

## Memorandum

### **P3 – Phase II**

January 21, 2022

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 D)

#### **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.

At the August 2021 Board meeting, members reviewed the results of staff's analyses concerning the FY 2020 note disclosures pursuant to SFFAS 49, *Public-Private Partnerships: Disclosure Requirements* and agreed not to proceed with measurement and recognition until additional insight and research is gained regarding how the P3 definition, exclusions, risk-based characteristics, and materiality guidance contributed to the disclosures or lack thereof in the FY2020 reporting cycle.

**This session's purpose is to provide an update concerning staff progress regarding (1) SFFAS 49 implementation and (2) identification of preliminary measurement and recognition approaches.**

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## RELATED CLIPPINGS ARTICLE

Department of Justice, December 23<sup>rd</sup>, 2021

<https://www.justice.gov/usao-sdga/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations>

The Justice Department announces a global resolution of criminal and civil investigations with a housing contractor for defrauding U.S. military. Balfour Beatty Communities LLC (BBC), one of the nation's largest providers of privatized military housing to the U.S. Armed Forces, pled guilty to defrauding the U.S. Army, the U.S. Air Force, and the U.S. Navy, in connection with a fraudulent scheme to obtain performance bonuses by submitting false information to the U.S. military.

## REQUEST FOR FEEDBACK BY February 11, 2022

Please review the attached material and background information including attachments and respond to the three questions in attachment 5 by **February 11, 2022**.

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

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## ATTACHMENTS

1. What Did We Conclude in August 2021 and Where are We Now?
2. SFFAS 49 P3 Training and Outreach Activity
3. Preliminary “broad-bucket” Approaches to Measurement and Recognition
4. Proposed Next Steps
5. Questions for the Board

**APPENDIX –** Memorandum P3: Phase II, *Public-Private Partnerships: Measurement and Recognition* (Topic C) dated August 9, 2021

1. **Members desired additional insight and research into how the P3 definition, exclusions, risk-based characteristics, and materiality guidance is being used or understood by preparers and their auditors. As members discussed variability in reporting and identifying material P3s, one member noted that as with most new standards, entities need time to perfect their reporting systems and processes. As such, committing staff resources at this time may be premature.**

Members also noted the following three points:

- (1) research should help answer why variability exists and if any changes or improvements need to be made to the existing guidance,

**Staff Update** – (1) staff has conducted telephone and email inquiries with selected entities (DoD, NGA, VA, USDA/Forst Service, DoJ, Treasury, Energy, HUD/Ginnie Mae, and NASA) to obtain an understanding concerning existing policies and procedures used to identify eligible P3s for reporting and potential areas to improve SFFAS 49; i.e., additional/clarifying guidance.

Nearly all agreed that training is required given the complex nature of P3s and SFFAS 49 implementation. Problematic areas common to the entities surveyed identified so far include:

- a. Applying materiality and identifying remote risks: difficulty in considering qualitative factors.
- b. Using contractual periods and not “expected life” criterion; failure to consider economic incentives.
- c. Inter-relationships between SFFAS 47, *Reporting Entity* and SFFAS 49 primarily distinguishing between related party disclosures and P3 disclosures.
- d. Insufficient program office involvement.

Staff will be specifically inquiring about these problematic areas in its training and outreach sessions.

- (2) focus should be on what entities are not doing as opposed to their current processes and also what they are at-risk for, and (see (3) below on next page for continuation)

**Staff Update** – (2) staff uncovered best-practices that include: pro-active CFO shop inquiries and P3 agreement reviews of bureau assertions; agency-wide data calls extending beyond program office inquiries; CFO shop “brainstorming” sessions pre-identifying P3s prior to data-calls; CFO shop review of additional memoranda such as budget justifications, leasing agreements, etc.; established SFFAS 49

## ATTACHMENT 1: What Did We Conclude in August 2021 and Where Are We Now?

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inter-departmental working groups; and coordination with external IPAs and IG auditors and legal counsel.

(3) staff resources should be focused on problem areas.

**Staff Update** – (3) Please refer to items (1) and (2) above for details. In direct response to concerns that there may be ways to better present the information to help reduce variability, staff and OMB (thank you Ms. Johnson) have already taken steps to clarify P3 form and content instructions in Circular A-136 relative to loans and loan guarantees.

### **2. Members desired additional insight and research into why cash flows (re: Disclosure 24d) weren't disclosed especially in light of the disclosed contractual risks-of-loss.**

**Staff Update** – Staff's telephone and email inquiries provided a general sense from a few entities of some possible reasons why cash flows weren't disclosed to include: (1) difficulty in quantifying estimates related to risks, (2) application of materiality, and (3) uncertainty if dollar estimates should be discounted. Staff will be specifically inquiring about this disclosure element in its training and outreach sessions.

### **3. Members decided not to explore measurement and recognition guidance for ESPCs and UESCs at this time. In short: (1) unless problems are specifically identified assume existing guidance is sufficient, (2) guidance should not highlight or elevate any particular P3 arrangement, (3) it's unclear if these are representative of the federal P3 universe, (4) establishing guidance at this time may signal to the community that these are the only types of arrangements/transactions that the Board is concerned with, (5) effort should be spent on identifying appropriate P3 reporting frameworks (i.e., buckets) such as capital asset recognition, equity investment recognition, investment recognition, contingency/commitment recognition, lease accounting, etc.**

**Staff Update** – As directed, no action has been taken specific to ESPCs or UESCs. However, staff has developed preliminary "broad-bucket" approaches to Measurement and Recognition. Please refer to Attachment 3 for details.

4. Members decided not to explore measurement and recognition guidance for Investments in P3s arrangements at this time. In short: (1) the Board’s project plan needs to weigh this activity against all other competing requirements, (2) the results of the staff research discussed at Questions 1 and 2 above are needed before any informed decisions can be made concerning any measurement and recognition guidance, and (3) a principles based approach identifying appropriate P3 reporting frameworks (i.e., buckets) such as capital asset recognition, equity investment recognition, investment recognition, contingency/commitment recognition, lease accounting, etc., should be identified before developing any discrete measurement and recognition guidance.

**Staff Update** – As directed, no action has been taken specific to P3 investment accounting other than developing preliminary “broad-bucket” approaches to Measurement and Recognition. Please refer to Attachment 3 for details.

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As previously stated, staff interviewed selected entities (DoD, NGA, VA, USDA/Forst Service, DoJ, Treasury, Energy, HUD/Ginnie Mae, and NASA) to obtain an understanding concerning existing policies and procedures used to identify eligible P3s for reporting and potential areas to improve SFFAS 49; additional/clarifying guidance.

Notably, nearly all entities agreed that training is required given the complex nature of P3s and SFFAS 49 implementation. Problematic areas common to the entities surveyed identified so far include:

- a. Applying materiality and identifying remote risks: difficulty in considering qualitative factors.
- b. Using contractual periods and not “expected life” criterion; failure to consider economic incentives.
- c. Inter-relationships between SFFAS 47, *Reporting Entity* and SFFAS 49 primarily distinguishing between related party disclosures and P3 disclosures.
- d. Insufficient program office involvement.

The training is designed not only to instruct practitioners in how best to implement SFFAS 49, but to also identify potential areas in the guidance requiring clarification or improvement. Staff is delivering the training along with the assistance of some P3 task force members as well as some others interested in measurement and recognition.

A list of the scheduled classes follow on the next page:

## ATTACHMENT 2: SFFAS 49 P3 Training and Outreach Activity

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### Scheduled Training Classes

#	Date	Sponsoring Organization	Point of Contact	Course
1	Jan 25, 2022	Department of Justice	Valerie Grant	SFFAS 49; Public-Private Partnerships: Disclosure Requirements
2	Feb 3, 2022	Department of Energy	Tynesha Douglass	SFFAS 49; Public-Private Partnerships: Disclosure Requirements
3	Feb 17, 2022	National Geospatial and Intelligence Agency	Sherri Anthony	SFFAS 49; Public-Private Partnerships: Disclosure Requirements
4	March 3, 2022	Department of the Treasury; Consolidated Financial Reporting Branch	Melissa Williams	SFFAS 49; Public-Private Partnerships: Disclosure Requirements
5	March 10, 2022	USDA/Forest Service Department of the Interior	Kevin Close Paul Batlan	SFFAS 49; Public-Private Partnerships: Disclosure Requirements
6	April 5, 2022	DoD/Comptroller's Office	Kellie Allison	SFFAS 49; Public-Private Partnerships: Disclosure Requirements
7	April 7, 2022	NASA IG	Mark Jenson	SFFAS 49; Public-Private Partnerships: Disclosure Requirements
8	April 14, 2022	Defense Logistics Agency	Joseph Butler	SFFAS 49; Public-Private Partnerships: Disclosure Requirements

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## ATTACHMENT 3: Preliminary “broad-bucket” Approaches to Measurement and Recognition

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1. Capital Asset Classification has three approaches:
  - a. Treat as a fee-simple acquisition
  - b. Treat as PP&E acquired through an Exchange
  - c. Treat as a leased asset acquisition

Capital Asset Classification: Is this approach...		
...recognized by GAAP standards-setters for risk-sharing arrangements?	Other than SFFAS 7, not specifically	SFFAS 7, <i>Accounting for Revenue and Other Financing Sources, et al</i> , provides specific guidance regarding exchange transactions with the public. Paragraphs 297 (Acquisition of property, plant, and equipment through exchange) and 298 (PP&E gains/losses recognized).
...adopted by any federal entity?	Possible to probable	Further research is needed as staff suspects that certain Enhanced Use Leases would fall in this category.
...consistent with FASAB reporting objectives?	YES	YES – answers (1) how budgetary resources have been obtained and used and whether their acquisition and use were in accordance with the legal authorization and (2) the costs of providing specific programs the efforts and accomplishments associated with them and their changes over time.

## ATTACHMENT 3: Preliminary “broad-bucket” Approaches to Measurement and Recognition

2. Investment Asset Classification has three approaches:

- a. Cost approach – initial plus future investments
- b. Fair value approach – percentage of P3 partnership net assets<sup>1</sup>
- c. Equity approach – adjust investment yearly for profits /losses, dividends, etc.

Investment Asset Classification: Is this approach...		
...recognized by GAAP standards-setters for risk-sharing arrangements?	YES	<ol style="list-style-type: none"> <li>1. FASB Codification 320 – <i>Investments</i></li> <li>2. IPSAS 36 - <i>Investments in Associates</i></li> <li>3. IPSAS 37 - <i>Joint Arrangements</i></li> <li>4. GASBS 90 - <i>Majority Equity Interests</i></li> </ol>
...adopted by any federal entity?	YES	Department of Defense / Military Housing Privatization Initiative (MHPI) – circa \$3 billion in real property has been booked as an investment.
...consistent with FASAB reporting objectives?	YES, some more than others	Further research is needed but it seems to depend on the approach selected. For example, the cost approach may not provide as much information as the fair value or equity approaches. Conversely, the fair value or equity approaches could create yearly distortions due to subjective valuations or P3 partners change in accounting practices.

<sup>1</sup> For example, in a limited liability company (LLC) partnership arrangement, while a shareholder, investor or government entity participates and enjoys in the benefits of the company’s growth and performance, their liability is usually restricted to the amount of their investment in the company even in light of bankruptcy and remaining debt obligations. The fair value approach provides a measure (i.e., Accounting Standards Code Topic 820, or for us “ole timers” FASB 157 Levels 1, 2 or 3) of each P3 participant’s ownership interest in the partnership.

## ATTACHMENT 3: Preliminary “broad-bucket” Approaches to Measurement and Recognition

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### 3. Reporting Entity Classification has one approach:

#### a. Consolidation

Reporting Entity Classification: Is this approach...		
...recognized by GAAP standards-setters for risk-sharing arrangements?	YES	SFFAS 47, <i>Reporting Entity</i> .
...adopted by any federal entity?	N/A	To be determined
...consistent with FASAB reporting objectives?	YES	YES

### 4. Subsidy Classification has one approach:

#### a. Net Present value of cash flows

Subsidy Classification: Is this approach...		
...recognized by GAAP standards-setters for risk-sharing arrangements?	Other than SFFAS 2, not specifically	SFFAS 2, <i>Direct Loans and Loan Guarantees</i> , could be used as a basis to account for P3s. Given that P3s are similar to federal credit programs which provide interest subsidies and sustain losses caused by defaults, its Net Present Value approach could be adopted for P3s.
...adopted by any federal entity?	N/A	To be determined
...consistent with FASAB reporting objectives?	Partially	Further research is needed but it seems that this approach may be insufficient when capital assets are central to a P3.

## ATTACHMENT 3: Preliminary “broad-bucket” Approaches to Measurement and Recognition

### 5. Intangible Asset Classification/approach:

- a. [GASB 51, Accounting and Financial Reporting for Intangible Assets](#)

Intangible Asset Classification: Is this approach...		
...recognized by GAAP standards-setters for risk-sharing arrangements?	YES	<b><i>GASB 51, Accounting and Financial Reporting for Intangible Assets</i></b>
...adopted by any federal entity?	N/A	To be determined
...consistent with FASAB reporting objectives?	N/A	To be determined

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## ATTACHMENT 4: Proposed Next Steps

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### January - September 2022

- Conduct P3 Training and Outreach Sessions as needed (priority)
- Identify potential areas to improve guidance (priority)

### March 2022 - September 2022

Conduct working group meetings covering: (secondary)

1. Balance sheet presentation and valuation (refer to Attachment 3)
2. Interest in an SPE/SPV<sup>2</sup>
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

### October – December 2022

- Staff drafts SFFAS 47 and SFFAS 49 implementation guidance (priority)
- Staff drafts Measurement and Recognition Exposure Draft (ED) (secondary)

### January – April 2023

- Board deliberates Exposure Draft SFFAS 47 and SFFAS 49 implementation guidance (priority)
- Board issues implementation guidance ED for 90-day comment period (priority)
- Board deliberates Exposure Draft Measurement and Recognition (M&R) (secondary)
- Board issues M&R ED for 90-day comment period (secondary)

### May – December 2023

- Board redeliberates and issues final implementation guidance (priority)
- Board redeliberates and issues final M&R SFFAS (secondary)

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<sup>2</sup> "A special purpose entity (or a special purpose vehicle) is a legal entity that has been established to separate an asset, subsidiary, or financial transaction from a larger corporation or government agency. A special purpose vehicle (SPV) is typically created for a limited task to help isolate risk with a transaction or an asset. For example, an SPV might be established for a subsidiary of a larger corporation. A special purpose entity can also be established for joint ventures, such as a public-private partnership (PPP)." Source: <https://www.investopedia.com/ask/answers/030915/what-role-do-spv-spes-play-publicprivate-partnerships.asp>

"Most SPVs are set up as Limited Liability Corporations (LLCs). In real estate, SPVs are often referred to as "single-purpose entity" or an "SPE." An SPE is formed for the sole purpose of holding title to real estate. It has no other assets or liabilities unrelated to the piece of real estate. The SPV makes one investment and is formed solely for that purpose. An LLC provides the benefits of limited liability to all members and not just limited partners and is universally accepted in all 50 states." Source: <https://www.assure.co/blog/should-your-spv-be-an-llc-or-an-lp#:~:text=An%20SPE%20is%20formed%20for%20the%20sole%20purpose,to%20invest%20in%20companies%20utilizes%20that%20same%20structure.>

## ATTACHMENT 5: Questions for the Board

**Question 1** – As detailed in Attachment 1 (Items 1 and 2), staff conducted telephone and email inquiries with selected entities to address the following Board observations noted at the August 2021 meeting: why variability in reporting exists; identification of what entities are not doing and what they are at-risk for and focusing staff resources on problem areas.

In addition to identifying best-practices used by some agencies, staff learned that the following problematic areas were common to the entities surveyed:

- a. Applying materiality and identifying remote risks: difficulty in considering qualitative factors.
- b. Using contractual periods and not “expected life” criterion; failure to consider economic incentives.
- c. Inter-relationships between SFFAS 47, Reporting Entity and SFFAS 49 primarily distinguishing between related party disclosures and P3 disclosures.
- d. Insufficient program office involvement.
- e. Possible reasons why cash flows weren’t disclosed include: (1) difficulty in quantifying estimates related to risks, (2) application of materiality, and (3) uncertainty if dollar estimates should be discounted.

**Question 1 – As staff begins its Training and Outreach to agencies, do Members have any specific questions they’d like answered concerning what staff has learned thus far? Are there any (other) entities that Members would like staff to contact (refer to Attachment 2)?**

**Question 2** – As noted at Attachment 1 (Items 3 and 4), although Members decided not to explore measurement and recognition guidance at this time, staff was asked to identify appropriate P3 reporting frameworks. To that end, staff identified five “broad-bucket” approaches discussed at Attachment 3.

**Question 2 - Do Members desire any specific insight or have questions concerning any of the five approaches so far identified? Are there any approaches that members believe (1) do not warrant any additional research; (2) staff should directly focus resources towards; (3) should be added to the existing list?**

## ATTACHMENT 5: Questions for the Board

**Question 3** – As noted in Attachment 4, Proposed Next Steps, staff plans on prioritizing work first on SFFAS 49 implementation guidance / improvements then followed by (as time and resources permit) measurement and recognition guidance. Staff proposes working on the following measurement and recognition issues:

Conduct working group meetings covering:

1. Balance sheet presentation and valuation (refer to Attachment 3)
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

In summary, resource priority will be first given to SFFAS 49 implementation guidance and measurement and recognition guidance will be developed as conditions allow.

**Question 3 - Do Members agree with staff's approach? If not, why not? Please note in your response what changes you would recommend be made to the Proposed Next Steps.**

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**APPENDIX**  
**Memorandum P3: Phase II, Public-Private**  
**Partnerships: Measurement and**  
**Recognition (Topic C) dated August 9, 2021**



## Memorandum

### P3 – Phase II

August 9, 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 C)

#### 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.

At the June 2021, meeting the majority of the members generally agreed with the major measurement and recognition issues identified by staff, however, they noted that reviewing a greater sampling of the entity disclosures would be most beneficial before activating a task force and commencing Phase 2.

**This session's purpose is to provide insight into the FY2020 entity disclosures to help address the varying member concerns and noted observations.<sup>1</sup>**

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<sup>1</sup> Some members noted that the complexity around P3s raises a need to define where and how such reporting should be presented. Other members noted the importance of clarifying the types of losses or exposures (e.g., exposure beyond the balance sheet; losses from natural disasters) the Board believes should be identified and specifically addressing the SFFAS 49 term, "risk-of-loss." Members also discussed reviewing what other standards-setters are doing in regards to P3s, identifying lessons-learned from preparers, canvassing views from auditors and users concerning SFFAS 49, disclosures overload, and cost/benefit considerations.

## **REQUEST FOR FEEDBACK BY August 23, 2021**

Please review the attached material and background information included in the seven attachments and respond to the four questions in attachment 7 by **August 23, 2021**.

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

## ATTACHMENTS

1. Federal Reporting Entities Addressing P3s in FY 2020
2. Analysis of FY 2020 SFFAS 49 Disclosures
  - a. Disclosure Reporting Percentages
  - b. Entity Reporting Percentages
3. Most Commonly Reported P3: ESPCs and UESCs
4. Example of a Comprehensively Reported P3: MHPIs
5. Identification of Measurement and Recognition Displays
6. Proposed Next Steps
7. Questions for the Board

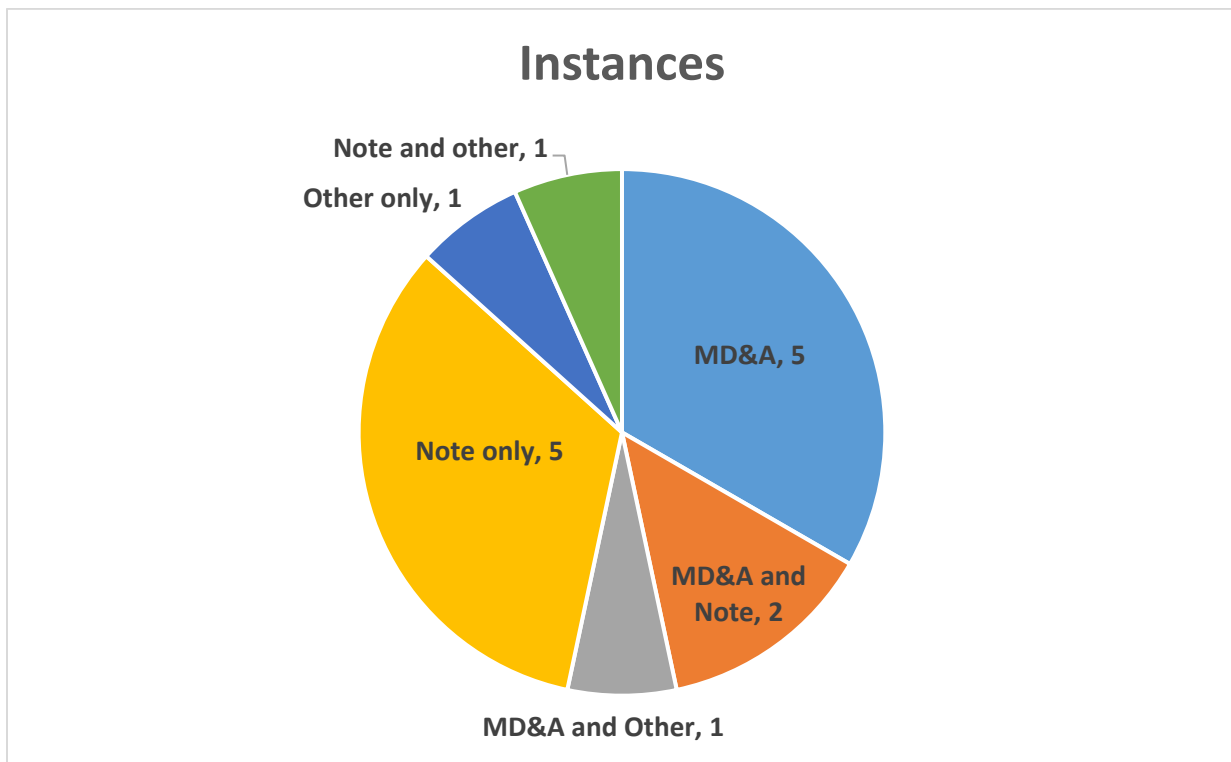
**APPENDIX** - Statement of Federal Financial Accounting Standards 49: *Public-Private Partnerships: Disclosure Requirements*

## ATTACHMENT 1: Federal Reporting Entities Addressing P3s in FY 2020

At the Board's request, staff reviewed additional federal financial reports for fiscal year (FY) 2020 SFFAS 49 disclosures. To that end, all 24 Chief Financial Officer (CFO) Act agencies and 16 significant entities were reviewed.

More than half (14 or 58.0%) of the CFO Act agencies address public-private partnerships (P3s) in their annual financial reports whereas nearly all (15 or 94.0%) of the significant entities do not.

Roughly speaking, from the 40 entities reviewed, more than one in three (15 out of 40) entities report some type of P3 activity. Below is a summary of the P3 reporting identified in the FY 2020 federal financial reports:



Eight instances (re: light blue, orange, grey) were significant enough to be reported in Management's Discussion and Analysis (MD&A) and two of these instances (re: orange) warranted SFFAS 49 disclosure. Five instances (re: yellow) were solely reported in the Notes whereas the remaining two instances (re: dark blue and green) were reported in an Other<sup>2</sup> category and combination Note and Other category, respectively. A visual analysis highlighting the 15 federal entities along with their reported P3 activities follows on the next page.

<sup>2</sup> Other category consists of: Secretary's Message; Payment Integrity Report; Other Information.

24 CFO Act Agencies & 16  
Significant Entities



15 mention P3s in some fashion = 14 CFO Act Agencies & 1 *Significant Entity* (MCC)

MD&A



1. USDA  
2. NASA  
3. NSF  
4. USAID  
5. MCC



1. Rural  
Infrastructure  
2. Academia,  
Industry, etc  
3. Consortiums  
4. Disease &  
Pharma  
5. Blended finance

MD&A  
& Note



6. COMMERCE  
7. ENERGY



6. Infrastructure,  
ESPCs, UESCs,  
Brand USA  
7. ESPCs, UESCs,  
& consortiums

MD&A  
& Other



8. TREASURY



8. Infrastructure  
protection,  
financial  
Assistance,  
Identity theft

Note only



9. DOD  
10. JUSTICE  
11. INTERIOR  
12. VA  
13. GSA



9. Military housing  
10. ESPCs  
11. Not identified  
12. EULs, ESPCs,  
UESCs  
13. Out-leases,  
ESPCs

Other only



14. HHS



14. COVID  
Testing,  
Dialysis  
Innovations,  
Fraud  
Prevention

Note &  
Other



15. HUD



15. Housing  
Assistance\*

\* = OMB A-136  
excluded loans, loan  
guarantees and  
insurance programs.

## ATTACHMENT 2: Analysis of FY 2020 SFFAS 49 Disclosures

Paragraph 24 of SFFAS 49, *Public-Private Partnerships: Disclosure Requirements* identifies 14 disclosures that could apply to a reportable P3. They are as follows:

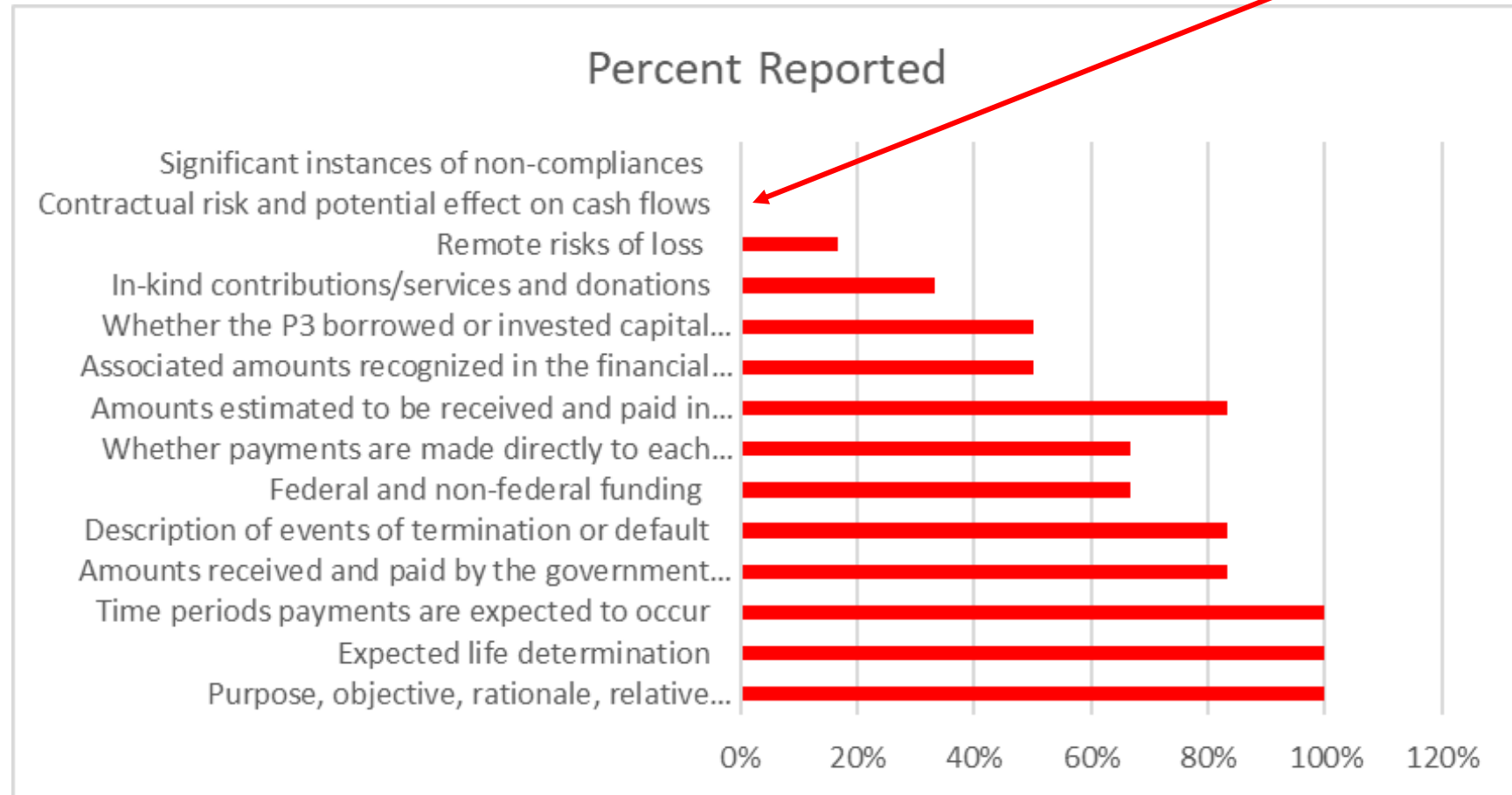
	<u>Paragraph</u>	<u>Disclosure Requirement</u>
1	24a	Purpose, objective, rationale, relative benefits/revenues, and statutory authority
2	24b	Federal and non-federal funding
3	24c	Expected life determination
4	24c	Time periods payments are expected to occur
5	24c	Whether payments are made directly to each partner or indirectly
6	24c	In-kind contributions/services and donations
7	24c	Amounts received and paid by the government during the reporting period(s)
8	24c	Amounts estimated to be received and paid in aggregate over the expected life of the P3
9	24d	Contractual risk and potential effect on cash flows
10	24d	Remote risks of loss
11	24e	Associated amounts recognized in the financial statements
12	24e	Significant instances of non-compliances
13	24e	Whether the P3 borrowed or invested capital contingent upon the reporting entity's promise to pay whether implied or explicit
14	24e	Description of events of termination or default

Staff notes that requirements one through ten are considered “main body” disclosures for purposes of the following analyses to differentiate requirements 11 through 14 which are “As applicable” disclosures. The following analyses display Disclosure Reporting Percentages and Entity Reporting Percentages. Disclosure reporting percentages reveal how often a discrete requirement was reported whereas entity-reporting percentages illustrate how many of the total (14) and main-body (10) requirements were reported by entities. The analyses follow:

## ATTACHMENT 2a: Disclosure Reporting Percentages

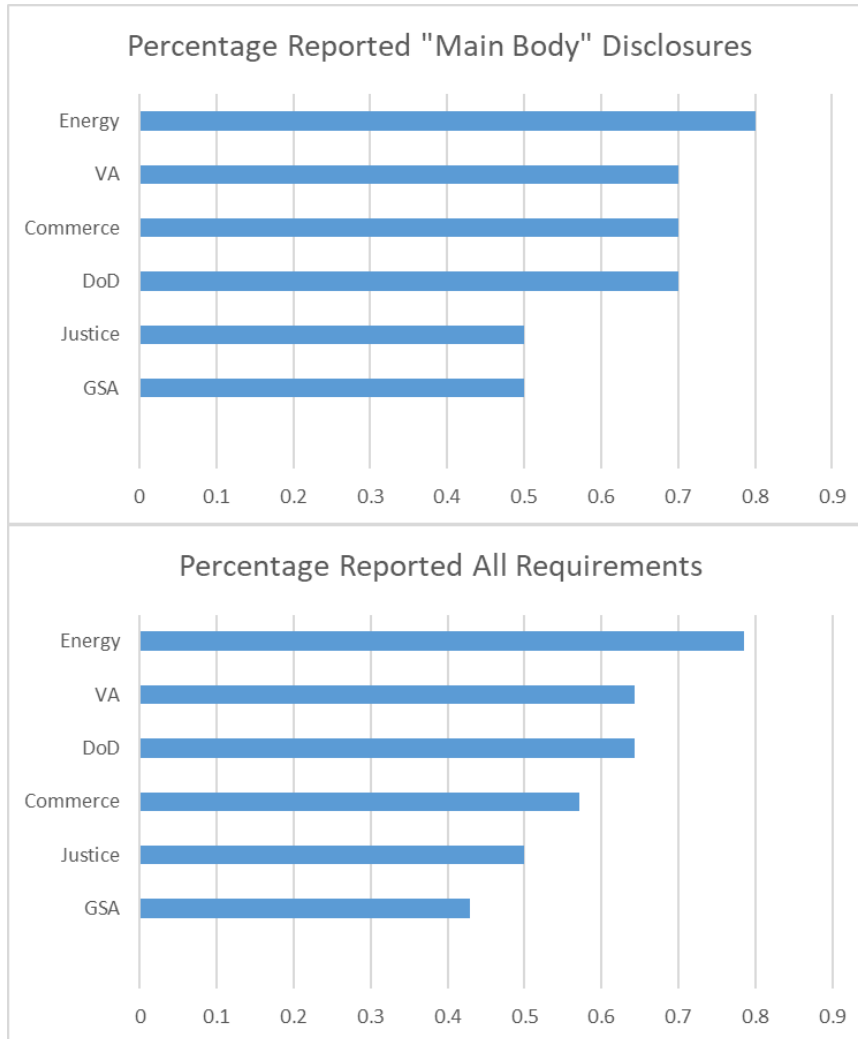
### Disclosure Reporting Percentages

These two elements (i.e., significant instances of non-compliance and potential effect on cash flows) were not reported.



## ATTACHMENT 2b: Entity Reporting Percentages

### Entity Reporting Percentages



Disclosure items 1 through 10 (par. 24a – 24d) can be considered “main-body” disclosures. Please note that 24d potential effect on cash flows was not reported by any entity.

When including disclosure items 11 through 14, the “As applicable” disclosures, staff notes that disclosures are dependent upon unique entity situations that may or may not require disclosure. The “As applicable” follow –

- 24ei - Associated amounts recognized in the financial statements
- 24eii - Significant instances of non-compliances
- 24eiii - Whether the P3 borrowed or invested capital contingent upon the reporting entity's promise to pay whether implied or explicit
- 24eiv - Description of events of termination or default



## **Most Commonly Reported P3: ESPCs and UESCs**

# Department of Commerce

## FY20 AFR, Note 26 Public Private Partnerships, Page 130

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

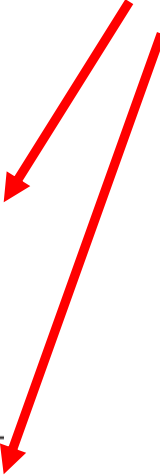
	FY 2020
Award Amount <sup>1</sup>	\$ 44,656
Principal Financed <sup>2</sup>	\$ 49,998
Total Estimated Cost Savings <sup>3</sup>	\$ 112,141
Total Guaranteed Cost Savings <sup>3</sup>	\$ 105,119
Total Payments to Contractor <sup>3</sup>	
Principal	\$ 49,998
Performance Period Expenses (includes Contractor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

<sup>1</sup> Total Implementation Costs.

<sup>2</sup> Total Implementation Costs plus Total Financing Procurement Price.

<sup>3</sup> Implementation Period plus Post-acceptance Performance Period (19 Years).

Savings of \$105.1 minus  
P3 Vendor Payment of  
\$104.4 = \$700K Net  
savings divided by 19  
years = Annual net  
savings of \$36,842.10



Note 16, page 96 - Unfunded Portion of ESPC & UESC Liability = \$74.4

So, \$74.4 less P3 Vendor Payment of \$104.4 = \$30.0 contingent liability payments.

# Department of Energy

FY20 AFR, Note 14 Other Liabilities, Page 74

## 14. Other Liabilities

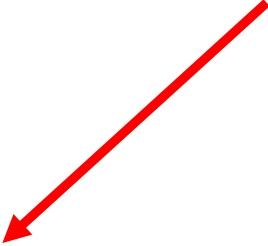
This P3 is separately identified in the Other Liability note and refers readers to Note 11, Liabilities Not Covered By Budgetary Resources

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

# Department of Energy

FY20 AFR, Note 14 Other Liabilities, Page 76

Unlike Commerce,  
program information  
such as anticipated  
savings or payment  
details are not  
displayed.



(\$ 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

Note 11, page 71 - ESPC & UESC liabilities not covered by budgetary resources = \$462.0. So, \$462.0 less remaining P3 Vendor Payment of \$1,269 = \$807.0 contingent liability payments.

# Department of Veterans Affairs

FY20 AFR, Note 25 Public-Private Partnerships, Page 98

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

# Department of Veterans Affairs

FY20 AFR, Note 25 Public-Private Partnerships, Page 100

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

# General Services Administration

FY20 AFR, Note 19 Public-Private Partnerships, Page 113

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

## ATTACHMENT 4: Example of a Comprehensively Reported P3: MHPIs

The DoD FY 2020 disclosure comprehensively reports information regarding its Military Housing Privatization Initiative (MHPI). In addition to providing substantial disclosures as required by SFFAS 49, the DoD Note 25 on page 191 [afr2020 \(defense.gov\)](#) embodies many, if not most of the qualitative characteristics<sup>3</sup> of financial information:

Understandability – The information is expressed clearly and simply enough for a first-time reader to grasp the operational and financial aspects of the MHPI. Examples:

- Operational – *“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.”*
- Financial – *“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.”*

Reliability – In part, to be reliable, financial reporting should be free from bias and should faithfully represent what it purports to represent. Examples:

- *“The Government Accountability Office Report, GAO-20- 280T, 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.”*
- *“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.”*

Relevance - Information is relevant if it is capable of making a difference in a user’s assessment of a problem, condition, or event.

- *“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*

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<sup>3</sup> SFFAC 1, *Objectives of Federal Financial Reporting*.



## ATTACHMENT 4: Example of a Comprehensively Reported P3: MHPIs

- *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.”*

Timeliness - In some instances, timeliness may be so essential that it requires sacrificing a certain amount of precision or detail.

- *“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.”*

Consistency - If accounting principles have changed or if the financial reporting entity has changed, the nature and reason for the change, as well as the effect of the change, should be disclosed.

- *“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.”*

Comparability - Financial reporting should help report users make relevant comparisons among similar federal reporting units, such as comparisons of the costs of specific functions or activities.

- 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.

# Department of Defense

## FY20 AFR, Note 25 Public Private Partnerships, Page 191

**TABLE 25: CUMULATIVE CONTRIBUTIONS**

Cumulative as of September 30  
(\$ in millions)

	2020
<b>Military Department Contributions to the DoD MHPI Program*</b>	
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
<b>DoD Contributions from the MHPI Program to the LLCs/LPs*</b>	
Direct Cash Contributions	1,607.2
Differential Lease Payments	16.5
Direct Loans Disbursed	1,891.9
<b>Contributions by Private Partners to the MHPI Partnership</b>	
Direct Cash Contributions	606.2
Bonds/Loans Contributed	11,259.0
Real Property and Land Contributions	1.6
<b>Contributions by the LLCs/LPs</b>	
Bonds/Loans Contributed	51.7

\*The disclosures above are currently presented in the DoD's consolidated financial statements and are not presented within the Military Department's financial statements.

Staff notes: DoD cannot yet identify current period amounts as it needs to rely on the individual MILDEPS for information.

Nevertheless, Table 25 comprehensively displays cumulative amounts contributed by the parties.

# Department of Defense

FY20 AFR, Note 25 Public Private Partnerships, Page 191

## **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*.

Staff notes: DoD's disclosure identifies assets and (contingent) liabilities used in its MHPI P3: Equity Investments, Loans Receivable, Loan guarantees, and Differential (additional) lease payments.

## ATTACHMENT 5: Identification of Measurement and Recognition Displays

### United States Government Balance Sheets as of September 30, 2020, and 2019

(In billions of dollars)	2020	Restated 2019
<b>Assets:</b>		
Cash and other monetary assets (Note 2) .....	1,926.9	524.6
Accounts receivable, net (Note 3) .....	321.2	238.0
Direct loans and loan guarantees receivable, net (Note 4) .....	1,577.4	1,425.8
Inventory and related property, net (Note 5) .....	379.7	355.7
General property, plant and equipment, net (Note 6) .....	1,145.0	1,106.9
Securities and investments (Note 7) .....	121.9	118.3
Investments in special purpose vehicles (Note 8) .....	108.4	-
Investments in government-sponsored enterprises (Note 9) .....	108.9	112.1
Other assets (Note 10) .....	261.3	110.6
Total assets .....	<u>5,950.7</u>	<u>3,992.0</u>
Stewardship property, plant and equipment (Note 25)		
<b>Liabilities:</b>		
Accounts payable (Note 11) .....	105.1	98.0
Federal debt and interest payable (Note 12) .....	21,082.9	16,861.0
Federal employee and veteran benefits payable (Note 13) .....	9,409.3	8,440.3
Environmental and disposal liabilities (Note 14) .....	602.7	595.4
Benefits due and payable (Note 15) .....	256.3	223.6
Loan guarantees liability (Note 4) .....	520.1	21.7
Insurance and guarantee program liabilities (Note 16) .....	199.3	194.5
Other liabilities (Note 17) .....	568.2	510.3
Total liabilities .....	<u>32,743.9</u>	<u>26,944.8</u>
Commitments (Note 19) and Contingencies (Note 20)		

## ATTACHMENT 5: Identification of Measurement and Recognition Displays

### Note 7. Securities and Investments

Securities and Investments as of September 30, 2020, and 2019			
(In billions of dollars)	2020		Book Value
	Cost	Adjustment	
<b>Held-to-Maturity</b>			
Debt securities:	0.1	-	0.1
Equity securities:	3.5	-	3.5
Total held-to-maturity (net investment)	3.6	-	3.6
<b>Available-for-Sale:</b>			
Debt securities:	1.3	0.2	1.5
Total available-for-sale (fair value)	1.3	0.2	1.5
<b>Trading Securities:</b>			
Debt securities:			
Non-U.S. government.....	9.4	0.1	9.5
Commercial .....	0.4	-	0.4
Mortgage/asset backed .....	5.7	0.2	5.9
Corporate and other bonds .....	23.2	2.9	26.1
All other debt securities .....	1.7	6.4	8.1
Equity securities:			
Unit trust .....	13.8	7.9	21.7

FY 2020 Consolidated Financial Report of the United States, page 92 Note 7

### NOTE 5: INVESTMENTS AND RELATED INTEREST

TABLE 5: INVESTMENTS AND RELATED INTEREST

As of September 30 (\$ in millions)		2020			
	Cost	Amortization Method	Amortized (Premium)/Discount	Investments, Net	Market Value Disclosure
<b>Intragovernmental Securities</b>					
Non-Marketable, Market-Based					
Military Retirement Fund	\$1,013,708.9	Eff. Int.	\$(40,106.4)	\$973,602.5	\$1,218,732.9
Medicare Eligible Retiree					
Health Care Fund	305,586.8	Eff. Int.	(17,785.7)	287,801.1	363,974.1
U.S. Army Corps of Engineers	9,280.8	Eff. Int.	20.5	9,301.3	9,341.5
Other Funds	2,993.8	Eff. Int.	(23.0)	2,970.8	3,052.1
Total Non-Marketable, Market-Based	1,331,570.3		(57,894.6)	1,273,675.7	1,595,100.6
Accrued Interest	8,091.4	Eff. Int.	N/A	8,091.4	8,091.4
Total Intragovernmental Securities	1,339,661.7		(57,894.6)	1,281,767.1	1,603,192.0
<b>Other Investments</b>	\$3,511.6		\$-	\$3,511.6	N/A

Legend for Amortization Methods:  
Eff. Int. = Effective Interest Method

FY 2020 DoD Financial Report, page 125 Note 5

DoD Note 5 – “Other Investments consists of Military Housing Privatization Initiative (MHPI) limited partnerships (LP) and limited liability companies (LLC). These business enterprises are designed as public-private partnerships, which are defined as long-term contractual arrangements between the government and the private sector whereby the private partner delivers and funds public services using a capital asset, and sharing the associated risks. The Department invests in non-governmental entities involved in the acquisition or construction of family housing and supporting facilities at Army, Air Force, Navy, and Marine Corps installations. The Department provides cash, land, or facilities as equity, and the Department’s involvement in the operations and management of the LP/LLC 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. Total Other Investments is currently reporting cash investments only. See Note 25, *Public- Private Partnerships* for additional information on cash and non-cash contributions to the MHPI limited partnerships.”

## ATTACHMENT 5: Identification of Measurement and Recognition Displays

### Note 8. Investments in Special Purpose Vehicles

#### Investments in Special Purpose Vehicles as of September 30, 2020

(In billions of dollars)	Gross Investments	Cumulative Valuation Gain (Loss)	Fair Value
Corporate Credit Facilities .....	37.5	(0.1)	37.4
Main Street Lending Programs .....	37.5	(4.3)	33.2
Municipal Liquidity Facility .....	17.5	(0.2)	17.3
Term Assets Lending Facility .....	10.0	(0.1)	9.9
Commercial Paper Funding Facility .....	10.0	0.1	10.1
Total investments in Special Purpose Vehicles	112.5	(4.6)	107.9
Common stock warrants <sup>1</sup> .....			0.5
Total .....			108.4

<sup>1</sup> Investments in common stock warrants are included due to the nature of funding and purpose of financial assistance to provide payroll support to aviation workers during the pandemic. Common stock warrants gross investment cost is \$4 billion

FY 2020 Consolidated Financial Report of the United States, page 95 Note 8

#### H. Investments in Special Purpose Vehicles

Treasury invested in common stock warrants and equity investments in SPVs for the purpose of enhancing the liquidity of the U.S. financial system. These equity investments are reported at fair value. In addition to SPV investments, warrants are held for the purchase of common stock received as compensation from recipients of financial assistance to support ongoing employment of aviation workers during the pandemic under Section 4117 of the CARES Act. The warrants are assets of the U.S. government and Treasury is precluded from using the cash proceeds realized from the financial instruments received. These investment holdings are also reported at fair value.

The valuation to estimate the investment's fair value incorporates forecasts, projections, and cash flow analyses. Changes in valuation, including impairments, are deemed usual and recurring and thus are recorded as exchange transactions on the Statement of Net Cost and investments in SPVs on the Balance Sheet. See Note 8—Investments in Special Purpose Vehicles for additional information.

**Staff note** – unlike the Special Purpose Vehicles discussed above in the DoD example, these entities are “intervention entities” and not considered to be in a permanent or long-term relationship with the government. As such, these entities are classified as disclosure entities. Nevertheless, the value of the investments in these entities, changes in value, and related activity with these entities are included in the U.S. government’s consolidated financial statements.

**Staff note** - equity investments are reported at fair value per Note 1, page 76.



## ATTACHMENT 5: Identification of Measurement and Recognition Displays

### Investments in Private-Sector Entities

Investments in private-sector entities are the result of FHA's Risk Sharing Debentures. Multifamily Risk Sharing Debentures [Section 542(c)] is a program available to lenders where the lender shares the risk in the property by issuing debentures for the claim amount paid by FHA on defaulted insured loans.

94/ HUD FY 2020 Agency Financial Report  
U.S. Department of Housing and Urban Development  
[www.hud.gov](http://www.hud.gov)



**Staff note** – HUD does not specify either in Note 5 partially shown here or in Note 1f on pages 71-72 the measurement basis for investments with the private sector. Presumably, debentures if held to maturity would be measured and recognized at an amortized cost.

### Financial Information

The following table presents financial data on FHA's investments in Risk Sharing Debentures as of September 30, 2020:

Investments						
(Dollars in Millions)	2020					
	Beginning Balance	Net Acquisitions	Share of Earnings or Loss	Return of Investment	Redeemed	Ending Balance
Securities Held Outside of Treasury	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
601 Program	-	-	-	-	-	-
Risk Sharing Debentures	6	-	-	-	(6)	-
Total	\$ 6	\$ -	\$ -	\$ -	\$ (6)	\$ -

FY 2020 HUD Financial Report, pages 94-95 Note 5 Investments

## **ATTACHMENT 6: Proposed Next Steps**

### **September 2021**

Form Task Force

### **October 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 7: Questions for the Board

**Question 1** – As noted in Attachment 1, eight reports addressed P3s in their MD&A wherein five were MD&A only, two were MD&A accompanied by a P3 note, and one was MD&A accompanied by an “other” presentation. Such disparate reporting may be indicative of how the P3 definition, exclusions, risk-based characteristics, and materiality guidance is being used or understood by preparers and their auditors.

**Question 1 - Do Members desire additional insight and research into how the P3 definition, exclusions, risk-based characteristics, and materiality guidance is being used or understood by preparers and their auditors?**

**Question 2** – As noted at Attachment 2, two disclosure requirements (elements) (i.e., significant instances of non-compliance (24e) and potential effect on cash flows (24d)) were not reported by any entity. The 24e disclosure is an “As applicable” disclosure dependent upon unique entity situations that may or may not require disclosure. However, the 24d disclosure is a “main-body” disclosure that was not reported by any entity. Given that (1) this disclosure is intended to reflect the contractual risks in monetary terms, (2) is a corollary to the contractual risk disclosure, and (3) entities did disclose contractual risks, such non-disclosure could be indicative of measurement or recognition concerns or difficulties preparers may have.

**Question 2 - Do Members desire additional insight and research into why this corollary disclosure wasn’t provided by any entity?**

**Question 3** – As noted in Attachment 3, ESPCs and UESCs are the most commonly reported P3. As a result, the Board may wish to explore whether measurement and recognition guidance should be developed for these types of arrangements/transactions

**Question 3 - Do Members wish to explore whether measurement and recognition guidance should be developed for ESPCs and UESCs?**

**Question 4** – As evidenced at Attachments 4 and 5, entities are reporting investments in P3s (e.g., DoD) or P3-like arrangements (e.g., HUD). As a result, the Board may wish to explore whether measurement and recognition guidance should be developed for investments in P3s or P3-like arrangements/transactions.

**Question 4 - Do Members wish to explore whether measurement and recognition guidance should be developed for Investments in P3s or P3-like arrangements?**

# **APPENDIX**

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



Federal Accounting Standards Advisory Board

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# PUBLIC-PRIVATE PARTNERSHIPS DISCLOSURE REQUIREMENTS

**Statement of Federal Financial Accounting Standards 49**

April 27, 2016

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## THE FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

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

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

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

- [“Memorandum of Understanding among the Government Accountability Office, the Department of the Treasury, and the Office of Management and Budget, on Federal Government Accounting Standards and a Federal Accounting Standards Advisory Board.”](#)
- [“Mission Statement: Federal Accounting Standards Advisory Board”](#), [exposure drafts](#), [Statements of Federal Financial Accounting Standards and Concepts](#), [FASAB newsletters](#), and other items of interest are posted on FASAB’s website at: [www.fasab.gov](http://www.fasab.gov).

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## SUMMARY

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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-sharing<sup>1</sup> 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.

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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<sup>1</sup> 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.

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# INTRODUCTION

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## PURPOSE

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1. To meet challenges such as those brought about by limited budgetary resources governments are increasingly establishing risk-sharing arrangements or transactions<sup>2</sup> 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)**<sup>3</sup> 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<sup>4</sup> performance. 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 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

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<sup>2</sup> 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.

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

<sup>4</sup> 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.

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 measureable.
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 FAR<sup>5</sup> inherently increases the entity's risk as does a

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<sup>5</sup> For 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.



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.

## MATERIALITY

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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

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### SCOPE

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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.<sup>6</sup> 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
  - b. Leases<sup>7</sup> that are not bundled<sup>8</sup> and are entered into using General Services Administration (GSA)-delegated authority (This Statement does not amend

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

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

<sup>8</sup> A bundled lease typically arises when parties to a leasing arrangement agree to include additional products or services in the leasing arrangement, some of which might be related or tied directly to the underlying leased product 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.

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

## DEFINITION

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- 16. Subject to the exclusions noted in paragraph 15 and for the purposes of this Statement, federal public-private partnerships (P3s) are risk-sharing<sup>9</sup> 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

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<sup>9</sup> 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.

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.<sup>10</sup>

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.

## 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 <sup>11</sup>
1. The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing <sup>12</sup> liability.	Not all P3s result in the conveyance or construction of an asset. However, in those that do, the government's risk may be significantly increased because of costs that accompany asset ownership or control. Further, 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.
2. The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, and other such arrangements.	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

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

<sup>11</sup> The 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 23. Please refer to BFC paragraphs A37 through A44 for related comments.

<sup>12</sup> Contractors routinely finance operations while awaiting payment of invoices. Such routine financing is not indicative of a P3 in and of itself.

Conclusive Risk Characteristics	Risk Rationale <sup>11</sup>
	<p>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> <ul style="list-style-type: none"> <li>a. if a contract, the FAR; or</li> <li>b. if a grant, Office of Management and Budget (OMB) requirements (2 C.F.R. Title 2, Part 200).</li> </ul>	<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>

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 Rationale <sup>11</sup>
1. A <b>Value for Money</b> <sup>13</sup> (VfM) analysis is performed.	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.
2. The consideration or items given up in an arrangement/transaction or their value are not readily apparent.	Generally under common law, consideration from both parties is required in order to have what constitutes a binding contract. Some courts have ruled that in those cases where the exchange appears excessively one sided, no quid-pro-quo exists and the contract may be void by law. Therefore, in those cases where consideration or its value from either party is not readily apparent, such cases could lead to recourse or remedies that have adverse financial ramifications to the agency.
3. Significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.	As federal entities face under-utilization and skill retention issues, with Congressional approval, some entities are entering into P3 arrangements/transactions to put both infrastructure and government personnel to

<sup>13</sup> 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.

Suggestive Risk Characteristics	Risk Rationale <sup>11</sup>
	<p>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

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### COMPONENT REPORTING ENTITY DISCLOSURES

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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 US GOVERNMENT DISCLOSURES

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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

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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

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

### PROJECT HISTORY

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- 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)
- 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.

### **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)<sup>14</sup> analyses.
  - 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 Regulation<sup>15</sup> (FAR) increases government risk, and
    - iii. some P3s circumvent procurement administration.

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<sup>14</sup> 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.

<sup>15</sup> The FAR is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

- 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” risk<sup>16</sup> absent sufficient private partner consideration
  - 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.

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<sup>16</sup> Availability 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.

## 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:
- 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 subset 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<sup>17</sup> arrangements or transactions with

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<sup>17</sup> 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)

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.

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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.



- 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:

- 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 sector<sup>18</sup> 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:

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<sup>18</sup> For purposes of this Statement, the private sector refers to individuals and entities acting in their private capacities outside of the authority and control of federal, state or local governments and encompasses for-profit businesses and non-profit organizations that are outside of the authority and control of federal, state or local governments.

- 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
  - 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 leases<sup>19</sup> 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

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<sup>19</sup> The 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).

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.
- 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.”<sup>20</sup> 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,<sup>21</sup> 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:

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<sup>20</sup> SFFAC 1, par. 105 states, “The federal government derives its just powers from the consent of the governed. It therefore has a special responsibility to report on its actions and the results of those actions. ...Providing this information to the public, the news media, and elected officials is an essential part of accountability in government.”

<sup>21</sup> 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.

- 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.<sup>22</sup> 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

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<sup>22</sup> Per 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).



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 "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**

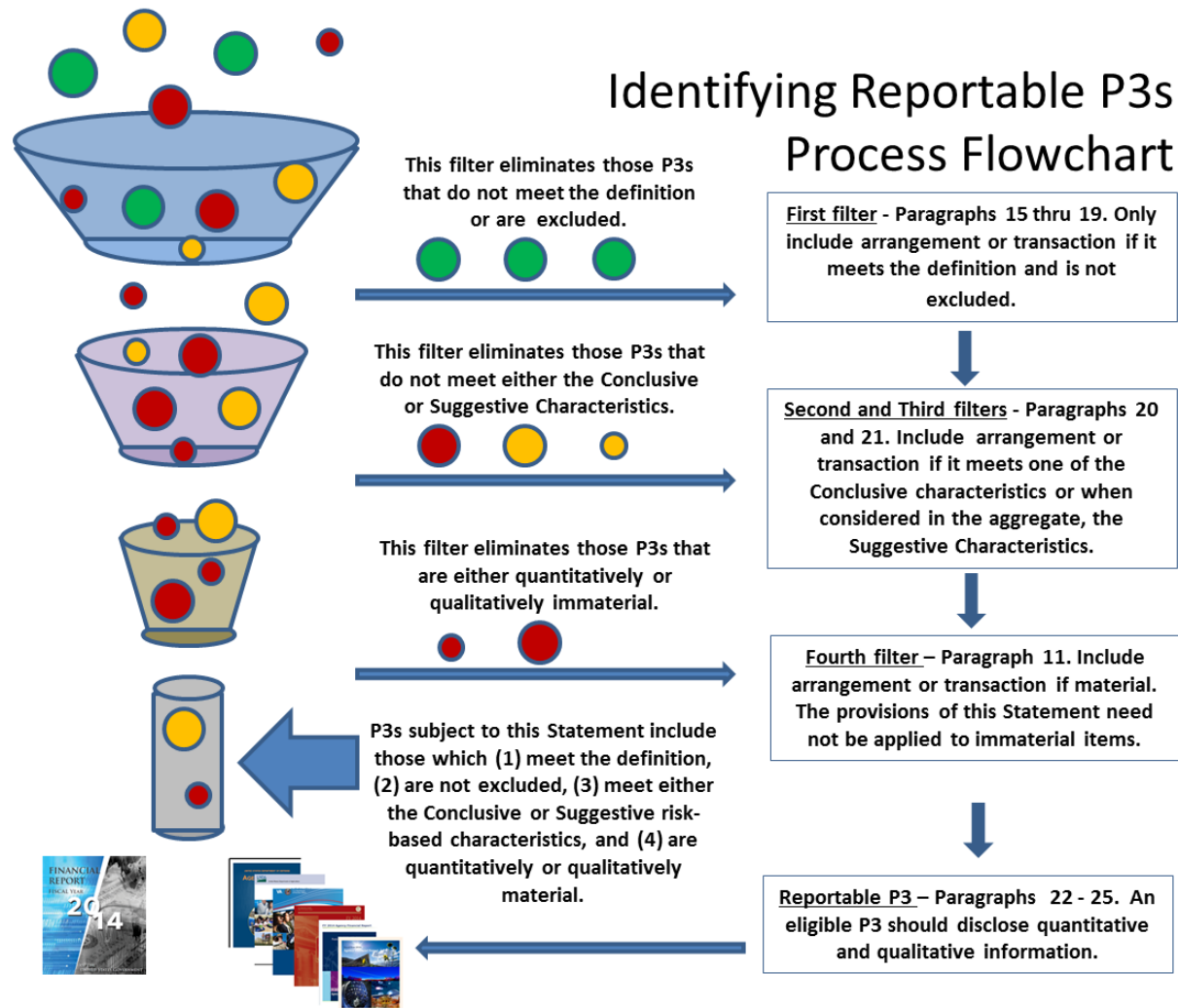
- A44. Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a material P3 arrangement/transaction.

## BOARD APPROVAL AND DISSENT

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- 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: FLOWCHART<sup>23</sup>



<sup>23</sup> The 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

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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

### APPENDIX D: GLOSSARY

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

**Public-private partnerships** - 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.

**P3 Structural Arrangement** - P3s that are external to the government sponsor's or entity's operations and often involve the creation of an SPV, Trust, or Limited Partnership (LP), and other such arrangements. For example, military base housing.

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

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

**Value for Money (VfM)** - VfM is defined as the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user's requirement. VfM is not the choice of goods and services based on the lowest cost bid. To undertake a well-managed procurement, it is necessary to consider upfront, and at the earliest stage of procurement, what the key drivers of VfM in the procurement process will be. In other words, VfM is a much broader concept than typical cost-benefit analysis because it emphasizes "value" in more of a qualitative than quantitative manner. Quantitatively, some VfM models use a project's Internal Rate of Return (IRR) to help determine project acceptability.

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