



Delaware Auditor of Accounts  
GASB Entity Determination Analysis Memo  
Delaware Stadium Corporation  
June 30, 2015

Not an FSF User

No relationship to Primary Government  
(Not a Component Unit, Joint Venture, or Jointly Governed)

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(GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 – ¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)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
- Delaware Stadium Corporation Certificate of Incorporation

***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.

**Application to Delaware Stadium Corporation**

The Delaware Stadium Corporation is a private corporation formed to own, develop, construct and operate a sports facility in and for the State of Delaware. Although the State of Delaware may provide funding to the corporation, the Delaware Stadium Corporation was not created through Delaware laws or

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



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regulations (Article III, Delaware Stadium Corporation Certificate of Incorporation). Thus, the Delaware Stadium Corporation is not a part of State government.

Articles of Incorporation Excerpts are as follows:

**Delaware Stadium Corporation Certificate of Incorporation**

THIRD: The purpose of the corporation is to own, develop, construct and operate a sports facility in and for the State of Delaware. In connection therewith, the corporation shall have the power and authority to engage in any lawful act or activity for which a non-profit corporation may be organized under the laws of the State of Delaware; provided, however the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 as amended, and any corresponding provision of any future United States Internal Revenue Code. In furtherance of the general powers conferred by the laws of the State of Delaware and these articles, the corporation shall have the power to accept monies from government entities and from private parties and to expend such funds, and any and all other funds received, in furtherance of the purposes for which the corporation shall have been organized.

**3. *The PG does not appoint the majority of the PCU's board. (§22-24)***

According to GASB, if a primary government appoints a simple majority of the organization's governing board, 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.



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**Application to the Delaware Stadium Corporation**

AOA did not identify any statutory language to indicate that the State of Delaware appoints any members of the Delaware Stadium Corporation board of directors.

**4. *The PCU does not meet the fiscal dependency or the financial benefit/burden criteria. (§21b)***

According to GASB, the primary government may be financially accountable if an organization is fiscally dependent (paragraphs 16–18) on the primary government regardless of whether the organization has (1) a separately elected governing board, (2) a governing board appointed by a higher level of government, or (3) a jointly appointed board (paragraphs 34–38).

***Fiscal Dependency (§16-18)***

A special-purpose government is fiscally independent if it has the ability to complete certain essential fiscal events without substantive approval by a primary government. A special-purpose government is fiscally independent if it has the authority to do all three of the following:

- a. Determine its budget without another government's having the authority to approve and modify that budget.
- b. Levy taxes or set rates or charges without approval by another government.
- c. Issue bonded debt without approval by another government.

A special-purpose government that is not fiscally independent is fiscally dependent on the primary government that holds one or more of those powers. A special-purpose government may be fiscally dependent on another state or local government regardless of whether it receives financial assistance from that state or local government; fiscal dependency does not necessarily imply that a financial benefit or burden relationship exists.

In determining whether a special-purpose government is fiscally independent, a distinction should be made between substantive approvals and ministerial (or compliance) approvals. Special-purpose governments typically are subject to the general oversight of their respective state governments, and sometimes to the oversight of county or other local governments as well. Often, this general oversight responsibility includes an approval process that is more ministerial or compliance oriented than substantive. Examples of approvals that are likely to be ministerial or compliance oriented in nature rather than substantive are:

- a. A requirement for a state agency to approve local government debt after review for compliance with certain limitations, such as a debt margin calculation based on a percentage of assessed valuation.



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- b. A requirement for a state agency, such as a department of education, to review a local government's budget in evaluating qualifications for state funding.
- c. A requirement for a county government official, such as the county clerk, to approve tax rates and levy amounts after review for compliance with tax rate and levy limitations.

A special-purpose government subject to substantive approvals should not be considered a primary government for purposes of this Statement. For example, budgetary approval is substantive if a government has the authority to reduce or modify a special-purpose government's budget. On the other hand, a special-purpose government that is statutorily prohibited from incurring debt may be fiscally independent if it possesses the other two powers because the statutory prohibition does not subordinate the special-purpose government to another government for debt approval. It may be necessary to ascertain whether approvals or restrictions have the effect of impairing the special-purpose government's fiscal independence.

***Financial Benefit to or Burden on a Primary Government (§27-33)***

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 *and* there is a potential for that organization either to provide specific financial benefits to or to impose specific financial burdens on the primary government, the primary government is financially accountable for that organization. An organization has a financial benefit or burden relationship with the primary government if *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.
- 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



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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:

- 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.



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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 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.



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- 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.

**Application to the Delaware Stadium Corporation**

The State of Delaware has appropriated minor capital improvement funds to the Delaware Stadium Corporation in the past; however, the Delaware Stadium Corporation did not receive any State of Delaware funding during Fiscal Year Ended June 30, 2015. AOA did not identify any evidence to suggest that the Delaware Stadium Corporation is fiscally dependent on the State nor did we find any indication of a financial benefit/burden relationship.

**5. It would not be misleading to exclude the PCU. (§39-41)**

*Organizations Included in the Reporting Entity Although the Primary Government Is Not Financially Accountable*

GASB requires that certain organizations should be included as component units if the nature and significance of their relationship with the primary governments are such that exclusion from the financial reporting entity would render the financial reporting entity's financial statements incomplete or misleading.

In some states, authorities with state-appointed boards may be created to provide temporary fiscal assistance to a local government to alleviate that local government's fiscal distress. The authority should be evaluated as a potential component unit of the local government. If the authority issues debt on behalf of the local government and serves as a conduit for receiving dedicated revenues of the local government that are designated for repayment of the debt, the nature and significance of the relationship between the authority and the local government would warrant including the authority as a component unit of the local government. The temporary nature of the state-created authority emphasizes that the debt and revenues are, in substance, the debt and revenues of the local government.

A legally separate, tax-exempt organization should be reported as a component unit of a reporting entity if *all* of the following criteria are met:

- a) The economic resources received or held by the separate organization are entirely or almost entirely for the direct benefit of the primary government, its component units, or its constituents.



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- b) The primary government, or its component units, is entitled to, or has the ability to otherwise access,<sup>2</sup> a majority of the economic resources received by or held by the separate organization.
- c) The economic resources received or held by an *individual organization* that the specific primary government, or its component units, is entitled to, or has the ability to otherwise access, are significant to that primary government.

In addition, other organizations should be evaluated as potential component units if they are closely related to the primary government. It is a matter of professional judgment to determine whether the nature and the significance of a potential component unit's relationship with the primary government warrant inclusion.

Organizations affiliated with governmental units, agencies, colleges, universities, hospitals, and other entities may warrant inclusion. An example of an affiliated organization that may be evaluated for inclusion is a nonprofit corporation whose purpose is to benefit a governmental university by soliciting contributions and managing those funds. There may also be circumstances warranting inclusion of a single-employer defined-benefit public employee retirement system (PERS) that does not meet the criteria for inclusion in paragraph 21 in the financial reporting entity. The GASB is studying circumstances under which foundations, similarly affiliated organizations, and PERS might be included in the financial reporting entity. Appropriate pronouncements will be issued at a later date.

#### **Application to the Delaware Stadium Corporation**

It would not be misleading to exclude the Delaware Stadium Corporation for the following reasons:

- a) The economic resources received or held by the Corporation are not entirely or almost entirely for the direct benefit of the State of Delaware, its component units, or its constituents. The Corporation was created to own, develop, construct, and operate a sports facility in and for the State of Delaware (Article III, Delaware Stadium Corporation Certificate of Incorporation).
- b) The State of Delaware, or its component units, is not entitled to and does not have the ability to otherwise access a majority of the economic resources received by or held by the Corporation. In the event of liquidation, the board of directors shall distribute all of the assets of the Corporation as the board of directors may determine to be best suited to the accomplishment of the purposes of the corporation (Article VI, Delaware Stadium Corporation Certificate of Incorporation).

Articles of Incorporation Excerpts are as follows:

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<sup>2</sup> The ability of the primary government to otherwise access the resources of an organization does not necessarily imply control over that organization or its resources; rather, it entails a broader concept. As noted in paragraph .128, 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. A primary government's ability to otherwise access may be demonstrated in several ways. For example, the primary government or its component units historically may have received, directly or indirectly, a majority of the economic resources provided by the organization, the organization previously may have received and honored requests to provide resources to the primary government, or the organization is a financially interrelated organization, as defined by FASB Statement No. 136, Transfers of assets to a Not-for-Profit Organization or Charitable Trust That Raises or Holds Contributions for Others. [GASBS 39, ¶5]



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**Delaware Stadium Corporation Certificate of Incorporation**

**THIRD:** The purpose of the corporation is to own, develop, construct and operate a sports facility in and for the State of Delaware. In connection therewith, the corporation shall have the power and authority to engage in any lawful act or activity for which a non-profit corporation may be organized under the laws of the State of Delaware; provided, however the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501 (c)(3) of the Internal Revenue Code of 1954 as amended, and any corresponding provision of any future United States Internal Revenue Code. In furtherance of the general powers conferred by the laws of monies from government entities and from private parties and to expend such funds, and any and all other funds received, in furtherance of the purposes for which the corporation shall have been organized.

**SIXTH:** In the event of the liquidation, dissolution or winding up of the affairs of the corporation, the board of directors shall, after paying or making provision for payment of all of the liabilities of the corporation, distribute all of the assets of the corporation, including any income or other property which shall not theretofore have been distributed in furtherance of the corporation's purposes, to such corporations or institutions organized and operated exclusively for civic, charitable, scientific, literary or educational purposes or to such federal, state or local government entity, as the board of directors may determine to be best suited to the accomplishment of the purposes of the corporation.

**9. The PCU is not owned, operated, or governed by 2 or more participants as a separate and specific activity subject to joint control. (¶69-78)**

GASB defines a joint venture as a legal entity or other organization that results from a contractual arrangement and that is owned, operated, or governed by two or more participants as a separate and specific activity subject to joint control, in which the participants retain (a) an ongoing financial interest or (b) an ongoing financial responsibility. Generally, the purpose of a joint venture is to pool resources and share the costs, risks, and rewards of providing goods or services to the venture participants directly, or for the benefit of the general public or specific service recipients. *Joint control* means that no single participant has the ability to unilaterally control the financial or operating policies of the joint venture.

**Application to the Delaware Stadium Corporation**

As discussed above, the Delaware Stadium Corporation is a private corporation, governed by a board of directors not controlled by the State of Delaware. Further, the Delaware Stadium Corporation was not created through Delaware laws or regulations (Article III, Delaware Stadium Corporation Certificate of Incorporation).



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

