

**Bureau of Justice Assistance (BJA)
US Department of Justice (DOJ)
Pay for Success and the Department of Justice's Second Chance Act Programs
Nonprofit Finance Fund and DOJ Webinar Recording
Frequently Asked Questions (FAQs)**

Note: The following FAQs were transcribed and edited from the Nonprofit Finance Fund and DOJ webinar hosted on Tuesday, March 6, 2012 entitled: "[Pay for Success and the Department of Justice's Second Chance Act Solicitations](#)". In addition, these FAQs also potentially include other Pay for Success questions received from the BJA Justice Information Center (JIC) that responds to inquiries from the field on BJA solicitations.

1. What is the outcome or outcomes that DOJ is trying to accomplish with the Pay for Success preference and what is the intent?

The intent for DOJ is to use Second Chance Act funds to really incentivize jurisdictions, to procure outcomes, and not just outputs. With the preference or what we call Priority Considerations, it's really important to know and reiterate that all of the Mandatory Requirements of the Second Chance Act need to be met by applicants. For example, the project has to have a sound project design and all the collaborating stakeholders need to be a part of the project. When all of those components are met DOJ will then examine those projects that are proposing to also incorporate a Pay for Success model. As a result, simply mentioning or incorporating a Pay for Success model into an application will not result in the automatic receipt of a grant award.

2. Will the chances of winning a grant be hurt if the applicant does not include a Pay for Success component? Similarly, must an application include a Pay for Success component in order to be considered for a grant award?

Definitely not – DOJ expects to receive a broad range of applications from the field in response to the three Fiscal Year 2012 Second Chance Act solicitations that include Pay for Success as a "Priority Consideration". These three solicitations include the following:

- [Second Chance Act Adult Offender Reentry Program for Planning and Demonstration Projects FY 2012 Competitive Grant Announcement](#)
- [Second Chance Act Reentry Program for Adult Offenders with Co-Occurring Substance Abuse and Mental Health Disorders FY 2012 Competitive Grant Announcement](#)
- [Second Chance Act Family-Based Adult Offender Substance Abuse Treatment Program FY 2012 Competitive Grant Announcement](#)

You'll notice within all three of these solicitations there are a number of Priority Considerations and Pay for Success is one of those Priority Considerations listed this year. Not including a Pay for Success component does not hurt one's chances within the competitive process for these solicitations.

3. Is DOJ willing to accept Pay for Success planning proposals? That is, how preliminary can plans be for an applicant to be eligible for Pay for Success funding? For example, an applicant has been working on developing a Pay for Success pilot in their state for quite some time. Based on their experience, it could be difficult to develop an

application with a viable Pay for Success component given the tight timeline. Planning grants could be an extremely helpful DOJ contribution to the development of effective Pay for Success projects.

DOJ acknowledges that “Pay for Success” could be a complicated model to put together regarding the obtainment of the working capital, and engagement of all partners that are necessary for a successful Pay for Success model. Although the current solicitation timeframes and due dates have been set, DOJ encourages applicants that are at a level of capacity and readiness to apply for implementation dollars. For those applicants that are more at a point of discovery and at an initial phase of strategizing about these activities, DOJ suggests applicants examine “Category 1: Planning Projects” within the [Second Chance Act Adult Offender Reentry Program for Planning and Demonstration Projects FY 2012 Competitive Grant Announcement](#). Those applicants that are serious about incorporating a Pay for Success model into their application materials may need some time and potentially some money to bring together the correct set of stakeholders, and really strategize about how to incorporate the model within a reentry program.

- 4. What sorts of agreements with partners, for example providers of working capital, are required? For example, will a letter of intent with contingencies that is final terms of conditions be acceptable? If more formal Memorandum of Understanding (MOUs) or contracts are required, providing them in the timeframe required under the three (3) Second Chance Act solicitations may be difficult, if not infeasible?**

Here again is an example of applicants raising the fact that timing might again be an issue within Second Chance Act Programs. DOJ realizes that formal MOUs or contracts are not absolutely required. But DOJ will definitely be examining application materials for evidence of the strengths of the commitment of the partners that are necessary to complete these activities. DOJ will definitely consider letters of intent and the firmer the commitment that can be demonstrated in the applications would put those applications within a more competitive stance.

- 5. Under this model, who would be responsible for conducting the program evaluation to determine if outcomes were achieved? And more specifically, what are DOJ’s parameters for that measurement and verification piece?**

The key answer to that question will really lie with the government entity (grantee in this instance) and those that are providing the working capital. It would need to be the comparison group, the verification of the outcomes from each entity, the target groups that receive funds under this schema, and the comparison group. All entities would need to agree upon the metrics, the independents, and the outcomes and measures. All of these components would need to be very well thought out and a crafted part of the agreement between the government entity potentially receiving a Second Chance Act grant award, and those that are providing the working capital or “the investors.” DOJ will examine application materials to see how applicants address these issues but won’t dictate or mandate what that evaluation needs to look like.

- 6. As a point of clarification, I assume that DOJ is not seeking to enter into a Pay for Success arrangement, whereby it conditions the payment of Second Chance Act funds**

from the federal government? That is, the grant funds are conditioned upon the success of the reentry plan that has been designed?

These are not outcome payments and these funds should be looked at as a part of the working capital. The federal government obviously would not expect a return on investment and DOJ envisions that these dollars would be used in the provision of direct services or the reimbursement of direct services.

7. Would a public institution of higher education, which is a political subdivision of the state, be eligible to submit an application?

DOJ has traditionally seen universities as generally being a sub-unit of state government. So the university or higher education entity would need to demonstrate that they were clearly part of the state university college system. In all probability this type of applicant would need to have a collaborative relationship with a correctional criminal justice agency that could include a state or local department of corrections (DOC). The public institution of higher education could be the lead agency that officially submits an application under a Second Chance Act solicitation as long as they were able to demonstrate they were clearly a unit of the state government or state bureaucracy.

8. Is there any support being provided in bringing investors together?

DOJ is not engaged in bringing private funders to the table and are not serving in that broker's role, and the Nonprofit Finance Fund is also not engaged in this role. However, there are intermediaries that do play that role in the market place and actually information about them can be found on the [Pay for Success Learning Hub website](#).

DOJ also wants to reinforce that one of the positive impacts of the Second Chance Act over the last three (3) years has been to really serve as a catalyst for enhanced collaborative efforts between private philanthropic sources, government agencies, and the non-private/non-profit sector. There are some particular private foundations (e.g. Public Welfare Foundation) that have really emerged as leaders in trying to bring together collaborative efforts. So while DOJ itself could not serve as that convener there are a good number of other private non-profits or foundations that could recruited to be helpful in that role.

9. Would an appropriate use of grant funds be for a government to pay itself, in either or both intermediary and service providers, for adapting their operations to carry out the planned Pay for Success model?

In this situation DOJ would have to weigh what the applicant interpreted for paying it to do, and whether it was capacity building in terms of perhaps training their staff in better understanding the Pay for Success model. DOJ envisions activities similar to this might be an allowable expense but these activities would have to be confirmed based on the federal [Office of Justice Programs \(OJP\) 2011 Financial Guide](#) to ensure they were actually allowable. DOJ believes that capacity building to enhance culture changes within an organization to assist them with better adaption and implementation of a Pay for Success model could certainly be counted as an allowable expense if it were (again) cast in the same mode as training or capacity building.

10. Since there's no reimbursement for services provided in a Pay for Success project, or rather payment for outcomes, can DOJ funds be used to pay for outcomes or can they only be used as working capital?

This should be seen as working capital but allowable funding activities could be used for the government entity to provide direct services, for the government entity to either contract directly with a service provider, to contract with a service provider through an intermediary, or to reimburse for those services. So in that context, if outcomes can be achieved via direct services and within the project period of the grant award, then Second Chance Act funds could be used to reimburse those outcomes. But the caveat (again) is that funding can't be used for a return on investment, can't be used for profit, or to pay interest to others who provide a work in capital.

11. Who takes the risk financially for failed programs? The government entity or the organizations the government entity contracted with to provide direct service?

The Pay for Success model as described by DOJ would designate those that provided the work in capital, and the assumption in this model is those that are looking to make a return on investment. Second Chance Act funds can be used to offset some of that work in capital and the federal government obviously would not be expecting a return on investment, so one can examine this as a contribution to the work in capital. But for those other entities that are providing working capital and were anticipating a return on investment, and don't receive it because outcomes were not achieved, those entities are at financial risk for failed programs within the model.

12. Can you provide an example of what type of program BJA (DOJ) envisions? For example, an illustrated example on the types of investors and types of outcomes?

DOJ suggests examining the Peterborough Model referenced in the [Pay for Success webinar](#) since it lends itself well as another example of a reentry program. The major purpose and overarching outcome of the Second Chance Act is to achieve recidivism reduction and applicants can refer to the [BJA website](#) for a closer examination of specific performance measure information. In addition, DOJ also examines other performance measures deemed important as functional outcomes such as jobs and housing attainment and retainment. So DOJ envisions applicants could also look at those within the reentry context but (again) the overarching outcome is recidivism reduction.

Here's another possible scenario as an illustration. (Hypothetical Situation) - Bryant County is having problems maintaining their county jail and is looking at ways of reducing recidivism which would also have the resulted impact of reducing the number of people within their county jail. As a result of these potential activities, Bryant County might then be able to close a wing of their county jail for financial savings. Within this hypothetical scenario, DOJ could envision a robust reentry program partly funded by a Second Chance Act grant award that would pay for direct services for housing, or other ancillary components that support positive reentry. Bryant County would then recruit private investors to provide the working capital that would go in with the idea that if they were able to achieve a significant reduction (or reasonable reduction in recidivism) which resulted in allowing the county to close the wing of the county jail, and resulted in significant savings, then the county might be willing to return a portion of the saved money. This saved money could then

be used as the incentive, or the return on investment, for those entities willing to assist the efforts as long as that money was over and above funds that were originally counted towards a match for the project.

So DOJ is looking for really creative collaborations from applicants on quantifying savings. Recidivism reduction itself needs to somehow translate into savings, whether it's reducing the number of people who come through a prison or closing a wing of a jail. This is something that DOJ is seeing more and more now from correctional facilities. Particularly in some cases where prison or jail populations are dwindling. These are the type of scenarios where one can envision these pieces fitting together.

13. Who sets the threshold for success that triggers the government paying back the working capital providers?

That would need to be worked out between the government entity and those that it was contracting with for the working capital. In relation to the Peterborough example, all of those activities have got to be quantified, so the entity has to have a real strong sense of how much this will cost to achieve what they're achieving now, and doing business as usual. In addition, the entity needs to consider how much they're willing to spend in any savings they might achieve by somebody else doing it potentially better, as interest or as a return on investment.

14. Can the SSA as the grantee pay the State Department of Corrections (DOC) to provide the direct service?

There's the SSA that is the "Single State Agency (SSA) for Substance Abuse Services", which is the recipient of substance abuse block grant funds, and DOJ also deals with the SAA which are "[State Administering Agencies](#)" for criminal justice block grant funds. DOJ would probably need to see more detail within an application but could foresee that as an allowable pass through of funding. Obviously an eligible applicant would be a State Administering Agency for criminal justice funds, and a direct provider of services could be the DOC for certainly pre-release services at the least.

However, it begs the question of why an applicant would want an SAA to function in that role when the grant could be awarded directly to the DOC? But in thinking this through, the eligible applicant could also be the SAA (State Administrating Agency) since generally those entities are attached to the Governor's Office within state government, and might be more successful at recruiting potential private investors. But it begs the question about why the SAA would want to do that?

15. For the one (1) year funding under a Second Chance Act Planning Project, is there a matching fund requirement for Pay for Success criteria?

Yes, there is a matching requirement for Planning Projects under the "[Second Chance Act Adult Offender Reentry Program for Planning and Demonstration Projects FY 2012 Competitive Grant Announcement](#)" (Section 101). Unfortunately, in Section 101 that authorizes Category 1: Planning Projects there's a fifty percent (50%) match requirement defined by Congress. Twenty-five percent (25%) of that match requirement is a hard "cash match" and twenty-five percent (25%) is an in-kind match requirement. Under Section 101 Congress did include a provision within the Second Chance Act appropriations that allows

for the applicant to request a waiver of the “cash match” due to fiscal hardship. So the short answer is that from the potential \$50,000 award amount received under a Planning Project, if the applicant did request and receive a waiver of the cash match portion, they would then need to provide a fifty percent (50%) in-kind match as a substitution for cash match portion requirement. For more information on examples of both cash and in-kind match, refer to the “Chapter 8: Matching or Cost Sharing” within the [2011 OJP Financial Guide](#).

16. A key outcome area from the [Second Chance Act Family-Based Substance Abuse Treatment Program](#) is “recidivism rate” that is generally measured 2-3 years out from treatment. In this case, how would success be measured and drive payments?

As DOJ acknowledges, timing is an issue in regard to the project length of Second Chance Act grant awards. Under the Second Chance Act Programs, DOJ is statutorily required by Congress to make awards for the project periods that are posted within the solicitation. However, based on past experience the majority of grantees have requested no-cost extensions. Unless there’s good justification not to approve a no-cost extension, DOJ has generally approved and been supportive of allowing project periods to continue past the initial project end date, with the realization that it’s difficult within these timeframes for grantees to be able to provide services and see outcomes achieved.

17. So it sounds like the Second Chance Act is assuming that there is a sophisticated financial understanding well connected to potential investors, and understanding of effective and proven nonprofit providers? Is this asking too much from a government agency? Why not leave this work up to a financial intermediary such as social finance or another organization?

The model could potentially include intermediary organizations and what DOJ is proposing to support does not exclude or preclude an intermediary organization. That would be okay as long as that is the way that a government agency chooses to operate. However, for specific Second Chance Act Programs that DOJ is focused upon, eligible applicants are limited to states, units of local governments, and federally eligible Tribes, and DOJ fully imagines and hopes to see applications from the field for incorporating a Pay for Success Model into a reentry program. DOJ anticipates several applications will include something that looks like an intermediary organization that can help a government entity make sense of everything, gain partnerships, seek working capital, and procure evidence-based service provisions for individuals to be served under these projects.