



June 5, 2015

**Memorandum**

To: Members of the Board

From: Domenic N. Savini, Assistant Director

Through: Wendy M. Payne, Executive Director

Subject: **Public-Private Partnerships: Disclosure Requirements – Tab C<sup>1</sup>**

**MEETING OBJECTIVES**

**The objective** for the June 2015 meeting is to **review revised standards**. This revised document was prepared based upon guidance received from members during the February and April 2015 meetings which incorporated respondent comments and preliminary working group suggestions, respectively.

Our next step will be to address any remaining open content or technical concerns prior to reviewing a complete Statement which will include a revised Introduction and Basis for Conclusions based on the Board's re-deliberations.

**BRIEFING MATERIAL**

1. **Attachment 1- Tracked Changes Version** of the standards-only section of the Exposure Draft.
2. **Attachment 2 – Process Flowchart: Identifying Reportable P3s**

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<sup>1</sup> 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.

## BACKGROUND

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### BACKGROUND

At the April 2015 meeting the Board continued its consideration of comments received pursuant to the Exposure Draft (ED), *Public-Private Partnerships: Disclosure Requirements*, including a working group's preliminary suggestions on proposed changes to the standards section of the ED. The working group was comprised primarily of those ED respondents who had concerns over the breadth and scope of the proposed definition and offered written suggestions and rationale for improvement.

Although the definition was primarily left intact by the working group, one suggestion to exempt arrangements and transactions with a life of five years or less was received favorably by the Board. However, it was noted that this would probably result in a realignment of the definition to the proposed risk-based characteristics.

In addition, the working group suggested three other exclusions including (1) grants to other governments or public institutions, (2) arrangements and transactions with foreign governments and (3) the sharing of nominal or incidental resources. Also, the working group proposed adding a risk-based characteristic (Conclusive) for those grants that are part of a P3 and exempt from OMB requirements. The Board seemed in general agreement with these working group suggestions.

The Board did not appear to object to the substance of the working group's suggested language (Refer to Attachment 1, Page 3, Paragraphs 16 and 17) concerning risk-sharing intended to accompany the definition but noted areas where the language could be improved. Lastly, the Board confirmed that the distinction between the conclusive and suggestive risk-based characteristics should not be eliminated so as to better facilitate materiality assessments.

## PRINCIPAL BOARD MEMBER CHANGES

### PRINCIPAL BOARD MEMBER CHANGES

As a result of guidance received from members during the February and April 2015 meetings, staff has incorporated changes which are highlighted in Attachment 1 and summarized below:

<b>Principal Board Member Changes</b>	
<b>Reference</b>	<b>Content</b>
<b>Page 1, Par. 13</b> <b>Page 3, Par. 19</b> <b>Page 6, Par. 20</b> <b>Page 9, <i>Old</i> Par. 18 &amp; 19</b>	<ul style="list-style-type: none"> <li>Eliminating references to materiality other than the standard FASAB “materiality box” to eliminate confusion and conflict with other guidance</li> </ul>
<b>Page 9, <i>Old</i> Par. 19</b>	<ul style="list-style-type: none"> <li>Eliminating references to remote risks and business risks to avoid potential conflict with Par. 23(d)ii</li> </ul>
<b>Page 2, Par. 14 (e) &amp; 14 (f)</b>	<ul style="list-style-type: none"> <li>Adding a total of 3 exclusions; state/local/tribal governments, foreign governments, and nominal and incidental, to significantly narrow pool of potential P3s subject to the proposed standards</li> </ul>
<b>Page 2, Par. 15</b>	<ul style="list-style-type: none"> <li>Eliminating P3s that are not greater than 5 years in duration to reflect lower risk profiles associated with short-term arrangements/transactions and to significantly narrow the pool of potential P3s subject to the proposed standards</li> <li>Streamlining the definition to better link to the risk-based characteristics</li> </ul>
<b>Page 3, Par. 16 &amp; 17</b>	<ul style="list-style-type: none"> <li>Providing more robust discussion that follows immediately after the definition to better reflect what is meant by risk-sharing</li> </ul>
<b>Page 3, Par. 18</b>	<ul style="list-style-type: none"> <li>Suggesting that materiality considerations can be front-end to help avoid unnecessary rote application of the standard</li> </ul>
<b>Pages 3 – 4, Par. 19</b>	<ul style="list-style-type: none"> <li>Enhancing the risk-based characteristics to facilitate streamlining the definition and to better link to the definition and its related risk-sharing discussions at paragraphs 16 and 17</li> </ul>
<b>Page 4, Par. 19</b>	<ul style="list-style-type: none"> <li>Adding a risk-based characteristic for when OMB requirements are exempt from grants to reflect higher risk profiles associated with such arrangements/transactions</li> </ul>
<b>Page 9, Par. 23b</b>	<ul style="list-style-type: none"> <li>Reinstating the requirement for the mix and amount of funding used in a P3 to better reflect funding sources</li> </ul>
<b>Pages 10 – 11, Par. 23(c)ii &amp; 24b</b>	<ul style="list-style-type: none"> <li>Eliminating the 5 year reporting requirement to reflect general concerns raised by respondents over administrative burden</li> </ul>
<b>Page 10, Par. 23d</b>	<ul style="list-style-type: none"> <li>Eliminating references to materiality other than the standard FASAB “materiality box” to eliminate confusion and conflict with other guidance</li> <li>Eliminating references to “significant” to eliminate confusion and conflict with materiality guidance</li> </ul>

## QUESTIONS FOR BOARD

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**Question 1** – Refer to the above summary of principal board member changes and Attachment 1 for details.

**Question 1**

**Does the Board believe that the revised standards satisfactorily address content or technical concerns addressed at the February and April 2015 meetings? If not, please identify any pending concerns and what changes staff should consider making to better address them.**

**Question 2** – The revised standards addresses respondent concerns related to the breadth and scope of the proposed definition and related exclusions. As discussed at the February 2015 meeting concerning remote risk disclosures, most of the respondents (75.0% or more) disagree with the Board and agree with the Alternative View. In preparing to address this matter, does the Board believe that the edits made to the revised standards so far also satisfy any remaining concerns related to remote risk disclosures? If not, why not and what additional staff research or outreach should staff consider?

**Question 2 - Refer to Attachment 1:**

**Does the Board believe that the edits made to the revised standards so far also satisfy any remaining concerns related to remote risk disclosures? If not, why not and what additional staff research or outreach should staff consider, if any?**

**Question 3** – Before staff can finalize the standards to include a revised Introduction and Basis for Conclusions for the August meeting, any remaining open content or technical concerns should be addressed and as appropriate, re-deliberated.

**Question 3 – Refer to Attachment 1:**

**Does the Board believe there are any remaining open content or technical concerns that should be addressed before staff begins finalizing the standards for the August meeting? If so, what additional staff research or outreach should staff consider, if any?**

If you require additional information please contact me as soon as possible. If you have any questions or comments, please contact me by telephone at 202.512.6841 or by e-mail at [savinid@fasab.gov](mailto:savinid@fasab.gov)

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ATTACHMENTS 1 & 2 TO FOLLOW

## 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 public-private partnerships (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 P3s presented in paragraphs ~~4915 through 17~~.<sup>1</sup> 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 ~~48-19~~ and ~~4920~~, respectively to identify those possessing significant risk that should be ~~disclosed~~~~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 (FAR) 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. Leases<sup>2</sup> that are not bundled<sup>3</sup> and are entered into using GSA-delegated authority (This Statement does not amend existing standards applicable to

<sup>1</sup> For purposes of this Statement, 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.

<sup>2</sup> 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 ~~4614b~~ above, from the provisions of this guidance.

<sup>3</sup> 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

**Comment [DS1]:** As per preliminary Working Group suggestions, the definition has been expanded to cover risk-sharing discussions. Please refer to paragraphs 15-17 for details.

**Comment [DS2]:** Respondent #17 KPMG and subsequent discussions with Respondent #19, DoL. Staff proposes this edit for the following reasons:

1. Some respondents (auditor and preparer) find the "should be considered" wording confusing and in conflict with existing materiality guidance. This coincides with Mr. Granof's position concerning materiality.

2. Some respondents have expressed concern that this wording works against consistent application of the Statement's principles.

3. Follow-up discussions with some respondents reveal that because the Conclusive RBCs represent significantly greater risk than the Suggestive RBCs, P3s meeting these characteristics should be required for disclosure.

4. One respondent noted that greater management flexibility that a Principles based standard may provide is not often welcomed in practice – "we just want to know what to report so we can avoid extensive auditor discussions."

**Comment [DS3]:** As per 25 February Board meeting. A robust discussion led by Mr. Granof's concern that once you specify language like this it suggests that materiality does not have to be considered elsewhere. It seems to him that if we want to emphasize materiality it should be done in the basis of conclusions.

Staff: Concur. Please see this change as well as other conforming changes later on in the document.

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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 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.

e. Grants to state, local, and Indian tribal governments and other public institutions and arrangements or transactions with foreign governments.

d-f. Arrangements or transactions where private entities voluntarily contribute nominal resources or provide incidental resources without expectation of reward compensation or government indemnification for any possible risk of loss.

**Comment [DS4]:** As per 29 April Board meeting. These are the Working Group suggested exclusions. The grants exclusion and related wording has been coordinated with OMB. The foreign government exclusion acknowledges a State Department concern expressed early-on in the project.

**Comment [DS5]:** As per 29 April Board meeting. This is a Working Group suggested exclusion. Members asked that we substitute "compensation" in lieu of "reward".

## DEFINITION

15. Subject to the exclusions noted in paragraph 14 and for the purposes of this Statement, federal public-private partnerships (P3s) are contractual risk-sharing arrangements<sup>4</sup> or transactions lasting more than five years<sup>5</sup> between public and private sector entities. Such arrangements or transactions 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<sup>6</sup> 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 [DS6]:** As per 25 February Board meeting. Mr. Steinberg went on to state that the problem is the perception that we are calling everything a P3. He suggested that we say this is a P3 definition limited to, and only for reporting requirements.

Staff: Concur. Please see suggested edit.

**Comment [DS7]:** As per 29 April Board meeting; adopt WG 5 year suggestion.

**Comment [DS8]:** As per 25 February and 29 April Board meetings. Per B. Dacey – improve linkage between the definition and the Risk-Based Characteristics because there is some overlap of the 4 features in the definition to the listed RBCs.

Staff: Concur. Suggest (1) eliminating the 4 features in the definition and where appropriate, reflecting any changes to the existing RBCs and (2) adopting the WG proposed language; refer to new paragraphs 16 thru 18 below.

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.

<sup>4</sup> 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.

<sup>5</sup> 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."

<sup>6</sup> Contractors routinely finance operations while awaiting payment of invoices. Such routine financing is not indicative of a P3 in and of itself.

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- 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. 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. Contractual arrangements or transactions that meet the definition in paragraphs 15 through 17 should be assessed against the risk characteristics (paragraphs 19 and 20) that provide evidence of significant risk in a P3 arrangement or transaction. Unless risks are deemed to be immaterial, the relationship, arrangement or transaction should be evaluated against the risk based characteristics shown below to identify whether the P3 possesses significant risk and is subject to the disclosure requirements.

**IDENTIFICATION OF P3'S REQUIRING DISCLOSURE**

19. 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 ~~disclosed~~considered for disclosure.

Conclusive Risk Characteristics	Significant Risk Rationale <sup>7</sup>
1. The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing <sup>8</sup> 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, <u>financing may be provided in whole or shared in part by the private partner. Note that</u> some private partners may incur substantial financing liabilities in preparation for delivering services even if an

<sup>7</sup> The Rationale presented herein explains why the Board believes there is significant risk 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.

<sup>8</sup> Contractors routinely finance operations while awaiting payment of invoices. Such routine financing is not indicative of a P3 in and of itself.

**Comment [DS9]:** As per H. Steinberg 20 April email and Members on 29 April meeting. The term "relationship" is problematic.

Staff: Concur. Please see Mr. Steinberg's proposed language with minor Staff modification.

**Comment [DS10]:** As per 25 February Board meeting. A robust discussion led by Mr. Granof's concern that once you specify language like this it suggests that materiality does not have to be considered elsewhere. It seems to him that if we want to emphasize materiality it should be done in the basis of conclusions.

Staff: Concur. Please see this change as well as other conforming changes in the document.

**Comment [DS11]:** Respondent #17 KPMG and subsequent discussions with Respondent #19. DoL. Staff proposes this edit for the following reasons:

1. Some respondents (auditor and preparer) find the "should be considered" wording confusing and in conflict with existing materiality guidance.
2. Some respondents have expressed concern that this wording works against consistent application of the Statement's principles.
3. Follow-up discussions with some respondents reveal that if the Conclusive RBCs represent significantly greater risk than the Suggestive RBCs, they should simply be required for disclosure.
4. One respondent noted that greater management flexibility that a Principles based standard may provide is not often welcomed in practice – "we just want to know what to report so we can avoid extensive auditor discussions."

**Comment [DS12]:** As per 25 February and 29 April Board meetings. Per B. Dacey – improve linkage between the definition and the Risk-Based Characteristics because there is some overlap of the 4 features in the definition to the listed RBCs.

Staff: Concur. Staff suggests incorporating Mr. McCall's previous edit to the definition that "financing may be provided in whole or shared in part by the private partner."

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Conclusive Risk Characteristics	Significant Risk Rationale <sup>7</sup>
	asset is not created.
<p>2. The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, etc.</p>	<p>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.</p>
<p>3. <del>The term of the procurement or contract is longer than 5 years<sup>9</sup>. The arrangement or transaction covers a significant portion of the economic life of a project or asset.</del></p>	<p>Those P3 procurement or contract arrangements/transactions <u>that cover a significant portion of the economic life of a project or asset greater than 5 years</u> 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.</p>
<p>4. The principal arrangement or transaction is exempt from:</p> <p>a. <del>If a contract,</del> the Federal Acquisition Regulation (FAR)</p> <p>a-b. <del>if a grant, Office of Management and Budget (OMB) requirements (2 C.F.R. Title 2, Part 200).</del></p>	<p>The FAR <u>for contracts and OMB requirements for grants</u>, <del>is the primary regulation that</del> governs the administrative framework and includes procurement, <u>accounting</u> and legal requirements to help safeguard and protect taxpayer dollars <del>by preserving and protecting specific government (contractual) rights</del>. Therefore, those P3s exempt from <u>such requirements</u> 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</p>

**Comment [DS13]:** As per 25 February and 29 April Board meetings. Per B. Dacey –improve linkage between the definition and the Risk-Based Characteristics because there is some overlap of the 4 features in the definition to the listed RBCs.

Staff: Concur. Staff suggests retaining the "economic life" feature as a risk-based characteristic because an asset or project life may far out live a P3 arrangement's contractual term.

**Comment [DS14]:** As per 29 April board meeting. This is a working group suggestion that was coordinated with OMB.

<sup>9</sup> 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."

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Conclusive Risk Characteristics	Significant Risk Rationale <sup>7</sup>
	resolution venues. As a result, the increased exposure arising from the loss of such <del>contractual</del> protections are not appropriately recognized or disclosed.

**Comment [DS15]:** This is a conforming edit to reflect inclusion of grants intended to avoid confusion.

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47-20. 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.

**Comment [DS16]:** Conforming edit re: materiality.

Suggestive Risk Characteristics	Significant Risk Rationale <sup>6</sup>
1. A <b>Value for Money</b> <sup>10</sup> (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

<sup>10</sup> 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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Suggestive Risk Characteristics	Significant Risk Rationale <sup>6</sup>
<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>

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<b>Suggestive Risk Characteristics</b>	<b>Significant Risk Rationale<sup>6</sup></b>
	third party determination of a P3's performance or return on investment/equity without performing its own verification. Such analyses may belie the significant risk the government has or will incur.

## DISCLOSURE REQUIREMENTS

~~18. 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.~~

~~19. 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.~~

## COMPONENT REPORTING ENTITY DISCLOSURES

~~18-21.~~ 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.

~~19-22.~~ 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.

~~20-23.~~ 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, ~~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 [DS17]:** As per 25 February Board meeting. Staff explained that this language was introduced to help address concerns raised by some members that we make clear that we avoid burdening preparers and readers with immaterial P3 disclosures especially given our broad definition.

However, a robust discussion led by Mr. Granof's concern that once you specify language like this it suggests that materiality does not have to be considered elsewhere. It seems to him that if we want to emphasize materiality it should be done in the basis of conclusions.

The majority of members seemed to agree and some questioned the entire paragraph.

Staff: Suggest we delete this language and follow Mr. Granof's advice to consider this a BFC discussion item.

**Comment [DS18]:** As per 25 February meeting. Mr. Dacey stated the edits made regarding business risks imply that material business risks should be reported. This concerns him and he wonders if we really need this new paragraph. Instead, paragraph 23 D2 below could address remote risks.

Staff: Staff has withdrawn suggested edit in response to GAO AV par 41.

**Comment [DS19]:** As per S. McCall at 25 February meeting. Mr. McCall and Mr. Allen agreed that knowing the mix and amount of funding for the entire project would be more meaningful than just the amounts incurred during the year.

Staff: The suggested Staff edit is withdrawn and language re-instated in its originally form.

Please refer to Par. C ii comment below.

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~~ the amounts estimated to be received and paid in aggregate over the life of the P3.

~~d. Identification of the significant contractual risks the P3 partners are undertaking.~~

~~i. it is probable or reasonably possible that the risk could materialize and materially change the estimated cash flows; or~~

~~ii. d. the chance of the risk materializing is remote but its impact on the P3s estimated cash flows would be significant<sup>14</sup> and its impact on the entity would be either quantitatively or qualitatively material to the entity.~~

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.

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.

<sup>14</sup> 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 [DS20]:** As per T. Allen at 25 February meeting. Although Mr. Allen liked Mr. McCall's point above, he asked if we should just drop 23b in its entirety because of this language. Mr. Allen sees that they are asking for the same information. Mr. Dacey stated that we have different purposes in these 2 requirements.

Staff: Pending further Board direction, no change is advised. Staff notes that 23b above represents "to-date" amounts whereas this language represents estimates over the project's life.

**Comment [DS21]:** As per 25 February Board meeting. No exception was taken to the Staff recommendation to help ease preparer burden by eliminating the 5 year reporting requirement.

**Comment [DS22]:** 2 June Staff edit in consultation with ED. Staff suggests simplifying this disclosure by:

1. Adopting conforming edits (eliminating references to materiality) pursuant to Mr. Granof's concern that once you specify language like this it suggests that materiality does not have to be considered elsewhere. It seems to him that if we want to emphasize materiality it should be done in the basis of conclusions.

2. Eliminating FASAB 5 distinctions and clearly mentioning that if remote risks are disclosed they should be clearly labeled as such.

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FINANCIAL REPORT OF THE US GOVERNMENT DISCLOSURES

~~24-24.~~ 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.

**Comment [DS23]:** As per 25 February Board meeting. No exception was taken to the Staff recommendation to help ease preparer burden by eliminating the 5 year reporting requirement.

EFFECTIVE DATE

~~22-25.~~ The requirements of this Statement are effective for reporting periods beginning after September 30, ~~20XX17~~. Early adoption is permitted.

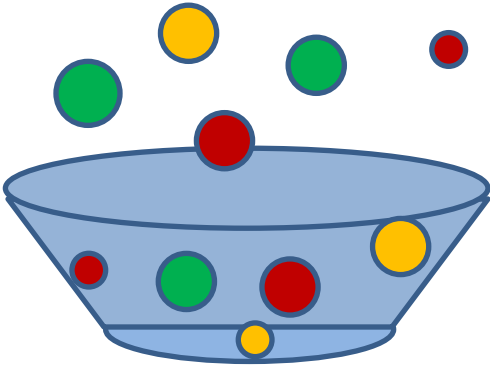
The provisions of this Statement need not be applied to immaterial items.

**Comment [DS24]:** The implementation date is subject to change. Some on the working group have asked that the Board consider preparer burden in toto, that is, what other Standards might be issued along with this one when considering an implementation date.



# Identifying Reportable P3s

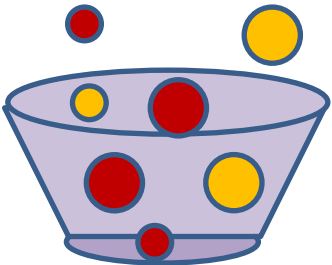
## Process Flowchart



P3s that are excluded or those not exceeding 5 years.



**First filter** - Paragraphs 14 and 15 thru 17. Only include arrangement or transaction if it is not excluded and exceeds 5 years.



P3s that do not meet either the Conclusive or Suggestive Characteristics.



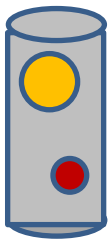
**Second and Third filters** - Paragraphs 19 and 20. Only include arrangement or transaction if it meets one of the Conclusive characteristics or when considered in the aggregate, the Suggestive Characteristics.



P3s that are either quantitatively or qualitatively immaterial.



**Fourth filter** – An eligible P3 should be disclosed if it is either quantitatively or qualitatively material.



P3s that are not excluded; those greater than 5 years, meeting the risk-based characteristics, and either quantitatively or qualitatively material.

**Reportable P3** – Paragraphs 21 - 24.

