

EFFECTING PROGRESS: USING SOCIAL IMPACT BONDS TO FINANCE SOCIAL SERVICES

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This piece is a comment offered in conjunction with Deborah Burand's article, Globalizing Social Finance: How Social Impact Bonds and Social Impact Performance Guarantees Can Scale Development, which can be found at 9 N.Y.U. J.L. & BUS. 447. An earlier version of the comment was presented on November 9, 2012 at the N.Y.U. Journal of Law & Business Fall Conference on the Law and Finance of Social Enterprise.

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I.

INTRODUCTION

How do you know if a government dollar is well spent? Do you look to the number of people served? The amount of money dedicated to addressing a pressing issue? In a time when dollars are so scarce and the appropriation of every discretionary dollar seems to necessitate a protracted battle, what metric should we use to evaluate success?

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Consider the U.S. correctional system. Today, there are over seven million adults under the supervision of U.S. correctional authorities.¹ One in thirty-one adults in this country is incarcerated or on probation or parole.² This incarceration rate represents a tripling of the correctional population over the last thirty years.³ Are government criminal justice dollars spent effectively?⁴ One metric—the number of individuals who ultimately return to the system—would suggest the answer is no: nearly 70% of offenders are rearrested within three years of release.⁵

The reality is that, by and large, the government does not allocate dollars based on proof of program effectiveness;⁶ we

1. Lauren Glaze, *Correctional Population in the United States, 2010*, U.S. DEP'T OF JUSTICE, N.C.J. 236319, 1 (2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus10.pdf>.

2. THE PEW CENTER ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 1 (2009) [hereinafter ONE IN 31], http://www.pew-states.org/uploadedFiles/PCS_Assets/2009/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

3. Glaze, *supra* note 1.

4. ONE IN 31, *supra* note 2, at 11.

5. Patrick A. Langan & David J. Levin, *Recidivism of Prisoners Released in 1994*, U.S. DEP'T OF JUSTICE, N.C.J. 193427, 1 (2002), <http://bjs.gov/content/pub/pdf/rpr94.pdf> (finding a recidivism rate of 67.5% based on a three-year study of offenders released in 1994). The 1994 data is the most recent national, government-collected recidivism data. The Department of Justice is scheduled to release a new study on the recidivism of prisoners released in 2005 in 2013. See *Prisoner Recidivism*, U.S. DEP'T OF JUSTICE, <http://bjs.gov/index.cfm?ty=datool&surl=/recidivism/index.cfm>.

6. See JEFFREY B. LIEBMAN, CTR. FOR AM. PROGRESS, SOCIAL IMPACT BONDS: A PROMISING NEW FINANCING MODEL TO ACCELERATE SOCIAL INNOVATION AND IMPROVEMENT GOVERNMENT PERFORMANCE (2011), http://www.americanprogress.org/wp-content/uploads/issues/2011/02/pdf/social_impact_bonds.pdf ("This insufficient attention to objectives and performance measurement means that unsuccessful programs can persist for years. As demonstrated by the recent Head Start evaluation, which found that few program benefits persisted to the end of first grade, even large important programs can receive funding for decades without the kind of rigorous evaluation necessary to reveal that the program delivery model needs to be reformed."); Jon Baron, *Applying Evidence to Social Programs*, N.Y. TIMES ECONOMIX BLOG (Nov. 9, 2012, 12:00 PM), <http://economix.blogs.nytimes.com/2012/11/29/applying-evidence-to-social-programs> ("Scientifically rigorous studies—particularly the 'gold standard' of randomized control trials—are a mainstay of medicine, providing conclusive evidence of effectiveness for most major medical advances in recent history. In social spending, by contrast, such studies have only a toehold. . . . In social spending . . .

do not pay for performance. Instead we pay nearly \$70 billion,⁷ including \$50 billion at the state level,⁸ in annual corrections costs for a majority of offenders to return to the system.⁹ The value of this “investment” is further called into question by the fact that there are effective, evidence-based programs that reduce criminal behavior and succeed both in keeping former offenders from re-engaging in criminal conduct and in

scientific evidence plays little role in allocating resources. Historically, major programs like Head Start, Title I at the Department of Education, and the Job Training Partnership Act have been set up as multibillion-dollar faucets, allocating streams of money to state and local agencies—often by formula—to support a diverse array of activities. Rigorous evidence has little say in which activities receive support.”). However, in recent years the federal government has made an increasing push for evidence in policymaking. The Office of Management & Budget advised agencies to incorporate evidence of effectiveness into their Fiscal Year 2014 budget requests. *See* Jeffrey Zientz, Memorandum from the Exec. Office of the President Office of Mgmt. & Budget to the Heads of Exec. Dep’ts & Agencies: Use of Evidence & Evaluation in 2014 Budget 1 (May 18, 2012).

7. Tracey Kyckelhahn, *Criminal Justice Expenditure and Employment Extracts Program*, U.S. DEP’T OF JUSTICE, N.C.J. 238059 (2012), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4332>.

8. CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INST. OF JUSTICE, *THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS* 6 (2012), http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf (surveying forty states to calculate an aggregate cost of the state prison systems). On average, the actual cost of prisons exceeds the state correctional budget by roughly 14%. *Id.* In six states—Connecticut, Illinois, Missouri, New York, Pennsylvania and Texas—cost overruns were between 24% and 30%. *Id.*

9. As reducing recidivism remains a goal for many jurisdictions, recidivism provides a useful measure of a criminal justice system’s efficacy. *See* STATE OF CONNECTICUT, *COMPREHENSIVE REENTRY AND RISK ASSESSMENT STRATEGY* (2011), http://www.ct.gov/opm/lib/opm/cjppd/cjcjpac/20110215_reentry_riskassessmentstrategy.pdf; WALTER A. McNEIL, FLA. DEP’T OF CORRECTIONS, *RECIDIVISM REDUCTION STRATEGIC PLAN FISCAL YEAR 2009-2014* (2009), <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf>; CMTY. SAFETY & REENTRY COMM’N, *INSIDE OUT: A PLAN TO REDUCE RECIDIVISM AND IMPROVE PUBLIC SAFETY* (2007), http://www.illinois.gov/publicincludes/documents/Governor_Reentry_Commission_Report_FINAL.pdf. The rate of offenders recidivating is just one metric one could look to when evaluating the success of the criminal justice system, however, and looking solely to an overall metric of recidivism does not gauge whether offenders are committing less violent crimes, which might suggest some level of rehabilitation. Accounting for accomplishments related to deterrence, retribution, and incapacitation would likely give statement of the effectiveness of criminal justice spending.

keeping young people from becoming criminally involved in the first place. Why then do we invest our taxpayer dollars in costly programs with limited results? Why do we acquiesce to significant social stagnation¹⁰ and not direct sufficient resources to programs with evidence of effectiveness?¹¹

There are many answers to these questions. The Social Impact Bond¹² offers one potential remedy to many of the un-

10. See Baron, *supra* note 6 ("Despite a myriad of new government programs and spending over the last 40 years, the system has failed to improve economic and social well-being for an astonishingly large segment of the American population. . . . Census Bureau data show that over the last 40 years, average yearly income of the bottom 40 percent of U.S. households—now at \$20,221—has changed little after adjusting for inflation.").

11. While calling for increased investment in evidence-based programming, I do not assume that there are sufficient numbers of evidence-based programs, that there is no room for innovation in social programming, or that evidence-based programs do not have room to improve. There are currently too few evidence-based projects, in part because evaluation is expensive and invasive. Multiple other questions (including, for example, how decisions about which programs or types of programs have been recognized as important to evaluate) complicate our understanding of the definition of the phrase "evidence-based" and the relative value of programs that are not "evidenced-based." Just as it is important to invest in and scale what works, so too it is important to improve our ability to tackle challenging social programs. Innovation—including the development of new ideas and the refining of old ones—is key to our social progress. Government should test new ideas but, as in all uses of taxpayers' funds, it should do so with an eye towards accountability. Philanthropy, the ultimate risk capital, should be a partner in this social innovation. A drive towards social progress and a lens of continual learning is central to the Social Impact Bond. Even the best social programs can be refined. Ideally, data-driven decision making during a Social Impact Bond financing will allow not just for the scaling of evidenced-based programs, but also for their improvement.

12. Social Impact Bonds are also called Pay for Success Bonds. Please note that while the Social Impact Bond is a new way of financing performance-based contracts, performance-based contracts are not themselves new to government. During the Clinton Administration, there was a focus on performance-based contracting including launching the National Partnership for Reinventing Government, formerly the National Performance Review, which was focused on accountability driving results in government. See JOHN KAMENSKY, NATIONAL PARTNERSHIP FOR REINVENTING GOVERNMENT (1999), <http://govinfo.library.unt.edu/npr/whowere/history2.html>; NAT'L PERFORMANCE REV., MISSION DRIVEN, RESULTS ORIENTED BUDGETING (1993), <http://govinfo.library.unt.edu/npr/library/nprprt/annrpt/sysrpt93/mis-sion.html>; OFFICE OF FED. PROCUREMENT POLICY ET AL., BEST PRACTICES FOR PERFORMANCE-BASED CONTRACTING (1998), available at http://www.whitehouse.gov/omb/procurement_guide_pbsc. The Clinton Administration also

derlying problems described above. Providing context for a broader discussion on Social Impact Bonds, including Deborah Burand's *Globalizing Social Finance*,¹³ this comment offers an overview of the innovative financial tool in question, as well as the reasons it has generated interest worldwide. Recognizing the nascency of the Social Impact Bond market as well as the risks fundamental to the instrument, this comment distills the anticipated benefits of this novel tool.

II.

A NEW WAY TO FINANCE SOCIAL SERVICES

The Social Impact Bond represents a new way to finance social services and expand evidence-based programming.¹⁴ Af-

saw the enactment of the Government Performance and Results Act, which sought to transition from an outputs focus to an outcomes focus. Government Performance and Results Act of 1993, Pub. L. 103-62, 107 Stat. 285 (1993). This interest in performance-based contracting was carried into the Bush Administration. See GOV'T SERVS. ADMIN., SEVEN STEPS TO PERFORMANCE-BASED SERVICES ACQUISITION (2000), http://www.gsa.gov/graphics/fas/VETS_Attach_8_Seven_Steps_to_PBA.pdf. Performance-based contracting has been adopted for human contracting in some states and cities, including New York City, Florida, and Maine. See Dennis C. Smith & William J. Grinker, *The Promise and Pitfalls of Performance Based Contracting* (June, 2004) (unpublished manuscript), available at <http://seedco.org/wp-content/uploads/2011/11/The-Promise-and-Pitfalls.pdf>; Lawrence L. Martin, *Performance-Based Contracting for Human Services: Does It Work?*, 29 ADMIN. SOC. WORK 63 (2005), available at http://www.calgaryandareacfsa.gov.ab.ca/home/documents/ProgramsServices/PBC_Does_it_Work.pdf. Adoption of this type of contracting has not been as widespread as it might be, however. See Deborah Burand, *Globalizing Social Finance: How Social Impact Bonds and Social Impact Performance Guarantees Can Scale Development*, [cross reference], for additional discussion of performance-based contracting.

13. See Burand, *supra* note 11, at [cross reference].

14. For a more detailed overview of the instrument, its benefits and key stakeholders, see generally SOC. FIN., A NEW TOOL FOR SCALING IMPACT: HOW SOCIAL IMPACT BONDS CAN MOBILIZE PRIVATE CAPITAL TO ADVANCE SOCIAL GOOD (2012) [hereinafter A New Tool], http://www.socialfinanceus.org/sites/socialfinanceus.org/files/small.SocialFinanceWPSingleFINAL_0.pdf; MCKINSEY & CO., FROM POTENTIAL TO ACTION: BRINGING SOCIAL IMPACT BONDS TO THE U.S. (2012), http://mckinseysociety.com/downloads/reports/Social-Innovation/McKinsey_Social_Impact_Bonds_Report.pdf; LIEBMAN, *supra* note 6. A number of helpful articles can be found in the Community Development Investment Review issue on pay for success financing. See 9 CMTY. DEV. INV. REV. (2013), available at http://www.frbsf.org/publications/community/review/vol9_issue1/review-volume-9-issue-1.pdf.

ter being piloted in the United Kingdom,¹⁵ the tool has received international attention—including in Australia,¹⁶ Canada,¹⁷ Colombia,¹⁸ Israel,¹⁹ Scotland,²⁰ and at the G8²¹—and is gaining ground in the United States.²² Aligning the interests

15. The world's first Social Impact Bond was launched by Social Finance, Ltd. in September 2010. A NEW TOOL, *supra* note 13, at 3.

16. In the fall of 2011, Australia released a Request for Proposals for Social Impact Bonds (called "Social Benefit Bonds") and selected proposal outcomes in Spring 2012. See *Social Benefit Bonds*, NEW SOUTH WALES TREASURY, http://www.treasury.nsw.gov.au/site_plan/social_benefit_bonds (last visited Mar. 13, 2013).

17. See Tim Shufelt, *Do Good and Make Money with Social Impact Bonds*, CAN. BUS. (January 3, 2013), <http://www.canadianbusiness.com/investing/social-impact-bonds-under-review-in-canada/>; *Social Finance*, HUMAN RES. & SKILLS DEV. CAN., http://www.hrsdc.gc.ca/eng/consultations/social_finance/about.shtml (last visited May 1, 2013).

18. See Michael Belinsky & Sebastian Chaskel, *Designing a Social Impact Bond in the Tropics*, STAN. SOC. INNOVATION REV. BLOG (Nov. 12, 2012), http://www.ssireview.org/blog/entry/designing_a_social_impact_bond_in_the_tropics.

19. See SOCIAL FINANCE, SOCIAL FINANCE ISRAEL 2 PAGER (Nov. 2012), http://www.portlandtrust.org/sites/default/files/projectdocs/social_finance_israel_-_2_pager_-_nov_12.pdf.

20. See Vibeka Mair, *Social Impact Bonds Expand Across UK*, CIVIL SOC'Y (Mar. 19, 2012), http://www.civilsociety.co.uk/finance/news/content/11844/social_impact_bonds_expand_across_the_uk.

21. The G8, under Prime Minister Cameron's leadership, is set to make Social Impact Bonds a major agenda item in 2013. See Kamal Ahmed, *Cameron to Push G8 on Finance Bonds for New "Social Investment,"* THE TELEGRAPH, Feb. 10, 2013, <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9859906/Cameron-to-push-G8-on-finance-bonds-for-new-social-investment.html>.

22. In the United States, multiple jurisdictions have announced an interest in the funding mechanism. Massachusetts released a procurement process for Social Innovation Financing in January of 2012 and is currently negotiating with potential contracting partners. See Dan Adams, *Mass. Program Ties Nonprofits' Pay to Success*, THE BOS. GLOBE, Aug. 1, 2012, <http://www.bostonglobe.com/business/2012/07/31/massachusetts-among-first-pay-for-success-social-programs/Fckml2GZ0vycLNBLXpgRCM/story.html>. In the summer of 2012, New York City announced the launch of a Social Impact Bond aimed at reducing recidivism for young offenders on Rikers Island. See *NYC Announces Nation's First Social Impact Bond Program*, MIKE BLOOMBERG (Aug. 2, 2012), <http://www.mikebloomberg.com/index.cfm?objectid=E791E137-C29C-7CA2-F5C2142354A09332>. New York State launched a procurement process for Social Impact Bonds in September 2012. *Request for Information: Identifying Innovative Ways to Finance Social Services*, STATE OF N.Y. DIV. OF THE BUDGET, http://payforsuccess.org/sites/default/files/rfi_-_identifying_innovative_ways_to_finance_social_services.pdf. Governor Cuomo proposed

\$100 million for Pay for Success Initiatives in his 2013-2014 Budget. *See Governor Cuomo Outlines 2013-2014 Executive Budget to Maintain Fiscal Responsibility and Continue to Invest in Economic Growth*, GOVERNOR OF N.Y. (Jan. 22, 2013), <http://www.governor.ny.gov/press/122201-Executive-Budget-2013-2014>. In March 2013, the New York State legislature acted on Governor Cuomo's request and passed a budget with \$30 million for pay for success initiatives. Press Release, State of New York Division of the Budget, Governor Cuomo and Legislative Leaders Announce Early Passage of 2013-14 Budget (Mar. 29, 2013), *available at* http://www.budget.ny.gov/pubs/press/2013/press-Release13_enactedBudgetReleased.html. In relation to Connecticut, see Dan Haar, *As Private Financing Emerges For Social Services, The State Is In Talks For A Deal*, HARTFORD COURANT, Dec. 4, 2012, <http://www.courant.com/business/hc-haar-social-impact-bonds-20121204,0,3010119.column>. In relation to Oregon, see Matthew Kish, *Oregon Tests Social Impact bond investing*, PORTLAND BUS. J., Aug. 24, 2012, <http://www.bizjournals.com/portland/print-edition/2012/08/24/oregon-tests-social-impact-bond.html>. In relation to California, see Randall Jensen, *Social Impact Bond Buzz Heads West*, THE BOND BUYER, Jan. 10, 2013, http://www.bondbuyer.com/issues/122_8/fresno-california-pilot-project-social-impact-bonds-1047541-1.html. Illinois announced that they were beginning a procurement process on Social Impact Bonds. *See* Press Release, Office of the Governor, Governor Quinn Announces Illinois is Second State to Launch Social Impact Bond Program (Apr. 9, 2013), *available at* <http://www3.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=2&RecNum=11072>. Several states have also introduced Social Impact Bond legislation, including: Maryland (see Task Force to Study Social Impact Bonds, H.B. 951, 2013 Reg. Sess. (Md. 2013) [hereinafter Maryland Task Force], *available at* <http://openstates.org/md/bills/2013/HB951/documents/MDD00044682>), Texas (see Relating to Pay-for-Performance Contracts for Certain Criminal Justice Programs and Services, H.B. 1450, 83d Leg. (Tex. 2013) [hereinafter Texas Pay-for-Performance Contracts], *available at* <http://legiscan.com/TX/text/HB1450/id/749338>; Proposing a Constitutional Amendment Providing for the Issuance of General Obligation Bonds to Finance Pay-for-Performance Contracts for Certain Programs and Services for Health Programs, House Joint Resolution 99, 83d Leg. (Tex. 2013), *available at* <http://legiscan.com/TX/text/HJR99/id/764223>), and Hawaii (see Relating to Social Impact Bonds, H.B. 1402, 2013 Reg. Sess. (Haw. 2013), *available at* <http://openstates.org/hi/bills/2013%20Regular%20Session/HB1402/documents/HID00053517>). President Obama included approximately \$100 million and \$109 million for Social Impact Bonds in his Fiscal Year 2012 Budget and Fiscal Year 2013 Budget, respectively. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEARS 2012 (Feb. 14, 2011) and 2013 (Feb. 1, 2012), *available at* <http://www.gpo.gov/fdsys/browse/collectionGPO.action?collectionCode=BUDGET>. In Fiscal Year 2014, President Obama quadrupled his budgetary commitment to Social Impact Bonds or Pay for Success by including in his budget \$195 million to expand existing Pay for Success money, \$300 million for a "top up" fund to incentivize state and local governments to enter these types of transactions, and a commitment to make available up to "five percent of proceeds from the sale of excess Federal

of governments, investors, and service providers, the Social Impact Bond endeavors to improve the lives of underserved individuals and generate value for taxpayers. Central to the mechanism is the linking of investor payment to the success of preventative social service programs.

The journey to a Social Impact Bond starts with a social problem: young people aging out of the foster care system are struggling to succeed; or young, low-income, first-time mothers do not have the knowledge and resources to maintain healthy pregnancies and parent responsibly. While such problems are distinct, they share certain themes. First, each of these problems has an easily defined population—children aging out of foster care, for example, or Medicaid-eligible, first-time mothers. Second, the problems are complex and, accordingly, they have no straightforward solution. For example, youth aging out of the foster care system often have educational deficits, lack a parenting or alternative support system, and may have mental health issues and low life skills development.²³ Their needs cut across educational, employment, health, and possibly other systems, and any successful solution

property under the proposed Civilian Property Realignment Act for innovative homeless programs, including Pay for Success projects that save taxpayer money by reducing homelessness.” OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2014 (Apr. 10, 2013), *available at* <http://www.gpo.gov/fdsys/browse/collectionGPO.action?collectionCode=BUDGET>. In 2012, the Department of Labor released a solicitation under the Workforce Innovation Fund for Social Impact Bonds, *Notice of Availability of Funds and Solicitation for Grant Applications for Pay for Success Pilot Projects*, U.S. DEP’T OF LABOR EMP’T & TRAINING ADMIN., http://www.doleta.gov/grants/pdf/pfs_sga_dfa_py_11_13.pdf, and the Department of Justice released a solicitation under the Second Chance Act that gave priority for projects that included pay for success in their design, *Second Chance Act*, U.S. DEP’T OF JUSTICE BUREAU OF JUSTICE ASSISTANCE, https://www.bja.gov/ProgramDetails.aspx?Program_ID=90 (last visited Mar. 13, 2013). For an overview of the Federal government’s participation in Pay for Success, see Jonathan Greenblatt & Annie Donovan, *The Promise of Pay for Success*, 9 CMTY. DEV. INV. REV. 19 (2013), *available at* https://www.frbsf.org/publications/community/review/vol9_issue1/promise-pay-for-success.pdf.

23. See MARK E. COURTNEY ET AL., CHAPIN HALL, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26 (2011), http://www.chapinhall.org/sites/default/files/Midwest%20Evaluation_Report_4_10_12.pdf.

for this population requires multi-sector collaboration.²⁴ Sometimes, these problems remain unsolved, not because of a lack of an effective solution, but because of the difficulty of cross-sector collaboration.²⁵ Third, these problems can potentially all be addressed by economical and effective programming that reduces the need for costly remediation, like incarceration and hospitalization.²⁶

The process of identifying a problem and determining its suitability for a Social Impact Bond can be started by a government leader, an independent organization like an intermedi-

24. See YOUTH DEV. INST., COMMUNITY-BASED PROGRAMS FOR FOSTER CARE: PREVENTING PLACEMENTS AND PROMOTING SUCCESSFUL TRANSITIONS 35 (2009), <http://www.ydinstitute.org/resources/publications/Community-BasedProgramsforFoster.pdf> ("If young people aging out of foster care are to make it in the long term, they must be educated, they must have work skills, and they must have a place to live. No one denies that all three are necessary, but the challenge to policy is how to make this real. No young person should have to choose between homelessness and illiteracy. Crafting alternatives for housing and housing subsidies for this population, with the involvement of practitioners, policy makers, young adults, and public and private property owners is an essential step. . . . Progress in moving young people from foster care into successful adulthood requires the participation of multiple sectors.").

25. For an example of some of the difficulties in funding effective foster care solutions, see OFFICE OF ASSISTANT SEC'Y FOR PLANNING & EVALUATION, FEDERAL FOSTER CARE FINANCING: HOW AND WHY THE CURRENT FUNDING STRUCTURE FAILS TO MEET THE NEEDS OF THE CHILD WELFARE FIELD (2005), <http://aspe.hhs.gov/hsp/05/fc-financing-ib/ib.pdf>.

26. For example, Triple P (Positive Parenting Program), a system of parenting interventions from ages zero to eight, showed substantial reductions in child maltreatment, out of home placements, and hospitalizations for child maltreatment and costs \$23/family. See Ronald J. Prinz et al., *Population-Based Prevention of Child Maltreatment: The U.S. Triple P System Population Trial*, 10 PREVENTION SCI. 1 (2009), available at <http://www.triplep-america.com/documents/Prinz%20et%20al%202009%20Prev%20Science.pdf>; Michael E. Foster et al., *The Costs of a Public Health Infrastructure for Delivering Parenting and Family Support*, 30 CHILDREN & YOUTH SERVS. REV. 493 (2008), available at <http://www.sciencedirect.com/science/article/pii/S0190740907002101>. Multidimensional Treatment Foster Care, a program for severely delinquent foster youth, substantially reduces criminal referrals and has been demonstrated to generate over \$20,000 in criminal justice savings for each program participant. Patricia Chamberlain et al., *Multidimensional Treatment Foster Care for Girls in the Juvenile Justice System: 2-Year Follow-Up of a Randomized Clinical Trial*, 75 J. CONSULTING & CLINICAL PSYCHOLOGY 187 (2007); STEVE AOS ET AL., WASH. STATE INST. PUB. POL'Y, THE COMPARATIVE COSTS AND BENEFITS OF PROGRAMS TO REDUCE CRIME (2001), <http://www.wsipp.wa.gov/rptfiles/costbenefit.pdf>.

ary, or a nonprofit organization. The journey from identifying a problem to structuring a Social Impact Bond can take multiple routes. It may start within government with a specific policy priority and the antecedents to a formal procurement process.²⁷ Other jurisdictions may begin the process from the legislature.²⁸ In some instances an intermediary or other nongovernmental entity might begin the analysis independently and reach out to government to explore the potential of the innovation or work with the government to identify a suitable opportunity.²⁹ As the Social Impact Bond market ma-

27. New York and Massachusetts both started the exploration of Social Impact Bonds or Social Innovation Financing with a Request for Information that inquired broadly about potential uses of this financing mechanism. See *Request for Information: Pay for Success Contracts and Social Impact Bonds*, COMMONWEALTH OF MASSACHUSETTS (2011), available at http://ppp.cof.org/news/june-10th-deadline-to-respond-to-massachusetts-social-impact-bond-request-for-information_3054/; *Request for Information: Identifying Innovative Ways to Finance Social Services*, STATE OF NEW YORK DIV. OF BUDGET IN P'SHIP WITH EXEC. CHAMBER (2012), available at http://payforsuccess.org/sites/default/files/rfi_-_identifying_innovative_ways_to_finance_social_services.pdf.

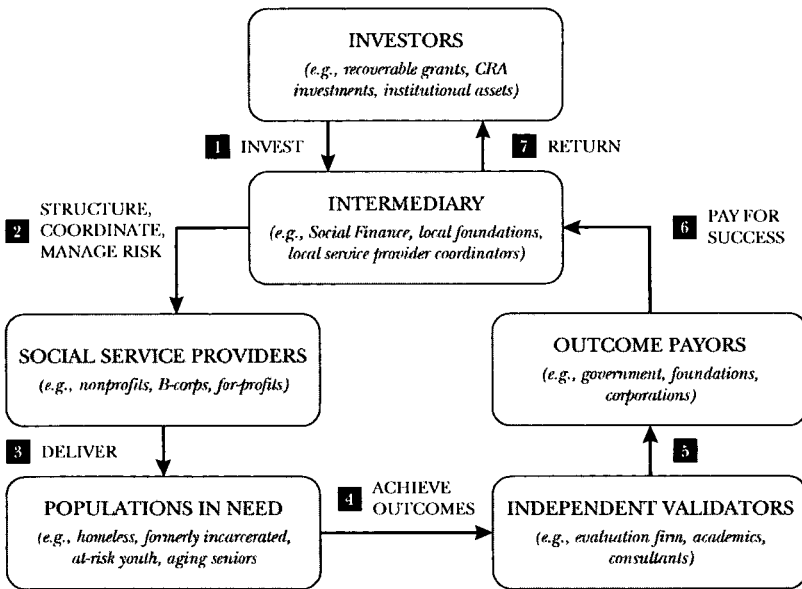
28. While the Texas, Maryland, and California executive branches have not announced any formal interest in participating in Social Impact Bonds, all three legislatures have begun unique processes to independently explore the instrument and encourage support within their state. See Texas Pay-for-Performance Contracts, *supra* note 21; Maryland Task Force, *supra* note 21; Press Release, Senator Curren D. Price, Jr., Senator Price Introduces S.B. 9 to Establish State Office of Social Innovation and Entrepreneurship (Dec. 4, 2012), available at <http://sd26.senate.ca.gov/news/2012-12-04-senator-price-introduces-sb-9-establish-state-office-social-innovation-and-entrepren>.

29. In the United Kingdom, Social Finance reached out to a number of different stakeholders and "canvassed offenders, prison staff, local stakeholders, voluntary organisations working in the field and criminal justice experts to hear what they thought might help stop the revolving door of short sentenced reoffending. [They] began talks with the Ministry of Justice to understand what might make a difference if [they] could find an alternative source of funding to deliver support to this target group." SOC. FIN., THE ONE SERVICE. ONE YEAR ON 7 (2011) [hereinafter ONE SERVICE], http://www.socialfinance.org.uk/sites/default/files/sf_peterborough_one_year_on.pdf. In Essex, U.K., Social Finance has undertaken a feasibility study, funded by the Essex Council government, to assess whether a Social Impact Bond could fund children in care. Camilla Pemberton, *Essex Council Unveils Plans for Social Impact Bonds*, COMTY. CARE, Feb. 8, 2012, <http://www.communitycare.co.uk/articles/08/02/2012/117968/essex-council-unveils-plans-for-social-impact-bonds.htm>. The Harvard Kennedy School Technical Assistance Lab, funded by the Rockefeller Foundation, is offering pro bono assistance to jurisdictions that are interested in developing Social Impact Bonds in order to enable them to identify potential areas of financing and begin

tures, this process may standardize; for now each transaction appears to have a unique path to development.

While the Social Impact Bond process may take different paths, ultimately five parties must come together: a payor of outcomes (e.g., a government), an intermediary or intermediaries (to develop the structure, raise the capital, and manage the project), investors, service providers, and an evaluator. All of these parties come together in service of a sixth group: the target population.

SOCIAL IMPACT BOND ARCHITECTURE³⁰



the process of launching a Social Impact Bond. Harvard Kennedy School of Gov't, Social Impact Bond Technical Assistance Lab Proposals Requested (2012), *available at* <http://hkssiblab.files.wordpress.com/2012/12/sib-lab-announcement.pdf>.

30. Soc. Fin., Firm Overview (April, 2013) (unpublished manuscript) (on file with author) (adapting diagram from LIEBMAN, *supra* note 6). When appropriate, a Social Impact Bond may include two intermediary organizations: 1) a financial intermediary focused on structuring the financing and raising the capital and 2) a program intermediary focused on program management.

Once the potential parties to a contract are at the table and a problem has been identified, six important questions must be asked:

1. How should we define the target population (e.g., as those with the highest risk)?
2. How many people should the project treat?
3. How long should the program run?
4. How much could we remedy this problem (e.g., reducing recidivism by 5% or 10%)?
5. How should we value the outcome?
6. How should we evaluate whether or not the project is successful?

These questions are at the heart of a Social Impact Bond. Just as different geographies are developing alternative means to solicit Social Impact Bonds, so a variety of approaches will be developed to answer these questions.

Once these and many other questions have been answered and a contract is signed,³¹ the intermediary organization raises capital³² from private investors. The intermediary uses the capital raised from investors to provide “working capi-

31. In a typical Social Impact Bond, the contract is executed between a government or payor of outcomes and an intermediary with the promise that the government will repay the intermediary, and thereby the investor(s), if a given social outcome is attained. *See, e.g.*, MINISTRY OF JUSTICE, LESSONS LEARNED FROM THE PLANNING AND EARLY IMPLEMENTATION OF THE SOCIAL IMPACT BOND AT HMP PETERBOROUGH 38 (2011) [hereinafter LESSONS LEARNED], https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162335/social-impact-bond-hmp-peterborough.pdf.pdf (explaining that the Ministry of Justice contracted with Social Finance for a 7.5% reduction in recidivism); ONE SERVICE, *supra* note 29 (discussing how Social Finance approached the Ministry of Justice about areas of need within criminal justice that they could improve with monetary support); *Projects: Social Impact Bond Project at Rikers Island – Agenda Scope and Goals*, MDRC, http://www.mdrc.org/project/social-impact-bond-project-rikers-island#agenda_scope_goals (discussing how the City of New York contracted with MDRC for a 10% reduction in recidivism) (last visited May 1, 2013).

32. The structure of this investment can differ based on the nature of the financing. For example, in the New York City project, Goldman Sachs gave MDRC a loan. *See NYC Announces Nation’s First Social Impact Bond Program*, NYC.GOV (Aug. 2, 2012), <http://www.mikebloomberg.com/index.cfm?objectid=E791E137-C29C-7CA2-F5C2142354A09332>. At Peterborough, a limited partnership was established. LESSONS LEARNED, *supra* note 33, at 13.

tal” to service providers, who use that capital to scale evidence-based preventive programming. Over the life of the Social Impact Bond, the intermediary organization provides ongoing management and monitoring to make sure the programming stays on track. An independent evaluator determines whether the outcome articulated in the contract between the government and the intermediary has been achieved. If the outcome has been achieved, the government pays the intermediary, and investors are repaid their principal plus a return. Depending on the agreements at the outset, investors may receive a sliding scale of return, with a higher return for the achievement of better outcomes.

III.

WHY ALL THE BUZZ?

The Social Impact Bond is a novel tool and, as demonstrated by the discussion above, requires substantially more work than direct funding of social services. So why is it generating this much interest? Here are ten reasons the Social Impact Bond deserves the buzz.

1) *Social Impact Bonds facilitate spending on upfront prevention, reducing the need for downstream remediation expenditures.* Social Impact Bond funding is directed at preventative services (e.g., community-based programs that keep individuals out of prison) that reduce the need for costly remediation programs (e.g., incarceration). If a given social outcome is achieved (e.g., recidivism drops by 10%) the government pays investors for the improved outcomes.

Governments routinely spend money on crisis-driven services but do not allocate sufficient money to effective preventive services because they are constrained by the limits of budgeting processes.³³ Government appropriation processes

33. The investment in long-term, preventive programming is often complicated by the nature of the budgeting and political process. As noted above, many social problems cut across multiple social issue areas, but government funding is often siloed and prevents multiple agencies or funding streams from collaborating on a solution. See NAT'L CONF. OF STATE LEG., NCSL Comment Letter on Federal Strategic Plan for Youth Policy (2011), <http://www.ncsl.org/issues-research/human-services/comment-letter-on-strategic-plan-for-federal-youth.aspx> (“The main challenges states face when trying to implement effective youth policies are the federal funding silos and varied program requirements among different federal funding streams. . . .

happen on an annual or biennial basis, with the majority of states now enacting an annual budget,³⁴ but prevention typically takes more than one or two years to bear fruit. If we invest in early education today, it will be years before we realize the full benefits of that investment.³⁵ When appropriations are managed on an annual or biennial basis by politically accountable officials, there may be pressure to make short-term investments that generate short-term benefit, even if long-term value is sacrificed.³⁶

This near-term focus in the budgeting process is complicated by the fact that budgets tend to be siloed, separating one agency budget from another and discouraging the type of multi-sector collaboration central to prevention and to accurately addressing complex social issues. For example, chroni-

Collaboration between federal and state programs for youth is critical to fully address the needs of youth.”); *Spotlight on budget: Permanent Supportive Housing!*, NAT’L ALLIANCE TO END HOMELESSNESS (Feb. 9, 2010), <http://www.endhomelessness.org/blog/entry/spotlight-on-budget-permanent-supportive-housing> (discussing innovations in HUD budgets to support permanent supportive housing as a solution for chronic homelessness as “[a] ‘silo-busting’ alignment of resources,” representing “a move toward interagency collaboration.”).

34. See RON SNELL, NAT’L CONF. OF STATE LEG., STATE EXPERIENCES WITH ANNUAL AND BIENNIAL BUDGETING (2011), <http://www.ncsl.org/issues-research/budget/state-experiences-with-annual-and-biennial-budgeti.aspx>.

35. James Heckman and Dimitriy Masterov, in their research on the Perry Preschool Program and the Abecedarian Program, found substantial positive effects of early childhood programming on an array of outcomes including job skills, school achievement, and cognitive and noncognitive skills. See James J. Heckman & Dimitry V. Masterov, *The Productivity Argument for Investing in Young Children* 33-36 (Nat’l Bureau of Econ. Research, Working Paper No. 13016, 2007), available at <http://www.nber.org/papers/w13016.pdf>. Many of these outcomes were realized over a decade after the program—early education—had been funded and implemented. See *id.* at 34-35.

36. A 2010 Report of the Peterson-Pew Commission on Budget Reform, referring to the federal budgeting process, alleged that “[t]he current budget framework is too short-sighted and tends to focus primarily on the upcoming year. The result is that lawmakers routinely continue programs that could not withstand rigorous evaluation of their costs and benefits.” PETERSON-PEW COMMISSION ON BUDGET REFORM, GETTING BACK IN THE BLACK (2010), http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Peterson-Pew_report_federal_budget_process_reform.pdf.

cally homeless individuals³⁷ generate significant public costs through emergency room visits and involvement with the corrections system.³⁸ While the expenses are borne by Medicaid and corrections, the solution—housing—is paid for by housing agencies.³⁹ The costs and benefits of prevention and remediation do not reside in the same agency budgets and, accordingly, agencies lack incentives to work together. By permitting government to transfer the risk of prevention programming away from the taxpayers and onto private investors, Social Impact Bonds allow governments to support prevention without the fear that they will pay the cost and not reap the reward. Moreover, Social Impact Bonds allow multiple agencies to recognize the value of funding prevention.

Indeed, governments in the United States have looked to Social Impact Bonds to overcome structural limitations of investing in prevention and have thought creatively about how best to facilitate this process. In both New York State and Massachusetts, the state government initiated procurements processes for Social Impact Bonds out of the budgeting agency so it could look across agencies to fund the best solutions. Moreover, in 2012 the Massachusetts state legislature estab-

37. A chronically homeless individual is one who has a disability and has either experienced homelessness for a year or longer or experienced at least four episodes of homelessness in the last three years. Notice of Funding Availability for the Collaborative Initiative to Help End Chronic Homelessness, 68 Fed. Reg. 4018, 4019 (Jan. 27, 2003).

38. See *Chronic Homelessness*, NAT'L ALLIANCE TO END HOMELESSNESS (last visited Mar. 14, 2013), <http://www.endhomelessness.org/pages/chronic-homelessness-solutions>.

39. Please note that many in homeless services have long tried to collaborate and address the multi-faceted nature of this problem. See, e.g., *Supportive Housing*, P'SHIP FOR STRONG COMMUNITIES, <http://pschousing.org/supportive-housing> (last visited May 1, 2013) ("Ending chronic homelessness with permanent supportive housing . . . will require continued commitment and coordination. Housing developers and landlords must collaborate with [service] organizations These groups must also coordinate with government agencies to ensure that funding is provided and that these funds are efficiently and effectively used to reach as many individuals and families as possible.") For a discussion of the efficacy of permanent supportive housing in reducing public expenditures for homeless individuals with severe mental illness ("SMI") and the history of collaborative efforts to support homeless individuals with SMI, see Dennis Culhane, *Public Service Reductions Associated with Placement of Homeless Persons with Severe Mental Illness in Supportive Housing*, 13 HOUSING POL'Y DEBATES 107 (2002), available at http://repository.upenn.edu/cgi/viewcontent.cgi?article=1067&context=spp_papers.

lished a sinking fund—to repay investors in the event of success—out of the general fund rather than out of any one agency budget; and in 2013 the New York General Assembly appropriated \$30 million to a new Pay for Success Contingency Fund.⁴⁰

2) *Social Impact Bonds transfer risk away from taxpayers and onto investors.* Typically, governments pay for services without evaluating whether or not the services will be effective.⁴¹ As a result, taxpayers routinely bear the expense of ineffective government spending. In a time of increasing fiscal constraints, Social Impact Bonds allow governments to be judicious in their use of limited dollars. The investors take the performance risk and lose money if programming is ineffective.⁴²

3) *Social Impact Bonds facilitate improved accountability for the use of government dollars.* The Social Impact Bond provides one answer to the question: “how do we know if a government dollar is well spent?” Setting an outcome target by contract—assuming the outcome is valued by society⁴³—gives taxpayers a way of determining whether their money is being well spent. In preparing to collect the relevant data over the life of the instrument, governments will improve their data collection processes by integrating data systems and will develop a better sense of how underserved populations interact with government systems. Indeed, this is a “positive externality” of offering a Social Impact Bond that governments often mention as be-

40. Social Innovation Financing Trust Fund, MASS. GEN. LAWS ch. 10, § 35VV (2012); NEW YORK STATE SENATE, REPORT ON THE ENACTED STATE FISCAL YEAR 2013-2014 EXECUTIVE BUDGET (2013), <http://www.nysenate.gov/files/pdfs/Enacted%20Budget%20Fact%20Sheet%20Revised%20with%20Cover%204-3-13.pdf>.

41. See *supra* note 6; see also Jonathan Walters, *Performance-Based Contracting Comes to Human Services*, GOVERNING, Nov. 13, 2012, <http://www.governing.com/topics/health-human-services/col-performance-based-contracting-comes-human-services.html> (“While contract negotiation and management have never been human services’ strong suit, there’s the parallel problem that in many jurisdictions a handful of politically connected and powerful human services providers have often hijacked the contracting process, with public money going to historically influential providers rather than those with a proven track record.”).

42. Please note that the intermediary and/or social service provider could also elect to take some financial risk.

43. Examples might include a reduction in the recidivism rate, an increase in days employed for hard to employ populations, and a reduction in the incidence of acute asthma attacks for chronic asthma sufferers.

ing a main motivating factor for their participation in Social Impact Bond financing.

4) *Social Impact Bonds allow investors to obtain a financial return and achieve social impact.* For a new cadre of “impact investors” the opportunity to earn a social as well as financial return provides a unique chance to utilize their portfolio for social benefit. Because Social Impact Bonds only provide a financial return in the event a given outcome is achieved, Social Impact Bonds allow investors to deploy their capital to promote, not undermine, social good.

5) *Social Impact Bonds allow investors to participate in a new asset class, not correlated to other investments.* Many investments’ returns are linked, aggregating risk for investors. Because Social Impact Bonds’ returns are linked solely to the achievement of social outcomes—outcomes not necessarily correlated with traditional investment benchmarks—they may diversify the risk in a given portfolio rather than compound any one set of risks.⁴⁴

6) *Social Impact Bonds give service providers a stable, multi-year revenue stream.* Nonprofits need new ways to support themselves financially. Many service organizations find themselves working year after year to raise just enough money to survive the next fiscal year.⁴⁵ When management needs to spend such a large percentage of their time raising money, they do not have the financial resources or time to plan for multi-year efforts. By giving service providers access to a stable multi-year funding

44. See J.P. MORGAN GLOBAL RESEARCH & THE ROCKEFELLER FOUND., *IMPACT INVESTMENTS: AN EMERGING ASSET CLASS* (2010), <http://www.rockefellerfoundation.org/uploads/files/2b053b2b-8feb-46ea-adbd-f89068d59785-impact.pdf> (discussing the role of impact investments as a new asset class); Jonathan Greenblatt, *Social Impact Bonds Bring Social Innovation to the Bay State*, HUFFINGTON POST, May 5, 2011, http://www.huffingtonpost.com/jonathan-greenblatt/shot-heard-round-the-world_b_858961.html (noting that the argument that social impact bonds are a new asset class is particularly apt if they do in fact produce uncorrelated returns); Sir Ronald Cohen & William A. Sahlman, *Social Impact Investing Will Be the New Venture Capital*, HBR BLOG NETWORK (Jan. 17, 2013, 8:00 AM), http://blogs.hbr.org/cs/2013/01/social_impact_investing_will_b.html.

45. NONPROFIT FINANCE FUND, 2013 STATE OF THE NONPROFIT SECTOR SURVEY 15 (2013), http://nonprofitfinancefund.org/files/docs/2013/2013_survey-results.pdf (finding that “42% of survey respondents report that they do not have the right mix of financial resources to thrive and be effective in the next 3 years, 1 in 4 nonprofits has 30 days or less cash-on-hand.”).

stream, Social Impact Bonds allow service providers to think strategically about robust scaling efforts and to focus their energy on providing excellent services.

7) *Social Impact Bonds focus social services on outcomes not outputs.* Traditional funding for social services focuses on outputs or services delivered.⁴⁶ A provider is obligated to serve 400 people per year, an output, not reduce the rate of recidivism, an outcome. By linking investors' returns to outcomes, Social Impacts Bond focus payments and performance on outcomes. Service providers are only selected for funding if they have a record of delivering outcomes and are able to properly monitor their performance. Investors and governments choose to invest in the selected providers because of their ability to achieve a given social outcome. Ultimately, Social Impact Bonds can be part of a larger movement to create a more performance-based social sector.

8) *Social Impact Bonds facilitate necessary collaboration across organizations.* Consider again the fact that chronically homeless individuals experience a range of challenges, of which lack of shelter is only one. If the service provider's funding turns only on the provision of shelter, she is not incentivized to connect an individual to other critical ancillary services, like mental health service. She may very well try to coordinate these services, but if she is constrained in time and struggling to meet her client's needs for shelter, she might not prioritize this collaboration. Similarly, the mental health provider, under similar constraints, might not prioritize assuring that his clients have shelter for the evening. If instead both the mental health provider and the shelter provider were funded together to achieve an outcome, they would have to acknowledge the multi-faceted nature of the problem and work closely together to address the underlying challenges.

In addition to catalyzing collaboration among human service agencies, Social Impact Bonds facilitate collaboration be-

46. For a discussion of the difference between outputs and outcomes, see Sean Stannard-Stockton, *Getting Results: Outputs, Outcomes and Impact*, STAN. SOC. INNOVATION REV. BLOG (Jul. 26, 2010), http://www.ssireview.org/blog/entry/getting_results_outputs_outcomes_impact. For a discussion of outcome-oriented philanthropy, see Paul Brest, *A Decade of Outcome-Oriented Philanthropy*, STAN. SOC. INNOVATION REV., Spring 2012, at 41, http://www.ssireview.org/pdf/Spring_2012_A_Decade_of_Outcome-Oriented_Philanthropy.pdf.

tween different sectors. This complex contracting structure brings government and service providers into a shared discussion about driving better results; service providers and government actors, who often are independently working on similar goals, have anecdotally shared that this type of conversation is new and highly beneficial.

9) *Social Impact Bonds allow service providers to access new capital to scale operations.* Despite the United States' significant philanthropic resources and government commitment to funding human services, service providers still struggle to scale their operations. A recent study found that while over 75% of surveyed nonprofits were in the process of expanding, only 24% of those groups had started fundraising campaigns to fund that growth, and they had raised, on average, only 17% of what they needed to realize their expansion plans.⁴⁷ By monetizing social outcomes, Social Impact Bonds create an asset that investors can invest in, expanding the pot of money available beyond philanthropy and government grants to true investment capital. Investors can look at the data surrounding a given financing and ascertain the risks associated with the investment, similarly to the way they would analyze the risks in a traditional investment. By allowing investors to analyze and price the risks of achieving a given social outcome, Social Impact Bonds facilitate the financing of outcomes by investors, not just philanthropists. While there are \$700 billion of foundation assets, there are some \$200 trillion of financial assets; creating a pipeline from social outcomes to these \$200 trillion forms a pathway to a new world where social entrepreneurs can get the capital they need to scale critical services and where people in need have access to services they require.⁴⁸

10) *Social Impact Bonds provide an opportunity for philanthropy to focus on innovation.* By accounting for which services are effective and which are ineffective, Social Impact Bonds direct capital towards effective programming and reduce expenditures on ineffective programming. This focus on outcomes not only provides a pathway for investment capital to

47. CYNTHIA W. MASSARSKY & JOHN F. GILLESPIE, THE SOC. IMPACT EXCH. & VERIS CONSULTING, THE STATE OF SCALING SOCIAL IMPACT: RESULTS OF A NATIONAL STUDY OF NONPROFITS (2013), http://www.socialimpactexchange.org/webfm_send/810.

48. Cohen & Sahlman, *supra* note 45.

finance social services, but also frees philanthropy to be used more judiciously. As investment capital is increasingly directed towards funding evidence-based social services, philanthropy can be unencumbered to fund innovation.

IV.

MANAGING PERFORMANCE: CONSIDERATIONS IN TRANSLATING SOCIAL IMPACTS BONDS FROM CONCEPT TO ACTION

In light of the substantial conversation surrounding the Social Impact Bond, it is important to acknowledge key considerations about Social Impact Bonds. Social Impact Bonds are risky endeavors—at their core they are about transferring risks. Those risks must be properly articulated, managed, and appreciated; they are a challenge and an opportunity. As practitioners in the field, we do not enter these transactions in spite of the risks but largely because of them. The gaps in information and resources are what we seek to bridge. While we have no illusions that we have found *the* solution, we believe we are working on an important innovation that will mature with time, learn from its early experiences, and ultimately better serve those in need.

A. *Categories of Risk*

The risks inherent to a Social Impact Bond are important to appreciate. Each of the four elements of a Social Impact Bond contains its own challenges that must be properly understood and addressed:

1) *Program model or intervention*: Intervention risk refers to the risk that the chosen interventions will not meet their expected outcomes. While funding interventions with high levels of evidence reduces program model or intervention risk, it does not eliminate it. When deciding where to invest Social Impact Bond money, we must ask whether a candidate program model is well tested, how variant we expect outcomes to be from historic outcomes, whether there is potential for investment return, and whether the program model is the right model to meet target outcomes.

2) *Social service provider*: Service provider risk is a form of execution risk and refers to the risk that the service providers will not effectively implement the program. When selecting the provider we must determine whether the provider is a

good execution partner for the project, how likely it is, individually or as part of a larger group, to achieve the target outcomes, as well as the provider's capacity to scale.

3) *Government*: Government risk refers to the risk that government will terminate the contract, default on its payment or ultimately choose not to appropriate the money to fund investor returns. When contracting with a government, we must be aware of the government's credit risk, the level of political risk to which the deal is exposed, how risk is articulated and shared in the contract, and, ultimately, whether the government will be a good partner in executing the Social Impact Bond.

4) *Investors*: Investor risk refers to the risk that investors might not meet capital calls.

5) *Evaluation*: Evaluation risk refers to the risk that the evaluation methodology might not properly capture the impact of the intervention or make investors accountable for risks they cannot manage.

B. *Managing the Risks*

The considerations above underscore that developing and managing Social Impact Bonds is not without its risks. Having a dedicated intermediary that is committed to driving performance throughout the project is critical to selecting the right projects, effectively managing risks, assuring that the project produces the desired outcomes, and mitigating these performance and execution risks. While an active intermediary organization comes with its own risks, it also makes it possible to align interests. While the investor, nonprofit, and government all likely want to see a successful transaction, they all also have their own self-interests. An intermediary organization may have its own priorities, but its ultimate focus and its own success are tied to successful outcomes for these transactions.

The intermediary's focus on driving toward the achievement of mutually beneficial outcomes helps assure that each party stays on track through the life of the Social Impact Bond. For example, as Burand mentions,⁴⁹ scaling providers is not risk free. A strong project management role is designed to address this problem and provide ongoing support to assure the service provider is well positioned to receive the capital and

49. Burand, *supra* note 11, at 467-80.

has the necessary resources to scale its programming. Service providers need to be vetted, not just to understand the interventions they deliver, but also to assess their financial health, their internal management, their ability to deliver the valued outcomes, and their ability to absorb new capital. The intermediary organization needs to articulate these risks at the outset and then help providers manage these risks over the life of the project by providing technical assistance and assuring that there is sufficient funding for data management or staff training. Throughout the project, an intermediary should monitor data to assure that performance is on track, support data-driven course corrections and re-deploy funding to other providers if needed.⁵⁰

The intermediary also protects one interest from overriding others. Burand identifies the potential for investors to take a greater role in making decisions normally in the purview of government.⁵¹ If the intermediary properly aligns the diverse interests and focuses on the mutually valued outcome, and not on the interest of one party, the intermediary can ensure that the government and the investors do not override one another in the decision-making processes. This active intermediary role can also prevent the moral hazard problem Burand suggests could present should government not collaborate sufficiently to achieve the outcomes.⁵² Playing an active role throughout the transaction, the intermediary can engage government if they seem to be withdrawing or not meeting their responsibilities.

C. *Risks, Opportunities, and Looking Ahead*

While the risks endemic to the Social Impact Bond pose serious challenges, they also are indicative of the opportunities associated with using this new tool. If the relationships between the parties in a Social Impact Bond were straightforward, and if there were no risk in engaging in this type of contracting, these partnerships would have already formed, and capital would naturally be flowing to support these important

50. See ONE SERVICE, *supra* note 29, at 9-10, 32 (describing some of the management and flexibility of the Peterborough transaction as well as referring to Meganexus, the case management system utilized to collect data).

51. Burand, *supra* note 11, at 496-98.

52. *Id.*

programs that are not only socially important but also generate value to the taxpayers. The challenges discussed above represent the need for a dedicated intermediary that can not only actively manage risk but also define the opportunities. Social Impact Bonds recognize the latent potential in providing bridge financing and bridging the gap between what we know (e.g., the record of how a social services intervention has performed) and what we aim for (e.g., how we hope the intervention can perform in the future, at a larger scale).

These risks also points to the nascent nature of the instrument. The Social Impact Bond is an innovation. We anticipate that early Social Impact Bonds will all take their own structure and push different elements of the innovation. Some projects may think about increasing the value for government dollars while others may think exclusively about government savings. Some projects may utilize a randomized control trial while others may rely on a historical baseline. Some projects may have solely philanthropic capital, some may have solely investment capital, and many will likely have a mix of both sources of capital. These early projects and variations will provide a variety of data to better inform all Social Impact Bond actors and improve the delivery of social services. Different models will emerge, including structures where providers and government take risk. In the days and years ahead we expect to learn a tremendous amount about the possibility of increasing the quality and quantity of social services and the potential to use investment capital as a pump for that much-needed progress.

V.

CONCLUSION

Today, we have the opportunity to move past the status quo of social stagnation⁵³ and open up new opportunities for our most in-need. Social Impact Bonds provide a unique mechanism for financing social outcomes and expanding the availability of services to tackle our most entrenched social problems. Collecting data and utilizing evidence to make government funding decisions, Social Impact Bonds not only provide a means to direct capital to the social sector, but also provide the opportunity for government to receive feedback

53. Baron, *supra* note 6.

about the efficacy of its spending and to make progressively better decisions about social spending. These early transactions will provide learning points. The result, we hope, is progress towards not only a stronger instrument but towards stronger communities.