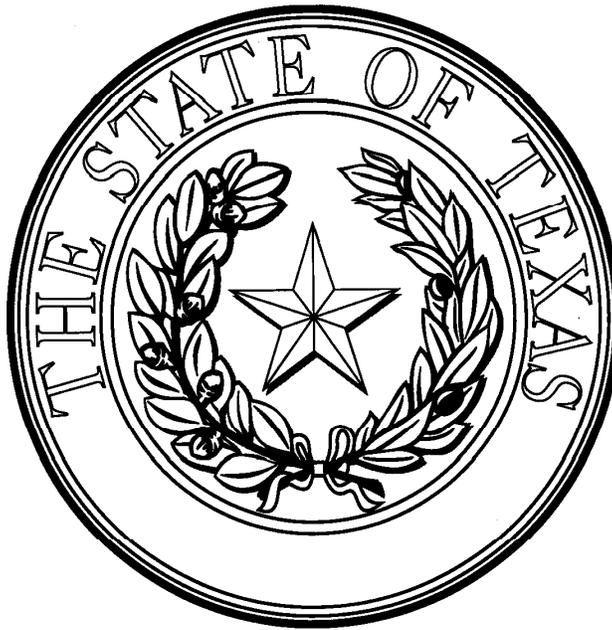


2014
Texas Capital Fund
Real Estate and Infrastructure
Program Guidelines



Texas Department of Agriculture

1700 N. Congress

P.O. Box 12847

Austin, Texas 78711-2847

OVERVIEW OF THE TEXAS CAPITAL FUND

The Texas Capital Fund (TCF) was created to improve the Texas economy. These funds, which are a part of the United States Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) program, are known as the Texas Community Development Block Grant Program (TxCDBG).

The goal of the Program, as stated in the Housing and Community Development Act of 1974 (as amended), is "the development of viable communities ... by expanding economic opportunities, principally for persons of low and moderate income." Additionally, the 1999 Texas Legislature mandated that the Texas Capital Fund primarily benefit businesses involved in manufacturing and/or processing. The Texas Capital Fund encourages business development, retention, or expansion by providing infrastructure and real estate development funds to qualified applicants (non-entitlement cities/counties). Funds will be awarded for the express purpose of creating new permanent jobs or retaining existing permanent jobs, primarily for low and moderate income persons. The TCF program is administered by the Texas Department of Agriculture (TDA or Department).

This document serves as a reference guide for the Texas Capital Fund Application. HUD federal regulations governing the program are found at 24 CFR Part 570. Texas state rules governing the program are found in the Texas Administrative Code, Title 10, Part 6, Chapter 255, Subchapter A. All documentation submitted in the application and for a subsequent award is subject to the Open Records Request Act. The Application and any requests for additional information should be addressed to:

The Texas Capital Fund
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711-2847

-or-

1700 N. Congress
Stephen F. Austin State Bldg., Room 220
Austin, Texas 78701
FAX (888) 216-9867

e-mail: matthew.schmidt@TexasAgriculture.gov

web site: <http://www.TexasAgriculture.gov>

TDD/ITT: 800/735-2988. The Texas Department of Agriculture is an equal opportunity employer/program. Auxiliary aids and services will be made available upon request to individuals with disabilities.

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SECTION 1

Application Preparation Information

Appeals - An applicant for funding under the Texas Community Development Block Grant Program (TxCDBG) may appeal the disposition of its application in accordance with the following guidelines:

1. The appeal may only be based on one or more of the following grounds:
 - A. **Misplacement of an application:** All or a portion of an application is lost, mis-filed, or otherwise misplaced by program staff, resulting in unequal consideration of the applicant's proposal.
 - B. **Scoring error:** In rating the application, the score on any selection criteria is incorrectly evaluated by program staff.
 - C. **Other procedural error:** The application is not processed by program staff in accordance with the application and selection procedures set forth in the rules.
2. The appeal must be submitted in writing to the Texas Department of Agriculture (TDA) no later than ten (10) days following the date of the notification letter. TCF staff will evaluate the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the Commissioner of the Texas Department of Agriculture. The Commissioner will then consider the appeal within thirty (30) days and make the final decision.
3. The applicant will be notified of the decision made by the Commissioner within ten (10) days, after the final determination by the Commissioner.
4. Appeals not submitted in accordance with these guidelines will be dismissed and may not be re-filed.

Applicants - Eligible applicants (localities) must be either an incorporated city or county government and must be a non-entitlement locality. An applying city generally is less than 50,000 in population and cannot be designated as eligible or entitled to receive direct Community Development funding from HUD. The population restrictions do not apply to a county applicant; however, the county would not be eligible for this program if it received entitlement funding from HUD. A list of eligible applicants is available from TDA. Eligible cities or counties must submit applications that provide assistance in support of specific business(es). The applicant remains responsible for the administration and success of the project throughout the term of the contract.

Applicant Performance Threshold Requirements – An applicant must meet all of the following requirements in order for its application to be considered:

1. Commit to create and/or retain jobs where at least fifty-one percent (51%) of the jobs benefiting low and moderate income (LMI) individuals.
2. Demonstrate the ability to manage and administer the proposed project, including delivery of all the proposed benefits outlined in the application, property management for real estate projects and lease/loan servicing.
3. Demonstrate the financial management capacity to operate and maintain improvements made in conjunction with the proposed project.
4. Levy a local property tax or local sales tax option.
5. Demonstrate satisfactory performance on prior and existing TCF contracts and resolve all outstanding compliance and audit findings related to previous TxCDBG awards.
6. Applicants may not have an existing contract with an award date in excess of forty-eight (48) months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than thirty (30) days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract no less than thirty (30) days prior to the new application deadline date. Complete closeout documentation is defined in the most recent version of the TxCDBG Implementation Manual.

7. TCF program funds may not be used in any county that is **designated** by Texas Water Development Board as an Economically Distressed Area, unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to Section 12.343 of the Water Code or agrees to adopt and/or enforce the Model Subdivision Rules.

An incorporated city that is located in any EDAP designated county that has not adopted, or is not enforcing the Model Subdivision Rules, may submit an application for TCF funds. However, that incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TCF funds for the proposed project.

For more information, contact the Texas Water Development Board (TWDB) at 512/463-0991, or visit the Assistance Section of the TWDB website at www.twdb.state.tx.us

Application Dates - The Texas Capital Fund (except the Main Street and Downtown Revitalization Programs) will be available monthly, on a competitive basis, to eligible applicants statewide. Applications for the **2014** program year, both regular and jumbo requests received by the 20th of each month (or next business day if it falls on a weekend or holiday) will be competitively reviewed by Department staff to determine which applications are in the “funding range”. All applications shall be submitted to the Department at the address listed on the front of the Program Guidelines. Only one copy of the application should be submitted. You may contact the Department to verify the availability of funds, for both the regular and jumbo requests, before preparing and submitting applications.

Application Process - The application and award procedures consist of the following steps:

1. Each applicant must submit a complete “Short Form” Application to the Department's Office of Rural Affairs. No changes to the application will be allowed after the 20th of each month, unless they are a result of Department recommendations. Scores are reviewed and finalized based on information contained in the application as of the 20th. Information and/or documentation received after the 20th will not be considered for scoring purposes until the following month.
2. For 2014, “short form” applications will be reviewed, competitively scored and then considered for possible funding on a monthly basis. Applications will be ranked by scores, from high to low and tie-breakers may be used. No preference will be given to rollover applications.
3. Any applications having a reviewed final score equal to or greater than the maximum amount for that particular month will be considered to automatically be in the funding range and notified to submit the full project detail and business information. We plan on funding these applications without using the monthly allocation amount. This means that the total funding level for the month could be greater than the monthly allocation amount.
4. Applications having final scores below the maximum, but not less than the minimum amount, will be considered based on score ranking and available allocated funds. For example: In January, we receive three applications each requesting \$750,000 with scores of 65, 55 and 50. Since we only have \$1,500,000 allocated to this month, the two highest scoring applications will be in the funding range. The lowest scoring application would not have funding available in January, but would be reconsidered in February and future months.
5. No applications with final scores below the minimum for the month will be considered for funding. These applications will be identified as holdover applications and reconsidered the next month, unless withdrawn by the applicant.
6. If applications scoring the maximum or higher are identified for funding, this will cause the total available funding to be used more quickly and may reduce the available monthly allocations in future months.
7. After the application scores are reviewed, applicant communities determined to be in the funding range will be requested to provide the *Project Detail and Business Documentation Application*. Communities will be given thirty (30) business days to provide this information. Failure to provide this information and documentation may result in an application being declined as incomplete.
8. Upon receipt of the *Project Detail and Business Documentation Application*, applications within the funding range are then reviewed for eligibility and completeness in descending order based on the scoring. The applicant will be notified of any needed clarifications or deficiencies and given ten (10) business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature may be declined. Material deficiencies are items such as missing business and guarantor financial information, financing commitments, etc. In the event a determination is made that an application contains activities that are ineligible for

funding, the application may be restructured or declined. If an application is declined, the application will be retained by TDA.

9. Each complete application is assessed for:
 - A. The financial feasibility of the business(es) to be assisted based on a credit analysis;
 - B. The strength of commitments from all other public and/or private investments identified in the application;
 - C. Whether the use of TCF funds is appropriate to carry out the project proposed in the application;
 - D. Whether efforts have been made to maximize other financial resources;
 - E. Whether there is evidence that the permanent jobs created or retained will primarily benefit low and moderate income persons; and
 - F. The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.
10. Upon determination that an application supports a feasible and eligible project, a visit is generally arranged to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.
11. A project report is prepared. The need to negotiate some elements of the application that would be in the TCF contract, if it is awarded, may be discussed. A recommendation to the Commissioner is then made.
12. The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.
13. A contract will be drafted and reviewed prior to being mailed to award recipients. Upon receipt, the award recipient has thirty (30) days to review and execute the contract. Once returned to TDA, the contract will be fully executed by the Commissioner and a copy is returned to contractor.
14. The TCF contract will be based on the information provided to the Department that resulted in the award.
15. No matching funds or reimbursable expenses may be expended or incurred, and no new jobs that the applicant wants to count under the contract, may be created prior to the execution of the contract.

Application Time Line - Generally the total time frame from receipt of *Project Detail and Business Documentation Application* to approval will be 60-90 days. Contracts are generally mailed out within 3–4 weeks after approval. **Note:** Any extensions or delays due to deficient responses to information request and negotiations will extend the time line.

Assurances – In executing the contract, the applicant assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including Office of Management and Budget Circulars Nos. A-87 and A-102, as they relate to the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant gives assurance and certifies with respect to the award that:

1. It possesses legal authority to apply for the award and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein; and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards, and Executive Order 11990, relating to protection of wetlands.
3. It will have sufficient funds available to meet the non-federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
4. It will obtain approval by the appropriate federal/state agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate federal/state agency for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction award program(s) have been met.

5. It will provide and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms to the approved plans and specifications; that it will furnish progress reports and such other information as the federal award agency may require.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the awarding agency, and the Comptroller General of the United States, the Texas State Auditor, or any of their authorized representatives, access to and the right to examine all records, books, papers, or documents related to the award.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the construction contractor(s).
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving agency that funds have been approved and that the project will be performed to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of federal interest or while the government holds bond, whichever is the longer.
11. It will comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 200d et seq.) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
14. It will comply with all requirements imposed by the federal awarding agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.
15. It will comply with the provisions of the Hatch Act, as amended (5 U.S.C. § 1501 et seq.), which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as amended (29 U.S.C. § 201 et seq) as they apply to hospital and educational institution employees of State and local governments.
17. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal awarding agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
18. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001 et seq.) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal

financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.

19. It will assist the federal awarding agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470 et seq.), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966, as amended (16 U.S.C. § 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the federal awarding agency of the existence of any such properties, and by (b) complying with all requirements established by the federal awarding agency to avoid or mitigate adverse effects upon such properties.
20. A. It will comply with Texas Government Code, Ch. 573, by insuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
B. It will insure that all information collected, assembled or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Texas Government Code, Ch. 552, unless otherwise expressly provided by law.
C. It will comply with Texas Government Code, Ch. 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
21. The applicant and/or business shall provide the Texas Department of Licensing and Regulation (TDLR) plans and specifications for construction of, improvements to, or the renovation of buildings and/or other real estate improvements prior to funding construction activities.

Awards - The minimum and maximum award amount that may be requested/awarded for a project funded under TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, total jumbo awards may not exceed \$3,500,000 in total awards during the program year. Additionally, no more than \$1,500,000 in jumbo awards will be approved in any one round. The maximum amount for a jumbo award is \$1,500,000 and the minimum award amount is \$750,100. The maximum amount for a regular award is \$750,000 and the minimum award amount is \$50,000.

Regular:	Minimum \$ 50,000	Maximum \$ 750,000
Jumbo awards:	Minimum \$750,100	Maximum \$1,500,000

Amounts shown above are maximum funding levels. The Program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final agreement between the Department and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application. All real estate and private infrastructure awards will require some level of repayment. See the **Repayment Requirements** (page 17) and **Program Income** (page 30) sections for more information.

The Department will allocate the funds for the year, less \$600,000 for the Main Street program and \$1,200,000 for the Downtown Revitalization program, as follows:

Month	Max	Min	Allocation	Month	Max	Min	Allocation
Jan	70	50	\$1,500,000	Jul	70	50	\$1,000,000
Feb	65	50	\$1,500,000	Aug	65	50	\$1,000,000
Mar	60	45	\$1,000,000	Sep	60	45	\$1,000,000
Apr	55	45	\$1,000,000	Oct	55	45	\$?
May	55	40	\$1,000,000	Nov	55	40	\$?
Jun	55	40	\$?	Dec	55	35	\$?

Note: Monthly allocations are subject to change upon receipt of actual HUD funding. Additionally in the event there are sufficient funds to fund 50% or more of an eligible application request, but less than 100%, additional funds may be allocated to allow full or 100% funding of such application. If there are insufficient applications scoring above the minimum to use up the entire monthly allocation, unused funds will roll forward to the next month. Uncommitted funds from the previous year may be carried forward and thus be available in the first half of the year.

Bankruptcy Filings - The Department will **not** consider any application for funding in which any/the business to be assisted thereunder, its principals, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case-by-case basis, extenuating circumstances will be evaluated.

Business - All TCF applications must support proposed activities of one or more businesses. This is the benefiting business, the business that is proposing to create and/or retain jobs and make capital expenditures in the jurisdiction of the applicant. This may be a for-profit or a private non-profit business. Governmental entities/units and public non-profits are not eligible and may not qualify as the benefiting business.

The Department will consider applications that provide assistance for up to three (3) specific businesses. Divisions, branch offices, units of a business with the same ownership or businesses with a common bond of ownership, where some entity owns at least 50% of the business(es), are not considered separate businesses. In these scenarios a parent entity/organization may be considered the benefiting business. Businesses that have an award and subsequently submit a new application, that have a common bond of ownership, are not eligible when submitted by the same applicant.

Competing Applicants - The Department will not consider any application for funding which would result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

Conflict Of Interest - Under the federal conflict of interest provisions at 24 CFR 570.489 (h), that are included in the regulations governing state administration of Community Development Block Grant (CDBG) funds (24 CFR 570, Subpart I), no persons who exercise or have exercised any function or responsibilities, with respect to TCF activities, or who are in a position to participate in a decision making process, or gain inside information regarding TCF activities, may obtain a financial interest or benefit from the activity, or have interest in any contract, subcontract, or agreement, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure, or for one year thereafter.

These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients that are receiving CDBG funds.

Under these provisions, a conflict of interest would exist if an employee, elected official, or their family members receive benefit from an activity. For example, if a member of a mayor's family was selected to receive TCF assistance or would benefit from or receive a TCF award, abstention from voting does not clear the conflict of interest. Another example where a conflict of interest would exist (business ties) is a situation where a consultant, who is employed by an engineering firm, has been selected by a city to provide administration services for the TCF contract and the city is considering the selection of an engineer from that same firm to provide engineering services for the TCF contract.

Contractor - An applicant city or county government (locality) unit that receives an award from the Department.

Contracts - If an applicant is approved for funding they will need to enter various contracts to complete the project. The TCF contract is intended to ensure a complete understanding of the planned development, the expected number of jobs to be created or retained, the sources and uses of all funds committed to the project, the reporting requirements of the business and the applicant to the Department, and all other obligations of the business, applicant and the Department. Some of these contracts are identified below.

- Contract with the Department - This details the duties and responsibilities of both the applicant and the Department. Currently, these contracts are for a standard term of three (3) years for infrastructure and real estate. Applicants may contact the Department for a sample "boilerplate" contract, which will include most contract conditions.
- Contractor/Company Contract Agreement - This details duties and responsibilities of both the applicant and the business. The terms and many of the requirements in this contract will mirror the contract with the Department.
- Contractor Repayment Agreement - This details the contractor's responsibility to remit payments to the Department.
- Infrastructure Repayment Agreement - This details the repayment requirements for infrastructure improvements.
- Real Estate Lease Agreement - This details the repayment requirements, tenant responsibilities and rights, and owner/landlord responsibilities and rights.
- Other contracts - These will include contracts for engineering and administration services, construction activities and others as necessary to carry out the project.

Credit Ratings/Reports – Credit Ratings/Reports will be obtained on all businesses, related entities and from all principals of the business, including individuals and their spouses. This is necessary to support our financial feasibility review and to report outstanding tax liens. Individual owners and their spouses must provide signed authorization/disclosure forms (see page 17 in the TCF *Project Detail and Business Documentation Application*).

Dates - Various dates are used and referred to in these guidelines and the contract an applicant enters into when their application is approved. Below are definitions of these dates.

- Application cut-off date - This is the 20th of each month (or next business day if it falls on a weekend or holiday) and represents the last day that applications may be received by the department for consideration each month.
- Award date - This is the day the contract between the Department and the applicant is executed by both parties. For the purpose of this document, Award Date and Contract Execution Date are interchangeable.
- Contract commencement/execution/start date - This is the beginning date of the three (3) year contract period. It is also the same date as the *award date*.
- Contract end/expiration date - This is the date by which the project activities should be completed. This date could change as a result of contract extensions.
- Closeout date - After all project activities have been satisfactorily completed, a contract closeout letter will be issued. Closeout is effective the date identified in the letter.
- Repayment start date - The date that payments begin for private infrastructure improvements and/or real estate lease payments. This generally is the 1st day of the 3rd month following construction completion or occupancy, whichever occurs first.

Department - Texas Department of Agriculture (TDA).

Data Universal Numbering System (DUNS) Number – All benefiting businesses and localities must provide their DUNS number. If a business or locality does not have a DUNS number, they will need to call the dedicated toll-free DUNS number request line at 1-866-705-5711 to obtain the number. The process is free and takes an average of ten (10) minutes. Additional information can be obtained at: <http://www.whitehouse.gov/government/fbci/duns-number.html>

For all TCF Contractor Localities (cities or counties), please do not provide the DUNS number of your local police or fire department. The DUNS number must be for your city, town or county. This number must be provided to the Department when you submit a TCF application and with the Project Completion Report.

Employment Projections Form - The purpose of this form, in the application, is to provide additional detail in regards to the total number of jobs to be created and/or retained and the percentage of those jobs which will go to the targeted income group of low and moderate income persons.

Enter the name of the applicant and the benefiting business.

1. Enter the requested information pertaining to the business.
- 2-3. Enter the following information in the space provided.

of Jobs - enter the total number of full-time and part-time jobs for each job type group/category provided. Do not add other job groups. Be sure to provide a total. See *Appendix A* in the Guidelines or *Appendix E* in the Application, for job group/category definitions.

Annual Wage - enter the average annual wage for jobs in each group/category listed. In cases where wage ranges are proposed by the business, the lowest wage within the range should be used.

4. Describe how the level of new jobs was determined and explain in detail.
5. Health Benefits – Indicate if the jobs will have employer sponsored healthcare benefits.

Equity Requirement by the Business(es) - All businesses are required to make financial contributions to the proposed project. Financial contribution may consist of all cash or a combination of cash and equity in fixed assets. New loans are not considered equity. Projects are expected to show sufficient equity from the business(es) to show that the project has a reasonable probability of success. Infrastructure projects must have at least 10% equity. Real estate projects must have 10% equity, unless the occupant is a start up business, in which case, the equity must be at least 33%.

For projects that propose to benefit a **single** business: A cash injection of a minimum of 2½% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost.

Length of Time in Business	Real Estate Application	Infrastructure Application
3 years or more	10% equity – including 2 ½ % cash	10% equity including 2 ½ % cash
Less than 3 years	33% equity – including 2 ½ % cash	10% equity including 2 ½ % cash

For projects that propose to benefit **multiple** businesses, the usual equity requirement for each business is determined by taking the total number of jobs for all businesses, then calculating a pro-rata share for each business, then multiplying this ratio by the equity requirements as shown above. However, each business must contribute a minimum of 5% to the project, and start-up businesses that are the benefiting business in a real estate project must contribute a minimum of 12% equity. Each business must make a minimum cash injection of 1½% of the total project cost.

Example with three (3) businesses for a total of 30 jobs:

- #-1 in business for 5yrs with 15 jobs;
- #-2 in business for 4yrs with 10 jobs and
- #-3 in business for 1yr with 5 jobs.

Equity calculations using rounded job ratios:

- #1 - 15jobs/30jobs = 50% (job ratio) x 10%equity requirement above = 5% actual equity requirement for this business.
 - #2 - 10jobs/30jobs = 33% (job ratio) x 10%equity requirement above = 3%* equity requirement for this business.
 - #3 - 5jobs/30jobs = 17% (job ratio) x 33%equity requirement above = 6%* equity requirement for this business.
- *Since there is a minimum requirement of 5% (if in business for 3yrs) and 12% (if in business less than 3yrs), business #2 and #3 will have to make the required minimums.

Note: If the project is a combination of real estate and infrastructure the real estate figures apply.

The Department will consider a business to have been operating for at least three years if:

1. The business or principals have been operating for at least three years with comparable product lines or services;
2. The parent company (100% ownership of the business) has been operating for at least three years with comparable product lines or services; or
3. An individual or partnership (100% ownership of the business) has been in existence/operation for at least three years with comparable product lines or services.

A firm financial commitment and a *Verification of Deposit* (VOD) form for all cash equity injections will be required upon submission of the application. The value of cash equity is the cash verified by a VOD form and may be re-verified at the time the application is recommended for approval. New financing going forward is **not** equity. See pg. 23, **Financing Commitments**, for additional information.

Non-cash equity from fixed assets may be considered as match, if it will be used in the project. For the purposes of this program, **fixed assets** are defined as land, buildings, fixtures and/or machinery and equipment, **but does not include inventory or raw materials**. If net equity value in fixed assets is utilized for match in a TCF application, then a lien search must be completed and included in the application and the following guidelines shall be used:

1. If the fixed assets have been owned by the principals/business for more than a year, then the net equity value will be determined by using the appraised market value (which should take into account depreciation) less any outstanding debt against the assets.

Note: For land, buildings, fixtures, machinery and equipment, a current county tax appraisal is acceptable in the application to establish market value. All other real estate appraisals must be dated within one (1) year of the application and prepared by a State Certified General Appraiser. For machinery and equipment, the appraisal must not be more than 6 months old, prepared by an appraiser whose business regularly makes such appraisals, and includes the appraiser's qualifications. This report must be included in the application.

2. If the fixed assets have been owned by the principals/business for less than or equal to a year, then the net equity value will be determined by using cost less any outstanding debt against the assets. Invoices, canceled checks, and/or closing statements will be required (in the application) to support the cost of the assets.

Financial Documentation - Numerous financial documents are required to be included in the application. These are itemized in the application checklist and supplied by the applicant, the business and/or principals of the business. The checklist includes, but is not limited to, financial statements, personal financial information, if business is partnership, or sole proprietor, tax returns, projections, budgets, cost estimates and verification of deposit forms. **These are material documents, and failure to include these applicable documents could result in the application being declined.**

Historically Underutilized Business (HUB) - A business which has received HUB certification from the Texas Comptroller of Public Accounts. This certification **must** be included in the application at the time of submission. Businesses may download the HUB application at www.window.state.tx.us/procurement/prog/hub/hub-certification or call (888) 863-5881 to get started.

Jobs - TCF will only provide financial assistance to an applicant and business(es) that commit to create and/or retain jobs where at least 51 percent of the jobs benefit LMI individuals. LMI levels are provided annually by HUD and are the same income levels used for *Section 8* housing. A list of the most recent LMI levels may be downloaded from the Department's Texas Capital Fund web site page at www.texasagriculture.gov.

The level of financial assistance is directly related to the number of created/retained jobs. At no time will this program consider an application for assistance where the cost per job exceeds \$25,000. Only full-time permanent and part-time permanent created/retained jobs, as defined below, are eligible for consideration. Credit will only be given for jobs created/retained at the project site described in the application, which must generally be within the jurisdiction of the applicant. No credit will be given for transferred jobs or positions held by principals. A job is defined as a permanent full-time position held by one employee or two part-time employees and the position must be required 12 months out of the year. The calculation compares the starting and ending payroll to determine the number of jobs created/retained. Additionally, sufficient documentation must be provided to show that employees have been on the job for no less than one (1) month. Jobs are further defined below.

- A full-time job is defined as permanent employment for 1,820 hours or more per year or 35 hours or more per week per person on an annualized basis.
- A part-time job is defined as permanent employment for at least 1,040 hours per year or 20 hours or more per week per person on an annualized basis. Two part-time jobs equal one full-time job. Employees working less than 20 hours per week may not be counted individually or in combination/aggregate towards meeting the job goal of the business.
- Seasonal jobs are not eligible consideration in the program.
- Contract jobs are not eligible for consideration and should not be included on starting or ending payroll documentation. Only permanent employees may be counted toward job creation requirements.
- Leased employees must meet the same requirements as described above, as long as the business has control over the leased employee(s).
- Unfilled or vacant jobs/positions are not eligible for consideration.

Note: Jobs created prior to the execution of the contract will not be counted toward job creation requirements.

Job Category/Group Definitions: HUD requires that jobs created/retained be described or defined by specific categories/groups. Here is the list of major categories/groups: Officials and Managers, Professionals, Technicians, Sales, Office and Clerical, Craft Worker (skilled), Operatives (semi-skilled), Laborers (unskilled) and Service Workers. These categories/groups **must** be used and businesses may not add to or substitute other categories/groups. A more detailed description or definition of the types of jobs that fall into these categories is contained in the Appendix of the *Guidelines* or Appendix B of the *Project Detail and Business Documentation Application*.

Job Commitment Letter: A letter is required from each business named in this application that would be creating/retaining jobs as a direct result of TxCDBG funding. This letter must specify the full or part-time status of all such jobs, type of job and salary, as well as methods for ensuring primary benefit to low and moderate income persons. If the business has made arrangements with another entity to provide employment screening or job training (such as the Workforce Investment Act (WIA) formerly known as JTPA), submit a letter reflecting this agreement.

Jobs Retained: In order to consider jobs retained as a result of TCF assistance, a business must submit documentation showing clear and objective evidence that permanent jobs will be lost without TCF assistance. For these purposes, clear and objective evidence that jobs will be lost must include 1 or 2, 3 and 4:

1. Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, **or**
2. Analysis of relevant financial records which clearly and convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention, **and**
3. Documentation verifying that they will meet at least one of the following requirements,
 - A. That some or all of the employees will be permanently laid off;
 - B. That the business will close down its existing operation/facility; or
 - C. That the business will relocate out of state. Requires 3rd party documentation from out of state locations;**and**
4. Income certifications for all affected employees showing that a minimum of 51% of the retained jobs are held by LMI individuals.

No retained jobs will be considered for a minimum of 1 year after a contract has been closed out with the same business in the same community. See Section 1, **Liability** (page 14) for information on failure to create/retain jobs according to terms of the contract.

Cost Per Job - The number of jobs to be created/retained by the business(es) is one of the factors that will determine how much financial assistance is available from the program. Cost per job is determined by dividing the total number of full-time permanent jobs to be created/retained into the total amount of TCF funds, including administration. The maximum allowable cost per job is determined by the amount of the TCF awards, as follows:

<u>Gross Award Amounts</u>	<u>Max Cost-Per-Job</u>	<u>Minimum # of Jobs</u>
\$750,000 or less	\$25,000	2 - 30
\$750,100 - \$1,000,000	\$10,000	75 - 100
\$1,000,100 - \$1,500,000	\$5,000	200 - 300

Thus, in a project where a business proposes to create/retain ten (10) jobs, the maximum award available would be $10 \times \$25,000 = \$250,000$. For an award of \$600,000 the minimum number of jobs to create/retain would be 24 ($\$600,000 \div \$25,000 = 24$).

Liability - Title I of the Housing and Community Development Act of 1974 (42 USC 5.301 et seq.) requires all Community Development Block Grant (CDBG) funds to be expended in such a way to satisfy one of three national objectives specified in the statute. TCF funds provided under the TxCDBG are required to comply with the national objective of principally benefiting persons of low and moderate income. This requirement is fulfilled by funding projects which create or retain jobs, principally for persons of low and moderate income. The state has certified to HUD that expenditure of economic development funds will satisfy this national objective and has also executed a grant agreement with HUD containing this requirement. Title I also provides that the state may only contract with units of general local government. The Department, therefore, has no choice but to hold the local government recipient of TCF funds accountable to the same extent that HUD holds the state accountable.

In the event of a failure to create or retain all the jobs specified in a TCF contract, the Department's standard policy may require a recipient city or county to reimburse the Department for the number of jobs not created or retained, based on the original cost per job. For example, if the Department provided \$500,000 in TCF funds to a city for an economic development project in which 100 permanent jobs were to be created and only 50 jobs were actually created, the Department may require repayment of \$250,000. Other penalties may apply as well.

In the event of a failure to create the LMI jobs specified in a TCF contract, it is the Department's standard policy to require a recipient city or county to reimburse the Department for the number of LMI jobs not created. For example, if the Department provided \$500,000 in TCF funds to a city for an economic development project in which 100 permanent jobs were committed, a minimum of 51 of the jobs must be held by LMI persons. The 100 jobs were created but only 40 jobs were actually held by LMI persons. The Department would require repayment as follows: $\$500,000 \text{ award} / 51 \text{ LMI jobs} = \$9,803 \text{ LMI cost per job} \times 11 \text{ LMI jobs short} = \$107,843$ to be repaid. If the business creates more jobs than they committed in the contract, they are required to ensure that a minimum of 51% of all of the jobs created are held by LMI

persons. Thus, if the business creates 150 jobs, with only 70 LMI persons instead of the minimum required 77 LMI persons ($150 \times 51\% = 77$), the repayment would be calculated as follows: \$500,000 award / 77 LMI persons = \$6,494 LMI cost per job X 7 LMI jobs short = \$45,455 to be repaid.

Location Requirement for Business - The Department will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. Cities may not sponsor an application for a business located in their county, if that business is currently participating in a TCF project with that county. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties (not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and may consider a project proposed by a county when the project is within an incorporated city. A community that submits an application benefiting a business outside its jurisdiction must demonstrate all of the following:

- The project is appropriate to meet its needs;
- The applicant has the legal authority to engage in such a project and;
- At least fifty-one percent (51%) of the proposed beneficiaries reside within the applicant's jurisdiction.

Note: The project activities and benefiting business may not be located in an entitlement area.

Low/Moderate Income Requirement - The goal of the Texas Capital Fund Program, as stated in the Housing and Community Development Act of 1974 (as amended), is "the development of viable communities ... by expanding economic opportunities, principally for persons of low and moderate income." The objective of the program is to expand economic opportunities that create or retain jobs, principally for low and moderate income persons. The TCF program provides resources for an eligible applicant to support a specific business(es) (either a for-profit entity or a non-profit entity). The business(es) must create or retain jobs for Texans.

For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low- and moderate-income persons. For purposes of determining whether a job is or will be held by a low- or moderate-income person, the following options are available.

1. The business must survey all persons filling a created/retained job. Persons filling a created job should be surveyed at the time of employment. Persons holding a retained job should be surveyed prior to application submission. This determination is based on the family's size and previous 12-month income and is normally documented on the Family Income/Size Certification form, which is filled out, dated and signed by employees; or
2. The person(s) employed by the business for created/retained jobs may be presumed to be a low- or moderate-income person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:
 - A. The census tract or block numbering area has a poverty rate of at least 20% as determined by the most recently available decennial census information;
 - B. The census tract or block numbering area does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; and
 - C. The census tract or block numbering area shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:
 - (I) All block groups in the census tract have poverty rates of at least 20%; or
 - (II) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or
 - (III) Has at least 70% of its residents who are low- and moderate-income persons; or
 - (IV) The assisted business is located within a census tract or block numbering area that meets the requirements of this subparagraph, and the job under consideration is to be located within that census tract or block numbering area.

Census terms defined:

1. Census tracts are small, relatively permanent statistical subdivisions of a county. Census tracts usually have between 2,500 and 8,000 persons and, when first delineated, are designed to be homogeneous with respect to population characteristics, economic status, and living conditions. Census tracts do not cross county boundaries. The spatial size of census tracts varies widely depending on the density of settlement. Census tract boundaries are delineated with the intention of being maintained over a long time so that statistical comparisons can be made from census to census. However, physical changes in street patterns caused by

highway construction, new development, etc., may require occasional revisions; census tracts occasionally are split due to large population growth, or combined as a result of substantial population decline.

2. **Block numbering areas (BNA's)** are small statistical subdivisions of a county for grouping and numbering blocks in nonmetropolitan counties where local census statistical areas committees have not established census tracts. BNA's do not cross county boundaries, but may be split to separate statistics within a city limits and outside a city limits.
3. **A block group (BG)** is a cluster of blocks having the same first digit of their three-digit identifying numbers within a census tract or block numbering area (BNA). For example, BG 3 within a census tract or BNA includes all blocks numbered between 301 and 397. In most cases, the numbering involves substantially fewer than 97 blocks. Geographic BG's never cross census tract or BNA boundaries, but may cross the boundaries of county subdivisions, places, American Indian and Alaska Native areas, urbanized areas, voting districts, and congressional districts. BG's generally contain between 250 and 550 housing units, with the ideal size being 400 housing units.

Applicants and businesses choosing option two (2) above, to document that low and moderate income persons are the primary beneficiaries, must provide adequate supporting documentation in the application (i.e., Census tract map, block number, group number, poverty rate, etc.).

Note: See **Liability** (page 14) for failure to meet LMI requirements according to terms of contract.

Number of Applications - The number of TCF applications which a city or county may submit (and have funded, if feasible) is determined by factors affecting both the city/county and business, as follows:

1. Applicant components:
 - The program income choice selected on a previous approved application;
 - Contractual compliance on existing contracts;
 - Applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted; and
 - The applicant must satisfactorily close-out an open TCF contract before the applicant can submit another TCF application for the same business.

See **Program Income** requirements (page 30) and the **Applicant Performance Threshold Requirements** (page 5) for further guidance.

2. Business components: Contractual compliance on existing TCF contracts, leases and loans.

Ownership Requirements - TCF real estate assistance is provided to purchase, construct, or rehabilitate real estate that is wholly or partially owned by the applicant (applicant to maintain a minimum pro-rata ownership position based on the TCF contribution, but no less than 10 percent). With Departmental approval, the applicant may share ownership with a non-profit economic development entity (based on the pro-rata contribution of the non-profit economic development entity) as long as the non-profit economic development entity is not the assisted business committing to create/retain jobs for the TCF contract, and the shared ownership is necessary to complete the real estate financing portion of the project. Under this shared arrangement the non-profit may pledge the real estate as collateral to secure the additional needed mortgage funds. The Department may allow a city/county to pledge the real estate as collateral for additional financing obtained by the business(es) or related entities, when required to complete the acquisition, construction and/or rehabilitation. Shared ownership would require the business(es) to make two separate lease payments: one for TCF repayment and one for the additional financing. Applicant ownership may not be diluted or transferred for a minimum period of five years after contract closeout. If TCF funds are awarded, applicant will agree not to occupy or utilize the property for the general conduct of government as long as it retains an ownership interest. The TCF funded real estate may be sold to the benefiting business(es) for the remaining balance of unrecovered lease payments after the minimum five year ownership period. See Texas Local Government Code Chapter 272 Section 272.001 for the text that exempts communities from having to sell the TCF acquired real estate through a public bid process. **Note:** Special rules apply to a change in use of real property. If a community should dispose of the project real estate prior to five years after the close of the contract, contact the Department for details.

Project Length - Projects must be completed and all requirements of the TCF contract must have been met within three (3) years from the award date of the TCF contract.

Project Site - This includes the location of the proposed infrastructure improvements, real estate improvements and the business(es) facility(ies). This is further defined in the contract Performance Statement.

Relocating Businesses – Limitations

HUD prohibits state and local governments from using CDBG funds for “job-pirating” activities that are likely to result in significant job loss to the losing community. Significant job loss is defined as follows:

1. If the business relocation will result in a loss of 25 or less jobs, it is not considered significant;
2. If the business relocation will result in a loss of 500 or more jobs, it is SIGNIFICANT and not eligible for TCF/CDBG assistance; or
3. If the business relocation will result in a loss of 26-500 jobs, the job loss must be less than 0.1% of the losing area's labor force to avoid being counted as significant.

For metropolitan areas, HUD defines the term “area” as synonymous with the term “Labor Market Area (LMA),” as defined by the U.S. Bureau of Labor Statistics (BLS) (<http://www.bls.gov/lau/laueo.htm>). The BLS defines an LMA as: [a]n economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence. In addition, LMAs are non-overlapping and geographically exhaustive.

LMAs include Metropolitan Statistical Areas (MSAs) and Metropolitan Divisions, defined by the Office of Management and Budget (OMB), and small LMAs. Metropolitan Division is a new OMB term that has replaced Primary Metropolitan Statistical Areas (PMSAs). A Metropolitan Division consists of a county or a group of counties within a Core Based Statistical Area that has a core population of at least 2.5 million. A Metropolitan Division consists of one or more main/secondary counties that represent an employment center or centers, plus adjacent counties associated with the main county or counties through commuting ties. A Micropolitan Statistical Area is viewed as an area with urban clusters of at least 10,000 population, but less than a population of 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

HUD has determined that in non-metropolitan areas, a state may choose to use the BLS definition of LMA, or it may combine LMAs if that gives a more accurate definition of the true commuting area for a portion of a state. States would be required to define their LMAs and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. It should be noted that metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. Combined LMAs will still be referred to as LMAs. Also, a state can be more restrictive in its definitions (e.g., a state can forbid units of general local government from using State CDBG funds to fund any business relocation if the state so chooses).

HUD believes that the BLS definition of a LMA is the most logical one to use for metropolitan jurisdictions, for two reasons:

1. It ensures consistency of definitions and data across the country; and
2. It enhances consistency of approach among federal programs.

The rule would be applicable to business relocations from one LMA to another, regardless of the type of area (e.g., from a MSA to a Metropolitan Division, or from a MSA to a small LMA, etc.) For instance, moving a business from the City of Denver (located in the Denver-Aurora, CO, MSA) to Adams County, CO (also located in the Denver-Aurora, CO, MSA) would not be subject to the anti-pirating provisions of this interim rule since both Denver and Adams County are located in the same LMA.

Additional intrastate relocation requirements - This is defined as the movement or transfer of any portion of business operations from an existing location in a unit of local government to another unit of local government within the state of Texas, or the transfer of employees from an existing location in a unit of local government to another unit of local government within the state of Texas, with no intent to replace those transferred employees. The TCF Program will not be used to financially assist/facilitate the relocation of a business unless a minimum 10% net gain of jobs will occur.

It is not the intent of the TCF program to use these monies to assist/facilitate the relocation of businesses within the state, but occasionally relocations may be considered, unless a formal written objection is made by the losing unit of local government. The applicant must take steps to notify the losing unit of local government prior to application submission. This notification should take the form of a certified/registered letter, with a return receipt. If the losing unit of local government disapproves, and a written objection is received by the applicant, the application will be considered ineligible.

If a written compromise agreement between the two local governments is reached, then the application is eligible for

submission and may be considered for a TCF award. If the losing unit of local government chooses not to formally respond, within 30 days of being notified, the application may be considered for a TCF award. A written objection to a relocation from the current unit of local government would prevent an application from being considered.

A business relocating within the state must qualify under one or more of the following guidelines, prior to submitting an application for consideration under TCF:

- A. The relocating business has received written approval from the current locality (the unit of local government the business is leaving). The applicant must provide a certified letter verifying that the chief elected official (mayor or judge) of the unit of local government from which the business is relocating supports and approves the relocation proposal.
- B. The current locality (the unit of local government the business is leaving) has been notified but has not responded. The applicant must provide written documentation that a letter has been mailed (by registered mail) to the current locality from which the business is relocating, notifying them of the potential relocation. The current unit of local government, upon receipt of the notification, has thirty (30) days to object to the relocation in writing before the application can be considered.

Repayment Requirements - With the exception of administration funds, TCF monies awarded for real estate improvements and private infrastructure, awards will require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefiting business(es) to the applicant/contractor, who will forward the payments to TDA. A contract Special Condition requires submission of a *Repayment Agreement* that details the terms of the repayment. This must be signed by the applicant as part of the contract process. See **Program Income** (page 30) for more information.

1. Real Estate (RE) Improvements

These improvements are intended to be owned by the applicant and leased to the business(es). Real estate improvements require full repayment. At a minimum, the lease agreement with the business(es) must be for a minimum three year period or until the TCF contract between the applicant and the Department has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business(es) and any subsequent business(es) which occupy the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by the Department and may not be for the maximum of 20 years for smaller award amounts. The minimum monthly payment should not be less than \$500. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of five percent (5%) of the payment amount. After the contract between the applicant and the Department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after the minimum five year ownership/dilution requirement (see ownership requirement in the program requirements in this section), and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

2. Private Infrastructure Improvements

This is infrastructure that will be located on the business site or on adjacent and/or contiguous property, to the site, that is owned or leased by the business(es), principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will be no interest, with repayment not to exceed twenty (20) years and are intended to be repaid by the business through a repayment agreement. The minimum monthly payment shall not be less than \$500. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of five percent (5%) of the payment amount.

Security Document – All projects are required to be guaranteed in the full amount of **any** TCF award, by either the Applicant or the benefitting business. Guaranties will address any failure to reach or maintain the jobs creation/retention goal and any required repayment terms.

TxDOT Compliance – Each applicant will be required to indicate whether the proposed infrastructure improvements will be located within a Texas Department of Transportation (TxDOT) controlled highway, road, or right of way. If yes, the applicant will be required to provide documentation to the Department, which indicates that the applicant has notified and/or consulted with TxDOT of their proposed improvements prior to the TCF contract execution date.

Use of Funds - TCF monies are available for infrastructure and real estate improvements. For all proposed uses, requested funds may not exceed the minimum necessary to meet the needs of the business(es). Excess/speculative improvements, extra connections or excessive looping will not be funded.

For activities that will be funded with a combination of TCF and other match monies, the other monies must be expended prior to drawing TCF monies. If a community experiences cost overruns or elects to do oversizing the community's funds will be required to be used prior to drawing TCF monies. Also, if project costs come in under budget or the community elects to reduce the project scope, the committed match monies must still be expended prior to drawing TCF monies. Any cost savings will reduce the TCF funding.

TCF monies are to reimburse a city/county for eligible expenditures they have made or incurred, rather than be advance payments. These reimbursements will be only for work actually completed. Cities/counties are responsible to pay construction contractors according to the terms of their agreements. TCF monies are available to reimburse cities/counties, when they are in compliance with the terms of their TCF contract, for construction draws. Failure to comply with the terms of the TCF contract does not relieve the community of its liability to pay contractors. See *Match Requirement* in Section 2 for more information.

1. Eligible Uses:

A. INFRASTRUCTURE improvements may be either private or public in nature.

1. Private Infrastructure is infrastructure that will be located on the business site or on adjacent and/or contiguous property, to the site, that is owned or leased by the business(es), principals, or related entities. A lien may be placed on this property if required.
2. Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business(es) or owners. Strip or spot deeding of RE or granting of easements by the benefiting business, owners or related parties is perceived as a way to avoid repayment, which would normally be required per the private infrastructure explanation above. The only exception to this policy is if the deed transfer or granting of the easement occurs prior to submission of the application.

Uses include:

- Water lines, storage and pumping facilities, treatment plants and related items;
- Sewer lines, lift stations, treatment plants and related items;
- Road construction/renovation, to include curb and gutter and related drainage;
- Natural gas lines and related items;
- Electric power lines and transformers;
- Harbor/channel dredging;
- Railroad improvements including but not limited to spurs, extensions, switches and turnouts;
- Drainage channels and ponds
- Pre-treatment facilities; or
- Purchase of land, easements, right-of-ways and basic/special engineering services related to eligible infrastructure items.

B. REAL ESTATE IMPROVEMENTS are for the sole occupancy and use of the benefiting business(es) and are not intended to be leased or subleased to other entities. They must be owned by the city/county and leased to the benefiting business. Private non-profit businesses are not eligible for real estate improvements.

Uses include:

- Purchase of land and/or building(s);
- Construction of buildings and/or site improvements;
- Rehabilitation of existing building(s); or
- Construction of infrastructure improvements on the project site.

Note: Buildings must be fully enclosed by permanent walls and a roof.

2. **Ineligible Uses** - The applicant may not grant or otherwise transfer TCF monies to a business. TCF monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business(es) or its owners and related parties for expenditures, prior to TCF approval. Real estate improvements may not be funded when the benefiting business(es) is a private non-profit.

Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business(es). If the community does not own the entire project site, the TCF funded real estate improvements must be fully enclosed, with permanent walls and roofs. Any project site only partially owned by the community must provide, by deed, full street/road access and parking for each committed job and transportation access to the owned site. Further, a minimum of 20 feet outside the structure's exterior perimeter must be deeded to

the community. If the project site is fully owned by the community, additional out buildings and/or open shelter areas are eligible.

The TCF program will not accept applications in support of racetracks, prisons/detention centers, public medical businesses/facilities (i.e. hospital districts, hospitals, clinics, nursing homes, etc.), public non-profits or projects that address job creation/retention through government supported facilities. Government entities may not be the business creating/retaining the jobs.

SECTION 2

Application Preparation Information

The *Project Detail and Business Documentation Application* contains a checklist which itemizes what documentation must be included in the application and the order in which it must be presented.

Note: All fields must be filled on all pages of the *Application Information Form*.

Acquisition - The cost of purchasing real estate, including land, buildings, site improvements, title policy, survey, appraisal, legal fees, miscellaneous closing costs, etc. Canceled checks, closing statements and/or invoices and receipts must be provided. See the **Equity Requirement by the Business** (page 11) for more information.

Administration - A portion of an award may be used for administrative expenses incurred by applicants in order to meet contractual obligations. See the **Budget Justification** section for details and dollar limits.

Budget Justifications - This information should justify **all** proposed project costs, including that portion proposed to be paid by the TCF. Projects must include detailed information of **all** dollar amounts listed on the Sources and Uses of Funds form. **Note: The detail must show the breakdown for each line item. Amounts must be rounded to nearest one hundred dollars (\$100) increment.** Funds must be delineated by source and use. This must include all major parts of the project, such as land acquisition, construction/rehabilitation, machinery/equipment, working capital, infrastructure improvements, and administration. Source information must include which entity is paying/providing funding for these activities. All budget justifications and opinion letters must be dated within six (6) months of the submission of the application; all appraisals must be dated within twelve (12) months of the submission of the application; and, all lien searches must be dated within three (3) months of the submission of the application. Please refer to the Equity Requirement by the Business (page 11) for additional information regarding substantiating the value of all previously expended equity injections. Provide the following documentation to substantiate all project costs, as outlined on the *Sources and Uses of Funds* form, which will be incurred/expended upon receipt of a TCF contract award. No changes to activities and/or budget line items listed in the application will be allowed before a contract is executed.

1. If the project includes TCF or match funds for **land** and/or **building acquisition**, or if **real estate equity** is being contributed, provide appropriate cost/value documentation, lien search, and complete legal description for subject property. See the **Equity Requirement by the Business** (page 11) for more information. Canceled checks and/or invoices and receipts must be provided.

NOTE: The acquisition of any real property associated with a TCF funded project must follow the requirements of the Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act) and the HUD implementing regulations (regardless of whether the acquisition is funded by private funds or funds from another state or federal agency). Contact the Department for additional information on the Uniform Act.

2. If the project includes funds for **engineering or architectural services**, provide:
 - a. Description of services and related costs (i.e. archeological studies); and
 - b. Name of the individual or firm who prepared the justification and the date of preparation (must be prepared, signed and sealed by a Texas-registered engineer and/or architect).

NOTE: TCF monies may only be used to pay for services directly related to infrastructure or real estate improvements funded with same. Engineering must meet the requirements of the Texas Engineering Practice Act. Procurement of engineering services (funded by TCF) must be accomplished in accordance with certain State and federal laws, and OMB Circular No. 102. For projects that do not request funds for engineering/architectural applicants will be required to identify the party responsible for ensuring that the projects are completed according to plans and specifications and for approving construction invoices. See **Engineering/Architectural** (page 23) for more information.

3. If the project includes funds for **public or private infrastructure**, provide:
 - a. Quantity and size of improvements (for example, total linear feet, diameter, capacity);
 - b. Types of material (surface type, pipe material, etc.) and costs;
 - c. Labor costs and a statement indicating whether Davis-Bacon wage rates will apply to the project. **NOTE:** Labor costs may trigger application of the Davis-Bacon Act;
 - d. Statement indicating that the proposed improvements are the minimum necessary to support the specific business(es) named in the application. The TCF program will only consider funding the minimum improvements needed by the business start-up or expansion (i.e.-over-sizing a water line to accommodate future development is not eligible);
 - e. Name of the individual or firm who prepared the justification and the date of preparation (must be sealed and signed by a Texas registered engineer); and

- f. Locations (subdivisions, street names, etc.). The locations description should match the locations shown on the Project Map.

Example - The proposed project includes the construction of approximately 4,000 linear feet of eight inch (8") PVC sewer line, 3,500 linear feet of service line, 10 manholes, five cleanouts, fittings. Construction will take place in the following locations:

<u>Street</u>	<u>From</u>	<u>To</u>	<u>Distance</u>
1st Street	Adams Avenue	Basin Street	1,000'
2nd Street	Adams Avenue	Basin Street	1,000'
3rd Street	Basin Street	Austin Avenue	1,000'
King Avenue	1st Street	4th Street	1,000'

NOTE: Be sure to separate public or off-site versus private or on-site infrastructure improvements and related engineering for each.

4. If the project includes funds for **building construction** and/or **rehabilitation**, provide: (See **Use of Funds-Real Estate Improvements** (page 18) for more information.)

- Plans and specifications, including size of building, construction materials;
- Itemized material costs;
- Labor costs, a statement indicating whether Davis-Bacon wage rates will apply to the project and whether or not these wage rates were taken into consideration in determining construction costs;
- Architectural/engineering costs (pre-engineered metal buildings require an engineer oversight); and
- Name of the individual or firm who prepared the justification and the date of preparation (Third party preparer generally required).

Note: All projects involving any building construction activities, regardless of source of funding, must ensure that building plans and specifications be submitted to the Texas Department of Licensing and Regulation for review, as required by the Texas Architectural Barriers Act. See the **ADA/Architectural Barriers Act** (page 29) for more information.

5. If the project includes equity/funds for **machinery and equipment** (M&E), provide:

- Type and description of equipment;
- Itemized price/value list per piece of equipment (qualified 3rd party market value appraisal or tax appraisal, canceled checks and/or invoices and receipts); and
- Lien search, for equity documentation.

Note: TCF monies cannot be used for machinery and equipment; however, matching funds may be used for this purpose. Canceled checks and/or invoices and receipts must be provided. See the **Equity Requirement by the Business** (page 11) for more information.

6. If the project includes funds for **working capital**, provide:

- Description of the inventory, amount per item (include independent, 3rd party source information from a supplier, a catalog, etc.) and how the increase in inventory will be documented;
- Employee salaries (for new and retained employees);
- Operational costs (i.e. rent, insurance payments and utilities).

Note: TCF monies cannot be used for working capital needs.

7. If an application for funding is approved, the applicant is responsible for **administering** the award. This normally includes the following general areas: record keeping; environmental; archeological studies; special conditions; RE acquisition; quarterly reports; jobs documentation; close out; and audit. It does not include application preparation costs. Detailed information about award administration is contained in the implementation manual or may be obtained from the Department. See the **Administration Draw-Down Requirements** (page 29) for more information.

Applicants may request that a portion of an approved award be allocated for administration. Award amounts are inclusive of administration funds. Maximum administration amounts are listed below:

<u>Gross Award Amounts</u>	<u>Max Admin Amount</u>
\$500,000 or less	\$35,000
\$500,100 - \$750,000	\$50,000
\$750,100 - \$1,500,000	\$60,000

Please describe how these requirements will be met; how much is being requested to cover these costs; and how this amount was determined. Procurement of administrative services (funded by TCF) must be accomplished in accordance with certain State and Federal laws. In projects where no funds have been requested for administration, the applicant is required to provide an administrative plan and budget showing how the required award administration will be completed.

Business Plan - Businesses are required to provide a detailed formal business plan. This should include in-depth discussions of business history, strengths, weaknesses, products, services, market, competition, industry comparison, operations,

employee requirements, suppliers and customers, ownership and organizational chart. See Appendix A in the *Project Detail and Business Documentation Application* packet.

Citizen Complaint Procedures - The applicant must have adopted written citizen complaint procedures that provide for a timely written response to complaints and grievances. The applicant complaint procedures must be similar to those that the Department outlines at Title 4, Part 1, Chapter 30, Subchapter A, Section 30.1 of the Texas Administrative Code. Citizens must be made aware of the location and hours at which times they may obtain a copy of the applicant written procedures, and addresses and phone numbers for submitting complaints. See samples 1 and 2 on pages 21-24 in the *Project Detail and Business Documentation Application* packet.

Citizen Participation - A contract with an applicant under the TCF may be awarded only if the applicant certifies that it is following a detailed citizen participation plan that provides for and encourages citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and areas in which the funds provided under the contract are used in accordance with the following Citizen Participation Plan adopted by the TxCDBG. Each applicant certifies, by signing the application that it has complied and will comply with the requirements of this Citizen Participation Plan. TCF applicants are required to carry out citizen participation in accordance with the following Citizen Participation Plan adopted for the TCF.

Each applicant must maintain a citizen participation file which includes a copy of this plan, the applicant's complaint procedures; any technical assistance provided by the applicant, public notices, and minutes, and attendance lists for public hearings/meetings.

The applicant must comply with the following citizen participation requirements for the preparation and submission of an application to the TCF:

1. At a minimum, the applicant must hold one public hearing/meeting prior to the development and submission of the application.
2. The locality must retain documentation of the hearing/meeting notice(s), attendance lists, minutes of the hearing(s), and any other records concerning the proposed use of funds for a period of one year or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Chapter 552, Government Code.
3. The public hearing/meeting must meet the following TCF notification requirements and include a discussion with citizens covering the following topics:
 - The development of housing and community development needs.
 - The amount of funding available.
 - All eligible activities under the TCF.
 - The applicant's use of past TCF contract funds, if applicable.
 - The estimated amount of funds proposed for activities that will meet the national objective of benefit to low and moderate income persons.
 - The plans of the locality to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TCF funds, if applicable.
 - Citizens, with particular emphasis on persons of low to moderate income who are residents of slums or blighted areas, shall be encouraged to submit their views and proposals regarding community development and housing needs.
 - Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local Public Housing Authority, the local Health and Human Services office, and the local Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location and topics to be covered at the public hearing.
 - Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing/meeting.
 - The public hearing/meeting notice must include the location and hours when the application will be available for public review.
4. While more than one application for different TxCDBG fund categories may be discussed at the public hearing /meeting -- that is, if the applicant is considering both a Community Development Fund and a Planning and Capacity Building Fund or a Texas Capital Fund application -- a hearing/meeting held for the previous program year's submittal of the same application (under either fund) is not acceptable for meeting the requirements for any subsequent competition.
5. At least five (5) days prior to submission of an application, or applications for TCF assistance, the applicant **must** publish another public notice in a local newspaper that includes the following information:
 - The TxCDBG fund categories for which application(s) will be submitted.
 - The amount of TxCDBG funds requested in each application.

- A short description of the proposed project activities in each application.
- The locations of the project activities included in each application.
- The location and hours when the application will be available for public review.

Note: This 2nd notice must be published no less than one (1) day after the notice for the public hearing/meeting, described in paragraph 3 above, is published.

Public Hearing/Meeting Provisions: For each public hearing/meeting scheduled and conducted by a TCF applicant, the following public hearing/meeting provisions shall be observed:

1. Public notice of all hearings/meetings must be published at least 72 hours prior to the scheduled hearing/meeting. The public notice must be published in a local newspaper and/or the predominant daily newspaper local residents subscribe to. Each public notice MUST include the DATE, TIME, LOCATION and TOPICS to be considered at the public hearing/meeting. A published newspaper article may also be used to meet this requirement so long as it meets all content and timing requirements. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.
2. Each public hearing/meeting shall be held at a time and location convenient to potential or actual beneficiaries and will include accommodation for persons with disabilities. Persons with special needs must be able to attend the hearings/meetings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing/meeting. The public hearing/meeting held prior to submission of an application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.
3. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing/meeting, an interpreter must be present to accommodate the needs of the non-English speaking residents.

The applicant must comply with the following citizen participation requirements in the event that the applicant/recipient receives an award from the TCF Program:

1. The locality must hold a public hearing/meeting concerning any substantial change, as determined by the TxCDBG, proposed to be made in the use of TCF funds from one eligible activity to another.
2. Upon completion of the TCF activities, the locality shall hold a public hearing /meeting and review its program performance including the actual use of TCF funds.
3. The locality must retain documentation of the hearing/meeting notice(s), attendance lists, minutes of the hearing/meeting(s), and any other records concerning the actual use of funds for a period of three years after the project is closed out. Such records must be made available to the public in accordance with Chapter 552, Government Code.

Engineering/Architectural - These are costs related to the oversight/review activities for construction of buildings and/or infrastructure improvements, especially related to activities proposed to be paid by the TCF. Only those costs incurred after the contract execution date may be reimbursed by the TCF. Contractor is ultimately liable for all costs whether determined as eligible costs, or not, as determined by the Department. An engineer/architect is responsible for, and must seal and sign off on all draws for construction items.

False Information - those instances where it is determined that an applicant, its agent, or the benefiting business(es) provided false information for the purpose of improving its scoring or increasing its chance for approval. False information may include:

1. Knowingly make a false entry in, or false alteration of, a government record;
2. Make, present, or use any item, record or document with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
3. Intentionally destroying, concealing, removing, or otherwise impairing the verity, legibility, or availability of a governmental record. A governmental record is defined as anything belonging to, received by, or kept by government for information or that government is required by law to be kept by others for information of government. An offense under Section 3 is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree; or
4. Over-estimates of the number of jobs to be created when compared to actual number created.

The TCF contractor community:

1. May be liable for full and immediate repayment of TCF funds released, if the false information resulted in the project being funded.
2. The locality will be ineligible to apply for TCF funding for a period of two program years or until any issue of restitution is resolved, whichever is longer.

3. If false information is discovered during the review process, the application will be deemed ineligible.

Financing Commitments - A letter of commitment from each funding source outlined on the *Sources and Uses of Funds* form must be included in the application. Financing/loan commitments, for match funds, will **only** be accepted from:

1. State or federal chartered financial institutions (ie. banks, credit unions, etc.);
2. Insurance companies with an *A.M. Best* rating of A or higher;
3. Commercial lenders with a *Standard and Poor's* rating of A or higher (or *Moody's* equivalent); or
4. Other third party lenders (i.e. economic development corporations) with a verified/documented financial capacity (i.e. a *Verification of Deposit*).

Additionally, financial commitment letters should meet the following requirements (see sample letters in Application):

1. If a business is using other private financing, a commitment letter (from all other private financing entities) must be included in the application indicating the commitment amount, the proposed use of the funds, the estimated date of availability, the rate and term, the expiration date of the commitment and the security of the loan.
2. If a business is using corporate or personal funds, a commitment letter from that business's chief executive officer or the principals of the firm (or the individual) must be included in the application indicating the commitment amount, the stated proposed use of the funds, the estimated date of availability, the rate and term, the expiration date of the commitment, and the security of the loan. **NOTE:** Applicant must ensure that appropriate documentation has been provided in the application verifying the signature capacity/authorization on such commitment letters.
3. If a business is using public financing, a commitment letter from the financing entity must be included in the application indicating the commitment amount, the stated proposed use of the funds, the estimated date of availability, the rate and term, the expiration date of the commitment and the security of the loan.
4. If a business is using local governmental financing, a resolution from the local governing body (city or county funds) must be submitted. The resolution must be included in the application indicating the commitment amount, the proposed use of the funds, the estimated date of availability, the rate and term, the expiration date of the commitment, and the security of the loan.
5. If a business is using industrial revenue bonds, a separate local bond inducement resolution stating the dollar amount and conditions of sale/issuance must be included in the application. A commitment letter from the purchaser of the bonds must also be included in order for the funds to be utilized for project feasibility.

Jumbo Awards - Award amounts from \$750,100 to \$1,500,000 are referred to as "jumbo" awards. These require a significantly higher job creation/retention commitment and capital investment/match. Only two jumbo awards are permitted each year and no more than one jumbo award may be made in either of the first two application rounds within the first six (6) months of the year, and a maximum of \$3.5 million may be awarded in a given program year. See **Awards** (page 9) for more information. Jumbo award requirements follow:

<u>Award Amounts</u>	<u>Max Cost-Per-Job</u>	<u>Minimum # of Jobs</u>	<u>Maximum Admin Amt</u>	<u>Minimum match</u>
\$750,100-\$1,000,000	\$10,000	76 – 100	\$60,000	400% or more
\$1,000,100 - \$1,500,000	\$5,000	200-300	\$60,000	500% or more

Labor Requirements for Construction Activities - Any kind of construction related activities that are being funded in whole or in part with TCF funds must comply with the federal Davis-Bacon Act (labor standards). This requires that the federal prevailing wage rate be paid to construction workers. This requirement applies to all primary and secondary contractors. The primary exception would be for the use of force account labor by the locality. There is no such exemption under federal guidelines for private force account labor. The applicability and extent of Davis-Bacon Act requirements in regard to a particular project will be determined on a case-by-case basis by the Department.

Maps - A minimum of 2 project maps must be included with the application. Infrastructure projects have 2 more required maps. Please identify the location of the business(es), buildings, private and public infrastructure, that are part of this project. All maps must be color coded and drawn to scale. Failure to comply will delay the processing of the application.

1. The vicinity map must show the general location of the project in relation to major landmarks such as freeways, rivers, and major streets. If the city is the applicant, the city's corporate limits and extraterritorial jurisdiction must be delineated. If a county is the applicant, the unincorporated area of the county must be delineated.

2. The project site map must be a magnification of the project site delineating:
 - dimension of the lot;
 - dimensions of nearest existing and proposed structures;
 - location and size of nearest existing and proposed private infrastructure (road, water, sewer, etc.) improvements;
 - name of adjacent street(s) and identification of the nearest intersection and designate the service area of such activity; and identification of proposed improvements (**legend or key is required**) to clearly identify the proposed project.

3. Public infrastructure projects must provide 2 maps delineating the proposed infrastructure improvements. Identify the location and names of any property owners from which easements, right-of-ways, or land may be acquired that are contiguous to the proposed infrastructure improvements. Additionally, please identify any businesses located contiguous to the proposed infrastructure improvements. The infrastructure maps must include the following:
 - location and size of nearest existing and proposed public infrastructure (road, water, sewer, etc.) improvements;
 - name of adjacent street(s) and identification of the nearest intersection and designate the service area of such activity; and
 - identification of proposed improvements (**legend or key is required**) to clearly identify the proposed project.

Match Requirement - At a minimum, all TCF monies, including administration, must be matched dollar for dollar by other funds in a project. Other funds are defined as all other sources of funds for the project as reflected on the *Sources and Uses of Funds* form, with the exception of any other HUD monies. HUD money includes program income. Future payment streams from any source will not be considered eligible match. Refinancing of existing funds may not be included as match. A firm financial commitment and a *Verification of Deposit*, if applicable, for all matching funds will be required upon submission of the application. A letter from the Economic Development Administration (EDA) or USDA Rural Development (RD) inviting a formal application must be included in the application, in lieu of a formal commitment. TCF funds, and match funds, outlined on the *Sources and Uses of Funds* form may not be spent or incurred prior to award date.

For activities that will be funded with a combination of TCF and other match monies, the other monies must be expended prior to drawing TCF monies. Also, if a contractor experiences cost overruns or elects to do oversizing, the contractor's funds will be required to be used prior to drawing TCF monies. See **Use of Funds** (page 18).

TCF monies are to reimburse a locality for eligible expenditures they have made or incurred, rather than be advance payments. These reimbursements will be only for work actually completed. Localities are responsible to pay construction contractors according to the terms of their agreements. TCF monies are available to reimburse localities for construction draws when they are in compliance with the terms of the TCF contract. Failure to comply with the terms of the TCF contract does not relieve the contractor of its liability to pay construction contractors.

The following is the minimum required match for TCF awards:

<u>Award Amounts</u>	<u>Match</u>
\$750,000 or less	100% or more
\$750,100 - \$1,000,000	400%
\$1,000,100 - \$1,500,000	500%

Personal Financial Statements - Required from all principals of the business and their spouses. In order to demonstrate and support financial feasibility, it may be necessary for principals owning less than 20% of a business to provide their personal financial information.

Principal - An individual or other legal entity that owns 20 percent or more of the business.

SCORING CRITERIA - The following is an outline of the selection criteria used by the Department for the selection of projects under the TCF. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

FAILURE TO SUBMIT ALL BACK UP DOCUMENTATION TO SUPPORT SCORING MAY RESULT IN A LOSS OF POINTS. ALL SCORE DOCUMENTATION MUST BE PLACED IMMEDIATELY BEHIND THE SCORE SHEET.

In the event of a tie and insufficient funds to approve all applications, the following tie-breaker criteria will be used.

- 1st : The tied applications will be ranked from lowest to highest, based on the job impact rate. Thus, preference would be given to the applicant with the higher job impact rate.

2nd : If a tie still exists after applying the first criteria then applications will be ranked from lowest to highest, based on the total number of jobs proposed to be created and/or retained in the application. Thus, preference would be given to the applicant with the higher number of jobs to created and/or retained.

If more jumbo applications are received than can be funded, the decision of which application to fund will be determined competitively by their scores. Subject to availability of funds, the losing jumbo application(s) may be offered the opportunity to compete for the regular maximum amount of \$1,500,000, provided that the project can still be satisfactorily completed.

1. **Community Need** (maximum 40 points) Measures the economic distress of the applicant community.
 - (A) **Unemployment** (maximum 5 points). Five (5) points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months, as of the 1st of the month in which submitted) is higher than the state rate, indicating that the community is economically below the state average. This information may be obtained by contacting the Texas Workforce Commission, Labor Market Information at 1-866-938-4444 or e-mail at imi@twc.state.tx.us, or website: <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Labforce>. A copy of this documentation must be included with the score sheet in the application.
 - (B) **Poverty** (maximum 10 points). Awarded if the applicant's county annual rate is higher than the annual state rate using the most recent available American Community Survey – 5 year Estimate, as follows: score 5 points if their county rate meets or exceeds the state average and score 10 points if this rate is 15% over the state average. This information may be obtained from the Census Department's American Fact Finder website. A copy of this documentation must be included with the score sheet in the application.
 - (C) **Awarded/Previous Contracts** (Maximum 10 Points). Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.
 - (D) **Community Population** (maximum 10 points). Award 5 Points to applying cities with populations of 5,000 or less and counties with a population of 35,000 or less, using most recent decennial data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,000. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,000. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the most recent decennial data. Use the American Fact Finder website.
 - (E) **Per Capita Income** (Maximum 5 points). Awarded if the city/county per capita income is below the state average using the most recent American Community Survey – 5 year Estimate. Use the American Fact Finder website. A copy of this documentation must be included with the score sheet in the application.
2. **Jobs** (maximum 35 points).
 - (A) **Job Impact** (maximum 15 points). Awarded by taking the Business' total job commitment, created & retained, and dividing by applicant's most recent decennial Census population. This equals the job impact ratio. Score 5 points if this figure exceeds 0.00485; score 10 points if this figure exceeds 0.00969; and score 15 points if this figure exceeds 0.01455. County applicants may deduct the most recent decennial population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the most recent decennial Census data.
 - (B) **Cost per Job** (maximum 10 points). Awarded by dividing the amount of TCF monies requested (including administration) by the number of full-time job equivalents to be created and/or retained during the 3-year term of the contract. Points are then awarded in accordance with the following scale:
 - (i) Below \$15,000--10 points.
 - (ii) Below \$20,000--5 points.
 - (C) **Wage Impact** – (maximum 10 points). Awarded by taking the business's average weekly wage commitment, for all jobs proposed to be created and retained, and dividing by applicant's most recent county, quarterly, private sector average weekly wage. Score 5 points if this figure exceeds 0.50 and score 10 points if this figure exceeds 0.60.

Instruction for locating this information:

The private sector County Average Weekly Wage is calculated by TWC quarterly. Go to the following website: <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>.

Section 1: Select COUNTY

Section 2: Select the County you are researching, i.e. "ANDERSON"

Click CONTINUE

Section 3: Select year – select the most recent year available

Section 4: Select Time Period – select most recent quarter available

Click CONTINUE

Section 5: Select Industry Code – NAICS

Section 6: Select Ownerships – select PRIVATE

Section 7: Select Division – select ALL

Click CONTINUE

Section 8: Select Industries – select TOTAL, ALL INDUSTRIES

Section 9: Select Data Series – select AVG WEEKLY WAGES

3. **Business/Economic Emphasis** (maximum 25 points).

(A) **Preferred/Primary Jobs** – (maximum 20 points). Awarded if the jobs to be created and/or retained are or will be employed by a benefiting Business' whose primary North American Industrial Classification System (NAICS) code number falls into the following categories. This is based on the NAICS number reported on the Business' Texas Workforce Commission (TWC) Quarterly Contribution Report Form C-3, their IRS business tax return, documentation from the Texas Comptroller of Public Accounts containing the business's tax identification number, or other documentation from the Texas Workforce Commission. Foreign or new businesses that have not had an NAICS code number assigned to them by either the TWC or IRS may submit alternative documentation to support their primary business activity to be eligible for these points. In a multi-business application, NAICS code from the business committing to the largest number of created/retained jobs will be used to assign points. Points may be earned under only one of the following three groups:

- (i) 20 points for the following NAICS category: 31-33 - Manufacturing
- (ii) 15 points for the following NAICS categories:

111 - Crop Production	42 - Wholesale Trade
112- Animal, poultry & egg production	48-49 - Transportation/Warehousing
113 - Forestry/Logging	51 - Information (excluding 512-theaters)
114 - Commercial Fishing	5182 - Data Processing, Hosting, Related Services
115 - Support Activities for Agriculture	62 - Health Care
211-213 – Mining	
- (iii) 5 points for projects involving non-primary jobs (i.e., retail), when the business offers a choice of medical and prescription drug benefits to 51% or more of the employees, including coverage for the family.

(B) **Small Business/HUB** (maximum 5 Points). Awarded if each(in a multi-business project)/the Business employs no more than 100 employees for all locations both in and out of state OR has been certified by the Texas Comptroller of Public Accounts as a Historically Underutilized Business (HUB). Information about the HUB program may accessed at: <http://www.window.state.tx.us/procurement/prog/hub/>. Provide current employee count for any/all locations combined and related businesses. This number is determined by the business and any related entities, such as parent companies, subsidiaries & common ownership. Common ownership is considered 51% or more of the same owners. Provide a copy of TCPA's HUB certification in the application.

Scoring Thresholds – The following target score thresholds will be used in 2012.

Month	Max	Min	Allocation	Month	Max	Min	Allocation
Jan	70	50	\$1,500,000	Jul	70	50	\$1,000,000
Feb	65	50	\$1,500,000	Aug	65	50	\$1,000,000
Mar	60	45	\$1,000,000	Sep	60	45	\$1,000,000
Apr	55	45	\$1,000,000	Oct	55	45	\$?
May	55	40	\$1,000,000	Nov	55	40	\$?
Jun	55	40	\$?	Dec	55	35	\$?

Note: Monthly allocations are subject to change upon receipt of the actual HUD funding amounts.

1. Applications will be reviewed, scored and then considered for possible funding on a monthly basis. Applications will be ranked by scores, from high to low and tie-breakers may be used. No preference will be given to holdover applications.
2. Any applications having a reviewed final score equal to or greater than the maximum amount for that particular month will be considered to automatically be in the funding range and notified to submit the full project detail information. We plan on funding these applications without using the allocation amount. This means that the total funding level for the month could be greater than the monthly allocation amount.
3. Applications having final scores below the maximum and not less than the minimum amount, will be considered based on score ranking and available funds. For example: In January, we receive three applications each requesting \$750,000 with scores of 65, 55 and 50. Since we only have \$1,500,000 allocated to this month, the two highest scoring applications will be in the funding range. The lowest scoring application would not have funding available in January, but would be reconsidered in February and future months.
4. No applications with final scores below the minimum for the month will be considered for funding. These applications will be identified as holdover applications and reconsidered the next month.
5. If applications scoring the maximum or higher are identified for funding, this may cause the total available funding to be used more quickly and may reduce the available monthly allocations in future months.
6. Uncommitted "rollover" funds from the previous year may be available for use during the first half of the year.

Verification of Deposit - All financial commitments, as outlined on the *Sources and Uses of Funds* form, will be verified. A sample form is provided in the application. The cash may be re-verified at the time the application is recommended for approval. The verification of deposit should show actual balances, if possible.

SECTION 3

Approved Application Information

ADA/Architectural Barriers Act - State law requires that all projects involving any building construction activities, regardless of source of funding, must ensure that building plans and specifications will be in compliance with the requirements concerning the elimination of architectural barriers encountered by persons with disabilities, as specified in Chapter 469 of the Texas Government Code, and in rule at Title 16, Part 4, Chapter 68 of the Texas Administrative Code, and be submitted to the Texas Department of Licensing and Regulation (TDLR) for review, as required by the Texas Architectural Barriers Act. The plans and specifications shall be sent to the Texas Department of Licensing and Regulations, Architectural Barriers Division, P.O. Box 12157, Austin, Texas 78711.

In real estate projects where TCF monies will be used for building construction activities, the Department requires evidence that the plans and specifications for construction of improvements to, or the renovation of buildings and/or public facilities have been submitted to TDLR, prior to funding construction activities. Evidence of TDLR receipt must be proof of payment (i.e. paid receipt, canceled check, wire transfer receipt) and a copy of the TDLR application form. A *plan approval letter*, issued by TDLR, will be required, prior to closeout of the TCF contract.

The business(es) and locality must ensure that they are in compliance with all provisions of the Americans With Disabilities Act (ADA).

Administration Draw-down Requirements - Below are administrative services draw-down thresholds. These thresholds are commensurate with the progress of the project and associated with administrative duties.

1. No more than a 35% draw-down of the TCF administration line-item funds prior to start of construction. This date will be indicated on the *Start of Construction Notice*. Eligible line items would include environmental clearance activities, record keeping, procurement activities, acquisition, job retention/creation documentation, some special conditions, and quarterly reports. In projects with limited or no construction activity and acquisition is the primary activity, no more than a 35% draw-down of the TCF Administration line-item funds will be allowed prior to the acquisition activity. The date will be indicated on the Report on Real Property Acquisition Activities form.
2. No more than an 80% draw-down of the TCF administration line-item funds prior to the receipt of all required close-out documentation.
3. No more than a 90% draw-down prior to programmatic closure, less any reserved funds and final programmatic closure as noted on the *Certificate of Expenditures*.
4. The final 10% draw-down (100% total, less any reserved funds) may be requested upon programmatic closure and will be available following receipt of the programmatic close-out letter issued by the Department.
5. Funds reserved for audit purposes will be released upon completion and submission of an acceptable audit.

All support documentation invoices submitted for TCF administrative services must include milestones, percent complete, total earned, previously billed, and currently due.

Contract Threshold Requirements: Localities, also referred to as Contractors, that have approved applications must meet the following requirements:

1. Six Month Rule - Minimum documentation required for compliance shall consist of the following contract items: completion of Section 20, Environmental Clearance Requirements and certain items in Section 22, Special Conditions. Any contractor that has not completed certain project activities within the first six (6) months of the contract period may have contract funds deobligated and its contract terminated. Failure to comply with the six-month rule will also cause contract funding to cease.
2. Twelve Month Rule - At a minimum, this must include receipt of the *Notice of Start of Construction* and a copy of contractor's resolution awarding the construction contract(s). Any contractor that has not completed certain project activities within the first twelve (12) months of the contract period may have contract funds deobligated and its contract terminated. Failure to comply with the twelve-month rule will also cause contract funding to cease.
3. Contractor shall submit to the Department the TCF contract requirements of Special Conditions in Sections 20 and 22.A., prior to release of contract funds.

4. Contractor shall satisfy the Sec 22.B. Special Conditions prior to release of contract funds, excluding funds budgeted for architecture/engineering and administration.
5. Contractor shall satisfy the Sec 22.C. Special Conditions as required, but no later than thirty (30) days prior to contract expiration.

Environmental Review - ALL approved TCF projects require environmental clearance before TCF funds, as outlined on the *Sources and Uses of Funds* form, may be spent or incurred (with the qualified exception of general administrative, engineering or architectural costs). Applicant is at risk for any funds expended or incurred prior to receiving an award or an environmental clearance. The environmental review must include a review of private as well as public sector improvements and must address the impact of projects on existing infrastructure. Environmental Reviews will not be cleared prior to the Department's receipt of the fully executed TCF contract. Contact the Department for additional environmental review information.

Additionally, in real estate acquisition "only" projects, award recipients shall provide the Department with a copy of a **Phase 1 Environmental Site Assessment**, prepared by an environmental engineer that reflects no hazardous substances on the project real estate site. The Environmental Site Assessment shall be dated no more than ninety (90) days prior to the city/county's acquisition date.

Minority Participation - The Department encourages minority participation and will assist communities to identify potential minority contractors and subcontractors through the Texas Building and Procurement Commission's Minority Certification Program. Applicants (cities and counties) must provide information regarding their local minority population and their minority employees.

Procurement of professional and construction services and materials through contracts and subcontracts – Procurement is the process through which an entity obtains services, goods and materials that are purchased, and equipment that is leased for use on TxCDBG projects, from vendors. The federal government has established a set of procurement rules that apply to CDBG/TCF-funded projects. These rules are in place to ensure that federal dollars are spent fairly and encourage open competition for the best level of service and price. In addition, the State of Texas has enacted a set of regulations that also apply to CDBG contracts. The procurement procedures described in Section A, Chapter 5 of the *TxCDBG Implementation Manual* comply with both sets of regulations.

HUD requires that recipients of CDBG financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities for low or very low income residents in connection with projects and activities in their community. HUD recognizes that funding typically results in projects/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide "bricks and mortar," but also positively impact the lives of local residents who live in the community. Further, HUD has conveyed that **Section 3** of the Housing and Urban Development Act of 1968 is their legislative directive for providing preference to low and very low income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects. As a result, there is additional reporting required as a result of clarification by HUD and an increased emphasis on Section 3 at the federal level. The Section 3 requirements are described in Chapter 10 Civil Rights, of the *TxCDBG Implementation Manual*. These requirements affect all CDBG/TCF funded contracts and subcontracts in excess of \$100,000.

Program Income - Gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG/TCF funds. When program income is generated by an activity that is only partially funded with TCF funds, the income shall be prorated to reflect the percentage of TCF funds used. Program income includes, but is not limited to, the following:

- Payments of principal and interest on loans, lease payments, and late fees;
- Proceeds from the sale of loans/leases;
- Gross income from the use, sale, or rental of real or personal property acquired by the applicant or a subrecipient;
- Gross income from the use, sale, or rental of real property owned by the applicant or subrecipient that was constructed or improved;
- Gross income from the use of infrastructure improvements constructed or improved with CDBG funds;
- Funds collected through special assessments, impact fees or other additional fees from benefiting businesses, if the special assessments or fees are used to recover all or part of the CDBG portion of public improvements;
- Proceeds from the disposition of equipment; and
- Interest earned on funds held in a Revolving Loan Fund account.

For program income generated through Texas Capital Fund projects communities that elect to participate in the recapture of program income for use at the local level through a designated Revolving Loan Fund (RLF) will be limited to receiving one Texas Capital Fund contract award per program year. If a locality elects not to participate in the recapture of program income,

the locality may apply for as many Texas Capital Fund awards as it has eligible projects. This determination must be made at the time of the original award and cannot be changed with subsequent awards.

A locality, electing to retain program income at the local level, must have a Revolving Loan Fund Plan (RLFP) approved in writing by the TxCDBG, prior to committing and expending any program income. The RLFP shall be approved and must be used for economic development in accordance with Title I of the United States Housing and Community Development Act of 1974, as amended. The RLFP must be submitted for approval no later than six (6) months from the commencement date of the contract. Program income generated by the award prior to the TxCDBG approval of an RLFP must be returned to the State.

Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date and thereafter one award must be made every three years. Every award from the RLF must be used to fund the same type of activity, from which such income is derived. The Department will determine when an activity will be considered to be continued. If the locality has not committed any RLF funds during the three-year period, all program income currently retained in the local RLF and any future program income received must be returned to the State for use in the statewide RLF.

Localities electing to retain program income through an approved RLF are required to monitor and report to the State program income account balances reflecting amounts received and disbursed and the status of outstanding loans or leases. Such report should also include information regarding RLF loans, leases, and commitments made.

If the locality elects not to participate in program income recapture, fails to meet all requirements of this section or requirements identified in Section 6 of its TxCDBG contract or an RLFP is not submitted for approval within the first six (6) months from the commencement date of the contract, then all program income must be returned to the state. Program income returned to the state will be placed in a statewide RLF for the purpose of providing funds for eligible economic development activities.

At the contractor's discretion, property taxes may be assessed on real estate improvements funded through the real estate program and will not be considered as program income.

Retainage and Draws –

1. The minimum draw amount that may be submitted to TDA is \$2,500.
2. No more than 90% of the funds for each construction contract will be paid prior to receipt of the *Certificate of Construction Completion* and *Final Wage Compliance* forms.

No more than 90% of Engineering funds will be paid prior to certification by the contractor locality that it has received as-built plans for contract funded construction activities.

3. Draws for engineering/architectural services will be subject to a five percent (5%) retainage, until the *Certificate of Construction Completion* and record drawings are submitted.

Social Security Numbers (SSN) reporting for employees continues to be an area of "privacy" concern for businesses. We have new options for reporting this information:

1. Full SSN reported wherever required (default method);
2. The City submits a letter to TDA stating it has approved the business request to submit full SSNs directly to TDA and is not requiring that information to be submitted through the city;
3. The business submits full employee information including SSNs to TDA, but only the last four (4) digits of an employee's SSN to the City.

NOTE: By law, social security numbers are protected and withheld in the event a public information request is made.

Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act) -These policies must be followed any time real estate acquisition is involved (acquiring real estate with TCF or **any** other funds) in a project assisted with TCF monies. This may include real estate already acquired (generally within the previous 12 months) in anticipation of a proposed project. Therefore, all projects which will involve/include any real property acquisition or displacement (residents or businesses) should contact the Department prior to initiating acquisition negotiations and/or prior to submitting a TCF application.

Appendix

Job Category/Group Definitions

<p>Officials and Managers - Occupants requiring administrative personnel who set broad policies, exercise overall responsibility of execution of these policies, and individual departments or special phases of a firm's operations. This includes: Officials, Executives, middle management, plant managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, and kindred workers.</p>
<p>Professional - Occupants requiring either college graduation or experience of such kind and amount as to provide a comparable background includes: accountants and auditors, airplane pilots and navigators, architects, artists chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, professional and labor relations workers, physical scientists, physicians, social scientists, teachers, and kindred workers.</p>
<p>Technicians - Occupants requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education such as is offered in many technical institutions and junior colleges, or through equivalent on the job training. This includes: computer programmers and operators, drafters, engineering aides, junior engineers, mathematic aides, licensed practical or vocational nurses, photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical science) and kindred workers.</p>
<p>Sales - Occupants engaging wholly or primarily in direct selling. This includes: advertising agenda and sales workers; insurance agents and brokers; real estate agents and brokers; sales workers; demonstrators and retail sales workers; and sales clerks, grocery clerks and cashiers; and kindred workers.</p>
<p>Office and Clerical - Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. This includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists, and secretaries, telegraph and telephone operators, and kindred workers.</p>
<p>Craft Worker (skilled) - Manual workers of relatively high level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. This includes: the building trades, hourly paid supervisors and lead operators (who are not members of management), mechanic and repairers, skilled machining occupations, composers and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, and kindred workers.</p>
<p>Operatives (semi-skilled) - Workers who operate machines or other equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. This includes: apprentices (auto mechanics, plumbers, electricians, machinists, mechanics, building trades, metal working trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dress makers and sewers (except factory), dryer's furnaces workers, heaters (metal), laundry and dry cleaning, operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, boiler tenders, truck and tractor drivers, weavers (textile), welders and flame metals workers, and kindred workers.</p>
<p>Laborers (unskilled) - Workers in manual occupations which generally require no special training perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. This includes: garage laborers; car washers and greasers; gardeners (except farm) and ground keepers; stevedores; wood choppers; laborers performing lifting, digging, mixing, loading, and pulling operations; and kindred workers.</p>
<p>Service Workers - Workers in both protective and non-protective service occupations. This includes attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, chairworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection guards, door keepers, stewards, janitors, police officers and detectives, porters, waiters and waitresses, and kindred workers.</p>

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