



November 26, 2013

**Memorandum**

To: Members of the Board  
From: Domenic N. Savini, Assistant Director

*Wendy M. Payne*

Through: Wendy M. Payne, Executive Director

Subject: **Public-Private-Partnerships (P3)<sup>1</sup> – Tab C**

**OBJECTIVE**

The objective of this session is to seek **Board input** concerning progress made on the project since our October meeting. Specifically, staff has incorporated Member comments from our October meeting in the following **four matters and revised materials accordingly**:

**1. Updated draft P3 Definition**

- Adopt the Alternate Draft P3 Definition

**2. Introduction or Preamble to the Alternate Draft P3 Definition**

- Adopt its use so we can provide context and background to accompany the Alternate Draft P3 Definition

**3. P3-Centric Reporting Characteristics**

- Conclusive Characteristics – reduced from 4 to 5, clarified that we are concerned with long-lived assets and long-term financing liabilities, and identified specific risks associated with exempting P3s from the Federal Acquisition Regulation (FAR)
- Suggestive Characteristics – streamlined the *Value for Money* characteristic and highlighted 2 for potential elimination

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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.

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#### 4. Disclosures - Fiscal Exposure (Risk)

- Develop & Harmonize P3-Centric Disclosures in accordance with the Risk Reporting Framework as explained at Tab B

#### BRIEFING MATERIAL

This memo presents background information and questions for the Board along with:

Attachment 1: *Disclosures: Relationship to Federal Reporting Objectives*

You may electronically access all of the briefing material at <http://www.fasab.gov/board-activities/meeting/briefing-materials/>.

#### BACKGROUND

At the October meeting the Board decided to proceed with a definition that captures a wide universe of arrangements or transactions and then to have a risk-based filtering process vis-à-vis characteristics, to pare down the universe to those P3s the Board believes warrants disclosure based upon risk (conclusive or suggestive) characteristics. Members generally noted the difficulty in attempting to develop a single P3 definition. Adopting a broad definition reflects the wide breadth of assets, complex arrangements/transactions, and diverse entity mission requirements that exist in the federal environment.

The Waterfall/Cascade approach shown in the form of a flowchart was generally well received by Members. The overall effect would be to exclude from further consideration those P3 arrangements/transactions that either:

- Meet a principle in the reporting entity standards (e.g., are either consolidation entities, disclosure organizations, or related parties), or
- Have an asset or liability that is recognizable under SFFAS 6 (PP&E standards) or SFFAS 5 (liability standards).

Specifically, the approach proposed that if an arrangement/transaction is captured under the requirements of either the *Federal Entity* or as an asset or liability, any applicable P3 guidance would be limited to P3-Centric disclosures essential to the fair presentation of the entity's financial statements. Some members emphasized that even when the two above bullet items are met additional P3-Centric disclosures may be required. Staff is deferring revisions to the Waterfall/Cascade approach so that members can consider the extent of the disclosures and how those disclosures compare to existing requirements for the two above items. In conclusion, Staff was asked to (1) consider further development of the definition, (2) continue working with the Task Force especially in the area of the Conclusive characteristics, (3) state why the risk in a selected P3 is different from other risks and why we believe it is important to be disclosed, and (4) identify P3-centric disclosures based on Task Force feedback.

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## **MEMBER FEEDBACK**

If you require additional information or wish to suggest another alternative not considered by staff, please contact staff as soon as possible. In most cases, staff would be able to respond to your request for information and prepare to discuss your suggestions with the Board, as needed, in advance of the meeting. If you have any questions or comments prior to the meeting, please contact me by telephone at 202-512-6841 or by e-mail at [savinid@fasab.gov](mailto:savinid@fasab.gov) with a cc to [paynew@fasab.gov](mailto:paynew@fasab.gov).

Thank you.

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## Draft P3 Definition, Introduction, Characteristics & Risk Disclosure Principle

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### Draft P3 Definition, Introduction, Characteristics & Risk Disclosure Principle

Consistent with the Board's decision in October to adopt a broad definition reflecting the wide breadth of assets, complex arrangements/transactions, and diverse entity mission requirements that exist in the federal environment, staff suggests the following as Next Steps:

#### Next Steps:

1. **Adopt the Alternate Draft P3 Definition** – Members seemed to agree that both definitions were sufficiently broad however, a few Members expressed concern (1) over terminology and the relevance of referencing the *Federal Acquisition Regulation (FAR)* and (2) that implementation of such a broad statement might be problematic.
2. **Create an Introduction or Preamble to the Alternate Definition to address the concerns noted above** - Staff suggests that an Introduction or Preamble to the definition be considered. Staff has incorporated the middle paragraph that existed in the *Edited Board Version of the Updated Draft P3 Definition/Description* into the text (please refer to paragraph 3) of the Introduction/Preamble beginning on page 9.  
This Introduction would provide context and background to the *Alternate Draft P3 Definition* by identifying and discussing the:
  - a. Scope of P3's we are concerned with,
  - b. General purpose of federal P3s,
  - c. General nature of federal P3s,
  - d. Risks associated with federal P3s, and
  - e. Importance of quantitative and qualitative information.
3. **Finalize Task Force Review of the Conclusive and Suggestive Characteristics** - Staff will continue working with the Task Force especially in the area of the Conclusive characteristics and state why the risk in a selected P3 is different from other risks and why we believe it is important to be disclosed. In anticipation of the January 2014 Task Force meeting, staff has streamlined and refined some of the Conclusive Characteristics and identified 2 of the Suggestive Characteristics for possible elimination.
4. **Develop & Harmonize P3-Centric Disclosures in accordance with the *Risk Reporting Framework* as explained at Tab B** – Members and staff have noted the overlap of the risk assumed project and other active projects. To avoid overloading the risk assumed project and delaying progress on other projects but assure that we address risk with some degree of consistency, Tab B recommends that the Board agree to a working framework for risk reporting. Please refer to Tab B for further details.

## Alternate Draft P3 Definition

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### Alternate Draft P3 Definition

As a reminder, the Board supported a broad definition to identify the pool of arrangements and transactions that are P3s. The following alternate definition was presented in October—some members preferred it while others supported the version that described the risks arising from P3s. Staff proposes to include the discussion of risks in the introduction and the alternate draft P3 definition below in the proposed standards. (See page 9 for the proposed introductory text and proposed standards.)

“Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private sector entities to deliver 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 potential 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 arranged by the private partner, (3) conveyance or transfer of real and personal property, multi-sector skills and expertise, and (4) formation of special purpose vehicles or SPV’s.<sup>2</sup>

The above description 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 these disclosure requirements.”

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<sup>2</sup> The text you see here replaced the following language which has been incorporated into staff’s suggested Introduction/Preamble (refer to paragraph 3 on page 9) – “*As a result, federal P3s can (1) exclude contractual protections afforded the government by the Federal Acquisition Regulations, (2) require the government to provide resources or absorb losses greater than other alternative or competing arrangements or transactions, and (3) include the formation of special purpose vehicles or SPV’s.*”

## P3-Centric Reporting Characteristics

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### P3-Centric Reporting Characteristics

Although the Board seemed generally satisfied with the characteristics at the October meeting, staff was asked to continue working with the Task Force especially in the area of the Conclusive characteristics and state why the risk in a selected P3 is different from other risks and why we believe it is important to be disclosed.

In preparation of the next Task Force meeting, staff has:

1. Reduced the Conclusive Characteristics from 5 to 4 by consolidating 2 characteristics regarding a federal entity's involvement with SPEs, Partnerships, Trusts, etc.
2. Clarified Conclusive Characteristic Item 1; *The arrangement resulted in the conveyance or creation of an asset or liability*, to indicate that we are concerned with long-lived assets and long-term financing liabilities.
3. Identified specific risks associated with Conclusive Characteristic Item 4; *The principal arrangement is exempt from the Federal Acquisition Regulation (FAR) or other comparable laws, regulations or provisions preserving and protecting the government's rights*. The following judgmentally selected contract clauses are only a sample of potential risks from waiving the FAR and is not meant to be all-inclusive:
  - a. Inverted domestic corporations - Applicable clauses protect against tax avoidance.
  - b. Audit & Access to Records clauses – Applicable clauses protect fair and reasonable costing/pricing.
  - c. Certified cost/pricing data – Applicable clauses protect fair and reasonable costing/pricing.
  - d. Change orders, economic price adjustments, hardship claims - Applicable clauses protect fair and reasonable costing/pricing.
  - e. Allowable costs - Applicable clauses protect fair and reasonable costing/pricing.
  - f. Cost Accounting Standards - Applicable clauses protect fair and reasonable costing/pricing.
  - g. Termination procedures - Applicable clauses protect fair and reasonable costing/pricing.
4. Streamlined Suggestive Characteristic Item 1 by eliminating references to “or other similar cost-benefit analysis.”
5. Retained the 8 Suggestive Characteristics but highlighting 2 of them for potential elimination;
  - Item 6. *Operational performance metrics exist absent strategic milestone metrics, and*
  - Item 7. *Separate payments, as opposed to a unitary payment, are made to the private sector partner.*

## P3-Centric Reporting Characteristics

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Please recall that the following characteristics should be applied to assist a federal entity in determining which P3 arrangements or transactions should be included or conversely, eliminated from the P3-Centric disclosure requirements.

As a result, staff suggests that we continue to categorize the characteristics as:

- **Conclusive characteristics** where answering “Yes” to any 1 characteristic means the P3 arrangement or transaction must be considered for P3-Centric disclosures; and
- **Suggestive characteristics** where answering "Yes" to any 1 characteristic suggests that the P3 arrangement or transaction should be disclosed but that this 1 characteristic must be considered in the aggregate with all other Suggestive characteristics before a decision to consider the P3 for P3-Centric disclosures is reached.

## Disclosures - Fiscal Exposure (Risk)

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### Disclosures - Fiscal Exposure (Risk)

#### *General Approach to Disclosures<sup>3</sup> - Narrative & Quantitative*

##### **Need for Harmonizing Disclosures - Factors in Determining P3-Centric Disclosures**

Members and staff have noted the overlap of the risk assumed project and other active projects. To avoid overloading the risk assumed project and delaying progress on other projects but assure that we address risk with some degree of consistency, Tab B recommends that the Board agree to a working framework for risk reporting. Please refer to Tab B for further details.

Practically speaking, the unintended consequences of not developing and harmonizing P3-Centric disclosures could result in an entity having inconsistent P3 disclosures over similar arrangements/transactions and creating an incentive for entities to select their disclosures and P3 reporting/recognition based on subjective criteria and not underlying disclosure principles that support the federal reporting objectives.

As is the custom, P3-Centric disclosures will be subject to materiality as an overarching consideration in financial reporting and preparers would be reminded to consider both qualitative and quantitative materiality in determining the information that should be presented regarding P3 arrangements or transactions.

If the Board agrees to develop a framework as suggested in Tab B, staff will work with the task force to relate the suggested disclosures to the framework. This should ensure consistency in coverage of risk and the objectives of disclosures across standards.

##### **Broad and Summarized Information**

As previously noted, due to the relative complexity and potential voluminous nature of P3s that an entity might be party to, the P3-Centric disclosures would permit entities to provide summarized information about broad groups of P3s instead of unique or discrete 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.

##### **Need for Unique P3-Centric Risk Disclosures**

Specifically, the disclosures would reveal (1) the nature of the P3 arrangements or transactions; (2) relevant P3 activity during the reporting period, (3) the SPV's created, if any, to execute mission and their relationship to the reporting entity, and (4) the reporting entity's future fiscal exposures to risks and rewards resulting from the P3 relationships.

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<sup>3</sup> **Disclosure** is the reporting of information in the notes or a narrative regarded as an integral part of the basic financial statement. SFFAC 5, *Definitions of Elements and Basic Recognition Criteria for Accrual-Basis Financial Statements*, states that unrecognized elements are candidates for disclosure in the notes to financial statements or as supplementary information and that items, because of their uncertainty that do not meet the basic recognition criteria may be candidates for disclosure. Source: *FASAB 2012 Handbook*.

## Disclosures - Fiscal Exposure (Risk)

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Additionally, some preliminary Task Force discussions reveal an interest in seeing the following disclosed:

1. An entity's statutory authority for entering into P3s,
2. Whether the SPV has borrowed or invested capital contingent upon the federal entity's promise to pay whether implied or explicit,
3. Type of funding, federal or otherwise used in the P3; e.g., appropriated, non-appropriated, private capital or investment.

The Example on the following page incorporates the revisions brought about by Member recommendations made at the October meeting.

## Example of what a draft Exposure Draft could contain follows:

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### Introduction - Preamble to Definition

1. This Statement addresses Public-Private-Partnerships (P3s) and this term is used to refer to a wide variety of service, management, and operating arrangements or transactions, including alternative financing arrangements, and privatization initiatives.
2. From the point of view of the federal entity, entering into Public-Private-Partnerships may be seen as beneficial and in some cases essential for a variety of reasons. Federal entities may turn to the private sector to effectively deliver targeted, less costly operational efficiencies which optimize the delivery of facilities, goods and services. Specifically, federal entities may employ P3s as a way of delivering public value that might otherwise not be achieved due to the lack of available funding, limited resources or lack of human capital skill-sets.
3. P3s may involve the use of 3rd party financing, non-appropriated funds, or significant amounts of private capital or investment. To effectively deliver targeted, less costly operational efficiencies and ensure appropriate returns to the private partners and/or 3<sup>rd</sup> party financiers, P3s can (1) be so long-term in nature that costs 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 or competing arrangements or transactions. Lastly, P3s may involve the transfer of government assets, including intellectual property into private hands for extended periods of time.
4. Because of the inherent risks involved in entering into such long term agreements, some of which involve government assets, P3s require disclosure to help foster accountability and sound accounting; i.e., capturing costs, revenues, liabilities, and assets while disclosing associated risks. This Statement recognizes the following:
  - a. Due to the long-term nature of P3s, it is especially difficult to assess the likelihood that a future event or events will confirm a loss or the incurrence of a liability as required by SFFAS 5.
  - b. P3 cash flows are highly dependent upon future events such as availability and demand conditions (risks), which make it difficult to measure and recognize relevant amounts.

## Example of a draft Exposure Draft

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- c. Potential gains and impairment of nonfinancial assets are essential components in P3s requiring appropriate disclosure.
5. It is important to note that disclosures comprise quantitative and qualitative information and that not all P3 risk (1) leads to fiscal exposure or (2) can be readily or sufficiently measured. However, user needs and federal financial reporting objectives are enhanced when entity financial statements (1) demonstrate accountability, (2) provide useful information, and (3) help improve the government's management.<sup>4</sup> 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.
6. For example, some P3 risks that may lead to fiscal exposure include: (1) that actual costs will be greater than those corresponding costs contained in the federal budget, (2) that the federal entity may have to absorb any of the project's private debt, (3) that the federal entity will not achieve expected returns over the long-term on its investments in Limited Partnerships, (4) political pressures will necessitate incurrence of a liability that would not otherwise be a legal responsibility of the federal entity and (5) that the public purpose or public value will not be fulfilled or achieved.
7. The objective of this Statement is to improve federal financial reporting by addressing issues related to federal P3s. This Statement will improve consistency in reporting these types of arrangements or transactions, thereby enhancing the comparability of the accounting and financial reporting of such arrangements among federal entities.

### Proposed Standards Section

#### Definition of Public-Private-Partnerships

8. This Statement establishes guidance for disclosures regarding P3s. The following definition should be applied for use in this Statement:

Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private sector entities to deliver 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 potential 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

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<sup>4</sup> Statement of Federal Financial Accounting Concepts 1: *Objectives of Federal Financial Reporting*.

## Example of a draft Exposure Draft

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arranged by the private partner, (3) conveyance or transfer of real and personal property, multi-sector skills and expertise, and (4) formation of special purpose vehicles or SPV's.

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 these disclosure requirements.

9. 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 these disclosure requirements.

## Example of a draft Exposure Draft

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### Identification of P3's Requiring Disclosure

10. If any one of the following Conclusive Characteristics is met, the P3 arrangement or transaction must be considered for P3-Centric disclosure.

<b>Conclusive Characteristics</b>	<b>Fiscal Exposure (Risk) Rationale Implication</b>
<p>1. The arrangement resulted in the conveyance or creation of a long-lived asset or long-term financing liability.</p>	<p>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 often accompany asset ownership or control. Further, some private partners may incur substantial liabilities in preparation for delivering services even if an asset is not created.</p>
<p>2. The federal entity participates in, helps sponsor, or is party to an 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 kept off of budgets and balance sheets. P3s can be or most often become borrowing arrangements or alternative financing mechanisms. Therefore, the risk rests in the fact that because the SPV facilitates funding, an agency's explicit or implicit long-term debt or promise to pay the SPV is not appropriately recognized.</p>
<p>3. The term of the procurement or contract arrangement is longer than 5 years.</p>	<p>Those P3 procurement or contract arrangements 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.</p>

**Example of a draft Exposure Draft**

<b>Conclusive Characteristics</b>	<b>Fiscal Exposure (Risk) Rationale Implication</b>
<p>4. The principal arrangement is exempt from the Federal Acquisition Regulation (FAR) or other comparable laws, regulations or provisions preserving and protecting the government’s rights.</p>	<p>The FAR is the primary regulation that governs the administrative framework that includes procurement and legal requirements to help safeguard and protect taxpayer dollars. Therefore, those P3s exempt from FAR are at an increased-risk because well-established safeguards and contract resolution mechanisms are abandoned 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>

11. While meeting one of the Suggestive Characteristics implies there is some persuasive evidence that a P3 should be disclosed, each characteristic must be considered in the aggregate with the other Suggestive characteristics before a final decision to consider for P3-Centric disclosure is reached. Each Conclusive characteristic is definitive whereas each Suggestive characteristic will require entity judgment as each one is analyzed in connection with the other Suggestive characteristics. If P3 arrangements or transactions are identified for potential disclosure, they should be further evaluated in light of the entity’s materiality considerations; e.g., qualitative and quantitative thresholds.

<b>Suggestive Characteristics</b>	<b>Fiscal Exposure (Risk) Rationale Implication</b>
<p>1. A Value for Money analysis is performed.</p>	<p>Because the term VfM is almost always used in connection with P3 arrangements, 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 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 done ex-post facto.</p>

## Example of a draft Exposure Draft

<b>Suggestive Characteristics</b>	<b>Fiscal Exposure (Risk) Rationale Implication</b>
<p>2. The principal arrangement is NOT managed by an Administrative Contracting Officer (ACO) and/or Procurement Contracting Officer (PCO).</p>	<p>Typically, when a contract is awarded under the FAR, the procuring organization has an independent administrative contracting officer administer and manage aspects of the contract to ensure contract compliance. This activity can be either assigned to an Administrative Contracting Officer (ACO) who is usually external to the procuring organization or delegated internally to a Procurement Contracting Officer (PCO). In some cases dual-administration will occur. However, if an entity does not delegate administration responsibility to any contracting officer and retains administration internally, there may be less objectivity and independence in ensuring that contract requirements are adhered to leading to potentially adverse financial ramifications for the agency.</p>
<p>3. The consideration or items given up in an arrangement are not readily apparent.</p>	<p>Generally under common law consideration from both parties is required in order to have what constitutes as 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 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>4. 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 have begun entering into P3 arrangements to put both infrastructure and government personnel to heightened work. However, there is a concern that the analyses (e.g., Value for Money) used to justify these arrangements may be skewed in favor of the private partner. Therefore, increased risk exists in those cases where significant work force duties, activities or knowledge is cross-shared under a skewed VfM that did not include all personnel or legacy costs. Because such costs were not identified or considered, the government is left absorbing them with no related activity base,</p>

**Example of a draft Exposure Draft**

<b>Suggestive Characteristics</b>	<b>Fiscal Exposure (Risk) Rationale Implication</b>
	and is exposed to potential liabilities arising from union and/or employee litigation.
5. The focus is more on collaboration and informal, real-time, resolution processes as opposed to formal, contractual, administrative processes.	Due to their very nature P3 arrangements 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.
8. <sup>5</sup> 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.	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 level 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 benefitted on both ends of the P3 arrangement by providing advisory services to both the private partner and government. In addition, fees are often based on the dollar volume of the arrangement creating what some believe are self-serving incentives. Therefore, the risk rests in those P3 arrangements 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.

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<sup>5</sup> Original numbering retained for tracking purposes only. Items 6 and 7 have been excluded contingent upon Task Force review.

## Questions for the Board

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### Questions for the Board

1. **Does the Board agree with staff's recommendation to adopt the Alternate Draft P3 Definition accompanied by an Introduction or Preamble that would include the middle paragraph taken from the other definition? If not, what changes would the Board advise be made?**

Members seemed to agree that both definitions were sufficiently broad, however, a few Members expressed concern (1) over terminology and the relevance of referencing the *Federal Acquisition Regulation* (FAR) and (2) that implementation of such a broad statement might be problematic.

To address the concerns noted above, staff suggests that an Introduction/Preamble to the definition be considered. Staff has incorporated the middle paragraph that existed in the *Edited Board Version of the Updated Draft P3 Definition/Description* into the third paragraph of the Introduction/Preamble beginning on page 9.

### **Staff Suggested Edits to the Clean Board Version of the Updated Draft P3 Definition**

"Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private sector entities to deliver 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 potential of said arrangements or transactions.

**DELETE AND MOVE TO INTRO/PREAMBLE** ~~As a result, federal P3s can (1) exclude contractual protections afforded the government by the *Federal Acquisition Regulations*, (2) require the government to provide resources or absorb losses greater than other alternative or competing arrangements or transactions, and (3) include the formation of special purpose vehicles or SPV's.~~<sup>6</sup>

**MOVE HERE FROM ALTERNATE** ~~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 arranged by the private partner, (3) conveyance or transfer of real and personal~~

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<sup>6</sup> Staff advises moving the bulk of this paragraph to the Introduction/Preamble and replacing it with the language contained in the Alternative Definition that focused more on risks and rewards discussed at October's Board meeting. Refer to paragraph 3 of the *Introduction - Preamble to Definition*.

## Questions for the Board

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property, multi-sector skills and expertise, and (4) formation of special purpose vehicles or SPV's.

The above description 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 these disclosure requirements.”

**Does the Board agree with staff's recommendation to adopt the Alternate Draft P3 Definition accompanied by an Introduction or Preamble that would include the middle paragraph taken from the other definition? If not, what changes would the Board advise be made?**

- 2. Does the Board generally agree with the approach of creating an Introduction or Preamble to accompany the Alternate Definition? If not, what additional changes would the Board advise be made?**

To address concerns noted regarding terminology, the relevance of referencing the *Federal Acquisition Regulation* (FAR), and that implementation of such a broad statement might be problematic; staff suggests that an Introduction or Preamble to the Alternate Draft P3 Definition be considered.

**Does the Board generally agree with the approach of creating an Introduction or Preamble to accompany the Alternate Definition? If not, what additional changes would the Board advise be made?**

## Questions for the Board

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3. **Does the Board generally agree with the content that would be included in the Introduction or Preamble to the Alternate Definition? If not, what changes would the Board advise be made?**

This Introduction or Preamble would provide context and background to the Alternate Draft P3 Definition by identifying and discussing the following:

- a. Scope of P3's we are concerned with,
- b. General purpose of federal P3s,
- c. General nature of federal P3s,
- d. Risks associated with federal P3s, and
- e. Importance of quantitative and qualitative information.

**Does the Board generally agree with the content that would be included in the Introduction or Preamble to the Alternate Definition? If not, what changes would the Board advise be made?**

4. **Does the Board agree with the staff recommendation to develop and harmonize P3-Centric Disclosures in accordance with the Risk Reporting Framework as explained at Tab B? If not, why not and what changes would the Board advise be made?**

Members and staff have noted the overlap of the risk assumed project and other active projects. To avoid overloading the risk assumed project and delaying progress on other projects but assure that we address risk with some degree of consistency, Tab B recommends that the Board agree to a working framework for risk reporting. Please refer to Tab B for further details.

The unintended consequences of not harmonizing disclosures could result in an entity having inconsistent P3 disclosures over similar arrangements/transactions and creating an incentive for entities to select their disclosures and P3 reporting/recognition based on subjective criteria and not underlying disclosure principles that support the federal reporting objectives.

**Does the Board agree with the staff recommendation to develop and harmonize P3-Centric Disclosures in accordance with the Risk Reporting Framework as explained at Tab B? If not, why not and what changes would the Board advise be made?**

## Questions for the Board

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The objective of this session is to seek Board input concerning progress made on the project since our October meeting. Specifically, staff has incorporated Member comments in the following three matters and revised materials accordingly:

**1. Updated draft P3 Definition**

- Adopt the Alternate Draft P3 Definition

**2. Introduction or Preamble to the Alternate Draft P3 Definition**

- Adopt its use so we can provide context and background to accompany the Alternate Draft P3 Definition

**3. P3-Centric Reporting Characteristics**

- Conclusive Characteristics – reduced from 4 to 5, clarified that we are concerned with long-lived assets and long-term financing liabilities, and identified specific risks associated with exempting P3s from the Federal Acquisition Regulation (FAR)
- Suggestive Characteristics – streamlined the *Value for Money* characteristic and highlighted 2 for potential elimination

**4. Disclosures - Fiscal Exposure (Risk)**

- Develop & Harmonize P3-Centric Disclosures in accordance with the Risk Reporting Framework as explained at Tab B

If you require additional information or wish to suggest another alternative not considered in the staff proposal, please contact staff as soon as possible. In most cases, staff would be able to respond to your request for information and prepare to discuss your suggestions with the Board, as needed, in advance of the meeting. If you have any questions or comments prior to the meeting, please contact me by telephone at 202-512-6841 or by e-mail at [savinid@fasab.gov](mailto:savinid@fasab.gov) with a cc to [paynew@fasab.gov](mailto:paynew@fasab.gov).

## Questions for the Board

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### Questions for the Board

- 1. Does the Board agree with staff's recommendation to adopt the Alternate Draft P3 Definition accompanied by an Introduction or Preamble that would include the middle paragraph taken from the other definition? If not, what changes would the Board advise be made?**
- 2. Does the Board generally agree with the approach of creating an Introduction or Preamble to accompany the Alternate Definition? If not, what additional changes would the Board advise be made?**
- 3. Does the Board generally agree with the content that would be included in the Introduction or Preamble to the Alternate Definition? If not, what changes would the Board advise be made?**
- 4. Does the Board agree with the staff recommendation to develop and harmonize P3-Centric Disclosures in accordance with the Risk Reporting Framework as explained at Tab B? If not, why not and what changes would the Board advise be made?**

**Attachment 1: Disclosures: Relationship to Federal Reporting Objectives**

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**Attachment 1: Disclosures: Relationship to Federal Reporting Objectives**

Federal Reporting Objectives	Examples of Fiscal Exposure (Risk) Disclosures that Meet the Objectives:	
Federal financial reporting should provide information that helps the reader to determine:	Narrative/Qualitative	Quantitative
<p style="text-align: center;"><b>Budgetary Integrity</b></p> <p>1. How budgetary resources have been obtained and used and whether their acquisition and use were in accordance with the legal authorization.</p> <p style="text-align: center;"><b>Operating Performance</b></p> <p>2. The costs of providing specific programs and activities and the composition of, and changes in these costs.</p> <p>3. The efficiency and effectiveness of the government's management of its assets and liabilities.</p>	<p>1. Identification of all costs &amp; contingencies</p> <p>2. Tax arrangements affecting financing/costs</p>	<p>1. Total payment amounts (e.g., cash flows) to and from the federal entity</p> <p>2. Identification of the full fair value of any public property used and/or assets conveyed or constructed</p>

**Attachment 1: Disclosures: Relationship to Federal Reporting Objectives**

Federal Reporting Objectives	Examples of Fiscal Exposure (Risk) Disclosures that Meet the Objectives:	
Federal financial reporting should provide information that helps the reader to determine:	Narrative/Qualitative	Quantitative
<p style="text-align: center;"><b>Operating Performance</b></p> <p>1. The costs of providing specific programs and activities and the composition of, and changes in, these costs.</p> <p style="text-align: center;"><b>Stewardship</b></p> <p>2. Future budgetary resources will likely be sufficient to sustain public services and to meet obligations as they come due, and</p> <p>3. Government operations have contributed to the nation’s current and future well-being.</p>	<p>3. Expected and actual levels of performance</p> <p>4. Major milestones</p> <p>5. Identification of stabilization clauses/compensating events</p> <p>6. Identification of non-compete clauses or agreements</p> <p>7. Identification of termination for convenience provisions</p>	<p>3. Annual payment amounts between government and private partner</p> <p>4. Tariffs, User fees and pricing</p> <p>5. Guarantees and other arrangements that affect financing/costs</p>

## Attachment 1: Disclosures: Relationship to Federal Reporting Objectives

Federal Reporting Objectives	Examples of Fiscal Exposure (Risk) Disclosures that Meet the Objectives:	
Federal financial reporting should provide information that helps the reader to determine:	Narrative/Qualitative	Quantitative
<p style="text-align: center;"><b>Budgetary Integrity</b></p> <p>1. How budgetary resources have been obtained and used and whether their acquisition and use were in accordance with the legal authorization.</p> <p style="text-align: center;"><b>Systems and Control</b></p> <p>2. Transactions are executed in accordance with budgetary and financial laws and other requirements, consistent with the purposes authorized, and are recorded in accordance with federal accounting standards.</p> <p style="text-align: center;"><b>Stewardship</b></p> <p>3. The government's financial position improved or deteriorated over the period.</p> <p>4. Future budgetary resources will likely be sufficient to sustain public services and to meet obligations as they come due.</p> <p>5. Government operations have contributed to the nation's current and future well-being.</p>	<p>8. Rationale for project and for PPP option</p> <p>9. Description of tender process or other selection process</p> <p>10. Project structure and parties to the contract</p> <p>11. Events of default and termination payments</p> <p>12. Independent assurance that all costs &amp; contingencies are considered</p>	

**Attachment 1: Disclosures: Relationship to Federal Reporting Objectives**

Federal Reporting Objectives	Examples of Fiscal Exposure (Risk) Disclosures that Meet the Objectives:	
Federal financial reporting should provide information that helps the reader to determine:	Narrative/Qualitative	Quantitative
<p style="text-align: center;"><b>Stewardship</b></p> <p>1. Government operations have contributed to the nation’s current and future well-being.</p> <p style="text-align: center;"><b>Systems and Control</b></p> <p>2. Transactions are executed in accordance with budgetary and financial laws and other requirements, consistent with the purposes authorized, and are recorded in accordance with federal accounting standards.</p> <p>3. Assets are properly safeguarded to deter fraud, waste, and abuse.</p>	<p>13. Ensuring value for money and/or that costs exceed benefits.</p> <p>14. Analysis of a P3 procurement approach vs. traditional procurement</p>	<p>6. Total payment amounts (e.g., cash flows) to and from the federal entity</p> <p>7. Identification of the full fair value of any public property or assets used</p> <p>8. Other asset transfers</p>