Pay for Success in the Workforce Innovation and Opportunity Act
Frequently Asked Questions

The following provides information about the Pay for Success provision in the Workforce Innovation and Opportunity Act (WIOA), which was signed into law in July of 2014, and the potential opportunities for engagement in the short and long term process in the implementation of these provisions.

GENERAL QUESTIONS:

Q: What is the Workforce Innovation and Opportunity Act (WIOA)?
A: WIOA is the new law that replaced the Workforce Investment Act upon enactment on July 22nd, 2014, the largest piece of legislation governing the American workforce development system. The annual appropriation for WIA is close to $2.5B. In FY14, Congress funded the programs under WIA at approximately $2.4 billion, covering 3 major funding streams – adult workers, youth, and dislocated workers. WIOA is a new law with several important changes to the old law. The full language of the bill can be found here, the fact sheet can be found here, and the FAQ on WIOA prepared by the U.S. Department of Labor can be found here.

Q: When does full implementation of WIOA take effect?
A: The majority of WIOA provisions will become effective on July 1, 2015, the first full program year (PY) after enactment. However, the Act includes several provisions that become effective on other dates. For example, the WIA State and local plans remain in effect for PY 2015 and the new State Unified Strategic Plan is to be submitted for PY 2016, which begins July 1, 2016. In addition, the WIA performance accountability section remains in effect for PY 2015, with the new WIOA performance accountability provisions taking effect at the beginning PY 2016. The full timeline can be found here. Some major points to note:

- **By January 2015:** No more than 180 days after this date, Department of Labor (DOL), Department of Education (ED) and Department of Health and Human Services (HHS) must publish Notices of Proposed Rulemaking to implement WIOA.
- **July 2015:** Most provisions take effect, unless otherwise noted in the Act (1st full program year (PY) after enactment)
- **July 2016:** All provisions in WIOA take full effect by the second program year.

Q: What is Pay for Success?
A: Pay for Success (referred to as 'pay for performance' in the bill) is a performance-based contracting arrangement between government and a social service provider in which impact is measured rigorously for 'high bar' outcomes and government only pays 'for success' when results are achieved within a specific timeframe. By only paying for programs that are working, these funding models use tax payer dollars more efficiently and direct resources to programs getting real results, instead of only measuring the number of people they serve.

Because Pay for Success arrangements do not require pre-determined interventions, local and state governments can be flexible in selecting innovative and effective programs to deliver much needed services in their community. In some cases, private sector funders may provide up-front financing for the delivery of services (an arrangement commonly known as "Social Impact Bonds"), taking on the risk that the intervention will not succeed and receiving success payments only if it does.

In WIOA, Pay for Success is broadly and does not proscribe a specific type of arrangement or intervention, allowing for flexibility in the construct of the project, as long as certain requirements detailed below are met.

Q: How is Pay for Success defined in WIOA?
A: WIOA includes the following criteria for a Pay for Success/Pay for Performance Contract (defined in Section 3 of the bill):

- Fixed amount that will be paid to an eligible service provider (including providers not previously approved by the local workforce board, which may now include community-based organizations, community colleges, nonprofits, other training providers) based on achievement of a specified level of performance for target populations as identified by the local board in accordance with the performance accountability system established by WIOA (found in Sec. 116(b)(2)(A) of the bill)
- Pre-determined time table for achieving outcomes and related 'success' payments, which may include bonus payments for the service provider to expand its capacity
- Independent validation of the achievement of the performance described in the contract
- Description of how the State or local area will reallocate funds not paid to a provider because the achievement of the pre-determined outcomes is not met

Q: How is Pay for Success different from traditional Performance Contracting in the workforce development system?
A: Although it's referred to as 'pay for performance' in the bill, Pay for Success is different from traditional performance based contracting. Very often, performance contracting in the workforce space has focused on 'input's and 'outputs' rather than 'outcomes,' where funding may be based on the number of people served through a training program and some early indicators of success like achievement of credentials. However, outcomes, like job placement and retention for a pre-determined period of time (ex: 6 months) are not currently the determining factors of many contracts. Pay for Success in WIOA would flip this concept and incentivize contracts that would hold providers accountable for 'high bar' outcomes and success payments would only flow to providers delivering those pre-negotiated outcomes.

Q: What is the total amount of money that could be used on Pay for Success?
A: Although several provisions and changes in the law (like changes to the youth funding streams detailed below) could be coupled with a Pay for Success approach, there are two primary sources of funding authorized under WIOA that could be targeted for Pay for Success:

- 10% reserve for local boards to use on Pay for Success in all 3 major funding streams. In FY14, WIA was funded at $2.6 billion, so this would amount to $260 million nationwide for Pay for Success under discretion of local boards.
- 15% of Governor's reserve for state-wide activities that allows for innovations such as Pay for Success that will drive toward better outcomes (could include evaluation of programs, new data approaches, etc.). This is about $360 million in total.

There is another provision in WIOA that allows Governors to use non-federal funds to establish incentives for local boards to implement PFS Contracts for the delivery of training services which could allow for an even greater amount of funds used toward PFS.

Q: Why is the Governor's reserve being restored to 15% and can this be considered 'new' money?
A: Under the old law (WIA), Governors were authorized to reserve up to 15% of the grants to states that flow down from the three major funding streams (adults, youth, and dislocated workers) and pass the rest of the money to the local boards through formula funding. The Governor could use that 15% reserve on state-wide activities to meet the goals of the state plan for workforce development and to pilot and test innovative approaches such as competitive prizes, assistance on evaluation, conduct feasibility studies for pay for success, etc.

Over the past three years, however, appropriators in Congress have reduced the total amount of money in grants to the states by decreasing the amount of money the Governor could reserve to 5% and deployed the other 10% of that money to fund the Workforce Innovation Fund at the national level through the U.S. Department of Labor. This approach did not change the amount of money that flowed to the local workforce boards, but did reduce the Governor's set aside. The FY14 appropriation bill included a partial restoration to the Governor's reserve and allows for an additional 2.5% for PY14, which is new money that the Governor did not have the ability to reserve in past years. Next year, under WIOA, the Governor's reserve will be fully restored to 15%, thus doubling the current allowable reserve and increasing the amount of new money that could be used on Pay for Success by 50% from the current program year for a total of up to $360 million.

Q: What is a permissible use of the 10% of local funds in the context of pay for success?
A: The specific regulations for the use of funds will be determined by the U.S. Department of Labor in the coming year. However, allowable uses are likely to include many or most of the Pay for Success activities underway in various workforce related pilot projects around the country and some governors may help define what will be allowable by seeking Department of Labor approval to amend their current PY14 WIA state plans to launch Pay for Success strategies now.

OPERATIONALIZING PAY FOR SUCCESS IN WIOA:

Q: How can Governors and states take advantage of this provision before the official regulations from the U.S. Department of Labor are released?
A: There are several things Governors can do in the short term (next few months) and longer term.

- Funds are available annually for states under WIOA, but states must submit a plan in order to draw down those funds. Typically, the local workforce investment boards (WIBs) develop individual plans that are then submitted to the Governor as inputs for a single state plan that the Governor will then submit to the U.S. Department of Labor. Plans go into effect July 1 at the beginning of each program year and funds are disbursed to the states in order to carry out the details in the plan. Governors can, however, at any point request an amendment to their state plan.
- The current state plans (for program year 2014) went into effect July 1st, 2014 and Governors have the opportunity to amend those plans (especially since few resources have, as yet been drawn down). Amending the state plan requires a letter to the U.S. Secretary of Labor that states the intent to amend the plan to include the Pay for Success provisions. The Governor could propose how to use funds and could include those specifics in the plan amendment (such as a demo program for Pay for Success, or a pre-negotiated arrangement with certain WIBs, etc.).
- Governors can also advise their local workforce boards that inclusion of Pay for Success will be a priority for the PY15 State plan and encourage their local workforce boards to include that as a

component of the plans they will begin writing in the coming months for submission to the Governor in early 2015.

Q: What can Local Workforce Boards do to take advantage of this provision?
A: There are several things workforce boards can do in the short and long term to incorporate Pay for Success strategies.

- Work with the State Workforce Agency to help amend the current state plan to include Pay for Success.
- Many local WIBs will soon begin drafting their individual plans that will be submitted to the Governor for approval (likely in early 2015) and can include pay for success approaches in those plans.
- Encourage high performing nonprofit partners to become eligible training Pay for Success providers and incorporate their successful Pay for Success program designs into their local PY14 plans.

Q: What role does social financing or 'social impact bonds' play in WIOA?
A: In some Pay for Success contracts, particularly where there may be a delay between program delivery and success payments, social financing instruments like social impact bonds could come in to play. WIOA does not prescribe the use of social financing in Pay for Success arrangements in the workforce space and individual contracts will determine whether a financing mechanism is needed. Should states decide to amend their plans for the current program year to use Pay for Success, it is unlikely, given the short time frame, that projects with financing mechanisms will be employed. The longer timeframe of 2 years for spending down the money could allow for future program years and state plans to incorporate projects with a financing component. In a contract where social financing is involved, the money from WIOA could be used for success payments, to reward the leveraging of additional resources (ie private investment, other public funds, etc.).

Q: What could a Pay for Success contract look like under the new provisions?
The provision allows for quite a bit of flexibility for the provider and the local WIB/the state when negotiating the contract. WIOA does not require that the contract be awarded on a competitive basis, though this is likely to be the case. If a contract is awarded after a competition, the parties involved could presumably negotiate the level of up front financing, success payments, benchmarks, bonus payments, etc. that will be dictated by the contract.

Q: Who negotiates the Pay for Success contracts? Local boards or the state?
A**:** There are scenarios in which either the local boards or the state could negotiate the contract. If Governors use the 15% set aside on Pay for Success, then they could negotiate a project directly on behalf of the state and could include several different workforce boards. Local workforce boards could similarly negotiate a direct contract using the 10% allocation allowed under the new provision. It is likely that a common approach will include a contribution from the state under a fully developed state plan to support local Pay for Success programs, not as an inducement but as an enhancement to a project. In that case, workforce boards would negotiate on an individual basis.

Q: What is the timeframe for spending down money that gets allocated in any given program year?
A: Local WIBs can use the dollars they receive for 2 years. Since local WIBs receive new funding each year they could conceivably, support individual Pay for Success models that have longer time horizons for success if, for instance the WIB is providing bonus payments for the model.

Q: Has money already been allocated for the current program year? How can those funds be accessed for PFS if the current state plan is amended?
A: The most likely use of funds in this current program year for Pay for Success would include the use of the Governor's set aside. For the current program year (PY14), Governors received an additional 2.5% set aside than they did the previous year. This is new money that could be deployed to Pay for Success in this program year. If the PY14 local/state plan is flexible, it is possible to implement local Pay for Success strategies now. Additionally, as discussed above, the current state plan could be amended with DOL approval to address Pay for Success strategies at the state and/or local level. Governors have great discretion over their reserve funds and could use them to conduct a state initiative and/or enlist local workforce boards to join such an initiative in the current program year.

Q: What are the outcomes that need to be met? How is performance determined?
A: Generally, outcomes for each individual contract will be negotiated at the state or local level (depending on which government entity enters into the contract), but given that this is a new provision for the Department of Labor, they may be open to considering different approaches. WIOA does provide for specific performance measures in Sec. 116 (b)(2)(A) including:

For adults and dislocated workers:

- % percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;
- % of participants who are in unsubsidized employment during the fourth quarter after exit from the program;
- Median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program
- % of participants who obtain a recognized postsecondary credential, or a secondary school diploma or its equivalent during participation in or within 1 year after exit from the program
- % of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment

Additional outcomes for Youth:

- % of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program
- % of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program

Q: Is there flexibility in the contract to adjust as the program rolls out to ensure certain benchmarks are hit?
A: In theory there would be flexibility to make adjustments. A contract could include provisions for adjustments throughout the year. There is a provision in WIOA related to recapturing of funds that would apply. If funds were earmarked as success payments for a provider that does not succeed and the anticipated funds are not deployed, those funds have to be spent on another Pay for Success activity.

Q: What are examples of programs that could be used on Pay for Success?
A: There are many types of programs that could be used in the Pay for Success approach as long as they meet the criteria outlined in the "Pay for Performance Contract" question above. For local or state governments who are interested in incorporating a social finance component, a model similar to the

current project in New York State with the Center for Employment Opportunities and the pilot in Massachusetts with Roca could be considered on a shorter timeline or to finance a portion of the project. Other training and job placement programs for adults and youth such as those conducted by Genesys Works, REDF, Single Stop, Social Enterprise Alliance, The Corps Network, Twin Cities RISE!, YouthBuild, Year Up, and others that meet rigorous outcome measures could potentially qualify for a contract that may or may not include social financing. It is also worth noting that WIOA changes the requirements of the adult funding streams from "voucher driven" to flexible funds that can be deployed through grants/contractors to providers as well. This makes Pay for Success strategies at the state and local level potentially more directed and targeted, although it would be permissible and possible to structure a Pay for Success strategy that is voucher based.

CHANGES TO YOUTH FUNDING STREAM:

Q: What are the major changes to the youth funding stream?
A: WIOA requires that youth formula program spend at least 75 percent of funds on out-of-school youth, compared to 30 percent under WIA. The Act also changes youth eligibility requirements by establishing separate criteria for out-of-school and in-school youth, including removing income eligibility requirements for most out-of-school youth and raising the eligible age for such youth to 16 through 24. In-school youth age eligibility continues to be ages 14-21, as in WIA. WIOA places a new priority on work-based learning by providing that at least 20 percent of local youth formula funds be used for work experiences such as pre-apprenticeship training, on-the-job training, internships and summer work experiences that have academic and occupational education as a component. WIOA also links services to the attainment of secondary school diplomas, entry into postsecondary education and career readiness, and to the attainment of postsecondary credentials aligned with in-demand industry sectors or occupations. Additional allowable activities include financial literacy education and entrepreneurial skills training

Q: How is 'in school' and 'out of school youth' defined in WIOA?
A: The statute defines them as:

- ***'In school youth'*** is defined as a low-income individual between the ages of 14 and 21 that is attending school and meets one of the following criteria: basic skills deficient, an English language learner, an offender, a homeless individual or in foster care/aging out of foster care, pregnant or parenting, individual with disability, requires additional assistance to complete an educational program or to secure or hold employment.
- '***Out of school youth' is*** defined as a low income individual between the ages of 16 and 24 that is not attending a school (as defined under State law), and meets one of the following criteria: has dropped out of school, has not attended school for at least the most recent quarter of the academic year, a recipient of a secondary school diploma or a recognized equivalent who is low income and deficient in basic skills or an English language learner, a juvenile/criminal justice involved youth, homeless or in foster care/aging out of foster care, pregnant or parenting, youth with a disability, or is low income and requires additional assistance to enter or complete an educational program or to secure or hold employment.

Note: 'Low income' includes youth living in a high-poverty area.

For more information, contact America Forward at info@americaforward.org

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