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Managing Large Task Public-Private Partnerships

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MANAGING LARGE TASK PUBLIC – PRIVATE PARTNERSHIPS

*By Mark Pisano and Rich Callahan**

Action Agenda for Leaders

Fiscal crisis cannot be an excuse for inaction and delay in addressing the problems that face the nation. Leaders must take steps to build infrastructure and rebuild the country so that we can address the needs of our people and their communities and compete in an increasingly complex world. This memo proposes that leadership use new partnerships and ways of doing business as the path to action:

- Create a range of Public Benefit Corporations (PBCs) to bring about investments and business plan development for infrastructure—parks, energy, transportation—and any other public goods investment that can be enhanced by these approaches. PBCs use the authority of government, federal, state and local for their establishment, the tools of the private sector to operate, and are generally administered in a nonprofit format. There is no single model for a PBC, but there is a single operating principle: the use of partnerships and collaboration among sectors with the objective of developing the resources and capacity to address our public needs in an environment of scarcity.
- Establish a Council for Fiscal Sustainability (CFS). Congress should create the nonprofit CFS using the same authorities and provisions as it has in creating the United States National Academies. Membership should include federal departments, public interest organizations at all levels, business, labor and other interests that are necessary to accomplish the objectives of the council. The CFS would make recommendations on how to change the operating procedures of the governmental entities in the intergovernmental system so that new “rules of the game” provide a culture of partnership needed for the problem solving initiatives ahead.
- Create by act of Congress a Risk Assessment and Mitigation Board (RAMB). The RAMB would provide the capacity to review, assess, identify and mitigate risk of proposed PBCs. The RAMB should include members from the financial, insurance, engineering and governance arenas who are capable of providing the ongoing technical assistance for risk identification and assessment and should be housed in the Council of Fiscal Sustainability to insure transparency and accountability in the use of PBCs.
- Establish by act of Congress an infrastructure banking system using the authority of the Business Development Corporation Act of 1980. The bank would have the authority to provide financial assistance up to 20 percent of the investment portfolio of a PBC, based on the actuarial assessment of the RAMB. In order to avoid a moral hazard scenario to the detriment of the U. S. government, the bank should obtain financing through the market place. Infrastructure Bank assistance would be reserved for PBC startup difficulties and the unexpected. The bank should be capitalized through investments by individuals – that is, institutional investors, including pensions and sovereign wealth funds. The risk management structure of this partnership as Fiscal Policy creates a sound basis for federal equity and debt investments in the Bank and to PBCs. These investments should be scored by OMB in the year of expenditure, rather than

up front, as is the current practice. This change in practice would, in effect, create a Capital Investment Program at the federal level.

Investment in our public infrastructure and communities is vital to building a thriving economy. Our country's future rests on the willingness of our leaders to take creative and sustained action to grow our economy. This paper offers several innovative mechanisms to move us into a brighter future.

Context

We face intractable problems and our current management and leadership practices have been unsuccessful in moving us forward. The problems include: financial debt at every level of government; significant and serious backlogs in the infrastructure required to efficiently compete in an increasingly globalized economy; and providing for our own domestic needs and quality of life and security. At the same time there is extremely large amounts of capital, over \$1.8 trillion, that is held by private firms that could be attracted to public goods investment if the concerns of risk and impediments to creating an investment pipeline could be addressed. Many have observed that America's greatest strength is the innovative and flexible way that we put organizations within our country together to solve our problems. It is time that we flex what may be our greatest asset: Our ingenuity in putting our organizations together—the people of our public, private, nonprofit sectors—to solve problems.

GAO and other organizations report that all levels of government, even assuming normal economic growth, will experience fiscal shortfalls stretching far into the future for decades to come. The “Memos to Leadership: Intergovernmental Panel” has identified the financial shortfalls in our states and local governments as the invisible crisis in America. News stories have reported that over 700,000 employees (teachers, police, fire and many other public servants) have been laid off in the past two years. The GAO's analysis and forecast for federal, state and local units of government predicts that the reductions this year will continue to grow by tenfold over the next 20 years if current policies continue without change. Numerous reports conclude that unless we undertake major investment programs in our public goods issues of education, infrastructure, energy and health, we will be unable to accelerate growth and alter what promises to be a very bleak future.

Our panel is developing strategies and recommendations, both short and long term, to put the public, private and nonprofit organizations and individuals together differently. We must create new “rules of the game” to foster the synergy, efficiencies, partnerships and innovation that will enable us to forge approaches to address these challenges. Changing the way we do things and capturing the benefits of these partnerships constitutes a new fiscal strategy for the nation.

The panel also observed that the global transformation we are now experiencing is profound with almost 40 percent of the economy coming from the global economy; all levels of government need to be part of a new national partnership to sustain the nation in this new century. Without a national strategy, states and regions and communities will be left to forage in the global economy with a significant competitive disadvantage.

What we recommend is neither new nor untested. There have been a range of related examples of similar initiatives in recent history. The panel noted that we should learn from cases that failed or were deficient and we should draw on successful experiences to illuminate pathways for working differently – and better – at all levels of government.

Problems/Challenges/Opportunities

The convergence of the fiscal, demographic and global stresses creates four sets of challenges for our national leaders:

1. How do we meet current and future needs to build infrastructure to improve our living environment and compete in the global economy, particularly those large-scale investments that have eluded us in the past several decades? How do we provide the programs and services to support the changing public needs in our communities? We must develop new revenues that are derived from the benefits that are generated by users of investments, by gaining from the synergy of bringing together multiple investments and revenue streams, by leveraging existing revenues with these new revenues, and by increased efficiencies in implementation. We must more effectively link the beneficiary of and payer for services.
2. How do we leverage the public management lessons learned in the American Recovery and Reinvestment Act (ARRA), working vertically in the intergovernmental system and horizontally across the private and nonprofit sectors? What does that experience suggest for immediate action by federal, state and local leaders that can facilitate developing new projects and programs in real time, leveraging information technology to accelerate implementation while increasing transparency and accountability?
3. How might we learn and benefit from the successes and failures of public benefit corporations (i.e., partnerships that combine the advantages of each of the sectors)? How do we optimize effective use of these partnerships?
4. How do we accelerate coordination across infrastructure silos to increase development of integrated investments for transit, goods movement, energy grid development, the internet, communication, watershed, open space and hazard mitigation?

Recommendations

Create a range of Public Benefit Corporations (PBCs) to bring about investments in and business plan development for infrastructure – parks, energy, and transportation – and any other public good investment that can be enhanced by these approaches. PBCs use the authority of government, federal, state and local for their establishment, the tools of the private sector to operate, and are generally administered in a nonprofit format. There is no single model for a PBC, but there is a single operating principle: the use of partnerships and collaboration among sectors with the objective of developing the resources and capacity to address our public needs in an environment of scarcity. How can publicly defined objectives be met by using innovation and risk taking of the private sector, whereby risks are identified, managed, mitigated and appropriately shared?

The recommendations are based on the learning experiences of recent experiments and pilot programs. Setbacks, as well as the successes, inform these proposals. The U.S. Enrichment Corporation (USEC), created in 1993 to privatize uranium for civilian use, provides an example of PBC setbacks. In 1998, USEC issued public stock and is today struggling to remain in existence, due in part to lack of transparency and difficulties in assessing risk. More troubling are the mortgage bundling firms, Fanny-Mae, Freddie-Mac (government sponsored enterprises [GSEs]) that created a moral hazard and other risks that prompted the recent financial meltdown. Public policies were established that enabled and encouraged these corporations to operate at risk in

the market place. The failure of the housing GSEs illustrates what can go wrong when a private corporation is charged with conflicting missions of achieving public benefits and private profits. The panel examined numerous reports of the best practices that should be followed and the pitfalls that should be avoided in operating PBCs.

There are numerous examples and lessons that can be used in the design and mobilization of the effort to establish PBCs. For example, the Presidio Trust in San Francisco, California was established by Congress in 1996 to achieve financial self-sufficiency for the operation of a large item in the National Park Service's budget. NAPA was asked by Congress in 2004 to make recommendations to the newly created foundation to achieve the objectives of the statute. The key elements of the NAPA Panel's recommendation included the following: ensure that the Board composition reflects the sectors that need to be brought together to achieve the objectives of the statute; provide the leadership for a coordinated and multi-sector implementation; develop a business plan upfront that is consistent with the public mission and goals established through the public policy process; and recognize that transparency and accountability are essential.

Another example is the Alameda Corridor Transportation Authority (ACTA), which was established in 1989 by the cities and ports of Los Angeles and Long Beach in partnership with the UP and BNSF railroads. A business plan was developed to build a \$2.1 billion investment program to move goods from the ports and to fund the construction through a container fee paid for by the private sector. A loan from the federal government, which led to the Transportation Infrastructure Investment Act, was awarded and provided assurance of the resources that enabled the project to go to market for this revenue- backed investment.

Decision-Making Principles

The panel examined numerous reports of the best practices that should be followed and the pitfalls that should be avoided in operating PBCs. To get traction on partnerships while minimizing risks, the panel suggested that the decision-making and implementation process follow these principles:

- **Starting Point — outcomes and results** that is, begin with the end in mind, asking what does success look like? Focus on the outcomes that can be achieved from the partnership relationships among sectors and levels of government. Outcomes should be beneficial to society and all people – not specific prescriptions, but rather solutions that generate results
- **Funding — the new normative condition.** Shift from a cost analysis to aligning financing with decision-making up front rather than a post decision-making step. Funding strategies are an integral part of front-end planning.
- **Decision-making — an iterative process** with continued evaluations that bring life cycle costs to the table particularly costs over time. Consider the full range of systems, not just alternatives. Experiment with how to get out of the stovepipes of programs.
- **Criteria for Success — benefits, lifecycle costs and risks** will be the key elements of a new decision-making process that will ensure allocation of risk and investment among the parties.
- **Approach — identify and draw on current practices**, particularly funding, that build on the experimentation within the country. Innovation and doing things differently is not only difficult but discouraged by the current funding processes and the difficulty of assessing risk.

- **Change Analytical Perspectives — move from risk avoidance to risk identification, risk mitigation, and risk management.** Properly assessing risks will be a key challenge for all the sectors and will require different actions and behavior of all the parties.
- **Leadership Challenge — remove hurdles.** Leadership needs to facilitate all the participants in identifying and removing hurdles that create inefficiencies (subtraction) and incentivize actions that increases efficiency (addition)

Opportunities for PBCs

The following are a few potential opportunities for establishing Public Benefit Corporations (PBCs), which could be modeled after ongoing domestic initiatives. These are an illustrative set of possibilities, keeping in mind the fact that additional initiatives are bubbling up wherever needs exist and leadership is willing to experiment. It is hoped that this starter list builds the confidence and understanding needed to expand the initiative.

One, create PBCs that would achieve the multiple outcomes of security, transportation infrastructure development, and environmental mitigation at the port of entries into the United States from Canada and Mexico. There are over 300 ports of entry where people, cars, trucks and trains cross into this country. The transportation infrastructure, security and safety operations are funded from the increasingly limited budgets of federal, state and local entities. The nation is having trouble building needed infrastructure, maintaining security, and dealing with the adverse fiscal effects on border communities. In only a few instances are tolls charged for bridges that enter the country and there are no entry fees for security and infrastructure to come into the country. For example, the City of El Paso and the City of Juarez charge tolls for trucks that operate on the Zaragoza Bridge between the cities. The reverse is true for expenses of infrastructure, security and local affects for leaving the country where fees are commonplace. The State of California granted legislative authority to The San Diego Association of Government in California to form an entity to build a business plan-based port of entry that could be the start of a “North American Borders” initiative.

Two, create Public Benefit Corporations that will achieve multiple objectives of parks, environmental management, conservation and open space using the model of the Presidio Trust. This could be a significant national initiative, especially given the number of parks at all levels of government that are experiencing closures or declining operations. To mobilize this effort a learning laboratory for federal, state and local parks could be launched by the National Park Service and NAPA.

Three, consider use of the Interstate Highway system prism for new integrated investments that could move people, goods, electricity and communications. Currently each infrastructure area (e.g., transportation, energy, communication) operates separately and independently. As a result, investments are not coordinated, failing to take advantage of the efficiency and synergy of an integrated investment program with multiple revenues streams on the Interstate corridors. This integrated approach could also address environmental, jurisdictional and financing obstacles that energy grid development, goods movement and high-speed transportation constantly face. By getting out of the stovepipe of each infrastructure area and by using the assets of each area collectively, we could mitigate or remove these barriers to develop fiscally viable environmental investments in our national infrastructure.

For example, the America 2050 Megaregions in the Southwest contemplates use of the Interstate highway system prism for new integrated investments to move people, goods, electricity and communications. In the Northeast, the Regional Plan Association and the University of Pennsylvania have developed multiple-use strategies for building the High Speed Northeast Corridor. Public Benefit Corporations, using the principles outlined above, will be needed to move these initiatives forward. Putting federal agencies together with state and local partners and involving the private and community interests on a few pilots is the key to such an initiative.

Four, amplify and expand the development of PBCs in communities throughout the country. A number of states have adopted laws enabling the establishment of PBCs, which are building and operating facilities by bringing new resources to the table in partnership with ongoing government programs. The tools and the decision-making principles of the action agenda would enable these initiatives to accelerate and coalesce to achieve more efficient use of scarce resources.

ARRA Management Lessons Applied to PBCs

The largest management experiment in governmental action in recent times is the American Recovery and Reinvestment Act (ARRA) of 2009. The IBM's Center for the Business of Government recently completed an assessment of lessons for mobilizing federal executives to create partnerships, create flexibility in program implementation and improve accountability and transparency. Notable among the lessons for public managers is the experience of bringing together Inspector Generals to monitor the implementation of the Act, a vital element for ensuring transparency and accountability.

The ARRA experiences and lessons in designing networks for performance and accountability suggest the potential value of establishing a Council for Fiscal Sustainability (CFS). Congress should create the nonprofit CFS using the same authorities and provisions as it has in creating the United States National Academies. Membership should include federal departments, state leaders, public interest organizations at all levels, business, labor and other interests that are necessary to accomplish the objectives of the council. The CFS would make recommendations on how to change the operating procedures of the governmental entities in the intergovernmental system so that new "rules of the game" provide an institutional design coupled with a culture of partnerships needed for the problem solving initiatives ahead.

The CFS offers significant potential with these actions among its early priorities:

- Take lessons on flexibility and speed of response from ARRA cases and incorporate these proven practices to become part of the administrative processes of the federal system.
- Accelerate bidding and procurement processes, identify potential federal bottlenecks in contract awards, and develop a mechanism for technology evolution in the public sector that occurs in NASA and military deployment. NAPA and The Aerospace Corporation, a federally funded research and development center, have developed a Memorandum of Agreement to start this process. The new Congress and Administration should support this initiative.
- Develop the integration of practices to work across federal agencies that will be needed to implement coordinated investment programs for bringing together multiple revenue streams.
- Provide a forum for the policy, coordinating and accountability in the development of Public Benefit Corporations and other new governance structures that can undertake these initiatives

in the country. The forum is to take the lessons learned from Fannie Mae, Freddie Mac, USEC and others to design appropriate risk sharing and accountability incentives and controls that protect the federal interest while at the same time engaging private initiative and financing. This accountability forum would offer an opportunity for the iterative dialogue that researcher Don Moynihan finds to be essential to developing performance management systems.

- Create real time learning by requiring the Council of Fiscal Sustainability (CFS) to report on the experience of PBCs on a monthly basis. These reports should draw from the successful ARRA Tracking Committee for Accountability (TCA) experience. The TCA used readily available information technology systems that enabled progress to be geographically identified and internet accessible.

Accountability — that is, tracking, reporting and maintaining transparency — was the greatest concern of the panel members and it should be a high priority for the CFS. The IBM Center report noted that systems developed from off-the-shelf tracking systems was one of the most visible and effective innovations. Internet access, based on geographic reporting, will enable all the parties, regardless of governmental level or sector, to be aware of the progress and problems. The social equity implications of these place-based initiatives will need to be tracked as well as incorporated into the institutional learning process. If inequities arise, mitigation strategies will need to be put in place. Real time sharing of information and management action will be essential for the problem-solving and results-achievement of this approach. This system will also be instrumental in developing the consumer or user knowledge so crucial to the financial success of this approach.

Manage Financial Risks of PBCs

There are many different risks associated with these initiatives: technological, environmental, institutional, project delivery and financial. The PBCs are a combination of all sectors and the risk associated with the projects should also be a shared responsibility of all the sectors. Traditionally, we reduce financial risk by collecting all the money for our public sector needs and allocating known resources on a pay-as-you go basis. The Public Benefit Corporation approach relies on future users and markets, which introduces the possibility that revenues may not be sufficient if the initiative is not correctly designed or if the unknown hazards arise. While the market is the vehicle for making the ultimate financial decision, a process that helps identify the range of risks and develops mitigation strategies throughout the decision-making and implementation phases will greatly assist. The international community shares risk by requiring the private sector to bear the risks of developing and building the project, while the public sector participates in the risks of financing the project with demand or utilization assurances. We would do well to learn from their experience, including what has worked and the extent to which risks of moral hazards are introduced by their approach.

An additional recommendation is to create a Risk Assessment and Mitigation Board (RAMB). The RAMB provides the capacity to review, assess, identify, and mitigate risk of each proposed PBC. The RAMB should have members from the financial, insurance, engineering and governance areas capable of providing the ongoing technical assistance for risk identification and assessment and should be housed in the Council of Fiscal Sustainability to insure transparency and accountability in the use of PBCs.

While risk mitigation can be a part of the business plan development, a financial backstop or assist mechanism will be needed given the international experience as well as domestic experiences of the Alameda Corridor and other new investments. The United States has experimented with an approach in the Transportation Infrastructure Financing Innovation Act (TIFIA), which provides advantaged financing. The original intent of the program to be a subordinated loan by the federal government was never fully realized. To assist in dealing with the demand risks, an Infrastructure Banking System using the authority of the Business Development Corporation Act of 1980 should be established by Congress with the authority to provide financial assistance to a PBC either as equity participation or as added debt in a financial restructuring to be repaid by the project. To avoid a moral hazard to the detriment of the U.S. government the infrastructure bank will use the actuarial assessment of the RAMB in making decisions and the banks participation will be limited to 20 percent of the investment portfolio. The bank would be capitalized by investments by individuals – that is, institutional investors, including pensions and sovereign wealth funds. The risk management structure of this Partnership as Fiscal Policy creates a sound basis for federal equity and debt investments in the Bank and to PBCs. These investments should be scored by OMB in the year of expenditure, rather than up front, as is the current practice. This change in practice would, in effect, create a Capital Investment Program at the federal level.

Conclusion

The future of our country rides on the will of national leaders to take decisive action. Given the bleak long-range fiscal picture, those who are being affected most are those that can least afford the economic impact. Good public administration finds ways to accomplish our goals by getting the organizations in our society to work together to achieve these goals even in the face of dwindling public financing.

We have much to discover about new rules of engagement among the sectors and between levels of government. The principles identified in this paper and the pilot projects we recommend and others that will emerge provide an opportunity to experiment and learn over time to begin to deal with our public goods issues. This is not a solution for every public goods problem. But the learning-by-doing approach could be useful in developing the capacity to address the needs of an increasingly stressed public sector at all levels of government. We must change the way we put ourselves together to meet our public sector needs for all and not further increase the fiscal stress of governmental actors. While the focus of the action agenda is our built environment, the approach could be extended in the future to health care and education to develop partnerships as funding strategy to address the fiscal dilemmas we face in these arenas.

The changes that we recommend are institutional changes coupled with shifts in organizational cultural among the sectors in our country. It will take time. This is not a short run undertaking, far from it. As a first step, we propose a set of demonstration projects that can be launched by the next administration to show that we can satisfy societal needs by working together differently.

**This memo was developed by the Memo to Leadership Panel consisting of Mark Pisano, chair, Alan Abramson, Jack Basso, Rich Callahan, Tom Downs, and Wendy Haynes with input from the Federal Systems Panel. The authors served as reporters of the Panel's work.*