

**VEDP Policies and Procedures for Capital Investment, Employment, and
Wage Level Reporting and Verification
Approved by VEDP Board of Directors on October 25, 2018**

Purpose:

The Virginia Economic Development Partnership (VEDP) Division of Incentives (Incentives Division) is tasked with monitoring and reviewing the status and progress of the performance requirements for certain economic development incentives in accordance with Section 2.2-2237.3 of the Code of Virginia of 1950, as amended (the Virginia Code).

The VEDP Board of Directors recognizes the importance of (i) the timely and accurate reporting from grant recipients of the progress on and achievement of certain capital investment, employment, and wage targets required for the payment of such incentives contained in the performance agreements setting forth the terms and conditions of the grant to be received, and (ii) the consistent, effective and transparent verification of such data by VEDP. The purpose of these policies and procedural guidelines is to formally document the performance reporting and verification procedures for companies and VEDP to follow.

Capital Investment and Employment and Wage Reporting

Each performance agreement contains the statutory minimum capital investment, new jobs, and average annual wage targets as set forth in the applicable statute pursuant to which the incentive was awarded, as well as the capital investment, new jobs, and average annual wage targets which the company is expected to achieve for the particular project.

- A company must achieve the statutory minimum capital investment and new jobs and average annual wage targets to qualify for the grant. If the company fails to achieve either or both of these statutory minimum requirements, the grant will not be paid out or, in the case of a Commonwealth's Development Opportunity Fund (COF) grant which may be paid out prior to the completion of the performance period based upon the company reaching certain milestones set forth in the performance agreement, the entire grant must be repaid to the Commonwealth.
- If the company achieves the statutory minimum requirements, but does not achieve the expected capital investment and/or new jobs targets, the approved grant amount may be reduced proportionately or, in the case of a COF grant paid prior to the performance date, portions of the grant may be required to be repaid to the Commonwealth.

To ensure the proper monitoring and review of the status and progress of these targets, each performance agreement contains specific reporting obligations and verification procedures.

Annual Progress Reports

For a COF grant, the locality in which a company's facility is located must work with the company to file with the Incentives Division an annual progress report for each year of the performance period by the date set forth in the performance agreement.

For Virginia Investment Partnership (VIP) grants, Virginia Economic Development Incentive Grants (VEDIG), and Major Eligible Employer (MEE) grants, the company will file with the Incentives Division an annual progress report for each year of the performance period and the payment period by the date set forth in the performance agreement.

All annual progress reports will require, at a minimum, the company to submit, as applicable:

- The amount of total capital investment and a summary breakdown of capital investment into categories such as land, purchase of existing building, new construction, renovation or building up-fit, machinery and tools, furniture, fixtures and equipment, and other major categories of expenditures.
- A summary of the number of any baseline jobs existing at the facility, the number of new jobs created and maintained at the facility, net of any baseline jobs, and the average annual wage of such new jobs.
- Management's confidence level as to the achievement of its performance targets (to be classified as High, Medium, or Low).
- Such other documentation as the company may offer to evidence the capital investment and new jobs and average annual wage targets.

Final Reports or Company Notifications

For a COF grant, the locality must work with the company to file with the Incentives Division a final report upon completion of the performance period.

For VIP, VEDIG, and MEE grants, the company will file with the Incentives Division what is referred to as an initial company notification in the case of a VIP Grant and the company notification for VEDIG and MEE grants indicating the completion of the capital investment and, if applicable, the creation and maintenance of new jobs at the facility at the promised average annual wage.

All final reports or company notifications will, at a minimum, require the company to submit, as applicable:

- The amount of total capital investment and a summary breakdown of capital investment into categories such as land, purchase of existing building, new construction, renovation or building up-fit, machinery and tools, furniture, fixtures and equipment, and other major categories of expenditures.

- A summary of the number of any baseline jobs existing at the facility, the number of new jobs created and maintained at the facility, net of any baseline jobs, and the average annual wage of such new jobs.
- Copies of the company's four most recent Employer's Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission (VEC.).

Subsequent Company Notifications

A company receiving a VIP grant must submit an additional report referred to as a subsequent company notification to the Incentives Division in order to ensure qualification for such grant. One year after the initial company notification has been filed, the company must provide:

- A written certification to VEDP indicating whether there has been a net reduction in employment in the year since the completion of the capital investment and the creation of any new jobs that may be required.
- Copies of the company's four most recent Employer's Quarterly Tax Reports (Form FC-20) filed with the VEC.

Annual Payment Period Certifications

A company receiving a VIP, VEDIG, or MEE grant is required to make an additional certification to VEDP for each year of the payment period. Each year prior to the scheduling of the disbursement of the grant installment payment, the company must provide:

- A written certification to VEDP that the capital investment has substantially remained in place during the payment period, the new jobs have been maintained during the payment period, and the facility continues to operate during the payment period at substantially the same level as existed at the time of the completion of the capital investment and creation of the new jobs that may be required.
- Copies of the company's four most recent Employer's Quarterly Tax Report (Form FC-20) filed with the VEC.

Verification of Company-Reported Capital Investment Data:

Company's Final Report (Commonwealth's Development Opportunity Fund, "COF")

Companies receiving incentives through the COF are required in Section 5 of the performance agreement to report annually their progress in meeting the performance targets outlined in the performance agreement for capital investment, average annual wage, and job creation. It is expected that this report will be sent to VEDP's Incentives Coordinator within 90 days of the annual anniversary date of the performance date and, in the case of the Final Report, within 90 days of the final performance date specified in the performance agreement.

Through this Annual Progress Report (and Final Report, as appropriate), the company will reflect its progress against its capital investment target. The company will also reflect its confidence level (High, Moderate, or Low) in reaching that target. The company is encouraged to discuss any changes (or anticipated changes) in the project which may impact achievement of the target. Finally, the company must certify as to the accuracy of the report. This Annual Progress Report (and Final Report, where appropriate) is to be submitted to VEDP's Incentives Coordinator.

Once this report is received, VEDP's Incentives Coordinator will compare the figures reflected on the Final Report to the figures reported by the local Commissioner of the Revenue. The verified figures reported and the confidence level reported by the company are reflected in VEDP reports to its Board of Directors.

Commissioner of the Revenue Records

The Incentives Division first will verify the capital investment data by requesting the company's real estate tax, business personal property tax and machinery and tools tax records from the Commissioner of the Revenue, or equivalent official, in the applicable locality where the company's facility is located.

- In accordance with Section 58.1-3122.3 of the Virginia Code, VEDP is entitled to receive such tax information as may be required to facilitate the administration and enforcement of a performance agreement with a company that has received an incentive award.
- A performance agreement will contain language in which the company authorizes VEDP to access this tax information and agrees to provide such other consents as may be required.
- The Incentives Division will enter into a written agreement with the applicable Commissioner of the Revenue (Disclosure Agreement), as required by Section 58.1-3122.3 of the Virginia Code. The Disclosure Agreement will note that the Incentives Division is responsible for reviewing, vetting, tracking and coordinating certain economic development incentives and must verify the achievement of capital investment amounts reported to be made. The Disclosure Agreement will set forth the contact with whom VEDP shall initiate its request.
- In order to verify the capital investment claim by the company that received an incentive award, VEDP will ask for the change in assessed value from the beginning to the end of the performance period and/or confirmation that the tax records reflect the capital investment reported by the company.
- Promptly upon request made by the Incentives Division, the Office of the Commissioner of the Revenue or equivalent official will release to the Incentives Division a company's real estate tax, business personal property tax and machinery and tools tax information.
- If the Office of the Commissioner of the Revenue or equivalent official should require documentation of the Incentives Division's need to access the tax information, the Incentives Division will provide a copy of the performance agreement or such documentation as such office may reasonably require.

- Any tax information provided to VEDP shall be confidential and not divulged by VEDP.
- Such tax information will be used by VEDP solely for the purpose of verifying a capital investment claim.

VEDP recognizes that the data provided by the Commissioners of the Revenue will not match exactly the data provided by the company.

- The records of the Commissioners of the Revenue represent assessed real estate, business personal property and machinery and tools tax value, rather than actual capital expenditures.
- Tax reporting periods may not align with performance reporting periods.
- In spite of these limitations, records of the Commissioners of the Revenue are the most useful data source available for independent verification purposes and should represent confirmation that some or all of the expected capital investment was indeed made and is in place.

Utilizing Company and local Commissioner of the Revenue Data in Determining Performance

Based on the comparison results of the company's Final Report against the data provided by the local Commissioner of the Revenue, VEDP's Incentives Coordinator will calculate how closely the data reported to VEDP matches the data reflected by the Commissioner of the Revenue. In the event the data provided by the Commissioner of the Revenue is 75% or more of the company's reported data as reflected in its Final Report, then VEDP will consider the Final Report data to be effectively verified.

Invoices

If the records of the Commissioners of the Revenue reflect achievement of less than 75% of the capital investment target, the Incentives Division will work with the company to determine the source of such discrepancy.

The company may be required to submit copies of invoices related to the capital investment paid by or on behalf of the company which are accompanied by a summary of the invoices and a certification by the company that such copies are true, accurate, and complete.

The Incentives Division will sample the invoices submitted by the company. Such sample will be to review:

- The dates and amounts of such invoices to determine whether the invoices comport with the company's reported capital investment totals.

Right to Require Audit

In every performance agreement, VEDP reserves the right to require the company to submit to audits as may be required to properly verify the capital investment.

If the Commissioner of the Revenue's records and the invoices do not appear to reflect the reported capital investment total, then VEDP may require the company to engage a mutually agreed-upon certified public accounting firm, at the company's expense, to audit the company's records with respect to the project.

Verification of Company-Reported Employment and Wage Level Data

Company's Final Report (Commonwealth's Development Opportunity Fund, "COF")

Companies receiving incentives through the COF are required in Section 5 of the performance agreement to report annually their progress in meeting the performance targets outlined in the performance agreement for capital investment, average annual wage, and job creation. It is expected that this report will be sent to VEDP's Incentives Coordinator within 90 days of the annual anniversary date of the performance date and, in the case of the Final Report, within 90 days of the final performance date specified in the performance agreement.

Through this Annual Progress Report (and Final Report, as appropriate), the company will reflect its progress against its new jobs target (i.e., those net new jobs over the baseline employment established in the performance agreement), its average annual wage as compared to the target, and whether or not it continues to offer standard fringe benefits (as required in the performance agreement). The company will also reflect its confidence level (High, Moderate, or Low) in reaching those targets. The company is encouraged to discuss any changes (or anticipated changes) in the project which may impact achievement of the targets. Finally, the company must certify as to the accuracy of the report. The Final Report is to be submitted to VEDP's Incentives Coordinator along with copies of the company's four most current Employer's Quarterly Tax Reports (Form FC-20) which the company is required to submit to the Virginia Employment Commission (VEC). The Employer's Quarterly Tax Reports (Form FC-20) are required of all employers covered under the Virginia Unemployment Compensation Act.

Once the company's Annual Progress Report is received, VEDP's Incentives Coordinator will compare the figures reflected on the Annual Progress Report to the most current data available from the VEC database (accessed through VEDP's Research division) for purposes of ensuring general alignment between VEC's figures and the company's Annual Progress Report. Full verification will occur at the time the Final Report is submitted.

Once the company's Final Report is received, VEDP's Incentives Coordinator will compare the figures reflected on the Final Report to the Form FC-20. To verify the net new jobs figure, the Incentives Coordinator will subtract the company's baseline employment, as specified in the performance agreement, from the total employment figure reflected in the matching month of the initial performance period target date, as shown on Form FC-20 (Box A. "Employee Count"), to calculate the net new jobs created.

To calculate the average annual wage, the Incentive Coordinator will look to the wage figure reported on Box B.1. "Total Wages paid this quarter." The sum of each of the four most recent quarters' wages (less the baseline) will be divided by the total average employment (less the baseline) over the 12-month period to calculate the average annual wage. The verified figures reported and the confidence level reported by the company are reflected in VEDP reports to its Board of Directors.

Virginia Employment Commission Records

Using the company's most current Employer's Quarterly Tax Report (Form FC-20) filed with the VEC during the performance period, the Incentives Division will verify the employee count. The Incentives Division will also verify the average annual wage using the company's four most recent Employer's Quarterly Tax Report (Form FC-20) filed with the VEC.

- In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission (VEC) as it may require to facilitate the administration and enforcement by VEDP of a performance agreement with a company that has received an incentive award.
- Any VEC information provided to VEDP shall be confidential and only disclosed to employees and Directors of VEDP who are public officials for the performance of their official duties.
- No public official or employee can re-disclose any such confidential information to non-legislative citizen members of the VEDP Board of Directors or the public.
- Such VEC information will be used by VEDP solely for the purpose of verifying an employment and wage claim.

Form FC-20 provides the total number of employees who worked during or received pay for any part of the payroll period, plus total wages paid in the quarter, and certifies that the information is true and correct. It should be recognized that the Form FC-20 does not distinguish between full-time and part-time employees, nor does it adequately account for turnover by position.

If more detailed data is necessary, the company may be asked to provide its most recent Employer's Quarterly Payroll Report (FC-21) filed with the VEC which provides each individual employee position and associated wages paid for the payroll period. All personally identifying employee information on such form including Social Security number and first, middle and last name, must be redacted. The company will be asked to highlight new jobs, net of any baseline jobs, and strike part-time positions.

Each company is requested to report to the VEC with respect to its employees at a facility-level, rather than at the company-level. This will ensure ease of access to information in a facility in a specific locality.

Utilizing Company and VEC Data in Determining Performance

Verification Guidelines FY 2018

Based on the comparison results of the company's Final Report against the Form FC-20 (or FC-21 where appropriate), the VEDP's Incentives Coordinator will calculate how closely the data reported to VEDP matches the data reported to VEC. In the event the data provided by the company in the Final Progress Report is lower than the data provided on Form FC-20, VEDP's Incentive Coordinator will consider the Final Progress Report as the figure to be used when determining performance against target. In those instances, the amount of clawback (if any) associated with the jobs target will be prorated according to the company data.

If, however, the company's Final Progress Report job figure is higher than the VEC data, VEDP will request that the company provide a list of the positions filled and the wages associated with those positions. The onus is on the company to prove that its figure is the most accurate and, if sufficiently convincing, then the company's figure will be used to evaluate performance against target and the amount of the clawback (if any); otherwise, the VEC data will be considered as the prevailing source.

Example:

Job target per the performance agreement = 100 net new jobs above the baseline

Company's Final Report reflects 80 net new jobs above the baseline

VEC Form FC-20 reflects 70 net new jobs above the baseline

VEDP's Incentives Coordinator would request that the company provide detailed data on the positions filled to adequately explain the discrepancy in the company's favor. (In some cases, this scenario would require an audit.) Barring the company's ability to prove the accuracy of its figure, VEDP would use VEC's figure in determining the company's performance against target and the clawback amount (if any). In this example, VEDP would determine that the company's net new job figure was 70, not 80.

For average annual wage calculations: Based on the comparison results of the company's Final Report against the Form FC-20 (or FC-21 where appropriate), the VEDP's Incentives Coordinator will calculate how closely the data reported to VEDP matches the data reported to VEC. Should the average annual wage calculation per the company's Final Progress Report be lower than the average annual wage as calculated using the four most recent quarterly VEC FC-20 reports, then the Incentives Coordinator shall use the Final Progress Report data as the prevailing figure to compare against the performance target for average annual wage.

If, however, the company's Final Progress Report reflects an average annual wage which is higher than the average as calculated using the VEC Form-FC20, then the wage as reflected on the VEC Form FC-20 will be the prevailing figure used.

Right to Require Audit

In every performance agreement, VEDP reserves the right to require such other documentation as may be necessary to evidence the new jobs and average annual wage targets, as well as to require the company to submit to audits as may be required to properly verify the employment and wage levels.

VEDP may also request both FC-20 and FC-21, directly from the VEC, to verify employment numbers submitted by the company.

If the VEC records do not appear to reflect the reported new job and average annual wage totals, then VEDP may require the company to engage a mutually agreed-upon certified public accounting firm, at the company's expense, to audit the company's records with respect to the project.