



Public Health Law

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention

Public Health Law and Policy Innovations: Social Impact Bonds

Social impact bonds (SIBs) are pay-for-success arrangements that can be used to address public health issues such as asthma and infant mortality.¹ SIBs are used as financing mechanisms to raise upfront funding from private investors for social and public health preventative interventions. They function by leveraging the anticipated savings of prevention as a source for potential financial rewards for the intervention's investors. In a SIB arrangement, rewards are due if and only if the intervention succeeds in reaching predetermined benchmarks, thereby shifting the financial burden of success to the investors. For example, South Carolina is planning to use SIBs to leverage private investment to finance interventions to improve early childhood health outcomes, such as nurse-family partnerships.² It is expected that these early childhood interventions will create measurable savings, including reduced Medicaid expenditures from preterm births and emergency room visits.³ If the interventions succeed in obtaining their savings goals, South Carolina will compensate the intervention's investors.⁴

Proponents of SIBs suggest that they can take advantage of private sector efficiency and capital to achieve public sector goals while shifting financial burden and risk to private parties.⁵ Successful SIBs create a “public policy trifecta” that benefits taxpayers, social service recipients, and private investors.⁶

¹ See Jonathan Greenblatt and Annie Donovan, *The Promise of Pay for Success*, CMTY. DEV. INV. REVIEW, FED. RESERVE BANK OF SAN FRANCISCO 18, 20 (2013), available at <http://www.nj.gov/state/programs/pdf/faith-based-investment-success-financing.pdf> (issue hereinafter “COMMUNITY DEVELOPMENT REVIEW”); Maria Hernandez, et al., *Impact Investing in Sources of Health*, Collective Health (2012), available at http://collectivehealth.files.wordpress.com/2012/04/impact-investing-in-health_tce-paper_feb-2012.pdf; Michael A. Fletcher, *Can investors make money in social services?*, WASH. POST, June 10, 2013, available at http://articles.washingtonpost.com/2013-06-10/business/39858376_1_programs-private-investors-childhood-education.

² SC DEPT. OF HEALTH AND HUMAN SERVICES, Social Impact Bond RFI #1, (Sept. 2013) available at https://www.scdhhs.gov/sites/default/files/Social_Impact_Bond_RFI_%231.pdf.

³ *Id.* app. b at 3.

⁴ *Id.* at 3.

⁵ Jeffrey B. Liebman, *Social Impact Bonds*, Center for American Progress 10–11 (2011), available at http://www.americanprogress.org/issues/2011/02/pdf/social_impact_bonds.pdf; Fletcher *supra* note 1.

⁶ Gadi Dechter, *Obama's social impact bonds: private money, public benefit*, THE BALTIMORE SUN, Feb. 14, 2011, available at http://articles.baltimoresun.com/2011-02-14/news/bs-ed-social-bonds-20110214_1_social-services-social-impact-social-finance.



SIBs are used not only to address public health goals, but also to combat social problems such as inmate recidivism and homelessness.⁷

In some SIB programs, a backer (often a government entity) will agree to pay an intermediary to provide a public health intervention if, and only if, the intervention meets preset goals (Figure 1).⁸ To secure the up-front financing for the public health intervention, the intermediary's investors finance it in exchange for the possibility of full repayment plus a premium if the program meets preset goals.⁹ Investors are given SIBs, which represent their opportunity to profit if the program is successful.

Programs can be designed so payouts to investors are less than the program's expected savings; thus, a successful governmental SIB can save taxpayers money.¹⁰ For example, a New York City SIB program aims to lower government costs associated with inmate recidivism at the Rikers Island Correctional Facility.¹¹ If it achieves a set goal of 20% reduction in recidivism, the city expects to save \$32.2 million from reduced incarceration costs. Per the terms of the SIB arrangement, the city would owe the intermediary \$11.7 million (investment plus success premium) for achieving a 20% recidivism reduction. Thus, the city expects to save \$20.5 million from reduced recidivism after paying the intermediary.¹²

SIBs are not ideal for every public health intervention. SIBs are intended to finance interventions for well-defined problems affecting known populations when costs and benefits can be measured accurately.¹³ These definitions and measurements are crucial because SIB program success will depend on how outcomes are defined and measured.¹⁴ SIB programs must be supported by reliable and valid evidence to attract investors and ensure program outcomes' fair evaluation.¹⁵ Program outcomes should have the potential to deliver social savings in excess of implementation costs to attract needed private investors.¹⁶ SIB issuers may not be required to repay investors if the initiative fails to achieve intended measurable outcomes, and investors could risk total loss, unless the SIB program offers insurance.¹⁷

From a governmental perspective, SIB projects are particularly useful where resources are limited and projects require large up-front expenditures because the government pays investors only if the program is successful.¹⁸ When a SIB program is well constructed and successful, the government benefits because it spends less than it otherwise would; moreover, government avoids losses for failed

⁷ *Id.*; Benjamin R. Cox, *Financing Homelessness Prevention Programs with Social Impact Bonds*, 31 REV. BANKING & FIN. L. 959, 964 (2012).

⁸ J. Haskell Murray, *Choose Your Own Master: Social Enterprise, Certifications, and Benefit Corporation Statutes*, 2 AM. U. BUS. L. REV. 1, 51 (2012); Cox *supra* note 7 at 964.

⁹ *Id.*

¹⁰ See John Olson and Andrea Phillips, *Rikers Island: The First Social Impact Bond in the United States*, COMMUNITY DEVELOPMENT REVIEW at 92.

¹¹ *Id.*

¹² *Id.*

¹³ Hanna Azemati, et al., *Social Impact Bonds: Lessons Learned So Far*, COMMUNITY DEVELOPMENT REVIEW at 25–26.

¹⁴ Jon D. Michaels, *Privatization's Progeny*, 101 Geo. L.J. 1023, 1088, note 45 (2013).

¹⁵ David Butler, et al., *Using Social Impact Bonds to Spur Innovation, Knowledge Building, and Accountability*, COMMUNITY DEVELOPMENT REVIEW at 55; Liebman, *supra* note 5 at 3.

¹⁶ *Id.*; Azemati, *supra* note 13 at 22.

¹⁷ George Overholser and Caroline Whistler, *The Real Revolution of Pay for Success: Ending 40 years of Stagnant Results for Communities*, COMMUNITY DEVELOPMENT REVIEW at 20; *but see* Olson *supra* note 10 at 92; Greenblatt, *supra* note 1 at 20; *see also* Azemati, *supra* note 13 at 25–26.

¹⁸ Cox, *supra* note 7 at 961, 970–71; *see* Michaels, *supra* note 14 at 1056.

programs.¹⁹ However, SIBs may challenge government appropriations in several ways, including creating long-term contingent contracts that may bind future legislatures.²⁰

Early experiences with SIBs show that intermediaries have organized SIB programs and set performance benchmarks with government as backer.²¹ Alternatively, the California Endowment, a nonprofit corporation, developed SIBs backed by insurers and employers rather than a government entity to fund home-based interventions to lower asthma rates.²² If the program achieves reduced asthma-related medical cost goals, then investors are repaid by the private stakeholders who have assumed the role held by the government in other SIB arrangements.²³ This example of early SIB implementation shows how SIBs can create new opportunities for innovative public health interventions.

Two of the world's earliest SIBs (both addressing inmate recidivism) are showing promising preliminary results. In the UK, the Peterborough prison SIB is on pace to achieve its goal of a 7.5% decrease in recidivism with preliminary results showing a 12% decrease in recidivism compared with an 11% increase nationally.²⁴ Similarly, the start of the Rikers Island SIB is correlated to a 36% reduction in violence among current inmates in the first year of the program; although, it is unclear if the reduction in violence will translate to the SIB's objective of lowering reoffending rates.²⁵ While these preliminary results are not definitive, they do suggest that the SIB model is capable of creating positive social impact by improving funding to successful social service initiatives.

Further information and tools to implement SIB programs can be found here:

<http://www.cdc.gov/phlp/docs/sib-researchanthology.pdf>

This document was developed by Cason Schmit, JD, Oak Ridge Institute for Science and Education Fellow, with the assistance of Matthew Penn, Director, JD, MLIS, and Tara Ramanathan, JD, MPH, with the Public Health Law Program (PHLP) within the Centers for Disease Control and Prevention's Office for State, Tribal, Local and Territorial Support. PHLP provides technical assistance and public health law resources to advance the use of law as a public health tool. PHLP cannot provide legal advice on any issue and cannot represent any individual or entity in any matter. PHLP recommends seeking the advice of an attorney or other qualified professional with questions regarding the application of law to a specific circumstance.

¹⁹ See Dan Adams, *Mass. program ties nonprofits' pay to success*, THE BOSTON GLOBE, Aug. 01, 2012, available at <http://www.bostonglobe.com/business/2012/07/31/massachusetts-among-first-pay-for-success-social-programs/Fckml2GZ0vycLNBLXpgRCM/story.html>.

²⁰ Cox *supra* note 7 at 979; see also Azemati, *supra* note 13 at 29.

²¹ See Terri Ludwig, *Pay for Success: Building on 25 Years of Experience with the Low Income Housing Tax Credit*, COMMUNITY DEVELOPMENT REVIEW at 110.

²² Rick Brush, *Can Pay for Success Reduce Asthma Emergencies and Reset a Broken Health Care System?* COMMUNITY DEVELOPMENT REVIEW at 115–17; see Hernandez, *supra* note 1 at 11.

²³ *Id.*

²⁴ Nicky Stubbs, *Peterborough social impact bond seeing positive results*, BLUE & GREEN TOMORROW (Nov. 2, 2013), available at <http://blueandgreentomorrow.com/2013/11/02/peterborough-social-impact-bond-seeing-positive-results/>.

²⁵ [Mark Rosenman](#), *How social impact bonds put private profit ahead of public good*, PBS NEWSHOUR (February 19, 2014) available at <http://www.pbs.org/newshour/making-sense/social-impact-bonds-put-private-profit-ahead-public-good/>.

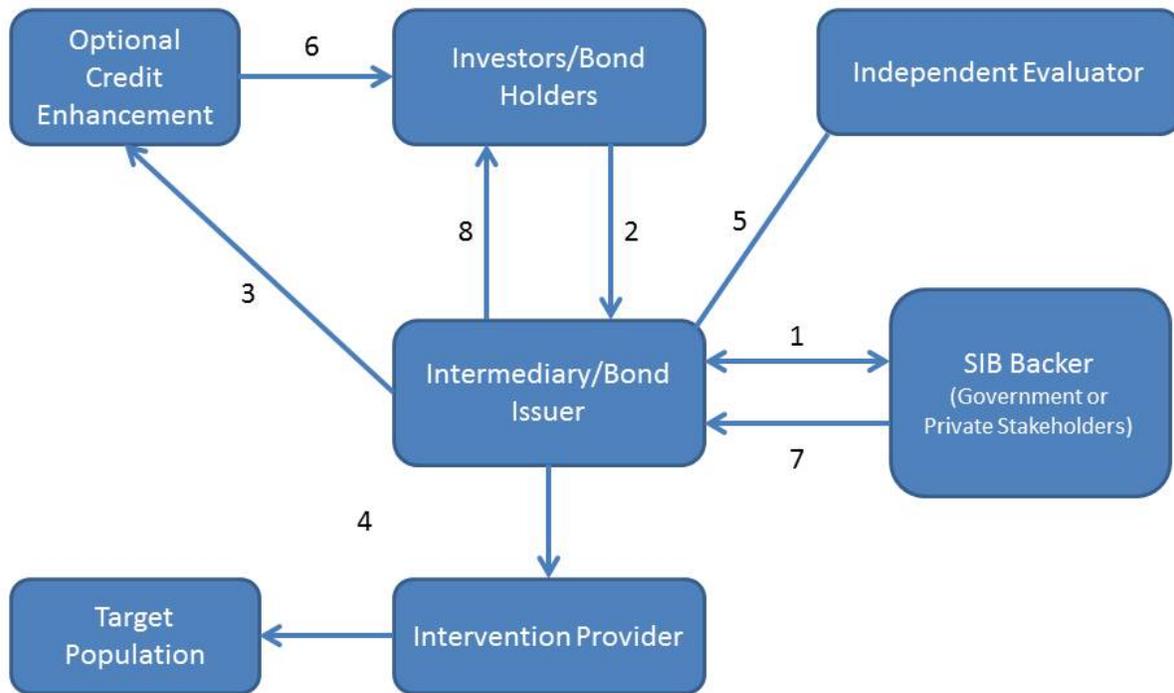


Figure 1: Generic Social Impact Bond Arrangement

1. The intermediary, usually a non-profit, and backer, usually government, negotiate terms of SIB arrangement.
2. The intermediary seeks investors.
3. The intermediary may obtain credit enhancement, often similar to insurance, to reduce the risk to investors.
4. The intermediary oversees the administration of the intervention.
5. An independent evaluator determines if the intervention achieved its goals.
6. If the goals are not met, the backer is not obligated to pay anything and investors may lose entire investment unless they obtained credit enhancement.
7. If the goals are met, the backer pays the intermediary the cost of the SIB plus any premium.
8. After receiving the payment from the backer, the intermediary forwards the payment to the investors.