



February 14, 2014

Memorandum

To: Members of the Board

From: Domenic N. Savini, Assistant Director

Through: Wendy M. Payne, Executive Director

Subject: **Draft Exposure Draft Materials: *Public-Private Partnerships: Disclosure Requirements.* – Tab F¹**

MEETING OBJECTIVE

The objective for the March 2014 meeting is to **review draft Exposure Draft materials** prepared based upon guidance received from members prior to and during the December 2013 meeting **so that staff can either (1) begin pre-balloting procedures or (2) obtain further direction** for incorporation into the next revision of the draft Exposure Draft document.

BRIEFING MATERIALS

1. **Attachment 1 - Track Changes Version** of draft Exposure Draft on *Public-Private Partnerships: Disclosure Requirements.*

¹ The staff prepares board meeting materials to facilitate discussion of issues at the board meeting. This material is presented for discussion purposes only; it is not intended to reflect authoritative views of the FASAB or its staff. Official positions of the FASAB are determined only after extensive due process and deliberations.

NEXT STEPS

NEXT STEPS

March – April 2014: Develop draft Exposure Draft

- Revise Exposure Draft and identify changes,
- Email pre-ballot draft (note: the P3 project will not be on the April 2014 agenda if approved before meeting and there are no outstanding issues)
 - ✓ Email ballot draft early April with ballots due at April meeting

May – August 2014: Issue Exposure Draft

- Proceed with exposure draft for 90-day comment period upon receipt of five affirmative ballots

August - October 2014: Finalize Standards for disclosures

- Proceed with a final ballot and finalize Standards upon receipt of six affirmative ballots

January 2015 – September 2017: Begin next Phase of project

- Address recognition, measurement and reporting issues as appropriate.
 - ✓ Develop implementation guidance and/or standards in concert with leases and reporting entity projects.

BACKGROUND

BACKGROUND

At the December 2013 meeting staff briefed the Board concerning four matters: (1) an updated draft P3 definition, (2) inclusion of an introduction to precede the draft P3 definition, (3) suggested revisions to the P3-Centric reporting characteristics, and (4) developing and harmonizing P3-Centric Disclosures in accordance with the *Risk Disclosure Framework* presented at that meeting as TAB B.

Although there was some discussion about refining the proposed definition (i.e., should it include reference to government-sponsored financing) and one of its terms (i.e., sharing of multi sector skills), the Board agreed to proceed with the staff's proposed definition. The majority of the members recognized and agreed with the proposed P3 definition and P3 identification process. That is, the P3 definition is intended to be a broad, umbrella-like definition that would capture P3s from a wide array of arrangements and transactions and then subject those P3s to a filtering process that would use risk-based characteristics to identify those P3 arrangements or transactions that create fiscal exposure (risk) and as a result, be subject to forthcoming disclosure requirements.

The Board then considered the example of an introductory section that would precede the proposed definition. One point noted here concerning P3 risks that could lead to fiscal exposure was whether it is more appropriate to refer to the concept of *the acceptance of a responsibility* as opposed to a concept referring to a *legal liability*.²

The Board also considered the content for the introduction; the scope, general purpose, and general nature of P3s, as well as associated risks and the use of quantitative and qualitative disclosures. The discussion focused on qualitative disclosures and whether auditors can attest to that information in all cases; such as the rationale for entering into a P3. Staff reviewed two examples of potential qualitative disclosures and some members noted concern with how auditors might be perceived as needing to evaluate management's judgmental decisions.

The final area of discussion was the proposal to develop disclosures considering the views of the task force and with the application of the risk disclosure framework. There was a general discussion about the unique aspects of certain P3s, what risks are present, and what disclosures might be made about them. Members agreed to develop and harmonize disclosure requirements in accordance with the Risk Disclosure Framework referenced above.

Staff agreed to meet with the P3 Task Force to discuss matters and to further develop and refine P3-Centric characteristics and disclosures, respectively.

If you require additional information or wish to suggest another alternative not considered in the staff paper, please contact me as soon as possible. If you have any questions or comments, please contact me by telephone at 202.512.6841 or by e-mail at savinid@fasab.gov.

² Staff subsequently adopted the recommendation to refer to the concept of *the acceptance of a responsibility* as opposed to a concept referring to *legal liability*.

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Questions for the Board

Questions for the Board

Question 1 – Staff has written an Introduction to precede the definition so that appropriate context and background can be provided to preparers when referring to the draft P3 Definition. The following 5 topical areas have been incorporated into the Introduction:

1. Scope of P3's we are concerned with,
2. General purpose of federal P3s,
3. General nature of federal P3s,
4. Risks associated with federal P3s, and
5. Importance of quantitative and qualitative information.

Question 1 - Refer to Attachment 1, paragraphs 1 through 12:
Does the Board believe that the Introduction adequately (1) addresses each of the 5 topical areas and (2) satisfactorily addresses the Board's intent concerning the appropriate context and background that should precede the P3 definition?

Question 2 - Via consultation with the Task Force staff has identified 4 Conclusive Characteristics and 6 Suggestive Characteristics that reporting entities would be required to use to identify those P3 arrangements or transaction that would be subject to additional disclosure requirements. The proposed characteristics follow:

Conclusive Characteristics	Suggestive Characteristics
1. The arrangement resulted in the conveyance or creation of a long-lived asset or long-term financing liability.	1. A Value for Money analysis is performed.
2. The federal entity participates in, helps sponsor, or is party to an SPV, partnership, trust, etc.	2. The principal arrangement is not managed by an Administrative Contracting Officer (ACO) and/or Procurement Contracting Officer (PCO).

Questions for the Board

3. The term of the procurement or contract arrangement is longer than 5 years.	3. The consideration or items given up in an arrangement or their value are not readily apparent.
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.	4. Significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.
	5. The focus is more on collaboration and informal, real-time, resolution processes as opposed to formal, contractual, administrative processes.
	6. 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.

Question 2 - Refer to Attachment 1, paragraphs 19 and 20:
Does the Board believe that the identified characteristics: (1) are representative of the underlying risk that a P3 could contain, (2) are properly categorized between Conclusive and Suggestive, and (3) satisfactorily explain to users the related fiscal exposure (risk) rationale implication?

Questions for the Board

Question 3 - Via consultation with the Task Force staff has identified several disclosures deemed important to P3 arrangements/transactions. The proposed disclosures would reveal:

- a. The purpose or objective for the P3 arrangement or transaction to include the relative benefits/revenues being received in exchange for all of the government's consideration, monetary and non-monetary.
- b. The decision criteria for selecting a P3 arrangement or transaction to include the entity's statutory authority for entering into the P3.
- c. Type of funding, federal or otherwise used to meet mission requirements and service delivery needs to support the P3; e.g., appropriated, non-appropriated, private capital or investment.
- d. The operational and financial structure of the P3 including the entity's rights and responsibilities and amounts the government can be reasonably expected to incur/pay over the life of the P3 arrangement or transaction.
- e. Whether the private partner(s), to include any special purpose vehicle (SPV), have borrowed or invested capital contingent upon the entity's promise to pay whether implied or explicit.
- f. Identification of the significant risks the P3 partners are undertaking.
- g. Material violations of legal and contractual provisions governing the P3 arrangement or transaction.

Question 3 - Refer to Attachment 1, paragraphs 21 through 24:

Does the Board take exception to any of the recommended disclosures? If so, please explain why and note if an alternative would be appropriate.

Questions for the Board

Question 4 - Staff recommends that these standards become effective for periods beginning after September 30, 2015. Earlier implementation is encouraged.

Question 4 – Refer to Attachment 1, paragraph 25:
Does the Board agree with proposed implementation date? If not, what period would the Board prefer establishing?

Question 5 – The draft ED solicits answers to the following 5 questions:

1. Do you agree or disagree that the P3 definition proposed at paragraph 17 captures the most widely identified features of federal P3s?
2. Do you agree or disagree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics should be subject to the disclosure requirements proposed at paragraphs 21 – 24?
3. Do you agree or disagree with the risk-based characteristics and their related classification as either Conclusive or Suggestive characteristics proposed at paragraphs 19 and 20?
4. Do you agree or disagree with the component entity report disclosures proposed at paragraph 23?
5. Do you agree or disagree that entities should be permitted to aggregate or group disclosures by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, etc. as proposed at paragraph 21?

Question 5 - Refer to Attachment 1, pages 8 - 10:
Does the Board generally agree with each of the questions being asked? If not, please identify the question along with changes you would like to see made. Are there any other questions that the Board would like to ask of the community? If so, please explain why and feel free to suggest appropriate language.

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Attachment 1 – Draft ED: Track Changes Version of *Public-Private Partnerships: Disclosure Requirements*.

Attachment 1 – Draft ED: Track Changes Version of *Public-Private Partnerships: Disclosure Requirements*.

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Federal Accounting Standards Advisory Board

**Public-Private Partnerships
Disclosure Requirements**

Statement of Federal Financial Accounting Standards

Exposure Draft

Written comments are requested by **August 13, 2014**

May 15, 2014

Working Draft – Comments Are Not Requested on This Draft

THE FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

The Secretary of the Treasury, the Director of the Office of Management and Budget (OMB), and the Comptroller General, established the Federal Accounting Standards Advisory Board (FASAB or "the Board") in October 1990. FASAB is responsible for promulgating accounting standards for the United States Government. These standards are recognized as generally accepted accounting principles (GAAP) for the federal government.

An accounting standard is typically formulated initially as a proposal after considering the financial and budgetary information needs of citizens (including the news media, state and local legislators, analysts from private firms, academe, and elsewhere), Congress, federal executives, Federal program managers, and other users of federal financial information. The proposed standards are published in an Exposure Draft for public comment. In some cases, a discussion memorandum, invitation for comment, or preliminary views document may be published before an exposure draft is published on a specific topic. A public hearing is sometimes held to receive oral comments in addition to written comments. The Board considers comments and decides whether to adopt the proposed standard with or without modification. After review by the three officials who sponsor FASAB, the Board publishes adopted standards in a Statement of Federal Financial Accounting Standards. The Board follows a similar process for Statements of Federal Financial Accounting Concepts, which guide the Board in developing accounting standards and formulating the framework for federal accounting and reporting.

Additional background information is available from the FASAB or its website:

- "Memorandum of Understanding among the Government Accountability Office, the Department of the Treasury, and the Office of Management and Budget, on Federal Government Accounting Standards and a Federal Accounting Standards Advisory Board."
- "Mission Statement: Federal Accounting Standards Advisory Board", Exposure drafts, Statements of Federal Financial Accounting Standards and Concepts, FASAB newsletters, and other items of interest are posted on FASAB's website at: www.fasab.gov.

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Federal Accounting Standards Advisory Board

May 15, 2014

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

The Federal Accounting Standards Advisory Board (FASAB or the Board) is requesting comments on the exposure draft of a proposed Statement of Federal Financial Accounting Standards entitled, *Public-Private Partnerships: Disclosure Requirements*. Specific questions for your consideration appear on page 8 but you are welcome to comment on any aspect of this proposal. If you do not agree with the proposed approach, your response would be more helpful to the Board if you explain the reasons for your position and any alternative you propose. Responses are requested by August 13, 2014.

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

We have experienced delays in mail delivery due to increased screening procedures. Therefore, please provide your comments in electronic form. Responses in electronic form should be sent by e-mail to fasab@fasab.gov. If you are unable to provide electronic delivery, we urge you to fax the comments to (202) 512-7366. Please follow up by mailing your comments to:

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

The Board's rules of procedure provide that it may hold one or more public hearings on any exposure draft. No hearing has yet been scheduled for this exposure draft, or A public hearing has been scheduled at 9:00 AM on Month Day, Year, in Room 7C13 at the GAO Building, 441 G Street, NW, Washington, D.C.

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

Tom L. Allen
Chairman

1 Executive Summary**2 What is the Board proposing?**

3 The Board will be providing implementation guidance to ensure that the full costs
4 of Public-Private Partnerships (P3s) are transparent in the reporting entity's
5 general purpose federal financial reports (GPFFRs). This proposal first
6 addresses disclosure requirements to aid users in understanding the nature of
7 P3s and related fiscal exposures. The requirements herein would not replace
8 existing disclosure requirements in other statements of federal financial
9 accounting standards (SFFAS). P3s are complex arrangements and an entity
10 would apply all applicable standards to report relevant information in the notes
11 regarded as an integral part of the basic financial statement.

**12 How would this proposal improve federal financial reporting and contribute
13 to meeting the federal financial reporting objectives?**

14 As a result of an increasing use of P3s, the Board has identified a need for
15 enhanced disclosures regarding these complex agreements. By addressing
16 disclosure issues as a first step, the Board will ensure information regarding the
17 nature of these complex agreements and their risks is provided. The Board also
18 believes there is a need for clarity in respect to the (full) costs of these complex
19 arrangements or transactions and will continue working with stakeholders to
20 identify measurement and recognition issues pertinent to these complex
21 agreements.

22 As such, the proposed standards represent a first step toward improving
23 reporting on P3s. The Board is working, and will continue to work, closely with
24 stakeholders interested in improving the accounting and reporting of these
25 complex arrangements or transactions. As stated above, future proposals will
26 address measurement and recognition guidance that may be needed for certain
27 P3 transactions.

28 Of the four objectives outlined in Statement of Federal Financial Accounting
29 Concepts (SFFAC) 1, *Objectives of Federal Financial Reporting*, the operating
30 performance and budgetary integrity objectives are identified as being most
31 important for P3 reporting.¹ P3-Centric reporting is important to meeting these
32 objectives because the federal government is accountable to citizens for the
33 proper stewardship and administration of its resources. Because P3s are a form
34 of investment, they should be adequately disclosed in order to assist report users
35 in determining: (a) what and where are the important assets of the U.S.
36 government and how effectively are they being managed and (b) did the
37 government's financial position improve or deteriorate over the period.

¹ SFFAC 1, *Objectives of Federal Financial Reporting*, September 2, 1993, par. 9-10.

Operating Performance Objective

Federal financial reporting should assist report users in evaluating the service efforts, costs, and accomplishments of the reporting entity; the manner in which these efforts and accomplishments have been financed; and the management of the entity's assets and liabilities. Federal financial reporting should provide information that helps the reader to determine:

- the costs of providing specific programs and activities and the composition of, and changes in, these costs;
- the efforts and accomplishments associated with federal programs and the changes over time and in relation to costs; and
- the efficiency and effectiveness of the government's management of its assets and liabilities.

Budgetary Integrity Objective

Federal financial reporting should assist in fulfilling the government's duty to be publicly accountable for monies raised through taxes and other means and for their expenditure in accordance with the appropriations laws that establish the government's budget for a particular fiscal year and related laws and regulations. Federal financial reporting should:

- provide information that helps the reader to determine how budgetary resources have been obtained and used and whether their acquisition and use were in accordance with the legal authorization,
- the status of budgetary resources, and
- how information on the use of budgetary resources relates to information on the costs of program operations and whether information on the status of budgetary resources is consistent with other accounting information on assets and liabilities.

Source: SFFAC 1

- 1 The ultimate benefits of developing additional disclosure principles include but are not
2 limited to:
- 3 a. Developing FASAB terminology and guidance that is meaningful to federal
4 agencies and users.
- 5 b. Improving consistency in definitions so that information is comparable among
6 agencies.

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1 **Questions for Respondents**

2 The FASAB encourages you to become familiar with all proposals in the Statement
3 before responding to the questions in this section. In addition to the questions below,
4 the Board also would welcome your comments on other aspects of the proposed
5 Statement.

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

11 Because the proposals may be modified before a final Statement is issued, it is
12 important that you comment on proposals that you favor as well as any that you do not
13 favor. Comments that include the reasons for your views will be especially appreciated.

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

18 Wendy M. Payne, Executive Director
19 Federal Accounting Standards Advisory Board
20 Mailstop 6H19
21 441 G Street, NW, Suite 6814
22 Washington, DC 20548

23 All responses are requested by **August 13, 2014.**

Q1. The Board proposes defining the term “public-private partnerships” as shown below:

Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private sector entities to provide a service or an asset for either government or general public use where in addition to the sharing of resources, each party shares in the risks and rewards 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, or (4) formation of special purpose vehicles (SPV's).

Do you agree or disagree that the P3 definition proposed at paragraph 17 captures the most widely identified features of federal P3s (refer to paragraphs A7 – A9 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Q2. The Board, in consultation with the P3 Task Force has developed P3 risk-based characteristics that an entity can use to ascertain what P3s, if any, should require disclosure. The characteristics are intended to apply to all types of P3's; construction, housing, utilities, military depots, etc. These characteristics may be used as an entity filter that would eliminate disclosing P3 arrangements/transactions that pose little or no (1) financial recognition or de-recognition concerns, or (2) other risk that could lead to fiscal exposure; e.g. a liability.

Do you agree or disagree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics should be subject to the disclosure requirements proposed at paragraphs 21 – 24 (refer to paragraphs A10 – A11 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Q3. The Board, in consultation with the P3 Task Force proposes that the P3 risk-based characteristics be categorized as either: Conclusive characteristics - where answering “Yes” to any 1 characteristic means the P3 arrangement or transaction must be subject to disclosures; or Suggestive characteristics - where answering “Yes” to any 1 characteristic suggests that the P3 arrangement or transaction may be subject to disclosures but that this 1 Suggestive characteristic must be considered in the

1 aggregate with all the other Suggestive characteristics before reaching a final decision.
2 Each conclusive characteristic is meant to be definitive whereas each suggestive
3 characteristic will require entity judgment as each one is analyzed in connection with the
4 other suggestive characteristics. The conclusive and suggestive characteristics are
5 presented at paragraphs 19 to 20 and more fully discussed at paragraphs A12 – A13.

6 **Do you agree or disagree with the risk-based characteristics and their related**
7 **classification as either Conclusive or Suggestive characteristics proposed at**
8 **paragraphs 19 and 20 (refer to paragraphs A12 – A13 for a detailed discussion**
9 **and related explanations)? Please provide the rationale for your answer.**

10
11 Q4. The Board proposes disclosures that would reveal:

- 12 a. The purpose or objective for the P3 arrangement or transaction to include
13 the relative benefits/revenues being received in exchange for all of the
14 government's consideration, monetary and non-monetary.
- 15 b. The decision criteria for selecting a P3 arrangement or transaction to
16 include the entity's statutory authority for entering into the P3.
- 17 c. Type of funding, federal or otherwise used to meet mission requirements
18 and service delivery needs to support the P3; e.g., appropriated, non-
19 appropriated, private capital or investment.
- 20 d. The operational and financial structure of the P3 including the entity's
21 rights and responsibilities and amounts the government can be reasonably
22 expected to incur/pay over the life of the P3 arrangement or transaction.
- 23 e. Whether the private partner(s), to include any special purpose vehicle
24 (SPV), have borrowed or invested capital contingent upon the entity's
25 promise to pay whether implied or explicit.
- 26 f. Identification of the significant risks the P3 partners are undertaking.
- 27 g. Material violations of legal and contractual provisions governing the P3
28 arrangement or transaction.

29 **Do you agree or disagree with the component entity report disclosures proposed**
30 **at paragraph 23 (refer to paragraphs A14 – A16 for a detailed discussion and**
31 **related explanations)? Please provide the rationale for your answer.**

1

2 Q5. The Board proposes that due to the relative complexity and potentially voluminous
3 nature of P3s that an entity might be party to, the proposed disclosures would permit
4 entities to provide broad and summarized information instead of unique or discrete
5 arrangement or transaction detail. For example, disclosures of P3 arrangements or
6 transactions could be grouped by an entity's strategic objectives, departmental or
7 bureau categorizations, program budget classifications, etc. In this way users are
8 presented with information that is comprehensive and material to an entity's financial
9 statements without placing an undue burden on preparers to provide P3 specific or
10 granular level information.

11 **Do you agree or disagree that entities should be permitted to aggregate or group**
12 **disclosures by an entity's strategic objectives, departmental or bureau**
13 **categorizations, program budget classifications, etc. as proposed at paragraph 21**
14 **(refer to paragraphs A17 – A18 for a detailed discussion and related**
15 **explanations)? Please provide the rationale for your answer.**

16

17 Q6. The Board encourages respondents to not only provide input concerning any and
18 all aspects of the proposed changes thus far discussed, but also other changes, points,
19 issues and/or considerations which may not have been specifically addressed in this
20 exposure draft. In addition, the basis for conclusions explains the Board's goals for this
21 project (see comments beginning at paragraph A1) and also discusses other issues
22 raised by Task Force members as well as experts and practitioners both within and
23 external to government (as an example, see paragraphs A4 through A6).

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

1 Introduction

2 Purpose

- 3 1. The Board recognizes that the accounting and reporting issues regarding
4 **public-private partnerships (P3s)**² are extremely complex, involving a
5 wide array of assets and liabilities. Adding to this complexity is that P3s by
6 their very design transfer or share various forms of risk between the P3
7 partners. Such risk allocation strategies are in essence, the very incentives
8 that serve as the foundation or building blocks upon which P3s are entered
9 into. As a result, an entity must understand how much risk resides in an
10 arrangement or transaction and how much of that risk has been (1)
11 transferred to the private partner, (2) shared with the private partner, and (3)
12 retained by the entity (i.e., government sponsor). Such an analysis relies on
13 a thorough understanding of the underlying contractual agreements,
14 guarantees, insurance and indemnification strategies as well as the
15 existence and nature of any underlying capital buffer that might exist; i.e.,
16 debt and equity investors' participation. It is important to note that entities
17 can execute P3s via **structural arrangements** through the use of special
18 purpose vehicles (SPV's) and/or directly as **program transactions**.
19 Furthermore, many P3s are either discrete (long-term) leases or involve
20 aspects of leasing.
- 21 2. Because fairly robust FASAB guidance exists regarding the recognition and
22 measurement of assets/liabilities and revenues/expenses, the Board
23 believes that the complexities described above necessitate the
24 establishment of disclosure requirements as a first step to developing
25 uniform principles-based guidance, and identifying potential gaps in existing
26 guidance. It should be noted that the Board also plans to address
27 measurement, recognition and reporting issues through continued
28 consultation with stakeholders which could lead to the issuance of additional
29 guidance and/or standards.
- 30 3. The Board is committed to providing timely guidance via the standard-
31 setting process that is responsive to the complex P3 issues facing reporting
32 entities. As such, the Board has identified the need for clarity in respect to
33 questions that arise concerning the full costs, including risk (i.e., fiscal
34 exposure) of these complex arrangements.
- 35 4. As such, the proposed Statement represents a first step toward improving
36 the reporting on P3s. The Board is working, and will continue to work,
37 closely with stakeholders interested in improving the accounting and
38 reporting of these complex arrangements or transactions. By addressing

² Terms defined in the Glossary are shown in bold-face the first time they appear.

disclosure issues as a first step, the Board will facilitate continued cooperation and greater interest in identifying areas requiring attention while minimizing preparer burden.

5. This proposal does not alter financial reporting requirements but may result in changes in practice due to the establishment of the proposed P3 definition.

6. This proposed Statement addresses 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.

7. From the point of view of the entity, entering into a P3 may be seen as beneficial and in some cases essential for a variety of reasons. Entities may turn to the private sector to effectively deliver targeted, less costly operational efficiencies which optimize the delivery of facilities, goods and/or services. Specifically, 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.

8. 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 3rd 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.

9. Because of the inherent risks involved in entering into such long term agreements, some of which involve government assets, P3s require specific (P3-Centric) disclosures to help foster accountability and sound accounting; i.e., capturing costs, revenues, liabilities, and assets while disclosing associated risks; i.e., fiscal exposure. This proposed 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, *Accounting for Liabilities of the Federal Government*,

Comment [DNS1]: 18 Dec 2013 Board Meeting – Mr. Allen requested that this section be entitled "Introduction" and not "Preamble".

3 Feb – ED requested that Introduction to the definition be placed in this section marked "Introduction" to avoid confusion that could occur by having another introduction section in the Proposed Standards portion of the draft ED immediately preceding the definition.

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, and

c. Potential gains and impairment of nonfinancial assets are essential components in P3s requiring appropriate disclosure.

10. It is important to note that disclosures comprise quantitative and qualitative information and that not all P3 risks lead to fiscal exposure or 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.³ 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.

11. 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 entity may have to absorb any of the project's private debt, (3) that the entity will not achieve expected returns over the long-term on its investments in Limited Partnerships, (4) political pressures will ~~lead to a government-acknowledged event where an entity assumes financial responsibility for the event~~⁴ ~~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.

12. The objective of this proposed 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.

Materiality

13. The provisions of this Statement need not be applied to immaterial items. The determination of whether an item is material depends on the degree to which omitting or misstating information about the item makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or the misstatement.

³ Statement of Federal Financial Accounting Concepts 1: *Objectives of Federal Financial Reporting*.

⁴ Statement of Federal Financial Accounting Standard 5: Accounting for Liabilities of the Federal Government, paragraph 30.

Comment [DNS2]: 18 Dec 2013 Board Meeting – Messrs. Allen and Dacey. Mr. Allen expressed concern over the use of the term “legal”. Mr. Dacey referred to SFFAS 5 for guidance.

Staff: Concurs. Please see suggested edit and FN reference to SFFAS 5.

Effective Date

14. This proposed Statement would become effective for periods beginning after September 30, 2015. Earlier implementation is encouraged.

DRAFT

1 Proposed Standard

2 Scope

- 3 15. This Statement applies to federal reporting entities that prepare general
4 purpose federal financial reports (GPFFRs) in conformance with generally
5 accepted accounting principles (GAAP) as defined by paragraphs 5 through
6 8 of Statement of Federal Financial Accounting Standards (SFFAS) 34, *The*
7 *Hierarchy of Generally Accepted Accounting Principles*, including the
8 Application of Standards issued by the Financial Accounting Standards
9 Board.
- 10 16. The Statement provides a general definition of P3s and related disclosure
11 criteria. The arrangements or transactions that fall within the scope of this
12 Statement should be assessed against the Conclusive and Suggestive
13 characteristics to identify those subject to these disclosure requirements.

14 Definition of P3s

- 15 17. Federal public-private partnerships (P3s) are contractual arrangements or
16 transactions between public and private sector entities to ~~deliver~~ provide a
17 service or an asset for either government or general public use where in
18 addition to the sharing of resources, each party shares in the risks and
19 rewards potential of said arrangements or transactions. Sharing of risks and
20 rewards is evidenced by conditions such as (1) agreements covering a
21 significant portion of the economic life of a project or asset, and/or lasting
22 more than five years, (2) financing arranged by the private partner, (3)
23 conveyance or transfer of real and personal property, multi-sector skills and
24 expertise, ~~and or~~ (4) formation of **special purpose vehicles** ~~(or SPV's)~~⁵.
- 25 18. The above definition captures the most widely identified features of federal
26 P3s. P3s should be assessed against the Conclusive and Suggestive
27 characteristics presented below to identify those subject to these disclosure
28 requirements.

29 Identification of P3s Requiring Disclosure

- 30 19. If any one of the following Conclusive Characteristics is met, the P3
31 arrangement or transaction ~~must be considered for P3-Centric disclosure~~
32 should disclose the information at paragraph 23.

⁵ Special Purpose Vehicles (SPVs), also commonly called Special Purpose Entities (SPEs), are entities created for a specific, limited and normally temporary purpose. An SPV can be a corporation, trust, partnership, limited-liability company or some type of Variable Interest Entity (VIE). They are often an integral part of public private partnerships because of their risk-containment nature of isolating participating entities from financial risk.

Comment [DNS3]: M. Granof Email dated 15 December 2013. For precision and greater clarity.

Staff: Concur.

Comment [DNS4]: S. Showalter Email dated 9 Dec 2013. The alternative definition contains 4 conditions. Do you mean for all 4 to be required? Use of "and" implies all four conditions are necessary for a P3 to exist.

Staff: Concur. Please see suggested edits to lines 18 & 19 are recommended.

Comment [DNS5]: M. Granof Email dated 15 December 2013.

Comment [DNS6]: H. Steinberg Email dated 15 August 2013: I don't know what "must be considered" for disclosure means. I would think that adherence to the characteristics means an item must be disclosed. What other factors are used in the "consideration?" You can't say materiality, since that is always a consideration.

Staff: Concur. Please see suggested edit.

Conclusive Characteristics	Fiscal Exposure (Risk) Rationale Implication
1. The arrangement resulted in the conveyance or creation of a long-lived asset or long-term financing liability.	Not all P3s result in the conveyance or construction of an asset. However, in those that do, the government's risk may be significantly increased because of costs that 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 participates in, helps sponsor, or is party to 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. P3s can be or most often become borrowing arrangements or alternative financing mechanisms. Therefore, the risk rests in the fact that because the <u>established entity (e.g., SPV)</u> facilitates funding, an agency's explicit or implicit long-term debt or promise to pay the <u>established entity</u> SPV is not appropriately recognized.
3. 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.
4. The principal arrangement is exempt from the Federal Acquisition Regulation (FAR) or other comparable laws, regulations or provisions preserving and protecting the	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

Comment [DNS7]: 12 Feb Staff edit.

Conclusive Characteristics	Fiscal Exposure (Risk) Rationale Implication
government's rights.	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.

1

20. While meeting one of the Suggestive Characteristics implies there is some persuasive evidence that a P3 should ~~disclose the information at paragraph 23~~~~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 ~~additional~~ disclosure, they should be further evaluated in light of the entity's materiality considerations; e.g., qualitative and quantitative thresholds.

9

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication
1. A Value for Money analysis is performed.	Because I the term VfM is almost always used in connection with P3 arrangements or transactions. VfM analyses are broader in scope emphasizing qualitative factors as opposed to the more traditional quantitatively based cost-benefit analyses most often performed. If an entity conducts a VfM analysis it is likely that the project in question is a P3. VfM's are typically more subjective than traditional cost-benefit analyses and are sometimes done ex-post facto thus increasing potential risk to the agency.

Comment [DNS8]: 27 January 2014 – suggested staff edits.

Comment [DNS9]: 12 Feb Staff edits.

Comment [DNS10]: S. Showalter Email dated 9 Dec 2013.

Comment [DNS11]: 12 Feb Staff edit.

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication
2. The principal arrangement is not NOT managed by an Administrative Contracting Officer (ACO) and/or Procurement Contracting Officer (PCO).	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.
3. <u>The</u> consideration or items given up in an arrangement <u>or</u> <u>their</u> value are not readily apparent.	Generally under common law, consideration from both parties is required in order to have what constitutes a binding contract. Some courts have ruled that in those cases where the exchange appears excessively one sided, no quid-pro-quo exists and the contract may be void by law. Therefore, in those cases where consideration <u>or its value</u> 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/transactions 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 <u>entity</u> legacy costs. Because such costs were not identified or

Comment [DNS12]: J. Hamilton. GAO consultation.

Comment [DNS13]: 12 Feb – Staff edits.

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication
	considered, the government is left absorbing them with no related activity base, and is also 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/transactions involve risk-sharing and in some cases, issues such as contract disputes are resolved informally. However, such informal resolution processes could lead to potential liability when contracting, procurement, or legal personnel are not involved. Therefore, the risk rests in the potential liability arising from informal resolution of what otherwise would require more formal contractual administrative processes.
6. 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/transaction by providing advisory services to both the private partner and government sponsor. 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/transactions 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.

Disclosure Requirements of P3s**Component Entity Report Disclosures**

21. The P3 disclosures at paragraph 23 below should contain qualitative and quantitative information and may be aggregated or grouped by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, etc.
22. Disclosures would be required for the initial period and all annual periods thereafter where an entity is party to a P3 arrangement/transaction.
23. At a minimum, the following information should be disclosed:
 - a. The purpose or objective for the P3 arrangement or transaction to include the relative benefits/revenues being received in exchange for all of the government's consideration, monetary and non-monetary.
 - b. The decision criteria for selecting a P3 arrangement or transaction to include the entity's statutory authority for entering into the P3.
 - c. Type of funding, federal or otherwise used to meet mission requirements and service delivery needs to support the P3; e.g., appropriated, non-appropriated, private capital or investment.
 - d. The operational and financial structure of the P3 including the entity's rights and responsibilities and amounts the government can be reasonably expected to incur/pay over the life of the P3 arrangement or transaction.
 - e. Whether the private partner(s), to include any SPV, have borrowed or invested capital contingent upon the entity's promise to pay whether implied or explicit.
 - f. Identification of the significant risks the P3 partners are undertaking.
 - g. Material violations of legal and contractual provisions governing the P3 arrangement or transaction.

Financial Report of the US Government Disclosures

24. The U.S. government-wide financial statements should disclose the following information:
 - a. general description of material P3 arrangements or transactions,

- b. the consolidated amounts the government can be reasonably expected to incur/pay over the life of the P3 arrangements or transactions, and
- c. reference(s) to component entity report(s) for additional information.

Effective Date

25. These standards are effective for periods beginning after September 30, 2015. Earlier implementation is encouraged.

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

Appendix A: Basis for Conclusions

This appendix discusses some factors considered significant by Board members in reaching the conclusions in this Statement. It includes the reasons for accepting certain approaches and rejecting others. Individual members gave greater weight to some factors than to others. The standards enunciated in this Statement—not the material in this appendix—should govern the accounting for specific transactions, events, or conditions.

Project History

- A1. As part of FASAB's technical agenda-setting process this project was added to the April 2012 agenda because federal agencies have increasingly turned to public-private partnerships to accomplish goals and in light of budget pressures are likely to further increase their use. Although federal *Generally Accepted Accounting Principles* are fairly robust, the Board noted that due to the complex nature of P3s, significant study would be required in this area regarding a host of issues dealing with the definition, measurement and recognition of P3s. In December 2012 the project plan was adopted with the overall goal of making the full costs of public-private partnerships transparent in the entity financial statements.
- A2. Active work on this project began in FY2013 with final standards or guidance expected following a two to three year effort. Specific project objectives included:
- a. Defining terms
 - b. Providing guidance (i.e., identifying gaps) for the recognition and measurement of:
 - i. assets and liabilities,
 - ii. revenues and expenses, and
 - iii. establishing disclosure requirements.
 - c. Considering guidance for other arrangements related to P3s (e.g., sale-leaseback or other long-term arrangements)
- A3. Early on its deliberations the Board was clear that forthcoming guidance must be consistently applied and grounded or covered by an overarching principle(s). Specifically, the Board noted that it should look to establish uniform, principles-based guidance to enhance comparability among agencies, identify gaps in existing guidance, and avoid duplicating guidance or creating standards-overload. The Board noted its concern with the risks to which the government is exposed and related disclosures. As a result, members decided that because P3s often involve novel operational and complicated accounting practices, accompanied by

sophisticated financing agreements, these complexities necessitate the establishment of disclosure requirements as a first step to (1) developing uniform, principles-based guidance, and (2) identifying potential gaps in existing guidance. To that end, the Board decided that a broad P3 definition accompanied by risk-based characteristics should be pursued.

A4. P3 Task Force meetings for this phase of the Project were held between February 2013 and February 2014. All meetings were well attended with a good mix of federal agency, commercial sector, and citizen-centric points of view. Participants came from diverse disciplines such as accounting, auditing, facilities management, financial reporting, housing, information technology (IT), commercial and investment banking, procurement, and program management. The majority of participants agreed that there is significant interest in P3s across the diverse disciplines represented. It was noted that conditions such as current budget constraints and capacity (i.e., contingency) planning are driving some agencies to look at various types of P3 models to accomplish mission. Interestingly, both federal and private participants agreed that there is strong pressure against the use of P3s noting that this probably arises from the “off balance sheet” or “off budget spending” stigma associated with these arrangements or transactions. To counter the stigma associated with the term *Public-Private Partnerships*, some entities have begun re-labeling their P3 initiatives as *Alternative Financing* and/or *Privatization Initiatives*. A citizen viewpoint that was raised stated that absent empirical evidence supporting the notion that P3s in fact work, a citizen’s concern is that the government is assuming more risk than it would otherwise and in light of the fact that many private companies are flush with cash, while agency budgets are tight, seems to suggest that this be an area of careful consideration calling for transparency and robust disclosure.

A5. To best meet the project goal and objectives, in addition to task force discussions, staff initiated fact-finding meetings with experts and practitioners both within and external to government. Staff met with federal agency representatives, public policy experts, consultants, private equity participants and a private IT/Cloud/Software development firm. Please refer to Tables 1.0 and 2.0 respectively, for listings of the federal agencies visited or considered and the professionals or disciplines consulted. The goal of the fact-finding meetings was to refine the project’s scope by:

- Identifying the types of arrangements/transactions where part of the agency’s risk profile has been transferred to (or shared with) the private partner,
- Noting current P3 issues being faced by the participant(s),
- Soliciting input/suggestions on potential P3-Centric financial reporting characteristics/criteria, and

- Analyzing arrangements for potential accounting policy issues.

TABLE 1.0**Fact-Finding Agencies Visited or Considered**

Executive Agency *
Agency for International Development
Department of Commerce *
Department of Defense
Department of State
Department of Transportation/FHWA
Department of the Treasury
NASA
National Science Foundation
Veterans Affairs

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

TABLE 2.0
Professionals/Disciplines Consulted

	Profession/Organization/ Discipline	Federal	Non-Federal
1.	International Business & Finance Consultants		2X
2.	Procurement Professionals		2X
3.	Public Service Employee Union		X
4.	World Bank Finance Director		X
5.	P3 Attorney-Consultants		2X
6.	IT/Cloud Program Manager		X
7.	Agency Inspector General	X	
8.	Agency Policy Accountants	2X	
9.	Agency RP/Utility Directors	2X	
10.	Agency Deputy CFO	X	
11.	Agency Risk Manager	X	
12.	GAO Congressional Analysts	X	
13.	Agency P3 Program Manager	X	

Table 2.0 Note: An "X" signifies a single interview whereas as "2X" signifies that two persons usually from different organization were interviewed.

Common Themes and Other Matters

- A6. Generally, the most common themes arising from task force and fact finding meetings that were considered in developing the Statement include:
- As a minimum, participants expect continued use if not growth in P3s,
 - Government employee legacy & relocation costs not presently considered in VfM⁶ analyses,

⁶ The National Council of Public Private Partnerships has adopted the United Kingdom's, Her Majesty's Treasury Value for Money definition as contained in Her Majesty's Value Assessment Guide:

VfM is defined as the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user's requirement. VfM is not the choice of goods and services based on the lowest cost bid. To undertake a well-managed procurement, it is necessary to consider upfront, and at the earliest stage of procurement, what the key drivers of VfM in the procurement process will be.

Said another way, VfM is a much broader concept than typical cost-benefit analysis because it emphasizes "value" in more of a qualitative than quantitative manner. Quantitatively, some VfM models use a project's Internal Rate of Return (IRR) to help determine project acceptability. The VfM concept has drawn criticisms not only because of its subjectivity and lack of rigor in application, but because in some cases (1) cash flows can be easily managed to meet desired expectations and (2) VfM results are

- Long-term nature of P3s accepted, but
 - Lack of transparency in the solicitation and award processes along with the lack of competition hinders accountability and fair and reasonable pricing
 - Not applying the *Federal Acquisition Regulation*⁷ (FAR) increases government risk
 - Some P3s circumvent procurement administration
- In-Kind contributions are difficult to value or are overvalued and not always reported,
- P3-Centric financial reporting is generally supported but agencies and participants vary in the what, how and where
 - for example, relative to significant and material P3 arrangements, some believe that Property, Plant, and Equipment (PP&E) Note disclosure would be sufficient whereas others believe that MD&A discussion is more appropriate because of SFFAS 15, *Management's Discussion and Analysis*, requirement to address the future effects of existing, currently-known demands, risks, uncertainties, events, conditions and trends, while others suggest reporting in both locations. (bolding added for emphasis)

Other Matters

- **Increased Risk to Citizens.** A few participants noted that P3s erode (1) the notion of public service (e.g., what is inherently governmental) and (2) in many cases, belief in good government. This increased risk is evidenced by those entities that:
 - purposefully avoiding capital acquisition budgeting requirements
 - absorb “availability” risk absent sufficient private partner consideration
 - lose control of assets

used as ex-post facto justifications for qualitatively made project and/or award decisions. It is important to note that the same criticisms can be made of the more traditional cost-benefit analyses used in management decision making.

⁷ The FAR is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

- lock into long-term arrangements that cannot be re-competed or re-negotiated
- are constrained by contract modification restrictions
- are constrained by proximity and/or right-to-compete restrictions
- ignore government employee personnel (legacy) costs

- **Financing costs.** To enable private financing to work, P3's must be longer-term in nature to allow for sufficient time to liquidate debt and achieve Return on Investment targets. This is significantly different than traditional procurement contract periods that are typically 5 years or less.
- **Performance Metrics.** Financial reporting would be enhanced by incorporating performance metrics that could point to both risks and potential liabilities as they arise.

Definition – Public Private Partnerships

A7. The Board believes that a definition should be established in order to best assist the preparer community with the accounting for and reporting of P3s. The Board desires establishing a definition that (1) reflects actual federal P3 practices, (2) covers the wide breadth and diverse scope of federal assets and (3) focuses on the risk-sharing or risk transfer strategies that are the very essence of these complicated arrangements or transactions. The definition is intended for general application to be applied uniformly across the federal government.

A8. In reviewing the P3 definitions of other standard-setters the Board notes that their guidance is focused on service concession arrangements (i.e., a sub-set of P3s) that directly benefit the general public. The definition contained in this Exposure Draft is much broader primarily as a result of actual federal P3 practices reflecting the wide breadth and diverse scope of federal assets being managed. It is important to note that (1) federal preparers and auditors have identified accounting issues that extend beyond those typically found in service concession arrangements/transactions; e.g., excess and/or underutilized infrastructure and facilities, in-kind consideration, non-monetary exchanges, and fair value, (2) oversight entities such as the Congressional Budget Office (CBO), Government Accountability Office (GAO), and Inspectors General have defined and identified P3 arrangements or transactions to be more than just service concessions, and (3) service concession accounting guidance primarily reflects economic development initiatives such as new roads, toll roads, highways, airports, railways, hospitals, etc., whereas

federal initiatives extend well beyond economic development such as the common defense and general welfare of the nation thus necessitating corresponding accounting guidance to best fit these federal initiatives.

- A9. In developing the definition, the Board relied on the Task Force's review of existing definitions from several authoritative sources. The Task Force identified the more common characteristics of P3s which are believed to exist in the federal government. Some of the more common P3 characteristics identified include: existence of very long term contractual agreements (e.g., anywhere from 5 to 99 years), shared or transferred financing, agreements covering a significant portion of the project's or asset's life, shared risks, shared rewards, shared skills and expertise, conveyance or creation of real and personal property, and the use of special purpose vehicles (SPV's). The definition follows:

Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private sector entities to provide a service or an asset for either government or general public use where in addition to the sharing of resources, each party shares in the risks and rewards 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, or (4) formation of special purpose vehicles (SPV's).

Risk-based Characteristics

- A10. Although federal P3s are varied and complex, the Board believes that there are some common characteristics that can be used to identify those P3s that create fiscal exposure (risk) such that information would be disclosed. Because the Board is well aware of the administrative burdens that agencies face day-to-day and that some P3 portfolios might be voluminous, the proposed risk-based characteristics can also be applied to assist a federal entity in determining which P3 arrangements or transactions may be eliminated from disclosure requirements.

- A11. The risk-based characteristics have been developed, refined and categorized by the P3 Task Force from an initial comprehensive list of characteristics that distinguishes federal P3s from traditional procurement actions. The Task Force further analyzed and then selected those risk-based characteristics which in their opinion represent heightened indicators of P3 risk or fiscal exposure. These risk-based characteristics are intended to apply to all types of P3s: construction, housing, utilities, military depots,

etc. These risk-based characteristics are intended to assist a federal entity in ascertaining which P3 arrangements or transactions require disclosure. Once a P3 is identified for disclosure, such arrangements or transactions would then be evaluated in light of the entity's materiality considerations, e.g., quantitative and qualitative threshold(s).

Conclusive and Suggestive Characteristics

A12. The Board proposes establishing 2 categories for the following risk-based characteristics; i.e., Conclusive and Suggestive. Conclusive characteristics are those that by answering "Yes" to any 1 characteristic means the P3 arrangement or transaction requires disclosure whereas answering "Yes" to any 1 of the suggestive characteristic implies that the P3 arrangement or transaction should be disclosed but that this 1 characteristic must be considered in the aggregate with all the other suggestive characteristics before a final decision is made. Each conclusive characteristic is meant to be definitive whereas each suggestive characteristic will require entity judgment as each one is analyzed in connection with the other suggestive characteristics.

A13. If a P3 arrangement or transaction is identified for disclosure it should be further evaluated in light of materiality considerations that include both qualitative and quantitative assessments in determining the information that should be presented regarding P3 arrangements or transactions.

Disclosure Requirements of P3s

A14. The Task Force conducted research and uncovered examples of some of the more important disclosures surrounding P3s that have been developed from a variety of international and national authoritative sources which address P3 information needs for different types of users and audiences. Additionally, the Task Force considered the results from fact-finding meetings with public and private representatives regarding the type of information that diverse users believe are important. As a result, the Task Force overwhelmingly agreed with requiring disclosures concerning (1) why the government selects a P3 model to conduct business, (2) the solicitation and procurement processes used, (3) how the P3 is structured, (4) the expected benefits and (5) the total amounts expected to be paid. Although it was noted that requiring a description of the solicitation and procurement processes is fairly unusual in financial reporting, the Task Force opined that because P3s fall outside the routine way governments procure services such disclosures reveal the potential fiscal exposure or risk that governments assume that can ultimately lead to liability recognition.

A15. In analyzing the Task Force's recommendations the Board considered the federal financial reporting objectives. Of the four objectives outlined in

Statement of Federal Financial Accounting Concepts (SFFAC) 1, *Objectives of Federal Financial Reporting*, the operating performance and budgetary integrity objectives are identified as being most important for P3 reporting. The Board agreed that P3-Centric reporting is important to meeting these objectives because the federal government is accountable to citizens for the proper stewardship and administration of its resources. As such, the Board agreed with the majority of the Task Force's recommendations. However, requiring disclosure of an entity's solicitation and procurement processes falls outside the realm of financial reporting. Furthermore, the Board questioned the informational value of such a disclosure and opined that its cost also exceeded any potential benefit identified by the Task Force.

A16. Because P3s are a form of investment, they should be adequately disclosed in order to assist report users in determining: (a) what are the important assets of the U.S. government and how effectively they are being managed and (b) did the government's financial position improve or deteriorate over the period. The Board is of the opinion that because P3s often involve novel operational and complicated accounting practices, accompanied by sophisticated financing agreements, these complexities necessitate the establishment of disclosure principles as a first step to (1) developing uniform, principles-based guidance, and (2) identifying potential gaps in existing guidance. As a result of considering the overall financial reporting objectives, the Board further developed and refined the Task Force's recommendation to include the following disclosures:

- a. The purpose or objective for the P3 arrangement or transaction to include the relative benefits/revenues being received in exchange for all of the government's consideration, monetary and non-monetary.
- b. The decision criteria for selecting a P3 arrangement or transaction to include the entity's statutory authority for entering into the P3.
- c. Type of funding, federal or otherwise used to meet mission requirements and service delivery needs to support the P3; e.g., appropriated, non-appropriated, private capital or investment.
- d. The operational and financial structure of the P3 including the entity's rights and responsibilities and amounts the government can be reasonably expected to incur/pay over the life of the P3 arrangement or transaction.
- e. Whether the private partner(s), to include any SPV, have borrowed or invested capital contingent upon the entity's promise to pay whether implied or explicit.

f. Identification of the significant risks the P3 partners are undertaking.

g. Material violations of legal and contractual provisions governing the P3 arrangement or transaction.

Aggregation

A17. Due to the relative complexity and potential voluminous nature of P3s that an entity might be party to, the Standard would permit entities to aggregate disclosures by providing broad and summarized information instead of unique or discrete arrangement or transaction detail. However, entities would be permitted to disclose information related to individually significant P3 arrangements/transaction separately if entity management believed that such disclosure would better meet user needs.

A18. For example, disclosures of P3 arrangements or transactions could be aggregated 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.

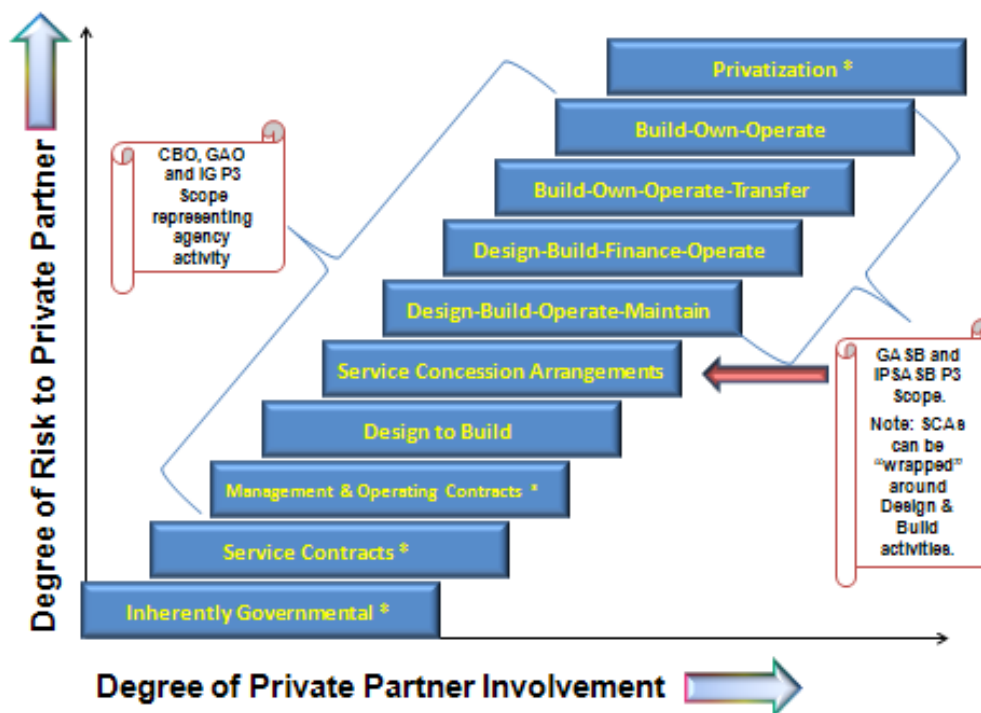
Reporting Period

A19. Disclosures would be required for the initial period and all annual periods thereafter where an entity is party to a material P3 arrangement/transaction.

Alternative Views

A20. Individual members sometimes choose to express an alternative view when they disagree with the Board's majority position on one or more points in a Statement. The alternative view would discuss the precise point or points of disagreement with the majority position and the reasons therefore. The ideas, opinions, and statements presented in the alternative view are those of the individual member alone. However, the individual member's view may contain general or other statements that may not conflict with the majority position, and in fact may be shared by other members. The material following was prepared by [insert name or names] and is presented as an alternative view.

1 Appendix B: Illustration 1: Hierarchy of P3s



2

3 * = Definitions follow:

4 Privatization - A federal agency decision to change a government-owned and government-
 5 operated commercial activity or enterprise to private sector control and ownership. When
 6 privatizing, the agency eliminates associated assets and resources (manpower for and
 7 funding of the requirement). Since there is no government ownership and control, no
 8 service contract or fee-for-service agreement exists between the agency and the private
 9 sector after an agency privatizes a commercial activity or enterprise. Moving work from
 10 agency performance with government personnel to private sector performance where the
 11 agency still funds the activity is not privatization. *OMB Circular A-76 (REVISED), Performance of*
 12 *Commercial Activities; May 29, 2003.*

13 Management and operating contract - means an agreement under which the Government
 14 contracts for the operation, maintenance, or support, on its behalf, of a Government owned
 15 or -controlled research, development, special production, or testing establishment wholly or
 16 principally devoted to one or more major programs of the contracting Federal agency.
 17 *Federal Acquisition Regulation (March 2005), Subpart 17.6 - Management and Operating Contracts.*

18 Service contract - means a contract that directly engages the time and effort of a contractor
 19 whose primary purpose is to perform an identifiable task rather than to furnish an end item

of supply. A service contract may be either a non-personal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

- (1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- (2) Routine recurring maintenance of real property.
- (3) Housekeeping and base services.
- (4) Advisory and assistance services.
- (5) Operation of Government-owned equipment, real property, and systems.
- (6) Communications services.
- (7) Architect-Engineering (see Subpart 36.6).
- (8) Transportation and related services (see Part 47).
- (9) Research and development (see Part 35).

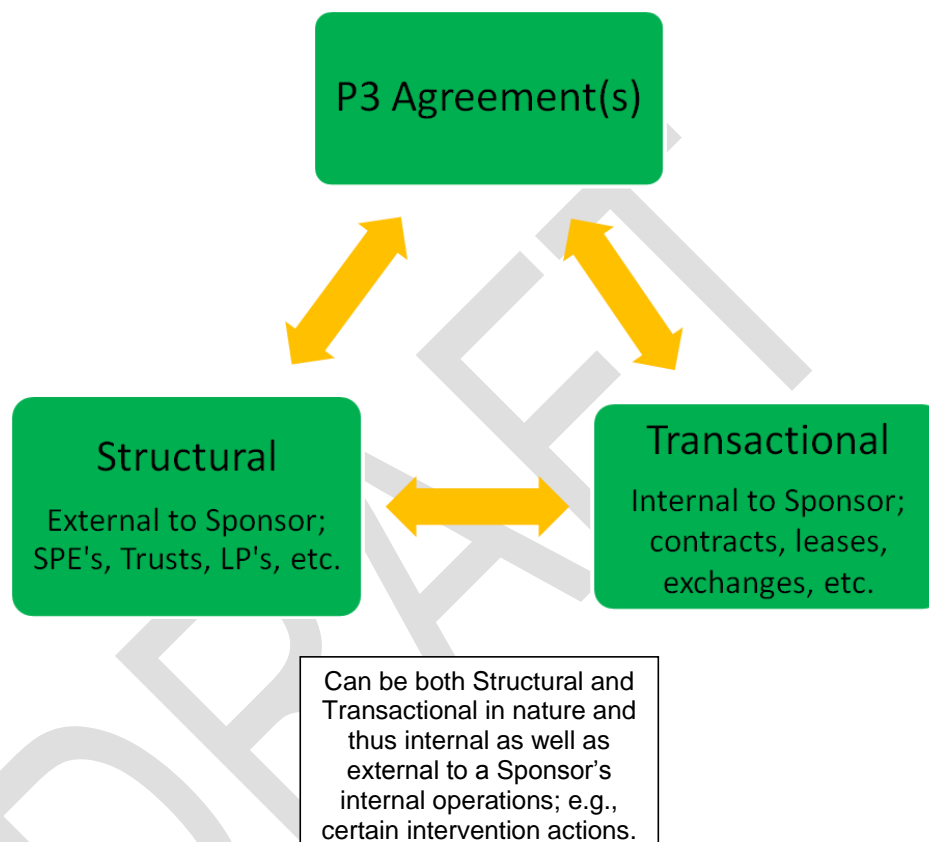
Federal Acquisition Regulation (March 2005), Subpart 37.1 - Service Contracts – General.

Inherently governmental - an inherently governmental activity is an activity that is so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial discretion in applying government authority and/or in making decisions for the government. Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. An inherently governmental activity involves:

- (1) Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (2) Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (3) Significantly affecting the life, liberty, or property of private persons; or
- (4) Exerting ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

OMB Circular A-76 (REVISED), Performance of Commercial Activities; May 29, 2003.

Appendix B: Illustration 2: P3s – Structural and/or Transactional



Note 2: Work-share Programs - A partnership in which a government buying activity, in collaboration with a contractor and an organic product support activity determines the best mix of work capitalizing on each partner's capabilities. The workload is then shared between the contractor and the organic activity. The contractor is funded through a contract and the organic activity is funded through a project or work order. The partnering agreement between the contractor and organic activity focuses on the roles and responsibilities of each partner where they work jointly to accomplish the overall requirement. Funding is not exchanged between the partners under a work-share agreement; therefore, work-shares do not require specific legal authority.

1 **Appendix C: Abbreviations**

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Appendix D: Glossary

Federal public-private partnerships - (P3s) are contractual arrangements or transactions between public and private sector entities to provide a service or an asset for either government or general public use where in addition to the sharing of resources, each party shares in the risks and rewards 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, or (4) formation of special purpose vehicles (SPV's).

P3 Structural Arrangement - P3s that are external to the government sponsor's or entity's operations and often involve the creation of an SPV, Trust, or LP, etc. For example, military base housing.

P3 Program Transaction - P3s that are internal to the government sponsor's or entity's operations. For example, work-share programs not involving the creation of a SPV, Trust, or LP, etc.

Special Purpose Vehicles (SPVs) - also commonly called Special Purpose Entities (SPEs), are entities created for a specific, limited and normally temporary purpose. An SPV can be a corporation, trust, partnership, limited-liability company or some type of Variable Interest Entity (VIE). They are often an integral part of public private partnerships because of their risk-containment nature of isolating participating entities from financial risk.

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