



Delaware Auditor of Accounts  
GASB Entity Determination Analysis Memo  
Delaware State University  
June 30, 2015

State appropriations are processed on FSF

Discretely Presented Component Unit

Governmental Accounting Standards Board (GASB) Statements No. 14, 34, and 61 establish standards for defining and reporting on a government's reporting entity. Management is responsible for determining the reporting entity while preparing the government's financial statements. The Office of Auditor of Accounts (AOA) performed the analysis below to assess the State's reporting entity for audit purposes.

To complete our entity determination analysis, AOA reviewed the following:

- GASB 14, *The Financial Reporting Entity*
- GASB 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 – ¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)
- GASB 39, *Determining Whether Certain Organizations Are Component Units*
- GASB 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*
- *AICPA Audit and Accounting Guide – State and Local Governments*, Chapter 3: The Financial Reporting Entity
- *GASB 2011-2012 Comprehensive Implementation Guide*, Chapter 4: The Financial Reporting Entity
- *14 Del. C., Education*
- *June 30, 2014 and 2013 Delaware State University (the University) Comprehensive Annual Financial Report (CAFR)*
- *June 30, 2014 State of Delaware CAFR*
- *University Board of Trustees Bylaws*

**1. The PCU is legally separate. (¶ 15)<sup>1</sup>**

According to GASB, an organization has separate legal standing if it is created as a body corporate or a body corporate and politic, or if it otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government.

Generally, corporate powers give an organization the capacity to have a name; the right to sue and be sued in its own name without recourse to a state or local governmental unit; and the right to buy, sell, lease, and mortgage property in its own name.

The corporate powers granted to a separate organization are enumerated in its corporate charter or in the legislation authorizing its creation. A special purpose government (or any other organization) that is *not* legally separate should be considered, for financial reporting purposes, part of the primary government that holds the corporate powers.

<sup>1</sup> Paragraph references are from GASB 14, as amended by GASB 61.



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### Application to the University

The University is legally separate from the State of Delaware (the State) because it is organized as a corporation (14 Del. C. §6501). Further, the Board of Trustees has overall authority and responsibility for the governance of the University, not the State (University Board of Trustees Bylaws, Article V, Section 2). The University also has all of the powers of a corporation, including the power to take and hold, alien, sell, transfer, and dispose of real and personal real estate, funds, or securities (14 Del. C. §6503 (a)). The University is defined as a State agency in 29 Del. C. §6902; however, this is for procurement purposes only and does not overturn the corporate body provision in the statute above.

Code and University Board of Trustees Bylaws Excerpts are as Follows:

#### **14 Del. C. §6501. Corporate status and membership.**

- (a) Delaware State University, hereafter in this part referred to as "the University," is and shall be a corporation.
- (b) The members of the Board of Trustees of the University shall constitute the membership of the corporation.

#### **University Board of Trustees Bylaws, Article V: Responsibilities and Reserved Authority**

**Section 2. Authority of the Board.** The Board of Trustees has the overall authority and responsibility for the governance of the University...

#### **14 Del. C. §6503. Powers.**

- (a) The University shall have all the powers and franchises incident to a corporation, including the power to take and hold real and personal estate by deed, devise, bequest, gift, grant or otherwise, and the same to alien, sell, transfer and dispose of as occasion may require, and the proceeds thereof to reinvest in other property, funds or securities for the benefit of the University and in accordance with the spirit and purpose of its charter.

#### **29 Del. C. §6902 (1) – Definitions (for procurement purposes only)**

"Agency" shall include Delaware Technical and Community College and the Delaware State University but shall not include any local government unit or agency receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this subsection shall be deemed to exempt any entity that is otherwise required to comply with § 6960 of this title.



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**3. *The PG appoints the majority of the PCU's board. (¶22-24)***

If a primary government appoints a simple majority of the organization's governing board<sup>2</sup>, it usually has a voting majority. However, if financial decisions require the approval of more than a simple majority, the primary government is not accountable for the organization.

For purposes of determining whether accountability exists, a primary government's appointment authority should be substantive. In some cases the appointment authority of a primary government's officials may be limited by a nomination process. For example, state statutes or local ordinances may require a primary government to select its appointees from a slate of candidates provided by one or more individuals or groups other than the primary government's officials or appointees. A primary government's appointment authority is not substantive if the number of candidates is severely limited by the nominating process, for example, if a primary government must select three appointees from a single slate of five candidates. Additionally, a primary government's appointment authority may not be substantive if its responsibility is limited to confirming appointments made by individuals or groups other than the primary government's officials or appointees.

In most instances, legal provisions for appointment of an organization's officials also provide for continuing appointment authority. However, in the absence of continuing appointment authority, the ability of a primary government to unilaterally abolish an organization also provides the basis for ongoing accountability. Thus, a primary government that creates an organization (creation is tantamount to the initial appointment of the governing body) is accountable for the organization if the primary government can unilaterally abolish it. A primary government is considered to be accountable for an organization as long as continuing appointments are made by the primary government, even if those appointments are made by a subsequent administration.

**Application to the University**

As required by 14 Del. C. §6504, the Governor of the State and the President of the University serve as members of the Board, ex officio. The University Board of Trustees Bylaws declare that these positions are voting members of the Board. In addition, the Code states that eight members of the Board of Trustees are appointed and commissioned by the Governor. The remaining seven trustees are elected by a majority of the whole Board. Therefore, the primary government appoints a voting majority (9 of the 17 members) of the Board.

<sup>2</sup> This also includes situations in which a voting majority of an organization's governing body consists of the primary government's officials *servng as required by law* (and, thus, technically not *appointed* by the primary government).



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Code Excerpts are as Follows:

**14 Del. C. §6504. Board of Trustees -- Composition, appointment or election, term and vacancies.**

- (a) The Board of Trustees of the University shall consist of 15 members whose appointment or election is provided for in subsections (b) and (c) hereof and the Governor of the State and the President of the University, both of whom shall be members of the Board, ex officio.
- (b) Eight of the trustees shall be appointed and commissioned by the Governor for a term of 6 years each, to begin upon the expiration of the term of the trustee whom each is to succeed. Two such trustees shall reside in each county of the State.
- (c) Seven of the trustees shall be elected by a majority of the whole Board as constituted. One such trustee shall reside in each county of the State. They shall be elected for a term of 6 years each beginning September 1 in the year of election. The election of these trustees shall be held on the date and in the manner established in the bylaws. The first set of trustees elected under this subsection shall be elected as follows: In 1957, 1 member shall be elected for a 4-year term and 1 member for a 5-year term. In 1958, 1 member shall be elected for a 6-year term and 1 member for a 5-year term and in 1959, 1 member shall be elected for a 6-year term.
- (d) The Governor shall fill any vacancies that occur as to appointments made by the Governor, and the Board shall fill any vacancies that occur as to elections made by the Board. All vacancies occurring for reasons other than the expiration of the term shall be filled for the unexpired term.

**6. *There is a financial benefit/burden relationship. (§ 27-33) However, the PG is not able to impose its will on the PCU. (§25-26)***

***Financial Benefit to or Burden on a Primary Government***

According to GASB, *an organization can provide a financial benefit to, or impose a financial burden on, a primary government in a variety of ways.* The benefit or burden may result from legal entitlements or obligations, or it may be less formalized and exist because of decisions made by the primary government or agreements between the primary government and a component unit. If a primary government appoints a voting majority of an organization's officials or if the organization is fiscally dependent on the primary government *and* there is a potential for those organizations either to provide specific financial benefits to, or to impose specific financial burdens on, the primary government, the primary government is financially accountable for those organizations. An organization has a financial benefit or burden relationship with the primary government if, for example, *any one* of these conditions exists:

- a. The primary government is legally entitled to or can otherwise access the organization's resources.
- b. The primary government is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, the organization.



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- c. The primary government is obligated in some manner for the debt of the organization.

Exchange transactions between organizations and the primary government should not be considered manifestations of a financial benefit or burden relationship. In an exchange transaction, such as a purchase or sale of goods or services, each participant (the government or its employees rather than the citizenry) directly receives and sacrifices value. For example, funding by a primary government for higher education is not equivalent to purchasing educational services and would be considered a manifestation of a financial burden on the primary government.

*The effect of the financial benefits or burdens on the primary government can be either direct or indirect.* A direct financial benefit or burden occurs when the primary government itself is entitled to the resources or is obligated for the deficits or debts of the organization. An indirect benefit or burden exists if one or more of the primary government's component units is entitled to the resources or is obligated for the deficits or debts of the organization. For purposes of this Statement, a financial benefit or burden relationship exists if the primary government is either directly or indirectly entitled to the resources or is either directly or indirectly obligated for the deficits or debts of an organization.

*Legally Entitled to or Can Otherwise Access the Organization's Resources.* The ability to access the resources of an organization—not necessarily whether there was an actual transaction during the period—is the important factor for determining when a primary government is entitled to an organization's resources. However, the ability to access the resources of an organization should be judged in light of the organization as a going concern; that is, a residual interest in the net assets of an organization in the event of dissolution is not equivalent to being entitled to its resources. If a primary government appoints a voting majority of an organization's officials *and* is legally entitled to or can otherwise access the organization's resources, the primary government is financially accountable for that organization.

*Resources may flow from a component unit to a primary government for several reasons.* Some organizations may operate activities, such as off-track betting or lotteries, for the principal purpose of generating net revenues that are accessible to the primary government. These organizations provide financial benefits to the primary government. Other organizations may operate activities (for example, public utilities) for the purpose of providing basic public services and charge rates sufficiently high to also provide a financial benefit to the primary government. These benefits may be characterized as "payments in lieu of taxes" or "contributions," or they may simply be amounts remitted on request of the primary government. These organizations also provide financial benefits to the primary government.

*Legally Obligated or Has Otherwise Assumed the Obligation to Finance the Deficits of, or Provide Financial Support to, the Organization.* A primary government may be obligated to finance the deficits of, or provide financial support to, an organization in different ways. It could be legally obligated to do so, or it may choose to do so for a variety of reasons. If a primary government appoints a voting majority of an organization's officials *and* is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, that organization, the primary government is financially accountable for that organization. The following are examples of financial burdens assumed by a primary government in support of certain organizations:



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- a. Some organizations provide public services financed by user charges that are not expected to be sufficient to sustain their operations. This situation often results from providing services such as mass transit, higher education, and healthcare. In these cases, public policy may dictate that a state or local government provide financial support to the organization to increase the availability and affordability of the service to a broader segment of the citizenry. Examples of support include annual appropriations to help meet operating expenditures/expenses, periodic capital grants, and direct payment of capital expenditures or debt service.
- b. A primary government may assume an obligation to finance the deficits of an organization. These deficits may or may not be expected to recur annually. A financial burden exists if the primary government is obligated to finance an organization's deficits even though there has not been, and may never be, a deficit to subsidize.

Some organizations' operations are fully or partially funded by revenues generated through tax increment financing. Legally separate development or redevelopment authorities sometimes receive the incremental taxes that result from a tax increment financing arrangement. When this is done, *a taxing government temporarily waives its right to receive the incremental taxes from its own levy*. The incremental taxes instead are remitted to the separate organization. For purposes of this Statement, this type of tax increment financing should be considered evidence of an obligation to provide financial support to an organization (a financial burden), regardless of whether the primary government collects the taxes and remits them to the organization or the incremental taxes are paid directly to the organization.

*Obligated in Some Manner for the Debt of an Organization.* An obligation for the debt of an organization is similar to the notion that a primary government may be obligated for future operating deficits. The obligation can be either expressed or implied. A primary government is obligated in some manner for the debt of an organization if (a) it is legally obligated to assume all or part of the debt in the event of default or (b) it *may* take certain actions to assume secondary liability for all or part of the debt, *and* the government takes, or has given indications that it will take, those actions. Conditions that indicate that a primary government is obligated in some manner include:

- a. The primary government is *legally obligated* to honor deficiencies to the extent that proceeds from other default remedies are insufficient.
- b. The primary government is *required* to temporarily cover deficiencies with its own resources until funds from the primary repayment source or other default remedies are available.
- c. The primary government is *required* to provide funding for reserves maintained by the debtor organization, or to establish its own reserve or guarantee fund for the debt.
- d. The primary government is *authorized* to provide funding for reserves maintained by the debtor organization or to establish its own reserve or guarantee fund *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)
- e. The primary government is *authorized* to provide financing for a fund maintained by the debtor organization for the purpose of purchasing or redeeming the organization's debt, or to establish a



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similar fund of its own, *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)

- f. The debtor government explicitly indicates by contract, such as the bond agreement or offering statement that, in the event of default, the primary government *may* cover deficiencies although it has no legal obligation to do so. That is, the bond offering statement may specifically refer to a law that authorizes the primary government to include an appropriation in its budget to provide funds, if necessary, to honor the debt of the organization.
- g. Legal decisions within the state or previous actions by the primary government related to actual or potential defaults on another organization's debt make it *probable* that the primary government will assume responsibility for the debt in the event of default.

If a primary government appoints a voting majority of an organization's officials *and* is obligated in some manner for the debt of that organization, the primary government is financially accountable for that organization.

### ***Imposition of Will***

A primary government that is accountable for an organization because it appoints a voting majority of that organization's governing body frequently has the ability to affect that organization's operations. Sometimes, however, based on the provisions of law or contract, the primary government has little influence over the organization's operations. Certain conditions indicate the primary government's ability to affect the day-to-day operations of an organization. These conditions are referred to in this Statement as a government's ability to impose its will on an organization. If a primary government appoints a voting majority of an organization's officials *and* has the ability to impose its will on the organization, the primary government is financially accountable for that organization.

*A primary government has the ability to impose its will on an organization if it can significantly influence the programs, projects, activities, or level of services performed or provided by the organization. The existence of any one of the following conditions clearly indicates that a primary government has the ability to impose its will on an organization:*

- a. The ability to remove appointed members of the organization's governing board at will.
- b. The ability to modify or approve the budget of the organization.
- c. The ability to modify or approve rate or fee changes affecting revenues, such as water usage rate increases.

### **Application to the University**

The State provides a financial benefit to the University. The University receives State funding annually that is appropriated through the Office of the State Treasurer. These funds are to be used for the support



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and maintenance of the University (14 Del. C. §6508 and §6509). Further, the State's CAFR explains that the University's funding is primarily through State appropriations. Additional funding is derived from tuition, federal grants, and private donations.

Even though the University receives a financial benefit from the State, the University's Board of Trustees has the overall authority and responsibility for the governance of the University, including the adoption of an annual plan of expenditures and revenues (University Board of Trustees Bylaws Article 5, Section 2). The State is also not obligated for the bonded debt of the University according to 14 Del. C. §6514.

The State cannot impose its will on the University for the following reasons:

- a. Appointed members of the University's governing board are removed from office by the affirmative vote of a majority of the members of the Board (University Board of Trustees Bylaws Article 3, Section 7).
- b. The University's Board of Trustees has the overall authority and responsibility to modify and approve the budget (University Board of Trustees Bylaws Article 5, Section 2).
- c. The University's Board of Trustees has the overall authority and responsibility to establish, review, and rescind tuition and academic fees (University Board of Trustees Bylaws Article 5, Section 2).

Code, State CAFR, and University Board of Trustees Bylaws Excerpts are as Follows:

**14 Del. C. §6508. Annual payment from State Treasurer.**

The State Treasurer shall pay annually to the treasurer of the University, 20 percent or one-fifth part of the sum of money which the State Treasurer shall receive annually by virtue of an act of Congress, entitled "An Act to Apply a Portion of the Proceeds of the Public Lands to the More Complete Endowment and Support of the Colleges for the Benefit of Agriculture and the Mechanic Arts, Established under the Provisions of an Act of Congress, Approved July 2, 1862," being the Act of August 30, 1890, Chapter 841, 26 Stat. 417 [7 U.S.C. §§ 321- 328].

**14 Del. C. §6509. Use of annual payments.**

The moneys received by the University as provided in § 6508 of this title shall be used by the University for the support and maintenance of the University.

**State of Delaware Fiscal Year 2014 CAFR – Summary of Significant Accounting Policies Note 1 (a):  
...Delaware State University (DSU)**

Delaware State University is a public institution of higher education. Funding is primarily through State appropriations. State appropriations, without restrictions as to use by the DSU, are reported in general revenue. Additional funding is derived from tuition, federal grants, private donations and grants. The Board of Trustees is comprised of fifteen members, eight appointed by the Governor of Delaware and seven elected by the Trustees. The President of the DSU and the Governor of the State



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of Delaware serve as ex-officio members of the Board. Delaware State University financial data includes its two component units, the Delaware State University Housing Foundation and the Delaware State University Foundation, Inc. The State annually appropriates funding for DSU, which totaled more than \$33 million in fiscal year ending June 30, 2014, which is twenty eight percent of DSU's total revenues.

**14 Del. C. §6514. Credit of State not pledged.**

Revenue bonds issued under this chapter shall be payable exclusively from specified funds of the University. All such bonds shall contain a statement on their face that the State is not obligated to pay the same or the interest thereon and that the faith and credit of the State are not pledged to the payment of the principal or interest of such bonds. The issuance of revenue bonds under this chapter shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

**University Board of Trustees Bylaws**

**Article III: Officers of the Board**

**Section 7. Removal from Office.** Any Officer of the Board may be removed from that office by the affirmative vote of a majority of the members of the Board.

**Article V: Responsibilities and Reserved Authority**

**Section 2. Authority of the Board.** The Board of Trustees has the overall authority and responsibility for the governance of the University, including ultimate responsibility for academic matters and the following decisions to take action on any of the following:

- C. Adoption of an annual plan of expenditures and revenues for the University.
- D. Establishing, reviewing, or rescinding tuition and academic fees applicable to students generally. Such tuition and fees include, but may not be limited to, on-campus and off-campus tuition, fees established for specific academic programs, general fees applicable to broad categories of students, and room and board rates for University housing.

<b>7. The CU does not meet any of the blending criteria of ¶53, a, b, or c.</b>
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A component unit should be included in the reporting entity financial statements using the blending method in any of these circumstances:

- a. The component unit's governing body is substantively the same<sup>3</sup> as the governing body of the primary government *and* (1) there is a financial benefit or burden relationship between the

<sup>3</sup> "Substantively the same" means sufficient representation of the primary government's entire governing body on the component unit's governing body to allow complete control of the component unit's activities. To illustrate, the board of a city redevelopment authority may be composed entirely of the city council and the mayor, serving ex officio. The



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primary government and the component unit, as described in paragraphs 27–33, or (2) management of the primary government has operational responsibility for the component unit. Management of a primary government has operational responsibility for a component unit if it manages the activities of the component unit in essentially the same manner in which it manages its own programs, departments, or agencies.

Management, for purposes of this determination, consists of the person(s), below the level of the governing board, responsible for the day-to-day operations of the primary government (for example, a county executive or city manager).

- b. The component unit provides services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefits the primary government even though it does not provide services directly to it. The essence of this type of arrangement is much the same as an internal service fund—the goods or services are provided to the government itself rather than to the citizenry. Usually the services provided by a blended component unit are financing services provided solely to the primary government. For example, a building authority may be created to finance the construction of office buildings for the primary government. However, a component unit that provides services to more than just the primary government should also be blended if the services provided to others are insignificant to the overall activities of the component unit. Other component units that should be blended are those that exclusively, or almost exclusively, benefit the primary government by providing services indirectly; for example, a component unit that provides services on behalf of the primary government to its employees rather than directly to the primary government itself.
- c. The component unit's total debt outstanding, including leases, is expected to be repaid entirely or almost entirely with resources of the primary government. Repayment generally occurs through a continuing pledge and appropriation by the primary government to the component unit that, in turn, pledges those appropriation payments as the primary source of repayment for its debt.

### **Application to the University**

Based on review and consideration of all of the guidance above, including the criteria of ¶53(a) through (c), we conclude the following:

- a. The governing body of the University is not substantially the same as that of the State (governing body of the State consists of the House and Senate)
- b. The University does not provide services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefit the primary government even though it does not provide services to it.

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*primary government is, essentially, serving as the governing body of the component unit. On the other hand, the board of a public housing authority composed of the city mayor and two council members (from a total of ten) ordinarily would not be substantively the same as the city's governing body. This criterion will rarely, if ever, apply to a state government because of the impracticality of providing sufficient representation of the state's entire governing body.*



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- c. Debt of the University is not expected to be repaid with the resources of the primary government.



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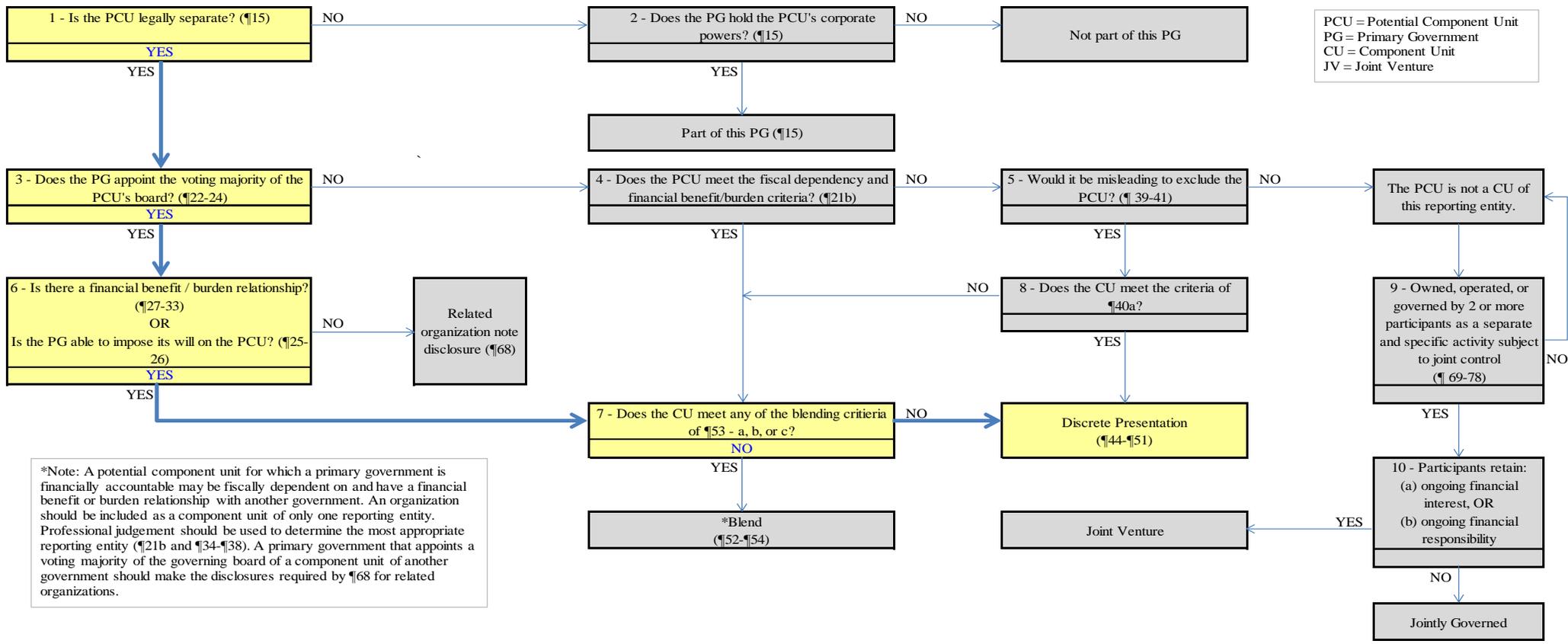
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Discretely Presented Component Unit

PCU = Potential Component Unit  
 PG = Primary Government  
 CU = Component Unit  
 JV = Joint Venture



\*Note: A potential component unit for which a primary government is financially accountable may be fiscally dependent on and have a financial benefit or burden relationship with another government. An organization should be included as a component unit of only one reporting entity. Professional judgement should be used to determine the most appropriate reporting entity (§21b and §34-§38). A primary government that appoints a voting majority of the governing board of a component unit of another government should make the disclosures required by §68 for related organizations.