INCENTIVES AND LOANS COMMITTEE

▪ *In-Person Meeting* ▪

AGENDA

INCENTIVES & LOANS COMMITTEE

The MET, Patrick & Henry Community College
67 Motorsports Drive, Martinsville, VA 24112

Wednesday, September 25, 2024
1:15 P.M.

If participating in the meeting by phone, dial: **1-332-249-0607** and enter **access code: 623 690 842#.**

The Commission will not change the method by which it chooses to meet without providing a new meeting notice that is in accordance with the Virginia Freedom of Information Act. If you experience problems calling in, please contact: **Hannah Franke-Fuller** at **(804) 894-9659** or **hfranke-fuller@revitalizeva.org** or **Roz Stein** at **(804) 894-9651**.

Welcome and Call to Order	*The Honorable Daniel "Danny" Marshall, Chair*
Call of the Roll	*The Honorable James Campos, Executive Director*
Approval of the 5/21/2024 Minutes *(published on website)*	*The Honorable Daniel "Danny" Marshall, Chair*
Public Comment	
TROF Extensions and Modifications	*The Honorable James Campos, Executive Director* *Mr. Jordan Butler, TROF Program Manager*
Updates to TROF Program	*Mr. Jordan Butler, TROF Program Manager*
VSBFA Loan Program Update	*The Honorable James Campos, Executive Director* *Mr. Stephen Versen, Deputy Director*
Economic Development Housing Incentive Pilot Program	*The Honorable James Campos, Executive Director* *Mr. Stephen Versen, Deputy Director*
Tobacco Region Incentive for Agribusiness Development (TRIAD)	*Mr. Stephen Versen, Deputy Director*
Other Business	*The Honorable James Campos, Executive Director*
Adjournment	

Incentives & Loans Committee
September 25, 2024

The Incentives and Loans Committee is meeting on September 25, 2024 at 2:00 pm to consider actions and updates on a number of Committee-created programs. The following summary provides staff overview and comment on each item.

1. **Updates to TROF Program**

Method for Calculating Jobs/Wages Performance for TROF Awards

Overview:
Commission staff seeks to simplify the policies and calculations used in determining compliance for TROF awards, as well as put the Commission's approach more in line with that of VEDP's COF program and the AFID Program at VDACS. Like AFID and COF, TROF awards are split 50/50 between jobs and investment.

Staff Comments:
Currently, the method used to calculate performance for jobs for TROF awards prorates the award amount based on the shortfall of number of new jobs created AND the shortfall in total payroll. This double penalty goes against the spirit of the program, and it is not aligned with how AFID and COF shortfalls are calculated.

For example, a TROF recipient commits to create 10 jobs with an average annual wage of $50,000, for a total annual payroll of $500,000, and is awarded a $100,000 TROF grant ($50K jobs, $50K investment). At the end of the performance period they have instead created 5 jobs with an average annual wage of $70,000, for an annual payroll of $350,000. Under our current policy, they will have their award reduced by 50% for the jobs shortfall, and reduced an additional 30% for the wage shortfall. This results in a final payout of $17,500 ($50,000 x 50% = $25,000 x 70% = $17,500). AFID and COF would calculate the final payout as $25,000, because the company created 50% of the jobs they promised at or above the wage they promised. Companies and localities have noted that TRRC's current method further penalizes good actors.

Going forward, staff recommends that the 50% of TROF award for employment be prorated in the event of a shortfall in the following manner: Staff calculates the percentage shortfall on new jobs target, as well as the percentage shortfall on total average quarterly wage target, averages those two numbers and reduces the award by that amount.

Using the same example as above, a TROF recipient commits to create 10 jobs with an average annual wage of $50,000 for a total annual payroll of $500,000 and is awarded a $100,000 TROF grant ($50K jobs, $50K investment). At the end of the performance period they have instead created 5 jobs with an average annual wage of $70,000. To calculate the final award amount, staff would take the average of the job number shortfall (50%) and the wage shortfall (30%) and apply that number (40%) to the award amount ($50,000 x 40%) to determine the reduction to the award ($20,000), resulting in a final award of $30,000.

Staff also recommends that the maximum achievement for either jobs or wage target be 100%. So, using the same company example ($100K TROF for 10 jobs at $50K, total payroll of $500K), say the company creates 8 jobs at $75,000 for a total payroll of $600K or 120% of wage target. In this case, staff would take the average of the job number shortfall (20%) and the wage shortfall (0%) and apply that number (10%) to the award amount ($50,000 x 10%) to determine the reduction to the award ($5,000) and a final award of $45,000.

Benefits of this new approach are:

- Companies are no longer doubly penalized for shortfall in job creation when paying the agreed-upon wages.
- Our process would be more in line with COF and AFID.
- This process uses the same documentation we currently request and is a relatively easy way for staff to verify performance.

Staff Recommendation: **That the Commission authorize staff to alter current TROF Guidelines, Policies & Procedures, Grant and Loan Agreements, and other documentation as needed to utilize the method described above for the calculation of performance for the jobs and wages portion of TROF awards.**

Alternate Method for Calculating Capital Investment Performance for TROF Awards.

Overview:
Staff proposes a minor change in how performance related to Capital Investment for TROF awards is calculated, specifically for existing companies that are undertaking expansions.

Staff Comments:
The Commission has recently approved several requests to modify performance agreements to allow for the utilization of reported costs (as evidenced by receipts of capital purchases) of M&T and TPP towards a company's taxable asset obligation, as verified in writing by the local Commissioner of Revenue.

This is due to the effect that depreciation of existing assets a company owns has on reports from the local Commissioner of Revenue which are used to calculate TROF performance. In practice, depreciation of existing assets hides new investment made during the performance period, making it appear as if the company has made less investment, or no investment, when they have in fact made qualifying capital investment in the locality.

To solve this problem, the Commission has authorized staff, on a case-by-case basis, to utilize reported costs rather than assessed value in establishing performance under the TROF agreement.

Staff Recommendation: **That the Commission authorize staff, at their discretion, to modify performance agreements to allow for the utilization of reported costs (as evidenced by receipts of capital purchases) of M&T and TPP towards a company's taxable asset obligation, as verified in writing by the local Commissioner of Revenue, in cases where a TROF award is made for an expansion and the depreciation of existing assets does not allow for an accurate performance calculation based on assessed value.**

2. VSBFA Loan Program Update

At its January 2024 meeting, the Commission directed the creation of a new lending program partnership with the Virginia Small Business Financing Authority and approved committing $10M from the Commission's existing loan fund to support this program. Below is a summary of loan requests and status:

Borrower(s):	Use of Funds	Amount:	Loan Term*	Interest Rate	VSBFA Recommendation	Status
Grayson Natural Farms	Working capital for meat stick production	$600,000	5 years	5.5%	Approve	Closed, all funds released
Roses Creek Farm, LLC	New hydroponic greenhouse	$2,300,000	10 years	5%	Decline	Company working to secure needed equity for deal
Brunswick County IDA	Construct produce processing facility	$2,000,000	10 years	5%	Approve	Awaiting final construction pricing before moving to close
IALR	Purchase Kyocera Building in Cyber Park	$5,900,000	10 years	5%	Decline	Strong commercial lending options available

* All loans amortized over 25 years

Commission and VSBFA staff are currently working with a hay operation in Franklin County that is looking to purchase its rented building and expand its operation of purchasing round bales from area farmers, then converting them into square bales for sale by area retailers such as Tractor Supply and Rural King.

3. Economic Development Workforce Housing Incentive Pilot Program

At the Commission's Spring Meeting, staff received approval to move forward with a new workforce housing program which began accepting preapplications in July. The program has received strong media coverage and generated many productive meetings for Commission staff on prospective projects in the footprint. Of the preapplications received thus far, there has not been a strong tie to an economic development project, and therefore no projects have been asked to begin work on a complete application. However, staff is aware of projects under development that could be an excellent fit for the unique goals of the program and is optimistic that a suitable project will be asked to move forward with a complete application in the coming months. Additionally, an important new workforce housing program is expected to be announced in the same timeframe which will provide an excellent complement to the Commission's program. In the meantime, staff welcomes Commissioner input on the program or referrals to prospective projects and resources.

4. Tobacco Region Incentive for Agribusiness Development (TRIAD) Program

Purpose: To enhance the ability of the Tobacco Region's economic development organizations to recruit new and expanding agribusiness projects and create new market opportunities for producers.

Background: In 2019, the Commission transformed its agribusiness program to create greater economic impact for farmers and producers. Prior to that time, privately owned businesses were generally not eligible for Commission funding. This restriction constrained the Commission's ability to meet the primary goal of sustainably increasing farmer income. The exclusion of for-profit entities disregarded some of the most impactful and financially sustainable agribusiness investments made in the region: privately owned new and expanding value-added processing facilities. These operations create new and improved market opportunities for the region's producers, often leading to increases in crop production that bring multiple benefits to the entire sector.

Working within the bounds of the Commission's existing grant program, staff created a new policy that permits the Commission to support up to 25% of new equipment purchases for new private sector, value-added processing facilities. This percentage was based on previous grant program policy allowing support for up to 50% of costs for non-profit entities. In addition, it is relatively easy to track and maintain a security interest in equipment purchases, as required by Commission grant policy. While a thoughtful and sensible improvement to the Commission's agribusiness program, the 25% limit on support of equipment costs often led to funding recommendations that did not accurately reflect the project's full impact. Further, while compliance procedures for the grant programs ensured project funds were spent as committed, there was no mechanism to ensure that a project delivered on its long-term commitments to create jobs and markets for producers in the Tobacco Region.

Commission staff has considered creating a new, performance-based product for private agribusiness projects in the mold of a traditional economic development incentive award. The Tobacco Region Opportunity Fund (TROF) model provides such a structure, but would need major changes to be effective in the agribusiness sector. A more relevant model for such a program is the Governor's Agriculture and Forestry Industries Development Fund Facility Grant program (AFID), which for over a decade has been an effective tool for incentivizing new agribusiness projects and ensuring compliance. AFID differs from TROF, and the Commonwealth Opportunity Fund (COF) on which it was based, in a few important ways. Both TROF and COF have high minimum project thresholds for jobs, investment, and interstate competitiveness that prevent many agribusiness economic development projects from benefiting. These programs also require projects to be competitive between states, which is seldom relevant for place-based businesses such as ag and forestry. The TRIAD program will be based largely off the AFID program's guidelines, ROI tool, and performance agreement, with some key changes to ensure that it meets the specific needs of the region and that its administration can easily be accommodated by the Commission's existing staff and data resources.

Program Justification: The Commission recognizes that the localities comprising the region and their respective economic development teams are important partners in transforming the region's economy. Therefore, providing them with a new tool to better serve Virginia's largest and most important industries, agriculture and forestry, makes sense. This program will also provide additional opportunities for collaboration with other economic development organizations and their incentive programs, such as the Virginia Department of Agriculture and Consumer Services (AFID) and the

Virginia Economic Development Partnership (COF, the Virginia Jobs Investment Program, and other business incentive grants), further leveraging the Commission's resources.

Program Funding: Staff proposes that the TRIAD program draw from funds that are currently budgeted for TROF. It is expected that the majority of TRIAD awards will be smaller than TROF awards and will therefore not significantly impact the budget. As with TROF funds, applicant localities will serve as awardees of TRIAD incentives and ultimately be required to pay back any shortfall, so the expectation is that most TRIAD awards will be paid post-performance, further reducing the program's risk and impact on the TROF budget.

Determination of award amount: TRIAD Program Guidelines detail the three major drivers that will determine a prospective award: 1) impact on the region's farmers and forestland owners; 2) a return-on-investment analysis to the Commonwealth; and 3) other factors that raise the quality and impact of the project. While items 1 and 3 are subjective, the ROI completed for item 2 is an objective measure and will thus be the most important factor used by staff to determine a range for the award.

The TRIAD program intends to utilize the same ROI tool developed and maintained by VEDP to determine the appropriate level of state incentives awarded to an economic development project. It uses the economic modeling software IMPLAN and includes state tax information, numerous assumptions developed by their economists, and project-specific data on jobs, wages, and capital investment by type, in addition to expected state incentives. In short, the tool estimates the expected new state revenues that will come from an economic development project, which it then compares to the state incentives the project is expected to receive, ultimately providing an answer to the following question: If the state were to give X amount of dollars to incentivize this project to move forward, how long would it take the state to break even on this investment? Typically, a grant amount uses a payback target of approximately three years, but that amount (and its payback period) may be modified to account for any subjective benefits of the project. VDACS uses this approach when determining AFID awards. Staff will include this ROI analysis for each award alongside relevant benchmarks in the staff reports presented to the Commission's Incentives and Loans Committee.

Commission review of awards and oversight of program: The review and approval process for all individual award recommendations will mirror that of TROF awards; staff will give the Commission's Incentive and Loans Committee a minimum of three business days to review, question, and comment on the award. Recommendations over $1M require a Committee vote, and those over $3M require approval from the full Commission. Additionally, Commission staff will provide the Committee an update on recent and prospective awards at each of the Commission's three annual meetings.

Requested action: Staff requests that the Commission approve the TRIAD program as presented in on pages 42 - 50 of the Board Book.

Tobacco Region Incentive for Agribusiness Development (TRIAD) Grant Program Guidelines

Purpose:

The purpose of the Tobacco Region Incentive for Agribusiness Development (TRIAD) is to provide the cities and counties of the Tobacco Region, and the political subdivisions that support them, an economic development incentive for attracting new or expanding agriculture- and forestry-based businesses that add value to products grown in the Tobacco Region. The program's goal is to bring beneficial economic activity along with new jobs and investments to the Tobacco Region, while also creating new market opportunities for farmers and forestland owners operating there.

Guiding Principles:

- TRIAD awards are made at the discretion of the Tobacco Commission, with the expectation that each awarded grant will result in a new or expanding processing or value-added facility for agricultural or forestry products that are produced in the Tobacco Region.
- TRIAD awards are made to political subdivisions of the Commonwealth to be awarded to, or spent to the direct benefit of, a private business that is committing to achieve certain targets for jobs, investment, and the purchase of products grown in the Tobacco Region (the Business Beneficiary). Additional targets or conditions may be added to the grant terms on a case-by-case basis.
- TRIAD grants are intended to be performance grants that incentivize actions. They are not intended to serve as front-end funding or financing for an economic development project and shall not consider investments made prior to an award decision.
- TRIAD grants are generally paid out on a performance basis.
- A dollar-for-dollar match, in cash and/or in-kind (further defined in the Matching Funds section) is required for every TRIAD dollar requested.
- Leveraging additional state and Federal grant awards for the business beneficiary is an important goal of the TRIAD program, and reasonable flexibility in the program's administration will be allowed in order to accommodate the needs of these other programs.
- In assessing the amount of a TRIAD grant, the section entitled "Determination of Grant Awards, Amount and Conditions" will be used.
- TRIAD Facility grants will only be awarded for projects that demonstrate a substantial benefit to farmers and forestland owners within the Tobacco Region.
- Businesses benefiting from TRIAD funds must provide a statement explaining how TRIAD support will play a critical role in the expected success of the project.
- All decisions and interpretations of these guidelines are made by the Commission, or its designee, based on the application materials provided and the recommendation of staff.
- Companies relocating from one Virginia locality to another within the Tobacco Region will generally not be eligible for support through the TRIAD program

Determination of Grant Awards, Amount and Conditions:

In determining the amount of a grant and the conditions under which it will be awarded, three areas of impact will be taken into consideration:

- Projected impact on the region's farmers and forestland owners, which includes:
  - The project's commitment on the volume and value of new Tobacco Region-grown agricultural and forestry products used by the project
  - Anticipated number of farmers and forestland owners that may benefit
  - The degree to which the project improves the access of the region's producers to lucrative new and expanded markets

- A return-on-investment analysis to the Commonwealth, which takes into consideration the project's commitments relating to:
  - Number of New Jobs to be created
  - Average annual pay for these New Jobs
  - Commitment of new private capital investment

- Other factors that raise the quality and impact of the project:
  - Importance of project to the applicant, including the amount and source of local matching funds
  - How well the project presents a clear market opportunity, builds on the region's inherent assets, and leverages existing business strengths
  - Amount of additional funding that the award leverages from the public, non-profit, and private sectors
  - How the project helps achieve other community and economic development goals of the community or region
  - How critical the grant award is to the success of the project

Commission staff make final recommendations on eligibility, award amount, and conditions for approval by the Commission.

Eligibility:

TRIAD Grants are made only to the Cities, Counties, and Towns located in the Tobacco Region, or to a political subdivision of the Commonwealth that supports one or more of those entities, such as an Industrial Development Authority or an Economic Development Authority.

TRIAD awards are to be used only as an economic development incentive in cases where the benefiting business is:

- A privately owned, tax-paying enterprise that is or will be physically located in the Tobacco Region
- Adding value to agricultural or forestry products that are or will be produced within the Tobacco Region
- Bringing significantly greater economic benefit to the region's agricultural and forestry economy than the company is receiving in TRIAD funding

- Committing to: 1) make significant new taxable private investment; and/or 2) create new jobs and FTEs; and 3) use a specific amount of Tobacco Region-grown products
- Committing to achieve the above commitments within a specified Performance Period, which is typically 36 months

Provisions Regarding New Jobs:

"New Job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time per week for the entire normal year of the firm's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. The following shall not qualify as new jobs: Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth to the location of the economic development project, positions with suppliers, and multiplier or spin-off jobs.

Additionally, positions that do not meet the definition above, but instead are new, part-time, or seasonal positions created by the project on a predictable, annual basis, may be, for the purposes of this program, converted into Full-Time Equivalent positions (FTEs). An FTE shall be calculated as: One FTE equals 2,000 paid hours per year. When projects are being evaluated for funding, FTEs may be considered as New Jobs in the project's ROI analysis.

The term "New Job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

Provisions Regarding Capital Investment:

"Capital investment" means a private capital expenditure by the company in taxable real property, taxable tangible personal property, or both, at the company's facility in the political subdivision. Capital investment does not include the amount of TRIAD grant proceeds nor any incentives applied to the costs of capital assets. The Executive Director may, in his or her discretion, determine that the value of machinery and equipment leased under an operating lease will qualify as a capital investment.

The Executive Director may, in his or her discretion, determine that the value of the construction or improvement of real property leased under an operating lease will qualify as a capital investment, but is likely to do so only in circumstances in which: (i) the operating lease is for at least the longer of five years or twice the period of time until it is estimated that the Commonwealth will "break even" on the project, taking into account all incentives offered to the company by the Commonwealth; (ii) the real property would not be constructed or improved "but for" the company's interest in leasing some or all of the facility; and (iii) if for an improvement project, the improvements will significantly increase the taxable value of the property. Only that portion of the construction or improvement costs related to the portion of the facility to be leased to the company may qualify.

Capital investment generally will not include operating expenses, except operating leases to the limited extent noted above. Capital investment may include the value of real or personal property leased under a capital lease. The cost of the acquisition of land and existing buildings will not count toward the required capital investment thresholds unless the land and existing buildings are being purchased from a governmental entity and/or are being returned to the tax rolls.

Provisions Regarding Use of Tobacco Region-Grown Agricultural and Forestry Products:

A distinguishing feature of the TRIAD program is its focus on bringing substantial benefits to the farmers and forestland owners of the Tobacco Region, primarily through the creation of new market opportunities. This goal of the program will typically be translated into a specific commitment from the business beneficiary to purchase a certain amount of agriculture and forestry products that are grown or produced in the Tobacco Region.

Projects committing to source at least 20% of the agricultural or forestry products to which the facility is adding value, on a volume or value basis, from the Tobacco Region will be considered eligible. Vertically integrated companies growing their facility's feedstock in the Tobacco Region are eligible for TRIAD support. If the company cannot commit to sourcing 20% from the Tobacco Region, it may still be recommended for an award, but it must explain in its application how the project will bring substantial benefit to the farmers and forestland owners of the Tobacco Region. In general, the benefit to the region's producers must far outweigh the value of assistance the company will receive through TRIAD.

In situations where the agricultural or forestry product(s) to be used are not immediately available when the facility begins production, the business beneficiary must present a realistic plan to achieve either a minimum of 20% Tobacco Region sourcing or a significant positive impact to the region's producers in a reasonable time frame.

Upon petition by the locality, the Executive Director may permit the use of a greater quantity of out-of-region products if supplies grown or produced in the Tobacco Region are insufficient to meet the level of usage agreed upon in the performance agreement due to unforeseen circumstances, unusually severe weather or disease conditions. The period of performance for the use of Tobacco Region-grown products for the grant shall be extended in the event the Executive Director permits a deviation from the Tobacco Region-grown requirement.

Matching Funds:

All TRIAD awards require dollar-for-dollar matching funds from public or non-profit sources.

At least 10% of the matching funds must come from the applicant locality or its political subdivision, such as an Economic or Industrial Development Authority. This local match may be funded by a direct cash award or in-kind contribution from the locality for the direct benefit of the business beneficiary; such in-kind contributions may be in the form of infrastructure development, fee waivers, or free or reduced-price land or buildings. Local Enterprise Zone incentives may be counted towards the local match where the locality makes actual expenditures or forgoes revenue normally owed to it to benefit the project after the project is announced. Local matches generally must be made within three years of the TRIAD award and may not be spread over more than five years.

If matching funds provided by the applicant locality do not meet the required one-for-one match, the remaining matching funds may come from other public or non-profit sources. Public funds, such as those coming from other political subdivisions of the Commonwealth, other state organizations, or Federal economic development programs, may be considered eligible match, provided they are being awarded to the same project being incentivized through the TRIAD award. In-kind contributions from these entities, as long as they are being awarded for the direct benefit of the business beneficiary, may also be counted as local match. Lastly, contributions to the project from non-profit sources may in certain circumstances be allowed as part of the matching funds. All decisions on the eligibility of matching funds are made at the discretion of the Executive Director.

In unique circumstances, the Commission may waive or reduce the public/non-profit match requirement for projects that are considered to be especially impactful to the agriculture and forestry community.

Unless otherwise stated in these guidelines, matching funds must comply with Section IX Matching Fund of the Commission's Funding Policies for Grant Awards.

Use of TRIAD Proceeds:

Generally, TRIAD funds shall be used to make permanent improvements to a site or building in the locality that receives the award. Acceptable uses of TRIAD funds include public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly or privately owned buildings; training; or grants to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing.

In no case shall funds from TRIAD be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.

TRIAD funds may not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. The Executive Director will enforce this policy. Exceptions to this policy may be made but require that the Executive Director provide written notice to the Commission, which will include a justification for any such exception. Further, the locality to which the business intends to relocate or expand will provide notification to the locality from which the jobs will be lost or the business will depart.

Unless otherwise stated in these guidelines, the use of TRIAD funds must comply with Section IV General Non-Eligible Uses of Funds of the Commission's Funding Policies for Grant Awards.

Application Process:

Applications may only be submitted by a political subdivision of the Commonwealth. Interested applicants must first contact Commission staff to introduce the project, discuss whether or not it is a fit for the program, and describe the source of the applicant's required matching funds. If Commission staff believe the project is eligible, a project metric spreadsheet detailing the company's planned commitments on New Jobs, Capital Investment, and Purchases of Tobacco Region-grown products will be requested from the business beneficiary.

The business beneficiary may be asked to provide historical financial statements covering the three years prior to the application, along with pro forma financial statements covering the three years following the application. If the business beneficiary has been in business for fewer than three years, it may be asked to provide the historical financial statements that are available. The Executive Director may request additional financial information from the company, including financial information and satisfactory evidence of a company's financial stability.

Once the applicant, business beneficiary, and Commission staff are comfortable with the commitments presented in this document, the locality will be invited to submit an application using the Commission's SmartSimple grants management system. The following information will be requested:

- Name of locality applying and contact information
- A summary statement presenting the importance of the project to the locality and the reason for seeking support from the TRIAD fund
- Amount requested and the use of the funds
- Business beneficiary name and information (website, ownership, location of headquarters, other Virginia operations, etc.)
- Description of the project, including:
  - Project location (county, city, or town; physical address)
  - Type of operation (i.e., brief description of the nature of the business, including its products, markets, this facility's relationship to other parts of the business, etc.)
  - How this project adds value to Tobacco Region-grown agricultural or forestry products
  - Details on the project's expected impact of the Tobacco Region's agriculture and forestry producers
- Final project metric spreadsheet, which includes:
  - Amount of capital investment (as defined in these guidelines)
  - Number of New Jobs created (as defined in these guidelines)
  - Average annual wage of the New Jobs created
  - Timetable for the project's capital investments, job creation, and purchase of Tobacco Region-grown agricultural and forestry products
- List each Commonwealth of Virginia funding source individually
- List local match for the project (as defined in these guidelines) and describe how the cash funds will be used
- Any other current or background information pertinent to the project that might assist the Executive Director in making an informed decision based on complete knowledge; political

subdivisions are obliged to disclose any information that may reflect negatively on the project.

- An explanation as to why TRIAD funds are critical to the success of the project;
- An indication of the total amount of agricultural or forestry products the business beneficiary plans to utilize, where these agricultural or forestry products will likely be sourced over the course of the performance period, and how the business beneficiary plans to track and report the products that are being sourced from the Tobacco Region as part of meeting their performance agreement with the locality
- An affirmation that the business beneficiary has not closed, downsized, consolidated, or laid off employees at existing operations in Virginia within the past 12 months prior to the application date, or, if it has, additional assurances regarding the stability of the new jobs and capital investment
- An affirmation that the proposed project will not result in a closing, loss of jobs, consolidation, or change to any existing operations in Virginia for the next 12 months

Commission Review:

Upon receipt of an eligible and complete application, staff provides the Incentives and Loans Committee with a copy of the application, along with a summary of the project and staff's recommendation. Staff provides the Committee a minimum of three business days to review and comment on the application. If no comments or concerns are received and there are no unresolved issues or questions, staff will route the application to the Executive Director for approval. If Committee members have unresolvable questions or other concerns, staff will hold action on the application until the Committee is able to meet, discuss, and vote on the application. In instances in which the award amount is under $1 million, the Executive Director may approve the award on behalf of the Commission. In instances in which the award amount in total is over $1 million and under $3 million, the Committee has final approval authority. For all award amounts over $3 million, the Full Commission must approve any award.

Contractual Arrangements:

Because a TRIAD Facility grant is awarded to a locality, the locality is required to enter into a performance agreement with the business beneficiary before it may receive TRIAD funds. This agreement ensures that the business beneficiary will meet the purchase commitment of Tobacco Region-grown agricultural and forestry products, job creation, and capital investment levels as stated in the application.

The performance agreement must include a statement that the business beneficiary will achieve and maintain the specified purchase of Tobacco Region-grown agricultural and forestry products, new job creation, and capital investment targets through a "performance date." Generally, the performance date will be the date 36 months after the date of award.

TRIAD Facility grants are broken out into 33% for purchase of Tobacco Region-grown products, 33% for new jobs, and 33% for capital investment. If the business beneficiary fails to meet at least

90% of its performance agreement targets in any of these categories, the locality must claw back a proportionate amount of the TRIAD Facility grant from the beneficiary.

If the business beneficiary has not achieved at least 90% of its Tobacco Region-grown purchases, jobs, and capital investment targets by the performance date set forth in the performance agreement, the locality may seek approval from Commission staff to grant the business beneficiary a one-time administrative extension of up to one year. Additional extensions of the Performance Period beyond the one-year administrative extension may only be granted by the Commission.

The performance agreement will contain a provision that will permit a 100% clawback of all TRIAD Facility grant funds if at any time the locality or the Executive Director conclude that the business beneficiary will be unable to meet at least half (50%) of any one of the following targets: its purchase of Tobacco Region-grown products, new jobs, or capital investment by the performance date. Such a conclusion may be based on factors such as the bankruptcy of the business beneficiary, the sale or liquidation of the business beneficiary, or the cessation or substantial reduction of operations by the business beneficiary in the locality. The locality will be held responsible for requesting any clawback as calculated by the Executive Director and for returning the TRIAD grant monies repaid by the business beneficiary to the Commonwealth if the performance agreement criteria are not met.

If the company refuses or is unable to repay, then the local applicant is obligated to make the Commission whole. It is routine to negotiate repayment agreements with localities to avoid negative budget impacts, particularly with smaller or less-affluent localities.

In repayment situations, the Executive Director is authorized to negotiate and enter into repayment agreements with entities that seek to make such repayments in installments over a mutually agreed-upon period.

The following remedies shall be employed, as deemed appropriate by the Executive Director, for all grants or loans under which contractual obligations are owed to the Commission and have not been fulfilled within 60 days after delivery of a written demand notice to all parties to the Performance Agreement and its control affiliates:

- Freeze all disbursements to the grantee and its control affiliates
- Decline to accept any application for new grants from the grantee or its control affiliates
- Enter the name of the grantee and its control affiliates into the State debt set-off system
- Refer the file to counsel for appropriate steps up to and including collection proceedings

Because of this requirement to repay, it is strongly recommended that the locality receive and pay out the TRIAD award in arrears.

The business beneficiary may not assign its rights or obligations under a TRIAD performance agreement without the express written approval from the Executive Director and the locality. The Executive Director will consider a reassignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary, or sister entity, so long as there is no significant negative impact on achievement of the targets in the Performance Agreement, and the benefits accruing to the locality and the Tobacco Commission will remain substantially the same.

Once the Executive Director, the locality, and the business beneficiary are comfortable with the language of the performance agreement, the performance agreement must be presented to the Office of the Attorney General (OAG) for review as to proper legal form. The OAG will have up to seven (7) days to provide written comments regarding the performance agreement.

Upon approval of a TRIAD Facility grant, neither the locality nor the business beneficiary shall announce or confirm the proposed project without coordination with the Executive Director.

The Tobacco Region-grown purchase, jobs, and capital investment targets in the performance agreement will be used in the press release when the public announcement is made. If the targets are not used for the public announcement of the project, or if the public announcement is made by anyone other than the Governor or the Commission, the grant award is subject to being reduced or withdrawn.