



October 17, 2013

**Memorandum**

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

*Wendy M. Payne*

Through: Wendy M. Payne, Executive Director

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

**OBJECTIVE**

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

1. An updated draft P3 definition/description,
2. P3-Centric Reporting Characteristics, and
3. Fiscal Exposure (risk) disclosures.

In addition, Members will find an attached *P3 Process Flowchart* developed by a P3 Task Force working group comprising agency preparers and auditors who suggest its use in determining for which P3s agencies should provide the P3-Centric disclosures. This waterfall or cascade approach presupposes that we first identify the universe of P3s (see bullet 1 above) and that we then apply *Reporting Entity* and Asset and Liability (de)recognition guidance prior to considering P3-Centric reporting; i.e., applying the conclusive and suggestive characteristics (see bullet 2 above). We would then need to review all existing standards to determine whether P3 disclosure requirements we've developed should be added to those standards.

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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.

## **BRIEFING MATERIAL**

This memo presents background information and questions for the Board.

Attachment 1: *P3 Process Flowchart*.

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

## **BACKGROUND**

At the August 2013 meeting three major topics were discussed:

### **1. Suggested Draft P3 definition/description developed by the P3 Task Force**

Some members had a concern that many of the terms used were too vague to be used in any forthcoming guidance. For example, terms such as "traditional" and "risk-transfer" seemed to require greater explanation. Other members noted that concepts of unusual risks and ownership relationships might need to be worked into the definition whereas others wanted to pare down to definition to just reflect the P3s that would be within the scope of the potential standard. Staff reminded members that (1) the draft definition/description is intended to be universal in nature capturing all types of P3 activities and different classes of assets and, (2) the draft definition/description is intended to be malleable and changes can be made as we progress through the project.

### **2. Revised and newly categorized Potential P3-Centric Reporting Characteristics**

Member feedback on the revised and then-newly categorized (conclusive and suggestive) characteristics was sought and staff was advised to re-write the characteristics as statements and to add language identifying the associated risk involved with each characteristic. The intent of the characteristics is to basically eliminate from reporting those P3 arrangements/transactions that pose no (1) financial asset/liability recognition or de-recognition by any P3 party; and (2) other fiscal exposure/risk that could lead to a liability for any P3 party. Overall, the Board seemed generally satisfied with the characteristics.

### **3. Potential disclosures related to fiscal exposure (risk).**

There was concern about the volume of disclosures this proposal could produce and questions as to whether the financial statements are the appropriate forum for operational or performance information. Generally, the Board seemed more concerned with the risks to which the government is exposed in contrast to what could be considered operational or performance oriented disclosures.

Staff was asked to share this information with the Task Force and to continue making progress towards the next phase dealing with measurement and reporting.

## **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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## Updated Draft P3 Definition/Description

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### Updated Draft P3 Definition/Description

As a result of Member input received at the August meeting staff has updated the draft P3 definition/description as follows:

#### *Edited Board Version of the Updated Draft P3 Definition/Description*

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.~~<sup>2</sup> ~~which allows for more private sector participation than is traditional.~~<sup>3</sup> As a result, federal P3s can (1) ~~exclude contractual protections afforded the government by the *Federal Acquisition Regulations*, fall outside typical federal contracting policies and guidelines,~~ (2) ~~require the government to provide resources or absorb losses greater than other alternative or competing arrangements or transactions be highly complex and sophisticated risk transfer systems where in theory risks are allocated to the party which is best able to manage them,~~ and (3) include the formation of ~~consortiums often called~~ special purpose vehicles or SPV's.<sup>4</sup>

~~Through these arrangements or transactions, the partners typically share resource such as real and personal property, multi-sector skills and expertise, and financial as well as risks and rewards to deliver desired policy outcomes.~~<sup>5</sup>

The above ~~definition-description~~ captures the most widely identified features of federal P3s ~~and many arrangements/transactions.~~<sup>6</sup> 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> S. McCall August Meeting - My closing comment is that I like the four or five sentences but I think that somewhere we need to talk about risk being involved.

<sup>3</sup> Messrs. Granof, McCall, Reger and Allen August Meeting - Members noted concerns with vague terms; in particular "traditional".

<sup>4</sup> N. Dong August Meeting - I am focused less on the distinction between description and definition because I think we can get wrapped around the axle on that. If we are getting tripped up on terms that are vague or ambiguous like typical or traditional then maybe the focus should be how do we use more clearer, more concise language that truly conveys its intent.

<sup>5</sup> M. Granof August Meeting - What I probably would have done is made the definition very short and then at some point describe characteristics separately. When it comes to public/private partnerships, both the definition and the characterization are very hard to come by because you have a lot of different situations.

<sup>6</sup> N. Dong August Meeting - "...maybe the focus should be how do we use more clearer, more concise language that truly conveys its intent."

## Updated Draft P3 Definition/Description

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### ***Clean Board Version of the Updated Draft P3 Definition/Description***

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.

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.

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.

Staff is also providing an alternate draft P3 definition/description for the Board's consideration:

### ***Alternate Draft P3 Definition/Description***

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.

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.

## Adoption of Waterfall (Cascade) Approach

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### Adoption of Waterfall (Cascade) Approach

Selected task force members assisted me in developing a means to exclude additional P3s from consideration for P3-Centric disclosures. The approach is shown in the form of a flow-chart at Attachment 1. The effect would be to exclude from further consideration those P3s 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).

If approved by the Board, the next draft standards will include language to exclude from consideration such P3s.

The benefit is that we rely on existing requirements to ensure reporting objectives are met.

The downside is that we may not have consistent minimum disclosures regarding P3s. For example, some P3s may result in general PP&E being recognized this would not lead to disclosures regarding the nature of the P3 or associated risks.

However, we can achieve consistent minimum disclosures by incorporating P3 disclosure requirements into *Reporting Entity* and asset/liability standards, as appropriate.

## P3-Centric Reporting Characteristics

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### P3-Centric Reporting Characteristics

Although the Board seemed generally satisfied with the characteristics at the August meeting, Members asked staff to write the characteristics as statements and not questions and to add language identifying the associated risk involved with each characteristic.

Please recall that the following characteristics should be applied to assist a federal entity in determining which P3 arrangements or transactions may be eliminated from disclosure requirements, i.e., no disclosure is required if the P3: (1) does not result in an asset or liability recognition or de-recognition by any P3 party; and (2) poses little or no fiscal exposure (risk) that could lead to a loss or a liability for any P3 party.

As a result, staff suggests that we 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.

Staff further notes the relationship between the P3 definition/description and the development of the characteristics. Simply put, the more general a P3 definition/description is, the greater the need to have not only very discrete characteristics, but possibly more of them. Of course, the opposite would be true if the P3 definition/description embodied these discrete characteristics.

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

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

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### **Description of Public-Private Partnerships**

8. 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. 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.

9 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.

### **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>
	[I will integrate this in text of the proposed standards. It is presented here in column format to facilitate review.]
1. The arrangement resulted in the conveyance or creation of an asset or 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 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.
2. The federal entity is a party to an arrangement wherein the private sector partner or special purpose vehicle (SPV) has either borrowed or invested capital contingent upon the federal entity's promise, whether implied or explicit, to make future	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

## P3-Centric Reporting Characteristics

<b>Conclusive Characteristics</b>	<b>Fiscal Exposure (Risk) Rationale Implication</b> <i>[I will integrate this in text of the proposed standards. It is presented here in column format to facilitate review.]</i>
payments.	appropriately recognized.
3. The federal entity participates in or helps sponsor an 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 kept off of budgets and balance sheets. As a result, implicit obligations are not appropriately recognized or disclosed.
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 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 that are 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.
5. The term of the procurement or contract arrangement is longer than 5 years.	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.

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

## P3-Centric Reporting Characteristics

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., threshold.

<p style="text-align: center;"><b>Suggestive Characteristics</b></p>	<p style="text-align: center;"><b>Fiscal Exposure (Risk) Rationale Implication</b></p> <p style="text-align: center; color: red;">[I will integrate this in text of the proposed standards. It is presented here in column format to facilitate review.]</p>
<p>1. A Value for Money or other similar cost-benefit 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>
<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</p>

## P3-Centric Reporting Characteristics

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication [I will integrate this in text of the proposed standards. It is presented here in column format to facilitate review.]
	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.
4. Significant work force duties, activities, or knowledge are cross- shared between public and private sector P3 parties.	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 the personnel or legacy costs. Because such costs were not identified or considered, the government is left absorbing them with no related activity base, 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.
6. Operational performance metrics exist absent strategic milestone metrics.	The presumption is that strategic milestones are best used to monitor project and/or partner performance when the private partner has in fact assumed responsibility and related risk over a given area. However, an indicator that greater agency risk still exists in a given area (either at the inception of the P3 agreement

## P3-Centric Reporting Characteristics

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication [I will integrate this in text of the proposed standards. It is presented here in column format to facilitate review.]
	or assumed by the agency at a later date) is when an agency employs operational performance metrics <u>absent</u> strategic milestone metrics. For example, this could imply that the agency has (1) retained a certain type of volatile risk or a significant amount of risk that warrants fairly close agency monitoring at an operational or granular level, and (2) assumed operational responsibility and the resultant liability. Such a condition could point to increased risk volatility or a significant amount of risk retained or assumed by the agency.
7. Separate payments, as opposed to a unitary payment, are made to the private sector partner.	The presumption is that unitary (i.e., single or lump-sum) payments are best used to monitor project and/or partner performance when the private partner has in fact assumed responsibility and related risk over a given area. However, an indicator that greater agency risk exists (either at the inception of the P3 agreement or assumed by the agency at a later date) is when an agency employs separate payments. Using separate payments could imply that the agency has retained a certain type of volatile risk or a significant amount of risk that warrants fairly close agency monitoring at a granular billing level. Such a condition could point to increased risk volatility or a significant amount of risk retained or assumed by the agency.
8. 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

**P3-Centric Reporting Characteristics**

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<p><b>Suggestive Characteristics</b></p>	<p><b>Fiscal Exposure (Risk) Rationale Implication</b>                      [I will integrate this in text of the proposed standards. It is presented here in column format to facilitate review.]</p>
	<p>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.</p>

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## Disclosures - Fiscal Exposure (Risk)

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### Disclosures - Fiscal Exposure (Risk)

At the August meeting Members were concerned about the volume of disclosures this proposal could produce and questions as to whether the financial statements are the appropriate forum for operational or performance information. Generally, the Board seemed more concerned with the financial risks to which the government is exposed in contrast to what could be considered operational or performance oriented risks.

Although staff shares this concern, it is important to note that FASAB's reporting objectives extend well beyond purely financial reporting to include: stewardship, budgetary integrity, operating performance and systems & control.

#### ***General Approach to Disclosures<sup>7</sup> - Narrative & Quantitative***

Due to the relative complexity and potential voluminous nature of P3s that an entity might be party to, the disclosures would permit entities to provide broad and summarized information 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.

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.

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

#### ***Factors in Determining Disclosures – Materiality and Some Others***

**Materiality** - As is the custom, P3 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.

**Some Others** - In addition to materiality, the following factors could be considered in making judgments about the extent of appropriate P3 disclosures:

- a. Relevance to reporting objectives (For related staff analysis, please refer to pages 16-19)
- b. Nature and magnitude of the potential risks/exposures or benefits associated with the relationship
- c. Complexity of the relationship

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<sup>7</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)

### *Suggested P3 Disclosures That Help Meet User Information Needs*

The P3 disclosure examples suggested by the Task Force were reviewed by the Board in August resulting in Member concerns about the volume of P3 disclosures that would be required. The Task Force has yet to address the Board's concerns and is expected to do so shortly after the October Board meeting.

Staff expects that some of the disclosures slated for elimination or consolidation as shown below will be met with resistance from various Task Force representatives. Staff anticipates that arguments will be made regarding the need for transparency and context around the financial information. Nonetheless, upon Board concurrence, staff will present the following revisions to the Task Force for review and comment.

Generally, a reader should have an understanding of:

<b>Task Force Suggested August 2013</b>	<b>Staff Draft - Pending TF Review December 2013</b>
1. The nature and rationale or purpose for the P3 arrangement or transaction, or categories of P3s.	1. The nature, purpose, benefits and risks of the P3 or categories of P3s.
2. The process used to qualify and select a private partner.	2. ELIMINATE
3. The structure of the P3 including its term and events that could lead to termination or default.	3. The occurrence of a condition or event that may lead to termination of the P3 arrangement.
4. The entity's rights and obligations under the P3 arrangement/transaction.	4. ELIMINATE
5. The purported benefits of the P3 in contrast to the more traditional procurement approaches.	5. ELIMINATE
6. The relative benefits/revenues being received in exchange for all of the government's consideration, monetary and non-monetary.	6. Significant balances or amounts of transactions between the government and the P3 during the reporting period.
7. Significant risks the P3 partners are undertaking in this arrangement.	7. Consolidate into #1 above.
8. Amounts the government can be reasonably expected to incur/pay over the life of the P3 arrangement or transaction.	8. Scheduled payments, or an estimate of amounts the government can be reasonably expected to pay, over the life of

**Disclosures - Fiscal Exposure (Risk)**

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<p align="center"><b>Task Force Suggested August 2013</b></p>	<p align="center"><b>Staff Draft - Pending TF Review December 2013</b></p>
	<p>the P3 arrangement or transaction.</p>
<p>9. Financial results of the P3 and how well the P3 arrangement/transaction is meeting its expected outcome(s).</p>	<p>9. Financial results of the P3 and how well the P3 arrangement/transaction is meeting its expected outcome(s).</p>

**Disclosures - Fiscal Exposure (Risk)**

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*Disclosures<sup>8</sup> and their Relationship to Federal Reporting Objectives*

<b>Federal Reporting Objectives</b>	<b>Examples of Fiscal Exposure (Risk) Disclosures that Meet the Objectives:</b>	
<b>Federal financial reporting should provide information that helps the reader to determine:</b>	<b>Narrative/Qualitative</b>	<b>Quantitative</b>
<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>

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<sup>8</sup> The examples are primarily project specific and as such, they will need to be tailored and made to apply to an entity's overall grouping of P3 arrangements or transactions so that users are presented with information that is comprehensive and material to an entity's financial statements and without placing an undue burden on preparers to provide P3 specific or granular level information.

**Disclosures - Fiscal Exposure (Risk)**

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>

**Disclosures - Fiscal Exposure (Risk)**

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>	

**Disclosures - Fiscal Exposure (Risk)**

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>

### Questions for the Board

- 1. Of the two P3 definitions/descriptions presented, does the Board prefer one over the other? Are there elements in either one that should be combined, deleted, changed, etc., in order to develop a singular definition/description?**

As a result of Member input received at the August meeting staff has updated the draft P3 definition/description as follows:

#### ***Clean Board Version of the Updated Draft P3 Definition/Description***

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.

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.

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.

#### ***Alternate Draft P3 Definition/Description***

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.

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.

## Questions for the Board

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**Of the two P3 definitions/descriptions presented, does the Board prefer one over the other? Are there elements in either one that should be combined, deleted, changed, etc., in order to develop a singular definition/description?**

- 2. Have the P3-Centric Reporting Characteristics; Conclusive and Suggestive been satisfactorily revised to reflect (1) affirmative statements and (2) associated risks? If not, what additional changes would the Board advise be made?**

Although the Board seemed generally satisfied with the characteristics at the August meeting, Members asked staff to write the characteristics as statements and not questions and to add language identifying the risk involved.

**Have the P3-Centric Reporting Characteristics; Conclusive and Suggestive been satisfactorily revised to reflect (1) affirmative statements and (2) associated risks? If not, what additional changes would the Board advise be made?**

- 3. Does the Board generally agree with the revised list of disclosures? If not, what changes would the Board advise be made?**

The P3 disclosure examples suggested by the Task Force were reviewed by the Board in August resulting in Member concerns about the volume of P3 disclosures that would be required. The Task Force has yet to address the Board's concerns and is expected to do so shortly after the October Board meeting.

In SFFAC 1, *Objectives of Federal Financial Reporting*, the Board centered on two fundamental values of governmental accounting and financial reporting; "accountability" and its corollary, "decision usefulness", stating that they comprise the foundation for the federal financial reporting objectives. To that end, staff proposes that we show the following list of disclosures to the task force for review and comment

1. The nature, purpose, benefits and risks of the P3 or categories of P3s.
2. The occurrence of a condition or event that may lead to termination of the P3 arrangement.
3. Significant balances or amounts of transactions between the government and the P3 during the reporting period.
4. Scheduled payments, or an estimate of amounts the government can be reasonably expected to pay, over the life of the P3 arrangement or transaction.
5. Financial results of the P3 and how well the P3 arrangement/transaction is meeting its expected outcome(s).

## Questions for the Board

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**Does the Board generally agree with the revised list of disclosures? If not, what changes would the Board advise be made?**

### **4. Does the Board support further development of the (waterfall) approach illustrated in the attached P3 Process Flowchart?**

A working group of the P3 Task Force comprised of agency preparers and auditors have developed a *P3 Process Flowchart* and suggest its use in determining reportable P3s. This waterfall or cascade approach presupposes that we first identify the universe of P3s (refer to the updated draft P3 definition/description) and that we then apply (1) *Reporting Entity* and (2) Asset and Liability (de)recognition guidance prior to considering specific P3-Centric reporting guidance; i.e., applying the conclusive and suggestive characteristics.

Please note that if we proceed with this approach we would need to review all existing standards to determine whether P3 disclosure requirements we've developed should be added to those standards.

**Does the Board support further development of the (waterfall) approach illustrated in the attached P3 Process Flowchart?**

## 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 August meeting. Specifically, staff has incorporated Member comments in the following three matters and revised materials accordingly:

1. An updated draft P3 definition/description,
2. P3-Centric Reporting Characteristics, and
3. Fiscal Exposure (risk) disclosures.

In addition, Members will find an attached P3 Process Flowchart (to be read horizontally) developed by task force members who suggest its use to assist preparers and auditors in determining reportable P3s. This waterfall or cascade approach presupposes that we identify the universe of P3s (see bullet 1 above) and that we then apply Federal Entity and Asset and Liability (de)recognition guidance prior to considering P3-Centric reporting; i.e., conclusive and suggestive characteristics (see bullet 2 above). We would then need to review all existing standards to determine whether P3 disclosure requirements we've developed should be added to those standards.

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-

## Questions for the Board

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### Questions for the Board

- 1. Of the two P3 definitions/descriptions presented, does the Board prefer one over the other? Are there elements in either one that should be combined, deleted, changed, etc., in order to develop a singular definition/description?**
- 2. Have the P3-Centric Reporting Characteristics; Conclusive and Suggestive been satisfactorily revised to reflect (1) affirmative statements and (2) associated risks? If not, what additional changes would the Board advise be made?**
- 3. Does the Board generally agree with the revised list of disclosures? If not, what changes would the Board advise be made?**
- 4. Does the Board support further development of the (waterfall) approach illustrated in the attached P3 Process Flowchart?**

**Attachment 1: P3 Process Flowchart**

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**Attachment 1: P3 Process Flowchart**

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# Determining Reportable P3's

August 29, 2013 version

