

Memorandum

P3 – Phase II

June 4, 2021

To: Members of the Board
From: Domenic N. Savini, Assistant Director
Thru: Monica R. Valentine, Executive Director
Subject: **Public-Private Partnerships: Measurement and Recognition** (Topic E)

INTRODUCTION

The project covering Public-Private Partnerships (P3s) was added to the agenda because federal agencies have increasingly turned to these risk sharing arrangements or transactions to accomplish their goals. Given that budget pressures are likely to further increase the use of P3s, the Board agreed that the overall objective of the project would be making the full costs of such partnerships transparent.

Project discussions began in April 2012 and resulted in the Board approving a dual-phased approach. The first phase would consist of establishing disclosure requirements, followed by measurement and recognition guidance in the second phase.

Active work on this project's first phase began in FY2013 and culminated with the issuance of SFFAS 49, *Public-Private Partnerships: Disclosure Requirements*, on April 27, 2016.

This session's purpose is to provide a refresher and background to the project's objective to make the (full) costs of P3s transparent.

REQUEST FOR FEEDBACK BY June 18, 2021

Please review the attached refresher material and background information, included in the first four attachments and respond to the three questions in attachment 5 by **June 18, 2021**.

For additional information, questions, or suggestions, please contact Dom as early as possible at savinid@fasab.gov with a cc to Monica at valentinem@fasab.gov.

ATTACHMENTS

1. Refresher – PowerPoint Presentation
2. Background
 - a. How do P3s relate to SFFAS 47, *Reporting Entity*?
 - b. How are P3s different from SFFAS 54 *Leases*?
 - c. Do GASB and IPSASB address P3s?
 - d. Identification of Measurement and Recognition Issues
3. Selected FY 2020 SFFAS 49 Disclosures
4. Proposed Next Steps
5. Questions for the Board

APPENDIX - Statement of Federal Financial Accounting Standards 49: *Public-Private Partnerships: Disclosure Requirements*

Excerpted Slide Show

**The Challenges and Opportunities with
Public Private Partnerships**

2020 Virtual Symposium

The Challenges and Opportunities with Public Private Partnerships

Bob Helwig, J.D.
Larry Checco, B. Ec., M.J.
Domenic Savini, CMA, CPA



Larry Checco
CMA, CPA

Larry Checco is president of Checco Communications and a nationally sought-after speaker and workshop facilitator on leadership, organizational management, and branding. He also serves as a consultant to both large and small nonprofit organizations, companies, foundations and government agencies, and is a member of the Government Accountability Office's (GAO's) task force on public-private partnerships, or P3s.

Larry's books, *Branding for Success: A Roadmap for Raising the Visibility and Value of Your Nonprofit Organization*, and *Aha! Moments in Brand Management: Commonsense Insights to a Stronger, Healthier Brand* have sold thousands of copies throughout the United States, Australia, Canada, South Africa, Sweden, Israel, Southeast Asia, and elsewhere around the globe.

Larry also writes political and economic columns, as well as personal essays for several online publications, including *Accountability Central*, *Inequality.Org*, and *BoomerCafe*. His articles are cited and reprinted on countless websites.

Larry holds a degree in Economics from Syracuse University, as well as an MA in Journalism and Public Affairs from American University.



Bob Helwig, J.D.

Bob Helwig is a lawyer, project consultant, and development executive focusing on public-private transactions. Bob is a thirty-year veteran in implementing public-private programs and projects (P3). For ten years he was a civilian real property specialist in the Department of the Air Force. In 1995, he joined the DOD office responsible for executing the newly enacted Military Housing Privatization Initiative (DOD's public-private partnership program for housing).

For fourteen years, he served as the Deputy Director of the DOD Directorate responsible for implementing the department's public-private programs and projects. Bob has been involved in all aspects of the public-private process, including concept development, contract solicitation, deal structuring, portfolio management, budget scoring, Congressional reporting, and financial analysis. He developed the long-term policy and guidance as well as the program evaluation framework for DOD's housing and utilities P3 programs.

He serves as a co-chair of the ABA Privatization, Outsourcing, and Financing Transactions Committee and as a member of the Federal Accounting Standards Advisory Board (FASAB) Task Force on Public-Private Partnerships. Bob is a Doctoral Candidate in Public Administration at the University of Baltimore where he is writing his doctoral dissertation entitled Public Value in Privatization: A Case Study of the Military Housing Privatization Initiative of 1996.

He holds a Juris Doctor from the George Washington University Law School. He also holds a Master's Degree in International Policy and Economics from the Monterey Institute of International Studies and Bachelor Degrees in Political Science and French from California State University at Long Beach. He is a member of the Maryland Bar.

What Are P3s?

Christopher Polke, CGAP, MPA
The Institute of Internal Auditors, Global Headquarters

What Are Public-Private Partnerships?

As defined by National Council for Public-Private Partnerships

- A public-private partnership (P3) is a **contractual arrangement** between a public agency (federal, state, or local) and a private sector entity. Through this agreement, **the skills and assets of each sector (public and private) are shared** in delivering a service or facility **for the use of the general public**. In addition to the sharing of resources, **each party shares in the risks and rewards** potential in the delivery of the **service and/or facility**.

“...A rose, by any other name would smell as sweet.” —William Shakespeare, *Romeo and Juliet*



- P3s are risk-sharing arrangements that take many forms and go by different names.
- States use P3s in toll road concessions (SCAs).
- P3 arrangements and transactions may include:
 - contracts
 - reimbursable agreements
 - alternative financing arrangements
 - privatization initiatives
 - other arrangements or transactions
- Note that P3s can also employ grants or collaborative agreements.
- A few examples of P3 use in the federal space:
 - DoD military base housing
 - NASA office construction and energy development
 - VA medical center construction

Polling Question #3

The NCPPP defines a P3 in part as an agreement where “the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of...”

- A. The general public
- B. The primary government
- C. Both the general public and primary government
- D. Investors and other key stakeholders'
- E. Uncertain

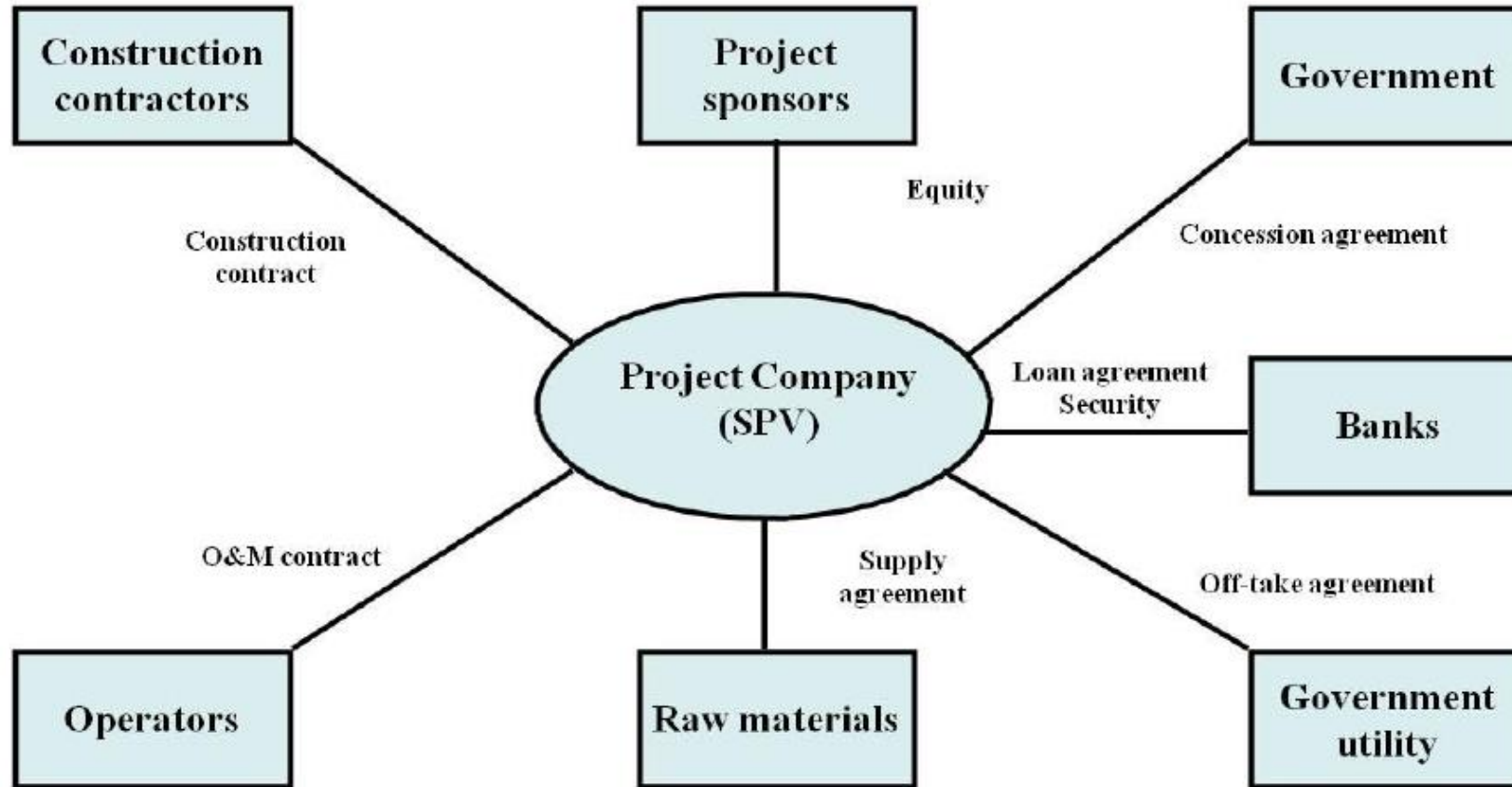
Opportunities of P3s in the Public Sector

Bob Helwig, J.D.
P3 Consultant & Development Executive

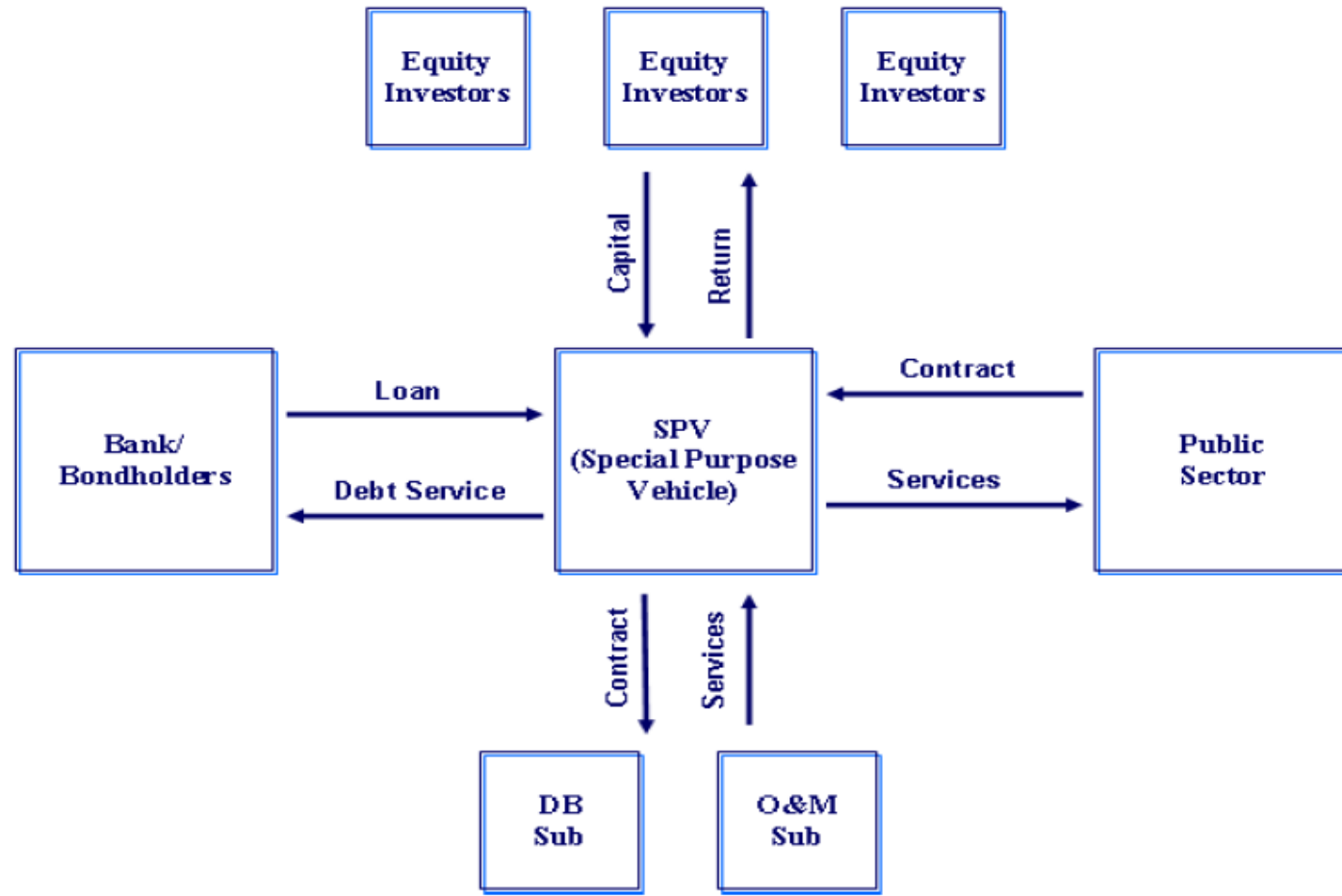
Public Purpose

- Federal agencies are increasing the use of innovative approaches to partnering with non-governmental entities.
 - **Benefits include:**
 1. **Create public value**
 2. **Ease the failure of markets to provide adequate infrastructure to the public**
 3. **Reduce congestion, improve public health and safety, and preserve the environment**
 4. **Allow agencies to access private capital to satisfy their mandates**
 5. **Allow projects outside an agency's annual budgetary "headroom"**
 6. **Allow agencies to access expertise which does not exist in-house**
 7. **Allocate risk - but not uncertainty - to the most capable parties**
 8. **Allow innovative design and economies of scale**

Public-Private Governance (an Example)



Budgeting and Finance (an Example)



Uncertainty and Risk

Compensation Events

- Government compensates SPV
- Change in output specs by government
- Changes in law
- Other changes not made by government but for which it is responsible
 - ▣ Construction site risks
 - ▣ Damage by users/staff

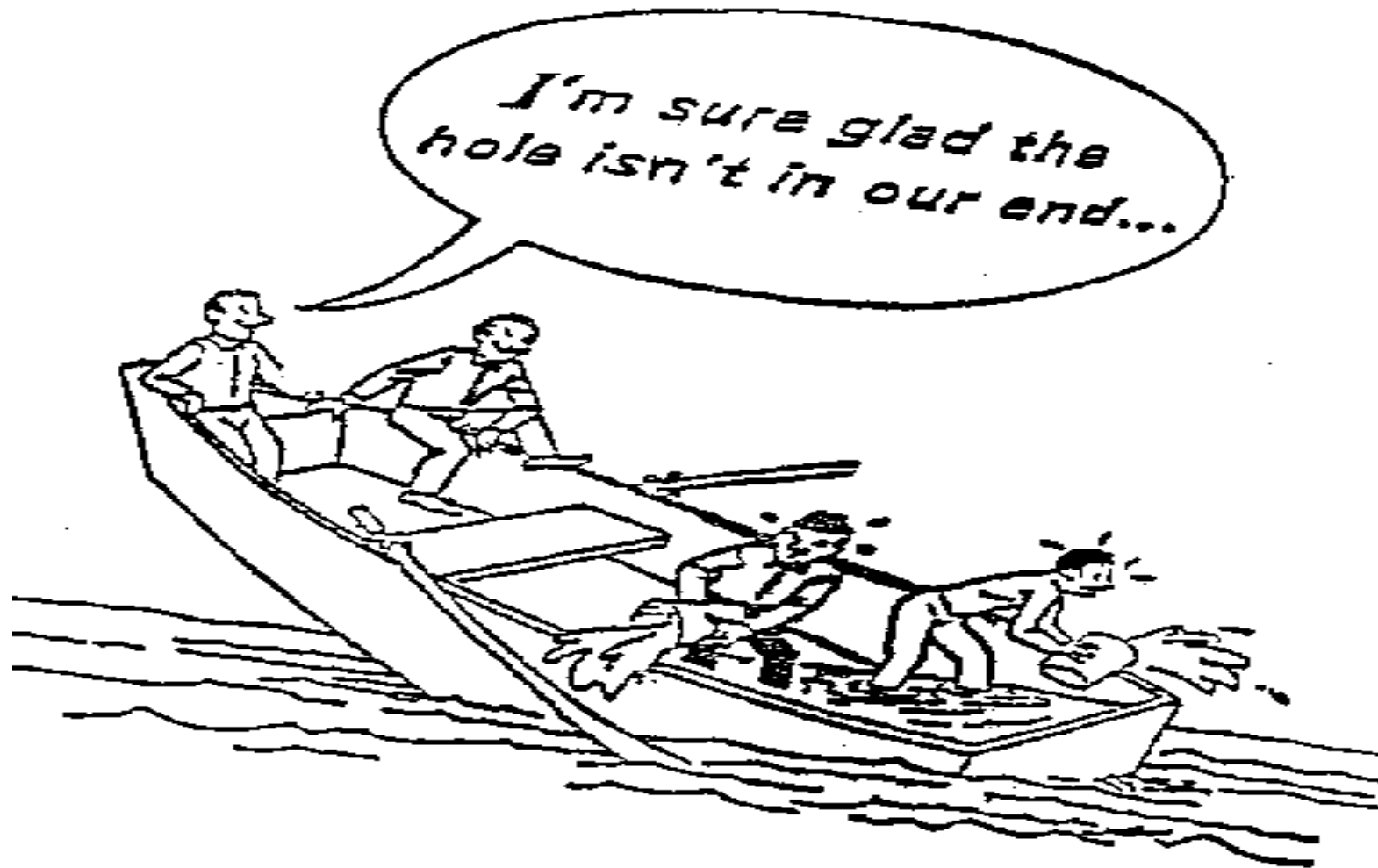
Relief Events

- Temporary *Force Majeure*
- Fire, accidental damage
- Civil disturbance
- Strikes
- Failure of 3rd parties
- Failure of utility svcs

Challenges of P3s in the Public Sector: A Citizen's Perspective

Larry Checco
President
Checco Communications

Illustration of a P3



Some General Cons of Partnering

Cons

- ❑ Higher financing costs
- ❑ Higher procurement costs
- ❑ Long-term contracts
- ❑ May still be on-credit
- ❑ Undefined legal, regulatory framework
- ❑ Political risk



Type of Risks Citizens are Concerned About

Generic P3 Risks:

- General political risks
- Site-related risks
- Construction risks
- Completion risks
- Operation-phase risks



Some specific P3 Risks noted by Board:

- Actual costs will be greater than budgeted costs
- The government may have to absorb part or all of the project's private debt
- The private partner will not achieve expected returns on investments in limited partnerships
- Conditions may lead to a government - acknowledged event where the government assumes financial responsibility for the event
- The public purpose or public value will not be fulfilled or achieved

Some P3s That Did Not Work Well

- In June 2017, Indiana Finance Authority (IFA) officials announced that they were moving to take over an Interstate 69 highway project operating under a P3. The IFA alleges that I-69 Development Partners had fallen behind schedule, been late on payments to subcontractors and that there is only \$72 million left to complete \$236 million of work.
- After signing a 75-year lease of the city's 36,000 parking meters for \$1 billion to a Morgan Stanley-led private consortium, Chicago's inspector general concluded that the city sold the meters \$1 billion dollars under their value. Parking rates skyrocketed, and the terms of the P3 leasing agreement protecting Morgan Stanley's investment created new annual costs for the city.
- Late in the 1990s, the Pentagon entered into a P3 agreement with a company called Corvias to out-source some of the military's on-base housing, hoping to save money and harness the efficiency of the private sector. Instead, the military families have been complaining of housing infested with rats, black mold, sewage and other problems. Despite congressional hearings, little has been done to correct the situation.

FASAB Task Force Risk Indicators

Audit Planning Considerations

Conclusive Evidence that Risk exists:

1. Creation of a long-lived **asset** or long-term financing liability.
2. The **federal entity** participates in or helps sponsor an **SPV**, partnership, trust, etc.
3. The **term** of the arrangement **covers a significant portion of the economic life** of a project or asset.
4. The principal arrangement is **exempt from** the Federal Acquisition Regulation (**FAR**) or if a grant, Office of Management and Budget (**OMB**) requirements (2 C.F.R. Title 2, Part 200).

FASAB Task Force Risk Indicators

Audit Planning Considerations

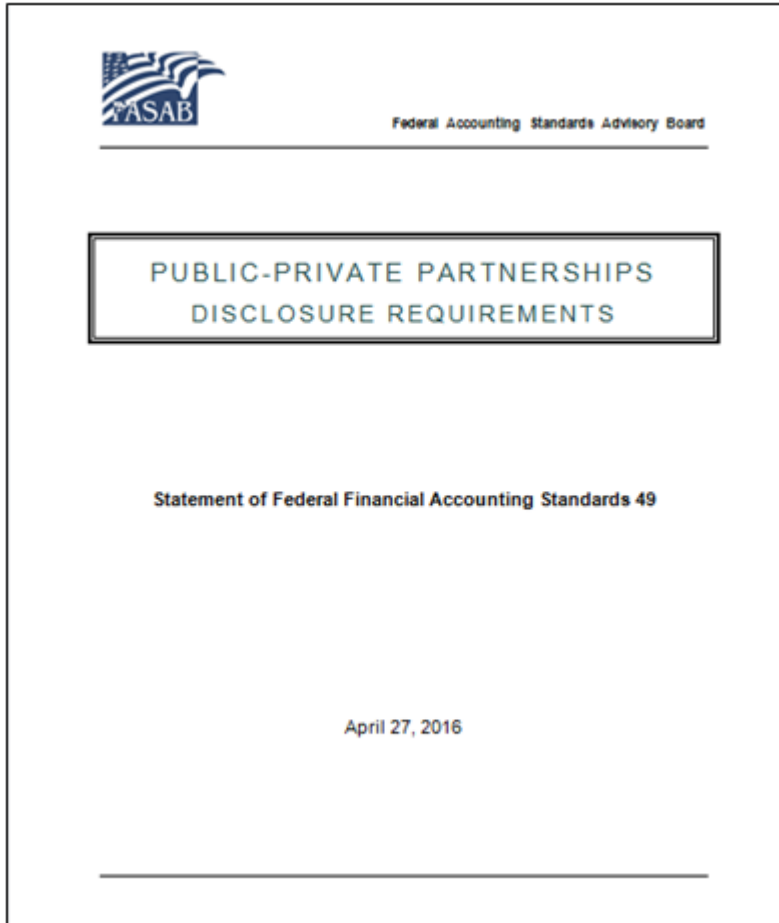
Suggestive Evidence that Risk exists:

1. A **Value for Money (internal rate of return)** analysis is performed.
2. The **consideration** or items given up in an arrangement **or their value are not readily apparent**.
3. **Significant work force duties**, activities, or knowledge **are cross-shared** between public and private sector P3 parties.
4. The **focus is more on collaboration** and informal, real-time, resolution processes as opposed to formal, contractual, administrative processes.
5. The government relies on either the private sector partner's or a third party's determination of a P3's performance or return on investment/equity, **without performing its own verification** of performance/return on investment/equity.

Internal Audit Implications of P3s in the Public Sector: A Federal Perspective

Domenic Savini
Assistant Director
FASAB

1st Implication: Identifying P3s and their Risk Characteristics



- Because P3s are often kept off-budget and off-balance sheet, FASAB established a P3 definition and risk-based characteristics to help identify P3s requiring disclosure
- Disclosures comprise quantitative and qualitative information

Addressing the 1st Implication: Defining P3s

FASAB response: SFFAS 49

For example, the federal definition in SFFAS 49 sets the following parameters:

Par 16 – Subject to the exclusions noted in Par 15 and for the purposes of this Statement, federal public-private partnerships (P3s) **are risk-sharing arrangements** or transactions **with expected lives greater than five years** between public and private sector entities. Such arrangements or transactions **provide a service or an asset for government and/or general public use** where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions.

Addressing the 1st Implication: What Is Risk/Reward Sharing?

SFFAS 49, Par 17

Par 17—A public sector entity shares risks and rewards with a private sector entity **whenever the benefits of the arrangement or transaction accrue to both the private sector entity and the public sector entity and (1) the public sector entity is at risk of loss, or (2) the private sector entity's ability to perform is at risk and success of the arrangement or transaction depends upon the public sector's intervention.**

Polling Question #5

SFFAS 49's P3 definition is different than most other P3 definitions. The key features that make the SFFAS 49 definition unique include:

- A. Specific exclusions including arrangements/ transactions that are 5 years or less.
- B. Including arrangements/transactions that also benefit the government.
- C. It excludes arrangements/transactions using the risk/reward model.
- D. Both A and B
- E. Uncertain

2nd Implication: Identifying the Types of Risks borne by the Partners

- Understand the risk allocation strategies used in the P3.
- Specifically, the auditor should understand how much:
 - (total) risk resides in an arrangement or transaction and how much of that risk has been (1) transferred to the private partner, (2) shared with the private partner, and (3) retained by the entity (that is, the government sponsor).
 - Conduct a thorough analysis of the underlying contractual agreements, guarantees, insurance, and indemnification strategies as well as identifying the existence and nature of any underlying private party capital buffer that might exist; that is, the extent of any debt (for example, bonds, loans and notes) and equity (for example, stocks, and other securities representing an ownership interest) participation.

Addressing the 2nd Implication: Citizen Focused

FASAB response: SFFAS 49

- **Increased Risk to Citizens.** A few participants noted that P3s erode (1) the notion of public service (for example, what is inherently governmental) and (2) in many cases, belief in good government. This increased risk is evidenced by those entities that:
 - a. purposefully avoid capital acquisition budgeting requirements
 - b. absorb “availability” risk¹⁶ absent sufficient private partner consideration
 - c. lose control of assets
 - d. lock into long-term arrangements/transactions that cannot be re-competed or re-negotiated
 - e. are constrained by contract modification restrictions
 - f. are constrained by proximity and/or right-to-compete restrictions
 - g. ignore government employee personnel (legacy) costs

Polling Question #6

The Board noted that there are risks that citizens face when a government enters into a P3. One of the risks identified is:

- A. Site related
- B. Financing
- C. Political
- D. Government absorption of private debt
- E. Uncertain

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3rd Implication: Identifying Information Needs

- Those charged with governance need accurate, timely and complete information in order to exercise effective oversight.
- Given the notion that “*no P3 is the same*” and that each has its own unique risks, developing uniform disclosure requirements is problematic.
- Some private partners restrict or limit the amount of information they will provide due to proprietary (e.g., intellectual property) or market-based competitive reasons.

Answering the 3rd Implication: Requiring Specific Disclosures

SFFAS 49, Par 24

24. Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a P3 arrangement/transaction. The following information should be disclosed:

- a. The purpose, objective, and rationale for the P3 arrangement or transaction and the relative benefits/revenues being received in exchange for the government's consideration, monetary and non-monetary; and the entity's statutory authority for entering into the P3.
- b. A description of federal and non-federal funding of the P3 over its expected life, including the mix and, where available, the amounts of such funding. For any amounts that are not available, the disclosures should indicate such.
- c. The operational and financial structure of the P3 including the reporting entity's rights and responsibilities, including:
 - i. A description of the contractual terms governing payments to and from the government over the expected life of the P3 arrangement or transaction to include:
 - 1. explanation of how the expected life was determined
 - 2. the time periods payments are expected to occur
 - 3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances
 - 4. in-kind contributions/services and donations



Required Disclosures (continued)

SFFAS 49, Par 24



- ii. The amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid in aggregate over the expected life of the P3
- d. Identification of the contractual risks of loss the P3 partners are undertaking
 - i. Identification of such contractual risks of loss should include a description of (1) the contractual risk and (2) the potential effect on cash flows if the risks were realized (for example, early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, contingent payments, or renewal options).
 - ii. Disclosure of remote risks of loss should be limited to those included in the terms of the contractual P3 arrangements or transactions. If remote risks of loss are disclosed, an explanation should be included that avoids the misleading inference that there is more than a remote chance of a loss.
- e. As applicable:
 - i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items
 - ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction
 - iii. Whether the private partner(s), including any Special Purpose Vehicle (SPV), have borrowed or invested capital contingent upon the reporting entity's promise to pay whether implied or explicit
 - iv. Description of events of termination or default

Additional Internal Audit Implications - Potential Measurement and Recognition Issues

1. Balance sheet valuation. Should the full value of the P3 be:
 - ☐ capitalized or just the created asset (if applicable)?
 - Consider asset capitalization measurement attributes: e.g., fair value vs construction costs.
 - Consider asset re-measurement issues such as impairment; deferred maintenance.
 - ☐ treated as an equity investment adjusted periodically for gains/losses?
2. Identify the government's interest in an SPE/SPV, reversionary and/or residual interests.
3. Single or unitary payments can obscure contractual requirements; i.e., can you clearly tell how much goes to operations, principal, or interest?
4. Identify and consider any non-monetary exchanges, in-kind consideration (e.g., donated assets), unearned revenue.
5. Other matters – intellectual property and privatization.

Polling Question #8

Governments are increasingly using innovative approaches to partnering with non-governmental entities and, as a result, accrue many benefits. However, P3 arrangements may:

- A. Result in recognizing contingent assets
- B. Obscure costs and results
- C. Overstate contingent liabilities
- D. Obscure costs, risks, and results
- E. Uncertain

Closing Comments

Larry Checco

Founder & President

Checco Communications

I really like what Mr. Kevin De Good has to say about P3s, both the positive and the negative. This summarizes my sentiments about P3s concisely and fairly.

*“Public-private partnerships are an alternative method of infrastructure procurement. When appropriately structured in concert with a reliable concessionaire, P3s can provide project sponsors with the ability to offload certain risks. **The state, however, always remains the ultimate guarantor of project delivery.** When the concessionaire fails to meet its contractual obligations, state and local governments are forced to shoulder the political, administrative, and financial burden to ensure a project’s completion. The money to build infrastructure ultimately comes from taxes or user fees, and the responsibility for completing the work rests with the state. **In short, P3s are neither a silver bullet nor a guarantee of success.**”*

Kevin DeGood is the Director of Infrastructure Policy at the Center for American Progress.

Bob Helwig, J.D.
P3 Consultant & Development Executive

- **Public-private partnerships have a great capacity to create public value.** By accessing private expertise and capital, they allow public managers to overcome market failure, satisfy agency mandates, spur innovation, expand economies of scale, allocate risk, reduce congestion, improve public health and safety, preserve the environment, and provide a host of other socially desirable results.
- **The key is to align public purpose, public-private governance, and public valuation. To the extent these three objectives are aligned, a project or program should be successful. To the extent they are misaligned, there will likely be problems.**

QUESTIONS

ATTACHMENT 2a: Background - How do P3s relate to SFFAS 47, *Reporting Entity*?

SFFAS 49 Paragraph 5 states:

“The Board has previously addressed various types of long-term arrangements or transactions in which the government participates (for example, leases or guarantees). As such, accounting standards exist that provide for recognition and measurement of assets/liabilities and revenues/expenses as well as disclosures of certain risks in these long-standing types of arrangements or transactions. **This Statement supplements existing guidance to help ensure adequate disclosure** of those arrangements/transactions that either form the basis of or are part of a P3. Therefore, existing accounting standards that govern the various types of long-term arrangements/transactions continue to apply.”

SFFAS 47, *Reporting Entity* provides for determining whether (1) an organization should be included in the reporting entity’s general purpose federal financial reports (GPFFR) for financial accountability purposes and if so, (2) the most appropriate means - consolidation or disclosure - to include information about these organizations in the GPFFR.

The three inclusion principles are whether the organization is: (1) Budgeted for by elected federal officials, (2) Owned by the federal government, (3) Controlled with risk of loss or expectation of gains, or (4) Misleading to exclude. An organization meeting any one of the three principles or if it is misleading to exclude would be included in the reporting entity’s GPFFR.

Once inclusion is decided, the next step is to determine the most appropriate means of inclusion; that is, consolidation or disclosure. This step requires an assessment of the degree to which four characteristics are met. Generally, an organization is considered a consolidation entity if, based on an assessment of the following characteristics as a whole the organization:

- a. is financed by taxes or other non-exchange revenue
- b. is governed by the Congress and/or the President,
- c. imposes or may impose risks and rewards on the federal government,
- d. and/or provides goods and services on a non-market basis.

Staff Take-away -

SFFAS 47 contemplated that P3s could in fact be either consolidated or disclosed in an reporting entity’s GPFFR using the above inclusion principles and consolidation characteristics. Please refer to SFFAS 47, Appendix C: Illustrations, U.S. Museum (Scenario B) on page 87 and Firefighters’ Housing Limited Partnership on page 89.

ATTACHMENT 2b: Background - How are P3s different from SFFAS 54 Leases?

SFFAS 54, *Leases* at paragraph 6 defines leases as:

Lease – A lease is defined as a contract or agreement whereby one entity (lessor) conveys the right to control the use of PP&E (the underlying asset) to another entity (lessee) for a period of time as specified in the contract or agreement in exchange for consideration.

However, where infrastructure assets are concerned, P3s are inherently different because these arrangements or transactions do not usually convey the right to control the use of the asset¹ but allow an operator to have the right of access to the asset. That is, the government sponsor does not relinquish control of the asset and retains its authorities to govern the asset's use.

Please be mindful that many, if not most of the P3s researched by staff² do include a leasing mechanism to execute the arrangement or transaction; that is, a master ground lease or other asset lease transfer to the operator. The most common leasing mechanism staff has seen at both the federal and state government levels is the lease-lease back³. Therefore, harmonizing with the SFFAS 54 recognition and measurement guidance is a Board option in the event that a government sponsor does in fact convey or transfer the right of control in a P3 arrangement/transaction.

Staff Take-away -

Given that control usually resides with the government sponsor, the question that needs to be answered is how such a resource and/or risk, if not already recognized on the financial statements, be appropriately measured and recognized. Furthermore, given the nature and breadth of federal activities, guidance needs to be written for not only capital asset arrangements/transactions but also for situations where the partnership involves intangible assets, services or financial investments in P3s.

¹ In Statement No. 94 of the Governmental Accounting Standards Board, the Board defined P3s as arrangements in which a government (the transferor) contracts with an operator to provide public services by conveying control of the right to operate or use a nonfinancial asset. However, this is a departure from the Board's definition of an SCA as per its Statement 60. The Board explained its departure stating that the definition of an SCA focuses on the transferor's control of the use of the underlying asset and that because there are P3s in which the transferor does not have that type of control, the Statement 60 SCA characteristics could not apply to their P3 definition.

² For example, DoD's Military Housing Privatization Initiative and certain VA Medical Center construction efforts. Also, NASA's solar energy agreements in central Florida may have also used lease-leaseback arrangements/transactions.

³ In an arrangement called lease-leaseback, the public agency leases an asset long-term (i.e. for 50 years) to a private-sector entity or a special-purpose entity created for that purpose and then leases the asset back for a shorter period (i.e., 20 years or about half of the asset's useful life). The private-sector entity or special-purpose entity pays for their long-term lease with a one-time, upfront payment, while the public agency spreads its leaseback payments over the (shorter) lease period. Such transactions generate up-front cash for the public agency allowing it to avoid seeking either budgetary appropriations or issuing additional bonds to finance its investments. In effect, the private-sector entity or special-purpose entity borrows on behalf of public agency. The private sector partner obtains financing through the sale of pass-through certificates which the public agency may or may not explicitly guarantee. However, these certificates are usually fully backed by the public agency's contractual commitment to make lease payments. The public agency entity benefits from some of the tax advantages that the private sector partner enjoys in the form of lower lease payments.

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

ILLUSTRATION: SCA and P3 ACCOUNTING – SNAPSHOT COMPARISON OF GASB AND IPSASB GUIDANCE

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
Applicability	<p>¶ 13 & 14 - Grantor and Operator</p> <p>¶ Summary - Includes public operators</p> <p>¶ Summary - This Statement also provides guidance for governments that are operators in an SCA. The governmental operator reports an intangible asset at cost for its right to access the facility and collect third-party fees; it amortizes the intangible asset over the term of the arrangement in a systematic and rational manner.</p>	<p>¶ 1 - Grantor only and excludes government business enterprises⁴</p> <p>¶ BC7 – Excludes public operators</p> <p>¶ AG1 - This Standard basically complements International Financial Reporting Interpretations Committee (IFRIC) 12, <i>Service Concession Arrangements</i>, which sets out the accounting requirements for the private sector operator in a service concession arrangement.⁵</p>	<p>¶ 14 & 37 - Grantor and Operator</p> <p>¶ Summary - Includes public operators</p> <p>¶ The Board decided to define a PPP in this Statement as an arrangement in which a government (the transferor) contracts with an operator to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset, for a period of time in an exchange or exchange-like transaction.</p>

⁴ Government Business Enterprises (GBS's) are required to follow IFRS.

⁵ For arrangements falling within IFRIC 12's scope, infrastructure assets are not recognized by the operator as property, plant and equipment. Instead, depending on the terms of the arrangement the operator will recognize: (1) a financial asset (i.e., right to receive unconditional cash from grantor); or (2) an intangible asset (i.e., receipt of cash is contingent on extent that public uses the service); or (3) a hybrid or bi-furcated approach using both the financial asset and intangible asset approaches.

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
SCA and P3 Definition	<p>¶ 1 and 4a.</p> <p>An arrangement that is a type of public-private or public-public partnership⁶. Operator can be governmental as well as non-governmental.</p>	<p>¶ 8</p> <p>A binding arrangement between grantor and operator. An operator is the entity that uses the service concession asset to provide public services subject to the grantor's control of the asset.⁷</p>	<p>¶ Summary</p> <p>A PPP is an arrangement in which a government (the transferor) contracts with an operator (a governmental or nongovernmental entity) to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction.</p>

⁶ GASB 60, par. 1, states that, "The term public-private partnership is used to refer to a variety of service arrangements, management arrangements, and SCAs. The terms of an SCA may include payments from the operator to the government for the right to build, operate, and collect user fees on infrastructure or other public assets and may provide for revenue sharing between the government and the operator during the term of the arrangement."

⁷ IPSAS 32, par. BC10 states that, "The term 'binding arrangement' had not been defined previously, but has been used in other IPSASs to describe arrangements that that confer similar rights and obligations on the parties to it as if they were in the form of a contract. The IPSASB concluded that this for the purposes of this Standard, this term should be defined to ensure consistent application of the Standard."

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
SCA / P3 Criteria	<p>¶ 4a. – 4d.</p> <p>4 criteria must all exist:</p> <ol style="list-style-type: none"> 1. An exchange 2. Operator collects and is compensated from 3rd party 3. Grantor can modify or approve services, to whom provided, and amounts that can be charged 4. Grantor is entitled to significant residual interest at end of arrangement 	<p>¶ 8</p> <p>Criteria includes:</p> <ol style="list-style-type: none"> 1. Operator uses the SCA asset to provide a public service on behalf of Grantor for a specified time 2. Operator is compensated over the SCA period 	<p>¶ 6</p> <p>Criteria includes:</p> <ol style="list-style-type: none"> 1. The transferor conveys to the operator the right and related obligation to provide public services through the use and operation of an underlying PPP asset in exchange for significant consideration, such as an up-front payment, installment payments, a new facility, or improvements to an existing facility. 2. The operator collects and is compensated by fees from third parties. 3. The transferor determines or has the ability to modify or approve which services the operator is required to provide, to whom the operator is required to provide the services, and the prices or rates

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
Continued: SCA / P3 Criteria			that can be charged for the services. 4. The transferor is entitled to significant residual interest in the service utility of the underlying PPP asset at the end of the arrangement.
SCA / P3 Examples	<p>¶ 28 lists:</p> <ol style="list-style-type: none"> 1. Waste management services <p>¶ 65 Illustrations list:</p> <ol style="list-style-type: none"> 2. Governmental operators such as Tollway, etc. 3. Non-governmental operators. 	<p>¶ IE4 example:</p> <ol style="list-style-type: none"> 1. A company that builds, maintains and operates a roadway 	<p>¶ C1 Examples:</p> <ol style="list-style-type: none"> 1. Tollway that is an SCA. 2. Public-to-Public that is a Design, Build, Operate arrangement. 3. Public-to-Public that is not an SCA. 4. Availability Payment Arrangements.

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
What is “arranged” in an SCA?	<p>¶ 4a. – 4d.</p> <p>Grantor (transferor) conveys to operator the right and related obligation to provide services through the use of infrastructure or another public asset in exchange for significant consideration and the operator collects and is compensated by fees from third parties.</p>	<p>¶ BC21</p> <p>An exchange transaction.</p>	<p>¶ 5</p> <p>Exchange and non-exchange transactions.</p>
Service Management Arrangement (SMA) Definition	<p>¶ 33</p> <p>GASB distinguishes between service contracts and management contracts.</p> <p>In a service contract, a government contracts with a separate entity for services it would otherwise have performed. For example, street sweeping and snow removal. Whereas a</p>	<p>Not defined in standard or IPSASB Glossary.</p>	<p>Not referenced in standard.</p>

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
Continued: Service Management Arrangement (SMA) Definition	management contract makes the separate entity responsible for management functions associated with the operation of the service.		
SMA examples	¶ 28 lists: 1. Cleaning services for government offices	¶ IG4 lists 2 types of SMA's: 1. Debt collection 2. Facility management	N/A
Asset Recognition	¶ Summary, 9 and BC 37. Occurs when the Grantor “determines or has the ability to modify or approve” nature of services, recipients/customers, and charges. Generally follows existing measurement, recognition, and disclosure guidance for capital assets. Newly constructed or acquired assets (including improvements) are booked at fair value.	¶ 9. Occurs when the Grantor “controls or regulates” nature of services, recipients/customers, and charges.	¶ 14 - 16 Transferor recognition - existing assets continue on books; new SCA asset is booked when placed in service; new non-SCA asset is booked as a right to receive (this happens when an underlying P3 asset is not owned by the transferor or is not the underlying asset of an SCA)

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
Liability Recognition	¶ Summary and 10. Occurs pursuant to the terms of the arrangement. Present value of significant contractual obligations imposed on the transferor and deferred inflows of resources.	¶ 14 and 15. Occurs when Grantor recognizes an asset. The liability is initially measured at the same amount of the asset and adjusted for “boot”.	¶14 – 16 and 32 - 33 Transferor recognition - Deferred inflow of resources. Should be adjusted by the same amount as any change resulting from the remeasurement of the receivable for installment payments, as discussed in paragraphs 27–30, or the remeasurement of the receivable for the underlying PPP asset, as discussed in paragraph 31, if applicable. ⁸
Existing Assets	N/A	¶ 12 and 13. Reclassified and accounted for as a separate asset class.	¶ 9 P3s will apply lease guidance in Statement No. 87 if existing assets are not required to be improved by the operator and are the only underlying P3

⁸ Per GASB 94, Par 32. A transferor initially should measure the deferred inflow of resources related to a P3 as the sum of the following assets when the related assets are recognized: a. initial measurement of the receivable for installment payments; b. P3 payments received from the operator at or before the commencement of the P3 term; c. initial measurement for the underlying P3 asset; d. the initial measurement for improvements to the underlying P3 asset; and e. the initial measurement of the receivable for the underlying P3 asset, as discussed in paragraph 31.

ATTACHMENT 2c: Background - Do GASB and IPSASB address P3s?

Area	GASB 60 Accounting and Financial Reporting for Service Concession Arrangements November 2010	IPSAS 32 Service Concession Arrangements: Grantor October 2011	GASB 94 Public-Private and Public-Public Partnerships and Availability Payment Arrangements March 2020
			assets and the P3 isn't an SCA.

Staff Take-away – IPSASB and GASB guidance are (1) narrowly focused mostly on infrastructure concession arrangements and (2) seem to follow leases guidance. Asset recognition generally occurs when the grantor has control of the asset. GASB requires that an intangible “Right-to-Receive” asset be booked when an underlying P3 asset is not owned by the transferor or is not the underlying asset of an SCA. Liability recognition differs: GASB requires that a deferred inflow of resources be booked whereas IPSASB books an amount equal to the asset value adjusted for boot.

ATTACHMENT 2d: Background - Identification of Measurement and Recognition Issues

At the October 2014 meeting, staff identified seventeen accounting gaps pertaining to P3s that needed attention. Most gaps affect PP&E, liability, and revenue recognition and measurement issues. Although a few of these issues may have been addressed in the leases project such as issues 2, 6, 7, 8 and 11, the majority will need specific project coverage and staff focus.

Major P3 Accounting Practice Issues

Gap - Accounting Practice Issue	SFFAS 5 Liabilities	SFFAS 6 PP&E	SFFAS 7 Revenue	SFFAS 47, Reporting Entity	SFFAS 54, Leases	P3, Intangibles or Other Project
1. Balance Sheet Presentation/Valuation		✗				✓
2. Capital Leases	✗	✗			✓	
3. Interest in anSPE/SPV		✗		✓		✓
4. Single or Unitary Payments	✗	✗				✓
5. Fair Value		✗				✓
6. Minimum Lease Payments	✗	✗			✓	
7. Discount Rate(s)	✗				✓	
8. Inception of Lease		✗			✓	
9. Asset Capitalization		✗				✓
10. Reversionary or Residual Interests		✗				✓
11. Capitalization of Interest		✗			✓	
12. Non-monetary exchanges		✗	✗			✓
13. In-kind Consideration		✗	✗			✓
14. Asset Re-measurement		✗				✓
15. Unearned Revenue			✗			✓
16. Intellectual Property		✗				✓
17. Privatization		✗				✓

ATTACHMENT 2d: Background - Identification of Measurement and Recognition Issues

Staff recommends addressing these issues in a single project because there are no bright-line distinctions⁹ of the P3 relationships that exist among the various projects. Effectiveness is maximized primarily by addressing the relevant accounting issues or gaps comprehensively and not in piecemeal fashion. This helps ensure that principles are uniformly applied aiding in consistency and comparability.

Major P3 Accounting Practice Issues Allocation Among Existing Guidance or Projects

P3	SFFAS 47, Reporting Entity	SFFAS 54, Leases	MD&A Placeholder	Intangibles or Other Project
1. Balance sheet presentation / valuation.	3. Interest in an SPE/SPV	2. Capital Leases	17. Other Matters - Privatization	16. Other Matters - Intellectual Property
3. Interest in an SPE/SPV		6. Minimum Lease Payments		14. Asset Re-measurement
4. Single or Unitary Payments		7. Discount Rate(s)		5. Fair Value
9. Asset Capitalization		8. Inception of Lease		
11. Capitalization of Interest.		11. Capitalization of Interest.		11. Capitalization of Interest.
10. Reversionary or Residual Interests				
12. Non-monetary exchanges				
13. In-kind Consideration (Donated assets)				
15. Unearned Revenue				

Yellow = Practice issues requiring attention. (continued on next page)

⁹ As the United Kingdom's Association of Chartered Accountants have stated, "Partnership is an ideal to be aspired to rather than a description of the actual working relationship between public and private contracting parties..." Staff notes that the risk-sharing ideal embodied in P3s cuts across projects and accounting standards.

ATTACHMENT 2d: Background - Identification of Measurement and Recognition Issues

Green = Practice issues addressed by the Leases project.

Orange = Practice issue that may require additional attention. For example, do we capitalize interest costs only when material and directly paid as per SFFAS 6, par. 26 or do we also require that imputed financing costs (e.g., indirectly paid or part of a single or unitary payment) be capitalized? The Board has several options concerning this issue: (a) not to pursue this matter at all, (b) add it to the P3 project scope, or (c) assign to another project.

Staff Take-away – Of the seventeen accounting measurement and recognition gaps initially identified by staff, notwithstanding Issue 11, eight issues (highlighted in yellow above) seem to remain as open and unresolved. As such, they require additional research for potential P3 guidance and are as follow::

1. Balance sheet presentation and valuation.
 2. Interest in an SPE/SPV
 3. Single or Unitary Payments
 4. Asset Capitalization
 5. Reversionary or Residual Interests
 6. Non-monetary exchanges
 7. In-kind Consideration (Donated assets)
 8. Unearned Revenue
-

Selected FY 2020 SFFAS 49 Disclosures

Department of Commerce
Note 26 P3 Disclosure

NOTE 26. DISCLOSURE PUBLIC-PRIVATE PARTNERSHIPS

The Department's evaluations of SFFAS 49, Public-Private Partnerships: Disclosure Requirements, identified three public-private partnerships (P3) for disclosure. Below is a summary table and detailed information for each of the P3s.

FY 2020				
Contracts/Cooperative Agreement Awards	Actual Amount Received	Actual Amount Paid	Estimated Amount to be Received over Expected Life of Contract/ Cooperative Agreement Awards	Estimated Amount to be Paid over Expected Life of Contract/ Cooperative Agreement Awards
First Responder Network Authority Contract with AT&T Inc.	\$ 120,000	\$ 1,461,600	\$ 18,000,000	Cannot be Estimated
NOAA Cooperative Agreement Awards with 11 Regional Associations	—	30,357	—	\$ 166,680
NIST Energy Savings Performance Contract with Johnson Controls Government Systems LLC	\$ 546	\$ 7,011	\$ 3,791	\$ 104,435
Total	<u>\$ 120,546</u>	<u>\$ 1,498,968</u>	<u>\$ 18,003,791</u>	<u>\$ 271,115</u>

First Responder Network Authority Contract with AT&T Inc.

The First Responder Network Authority (FirstNet), an independent authority within NTIA since its inception in 2012, was created to develop, deploy, and enhance wireless broadband communications for first responders—to give public safety 21st century communication tools to help save lives, and keep U.S. communities and emergency responders safe. To do that, Congress has tasked FirstNet ensuring the deployment and operation of a nationwide interoperable broadband network to meet the communication needs of public safety. This network must be designed to be reliable, functional, safe, and secure, and to provide optimal levels of operational capability at all times. See Note 22, *Funds from Dedicated Collections*, for more information on FirstNet.

The Nationwide Public Safety Broadband Network (NPSBN) is being built out, deployed, operated, and maintained under a P3 between FirstNet and AT&T Inc., under a 25-year contract awarded by FirstNet to AT&T in March 2017. The service will cover all 50 U.S. states, five territories, and the District of Columbia, including rural communities and tribal nations. The statutory authority for FirstNet to enter into the contract with AT&T is section 6206 of the Middle Class Tax Relief and Job Creation Act of 2012 (Act). For purposes of the information disclosed in this Note, due to the long length of the contract through 2042 and because FirstNet cannot reasonably estimate at this time what events might occur after the contract end date, the 25-year contract period is also treated as the expected life of this P3 arrangement.

FirstNet, under the terms of the contract and task orders issued thus far, provides to AT&T the use of 20 MHz of federally-owned Band 14 spectrum that Congress allocated to FirstNet under the Act. The Act mandates that the Band 14 spectrum be utilized for the deployment of the NPSBN. The subsequent task orders issued to AT&T provides for \$6.50 billion in firm-fixed-price (FFP), success-based payments for the buildout of the NPSBN, with AT&T contract performance for all payment milestones under these task orders scheduled for completion March 2023 at Final Operational Capability. In return, AT&T will buildout, deploy, operate, and maintain the NPSBN over 25 years, consistent with the terms of an indefinite delivery/indefinite quantity contract awarded

on March 27, 2017. AT&T will bring operational expertise, financial stability, and significant network assets. AT&T has publicly indicated that it will invest about \$40 billion over the life of the contract to buildout, operate, deploy, and maintain the NPSBN, and together with FirstNet will help ensure that the NPSBN evolves with the needs of public safety. The Band 14 spectrum is nationwide, high-quality spectrum dedicated for priority use by public safety via the NPSBN. When the Band 14 spectrum is not in use by public safety, it will be available for commercial use by AT&T. In addition, AT&T has made all of its LTE bands available to public safety on the NPSBN.

Payments made in FY 2020 and FY 2019 by FirstNet to AT&T for success-based payment milestones under the FFP buildout and continuing enhancement Task Orders total \$1.46 billion and \$1.47 billion, respectively. Costs incurred by FirstNet for the buildout and continuing enhancement of the NPSBN are recorded as an asset (less accumulated amortization) and include (a) costs incurred for completed and accepted AT&T contract performance for the buildout/continuing enhancement of the NPSBN; and (b) accrued costs for estimated, unbilled AT&T contract performance progress for buildout/continuing enhancement of the NPSBN. See Note 22, *Funds from Dedicated Collections – NTIA's Network Construction Fund*, for more information.

AT&T, under the contract terms, is required to make annual payments to FirstNet over the 25-year contract period totaling \$18.00 billion, including the annual payments received in FY 2020 and FY 2019 of \$120.0 million. Payments received from AT&T and that are retained by FirstNet are required by Section 6208 of the Act to be used only for constructing, maintaining, operating, or improving the NPSBN.

Payments by both parties are made directly to the other party. The contract with AT&T has a contract ceiling for the entire 25-year period of performance of \$100.00 billion. Any other costs incurred by FirstNet associated with future, additional task orders shall be task-order dependent. No estimates can be made at this time as to any further payments to AT&T that might occur under any future task orders under the contract.

The contract incorporates, by reference, Federal Acquisition Regulation (FAR) clauses for (a) termination by the U.S. government for convenience (FAR 52.249-2, *Termination for Convenience of the government (Fixed-Price)*); and (b) termination for default by the contractor (FAR 52.249-8, *Default (Fixed Price Supply and Service)*). The contract is a multiple-year vehicle and therefore does not contain the FAR clause 52.217-9, *Option to Extend the Term of the Contract*. The contract, however, contains FAR Clause 52.217-8, *Option to Extend Services*, which allows for continued performance of any services within the limits and at the rates specified in the contract for a period not to exceed six months.

FirstNet oversees and monitors the contract with AT&T to ensure it delivers on the requirements associated with deploying, operating, and maintaining the NPSBN through various mechanisms, including subscriber adoption targets, successful milestone completion, disincentives, and other mechanisms outlined in the contract. FirstNet oversees the verification and validation of the contractual requirements, as well as some products and services—in accordance with the terms of the contract—before they are deployed so that first responders will have the proven tools they need in disasters and emergencies. Through its Innovation and Test Lab in Boulder, CO, FirstNet is testing capabilities unique to public safety. FirstNet's P3 with AT&T provides first responders with access to mission-critical capabilities over the NPSBN, including priority and preemption features that give first responders their own “fast lane” on the NPSBN to communicate and share information during emergencies, large events, or other situations when commercial networks could become congested.

Contractual risks of loss to the federal government primarily relate to (a) AT&T's satisfactory performance under the terms of the contract and in accordance with the terms and conditions contained in subsequent task orders; and (b) that the contract may be subject to (1) future renewal(s) of the license of the federally-owned spectrum that Congress allocated to FirstNet under the Act; and (2) FirstNet reauthorization.

As previously mentioned, the task orders issued thus far under the contract for buildout/continuing enhancement of the NPSBN are FFP awards (FAR Subpart 16.2, *Firm-Fixed-Price*). This type of arrangement provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience during performing. This award type places maximum risk upon the contractor and full responsibility for all costs and resulting profit or loss. However, even in an FFP type environment, risks can be categorized within three distinct types: cost, schedule, and technical performance.

In an FFP-type arrangement, the "cost risk" shifts from the government to the contractor—in this instance, from FirstNet to AT&T. An FFP-type award reduces price uncertainty by providing for a price that is not subject to adjustment based on the contractor's cost experience. It requires the contractor to complete all requirements for the established price. The payment amounts from AT&T to FirstNet were negotiated and are also contained in the resultant award to include the timing of such payments.

With regard to any scheduling and/or technical performance risk, AT&T provides mobile, broadband, video, and other communications services to U.S.-based consumers and companies globally—from the smallest business to the Fortune 1000. Since contract award, AT&T has successfully performed all required milestones and has delivered performance ahead of schedule. Moreover, public safety personnel across the country continue to turn to the NPSBN to advance their routine and emergency responses. Deliverables provided by AT&T thus far demonstrate an increase in user adoption by public safety to support routine and emergency responses. FirstNet continues to monitor risk over the entire contract with AT&T and all awarded task orders.

AT&T is moving quickly and expediting its deployment of the required nationwide coverage targets completed ahead of schedule. This helps ensure reliable connections to critical information, communication, and coordination, which essentially helps public safety adoption targets. Therefore, although there is some risk pertaining to schedule and/or performance, the risk does not appear to be significant at this time based on AT&T's performance since award.

This contract is modernizing and improving public safety communications by leveraging private sector resources, infrastructure, and cost-saving synergies to buildout, deploy, operate, and maintain the NPSBN. The P3 approach gives a fully-funded, self-sustaining network that will serve public safety for years to come. This business model is built upon the efficient use of resources, infrastructure, cost-saving synergies, and incentives.

NOAA Partnerships with 11 Regional Associations (RA) under the federal program for the U.S. Integrated Ocean Observing System (IOOS)

NOAA partners with 11 RAs under the federal program for IOOS. IOOS is governed by the Integrated Coastal and Ocean Observation System Act of 2009 (ICOOS Act), which authorized the establishment of a National Integrated Ocean Observing System (System) and codified a governance structure within which the System will operate. The Act explicitly vests authority in NOAA as the lead federal agency for implementation and administration of the System, and tasked NOAA to establish an IOOS Program Office. NOAA is additionally required to carry out its responsibilities in consultation with federal agency and regional partners.

IOOS is a federal-regional partnership working to provide new tools and forecasts to improve safety, enhance the economy, and protect the environment. Integrated ocean information is available in near real time, as well as retrospectively. Easier and better access to this information is improving the Nation's ability to understand and predict coastal events—such as storms, wave heights, and sea level change. Such knowledge is needed for everything from retail to development planning. Regional IOOS partners are essential to building and supporting IOOS. They provide increased observations, distinctive knowledge, and critical technological abilities, and apply these toward the development of products to meet regional and local needs.

IOOS is comprised of 11 RAs, which guide development of and stakeholder input to regional observing activities. The federal government, through the ICOOS Act, established the fundamental purpose and mission of the RAs with respect to its role in IOOS. RAs serve the Nation's coastal communities, including the Great Lakes, Caribbean, and Pacific Islands and territories. RAs design, maintain, and operate regional coastal observing systems. Each RA is managed by a board of directors drawn from stakeholders in the region. RAs work with agencies, industry, scientists, and others to tailor an observing system to address specific regional issues. The 11 RAs are:

- Alaska Ocean Observing System (AOOS)
- Caribbean Coastal Ocean Observing System (CARICOOS)
- Central and Northern California Ocean Observing System (CeNCOOS)
- Gulf of Mexico Coastal Ocean Observing System (GCOOS)
- Great Lakes Observing System (GLOS)
- Mid-Atlantic Regional Association Coastal Ocean Observing System (MARACOOS)
- Northwest Association of Networked Ocean Observing Systems (NANOOS)
- Northeastern Regional Association of Coastal Ocean Observing Systems (NERACOOS)
- Pacific Islands Ocean Observing System (PacIOOS)
- Southern California Coastal Ocean Observing System (SCCOOS)
- Southeast Coastal Ocean Observing Regional Association (SECOORA)

Furthermore, all 11 RAs are currently voluntarily certified by NOAA to be Regional Information Coordination Entities (RICE), for which an RA, in order to be RICE-certified, is required to implement specific practices regarding data collection, governance, and management. The relevant federal regulations are located at Title 15, *Commerce and Foreign Trade*, Part 997, *Regional Information Coordination Entities*, of the Code of Federal Regulations (CFR).

Subsection 26, *Civil liability*, item (a), which is subject to conditions and restrictions set forth in items (b) through (d), states in full:

“For purposes of determining liability arising from the dissemination and use of observation data gathered pursuant to the ICOOS Act and these regulations, any non-federal asset or regional information coordination entity incorporated into the System by contract, lease, grant, or cooperative agreement that is participating in the System shall be considered to be part of the National Oceanic and Atmospheric Administration. Any employee of such a non-federal asset or regional information coordination entity, while operating within the scope of his or her employment in carrying out the purposes of this subtitle, with respect to tort liability, is deemed to be an employee of the federal government.”

NOAA currently has in place, as of September 30, 2020, separate cooperative agreements for each of the 11 RAs, each for the performance period of June 1, 2016 through May 31, 2021, totaling \$166.7 million. The cooperative agreements are with the fiscal sponsor for the RA; in a few cases, the RA also serves as its own fiscal sponsor. Payments are made by NOAA to the fiscal sponsor of the RA. NOAA breaks down a multi-year project period into “funding periods”—receipt by an RA of any NOAA financial assistance beyond the current funding period is contingent upon the availability of funds and satisfactory performance under the cooperative agreement and is at the sole discretion of NOAA. NOAA reserves the right to terminate funding for the award at any time throughout the award period should NOAA determine that a recipient is not meeting project milestones. NOAA's total expenses under the cooperative agreements with the 11 RAs for FY 2020 and FY 2019 is \$30.3 million and \$29.3 million, respectively.

The cooperative agreements' funding provided by NOAA to the 11 RAs is estimated by NOAA to be the predominate source of funding for each of the RAs, although the RAs may also receive some funding from other sources. NOAA does not have specific information on the dollar amounts of any additional funding received by the 11 RAs.

NOAA periodically conducts a competitive process (currently every five years) in which it requests proposals for NOAA funding for coordinated regional efforts that further the IOOS in sustaining and enhancing comprehensive regional coastal observing systems in 11 IOOS regions, and that build upon progress made to-date on the development of the regional coastal observing systems. NOAA expects successful awardees to serve as an RA responsible for operating the regional coastal observing system. Any organization, including the current awardee, may submit a proposal to serve as an RA; accordingly, an organization that currently serves as an RA may or may not be selected in the next competitive cycle. For purposes of the Department's evaluation of the expected lives of the NOAA partnerships with the RAs, because NOAA intends to continue the funding of and partnerships with RAs (successful awardees), NOAA's partnerships with RAs are considered to have expected lives that exceed five years.

Risk of loss under the partnerships with the 11 RAs primarily relates to NOAA being subject to the above discussed Subsection 26, *Civil liability*, of 15 CFR Part 997.

Any further possible risks of loss regarding the 11 RAs appear to relate to each RA's compliance with award provisions and satisfactory performance under the award. These risks of loss are mitigated in part because of NOAA's significant, continued involvement and monitoring of an RA's compliance with award requirements and performance under the award—RAs are required to report on progress and performance over the life of the cooperative agreement; and because NOAA breaks down a multi-year cooperative agreement into "funding periods" as previously discussed.

Furthermore, standard Departmental terms and conditions for these cooperative agreements include provisions for unsatisfactory performance or non-compliance with award provisions, internal controls, and audits, including provisions for the following:

- Failure to perform the work in accordance with award terms and maintain satisfactory performance as determined by the Department may result in implementation of additional award conditions pursuant to Title 2 of the CFR, *Grants and Agreements*, Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Subsection 207, *Specific conditions*, or other appropriate enforcement action as specified in 2 CFR Part 200, Subsection 338, *Remedies for noncompliance*. Possible enforcement actions include temporarily withholding award payments pending correction of a deficiency, changing payment method to reimbursement only, disallowance of award costs, and wholly or partially suspending or terminating award.
- 2 CFR Part 200, Subsection 339, *Termination*, through Subsection 342, *Effects of suspension and termination*, apply to an award that is terminated prior to the end of period of performance due to recipient's material failure to comply with award terms and conditions.
- Each recipient must comply with standards for internal controls described at 2 CFR Part 200, Subsection 303, *Internal Controls*.
- An audit of the award may be conducted at any time.

NIST Energy Savings Performance Contract with Johnson Controls Government Systems LLC

NIST, in June 2015, awarded a FFP, multi-year, energy savings performance contract (ESPC) award of \$44.5 million (subsequently amended to \$44.7 million) to Johnson Controls Government Systems LLC (Johnson Controls or Contractor) for energy savings improvements for its Gaithersburg, MD campus.

ESPCs, per the U.S. Department of Energy, allow federal agencies to conduct energy projects with limited to no up-front capital costs, minimizing the need for Congressional appropriations. An ESPC is a working relationship between an agency and an energy service contractor. The contractor conducts a comprehensive energy audit for the federal facility and identifies improvements to save energy. In consultation with the agency, the contractor designs and constructs a project that meets the agency's needs and arranges the necessary funding. The contractor guarantees that the improvements will generate energy cost savings sufficient to

pay for the project over the term of the contract. The cost of an ESPC project must be covered by the energy, water, and related cost savings generated at the project site. The ESPC's cost savings must be verified and documented annually. After the contract ends, any additional cost savings accrue to the agency.

This NIST ESPC project, with a contract period of performance through January 2041, primarily provides for energy conservation measures (ECMs) for (a) electrical power generation and steam system improvements, and operational changes, for NIST's central steam plant on campus; and (b) capital improvements and operational changes for NIST's chiller plant on campus. The contract also includes Contractor costs for proposal development for energy surveys, including preliminary assessment, investment grade audit, and the final proposal; and Contractor project direct costs for executing the scope of the award. This contract was made pursuant to 42 U.S.C Section 8287, *Authority to enter into contracts*, which addresses ESPCs awarded by federal agencies. For purposes of the information disclosed in this Note, the contract period is also treated as the expected life of this P3 arrangement.

ECMs include measures to increase energy efficiency of energy-consuming systems, in order to reduce water consumption and improve the efficiency of energy production systems that generate electrical and/or thermal energy. Johnson Controls is responsible for providing all labor, materials, and capital to install ECMs and provide operations and maintenance as specified in the contract.

Each ECM set forth in the contract for delivery by the Contractor includes a sites-specific Measurement and Verification (M&V) plan that specifies the M&V requirements and procedures that shall apply to the ECM based on various factors, such as type of ECM, projected value of energy savings, certainty/uncertainty of savings being achieved, and the intended risk allocation between NIST and the Contractor. The M&V plans are the primary vehicle that NIST will use to first document and then to periodically evaluate the performance expectations of the ESPC. The M&V plans state where and how energy, water, and related cost savings are going to occur and how they are to be calculated and verified. The Contractor will conduct annual M&V activities to verify operation of the installed equipment/systems and calculate the previous year's energy and water consumption reductions and cost savings, and compare verified, guaranteed, and actual savings. Lastly, the Contractor shall prepare and submit annual M&V reports to NIST, including data and calculations that demonstrate that continued ECMs performance achieves the guaranteed annual energy and water consumption reductions and related cost savings as specified in the contract.

Key financial data for this contract, as amended, is shown below:

	FY 2020
Award Amount ¹	\$ 44,656
Principal Financed ²	\$ 49,998
Total Estimated Cost Savings ³	\$ 112,141
Total Guaranteed Cost Savings ³	\$ 105,119
Total Payments to Contractor ³	
Principal	\$ 49,998
Performance Period Expenses (includes Contractor Profit)	34,629
Interest Expense	19,808
Total	\$ 104,435

¹ Total Implementation Costs.

² Total Implementation Costs plus Total Financing Procurement Price.

³ Implementation Period plus Post-acceptance Performance Period (19 Years).

The implementation period payment to the financier of \$2.0 million, which proceeded after project acceptance by NIST in November 2019, was made by NIST in December 2019, and post-acceptance performance period monthly payments to the financier, scheduled to be paid over 19 years, began in December 2019. Post-acceptance performance period payments made in FY 2020 to the financier totaled \$7.0 million, which included a \$3.5 million payment to buydown the principal balance; there were not any payments made to the financier in FY 2019. General Property, Plant, and Equipment items purchased by NIST through this contract that meet NIST's capitalization thresholds will be capitalized (see Note 1.M, *General Property, Plant, and Equipment, Net*, for NIST's capitalization thresholds).

The contract incorporates, by reference, FAR clauses for (a) cancellation under multi-year contracts (FAR 52.217-2, *Cancellation Under Multiyear Contracts*); (b) termination by the U.S. government for convenience (FAR 52.249-2, *Termination for Convenience of the Government (Fixed-Price)*); and (c) termination for default by the contractor (FAR 52-249-8, *Default (Fixed-Price Supply and Service)*; and FAR 52.249-10, *Default (Fixed- Price Construction)*).

The contract includes monthly financial schedules, should circumstances of NIST cancellation or termination for convenience of the contract occur, for (a) Financing Termination Liability Amounts¹, ranging from \$51.5 million prior to the first post-acceptance period monthly payment to \$95 thousand for the second to last monthly payment; and (b) Total Cancellation Ceiling Amounts² ranging from \$52.0 million prior to the first post-acceptance period monthly payment to \$95 thousand for the second to last monthly payment.

Contractual risks of loss to the federal government primarily relate to (a) the Contractor's ongoing satisfactory performance throughout the project lifecycle to ensure that the project is successful as designed; and (b) that the success of this ESPC project is also dependent on the newly installed equipment being properly operated and maintained—the savings calculations are based on the equipment operating as installed and as specified by Johnson Controls.

Johnson Control's management approach is designed to support NIST throughout the project lifecycle, and the contract sets forth numerous Contractor responsibilities to help ensure that the project is successful as designed, and that the installed equipment operates as intended.

Because this ESPC project is an FFP-type, maximum cost risk is with Johnson Controls. For that reason, the Contractor carefully controls the ECM investment costs so that they do not exceed their recovery through the NIST payments. The Contractor has implemented a budget plan and will frequently monitor costs and address any developing cost problems.

With regard to any scheduling and/or technical performance risk, Johnson Controls is responsible for ensuring that energy savings are met throughout the performance period. NIST will not be penalized for delays caused directly by Johnson Controls or its subcontractors. The annual M&V data reviews will be used to ensure that the project proceeds as designed and to identify any actions needed to be carried out by either party as appropriate.

There have been delays in the project; however, the ESPC project is proceeding satisfactorily. Therefore, although there is some risk pertaining to schedule and/or performance, the risk does not appear to be significant at this time based on Johnson Controls' performance since award.

¹ Remaining Unamortized Principal Balance plus a 3.0 percent Termination Liability Prepayment Charge.

² Maximum termination liability.

Department of Defense
Note 25 P3 Disclosure

NOTE 25: PUBLIC-PRIVATE PARTNERSHIPS

Public-Private Partnerships (P3s) are risk-sharing agreements between public and private sector entities with expected lives greater than five years. P3s can be extremely complex agreements which transfer or share various forms of risk among the P3 partners, some of which involve government assets. Disclosure of P3s foster accountability and improve understanding of the nature and magnitude of risk of loss, including potential risk of loss, when material to the financial statements. [SFFAS 49](#) Public-Private Partnerships, requires the disclosure of the nature of the Government's relationship with the private entities and helps achieve the operating performance and budgetary integrity objectives outlined in Statement of Federal Financial Accounting Concepts ([SFFAC](#)) 1, Objectives of Federal Financial Reporting, by making P3s more understandable.

The Department identified Military Housing Privatization Initiative (MHPI) agreements as P3s requiring disclosure. Military Departments are reviewing the details of individual agreements to ensure the underlying transactions are recorded and reported in accordance with GAAP. Due to the complexity of some of the MHPI agreements, the Department may need to adjust previous transactions in order to be GAAP compliant and is currently performing research and analysis to determine the materiality of prospective adjustments, which may result in a relevant effect on the financial position and results of operations of the MHPI agreements.

OVERVIEW

The MHPI agreements are private sector/market driven businesses established as Limited Liability Companies or Limited Partnerships (LLC/LP) single purpose entities. These entities allow the Department to work with the private sector to build, renovate and sustain military housing by obtaining private capital to leverage government dollars. By engaging in MHPI agreements, the government benefits through the use of private industry expertise and tools, improving the condition of military housing more expediently and efficiently than the traditional military construction process would allow. The MHPI authority stems from the National Defense Authorization Act for Fiscal Year 1996, [Public Law 104-106](#) (110, Stat 186, Section 2801). [Title 10 U.S.C. §§ 2871-2885](#) codifies the Military Department Secretaries' MHPI authority for acquisition and improvement of military housing. The Private Partner serves as the majority managing member which ensures performance objectives are met over the expected life of the operating agreement. The Military Department generally serves as the minority member and enters into a long-term ground lease (generally 50 years), and conveys the associated real property assets (buildings, structures, facilities, and utilities) to the LLC or LP. The contractual terms and termination clauses vary by agreement. The Department's involvement in the operations and management of the LLC or LP is governed by evaluating the percentage of ownership interest, along with analyzing the indicators of control, which determines the level of influence over the partnership.

FUNDING AND CONTRIBUTIONS

The Department provides funding to the LLC or LP through:

- **Equity Investments** - Provision of cash and transfer of real property ownership (land, housing units, and other structures) to a project and, in return, the DoD receives a portion of that project's profits and losses. In addition, the DoD also receives compensation if the investment is sold;
- **Government Direct Loans** - Provision of cash to a project with the expectation of future payment;
- **Government Loan Guarantees** - Agreement to pay a percentage of the outstanding balance on a non-Government loan in the event of nonpayment by the project;
- **Differential Lease Payments** - Provision of monthly payments to a project above the Basic Allowance for Housing (BAH) paid by the military personnel.

See Note 7, *Direct Loan and Loan Guarantees, Non-Federal Borrowers*.

NOTE 25: PUBLIC-PRIVATE PARTNERSHIPS (CONTINUED)

FUNDING AND CONTRIBUTIONS (CONTINUED)

Cash contribution from the Department's Family Housing Improvement Fund (FHIF) or the Department's Military Unaccompanied Housing Improvement Fund (MUHIF) requires Congressional notification, per [10 USC 2883](#), to provide a justification for the transfer of appropriated amounts to a fund from amounts authorized and appropriated to the Department for the acquisition, improvement, or construction of military family housing. The expected life of each MHPI agreement corresponds to the length of the ground lease. The agreement is established through negotiations between the Military Department and the Private Partner based on the duration of the project to establish housing, which determines the amount of contributions at the inception of the agreement. The Military Departments are not required to contribute resources to the MHPI P3 beyond the initial contribution to the FHIF or MUHIF. However, the enactment of [Pub L. 115-91 § 603](#), required the Military Departments to make direct payments to the MHPI entities (lessors) of 1% of the BAH amount for the period January 1, 2018 through December 31, 2018. The amount of BAH was calculated under the military pay statute in [37 U.S.C. § 403\(b\)\(3\)\(A\)\(i\)](#) for the area in which the covered housing existed. From September 1, 2018 through December 2019, [Pub L. 115-232 § 606](#) required the Military Departments to make monthly direct payments to the MHPI entities of 5% of the BAH. From January 1, 2020 forward, [Pub. L. 116-92 §§ 3036 and 3037](#) require the Military Departments to make monthly direct payments to the MHPI entities of 2.5% of BAH and "underfunded" projects may receive up to an additional 2.5% of BAH monthly at the determination of the Chief Housing Officer of the Department of Defense and Secretaries of the Military Departments until Congress modifies or rescinds this direction. Upon termination of the leasehold interest, all assets revert back to the Department at no-cost to either party. Upon dissolution of the LLC or LP and, after the contractual terms have been met, excess funds will be returned to the FHIF.

TABLE 25: CUMULATIVE CONTRIBUTIONS

Cumulative as of September 30
(\$ in millions)

2020

Military Department Contributions to the DoD MHPI Program*

Funding Contributions to DoD MHPI Program	\$3,081.8
Real Property Contributions to the LLCs & LPs (value of Real Property Assets (RPA) Conveyed, per OMB Scoring Documents)	7,617.5
DoD Direct Payments as Required by Pub. L. 115-91 § 603 (1% BAH through August 2018), and 15-232 § 606 (5% BAH through December 2019), and 116-92 §§ 3036 and 3037 (2.5% BAH and 2.5% for underfunded projects)	176.2
Basic allowance for housing (BAH) under § 403 of Title 37 to members living in privatized housing	3,140.3

DoD Contributions from the MHPI Program to the LLCs/LPs*

Direct Cash Contributions	1,607.2
Differential Lease Payments	16.5
Direct Loans Disbursed	1,891.9

Contributions by Private Partners to the MHPI Partnership

Direct Cash Contributions	606.2
Bonds/Loans Contributed	11,259.0
Real Property and Land Contributions	1.6

Contributions by the LLCs/LPs

Bonds/Loans Contributed	51.7
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*The disclosures above are currently presented in the DoD's consolidated financial statements and are not presented within the Military Department's financial statements.

NOTE 25: PUBLIC-PRIVATE PARTNERSHIPS (CONTINUED)

RISK

The Private Partner's potential risks are (1) inability to recover initial cash contributions, (2) inability to repay bonds and/or loans, and (3) loss of a long-term revenue source. The Private Partner is not entitled to the return of its capital contribution, or to be paid interest on its capital contribution. The Department's potential risks are (1) loss of the initial cash contribution to the program, (2) default by the Private Partner on a government direct loan, (3) guarantee threshold event, such as the need to request additional funds above the initial threshold amount, triggered under a loan guarantee agreement, (4) need to provide direct management support and financial contribution to the project until its completion if the Private Partner fails to comply with contractual terms, and (5) failure to deliver quality housing services to Military Personnel. Likewise, when unpredicted events occur, such as natural disasters and severe weather events, the Military Departments are required to provide direct intervention by restoring and rebuilding military housing.

To mitigate financial risk, each MHPI operating agreement prescribes to a revenue flow operating tool during the life of the arrangement and upon liquidation of the arrangement, in order to track revenue, expenses, cash flow, and operating metrics. The revenue flow generally allows the Private Partner an opportunity to earn incentives and returns for economic performance after providing capital for the maintenance of the facilities. Monies in excess of required reserves are returned to the FHIF at agreement liquidation.

The MHPI agreements do not explicitly identify risk of loss contingencies, although some projects include reserve accounts for specific circumstances, such as an Operating Expense Reserve Account or Utility Reserve Account to save funds to protect against unexpectedly high expenses. The Departments overall risk associated with these agreements are the total initial investment (funding and net book value of assets at the time of transfer), plus the commercial loan guarantees associated with the MHPI agreements.

The Department recognizes other risk scenarios may occur, such as Private Partner non-compliance with the MHPI agreements or risk of loan modifications. To address non-compliance risk, the Department performs reviews of compliance, a joint effort between the local military housing office, the Private Partners, Military Department installation commands, and other ranking members of the Military Department. These reviews can include neighborhood tours to view project amenities such as community centers, playgrounds, and pools, all of which are owned, maintained, and operated by the Private Partner companies, as well as exteriors of military housing units. Private Partner performance is measured through a variety of metrics, such as resident satisfaction, maintenance management, project safety, and financial management. The Government Accountability Office Report, [GAO-20-2807](#), Preliminary Observations on DoD's Oversight of the Condition of Privatized Military Housing, provides information about the Department's governance activities, and the National Defense Authorization Act ([NDAA](#)) 2020 Sections 3001-3064 prescribes the authoritative guidance which defines the accountability and oversight measures of the MHPI projects, the protections and responsibilities for tenants, and any additional requirements relating to contracts and management of MHPI projects. To address the risk of loan modifications or restructures, which may be necessary to ensure the sustainability of affected projects, a sustainment review is required to be performed every two to three years, outlining the future needs of a project. This review occurs even when the projects may not be at risk of imminent loan default. On an annual basis, the Department is required to re-forecast projected cash flows to assess each project's sustainability. If the assessment results in a funding shortfall or going concern for the project, a loan modification may be requested from the OMB. OMB is required to approve all loan modifications before the Military Departments and LLs or LPs can begin to restructure the loan.

NOTE 25: PUBLIC-PRIVATE PARTNERSHIPS (CONTINUED)

INVESTMENT RECOGNITION

Beginning in FY2020, the Department adopted [FASB ASC 323](#) Investments – Equity Method and Joint Ventures to account for its investments in LPs and LLCs engaged in MHPI projects. This treatment was chosen in the absence of specific FASAB accounting standards for the MHPI financial arrangement. The Department subsequently rescinded the policy requiring FASB ASC 323 and, instead, required Military Departments to provide details of the MHPI agreements and associated financial activity in the footnote disclosures.

OMB A-136 SIGNIFICANT ENTITY DISCLOSURE REQUIREMENT

The Military Departments are assessing their MHPI agreements and contracts to provide actual and estimated amounts paid and received by the Department for future periods, in compliance with OMB A-136's significant entity disclosure requirement.

The Components continue to assess agreements using criteria from [SFFAS 49](#) to determine if they have P3s to disclose. The Department will report these agreements as soon as these assessments are complete.

Department of Energy
Note 14 Other Liabilities
Disclosure

13. Deferred Revenues and Other Credits

(\$ IN MILLIONS)	FY 2020	FY 2019
Intragovernmental	\$ 239	\$ 246
Nuclear Waste Fund ^(Note 11)	\$ 45,069	\$ 43,481
Power Marketing Administrations	1,441	1,504
Reimbursable work advances	328	316
Other	219	220
Subtotal	\$ 47,057	\$ 45,521
Total deferred revenues and other credits	\$ 47,296	\$ 45,767

NUCLEAR WASTE FUND

NWF revenues are accrued based on interest earned on one-time charges assessed against owners and generators of high-level radioactive waste and SNF and interest accrued on investments in Treasury securities. These revenues are recognized as a financing source as costs are incurred for NWF activities. Revenues that exceed the NWF expenses are deferred.

POWER MARKETING ADMINISTRATIONS

BPA's deferred revenues and other credits make up the majority of the deferred revenues and other credits for the Power Marketing Administrations.

BPA's deferred revenues and other credits primarily represent the following:

- Regulatory liabilities for amounts previously collected through rates for accumulated plant

removal costs as part of depreciation and decommissioning and site restoration costs.

- Interconnection agreements which are advances for requested new network upgrades and interconnections that accrue interest and will be returned as cash or credits against future transmission service on the new or upgraded lines.
- Deferred project revenue funded in advance consisting of third party advances received where BPA will own the resulting transmission assets. The balance is amortized as other revenue not with customers over the life of the assets so that the balance prevents any stranded costs in case of impairment as prescribed by the transmission rate process.
- Third AC intertie transmission line capacity agreements reflecting unearned revenues from customers related to the Third AC intertie transmission line capacity project.

14. Other Liabilities

(\$ IN MILLIONS)	FY 2020	FY 2019
Intragovernmental		
Oil held for Department of Defense ^(Notes 2 and 8)	\$ 123	\$ 123
Future reimbursements to the Treasury Judgment Fund ^(Note 11)	407	393
Negative subsidies and downward re-estimates on loans outstanding	168	172
Other	191	74
Total other intragovernmental liabilities	\$ 889	\$ 762
Environment, safety, and health compliance activities ^(Note 11)	\$ 1,436	\$ 1,436
Accrued payroll, benefits, and withholding taxes	1,909	1,551
Residential exchange ^(Note 11)	1,910	2,093
Asset retirement obligations	891	821
Energy savings performance contracts and utility energy service contracts ^(Note 11)	462	504
Oil held for others ^(Notes 2 and 8)	149	-
Other	273	274
Subtotal	\$ 7,030	\$ 6,679
Total other liabilities	\$ 7,919	\$ 7,441

FUTURE REIMBURSEMENTS TO THE TREASURY JUDGMENT FUND

This amount is comprised of future reimbursements the Department will need to make to the Treasury Judgment Fund for litigation payments made on behalf of the Department.

ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE ACTIVITIES

The Department's environment, safety, and health (ES&H) liability represents those activities necessary to bring facilities and operations into compliance with existing ES&H laws and regulations (e.g., Occupational Safety and Health Act; Clean Air Act; Safe Drinking Water Act). Types of activities included in the estimate relate to the following: upgrading site-wide fire and radiological programs; nuclear safety upgrades; industrial hygiene and industrial safety; safety related maintenance; emergency preparedness programs; life safety code improvements; and transportation of radioactive and hazardous materials. The estimate covers corrective actions expected to be performed in future years for programs outside the purview of the Department's Environmental Management (EM) Program. ES&H activities within the purview of the EM program are included in the environmental liabilities estimate.

ACCRUED PAYROLL, BENEFITS, AND WITHHOLDING TAXES

Accrued payroll and benefits represent amounts owed to the Department's federal and contractor employees for accrued payroll, unfunded accrued annual leave for federal employees, funded accrued annual leave for contractor employees, payroll withholdings owed to state and local governments, and Thrift Savings Plan withholdings and employer contributions.

RESIDENTIAL EXCHANGE PROGRAM

In 1981 and as provided in the Northwest Power Act, BPA began to implement the REP through various contracts with eligible regional utility customers. BPA's implementation of the REP has been the subject of various litigations and settlement agreements.

Beginning in April 2010, over 50 litigants and other regional parties entered into mediation to resolve numerous disputes over the REP. In FY 2011, the parties reached a final settlement agreement – the 2012 Residential Exchange Program Settlement Agreement (2012 REP Settlement Agreement). As a result of the settlement, BPA recorded an associated long-term IOU exchange benefits liability and corresponding regulatory asset of \$3.1 billion. Under the 2012 REP Settlement Agreement the IOUs REP benefits were determined for fiscal years 2012-2028 (also referred to herein as Scheduled Amounts). The Scheduled Amounts started at \$182 million for FY 2012 and increase over time to \$286 million for FY 2028. As provided in the 2012 REP Settlement Agreement, the Scheduled Amounts are established for each IOU based on the IOU's average

system cost, its residential exchange load and BPA's applicable Priority Firm Exchange rate. The Scheduled Amounts total \$4.1 billion over the 17-year period through FY 2028. As of September 30, 2020, the remaining Scheduled Amounts total \$2.2 billion. Amounts recorded of \$1.9 billion at September 30, 2020 represent the present value of future cash outflows for these IOU exchange benefits.

ASSET RETIREMENT OBLIGATIONS

BPA recognizes asset retirement obligations (AROs) based on the future retirement of certain tangible, long-lived assets, BPA's AROs are recognized based on the estimated fair value of the dismantlement and restoration costs associated with the retirement of certain tangible long-lived assets, primarily comprised of the Columbia Generating Station (CGS), and 30% share of the former Trojan nuclear power plant decommissioning activities.

The CGS is a nonfederal nuclear power plant owned and operated by Energy Northwest, a joint operating agency of the state of Washington. The liability is adjusted for any revisions, expenditures and the passage of time. As a result of a 2019 site-specific decommissioning study for CGS, BPA management revised the estimate for the ARO liability during FY 2019 by \$595 million. This change in estimate was largely driven by the addition of a fuel storage estimate, the change in assumed decommissioning method, and increases in labor rates, which exceed the rate of inflation. Actual decommissioning costs may vary from this estimate because of various factors including future decommissioning dates, requirements, costs and technology.

Based on agreements in place, BPA directly funds Eugene Water and Electric Board's 30% share of the former Trojan nuclear power plant decommissioning activities that consist of long-term operation and decommissioning of the Independent Spent Fuel Installation (ISFSI). BPA funds these costs through current rates. The Trojan decommissioning primarily relates to the storage of spent nuclear fuel through 2059 at the former nuclear plant site. Decommissioning of the ISFSI and final site restoration activities is not expected to occur before 2059, which is the year the NRC extended the fuel storage license through. As a result of this extension, BPA management revised the liability by approximately \$38 million in FY 2020.

BPA also has tangible long-lived assets without an associated ARO because no legal obligation exists to remove these assets.

ENERGY SAVINGS PERFORMANCE CONTRACTS AND UTILITY ENERGY SERVICE CONTRACTS

Beginning in FY 2019, SFFAS 49, *Public-Private Partnerships*, requires the disclosure of risk-sharing arrangements with expected lives greater than five years between public and private sector entities. Per SFFAS 49, "Such arrangements or transactions provide a service or an asset for government and/or general public use where

FINANCIAL STATEMENTS, FOOTNOTES, AND CONSOLIDATING SCHEDULES

in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions.” DOE has determined that Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESC) meet the Public-Private Partnership (P3) criteria outlined in SFFAS 49; the disclosure details for DOE’s ESPC and UESC arrangements are provided below.

Initially authorized by the Energy Policy Act of 1992 and subsequently codified as 42 U.S.C. 8287 and 42 U.S.C. 8256, respectively, ESPCs and UESCs represent partnerships with energy service companies (ESCOs) and utility companies in the form of fixed-price, performance-based arrangements that are paid back over time through generated energy cost savings. In particular, ESPCs enable DOE to partner with an ESCO for a period not to exceed 25 years to improve energy efficiency in one or more DOE facilities at no direct capital cost to the U.S. Government and without special Congressional appropriations. The ESCO finances the upfront costs of implementing energy conservation measures—often borrowing the necessary funding for the investment from a third-party financier—and receives, in return, a contractually determined share of the cost savings that result. The ESCO provides a guarantee that the improvements will generate sufficient energy cost savings to pay for the project over the expected life of the arrangement, and after the arrangement ends, DOE fully retains all subsequent cost savings. Ultimately, ESPCs and UESCs provide DOE with the overall ability to implement energy efficient infrastructure upgrades at little to no upfront expense to the Government and generate future energy cost savings. (Similar to ESPCs, UESCs are partnerships between a federal agency and its serving utility company in which the utility company arranges financing to cover the upfront costs of energy efficiency projects and the agency’s subsequent payments are based on energy cost savings; unlike ESPCs, however, cost savings are not guaranteed by the utility company.)

Although ESPC and UESC arrangements are structured to minimize the level of risk to which DOE and the Government are exposed, general processes such as a mutual understanding of each entity’s role and responsibilities within the partnership, proper and timely project planning, installation and functionality oversight, and participation in the measurement and verification of equipment performance are all key components to helping ensure that energy cost savings are successfully realized. Failure to appropriately conduct these types of processes could potentially result in lost or unachieved energy cost savings and/or reduced payments to ESCOs in the case of ESPCs, payments being made by DOE in excess of the amount of actual energy cost savings achieved, or costs related to future contract or infrastructure modifications. Additionally, though standard contract language generally allows DOE to terminate ESPC and UESC arrangements for convenience, any such action is considered by DOE to be

remote and often requires, at a minimum, payment by DOE of the remaining unamortized principal (the total of which, as of September 30, 2020, is primarily represented by the “Energy savings performance contracts and utility energy service contracts” liability figure above) as well as other termination fees based on the financial details of each arrangement; further, because title to infrastructure improvement systems and equipment is typically transferred to DOE upon project acceptance, early termination could potentially lead to increased costs related to ownership (for example, maintenance and repairs previously performed by the ESCO or utility company needing to be performed by DOE or another contractor). Lastly, some arrangements contain contractual clauses specifically clarifying that the Government will be responsible for losses due to remote risks such as accidents or “force majeure” events.

As of September 30, 2020, DOE has 19 ESPC arrangements/modifications that are active or for which implementation is currently in process and two active UESC arrangements. The period of performance range for the 21 total arrangements is between 10 and 24 years in length, with the calculation of the period of performance largely dependent upon the amount of predicted annual cost savings in conjunction with the amount of annual payments (not to exceed the amount of annual cost savings in the case of ESPCs) required to eventually fund the overall value of the project. Payments related to these types of arrangements are generally made by DOE indirectly to the ESCO or utility company through a trustee on an annual basis.

The below table provides the amount of funding related to the non-federal partners’ implementation of DOE’s ESPC and UESC arrangements; the combined total amount of DOE payments scheduled to be made over the entire life of the arrangements (including principal repayment, interest, and performance period expenses); the total cumulative amount of payments made by DOE as of September 30, 2020; the total amount of payments made by DOE specifically in FY 2020; and the total amount of remaining DOE payments scheduled to be made in FY21 and beyond.

(\$ IN MILLIONS)	ESPCs	UESCs	Total
Non-federal partners' implementation amount	\$ 619	\$ 20	\$ 639
Total amount of payments to be made by DOE over life of arrangement	1,979	24	2,003
Total cumulative payments made as of 9/30/20	721	13	734
Total payments made in FY 2020	107	2	109
Total amount of scheduled payments remaining to be made in FY 2021+	1,258	11	1,269

OTHER LIABILITIES

Non-Federal Other Liabilities with the Public “Other” represents Contract Holdbacks, limited payroll related liabilities, Undistributed Advances, and various other miscellaneous liabilities.

General Services Administration
Note 19 P3 Disclosure

19. Public-Private Partnerships (P3s)

SFFAS 49, *Public-Private Partnerships*, helps achieve the operating performance and budgetary integrity objectives outlined in SFFAC 1, *Objectives of Federal Financial Reporting*, by making Public-Private Partnerships (P3s) more understandable. This statement establishes principles to ensure that any necessary disclosures about P3s are presented in the agency's AFR. SFFAS 49 mandates that when arrangements with private entities meet certain characteristics, these arrangements must be disclosed in the AFR.

PBS enters into long-term (greater than 5 years) arrangements (contracts) with private corporations, where: 1) There is a risk-reward relationship; 2) The arrangement results in a long-lived asset; and 3) PBS relies on the P3s partner's determination of the performance or return on investment.

Outleases³

Outleasing is an asset-management tool to help maximize Federal revenue generation. It is used when a property, or a portion thereof, is vacant and not needed for current or projected agency purposes. It can also be used to encourage certain activities within or near public buildings, such as food courts, farmers markets, rooftop antennas, and motion picture projects.

GSA has several authorities that it may use to enter into outlease agreements with non-federal entities. These include 40 U.S.C. 543, which authorizes the disposal of surplus property by lease and other means; 40 U.S.C. 581(h), which authorizes the lease of certain spaces in public buildings for commercial, cultural, educational, or recreational activity; 54 U.S.C. 306121, which authorizes the lease of historic property, if the lease contains provisions that will adequately ensure the preservation of the historic property; and section 412 of the Consolidated Appropriations Act of 2005 (Public Law No. 108-447), which authorizes the conveyance by lease and other means of real and related personal property, or interests therein.

Some of GSA's outlease arrangements are long-term (i.e., greater than 5 years), and entail 1) a risk-reward relationship; 2) a term that encumbers a significant portion of the economic life of the asset; and 3) rent that is based, in part, on a percentage of gross revenues reported by the tenant. The term of the outlease arrangement can vary, from a single day usage of space, to multiple years in length. Currently the longest outlease term is 65 years.

The general risk of loss to the Federal Government is low, but there is risk associated with an uncured tenant default that may result in a lease termination and unexpected vacancy or damage to the property. In this instance, GSA may incur costs to repair any damage to the property or to operate and maintain the property during any period of vacancy.

³ Non-Federal entity funding sources for outleases is unknown.

The outlease agreements generally require the non-federal entity to assume all of the costs and expenses associated with maintaining and operating the leased property during the term of the agreement.

Agreement amounts due monthly to GSA are shown below for the fixed amounts from Outleases with terms greater than 5 years. The amounts reported below do not include any variable payment portions due to GSA from the business entities sales in outyears, as those are not known.

Energy Savings Performance Contracts with Energy-Service Companies

The National Energy Conservation Policy Act, as amended, authorizes Federal agencies to enter into energy savings performance contracts (individually, an ESPC) with energy service contractors (individually, an ESCO) for the purpose of achieving energy savings and other related benefits. This authority is codified at 42 U.S.C. 8287. Agencies enter into these contracts with limited to no up-front capital costs, thereby minimizing the need for Congressional appropriations. The contractor conducts a comprehensive energy audit for the Federal facility and identifies improvements to save energy. In consultation with the agency, the contractor designs and constructs a project that meets the agency's needs and arranges the necessary funding. The contractor guarantees that the improvements will generate energy cost savings sufficient to pay for the project over the term of the contract. The cost of an ESPC project must be covered by the energy, water, and related cost savings generated at the project site. The ESPC's cost savings must be verified and documented annually. After the contract ends, any additional cost savings accrue to the agency.

Generally, the risk of loss to the Federal Government is low, but there is risk associated with (a) the potential failure of a contractor to provide ongoing satisfactory performance throughout the project lifecycle to ensure that the project is successful as designed; (b) the potential failure of equipment being improperly operated and maintained resulting in less than expected savings; and (c) the potential financial loss from early contract termination could include termination fees. All costs for the actual energy saving equipment installed in GSA's buildings is recognized when the assets are initially accepted, and recognized as installment contract liabilities on the Consolidated Balance Sheets. The payback period with the ESCO varies per arrangement however, it is generally between 10 and 20 years. Since the cost of ESPC projects are intended to be paid for via energy savings with no need for additional funding, if savings are not realized as planned, alternative funding sources may have to be used to satisfy contractual commitments. This potential for a shortfall in energy savings is the primary financial risk related to ESPCs. With regard to any technical performance risk, generally, the ESCO is responsible for ensuring that energy savings are met throughout the performance period.

In the table below, of the total \$1,511 million shown as the amount to be paid in future periods, \$657 million has been recognized as installment contract liability as of September 30, 2020; \$239 million is

for the future interest costs associated with the long-term financing of that liability; and \$615 million represents the contractual estimate of operations and maintenance support costs to be incurred over the life of the ESPCs.

19. Public - Private Partnerships (P3s) Revenues and Expenses (Dollars in Millions)

Agreements/Contracts	2019		2020		Future Periods	
	Actual Amount Received	Actual Amount Paid	Actual Amount Received	Actual Amount Paid	Estimated Amount to be Received	Estimated Amount to be Paid
Outleases	\$19	\$—	\$21	\$—	\$255	\$—
ESPCs	\$—	\$90	\$—	\$94	\$—	\$1,511

20. COVID-19 Activity

Three funds at GSA — the FBF, WCF, and FCSF — received funding through the Coronavirus Aid, Relief, and Economic Security Act to help prevent, prepare and respond to the coronavirus pandemic.

Appropriations provided to GSA as well as expenditures as of September 30, 2020 are displayed in the tables below.⁴

20A. COVID - 19 Budgetary Resources (Dollars in Millions)

	FBF	WCF	FCSF	Total
Appropriations Received	\$275	\$2	\$18	\$295
Less: Current Year Obligations	45	1	13	59
Unobligated Balance	\$230	\$1	\$5	\$236

20B. COVID - 19 Expenditures (Dollars in Millions)

	FBF	WCF	FCSF	Total
Contractual Services and Supplies	\$17	\$—	\$4	\$21
Personnel Compensation and Benefits	14	—	—	14
Acquisition of Assets	—	—	2	2
Total COVID - 19 Expenditures	\$31	\$—	\$6	\$37

⁴ Note, the impacts to GSA's assets, liabilities, costs, revenues, net position, etc., beyond those displayed above, are immaterial.

Department of Housing and Urban
Development
P3 OMB A-136 Exclusion
and
Other Information



guarantee home mortgage loans made to Native American borrowers. The loan guarantee assures the lender that its investment will be repaid in full in the event of a foreclosure.

The Homeless Assistance Grants (HAG) funds the formula Emergency Solutions Grant (ESG) program and the competitive Continuum of Care (CoC) program. Together, these programs fund the activities that comprise communities' homeless crisis response systems.

The Supportive Housing for the Elderly (Section 202) and Persons with Disabilities (Section 811) grant programs provide capital to nonprofit organizations sponsoring rental housing for the elderly and disabled. Prior to these programs being operated as grants, they were administered as 40-year loans.

The Community Development Block Grant (CDBG) programs provide funds for metropolitan cities, urban counties, and other communities to use for neighborhood revitalization, economic development, disaster recovery assistance (DR), and improved community facilities and services.

The Home Investments Partnerships (HOME) program provides grants to states, local governments, and Indian tribes to implement local housing strategies designed to increase home ownership and affordable housing opportunities for low-income and very low-income families.

HUD also has smaller programs which provide grants, subsidy funding, and direct loans to support other HUD objectives such as fair housing and equal opportunity, energy conservation, rehabilitation of housing units, removal of lead hazards, and maintenance costs of PHA and TDHE housing projects. These smaller programs are also included within the HUD consolidated revenues and financing sources reflected on the financial statements.

Under Federal Accounting Standards Advisory Board's (FASAB) *Statements of Federal Financial Accounting Standards (SFFAS) No. 47: Reporting Entity*, HUD does not have any disclosure entities or related parties. HUD does not consider activities with a parent agency as a disclosure entity or a related party. HUD provides financial information to the parent agency monthly to facilitate the agency's reporting consolidation.

In HUD's FY 2019 Agency Financial Report (AFR), SFFAS No. 49: Public-Private Partnerships (P3s) risks were reported as a separate note disclosure based on HUD's interpretation of the newly implemented standard and most current OMB Circular A-136 guidance. In FY 2020, the OMB Circular A-136 provided clarifying guidance on public private partnerships and those activities that should be excluded from disclosure requirements. Based on the clarifying guidance, HUD's loan, loan guarantees, and insurance programs are excluded from P3 disclosure requirements.



**HUD has implemented programs that use public-private partnerships to address affordable housing issues.**

In 2015, HUD estimated that housing choice vouchers supported about 2 million low-income families in finding housing in the private market through a contract between PHAs and private entities. In addition, HUD administers the Rental Assistance Demonstration Program (RAD), which allows PHAs and owners of other HUD-assisted properties to convert units into project-based Section 8 contracts, giving them more flexibility to access private and public funding sources.³⁵ RAD preserves affordable homes and addresses the nationwide backlog of deferred maintenance, estimated in 2010 at \$26 billion, through access to private capital and public-private partnerships. In September 2018, HUD reported that RAD had converted 100,000 public housing homes and planned to preserve or redevelop another 250,000 homes.³⁶ Although RAD is still in the demonstration phase, HUD reported in May 2018 that Congress had increased the unit cap³⁷ for RAD conversions from an initial 60,000 units to 455,000 units.

These mixed-finance housing assistance programs pose challenges to HUD's oversight capability. OIG's past work highlighted a weakness in HUD's oversight of PHAs administering housing choice vouchers and RAD conversions, which could result in less availability of affordable housing for eligible families and improper allocation of assistance funding.³⁸ OIG is continuing to monitor RAD conversions and assess their effectiveness. OIG has also conducted oversight of portability in the Housing Choice Voucher Program³⁹ and is currently reviewing its voucher utilization rates to better understand why certain communities take advantage of the program, while others do not. OIG will continue to assess the extent to which HUD public-private partnership programs meet residents' needs and PHAs' outstanding capital needs.

Under the CARES Act, HUD has awarded more than \$1.1 billion to support affordable housing through a series of funding allocations. On May 1, 2020, HUD announced that it would allocate \$685 million in COVID-19 relief funding to help low-income families living in public housing.⁴⁰ Additionally, on August 10, 2020, HUD announced that it would use \$472 million in CARES Act funding for PHAs to help families assisted by housing choice and mainstream vouchers. OIG will continue to assess HUD's strategies to increase the availability of quality, affordable housing.

³⁵ PD&R (2014, August). Status of HUD's Rental Assistance Demonstration Evaluation and Results to Date

³⁶ Office of Multifamily Housing Programs (2018, September). 100,000 Homes Preserved. RAD Newsletter. Retrieved from <https://www.hud.gov/RAD/news/newsletter>

³⁷ "Unit Cap" is set by Congress and is the maximum number of units that may be converted under RAD. PD&R (2016, September). Interim Report: Evaluation of HUD's Rental Assistance Demonstration (RAD).

³⁸ Audit Reports: 2020-LA-1002, The Housing Authority of the City of Long Beach, CA, Did Not Administer Its Housing Choice Voucher Program in Accordance With HUD Requirements, issued March 5, 2020; 2019-PH- 1001, The Housing Authority of the City of Easton, PA, Did Not Always Properly Administer Its Housing Choice Voucher Program, issued July 30, 2019; 2019-LA-1008, The Compton Housing Authority, Compton, CA, Did Not Administer Its Housing Choice Voucher Program in Accordance With HUD Requirements, issued July 11, 2019; 2020-AT-1001, The Christian Church Homes, Oakland, CA, Did Not Ensure That the Rental Assistance Demonstration Program Conversion Was Accurate and Supported for Vineville Christian Towers, issued November 4, 2019 and 2019-FW-1001 The Little Rock Housing Authority, Little Rock, AR, Did Not Fully Meet Rental Assistance Demonstration Program Requirements, issued April 23, 2019

³⁹ Audit Report 2020-CH-0006, HUD Could Improve Its Oversight of Portability in the Housing Choice Voucher Program, issued September 9, 2020

⁴⁰ HUD Public Affairs, HUD (2020, May 1). HUD Allocates Second Wave of Relief Funds, Over Half a Billion Dollars to Help Protect Low-Income Americans. Retrieved from https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_058



Department of Justice
Note 23 P3 Disclosure

Notes to the Principal Financial Statements
(Dollars in Thousands, Except as Noted)

Note 23. Public-Private Partnerships

In accordance with SFFAS No. 49, *Public-Private Partnerships: Disclosure Requirements*, the BOP maintains Public-Private Partnerships with energy service companies through energy savings performance contracts (ESPC). An ESPC allows federal agencies to procure energy savings and facility improvements with no up-front capital costs or special appropriations from Congress. An ESPC is a partnership between an agency and an energy service company (ESCO), with authority provided by 42 U.S.C. § 8287(b)(1)(A); 10 C.F.R. § 436.30(a).

The average length of an ESPC is 17 years, but may not exceed 25 years. Term length depends on the scope of work performed by the ESCO and the nature of energy upgrades required by the institution. Annual payments made to the ESCO are tied to the energy savings guaranteed for the project and validated by the ESCO through the annual measurement and verification activity plan. Unless otherwise stipulated in the payment schedules or amended by a procurement action, payments are applied to principal, interest expense, and operational expense. By contrast, Note 15 includes only liabilities related to principal payments.

As with all property acquisitions, the BOP assumes the inherent risk of maintaining the asset through its expected useful life. There may be additional risks of costs associated with asset ownership or control should those assets require maintenance beyond traditional wear and tear and outside the contractual scope of work. Likewise, private partners may assume added risk given the length of the contracts and may incur substantial financing liabilities in the delivery of performance measures. In addition, the BOP may elect to terminate individual contracts with a lump sum payment predetermined within the contract and as approved by the ESCO.

The schedule of actual and estimated payments, is presented in the following table.

As of September 30, 2020

Agreements/Contracts	Actual Amount Paid	Estimated Amount to be paid
ESPCs	<u>\$ 90,597</u>	<u>\$ 724,190</u>

Department of Veterans Affairs
Note 25 P3 Disclosure

NOTE 25. PUBLIC-PRIVATE PARTNERSHIPS

VA is engaged in various collaborative relationships with private sector entities in which the governance, roles and responsibilities were determined to produce a risk-sharing arrangement. These relationships are referred to as public-private partnerships (P3). While many of VA's relationships may be referred to as a P3, only those meeting the disclosure requirements outlined in SFFAS No. 49 are disclosed below.

<i>(dollars in millions)</i>	Actual Amount Received	Actual Amount Paid	Estimated Amount to be Received	Estimated Amount to be Paid
As of September 30, 2020				
EUL	\$ 2	\$ -	\$ 71	\$ 11
ESPC	-	63	-	966
UESC	-	33	-	29
Total	\$ 2	\$ 96	\$ 71	\$ 1,006

A. ENHANCED USE LEASES

VA's EUL Program allows VA to manage underutilized property through leasing arrangements with state or local governments or private sector organizations. Title 38, U.S.C. § 8161-8169, Enhanced-Use Leases of Real Property, authorizes VA to lease real property under VA's control or jurisdiction to other public and private entities on a long-term basis (up to 75 years) only for the provision of supportive housing, in return for cash at fair value if receiving consideration. VA's previous EUL authority expired on December 31, 2011, and was reauthorized on August 6, 2012, effective January 1, 2012, under P.L. 112-154, Section 211, limited to supportive housing, and set to expire on December 31, 2023. The previous authority under which all current operational leases were executed allowed VA to enter into EULs for receipt of rental income or in-kind consideration, such as facilities, space, services or other forms of consideration, which is intended to further VA's mission to effectively serve Veterans.

The majority of the EUL projects serve to provide safe, affordable housing for Veterans and their families. The properties are leased to commercial real estate developers who finance, design, develop, construct, operate and maintain the property. The partner assumes all financial obligations and risks associated with the private development. In some instances, the developer must finance the development with public issue bonds. Under some EULs governed under previous authority, VA leases back space or services under favorable terms or at reduced costs.

Under the EUL Program, VA does not:

- Allow its underlying interest in the land or properties to be used as security for financing an EUL project,
- Provide any kind of guaranty for the purpose of private-party financing, or
- Approve any project-related financing that includes requirements that might deny, restrict or subordinate VA's right to terminate the EUL where the lessee has breached the contract and failed to cure.

VA may not unilaterally terminate an EUL for convenience but may agree to a mutual termination of the lease.

VA will only pursue termination of an EUL prior to the end of the lease term in the event of default, noncompliance or nonperformance by the lessee. When this occurs, VA does not owe or pay any fees, costs, expenses or penalties, and the lessee bears all risk.

Upon the expiration of an EUL lease term, the property additions, improvements or enhancements revert to VA ownership unless the Secretary decides to transfer ownership to the developer.

Benefits to VA from the EUL Program include:

- Revenue in the form of lease payments;
- Cost avoidance, (i.e., the value of goods or services provided by the lessees that would have otherwise been paid by VA); and,
- Cost savings, (i.e., discounts realized on VA purchases, such as energy, office space or parking).

<i>(dollars in millions)</i>	Total Cumulative Funding by VA over life of Arrangement	Total Cumulative Funding by Private Sector over life of Arrangement
As of September 30, 2020		
EUL	\$ 64	\$ 1,694

B. ENERGY SAVINGS PERFORMANCE CONTRACTS AND UTILITY ENERGY SERVICE CONTRACTS

VA has entered into energy savings performance contracts (ESPC) and utility energy service contracts (UESC) to procure energy savings and facility improvements. These contract vehicles do not require up-front capital costs or special appropriations from Congress.

Federal agencies are authorized to enter into ESPCs under National Energy Conservation Policy Act (42 U.S.C. § 8287), as amended. An ESPC is a partnership between an agency and an energy service company (ESCO) to reduce energy, water and/or related operating costs and to assist agencies with upgrading aging infrastructure, systems and equipment. Upon conducting a comprehensive audit, the ESCO designs and constructs a project that meets the agency's needs and arranges financing to pay for the project. The ESCO guarantees that the improvements will generate sufficient energy cost savings to pay for the project over the term of the contract.

By statute, ESPCs cannot exceed 25 years. After a contract ends, VA retains all additional cost savings, and title to installed capital goods, equipment and improvements. VA is responsible for contract administration over the term of the contracts.

Authorized by the Energy Policy Act of 1992, P.L. 102-486 (codified as 42 U.S.C. § 8256), UESC is a limited-source contract between a Federal agency and its serving utility for energy and water-efficiency improvements and demand-reduction services, allowing Federal agencies to pay for the services over time, either on their utility bill or through a separate agreement.

UESCs also cannot exceed 25 years in duration. After a contract ends, VA retains all additional cost savings. Under UESCs, VA retains title to all installed capital goods, equipment and improvements. Under OMB Memorandum M-98-13 and M-12-21, ESPC and UESC repayments can be funded on an annual basis. Contracts can be terminated for convenience in part or in full. In the case of a termination, VA may be responsible for outstanding loan balances and early termination or payment fees. Measurement and verification of energy savings is required under ESPCs and UESCs.

The benefits of ESPCs and UESCs include:

- Infrastructure improvements that pay for themselves over time; and,
- Ability to install longer payback energy and water conservation measures by bundling savings with shorter payback measures.

<i>(dollars in millions)</i> As of September 30, 2020	Total Cumulative Funding by VA over life of Arrangement	Total Cumulative Funding by Private Sector over life of Arrangement
ESPC	\$ 108	\$ 624
UESC	102	72
Total	\$ 210	\$ 696

NOTE 26. COVID-19 ACTIVITY

In FY 2020, VA received supplemental appropriations of \$60 million to respond to COVID-19 under the Families First Act; P.L. 116-127, which is available until September 30, 2022. VA also received \$19.6 billion, under the CARES Act; P.L. 116-136, of which \$12 million for the OIG is available until September 30, 2022, and the remaining \$19.6 billion of funds are available until September 30, 2021. The appropriations have been allocated to the following programs:

Program	Purpose
Medical Services	To support increased demand for health care services at VA facilities and through telehealth, the purchase of medical equipment and supplies, testing kits and personal protective equipment. To support vulnerable Veterans through programs to assist homeless or at-risk of becoming homeless Veterans, as well as within VA-run nursing homes and community living centers. VA also provides support to the public during declared emergencies such as COVID-19. VA is currently authorized to provide care and certain health services for nonveterans.
Information Technology	To support increased telework, telehealth and call center capabilities, VA OIT switched to remote working environment for all non-health employees, increasing bandwidth to assist the delivery to health care, benefits services and financial management activities directly related to coronavirus, including the purchasing of devices to support, plan, execute and monitor resources needed to support a rapid pandemic response.
Medical Community Care	To support increased demand for care in the community, specifically emergency room and urgent care.
Medical Facilities	To support development of alternative sites of care and procurement of mobile treatment centers to meet the demand for health care services, improvements in security and non-recurring maintenance projects to existing infrastructure and utility systems at VA facilities.

National Aeronautics and
Space Administration
MD&A and Note 15
Disclosure Entities

STRATEGIC GOAL III. DEVELOP

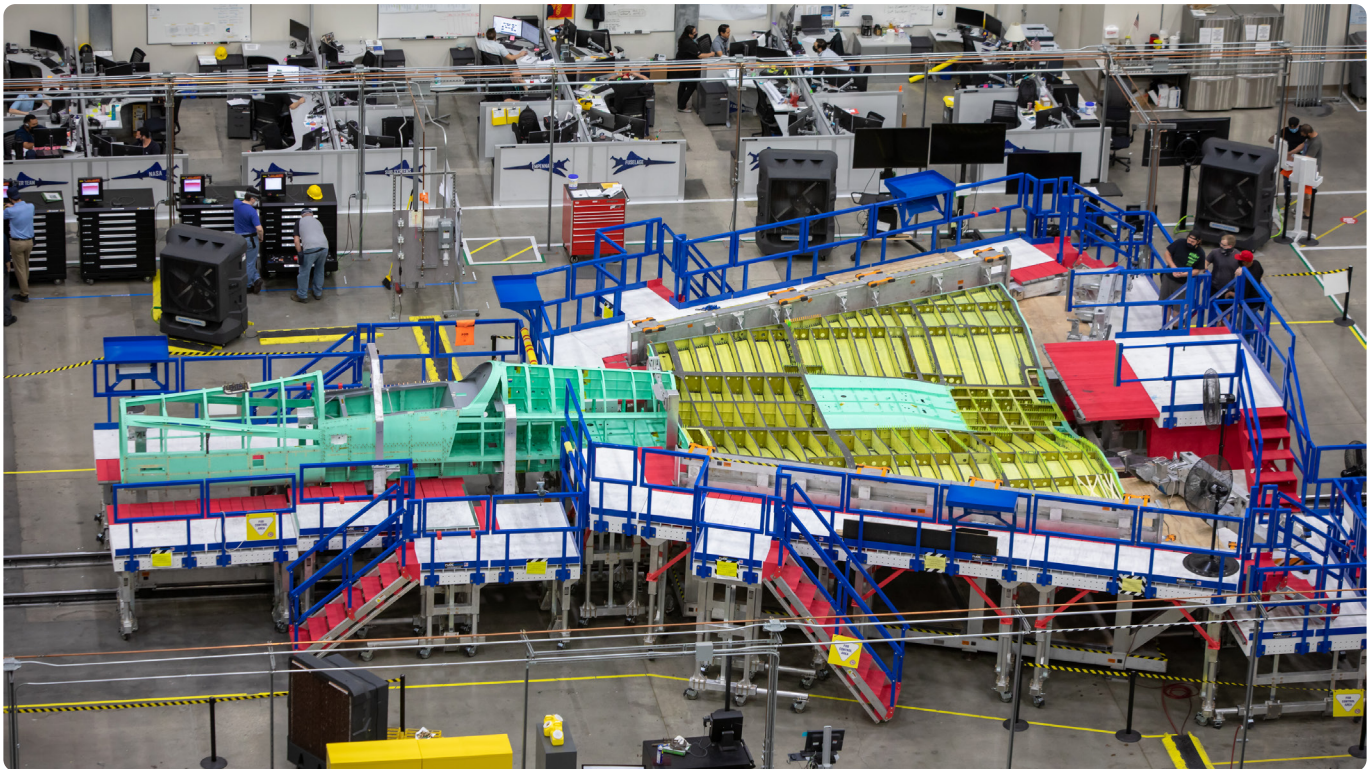
ADDRESS NATIONAL CHALLENGES AND CATALYZE ECONOMIC GROWTH

Overview

Originally tied to keeping the Nation secure and advancing U.S. leadership in aeronautics, communications satellites, and Earth remote sensing, NASA's mandate is broader today.

NASA drives economic development and growth; the National Aeronautics and Space Act of 1958 calls out this important theme, and the Agency generally invests more than 80 percent of its funds in U.S. industry and academia to carry out its missions of scientific discovery and exploration. In doing so, NASA engages and inspires young people to become scientists, technologists, engineers, and mathematicians. This ensures that the Nation's vast intellectual and industrial base – shared by many other government agencies, including the departments of Defense, Commerce, Transportation, and Interior – has a continuous supply of bright minds and skilled hands.

Today, NASA's technology is found aboard every U.S. aircraft and inside every traffic control facility in the country. **This infusion can be attributed to one of the most productive public-private partnerships (P3) in U.S. history, as NASA continues to team with industry, academia, and other Government agencies.**



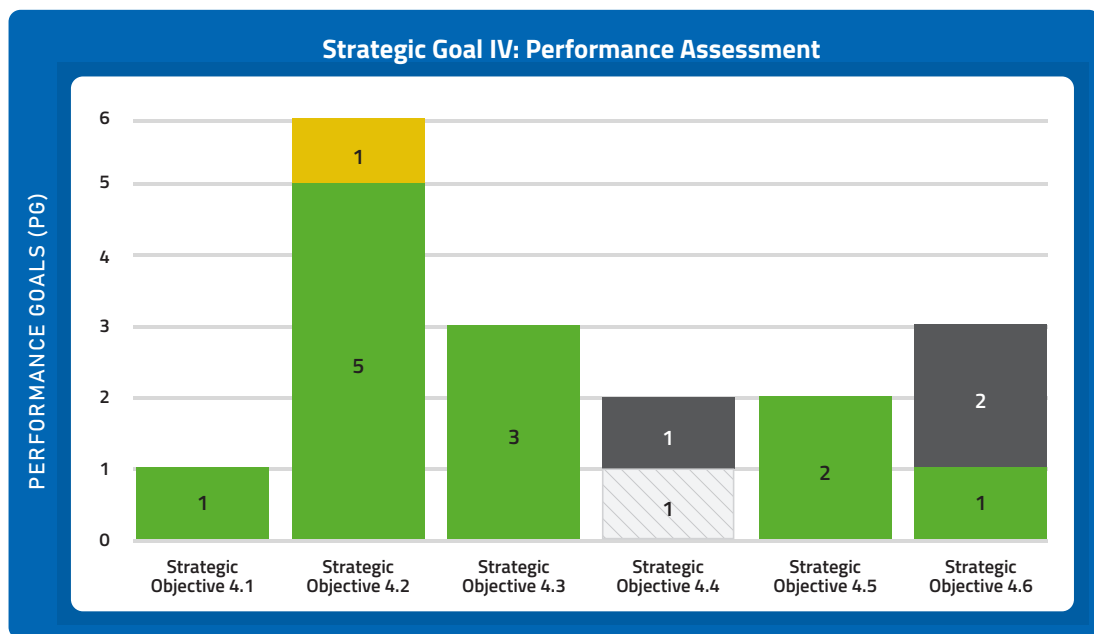
The wing and cockpit sections of NASA's X-59 Quiet SuperSonic Technology (QueSST) are coming together at Lockheed Martin's Skunk Works® factory in Palmdale, California. When complete, Lockheed Martin and NASA will put the X-59 through a series of ground and test flights to ensure not only its air worthiness, but also its ability to create a sonic boom that can barely be heard – if at all – by people on the ground while it flies supersonic at a cruise altitude overhead. The X-59 will then be flown over select communities in the United States – still to be chosen – so residents can help provide information to NASA about their reaction to the sound of the sonic “thump.” This scientifically gathered data will be presented to regulators with the hope they will change rules that currently prohibit commercial supersonic air travel over land.

Photo Credit: NASA

HIGHLIGHTS

In May 2020, for the first time in history, **NASA astronauts launched from American soil in a commercially built and operated American crew spacecraft on its way to the ISS on NASA's SpaceX Demo-2 mission.** The SpaceX Crew Dragon Endeavor spacecraft successfully delivered astronauts Doug Hurley and Bob Behnken to the ISS 19 hours later. In August, the spacecraft carrying the two astronauts safely splashed down into the Gulf of Mexico.

For the eighth consecutive year, NASA was named the Best Place to Work in Government by the Partnership for Public Service in December 2019. The ranking was based on responses from employees at 490 Federal agencies to the 2019 Federal Employee Viewpoint Survey (FEVS), which measures Federal employees' perceptions of their work experiences. The FEVS results provide insight into areas where improvements have been made, as well as areas where improvements are still needed. For more information, regarding FEVS see <https://www.opm.gov/fevs/>.



Complete or On Target to Complete Slightly Below Target Significantly Below Target Withdrawn Unrated

- 4.1 Engage in Partnership Strategies.
- 4.2 Enable Space Access and Services.
- 4.3 Assure Safety and Mission Success.

- 4.4 Manage Human Capital.
- 4.5 Ensure Enterprise Protection.
- 4.6 Sustain Infrastructure Capabilities and Operations.

CHALLENGES

NASA's PG target for FY 2020 called for both commercial partners conducting their crewed demonstration flight during the fiscal year. While SpaceX successfully completed their crewed flight to the ISS, Boeing did not complete a crewed demonstration of their CST-100 Starliner spacecraft. During an uncrewed orbital test flight conducted in December 2019, the spacecraft experienced some anomalies, including intermittent space-to-ground communication issues. A joint NASA-Boeing independent review team recommended corrective and preventive actions to address in preparation for a second uncrewed orbital flight test, which will occur in the first half of FY 2021. Boeing plans to conduct a crewed orbital flight test in summer 2021.



NASA astronauts Robert Behnken, left, and Douglas Hurley are seen inside the SpaceX Crew Dragon Endeavour spacecraft onboard the SpaceX GO Navigator recovery ship shortly after having landed in the Gulf of Mexico off the coast of Pensacola, Florida, Sunday, Aug. 2, 2020. Behnken and Hurley returned after spending 64 days in space.

Photo Credit: NASA/Bill Ingalls

NASA TECHNOLOGY TRANSFER PROGRAM

For over 50 years the NASA Technology Transfer Program has partnered with private industry companies to modify and transfer NASA-originated technology for the development of commercial products and services that can benefit the public on Earth. These products and services are commonly referred to as Spinoff Technologies. Since 1976, NASA has released an annual premier publication titled Spinoff that profiles new NASA technologies that have been transformed for commercial use in the public sector. Below are some technology transfer highlights from FY 2020.

Astronaut Artificial Intelligence Monitors Patients at Home

When astronauts go on spacewalks, their spacesuits contain numerous sensors that monitor body temperature, heart rate, how much they sweat, and more. That data is automatically sent to groundbased crew at NASA who use that information to guide support efforts – maybe to remind an astronaut to drink some water to avoid dehydration or take a short break to lower heart rate. The same remote health monitoring is now used here on Earth in a system called Ejenta. The system employs off-the-shelf health and fitness monitoring devices and a custom smartphone monitoring app to collect important health metrics. It then saves, analyzes, reports on, and distributes information to the patient and the entire medical team. That ongoing flow of information replaces an office visit with a phone call or video visit to discuss recent vital signs. Multiple studies conducted with healthcare provider Kaiser Permanente, an Ejenta customer, provide evidence for the system's potential benefits for treating serious health conditions such as heart failure and high-risk pregnancies. Doctors were able to catch problems early before it reached a crisis that required a hospital stay.

Cleaning up the Ecosystem

Monitoring carbon dioxide in our atmosphere is a critical priority for NASA's Earth-observation satellites. Looking down from orbit, these satellites detect large-scale changes in the atmosphere, but the same instruments can help plug smaller leaks too. The Langley Research Center developed an active remote sensor, called ASCENDS, capable of taking carbon dioxide readings in darkness and during the day. J. Stewart Hager, a subcontractor at Langley, was part of team that was brainstorming alternative uses for the instrument. Soon after, Hager left his contractor job and founded Hager Environmental and Atmospheric Technologies (HEAT) Inc., devising a monitor for carbon dioxide and other exhaust emissions based on the Langley ASCENDS tool. The Emissions Detection and Reporting (EDAR) system can be mounted on traffic signals and uses lasers to sniff out the hydrocarbons emitted by vehicles passing underneath. EDAR systems are now deployed in three states and recently saw road use in Europe.

NASA Invention Helps Keep Hearts Beating

In the early 1990s, Robert Bryant, a researcher at NASA's Langley Research Center, was studying advanced composites and adhesives that could be used to build a supersonic passenger jet. The material he discovered, LaRC-SI (short for Langley Research Center-Soluble Imide), has helped to keep hundreds of thousands of hearts beating properly all over the world. In 2004, Minneapolis-based Medtronic got a license from Langley to use LaRC-SI in its products and eventually brought Bryant on as a consultant, as well. He and the company spent years developing a process to use the material as a coating and electric insulator for key components in Medtronic's pacemakers. The technology began clinical trials in 2007 and received Food and Drug Administration approval in 2009. Medtronic's left ventricular leads, now in several models, have been implanted in hundreds of thousands of people.

The Soyuz rocket is rolled out by train to the launch pad at Site 31, Sunday, Oct. 11, 2020, at the Baikonur Cosmodrome in Kazakhstan. Expedition 64 Russian cosmonauts Sergey Ryzhikov and Sergey Kud-Sverchkov of Roscosmos, and NASA astronaut Kate Rubins are scheduled to launch aboard their Soyuz MS-17 spacecraft on Oct. 14 to start a six-month mission onboard the International Space Station.

Photo Credit: NASA/GCTC/Andrey Shelepin



Did You Know?

Note 14: Reconciliation of Net Cost of Operations to Net Outlays (continued)

2019			
(In Millions)	Intragovernmental	With the Public	Total
Net Operating Cost (SNC)	\$ (422)	\$ 21,232	\$ 20,180
Components of Net Operating Cost Not Part of the Budgetary Outlays			
Property, plant, and equipment depreciation	—	(575)	(575)
Property, plant, and equipment disposal & reevaluation	—	(76)	(76)
Other	—	573	573
Increase/(decrease) in assets not affecting Budgetary Outlays			
Accounts receivable	29	1	30
Other assets	21	—	21
(Increase)/decrease in liabilities not affecting Budgetary Outlays			
Accounts payable	(44)	55	11
Salaries and benefits	(1)	(12)	(13)
Environmental and disposal liabilities	—	(280)	(280)
Other liabilities (Unfunded leave, unfunded FECA, actuarial FECA)	(9)	(126)	(135)
Other financing sources			
Federal employee retirement benefit costs paid by OPM and imputed to agency	(183)	—	(183)
Total Components of Net Operating Cost Not Part of the Budgetary Outlays	(187)	(440)	(627)
Components of the Budgetary Outlays That Are Not Part of Net Operating Cost			
Other	—	(4)	(4)
Total Components of the Budgetary Outlays That Are Not Part of Net Operating Cost	—	(4)	(4)
Net Outlays (Calculated Total)	\$ (609)	\$ 20,788	\$ 20,179
Related Amounts on the Statement of Budgetary Resources			
Outlays, net (SBR 4190)			\$ 20,182
Distributed offsetting receipts (SBR 4200)			(3)
Agency Outlays, Net (SBR 4210)			\$ 20,179

Note 15: Disclosure Entity

The Jet Propulsion Laboratory (JPL) is a NASA-owned facility which serves as a Federally Funded Research and Development Center (FFRDC). The facility commenced activities in the mid-1930s and at that time was sponsored by the U.S. Army to develop rocket technology and missile systems.

The California Institute of Technology (Caltech), a private, not-for-profit 501(c)(3) university, manages JPL pursuant to a sole-source, five-year, Federal Acquisition Regulation (FAR)-based contract with NASA. The value of NASA's Caltech contract for FY 2020 was \$3 billion. Under this contract, NASA issues task orders to Caltech for various research programs and projects conducted at JPL. The contract is subject to the usual FAR-based Federal contract oversight and reporting requirements. Caltech has managed JPL as a NASA FFRDC since 1959.

Caltech and NASA's relationship at JPL is governed by the terms and conditions of their contract which does not give NASA responsibility for or insight into Caltech's business objectives or operations at JPL. JPL staff is comprised of Caltech employees and contractors, while NASA has a resident office at the facility staffed by Federal managers who administer the NASA/Caltech contract. The physical plant and equipment used to conduct operations under the contract are Government furnished property and material, made available to Caltech for the performance of its contract with NASA, and includes contractor-acquired property. The work performed by JPL for NASA is funded by NASA as part of one or more of NASA's major programs and supports NASA's missions and programs. Every year, JPL issues a review of its accomplishments. JPL's Annual Reports are found at <https://www.jpl.nasa.gov/about/reports.php>.

NASA has the unilateral authority to establish or amend the fundamental purpose and mission of activities at its JPL FFRDC. NASA's contract with Caltech reflects and incorporates NASA's authority into its terms and conditions. NASA also has the unilateral authority to orderly phase down and close its FFRDC and thus, the NASA contract with Caltech. As such, the contract terms allow NASA to close the FFRDC, transfer sponsorship of the FFRDC to another sponsor (Federal agency), transition the FFRDC to another contractor (e.g., another University), or renew the contract. In the event of a termination of its contract with Caltech for the management of JPL, JPL would only receive costs that NASA deems allowable, allocable, and reasonable under the contract's terms.



ATTACHMENT 4: Proposed Next Steps

August 2021

Form Task Force

September 2021 – March 2022

Conduct meetings covering:

1. Balance sheet presentation and valuation
2. Interest in an SPE/SPV
3. Single or Unitary Payments
4. Asset Capitalization
5. Reversionary or Residual Interests
6. Non-monetary exchanges
7. In-kind Consideration (Donated assets)
8. Unearned Revenue

April – May 2022

Staff drafts Measurement and Recognition Exposure Draft (ED)

June – December 2022

Board ED deliberations

January – April 2023

Board issues ED for 90-day comment period

May – December 2023

Board redeliberates and issues final SFFAS

ATTACHMENT 5: Questions for the Board

Question 1 - Members may have additional questions concerning this project's history given the passage of time since discussions first began in April 2012 and concluded with the issuance of SFFAS 49, *Public-Private Partnerships: Disclosure Requirements* in April 2016. As envisioned, this second phase consists of establishing measurement and recognition guidance.

Question 1

Do Members desire any other historical information not presented at this meeting or further elaboration on what is presented in the foregoing Attachments?

Question 2 – Members may have specific questions concerning the material accompanying this memorandum. Staff would be pleased to answer any questions. Staff requests that Member questions be forwarded no later than June 18, 2021.

Question 2

Do Members have specific questions concerning the material accompanying this memorandum? If so, staff requests that questions be forwarded no later than June 18, 2021.

Question 3 - Members may have general comments or preliminary advice concerning P3s and/or their measurement and recognition. Staff appreciates and welcomes all comments or advice as it considers our Next Steps. For example, should P3 financing costs whether paid directly by the government or imputed be separately measured and recognized?

Question 3

Do Members desire sharing any general comments or preliminary advice concerning P3s and/or their measurement and recognition?

APPENDIX

Statement of Federal Financial Accounting Standards 49: Public-Private Partnerships: Disclosure Requirements

Statement of Federal Financial Accounting Standards 49: Public-Private Partnerships: Disclosure Requirements

Status

Issued	April 27, 2016
Effective Date	For periods beginning after September 30, 2018. Early adoption is permitted.
Interpretations and Technical Releases	None.
Affects	None
Affected by	None.

Summary

This Statement establishes principles to ensure that disclosures about Public-Private Partnerships (P3s) are presented in the reporting entity's general purpose federal financial reports (GPFFRs). The principles guide financial reporting by establishing a P3 definition and identifying risk-based characteristics that need to exist before considering the P3 arrangement or transaction for disclosure.

This Statement exempts certain arrangements or transactions from the P3 disclosure requirements contained herein. Such exempt arrangements or transactions are subject to existing disclosure requirements in other Statements of Federal Financial Accounting Standards (SFFAS) applicable to such arrangements or transactions.

This Statement provides for first determining those arrangements or transactions that are exempt from the provisions of this Statement before proceeding to the P3 definition. Federal P3s are defined as "risk-sharing¹ arrangements or transactions lasting more than five years between public and private sector entities." Arrangements or transactions meeting the P3 definition are then evaluated against risk-based characteristics referred to as "Conclusive Characteristics." Should the arrangement or transaction not meet any one of the Conclusive Characteristics required for disclosure, the arrangement or transaction should then be evaluated against the "Suggestive Characteristics" before concluding whether disclosure is required. If an arrangement or transaction warrants reporting, the disclosures should be provided.

¹ Risk-sharing exists when a public sector entity shares risks and rewards with a private sector entity whenever the benefits of the arrangement or transaction accrue to both the private sector entity and the public sector entity and (1) the public sector entity is at risk of loss, or (2) the private sector entity's ability to perform is at risk and success of the arrangement or transaction depends upon the public sector's intervention.

Disclosure requirements comprise quantitative and qualitative information to assist users in understanding the nature of P3s such as the relative benefits/revenues being received in exchange for the government's consideration, the contractual terms governing payments to and from the government, and related risks including those deemed remote. Disclosures can be provided by individual P3 or summarized; for example, by an entity's strategic objectives, departmental or bureau categorizations, or program budget classifications.

This Statement helps achieve the operating performance and budgetary integrity objectives outlined in Statement of Federal Financial Accounting Concepts (SFFAC) 1, *Objectives of Federal Financial Reporting*, by making P3s more understandable. P3 information is important to meeting these objectives because the federal government is accountable to citizens for the proper administration of its resources. Moreover, because P3s are a form of investment, they should be adequately disclosed in order to assist report users in determining: (a) the important assets of the U.S. government and how effectively they are being managed and (b) the identification of risks.

This Statement is effective for periods beginning after September 30, 2018. Earlier implementation is permitted.

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Introduction

Purpose

1. To meet challenges such as those brought about by limited budgetary resources governments are increasingly establishing risk-sharing arrangements or transactions² with the private sector. Some of these arrangements or transactions may also involve private financing and enable governmental agencies to fulfill their missions to their constituents that would otherwise not be possible without such arrangements or transactions.
2. These risk-sharing arrangements or transactions are commonly referred to as **Public-Private Partnerships (P3s)**³ but may also be referred to as Alternative Financing Arrangements, or Privatization Initiatives, some of which are extremely complex. For example, P3s may involve the use of appropriated funds, non-appropriated funds, third-party financing, or significant amounts of private capital or investment. Furthermore, P3s can (1) be so long-term in nature that costs along with the accompanying benefits 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 procurement methods or competing in-house performance.⁴ Lastly, P3s may involve the transfer of government assets, including intellectual property, into private hands for extended periods of time.
3. As a result, the Board recognizes that the accounting and reporting issues related to risk-sharing can also be extremely complex, involving a wide array of assets and liabilities. P3s by their very design transfer or share various forms of risk among the P3 partners. Such risk allocation strategies are in essence the very incentives that serve as the foundation or building blocks for P3s. Therefore, an entity should understand how much (total) risk resides in an arrangement or transaction and how much of that risk has been (1) transferred to the

²Risk-sharing can be either structural or transactional. P3 Structural Arrangements are external to the government entity's operations and often involve the creation of a Special Purpose Vehicle (SPV), Trust, or Limited Partnership (LP). For example, military base housing. P3 Transactional Arrangements are internal to the government entity's operations. For example, work-share programs not involving the creation of a SPV, Trust, or LP.

³ Terms defined in the Glossary are shown in bold-face the first time they appear.

⁴ In-house refers to using government facilities and personnel as opposed to relying on commercial sources to supply the products and services the government needs.

private partner, (2) shared with the private partner, and (3) retained by the entity (that is, the government sponsor). Such an understanding relies on a thorough analysis of the underlying contractual agreements, guarantees, insurance, and indemnification strategies as well as the existence and nature of any underlying private party capital buffer that might exist; that is, the extent of any debt (for example, bonds, loans and notes) and equity (for example, stocks, and other securities representing an ownership interest) participation.

4. Entities can execute P3s via **structural arrangements** through the use of **special purpose vehicles (SPV's)** and/or directly as **program transactional arrangements**. Furthermore, many P3s are either discrete (long-term) leases or involve aspects of leasing.
5. The Board has previously addressed various types of long-term arrangements or transactions in which the government participates (for example, leases or guarantees). As such, accounting standards exist that provide for recognition and measurement of assets/liabilities and revenues/expenses as well as disclosures of certain risks in these long-standing types of arrangements or transactions. This Statement supplements existing guidance to help ensure adequate disclosure of those arrangements/transactions that either form the basis of or are part of a P3. Therefore, existing accounting standards that govern the various types of long-term arrangements/transactions continue to apply.
6. To that end, the Board notes that there are risks associated with P3s. For example, risks (1) where actual costs will be greater than budgeted costs, (2) the entity may have to absorb part or all of the project's private debt, (3) the entity will not achieve expected returns on its investments in limited partnerships, (4) conditions may lead to a government-acknowledged event where an entity assumes financial responsibility for the event, and (5) the public purpose or public value will not be fulfilled or achieved. Because of the risks involved in entering into such long-term agreements, some of which involve government assets, specific disclosures regarding P3s are needed. Such disclosures foster accountability and improve understanding of (1) the general risks inherent in P3 arrangements by revealing their purpose, objective, funding, operational and financial structures; and (2) contractual risks of loss such as early termination requirements. Disclosures should generally accompany the related asset and/or liability display contained within the financial statements.
7. A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to an entity. Some risks associated with P3s may result in the incurrence of losses and applying Statement of Federal Financial Accounting Standards 5 (SFFAS 5): *Accounting for Liabilities of the Federal Government* would be appropriate. For recognition of losses, SFFAS 5 requires that a past event has occurred for which a future outflow or other sacrifice of resources is probable and measurable. Disclosure should be provided for reasonably possible losses and probable losses that are not measurable.

8. Due to their very nature, P3s are used to manage risks, some of which may be risks of loss included in the terms of the contractual P3 arrangements or transactions that are deemed remote but are nonetheless material and may require disclosure. For example, excluding contractual protections afforded the government by the FAR⁵ inherently increases the entity's risk as does a relationship with an industry or private partner that may require the government to provide resources or absorb losses beyond what was contemplated. It is the Board's opinion that remote risks of loss included in the terms of the contractual P3 arrangements or transactions that are material should be disclosed. Therefore, consideration should be given to those risks that management does not expect to be likely yet could represent a risk of loss to the entity. With this being said, the Board also recognizes that (1) certain remote risks may have a reasonably high materiality threshold and (2) not all individual remote risks in a P3 arrangement or transaction need to be disclosed to satisfy the requirements of this Statement. As such, remote risks should not be dismissed from disclosure without further consideration of user needs and the qualitative and quantitative characteristics when applying materiality.
9. Disclosures comprise quantitative and qualitative information and not all P3 risks can be readily or sufficiently measured. However, federal financial reports are most likely to meet reporting objectives and, therefore, user's needs when disclosures help readers understand complex arrangements or transactions and the associated risk. 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.
10. Because the Board has identified the need for clarity with respect to questions that arise concerning the full costs including risk of these complex arrangements or transactions, this Statement is a first step toward developing principles-based guidance and identifying potential gaps in existing guidance. The Board is working and will continue to work closely with stakeholders interested in improving the accounting and reporting of these complex arrangements or transactions. By addressing disclosure issues as a first step, the Board will facilitate continued cooperation and greater interest in identifying areas requiring attention while minimizing preparer burden. It should be noted that the Board also plans to address measurement, recognition, and reporting issues through continued consultation with stakeholders. This could lead to the issuance of additional guidance.

⁵For example, contractual protections afforded the government by the FAR include but are not limited to: termination rights and obligations, contract by negotiation, cost accounting administration, and contract cost allowability.

MATERIALITY

11. The provisions of this Statement need not be applied to immaterial items. However, materiality should be applied cumulatively or in the aggregate by the entity. 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. Refer to paragraphs 8 and 9 above for related comments.

Standards

SCOPE

12. This Statement applies to federal entities that present general purpose federal financial reports, including the consolidated financial report of the U.S. Government (CFR), in conformance with generally accepted accounting principles, as defined by paragraphs 5 through 8 of Statement of Federal Financial Accounting Standards (SFFAS) 34, *The Hierarchy of Generally Accepted Accounting Principles, including the Application of Standards Issued by the Financial Accounting Standards Board*.
13. This Statement is applicable to public-private partnerships (P3s) and this term is used to refer to a wide variety of service, management, operating, and research and development arrangements or transactions meeting the definition of P3s presented in paragraphs 16 through 18.⁶ Such arrangements and transactions may include contracts, grants, reimbursable agreements, alternative financing arrangements, privatization initiatives, and other arrangements or transactions.
14. Some P3s can result in risk of loss and therefore should be assessed against the risk based (conclusive and suggestive) characteristics at paragraphs 20 and 21 to identify those that should be disclosed.
15. The following arrangements and transactions are not subject to the provisions of this Statement:
 - a. Non-lease acquisitions of property, plant, and equipment (PP&E) that are subject to the Federal Acquisition Regulations (FAR) and the private entity is not directly financing, operating, or maintaining the PP&E as part of an overall risk-sharing arrangement or transaction

⁶ For purposes of this Statement, the private sector refers to individuals and entities acting in their private capacities outside of the authority and control of federal, state, or local governments and encompasses for-profit businesses and non-profit organizations that are outside of the authority and control of federal, state or local governments.

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- b. Leases⁷ that are not bundled⁸ and are entered into using General Services Administration (GSA)-delegated authority (This Statement does not amend existing standards applicable to leases and those standards remain applicable to all such arrangements/transactions.)
 - c. Acquisition of supplies and services, including construction, research and development, and commercial items, made pursuant to the FAR Simplified Acquisition Procedures (FAR Part 13)
 - d. Formal and informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, encourage economic development, promote research and innovation, or coordinate and integrate strategic initiatives
 - e. Grants to state, local, and Indian tribal governments and other public institutions and arrangements or transactions with foreign governments
 - f. Arrangements or transactions in which private entities voluntarily contribute nominal resources or provide incidental resources without expectation of compensation or government indemnification for any possible risk of loss

⁷ The term leases includes enhanced use leases and both capital and operating leases, as defined under current FASAB standards.

⁸ A bundled lease typically arises when parties to a leasing arrangement agree to include additional products or services in the leasing arrangement, some of which might be related or tied directly to the underlying leased product or services (for example, software updates or maintenance). Although these additional products or services are not always expressly identified in the underlying lease agreement and may be documented in other agreements, they are nonetheless considered "bundled" with the underlying lease agreement.

Definition

16. Subject to the exclusions noted in paragraph 15 and for the purposes of this Statement, federal public-private partnerships (P3s) are risk-sharing⁹ arrangements or transactions with expected lives greater than five years between public and private sector entities. Such arrangements or transactions provide a service or an asset for government and/or general public use where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions.
17. A public sector entity shares risks and rewards with a private sector entity whenever the benefits of the arrangement or transaction accrue to both the private sector entity and the public sector entity and (1) the public sector entity is at risk of loss, or (2) the private sector entity's ability to perform is at risk and success of the arrangement or transaction depends upon the public sector's intervention.
18. The expected life of a P3 is the term or period for which the entity, including consideration of economic incentives, is likely to participate in the P3. The expected life is initially determined at the inception of the P3 arrangement when the economic incentives are identified and considered in the formation of the P3. Economic incentives considered may include expected significantly reduced costs or increased efficiencies if contracts are renewed or if the P3 approach is continued realization of return on investment, continuity of mission critical services, flexibility, and significant costs associated with nonrenewal, such as required payments at the end of the contract to compensate the private party for significant capital investments. Typically, expected life is documented in budget justifications, cost benefit or value for money analyses, or other analyses. Expected life may extend beyond the current contract period (including options or renewals). Expected life is re-evaluated as P3 contracts are renewed and when the entity identifies significant changes in circumstances during the contract period that may affect the expected life.¹⁰
19. Arrangements or transactions which are not excluded by paragraph 15 and meet the definition in paragraphs 16 through 18 should be assessed against the risk based characteristics in paragraphs 20 and 21.

⁹ Risk-sharing can be either structural or transactional. P3 Structural Arrangements are external to the government entity's operations and often involve the creation of a Special Purpose Vehicle (SPV), Trust, or Limited Partnership (LP); for example, military base housing. P3 Transactional Arrangements are internal to the government entity's operations; for example, work-share programs not involving the creation of a SPV, Trust, or LP.

¹⁰The Basis for Conclusions (BFC) paragraph A41 provides examples regarding determination of a P3's expected life.

Identification of P3'S Requiring Disclosure

20. The following risk characteristics are conclusive evidence that P3s possess risk of loss indicating that disclosures should be provided. If any one of the following conclusive risk characteristics is met, the P3 arrangement or transaction should be disclosed.

Conclusive Risk Characteristics	Risk Rationale ¹¹
<p>1. The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing¹² liability.</p> <p>¹² Contractors routinely finance operations while awaiting payment of invoices. Such routine financing is not indicative of a P3 in and of itself.</p>	<p>Not all P3s result in the conveyance or construction of an asset. However, in those that do, the government's risk may be significantly increased because of costs that accompany asset ownership or control. Further, financing may be provided in whole or shared in part by private sector entities. Note that some private partners may incur substantial financing liabilities in preparation for delivering services even if an asset is not created.</p>
<p>2. The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, and other such arrangements.</p>	<p>Entities such as SPVs, partnerships, trusts, and other such arrangements can be established for a variety of strategic and/or tactical reasons. Generally speaking, they are commonly considered risk-containment vehicles and are more often than not, purposefully not included in budgets or balance sheets. P3s employing SPVs, partnerships, trusts, and other such arrangements can be or most often become borrowing arrangements/transactions or alternative financing mechanisms. Therefore, the risk rests in the fact that because SPVs, partnerships, trusts, and other such arrangements can facilitate funding/financing, an agency's explicit or implicit long-term debt or promise to pay the established entity is not appropriately recognized in either budget or financial reports.</p>
<p>3. The arrangement or transaction covers a significant portion of the economic life of a project or asset.</p>	<p>Those P3 procurement or contract arrangements/transactions that cover a significant portion of the economic life of a project or asset pose greater risk to the federal entity because there is often no re-procurement or re-negotiation opportunity for the agency. As a result, changed conditions that could warrant a fair and reasonable re-negotiation or re-competition cannot be exercised and increased costs that would otherwise be avoided are incurred for the duration of the arrangement/transaction.</p>

<p>4. The principal arrangement or transaction is exempt from:</p> <p>a. if a contract, the FAR; or</p> <p>b. b. if a grant, Office of Management and Budget (OMB) requirements (2 C.F.R. Title 2, Part 200).</p>	<p>The FAR for contracts and OMB requirements for grants govern the administrative framework and include procurement, accounting, and legal requirements to help safeguard taxpayer dollars. Therefore, those P3s exempt from such requirements are at an increased-risk because well-established safeguards and contract resolution mechanisms are absent.</p>
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21. The following risk characteristics are evidence that P3s may possess risk of loss and require disclosure. The following suggestive risk characteristics should be considered in the aggregate. Each suggestive risk characteristic will require entity judgment as each characteristic is analyzed in connection with the other suggestive risk characteristics.

Suggestive Risk Characteristics	Risk Rationale¹¹
<p>1. A Value for Money (VfM)¹³ analysis is performed.</p> <p>¹³ In its publication "The Value for Money Analysis: A Guide for More Effective PSC and PPP Evaluation," the National Council of Public Private Partnerships 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.</p>	<p>¹¹The rationale presented herein explains why the Board believes there is or may be risk of loss when the characteristic is present. The rationale discusses risk broadly and is not intended to create specific disclosure requirements. The disclosures are articulated in paragraph 24. Please refer to BFC paragraphs A37 through A43 for related comments.</p> <p>The term VfM is commonly 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 may indicate that the project in question is a P3. VfM's are typically more subjective than traditional cost-benefit analyses and are sometimes prepared ex-post facto, thus increasing potential risk to the agency.</p>
<p>2. The consideration or items given up in an arrangement/transaction or their value are not readily apparent.</p>	<p>Generally under common law, consideration from both parties is required in order to have what constitutes a binding contract. Some courts have ruled that in those cases where the exchange appears excessively one sided, no quid-pro-quo exists and the contract may be void by law. Therefore, in those cases where consideration or its value from either party is not readily apparent, such cases could lead to recourse or remedies that have adverse financial ramifications to the agency.</p>

<p>3. Significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.</p>	<p>As federal entities face under-utilization and skill retention issues, with Congressional approval, some entities are entering into P3 arrangements/transactions to put both infrastructure and government personnel to heightened work. However, there is a concern that the analyses used to justify these arrangements or transactions often exclude government personnel costs, including associated legacy costs (for example, pension and OPEB). Therefore, increased risk exists in those cases where such costs are excluded from cost-benefit or VfM analyses because the government (1) is left absorbing these costs with no related activity base, (2) is exposed to potential liabilities arising from union and/or employee litigation, and (3) may lose governmental skill-sets that would lead to costlier procurement options.</p>
<p>4. The focus is more on collaboration and informal, real-time, resolution processes than on formal, contractual, administrative processes.</p>	<p>Due to their very nature, P3 arrangements or transactions involve risk-sharing and in some cases, issues such as contract disputes are resolved informally. However, such informal resolution processes could lead to potential liability when contracting, procurement, or legal personnel are not involved. Therefore, the risk rests in the potential liability arising from informal resolution of what otherwise would require more formal contractual administrative processes.</p>
<p>5. The government relies on either the private sector partner's or a third party's determination of a P3's performance or return on investment/equity without performing its own verification of performance or return on investment/equity.</p>	<p>Agencies often rely on 3rd party experts to assist in performing various types of analyses. It has been noted that conflicts of interest often exist because there are only a few firms who practice in this highly sophisticated area. As a result, some firms have provided advisory services to both the private partner and government sponsor of a P3 arrangement/transaction. In addition, fees are often based on the dollar volume of the arrangement/transaction creating what some believe are self-serving incentives. Therefore, the risk in those P3 arrangements/transactions rests where an agency does not or cannot perform its own independent analysis, thus relying solely on either the private partner or a third party determination of a P3's performance or return on investment/equity without performing its own verification. Such analyses may belie the significant risk the government has or will incur.</p>

Disclosure Requirements

Component Reporting Entity Disclosures

22. The P3 disclosures at paragraph 24 below specify the inclusion of qualitative and quantitative information and may be aggregated or grouped by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, or other means.
23. Disclosures should generally accompany the related asset and/or liability display contained within the financial statements. Depending on the circumstances, some of the required information may be disclosed due to other requirements. The resultant disclosures should be integrated so that concise, meaningful, and transparent information is provided and information is not repetitive.
24. Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a P3 arrangement/transaction. The following information should be disclosed:
 - a. The purpose, objective, and rationale for the P3 arrangement or transaction and the relative benefits/revenues being received in exchange for the government's consideration, monetary and non-monetary; and the entity's statutory authority for entering into the P3.
 - b. A description of federal and non-federal funding of the P3 over its expected life, including the mix and, where available, the amounts of such funding. For any amounts that are not available, the disclosures should indicate such.
 - c. The operational and financial structure of the P3 including the reporting entity's rights and responsibilities, including:
 - i. A description of the contractual terms governing payments to and from the government over the expected life of the P3 arrangement or transaction to include:
 1. explanation of how the expected life was determined
 2. the time periods payments are expected to occur
 3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances

4. in-kind contributions/services and donations

- ii. The amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid in aggregate over the expected life of the P3
- d. Identification of the contractual risks of loss the P3 partners are undertaking
 - i. Identification of such contractual risks of loss should include a description of (1) the contractual risk and (2) the potential effect on cash flows if the risks were realized (for example, early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, contingent payments, or renewal options).
 - ii. Disclosure of remote risks of loss should be limited to those included in the terms of the contractual P3 arrangements or transactions. If remote risks of loss are disclosed, an explanation should be included that avoids the misleading inference that there is more than a remote chance of a loss.
- e. As applicable:
 - i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items
 - ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction
 - iii. Whether the private partner(s), including any Special Purpose Vehicle (SPV), have borrowed or invested capital contingent upon the reporting entity's promise to pay whether implied or explicit
 - iv. Description of events of termination or default

Financial Report of The U.S. Government Disclosures

25. The U.S. government-wide financial statements should disclose:
- a. a general description of P3 arrangements or transactions
 - b. the consolidated amounts the government received and paid during the reporting period(s) and estimated to be received and paid in aggregate over the expected life of the P3s
 - c. a reference(s) to applicable component entity report(s) for additional information

Effective Date

26. The requirements of this Statement are effective for reporting periods beginning after September 30, 2018. Early adoption is permitted.

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

This Statement may be affected by later Statements. The FASAB Handbook is updated annually and includes a status section directing the reader to any subsequent Statements that amend this Statement. Within the text of the Statements, the authoritative sections are updated for changes. However, this appendix will not be updated to reflect future changes. The reader can review the basis for conclusions of the amending Statement for the rationale for each amendment.

Project History

- A1. This project was added to the FASAB's technical agenda in April 2012 because federal agencies have increasingly turned to public-private partnerships to accomplish goals and in light of budget pressures 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 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 recognizing the full costs of P3s in the financial statements. In addition, a P3 task force was formed and held its first meeting in February 2013.
- A2. Final standards or guidance were expected to follow a three year effort. Specific project objectives include:
 - a. Defining terms
 - b. Providing guidance (that is, identifying gaps) for the recognition and measurement of:
 - i. assets and liabilities
 - ii. revenues and expenses
 - iii. establishing disclosure requirements
 - c. Considering guidance for other arrangements/transactions related to P3s (for example, sale-leaseback or other long-term arrangements)

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- A3. Early in its deliberations the Board was clear that forthcoming guidance must be consistently applied and covered by an overarching principle(s). The Board noted its concern is with the risks to which the government is exposed and related disclosures. As a result, members decided that because P3s often involve innovative 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 to establish a framework for determining which P3s should be disclosed. The Board believes that the resulting disclosures will inform the need for and development of future standards providing recognition and measurement guidance specific to P3s. Therefore, any further work will be undertaken after these disclosures become effective.
- A4. P3 task force meetings for this phase of the project were held between February 2013 and May 2014. All meetings were well attended with representation from federal agencies, commercial sector(s), and citizens. 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. To best meet the project goals and objectives, staff, in addition to engaging in task force discussions, 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.
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Common Themes and Other Matters

- A5. The most common themes arising from task force and fact finding meetings considered in developing the Statement include:
- a. At a minimum, participants expect continued use if not growth in P3s.
 - b. Government employee legacy & relocation costs are not presently considered in Value for Money (VfM)¹⁴ analyses.

¹⁴ VfM is a much broader concept than typical cost-benefit analysis because it emphasizes "value" in more of a qualitative than quantitative manner. Quantitatively, some VfM models use a project's Internal Rate of Return (IRR) to help determine project acceptability. The VfM concept has drawn criticisms not only because of its subjectivity and lack of rigor in application, but because in some cases (1) cash flows can be easily managed to meet desired expectations and (2) VfM results are used as ex-post facto justifications for qualitatively made project and/or award decisions. It is important to note that the same criticisms can be made of the more traditional cost-benefit analyses used in management decision making.

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- c. Long-term nature of P3s is accepted, but concerns include
 - i. lack of transparency in the solicitation and award processes along with the lack of competition hinders accountability and fair and reasonable pricing,
 - ii. not applying the Federal Acquisition Regulation¹⁵ (FAR) increases government risk, and
 - iii. some P3s circumvent procurement administration.
 - d. In-kind contributions are difficult to value or are overvalued and not always reported.
 - e. P3 financial reporting is generally supported but agencies and participants vary in the what, how, and where of disclosures. For example, relative to significant and material P3 arrangements or transactions, 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 the 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.

A6. Other matters arising during task force and fact finding meetings included:

- a. **Increased Risk to Citizens.** A few participants noted that P3s erode (1) the notion of public service (for example, what is inherently governmental) and (2) in many cases, belief in good government. This increased risk is evidenced by those entities that:
 - i. purposefully avoid capital acquisition budgeting requirements
 - ii. absorb "availability" risk¹⁶ absent sufficient private partner consideration

¹⁵The 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.

¹⁶Availability risks or project completion risks exist when for example, defects in construction or quality shortfalls within the control of the private partner occur that preclude the asset or service from being available for its intended use requiring the government sponsor to intervene.

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- iii. lose control of assets
 - iv. lock into long-term arrangements/transactions that cannot be re-competed or re-negotiated
 - v. are constrained by contract modification restrictions
 - vi. are constrained by proximity and/or right-to-compete restrictions
 - vii. ignore government employee personnel (legacy) costs
- b. **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.
 - c. **Performance Metrics.** Financial reporting would be enhanced by incorporating performance metrics that could point to both risks and potential liabilities as they arise.

Summary of Outreach Efforts

- A7. The ED was issued October 1, 2014 with comments requested by January 2, 2015. Upon release of the exposure draft, notices and press releases went to the following organizations:
- a. *The Federal Register*
 - b. *FASAB News*
 - c. *The Journal of Accountancy, AGA Today, the CPA Journal, Government Executive and the CPA Letter*
 - d. The CFO Council, the Council of the Inspectors General on Integrity and Efficiency, the Financial Statement Audit Network; and members of both the Federal Real Property Council and Federal Facilities Council
 - e. Committees of professional associations generally commenting on exposure drafts in the past
- A8. This broad announcement was followed by electronic mailings of the exposure draft followed up by several reminder notices.to:

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- a. Relevant congressional committees
 - i. House Committee on Oversight and Government Reform
 - ii. Senate Committee on Homeland Security and Governmental Affairs
 - b. Public interest and labor union groups
 - i. In the Public Interest
 - ii. American Federation of State, County and Municipal Employees

A9. The Board did not rely on the number in favor of or opposed to a given position. Information about the respondents' majority view is provided only as a means of summarizing the comments. The Board considered the arguments in each response and weighed the merits of the points raised. The following paragraphs discuss significant issues identified by respondents followed by Board decisions.

Respondents' Comments on the Exposure Draft

A10. The exposure draft was issued with an alternative view that expressed concerns over the (1) breadth of the general definition, (2) disclosures related to certain remote risks, and (3) clarity of "significant exposure." Specific comments regarding respondent concerns and Board re-deliberations are noted in the following paragraphs as appropriate.

Definition: Public-Private Partnerships

A11. In consultation with constituents to include respondent comments received and related outreach concerning the breadth and scope of the definition, the Board has further developed and refined the definition proposed in the exposure draft. The Board desired establishing a definition that (1) reflected actual federal P3 practices, (2) covered the wide breadth and diverse scope of federal assets, and (3) focused 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.

A12. In reviewing the P3 definitions of other standard-setters, the Board notes that their guidance is largely focused on service concession arrangements (that is, a sub-set of P3s) that directly benefit the general public. The definition contained in this Statement is much broader given 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 topics that extend beyond those typically found in service concession arrangements, (2) oversight

entities such as the Congressional Budget 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, and hospitals, whereas federal initiatives extend well beyond economic development such as the common defense and general welfare of the nation thus necessitating accounting guidance to best fit these federal initiatives.

A13. In developing the definition, the Board primarily relied on (1) the task force's review of existing definitions from several authoritative sources, (2) various respondent comments to the definition contained in the exposure draft, and (3) an ad-hoc working group comprised of selected respondents. 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 (for example, anywhere from five 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 SPVs. Those respondents specifically commenting on the definition as well as the ad-hoc working group primarily suggested better linkage between the definition and the risk-based characteristics. Accordingly, the broad definition contained in the exposure draft was further refined and is as follows:

Subject to the exclusions noted in paragraph 15 and for the purposes of this Statement, federal public-private partnerships (P3s) are risk-sharing arrangements or transactions with expected lives greater than five years between public and private sector entities. Such arrangements or transactions provide a service or an asset for government and/or general public use where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions.

Scope, Applicability and Exclusions

Scope

A14. The Board recognizes that establishing a P3 definition reflecting the breadth and diverse scope of entity missions, operational strategies, available leasing authorities, and other variables might capture activities which are already being recognized or disclosed in the entity's financial statements. Specifically, this is because the Board has previously addressed various types of long-term arrangements/transactions in which the government participates (for example, leases and guarantees). As such, existing accounting standards provide for recognition and measurement of assets/liabilities and revenues/expenses as well as disclosures of certain risks in these long-standing types of arrangements or transactions. However, the Board believes that there is a need for disclosure requirements

specific to the risks existing in P3s for which there is no current accounting guidance. The requirements herein do not replace existing disclosure requirements in other SFFASs for similar arrangements or transactions such as leases. P3s are complex arrangements/transactions and an entity would apply all applicable standards to report relevant information in the notes.

Applicability

A15. To help ensure achievement of the federal reporting objectives while minimizing unwarranted disclosure of P3 arrangements or transactions, the Board has established filters at several decision points to aid preparers in this regard. The filters are categorized as follows:

- a. Definitional Features Indicative of Risk - After careful study the Board initially identified four major features of federal P3 arrangements or transactions that were embodied in the proposed definition: (1) agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years, (2) financing provided in whole or shared in part by the private partner, (3) conveyance or transfer of real property, personal property, or multi-sector skills and expertise, and (4) formation of SPV's. However, as a result of respondent comments concerning linkage between the definition and the risk-based characteristics and a working group recommendation, the Board (1) realigned the four major features by incorporating them directly into the risk-based characteristics and (2) within the definition, specifically excluding arrangements or transactions which are not more than 5 years in duration.
- b. Risk-based Characteristics - The Board has identified and refined during its re-deliberations certain key characteristics discussed later that reflect varying degrees of risk that exist in federal P3s. Therefore, should these characteristics be absent in a P3, the disclosure requirements of this Statement would generally not apply.
- c. Materiality - As is the custom with all Statements issued by the Board, only those P3s that are material (qualitatively and quantitatively) in nature, more thoroughly discussed later, should be subject to the requirements of this Statement. The Board notes that because materiality assessments require both qualitative and quantitative judgments, specific guidance limiting preparer and auditor considerations of information would not be appropriate.

Exclusions

A16. As a result of respondent comments concerning the breadth of the proposed definition, the ad-hoc working group recommended and the Board adopted three additional exclusions. The three additional exclusions are:

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- a. grants to state, local, and Indian tribal governments and other public institutions,
 - b. arrangements or transactions with foreign governments, and
 - c. arrangements or transactions sharing nominal or incidental resources.

The first two exclusions identified above reflect that this Statement only applies when a federal entity is in a risk-sharing arrangement or transaction with the private sector¹⁷ and not a public sector institution. Risks associated with public-to-public partnerships (for example, federal to state or federal to local) and those associated with foreign governments (1) are significantly different when compared to risks arising in public-private partnerships and (2) warrant extensive research far beyond the scope of this Statement. Moreover, arrangements or transactions with Indian tribal governments or foreign governments are closely governed by selected agencies and Congressional committees and are also beyond the scope of this Statement. Lastly, arrangements or transactions in which private entities voluntarily contribute nominal resources or provide incidental resources without expectation of compensation or government indemnification for any possible risk of loss are also excluded from the requirements of this Statement.

A17. In summary, the following arrangements or transactions are excluded from the requirements of this Statement:

- a. non-lease acquisitions of property, plant, and equipment that are subject to the FAR and the private entity is not directly financing, operating, or maintaining the PP&E as part of an overall risk-sharing arrangement or transaction,
- b. leases meeting certain conditions,
- c. acquisitions made using Simplified Acquisition Procedures (FAR Part 13),
- d. formal and informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, encourage economic development, promote research and innovation, or coordinate and integrate strategic initiatives,
- e. grants to state, local, and Indian tribal governments and other public institutions and those with foreign governments, and

¹⁷For purposes of this Statement, the private sector refers to individuals and entities acting in their private capacities outside of the authority and control of federal, state or local governments and encompasses for-profit businesses and non-profit organizations that are outside of the authority and control of federal, state or local governments.

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- f. arrangements or transactions sharing nominal or incidental resources.

A18. Concerning leases, in consultation with the P3 Task Force and after careful consideration, the Board concluded:

- a. to exclude leases¹⁸ that meet the following two conditions: a) they are not bundled and b) they are entered into using GSA delegated authority. Such leases (1) have no significant P3 risk of loss, (2) are already subject to existing FASAB guidance, (3) have well defined FAR-based contractual processes and remedies in place to address risks associated with landlord-tenant relationships, (4) have contractually capped payments for termination liabilities, and (5) have termination payments that are indemnified by GSA's Building Fund. The Board believes that if a lease is either bundled or not entered into using GSA delegated authority, the provisions of this Statement should apply.
- b. to not broadly exclude Enhanced Use Leases (EULs) except for those meeting the two conditions cited above because they are more oriented towards P3s as a result of (1) possessing special authorities and not being subject to the FAR, (2) often operating under a risk-reward model as opposed to those entity leases that are basically a landlord-tenant relationship and not a risk-sharing partnership, and (3) possibly including ancillary services and in-kind consideration as part of the arrangement or transaction. Because the Board believes that EULs could be encompassed by this Statement, a determination should be made as to whether disclosures are required via the application of the risk-based characteristics.

Risk-based Characteristics

A19. Although federal P3s are varied and complex, the Board believes there are some common characteristics that can be used to identify those P3s that create risk of loss and should be disclosed. Because the Board is aware of the administrative burdens agencies face day-to-day and that some P3 portfolios might be voluminous, in addition to identifying those P3s that create risk of loss, the risk-based characteristics can also be applied to assist a federal entity in determining which P3 arrangements or transactions do not require disclosure.

¹⁸The term leases includes enhanced use leases (EULs) which are typically long-term lease agreements that allow public or private entities to use an agency's property. Agency EUL programs have allowed entities to develop or occupy federal properties such as power plants, housing and healthcare facilities, office space, and parking facilities, and in return, federal agencies receive cash or in-kind consideration. Please note that there is no government-wide definition of EULs. Source: [GAO-13-14](#) Federal Real Property: Improved Cost Reporting Would Help Decision Makers Weigh the Benefits of Enhanced Use Leasing, December 2012).

- A20. The risk-based characteristics have been developed, refined, and categorized from an initial comprehensive list of characteristics that distinguishes federal P3s from traditional procurement actions. With the assistance of the task force, the Board further analyzed and then selected risk-based characteristics which indicate significant P3 risk of loss. These risk-based characteristics are intended to: (1) apply to all types of P3s: construction, housing, utilities, military depots, and others, and (2) assist a federal entity in ascertaining which P3 arrangements or transactions should be disclosed. Once a P3 is identified for disclosure, such arrangements or transactions would then be evaluated in light of the entity's materiality considerations including quantitative and qualitative threshold(s).
- A21. As a result of respondent comments concerning linkage between the definition and the risk-based characteristics, the working group recommended and the Board adopted an additional risk-based characteristic for grants and other arrangements. Specifically, OMB requirements (2 C.F.R. Title 2, Part 200) for grants govern the administrative framework and include requirements to help safeguard and protect taxpayer dollars. Therefore, those P3s exempt from such requirements are at an increased-risk because well-established safeguards and resolution mechanisms are absent.

Conclusive and Suggestive Characteristics

- A22. The majority of respondents agreed with the risk-based characteristics, their related classification, and their proposed application. However, as mentioned above, the working group recommended and the Board adopted an additional risk-based characteristic for grants and other arrangements. Moreover, the Board clarified the two categories of risk-based characteristics (conclusive and suggestive) pursuant to respondent concerns. Conclusive characteristics are those that existence of any one characteristic means the P3 arrangement or transaction should be disclosed. However, existence of any one of the suggestive characteristics is evidence that the P3 arrangement or transaction may possess risk of loss and require disclosure. Such a suggestive characteristic should 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 requires entity judgment as each one is analyzed in connection with the other suggestive characteristics.
- A23. If a P3 arrangement or transaction is subject to disclosure, it should be further evaluated in light of materiality considerations that include both qualitative and quantitative assessments. Additionally, materiality should be applied cumulatively or in the aggregate by the entity.

Materiality

Considering User Needs

A24. As the standards-setting body for the federal government, the Board has stated that there are two fundamental values that provide the foundation for governmental accounting and financial reporting: "accountability" and its corollary, "decision usefulness." Concepts explain that "Because a democratic government should be accountable for its integrity, performance, and stewardship, it follows that the government must provide information useful to assess that accountability." The Board believes that P3 disclosures are an essential element in establishing accountability.

A25. In applying the concept of materiality, the needs of the users of the annual financial report should be considered. Specific to P3s for example, users are interested in: (1) assessing the costs and related risks of entering into such long-term agreements; (2) assessing the efficiency and effectiveness of these risk-sharing agreements as well as the government's management of its assets and liabilities; and (3) determining how financial resources, budgetary or otherwise, have been obtained and used and whether their acquisition and use were in accordance with the entity's legal authorization. As a result, the Board believes that the P3 disclosures required by this Statement will help answer these questions while achieving the associated reporting objectives.

Qualitative and Quantitative Assessments Require Judgment

A26. In connection with concerns over the breadth and scope of the definition, some respondents suggested that the Board develop a clear and objective materiality standard that would limit the disclosure requirement to those transactions that present substantial financial risk to the government. The Board believes that refining the definition and adding additional exclusions best addresses respondent concerns in this regard. Respondents are reminded that "materiality" has not been formally defined in the accounting community; rather, it is a matter of judgment on the part of preparers of financial statements and the auditors who attest to them. The determination of whether an item is material:

- a. requires the exercise of considerable judgment, based on consideration of specific facts and circumstances, and
- b. depends on the degree to which omitting or misstating information about this 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.

A27. The Board believes that preparers and auditors are in the best position to exercise this judgment predicated on their direct knowledge of the specific facts and circumstances and

user needs. Furthermore, the Board believes that specific guidance concerning materiality assessments would limit preparer and auditor considerations and are therefore inappropriate.

A28. The Board notes that while a P3 arrangement or transaction might not be considered material from a quantitative standpoint, it may be considered qualitatively material and subject to this Statement's disclosure requirements if the disclosures would influence or change the judgment of the financial statement user. Exclusive reliance on certain quantitative benchmarks or thresholds to assess materiality should be avoided.

Materiality Includes Probability Assessments

A29. Decisions whether to recognize or, in the case of this Statement, disclose a P3 arrangement or transaction may take into account considerations that include uncertainties. Uncertainties can be expressed as a measurement of an appropriate attribute (for example, historical cost, fair value, expected value, or some other attribute) which may include an assessment of the probability of future flows of economic benefits or services (emphasis added). Furthermore, uncertainties are often subjected to assessments of the materiality of the item, and the benefit versus the cost of recognition or, in this Statement's case, disclosure.

A30. Statement of Federal Financial Accounting Standards 5 (SFFAS 5), *Accounting for Liabilities of the Federal Government*, states that "probable" refers to that which

- a. can reasonably be expected, or
- b. is believed to be more likely than not on the basis of available evidence or logic with the exception of pending or threatened litigation and unasserted claims.

A31. The Board notes that the concept of probability is imprecise and may be difficult to apply with respect to certain P3 activities such as economic stabilization payments, in addition to other matters that could arise during the life of the P3 arrangement or transaction. However, the "more likely than not" phrase in SFFAS 5 accommodates the assessment of the probability of those uncertainties often associated with P3s due to their long-term nature and project variability.

A32. Historically, some studies including work done by GAO suggest that, in practice, preparers and auditors in the private sector often interpret "probable" to mean a subjective assessment of probability considerably in excess of 50%. However, FASAB has defined "probable" as "more likely than not," that is, a subjective assessment of probability greater than 50% (51% or more).

Risks that are Deemed Remote

A33. Most of the respondents agreed with the Alternative View that stated (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of "significant exposure" is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosure. As such, respondents were concerned that such additional disclosures could overwhelm or mislead users. The Board believes that it has addressed respondent concerns in this regard by refining the definition contained in the Exposure Draft, adding additional exclusions, eliminating references to "significant exposure," and in emphasizing at paragraph 24d that remote risks of loss should be limited to those that are included in the terms of the contractual P3 arrangements or transactions. The Board is of the opinion that remote risks can and should be reported where appropriate as explained below.

A34. SFFAS 5 provides that contingencies deemed remote (that is, the chance that a loss has been incurred is slight) are not recognized as a contingent liability or disclosed.¹⁹ However, SFFAS 5 requires that a contingent liability should be disclosed if any of the conditions for liability recognition are not met and there is at least a reasonable possibility that a loss or an additional loss may have been incurred.

A35. The Board believes that some risks of loss associated with P3s may be consistent with contingencies in SFFAS 5 that arise because of an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to an entity, including the concepts of probable, reasonably possible, and remote. It is this uncertainty, or risk in other words, that prompts entities to seek private partners who can best manage and/or contain the effects of the uncertainty that could ultimately lead to a loss. In applying SFFAS 5 some contingencies may be identified for which the degree of uncertainty is so great that no reporting (that is, recognition or disclosure) is required by that Statement. However, the Board notes that (1) reporting such contingencies is not inconsistent with the provisions of SFFAS 5 and (2) as discussed above at paragraph A32, because FASAB has defined

¹⁹Per SFFAS 5, paragraph 38, a contingent liability should be recognized when all of these three conditions are met:

- A past event or exchange transaction has occurred (for example, a federal entity has breached a contract with a nonfederal entity).
- A future outflow or other sacrifice of resources is probable (for example, the nonfederal entity has filed a legal claim against a federal entity for breach of contract and the federal entity's management believes the claim is likely to be settled in favor of the claimant).
- The future outflow or sacrifice of resources is measurable (for example, the federal entity's management determines an estimated settlement amount).

"probable" as "more likely than not," the FASAB framework suggests that "reasonably possible" and "remote" risks be assessed for disclosure at the remaining (more narrow) band.

A36. Due to their very nature, P3s can also possess risks of loss that may be considered remote but material. For example, excluding contractual protections afforded the government by the Federal Acquisition Regulation (FAR) inherently increases the entity's risk as does a relationship with an industry or private partner that may require the government to provide resources or absorb losses beyond what was contemplated. The Board believes such P3 arrangements or transactions should be disclosed, subject to materiality, even though the risks of loss included in the terms of the contractual P3 arrangements or transactions may be deemed remote. The Board further notes that enterprise risk management frameworks often focus on remote risks because of the magnitude of any potential adverse effects that might arise. Therefore, consideration should be given to those risks that management does not expect to be likely, but represent a material risk of loss to the government if they were to occur. With this being said, the Board also notes that such remote risks may have a reasonably high materiality threshold balanced by whether the omission is such that it is probable that the judgment of a reasonable person would have been changed or influenced by the disclosure. As such, remote risks should not be dismissed from disclosure without further consideration of user needs and the qualitative and quantitative characteristics when applying materiality.

Disclosure Requirements of P3s

A37. The task force conducted research and identified examples of disclosures surrounding P3s from a variety of international and national authoritative sources which address P3 information needs for different types of users. Additionally, the task force considered fact-finding meetings with public and private representatives regarding the types 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 unusual in financial reporting, the task force reached that conclusion because P3s fall outside the routine way governments procure services and such disclosures reveal the potential risk that governments assume, which can ultimately lead to liability recognition.

A38. 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 reporting is important to meeting these objectives because the federal government is accountable to citizens for the proper 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 concluded that its cost also exceeded potential benefits identified by the task force.

- A39. P3s are a form of investment and they should be adequately disclosed in order to assist report users in determining: (a) the important assets of the U.S. government and how effectively they are being managed and (b) whether the government's financial position improved or deteriorated over the period of the P3. P3s often involve innovative 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.
- A40. Respondents were mixed regarding disclosures with some stating that the disclosures are onerous and burdensome and the others in agreement with the proposed disclosures or seeking additional disclosures. As a result of considering the overall financial reporting objectives, and in light of certain respondent comments regarding administrative burden, the Board decided to not require disclosure of amounts estimated to be received and paid during each of the succeeding five years. That is, only the amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid in aggregate over the expected life of the P3 need be reported. In determining the expected life of the P3 arrangement or transaction the entity's economic incentives (that is, its risks and/or rewards) should be considered.
- A41. The Board offers two examples regarding the determination of a P3s expected life. First, consider an infrastructure arrangement containing a master ground lease of 50 years where in exchange for an up-front payment the entity out-leases (government-owned) land for the construction of an office building and at the same time enters into an occupancy lease which can be renewed for up to 75 years. The expected life of the P3 should be limited to 50 years given the fact that the entity's economic incentive at year 50 changes due to the master ground lease's expiration. That is, at such time the entity may decide to renew the master ground lease and renegotiate its occupancy lease or sell the land and not renew the occupancy lease. As a result, the amounts estimated to be received and paid in aggregate over the 50 years would be reported. Second, consider a spare parts sustainment program where an entity partners with an inventory logistics firm to handle the entire supply chain management function of a major weapons system expected to remain in service for the next 25 years. Although by statute the entity can only enter into a 5 year (for example, base year with 4 renewable options) contract, it has an economic incentive to maintain the relationship

beyond 5 years. This is primarily due to the fact that the private partner is likely to incur a substantial investment to manage the supply chain and the investment will need to be recovered over time. As a result, the amounts estimated to be received and paid in aggregate over the 25 years would be reported.

Aggregation

A42. Due to the relative complexity and potential voluminous nature of P3s that an entity might be party to, the Statement permits entities to aggregate disclosures by providing broad and summarized information instead of unique or discrete arrangement or transaction detail. However, entities are permitted to disclose information related to individually significant P3 arrangements or transactions separately if entity management believes that such disclosure would better meet user needs.

A43. For example, disclosures of P3 arrangements or transactions could be aggregated by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, or other means. 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. Respondents generally supported the aggregation of information.

Reporting Period

A44. Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a material P3 arrangement/transaction

Board Approval and Dissent

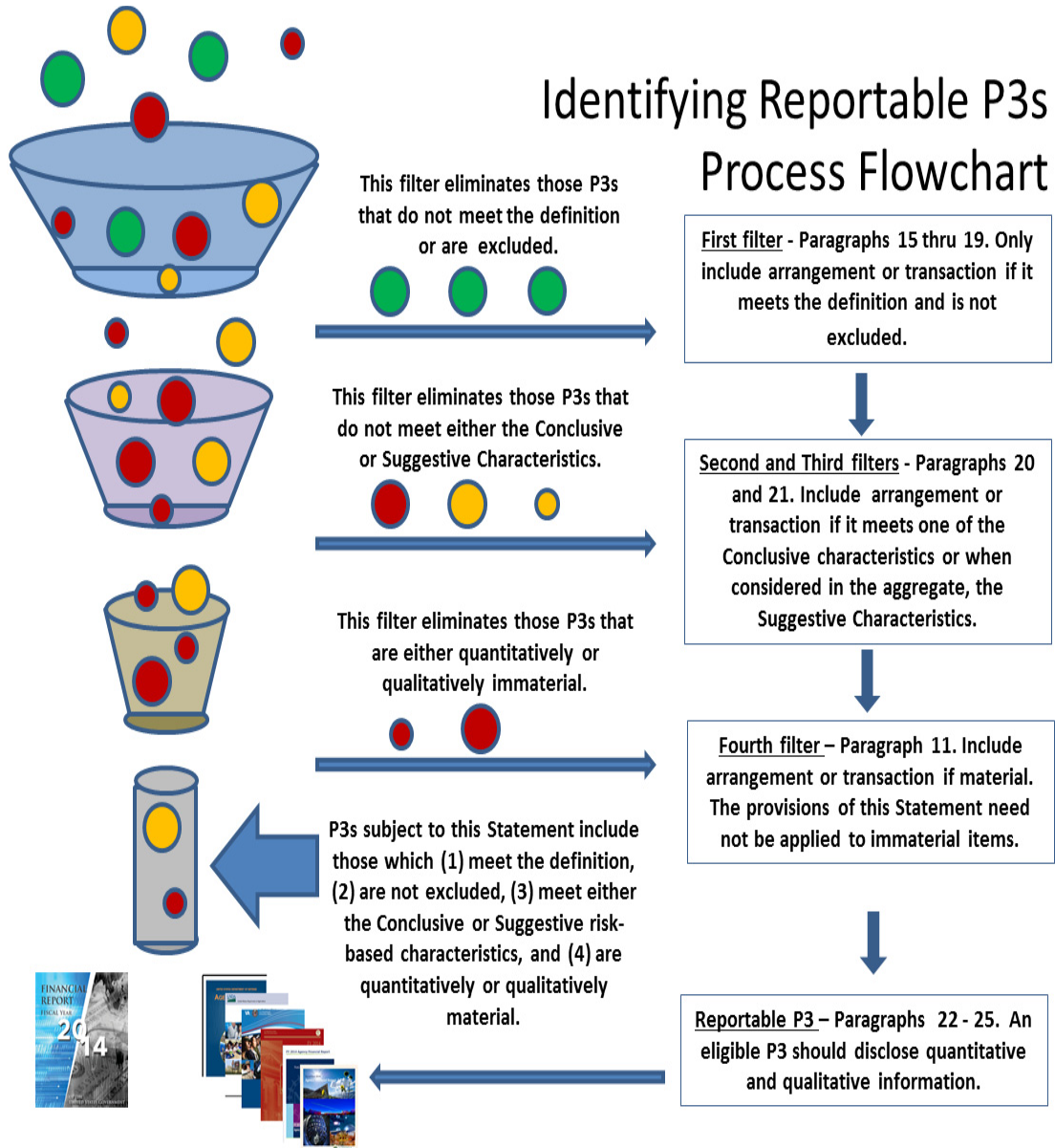
A45. This Statement was approved for issuance by 8 members of the Board. One member dissented. The written ballots are available for public inspection at the FASAB's offices. The dissent of the member who opposed the issuance of this Statement is presented in paragraphs A46 and A47.

A46. Ms. Ho dissents to the issuance of this Statement. She believes that the increased use of P3s in the federal government makes the need for clarity in the accounting for P3s vitally important. Ms. Ho acknowledges that the taxpayer has the right to know what obligations the government has agreed to and what the total cost is for a P3 project. Ms. Ho commends FASAB for their thorough examination of the issue, which encompassed several years.

A47. Ms. Ho strongly supports more transparency in financial reporting of federal taxpayers' dollars. However, she shares the concerns voiced by many agencies in response to the

exposure draft that the disclosures required by this Statement will create a burden that does not justify the cost required to collect, analyze, report and audit the information needed to comply with this Statement's requirements. In particular, Ms. Ho feels that the expected life requirement will result in inconsistent application by agencies throughout government, which is contrary to the goal of the Statement.

Appendix B: Flow Chart²⁰



²⁰The standards enunciated in this Statement and not the material in this appendix should govern the accounting for specific transactions, events, or conditions.

APPENDIX C: ABBREVIATIONS

AGA	Association of Government Accountants
BFC	Basis for conclusions
CFR	Consolidated financial report of the U.S. government
C.F.R.	Code of federal regulations
CPA	Certified public accountant
ED	Exposure draft
EUL	Enhanced Use Lease
FAR	Federal Acquisition Regulation
FASAB	Federal Accounting Standards Advisory Board
GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
GPFFR	General purpose federal financial reports
GSA	General Services Administration
IRR	Internal rate of return
IT	Information Technology
LP	Limited Partnership
MD&A	Management's discussion and analysis
OMB	Office of Management and Budget
OPEB	Other postemployment benefits
P3	Public-Private Partnership

PP&E	Property, Plant, and Equipment
PPP	Public-Private Partnership
PSC	Public Sector Comparator
SFFAC	Statement of Federal Financial Accounting Concepts
SFFAS	Statement of Federal Financial Accounting Standards
SPV	Special Purpose Vehicle
U.S.	United States
VfM	Value for Money