July 31, 2019

Mr. David Bean, Director of Research and Technical Activities
Project No. 30-1
Governmental Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

RE: GASB ED – Public-Private and Public-Public Partnerships and Availability Payment Arrangements

Dear Mr. Bean:

Thank you for the opportunity to respond to GASB on the GASB’s Exposure Draft (ED) Public-Private and Public-Public Partnerships (PPPs) and Availability Payment Arrangements (APAs). We appreciate the concept of using GASB Statement No. 87 – Leases to develop this proposed standard on PPPs and APAs. However, we are very concerned and believe there will be significant confusion in determining which standard to follow with regards to (1) a PPP that meets the definition of a lease, but not an SCA (follow GASB 87) and (2) all other PPPs. In addition, we are very concerned about the complexity and the effective date of this proposed standard. Please see our specific comments below.

1. Paragraphs 5-6. The definition of a PPP is an arrangement in which a government (the transferor) contracts with an operator to provide public services by conveying control of the right to operate or use an infrastructure or other nonfinancial asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction. Some PPPs are service concession arrangements (SCA). Per the scope and applicability section (paragraph 4), this proposed standard supersedes GASB 60 – Accounting and Financial Reporting for Service Concession Arrangements. GASB 60 provides a definition of “public services” in paragraph 4.a, footnote 2 as follows, these services relate to the primary function of the facility (for example, operating a city zoo) rather than ancillary services operated in conjunction with the facility (for example, operating the souvenir stand at a city zoo). Paragraph B5 explains why the definition of “public services” was not included in the proposed standard. However, we believe a definition should be included in the final standard to clearly explain what “public services” means. Paragraph B5 appears to indicate an SCA or a PPP could be for ancillary services, such as a souvenir stand at a zoo. We are concerned the lack of inclusion of a definition could lead to inconsistent application due to preparers/auditors referring to the GASB 60 definition of “public services.” We encourage the Board to provide a definition of “public services” in the final standard.

Paragraph 5 explains that the operator has the right to use an infrastructure or other nonfinancial asset. GASB 87 only refers to nonfinancial assets, it does not make mention of “infrastructure” in the definition of a lease. Two questions we have – Is there a reason for the specific mention of infrastructure in the proposed standard – are PPP arrangements typically going to be related to infrastructure? Would the proposed standard apply to an intangible asset, such as computer software, or is it specifically limited to tangible assets?
2. Paragraphs 5-6. These paragraphs provide the definition of a PPP and an SCA, and explain that an SCA is a sub-set of the PPP. These definitions are so very similar – we would appreciate a more defined explanation of what a PPP is. Paragraph 6 is quite detailed in describing an SCA as meeting all of the following criteria: *(a) The transferor conveys to the operator the right and related obligation to provide public services through the use and operation of an underlying PPP asset in exchange for significant consideration, such as an up-front payment, installment payments, a new facility, or improvements to an existing facility; (b) The operator collects and is compensated by fees from third parties; (c) The transferor determines or has the ability to modify or approve which services the operator is required to provide, to whom the operator is required to provide the services, and the prices or rates that can be charged for the services; and (d) The transferor is entitled to significant residual interest in the service utility of the underlying PPP asset at the end of the arrangement.* However paragraph 5 is quite simplistic in defining a PPP as an arrangement in which a government (the transferor) contracts with an operator to provide public services by conveying control of the right to operate or use an infrastructure or other nonfinancial asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction. We would appreciate a more clear definition of a PPP. For example, what if a potential PPP meets 3 of the 4 criteria for being an SCA, but not all 4, would that make the potential PPP a PPP? It would be helpful if the Board included a couple of examples with the same background information with slight variations that show the difference in a PPP and an SCA in the appendix.

3. Paragraph 7. We don’t see a clear difference in a PPP and an APA based on this paragraph. The definition of an APA is an arrangement in which a government compensates an operator for activities that may include designing, constructing, financing, maintaining, or operating an underlying infrastructure or other nonfinancial asset for a period of time in an exchange or exchange-like transaction. The payments by the government are based entirely on the asset’s availability for use rather than on tolls, fees, or similar revenues or other measures of demand. Availability for use may be based on specified criteria such as the physical condition of the asset, construction milestones, or achievement of certain performance measures. This seems to draw a line that an APA would not have a fee for use, whereas a PPP would have a fee for use (i.e. toll, admission fee, etc.). However, as noted in our question 2 above, only the SCA type of PPP seems to have a fee for use from third parties. Do all PPPs have a fee for use? Also, both a PPP and an APA could “operate” the underlying asset. We are very concerned that the definitions of a Lease, PPP, SCA and APA are so similar that preparers will have a difficult time concluding which type of arrangement they are dealing with. Therefore, we encourage the Board to more clearly define the difference in a Lease, PPP, SCA and an APA. See also our comment #14 below regarding paragraph B6.

4. Paragraph 10. We appreciate the clarification in the language used to explain that if both the operator and transferor have an option to terminate that portion should not be included as part of the PPP term. This wasn’t clear in the language used for Leases in GASB 87, paragraph 16 or the proposed SBITA standard in paragraph 13.

5. Paragraph 14. We agree that the transferor government should continue to report the underlying PPP asset and follow other related accounting and financial reporting requirements, such as depreciation and impairment.

6. Paragraph 16. This paragraph requires that if an underlying PPP asset is a new asset purchased or constructed by the operator and the PPP does not meet the definition of an SCA, when the underlying PPP asset is placed into service the transferor should recognize a receivable for the underlying PPP asset purchased or constructed to be received by the operator. The receivable for the underlying PPP asset should be recognized and measured based on the operator’s estimated carrying value of the underlying PPP asset as of the future date of the transfer in ownership from the operator? We interpret this to mean the government should estimate what the net book value will be (asset net of accumulated depreciation)
upon the transfer date in the future. Is this the Board’s intent? How would the operator estimate this future value? What does the government do upon the transfer date if the estimate is not materially correct? What should the receivable be titled?

7. Paragraph 18. This paragraph states a transferor initially should measure the receivable for installment payments at the present value of PPP payments expected to be received during the PPP term, reduced by any provision for estimated uncollectible amounts. We are not in favor of requiring the receivable to be measured at present value. We view this as an unnecessary complication that could be removed to simplify the accounting.

8. Paragraph 29.a., 29.d, and 29.e. We do not see the value in adding narrative explanations about the basis, terms, and conditions on which variable payments not included in the measurement of the receivable for installment payments are determined. Nor do we see the value in reporting the amount of inflows of resources recognized in the reporting period for variable and other payments not previously included in the measurement of the receivable for installment payments. There is a significant ongoing cost to tracking this type of information which is simply revenue to the government. In addition, we do not understand how describing the nature and extent of rights retained by the transferor or granted to the operator under the PPP arrangements provides valuable information for assessing a government’s financial condition. We understand the users of financial statements might be happy to have more and more and more disclosures, but where do we draw the line on providing lengthy disclosures about routine transactions? The footnotes are quite voluminous already and these are just adding to the volume without adding significant value. We are not in favor of these requirements.

9. Paragraph 36. This paragraph states the future PPP payments should be discounted using the interest rate the transferor charges the governmental operator, which may be the interest rate implicit in the PPP arrangement. We are not in favor of requiring the liability to be measured at present value. We view this as an unnecessary complication that could be removed to simplify the accounting.

10. Paragraphs 47.a, 47.e, and 47.f. We do not see the value in adding narrative explanations about the basis, terms, and conditions on which variable payments not included in the measurement of the liability are determined. Nor do we see the value in reporting the amount of outflows of resources recognized in the reporting period for variable payments not previously included in the measurement of the liability. There is a significant ongoing cost to tracking this type of information which is simply an expense to the government. In addition, we do not understand how describing the nature and extent of rights granted to the governmental operator or retained by the transferor under PPP arrangements provides valuable information for assessing a government’s financial condition. We understand the users of financial statements might be happy to have more and more and more disclosures, but where do we draw the line on providing lengthy disclosures about routine transactions? The footnotes are quite voluminous already and these are just adding to the volume without adding significant value. We are not in favor of these requirements.

11. Paragraph 48. We appreciate that the Board addressed that the governmental operator’s liability for installment payments is not considered debt subject to GASB 88 disclosure requirements.

12. Paragraph 65. This paragraph explains that an APA may contain multiple components. For example, a government enters into an agreement with an operator to design, construct, finance, operate, and maintain a public toll road in exchange for (a) fixed payments designed to compensate the operator for the design, construction, financing, operation, and maintenance of the toll road and (b) variable payments to the operator based on whether performance measures have been met. If the APA contains multiple components, the requirements in paragraphs 51-55 should be applied to recognize each component as a separate arrangement, if applicable. The reference to paragraphs 51-55 has us confused as to the overall
13. Paragraph 68. We are extremely concerned with the proposed effective date of *fiscal years beginning after June 15, 2021*. We request the Board to push back the effective date of this proposed standard by at least two years to fiscal years beginning after June 15, 2023. GASB 87 – Leases will be implemented just one year prior to the implementation of this proposed standard and the proposed standard on Subscription-Based Information Technology Arrangements (SBITA). As noted in our response to the proposed SBITA standard, we believe the turnaround from GASB 87 to implementing these two proposed standards the following year is unreasonable given the effort that will need to take place to implement both of these.

14. Paragraph B6. As mentioned above, we were not clear on the definition of an availability payment arrangement (APA). This paragraph explains in greater detail what an APA is – *APAs are similar to PPPs except that the government retains demand risk and responsibility for fee collection associated with the use of the underlying asset. That is, instead of the other entity (the operator) being conveyed the right and obligation by the government to provide public services through the use of the underlying asset and being compensated from third parties, the government is compensating the other entity for either providing an asset to the government or performing services on behalf of the government*. We encourage the Board to include this in paragraph 7 to expand upon the definition for better and more consistent understanding of the definition of an APA.

Editorial comment: This paragraph refers to availability payments arrangements; however, elsewhere in the proposed standard (i.e. the title and paragraph 1) refers to an APA as availability payment arrangements.

15. Paragraph B9. This paragraph is confusing without also reading the definition of an SCA in paragraph 6.

Paragraph B9 states the following: *In addition to PPPs that meet the definition of either an SCA or a lease, the Board considered providing guidance for other PPPs. An example of such a transaction would be an operator building and owning a new capital asset to provide additional governmental services, such as a college dormitory. In exchange for transferring ownership of the capital asset to the transferor at the end of the arrangement, the operator is allowed to set the price or rate that will be charged to users of the capital asset during the arrangement. Although the Board considered amending the definition of an SCA or a lease to encompass such transactions, the Board believes those transactions are different from SCAs because the transferor does not control the rates being charged. Therefore, the Board determined that additional accounting and financial reporting guidance should be developed for PPPs that do not meet the definition of an SCA or a lease.*

We suggest clarifying several of these sentences to be clearer as follows:

*In addition to PPPs that meet the definition of either an SCA or a lease, the Board considered providing guidance for other PPPs. An example of such a PPP transaction that does not meet the definition of an SCA or a lease would be an operator building and owning a new capital asset to provide additional governmental services, such as a college dormitory. In exchange for transferring ownership of the capital asset (the college dormitory) to the transferor at the end of the arrangement, the operator is allowed to set the price or rate that will be charged to users of the capital asset (the college dormitory) during the arrangement. Although the Board considered amending the definition of an SCA or a lease to encompass such PPP transactions that do not meet the definition of an SCA or a lease, the Board believes those transactions are different from SCAs because the transferor does not control the rates being charged in a*
**PPP that does not meet the definition of an SCA or a lease.** Therefore, the Board determined that additional accounting and financial reporting guidance should be developed for PPPs that do not meet the definition of an SCA or a lease.

16. Paragraph B26. We agree that the disclosure requirement from GASB 60 regarding management’s objectives for entering into an SCA should not be one of the required footnote disclosures in this proposed standard.

17. In 2016, the State entered into a contract with a vendor regarding the management of the Honey Creek Resort. At that time, we submitted a technical inquiry and had several discussions with GASB staff regarding this specific contract to determine if it met the SCA criteria per GASB 60. The key item we focused on was the “significant consideration” requirement. Through discussions with GASB staff, we determined the agreement was not an SCA per GASB 60; it was determined to be a service and management arrangement (SMA). This proposed standard has no specific discussion about SMAs. Our interpretation of the proposed standard is that something previously deemed an SMA would not meet the definition of a PPP and; therefore, we would not modify our current reporting of this contract based on this proposed standard. We encourage the Board to address the issue of SMAs and how they relate to PPPs, APAs and Leases in the basis for conclusion.

18. Appendix C – Illustrations. These illustrations will be valuable in working through the implementation of the proposed standard.

19. Illustration 4. This example is for APA type agreements. In the scenario, the State remits $10 million to the corporation at the start of the project. According to the solution of the example, at the commencement of the arrangement the State should report an asset for the initial payment of $10 million to the corporation. We would appreciate clarification in the illustration to explain whether this asset would be a prepaid expense or some other type of asset.

20. Does the Board intend to issue an Implementation Guide for this proposed standard? It seems there are a number of areas noted in our response above that could lend to a Q&A format to assist preparers in understanding the Board’s intent. We encourage the Board to develop an Implementation Guide.

If you have questions or need additional information regarding this response, please do not hesitate to contact Kim Knight at (515) 281-6523.

Sincerely,

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