

ROBERT SPRAGUE

OHIO TREASURER

Notice of Public Hearing

To Whom It May Concern:

A public hearing will be held by the Office of Treasurer of State Robert Sprague on June 30, 2020 at 12:30 PM, in the 3rd Floor Administrative Hearing Room of the Rhodes State Office Tower, located at 30 East Broad Street, Columbus, Ohio 43215.

The purpose of the hearing is to solicit comments on the following new rules that impliment the pay for success contracting program (ResultsOHIO):

Ohio Administrative Code 113-8-01 Pay for success contracting program authority.

Pursuant to sections 113.60 through 113.62 of the Revised Code, the treasurer of state may adopt rules in accordance with Chapter 119 of the Revised Code to administer the pay for success contracting program and shall adopt rules pursuant to 113.60(D).

Ohio Administrative Code 113-8-02 Definitions.

“Applicant” means a person, state agency, political subdivision, service intermediary, service provider, investor, or any combination thereof, who files an application for evaluation prior to entering in to a pay for success contract with the treasurer of state.

“Cost of the contract” means any costs associated with a pay for success contract or administering a pay for success contract, as determined by the treasurer of state, including but not limited to, administrative costs, installment payments, and costs related to contract with an independent evaluator.

“Independent Evaluator” is a person or government entity, other than a state agency, a political subdivision, or a group of state agencies or political subdivisions that requested the treasurer and, as applicable the director of administrative services, to enter into the contract, and is independent from the service intermediary and the service provider, ensuring that the evaluator does not have common owners or administrators, managers, or employees with the service intermediary or the service provider.

“Installment payments” means any payments to be paid under a pay for success contract.

“Owner” means any person who holds a direct or indirect ownership interest in an applicant or has the right to control an applicant, except any person who holds an interest of less than 25% of an applicant and does not exercise influence over the affairs of an applicant.

“Pay for success application” means the application and any supplemental forms submitted to the treasurer of state.

“Pay for success contract” means a pay for success contract entered into under sections 113.60 thorough 113.62 of the Revised Code and sections 113-8-3 of the Administrative Code.

“Pay for success fund” means one or more of the funds created pursuant to sections 113.62(A) through 113.62(C) of the Revised Code.

“Person” means any individual, corporation, business trust, estate, trust, partnership, association, any other business entity or organization, or any other legal entity that is capable of engaging in business.

“Service intermediary” has the same meaning as in section 113.60 of the Revised Code.

“Service provider” means any person who is either the service intermediary, or person who enters into a contract with a service intermediary to perform services under a pay for success contract.

“State agency” and “political subdivision” have the same meanings as in section [9.23](#) of the Revised Code.

Ohio Administrative Code 113-8-03 Procedure for entering into a pay for success contract.

(A) The treasurer of state, and as applicable the director of administrative services, may enter into a pay for success contract upon receipt of an appropriation from the general assembly, or funds from the federal government, for the purpose of entering into a pay for success contract, or at the request of a state agency, political subdivision, or group of state agencies or political subdivisions.

(B) The treasurer of state may release notices to accept pay for success applications in order to evaluate potential pay for success projects, including, but not limited, at the direction of the General Assembly and at the request of a state agency, political subdivision, or group of state agencies or political subdivisions.

(1) The treasurer of state shall provide the required application, and any supplemental forms, that an applicant must submit. The treasurer of state shall have the authority to amend the application and any supplemental forms.

(2) The treasurer of state shall have the authority to investigate any applicant or information submitted and request any other information, background checks, documentation, or materials.

(3) The treasurer of state may assess an applicant a fee to pay or reimburse the treasurer of state for actual costs of investigations related to an application or other costs of administering the pay for success contracting program, including any costs associated with conducting background checks. Any fees or reimbursements collected under this section shall be deposited into the fund from which the original expenditure was made or into a fund for which the fee or reimbursement is appropriate.

(C) The treasurer of state, and as applicable, the director of administrative services, is not required to enter into a pay for success contract on behalf of a requesting state agency, political subdivision, or group of state agencies or political subdivisions.

(D) The treasurer of state is not required to identify, apply for, or enter into an agreement to apply for federal grant moneys on behalf of any requesting state agency, political subdivision, or group through its administration of the pay for success contracting program.

(E) For each pay for success contract, the treasurer of state and, as applicable, the director of administrative services shall enter into a contract with an independent evaluator to evaluate whether the service provider has met the performance targets specified in the pay for success contract, pursuant to section 113.61(B) of the Revised Code.

(1) For any pay for success contract where the treasurer of state is the requesting agency, the department of administrative services shall select the independent evaluator to evaluate whether the service provider has met the performance targets.

Ohio Administrative Code 113-8-04 Pay for success fund.

(A) If the treasurer of state, and as applicable, the director of administrative services, does elect to enter into a pay for success contract, the requesting state agency, political subdivision, or group of state agencies or political subdivisions shall deposit the cost of the contract, as determined by the treasurer of state, in the appropriate fund established under 113.62 of the Revised Code.

(B) If the federal grant moneys are received and those moneys do not cover all of the cost of the contract, the requesting state agency, political subdivision, or group of state agencies or political subdivisions shall deposit the remainder of the cost of the contract, as determined by the treasurer of state, into the appropriate pay for success fund under 113.62 of the Revised Code.

(C) Moneys shall be deposited into the pay for success funds as follows:

(1) If a pay for success contract is funded by a state agency or political subdivision, the requesting state agency or political subdivision shall deposit into the applicable pay for success fund the cost of the contract, and used in accordance with section 113.62(A) or section 113.62(C) of the Revised Code, as applicable.

(2) If a pay for success contract is funded by general assembly appropriation, those funds shall be deposited into the applicable pay for success fund upon receipt, and used in accordance with section 113.62(A) of the Revised Code.

(3) If a pay for success contract is funded by federal grant moneys, those funds shall be deposited into the applicable pay for success fund upon receipt, and used in accordance with section 113.62(B) of the Revised Code. Federal grant moneys and any other funds received by the treasurer of state shall not constitute state funds for purposes of section 113.60(B)(2)(b) of the Revised Code.

(4) If one pay for success contract is funded by more than one of the sources set forth in (1) – (3) above, those moneys shall be deposited into the applicable pay for success fund and earmarked for that project.

(D) Costs related to a contract with an independent evaluator may be paid from funds on deposit in a pay for success fund.

(E) The treasurer of state may create and hold one or more trust accounts or escrow accounts with a corporate trustee or escrow agent, which trustee or escrow agent may be any trust company or bank having the powers of a trust company within or without the state, within which the treasurer of state may deposit any moneys on deposit in a pay for success fund pursuant to section 113.62 of the Revised Code, or any other funds received from any person to be used for purposes under sections 113.60 to 113.62 of the Revised Code. In the sole discretion of the treasurer of state, any installment payments payable under sections 113.60 to 113.62 of the Revised Code may be secured by one or more trust agreements or escrow agreements between the treasurer of state and a corporate trustee or escrow agent, under which the treasurer of state may pledge or assign any funds on deposit in a pay for success fund pursuant to section 113.62 of the Revised Code, or any other funds received from any person to be used for purposes under sections 113.60 to 113.62 of the Revised Code. All expenses incurred in carrying out the

provisions of this section may be treated as a part of the cost of administration of the pay for success contracting program and may be paid from funds on deposit in a pay for success fund.

Ohio Administrative Code 113-8-05 Regional and national data used in pay for success contracts.

(A) In not less than seventy-five per cent of the pay for success contracts entered into under Chapter 113 of the Revised Code, the performance targets specified in the contract shall require that, based on available regional or national data, the improvement in the status of this state or the relevant area of this state with respect to the issue the contract is meant to address be greater than the average improvement in status with respect to that issue in other geographical areas during the period of the contract.

(B) An independent evaluator who is providing evaluation services for a pay for success contract shall review any regional or national data that will be used to determine whether performance targets have been met under a pay for success contract to ensure that the data is scientifically valid.

All interested parties are invited to attend the hearing and present oral and/or written testimony. Written comments may also be submitted prior to the hearing to the attention of Monica Young, Deputy Legal Counsel, Office of Treasurer of State Robert Sprague, 30 East Broad Street, 9th Floor, Columbus, Ohio 43215, or monica.young@tos.ohio.gov no later than 5:00 PM on June 26th, 2020.