

# SECTION D

# TEXAS CAPITAL FUNDS

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# SECTION D

## TEXAS CAPITAL FUNDS

### D.0 Introduction

This section addresses the steps necessary to successfully implement economic development grants awarded through the Texas Capital Fund (TCF) of the Texas Community Development Block Grant Program (TxCDBG). This section is not intended to replace the other sections of the TxCDBG Project Implementation Manual; rather, it is to serve as a guide in accomplishing the administrative requirements specific to economic development Grant Recipients.

Grant Recipients that have executed grants for economic development activities must follow the administrative procedures outlined in Section A of the TxCDBG Project Implementation Manual. **In addition to the procedures and requirements outlined in those chapters, this Section D includes specific requirements for economic development activities.**

### D.1 Infrastructure and Real Estate Programs

The TCF infrastructure and real estate programs provide funds to eligible Grant Recipients for infrastructure and/or real estate improvements that support a specific business, either a for-profit or a non-profit entity, that is expanding or beginning operations in the Grant Recipient's jurisdiction.

#### **Eligible Use of Funds**

CDBG funds may be used to undertake certain economic development activities. Depending on the specific program, these activities include

- Acquiring, constructing, reconstructing, rehabilitating, or installing commercial or industrial buildings, structures, and other real property improvements;
- Railroad spurs or similar extensions by local Grant Recipients and sub-recipients;
- Private and public Infrastructure;
- Assisting a private, for-profit business; and/or
- Providing economic development services in connection with otherwise eligible CDBG economic development activities<sup>1</sup>.

Environmental review requirements apply to the acquisition of property related to TCF projects, Infrastructure or real estate—private property or public. See *Chapter 3 Environmental Review* for information on option contract requirements.

#### **D.1.1 Low- and Moderate-Income Jobs National Program Objective**

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<sup>1</sup> 24 CFR 570.203 (a)(b)(c).

Economic development activities designed to create or retain permanent, full-time jobs where at least 51% of the jobs involve the employment of low and moderate income (LMI) persons may qualify under the job creation or retention criteria of the LMI benefit national program objective<sup>2</sup>.

This chapter will generally refer to job creation to include both creation of new jobs and retention of existing jobs, except where explicitly stated. However, if job retention was not approved during the application and award processes, job retention will not be considered as part of a Grant Agreement amendment.

If Grant Recipients fund activities that create jobs, there must be documentation that at least 51% of the jobs will be held by low and moderate income persons. In the event more than the obligated number of permanent jobs are created, the Grant Recipient shall ensure that at least 51% of all jobs created during the grant period are held by LMI persons.

**EXAMPLE:** If the Grant Recipient is obligated to create 30 permanent jobs, then 16 are to be held by LMI persons. If the project actually creates 40 permanent jobs, then 21 of those jobs must be held by LMI persons.

### **Documenting Income of LMI Persons**

The business and the Grant Recipient may elect to document income by certifications, referrals, or census tract data. Income limits can be obtained from TDA.

#### **Certifications**

A written certification by a person who establishes his or her total family income and family size is the suggested method of verifying low- and moderate-income status. This certification must include the individual's name, employee identification number, current job title, the date hired by the business, the total family size, the total family income for the last twelve months as of the date the certification is signed by the newly-hired employee, and previous employment history. The form used for such certification must include a statement that the information is subject to verification, see *20xx TCF Survey Questionnaire (Family Income/Size Certification) (Form D7)*.

#### **Referrals**

In the case of referrals, the Grant Recipient or employment agency must have already determined the individual to be a low- or moderate-income person based on HUD's income levels and considering both total family income and family size. Such entities making referrals must maintain the documentation they used for verification by both state and HUD monitors.

### **Documenting Jobs**

Job creation requirements are computed on a full-time equivalent (FTE) basis as follows:

- Full-time employee status requires a minimum work schedule of 35 hours per week.
- Part-time employee status requires a minimum work schedule of 20 hours per week; two part-time employees equal one FTE.
- Employment must be consistent. A job which requires variable hours based on the business's scheduling needs is usually not considered full-time. The ending payrolls must document the employees' hours, including documented leave, meet or exceed the required weekly work schedule for each of four consecutive weeks, **or** the business may submit 12 weeks of payrolls showing the employee consistently met the required number of hours for 10 of the 12 weeks. Weekly hours will not be averaged over time to determine the full-time or part-time status of an employee.

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<sup>2</sup> 24 CFR 570.483 (b)(4)

For an employee to be considered towards job creation requirements, the person must:

- Be employed at least 30 days prior to the submittal of closeout documents or grant expiration, whichever comes first; and
- Be employed only at the location identified in the TxCDBG Grant Agreement Performance Statement.

### **Companies with Multiple Locations**

- The job commitment must be met through jobs created at the project location described in the TxCDBG Grant Agreement.
- TDA will allow up to 20% of the newly-created jobs to be filled by persons previously employed by the business at another location. The company must document the LMI status of the transferring employee immediately prior to the transfer. The company must specifically request that these transferred employees be considered toward the **net gain** of jobs and must document the additional employment by providing
  - The name of transferring employee;
  - The job title, salary range, and location of position prior to transfer;
  - The job title, salary range, date of hire, name of employee replacing the transferee; and
  - A payroll showing 30 days employment for replacement employee, no later than the final payroll period for the project.
- The company must document overall job creation using either payrolls or self-certification methods:
  - **Multi-location payrolls** – the company must provide:
    - Starting payroll records showing all locations within a 50-mile radius, accompanied by a master Excel list with the name and employee identification for all employees appearing on the payroll,
    - Final payroll **and** Excel list of employees for the project location, as well as locations from which employees were transferred.
    - TDA staff will compare the final payroll for the project location to the original master list and transfer requests to ensure that job creation totals are accurate.
  - **Self-certified employment and income records** – the company must provide:
    - *TCF Survey Questionnaire (Family Income/Size Certification) (Form D7)* for each job created, signed by both the employee and an authorized representative of the business e.g., human resources staff; and
    - Starting and ending payrolls for the project location only.
    - For projects in census tracts allowing for presumed LMI status, the actual employee responses will be used to determine LMI status.

Jobs **not** eligible to meet the national program objective include

- Seasonal jobs
- Temporary jobs
- Contract labor jobs (including staff leasing agencies)
- Jobs held by principals of the benefitting business(es)

### **Jobs Not Created**

The grant cost per job is determined by the total number of jobs to be created as identified in the Grant Agreement and the total grant funds awarded (total grant funds awarded / total jobs required). If some or all of those jobs are not created, TDA will calculate the maximum grant funds available for the project using the following formula: Actual jobs created \* Grant cost per job. Any grant funds disbursed in excess of this recalculated maximum amount must be repaid to TDA within thirty (30) days of notification.

## **D.1.2 Quarterly Job Creation Reporting Requirements**

The Grant Recipient must document job creation during the course of the TCF grant. Each quarter (due May 20, August 20, November 20, and February 20), the Grant Recipient must initiate a new Performance Report:

- On the *Performance Report Selection* page, select *Current Status* and save the page.
- On the *Current Status* page, provide a response to each question. Include the grant quarter and the total number of full-time and part-time jobs created or retained to date in the narrative field.
- Navigate to the *Notes* page in the Tools section of the navigation menu. Attach the Texas Workforce Commission's (TWC) Texas Employer's Quarterly Report (first page).
- Change the status of the report to *Performance Statement Submitted*.

In addition, the Grant Recipient must provide a current payroll report for the benefitting business(es) upon request from TDA. Job creation documentation must be **retained by both** the Grant Recipient and the business.

## **D.1.3 Grant Agreement Special Conditions Prior to Release of Funds**

In addition to the items listed in *Chapter 2 Financial Management*, the following documentation must be uploaded to the *Agreement Special Conditions* section of the TDA-GO *Grant Overview* page prior to the release of TxCDBG grant funds for any activity:

- Starting payrolls for the benefitting business(es) and/or other company facilities operating within a 50-mile-radius of the company location as identified in the Grant Agreement, or as otherwise specified by TDA.
- Agreement between Grant Recipient and benefitting business(es), including a checklist showing page numbers of required clauses, see *TCF Contractor-Company Agreement Certification (Form D1)*.
- Repayment agreement between Grant Recipient and TDA, if applicable.
- Repayment agreement between Grant Recipient and benefitting business(es), if applicable.

In addition to the items listed in *Chapter 2 Financial Management*, the following documentation must be submitted prior to the release of TxCDBG grant funds for construction or real estate activities (if applicable):

- Loan agreement between benefitting business(es) and a lender for private funding required to complete the project.
- For Infrastructure Improvements: Evidence of the start of building construction for the business location.
- For real estate improvements:
  - Tri-party agreement between Grant Recipient, benefitting business(es), and lender.
  - Appraisal for property to be purchased.
  - Evidence of flood insurance for property to be purchased.
  - Evidence of the owner's title insurance commitment for property to be purchased.

## **D.1.4 Funds Committed by the Business**

TCF real estate and infrastructure programs often include private investment which funds a project separate from the infrastructure construction funded by the grant. Work completed on private property and entirely with private funds may be excluded from many federal and program requirements; however, note that some federal regulations still apply.

## Following are Examples of Federal Requirements That Do Apply

- The environmental review must include the privately-funded work in order to comply with federal aggregation requirements as described in *Chapter 3 Environmental Review*. The scope of the environmental review for the TCF project must include
  - All activities conducted at the location where jobs will be created, including any acquisition, construction, or rehabilitation of buildings required to provide the jobs, whether publicly or privately funded;
  - All sites included in the TCF project, whether public or private; and
  - All other activities conducted as part of the same overall project.
- In addition to the site-specific analysis, the Grant Recipient must consider the wider context of the project. The Grant Recipient, as the Responsible Entity, determines how to evaluate the cumulative impact on the environment of the grant-funded project along with other existing local conditions.
  - The cumulative impact section of the *Environmental Assessment*, if applicable, should address any known activities which have already begun and/or are anticipated in the near future and are related to the HUD-funded project. This section may include other facilities to be operated by the same business or industry, planned activities for suppliers, and other firms that may be related to the business/industry, and/or activities related to but not a direct result of the HUD-funded project, etc.
  - **No environmental analysis of these cumulative impacts is required and identifying these impacts would not trigger a 24 CFR 58.22 issue.** The purpose of this section is to describe how such activities do/don't affect the area as part of the overall transparency for project-related impacts for stakeholders that choose to review the ERR.
- If any TxCDBG funds are used for a construction contract, even if the contract is primarily funded through private investment, Davis-Bacon labor standards requirements apply to the entire construction contract as described in *Chapter 7 Davis-Bacon Labor Standards*.
- If any TxCDBG funds are used for materials or service contracts, even if the contract is primarily funded through private investment, TxCDBG competitive procurement requirements apply as described in *Chapter 5 Procurement Procedures*.

TCF infrastructure grants are based on the **minimum necessary** infrastructure activities that are needed to adequately serve the benefitting business(es). If the Grant Recipient chooses to include additional or oversized work in the same construction contract, the bid and invoice documents must clearly indicate the minimum necessary separate from the additional work. The Grant Recipient is responsible for payment of all oversizing or extra activities and/or cost overruns and may be required to provide evidence of expenditure(s) prior to drawing grant funds.

### **D.1.5 Evidence of Business Occupancy**

The Grant Recipient must notify TDA of the date that the business occupies the project site benefitting from the TCF funded infrastructure or real estate improvements. Within 60 days of occupancy, the Grant Recipient must submit a copy of the certificate of occupancy issued by appropriate local authorities to the business and a current payroll report for the benefitting business.

**NOTE:** The date of the certificate of occupancy is not necessarily the same as the date the business begins operation.

If a certificate of occupancy is not required by local authorities, the Grant Recipient may submit a letter from a third party licensed professional approved by TDA who is knowledgeable about required safety

standards, i.e., a project engineer, an architect, a city/county inspector, or fire inspector, stating that a formal Certificate of Occupancy is not required and certifying the date that the benefitting business was approved to use the facility and/or improvements funded through the TCF grant.

The date of occupancy will determine

- The first date that jobs created by the project may be considered eligible; and
- The date on which the first payment is due to TDA under the repayment agreement, typically three months after the date of occupancy.

**NOTE:** The certificate of occupancy indicates that the facility is safe to be occupied by employees, and should occur prior to the company beginning operations in that facility. Any request to train new employees at an alternate location, including existing facilities on the same company property, prior to beginning work at the grant project location must have prior written approval from TDA. The request must be made in writing with supporting documentation demonstrating the need to have training begin prior to the date of safe occupancy of the building, including training policies, proposed location for training, and number of persons required to be trained off-site. Generally, requests for training greater than sixty days will not be approved, and in no case will TDA approve requests for trainees to be hired prior to the start date of the TCF grant.

## **D.1.6 Loan Repayment Requirements**

With the exception of administration funds, TCF monies awarded for private infrastructure awards will require repayment. Infrastructure repayments are the responsibility of the Grant Recipient and paid to TDA; in general, it is expected that the Grant Recipient will require payments in the same amounts from the benefitting business(es), but this is not a requirement of the program. A Grant Agreement Special Condition requires submission of a Repayment Agreement that details the terms of the repayment. This must be signed by the Grant Recipient as part of the grant process.

### **Private Infrastructure Improvements**

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, requires full repayment. Grant funds used for this infrastructure are intended to be repaid by the business through a repayment agreement with the following terms:

- No interest;
- Not to exceed 20 years, or 10 years for awards less than \$300,000;
- Minimum monthly payment not less than \$500; and
- Payments begin the first day of the third month following the construction completion date.

## **D.1.7 Grant Agreement Special Conditions Prior to Close-out**

The following items are required to be submitted no later than the date that the project completion report is submitted.

- Texas Department of Licensing and Regulation final approval letter for the project site identified in the TxCDBG Grant Agreement Performance Statement, if applicable.
- Evidence of hazard and liability insurance for the project site identified in the TxCDBG contract Performance Statement.
- *TCF Survey Questionnaire (Family Income/Size Certification)* (**Form D7**) for each LMI employee.
- Final payroll report for the benefitting business(es):

- The report must include all employees that were working for the business prior to the execution date of the Grant Recipient's TCF Grant Agreement **and** all newly hired employees reported for job creation requirements.
- The period reported on the final payroll must include at least four weeks of work performed.
  - If closeout documentation is submitted after the grant end date, the final date of the payroll reporting period must be 1 to 30 days prior to the grant end date.
  - If closeouts are submitted prior to the grant end date, the final date of the payroll reporting period must be no greater than thirty (30) days prior to the date the Project Completion Report is submitted to TDA.
  - Sufficient documentation must be provided with the ending payroll to show that employees have been on the job for no less than one month, including documentation of hours worked in each of the weeks included in the payroll report.
- For **each employee** the report must contain at a minimum:
  - Full name;
  - A unique employee identification number, which must **not** include all or part of the employee's Social Security number;
  - Full-time and part-time employment status;
  - Date hired;
  - Wages; and
  - Hours worked.

The Grant Recipient's local files must include sufficient documentation to show that each job is held by a specific individual. In addition, documentation must provide evidence no individual holds more than one specific job, unless working part-time on two different jobs. **Do not send this information to TDA unless specifically requested by TDA staff.**

In addition, certain grants for public infrastructure may be required to document the aggregate benefit of the project, as identified in the TxCDBG Grant Agreement. If required by Exhibit D, Special Conditions, the *TCF Aggregate Benefit Report (Form D8)* must be submitted one year after the final inspection date identified in the Materials and Services Report. The Grant Recipient must contact all businesses that are contiguous or have direct access to the new or improved infrastructure and report all new jobs created since the business(es) began accessing the new or improved infrastructure. These businesses are asked to use their best faith efforts to employ LMI individuals for the majority of new jobs created. However, the Grant Recipient is responsible for ensuring that no less than 51% of the total jobs created as a result of the infrastructure investment, including both the benefitting business identified in the Grant Agreement and any additional businesses identified are held by low-to moderate-income employees in order to satisfy the National Program Objective.

### **D.1.8 Closeout**

No later than sixty (60) days after the Grant Agreement end date, the Grant Recipient must complete the closeout process, as described in *Chapter 12 Grant Agreement Closeout*.

#### **Reporting Matching Funds**

For grants greater than \$750,000 that were required to match greater than 1:1 ratio, the Grant Recipient must provide cost documentation to support the minimum matching funds as required by the Application Guide. Documentation for additional leverage funds beyond the required match claimed in the TCF application must be provided upon request.

#### **Reporting Job Creation**

Grants that result in new or retained jobs to be documented as the national program objective must report direct beneficiaries.

On the **Project Completion Report**:

- Respond **Yes** to confirm direct beneficiary activities.
- Upload as Evidence of Benefit a list of all employees identified on the final payroll and claimed as jobs created or retained as a result of the grant. This list must include for each employee:
  - Name;
  - Full time or part time status as described in Section D; and
  - LMI status.

On the **Direct Beneficiary Form**:

- Report the income, gender, race, and ethnicity for each individual that holds a job created or retained as a result of the grant project—where the project includes part-time jobs, the total number of beneficiaries will be greater than the number of jobs committed in the Grant Agreement.
- Report the number of businesses assisted, as described in the Grant Agreement. Incidental benefit and “tap-in” businesses are not included in this report.
- Report the total number of FTE jobs created or retained by category, as described in *Section D.1.1*. This count will be used to determine grant compliance, including any required repayment for failure to create the jobs committed.
- Report weekly hours for all individuals on the payroll that are not reported as full-time employees.
- Report the number of FTE jobs by classification.

**Any business that does not gather, complete, and provide this data to both the Grant Recipient and TDA will not satisfy the National Program Objective requirement to benefit low and moderate income families.**