TREATMENT OF DEFAULTS UNDER COMMUNITY ECONOMIC DEVELOPMENT AGREEMENTS GOVERNING JDIG GRANTS

This memorandum outlines the policies of the North Carolina Economic Investment Committee (the "Committee") regarding the treatment of grantees in default under their respective Community Economic Development Agreements (each a "CEDA") governing their Job Development Investment Grant ("JDIG") awards.

The first section of this memorandum outlines the statutory framework governing the basic construct of what constitutes a default, particularly as it relates to the part of the grant term in which the default occurs.

The second section discusses the weighting that will be applied to the three main types of grant performance defaults, in order to determine if a company is eligible for payment in a given year. Although other defaults may occur, the program's principal goals are to foster job creation, payment of a specified minimum wage, and investment, with job creation being of primary importance. Other types of defaults rarely occur, and they will be addressed on a case-by-case basis. For purposes of this memorandum, these three types of default (job creation, minimum wages, investment), will collectively be referred to as the "Performance Defaults." For some grants, the investment amount to be made by a company will be too low to be included in the compliance weighting; if such is the case, the company's compliance weighting, described below, will omit the investment component.

The third section summarizes the policies governing the treatment of JDIG grantees in default.

1. STATUTORY FRAMEWORK

CEDAs incorporate the JDIG statutory framework for the treatment of defaults.[1] In 2006, the JDIG statute was amended to provide more flexibility to the Committee when dealing with defaulting grantees. Prior to 2006, the Committee had no choice but to terminate a grantee that was in its second consecutive year of default. Although the Committee may still terminate a grantee whenever there is a default, there are more circumstances in which this decision is discretionary. Thus, the governing construct is as follows: (*Defined terms are those used in the CEDAs*).

Each grantee is required to create a certain number of jobs during its "Base Period," which is the period during which the base level of jobs qualifying as "Eligible Positions" is established. The Base Period is set at the time of the grant award, and may run for a period of up to five grant years (and would include employees placed in Eligible Positions after the grant award). If a grantee experiences its first Performance Default in a particular grant year, the JDIG Statute requires the Committee to reduce the amount or the term of the grant, or to terminate the CEDA. If a grantee experiences a Performance Default in a second consecutive year, and the grantee is still in its Base Period, the Committee may, again, reduce the amount or term of the grant, or terminate the CEDA, and/or the Committee may permit the grantee to remain in the program. If the grantee is not within the Base Period and experiences a second consecutive year of default, the Committee must terminate the CEDA. **If a grantee that is still in its Base Period remains in the program and experiences a third year Performance Default, no grant payment is permitted for that year, or for any subsequent year of default. If the grantee is in the last year of its Base Period and demonstrates that it expects to achieve compliance within the following two years, the Committee may approve an Extended Base Period**, for up to 24 months, by which time the grantee must be in compliance, or the grant is terminated. (see N.C. Gen. Stat. §143B-437.59(b)(1).

[1] *See* N.C. Gen. Stat. §143B-437.50 *et. seq*. (the "JDIG Statute").

2. WEIGHTING DEFAULTS

In cases where the Committee determines that it will not exercise its right to terminate a grant as a result of a Performance Default, the Committee will instead apply the statutorily required grant reduction in the actual year of default, by weighting performance requirements based on the JDIG program's statutory priorities (as discussed above), in a manner that, as required by the JDIG Statute, "at a minimum, is proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred."

The following weighting will apply:

Application #1
Where the investment requirement has been triggered or achieved early

Job Creation	70%
Minimum Average Wage	20%
Investment	10%

Application #2
Where the investment requirement has not yet been triggered, or does not exist

Job Creation	80%
Minimum Average Wage	20%

Example: To determine the total compliance percentage (the "Compliance Rating"), if a company has achieved 80% compliance with the minimum job creation requirement, and 90% compliance with the minimum average wage requirement:

1. Where the investment requirement has been triggered or met early:

Job Creation:	80% compliance x 70% weight	= 56%
Minimum Average Wage:	90% compliance x 20% weight	= 18%
Investment:	100% compliance x 10% weight	= 10%
	Total	84% Compliance Rating

2. Where the investment requirement has not yet been triggered:

Job Creation:	80% compliance x 80% weight	= 64%
Minimum Average Wage:	90% compliance x 20% weight	= 18%
	Total	82% Compliance Rating

In order to receive a grant payment in a year in which a grantee has a Performance Default, it must achieve a Compliance Rating of 80%. In the example above, under the weighting system, depending on where a grantee is in its investment requirement, the grantee would receive either 84% or 82% of the grant payment for which it would otherwise have been eligible that year, based on the information certified in its annual grant report and verified by Commerce and the Department of Revenue. It should also be noted that depending on various factors affecting grant terms, such as the number of jobs or other project-specific factors, minimum job creation performance requirements (or other performance requirements) may be set at less than 100% of the target number….in some cases, at 90% or 95%. In such cases, the meeting of the 80% Compliance Rating would actually be 72% or 76%, respectively, of the target.

For the sole purpose of determining eligibility for a payment, the Compliance Rating achieved for a project located in a Development Tier 1 county will be bumped up by 10%, and, if this enables that grantee to achieve 80%, the grantee would receive the amount actually indicated by the Compliance Rating (before the 10% addition to determine eligibility).

3. SUMMARY OF COMMITTEE TREATMENT OF DEFAULTS

1. **EXTENDED BASE PERIODS**
   An Extended Base Period will only be approved if there is a Performance Default in the last year of a Base Period. Grantees must submit a request for an Extended Base Period, together with their projections for expected compliance over the following grant years, and their rationale for concluding that compliance will be achieved within two years. In such case, a two-year Extended Base Period will generally be approved. If the Grantee achieves compliance by the end of the Extended Base Period, positions created after that time shall not be counted as Eligible Positions and shall not be included in grant calculations, consistent with the provisions in the CEDA that have always applied after the Base Period.

2. **WEIGHTING**
   Performance Defaults will be weighted as follows:
   a. Where the required investment has been made, or the investment requirement has been triggered: 70% job creation; 20% wages; 10% investment.
   b. Where the investment requirement has not yet been triggered, or where investment will not be a component of a company's Compliance Rating: 80% job creation; 20% wages.
   c. Where additional requirements essential to the grant apply (such as specific retention at a specific site other than the main project site), case-specific weightings will be adopted.
   d. Where a grantee receives less than an 80% Compliance Rating, no grant payment will be made in the year of a Performance Default.
   e. Grantees located in Development Tier 1 counties will receive a 10% upward adjustment to their Compliance Rating to determine eligibility for a grant payment. The actual grant payment will be based on the initial Compliance Rating.