



February 6, 2015

Memorandum

To: Members of the Board

From: Domenic N. Savini, Assistant Director

Through: Wendy M. Payne, Executive Director

Subject: **Analysis of Comment Letters – *Public-Private Partnerships: Disclosure Requirements*.¹ – Tab B**

MEETING OBJECTIVE

Staff requests that the Board respond to the following questions:

- a. Should a public hearing be scheduled?
- b. If not, are there individual respondents from whom you wish to seek clarification directly?
- c. Does the Board generally agree with the proposed edits as shown at Attachment 2?

BRIEFING MATERIAL

Staff has summarized responses to each of the questions. Please note that to facilitate analysis staff's summary takes excerpts from respondent replies. The staff's summary is intended to support your consideration of the comments and not to substitute for reading the individual letters.

The staff summary consists of a brief background, summary of outreach efforts and an Executive Summary followed by tables identifying respondents by type and affiliation and analyses of their responses by question.

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.

Comment letters are provided as Attachment 1 which includes a table of contents and identifies respondents in the order their responses were received. The comment letters appear as an attachment to facilitate compilation and pagination. However, staff encourages you to read the letters in their entirety before you read the executive summary below.

Staff also notes preparing the Tally of Responses and Quick Tables of Responses by Question was not as straight forward or as the Board might be accustomed to seeing because of the following reasons:

- Some respondents chose to address only portions of the ED²
- Some respondents provided a narrative response to the question, without actually indicating agreement or disagreement
- Some respondents indicated agreement with the proposal but provided either a caveat or additional information for consideration (that may have been indicated as a reason for disagreement by another respondent)

As such, perceived correlations between questions should be carefully analyzed and considered in connection to the individual respondent's views.

The 90-day comment period ended on January 2nd. You will receive all responses but some responses were not received in time to include in the staff analysis. The staff analysis includes letters 1 through 25 and excludes those received later. Attachment 1 provides 29 responses received through February 4th. Any responses received after the 4th will be provided to you as soon as possible.

To help focus the discussion, Attachment 2 provides a revised ED, standards-only section, with recommended staff changes pursuant to some of the respondent comments. Staff intends to refine the non-authoritative sections of the ED - Introduction and Basis for Conclusions – based on Board re-deliberations if so required.

Lastly, Attachment 3 of the briefing materials includes the original Exposure Draft.

Thank you and I look forward to our meeting.

² Please note that Staff's accompanying analysis relies on the explicit (Yeas or Nays) responses in the tally reports. For example, where only 20 of 25 responded to a question, Staff would report that "half of the respondents agreed" if 10 agreed.

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Attachment 1 provides the full text of each of the comment letters in the order the responses were received and processed.

Attachment 2 provides a revised Exposure Draft, Standards-only section, with recommended changes pursuant to staff review of respondent comments.

Attachment 3 provides the original Exposure Draft.

BACKGROUND

This exposure draft proposes financial disclosure standards for public-private partnerships by establishing a definition of P3s and risk-based characteristics that need to exist before considering the proposed disclosure requirements. One member has an alternative view that expresses concerns related to the proposed definition of P3s, the proposed disclosure requirement for remote risks, the disclosure threshold for risks, and the nature of certain risks proposed for disclosure.

The Board believes that the information provided represents an important step in meeting the federal reporting objectives. Furthermore, the information will help users answer questions concerning budgetary resources obtained and used, the costs of providing specific programs and activities, and the associated long-term risks.

SUMMARY OF OUTREACH EFFORTS

The ED was issued October 1, 2014 with comments requested by January 2, 2015. Upon release of the exposure draft, notices and press releases went to the following organizations:

- a) The Federal Register
- b) *FASAB News*
- c) *The Journal of Accountancy, AGA Today, the CPA Journal, Government Executive and the CPA Letter*
- d) The CFO Council, the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the Financial Statement Audit Network; and members of both the Federal Real Property Council and Federal Facilities Council
- e) Committees of professional associations generally commenting on exposure drafts in the past

This broad announcement was followed by electronic mailings of the exposure draft to:

- a) Relevant congressional committees
 - a. House Committee on Oversight and Government Reform
 - b. Senate Committee on Homeland Security and Governmental Affairs
- b) Public interest and labor union groups
 - a. In the Public Interest
 - b. American Federation of State, County and Municipal Employees (AFSCME)

Several reminder notices were provided during the comment period.

EXECUTIVE SUMMARY

On balance, the body of the proposed Standard held up well with the exception of the remote risk disclosure requirement.

1. Definition: Refer to Q1 –

Refer to Table 2.0 for detailed comments - Half of the respondents basically agree with the definition when one considers that 4 of the 14 disagreeing respondents take exception to the definition because they believe it should be expanded (3) or that certain terms be further explained (1). The remaining half who disagree with the definition primarily question its scope.

Staff recommends – Leave the definition as-is but clearly note that that it is subject to exclusions. Refer to the Q2 analysis below for related comments. See Attachment 2 for suggested edits.

2. Exclusions: Refer to Q2 –

Refer to Table 2.0 for detailed comments - The majority of those disagreeing stated that the definition was too broad capturing routine or standard type arrangements/transactions and suggested clarifying or adding exclusions.

Staff recommends –Add 2 exclusions proposed by respondents that would exempt (1) routine PP&E procurements and (2) formal as well as informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, or encourage economic development. See Attachment 2 for suggested edits.

3. Characteristics: Refer to Q3 & Q4 –

Refer to Table 2.0 for detailed comments - The majority of respondents agreed with the risk-based characteristics, their related classification, and their proposed application. Some of those disagreeing sought additional characteristics such as identifying as higher risk P3s arising from non-complaint systems or where internal controls are lacking (e.g., lack of consistent contract terms) or where a principal arrangement or transaction is exempt from the requirements of specific sections of 2 CFR (Code of Federal Regulations). One respondent who disagreed took exception to eliminating P3s that lack fiscal exposure noting that such P3s may be qualitatively important to disclose. A few of the respondents questioned certain individual characteristics or their classification in light of unique circumstances or citing vagueness of certain terms.

Staff recommends – Subject to re-deliberation, no changes are recommended.

4. Disclosures: Refer to Q5 –

Refer to Table 2.0 for detailed comments - Respondents are mixed in this regard with one half stating that the disclosures are onerous and burdensome and the other half in agreement or seeking additional disclosures. Of those disagreeing, one respondent believes information is missing regarding government guarantees that place the ultimate risk on the taxpayer.

Staff recommends – Eliminating the requirement for amounts estimated to be received and paid during each of the succeeding five years of a P3 and limiting the mix and amount of funding to the reporting year in question. See Attachment 2 for suggested edits.

5. Remote Risk Board Position & Alternative View: Refer to Q6 –

Refer to Table 2.0 for detailed comments – Most of the respondents (75.0% or more) disagree with the Board and agree with the Alternative View that states (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 disclosure.

Staff recommends – See below and Attachment 2 for suggested edits:

Alternative View Issue	Suggested Edit
1. Disclosure of remote contingencies is not limited to the terms of contractual arrangements.	New Paragraph 21: “Disclosure of remote risks per par. 24. 3.d.ii, if any, should be limited to the underlying contractual arrangement or transaction. Business risks that are not material (quantitatively or qualitatively) need not be reported.”
2. The concept of “significant exposure” is not sufficiently clear to result in consistent disclosures.	Eliminate “significant exposure” as a concept and replace with “significant risk” along with a footnote explanation.
3. Risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosure.	Rewrite Paragraph 24.d (ii): “Identification of the significant contractual risks the P3 partners are undertaking if: ii. the chance of the risk materializing is remote but its impact on the P3s estimated cash flows would be significant and its impact on the entity would be either quantitatively or qualitatively material.

6. Aggregate or Group Disclosures: Refer to Q7 –

Refer to Table 2.0 for detailed comments – The majority of respondents agreed with this proposal and some saw potential benefit in the event any of the disclosures individually presented could be construed as being privileged or confidential. Those who disagreed noted that (1) P3s are individual undertakings and disclosure should be based on each individual project or task, and (2) each P3 is a unique contract with unique risks and payment structure and should therefore be reported individually.

Staff recommends – Subject to re-deliberation, no changes are recommended.

7. Comments or Suggestions: Refer to Q8 -

Refer to Table 2.0 for detailed comments – Respondent suggestions include: (1) adding an appendix to the standard to provide disclosure examples, (2) guidance and direction needs to be provided on establishing a risk disclosure framework, and (3) clarifying the term "private sector." See Attachment 2 for suggested edits.

Staff recommends – Subject to re-deliberation, adding illustrative examples concerning disclosures. Adding a footnote describing the term "private sector" as follows:

"Private sector refers to individuals and entities acting in their private capacities outside of the authority and control of Federal, State or local governments and encompasses for-profit businesses and non-profit organizations that are outside of the authority and control of Federal, State or local governments."

RESULT

We received a total of 29 responses all of which are include at Attachment 1, however, 4 were not received in time for incorporation into the staff analysis.³ Table 1.0 summarizes all received responses below.

Table 1.0 - Summary of Respondent Types to Exposure Draft

RESPONDENT TYPE	FEDERAL (Internal)	NON-FEDERAL (External)	TOTAL
Preparers and financial managers	19	0	19
Users, academics, others	2	6	8
Auditors	1	1	2
Total	22	7	29

³ Respondent 26³- Department of the Interior, Respondent 27³- Department of Defense, Respondent 28⁴- Office of the Director of National Intelligence, and Respondent 29⁴- Association of Government Accountants.

Table 1.1 - Summary of Respondent Agencies

RESPONDENT AGENCIES	FEDERAL (# Respondent Letters)
Agriculture	1
Commerce	1
Defense	1
DHS	1
DNI	1
Energy	1
EPA	1
GAO	1
GSA	1
HHS	1
HUD	1
Interior	1
Labor	1
NASA	1
NRC	1
OPM	1
RRB	1
SBA	2
SSA	1
Treasury	1
VA	1
Total	22

Table 2.0 – Tally of Responses by Question

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Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
1.	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.	6	14	<p>Those who disagree cite the following reasons:</p> <ol style="list-style-type: none"> 1. The definition is too broad. 2. The definition should be broader capturing more non-standard activities and legislative requirements. 3. Exclusions should be part of the definition; for example, informal arrangements and co-sponsorship agreements. 4. The definition should be more detailed; e.g., defining “private sector.” <p>Note: 3 disagreeing respondents (DHS, ARTBA, and Dillard) and 1 N/A respondent (HHS) <u>suggest expanding</u> the definition to capture “additional scenarios” and constitutional risks to “promote and improve” greater transparency and accountability.</p> <p>Note: 1 disagreeing respondent (DoC) substantially agrees with most of the definition subject to further elaboration of certain terms.</p>

Table 2.0 – Tally of Responses by Question

Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
2.	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.	7	7	<p>Specific 2a. comments include:</p> <ol style="list-style-type: none"> 1. The definition does not focus on the level of risk and is applied to both the federal entity and general public. 2. Economic life of the asset is not covered for proper risk management. 3. Significant risk is unclear. 4. Disclosures of material concentrations of risk may already be required. 5. The definition is reasonable but requires expansion to promote transparency and public-support. 6. Broaden the definition.

Table 2.0 – Tally of Responses by Question

Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
2.	<p>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.</p> <p>c. Are there any features other than those identified in the proposed P3 definition that would assist</p>	7	12	<p>Specific 2b. comments include:</p> <ol style="list-style-type: none"> 1. Expand the list of exclusions; such as P3s arising from (1) legislative requirements, (2) standard procurements, (3) co-sponsorship agreements, and (4) where standard processes exist to ensure minimal negative impact. 2. It is not clear that informal arrangements are excluded. 3. The Department believes that standard non-bundled and bundled leasing arrangements under FAR though that are not under GSA-delegated authority should also be specifically excluded from the provisions of the standard. 4. Exclude grants and P3s that are regulated. <p>Specific 2c. comments include:</p>

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2.	<p>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.</p> <p>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,</p>	7	1	<ol style="list-style-type: none"> 1. Reputational risk to federal agencies. For example, P3s with for-profit entities may carry more reputational risk than if partnered with a N4P. 2. Mergers and acquisitions subsequent to entering the P3. 3. Lack of consistent contract terms and conditions. 4. Reimbursable agreements. 5. Performance of economic analyses. 6. We believe that adding definitions for significant fiscal exposure and including expanding what is excluded will help users identify P3 relationships for reporting purposes. We also agree with the recommended improvements provided in the alternative paragraph A41. <p>Specific 2d. comments include:</p> <ol style="list-style-type: none"> 1. There must be accountability to the citizen whether the P3 has financial risk or not;

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2.	<p>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.</p>	10	8	<p>i.e.; part of normal execution of government.</p> <ol style="list-style-type: none"> Exclude non-binding arrangements. Expand the list of exclusions; such as P3s arising from (1) legislative requirements, (2) standard procurements, and (3) co-sponsorship agreements. It is not clear that informal arrangements are excluded. Shouldn't formal arrangements that don't share risks or rewards also be excluded? Exclude leases which are not made pursuant to GSA delegated authority.
	<p>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</p>	14	3	<p>Specific 2e. comments supporting the AV include:</p> <ol style="list-style-type: none"> The Board should reconsider issuing the standard as unnecessary and consider issuing guidance instead. We believe that the contingent losses associated with the other party's default (or

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2.	rationale for your answer.			<p>another party’s default to whom the activity has been delegated) on the arrangement should be the focus.</p> <p>3. The department agrees with the alternative view and believes that standard procurements of capital assets be excluded.</p> <p>4. We agree with Mr. Dacey that the definition of P3s and P3 transactions are drawn too broadly to be applied consistently and effectively.</p> <p>Note: The 3 “No” respondents (USDA, OPM and VA). USDA and OPM state that the definition is basically fine and USDA further noting that the definition confines arrangements / transaction to P3s.</p>
3.	<p>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</p>	11	4	<p>Specific 3a. comments include:</p> <p>1. We disagree that P3 arrangements should be eliminated from disclosure because they do not possess significant fiscal exposure. Certain arrangements may be qualitatively material although they may not be quantitatively material.</p> <p>2. One respondent states that the</p>

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3.	<p>detailed discussion and related explanations)? Please provide the rationale for your answer.</p> <p>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</p>	4	4	<p>characteristics force requirements on its co-sponsorship agreements.</p> <p>3. We do not believe that the risk should be different than what is in SFFAS 5, measurable and probable. Until a risk becomes probable, it does not meaningfully add to the financial statements, especially for the federal government. In addition, redefining risk could result in premature reporting of a remote risk that could put a partner in a compromised financial position</p> <p>Note: Two departments (HHS and HUD) specifically noted that we have identified very valid risks or that the risk-based characteristics allow a preparer to focus on only those P3s with fiscal exposure potential. DoL notes that P3s should not be eliminated because they lack fiscal exposure noting that such P3s may be qualitatively important to disclose.</p> <p>Specific 3b. comments include:</p> <p>1. Any arrangement arising from non-compliant systems such as those having inadequate internal controls or where there</p>

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3.	<p>required? Please provide the rationale for your answer.</p> <p>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</p>	4	5	<p>is a lack of consistent policies/practices.</p> <p>2. Specific agency legislation that provides the authority to undertake such arrangements.</p> <p>3. Non-FAR based arrangements such as small business and social/economic programs.</p> <p>4. Agency reimbursable agreements. These agreements allow an external party to pay the agency to provide additional agency services based on needs and agency availability. These agreements may not meet the FASAB requirements for disclosure from.</p> <p>Specific 3c. comments from those replying in the negative include:</p> <p>1. P3's <u>are</u> used for fostering goodwill.</p> <p>2. Agency not involved in P3s.</p> <p>3. Agency reimbursable agreements may not meet the FASAB requirements for</p>

Table 2.0 – Tally of Responses by Question

Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
3.	explanations)? Please provide the rationale for your answer.			<p>disclosure.</p> <p>4. The definition is not relevant to our agency.</p> <p>Specific 3c. comments from the respondents who replied in the affirmative include:</p> <ol style="list-style-type: none"> 1. Consider the Public, all P3s should be disclosed. 2. An agency notes that in addition to the very valid risks identified by FASAB, they are experiencing other concerns: mergers and acquisitions and non-FAR based arrangements. 3. Another agency notes that its co-sponsorships appear to fit under at least two of the four legs of our definition.
4.	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	8	5	<p>Specific comments include:</p> <ol style="list-style-type: none"> 1. We believe that an additional conclusive characteristic should be added: “The principal arrangement or transaction is exempt from the requirements of 2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit

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4.	provide the rationale for your answer.			<p>Requirements for Federal Awards.</p> <ol style="list-style-type: none"> 2. Consider adding an additional characteristic reflecting a lack of consistent contract or agreement terms and conditions sufficient enough to properly address all anticipated risks with such agreements. This can be evidenced by an entity not having a P3 governance structure or P3 procurement framework in place. 3. We recommend clear linkage within par. 19 to the definition at par. 17. 4. Our review of conclusive and suggestive characteristics run the danger of forcing these requirements on its co-sponsorship agreements. 5. We do not agree with conclusive item 3 because years, is not a good indicator for a conclusive characteristic although it could possibly be a suggestive one. Suggest a longer term, such as 10 years, or where language isn't based upon a number of years, but whether the federal government has any recourse during the term, e.g., to terminate prior to the end of the lease or to make modifications to the lease.

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4.				<p>6. We agree that item 4 should be a conclusive characteristic. However, where arrangements are reflective of the FAR standards in protections to the agency, those should also be excluded from disclosure. This item is contradictory to what is listed in the scope of the standard, par.15. This item infers exclusions for FAR based acquisitions, not just FAR simplified acquisitions.</p> <p>7. The reviewer is of the opinion that only items 2 and 4 under the Conclusive Characteristics should apply. Items 1 and 3 under Conclusive Characteristics are believed to be too vague and otherwise are appropriate for coverage under other FASAB standards such as accounting requirements for leasing and asset recognition.</p> <p>Note: Several departments note:</p> <p>1. The conclusive characteristics are straight forward and reasonable and the suggestive characteristics largely appear reasonable as well though appropriately require judicious use prior to automatically triggering additional disclosure</p>

Table 2.0 – Tally of Responses by Question

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4.				<p>requirements.</p> <ol style="list-style-type: none"> The Department agrees with the risk-based characteristics noting some elaboration should be considered; long-lived assets and long-term financing liability. Another agency notes that the characteristics appear to be reasonable and comprehensive.
5.	<p>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.</p>	10	10	<p>Specific comments include:</p> <ol style="list-style-type: none"> It would be more appropriate to report the information as RSI. Par. 23ii - significant instances of non-compliances with legal and contractual provisions could have audit implications if suitable or available criteria cannot be defined. Information is missing. Are there guarantees by the government which places the risk on the back of the taxpayer and not the private entity? The component entity disclosures required in paragraph 23 seem to be at a very detailed level and may be both burdensome for preparers and overwhelming for readers.

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5.				<p>5. The enhanced disclosure requirements are onerous – particularly the one which would require the Agency to identify “the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows; <i>a requirement which would oblige each co-sponsorship to be reviewed by an accountant.</i></p> <p>6. The Department believes that the individual required disclosures are much too extensive and costly. We recommend that FASAB delete:</p> <ul style="list-style-type: none"> a. The entity’s statutory authority for entering into the P3. b. 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. c. Associated amounts recognized in the financial statements such as gains or losses and capitalized items. d. Significant instances of non-compliances with legal and contractual

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5.				<p>provisions governing the P3 arrangement or transaction.</p> <p>7. We are concerned that some of this information may be considered proprietary by a private sector partner and including it in a public document may subject the agency to legal liabilities.</p>
6.	<p>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.</p> <p>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</p>	<p>4</p> <p>15</p>	<p>12</p> <p>2</p>	<p>Specific 6a. and 6b. comments from both “Yes” and “No” respondents include:</p> <ol style="list-style-type: none"> 1. Disagree. Contingent liabilities should be disclosed consistent with current standards. 2. Applying a different standard for the requirements outlined in SFFAS 5 would add confusion. 3. Full disclosure and transparent, objective analysis of costs and benefits and both short-term and long-term trade-offs is needed whenever government officials, at any level, propose entering into public-private partnership arrangements. 4. I support P3's Public Private Partnerships.

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6.	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.			<p>I want greater transparency when government representing my interests engages in a P3. I will appreciate your thoughtful deliberations.</p> <p>5. The Board’s position sounds reasonable.</p> <p>6. Agree with the Board’s position noting that user needs and the qualitative as well as quantitative characteristics are to be considered.</p> <p>7. The Department disagrees with the Board’s position. Remote risks may include far too many financial and nonfinancial risks and they should not be disclosed. The Department believes that a risk threshold higher than “remote” should exist similar to existing disclosure requirements for contingencies. The Department very much shares in the Alternative View concerns that the proposed standard could expand the disclosure requirements for contingent liabilities that are provided under SFFAS 5 by extending disclosure requirements to certain remote contingencies and expanding disclosures to include business risks. The Department agrees with the Alternative View that indicates that such additional disclosures could overwhelm or</p>

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6.				<p>mislead users with extensive information related to (1) risks that have only a slight chance of occurrence and (2) business risks that do not necessarily affect the financial statements.</p> <p>8. This department received conflicting opinions in this regard and notes that should the Board proceed, more specific guidance/thresholds for disclosing remote losses should be provided.</p> <p>9. We support many of Mr. Dacey’s alternate viewpoints including the three listed in the above question. The proposed standards should be revised to address the following:</p> <p>a. The disclosure of remote contingencies and business risks is unnecessary and may be detrimental to the overall clarity of the financial statements as a whole. These risks only have a slight chance of occurrence and tend to overwhelm users of the financial statements. They should not be required on a regular basis. <i>However, if there are unique circumstances where the omission would cause a misrepresentation,</i></p>

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Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
6.				<p><i>they should be included.</i></p> <p>b. The concept of “significant disclosure” should be clarified to allow consistent application across various P3 contractual arrangements and transactions.</p> <p>10. We agree with Mr. Dacey that the definition of P3s and P3 transactions are drawn too broadly to be applied consistently and effectively and we respectfully request that you define the arrangements to be bound by the additional disclosure requirements more narrowly, so that low-risk events like SBA's co-sponsorships are not included.</p>
7.	.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.	13	2	<p>Specific comments include:</p> <ol style="list-style-type: none"> 1. Disagree. P3s are individual undertakings. Disclosure should be based on each individual project or task. 2. Disagree. Each P3 is a unique contract with unique risks and payment structure. Each project has an individual VfM analysis and strategy, which should therefore be reported individually.

Table 2.0 – Tally of Responses by Question

Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
8.	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.	10	15	<p>Specific comments from the positive replies include:</p> <ol style="list-style-type: none"> 1. Today, P3s are more than infrastructure and are replacing the function of government without representation and accountability. Private entities cannot be relied upon to fully disclose information they might consider “confidential” to the Public. 2. In reference to one of your conclusive characteristics, our understanding is that all Grants & Agreements fall outside of Federal Acquisition Regulations, meaning, if this exposure draft is adopted, virtually all Grants & Agreement arrangements would be required to disclosure all risks associated with those arrangements – a serious reporting burden for Forest Service and hopefully many other Departments and agencies. Forest Service has solid set of authorities, policies and practices for our Grants & Agreements. Forest Service is not, as the conclusive characteristics indicates at any increased risk because,

Table 2.0 – Tally of Responses by Question

Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
8.				<p>we have established safeguards such as effective contract resolution mechanisms for any potential risks.</p> <p>3. We suggest that the Board consider adding an appendix to the standard to provide disclosure examples for illustrative purposes only. This would aid financial statement preparers to develop the necessary disclosure at the appropriate level of detail, and would ensure consistency in application and presentation of the requirements.</p> <p>4. Guidance and direction needs to be provided on establishing a risk disclosure framework – risks associated with P3s and the use of quantitative and qualitative disclosures.</p> <p>5. Guidance and direction needs to be provided on how to determine when information should be disclosed based upon its qualitative aspects and whether auditors can attest to that information, such as the rationale for entering in to the P3.</p> <p>6. This new standard is ill-advised. The requirements under this standard are addressed in other standards for valuing</p>

Table 2.0 – Tally of Responses by Question

Question Number	QUESTION	YES / AGREE	NO / DISAGREE or N/A	RATIONALE FOR “NO/DISAGREE”
8.				<p>assets and liabilities and need not be duplicated in a new standard. If there is a concern that the existing standards are not clear, they could be updated or implementation guidance could be provided without addressing P3s in a separate standard.</p> <p>7. It is unclear how an agency would apply the expanded definition of materiality to include qualitative factors as proposed in the Exposure Draft.</p> <p>8. There needs to be more rigor around the definition, clarifying "private sector," and how risk is disclosed/reported.</p> <p>9. Early adoption should be permitted only if the disclosures are reported as RSI.</p>

Table 3.0 – Quick Table of Responses by Question - Definition

Table 3.0 – Quick Table of Responses by Question - Definition

Respondent ▼ (see Table 6.0)	1 Do you Agree? (Definition)	2 a Do you Agree? (Definition's Scope includes arrangements or transactions that could possess significant risk)	2 b Do you Agree? (Definition's Scope excludes non-P3 contracts or arrangements)	2 c Are there....? (Features other than those identified in the proposed P3 definition)	2 d Do you Agree? (Is it clear what would be excluded by this provision)	2 e Do you Agree? (With AV that the definition is not sufficiently clear)
1 - Anderson	N/A	N/A	N/A	N/A	N/A	N/A
2 – Wallach	N/A	N/A	N/A	N/A	N/A	N/A
3 – USDA	Yes	Yes	Yes	Yes	Yes	No
4 - SSA	No	N/A	No	N/A	No	N/A
5 - HHS	N/A	N/A	N/A	Yes	N/A	N/A
6 - RRB	No	N/A	N/A	N/A	N/A	N/A
7 –DOC	No	N/A	No	N/A	Yes	Yes
8– DHS	No	No	No	Yes	No	N/A
9 – HUD	Yes	Yes	Yes	N/A	Yes	N/A
10 –ARTBA	No	No	N/A	N/A	N/A	N/A

Table 3.0 – Quick Table of Responses by Question - Definition

Respondent ▼ (see Table 6.0)	1 Do you Agree? (Definition)	2 a Do you Agree? (Definition's Scope includes arrangements or transactions that could possess significant risk)	2 b Do you Agree? (Definition's Scope excludes non-P3 contracts or arrangements)	2 c Are there....? (Features other than those identified in the proposed P3 definition)	2 d Do you Agree? (Is it clear what would be excluded by this provision)	2 e Do you Agree? (With AV that the definition is not sufficiently clear)
11 –SBA	No	N/A	No	N/A	No	Yes
12 - OPM	Yes	Yes	Yes	N/A	Yes	No
13 - SBA	Yes	Yes	Yes	N/A	No	Yes
14 - NASA	No	No	No	Yes	Yes	Yes
15 - Dillard	No	No	Yes	N/A	No	Yes
16 - EPA	N/A	No	No	N/A	Yes	Yes
17 - KPMG	No	N/A	No	N/A	No	Yes
18 - GSA	No	Yes	Yes	No	Yes	Yes
19 - DOL	No	No	No	Yes	N/A	Yes
20 - NRC	N/A	N/A	N/A	N/A	N/A	Yes
21 - GWSCPA	No	N/A	No	N/A	No	Yes

Table 3.0 – Quick Table of Responses by Question - Definition

Respondent ▼ (see Table 6.0)	1 Do you Agree? (Definition)		2 a Do you Agree? (Definition's Scope includes arrangements or transactions that could possess significant risk)		2 b Do you Agree? (Definition's Scope excludes non-P3 contracts or arrangements)		2 c Are there....? (Features other than those identified in the proposed P3 definition)		2 d Do you Agree? (Is it clear what would be excluded by this provision)		2 e Do you Agree? (With AV that the definition is not sufficiently clear)	
22 - GAO	No		N/A		No		N/A		No		Yes	
23 - VA	Yes		Yes		Yes		Yes		Yes		No	
24 - DOE	No		No		No		Yes		Yes		Yes	
25 - Treasury	Yes		Yes		No		N/A		Yes		Yes	
Totals	6 5	14	7 11	7	7 6	12	7 17	1	10 7	8	14 8	3
KEY	YES N/A	NO	YES N/A	NO	YES N/A	NO	YES N/A	NO	YES N/A	NO	YES N/A	NO

Table 4.0 – Quick Table of Responses by Question – Risk Based Characteristics

Table 4.0 – Quick Table of Responses by Question – Risk Based Characteristics

Respondent ▼ (see Table 6.0)	3 a Do you Agree? (Possessing Risk-based Characteristics)	3 b Do you believe....? (Other arrangements or transactions for which the risk-based characteristics should be required)	3 c Do you believe...? (Your Entity will have P3s that are subject to the proposed disclosure)	4 Do you Agree? (Applying Risk-based Characteristics, their classification as either conclusive or suggestive, and their proposed application)
1 - Anderson	N/A	N/A	N/A	N/A
2 – Wallach	N/A	N/A	N/A	N/A
3 - USDA	Yes	No	No	Yes
4 - SSA	N/A	N/A	No	N/A
5 - HHS	Yes	Yes	Yes	N/A
6 - RRB	N/A	N/A	N/A	N/A
7 –DOC	Yes	N/A	N/A	Yes
8– DHS	N/A	Yes	No	N/A
9 – HUD	Yes	N/A	No	N/A

Table 4.0 – Quick Table of Responses by Question – Risk Based Characteristics

Respondent ▼ (see Table 6.0)	3 a Do you Agree? (Possessing Risk-based Characteristics)	3 b Do you believe....? (Other arrangements or transactions for which the risk-based characteristics should be required)	3 c Do you believe...? (Your Entity will have P3s that are subject to the proposed disclosure)	4 Do you Agree? (Applying Risk-based Characteristics, their classification as either conclusive or suggestive, and their proposed application)
10 –ARTBA	N/A	N/A	N/A	N/A
11 – SBA	No	N/A	Yes	No
12 - OPM	Yes	No	N/A	Yes
13 - SBA	Yes	N/A	Yes	Yes
14 - NASA	Yes	No	Yes	No
15 - Dillard	No	Yes	N/A	N/A
16 - EPA	N/A	N/A	N/A	N/A
17 - KPMG	N/A	N/A	N/A	No
18 - GSA	Yes	No	No	No
19 - DOL	No	Yes	N/A	Yes
20 - NRC	N/A	N/A	N/A	N/A

Table 4.0 – Quick Table of Responses by Question – Risk Based Characteristics

Respondent ▼ (see Table 6.0)	3 a Do you Agree? (Possessing Risk-based Characteristics)		3 b Do you believe....? (Other arrangements or transactions for which the risk-based characteristics should be required)		3 c Do you believe...? (Your Entity will have P3s that are subject to the proposed disclosure)		4 Do you Agree? (Applying Risk-based Characteristics, their classification as either conclusive or suggestive, and their proposed application)	
21 - GWSCPA	Yes		N/A		N/A		Yes	
22 - GAO	N/A		N/A		N/A		N/A	
23 - VA	Yes		N/A		N/A		Yes	
24 - DOE	No		N/A		N/A		No	
25 - Treasury	Yes		N/A		N/A		Yes	
Totals	11 10	4	4 17	4	4 16	5	8 12	5
KEY	YES N/A	NO	YES N/A	NO	YES N/A	NO	YES N/A	NO

Table 5.0 – Quick Table of Responses by Question – Disclosures, Board Position, Aggregation, and Comments/Suggestions

Table 5.0 – Quick Table of Responses by Question – Disclosures, Board Position, Aggregation, and Comments/Suggestions

Respondent ▼ (see Table 6.0)	5 Do you Agree? (Disclosures)	6 a Do you Agree? (Board's position on remote risk)	6 b Do you Agree? (With the AV that (1) disclosures are not limited, (2) "significant exposure" is not clear, and (3) business risks would be included)	7 Do you Agree? (Aggregate Disclosures)	8 Comments or Suggestions
1 - Anderson	Yes	N/A	N/A	N/A	N/A
2 – Wallach	Yes	N/A	N/A	N/A	N/A
3 - USDA	Yes	Yes	No	Yes	Yes
4 - SSA	No	N/A	N/A	N/A	Yes
5 - HHS	N/A	N/A	N/A	N/A	Yes
6 - RRB	N/A	N/A	N/A	N/A	N/A
7 –DOC	No	No	Yes	Yes	N/A
8– DHS	N/A	Yes	Yes	N/A	N/A
9 – HUD	Yes	N/A	N/A	Yes	N/A

Table 5.0 – Quick Table of Responses by Question – Disclosures, Board Position, Aggregation, and Comments/Suggestions

Respondent ▼ (see Table 6.0)	5 Do you Agree? (Disclosures)	6 a Do you Agree? (Board's position on remote risk)	6 b Do you Agree? (With the AV that (1) disclosures are not limited, (2) "significant exposure" is not clear, and (3) business risks would be included)	7 Do you Agree? (Aggregate Disclosures)	8 Comments or Suggestions
10 –ARTBA	Yes	N/A	Yes	No	N/A
11 - SBA	No	N/A	N/A	N/A	N/A
12 - OPM	Yes	Yes	No	Yes	N/A
13 - SBA	Yes	No	Yes	Yes	Yes
14 - NASA	No	No	Yes	Yes	Yes
15 - Dillard	No	N/A	Yes ⁴	No	Yes
16 - EPA	N/A	No	N/A	Yes	N/A
17 - KPMG	No	No	Yes	N/A	N/A
18 - GSA	Yes	No	Yes	Yes	N/A

⁴ Accompanying respondent rationale to Q6b. seems to imply a misreading of the question as "disclosures should not be limited to contractual agreements."

Table 5.0 – Quick Table of Responses by Question – Disclosures, Board Position, Aggregation, and Comments/Suggestions

Respondent ▼ (see Table 6.0)	5 Do you Agree? (Disclosures)		6 a Do you Agree? (Board's position on remote risk)		6 b Do you Agree? (With the AV that (1) disclosures are not limited, (2) "significant exposure" is not clear, and (3) business risks would be included)		7 Do you Agree? (Aggregate Disclosures)		8 Comments or Suggestions	
19 - DOL	No		No		Yes		Yes		Yes	
20 - NRC	N/A		No		Yes		N/A		N/A	
21 - GWSCPA	No		No		Yes		Yes		Yes	
22 - GAO	No		No		Yes		N/A		Yes	
23 - VA	Yes		No		Yes		Yes		N/A	
24 - DOE	No		No		Yes		Yes		Yes	
25 - Treasury	Yes		Yes		Yes		Yes		N/A	
Totals	10	10	4	12	15	2	13	2	10	15
	5		9		8		10			
KEY	YES	NO	YES	NO	YES	NO	YES	NO	YES	N/A
	N/A		N/A		N/A		N/A			

Table 6.0 – Summary of Responses by Question ⁵

Table 6.0 – Summary of Responses by Question ⁵

<p>QUESTION - 1</p> <p>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.</p>	
3. USDA	Forest Service agrees. Forest Service interacts with many private (non-governmental) partners to provide a service with shared risks and rewards. We ensure that these risks and rewards are sufficiently captured in our memoranda. In addition, Forest Service does not discount projects or transactions that do not share risks or rewards sufficiently. However, we evaluate projects to ensure they are designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives.
4. SSA	Part (3) of the definition of P3s (Question 1), “conveyance or transfer of real property, personal property...” may be too broad. If interpreted literally, the definition could be perceived as requiring all acquisition of property be considered a P3 arrangement that requires disclosure, given that Appendix A, paragraph A11.a. discusses how there are inherent risks associated with acquiring, financing, operating, and maintaining long-lived assets. The Board may want to consider further refinement of this aspect of the definition or it may be beneficial to provide examples of the conveyance or transfer of real or personal property that fall within this definition.
6. RRB	Railroad Retirement Board (RRB) Response: Request that definition include language that states “other than transactions between public and private sector entities that have legislative requirements governing financing of service or benefit.....” Rationale for comment is the relationship between the RRB (public entity) and the National Railroad Retirement Board (private entity) is based on legislative requirements not a contract arrangement, yet they interact to provide a service/benefit to public.
7. DOC	The Department agrees that the definition, by including as elaboration four widely identified features of federal P3s evidencing the sharing of risks and rewards, helps identify risk-sharing arrangement or transactions that could possess significant fiscal exposure.

⁵ The staff’s summary takes excerpts from each respondents’ reply intended to support your consideration of the comments and not to substitute for a complete reading of the individual letters.

Table 6.0 – Summary of Responses by Question ⁵

8. DHS	Several DHS Components indicated that a more detailed definition of P3 needs to be presented. A suggestion was made to provide a detail listing of transactions that are considered standard in nature which would be excluded from this guidance.
9. HUD	The definition proposed at paragraph 17 allows for a general application of the most widely identified features of federal P3s. The definition encompasses actual practices while covering the diverse scope of federal assets and incorporates the risk-sharing element.
10. ARTBA	While the definition provided in paragraph 17 identifies many features commonly found in P3s, there are a few key points missing that should also be considered.
11. SBA - Outreach Task Force	We agree with Mr. Dacey (page 38) that the definition of P3s and P3 transactions are drawn too broadly to be applied consistently and effectively.
12. OPM	Agree that the P3 definition proposed at paragraph 17 captures the most widely identified features of federal P3s because it is broader based on actual Federal P3 practices and it recognizes the long-term nature and the shared financing of such agreements.
13. SBA - Deputy CFO	Agree that the P3 definition captures the most widely identified features of federal P3s. We cannot add to the rationale cited in A7-A9.
14. NASA	The standard appears to include arrangements/agreements that are non-binding to the federal government (a key aspect of whether the federal government would have risk). The standard also appears to include arrangements that have standard clauses or other language to minimize the risk to the government and to the general public, as well as arrangements that are properly reported/disclosed through other standards, e.g., SFFAS 5 and 6.
15. Dillard	Disagree. There are Constitutional issues at risk. Risks need to be identified. Are they strictly financial, as in a debt, or an insurance-risk type of exposure?
17. KPMG	The definition of P3s does not confine the scope of contractual agreements solely to P3s and the vagueness of the definition will not allow for the consistent application of the standard.

Table 6.0 – Summary of Responses by Question ⁵

18. GSA	The prescribed standards in this ED should only apply in the case of special purpose vehicles (SPV's) such as Trusts or Limited Partnerships that are specifically authorized by law. Outside of such SPV's or contractual agreements, the reviewer does not understand how P3's could exist under the law without representing an augmentation of appropriations or, potentially, anti-deficiency act violations.
19 - DOL	DOL/OCFO believes that an Agency may have specific legislation that provides the authority to undertake such arrangements. Furthermore, the legislative authority may limit the relationship between the Government and the non-government party. The Board should include a policy which recognizes the inconsistency that may occur between what is required in the legislation and/or regulations and what is required by the accounting standard.
20 - NRC	The NRC supports Mr. Dacey's position that the standard is too broadly written and the terms used therein need to be clearly defined for the same reasons expressed in paragraphs A33 through A40.
21 - GWSCPA	<p>The definition could be improved by:</p> <ol style="list-style-type: none">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.
22 - GAO	Narrow the proposed P3 definition to more closely align with P3 arrangements and transactions by (1) excluding items that likely have limited risk of contingent losses or (2) building upon more restrictive definitions used by other standard-setters. Also, ensure that all terms in the definition are clearly defined.
23 - VA	VA agrees 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.

Table 6.0 – Summary of Responses by Question ⁵

24 - DOE	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.
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Table 6.0 – Summary of Responses by Question ⁵

QUESTION - 2	
<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	
3. USDA	<p>2a – Forest Service agrees.</p> <p>2b – Yes, your definition makes special note of shared risk and reward, whereas traditional pay for service contractual arrangements do not include that shared element, all while still holding the contractor accountable as defined in the terms.</p> <p>2c – Analyzing reputational risk to federal agencies with P3’s from different sectors might be a project worth considering. P3’s with for-profit entities while valuable for many reasons may</p>

Table 6.0 – Summary of Responses by Question ⁵

	<p>carry more significant reputational risk than for example non-profit 501(c)3 organizations. Forest Service is not sure how type of risk is assessed or made clearer in the definition or not sure about the real “fiscal exposure” associated with such risks.</p> <p>2d – Forest Service agrees that, shared risk and reward arrangements that open up the most significant fiscal exposure and therefore should warrant additional attention. Likely, the majority of what the Forest Service is currently calling P3 fall into this excluded category. Though, as an example in an increasingly important form of P3, the Forest Service partners with a utility company (or municipal agency) and perhaps a non-profit organization or company can invest in land management activities on public lands (that stay public) so as to reduce risk of damage to their infrastructure or “public” resource that directly contributes to their product/service offered to their customers. In that case, there is a sense of risk sharing and reward; although not involving transfer of real property that might not be longer than 5 years in length, and not sure about SPVs. Such arrangements largely foster goodwill and integrate strategic initiative. Forest Service exposure to fiscal risks is minimal in this example. Transfer of real property and assets seem to be a significant trigger of fiscal exposure or risk.</p> <p>2e – The definition is fine. Confines to P3’s.</p>
4. SSA	<p>We agree that FASAB should exclude (Question 2d.) “those 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.” However, it is not clear that these items are excluded from the scope; thus, it may be beneficial to specifically exclude these items.</p>
5. HHS	<p>2c. In addition to the very valid risks identified in the RATIONALE listed above there are additional concerns already experienced by CMS; Mergers and Acquisitions.</p> <p>Also, lack of consistent contract or agreement terms and conditions sufficient enough to properly address all anticipated risks with such agreements.</p>
6. RRB	<p>Railroad Retirement Board (RRB) Response: Request that definition include language that states “other than transactions between public and private sector entities that have legislative requirements governing financing of service or benefit.....” Rationale for comment is the relationship between the RRB (public entity) and the National Railroad Retirement Board (private entity) is based on legislative requirements not a contract arrangement, yet they interact to provide a service/benefit to public.</p>

Table 6.0 – Summary of Responses by Question ⁵

7. DOC	<p>2b. The Department believes that the definition can be significantly improved by adding that the definition excludes contracts or other arrangement or transactions that are routine in nature and not generally identified as P3s for other purposes.</p> <p>2d. The Department believes that the exclusion is reasonably clear as to what would be excluded.</p> <p>2e. The Department does not believe that standard procurements of capital assets under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods.</p>
8. DHS	<p>Having a broader definition of P3 agreements that means more non-standard activities are reviewed to determine what additional disclosures are needed, would promote greater transparency.</p> <p>Instead of rewriting the definition of P3 arrangements to only include what is normally considered a P3, the better solution would be to expand the list of activities that are excluded from P3 disclosure.</p>
9. HUD	<p>2a. Agree. The definition highlights fours areas that should aid the preparer in identifying risk sharing arrangements or transactions. If such conditions are not present, the preparer should not apply the requirements of this Statement.</p> <p>2b. Agree. The definition excluded contracts or other arrangements or transactions that are routine in nature and the requirements would not replace existing disclosure requirements.</p> <p>2d. Agree, it is clear what would be excluded.</p> <p>2e. The definition is broad and flexible thus unwarranted disclosure is possible. The preparer will need to examine whether other disclosure requirements exist and keep in mind that this requirement should not replace any existing requirement. The exclusion of those informal arrangements or transactions that do not share risk or reward is appropriate since the four elements highlighted in the definition are not present. In addition, the requirements should not replace existing disclosure requirement.</p>
10. ARTBA	<p>2a. The definition is reasonable to understand the general nature of risk allocation that may be envisioned for a particular P3. However, every P3 deal is very unique in terms of risk sharing</p>

Table 6.0 – Summary of Responses by Question ⁵

	and risk allocation to the private sector, so FASAB should consider expanding the definition or including a qualifying statement noting that additional scenarios may exist.
11. SBA - Outreach Task Force	<p>2a. You propose exempting those public-private partnerships from the disclosure requirement if they are not “material” (page 30) but it is hard to apply your definition of materiality to co-sponsorships.</p> <p>2b. We do not believe that the SBA collaborations were the ones you intended to expose. We understand you to intend these requirements to apply when there is appreciable financial risk to the government. For SBA, co-sponsorships represent the opposite. SBA almost never has financial exposure in a co-sponsorship, significant or otherwise.</p> <p>We agree with Mr. Dacey that the definition of P3s and P3 transactions are drawn too broadly to be applied consistently and effectively.</p>
12. OPM	<p>2c. The features identified in the proposed P3 definition are appropriate for identifying risk-sharing arrangements or transactions that could possess significant risk.</p> <p>2d. Agree with the scope of the ED excluding those informal arrangements or transactions that do not share risks or rewards. The definition emphasizes what would be included, and that is what is most important.</p> <p>2e. The definition appears to be fine, however further information may minimize the possibility of excessive disclosures for remote risks.</p>
13. SBA – Deputy CFO	<p>2a. We agree that the definition helps identify some risk- sharing arrangements or transactions that possess significant risk but it is not clear that these additional requirements add value beyond existing requirements for disclosure.</p> <p>2b. We agree that the P3 definition captures P3s based upon features that seem reasonable and consistent with the proposed standard. However, there is no source for the definition criteria.</p> <p>2e. Agree. It is not clear what should be excluded from the definition in order to represent only P3 agreements that present financial risk to the reporting entity. As written the definitions will not achieve consistent application.</p>

Table 6.0 – Summary of Responses by Question ⁵

<p>14. NASA</p>	<p>2a. The definition does not focus on the level of risk and is applied to both the federal government and the general public. This expands a P3 focus and is only narrowed for disclosure through the conclusive and suggestive characteristics.</p> <p>2b. While the P3 ED scope excludes certain simplified FAR acquisitions, it does not exclude FAR acquisitions.</p> <p>2c. Yes, where a standard process exists to ensure that minimal negative impact may be incurred by the federal government or the public or where recourse is outlined, by way of clauses or other language, the arrangements should be excluded from disclosure.</p> <p>2d. We agree that informal arrangements should be excluded, but do not believe this is evident the way the ED is currently written (only in the question posed, which is not part of the standard). The terminology should be changed to exclude non-binding arrangements, or other clearly recognized terminology used in appropriations law and contracts law.</p>
<p>15. Dillard</p>	<p>2b. Agree. It excludes to the detriment of the taxpayer. P3 arrangements are being used to bypass representation.</p> <p>2c. Economic analysis should be required to determine how benefits have been measured.</p> <p>2d. No, there must be accountability to the citizen whether it is financial with risk, or part of the execution of government.</p>
<p>16. EPA</p>	<p>2a. We are concerned that the definition of significant risk is unclear and can lead to inconsistent application. Also, we agree with the alternative view that the definition appears to encompass contracts that are not traditionally considered P3's.</p> <p>2c. We believe that adding definitions for significant fiscal exposure and including expanding what is excluded will help users identify P3 relationships for reporting purposes.</p>
<p>17. KPMG</p>	<p>2b.and 2d. We support the views provided in paragraph A34 regarding the definition of P3s.</p>
<p>18. GSA</p>	<p>2a. It is the reviewers opinion that the second part of the definition outlining conditions for the sharing of risks and rewards only confuses the issue and should be limited to those types of</p>

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	<p>special purpose vehicles specifically authorized by law.</p> <p>2b. There is agreement that the definition excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as P3s, but the reviewer again believes that the sharing of the risks and rewards is too subjective.</p> <p>2c. The features are too broad.</p>
19. DOL	<p>2a. DOL/OCFO believes that an Agency’s disclosures with regard to (a) significant accounting policies (in the descriptions of the programs and funds) and (b) material concentrations of risk may already identify risk-sharing arrangements or transactions that could possess significant risks. Disclosures of material concentrations of risk may already be required as part of management’s written representations to the auditor.</p> <p>2b. DOL/OCFO believes that the accounting standard should specifically exclude grants or other arrangements that are regulated under 2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.</p> <p>2e. DOL/OCFO believes that the contingent losses associated with the other party’s default (or another party’s default to whom the activity has been delegated) on the arrangement should be the focus.</p>
21. GWSCPA	<p>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.</p>
22. GAO	<p>The P3 definition proposed at paragraph 17 captures many of the most widely identified features of federal P3s; however, it is our view that the breadth of the definition does not confine the scope of arrangements and transactions solely to P3’s. In addition, we believe that the definition does not provide sufficient clarity to facilitate consistent application of the standard among preparers or between the preparer and the auditor.</p>
23. VA	<p>2a. VA agrees 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. The</p>

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	<p>definition specifically focuses on risks and rewards evidenced by agreements or financings.</p> <p>2b. Contracts would not be included in P3s as contracts generally don't share risks and rewards.</p> <p>2c. VA believes SFFAS 5, Accounting for Liabilities of the Federal Government probability classification should apply.</p> <p>2d. VA agrees with the exclusion of informal arrangements or transactions that do not share risks and rewards. SFFAS 5 regarding liabilities and contingencies covers all probability risks (probable, reasonably possible, and remote).</p> <p>2e. As long as SFFAS 5 criteria for disclosure are applied, the P3 standards provide appropriate disclosures.</p>
24. DOE	<p>2a. We do not agree that the proposed definition would help identify transactions that result in a significant risk to an agency.</p> <p>2b. We disagree because there is no threshold in the definition which would exclude those items that are not material or are routine in nature.</p> <p>2c. 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.</p> <p>2d. Yes, we agree with the intended exclusion of the ED. A numeric definition would allow for the inclusion of any ED that met a certain threshold or posed a significant risk to an agency.</p> <p>2e. 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.</p>
25. Treasury	<p>2b. Treasury disagrees that the definition clearly identifies contracts and arrangements that should be specifically excluded. A list of the types of contracts/agreements and transactions that should be excluded from the provisions of this standard would enhance clarity and result in a more consistent application of the standard.</p>

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QUESTION - 3	
<p>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.</p> <p>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.</p> <p>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..</p>	
3. USDA	<p>3a – Agree. To require more disclosure for seemingly less risk (fiscal exposure) would trigger burdensome and unwarranted reporting requirements.</p> <p>3b – None</p> <p>3c – No, as previously noted of the four Definitional Features Indicative of Risk (Fiscal Exposure), only point 3 is regularly encountered and when it is largely to foster goodwill, promote economic development, and integrates strategic initiatives and therefore does not appear to trigger the disclosure requirements. Definitional Features Indicative of Risk (Fiscal Exposure) - (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 SPV's.</p>
4. SSA	<p>3c. SSA is not involved currently in any P3 arrangements, nor do we expect to have P3s that are subject to disclosure pursuant to the proposed requirements.</p>
5. HHS	<p>3b. Mergers and Acquisitions.</p>

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7. DOC	3a. The Department agrees that only those P3s (identified pursuant to the proposed definition) possessing risk-based characteristics that indicate significant fiscal exposure should be subject to the proposed disclosure requirements.
8. DHS	CBP has Reimbursable Agreements with private entities for certain Customs services as part of a pilot program in FY 2014, which has been expanded in FY 2015. The agreements allow an external party to pay CBP to provide additional Customs services based on needs and CBP availability. These agreements as Public Private Partnerships; however, they may not meet the requirements for disclosure from FASAB.
9. HUD	<p>3a. Agree. The identification of only those P3s that possess risk-based characteristics allow a focus only on the transactions with fiscal exposure potential.</p> <p>3c. The Department believes that the definition of P3s as stated in the standard is not relevant to HUD.</p>
11. SBA – Outreach Task Force	<p>3c. Co-sponsorships appear to fit under at least two of the four legs of your definition of a Public-Private Partnership set forth on page 30. Definition one is “agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years.” Typically, a co-sponsorship might be three months in the planning, and executed over the course of a week. The agreement would cover the entire period. The “economic life” of the project is the event; it has no economic life once it is over. Thus co-sponsorships, no matter how economically insignificant, would be included in your definition and, therefore, exposed to your disclosure requirements.</p> <p>The second definition is “financing provided in whole or shared in part by the private partner.” But if that provision applied – as it frequently does in SBA’s co-sponsorships – the Agency’s fiscal exposure would actually be substantially reduced. It is the private partner, not SBA, that is exposed to loss when it provides the financing.</p>
12. OPM	Only projects sharing risks and rewards should be subject to the disclosure requirements in conformance with the definition of P3s, as evidenced by conditions such as those contained in the definition.
13. SBA – Deputy CFO	3c. Since we execute our primary programs through relationships with outside parties, we anticipate these requirements would affect our financial disclosures and reduce the value of important information already disclosed under other standards. We do not perceive any

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	value from the duplicative requirement.
14. NASA	3a. We agree that only P3s possessing risk should be subject to the disclosure requirements. However, we do not believe that the risk should be different than what is in SFFAS 5, measurable and probable. Until a risk becomes probable, it does not meaningfully add to the financial statements, especially for the federal government.
15. Dillard	3c. Consider the public in this question. All P3s should be subject to disclosure.
19. DOL	<p>3a. Certain arrangements may be qualitatively material (for example, those that involve funding through the Recovery Act) although they may not be quantitatively material. However, disclosure should involve only those arrangements that may result in a contingent loss, even though the amount of loss may not be quantitatively material.</p> <p>3b. Other arrangements or transactions besides public-private partnerships that may result in contingent losses are those arrangements that would be disclosed in a financial statement note for material concentrations of risk.</p>
21. GWSCPA	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.
23. VA	3a. VA suggests that SFFAS 5 criteria for disclosure be applied.
24. DOE	3a. If the definition is more clearly expanded and includes a manner in which to quantify the P3, these characteristics will be unnecessary.

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QUESTION - 4	
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.	
3. USDA	A4 –Agree. The conclusive characteristics are straight forward and reasonable (transferring an asset, setting up an SPV/trust, formal arrangement is established at conception for longer than 5 years, and exempted from FAR). The suggestive characteristics largely appear reasonable as well though appropriately require judicious use prior to automatically triggering additional disclosure requirements.
5. HHS	Consider adding an additional characteristic reflecting a lack of consistent contract or agreement terms and conditions sufficient enough to properly address all anticipated risks with such agreements. This can be evidenced by an entity not having a P3 governance structure or P3 procurement framework in place.
7. DOC	The Department agrees with the risk-based characteristics noting some elaboration should be considered; long-lived assets and long-term financing liability.
11. SBA – Outreach Task Force	<p>Your review of conclusive and suggestive characteristics of public-private partnerships that should be exposed to your disclosure requirements also runs the danger of forcing these requirements on co-sponsorships. One of your conclusive characteristics is “[t]he principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).” While it is not clear what the “principal” transaction would be in most co-sponsorships, any item purchased by the private-sector partner would be exempt from the FAR, as it should be; it is not a purchase being made with taxpayer money. It seems incongruous to expose co-sponsorships to enhanced disclosure requirements because of financial burdens willingly undertaken by the private sector.</p> <p>On page 18, you find it suggestive if “significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.” But that is the raison d’être for co-sponsorships,. The parties work and plan collaboratively, which would be impossible without cross-sharing knowledge.</p> <p>On the same page, you describe it to be another suggestive characteristic if “[t]he focus is more on</p>

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	collaboration and informal, real-time, resolution processes than on formal, contractual, administrative processes.” There is a contract between SBA and its co-sponsorship partners, but it is unclear whether that suffices to identify “the focus” as being on contractual processes. Of course, as with any collaborative enterprise, problem-solving is preferred to litigation. We hope that this does not mean that cooperation results in enhanced disclosure requirements.
12. OPM	Agree with the risk-based characteristics and their related classification as either conclusive or suggestive, and their proposed application at paragraphs 19 and 20. They appear to be reasonable and comprehensive.
14. NASA	We agree with the majority of the characteristics. However, we do not fully agree with #3 and #4 under the Conclusive Characteristics for the following reasons: - #3: We do not agree with conclusive item 3 as years is not a good indicator for conclusive characteristic, although it could possibly be a suggestive one. Suggest a longer term, such as 10 years, or where language isn't based upon a number of years, but whether the federal government has any recourse during the term, e.g., to terminate prior to the end of the lease or to make modifications to the lease. - #4: We agree that item 4 should be a conclusive characteristic. However, where arrangements are reflective of the FAR standards in protections to the agency, those should also be excluded from disclosure. This item is contradictory to what is listed in the scope of the standard, par. 15. This item infers exclusions for FAR based acquisitions, not just FAR simplified acquisitions.
18. GSA	The reviewer is of the opinion that only items' 2 and 4 under the Conclusive Characteristics should apply. Items' 1 and 3 under Conclusive Characteristics are believed to be too vague and otherwise are appropriate for coverage under other FASAB standards such as accounting requirements for leasing and asset recognition. No additional comments are made regarding the suggestive characteristics.
19. DOL	DOL/OCFO believes that an additional conclusive characteristic should be added: “The principal arrangement or transaction is exempt from the requirements of 2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
21. GWSCPA	The FISC supports the inclusion of risk-based characteristics. In our response to question 3, we have provided a suggestion on Suggestive Characteristic #4.

Table 6.0 – Summary of Responses by Question ⁵

23. VA	VA agrees. P3s containing standard languages that mitigate the risk to the federal government or general public should be excluded.
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Table 6.0 – Summary of Responses by Question ⁵

<p>QUESTION – 5</p> <p>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.</p>	
1. Jon Anderson	Full disclosure and transparent, objective analysis of costs and benefits and both short-term and long-term trade-offs is needed whenever government officials, at any level, propose entering into public-private partnership arrangements.
2. Dr. Andrew Wallach	I support P3's Public Private Partnerships. I want greater transparency when government representing my interests engages in a P3. I will appreciate your thoughtful deliberations.
3. USDA/OCFO	A5 – Generally agree. Components a-c is standard elements of institutional MOUs and other subsidiary agreements and reports already typically developed to frame a P3. Components d and e however do not typically figure into, nor might they be needed for Forest Service P3, and so may require undue extra effort. Though as previously noted, most Forest Service P3's would likely be exempt from the reporting requirements as proposed in the standard.
4. SSA	The component entity disclosures required in paragraph 23 seem to be at a very detailed level and may be both burdensome for preparers and overwhelming for readers. Given the current efforts in the Federal financial community to streamline reporting requirements, simplify presentations, and create more user-friendly reporting models, the financial statements may not be the appropriate forum for this level of information.
7. DOC	The Department believes that the individual required disclosures are much too extensive and require much more information than is reasonably needed.
9. HUD	Agree. The component entity report disclosure proposed at paragraph 23 provides the user with relevant information in the notes.
10. ARTBA	Agree. All of the key proposed terms of P3 agreements should be disclosed and reported publicly.

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11. SBA – Outreach Task Force	The enhanced disclosure requirements are onerous – particularly the one which would require the Agency to identify “the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows, including (1) the risk, and (2) the potential effect on cash flows if the risks were realized” (p. 20), a requirement which would oblige each co-sponsorship to be reviewed by an accountant. As SBA does not have the staffing to undertake such a review, it is likely that SBA would do significantly fewer co-sponsorships, contrary to the expressed will of Congress.
12. OPM	Agree with the component entity report disclosures proposed at paragraph 23. They appear to be reasonable.
14. NASA	We are concerned that some of this information may be considered proprietary by a private sector partner and including it in a public document may subject the agency to legal liabilities. Also note a concern in Q.7 that this could impact a partner's ability to perform in accordance with the arrangement. We recommend that disclosure information be at a higher, summary level. Because the Board has proposed this as supplemental disclosure/reporting, it is likely that an agency could have duplicative, but differing information in various notes.
15. Dillard	Information is missing. Are there guarantees by the government which places the risk on the back of the taxpayer and not the private entity? Are cash flow shortages guaranteed?
17. KPMG	Paragraph 23e.ii requires the disclosure of significant instances of non-compliance with legal and contractual provisions governing the P3. However, the ED does not define “significant instances”. Further, requiring a disclosure of significant instances of non-compliance would require the auditor to evaluate the completeness of this disclosure, which could be viewed as an opinion on compliance with the legal and contractual provisions governing the P3. Such an opinion would require the auditor to adhere to the requirements of AU-C Section 935, Compliance Audits, or AT Section 601, Compliance Attestation, which requires suitable and available criteria to evaluate compliance. We question whether suitable and available criteria could be defined for the compliance with legal and contractual provisions governing a P3. As a result of these matters, we recommend removing this disclosure requirement.
18. GSA	The reviewer agrees with the disclosure requirements in general, but only for entities identified as P3's through SPV's, Trusts, or Partnerships, as specifically authorized by law - not for contracts or leases that the reviewer does not believe constitute P3's by definition as per the other comments herein. The reviewer is in definite agreement with the emphasis on the entity's

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	statutory authority for entering into the P3 and why the government entity selected a P3 model to conduct business.
19. DOL	DOL/OCFO believes that it would be more appropriate to report the information as required supplementary information. If the information was reported as basic, DOL/OCFO believes that less information would be provided than if the information was reported as RSI. Reporting the information as basic would increase the time and resources required for the audit and decrease the information provided. Furthermore, DOL/OCFO believes that the standards should address circumstances where partners subcontract to others, subsequent events, and going concern issues.
21. GWSCPA	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.
22. GAO	<p>It is our view that the standard should limit the disclosure requirements for remote contingencies to contractual terms that are specified in contractual P3 arrangements and exclude business risks from the disclosure requirements. To that end, disclosures of contingencies where the chance of the future event occurring is slight and business risks that do not necessarily affect the financial statements could overwhelm users with extensive information and could be misleading and/or confusing to users. While general purpose federal financial reports support decision-making and accountability over taxpayer provided and other resources, federal entities have a number of existing reporting vehicles where the reporting and disclosures of such types of risks may be more appropriate and relevant.</p> <p>We believe that the treatment for recognition and disclosure of contingencies relating to contractual terms such as termination clauses, minimum payment guarantees, and other types of non-performance or other external events applicable to P3 arrangements and transactions are currently covered under SFFAS 5. With regard to contingent liabilities, currently SFFAS 5 requires the recognition of a contingent liability when the contingency is deemed probable and measureable (SFFAS 5 paragraphs 38-39) and disclosure of a reasonably possible contingency or a probable contingency that is not measureable (SFFAS 5 paragraphs 40-42.) We believe that the proposed standard should more clearly incorporate the existing requirements of SFFAS 5 so that entities and their auditors understand how the proposed standard and SFFAS 5 inter-relate.</p>

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23. VA	VA agrees that component entity report disclosures as per SFFAS 5 be included in general purpose federal financial reports and in RSI when the risk is remote.
24. DOE	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.)

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QUESTION – 6	
<p>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.</p> <p>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.</p>	
1. Jon Anderson	Full disclosure and transparent, objective analysis of costs and benefits and both short-term and long-term trade-offs is needed whenever government officials, at any level, propose entering into public-private partnership arrangements.
2. Dr. Andrew Wallach	I support P3’s Public Private Partnerships. I want greater transparency when government representing my interests engages in a P3. I will appreciate your thoughtful deliberations.
3. USDA	<p>6a – Agree. All sounds reasonable.</p> <p>6b – Generally disagree, though perhaps spelling out a bit more “significant exposure” might be helpful.</p>
7. DOC	<p>6a. The Department disagrees that federal P3s possessing risks that are considered remote but significant should be disclosed.</p> <p>6b. The Department shares with the Alternative View concern that disclosure of federal P3 remote contingencies would not be limited to contractual arrangements. The Department agrees with the member's concerns, stated in the Alternative View, that risk's related to the entity's operations or performance would be included in the disclosures of P3s risks, and that this would be a significant expansion of financial reporting requirements.</p>
8. DHS	Several DHS Components commented on the remote risk disclosure requirement. We received conflicting opinions. Some Components agreed that remote risk contingencies should be disclosed and other Components indicated that disclosing remote contingencies is not

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	consistent with SFFAS #5 which requires disclosure of reasonably possible and probable. If this language is approved, then the Board needs to provide more specific guidance/thresholds for disclosing remote losses.
10. ARTBA	<p>6b. We support many of Mr. Dacey's alternate viewpoints including the three listed in the above question. The proposed standards should be revised to address the following:</p> <p>(1) The disclosure of remote contingencies and business risks is unnecessary and may be detrimental to the overall clarity of the financial statements as a whole. These risks only have a slight chance of occurrence and tend to overwhelm users of the financial statements. They should not be required on a regular basis. However, if there are unique circumstances where the omission would cause a misrepresentation, they should be included.</p> <p>(2) The concept of "significant disclosure" should be clarified to allow consistent application across various P3 contractual arrangements and transactions.</p>
11. SBA – Outreach Task Force	We agree with Mr. Dacey that the definition of P3s and P3 transactions are drawn too broadly to be applied consistently and effectively and we respectfully request that you define the arrangements to be bound by the additional disclosure requirements more narrowly, so that low-risk events like SBA's co-sponsorships are not included.
12. OPM	<p>6a. Agree with the Board's position as stated above and included at paragraph A24. User needs and the qualitative as well as quantitative characteristics are to be considered.</p> <p>6b. Agree that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements. Disagree that (2) the concept of "significant exposure" is not sufficiently clear to result in consistent disclosures; professional judgment appropriately comes in to play here.</p> <p>Agree that (3) risks related to entity operations or performance, referred to in the Alternative View as business risks, should be included in the risk.</p>
13. SBA – Deputy CFO	<p>6a. Disagree with the Board's position. Contingent liabilities should be disclosed consistent with current standards.</p> <p>6b. Agree with the member's concern. We do not believe that disclosure of contingent liabilities should be expanded.</p>

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14. NASA	Applying a different standard for the requirements outlined in SFFAS 5 would add confusion to the preparers and users of the financial statements, and this should not be risked absent evidence of strong meaningful benefit to the readers and management (which has not yet been shown).
15. Dillard	<p>6a. As a citizen, how would we request a FOIA from a private partner? The private partner could disclose or choose not to disclose without any consequences.</p> <p>6b. We have attended meetings with P3 industry groups who, when questioned, do not want feel they have the legal responsibility to disclose any information and have also been turned away from entering meetings because they are a private P3 group. One consultant stated disclosure was the posting of the government notice. Confidential business information is usually privileged information.</p>
16. EPA	6a. We disagree with disclosing risks deemed remote. Disclosing risks deemed remote materiality needs to clearly be defined what the materiality level is being measured against. Is the risk being measured against material to the financial statements? If yes, the reporting of risks deemed remote can be excessive.
17. KPMG	6b. Audit challenges exist related to the disclosure of remote risks and other operational and contractual risks. While these risks may be important for some users of the financial statements, such information is not directly related to the amounts presented in the financial statements. We believe this information is similar in nature to the “risk assumed” information that SFFAS No. 5 requires to be presented as required supplementary information (RSI). Therefore, if the Board believes that disclosures related to these risks are important to the users of the financial statements, such information should be presented as RSI. As a result, we support the views provided in paragraphs A40.
18. GSA	<p>6a. The reviewer believes that it is impossible to disclose all inherent risks in the operation of a business or government entity.</p> <p>6b. Remote contingencies will expand the requirements of FASAB accounting standards for disclosure and that disclosure policies are moving too far toward identification of risks inherent in any business or operation and away from good accounting principles.</p>

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19. DOL	<p>6a. DOL/OCFO believes that remote risks should not be reported as basic or RSI disclosures. DOL/OCFO believes that in the very unlikely event that such a loss were to occur, then it would be disclosed as a subsequent event (if the event occurred between the balance sheet date and the date that the financial statements were issued) or with a presentation and disclosure that would emphasize its importance to the reader of the financial statements (an example of the presentation and disclosure may be a treatment similar to the treatment of an extraordinary loss in the FASB standards).</p> <p>6b. DOL/OCFO believes that disclosures of remote risks would increase the volume of the disclosures and would overwhelm the reader.</p>
20. NRC	<p>6a. and 6b. The Nuclear Regulatory Commission (NRC) concurs in the Alternative Views stated by Mr. Robert F. Dacey in paragraph A32 of the Exposure Draft and his recommendations for improving the draft standard in paragraph A41. Further, the NRC recommends the Board reconsider issuing this as a standard since contingent liabilities are already adequately covered by existing standards as Mr. Dacey expressed in paragraphs A35 and A36. We suggest the Board simply issue guidance on disclosure of government risk that may be created by P3 arrangements as part of disclosure of contingent liabilities.</p>
21. GWSCPA	<p>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.</p>
22. GAO	<p>We commend the Board for its work to develop a standard on P3 disclosures and have made suggestions to reduce challenges related to implementation and consistent application of the standard. We thank you for considering our comments on these important issues.</p>
23. VA	<p>6a. VA disagrees that remote risks should be disclosed. VA suggests applying SFFAS 5, Accounting for Liabilities of the Federal Government, which states that contingencies classified as remote need not be reported in general purpose federal financial reports, though law may require such disclosures in special purpose reports.</p> <p>6b. VA agrees. Disclosures of remote risks would increase administrative burden to the preparers and overwhelm the readers. It also conflicts with SFFAS 5. However, if SFFAS 5 criteria were applied remote risks would not be included in general purpose federal financial reports.</p>

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24. DOE	<p>6a. 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.</p> <p>6b. 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.</p>
25. Treasury	<p>6b. Treasury agrees with the concerns expressed by the one member with the Alternative View. Extensive disclosures of “remote contingencies” could overwhelm or mislead users, particularly when such risks are not likely to occur. The term “significant exposure” is subjective and is not sufficiently clear. Furthermore, disclosures related to performance risks (or “business risks”) may be more appropriate in the MD&A section rather than disclosed in the independently audited footnotes, especially if such risks may not necessarily affect the financial statements.</p>

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<p>QUESTION – 7</p> <p>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.</p>	
3. USDA	A7 – Wholeheartedly agree that aggregating any required disclosures by logical category is the appropriate way to get the information needed to manage risk without placing undue burden on the agency.
7. DOC	The Department agrees with the provisions, set forth in Appendix A, paragraphs A2B and A29, that permit entities to aggregate disclosures by providing broad and summarized information instead of unique or discrete arrangement or transaction detail.
9. HUD	Agree. Allowing the entities to aggregate or group disclosures reduces some of the burden on the entities while providing comprehensive information to the user.
10. ARTBA	Disagree. Each P3 is a unique contract with unique risks and payment structure. Each project has an individual Value for Money (VfM) analysis and strategy, which should therefore be reported individually.
12. OPM	Agree that entities should be permitted to aggregate or group disclosures, as proposed at paragraph 21, to keep the disclosure requirement from being too burdensome.
13. SBA – Deputy CFO	Strongly agree. Entities should be required to aggregate disclosure in order to limit disclosure of proprietary information of non-government partners and provide summary impacts consistent with financial statements. If additional detail is deemed important it should be reported as a part of a searchable database, not as a part of the AFR.
14. NASA	Aggregating P3s is preferable to detailed disclosure. There could be proprietary impacts from publishing specific P3 information that is a private entities business and should be their responsibility to disclose.
15. Dillard	Disagree. Projects or tasks are individual undertakings. Disclosure should be based on each individual project or task.

Table 6.0 – Summary of Responses by Question ⁵

18. GSA	As a point of order, the reviewer, as a taxpaying citizen, has concerns about the viability of or need for public-private partnerships. The very existence of such partnerships blur the lines distinction between inherently governmental versus commercial responsibilities and creates the appearance of a conflict of interest between the Federal government and the larger corporations and consultants who partner with them, often with private industry benefiting from the profits of such relationships when they are successful but not sharing in the risks of loss or being subsidized when problems occur. However, to the extent that such partnerships do exist under law, it would seem that existing accounting standards for liabilities and contingencies should suffice, so to the extent that additional requirements are being made, the reviewer concurs that aggregation of such agreements for purposes of disclosure is appropriate.
19. DOL	DOL/OCFO agrees that entities should be permitted to aggregate or group disclosures, but the disclosures should be reported as RSI. The standard should be flexible about the methods and/or presentation for aggregating or grouping the public-private partnerships.
23. VA	VA agrees. Broad summary would be appropriate.
24. DOE	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.

Table 6.0 – Summary of Responses by Question ⁵

<p>QUESTION – 8</p> <p>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.</p>	
3. USDA	In reference to one of your conclusive characteristics, our understanding is that all Grants & Agreements fall outside of Federal Acquisition Regulations, meaning, if this exposure draft is adopted, virtually all Grants & Agreement arrangements would be required to disclosure all risks associated with those arrangements – a serious reporting burden for Forest Service and hopefully many other Departments and agencies. Forest Service has solid set of authorities, policies and practices for our Grants & Agreements. Forest Service is not, as the conclusive characteristics indicates at any increased risk because, we have established safeguards such as effective contract resolution mechanisms for any potential risks.
4. SSA	We suggest that the Board consider adding an appendix to the standard to provide disclosure examples for illustrative purposes only. This would aid financial statement preparers to develop the necessary disclosure at the appropriate level of detail, and would ensure consistency in application and presentation of the requirements.
5. HHS	<p>Guidance and direction needs to be provided on establishing a risk disclosure framework – risks associated with P3s and the use of quantitative and qualitative disclosures.</p> <p>Guidance and direction needs to be provided on how to determine when information should be disclosed based upon its qualitative aspects and whether auditors can attest to that information, such as the rationale for entering in to the P3.</p>
13. SBA – Deputy CFO	<p>This new standard is ill-advised. The requirements under this standard are addressed in other standards for valuing assets and liabilities and need not be duplicated in a new standard. If there is a concern that the existing standards are not clear, they could be updated or implementation guidance could be provided without addressing P3s in a separate standard. Although the standard does indicate that each P3 should be addressed separately, it is implied by asking the question as to whether they could be aggregated. If the government decides that more detail should be published it should be included as a part of the searchable database on one of the government websites.</p> <p>In addition, it is unclear how an agency would apply the expanded definition of materiality to include qualitative factors as proposed in the Exposure Draft. It is conceivable that a reasonable person, currently undefined in the ED, relying on information might find any omission to be misleading. Therefore everything could potentially be “material” and disclosable. More guidance is necessary.</p>

Table 6.0 – Summary of Responses by Question ⁵

	Should the proposed standard for P3s be promulgated, it should allow for exclusion from the requirements under the standard for those P3 relationships that have existing accounting guidance adequately defining risk, such as credit reform programs. Additional guidance is needed to define those P3 relationships that have existing accounting guidance adequate to define the P3 risk, and those that will be subject to the additional requirements under the standard.
14. NASA	We agree that P3s have become more common, however, there needs to be more rigor around the definition, clarifying "private sector," and how risk is disclosed/reported. The broad interpretation of P3s (by the definition and conclusive/suggestive characteristics) and remote risk, could result in much confusion by the agency and the readers of the financial statements.
15. Dillard	Today, P3s are more than infrastructure. They are replacing the function of government without representation and accountability.
19. DOL	With regard to implementation in paragraph 25, DOL/OCFO believes that early adoption should be permitted only if the disclosures are reported as RSI.
21. GWSCPA	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.
24. DOE	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.

Table 7.0 – Respondents

Table 7.0 - Respondents

Name		Organization	Category
1	Jon Anderson	Self	Non-Federal - Other
2	Dr. Andrew Wallach	Self	Non-Federal - Other
3	Osman Masahudu	USDA, Forest Service, Office of the CFO, Financial Policy	Federal Preparer
4	Carla Krabb	Social Security Administration, Deputy Chief Financial Officer	Federal Preparer
5	Daniel F. Kane	U.S. Department of Health & Human Services , CMS, Office of Acquisition and Grants Management	Federal, Other
6	Tangy Alexander	U. S. Railroad Retirement Board, Bureau of Fiscal Operations Office of the CFO	Federal Preparer
7	Gordon T. Alston	U.S. Department of Commerce, Office of the CFO	Federal Preparer

Table 7.0 – Respondents

Name		Organization	Category
8	Christine Burris	U.S. Department of Homeland Security, Office of Financial Management	Federal Preparer
9	Scott Moore	Department of Housing and Urban Development, Financial Policies & Procedures Division, Office of the Chief Financial Officer	Federal Preparer
10	T. Peter Ruane	American Road & Transportation Builders Association	Non-Federal - Other
11	Timothy C. Treanor	Small Business Administration, Outreach Task Force	Federal, Other
12	William Joe	Office of Personnel Management, Office of the Chief Financial Officer	Federal Preparer
13	Timothy Gribben	Small Business Administration, Deputy Chief Financial Officer	Federal Preparer
14	Kevin Buford	National Aeronautics and Space Administration, Director of Policy	Federal Preparer
15	Joyce Dillard	Self	Non-Federal - Other

Table 7.0 – Respondents

Name		Organization	Category
16	Anita Jones	Environmental Protection Agency, Financial Planning and Policy	Federal Preparer
17	Amanda Nelson	KPMG, LLP	Non-Federal - Auditor
18	Erik Dorman	General Services Administration, Office of the Chief Financial Officer	Federal Preparer
19	Karen Tekleberhan	U. S. Department of Labor, Deputy Chief Financial Officer	Federal Preparer
20	Anthony C. Rossi	U.S. Nuclear Regulatory Commission, Office of the CFO	Federal Preparer
21	Andrew C. Lewis	Greater Washington Society of CPAs and GWSCPA Educational Foundation	Non-Federal - Other
22	Steven J. Sebastian	Government Accountability Office, Financial Management and Assurance	Federal Auditor
23*	Katherine Palmer	Veteran's Administration/Financial Policy	Federal Preparer
24*	Jared Martin	Department of Energy, Office of Finance and Accounting	Federal Preparer

Table 7.0 – Respondents

Name		Organization	Category
25*	Shawn M. Mickey	Department of the Treasury, Financial Reports and Policy	Federal Preparer
26***	Sherry Lee	Department of the Interior, DCFO, Office of Financial Management	Federal Preparer
27***	Mark Easton	Department of Defense – Office of the Comptroller	Federal Preparer
28****	Richard Fravel	Office of the Director of National Intelligence, CFO	Federal Preparer
29****	Lealan Miller	Association of Government Accountants (AGA), the Financial Management Standards Board (FMSB)	Non-Federal - Other

Attachment 1

P3 Disclosures

Comment Letters

Public-Private Partnerships: Disclosure Requirements

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Full disclosure and transparent, objective analysis of costs and benefits and both short-term and long-term trade-offs is needed whenever government officials, at any level, propose entering into public-private partnership arrangements.

Jon Anderson
Front Royal, VA 22630

Dear **Federal Accounting Standards Advisory Board -- FASAB.**

I support P3's Public Private Partnerships. I want greater transparency when government representing my interests engages in a P3.
I will appreciate your thoughtful deliberations.

Dr. Andrew Wallach
635 Albemarle St
El Cerrito CA 94530

From: Masahudu, Osman -FS
Sent: Friday, October 24, 2014 4:04 PM
To: Savini, Domenic N
Cc: Close, Kevin - OCFO; Mudahar, Simerjeet K -FS; Clarke, Rico -FS; McCrary, Gail - FS
Subject: FASAB P3 Disclosure Requirements - USDA Forest Service Comments

Hello Dom,

Please see attached for Forest Service's consolidated comments on the P3 Disclosure Requirements Exposure Draft. Please let me know if you need clarification on any of our comments. Thanks for the opportunity.



Osman Masahudu
Accountant

Forest Service

**USDA Forest Service - Chief Financial Officer Staff -
Financial Policy**

p: 703-605-4803

f: 703-605-5117

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Washington, DC 20250

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Caring for the land and serving people

USDA – Forest Service Response to questions 1-8
FASAB Public Private Partnerships Exposure Draft Review

Q1 - 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 – Forest Service agrees. Forest Service interacts with many private (non-governmental) partners to provide a service with shared risks and rewards. We ensure that these risks and rewards are sufficiently captured in our memoranda. In addition, Forest Service does not discount projects or transactions that do not share risks or rewards sufficiently. However, we evaluate projects to ensure they are designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives.

Q2a - 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.

A2a – Forest Service agrees.

Q2b - 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.

A2b – Yes, your definition makes special note of shared risk and reward, whereas traditional pay for service contractual arrangements do not include that shared element, all while still holding the contractor accountable as defined in the terms.

Q2c -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.

A2c – Analyzing reputational risk to federal agencies with P3's from different sectors might be a project worth considering. P3's with for-profit entities while valuable for many reasons may carry more significant reputational risk than for example non-profit 501(c)3 organizations. Forest Service is not sure how type of risk is assessed or made clearer in the definition or not sure about the real "fiscal exposure" associated with such risks.

Q2d - 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.

A2d – Forest Service agrees that, shared risk and reward arrangements that open up the most significant fiscal exposure and therefore should warrant additional attention. Likely, the majority of what the Forest Service is currently calling P3 fall into this excluded category. Though, as an example in an increasingly important form of P3, the Forest Service partners with a utility company (or municipal agency) and perhaps a non-profit organization or company can invest in land management activities on public lands (that stay public) so as to reduce risk of damage to their infrastructure or “public” resource that directly contributes to their product/service offered to their customers. In that case, there is a sense of risk sharing and reward; although not involving transfer of real property that might not be longer than 5 years in length, and not sure about SPVs. Such arrangements largely foster goodwill and integrate strategic initiative. Forest Service exposure to fiscal risks is minimal in this example. Transfer of real property and assets seem to be a significant trigger of fiscal exposure or risk.

Q2e - 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.

A2e – The definition is fine. Confines to P3’s.

Q3a - 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.

A3a – Agree. To require more disclosure for seemingly less risk (fiscal exposure) would trigger burdensome and unwarranted reporting requirements.

Q3b - 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.

A3b – None

Q3c - 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.

A3c – No, as previously noted of the four Definitional Features Indicative of Risk (Fiscal Exposure), only point 3 is regularly encountered and when it is largely to foster goodwill, promote economic development, and integrates strategic initiatives and therefore does not appear to trigger the disclosure requirements.

Definitional Features Indicative of Risk (Fiscal Exposure) - (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 SPV's.

Q4 - 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 – Agree. The conclusive characteristics are straight forward and reasonable (transferring an asset, setting up an SPV/trust, formal arrangement is established at conception for longer than 5 years, and exempted from FAR). The suggestive characteristics largely appear reasonable as well though appropriately require judicious use prior to automatically triggering additional disclosure requirements.

Q5 - 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 – Generally agree. Components a-c is standard elements of institutional MOUs and other subsidiary agreements and reports already typically developed to frame a P3. Components d and e however do not typically figure into, nor might they be needed for Forest Service P3, and so may require undue extra effort. Though as previously noted, most Forest Service P3's would likely be exempt from the reporting requirements as proposed in the standard.

Q6a - 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.

A6a – Agree. All sounds reasonable.

Q6b - 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.

A6b – Generally disagree, though perhaps spelling out a bit more "significant exposure" might be helpful.

Q7 - 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 – Wholeheartedly agree that aggregating any required disclosures by logical category is the appropriate way to get the information needed to manage risk without placing undue burden on the agency.

Q8 - 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.

In reference to one of your conclusive characteristics, our understanding is that all Grants & Agreements fall outside of Federal Acquisition Regulations, meaning, if this exposure draft is adopted, virtually all Grants & Agreement arrangements would be required to disclosure all risks associated with those arrangements – a serious reporting burden for Forest Service and hopefully many other Departments and agencies. Forest Service has solid set of authorities, policies and practices for our Grants & Agreements. Forest Service is not, as the conclusive characteristics indicates at any increased risk because, we have established safeguards such as effective contract resolution mechanisms for any potential risks.

From: Krabbe, Carla

Sent: Tuesday, December 16, 2014 10:38 AM

To: FASAB; Payne, Wendolyn M

Cc: Spencer, Pete; ^DCBFQM OFPO Controls; Gasparini, Joanne; Dushel, Annette; Silvestri, Mark

Subject: Statement of Federal Financial Accounting Standard Exposure Draft, Public-Private Partnerships: Disclosure Requirements

Wendy -

We appreciate the opportunity to review the Federal Accounting Standards Advisory Board's Exposure Draft (ED), *Public-Private Partnerships (P3): Disclosure Requirements*. SSA is not involved currently in any P3 arrangements, nor do we expect to have P3s that are subject to disclosure pursuant to the proposed requirements. We defer to those agencies that have expertise in this subject matter. However, we do offer a few comments/observations regarding the ED that the Board may want to consider.

1. Part (3) of the definition of P3s (Question 1), "conveyance or transfer of real property, personal property..." may be too broad. If interpreted literally, the definition could be perceived as requiring all acquisition of property be considered a P3 arrangement that requires disclosure, given that Appendix A, paragraph A11.a. discusses how there are inherent risks associated with acquiring, financing, operating, and maintaining long-lived assets. The Board may want to consider further refinement of this aspect of the definition or it may be beneficial to provide examples of the conveyance or transfer of real or personal property that fall within this definition.
2. We agree that FASAB should exclude (Question 2d.) "those 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." However, it is not clear that these items are excluded from the scope; thus, it may be beneficial to specifically exclude these items.
3. The component entity disclosures required in paragraph 23 seem to be at a very detailed level and may be both burdensome for preparers and overwhelming for readers. Given the current efforts in the Federal financial community to streamline reporting requirements, simplify presentations, and create more user-friendly reporting models, the financial statements may not be the appropriate forum for this level of information.
4. We suggest that the Board consider adding an appendix to the standard to provide disclosure examples for illustrative purposes only. This would aid financial statement preparers to develop the necessary disclosure at the appropriate level of detail, and would ensure consistency in application and presentation of the requirements.

Thanks in advance for your consideration to our comments/observations. Hope you enjoy a happy holiday season.

Carla
Deputy Chief Financial Officer
Social Security Administration

From: Worsham Carey, Cassandra D. (CMS/OAGM)
Sent: Tuesday, December 16, 2014 2:54 PM
To: Karen Secker; Savini, Domenic N
Cc: Kane, Daniel F. (CMS/OAGM)
Subject: FASAB Requests Comments on Public-Private Partnerships: Disclosure Requirements

Karen/ Domenic,

Per your request, attached is OAGMs (Dan Kane) response to the subject request. Please let us know if you need additional information or have any comments/questions.

Many thanks.

Cassandra Worsham Carey
Special Assistant

Office of Acquisition and Grants Management
CMS U.S. Department of Health & Human Services

Federal Accounting Standards Advisory Board (FASAB) draft entitled “*Public-Private Partnerships: Disclosure Requirements*”

OAGM Review and Comments

Background

Definition

Federal public-private partnerships (P3s) are contractual arrangements¹ 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).

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 Disclosure

If any one of the following conclusive characteristics is met, the P3 arrangement or transaction should be considered for disclosure. P3 arrangements or transactions identified for disclosure should be further evaluated in light of the entity’s materiality considerations; including qualitative and quantitative thresholds.

¹ Risk-sharing arrangements can be either structural or transactional. P3 Structural Arrangements are external to the government entity’s operations and often involve the creation of a Special Purpose Vehicle (SPV), Trust, or Limited Partnership (LP). For example, military base housing. P3 Transactional Arrangements are internal to the government entity’s operations. For example, work-share programs not involving the creation of a SPV, Trust, or LP

Conclusive Characteristics	Rationale ²
1. The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing liability	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 accompany asset ownership or control. Further, some private partners may incur substantial financing liabilities in preparation for delivering services even if an asset is not created.
2. The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, etc.	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 not included in budgets or balance sheets. P3s can be or most often become borrowing arrangements/transactions or alternative financing mechanisms. Therefore, the risk rests in the fact that because the established entity (for example, SPV) facilitates funding/financing, an agency's explicit or implicit long-term debt or promise to pay, the established entity is not appropriately recognized in either budget or financial reports.
3. The term of the procurement or contract is longer than 5 years ¹² .	Those P3 procurement or contract arrangements/transactions 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/transaction.

² The Rationale presented explains why the Board believes there is significant fiscal exposure when the characteristic is present. The rationale discusses risk broadly and is not intended to create specific disclosure requirements. The disclosures and related applicability comments are articulated starting on page 5.

<p>4. The principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).</p>	<p>The FAR is the primary regulation that governs the administrative framework and includes procurement and legal requirements to help safeguard and protect taxpayer dollars by preserving and protecting specific government (contractual) rights. Therefore, those P3s exempt from FAR are at an increased-risk because well-established safeguards and contract resolution mechanisms are absent in favor of substitute contract terms and conditions and/or alternate contract dispute resolution venues. As a result, the increased exposure arising from the loss of such contractual protections are not appropriately recognized or disclosed.</p>
Suggestive Characteristics	Rationale²
<p>1. A Value for Money (VfM) analysis is performed</p>	<p>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 prepared ex-post facto thus increasing potential risk to the agency.</p>
<p>2. The consideration or items given up in an arrangement/transaction or their value are not readily apparent.</p>	<p>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.</p>
<p>3. Significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.</p>	<p>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 or transactions often exclude</p>

	<p>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.</p>
<p>4. The focus is more on collaboration and informal, real-time, resolution processes than on formal, contractual, administrative processes.</p>	<p>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 administrative processes.</p>
<p>5. 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 levels 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 provided advisory services to both the private partner and government sponsor of a P3 arrangement/transaction. In addition, fees are often based on the dollar volume of the arrangement/transaction 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>

Disclosure Requirements

Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a P3 arrangement/transaction. The following information should be disclosed:

- 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.

Applicability

Overarching Disclosure Principle: Significant Fiscal Exposure – The FASB’s Board desires to limit disclosure to those P3s possessing significant fiscal exposure. Significant fiscal exposure can result from various perspectives. For example, a key indicator that significant fiscal exposure exists in a P3 arrangement or transaction is when a long-lived asset or long-term financing liability exists in the arrangement or transaction regardless of which party recognizes said amounts. This is because (1) the inherent risks involved in acquiring, financing, operating and maintaining long-lived assets such as Property, Plant and Equipment, (PP&E) and certain intangible assets such as Patents or Trademarks, and (2) the risk-sharing nature of P3s, over very long periods creates the potential for significant fiscal exposure to extend to either party. Such significant fiscal exposure may extend even beyond what may have been contractually contemplated. However, significant fiscal exposure can exist absent a significant long-lived asset or sizeable long-term financing liability. For example, another key indicator of significant fiscal exposure in a P3 arrangement or transaction is when government skills are effectively transferred to the private party. In addition to being left absorbing personnel legacy costs, the government is exposed to potential fiscal exposure and liabilities arising from the need to turn to costlier contracting-out procurement options and union and/or employee litigation, respectively.

Therefore, if a P3 arrangement or transaction does not possess significant fiscal exposure, it would not be subject to the requirements of the FASB’s Statement.

Public-Private Partnerships (P3s)

Of the four objectives outlined in Statement of Federal Financial Accounting concepts (SFFAC):, *1, Objectives of Federal Financial Reporting*, the operating performance and budgetary integrity objectives are identified as being most important for P3 reporting. Because P3s are a form of investment, they should be adequately disclosed in order to assist report users in determining: (a) the important assets of the U.S. government and how effectively they are managed and (b) the identification of the risks (that is, financial exposure) associated with P3s.

OAGM/DFS’ Comments/Input:

- In addition to the very valid risks identified in the RATIONALE listed above there are additional concerns already experienced by CMS in the transition of moving from agreements to FAR based contracts such as: Mergers and Acquisitions what legal entity would be responsible over the long term since these typically are of 5 years or greater duration; lack of internal controls with disclosed practices creating significant uncertainty of actual cost data much less accountability for unallowable costs; lack of consistent contract or in this case (agreement) terms and conditions sufficient enough to properly address all anticipated risks with such agreements; and finally what happens when the other party (private entity) no longer exists who is responsible for the outcome of an otherwise agreed upon P3?

- These arrangements are not covered under FAR; therefore, what controls will be in place to ensure compliance with mandatory FAR criteria such as small business/social economic programs, etc. in the P3 arrangements? The answer lies with how they are written and structured which is not defined and thus leaves a great deal of risk associated with the drafters and the terms of these agreements.
- Guidance and direction needs to be provided on establishing a risk disclosure framework – risks associated with P3s and the use of quantitative and qualitative disclosures.
- Guidance and direction needs to be provided on how to determine when information should be disclosed based upon its qualitative aspects and whether auditors can attest to that information, such as the rationale for entering in to the P3.

For instance, On May 16, 2013, the Financial Accounting Standards Board (FASB) issued an exposure draft on proposed changes to accounting standards regarding Leases. The new standards will change the way leases are reported on company financial statements. Currently, Generally Accepted Accounting Principles (GAAP) requires companies to recognize capital leases as both an asset and a liability in balance sheets, while operating lease payments only affect current operating income. Future leasing liabilities are disclosed only in the footnotes of the financial statements.

- Should the Government contact CFO/Accounting departments for their input since this disclosure relates to financial accounting and reporting U.S. government-wide financial statements?
- In conclusion, P3s are complex transactions, and determining that a P3 is likely to provide a better result than a conventional approach is not simple. Therefore, education and training programs need to be provided to help understand and navigate the different aspects of implementing P3 projects and the possibility of establishing Subject Matter Experts (SME's). Additionally, although there may be merits when these type of arrangements make sense to move from the FAR based contracting world to P3s should be only on a very limited acceptance basis and with the Government's eyes wide open to all of the potential risks involved.

From: Alexander, Tangy L.

Sent: Wednesday, December 17, 2014 9:04 AM

To: FASAB

Cc: Govan, George V.

Subject: FASAB Requests Comments on Public-Private Partnerships: Disclosure Requirements

The attached response is being forwarded on behalf of the RRB-CFO.

Thank you,

Tangy Alexander
CFO Administrative Aide
Bureau of Fiscal Operations
U. S. Railroad Retirement Board

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.

Railroad Retirement Board (RRB) Response: Request that definition include language that states “other than transactions between public and private sector entities that have legislative requirements governing financing of service or benefit....” Rationale for comment is the relationship between the RRB (public entity) and the National Railroad Retirement Board (private entity) is based on legislative requirements not a contract arrangement, yet they interact to provide a service/benefit to public.

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**

Public-Private Partnerships: Disclosure Requirements**Questions for Respondents – MsWord Version**

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.**

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.**
- 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.**

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

- 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.**

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.

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.

Public-Private Partnerships: Disclosure Requirements**Questions for Respondents – MsWord Version**

- 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.

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.**

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

- 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.**

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.

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.



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

DEC 23 2014

Wendy M. Payne
Executive Director
Federal Accounting Standards Advisory Board
Washington, DC

Dear Ms. Payne:

The Department of Commerce has reviewed the Exposure Draft – Statement of Federal Financial Accounting Standards, *Public-Private Partnerships Disclosure Requirements*, dated October 1, 2014.

Please find enclosed answers to the questions that were asked of respondents. If you have any questions, please contact me at (202) 482-1207 or galston@doc.gov or Bruce Henshel at (202) 482-0646 or bhenshel@doc.gov.

Sincerely,

A handwritten signature in black ink, appearing to be "G. Alston", written over a horizontal line.

Gordon T. Alston
Director of Financial Reporting and Internal Controls

Enclosure

cc: Lisa Casias
Diane Marston
Atisha Burks
Bruce Henshel

Department of Commerce FASAB Exposure Draft Response
Exposure Draft (October 1, 2014)— *Public-Private Partnerships Disclosure Requirements*

Prepared By: Department of Commerce, Office of Financial Management

Date Prepared: December 23, 2014

Questions for Respondents

1. 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.

Department of Commerce Response:

- *The Department believes that “sharing of resources” as included in the proposed definition is not self-evident as to what is meant and that further elaboration should be included in the definition in order to capture the most widely identified features of federal P3s. It appears that “sharing of resources” may be discussed in Appendix A, Basis for Conclusions, paragraph A9 (e.g. possibly “shared or transferred financing,” “shared skills and expertise”).*
- *Paragraph 13 identifies arrangements (e.g. alternative financing arrangements, privatization initiatives, research and development arrangements) that are referred to as P3s per paragraph 13. These arrangements, however, may not be considered contractual arrangements or are not contractual arrangements per the proposed definition. Accordingly, the proposed definition which states “contractual arrangements” appears to be in conflict with the discussion in paragraph 13. We recommend that FASAB resolve this apparent conflict between paragraph 13 and the definition.*
- *The Department believes that the discussion of “Sharing of risks and rewards” in the definition sufficiently describes the primary features of federal P3 with respect to sharing of risks and rewards.*

2. 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).
- 2a. 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.

Department of Commerce Response:

The Department agrees that the definition, by including as elaboration four widely identified features of federal P3s evidencing the sharing of risks and rewards, helps identify risk-sharing arrangement or transactions that could possess significant fiscal exposure.

- 2b. 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.

Department of Commerce Response:

- The Department believes that the definition can be significantly improved by adding that the definition excludes contracts or other arrangement or transactions that are routine in nature and not generally identified as P3s for other purposes. We recommend, for example, that FASAB consider if the definition should additionally set forth the specific exclusions to the standard (exclusions currently proposed are those discussed in Appendix A, paragraph A12, which are (1) acquisitions made using Simplified Acquisition Procedures (FAR Part 13); and 2) leases meeting certain conditions).*

- *The Department agrees with the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard procurements of capital assets under the Federal Acquisition Regulation (FAR). The Department believes that standard procurements of capital assets under FAR should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard procurements of capital assets in the scope of the standard. The Department does not believe that standard procurements of capital assets under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard procurements of capital assets under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard procurements of capital assets under FAR are not generally considered federal P3s for other purposes.*
- *The Department similarly observes, as partially discussed in the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard leasing arrangements under FAR that are not using GSA-delegated authority. Paragraph 15 indicates that leases that are not bundled and that are entered into using GSA-delegated authority are excluded from the provisions of the standard. The Department, however, believes that standard non-bundled and bundled leasing arrangements under FAR though that are not under GSA-delegated authority should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard leasing arrangements under FAR. The Department does not believe that standard leasing arrangements under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard leasing arrangements under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard leasing arrangements under FAR as not generally considered federal P3s for other purposes.*

2c. 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.

Department of Commerce Response:

The Department is not readily aware of any additional risk-sharing arrangements or transactions that would assist entities in identifying risk-sharing arrangements or transactions could possess significant fiscal exposure to the entity.

- 2d. 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.

Department of Commerce Response:

- *The Department agrees with an exclusion for 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.*
- *The Department recommends that such an exclusion be specifically included in the Exclusions section of the standard, since this proposed exclusion is stated only in the Questions for Respondents section of the Exposure Draft.*
- *Similarly, shouldn't formal arrangements 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. also be excluded from the scope of the standard? We recommend that consideration be given to also including "formal" arrangements 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.*
- *The Department believes that the exclusion is reasonably clear as to what would be excluded. Possible future implementation guidance that may be developed by FASAB after the issuance of the standard could go into more detail on this and other standard provisions that entities may need further assistance with the implementation of.*

- 2e. 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.

Department of Commerce Response:

As stated in the Department's answer to Question 2b above, the Department agrees with the Alternative View with respect to the following:

- The Department believes that the definition can be significantly improved by adding that the definition excludes contracts or other arrangement or transactions that are routine in nature and not generally identified as P3s for other purposes. We recommend, for example, that FASAB consider if the definition should additionally set forth the specific exclusions to the standard (exclusions currently proposed are those discussed in Appendix A, paragraph A12, which are (1) acquisitions made using Simplified Acquisition Procedures (FAR Part 13); and 2) leases meeting certain conditions).*
- The Department agrees with the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard procurements of capital assets under the Federal Acquisition Regulation (FAR). The Department believes that standard procurements of capital assets under FAR should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard procurements of capital assets in the scope of the standard. The Department does not believe that standard procurements of capital assets under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard procurements of capital assets under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard procurements of capital assets under FAR are not generally considered federal P3s for other purposes.*

- *The Department similarly observes, as partially discussed in the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard leasing arrangements under FAR that are not using GSA-delegated authority. Paragraph 15 indicates that leases that are not bundled and that are entered into using GSA-delegated authority are excluded from the provisions of the standard. The Department, however, believes that standard non-bundled and bundled leasing arrangements under FAR though that are not under GSA-delegated authority should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard leasing arrangements under FAR. The Department does not believe that standard leasing arrangements under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard leasing arrangements under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard leasing arrangements under FAR as not generally considered federal P3s for other purposes.*
3. 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).
- 3a. 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.

Department of Commerce Response:

The Department agrees that only those P3s (identified pursuant to the proposed definition) possessing risk-based characteristics that indicate significant fiscal exposure should be subject to the proposed disclosure requirements.

- 3b. 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.

The Department is not readily aware of any additional arrangements or transactions besides P3s for which the risk-based characteristics are present and indicate significant fiscal exposure and therefore disclosure should be required.

- 3c. 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.

Department of Commerce Response:

The Department has not yet performed an evaluation to determine if the Department is associated with P3s that are subject to disclosure in accordance with the proposed requirements.

4. 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.

Department of Commerce Response:

The Department agrees with the risk-based characteristics described in paragraphs 19, and further offers the following comment:

Characteristic 1 refers to "long-lived asset" and "long-term financing liability." We recommend that these terms be further defined and/or elaborated on so that entities are able to understand and successfully analyze and apply Characteristic 1.

5. 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.

Department of Commerce Response:

- ***The Department believes that the individual required disclosures are much too extensive and require much more information than is reasonably needed for a user to reasonably gather more information and understand to a reasonable level an entity's federal P3s that have significant fiscal exposures. The Department believes that the costs of preparing such information would significantly outweigh the potential benefits to users of such extensive data and information. For this reason, the Department concurs with the provisions in Appendix A, paragraphs A28 and A29, that permits entities to aggregate disclosures by providing broad and summarized information.***

We recommend that FASAB significantly reduce the required individual disclosures by deleting the below individual disclosure requirements that the Department believes is unnecessary for a fair and complete disclosure of significant fiscal exposures for federal P3s, and for providing the user of the financial statements an understanding of the significant fiscal exposures for a federal P3:

- ***The entity's statutory authority for entering into the P3.***
- ***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.***
- ***Associated amounts recognized in the financial statements such as gains or losses and capitalized items.***
- ***Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.***

6. 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.

- 6a. 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.

Department of Commerce Response:

- *The Department disagrees that federal P3s possessing risks that are considered remote but significant should be disclosed. Remote risks may include far too many financial and nonfinancial risks, and because the risks are considered remote, the Department believes that they should not be disclosed. The Department believes that a risk threshold higher than "remote" should exist before disclosure is required, similar to existing disclosure requirements for contingencies.*
- *The Department very much shares in the Alternative View concerns described in Appendix A, paragraph 35 that the proposed standard could expand the disclosure requirements for contingent liabilities that are provided under SFFAS 5, Accounting for Liabilities of the Federal Government, by extending disclosure requirements to certain remote contingencies (para 8) and expanding disclosures to include business risks (e.g., comparative costs, skill transfers to the private sector, etc.). The Department agrees with the Alternative View that indicates that such additional disclosures could overwhelm or mislead users with extensive information related to (1) risks that have only a slight chance of occurrence and (2) business risks that do not necessarily affect the financial statements.*

- 6b. 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.

Department of Commerce Response:

- *Item 1:*

The Department shares with the Alternative View concern that disclosure of federal P3 remote contingencies would not be limited to contractual arrangements. The Department agrees with the Alternative View discussion in Appendix A, paragraph 35, that indicates that the disclosure of remote federal P3 risks would also include risk's related to the entity's operations or performance. Paragraph 24 discusses, for example, the risk of a relationship with an industry or private partner that may require the government to provide resources or absorb losses beyond what was contemplated. The Department is concerned that that disclosures of expanded risks, for example what the Alternative View referred to as business risks, is a significant expansion of financial reporting requirements that may not be appropriate for disclosures that support the entity's financial statements.

- *Item 2:*

The Department believes that the concept of "significant exposure" is reasonably clear as to providing guidance to entities. Possible future implementation guidance that may be developed by FASAB after the issuance of the standard could go into more detail on this and other standard provisions that entities may need further assistance with the implementation of.

- *Item 3:*

As discussed in the Department's response to Item 1 above, the Department agrees with the member's concerns, stated in the Alternative View, that risk's related to the entity's operations or performance would be included in the disclosures of P3s risks, and that this would be a significant expansion of financial reporting requirements that may not be appropriate for disclosures that support the entity's financial statements.

7. 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.

Department of Commerce Response:

The Department agrees with the provisions, set forth in Appendix A, paragraphs A28 and A29, that permit entities to aggregate disclosures by providing broad and summarized information instead of unique or discrete arrangement or transaction detail. The Department believes this is appropriate because of the extensiveness of potential federal P3 disclosure text that would be required under the proposed disclosure requirements, and because of the sensitive nature of the proposed disclosure requirements, broader summarization would often be appropriate.

8. 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.

Department of Commerce Response:

The Department does not have any additional comments.

From: Burris, Christine

Sent: Tuesday, December 23, 2014 4:44 PM

To: Savini, Domenic N

Cc: Bobich, Jeffrey; Morgan-Lowden, Melissa

Subject: FASAB P3 Disclosure Requirements - DHS Financial Management Comments

Mr. Savini,

Please see attached DHS Financial Management comments on the P3 Disclosure Requirements Exposure draft. Please let me know if you need clarification on any of our comments. Thanks for the opportunity.

Christine

Christine Burris, CPA, CISA

Assistant Director, Financial Management

1. DHS largely does not have agreements that fit the definition of P3 as provided in the Exposure Draft. CBP has Reimbursable Agreements with private entities for certain Customs services as part of a pilot program in FY 2014, which has been expanded in FY 2015. The agreements allow an external party to pay CBP to provide additional Customs services based on needs and CBP availability. These agreements as Public Private Partnerships; however, they may not meet the requirements for disclosure from FASAB. Depending on the final guidance related to leases and Third Party Vendors, DHS may have situations which meet the criteria.
2. Several DHS Components indicated that a more detailed definition of P3 needs to be presented. A suggestion was made to provide a detail listing of transactions that are considered standard in nature which would be excluded from this guidance. As noted in the ED, the P3 arrangements are a different, nonstandard way of conducting “the public’s” business. Federal entities and program managers have a responsibility to make the conduct of the public’s business as transparent as possible. Having a broader definition of P3 agreements that means more non-standard activities are reviewed to determine what additional disclosures are needed, would promote greater transparency. Instead of rewriting the definition of P3 arrangements to only include what is normally considered a P3, the better solution would be to expand the list of activities that are excluded from P3 disclosure.
3. Several DHS Components commented on the remote risk disclosure requirement. We received conflicting opinions. Some Components agreed that remote risk contingencies should be disclosed and other Components indicated that disclosing remote contingencies is not consistent with SFFAS #5 which requires disclosure of reasonably possible and probable. If this language is approved, then the Board needs to provide more specific guidance/thresh holds for disclosing remote losses.

From: Moore, Scott

Sent: Tuesday, December 23, 2014 3:35 PM

To: FASAB

Cc: Guilford, William E; Bergin, Christopher C; Sorah, Noah B

Subject: HUD Response to FASAB Request for Comments on Public-Private Partnerships: Disclosure Requirements

Please see the attached response from HUD concerning this exposure draft.

For questions, please contact me at the number below or Chris Bergin (202-4026374) or Bill Guilford (202-402-3865).

Scott Moore

202.402.2277

HUD OACFO - Financial Management
Financial Policy and Procedures Division

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents

Department of Housing and Urban Development Response

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.

Agree.

The definition proposed at paragraph 17 allows for a general application of the most widely identified features of federal P3s. The definition encompasses actual practices while covering the diverse scope of federal assets and incorporates the risk-sharing element.

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.**

Agree.

The definition highlights four areas that should aid the preparer in identifying risk-sharing arrangements or transactions. If such conditions are not present, the preparer should not apply the requirements of this Statement.

- 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.

Agree.

The definition excluded contracts or other arrangements or transactions that are routine in nature and the requirements would not replace existing disclosure requirements.

- 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.

No comment.

- 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.

Agree, it is clear what would be excluded.

The exclusion of those informal arrangements or transactions that do not share risk or reward is appropriate since the four elements highlighted in the definition are not present. In addition, the requirements should not replace existing disclosure requirement.

- 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.

The definition is broad and flexible thus unwarranted disclosure is possible. The preparer will need to examine whether other disclosure requirements exist and keep in mind that this requirement should not replace any existing requirement.

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.**

Agree.

The identification of only those P3s that possess risk-based characteristics allow a focus only on the transactions with fiscal exposure potential.

- 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.**

No comment.

- 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.**

The Department believes that the definition of P3s as stated in the standard is not relevant to HUD.

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

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.

**20 (refer to paragraphs A15 – A16 for a detailed discussion and related explanations)?
Please provide the rationale for your answer.**

No comment.

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.

Agree.

The component entity report disclosure proposed at paragraph 23 provides the user with relevant information in the notes.

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 comment.

- 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.**

No comment.

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.

Agree.

Allowing the entities to aggregate or group disclosures reduces some of the burden on the entities while providing comprehensive information to the user.

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.

December 30, 2014

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

Re: Statement of Federal Financial Accounting Standards, Public-Private Partnerships – Disclosure Requirements

Dear Ms. Payne:

On behalf of the 6,000 members of the American Road & Transportation Builders Association (ARTBA), we respectfully offer comments on the exposure draft of a proposed Statement of Federal Financial Accounting Standards, entitled “Public-Private Partnerships: Disclosure Requirements,” from the Federal Accounting Standards Advisory Board (FASAB).

Founded in 1902, ARTBA’s membership includes private and public sector members involved in the planning, design, construction and maintenance of the nation’s roadways, bridges, ports, airports and transit systems. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs. ARTBA maintains ongoing and thorough involvement in federal legislative, policy, regulatory and legal developments relating to transportation infrastructure development and investment. This includes public private partnerships (P3s) in transportation, with which ARTBA has a long history.

ARTBA’s P3 Division dates back more than 25 years and includes prominent concessionaires, planning and design firms, contractors, law firms, financial entities and other experienced parties in the P3 field. Through the reauthorization processes which have produced a series of federal surface transportation bills in recent decades, ARTBA has advocated for provisions that have helped make P3s a viable option for the financing and delivery of transportation improvement projects in appropriate circumstances around the country.

The following comments are submitted in response to the query in FASAB’s exposure draft dated October 1, 2014. The context comes from ARTBA’s experience as an advocate for and observer of P3s in the transportation sector at the state and local levels. While the FASAB document primarily addresses P3 agreements that directly involve the federal government, ARTBA offers our comments with the belief that certain P3 principles are applicable whether at the federal, state or local level.



As an example, ARTBA welcomes efforts to improve the transparency of transportation P3 transactions and contracts. Given the growing complexity of these agreements in many cases, ARTBA believes the public is well-served – and likely to be even more supportive of P3 projects – when information disclosure is maximized.

With that in mind, ARTBA offers the following comments related to select questions included in the exposure draft:

Question 1 - Do you agree or disagree that the P3 definition proposed at paragraph 17 captures the most widely identified features of federal P3s?

While the definition provided in paragraph 17 identifies many features commonly found in P3s, there are a few key points missing that should also be considered:

- Transportation P3s typically provide a new or upgraded asset as a result of the agreement.
- A key aspect of P3s is the customary allocation of life cycle risk and long-term performance of such to the private sector after construction of the asset is complete.
- For most transportation P3 projects, the agreement is much longer than five years.
- Payments from public owner to the private entity are based on key performance criteria - i.e. the public entity pays if the asset is performing to contract standards.
- The creation of a Special Purpose Vehicle (SPV) is solely for the purpose of gaining non-recourse financing as a stand-alone project, and should be clarified as such.

Question 2(a) - Do you agree or disagree that the P3 definition helps identify risk-sharing arrangements or transactions that could possess significant risk to the federal reporting entity?

The definition is reasonable to understand the general nature of risk allocation that may be envisioned for a particular P3. However, every P3 deal is very unique in terms of risk sharing and risk allocation to the private sector, so FASAB should consider expanding the definition or including a qualifying statement noting that additional scenarios may exist.

Question 5 - Do you agree or disagree with the component entity report disclosures proposed at paragraph 23?

Agree. All of the key proposed terms of P3 agreements should be disclosed and reported publicly.

Question 6(b) - Do you agree or disagree with the one [FASAB] member's [Mr. Robert Dacey'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?

We support many of Mr. Dacey's alternate viewpoints including the three listed in the above question. The proposed standards should be revised to address the following:

- The disclosure of remote contingencies and business risks is unnecessary and may be detrimental to the overall clarity of the financial statements as a whole. These risks only have a slight chance of occurrence and tend to overwhelm users of the financial statements. They should not be required on a regular basis. However, if there are unique circumstances where the omission would cause a misrepresentation, they should be included.
- The concept of “significant disclosure” should be clarified to allow consistent application across various P3 contractual arrangements and transactions.

Question 7 - Do you agree or disagree that entities should be permitted to aggregate or group disclosures as proposed at paragraph 21?

Disagree. Each P3 is a unique contract with unique risks and payment structure. Each project has an individual Value for Money (VfM) analysis and strategy, which should therefore be reported individually.

In conclusion, we appreciate FASAB’s allowing our participation in the process of establishing new disclosure requirements. We commend FASAB for its efforts to develop standards that will help strengthen the reporting process and provide additional clarity with respect to the full costs of P3s.

If ARTBA can provide additional information or organize an opportunity for members of our P3 Division to share their individual views directly with FASAB, please do not hesitate to contact Michael Forsythe, CPA, ARTBA’s vice president of finance, at (202) 289-4434 or mforsythe@artba.org. Thank you for your consideration.

Sincerely,



T. Peter Ruane
President & C.E.O



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

December 31, 2014

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 Small Business Administration's Outreach Task Force is pleased to have been given this opportunity to comment on the Federal Accounting Standards Advisory Board draft, "Public Private Partnerships Disclosure Requirements".

The Outreach Task Force is a cross-disciplinary entity within SBA charged with enhancing SBA's ability to provide services to small businesses by leveraging assistance given by private-sector collaborators. That ability would be significantly diminished, in ways that appear to be unintended by the Advisory Board, if the draft requirements come into effect. We urge you to consider applying these requirements to a narrower band of enterprises than the present language would provide.

First, some background: SBA's principal collaboration with the private sector is through cosponsorships. Congress bestowed the right to enter these cosponsorships upon SBA in 15 U.S.C. §§ 633(h) and 637(b)(1)(A), while imposing certain restrictions as well. Among these, SBA is required to enter into a cosponsorship agreement, including a budget, with the private-sector party or parties involved.

An SBA cosponsorship typically involves the parties collaborating on an event – a training for small business, for example, or an awards night. The private-sector party may or may not provide a venue or make purchases for the event; on rare occasions, SBA may provide supplies for the event. In such cases, the Agency is bound by the same acquisition laws and regulations as it is in its ordinary workday purchasing. SBA and the private sector entity are jointly involved in planning the event, and SBA and the private sector entity may provide speakers, panelists, ticket-takers, setup and cleanup. Two-thirds of SBA cosponsorships cost ten thousand dollars or less.

For example, in calendar year 2014 SBA planned and executed one hundred seventy-nine cosponsorships, providing training or other benefits to 2,366,654 small business executives, at a total cost of \$2,678,763 – almost all of which was borne by the private-sector partner.

We do not believe that these sorts of collaborations were the ones you intended to expose to the challenging new disclosure requirements in your draft. We understand you to intend these requirements to apply when there is appreciable financial risk to the government. We note in Appendix A, at A11.a. (page 29), the report states “[t]he Board desires to limit disclosure to those P3s possessing significant fiscal exposure.” For SBA, cosponsorships represent the opposite. SBA is almost never has financial exposure in a cosponsorship, significant or otherwise.

Yet cosponsorships appear to fit under at least two of the four legs of your definition of a Public-Private Partnership set forth on page 30. Definition one is “agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years.” Typically, a cosponsorship might be three months in the planning, and executed over the course of a week. The agreement would cover the entire period. The “economic life” of the project is the event; it has no economic life once it is over. Thus cosponsorships, no matter how economically insignificant, would be included in your definition and, therefore, exposed to your disclosure requirements.

The second definition is “financing provided in whole or shared in part by the private partner.” But if that provision applied – as it frequently does in SBA’s cosponsorships – the Agency’s fiscal exposure would actually be substantially *reduced*. It is the private partner, not SBA, that is exposed to loss when it provides the financing.

You propose exempting those public-private partnerships from the disclosure requirement if they are not “material” (page 30) but it is hard to apply your definition of materiality to cosponsorships. You note at A19.b. (page 34) that materiality “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 misstatement.” But it would seem that everyone who *relies* on information would, by the nature of things, be influenced by false information. In the case of cosponsorships, for example, officials at SBA look at the number of cosponsorships each office performs as a measure of the effectiveness of that office’s outreach efficiency. A misstatement of even the tiniest, no-cost cosponsorship would influence that assessment.

But does that make that cosponsorship “material” for purposes of the disclosure requirements?

Your review of conclusive and suggestive characteristics of public-private partnerships that should be exposed to your disclosure requirements also runs the danger of forcing these requirements on cosponsorships. One of your conclusive characteristics is “[t]he principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).” While it is not clear what the “principal” transaction would be in most cosponsorships, any item purchased by the private-sector partner would be exempt from the FAR, as it should be; it is not a purchase being made with taxpayer money. It seems incongruous to expose cosponsorships to enhanced disclosure requirements because of financial burdens willingly undertaken by the private sector.

On page 18, you find it suggestive if “significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.” But that is the *raison d’être* for cosponsorships. The parties work and plan collaboratively, which would be impossible without cross-sharing knowledge.

On the same page, you describe it to be another suggestive characteristic if “[t]he focus is more on collaboration and informal, real-time, resolution processes than on formal, contractual, administrative processes.” There is a contract between SBA and its cosponsorship partners, but it is unclear whether that suffices to identify “the focus” as being on contractual processes. Of course, as with any collaborative enterprise, problem-solving is preferred to litigation. We hope that this does not mean that cooperation results in enhanced disclosure requirements.

The enhanced disclosure requirements are onerous – particularly the one which would require the Agency to identify “the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows, including (1) the risk, and (2) the potential effect on cash flows if the risks were realized” (p. 20), a requirement which would oblige each cosponsorship to be reviewed by an accountant. As SBA does not have the staffing to undertake such a review, it is likely that SBA would do significantly fewer cosponsorships, contrary to the expressed will of Congress.

We agree with Mr. Darcey (page 38) that the definition of P3s and P3 transactions are drawn too broadly to be applied consistently and effectively and we respectfully request that you define the arrangements to be bound by the additional disclosure requirements more narrowly, so

that low-risk events like SBA's cosponsorships are not included.

Sincerely,

T.C. Treanor

Timothy C. Treanor, Chair
For the Outreach Task Force
United States Small Business Administration

From: Joe, William
Sent: Wednesday, December 31, 2014 4:18 PM
To: Savini, Domenic N
Cc: Wilbur, Cynthia P; Babagana, Kolo; Farington, Kim
Subject: RE: FASAB Requests for Comment - P3s and Three-Year Plan

TO:
Mr. Domenic Savini
Federal Accounting Standards Advisory Board
savinid@fasab.gov
202-512-6841

Please see attached for OPM OCFO's comments on the FASAB's exposure draft
entitled *Public-Private
Partnerships: Disclosure Requirements*.

Thank you.

Sincerely,

Bill Joe
Office of the Chief Financial Officer
Office of Personnel 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.

Agree that the P3 definition proposed at paragraph 17 captures the most widely identified features of federal P3s because it is broader based on actual Federal P3 practices and it recognizes the long-term nature and the shared financing of such agreements.

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.**

Agree 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 as it includes:

agreements covering a significant portion of the economic life of a project or asset;

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

and conveyance or transfer of real property, personal property, or multi-sector skills and expertise.

- 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.

Agree that the P3 definition excludes contracts or other arrangements or transactions that are routine in nature since it explicitly mentions agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years; per the FAR, a contract typically lasts 5 or fewer years.

- 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 features identified in the proposed P3 definition are appropriate for identifying risk-sharing arrangements or transactions that could possess significant risk.

- 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.

Agree with the scope of the ED excluding those informal arrangements or transactions that do not share risks or rewards. The definition emphasizes what would be included, and that is what is most important.

- 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.

The definition appears to be fine, however further information may minimize the possibility of excessive disclosures for remote risks.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.**

Agree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics should be subject to the disclosure requirements. Only projects sharing risks and rewards should be subject to the disclosure requirements in conformance with the definition of P3s, as 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).

- 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.**

No. Please see the above response to Q3a.

- 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.**

We are not aware of any P3s for the entity with which we are associated.

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

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

Agree with the risk-based characteristics and their related classification as either conclusive or suggestive, and their proposed application at paragraphs 19 and 20. They appear to be reasonable and comprehensive.

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

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

Agree with the component entity report disclosures proposed at paragraph 23. They appear to be reasonable.

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.**

Agree with the Board’s position as stated above and included at paragraph A24. User needs and the qualitative as well as quantitative characteristics are to be considered.

- 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**

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

(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.

Agree that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements.

Disagree that (2) the concept of “significant exposure” is not sufficiently clear to result in consistent disclosures; professional judgment appropriately comes in to play here.

Agree that (3) risks related to entity operations or performance, referred to in the Alternative View as business risks, should be included in the 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.

Agree that entities should be permitted to aggregate or group disclosures, as proposed at paragraph 21, to keep the disclosure requirement from being too burdensome.

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.

Thank you for the opportunity to review and comment.

No further comments or suggestions.

From: Gribben, Timothy E.

Sent: Friday, January 02, 2015 4:51 PM

To: FASAB; Savini, Domenic N

Cc: Perriello, Tami; Kushman, John S.; Ramey, Steve D.

Subject: SBA Response to P3 Exposure Draft

Please find attached the Small Business Administration's response to the exposure draft entitled

Public-Private Partnerships: Disclosure Requirements.

We appreciate the opportunity that FSAB provided us to respond to this proposal.

Please let me know if you have any questions regarding our comments.

Regards,
Tim

Tim Gribben
Deputy CFO

U.S. Small Business Administration

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

SBA's responses are displayed in red font and can be found after each question.

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.

Agree. We cannot add anything to rationale cited in A7-A9. However, it is possible that one party to the transaction is absorbing the risks while the other party is receiving the rewards – there is no guarantee that risk sharing is required.

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 that the definition helps identify some risk- sharing arrangements or transactions that possess significant risk but it is not clear that these additional requirements add value beyond existing requirements for disclosure. The definition does not provide clarity on what risks are being identified and disclosed that would not be required under existing standards and guidance.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

- 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.

We agree that the P3 definition captures P3s based upon features that seem reasonable and consistent with the proposed standard. However, there is no source for the definition criteria. We have no basis for forming an opinion as to whether these are the most widely identified features and whether they would be supported by documentation that clarifies the arrangement sufficiently to support disclosure. Exclusions are defined in A12 but there are no criteria that support that these are routine transactions.

- 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.

None identified. Checklists and implementation guidance in addition to the standard would be helpful in implementing the proposed standard.

- 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.

This exclusion does not expand upon the definition or provide additional clarity to the definition provided in 17 and 18 or the scope 12-16.

- 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.

Agree. It is not clear what should be excluded from the definition in order to represent only P3 agreements that present financial risk to the reporting entity. As written the definitions will not achieve consistent application.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.**

Yes. The definition provides the disclosure requirements under the proposed standard. A lack of requirement in this standard does not preclude disclosures under other standards.

- 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.**

None identified.

- 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.**

Since we execute our primary programs through relationships with outside parties, we anticipate these requirements would affect our financial disclosures and reduce the value of important information already disclosed under other standards. We do not perceive any value from the duplicative requirement.

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.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

Yes. Nothing to add.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

- 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.

Agree, but need to include the qualifier of “to the extent that it is applicable”.

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.**

Disagree with the Board’s position. Contingent liabilities should be disclosed consistent with current 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 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.**

Agree with the member’s concern. We do not believe that disclosure of contingent liabilities should be expanded.

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,

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

Strongly agree. Entities should be required to aggregate disclosure in order to limit disclosure of proprietary information of non-government partners and provide summary impacts consistent with financial statements. If additional detail is deemed important it should be reported as a part of a searchable database, not as a part of the AFR.

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.

This new standard is ill-advised. The answers we provided assumed that the standard would be implemented and addressed the question asked. The requirements under this standard are addressed in other standards for valuing assets and liabilities and need not be duplicated in a new standard. If there is a concern that the existing standards are not clear, they could be updated or implementation guidance could be provided without addressing P3s in a separate standard. Although the standard does indicate that each P3 should be addressed separately, it is implied by asking the question as to whether they could be aggregated. If the government decides that more detail should be published it should be included as a part of the searchable database on one of the government websites.

In addition, it is unclear how an agency would apply the expanded definition of materiality to include qualitative factors as proposed in the Exposure Draft. It is conceivable that a reasonable person, currently undefined in the ED, relying on information might find any omission to be misleading. Therefore everything could potentially be "material" and disclosable. More guidance is necessary.

Should the proposed standard for P3s be promulgated, it should allow for exclusion from the requirements under the standard for those P3 relationships that have existing accounting guidance adequately defining risk, such as credit reform programs. Additional guidance is needed to define those P3 relationships that have existing

Public-Private Partnerships: Disclosure Requirements

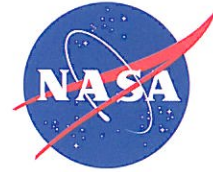
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accounting guidance adequate to define the P3 risk, and those that will be subject to the additional requirements under the standard.

National Aeronautics and Space Administration

Headquarters

Washington, DC 20546-0001



January 2, 2015

Reply to Attn of: Office of the Chief Financial Officer

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

Dear Ms. Payne:

Enclosed are our comments on the exposure draft for the proposed Statement of Federal Financial Accounting Standards, *Public-Private Partnerships: Disclosure Requirements*, dated October 1, 2014.

Thank you for the opportunity to provide comments on the exposure draft. If you have questions concerning our comments, please contact Mr. Kevin Buford, Director of Policy, NASA OCFO, at (202) 358-0405, or by email at Kevin.Buford@nasa.gov.


Kevin Buford
Director of Policy, NASA OCFO

Questions for Respondents – NASA Responses

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.

R1. We disagree with the definition, and share the concerns raised by the member's alternative view in A.32 - A.34. We are concerned that the definition is too broad and does not adequately exclude arrangements that are not traditionally thought of as P3 in the federal sense. Although the definition uses the term “contractual,” the standard appears to include arrangements/agreements that are non-binding to the federal government (a key aspect of whether the federal government would have risk). The standard also appears to include arrangements that have standard clauses or other language to minimize the risk to the government and to the general public, as well as arrangements that are properly reported/disclosed through other standards, e.g., SFFAS 5 and 6.

We are also concerned that the definition lacks clarity about the term “private sector.” For example, will this include what are generally classified as quasi-governmental or sponsored entities (e.g., state owned/sponsored entities, FFRDCs), non-profit, other sovereign entities, and international entities. The issue arises in part because P3 are so broadly defined. Left unchanged, this could lead to varying degrees of interpretation and implementation rather than a consistent application.

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).

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – NASA Responses

- 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.**

R2.a. We do not agree that the definition helps to identify risk-sharing arrangements or transactions, but rather concur with member's alternative view in A.35. - A.36. The definition is very broad. The definition itself does not focus on the level of risk and is applied to both the federal government and the general public. This expands a P3 focus and is only narrowed for disclosure through the conclusive and suggestive characteristics.

- 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.**

R2.b. We do not agree that the P3 definition excludes contracts/other arrangements, but concur with member's alternative view in A34. We are concerned that contradictory language exists between the scope, definition, and characteristics. For example, while the P3 ED scope excludes certain simplified FAR acquisitions, it does not exclude FAR acquisitions. The conclusive characteristics includes those arrangements that are exempt from FAR, but this does not exclude FAR transactions. R&D is only mentioned within the FAR simplified acquisition exclusion; these should be addressed along with FAR contracts.

- 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.**

R2.c. Yes, the standard should assist in identifying the arrangements that are excluded in the P3 definition. For example, where a standard process exists to ensure that minimal negative impact may be incurred by the federal government or the public or where recourse is outlined, by way of clauses or other language, the arrangements should be excluded from disclosure. Non-binding arrangements should be excluded, as these by their nature, have minimal risk (see Q2.d. response). The requirement of "remote" risk should be removed here and SFFAS 5 requirements applied.

- 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.**

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – NASA Responses

R2.d. We agree that informal arrangements should be excluded, but do not believe this is evident the way the ED is currently written (only in the question posed, which is not part of the standard). The terminology should be changed to exclude non-binding arrangements, or other clearly recognized terminology used in appropriations law and contracts law.

- 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.**

R2.e. We agree with the member's concerns. The definition itself does not exclude FAR based arrangements, other binding arrangements that provide for protections to the government and the public, research and development, and non-binding arrangements. See responses to the above questions.

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.**

R3.a. We agree that only P3s possessing risk should be subject to the disclosure requirements. However, we do not believe that the risk should be different than what is in SFFAS 5, measurable and probable. Until a risk becomes probable, it does not meaningfully add to the financial statements, especially for the federal government. In addition, redefining risk could result in premature reporting of a remote risk that could put a partner in a compromised financial position, which could ultimately impact their ability to perform in accordance with the arrangement. This could be of even higher consequence when dealing with international and other quasi-governmental entities (non-federal).

- 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.**

R3.b. No, the standard is so broadly written that it would encompass arrangements/transactions that are actually better served by another standard for

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – NASA Responses

disclosure/recognition/reporting, e.g., SFFAS 5 and 6. Because the Board has proposed this as supplemental disclosure/reporting, it is highly likely that an agency could have duplicative, but differing information in various notes. As an example, a lease that would not be disclosed as a contingent liability under SFFAS 5, could possibly be disclosed as a remote risk under this ED. This would be confusing to both the preparers and readers of financial statements.

- 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.**

R3.c. Yes, NASA enters into binding partnerships/agreements that use a range of authorities to lease, acquire, and fund assets and other activity, including international and R&D activities that may be subject to the proposed standard. NASA has developed standard language used in partnerships/agreements to mitigate the risk to the Federal government or public if a remote risk in a partnership/agreement occurs.

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.

R4. We agree with the majority of the characteristics. However, we do not fully agree with #3 and #4 under the Conclusive Characteristics for the following reasons:

- #3: We do not agree with conclusive item 3 as years is not a good indicator for conclusive characteristic, although it could possibly be a suggestive one. Suggest a longer term, such as 10 years, or where language isn't based upon a number of years, but whether the federal government has any recourse during the term, e.g., to terminate prior to the end of the lease or to make modifications to the lease.

- #4: We agree that item 4 should be a conclusive characteristic. However, where arrangements are reflective of the FAR standards in protections to the agency, those should also be excluded from disclosure. This item is contradictory to what is listed in the scope of the standard, ¶15. This item infers exclusions for FAR based acquisitions, not just FAR simplified acquisitions.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – NASA Responses

Also, P3s containing standard language/clauses that mitigate the risk to the federal government/general public, as applicable, should be excluded.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – NASA Responses

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.

R5. We do not agree with the proposed disclosure requirements, but agree with the member's concerns raised in alternative view, A.35 through A.38. We believe the disclosure requirements are too extensive and beyond that needed by users of the financial statements to understand the agency's fiscal exposure from P3s. Additionally, we are concerned that some of this information may be considered proprietary by a private sector partner and including it in a public document may subject the agency to legal liabilities. Also note a concern in Q.7 that this could impact a partner's ability to perform in accordance with the arrangement. We recommend that disclosure information be at a higher, summary level. Because the Board has proposed this as supplemental disclosure/reporting, it is likely that an agency could have duplicative, but differing information in various notes. As an example, a lease that would not be disclosed as a contingent liability under SFFAS 5, could possibly be disclosed as a remote risk under this ED. This would prove confusing to both the preparers and readers of 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.**

R6.a. We do not agree with the Board's position related to paragraph A24, but concur with the member's alternative view in A.36 through A.40. Applying a different standard for the requirements outlined in SFFAS 5 would add confusion to the preparers and users of the financial statements, and this should not be risked absent evidence of strong meaningful benefit to the readers and management (which has not yet been shown).

- 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.**

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – NASA Responses

R6.b. We agree with the alternative view. There is potentially contradictory language between the scope, definition, and characteristics; and the disclosure requirements is contrary to SFFAS 5. See responses in the questions above.

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.

R7. We agree with aggregating P3s under a more tailored definition. Aggregating P3s is preferable to detailed disclosure. There could be proprietary impacts from publishing specific P3 information that is a private entities business and should be their responsibility to disclose. There is also a possibility that publicly detailed remote risk disclosures may also be used against private entities seeking to bid/compete on arrangements. The remote risk is an agency's interpretation that does not require vetting prior to publication. Refer to the responses in Q.5.

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.

R8. We agree that P3s have become more common, however, there needs to be more rigor around the definition, clarifying "private sector," and how risk is disclosed/reported. The broad interpretation of P3s (by the definition and conclusive/suggestive characteristics) and remote risk, could result in much confusion by the agency and the readers of the financial statements. Because this is to be considered "supplemental" to existing SFFAS, it has the possibility of leading to assets being disclosed in multiple notes and reported differently. For example, a lease under SFFAS 6 (already disclosed in a note), could also be a P3 (disclosed under a different note) with a different measurement for risk, remote vs. measurable and probable. This could also be a significant undertaking by relatively small agencies/administrations that are relying more on P3s to maintain facilities that have a future need. There is also a possibility that public detailed remote risk disclosures may also be used against private entities seeking to bid/compete on arrangements, with the risk for premature chilling effects against beneficial

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – [NASA Responses](#)

arrangements (particularly in those with less predictable outcomes like R&D efforts). The remote risk is an agency's interpretation that does not require vetting prior to publication.

From: Joyce Dillard

Sent: Friday, January 02, 2015 4:38 PM

To: FASAB

Subject: Comments FASAB-2014-0006-0001 Public-Private Partnerships: Disclosure Requirements

Questions for Respondents due 1.2.2015

Attached.

Joyce Dillard

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.

COMMENTS:

Disagree. There are Constitutional issues at risk.

Government assets need to be protected as they are citizen assets. With PPP arrangements, that government due process ends. Representation ends. There leaves no recourse for the judicial branch of the government to weigh in.

Who sues-the citizen against the private party of a PPP?

Are public private partnerships formal, signed contractual arrangements or verbal contractual arrangements? If there is just a transaction, is there an approval required by an elected body who represents the citizens?

Resources is not defined. Personnel can be used as resources.

Risks need to be identified. Are they strictly financial, as in a debt, or an insurance-risk type of exposure? Would the IRS consider the private party at-risk if they do not have the indebtedness?

How does a government benefit by rewards? Are rewards net profit, budget reduction or pension liability reduction?

How is economic life defined? It appears to have a five year life. Some projects could last 100 years as an economic life.

You state that financing be provided, in whole or in part, by the private partner, yet debt is not discussed. Who has the responsibility for the debt service and debt retirement? If it is the taxpayer, where is the risk to the private partner?

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Questions for Respondents – MsWord Version

How can a government asset be transferred to a private partner? Who signs the transfer of the asset? Does Congress need to approve these transactions? If there is debt involved, it retired so there is no government liability?

There is no distinction if the private partner is a non-profit corporation or foundation.

How are multi-sector skills and expertise determined?

Who is liable and who pays for overhead aka operations and maintenance?

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.**

COMMENTS:

Disagree. Economic life of the asset is not covered for proper risk management. Significant risk is not reality. Any risk falls back onto the taxpayer.

- 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.**

COMMENTS:

Agree. It excludes to the detriment of the taxpayer. There is a responsibility that is being ignored. P3 arrangements are being used to bypass representation.

- 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.**

Public-Private Partnerships: Disclosure Requirements

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COMMENTS:

Economic analysis should be required by a non-partisan agency. You state:

In reviewing the P3 definitions of other standard-setters, the Board notes that their guidance is largely focused on service concession arrangements (that is, a sub-set of P3s) that directly benefit the general public.

That is a pure assumption. How is that benefit determined and measured? In government, reporting is required. Where is that reporting requirement?

- 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.**

COMMENTS:

No. Intellectual property is an investment by the public with no return of investment when given away to a private party. Why should the taxpayer pay for that research and innovation?

What is the purpose of “fostering goodwill” in this arrangement?

“Encourage economic development” has no measurable results. One could encourage less debt spending and qualify under this example.

Strategic Initiatives are part of an agency and its formation of execution of its responsibilities not an excuse for a P3 exclusion.

There must be accountability to the citizen whether it is financial with risk, or part of the execution of government.

Citizens vote, not corporations or partnerships.

- 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.**

COMMENTS:

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Agree. The standard is difficult to define to encompass the invention of P3s. It is not clear if the P3 would be regulated as a government agency or if financial disclosures for purposes of Conflict of Interests would be disclosed.

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.**

COMMENTS:

Disagree. It appears that you are limited these arrangements to some type of construction project. We find the hunger of the private partner is for the low-cost asset, not necessarily the infrastructure building that is assumed.

- 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.**

COMMENTS:

Design-build is used for construction projects, yet it is not addressed and the liability issues surrounding that type of control and deliver should be encompassed.

- 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.**

COMMENTS:

Consider the public in this question. All P3s should be subject to disclosure.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

COMMENTS:

Please note the typo DISCLSOURE. Value for Money is not an American concept. *Qualitative* is not defined nor is *emphasis*. Who determines these concepts and with what qualifications. This approach is not protective of data in relationship to the public interest.

Stock markets and corporate profits should not determine P3 usage.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

- 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.

COMMENTS:

Information is missing. Are there guarantees by the government which places the risk on the back of the taxpayer and not the private entity?

Are cash flow shortages guaranteed?

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

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.**

COMMENTS:

Your position is weak. As a citizen, how would we request a FOIA from a private partner? The private partner could disclose or choose not to disclose without any consequences.

Confidential business information is usually privileged information.

- 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.**

COMMENTS:

Agree. We have attended meetings with P3 industry groups who, when questioned, do not want feel they have the legal responsibility to disclose any information and have also been turned away from entering meetings because they are a private P3 group.

One consultant stated disclosure was the posting of the government notice.

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.

COMMENTS:

Disagree. Projects or tasks are individual undertakings. Disclosure should be based on each individual project or task.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

COMMENTS:

Our first P3 meeting was back in March 2008 *Lessons Learned from Public Private Partnerships for Infrastructure* hosted by University of Southern California Keston Institute for Public Finance and Infrastructure Policy. In attendance were representatives from:

- U.S. Federal Highway Administration
- U.S. Department of Transportation
- Infrastructure Management Group
- Louisiana Department of Transportation and Development
- Cambridge Systematics, Inc.
- Simon Fraser University
- University of British Columbia
- Georgia Institute of Technology
- Virginia Tech
- University of Texas at Dallas
- Old Dominion University
- Mayor-City of Los Angeles
- Los Angeles Unified School District

At that point in time, the public was upset over toll roads. In further P3 meetings, the attitude was that the citizen be damned.

Today, P3s are more than infrastructure. They are replacing the function of government without representation and accountability.

Joyce Dillard
P.O. Box 31377
Los Angeles, CA 90031

From: Jones, Anita

Sent: Monday, January 05, 2015 9:29 AM

To: FASAB

Cc: O'Connor, John; Atcherson, Aileen; Varkalis, Cheryl; Osborne, Christopher; Yusuf, Istanbul; Miller, Dale; Beresford, Jill

Subject: Comments to Exposure Draft Public Private Partnerships

Thank you for the opportunity to comment on FASAB Statement of Federal Financial Accounting

Standards Public Private Partnerships Disclosure Requirements. Enclosed are the Environmental

Protection Agency comments on the exposure draft. If you have any questions please contact.

Again, thank you for the opportunity to comment.

Anita Jones

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.

No Comment.

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 disagree that the P3 definition helps identify risk-sharing arrangements or transactions. We are concerned that the definition of significant risk is unclear and can lead to inconsistent application. Also, we agree with the alternative view that the definition appears to encompass contracts that are not traditionally considered P3’s.

- 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**

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

other purposes (refer to paragraphs 17, 18, A7- A9, and A10 – A12 for related comments)? Please provide the rationale for your answer.

We disagree that the definition will exclude contracts or other arrangements not generally identified as P3s. We are concerned that the breadth and width of the definition will capture activities already reported.

- 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.**

We believe that adding definitions for significant fiscal exposure and including expanding what is excluded will help users identify P3 relationships for reporting purposes. We also agree with the recommended improvements provided in the alternative paragraph A41.

- 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.**

We agree with the exclusion and believe that the exclusions can be enhanced by including contracts with limited risk of contingent loss.

- 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.**

We agree with the one member's concern. We believe that the definition was designed in a manner to capture a broad application of P3s which will lead to inconsistent application. In addition, the Board in paragraph A10 recognizes that the definition might capture activities which are already being recognized.

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

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.**

No comment.

- 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.**

No comment.

- 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.**

No comment.

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.

No Comment.

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

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

No Comment.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.**

We disagree with disclosing risks deemed remote. Disclosing risks deemed remote materiality needs to clearly be defined what the materiality level is being measured against. Is the risk being measured against material to the financial statements? If yes, the reporting of risks deemed remote can be excessive.

- 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.**

No Comment.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

No Comment.

From: Gould, James
Sent: Monday, January 05, 2015 12:05 PM
To: Payne, Wendolyn M
Cc: Nelson, Amanda E (US/DPP)
Subject: KPMG Comment Letter - Public Private Partnerships

Wendy:

We appreciate the opportunity to provide comments on the Federal Accounting Standards Advisory Board (FASAB) Exposure Draft (ED) on the Statement of Federal Financial Accounting Standards (SFFAS), *Public Private Partnerships Disclosure Requirements*. Attached is our response with comments to the subject exposure draft.

If you have any questions concerning our comments or would like additional information, please contact Amanda Nelson or myself.

Thanks,

James

James P. Gould

KPMG LLP

Department of Professional Practice

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January 5, 2015

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

RE: Proposed Statement of Federal Financial Accounting Standards, *Public-Private Partnerships Disclosure Requirements* – the exposure draft (ED)

Dear Ms. Payne:

We appreciate the opportunity to respond to the proposed Statement of Federal Accounting Standards, *Public-Private Partnerships Disclosure Requirements* – the exposure draft (ED). We support the Board's efforts to address Public-Private Partnerships (P3) since they are becoming more significant to governmental operations. The ED states that the Board anticipates providing guidance on P3 through a two-phase approach. Phase 1 is addressed through this ED, which relates to the identification and disclosure of P3s. Phase 2 of the approach will address the measurement and recognition of P3s. To support a clear and comprehensive standard, we believe that measurement and recognition should be developed jointly with the disclosure requirements. Instead of developing two standards to address P3s, we believe the Board should consider more extensive outreach to determine the significance of P3s. For example, through a Preliminary Views document, the Board could request input regarding the prevalence of P3s based upon a stated definition/characteristics. The Board could use the responses to this request to develop one comprehensive ED addressing measurement, recognition, and disclosure requirements for P3s.

However, if the Board continues to believe the two-phase approach is warranted, we provide the following comments.

We agree with some of the concerns expressed in the Alternative Views of the ED because:

- The definition (paragraph 17) of P3s does not confine the scope of contractual agreements solely to P3s and the vagueness of the definition will not allow for the consistent application of the standard. Further, confusion is created by the lack of linkage between the P3 definition and the P3 characteristics (Conclusive – Paragraph 19; Suggestive – Paragraph 20). As a result, we support the views provided in paragraph A34 regarding the definition of P3s.
- The requirement to disclose certain remote risks is not consistent with Statement of Federal Financial Accounting Standards (SFFAS) No. 5, *Accounting for Liabilities of the Federal Government*, which states that matters that are considered remote need not be reported (disclosed). In addition, this disclosure requirement expands the reporting of risks to operational matters that may have limited or no financial significance. As a result, we support the views provided in paragraphs A35-A36.

- Significant contractual risks (required disclosure contained in paragraph 23d) is lacking a clear definition. This terminology is not clearly linked to the concept of materiality introduced in paragraph 11. As a result, we support the views provided in paragraphs A37-A38.
- Audit challenges exist related to the disclosure of remote risks and other operational and contractual risks. While these risks may be important for some users of the financial statements, such information is not directly related to the amounts presented in the financial statements. We believe this information is similar in nature to the “risk assumed” information that SFFAS No. 5 requires to be presented as required supplementary information (RSI). Therefore, if the Board believes that disclosures related to these risks are important to the users of the financial statements, such information should be presented as RSI. As a result, we support the views provided in paragraphs A40.

In addition, to our support of some of the concerns expressed in the Alternative Views, we provide the following additional comments for the Board’s consideration:

- Paragraph 16 of the ED states that the standard does not change financial measurement and recognition requirements but could result in a change in practice. It is unclear whether the phrase “change in practice” refers to a change in operations or a change in the measurement and recognition of past financial events. If the Board was referring to a change in measurement and recognition, we question why a change would occur considering that the ED does not address the measurement and recognition requirements of P3s.
- Paragraph 11 provides guidance regarding the concept of materiality that is not consistent with how materiality is addressed in the current SFFASs. Each SFFAS contains the following guidance related to materiality:

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

Paragraph 11 goes beyond this standard guidance and includes additional information that does not exist in the current SFFASs. As a result, if the ED becomes a standard, as currently written, the standard will have a different definition of materiality from all other SFFASs. Therefore, we recommend that paragraph 11 be changed to match the other standards. Further, the additional information contained in paragraph 11 should be moved after the table in paragraph 19 to provide further guidance on the application of the P3 characteristics.

- Paragraph 19 states that if any of the conclusive characteristics are met, the P3 arrangement should be considered for disclosure. We were unclear what was meant by the phrase “should be considered.” We found it confusing that a relationship/agreement that met a “conclusive characteristic” may not require disclosure. Based upon discussion with Board staff, we learned that this phrase is meant to reinforce the consideration of materiality that is described in paragraph 11. Because preparers and auditors should already consider materiality based on paragraph 11, we believe the phrase “should be considered” will not be consistently applied and therefore, should be deleted.
- The conclusive characteristics in paragraph 19 indicate the existence of a P3 arrangement. A preparer would evaluate each characteristic independently. Considering each conclusive

characteristic independently we identified certain relationships/agreements that we believe would be potential P3 arrangements. The following table summarizes these examples. If it was not the Board's intention for these types of relationships/agreements to be disclosed as P3s, we recommend that the Board reconsider the characteristic.

Conclusive Characteristic	Potential P3 Arrangement
The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing liability.	A reporting entity's (such as the Department of Health and Human Services) funding of a university research facility.
The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, etc.	A reporting entity charters/sponsors a not-for-profit organization.
The term of the procurement or contract is longer than 5 years.	A software lease agreement that is bundled with a maintenance agreement that is longer than 5 years.
The principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).	A grant or contract agreement under the Uniform Guidance.

- It is unclear if the conclusive characteristics contained in paragraph 19 should be considered in conjunction with the P3 definition provided in paragraph 17. As a result, our evaluation of the conclusive characteristics, summarized above, did not consider the definition provided in paragraph 17. If this was not the Board's intention, we recommend adding a clear linkage within paragraph 19 to the definition provided in paragraph 17.
- Paragraph 23e.ii requires the disclosure of significant instances of non-compliance with legal and contractual provisions governing the P3. However, the ED does not define "significant instances". Further, requiring a disclosure of significant instances of non-compliance would require the auditor to evaluate the completeness of this disclosure, which could be viewed as an opinion on compliance with the legal and contractual provisions governing the P3. Such an opinion would require the auditor to adhere to the requirements of AU-C Section 935, *Compliance Audits*, or AT Section 601, *Compliance Attestation*, which requires suitable and available criteria to evaluate compliance. We question whether suitable and available criteria could be defined for the compliance with legal and contractual provisions governing a P3. As a result of these matters, we recommend removing this disclosure requirement.

If you have questions about our response, please contact Ms. Amanda Nelson at 202-533-5560 or aenelson@kpmg.com.

Sincerely,

KPMG LLP

From: Erik Dorman (BC)

Sent: Monday, January 05, 2015 2:59 PM

To: FASAB

Cc: Priscilla Sampson - BCA

Subject: FASAB ED - Public-Private Partnerships (P3s): Disclosure Requirements

Dear FASAB Director,

Attached in the email are GSA's comments on Federal Accounting Standards Advisory Board (FASAB) Exposure Draft issued October 1, 2014 on Public-Private Partnerships (P3s): Disclosure Requirements. Thank you for the opportunity to provide comments and please let me know if you have any questions.

--

Thank you,

Erik Dorman, CPA, CISA, CIA

Director, Financial Policy and Analysis (BCA)

GSA, Office of the Chief Financial Officer

GSA Consolidated Comments and Recommendations

Question	Para No.	SUBJECT/TITLE (FASAB Exposure Draft on Public-Private Partnerships (P3s): Disclosure Requirements)	Yes	No	RECOMMENDATIONS/COMMENTS	Name of Commenter	Office	Email Address/Phone
		General Comments						
1		<p>The Board proposes defining the term —public-private partnerships as: "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)."</p> <p>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.</p>		X	<p>The first sentence of the definition seems appropriate. However, the reviewer believes that the first three of the four items regarding evidence of the sharing of risks and rewards are redundant and sufficient coverage of these first three items are already adequately provided in existing FASAB accounting standards; particularly standards for the accounting of contracts and leases and standards that exist for the recognition of assets and liabilities and income and expense (e.g., SFFAS 5 accounting for liabilities and contingencies of the federal government). The prescribed standards in this ED should only apply in the case of special purpose vehicles (SPV's) such as Trusts or Limited Partnerships that are specifically authorized by law. Outside of such SPV's or contractual agreements, the reviewer does not understand how P3's could exist under the law without representing an augmentation of appropriations or, potentially, anti-deficiency act violations.</p>	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov 202.501.4568 or John.Wotring@gsa.gov 703.605.5442

GSA Consolidated Comments and Recommendations

2	<p>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).</p>		No comment			
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2a		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.	X	Yes, but only with respect to the first part of the definition. It is the reviewers opinion that the second part of the definition outlining conditions for the sharing of risks and rewards only confuses the issue and should be limited to those types of special purpose vehicles specifically authorized by law. Existing FASAB standards are felt to be sufficient to cover all arrangements other than specifically authorized public-private partnerships. The reviewer does share concerns that expansion of current reporting to include disclosures related to remote risks could overwhelm or mislead users and delves into the subjective areas of business risks which should be beyond the scope of accounting standards.	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)
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2b		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.	X	There is agreement with the statement that the definition as stated excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as P3s for other purposes because of the statement about the sharing of risks and rewards, but the reviewer again believes that the second part of the definition concerning conditions for the sharing of the risks and rewards is too subjective. It is the reviewer's belief that as long as financial compensation is involved in the provision of goods or services by either or both parties, there is a contractual relationship that should not be considered to involve the sharing of risks and rewards and the contract should not be classified or identified as a P3 unless specifically structured that way as authorized by law. This goes back to the response in Question 1 above as to why the reviewer believes the first three of the four items of evidence of P3's should be excluded.	John B. Wotring	BF	John.Wotring@gsa.gov (703.605.5442)
2c		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.	X	Contrary to identifying additional features that would assist entities in identifying risk sharing arrangements, the reviewer believes that the features identified are too broad. Reference the previous comments made for additional information.	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)

2d		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.	X	It is believed that existing FASAB standards regarding liabilities and contingencies are more than sufficient to cover any additional risks in such arrangements.	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)
2e		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.	X	The reviewer is also concerned that entities may expend undue resources developing and implementing processes to identify contracts and agreements that are not truly P3's and that the definition may significantly expand disclosure requirements for contingent liabilities beyond the requirements of SFFAS 5. This is why the reviewer has made a suggestion in response to Question 1 to limit the definition of P3's to special purpose vehicles (SPV's) such as Trusts or Limited Partnerships that are specifically authorized by law. Outside of such SPV's or authorized agreements, the reviewer fails to see how P3's could exist under the law.	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)

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3		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).			No comment			
3a		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.	X		The reviewer agrees with the requirement for disclosures only for those P3s possessing risk-based characteristics.	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)
3b		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.		X	It is the opinion of the reviewer that current FASAB accounting standards are sufficient in scope to account for all possible arrangements and transactions without the need for additional guidance beyond what has been described herein.	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)
3c		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.		X	The reviewer can think of no activity, agreement, or other type of legally authorized special purpose vehicle that this standard would apply to within GSA's Federal Acquisition Service (FAS) under the terms and conditions as stated.	Erik Dorman or John B. Wotring	BF	Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)

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4	<p>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.</p> <p>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</p>	X	<p>The reviewer is of the opinion that only items' 2 and 4 under the Conclusive Characteristics should apply. Items' 1 and 3 under Conclusive Characteristics are believed to be too vague and otherwise are appropriate for coverage under other FASAB standards such as accounting requirements for leasing and asset recognition. No additional comments are made regarding the suggestive characteristics.</p>	Erik Dorman or John B. Wotring	BF	<p>Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)</p>
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5	<p>The Board proposes the following component reporting entity disclosures:</p> <p>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.</p> <p>b. The mix and amount of funding, federal and non-federal, used to meet mission requirements and service delivery needs to support the P3.</p> <p>c. The operational and financial structure of the P3 including the entity's rights and responsibilities, including:</p> <p>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:</p> <p>1. in-kind contributions/services and donations,</p> <p>2. the time periods payments are expected to occur, and</p> <p>3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances.</p> <p>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.</p>		No comment			
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GSA Consolidated Comments and Recommendations

5		<p>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.).</p> <p>e. As applicable:</p> <p>i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items.</p> <p>ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.</p> <p>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.</p> <p>iv. Description of events of termination or default.</p> <p>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.</p>	X	<p>The reviewer agrees with the disclosure requirements in general, but only for entities identified as P3's through SPV's, Trusts, or Partnerships, as specifically authorized by law - not for contracts or leases that the reviewer does not believe constitute P3's by definition as per the other comments herein. The reviewer is in definite agreement with the emphasis on the entity's statutory authority for entering into the P3 and why the government entity selected a P3 model to conduct business. Reference the additional comments provided in the response to Question 7 below.</p>			
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6	<p>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</p>		No comment			
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6a		<p>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.</p>	X	<p>The reviewer believes that it is impossible to disclose all inherent risks in the operation of a business or government entity. Businesses in fact exist based on there willingness to incur risk for potential future rewards. The ED as written seems to be moving across that fine line where known quantifiable risks exist as contingent liabilities that should be disclosed and stepping into the realm of business risks that are practically impossible to identify or quantify. To this end, the reviewer believes that current FASAB accounting standards for contingent liabilities are sufficient for full accounting disclosures in all areas and that the ED should only apply to disclosures for SPV's such as Trusts or Limited Partnerships that are specifically defined and authorized by law.</p>	John B. Wotring	BF	<p>John.Wotring@gsa.gov (703.605.5442)</p>
6b		<p>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.</p>	X	<p>Based on all of the comments noted previously, the reviewers' comments tend to side on the member's concern about how, based on the ED as written, remote contingencies will expand the requirements of FASAB accounting standards for disclosure and that disclosure policies are moving too far toward identification of risks inherent in any business or operation and away from good accounting principles. The reviewer does not believe that the new standards are advisable from a cost/benefit perspective. FASAB accounting standards constitute a form of regulation and redundancies in regulation need to be minimized.</p>			

7		<p>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.</p> <p>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.</p>	X	<p>As a point of order, the reviewer, as a taxpaying citizen, has concerns about the viability of or need for public-private partnerships. The very existence of such partnerships blur the lines distinction between inherently governmental versus commercial responsibilities and creates the appearance of a conflict of interest between the Federal government and the larger corporations and consultants who partner with them, often with private industry benefiting from the profits of such relationships when they are successful but not sharing in the risks of loss or being subsidized when problems occur. However, to the extent that such partnerships do exist under law, it would seem that existing accounting standards for liabilities and contingencies should suffice, so to the extent that additional requirements are being made, the reviewer concurs that aggregation of such agreements for purposes of disclosure is appropriate.</p>	Erik Dorman or John B. Wotring	BF	<p>Erik.Dorman@gsa.gov (202.501.4568) or John.Wotring@gsa.gov (703.605.5442)</p>
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8	<p>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.</p> <p>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.</p>			All comments or suggestions regarding the goals for this project or other issues identified and the basis for conclusions are addressed in the specific comments to the individual questions above.	John B. Wotring	BF	John.Wotring@gsa.gov (703.605.5442)
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From: Tekleberhan, Karen - OCFO

Sent: Monday, January 05, 2015 5:21 PM

To: FASAB

Cc: Payne, Wendolyn M; Brown, Kevin L - OCFO; Balin, Robert - OCFO; Jones, Jerri N - OCFO; Simpson, Cynthia - OCFO

Subject: US DOL/OCFO Comments on FASAB ED, "Public-Private Partnerships Disclosure Requirements"

Importance: High

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

Dear Ms. Payne:

Below please find comments from the U.S. Department of Labor (DOL), Office of the Chief Financial Officer (OCFO), on the Federal Accounting Standards Advisory Board Exposure Draft (ED), "Public-Private Partnerships Disclosure Requirements." In addition to answering the ED questions, DOL/OCFO provided comments on other matters not specifically addressed. Thank you for the opportunity to provide comments on the ED. The contact at DOL/OCFO is Mr. Kevin Brown, Director, Office of Financial Reporting, Office of the Chief Financial Officer, at (202) 693-6800 or Brown.Kevin.L@dol.gov.

Regards,

Karen Tekleberhan, CPA
Deputy Chief Financial Officer
U. S. Department of Labor

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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 1: The U.S. Department of Labor (DOL), Office of the Chief Financial Officer, disagrees that the public-private partnership definition proposed at paragraph 17 captures the most widely identified features of public-private partnerships. DOL/OCFO believes that an Agency may have specific legislation that provides the authority to undertake such arrangements. Furthermore, the legislative authority may limit the relationship between the Government and the non-government party. The Board should include a policy which recognizes the inconsistency that may occur between what is required in the legislation and/or regulations and what is required by the accounting standard.

Without specific legislative authority to undertake such arrangements, US DOL/OCFO believes that there is potential for a violation of the Anti-Deficiency Act.

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).

©1. 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 2a: DOL/OCFO disagrees that the definition of public-private partnerships helps identify risk-sharing arrangements or transactions that could possess significant risk. DOL/OCFO believes that an Agency's disclosures with regard to (a) significant accounting policies (in the descriptions of the programs and funds) and (b) material concentrations of risk may already identify risk-sharing arrangements or transactions that could possess significant risks. Disclosures of material concentrations of risk may already be required as part of management's written representations to the auditor.

©2. 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 2b: DOL/OCFO disagrees that the definition of public-private partnerships excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as public-private partnerships for other purposes. DOL/OCFO believes that the accounting standard should specifically exclude grants or other arrangements that are regulated under 2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

©3. 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 2c: Refer to Response 1, Response 2a and Response 2b.

©4. 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 2d: DOL/OCFO believes that the Board should more clearly distinguish between those arrangements or transaction that are formal versus informal. Furthermore, DOL/OCFO believes that Agency activities accomplish multiple goals concurrently and activities solely designed to achieve the goals such as those listed in question 2d would be rare.

Q5. 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 2e: DOL/OCFO agrees with the one member's concern that the definition of public-private partnerships is not confined solely to those arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard.

DOL/OCFO agrees with the one member's concern that the risks are not confined to those risks which have the potential to result in contingent losses. DOL/OCFO believes that the contingent losses associated with the other party's default (or another party's default to whom the activity has been delegated) on the arrangement should be the focus. DOL/OCFO agrees with the one member's concern that risks should not include general business risks and DOL/OCFO believes that the risks should not include programmatic or performance-related risks. Furthermore, remote risks associated with highly unlikely, but also highly detrimental events, should be excluded.

Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered^[1] 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 3a: DOL/OCFO disagrees that public-private partnership arrangements should be eliminated from disclosure because they do not possess significant fiscal exposure. Certain arrangements may be qualitatively material (for example, those that involve funding through the Recovery Act) although they may not be quantitatively material. However, disclosure should involve only those arrangements that may result in a contingent loss, even though the amount of loss may not be quantitatively material.

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 3b: Please refer to response 3a. Other arrangements or transactions besides public-private partnerships that may result in contingent losses are those arrangements that would be disclosed in a financial statement note for material concentrations of risk.

^[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.

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 3c. DOL/OCFO has no comment at this time.

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 4: DOL/OCFO believes that an additional conclusive characteristic should be added: "The principal arrangement or transaction is exempt from the requirements of 2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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 5: DOL/OCFO believes that it would be more appropriate to report the information as required supplementary information. If the information was reported as basic, DOL/OCFO believes that less information would be provided than if the information was reported as RSI. Reporting the information as basic would increase the time and resources required for the audit and decrease the information provided. Furthermore, DOL/OCFO believes that the standards should address circumstances where partners subcontract to others, subsequent events, and going concern issues.

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 6a: DOL/OCFO disagrees with the Board’s position as stated above. DOL/OCFO believes that remote risks should not be reported as basic or RSI disclosures. DOL/OCFO believes that in the very unlikely event that such a loss were to

occur, then it would be disclosed as a subsequent event (if the event occurred between the balance sheet date and the date that the financial statements were issued) or with a presentation and disclosure that would emphasize its importance to the reader of the financial statements (an example of the presentation and disclosure may be a treatment similar to the treatment of an extraordinary loss in the FASB 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 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 6b. DOL/OCFO agrees with the one member's concerns. DOL/OCFO believes that disclosures of remote risks would increase the volume of the disclosures and would overwhelm the reader.

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 7: DOL/OCFO agrees that entities should be permitted to aggregate or group disclosures, but the disclosures should be reported as RSI. The standard should be flexible about the methods and/or presentation for aggregating or grouping the public-private partnerships.

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.

Response 8: With regard to implementation in paragraph 25, DOL/OCFO believes that early adoption should be permitted only if the disclosures are reported as RSI.

Other matters not specifically addressed:

- a. DOL/OCFO noted the use of “etc.” in the questions and throughout the proposed accounting standard and believes the use of “etc.” should be avoided in an accounting standard.
- b. Avoid using the acronym “P3.” At DOL, the P3 acronym is used to describe the program “Performance Partnership Pilot for Disconnected Youth.”

Edits:

DOL made note of the following edits:

- i. Page 4, in the table of contents, “Identification of P3’s Requiring Disclosure” is misspelled.
- ii. Page 24, in paragraph A5a, use either “the” or “a” at the end of the sentence.
- iii. Page 29, in footnote 17, at the end of the footnote, use “adversely” instead of “adverse.”

From: Rossi, Anthony
Sent: Thursday, January 08, 2015 10:02 AM
To: FASAB
Cc: Wylie, Maureen; Muessle, Mary; Gusack, Barbara
Subject: Comments on FASAB Exposure Draft

Tom L. Allen, Chairman, FASAB:

We have reviewed the FASAB Exposure Draft, Public-Private Partnerships Disclosure Requirements, dated October 1, 2014. The Nuclear Regulatory Commission (NRC) concurs in the Alternative Views stated by Mr. Robert F. Dacey in paragraph A32 of the Exposure Draft and his recommendations for improving the draft standard in paragraph A41. Further, the NRC recommends the Board reconsider issuing this as a standard since contingent liabilities are already adequately covered by existing standards as Mr. Dacey expressed in paragraphs A35 and A36. We suggest the Board simply issue guidance on disclosure of government risk that may be created by P3 arrangements as part of disclosure of contingent liabilities.

Specifically, the NRC supports Mr. Dacey's position that the standard is too broadly written and the terms used therein need to be clearly defined for the same reasons expressed in paragraphs A33 through A40. Further, the Board should reconsider issuing the standard as unnecessary and consider issuing guidance instead.

Please contact me if you have questions.

Thank-you,

Anthony C. Rossi
Senior Advisor, OCFO
U.S. Nuclear Regulatory Commission



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.

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



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.

Washington, DC 20548

January 12, 2015

Federal Accounting Standards Advisory Board

Wendy M. Payne, Executive Director

441 G Street, NW, Suite 6814

Washington, D.C. 20548

Dear Ms. Payne,

This letter provides the U.S. Government Accountability Office's (GAO) comments on the Federal Accounting Standards Advisory Board's (FASAB) *Public-Private Partnerships Disclosure Requirements* Exposure Draft. We fully support the Board's efforts to improve federal financial reporting by proposing a standard on disclosure requirements for public-private partnerships (P3s) and believe that appropriate disclosures could add value to users of the financial statements. We also believe that it is especially important to establish clear and appropriate principles for P3 disclosures so that as the Board develops other accounting standards for disclosing risks across many areas (e.g., insurance risks), there is consistency in the nature and magnitude of such disclosures.

We concur with the Alternative View provided in the Exposure Draft. We believe that certain aspects of the proposed standard would likely result in preparers and auditors encountering implementation challenges and incurring costs that may not be commensurate with the value of the disclosures to users of the financial statements, and the proposed disclosures may detract from rather than enhance the user's ability to assess the entity's finances. We provide suggestions to the proposed standard that:

- Narrow the proposed P3 definition to more closely align with P3 arrangements and transactions by (1) excluding items that likely have limited risk of contingent losses or (2) building upon more restrictive definitions used by other standard-setters. Also, ensure that all terms in the definition are clearly defined.
- Limit the disclosure requirements for remote contingencies to contractual terms specified in contractual agreements and more clearly incorporate the existing requirements in FASAB's Statement of Federal Financial Accounting Standards 5 (SFFAS 5.)¹ Also, exclude business risks² from the scope of required disclosures.
- Provide a clear disclosure threshold for remote risks that is higher than materiality as currently applied.

Narrow The Definition Of P3s And Ensure Clarity In The Definition

The P3 definition proposed at paragraph 17 captures many of the most widely identified features of federal P3s; however, it is our view that the breadth of the definition does not confine the scope of arrangements and transactions solely to P3's. In addition, we believe that the definition does not provide sufficient clarity to facilitate consistent application of the standard

¹SFFAS 5: *Accounting for Liabilities of the Federal Government*

² As discussed in the Alternative View, business risks relate to entity operations or performance.

among preparers or between the preparer and the auditor. In operation, we anticipate that preparers and their auditors would need to demonstrate that:

- all contracts and agreements that meet the broad definition have been identified;
- each contract and agreement has been compared with the conclusive and suggestive characteristics; and
- the significant exposure criteria (paragraph 8) have been applied.

In addition to challenges encountered in applying the P3 definition consistently, a substantial number of contracts and agreements may be identified that ultimately have little or no material financial statement effect or risk. Consequently, we have concerns that the proposed standard would require significantly more preparer and auditor resources to implement than if the definition was narrower and clearer. The proposed definition states that 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.

The breadth of the definition appears to encompass (1) contracts that are not traditionally considered P3s and (2) arrangements and transactions that do not necessarily result in potential contingent losses to the entity. This could include:

- contracts that relate to standard procurements of capital assets under the Federal Acquisition Regulation;
- long-term contracts in which some financing is incurred by the private sector entity;
- leases that include any other services related to the lease; and
- arrangements or transactions where government skills are transferred to the private party.

These examples would likely meet the P3 conclusive or suggestive criteria as stated in paragraph 19. Consequently, federal entities may expend resources developing and implementing processes to identify contracts and agreements that meet the proposed definition but are not true P3s and have limited risk of contingent losses.

An alternative approach for narrowing the P3 definition is to build upon the more restrictive definitions of P3s that are currently used by other standard setters. The Financial Accounting Standards Board, Governmental Accounting Standards Board and the International Accounting Standards Board have issued standards related to a narrower, but significant subset of P3s, service concession arrangements. Generally, a service concession arrangement includes a private sector entity operating infrastructure (such as roads, bridges, etc.) or another public asset to provide public services in exchange for compensation, which may include user fees. As part of the service concession arrangement, the private sector entity may be required to construct, upgrade, or maintain such infrastructure or public asset.

Limit The Disclosure Of Remote Contingencies To Contractual Terms Specified In Contractual Agreements And Exclude Disclosures Of Business Risks

The proposed standard would significantly expand the disclosure requirements for contingent liabilities that are provided under SFFAS 5 by requiring disclosures of (1) certain *remote contingencies*³ (paragraph 8) and (2) *business risks* such as comparative costs and skill transfers to the private sector.

It is our view that the standard should limit the disclosure requirements for remote contingencies to contractual terms that are specified in contractual P3 arrangements and exclude business risks from the disclosure requirements. To that end, disclosures of contingencies where the chance of the future event occurring is slight and business risks that do not necessarily affect the financial statements could overwhelm users with extensive information and could be misleading and/or confusing to users. While general purpose federal financial reports support decision-making and accountability over taxpayer provided and other resources, federal entities have a number of existing reporting vehicles where the reporting and disclosures of such types of risks may be more appropriate and relevant.

We believe that the treatment for recognition and disclosure of contingencies relating to contractual terms such as termination clauses, minimum payment guarantees, and other types of non-performance or other external events applicable to P3 arrangements and transactions are currently covered under SFFAS 5. With regard to contingent liabilities, currently SFFAS 5 requires the recognition of a contingent liability when the contingency is deemed *probable* and measureable (SFFAS 5 paragraphs 38-39) and disclosure of a *reasonably possible* contingency or a *probable* contingency that is not measureable (SFFAS 5 paragraphs 40-42.) We believe that the proposed standard should more clearly incorporate the existing requirements of SFFAS 5 so that entities and their auditors understand how the proposed standard and SFFAS 5 inter-relate.

In addition, SFFAS 5 provides that contingencies that are classified as *remote* need not be reported in general purpose federal financial reports. The proposed standard would require disclosure of P3 arrangements and transactions that are remote contingencies. This could include transactions and arrangements that result from:

- contractual terms (e.g. the contract may contain early termination clauses and minimum payment guarantees) that specify the amount or the basis for determining the amount of any contingent loss or
- circumstances not addressed in the contract and relate to other types of non-performance or other external events.

To determine whether a remote contingency represents a *significant fiscal exposure* and meets the disclosure requirements of paragraph 23 d (2), the entity would need to develop an inventory and complete an assessment of remote contingencies. This would include estimating the maximum loss to the federal entity assuming that all potential adverse events with respect to the federal government were to occur, whether or not such events were contemplated in the contract. Such disclosures would represent the maximum loss to the federal government, even though there is only a remote chance of occurrence. It is envisioned that such disclosures could be numerous and we question the meaningfulness of this information to users for the reasons

³ Refer to SFFAS 5 paragraph 36

stated in the Alternative View. Also, as noted in the Alternative View, proposals by the Financial Accounting Standards Board for disclosing remote risks were not widely supported in public comments on the proposal. We support narrowly defining the instances in which remote risks would be disclosed to only those contractual terms as specified in P3 contractual arrangements to minimize the possibility of excessive disclosures and preparer and auditor implementation challenges.

It is also our view that business risks should be excluded from disclosure in the financial statements. As noted above, including information related to business risks in the financial statements could overwhelm users with extensive information, and could be misleading and/or confusing to users. While information about business risks is relevant to management and possibly to performance reporting, requiring disclosure of business risks:

- extends significantly beyond current financial reporting requirements;
- would not necessarily reflect potential future losses to the entity;
- may be highly subjective;
- would also present difficulties in determining whether the exposures meet the “*significant exposure*” disclosure threshold; and
- may cause confusion to users about the entity’s finances.

Also, the preparer and auditor would likely experience significant challenges in preparing and auditing such business risk disclosures, particularly in determining whether all such business risks were considered and properly evaluated. Risks not affecting the financial statements are generally outside the scope of a financial statement audit. Further, if the underlying principle of disclosure of business risks were to be applied by the Board to other types of contracts or other areas, it could substantially increase the volume of disclosures in the financial statements. It is unclear whether such additional information would add value to the financial statements and may detract from the readers’ ability to properly assess the entity’s financial condition.

Provide A Clear Disclosure Threshold For Remote Risks That Is Higher Than Materiality

The disclosure threshold of *significant exposure* (paragraph 8) does not provide a clearly defined conceptual threshold to facilitate appropriate and consistent disclosures of risk related to P3 contractual arrangements and transactions. The proposed standard states that disclosures of remote contingencies should be provided if they would result in *significant exposure* to the entity, but does not define the term. In addition, the term is not clearly linked to the discussion of materiality in paragraph 11 or included in the disclosure requirements or other authoritative sections of the proposed standard. In fact, we believe that the term “significant” is often perceived as an amount less than “material.” Also, we believe that the standard should develop and clearly define a disclosure threshold that is higher than materiality as it is applied to other areas, consistent with earlier Board discussions. Such a threshold would appropriately limit the extent of disclosures while providing disclosure of remote contingencies that could, for example, fundamentally affect the entity’s ability to operate. Also, clear definitions would facilitate appropriate and consistent disclosures related to P3s. Further, we noted that the proposed standard also inconsistently uses terms related to risk (e.g., significant risk, significant remote risk, significant contractual risk) and exposure (e.g., significant fiscal exposure, fiscal exposure, significant exposure), which also may be confusing to entities and their auditors.

The proposed standard indicates that certain remote risks may have a reasonably *high materiality threshold*, but does not indicate how that would be applied or whether certain remote

risks could likewise have a low materiality threshold. We believe that use of the term *significant exposure* without a definition is not sufficiently clear for consistent implementation and consequently would also cause challenges between the preparer and auditor. Also, it is unclear how the concept of *significant exposure* would be applied to commitments (e.g. future payments under paragraph 23 c ii.) Further, the term *fiscal exposure* has been used in GAO reports and in the International Organization of Supreme Audit Institutions' international auditing standards, and possibly by others to refer to concepts different from that used in the proposed standard--which may cause confusion.

Another difficulty is that the proposed standard provides disclosure requirements for risks related to P3 contracts and arrangements while the FASAB has not first established a standard that provides recognition and reporting requirements specifically for P3s and related disclosure requirements. Such recognition and reporting requirements would provide better context in which to define incremental risk disclosures related to P3s.

Overall, we commend the Board for its work to develop a standard on P3 disclosures and have made suggestions to reduce challenges related to implementation and consistent application of the standard. We thank you for considering our comments on these important issues. Please contact me at (202) 512 – 2600, or sebastians@gao.gov if you have questions on GAO's perspectives.

Sincerely yours,



Steven J. Sebastian
Managing Director,
Financial Management and Assurance

From: Shea, James (Jerry)
Sent: Tuesday, January 13, 2015 4:32 PM
To: Savini, Domenic N
Cc: Palmer, Katherine; Hallameyer, Ronald; Work, Irma
Subject: FW: Review of FASAB P3

Dom,

Katherine Palmer, our ADAS for the Office of Financial Policy has reviewed and approved VA's comments to the P3 ED.

Jerry

James J. (Jerry) Shea
Accounting Policy Service
Office of Financial Policy
Department of Veterans Affairs

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.

VA agrees that the public-private partnership (P3) definition proposed at paragraph 17 captures the most widely identified features of P3. The definition incorporates the risks and rewards element.

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.**

VA agrees 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. The definition specifically focuses on risks and rewards evidenced by agreements or financings.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

- 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.

VA agrees. Contracts would not be included in P3s as contracts generally don't share risks and rewards. If a contract does share risks and rewards P3 should apply.

- 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.

Yes. VA believes SFFAS 5, Accounting for Liabilities of the Federal Government probability classification should apply.

- 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.

VA agrees with the exclusion of informal arrangements or transactions that do not share risks and rewards. SFFAS 5 regarding liabilities and contingencies covers all probability risks (probable, reasonably possible, and remote).

- 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.

VA disagrees. As long as SFFAS 5 criteria for disclosure are applied, the P3 standards provide appropriate disclosures. See 2.c. response above.

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;

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.

Public-Private Partnerships: Disclosure Requirements**Questions for Respondents – MsWord Version**

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.**

VA agrees that only those P3 (identified pursuant to the proposed definition) possessing risk-based characteristics should be subject to the proposed disclosure requirements. VA suggests that SFFAS 5 criteria for disclosure be applied.

- 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.**

VA is not aware of any other arrangements or transactions besides P3s for which the risk-based characteristics are present and requiring 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.**

VA has not yet performed evaluation to determine if VA is associated with P3s that are subject to disclosure in accordance with the proposed requirements.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

VA agrees. P3s containing standard languages that mitigate the risk to the federal government or general public should be excluded.

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.

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

VA agrees that component entity report disclosures as per SFFAS 5 be included in general purpose federal financial reports and in RSI when the risk is remote.

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.**

VA disagrees that remote risks should be disclosed. VA suggests applying SFFAS 5, Accounting for Liabilities of the Federal Government, which states that contingencies classified as remote need not be reported in general purpose federal financial reports, though law may require such disclosures in special purpose reports.

- 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.**

VA agrees. Disclosures of remote risks would increase administrative burden to the preparers and overwhelm the readers. It also conflicts with SFFAS 5. However, if SFFAS 5 criteria were applied remote risks would not be included in general purpose federal financial reports.

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

Public-Private Partnerships: Disclosure Requirements**Questions for Respondents – MsWord Version**

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.

VA agrees. Broad summary would be appropriate.

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.

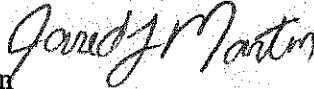
Please provide any comments or suggestions you have regarding the goals for this project, other issues identified in the basis for conclusions, or areas which have not been addressed.

VA has no additional comments.

**Department of Energy**

Washington, DC 20585

January 14, 2015

MEMORANDUM FOR THE FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD**FROM**
Jared Martin
Acting Director, Office of Finance and Accounting**SUBJECT**Comments 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.

From: Shawn Mickey
Sent: Friday, January 16, 2015 1:19 PM
To: Savini, Domenic N
Cc: Carole Banks; Kawan Taylor, Payne, Wendolyn M
Subject: Public-private partnerships (P3s) request for comments

Domenic,

Please find attached the Department of the Treasury response to the public-private partnerships (P3s) request for comments.

Thank you,
Shawn

Shawn M. Mickey, CPA, CGFM
U.S. Department of the Treasury, DCFO-FRP

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 1:

The Department of the Treasury (Treasury) generally agrees that the definition captures the most widely identified features of federal P3s. The definition reflects actual federal P3 practices and covers a wide breadth of federal assets. Also, it focuses on risk-sharing and risk transfer strategies and can be applied uniformly across the federal government. We believe that there would be more clarity if the standard provided specific examples of how the definition can be applied.

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 2.a:

Treasury generally agrees that the P3 definition helps identify those risk-sharing arrangements or transactions that possessing significant risk. However, please refer to our response to Question 2.e 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 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 2.b:

Treasury disagrees that the definition clearly identifies contracts and arrangements that should be specifically excluded. A list of the types of contracts/agreements and transactions that should be excluded from the provisions of this standard would enhance clarity and result in a more consistent application of the standard.

- 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 2.c:

Treasury is unaware of any other features that would assist in such identification.

- 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 2.d:

Treasury agrees with the exclusion of informal arrangements or transactions.

- 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 2.e:

Treasury agrees with the alternative view for the reasons specified in paragraph A34. Treasury is concerned that the definition is so broad that the identification of P3s could expand to transactions or arrangements that are already accounted for and disclosed under other existing standards. Addressing the concerns identified in paragraph A34 may facilitate more consistent application and comparability across agencies.

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.**

Response 3.a:

Treasury generally agrees that only those P3s possessing risk-based characteristics should be identified for disclosure pursuant to this proposed standard. The Board should reconsider if the current definition of P3s, when applied to the risk-based characteristics, will result in inconsistent application of the standard and disclosures across all agencies.

- 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 3.b:

Treasury is not aware of any arrangements/transactions besides P3s for which the risk-based characteristics are present and for which consideration for disclosure should be required.

- 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.**

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.

Response 3.c:

Currently, Treasury is not aware of any existing P3 arrangements or transactions subject to the disclosure requirements of this new standard. Treasury cannot make a definitive assessment about whether or not it anticipates having such arrangements in the future.

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 4:

Treasury generally agrees that the risk-based characteristics, as classified between conclusive or suggestive, can assist in identifying potential reportable P3 transactions.

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 5:

Treasury generally agrees with the proposed disclosures in paragraph 23. However, the extensive disclosure requirements, coupled with the broad definition of P3s, could result in lengthy disclosures on certain arrangements or transactions that may not have more than a remote chance of impacting the financial statements. Furthermore, the extensive disclosure requirements may be beyond that needed by users of the financial statements to understand the agency's fiscal exposure from P3s.

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 6.a:

Though Treasury would prefer adherence to SFFAS No. 5 which does not require disclosure of remote contingencies, Treasury does understand the Board's view for disclosing remote risks, but limited only to those risks that are included in the terms of contractual agreements (as recommended in paragraph A39).

- 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 6.b:

Treasury agrees with the concerns expressed by the one member with the Alternative View. Extensive disclosures of "remote contingencies" could overwhelm or mislead users, particularly when such risks are not likely to occur. The term "significant exposure" is subjective and is not sufficiently clear. Furthermore, disclosures related to performance risks (or "business risks") may be more appropriate in the MD&A section rather than disclosed in the independently audited footnotes, especially if such risks may not necessarily affect the financial statements.

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 7:

Treasury agrees that entities should be permitted to aggregate or group disclosures for financial statement presentation purposes as proposed in paragraph 21. However, the entity should collect and maintain detailed documentation specific to each arrangement or transaction.

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.

Response 8:

Treasury has no further comments at this time.

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.

Public-Private Partnerships: 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**

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

JAN 27 2015

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 Defense appreciates the opportunity to comment on the Federal Accounting Standards Advisory Board Public-Private Partnerships Disclosure Requirements Exposure Draft. The proposed definition of Public-Private Partnerships is too broad and can be misconstrued to include instruments that are not Public-Private Partnerships. The requirement to disclose certain remote risks may result in voluminous disclosures easily misinterpreted by readers of the financial statements. The Department concurs with the alternative view proposed by Mr. Dacey as outlined in Paragraphs A31 through A41 in the Exposure Draft.

Responses to specific questions are enclosed. My contact is Ms. Maryla E. Engelking. She can be reached at maryla.e.engelking.civ@mail.mil or 703-571-1657.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Easton", is positioned above the typed name and title.

Mark E. Easton
Deputy Chief Financial Officer

Enclosure:
As stated

**Department of Defense (DoD) Responses to
FASAB Questions for Respondents**

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.

The DoD disagrees. The proposed definition of P3s is too broad.

- a) The characteristics listed may be representative of some P3s, but could also characterize contracts that are not P3s. For example, the definition could also be used for capital leases.
- b) The inclusion of SPVs also confuses the issue. SPVs are commonly used in a variety of business transactions that have nothing to do with a P3. For example, in a DoD enhanced use lease authorized under Title 10 USC 2667, DoD may out-lease a parcel of underutilized land to a private entity in exchange for the fair market value of the lease. The private entity would likely use a SPV as the legal entity and lessee. No other P3 conditions would exist and there is no risk sharing. The definition should be expanded to state that the federal entity sponsors or is party to the SPV.
- c) The definition can be improved by focusing on the conclusive characteristics for consistency and understanding.
- d) The definition should also state that transactions that are routine or standard in nature should be excluded from this standard.
- e) The definition will be enhanced with the inclusion of examples of arrangements that meet the 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.

The DoD disagrees.

- a) The definition identifies risks that are related to P3s and non-P3s. Once again, the proposed definition of P3s is too broad and could result in reporting of remote contingent liabilities for non-P3 contracts.
- b) The definition of significant risk is unclear and can lead to inconsistent application.
- c) The definition should directly tie to the conclusive characteristics. For instance, clearly stating that the principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR) would enhance the definition.
- d) Current accounting guidance already provides for disclosures of risks and long standing agreements and transactions entered into by the federal government.

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.

The DoD disagrees.

- a) The definition as written should include a caveat stating arrangements or transactions that are routine in nature are generally not identified as P3s.
- b) The definition should also include specific exclusions such as those in Paragraph A12.

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.

P3s are contractual relationships with specific terms and conditions of the contract that defines the nature of the services, obligations, and risks for each party. The definition should be more specific in identifying P3s as discussed in responses to previous questions.

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.

The DoD agrees with the exclusion of 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. However, such exclusions should be specifically included in the proposed Standard.

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.

The DoD agrees. The broad definition of P3s could include many activities that are not related to 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 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 DoD agrees. Once it is determined that the arrangement is a P3, the disclosures are warranted. However, the risk should be probable and measurable as defined in Statement of Federal Financial Accounting Standards 5, Accounting for Liabilities in the Federal Government. Including remote risks could easily be misinterpreted by the reader of the financial statements.

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.

Any other arrangements and transactions are addressed by other FASAB Standards. Additionally, the reporting entity has the ability to include other disclosures in their financial statements if they deem it necessary.

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.

There will be some activities within the DoD that will require disclosure. One such program is the Military Family Housing Privatization Initiative.

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.

The DoD agrees. The conclusive characteristics in and of themselves identify P3s. Although utilizing the conclusive characteristics may result in disclosing arrangements that are not P3s given the way P3s are defined.

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.

The DoD agrees in concept. However, in practice, the disclosures may be difficult to apply consistently in all situations.

- a) The disclosures are very detailed and will be burdensome for preparers and overwhelming for readers.
- b) Disclosures relating to private, related-party transactions may need to be added to the required disclosures. These disclosures may be deemed as proprietary to the private partner. The private partner may not agree to reveal proprietary information.

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.

The DoD disagrees. Reporting remote risks expands the requirements currently espoused in Statement of Federal Financial Accounting Standards 5, Accounting for Liabilities in the Federal Government. These disclosures, although remote, could be misinterpreted by readers of financial statements as being possible or probable to occur. If these disclosures are to be required, they must be labeled as remote to avoid being misleading. Finally, this requirement may result in voluminous disclosures that may be easily misconstrued by the reader.

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?

The DoD agrees. The disclosure of remote contingencies is not limited to the terms of contractual arrangements and would include business risks. The term “significant exposure” needs to be defined in order for it to be applied consistently across the Federal Government.

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.

The DoD agrees. The reporting entities are given the option of aggregating P3s or reporting them separately. In most cases, P3s are material individual contractual arrangements and will be reporting separately. Aggregation may make it even more difficult for financial statement users to determine the nature and extent of these arrangements, but it should be made available for P3s below materiality thresholds.

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.

After much research, P3s pose issues and questions for both the private and public sectors. By hiding liabilities in partnerships or other similar arrangements, there were cases when countries were able to meet requirements (i.e., debt as a percentage of GNP) that allowed them to meet financing agreements with international agencies. However, a concern is if a contractor fails to perform, the government will have to step in to provide these services. Although there may be remedies that could be pursued, it is likely it will not cover the full cost of the failed project and the government and taxpayers will carry the burden of paying the bill. The disclosures in financial statements will not change this fact. Although we agree in concept with this approach, this disclosure will be challenging to apply uniformly.

Another concern is the potential difference of opinion between the reporting entity and their auditor as to whether a disclosure is sufficient or whether a contingent liability should be recorded for the financial risks of a P3 arrangement. Also, the P3 definition is too broad and can lead to disagreements between management and auditors on the scope of the entity's disclosure requirements. The Exposure Draft did not provide sufficient detail to allow federal financial management and the audit communities to agree on the necessary disclosures required to achieve the reporting objectives of the standard. Further explanation may be required of paragraph 23(b), "The mix and amount of funding, federal and non-federal used to meet mission requirements and service delivery needs to support the P3." Is this cumulative, prospective, or just the mix/amount of funding associated with the reporting years? FASAB may need to provide examples or additional requirements related to paragraph 23(b).

More detail will be required to explain risk sharing and DoD may need additional guidance for disclosures or financial transactions when a default or decrease in public interest in the asset occurs. Finally, how does the P3 definition compare and contrast with contract financing payments for major efforts with private entities?

The following terms within the Exposure Draft warrant clarification and/or definitions:

- a) Long-lived asset
- b) Remote risk
- c) Significant exposure

An appendix should be added to the standard providing disclosure examples to aid preparers in developing the necessary and consistent disclosures. More examples are needed indicating what is included and what is excluded from the definition of P3s so that the non-accountant (functional community) tasked with providing financial information on business operations can fully comprehend and understand the requirement and how it relates to current operations.

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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
ASSISTANT DIRECTOR OF NATIONAL INTELLIGENCE AND
CHIEF FINANCIAL OFFICER
WASHINGTON, DC 20511

CFO-14-2229 Part 2

MEMORANDUM FOR: Ms. Wendy Payne
Executive Director, Federal Accounting Standards Advisory Board
(FASAB)

SUBJECT: (U) Intelligence Community (IC) Comments

REFERENCE: (U) FASAB *Public-Private Partnerships Disclosure Requirements*
Exposure Draft

(U) This memo provides the consolidated comments and questionnaire responses for the Intelligence Community (IC) to the FASAB *Public-Private Partnerships Disclosure Requirements* Exposure Draft.

If you have any questions, please contact Ms. Barbara Jones at 703-275-3405, bilger@dni.ic.gov or Ms. Lois Hite at 703-275-3210, hiteloi@dni.ic.gov.


Richard Fravel

26 JAN 2015
Date

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IC Comments on Federal Accounting Standards Advisory Board (FASAB) <i>Public-Private Partnerships Disclosure Requirements</i> Exposure Draft						
Intelligence Community Consolidated Comments to the P3 Exposure Draft						
*For comment matrix instructions, see "Instructions" tab at bottom right.						
Com ment #	Page #	Question/Para graph #	POC Info: Organization, Name, Title, Phone, Email	Comment Type: Administrative (A) Substantive (S) Critical (C)	Comments: (Use classification portion markings)	Rationale (Use classification portion markings)
1	2	1	IC CFO, 7032753405	S	Recommend rephrasing the third sentence as follows: "Because P3s could be considered an investment...". The way this sentence is worded conflicts with pg 11, paragraph 2 and pg 15, paragraph 19	This wording implies all P3s are investments, however, there is criteria that is required to determine if an investment is a P3 in the document which suggests that further analysis is necessary to determine if (1) a P3 exists and (2) it should be disclosed.
2	6	Question 2b	IC CFO, 7032753405	C	Disagree. The proposed P3 definition appears to include contracts relating to standard procurements of capital assets under the Federal Acquisition Regulation, leases that include any other services related to the lease (e.g., leases including maintenance services), and arrangements or transactions where government skills are transferred to the private party. Inclusion of these routine contracts and other transactions in P3 disclosure consideration could unnecessarily create disclosure requirements for long-term contractual arrangements unrelated to P3s, where risks and rewards are not shared between the government and private parties.	
3	6	Question 2b	IC CFO, 7032753405	S	Disagree. The first sentence is a generic definition and could apply to any transaction between a contractor and a Federal Entity.	Agencies could interpret the first sentence to mean they have to apply all commercial contracts to the P3 requirement.

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4	7	Question 2c	IC CFO, 7032753405	A	Yes. The definition mentions the “conveyance or transfer of real property”; however, it does not cover the occupancy or use of such property. Further, the disclosure requirements described in this document might be misaligned with the concepts covered in the Statement of Federal Financial Accounting Concept (SFFAC) No. 5, Definitions of Elements and Basic Recognition Criteria for Accrual-Basis Financial Statement. For example, property can be conveyed or transferred to a party but used or managed by another party. Which party shares in the benefit or bears the risk....the party which owns the property (transfer/conveyance) or which occupies/uses or manages the property? It is unclear in this document which party should report vice disclose the real property.	
5	7	Question 2e	IC CFO, 7032753405	C	Agree with the member's concern. The proposed P3 definition appears to include contracts relating to standard procurements of capital assets under the Federal Acquisition Regulation, leases that include any other services related to the lease (e.g., leases including maintenance services), and arrangements or transactions where government skills are transferred to the private party. Inclusion of these routine contracts and other transactions in P3 disclosure consideration could create a lack of clarity on the nature of P3s, and hinder FASAB's overall objective for the proposed standard.	

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6	8	Question 4	IC CFO, 7032753405	C	Conclusive Characteristic #1: Disagree with this conclusive risk-based characteristic. While many P3s may have this characteristic, standard procurements conducted under the FAR, not associated with P3s, may result in the conveyance or creation of a long-lived asset. Suggest reclassifying the characteristic as "suggestive".	
7	8	Question 5	IC CFO, 7032753405	C	Conclusive Characteristic #3: Disagree with this conclusive risk-based characteristic. While many P3s may have this characteristic, standard FAR procurements not associated with P3s may result in a total contract term over 5 years. Suggest reclassifying the characteristic as "suggestive".	

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8	9	Question 6a	IC CFO, 7032753405	C	Disagree, as the Board's position should be more clearly defined. To avoid ambiguity, and differences in interpretation of the standard by preparers and auditors, the Board should include additional guidance to define the "significant exposure" threshold, as well as the "reasonably high materiality threshold". How should these terms relate to overall financial statement materiality? Is the intent to apply existing materiality thresholds currently identified by preparers & auditors to the facts surrounding each P3, or to create a distinct materiality threshold for each P3?	

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9	9	Question 6b	IC CFO, 7032753405	C	Agree with the member's concern. (1) Disclosure of remote contingencies is not limited to the terms of contractual arrangements. Requirements to disclose remote contingencies should be more clearly defined to ensure reporting consistency across Federal agencies. (2) The concept of "significant exposure" threshold is less thoroughly defined than existing materiality definitions, and could result in confusion with the "significant deficiency" concept. The final standard should include additional definition for this area. (3) Required disclosures appear to include risks related to entity operations or performance, outside the scope of the financial statements. Additional guidance should be provided to foster agreement between preparers and auditors as to which risks require disclosure on the financial statements.	
10	10	Question 7	IC CFO, 7032753405	S	Agree that flexible reporting will allow agencies the ability to best present information in a matter that is concise and flows well within the GPFFR.	
11	10	Question 8	IC CFO, 7032753405	S	Evaluating implementation, measurement, recognition and reporting issues prior to the issuance of this standard would help to limit agency and auditor confusion in the interim, especially considering the lengthy timeline to issue subsequent FASAB or AAPC guidance. Additionally, per Table 2.0, there appears to be very limited or no OIG/public auditor input in the development of this Exposure Draft.	

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12	10	Question 8	IC CFO, 7032753405	S	<p>In paragraph A8, the basis for conclusions include some examples of P3s as service concession arrangements (economic development initiatives such as new roads, toll roads, highways, airports, railways, hospitals, etc...).</p> <p>As FASAB seeks to set a more broad definition of P3s, including specific examples of non-service concession P3s would improve understanding of the Standard by preparers and auditors. The Standard should clarify that no additional contingent liability reporting requirement under SFFAS 5 is created by the Standard.</p>	
13	10	Question 8	IC CFO, 7032753405	S	<p>This is a further expansion of the Reporting Entity exposure draft and will be completed in two phases, the first of which deals with disclosure requirements and the second will deal with financial reporting requirements. Could this lead to auditor problems if management is disclosing some of the financial risks of P3s; however, the auditor believes that a contingent liability exists and should be recorded?</p>	
14	11	2	IC CFO, 7032753405	S	<p>Could the FASAB provide examples of P3 arrangements and disclosure requirements, similar to what was provided for the Reporting Entity ED?</p>	<p>The ED acknowledges that P3 arrangements are extremely complex; therefore, the ED may not provide sufficient detail to allow the Federal financial management and audit community to agree on the necessary disclosures that are required to achieve the reporting objectives of the standard.</p>

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15	11	footnotes 5, 6	IC CFO, 7032753405	A	Font size of footnotes 5 and 6 is inconsistent with the other footnotes.	
16	12	6	IC CFO, 7032753405	S	Paragraph 6 appears to focus on forecasting or reporting information that is not consistent with other current financial statement and footnote reporting requirements. For example, information such as budget to actual comparisons and non-financial related performance results (e.g. return on investment, or achieving expected outcomes) are currently limited to Other Information (e.g. Management's Discussion and Analysis). It is also unclear how/where these items are covered under the subsequent list of footnote disclosure requirements in paragraph 23. Recommend removing paragraph 6.	
17	12	8	IC CFO, 7032753405	S	The disclosure of remote liabilities could be confusing and misleading to GPFFR users and is not consistent with the current practice of reporting other contingent liabilities. This also increases the burden on financial reporters to quantify risks that are not likely to occur and therefore provide little benefit relevant to an entity's current financial position. Recommend limiting disclosure/reporting requirements to those arrangements or transactions that have a probable or reasonably possible risk of significant fiscal exposure. Also recommend clarifying reporting requirements where the materiality is unknown (e.g. cannot be reasonably quantified).	

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18	14	13	IC CFO, 7032753405	S	<p>Recommend clarifying the definition of P3 contractual arrangements and transactions in the exposure draft to be more precise and require less judgmental interpretation. For example:</p> <p>* Paragraph 13 indicates that P3s may include "research and development arrangements;" however, question 2 indicates arrangements designed to "promote research and innovation...would generally be exempt from applying this Statement". Also, research and developmental activities are inherently risky since there is no guarantee of a usable output/return on investment. As such, investments in R&D activities are currently already required to be reported in GPFFRs in the Required Supplementary Information (not footnote disclosures).</p> <p>* Paragraph 13 also indicates that P3s may include grants. At what level would grants, determined to meet the definition of a P3, be attributed to a reporting entity? Often grants are passed down through intermediary agencies (federal, department, department-components); therefore it may be difficult to determine which reporting entity incurs actual risk. Also grants are generally provided for R&D activities, to foster goodwill or promote economic growth/development.</p>	

IC Comments on Federal Accounting Standards Advisory Board (FASAB) <i>Public-Private Partnerships Disclosure Requirements</i> Exposure Draft						
Intelligence Community Consolidated Comments to the P3 Exposure Draft						
*For comment matrix instructions, see "Instructions" tab at bottom right.						
Com ment #	Page #	Question/Para graph #	POC Info: Organization, Name, Title, Phone, Email	Comment Type: Administrative (A) Substantive (S) Critical (C)	Comments: (Use classification portion markings)	Rationale (Use classification portion markings)
19	15	19	IC CFO, 7032753405	S	Item 3 in the table under paragraph 19 indicates that the rationale for including procurements or contracts longer than five years in the P3 definition is due to potential increased costs that could potentially have been renegotiated under a shorter-term contract. This appears to place undue burden on agencies to determine/quantify opportunity costs on existing contracts. The rationale for the suggestive characteristics in the table under paragraph 20, also identifies potential risks that would be difficult to quantify and thereby disclose.	
20	15	19	IC CFO, 7032753405	S	It would be less confusing if all of the criteria were classified as suggestive and state that they need to be considered individually and in the aggregate. The actual impact of the two different criteria sets between conclusive and suggestive is not clear. The term "conclusive" in the table suggests a definitive result that a "yes" to any of the conclusive items <u>would</u> result in a required disclosure. However, the ED uses the term "should be considered" in paragraph 19 for conclusive characteristics. For suggestive criteria, the ED indicates the arrangement or transaction "may be subject to disclosure." Both definitions appear to require similar management judgment.	

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21	20	23	IC CFO, 7032753405	S	Recommend making the edits noted below to paragraph 23: - Sentence 2: Add the words “as applicable” so the sentence would read “The following information should be disclosed, as applicable.” Section (e) of paragraph 23 states other “as applicable” criteria for disclosure, however, it is not explained why only some disclosure criteria are on an “as applicable” basis. - Paragraph 23, e, ii states “instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction”. Please provide clarification as to why all instances of non-compliance should be disclosed rather than just the instances of financial non-compliance.	
22	20	23b	IC CFO, 7032753405	S	Provide examples or additional requirements around the requirement in paragraph 23(b).	Question around paragraph 23(b): “The mix and amount of funding, federal and non-federal, used to meet mission requirements and service delivery needs to support the P3” Is this a cumulative prospective, or just the mix/amount of funding associated with the reporting years?
23	39	A32 First Bullet	IC CFO, 7032753405	S	The definition of P3s, as Mr. Dacey pointed out in his dissention, may be too broad and could lead to disagreements between management and auditors on the scope of the Agency’s disclosure requirements.	

IC Comments on Federal Accounting Standards Advisory Board (FASAB) <i>Public-Private Partnerships Disclosure Requirements</i> Exposure Draft						
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24	39	A34	IC CFO, 7032753405	S	Agree with the alternative view that the definition of P3s presented in the ED is too broad and therefore could encompass the traditional procurement of capital assets or long-term contracts under the FAR, leases with maintenance services, and transactions where government skills are transferred to a private party, which may not equate to actual P3 arrangements.	



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February 2, 2015

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

Dear Ms. Payne:

On behalf of the Association of Government Accountants (AGA), the Financial Management Standards Board (FMSB) appreciates the opportunity to provide comments to the Federal Accounting Standards Advisory Board (FASAB) on its October 1, 2014 exposure draft entitled *Public-Private Partnerships Disclosure Requirements*. This exposure draft, if adopted, would implement the first phase of FASAB's planned project to require federal financial officials to ensure the full costs of Public-Private Partnerships (P3) are recognized in the reporting entity's general purpose federal financial reports (GPFFRs) and that appropriate disclosures are included in the same. This exposure draft addresses the first phase of the project by establishing a definition of a P3 and proposes guidance relative to the risk-based characteristics that need to exist before disclosure is required.

The FMSB is comprised of 24 members (list attached) with accounting and auditing backgrounds in federal, state and local government, as well as academia and public accounting. The FMSB reviews and responds to proposed standards and regulations of interest to AGA members. Local AGA chapters and individual members are also encouraged to comment separately.

The FMSB has reviewed the exposure draft and has some significant concerns related to the definition and the guidance suggested by the exposure draft. We do recognize that guidance for reporting of P3 arrangements is needed for federal financial reporting. P3 arrangements present federal agencies and the general public with significant financial and operational risks and we agree that information on this topic should be provided. Our difficulty is in the definition and the guidance provided by the FASAB. Overall, we believe that the definition is too broad and generic and will not provide meaningful guidance for the preparers of federal financial statements. As presently constructed, we believe that the definition and additional guidance will result in an extensive reassessment of disclosures related to contractual and other arrangements, which will not necessarily provide the information desired by the FASAB.

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.

FMSB Response: The question asks if we agree or disagree that the proposed definition in paragraph 17 captures the most widely identified features of a P3. The FMSB is not familiar with the breadth and extent of P3 arrangements entered into by federal agencies. In our letter of comments related the FASAB's 2013 through 2015 Three Year Plan and the 2014 through 2016 Three Year Plan, the FMSB had expressed great interest in this project and wished to ascertain the extent to which P3 arrangements were being used by federal operations. Although we were familiar with the types of P3 arrangements used by state and local governments, we were not as familiar with the types of P3 arrangements used in federal agencies. The FASAB should consider releasing the information gathered in preparing this exposure draft as we would like to understand the extent to which such arrangements are occurring and how the FASAB classified certain factors in reaching its conclusions. The FMSB is uncertain as to whether the definition does or does not capture the most widely identified features of a P3 in the federal arena of operations because of a lack of information on this topic. Therefore we cannot provide a yes or no answer to this question.

As stated in our comments to the other questions, the FMSB does not support the definition that has been provided in the exposure draft. We believe that the definition would cover routine contractual arrangements that are not true P3 arrangements. We provide additional comments on these matters in response to the specific questions.

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.

FMSB Response: The FMSB does not agree that the definition helps to identify P3 risk sharing transactions or contractual arrangements that could possess significant risk (fiscal exposure) to the federal reporting entity. The FMSB believes that the definition in paragraph 17 casts too wide a net over contractual arrangements or transactions in its attempt to identify P3s. This approach will result in routine transactions being potentially characterized as P3s. In reviewing the definition, FMSB members were concerned that the definition would encompass a wide range of routine transactions that have been properly accounted for and disclosed (when warranted) for many years. For example, a widely identified feature used in the definition of a P3 is related to sharing of risks and rewards. Risks and rewards are an integral part of nearly all long-term contractual arrangements. Each party takes on risk when signing a contract and expects a reward. The definition as proposed would encompass a wide range of routine long term contracts and would not provide strong criteria to use in classifying contractual arrangements or transactions as a P3. Implementing such a standard would seem to require that all contracts and arrangement that meet the paragraph 17 definition would have to be identified and scrutinized using the conclusive and suggestive characteristics. The entity would then apply the criteria of significant exposure to the arrangement or transaction. This may be difficult to apply on a consistent basis across agencies.

The definition, as now constructed, will require federal agencies to expend resources developing processes to identify contractual arrangements and transactions that meet the definition but are not P3 arrangements as intended by the FASAB. The definition, as written, would appear to cover both contracts that would not be considered a P3 arrangement as well as transactions that will not result in a contingent loss to the federal entity. This could include contracts that have financing provided by non-federal entities as well as transactions where government skills (or service operations) are transferred to a private entity. Such arrangements are not P3s in our view, yet disclosure might be required under this ED.

We also have additional concerns with the definition. For example, the first sentence of paragraph 17 states that P3s are either contractual arrangements or transactions. However Footnote 10, attached to the term "contractual arrangements" introduces the term risk sharing arrangements. Footnote 10 does not mention contractual arrangements or contracts. Is the reader to assume a contractual arrangements are synonymous with the term risk sharing arrangements? Is a contract essential to risk sharing arrangements?

Footnote 10 further subdivides risk sharing arrangements into either structural or transactional. Since transactions (as stated in paragraph 17) is transactional, is this referring to such arrangements or is it a separate category that must be considered? It seems that the information in footnote 10 is a fundamental part of the definition of a P3 and likely should be included in the body of the standard.

Other terms used in the definition also present concerns to the FMSB. Paragraph 17 states that P3s involve contractual arrangements or transactions to provide a service or an asset for either government or general public use where in addition to sharing resources each party shares the risks and rewards of said arrangements or transactions. Paragraph 17 further states that sharing of risks and rewards is evidenced by, among other ways, financing provided in whole or in part by the private partner. Does the term resources include financing? Or is it more inclusive? If so, it should be explained.

Our review of the conclusive characteristics and the suggestive characteristics, which are intended to assist preparers in further narrowing the field of potential contractual arrangements and transactions present additional concerns for the FMSB. We attempted to align the “P3 conditions” presented in paragraph 17 with the “conclusive characteristics” in paragraph 19. Paragraph 19 states that if any of the “conclusive characteristics” are met by a “contractual arrangement or transaction” the P3 arrangement should be considered for disclosure. We would expect that these “conclusive characteristics” align explicitly with the “P3 conditions” of paragraph 17, however we believe that they do not. We aligned the P3 conditions with the conclusive characteristic and concluded that these items do not fully align. Our comparison is shown in the following table.

<i>Paragraph 17 Conditions</i>		<i>Paragraph 19 Conclusive Characteristics</i>	
<i>1a</i>	<i>agreements covering a significant portion of the economic life of a project or asset,</i>		
<i>1b</i>	<i>and/or lasting more than five years,</i>	<i>3</i>	<i>The term of the procurement or contract is longer than 5 years.</i>
<i>2</i>	<i>financing provided in whole or shared in part by the private partner,</i>		
<i>3a</i>	<i>conveyance or transfer of real property, personal property,</i>	<i>1</i>	<i>conveyance or creation of a long-lived asset or long-term financing liability.</i>
<i>3b</i>	<i>or multi-sector skills and expertise, or</i>		
<i>4</i>	<i>formation of special purpose vehicles (SPVs).</i>	<i>2</i>	<i>The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, etc.</i>
		<i>4</i>	<i>The principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).</i>

As shown in the table, the relationships are unclear and not all “P3 conditions” are clarified by a “conclusive characteristic”. For example, no additional guidance is offered regarding the term “...a significant portion of the economic life of a project or asset ...” We would expect that P3 arrangements for the operation of an asset or project, if significant, would generally be for a period of time in excess five years and providing a five year floor for the characteristic seems too low a bar for a conclusive characteristic. Similar concerns arise in relation to P3 condition labeled 3a in the first column of our table and conclusive characteristic labeled 1. The conclusive characteristic discusses a broader range of transactions than the P3 conditions in paragraph 17. The relationship between the definition and the conclusive characteristics are implicit in nature and we believe the relationship should be more explicit in nature.

The FMSB is also concerned about the threshold for disclosure as currently presented in the ED. Preparers will be asked to disclose P3 arrangements when there is a significant exposure. We do not believe that the term significant exposure is a term that is well defined. Is the term significant exposure at the level of materiality or is “significant” at a lower or higher level than materiality. The concept of significant exposure needs to be defined in the ED.

In reviewing the exposure draft, the FMSB finds that its concerns mirror the concerns expressed in Appendix A Basis for Conclusion, paragraph A34. We agree with the Alternative View, that the definition provided by paragraph 17 appears to encompass contracts not traditionally viewed as P3 and contractual arrangements and transactions that will not result in potential contingent losses to the federal entity.

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.

FMSB Response: The FMSB disagrees that the P3 definition, based on the widely identified features in paragraph 17 and the requirements of paragraph 18, excludes contracts and other arrangements that are routine in nature. As stated in answer to question 2a, we believe the definition will not clarify matters.

In reviewing paragraph A-11 of the basis of conclusion, the FASAB states that it has established filters at several decision points to aid preparers and to minimize unwarranted disclosures. These decision points were not readily apparent from our review of the ED and we believe the FASAB should consider modifying the document to explicitly highlight these decision points.

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.

FMSB Response: The FMSB has no comment to this question.

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.

FMSB Response: The FMSB agrees with this exclusion.

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.

FMSB Response: The FMSB agrees that the definition is not confined solely to P3 arrangements or transactions and that it is not sufficiently clear to facilitate consistent application of the standard. The FMSB supports the Alternative View provided in the Basis for Conclusion section of the ED. In addition to our other comments, the FMSB believes that the concerns expressed in the Alternative View are well reasoned and we support the conclusions of the Alternative View.

We believe that the ED would expand the requirements of SFFAS No. 5 related to disclosure of contingencies. The proposed standard would require disclosures of certain contingent liabilities that are remote as well as require disclosures relative to transfers of business risks (e.g., transfers of skills) to the private sector. The approach suggested in the Alternative View is that disclosures of remote contingencies should be limited to contractual terms and we agree. Such additional disclosures relative to risk that are remote present significant difficulties to the preparers of federal financial statements and we would limit this requirement as suggested in the Alternative View. The additional disclosures might overwhelm or mislead readers of federal financial statements. Should the FASAB decide to finalize this ED as drafted, we would hope that the FASAB clearly relate the requirements of this standard with the requirements of SFFAS No. 5 to avoid confusion among preparers.

Regarding the matter of business risks that do not affect the financial reports, we acknowledge that such risks are real and such risks must be understood by decision makers that enter into a P3 arrangements. We also acknowledge that such risk are matters that should be disclosed beyond the federal agency. However we believe that there are ways other than footnotes to financial reports to disclose this information.

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.

FMSB Response: The FMSB does not agree that P3s identified pursuant to the definition in paragraph 17 and possessing either Conclusive Characteristics or Suggestive Characteristics should be subject to the disclosure requirements. As stated in prior answers, we do not agree with the definition proposed in the ED.

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.

FMSB Response: No Comments

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.

FMSB Response: No Comment

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.

FMSB Response: As stated in our response to Q2a, the FMSB believes that the conclusive characteristics and suggestive characteristics are not sufficiently aligned with the definition in paragraph 17. There are gaps in the crosswalk of conclusive and suggestive characteristics to the Paragraph 17 conditions and further gaps between the Conclusive Characteristics and the Suggestive Characteristics. Further, we do not believe that the conclusive and suggestive characteristics will assist the preparer in narrowing the field of arrangements and transactions to P3. The characteristics

do not provide sufficient additional guidance to clarify the definition. We believe the characteristics provide some additional descriptive information but the characteristics do not assist the preparer to conclusively narrow the criteria for determining if an arrangement or transaction is a P3. The ED provides a widely inclusive definition of P3s contractual arrangements and transactions and the Characteristics create additional uncertainties for preparers. As discussed in our answer to Q2a, we believe that the relationships between the elements of the paragraph 17 definition should be explicit and not implicit. There should be conclusive and suggestive characteristics that clarify the elements being evaluated.

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.

FMSB Response: The FMSB agrees with the disclosures proposed in the ED, however we disagree with the definition and the method suggested for determining what P3 arrangements are. We do suggest that in addition to the disclosure requirements currently in the ED, that the entity be required to disclose the federal entity's budget versus actual experience relative to the P3.

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.

FMSB Response: The FMSB disagrees with the Board's position regarding disclosure of remote risks. SFFAS 5 states that contingencies classified as remote do not need to be reported in the general purpose financial reports. As discussed in paragraph A35 and A36, this ED would seem to result in an expansion of the current contingent liability disclosure requirements by requiring preparers by extending disclosure requirements to certain remote contingencies and to include nonmonetary risks in the evaluation process. We recognize that the challenge for the FASAB is to develop standards for disclosing risks affecting the financial condition of the federal agency. Distinguishing risks that are significant from an operational perspective from those that are significant to an entity's fiscal condition is difficult as many times risks have components of both aspects, operational risks and fiscal risks. We support the views expressed in the Alternative View in this regard.

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.

FMSB Response: We agree with the Alternative View expressed in the Basis for Conclusions.

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.

FMSB Response: We agree that entities should be allowed to aggregate or group disclosures as proposed in paragraph 21.

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.

FMSB Remark: The requirements for general purpose financial reporting has evolved over time from the less complex to the more complex, in step with the ability for financial reporting to incorporate more and more judgment under a principles-based standard setting structure, as opposed to a rules-based accounting structure into the process of preparing reports and estimates. We recognize that this evolution is understandably necessary as the need to increase the informative value of general purpose financial statements increases. For example, the value of general purpose financial statements can be greatly enhanced if they can go from showing "where the entity stands today" to "where it might be". Therefore, including a discussion of the risk factors faced by an agency is valuable, if not essential to understanding the financial condition of the entity. For example, the disclosure requirements related to the valuation of Federal Credit programs broke new ground in requiring management to discuss the relevant risk factors affecting their estimates. This requires management to use judgment in determining what risks drove their estimates and to what degree. However, there are limited requirements for management to disclose the implied precision of those estimates, which is a key discussion point raised by the Risk Assumed Task Force. The question remains—how do you inform the reader of a financial statement of the differences in uncertainty between, for example, the estimated liability for a pension program, a mortgage program, a contingent liability, or a flood program?

In this project and the Risk Assumed project, FASAB is now broaching into the area that involves disclosures related to risks that have a more operational feature to them rather than one of a predominantly financial impact. The question for FASAB and the rest of the federal financial community is how to properly report on these risks. There is no current standard reporting mechanism for detailing operational risks identified through an entity's enterprise risk management program and

without a well-developed enterprise risk management program, the boundaries for determining which risks—operational or financial—are relevant to the agency are unclear.

We believe delving into the disclosure aspects of the risks related to P3s is a necessary progression into more and more complex areas of reporting federal fiscal exposure, rather than “most likely” financial condition. The need for this information by users was fairly well established by FASAB’s user survey. We applaud FASAB for stepping into the void. However, we are not convinced that the current definition as proposed by the FASAB is the approach that should begin the disclosure process for P3 arrangements. The resulting processes will be unnecessarily burdensome to the preparer and not result in a significant benefit to the users. We believe that the FASAB should consider exposing this matter again in the form of a preliminary views type of document, along with information on the information gathered and considered by the P3 task force.

We appreciate the opportunity to comment on this document and would be pleased to discuss this letter with you at your convenience. A majority of the FMSB members approved of the issuance of this letter of comments. If there are any questions regarding the comments in this letter, please contact Steven E. Sossei, CPA, and AGA’s staff liaison for the FMSB, at ssossei@agacgfm.org or at 518-522-9968.

Sincerely,



Lealan Miller, CGFM, CPA
Chair- AGA Financial Management Standards Board

cc: William Miller, CGFM
AGA National President

**Association of Government Accountants
Financial Management Standards Board**

July 2014 – June 2015

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Robert L. Childree
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Harriet Richardson
Eric Scheetz
Roger Von Elm
Sheila Weinberg
Brittney Williams-Spross

Ann M. Ebberts, Chief Executive Officer, (Ex-Officio Member) AGA
Steven E. Sossei, Staff Liaison, AGA

STANDARDS

SCOPE

11. 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.
12. This Statement is applicable to P3s and this term is used to refer to a wide variety of service, management, operating, and research and development arrangements or transactions meeting the definition of public-private partnerships (P3s) presented in paragraph 19¹. Such arrangements and transactions may include contracts, grants, reimbursable agreements, alternative financing arrangements, privatization initiatives, and other arrangements or transactions.
13. P3s should be assessed against the conclusive and suggestive characteristics at paragraphs 18 and 19, respectively to identify those possessing significant risk that should be considered for disclosure. Materiality considerations would determine whether the P3s considered for disclosure should be disclosed.
14. The following arrangements and transactions are not subject to the provisions of this Statement:
 - a. Acquisitions of property, plant, and equipment that are not leases if the acquisition was subject to the Federal Acquisition Regulations and the private entity is not directly financing, operating, or maintaining the PP&E as part of an overall risk-sharing arrangement or transaction.
 - b. Leases² that are not bundled³ and are entered into using GSA-delegated authority (This Statement does not amend existing standards applicable to

¹ For purposes of this Standard, the private sector refers to individuals and entities acting in their private capacities outside of the authority and control of Federal, State or local governments and encompasses for-profit businesses and non-profit organizations that are outside of the authority and control of Federal, State or local governments.

² Leases include both capital and operating leases, as defined under current FASAB standards. The Board is currently considering changes to existing distinctions between capital and operating leases through a separate project on lease accounting. Potential changes to existing lease distinctions are not expected to alter the Board's exclusion of certain leases as described in paragraph 15, from the provisions of this guidance.

³ A bundled lease typically arises when parties to a leasing arrangement agree to include additional products or services in the leasing arrangement, some of which might be related or tied directly to the underlying leased product or services (for example, software updates, maintenance, etc.). Although these additional products or services are

Comment [GAO1]: As per Respondent #14 (NASA) - clarify "private sector."

Staff: See suggested footnote explanation.

Comment [GAO2]: As per Respondent # 8 (DHS) - Agency reimbursable agreements may not meet the FASAB requirements for disclosure .

NOTE: 3 other respondents (HHS, ARTBA, and Dillard) suggest expanding the definition to capture "additional scenarios" and constitutional risks to "promote and improve" greater transparency and accountability.

Staff: Non-concur with changing the definition but do concur with adding reimbursable agreements in the Scope section as suggested by DHS.

Comment [GAO3]: As per Respondent # 17 (KPMG) – The terminology is not clearly linked to the concept of materiality.

Staff: See suggested edits here emphasizing the importance of materiality and the new paragraph 20 language worked in conjunction with the respondent.

Comment [GAO4]: As per Respondents # 4 and # 7 (SSA & DOC) - Exclude "routine", "standard:", and non-P3 acquisition of assets.

Staff: We in fact have when one considers the FAR Part 13 exclusion and the unbundled GSA delegated leases exclusion.

However, staff advises that we separately list all the exclusions to give them more prominence.

Comment [GAO5]: As per Respondents # 4, # 7, # 8 and AV Par 41 (SSA, DoC, DHS, and GAO AV) - The Department does not believe that standard procurements of capital assets under FAR should be considered federal P3s,

Expand the list of activities that are excluded from P3 disclosure

Staff: This is original intent and we concur that greater clarity is needed.

Standards

leases and those standards remain applicable to all such arrangements/transactions.)

- c. Acquisition of supplies and services, including construction, research and development, and commercial items, made pursuant to the Federal Acquisition Regulation (FAR) *Simplified Acquisition Procedures* (FAR Part 13)
- d. Formal and 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, or coordinate and integrate strategic initiatives.

Comment [GA06]: As per Respondents #4, #7, and #8 (SSA, DOC, DHS). Clarify that informal agreements are excluded and add "formal" agreements promoting goodwill, etc, are also excluded.

Staff: Concur. See suggested edits.

DEFINITION

- 15. Subject to the exclusions noted in paragraph 14, federal public-private partnerships (P3s) are contractual arrangements⁴ 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 part⁵ 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).

Comment [GA07]: As per Respondents #7 (DOC) - The Department believes that the definition can be significantly improved by adding that the definition excludes contracts or other arrangement or transactions that are routine in nature and not generally identified as P3s for other purposes.

Staff: Concur. See suggested edit.

- 16. The above definition captures the most widely identified features of federal P3s. Eligible P3 arrangements or transactions ~~P3s~~ should be assessed first, against the conclusive characteristics and then the suggestive characteristics presented below, to identify those possessing significant risk that should be subject to the disclosure requirements.

Comment [GA08]: As per Respondent #17 (KPMG) – There is a lack of linkage between the definition and characteristics.

Staff: In order to enhance clarity, please see suggested edit.

- 17. Contractual arrangements or transactions that meet the definition in paragraph 15 should be assessed against the risk characteristics (paragraphs 19 and 20) that provide evidence of significant risk in a P3 arrangement or transaction.

Please note that Staff worked with the respondent to develop edits in Paragraphs 16 through 20.

not always expressly identified in the underlying lease agreement and may be documented in other agreements, they are nonetheless considered "bundled" with the underlying lease agreement.

⁴Risk-sharing arrangements can be either structural or transactional. P3 Structural Arrangements are external to the government entity's operations and often involve the creation of a Special Purpose Vehicle (SPV), Trust, or Limited Partnership (LP). For example, military base housing. P3 Transactional Arrangements are internal to the government entity's operations. For example, work-share programs not involving the creation of a SPV, Trust, or LP.

⁵ Contractors routinely finance operations while awaiting payment of invoices. Such routine financing is not indicative of a P3 in and of itself.

Standards

IDENTIFICATION OF P3'S REQUIRING DISCLOSURE

18. The following risk characteristics are conclusive evidence of a P3's risk profile indicating that disclosures should be provided, considering the materiality guidance of paragraph 20. If any one of the following conclusive risk characteristics is met, the P3 arrangement or transaction should be considered for disclosure.

Conclusive <u>Risk</u> Characteristics	<u>Significant Risk</u> Rationale ⁶
1. The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing liability.	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 accompany asset ownership or control. Further, some private partners may incur substantial financing liabilities in preparation for delivering services even if an asset is not created.
2. The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, etc.	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 not included in budgets or balance sheets. P3s can be or most often become borrowing arrangements/transactions or alternative financing mechanisms. Therefore, the risk rests in the fact that because the established entity (for example, SPV) facilitates funding/financing, an agency's explicit or implicit long-term debt or promise to pay, the established entity is not appropriately recognized in either budget or financial reports.
3. The term of the procurement or contract is longer than 5 years ⁷ .	Those P3 procurement or contract arrangements/transactions greater than 5 years pose greater risk to the federal entity because there is often no re-procurement or re-

⁶ The Rationale presented herein explains why the Board believes there is significant ~~fiscal risk exposure~~ when the characteristic is present. The rationale discusses risk broadly and is not intended to create specific disclosure requirements. The disclosures are articulated in paragraph 23. Please refer to BFC Paragraph A-11a for related comments.

⁷ Federal contracts are normally for one year but can be extended to five years through agencies' use of options. Source: 48 C.F.R. § 17.204(e) "Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies."

Standards

Conclusive Risk Characteristics	Significant Risk Rationale ⁶
	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/transaction.
4. The principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).	The FAR is the primary regulation that governs the administrative framework and includes procurement and legal requirements to help safeguard and protect taxpayer dollars by preserving and protecting specific government (contractual) rights. Therefore, those P3s exempt from FAR are at an increased-risk because well-established safeguards and contract resolution mechanisms are absent in favor of substitute contract terms and conditions and/or alternate contract dispute resolution venues. As a result, the increased exposure arising from the loss of such contractual protections are not appropriately recognized or disclosed.

Standards

19. [The following risk characteristics are evidence of a P3's risk profile that may require disclosure, considering the materiality guidance of paragraph 20. The following suggestive risk characteristics should be considered in the aggregate. Each suggestive risk characteristic will require entity judgment as each characteristic is analyzed in connection with the other suggestive risk characteristics.](#)

Suggestive Risk Characteristics	Significant Risk Rationale⁶
1. A Value for Money⁸ (VfM) 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 prepared ex-post facto thus increasing potential risk to the agency.
2. The consideration or items given up in an arrangement/transaction 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.
3. Significant work force duties, activities, or	As federal entities face under-utilization and skill

⁸ 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".

In other words, 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.

Standards

Suggestive Risk Characteristics	Significant Risk Rationale ⁶
<p>knowledge are cross-shared between public and private sector P3 parties.</p>	<p>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 or transactions 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.</p>
<p>4. The focus is more on collaboration and informal, real-time, resolution processes than on formal, contractual, administrative processes.</p>	<p>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 administrative processes.</p>
<p>5. 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 levels 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 provided advisory services to both the private partner and government sponsor of a P3 arrangement/transaction. In addition, fees are often based on the dollar volume of the arrangement/transaction 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</p>

Standards

Suggestive <u>Risk</u> Characteristics	<u>Significant Risk</u> Rationale ⁶
	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 exposures <u>significant risk</u> the government has or will incur.

DISCLOSURE REQUIREMENTS

20. P3 arrangements or transactions containing a risk profile indicating disclosures should be provided (eligible P3s) based upon the guidance in paragraphs 18 and 19 should be further evaluated considering materiality. For example, an eligible P3 should be disclosed if (1) its quantitative risk relationship to the financial statements is deemed significant enough to affect the judgment of a reasonable user or (2) if the risk relationship, while not quantitative, would adversely impact the entity qualitatively. Exclusive reliance on quantitative benchmarks or thresholds should be avoided.
21. Disclosure of remote risks per par. 24. 3.d.ii, if any, should be limited to the underlying contractual arrangement or transaction. Business risks that are not material (quantitatively or qualitatively) need not be reported.

Comment [WP9]: As per Respondent # 17 (KPMG) – The terminology is not clearly linked to the concept of materiality.

Staff: See suggested placement of respondent's suggestion.

Comment [GAO10]: As per GAO AV Par. 41.

COMPONENT REPORTING ENTITY DISCLOSURES

- ~~21-22.~~ The P3 disclosures at paragraph 23 below specify the inclusion of qualitative and quantitative information and may be aggregated or grouped by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, or other means.
- ~~22-23.~~ Disclosures should generally accompany the related asset and/or liability display contained within the financial statements. Depending on the circumstances, some of the listed information may be disclosed due to other requirements. The resultant disclosures should be integrated so that concise, meaningful and transparent information is provided and information is not repetitive.
- ~~23-24.~~ Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a P3 arrangement/transaction. The following information should be disclosed:
- 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.
 - The mix and amount of funding, federal and non-federal, incurred during the year used to meet mission requirements and service delivery needs to support the P3.
 - The operational and financial structure of the P3 including the entity's rights and responsibilities, including:
 - A description of the contractual terms governing payments to and from the government over the life of the P3 arrangement or transaction to include:

Comment [GAO11]: 3 Feb - Staff Edit – In response to some respondent concerns that disclosures are excessive, staff advises that we limit and clarify that this disclosure applies only to the reporting year in question.

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.).~~ Identification of the significant contractual risks the P3 partners are undertaking if:

- i. it is probable or reasonably possible that the risk could materialize and materially change the estimated cash flows; or
- ii. the chance of the risk materializing is remote but its impact on the P3s estimated cash flows would be significant⁹ and its impact on the entity would be either quantitatively or qualitatively material.

Identification of such contractual risks should include a description of (1) the contractual 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, or renewal options). If remote risks are disclosed, an explanation should be included that avoids the misleading inference that there is more than a remote chance of a loss of that amount.

~~d.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.

⁹ Significant risks can result from non-routine transactions and matters requiring a high degree of judgment. For example, a risk is more likely to be significant when it involves (1) potential or actual fraud, (2) recent developments such as adverse economic conditions, (3) complex transactions, (4) related party transactions, (5) a high degree of subjectivity or uncertainty in a financial measure, or (6) a transaction outside the normal (non-routine) course of business. Generally, significant risks are less likely to be subject to an entity's routine internal controls.

Comment [GAO12]: Feb - Staff Edit – In response to some respondent concerns that disclosures are excessive, staff advises that we eliminate the requirement for 5-year reporting.

Comment [WP13]: As per Staff edit – several respondents (#18 GSA, #22 GAO, #23 VA) directly cite SFFAS 5. Staff believes following the SFFAS 5 "flow" or formatting increases user ease.

This revision is intended to use the SFFAS 5 structure and wording without changing the substance of the requirement.

- 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.

FINANCIAL REPORT OF THE US GOVERNMENT DISCLOSURES

24-25. The U.S. government-wide financial statements should disclose the following information:

- a. general description of P3 arrangements or transactions,
- b. the consolidated amounts the government receives and pays 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, and
- c. reference(s) to applicable component entity report(s) for additional information.

EFFECTIVE DATE

25-26. The requirements of this Statement are effective for reporting periods beginning after September 30, 2017. Early adoption is permitted.

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



Federal Accounting Standards Advisory Board

PUBLIC-PRIVATE PARTNERSHIPS DISCLOSURE REQUIREMENTS

Statement of Federal Financial Accounting Standards

Exposure Draft

Written comments are requested by January 2, 2015

October 1, 2014

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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Federal Accounting Standards Advisory Board

October 1, 2014

TO: ALL WHO USE, PREPARE, AND AUDIT FEDERAL FINANCIAL INFORMATION

Your comments on the exposure draft of a proposed Statement of Federal Financial Accounting Standards, entitled *Public-Private Partnerships: Disclosure Requirements*, are requested. Specific questions for your consideration appear on page 5 but you are welcome to comment on any aspect of this proposal. If you do not agree with the proposed approach, your response would be more helpful to the Board if you explain the reasons for your position and any alternative you propose. Responses are requested by January 2, 2015.

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

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

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

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

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

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

Sincerely,

Tom L. Allen
Chairman

EXECUTIVE SUMMARY

WHAT IS THE BOARD PROPOSING?

To ensure that the full costs of Public-Private Partnerships (P3s) are recognized in the reporting entity's general purpose federal financial reports (GPFFRs) and appropriate disclosures are included, the Board anticipates providing implementation guidance in two phases.¹ The first phase as covered by this proposal addresses disclosure requirements to aid users in understanding the nature of P3s and related fiscal exposures. To that end, this proposed Statement establishes a definition of P3s and identifies risk-based characteristics that need to exist before considering the proposed disclosure requirements. The second phase of the project is scheduled to cover measurement and recognition issues. Specifically, the Board has previously addressed various types of long-term arrangements in which the government participates (for example, leases, guarantees, etc.). Existing accounting standards provide for measurement and recognition of assets/liabilities and revenues/expenses as well as disclosures of certain risks (that is, fiscal exposure) in these long-standing types of arrangements or transactions. Still, the Board believes that there is a need for disclosure requirements specific to the fiscal exposures existing in P3s. The requirements herein would not replace existing disclosure requirements in other statements of federal financial accounting standards (SFFAS) for similar arrangements or transactions such as leases. P3s are complex and an entity would apply all applicable standards to report relevant information in the notes regarded as an integral part of the basic financial statements. One member has an alternative view that expresses concerns related to the proposed definition of P3s, the proposed disclosure requirement for remote risks, the disclosure threshold for risks, and the nature of certain risks proposed for disclosure. This member's alternative view is presented at page 38.

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

Given the increasing use of P3s, the Board has identified a need for disclosures regarding these complex arrangements or transactions. By addressing disclosure issues as a first step, the Board will provide a mechanism to disclose information regarding the nature of these complex arrangements or transactions and their risks. The Board also believes there is a need for clarity with respect to the (full) costs of P3s and will continue working with stakeholders to identify measurement and recognition issues pertinent to P3s. As such, future proposals may address additional measurement and recognition guidance for certain types of P3 arrangements or transactions.

Of the four objectives outlined in Statement of Federal Financial Accounting Concepts (SFFAC) 1, *Objectives of Federal Financial Reporting*, the operating performance and budgetary integrity

¹ This is subject to the acceptance of the technical agenda. The Board routinely consults with the Executive Director to prioritize its potential projects. As a result, active projects may change based on periodic prioritization by the Board. Please note that all agenda decisions are made at Board meetings by oral polling with agreement of at least a majority of members polled required for approval. Source: FASAB Rules of Procedure, October 2010.

Executive Summary

objectives are identified as being most important for P3 reporting.² P3 reporting is important to meeting these objectives because the federal government is accountable to citizens for the proper administration of its resources. Because P3s are a form of investment, they should be adequately disclosed in order to assist report users in determining: (a) the important assets of the U.S. government and how effectively they are being managed and (b) the identification of the risks (that is, fiscal exposure) associated with P3s.

² SFFAC 1, *Objectives of Federal Financial Reporting*, September 2, 1993.

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

The benefits of developing this Statement include but are not limited to:

- a. Developing terminology and guidance that is meaningful to federal agencies and users.
- b. Improving consistency in definitions so that information is comparable among agencies.
- c. Disclosing information helpful in meeting the reporting objectives.

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QUESTIONS FOR RESPONDENTS

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

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

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

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

All responses are requested by January 2, 2015.

Questions for Respondents

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.

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.**

Questions for Respondents

- 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.

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.
- 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.

³ 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.

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.

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

Questions for Respondents

(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.

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**

Questions for Respondents

disclosures (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.

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.

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.

INTRODUCTION

PURPOSE

1. The requirements for effective 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 arrangements or transactions⁴ 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 governmental entity (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 arrangements or transactions are commonly referred to as **Public-Private Partnerships (P3s)**⁵ but may also be referred to as Alternative Financing Arrangements, or Privatization Initiatives, some of which are extremely complex. For example, P3s may involve the use 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 along with the accompanying benefits 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-house⁶ 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 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 among 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 should 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 understanding relies on a thorough analysis of the underlying contractual agreements, guarantees, insurance and indemnification strategies as well as the

⁴ Risk-sharing arrangements can be either structural or transactional. P3 Structural Arrangements are external to the government entity's operations and often involve the creation of a Special Purpose Vehicle (SPV), Trust, or Limited Partnership (LP). For example, military base housing. P3 Transactional Arrangements are internal to the government entity's operations. For example, work-share programs not involving the creation of a SPV, Trust, or LP.

⁵ Terms defined in the Glossary are shown in bold-face the first time they appear.

⁶ 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.

existence and nature of any underlying private party capital buffer that might exist; that is, the extent of any debt (e.g., bonds, loans, notes, etc.) and equity (e.g., stocks, other securities representing an ownership interest, etc.) participation.

4. Entities can execute P3s via **structural arrangements** through the use of **special purpose vehicles (SPV's)** and/or directly as **program transactional arrangements**. Furthermore, many P3s are either discrete (long-term) leases or involve aspects of leasing.
5. The Board has previously addressed various types of long-term arrangements or transactions in which the government participates (for example, leases, guarantees, etc.). As such, accounting standards exist that provide for recognition and measurement of assets/liabilities and revenues/expenses as well as disclosures of certain risks in these long-standing types of arrangements or transactions. This Statement supplements existing guidance to help ensure adequate disclosure of those arrangements/transactions that either form the basis of or are part of a P3. Therefore, existing accounting standards that govern the various types of long-term arrangements/transactions continue to apply. The Board would address any implementation issues that may arise during this project's second phase. Moreover, the Board believes the more immediate need is for disclosure requirements specific to P3 risk-sharing.
6. To that end, the Board notes that there are risks associated with P3s. For example, risks (1) where actual costs will be greater than budgeted costs, (2) the entity may have to absorb part or all of the project's private debt, (3) the entity will not achieve expected returns on its investments in limited partnerships, (4) conditions may lead to a government-acknowledged event where an entity assumes financial responsibility for the event, and (5) the public purpose or public value will not be fulfilled or achieved. Because of the risks involved in entering into such long-term agreements, some of which involve government assets, specific disclosures regarding P3s are needed. Such disclosures foster accountability and improve understanding of (1) the general risks inherent in P3 arrangements by revealing their purpose, objective, funding, operational and financial structures; and (2) significant contractual risks such as early termination requirements. Disclosures should generally accompany the related asset and/or liability display contained within the financial statements.
7. A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to an entity. Some risks associated with P3s may result in the incurrence of losses and applying Statement of Federal Financial Accounting Standards 5 (SFFAS 5): *Accounting for Liabilities of the Federal Government* would be appropriate. For recognition of losses, SFFAS 5 requires that a past event has occurred for which a future outflow or other sacrifice of resources is probable and measurable. Disclosure should be provided for reasonably possible losses.
8. Due to their very nature, P3s are used to manage risks, some of which may be deemed remote but are nonetheless significant and should be considered for disclosure. For example, excluding contractual protections afforded the

government by the Federal Acquisition Regulation⁷ (FAR) inherently increases the entity's risk as does a relationship with an industry or private partner that may require the government to provide resources or absorb losses beyond what was contemplated. It is the Board's opinion that significant remote risks that are material should be disclosed. Therefore, consideration should be given to those risks that management does not expect to be likely yet could represent a significant exposure to the entity. With this being said, the Board also recognizes that (1) certain remote risks may have a reasonably high materiality threshold, and (2) not all individual remote risks in a P3 arrangement or transaction need to be disclosed to satisfy the requirements of this Statement. 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.

9. Disclosures comprise quantitative and qualitative information and not all P3 risks lead to fiscal exposure or can be readily or sufficiently measured. However, federal financial reports are most likely to meet reporting objectives and, therefore, user's needs when disclosures help readers understand complex arrangements or transactions and the associated risk. To this end, qualitative disclosures are as important as quantitative disclosures. Further, both quantitative and qualitative factors should be considered in assessing materiality as well as the nature and content of information to be disclosed.
10. Because the Board has identified the need for clarity with respect to questions that arise concerning the full costs, including risk (that is, fiscal exposure) of these complex arrangements or transactions, this Statement is a first step toward developing principles-based guidance and identifying potential gaps in existing guidance. The Board is working, and will continue to work closely with stakeholders interested in improving the accounting and reporting of these complex arrangements or transactions. By addressing disclosure issues as a first step, the Board will facilitate continued cooperation and greater interest in identifying areas requiring attention while minimizing preparer burden. It should be noted that the Board also plans to address measurement, recognition, and reporting issues through continued consultation with stakeholders. This could lead to the issuance of additional guidance and/or standards.

MATERIALITY

11. The provisions of this Statement need not be applied to immaterial items. However, materiality should be applied cumulatively or in the aggregate by the entity. The determination of whether an item is material depends on the degree to which omitting or misstating information about the 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. Refer to paragraphs 8 and 9 above for related comments.

⁷ For example, contractual protections afforded the government by the Federal Acquisition Regulation (FAR) include but are not limited to: termination rights and obligations, contract by negotiation, cost accounting administration, and contract cost allowability,

PROPOSED STANDARDS

SCOPE

12. 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.
13. This Statement addresses P3s and this term is used to refer 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, privatization initiatives, and other arrangements or transactions.
14. 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 considered for disclosure. These characteristics along with materiality considerations would determine whether reporting certain P3 arrangements/transactions are necessary.
15. Leases⁸ that are not bundled⁹ and are entered into using GSA-delegated authority are excluded from the provisions of this Statement. This Statement does not amend existing standards applicable to leases and those standards remain applicable to all such arrangements/transactions. Acquisition of supplies and services, including construction, research and development, and commercial items, made pursuant to the Federal Acquisition Regulation (FAR) *Simplified Acquisition Procedures* (FAR Part 13) are excluded from the provisions of this Statement.
16. This Statement does not alter financial measurement and recognition requirements but may result in changes in practice due to the establishment of the proposed P3 definition focusing attention on P3s.

⁸ Leases include both capital and operating leases, as defined under current FASAB standards. The Board is currently considering changes to existing distinctions between capital and operating leases through a separate project on lease accounting. Potential changes to existing lease distinctions are not expected to alter the Board's exclusion of certain leases as described in paragraph 15, from the provisions of this guidance.

⁹ A bundled lease typically arises when parties to a leasing arrangement agree to include additional products or services in the leasing arrangement, some of which might be related or tied directly to the underlying leased product or services (for example, software updates, maintenance, etc.). Although these additional products or services are not always expressly identified in the underlying lease agreement and may be documented in other agreements, they are nonetheless considered "bundled" with the underlying lease agreement.

Proposed Standards

DEFINITION

17. Federal public-private partnerships (P3s) are contractual arrangements¹⁰ 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).
18. 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 DISCLOSURE

19. If any one of the following conclusive characteristics is met, the P3 arrangement or transaction should be considered for disclosure. P3 arrangements or transactions identified for disclosure should be further evaluated in light of the entity's materiality considerations; including qualitative and quantitative thresholds.

Conclusive Characteristics	Rationale ¹¹
1. The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing liability.	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 accompany asset ownership or control. Further, some private partners may incur substantial financing liabilities in preparation for delivering services even if an asset is not created.
2. The federal entity participates in, helps sponsor, or is party to a Special Purpose	Entities such as SPVs, partnerships, trusts, etc., can be established for a variety of strategic

¹⁰Risk-sharing arrangements can be either structural or transactional. P3 Structural Arrangements are external to the government entity's operations and often involve the creation of a Special Purpose Vehicle (SPV), Trust, or Limited Partnership (LP). For example, military base housing. P3 Transactional Arrangements are internal to the government entity's operations. For example, work-share programs not involving the creation of a SPV, Trust, or LP.

¹¹ The Rationale presented herein explains why the Board believes there is significant fiscal exposure when the characteristic is present. The rationale discusses risk broadly and is not intended to create specific disclosure requirements. The disclosures are articulated in paragraph 23. Please refer to BFC Paragraph A-11a for related comments.

Proposed Standards

Conclusive Characteristics	Rationale ¹¹
Vehicle (SPV), partnership, trust, etc.	and/or tactical reasons. Generally speaking, they are commonly considered risk-containment vehicles and are more often than not, purposefully not included in budgets or balance sheets. P3s can be or most often become borrowing arrangements/transactions or alternative financing mechanisms. Therefore, the risk rests in the fact that because the established entity (for example, SPV) facilitates funding/financing, an agency's explicit or implicit long-term debt or promise to pay, the established entity is not appropriately recognized in either budget or financial reports.
3. The term of the procurement or contract is longer than 5 years ¹² .	Those P3 procurement or contract arrangements/transactions 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/transaction.
4. The principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).	The FAR is the primary regulation that governs the administrative framework and includes procurement and legal requirements to help safeguard and protect taxpayer dollars by preserving and protecting specific government (contractual) rights. Therefore, those P3s exempt from FAR are at an increased-risk because well-established safeguards and contract resolution mechanisms are absent in favor of substitute contract terms and conditions and/or alternate contract dispute resolution venues. As a result, the increased exposure arising from the loss of such contractual protections are not appropriately recognized or disclosed.

¹² Federal contracts are normally for one year but can be extended to five years through agencies' use of options. Source: 48 C.F.R. § 17.204(e) "Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies."

20. While meeting one of the suggestive characteristics implies there is some persuasive evidence that the information at paragraph 23 may need to be disclosed for the P3, 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 characteristic is analyzed in connection with the other suggestive characteristics. P3 arrangements or transactions considered for disclosure should be further evaluated in light of the entity's materiality considerations; including, qualitative and quantitative thresholds.

Suggestive Characteristics	Rationale ¹¹
1. A Value for Money ¹³ (VfM) 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 prepared ex-post facto thus increasing potential risk to the agency.
2. The consideration or items given up in an arrangement/transaction 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.

¹³ 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".

In other words, 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	Rationale ¹¹
<p>3. Significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.</p>	<p>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 or transactions 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.</p>
<p>4. The focus is more on collaboration and informal, real-time, resolution processes than on formal, contractual, administrative processes.</p>	<p>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 administrative processes.</p>
<p>5. 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 levels 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 provided advisory services to both the private partner and government sponsor of a P3 arrangement/transaction. In addition, fees are often based on the dollar volume of the arrangement/transaction 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</p>

Proposed Standards

Suggestive Characteristics	Rationale ¹¹
	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.

DISCLOSURE REQUIREMENTS

COMPONENT REPORTING ENTITY DISCLOSURES

21. The P3 disclosures at paragraph 23 below specify the inclusion of qualitative and quantitative information and may be aggregated or grouped by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, or other means.
22. Disclosures should generally accompany the related asset and/or liability display contained within the financial statements. Depending on the circumstances, some of the listed information may be disclosed due to other requirements. The resultant disclosures should be integrated so that concise, meaningful and transparent information is provided and information is not repetitive.
23. Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a P3 arrangement/transaction. The following information should be disclosed:
 - 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.

FINANCIAL REPORT OF THE US GOVERNMENT DISCLOSURES

24. The U.S. government-wide financial statements should disclose the following information:
- a. general description of P3 arrangements or transactions,
 - b. the consolidated amounts the government receives and pays 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, and
 - c. reference(s) to applicable component entity report(s) for additional information.

EFFECTIVE DATE

25. The requirements of this Statement are effective for reporting periods beginning after September 30, 2017. Early adoption is permitted.

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

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 in April 2012 because federal agencies have increasingly turned to public-private partnerships to accomplish goals and in light of budget pressures 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 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 P3s in the financial statements. In addition, the formation of a P3 task force began and its inaugural meeting was held in February 2013.
- A2. With active work on this project beginning in FY2013, final standards or guidance are expected following a three year effort. Specific project objectives include:
 - 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/transactions related to P3s (for example, sale-leaseback or other long-term arrangements)
- A3. Early in its deliberations the Board was clear that forthcoming guidance must be consistently applied and 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 is with the risks to which the government is exposed and related disclosures. As a result, members decided that because P3s often involve innovative 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. To that end, the Board decided that a broad P3 definition accompanied by risk-

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based characteristics should be pursued to establish a framework for determining which P3s should be disclosed.

- A4. P3 task force meetings for this phase of the project were held between February 2013 and May 2014. All meetings were well attended with representation from federal agencies, commercial sector(s), and citizens. Participants came from diverse disciplines such as accounting, auditing, facilities management, financial reporting, housing, information technology (IT), commercial and investment banking, procurement, and program management. The majority of participants agreed that there is significant interest in P3s across the diverse disciplines represented. It was noted that conditions such as current budget constraints and capacity (that is, contingency) planning are driving some agencies to look at various P3 models to accomplish their missions. Both federal and private participants agreed there is strong pressure against the use of P3s noting that this probably arises from the “off balance sheet” or “off budget spending” stigma associated with these arrangements or transactions. To counter the stigma associated with the term *Public-Private Partnerships*, some entities have begun re-labeling their P3 initiatives as *Alternative Financing* and/or *Privatization Initiatives*. A citizen stated that absent empirical evidence supporting the notion that P3s in fact work, a citizen’s concern is that the government is assuming more risk than it would otherwise. In light of the fact that many private companies appear to possess large amounts of available capital to invest in P3 projects, the citizen suggested that this be an area of careful consideration calling for transparency and robust disclosure.
- A5. To best meet the project goals and objectives, staff, in addition to engaging in task force discussions, initiated fact-finding meetings with experts and practitioners both within and external to government. Staff met with federal agency representatives, public policy experts, consultants, private equity participants and a private IT/Cloud/Software development firm. Please refer to Tables 1.0 and 2.0 respectively for listings of the federal agencies visited or analyzed and the professionals or disciplines consulted. The goal of the fact-finding meetings was to refine the project’s scope by:
- a. identifying the types of arrangements/transactions where part of the agency’s risk profile has been transferred to (or shared with) the a private partner,
 - b. identifying current P3 issues being faced by the participant(s),
 - c. soliciting input/suggestions on potential P3 financial reporting characteristics/criteria, and
 - d. analyzing arrangements/transactions for potential accounting policy issues.

TABLE 1.0
Fact-Finding Agencies Visited or Analyzed

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

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

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 organizations were interviewed.

Common Themes and Other Matters

- A6. The most common themes arising from task force and fact finding meetings considered in developing the Statement include:
- a. At a minimum, participants expect continued use if not growth in P3s.
 - b. Government employee legacy & relocation costs are not presently considered in Value for Money (VfM)¹⁴ analyses.

¹⁴ 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.

In other words, 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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- c. Long-term nature of P3s is accepted, but concerns include
 - lack of transparency in the solicitation and award processes along with the lack of competition hinders accountability and fair and reasonable pricing,
 - not applying the *Federal Acquisition Regulation*¹⁵ (FAR) increases government risk, and
 - some P3s circumvent procurement administration.
- d. In-Kind contributions are difficult to value or are overvalued and not always reported.
- e. P3 financial reporting is generally supported but agencies and participants vary in the what, how and where of disclosures.
 - For example, relative to significant and material P3 arrangements/transactions, some believe that property, plant, and equipment (PP&E) note disclosure would be sufficient whereas others believe that MD&A discussion is more appropriate because of the SFFAS 15, *Management's Discussion and Analysis*, requirement to address the future effects of existing, currently-known demands, risks, uncertainties, events, conditions and trends, while others suggest reporting in both locations.

Other Matters

- **Increased Risk to Citizens.** A few participants noted that P3s erode (1) the notion of public service (for example, what is inherently governmental) and (2) in many cases, belief in good government. This increased risk is evidenced by those entities that:
 - a. purposefully avoid capital acquisition budgeting requirements
 - b. absorb “availability” risk¹⁶ absent sufficient private partner consideration
 - c. lose control of assets
 - d. lock into long-term arrangements/transactions that cannot be re-competed or re-negotiated
 - e. are constrained by contract modification restrictions
 - f. are constrained by proximity and/or right-to-compete restrictions
 - g. ignore government employee personnel (legacy) costs

¹⁵ 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.

¹⁶ Availability risks or project completion risks exist when for example, defects in construction or quality shortfalls within the control of the private partner occur that preclude the asset or service from being available for its intended use requiring the government sponsor to intervene.

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- **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 largely focused on service concession arrangements (that is, a subset 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 topics that extend beyond those typically found in service concession arrangements; 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 five 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). Accordingly, a broad definition was developed to encompass the diverse characteristics. Therefore the definition is:

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).

Scope, Applicability and Exclusions

Scope

A10. The Board recognizes that establishing a P3 definition reflecting the breadth and diverse scope of entity missions, operational strategies, available leasing authorities, and other variables might capture activities which are already being recognized or disclosed in the entity's financial statements. Specifically, this is because the Board has previously addressed various types of long-term arrangements/transactions in which the government participates (for example, leases and guarantees). As such, existing accounting standards provide for recognition and measurement of assets/liabilities and revenues/expenses as well as disclosures of certain risks in these long-standing types of arrangements or transactions. However, the Board believes that there is a need for disclosure requirements specific to the fiscal exposures existing in P3s for which there is no current accounting guidance. The requirements herein would not replace existing disclosure requirements in other statements of federal financial accounting standards (SFFAS) for similar arrangements or transactions such as leases. P3s are complex arrangements/transactions and an entity would apply all applicable standards to report relevant information in the notes.

Applicability

A11. To help ensure achievement of the federal reporting objectives while minimizing unwarranted disclosure of P3 arrangements or transactions, the Board has established filters at several decision points to aid preparers in this regard. The filters are categorized as follow:

- a. Overarching Disclosure Principle: Significant Fiscal Exposure – The Board desires to limit disclosure to those P3s possessing significant fiscal exposure. Significant fiscal exposure can result from various perspectives. For example, a key indicator that significant fiscal exposure exists in a P3 arrangement or transaction is when a long-lived asset or long-term financing liability exists in the arrangement or transaction regardless of which party recognizes said amounts. This is because (1) the inherent risks¹⁷ involved in

¹⁷ Projects typically contain a variety of inherent risks that can affect the entire project life cycle. For example, there are regulatory, procurement and financing risks affecting a project's development phase and changes in market conditions, maintenance and other operational risks that affect a project's construction and operations phases. Inherent risks could be assessed using such factors as: potential financial exposure, degree of complexity, nature and extent of the use of estimates and/or projections, and adverse impact to the entity's reputation.

acquiring, financing, operating and maintaining long-lived assets such as Property, Plant and Equipment, (PP&E) and certain intangible assets such as Patents or Trademarks, and (2) the risk-sharing nature of P3s, over very long periods creates the potential for significant fiscal exposure to extend to either party. Such significant fiscal exposure may extend even beyond what may have been contractually contemplated. However, significant fiscal exposure can exist absent a significant long-lived asset or sizeable long-term financing liability. For example, another key indicator of significant fiscal exposure in a P3 arrangement or transaction is when government skills are effectively transferred to the private party. In addition to being left absorbing personnel legacy costs, the government is exposed to potential fiscal exposure and liabilities arising from the need to turn to costlier contracting-out procurement options and union and/or employee litigation, respectively.

Therefore, if a P3 arrangement or transaction does not possess significant fiscal exposure, it would not be subject to the requirements of this Statement.

- b. Definitional Features Indicative of Risk (Fiscal Exposure) – After careful study, the Board has identified four major features of federal P3 arrangements or transactions that are embodied in the proposed definition: (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 SPV's. Therefore, those arrangements not possessing one or more of the four features would generally not be subject to the requirements of this Statement.
- c. Risk-based Characteristics – The Board has identified certain key characteristics discussed later 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 generally 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 later, should be subject to the requirements of this Statement. The Board notes that because materiality assessments require both qualitative and quantitative judgments, specific guidance limiting preparer and auditor considerations of information would not be appropriate.

Appendix A: Basis for Conclusions

Exclusions

- A12. The Board proposes excluding from the provisions of this Statement (1) acquisitions made using Simplified Acquisition Procedures (FAR Part 13) and (2) leases¹⁸ meeting certain conditions. It is the Board's opinion that acquisitions of supplies and services, including construction, research and development, and commercial items using Simplified Acquisition Procedures are not within the intended scope of this Statement. Concerning leases, in consultation with the P3 Task Force and after careful consideration, the Board concluded:
- a. to exclude non-Enhanced Use Leases¹⁹ (EULs) that meet the following two conditions: a) they are not bundled, and b) they are entered into using GSA delegated authority. It is the Board's conclusion that such leases (1) have no significant P3 fiscal exposure (risks), (2) are already subject to existing FASAB guidance, (3) have well defined FAR-based contractual processes and remedies in place to address risks associated with landlord-tenant relationships, (4) have contractually capped payments for termination liabilities, and (5) have termination payments that are indemnified by GSA's Building Fund. It is the Board's conclusion that if a lease is either bundled or not entered into using GSA delegated authority, the provisions of this Statement should apply.
 - i. Bundled Leases - A bundled lease typically arises when parties to a leasing arrangement agree to include additional products or services in the leasing arrangement, some of which might be related or tied directly to the underlying leased product or services (e.g., software updates, maintenance). Because these additional products or services are not always expressly identified in the underlying lease agreement and may be documented in other agreements, they are nonetheless considered "bundled" with the underlying lease agreement.
 - Examples of bundled equipment leases can range from leasing high-end, sophisticated medical equipment (inclusive of all software licenses, training, maintenance, and/or other supplies necessary to operate the equipment during the lease term) to a small-ticket, basic photocopier with maintenance for the term of the lease.
 - Examples of bundled facilities leases can include fees paid for professional services and fees related to the purchase and/or

¹⁸ Leases include both capital and operating leases, as defined under current FASAB standards. The Board is currently working on a leases project that may make changes to existing distinctions between capital and operating leases. Potential changes to existing lease distinctions are not expected to alter the Board's exclusion of certain leases as described in paragraph A12, from the provisions of this guidance.

¹⁹ EULs are typically long-term lease agreements that allow public or private entities to use an agency's property. Agency EUL programs have allowed entities to develop or occupy federal properties such as power plants, housing and healthcare facilities, office space, and parking facilities, and in return, federal agencies receive cash or in-kind consideration. Please note that there is no government-wide definition of EULs. Source: GAO-13-14 Federal Real Property: Improved Cost Reporting Would Help Decision Makers Weigh the Benefits of Enhanced Use Leasing, December 2012).

construction of the facility. Such costs can include appraisal, architectural, engineering, environmental testing, financing, legal fees, and other pre and post construction expenses.

- Costs that are bundled are sometimes referred to as soft costs and from an accounting perspective can be (1) typically indirect in nature and not part of the direct costs charged to a cost objective, and (2) inclusive of general & administrative expenses (G&A).
- b. to not exclude Enhanced Use Leases (EULs) because they are more oriented towards P3s as a result of (1) possessing special authorities and not being subject to the FAR, (2) often operating under a risk-reward model as opposed to those entity leases that are basically a landlord-tenant relationship and not a risk-sharing partnership, and (3) possibly including ancillary services and in-kind consideration as part of the arrangement or transaction. Because the Board believes that EULs could be encompassed by this Standard, a determination should be made as to whether disclosures should be considered via the application of the risk-based characteristics.

Risk-based Characteristics

- A13. Although federal P3s are varied and complex, the Board believes there are some common characteristics that can be used to identify those P3s that create risk (fiscal exposure) such that information should be disclosed. Because the Board is aware of the administrative burdens agencies face day-to-day and that some P3 portfolios might be voluminous, in addition to identifying those P3s that create significant fiscal exposure, the proposed risk-based characteristics can also be applied to assist a federal entity in determining which P3 arrangements or transactions do not require disclosure.
- A14. The risk-based characteristics have been developed, refined, and categorized from an initial comprehensive list of characteristics that distinguishes federal P3s from traditional procurement actions. With the assistance of the task force, the Board further analyzed and then selected risk-based characteristics which indicate significant P3 risk or fiscal exposure. These risk-based characteristics are intended to: (1) apply to all types of P3s: construction, housing, utilities, military depots, and others, (2) assist a federal entity in ascertaining which P3 arrangements or transactions require disclosure. Once a P3 is identified for disclosure, such arrangements or transactions would then be evaluated in light of the entity's materiality considerations including quantitative and qualitative threshold(s).

Conclusive and Suggestive Characteristics

- A15. The Board proposes establishing two categories of risk-based characteristics -- conclusive and suggestive. Conclusive characteristics are those that by answering "Yes" to any one characteristic means the P3 arrangement or transaction should be considered for disclosure. Answering "Yes" to any one of the suggestive characteristic implies there is some persuasive evidence that the P3 arrangement or transaction may need to be disclosed. This one characteristic

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should be considered in the aggregate with all the other suggestive characteristics before a final decision is made. Each conclusive characteristic is meant to be definitive whereas each suggestive characteristic requires entity judgment as each one is analyzed in connection with the other suggestive characteristics.

- A16. If a P3 arrangement or transaction is considered for disclosure, it should be further evaluated in light of materiality considerations that include both qualitative and quantitative assessments in determining the information that should be presented regarding P3 arrangements or transactions.

Materiality

Considering User Needs

- A17. 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.”²⁰ 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.
- A18. 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

- A19. “Materiality” has not been formally defined in the accounting community; rather, it is 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.

²⁰ 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.”

Materiality Includes Probability Assessments

- A20. Decisions whether to recognize or, in the case of this Statement, disclose a P3 arrangement or transaction may take into account considerations that include uncertainties. Uncertainties can be expressed as a measurement of an appropriate attribute (for example, historical cost, fair value, expected value, or some other attribute) which may include an assessment of the probability of future flows of economic benefits or services (emphasis added). Furthermore, uncertainties are often subjected to assessments of the materiality of the item, and the benefit versus the cost of recognition or in this Statement's case, disclosure.
- A21. Statement of Federal Financial Accounting Standards 5 (SFFAS 5), *Accounting for Liabilities of the Federal Government*, states that "probable" refers to that which
- a. can reasonably be expected, or
 - b. is believed to be more likely than not on the basis of available evidence or logic with the exception of pending or threatened litigation and unasserted claims.

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

Risks that are Deemed Remote

- A22. SFFAS 5 provides that contingencies deemed remote (that is, the chance that a loss has been incurred is slight) are not recognized as a contingent liability or disclosed.²¹ However, SFFAS 5 requires that a contingent liability should be disclosed if any of the conditions for liability recognition are not met and there is at least a reasonable possibility that a loss or an additional loss may have been incurred.
- A23. The Board believes that some risks associated with P3s may be contingencies that arise because of an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to an entity. It is this uncertainty, or risk in other words, that prompts entities to seek private partners who can best manage and/or contain the effects of the uncertainty that could ultimately lead to

²¹ 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).

fiscal exposure. In applying SFFAS 5 some contingencies may be identified for which the degree of uncertainty is so great that no reporting (that is, recognition or disclosure) is required by that Statement. However, the Board notes that reporting such contingencies is not inconsistent with the provisions of SFFAS 5.

- A24. Due to their very nature, P3s can also possess risks that may be considered remote but significant. For example, excluding contractual protections afforded the government by the Federal Acquisition Regulation (FAR) inherently increases the entity's risk as does a relationship with an industry or private partner that may require the government to provide resources or absorb losses beyond what was contemplated. The Board believes such P3 arrangements or transactions should be disclosed, subject to materiality, even though the inherent risks may be deemed remote. The Board further notes that enterprise risk management frameworks often focus on remote risks because of the magnitude of any potential adverse effects that might arise. Therefore, 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.

Disclosure Requirements of P3s

- A25. The task force conducted research and identified examples of disclosures surrounding P3s from a variety of international and national authoritative sources which address P3 information needs for different types of users. Additionally, the task force considered fact-finding meetings with public and private representatives regarding the types of information that diverse users believe are important. As a result, the task force overwhelmingly agreed with requiring disclosures concerning (1) why the government selects a P3 model to conduct business, (2) the solicitation and procurement processes used, (3) how the P3 is structured, (4) the expected benefits, and (5) the total amounts expected to be paid. Although it was noted that requiring a description of the solicitation and procurement processes is unusual in financial reporting, the task force reached that conclusion because P3s fall outside the routine way governments procure services and such disclosures reveal the potential risk (fiscal exposure) that governments assume that can ultimately lead to liability recognition.
- A26. In analyzing the task force's recommendations the Board considered the federal financial reporting objectives. Of the four objectives outlined in Statement of Federal Financial Accounting Concepts (SFFAC) 1, *Objectives of Federal Financial Reporting*, the operating performance and budgetary integrity objectives are identified as being most important for P3 reporting. The Board agreed that P3 reporting is important to meeting these objectives because the federal government is accountable to citizens for the proper administration of its resources. As such, the Board agreed with the majority of the task force's recommendations. However, requiring disclosure of an entity's solicitation and procurement processes falls outside the realm of financial reporting. Furthermore, the Board questioned the informational value of such a disclosure and concluded that its cost also exceeded potential benefits identified by the task force.

A27. P3s are a form of investment and they should be adequately disclosed in order to assist report users in determining: (a) the important assets of the U.S. government and how effectively they are being managed and (b) whether the government's financial position improved or deteriorated over the period of the P3. P3s often involve innovative operational and complicated accounting practices, accompanied by sophisticated financing agreements. These complexities necessitate the establishment of disclosure principles as a first step to (1) developing uniform, principles-based guidance, and (2) identifying potential gaps in existing guidance. As a result of considering the overall financial reporting objectives, the Board further developed and refined the task force's recommendation to include the following 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:

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- 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.

Aggregation

- A28. Due to the relative complexity and potential voluminous nature of P3s that an entity might be party to, the Statement permits entities to aggregate disclosures by providing broad and summarized information instead of unique or discrete arrangement or transaction detail. However, entities would be permitted to disclose information related to individually significant P3 arrangements or transactions separately if entity management believed that such disclosure would better meet user needs.
- A29. For example, disclosures of P3 arrangements or transactions could be aggregated by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, or other means. 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.

Reporting Period

- A30. Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a material P3 arrangement/transaction.

ALTERNATIVE VIEWS

- A31. Individual members sometimes choose to express an alternative view when they disagree with the Board's majority position on one or more points in a Statement. The alternative view would discuss the precise point or points of disagreement with the majority position and the reasons therefore. The ideas, opinions, and statements presented in the alternative view are those of the individual member alone. However, the individual member's view may contain general or other statements that may not conflict with the majority position, and in fact may be shared by other members. The material following was prepared by Mr. Robert F. Dacey and is presented as an alternative view.
- A32. While Mr. Dacey fully supports the disclosure of commitments and contingencies related to public/private partnership (P3) contractual arrangements and transactions, he has concerns that:

Appendix A: Basis for Conclusions

- The breadth of the general definition of P3 contractual arrangements and transactions in the Exposure Draft (ED) does not confine the scope of arrangements and transaction solely to P3's and the definition does not provide sufficient clarity to facilitate consistent application of the standard (see paragraphs A33 - A34 below and Question for Respondents number 2);
- The expansion of current reporting to include disclosure related to certain remote risks (risks that have a slight chance of occurrence) and to risks related to entity operations or performance that do not necessarily result in contingent losses (referred to in the Alternative View as business risks) could overwhelm or mislead users with extensive information related to (1) risks that have only a slight chance of occurrence and (2) business risks that do not necessarily affect the financial statements (see paragraphs A35 – A36 below and Question for Respondents number 6); and
- The disclosure threshold of “significant exposure” is not clearly defined to facilitate appropriate and consistent disclosures of risk related to P3 contractual arrangements and transactions (see paragraphs A37 – A38 below and Question for Respondents number 6).

A33. Mr. Dacey believes that it is especially important to establish clear and appropriate principles related to risk disclosures at this time, as the board considers establishing disclosures of other types of risks—such as insurance, etc.—to ensure that a solid foundation is built so that there is consistency in the nature and magnitude of risk disclosures across many areas. The application of the ED's risk disclosure concepts to other areas would likely result in a significant expansion of disclosures and would be subject to concerns similar to those expressed in this Alternative View.

A34. With regard to the breadth and clarity of the general definition of P3s, the ED defines federal P3s as “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).” (para 17). While the Board intended to provide an expansive definition of P3s, the definition in the ED may not be sufficiently narrow to confine the scope of arrangements and transactions solely to P3's. The definition appears to encompass (1) contracts that are not traditionally considered P3s and (2) arrangements and transactions that do not necessarily result in potential contingent losses to the entity. For example, the definition would include contracts that relate to standard procurements of capital assets under the Federal Acquisition Regulation²², long-term contracts in which some financing is incurred

²² The ED definition excludes acquisitions under Simplified Acquisition Procedure, which are typically smaller dollar acquisitions, but includes acquisitions under “standard” FAR.

by the private sector entity, leases that include any other services related to the lease (e.g., leases including maintenance services)²³, and arrangements or transactions where government skills are transferred to the private party. These examples would also likely meet the conclusive or suggestive criteria. Consequently, entities may expend resources developing and implementing processes to identify contracts and agreements that meet the definition, but are not true P3s and do not result in disclosures. The Financial Accounting Standards Board (FASB), Governmental Accounting Standards Board (GASB), and the International Accounting Standards Board (IASB) have issued standards and defined a more narrow significant subset of P3s, service concession arrangements. In addition, further clarity in the definition and the meaning of the terms used in the definition would result in more consistent application of the standard and foster agreement between preparers and auditors as to which arrangements and transactions meet the definition.

- A35. A second concern is that the ED would significantly expand the disclosure requirements for contingent liabilities that are provided under SFFAS 5, Accounting for Liabilities of the Federal Government, by extending disclosure requirements to certain remote contingencies (para 8) and expanding disclosures to include business risks (e.g., comparative costs, skill transfers to the private sector, etc.). Such additional disclosures could overwhelm or mislead users with extensive information related to (1) risks that have only a slight chance of occurrence and (2) business risks that do not necessarily affect the financial statements.
- A36. Currently, SFFAS 5 requires the recognition of a contingent liability when a past event or exchange transaction has occurred and the future outflows or other sacrifice of resources related to a contingency is deemed probable and measureable (SFFAS 5 para 38-39). In addition, SFFAS 5 requires disclosure of a reasonably possible contingency and a probable contingency that is not measureable (SFFAS 5 para 40-42). For example, under SFFAS 5, if an early termination of a P3 was deemed reasonably possible, the potential financial effects would be disclosed. If early termination was deemed probable, the related losses expected to result from the early termination would be recognized in the financial statements.

In addition, a contingency subject to recognition or disclosure as a P3 arrangement or transaction may be contractual (e.g. the contract may contain early termination clauses and minimum payment guarantees) and the contractual terms could specify the amount or the basis for determining the amount of any contingent loss. On the other hand, a contingency may result from circumstances not addressed in the contract and relate to other types of non-performance or other external events. The ED would seem to require disclosure of remote contingencies related to both types of contingent losses. For example, paragraph A11.a of the ED states that significant fiscal exposure may extend even beyond what may have been contractually contemplated.

²³ The ED definition includes bundled leases that include additional products or services in the leasing arrangement.

SFFAS 5 states that “contingencies classified as remote²⁴ need not be reported in general purpose federal financial reports, though law may require such disclosures in special purpose reports. If information about remote contingencies or related to remote contingencies is included in general purpose federal financial reports (e.g., the total face amount of insurance and guarantees in force), it should be labeled in such a way to avoid the misleading inference that there is more than a remote chance of a loss of that amount” (para 42.) To (1) determine whether a remote risk represents a significant fiscal exposure and (2) meet the disclosure requirements of paragraph 23.d(2) for the potential effect on cash flows if the risks were realized, an assessment of remote contingencies would necessarily require estimation of the maximum loss to the federal entity that might be incurred, assuming all potential adverse events with respect to the federal government were to occur, whether or not such events were contemplated in the contract. Such potential disclosures would represent the “maximum possible loss” to the federal government, even though there is only a remote or slight likelihood of such an outcome. As noted above, the federal government has some limited examples of remote contingencies where the maximum loss under the terms of contractual arrangements is reported. Specifically, credit reform programs report the face value of loan guarantees and insurance programs report insurance-in-force. In such instances, the entities are in the business of guaranteeing and insuring and the reported amount represents the estimated maximum exposure to losses under the terms of the insurance or guarantee contracts. In addition, to the extent that maximum losses in these programs would occur, they would generally have a substantial adverse financial impact on the entity.

- A37. Another concern is that 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. In the development of the ED, the Board discussed limiting disclosure of remote contingencies to those where the potential loss would exceed a threshold that is considered to be higher than “material”, as the term “material” is currently implemented. The ED states that disclosures of remote contingencies should be provided if they would result in “significant exposure” to the entity, but does not define the term. Also, the term is not clearly linked to the discussion of materiality in paragraph 11 or included in the disclosure requirements or other authoritative sections of the standard. The ED does indicate that certain remote risks “may have a reasonably high materiality threshold”, but does not indicate how that would be applied or whether certain remote risks could likewise have a low materiality threshold. While the meaning of the term “material” is supported by a definition and years of implementation experience, the term “significant exposure”, without definition, is likely not sufficiently clear to result in consistent application. For example, some may perceive “significant” as something less than material. By illustration, as it relates to internal controls, a “material weakness” is by definition more severe than a “significant deficiency.” In addition to defining the concept, a term other than “significant” may be appropriate. Also, it is unclear how the concept of “significant exposure” would be applied to commitments (e.g., future payments under paragraph 23.c.ii). Further, the term “fiscal exposure”, used in the ED, may be confused with the same term

²⁴ SFFAS 5 defines remote as “the chance of the future event or events occurring is slight”.

Appendix A: Basis for Conclusions

that has been used in GAO and other reports to define concepts which differ from that in the ED.

A38. As background, in 2010, the Financial Accounting Standards Board (FASB) proposed to extend its disclosure requirements related to loss contingencies to include remote contingencies that have a potential “severe impact” on the entity. FASB defined “severe impact” as “a significant financially disruptive effect on the normal functioning of an entity. Severe impact is a higher threshold than material.”²⁵ Most respondents objected to the proposal and raised concerns, including:

- The additional disclosures would overwhelm or mislead the users with extensive information that has only a slight chance of occurrence and would not improve the ability of users to understand potential future cash flows;
- The disclosures of remote contingencies that may not be realized for an extended period of time are not relevant;
- The definition of severe impact would be difficult to apply operationally or was not sufficiently clear to be applied without being highly judgmental; and
- The current requirements for contingencies were adequate to inform users about potential future losses (note—FASB contingency requirements are generally consistent with SFFAS 5, except that FASAB defines probable as “more likely than not”, while FASB’s “probable” is generally considered a much higher threshold).

Respondents raised additional concerns about its specific application to legal contingencies. FASB decided to no longer pursue the proposal. Similar concerns would seem applicable to the proposals in FASAB’s ED related to remote contingencies.

A39. Mr. Dacey supports narrowly defining the instances in which remote risks would be disclosed to minimize the possibility of excessive disclosures and avoid the negative consequences discussed in this Alternative View. Specifically, he supports (1) limiting the disclosure of remote contingencies to those that are included in the terms of contractual agreements and (2) developing and clearly defining a disclosure threshold that is higher than materiality as it is applied to other areas, consistent with earlier Board discussions. While paragraph 23d refers to the term “significant contractual risks”, that term is not defined and is not necessarily limited to the terms of contractual agreements. For example, it can be considered to be all risks (including business risks) that could arise related to the contract, whether included in the contract terms or not. As noted earlier, paragraph A11.a of the ED states that significant fiscal exposure may extend even beyond what may have been contractually contemplated. Specific suggestions to address this issue are included below.

²⁵ See http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=900000011071

A40. In addition, the ED appears to extend the reporting requirements to disclosure of exposures related to business risks (risks related to entity operations or performance that do not necessarily result in contingent losses), which is significantly beyond the current reporting requirements for contingent losses. For example, paragraph 6 discusses disclosure of the risks associated with P3s and provides several examples of business risks, including instances where (1) actual costs will be greater than budgeted costs, (2) the entity will not achieve expected returns on its investments, and (3) the public purpose or public value will not be fulfilled or achieved. Also, the suggestive criteria discuss certain business risks, including (1) the loss of governmental skill-sets that would lead to costlier contracting-out procurement options in the future and (2) instances where there is subjectivity in value for money analyses and potential that management's decision to enter the P3 arrangement was not justified. Further, the disclosure requirements and the discussion of "significant exposure" do not specifically exclude business risks and, based on the consideration of qualitative characteristics in applying materiality, disclosures could relate to business risks that are not quantitatively material. While information about business risks is relevant to management and possibly to performance reporting, requiring disclosure of business risks in the notes:

- extends significantly beyond current financial reporting requirements;
- would not necessarily reflect potential future losses to the entity;
- would seem to be highly subjective;
- would also present difficulties in determining whether the exposures meet the "significant exposure" disclosure threshold; and
- may cause confusion to users about the entity's finances.

Also, there would likely be challenges in auditing such business risk disclosures, particularly in determining whether all such business risks were considered and properly evaluated. Risks not affecting the financial statements are generally outside the scope of a financial statement audit-which focuses on the reliability of the financial statements. Further, if the underlying principle of disclosure of business risks were to be applied by the Board to other contracts or other areas, it could substantially increase the volume of disclosures in all financial statements. It is not clear that such additional information would add value, and may detract from the readers' ability to assess the entity's finances.

A41. Based on the above, the ED could be improved by:

- Narrowing the definition of P3s to more closely align with P3 arrangements, such as by adding additional exclusions for contractual agreements and transactions that likely have limited risk of contingent losses, and more clearly defining the terms used in the definition;
- Limit disclosure of remote contingencies to those that are included in the terms of contractual agreements and develop and clearly define a disclosure threshold that is higher than materiality as it is applied to other areas. For

example, paragraph 25d, which articulates required disclosures of risk, could be revised to language such as

“Contingent payments that may be payable under the terms of the contractual arrangement or transaction (e.g., early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, other contingent payments, renewal options, etc.). Disclosures should discuss the nature of such contingent payments and the potential effect on cash flows if the contingent risks were realized. The potential effect may include a narrative discussion of the effect, the basis for determining the amount of the payments, and/or the amount of the contingent payments if measureable. Materiality used to determine whether to disclose contingent payments that have a remote likelihood of occurrence is necessarily higher than materiality, as it is applied to other areas, to (1) avoid overly extensive disclosures of remote contingencies that could lead to user misunderstanding of potential losses and (2) focus on those remote contingencies that would have a substantial effect on the entity’s finances if they occurred. If remote risks are disclosed, an explanation should be included that avoids the misleading inference that there is more than a remote chance of a loss.” and;

- Clearly exclude business risks from the scope of disclosures in the financial statements. This could be done by discussing “risk” and “significant exposure” in the ED in terms of potential impact on the financial statements and more clearly tying “significant exposure” to the disclosure requirements.

Also, the Board should clarify whether they anticipate that the concepts in the ED are or are not equally applicable to risk disclosures in financial reporting areas other than P3s.

APPENDIX B: ABBREVIATIONS

CFR	Consolidated financial report of the U.S. government
ED	Exposure draft
FASAB	Federal Accounting Standards Advisory Board
GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
OMB	Office of Management and Budget
SFFAC	Statement of Federal Financial Accounting Concepts
SFFAS	Statement of Federal Financial Accounting Standards
VfM	Value for Money

APPENDIX C: GLOSSARY

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 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).

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 Limited Partnership (LP), etc. For example, military base housing.

P3 Program 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.

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 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. In other words, 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.

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Department of Agriculture, U.S. Forest Service
Department of Defense, Office of the Secretary of Defense
Department of Defense, Comptroller
Department of Labor, Office of the Inspector General
Department of State, Bureau of Overseas Buildings Operations
Department of the Treasury, Office of Financial Stability
Department of the Treasury, Office of the Fiscal Assistant Secretary
Department of Veterans Affairs, Office of Financial Policy
General Services Administration, Office of the Chief Financial Officer
National Aeronautics and Space Administration, Office of Strategic Infrastructure
Naval Audit Service, Financial Management and Comptroller Division

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