



# Federal Public-Private Partnerships Financial Statement Reporting

Thursday, June 9, 2016

# Webinar Presenters

- Larry Checco, Founder and President, Checco Communications
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# Disclaimer and FASAB's Mission

## Disclaimer

- Views expressed are those of the speakers. The FASAB expresses its views in official publications.

## FASAB's Mission

- The FASAB **serves the public** interest by **improving federal financial reporting** through **issuing federal financial accounting standards** and **providing guidance** after considering the needs of external and internal users of federal financial information.

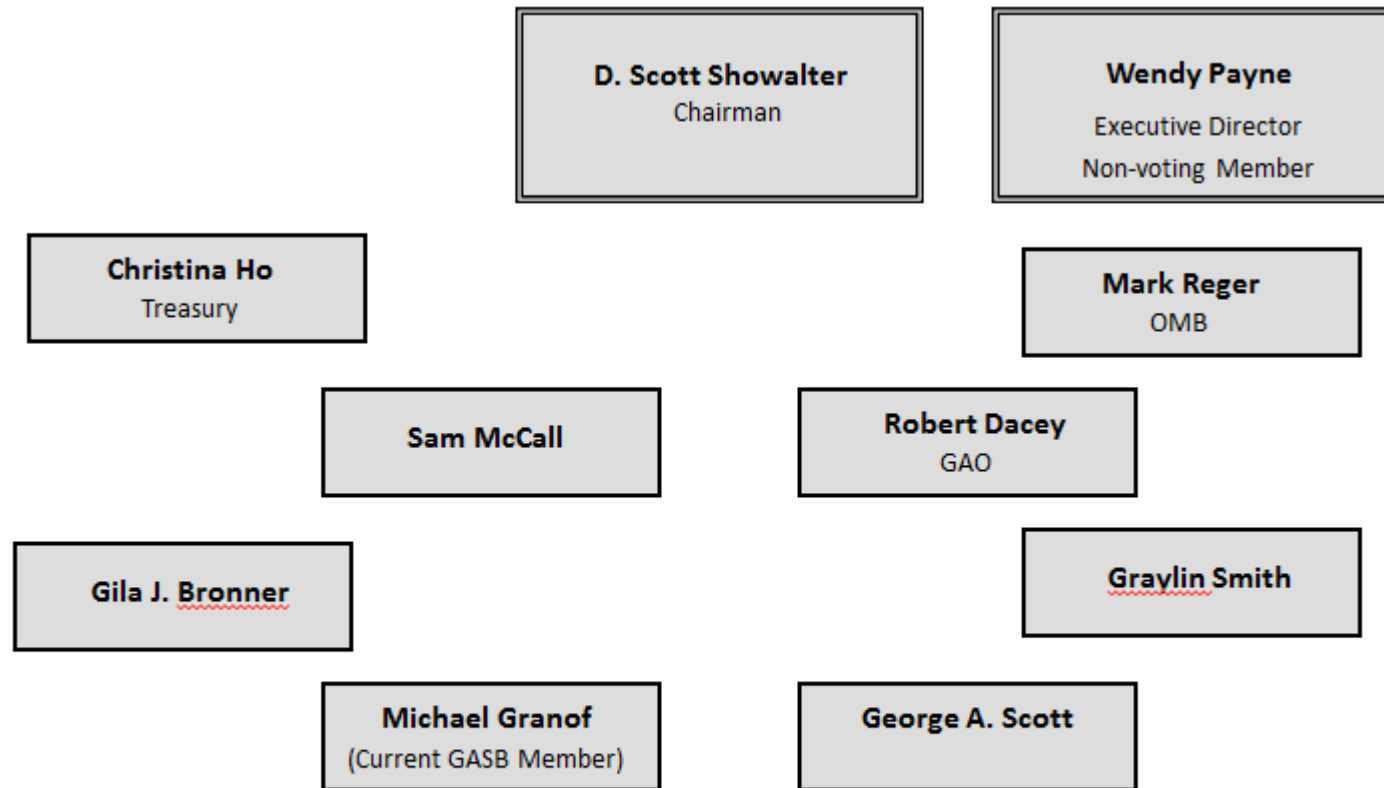
# What Is FASAB?

One of three U.S. accounting standards-setting organizations



# Who Is FASAB?

9 board members supported by 8 staff



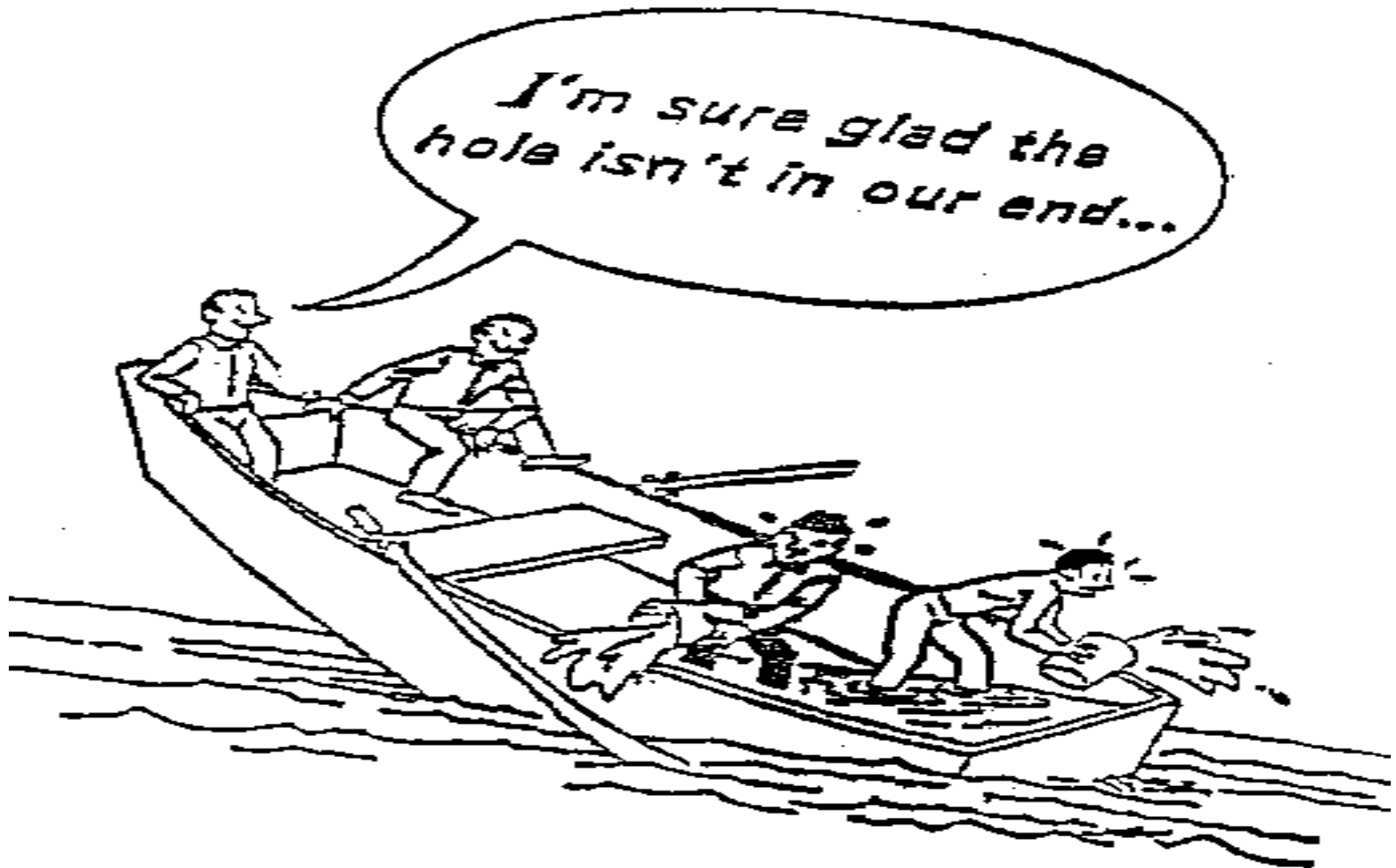
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# What Are P3s?

Robert D. Helwig, JD  
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Formerly Office of the Secretary of Defense

# Illustration of a P3



# What Are Public-Private Partnerships?

As defined by National Council for Public-Private Partnerships

- A public-private partnership (P3) is a **contractual arrangement** between a public agency (federal, state, or local) and a private sector entity. Through this agreement, **the skills and assets of each sector (public and private) are shared** in delivering a service or facility **for the use of the general public**. In addition to the sharing of resources, **each party shares in the risks and rewards** potential in the delivery of the **service and/or facility**.



“...A rose, by any other name would smell as sweet.”  
—William Shakespeare, *Romeo and Juliet*



- P3s are risk-sharing arrangements that take many forms and go by different names.
- States use P3s in toll road concessions (SCAs).
- P3 arrangements and transactions may include:
  - contracts
  - reimbursable agreements
  - alternative financing arrangements
  - privatization initiatives
  - other arrangements or transactions
- Note that P3s can also employ grants or collaborative agreements.
- A few examples of P3 use in the federal space:
  - DoD military base housing
  - NASA office construction and energy development
  - VA medical center construction

# Why Do Governments Use P3s?

Partly due to budgetary constraints or lack of skill-sets, governments are increasingly using innovative approaches to partnering with non-governmental entities. Benefits include:

- Carrying out a public purpose
- Support or stimulation of specific legislation
- Funding projects with low bankability/financial capability
- Leveraging private partner's expertise, infrastructure, network, etc.
- Risk sharing
- Enhanced performance outcomes
- Financing arrangements to avoid large up front investments of taxpayer funds
- **However, P3 arrangements may obscure costs, risks, and results.**

# Polling Question #1

The NCPPP defines a P3 in part as an agreement where “the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of...”

- A. The general public
- B. The primary government
- C. Both the general public and primary government
- D. Investors and other key stakeholders’
- E. Uncertain

# Polling Results

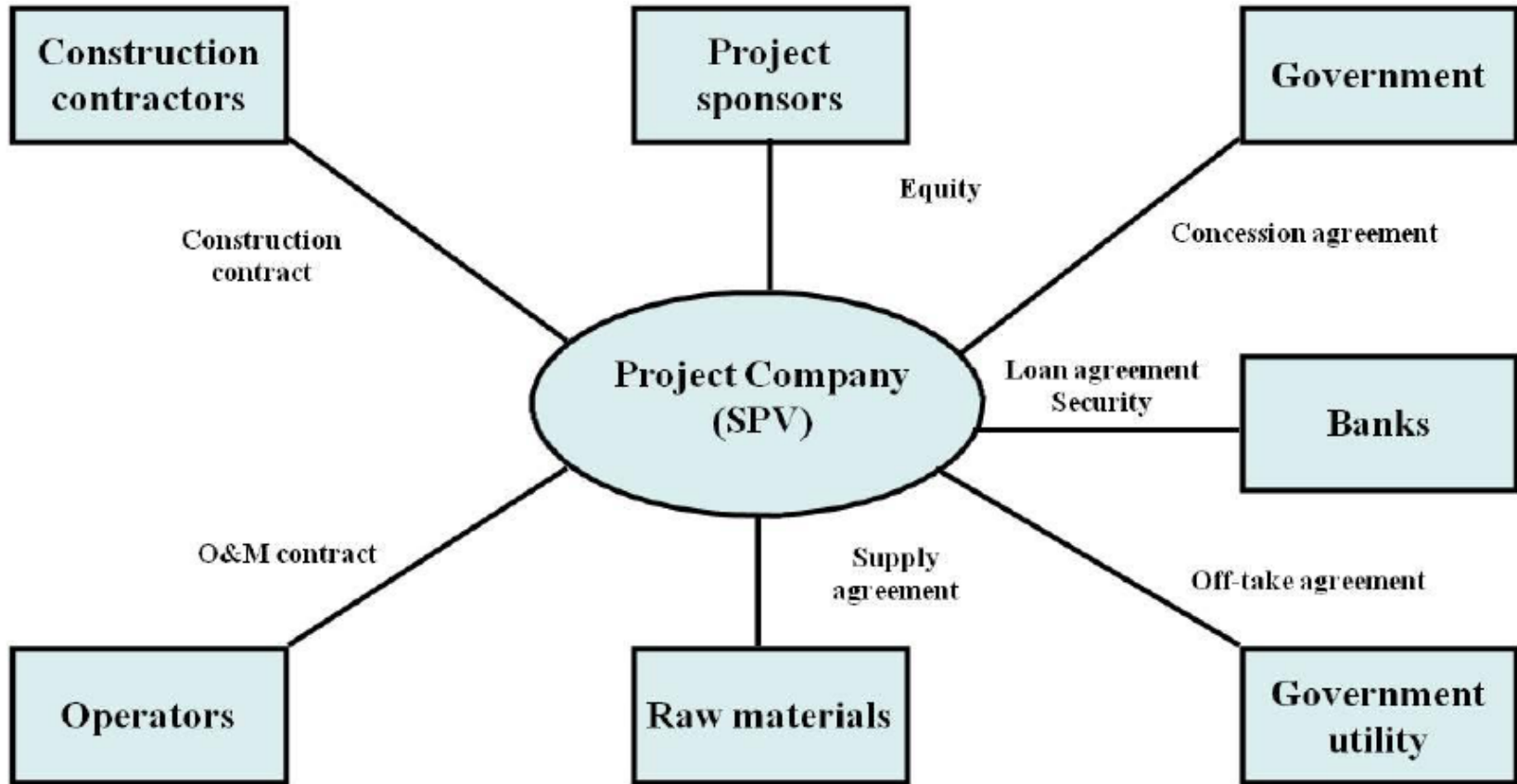
## Polling Question #2

Governments are increasingly using innovative approaches to partnering with non-governmental entities and, as a result, accrue many benefits. However, P3 arrangements may:

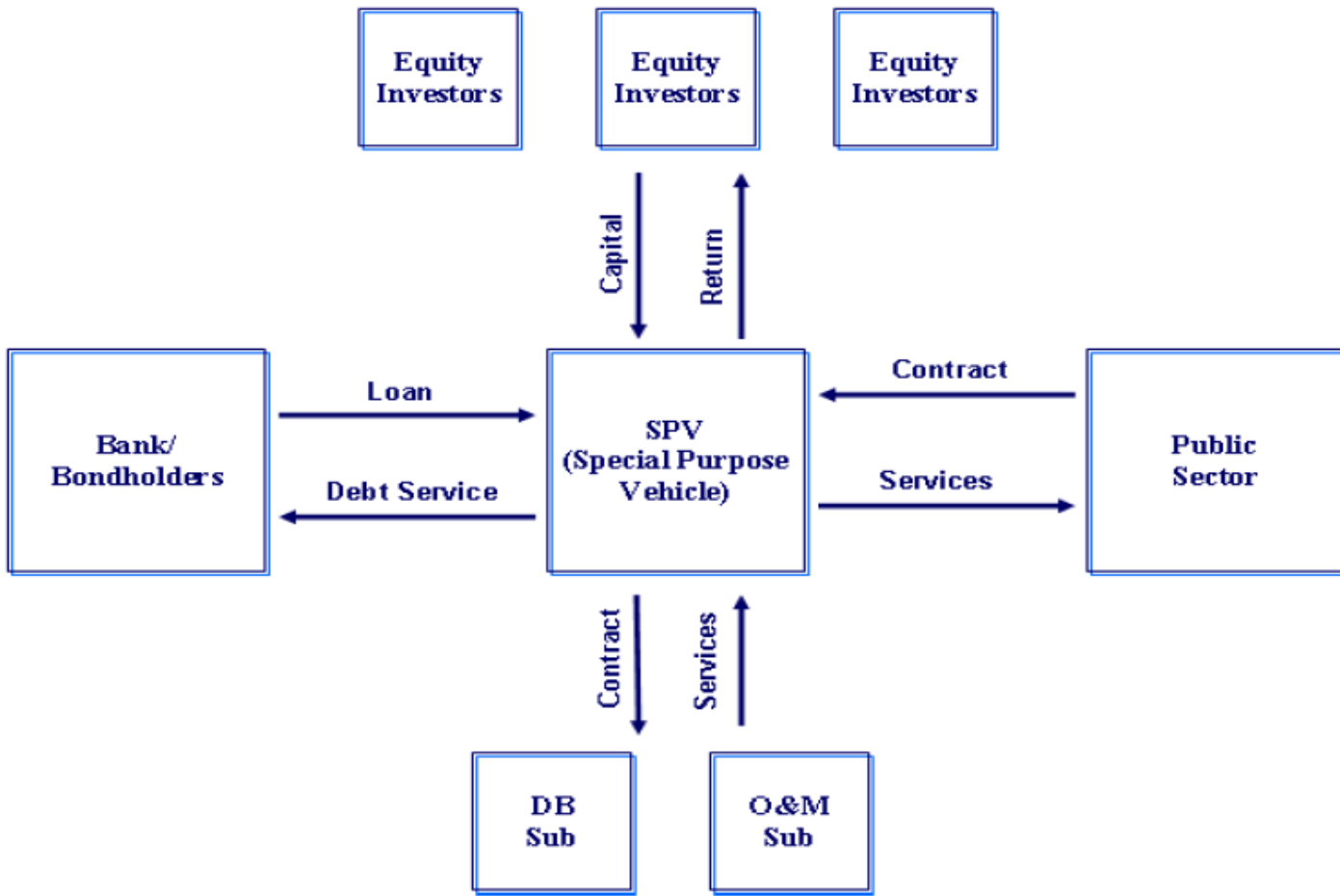
- A. Result in recognizing contingent assets
- B. Obscure costs and results
- C. Overstate contingent liabilities
- D. Obscure costs, risks, and results
- E. Uncertain

# Polling Results

# Typical P3 Contractual Arrangement



# P3 Financing (an Example)





# Some General Pros and Cons of P3s

## Pros

- ❑ Access to private financing
- ❑ Off-balance sheet borrowing
- ❑ Budget certainty
- ❑ Lifecycle costing
- ❑ Risk transfer
- ❑ Private sector efficiency & innovation

## Cons

- ❑ Higher financing costs
- ❑ Higher procurement costs
- ❑ Long-term contracts
- ❑ May still be on-credit
- ❑ Undefined legal, regulatory framework
- ❑ Political risk

# Government Compensation and Relief Events

## Compensation Events

- Government compensates SPV
- Change in output specs by government
- Changes in law
- Other changes not made by government but for which it is responsible
  - ▣ Construction site risks
  - ▣ Damage by users/staff

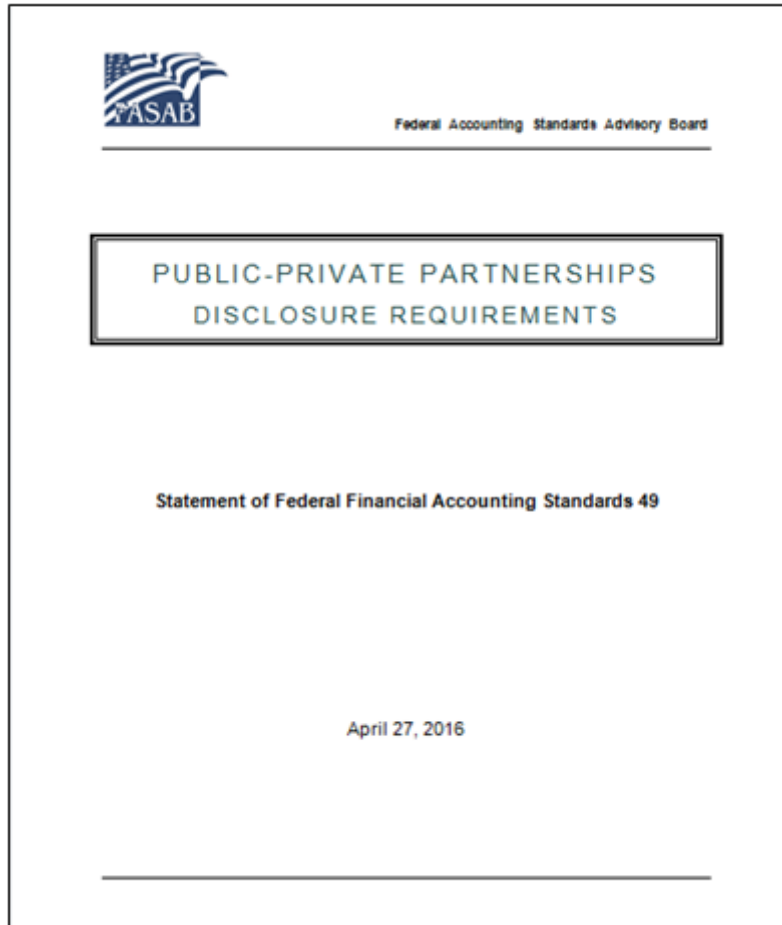
## Relief Events

- Temporary *Force Majeure*
- Fire, accidental damage
- Civil disturbance
- Strikes
- Failure of 3<sup>rd</sup> parties
- Failure of utility svcs

# Overview of SFFAS 49, P3 Disclosure Requirements

Larry Checco  
Founder and President  
Checco Communications

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



- Issued April 27, 2016
- Effective FY19 and early adoption permitted
- Exempts certain arrangements
- Establishes a P3 definition and risk-based characteristics that need to exist as a requisite for disclosure
- Disclosures comprise quantitative and qualitative information

# What Are *Federal* Public-Private Partnerships?

As defined by FASAB's SFFAS 49, Par 16

**Par 16**—Subject to the **exclusions** noted in Par 15 and for the purposes of this Statement, federal public-private partnerships (P3s) **are risk-sharing arrangements** or transactions **with expected lives greater than five years** between public and private sector entities. Such arrangements or transactions **provide a service or an asset for government and/or general public use** where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions.

# Polling Question #3

SFFAS 49's P3 definition is different than most other P3 definitions. The key features that make the SFFAS 49 definition unique include:

- A. Specific exclusions including arrangements/ transactions that are 5 years or less.
- B. Including arrangements/transactions that also benefit the government.
- C. It excludes arrangements/transactions using the risk/reward model.
- D. Both A and B
- E. Uncertain

# Polling Results

# Public-Private Partnerships

## SFFAS 49 P3 Disclosure Requirements Overview

If the arrangement or transaction is a P3, first go to the Conclusive Characteristics.

If the P3 meets any one of the Conclusive Characteristics it is subject to disclosure (if material) and we stop here. If no, go to the Suggestive Characteristics.

If the P3 meets one or some of the Suggestive Characteristics we must apply managerial judgment before deciding whether the P3 is subject to disclosure (if material).



# Types of Risks Identified by the Board

## Generic P3 Risks:

- General political risks
- Site-related risks
- Construction risks
- Completion risks
- Operation-phase risks



## Some specific P3 Risks noted by Board:

- Actual costs will be greater than budgeted costs
- The government may have to absorb part or all of the project's private debt
- The private partner will not achieve expected returns on investments in limited partnerships
- Conditions may lead to a government - acknowledged event where the government assumes financial responsibility for the event
- The public purpose or public value will not be fulfilled or achieved

# Risks Identified by the Task Force and via Fact-Finding Meetings

- **Increased Risk to Citizens.** A few participants noted that P3s erode (1) the notion of public service (for example, what is inherently governmental) and (2) in many cases, belief in good government. This increased risk is evidenced by those entities that:
  - a. purposefully avoid capital acquisition budgeting requirements
  - b. absorb “availability” risk<sup>16</sup> absent sufficient private partner consideration
  - c. lose control of assets
  - d. lock into long-term arrangements/transactions that cannot be re-competed or re-negotiated
  - e. are constrained by contract modification restrictions
  - f. are constrained by proximity and/or right-to-compete restrictions
  - g. ignore government employee personnel (legacy) costs

# Polling Question #4

The Board noted that there are risks that citizens face when a government enters into a P3. One of the risks identified is:

- A. Site related
- B. Financing
- C. Political
- D. Government absorption of private debt
- E. Uncertain

# Polling Results

# Required Disclosures

## SFFAS 49, Par 24

24. Disclosures should be provided for the initial period and all annual periods thereafter where an entity is party to a P3 arrangement/transaction. The following information should be disclosed:
- a. The purpose, objective, and rationale for the P3 arrangement or transaction and the relative benefits/revenues being received in exchange for the government's consideration, monetary and non-monetary; and the entity's statutory authority for entering into the P3.
  - b. A description of federal and non-federal funding of the P3 over its expected life, including the mix and, where available, the amounts of such funding. For any amounts that are not available, the disclosures should indicate such.
  - c. The operational and financial structure of the P3 including the reporting entity's rights and responsibilities, including:
    - i. A description of the contractual terms governing payments to and from the government over the expected life of the P3 arrangement or transaction to include:
      1. explanation of how the expected life was determined
      2. the time periods payments are expected to occur
      3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances
      4. in-kind contributions/services and donations



# Required Disclosures (continued)

## SFFAS 49, Par 24



- ii. The amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid in aggregate over the expected life of the P3
- d. Identification of the contractual risks of loss the P3 partners are undertaking
  - i. Identification of such contractual risks of loss should include a description of (1) the contractual risk and (2) the potential effect on cash flows if the risks were realized (for example, early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, contingent payments, or renewal options).
  - ii. Disclosure of remote risks of loss should be limited to those included in the terms of the contractual P3 arrangements or transactions. If remote risks of loss are disclosed, an explanation should be included that avoids the misleading inference that there is more than a remote chance of a loss.
- e. As applicable:
  - i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items
  - ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction
  - iii. Whether the private partner(s), including any Special Purpose Vehicle (SPV), have borrowed or invested capital contingent upon the reporting entity's promise to pay whether implied or explicit
  - iv. Description of events of termination or default

# Break

## 10 Minutes

# Nuts and Bolts of SFFAS 49, P3 Disclosure Requirements

Domenic N. Savini, CPA CMA  
FASAB Assistant Director and P3 Project Director



# First, What Did the Board Exclude?

## SFFAS 49, Par 15

The Board excluded the following 6 types of arrangements or transactions:

1. Non-lease acquisitions of PP&E subject to FAR and where the private entity is not directly financing, operating, or maintaining the PP&E as part of an overall risk-sharing arrangement or transaction
2. Leases that are not bundled and are entered into using GSA-delegated authority
3. FAR Part 13 Simplified Acquisition Procedures
4. Formal and informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, encourage economic development, promote research and innovation, or coordinate and integrate strategic initiatives
5. Grants to state, local, and Indian tribal governments and other public institutions and arrangements or transactions with foreign governments
6. Arrangements or transactions in which private entities voluntarily contribute nominal resources or provide incidental resources without expectation of compensation or government indemnification for any possible risk of loss

# What Are *Federal* Public-Private Partnerships?

As defined by FASAB's SFFAS 49, Par 16

**Par 16**—Subject to the **exclusions** noted in Par 15 and for the purposes of this Statement, federal public-private partnerships (P3s) **are risk-sharing arrangements** or transactions **with expected lives greater than five years** between public and private sector entities. Such arrangements or transactions **provide a service or an asset for government and/or general public use** where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions.

# What Is Risk/Reward Sharing in a Federal P3?

SFFAS 49, Par 17

Par 17—A public sector entity shares risks and rewards with a private sector entity **whenever the benefits of the arrangement or transaction accrue to both the private sector entity and the public sector entity and (1) the public sector entity is at risk of loss, or (2) the private sector entity's ability to perform is at risk and success of the arrangement or transaction depends upon the public sector's intervention.**

# Expected Lives Must Be Greater Than 5 Years

## SFFAS 49, Par 18

- The term or period, including **consideration of economic incentives**, that partners are likely to participate in the P3.
- **Initially determined at the inception** of the P3 arrangement when the economic incentives are identified.
- Economic incentives considered may **include expected significantly reduced costs or increased efficiencies** if contracts are renewed or if the P3 approach is continued.
- Typically, **expected life is documented in budget justifications, cost benefit or value for money analyses, or other analyses.**
- Expected life **may extend beyond the current contract period** (including options or renewals).
- **Expected life is re-evaluated** as P3 contracts are renewed and when the entity identifies significant changes in circumstances during the contract period that may affect the expected life.

# Two Examples of Expected Life Determinations

## SFFAS 49, BFC A41

### Example 1 – Infrastructure P3

- Consider an infrastructure arrangement containing a master ground lease of 50 years where in exchange for an up-front payment the entity out-leases (government-owned) land for the construction of an office building and at the same time enters into an occupancy lease which can be renewed for up to 75 years. The expected life of the P3 should be limited to 50 years given the fact that the entity's economic incentive at year 50 changes due to the master ground lease's expiration. That is, at such time the entity may decide to renew the master ground lease and renegotiate its occupancy lease or sell the land and not renew the occupancy lease. As a result, the amounts estimated to be received and paid in aggregate over the 50 years would be reported.

# Two Examples of Expected Life Determinations

(continued) SFFAS 49, BFC A41

## Example 2 - Services P3

- Now consider a spare parts sustainment program where an entity partners with an inventory logistics firm to handle the entire supply chain management function of a major weapons system expected to remain in service for the next 25 years. Although by statute the entity can only enter into a 5 year (for example, base year with 4 renewable options) contract, it has an economic incentive to maintain the relationship beyond 5 years. This is primarily due to the fact that the private partner is likely to incur a substantial investment to manage the supply chain and the investment will need to be recovered over time. As a result, the amounts estimated to be received and paid in aggregate over the 25 years would be reported.

# Polling Question #5

True or false? Expected life is re-evaluated as P3 contracts are renewed and when the entity identifies significant changes in circumstances during the contract period that may affect the expected life. However, in no instance may expected life extend beyond the current contract period (including options or renewals).

- A. True
- B. False
- C. Uncertain

# Polling Results



# Step 1: Is the Arrangement or Transaction a P3?

If the arrangement or transaction is a P3, first go to the Conclusive Characteristics.

1. Do we meet any of the exemptions at Par 15?
2. Is there risk-sharing as defined at Par 17?
3. Is the expected life as described at Par 18, including economic incentives greater than 5 years?

If we are not exempt and answer yes to risk-sharing and expected life conditions, we proceed to our conclusive characteristics.

# Step 2: Apply the Risk-Based Characteristics (RBCs).

If the P3 meets any one of the Conclusive Characteristics it is subject to disclosure (if material) and we stop here. If no, go to the Suggestive Characteristics.

1. Do we meet any one of the risk-based conclusive characteristics at Par 20?
2. If not, we proceed to test the arrangement or transaction using the suggestive risk-based characteristics at Par 21.

If we meet any one of the conclusive RBCs, the arrangement or transaction should be disclosed if material.

If we do not meet any of the conclusive RBCs, we then proceed to the suggestive risk-based characteristics and apply judgment.

# Steps 3 & 4: Apply Judgment to the Suggestive RBCs and Assess Materiality.

If the P3 meets one or some of the Suggestive Characteristics we must apply managerial judgment before deciding whether the P3 is subject to disclosure (if material).

## Step 3: Applying judgment to the Suggestive RBCs

1. The suggestive RBCs are evidence that P3s may possess risk of loss and require disclosure.
2. They should be considered in the aggregate.
3. Each suggestive RBC will require entity judgment as each characteristic is analyzed in connection with the other suggestive RBCs.

## Step 4 (final step): Assessing materiality

- The Board notes that because materiality assessments require both qualitative and quantitative judgments, specific guidance limiting preparer and auditor considerations of information would not be appropriate.

# Conclusive Risk-Based Characteristics

Conclusive – “You’re in if you meet *any* one.”

1. Creation of a long-lived **asset or long-term financing liability**.
2. The **federal entity** participates in or helps sponsor an **SPV, partnership, trust**, etc.
3. The **term** of the arrangement **covers a significant portion of the economic life** of a project or asset.
4. The principal arrangement is **exempt from** the Federal Acquisition Regulation (**FAR**) or, if a grant, the Office of Management and Budget (**OMB**) requirements (2 C.F.R. Title 2, Part 200).

# Suggestive Risk-Based Characteristics

Suggestive – “maybe, maybe not” – requires judgment. View each SC in light of the others.

1. A **value-for-money** analysis is performed.
2. The **consideration** or items given up in an arrangement, **or their value, are not readily apparent.**
3. **Significant work force duties**, activities, or knowledge **are cross-shared** between public and private sector P3 parties.
4. The **focus is more on collaboration** and informal, real-time, resolution processes as opposed to formal, contractual, administrative processes.
5. **The government relies on either the private sector partner’s or a third party’s determination of a P3’s performance or return on investment/equity, without performing its own verification** of performance/return on investment/equity.

# Polling Question #6

An entity identifies a potential P3 for disclosure and notes that because payments made only represent 0.3% of its total expenses, it need not be reported. This situation best describes:

- A. Materiality only measured quantitatively
- B. Materiality only measured qualitatively
- C. An incomplete materiality assessment
- D. Materiality only measured quantitatively & qualitatively
- E. Uncertain

# Polling Results

## P3 Case Studies

Case views illustrated here are for instructional purposes only. The Board expresses its views in official publications following due process procedures and deliberations. As such, the Board may reach different conclusions than those illustrated here.



# Washington Metropolitan Area Transit Authority (WMATA)

## Background

- Pursuant to Public Law 89-774, WMATA was created by Congress effective February 20, 1967, to plan, construct, finance, and operate a public transit system to serve roughly 14 cities/counties in Maryland and Virginia.
- The federal government has provided about 60.0% of the funds used to construct the system.
- Congress has a continued interest in the viability of WMATA due to the system's importance to the functioning of the federal government.
- In recent years WMATA has faced serious financial, budgetary, and, most recently, operational problems.
- Since inception, the Authority has operated at a loss, which has been fully subsidized each year by the participating jurisdictions.

# Washington Metropolitan Area Transit Authority (WMATA)

## Key Facts

- Pursuant to Article VII, Section 18, of the Compact, each budget indicates the amounts, if any, required from each participating jurisdiction to balance the budgets.
- Based upon the provisions of US-GAAP applicable to government entities, management has determined that it is a joint venture of the participating jurisdictions.

## Step 1: Is the Arrangement or Transaction a P3?

- Does WMATA qualify as a federal P3?
- *Federal public-private partnerships (P3s) are risk-sharing arrangements or transactions with expected lives greater than five years between public and private sector entities.*

# Washington Metropolitan Area Transit Authority (WMATA)

- Although WMATA appears to be a risk-sharing arrangement, the fact that it operates pursuant to an agreement between and among public entities (federal, state, and local) would qualify it more along the lines of a *public-public* partnership and not *public-private* partnership.
- As such, the provisions of SFFAS 49 would not apply.

# In-Q-Tel

## Background

- By the late 1990s the Central Intelligence Agency (CIA) recognized that it could not effectively compete for Information Technology (IT) innovation and talent.
- To that end, in February 1999 the CIA chartered In-Q-Tel, a venture capital fund, as a non-profit organization with the support of Congress and with the help of a small group of private citizens.
- In-Q-Tel was initially established to do only unclassified work for the CIA and was designed to be exempt from the FAR (Federal Acquisition Regulation) to allow for greater flexibility in areas such as procurement, contracting, and technology transfers.
- In-Q-Tel now supports multiple agencies, such as the National Geospatial-Intelligence Agency, Defense Intelligence Agency, and Department of Homeland Security Science and Technology Directorate. The Corporation has offices in Washington, DC, and Menlo Park, CA.

# In-Q-Tel

## Key Facts

- In-Q-Tel’s former CEO, Gilman Louie, said the following in an interview:

“The best thing about In-Q-Tel, to me, is that it’s risky. The CIA and the rest of the government need to catch the entrepreneurial, risk-taking spirit that’s driving the Silicon Valley technology revolution. The CIA’s new venture may fall flat, but so what. Washington has been a zero-defect culture for too long. If we want a CIA that performs better, we’ll need to take more risks—and give our government freedom to fail.”
- The CIA does not have a typical “program management” oversight relationship with In-Q-Tel.
- Although In-Q-Tel does not require Agency approval for its business deals, there is a significant amount of coordination between the CIA and In-Q-Tel on all business-related issues.

# In-Q-Tel

## Step 1: Is the Arrangement or Transaction a P3?

– Unlike WMATA, In-Q-Tel is a non-profit corporation and can be considered a private entity per SFFAS 49, Par 13, footnote 6:

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

# In-Q-Tel

- Step 2: Is There Risk Sharing? (Apply the RBCs)
  - Yes, as per the former chairman’s comments:  
“If we want a CIA that performs better, we’ll need to take more risks—and give our government freedom to fail.”
- However, although we seem to meet the basic definition at Par 16, the wrinkle we have to iron out is the Par 13, footnote 6, requirement as to whether In-Q-Tel truly operates “outside of the authority and control of” the federal government.
- If we answer yes, we can then move to the Risk-Based Characteristics (RBCs). If not, In-Q-Tel would not meet the SFFAS 49 but would be subject to other requirements such as SFFAS 47, *Reporting Entity*.

# Polling Question #7

The Risk-Based Characteristics (RBCs) should only be applied after an arrangement or transaction has been carefully reviewed to see if it meets the definition of a federal P3. Which below feature is false?

- A. Must be between public and private sector entities.
- B. Expected lives must be 5 years or greater.
- C. Risk-sharing as defined in standard must exist.
- D. Must provide a service or an asset for government and/or general public use.
- E. Uncertain



# Polling Results

# P3 Measurement and Recognition Issues

# Potential Measurement and Recognition Issues

1. Balance sheet valuation. Should the full value of the P3 be capitalized?
2. Capital leases, minimum lease payments, discount rate(s), inception of lease.
3. Interest in an SPE/SPV, reversionary, or residual interests.
4. Single or unitary payments, capitalization of interest. Should financing be imputed?
5. Asset capitalization, fair value, asset re-measurement.
6. Non-monetary exchanges, in-kind consideration (donated assets), unearned revenue.
7. Other matters – intellectual property and privatization.

# Potential Measurement and Recognition Issues

- FASAB intends to address measurement and recognition in phase 2 of the P3 project scheduled for FY 2018 beginning October 1, 2017.
- Until such time, practitioners are reminded that existing measurement and recognition guidance should be used.
- If you are interested in joining the task force and tackling any one of these areas, please let us know.

# Polling Question #8

Because FASAB has yet to address measurement and recognition topics specific to P3s, what is the first course of action a practitioner should take if they have any questions in this area?

- A. Follow appropriate FASB or GASB standards.
- B. Use OMB budgetary guidelines or CASB cost accounting practices.
- C. Immediately follow FASAB concept statements.
- D. Follow the procedures as outlined in SFFAS 34: *The Hierarchy of Generally Accepted Accounting Principles, Including the Application of Standards Issued by the Financial Accounting Standards Board.*
- E. Uncertain

# Polling Results

# Contact and Website Information

- Domenic can be reached at: [savinid@fasab.gov](mailto:savinid@fasab.gov), 202-512-6841
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# Thank You

