



April 17, 2015

Memorandum

To: Members of the Board

From: Domenic N. Savini, Assistant Director

Through: Wendy M. Payne, Executive Director

Subject: **UPDATE – Exposure Draft: *Public-Private Partnerships: Disclosure Requirements*.¹ – Tab B**

MEETING OBJECTIVE

Review working group preliminary results of specific respondent comments regarding the proposed P3 definition and exclusions.

BRIEFING MATERIAL

Respondents who suggested specific exclusions to the proposed P3 requirements were invited to form a P3 working group. The working group's goal was to analyze the proposed P3 definition and to determine if additional exclusions could be developed.

This staff memorandum consists of a brief background of the February 2015 Board meeting, followed by an executive summary and accompanying details concerning the working group's preliminary review of the definition and suggested additional exclusions. Specific exclusions proposed by respondents to the Exposure Draft as well as working group members are included at the end of this memorandum.

Thank you and I look forward to our meeting.

Attachment 1: February 2015 Revisions to the Proposed Standards-section

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.

Table of Contents

BACKGROUND	3
EXECUTIVE SUMMARY	4
REVIEW OF DEFINITION.....	5
REVIEW OF EXCLUSIONS.....	7
WORKING GROUP ANALYSIS OF EXCLUSIONS.....	8
QUESTIONS FOR THE BOARD	9
SUMMARY OF QUESTIONS FOR THE BOARD	12
SPECIFIC EXCLUSIONS PROPOSED BY RESPONDENTS ...	13
WORKING GROUP MEMBERS	14
ATTACHMENT 1: FEBRUARY PROPOSED STANDARDS- ONLY SECTION	15

BACKGROUND

BACKGROUND

At the February 2015 meeting the Board began its re-deliberations by reviewing the comment letter responses received pursuant to the Exposure Draft, *Public-Private Partnerships: Disclosure Requirements* and the staff-proposed changes (refer to Attachment 1) to the standards section in response to the comments received. Staff had followed up with some of the respondents to better understand their concerns and to review potential solutions to these concerns, some of which have been incorporated as changes. After reviewing the content of the comment letters and staff's related analysis, the Board generally agreed that a public hearing was not needed.

However, the Board suggested that staff conduct additional outreach as appropriate to obtain feedback on (1) other suggested revisions, (2) whether concerns had been satisfactorily addressed in staff's proposed changes, and (3) specific language changes some respondents might suggest.

The Board then discussed the staff proposed changes to the standards section of the document. Specifically, staff's attempt to address some respondent views that the definition was too broad by adding 2 additional carve-outs: (1) exclusion for basic property, plant, and equipment acquisitions and (2) formal as well as informal arrangements that might be interpreted as being a P3 but do not share risks/rewards.

Suggestions were made to better convey the approach of applying a series of filters from the universe of all P3s to those that are ultimately reportable; those requiring disclosure. Members generally noted that the filters include: the exclusions, the conclusive and suggestive risk-based characteristics, and consideration of quantitative and qualitative materiality.

However, some questioned whether the language of the materiality filter sufficiently conveys the concept of qualitative materiality whereas some questioned whether a discussion of materiality is even needed.

Primarily regarding the reporting of risk, the respondents clearly favored the alternative view with respect to the discussion of when disclosure of remote risks is required. Mr. Dacey, who authored the alternative view, questioned whether the inclusion of a discussion of remote risks within the discussion of the materiality filters was needed. He suggested that the terminology from SFFAS 5, *Accounting for Liabilities of the Federal Government*, on contingencies (specifically "probability of loss") should be used rather than "remote risks," and was also concerned with the use of "significant" in discussing a higher threshold for the disclosure of remote risks.

Staff was asked to incorporate the Board's suggestions and prepare another draft for consideration at the next meeting.

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Definition – Although the working group suggests making clear that the 4 conditions contained in the definition would in fact act as the first filter in the proposed Statement, they also caution not to (1) restrict the definition to the cited conditions and (2) presume mandatory disclosure if any of the cited conditions are present.

In addition, the working group suggests clearly exempting arrangements or transactions whose entire economic life is 5 years or less.

Exclusions – In addition to the exclusions already being proposed, working group discussions suggest consideration of three additional exclusions:

1. Grants to State, Local, and Indian Tribal governments and other public institutions.
2. Arrangements or transactions with foreign governments.
3. Shared nominal or incidental resources.

Risk-based Characteristics – In connection with making clear that the 4 conditions contained in the definition would in fact act as the first filter in the proposed Statement, working group discussions suggest the establishment of just one list of risk-based characteristics; that is, eliminating conclusive and suggestive labeling. In this way, preparers would be free to apply judgment on a case-by-case basis and weight the risk-based characteristics as appropriate.

In addition, a risk-based characteristic for grants and other arrangements should be added. Specifically, higher risk exists if a grant or other arrangement is exempt from Office of Management and Budget (OMB) requirements.²

² For example, Subpart A - Introduction to Title 2 of the Code of Federal Regulations (CFR), § 1.100 contains (a) OMB guidance to Federal agencies on government-wide policies and procedures for the award and administration of grants and agreements; and (b) Federal agency regulations implementing that OMB guidance. Source: <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-part1.pdf>

REVIEW OF DEFINITION

REVIEW OF DEFINITION

As Shown to the Board in February 2015

15. Subject to the exclusions noted in paragraph 14³, 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).

Working Group Preliminary Changes April 2015

15. Subject to the exclusions noted in paragraph 14, 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).

The use of “such as” caused some debate among the group. Some believed that the definition would be bolstered by eliminating this wording making the 4 conditions act as initial filters. However, others disagreed noting that due to the voluminous and complex nature of P3 arrangements or transactions, we should not limit the definition to these 4 conditions because other unidentified conditions or features may exist or arise in the future. Some also cautioned not to presume mandatory disclosure if any one of the cited conditions are present.

³ Refer to Attachment 1 - As per Respondent # 7 (DOC) - The Department believes that the definition can be significantly improved by adding that the definition excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as P3s for other purposes. Staff: Concur. See suggested edit.

REVIEW OF DEFINITION

As such, the only proposed change to the definition that the group agreed to was eliminating “or” from the first P3 feature. This edit would help ensure that P3s whose lives are less than 5 years in duration would be exempt from applying the proposed standard.

Additionally, preliminary discussions with the working group suggest a complete re-write of paragraph 16 followed by additional wording on risk-sharing.

As Shown to the Board in February 2015

16. The above definition captures the most widely identified features of federal P3s. **Eligible⁴ P3 arrangements or transactions** 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.

Working Group Preliminary Changes April 2015

16. A public sector entity shares risks and rewards with a private sector entity whenever the benefits of the arrangement or transaction will accrue to both the private sector entity and the public sector entity and (1) the public sector entity is at risk of material loss, or (2) the private sector entity is at risk of material loss, and success of the arrangement or transaction will be at risk unless the public sector entity takes on the risk of material loss itself.

17. Generally, when a private sector entity voluntarily contributes nominal or incidental resources to an arrangement or transaction without compensation or public sector indemnification there is no sharing of risks or rewards between sectors.

18. The sharing of risks and rewards may be evidenced by one of the four conditions identified in the definition at paragraph 15 above. Unless a relationship is deemed to be immaterial, it should be evaluated against the risk based characteristics shown below.

⁴ Refer to Attachment 1 - 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. Please note that Staff worked with the respondent to develop edits in Paragraphs 16 through 20.

REVIEW OF EXCLUSIONS

REVIEW OF EXCLUSIONS

A summary of the additional exclusions suggested by the Working Group follow:

1. Grants to State, Local, and Indian Tribal governments and other public institutions.

- The Working Group was concerned that the scope of the ED could be extended to grants made to States and/or local governments that ultimately are awarded to private parties.

2. Arrangements or transactions with foreign governments.

- The Working Group was concerned that the scope of the ED could be extended to foreign governments.

3. Shared nominal or incidental resources.

- Private entities who voluntarily contribute nominal resources or provide incidental resources to an arrangement or transaction without expectation of a reward or government indemnification for any possible risk of loss should be exempted.

Additionally, recognizing that grants and other agreements can be part of a risk-sharing (P3) arrangement or transaction, the working group suggests a specific risk-based characteristic for grants and other agreements similar to what now exists for FAR covered arrangements or transactions. The rationale is that grants and other agreements should be treated in a similar manner as contracts and if they are exempt from OMB requirements they possess increased risk. That is, exemption from overarching statutory or regulatory frameworks increases risk.⁵

Potential exclusions for legislative requirements or Congressional mandates were considered but deemed unreasonable given their potential for overly broad application. Additionally, the working group did not take issue with the Task Force's opinion that non-GSA leases or GSA leases that are bundled have an inherently higher risk profile than unbundled leases entered into via GSA delegated authority.

⁵ Specifically, Title 2, CFR 200 - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

REVIEW OF EXCLUSIONS

WORKING GROUP ANALYSIS OF EXCLUSIONS

Respondent Exclusion	Rationale	Working Group Discussion / Recommendation
Grants & other arrangements to include Co-sponsorship agreements	<ul style="list-style-type: none"> ➤ Fall outside of FAR ➤ Regulated and covered by 2 CFR Chapters 1 and 2 ➤ Legislative requirement ➤ Lacks risk ➤ Immaterial 	<ul style="list-style-type: none"> ➤ Low risk grants and other such agreements warrant specific exclusion. ➤ Modify Par 14d. (Exclusion) language that discusses “formal and informal” P3s. <p>Recommendation:</p> <ul style="list-style-type: none"> ➤ Create a Risk Based Characteristic similar to FAR covered contracts. ➤ Clarify that grants to states and locals are excluded.
Arrangements arising from legislative requirements	<ul style="list-style-type: none"> ➤ Congressional mandate 	<ul style="list-style-type: none"> ➤ The users’ need-to-know outweighs the argument that P3s arising from Congressional mandates should be excluded because some believe mandates differ from routine agency program initiation. ➤ Because agency appropriations must be in accord with legislative requirements, such exclusion would be overly broad. This would allow for any P3 not to be reported if it were in some way linked back to agency appropriations or Congressional intent. <p>Recommendation:</p> <ul style="list-style-type: none"> ➤ Exclude shared nominal or incidental resources.
Non-GSA leases	<ul style="list-style-type: none"> ➤ To help narrow definition’s impact and focus on actual P3 risk 	<ul style="list-style-type: none"> ➤ The working group did not take issue with the Task Force’s opinion that such leases are in fact at greater risk than those entered into using GSA delegated authority.

QUESTIONS FOR THE BOARD

QUESTIONS FOR THE BOARD

1. Concerning the definition, although the working group suggests making it clear that the 4 conditions contained in the definition would act as initial filters in the application of the proposed Statement, they also caution not to (1) restrict the definition to the cited conditions because other unidentified conditions or features may exist or arise in the future and (2) presume mandatory disclosure if any of the cited conditions are present.

Does the Board agree with the working group's position that the definition should not (1) be restricted to the 4 cited conditions and (2) presume mandatory disclosure should any of the cited conditions be present? If not, what changes would the Board advise be made?

2. In addition, the working group suggests clearly exempting arrangements or transactions whose entire economic life is 5 years or less. This change to the definition would help ensure that P3s whose lives are less than 5 years in duration would be exempt from applying the proposed standard.

Does the Board agree with the working group's position to exempt P3s whose lives are less than 5 years in duration? If not, what changes would the Board advise be made?

3. Preliminary discussions with the working group suggest a complete re-write of paragraph 16 (Refer to Attachment 1 for current wording) followed by additional wording on risk-sharing that emphasizes the following:
 - a. P3s share risks and rewards that accrue to both the private sector entity and the public sector entity ^{Para. 16}
 - b. Either the public sector or private sector entity can be at risk of material loss ^{Para. 16}
 - c. Voluntary contributions of nominal or incidental resources where there is no expectation of compensation or government indemnification is not evidence of risk sharing ^{Para. 17}
 - d. The risk based characteristics should only be applied to material arrangements/transactions ^{Para 18}

QUESTIONS FOR THE BOARD

Does the Board agree with each (a-d) of the preliminary working group positions as stated above? If not, what changes would the Board advise be made?

4. The Working Group reviewed the specific exclusions proposed by respondents and developed 3 additional exclusions for the Board to consider. A summary of the additional exclusions suggested by the Working Group follow:
 - a. **Grants to State, Local, and Indian Tribal governments and other public institutions.** The working group was concerned that the scope of the ED could be extended to grants made to States and/or local governments that ultimately are awarded to private parties.
 - b. **Arrangements or transactions with foreign governments.** Similarly, the working group was concerned that the scope of the ED could be extended to foreign governments.
 - c. **Shared nominal or incidental resources.** Lastly, private entities who voluntarily contribute nominal resources or provide incidental resources to an arrangement or transaction without expectation of a reward or government indemnification for any possible risk of loss should be exempted.

Does the Board agree with each specific exclusion suggested by the working group? If not, what changes would the Board advise be made?

5. Recognizing that grants and other agreements can be part of a risk-sharing (P3) arrangement or transaction, the working group suggests a specific risk-based characteristic for grants and other agreements similar to what now exists for FAR covered arrangements or transactions. The rationale is that grants and other agreements should be treated in a similar manner as contracts and if they are exempt from OMB requirements they possess increased risk. That is, exemption from overarching statutory or regulatory frameworks increases risk.

Does the Board agree with the creation of an additional risk based characteristics specific to grants/other arrangements? If not, what changes would the Board advise be made?

QUESTIONS FOR THE BOARD

6. This has not yet been addressed by the working group and staff seeks Board input in order to better proceed. Staff is thinking about eliminating the distinction between Conclusive and Suggestive characteristics in an attempt to simplify the ED and provide management with greater discretion and flexibility. In this way, preparers would be free to apply judgment on a case-by-case basis and weight the risk-based characteristics as appropriate. Such an approach appears to be more in-line with a principles based standard but at the same time may not readily facilitate application of the proposed standard.

What does the Board think about the option of eliminating the distinction between Conclusive and Suggestive characteristics in an attempt to simplify the ED and provide management with greater discretion and flexibility? How does the Board believe this would impact preparers and auditors when determining materiality?

QUESTIONS FOR THE BOARD

SUMMARY OF QUESTIONS FOR THE BOARD

1. Does the Board agree with the working group's position that the definition should not (1) be restricted to the 4 cited conditions and (2) presume mandatory disclosure should any of the cited conditions be present? If not, what changes would the Board advise be made?
2. Does the Board agree with the working group's position to exempt P3s whose lives are less than 5 years in duration? If not, what changes would the Board advise be made?
3. Does the Board agree with each (a-d) of the preliminary working group positions as stated above? If not, what changes would the Board advise be made?
4. Does the Board agree with each specific exclusion suggested by the working group? If not, what changes would the Board advise be made?
5. Does the Board agree with the creation of an additional risk based characteristics specific to grants/other arrangements? If not, what changes would the Board advise be made?
6. What does the Board think about the option of eliminating the distinction between Conclusive and Suggestive characteristics in an attempt to simplify the ED and provide management with greater discretion and flexibility? How does the Board believe this would impact preparers and auditors when determining materiality?

SPECIFIC EXCLUSIONS PROPOSED BY RESPONDENTS

SPECIFIC EXCLUSIONS PROPOSED BY RESPONDENTS

#	Agency	Exclusion	Rationale	POC & Contact info
1.	USDA / Forest Service; Letter #3	Grants & other arrangements	Fall outside of FAR	Osman Masahudu 703-605-4803 omasahudu@fs.fed.us
2.	Rail Road Retirement Board; Letter #6	Arrangements arising from legislative requirements	Congressional mandate	Tangy Alexander Tangy.Alexander@rrb.gov
3.	Department of Commerce; Letter #7	1. Non-GSA leases 2. Standard PP&E procurements 3. Formal "goodwill" arrangements	To help narrow definition's impact and focus on actual P3 risk	Gordon Alston 202- 482-1207 galston@doc.gov Bruce Henshel 202- 482- 0646 bhenshel@doc.gov.
4.	Small Business Administration; Letter #11	Co-sponsorship agreements	Legislative requirement, lacks risk and immaterial	Timothy C. Treanor timothy.treanor@sba.gov
5.	Department of Labor; Letter #19	Grants & other arrangements	Regulated and covered by 2 CFR Chapters 1 and 2	Kevin Brown 202- 693-6800 Brown.Kevin.L@dol.gov
6.	Department of Interior: Letter #26***	Formal "goodwill" arrangements	Many formal agreements have been established to foster goodwill, encourage economic development, etc.	Sherry Lee 202-219-4096 sherry_lee@ios.doi.gov

WORKING GROUP MEMBERS

WORKING GROUP MEMBERS

1. Department of Agriculture, Forest Service, OCFO
2. Department of Commerce, OCFO
3. Department of the Interior, Bureau of Reclamation
4. Department of the Interior, Office of Financial Management
5. Department of Labor, OCFO
6. National Aeronautics and Space Administration, Office of Strategic Infrastructure
7. National Park Service, OCFO
8. Small Business Administration, Chairman for the Outreach Task Force
9. Veterans Administration - Director for Grants Management Services
10. Peckar & Abramson, P.C. – Partner, Construction and Government Contracts Law

ATTACHMENT 1

NOTE: This attachment is identical to the February proposed standards section. It is being provided for your ready-reference.

Standards

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 [GAO6]: 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 [GAO7]: 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 [GAO8]: 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 Risk Characteristics	Significant Risk Rationale⁶
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 <u>Risk</u> Characteristics	<u>Significant Risk</u> Rationale⁶
	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 Rationale⁶
<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> Rationale⁶
	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 <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

- ~~24-22.~~ 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:
- 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, incurred during the year 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:

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.