

## VERMONT EMPLOYMENT GROWTH INCENTIVE LOOK BACK REQUIREMENT AND POTENTIAL WAIVER

### What is “lookback:”

VEGI statute prohibits the approval of incentives for job creation that restores full-time positions that were shed by an applicant company within the two calendar years prior to application for incentives. This “look back” requirement can be waived by the Council under certain circumstances.

### Statutory Citation: 32 V.S.A. § 3331(9)(E):

*When the position is added to base employment, the business’s total employment exceeds its average annual employment during the two preceding years, unless the Council determines that the business is establishing a significantly different, new line of business and creating new jobs in the new line of business that were not part of the business prior to filing its application.*

### Look Back Requirement:

If a VEGI applicant’s employment data shows that the company decreased full-time employment (combination of qualifying and non-qualifying jobs) in Vermont during the two calendar years leading up to the application year, the incentive must be calculated using only the payroll for the qualifying jobs that are added *after* the full-time headcount is brought back up to the average level of the two calendar years prior to the application year. For example, a company applying in May 2017 had 66 full-time employees in Vermont at end of 2015 and 56 at end of 2016 and is at 54 at time of application. The formula is: Average of 66 + 56 = 61 – 54 = 7. Therefore, 7 jobs must be added before any incentive is calculated. If the company projected adding 10 new, qualifying jobs in Vermont during 2017, only the payroll for the last three new, qualifying jobs would be used in the incentive calculation. The payroll (calculated using an average wage based on the company payroll) for the first seven new, qualifying jobs will be included as “background growth” and not count toward the incentive calculation.

### Look Back Waiver:

Statute enables the Council to waive the look back *if* the Council can determine that the company will establish a significantly different, new line of business in Vermont and create new jobs in the new line of business that were not part of the enterprise in Vermont prior to filing its VEGI application with the Council.

If an applicant wants the Council to consider waiving the look back, the waiver must be requested by the applicant, the application must include additional information regarding the waiver criteria, and the Council must determine:

- Will the company establish a significantly different, new line of business in Vermont?
- Will the project create new jobs in this new line of business in Vermont?
- Are the jobs different from the jobs that existed in Vermont prior to application?

**Procedure:**

- If a VEGI Pre-Application is filed that shows a drop in full-time employment in Vermont during the two calendar years prior to application year, VEPC staff will inform the applicant of the “look back” requirement. The applicant must indicate that the company is seeking a look back waiver in the Potential Enhancements form of the VEGI Pre-Application. The Pre-Application estimate will be run two ways: accounting for the look back and with the look back ignored.
- The Pre-Application estimate will be provided to the applicant with the look back included. Staff will also inform the applicant that the waiver is available, explain the circumstances under which the waiver can be granted, indicate the incentive estimate if the look back were waived, and explain the information that would be required to be filed with a formal application for a waiver to be considered. Staff will also discuss with the applicant and the appropriate Regional Development Corporation director, the potential for a look back waiver based on information known about the applicant and project.
- When a formal application is filed, if the applicant wants the Council to consider the look back waiver, the applicant must request consideration of the waiver by checking the appropriate radio button on Line 1 of the “Potential Incentive Enhancement” form, and completing the required additional information in the “Look Back Waiver Information” form. The following narrative information must be included even if the applicant believes the issue is addressed elsewhere in the application:
  - Describe the current line(s) of business?
  - Describe what the company currently does?
  - Describe what products are currently made/services provided by the Vermont operation?
  - Which markets are served and to what extent?
  - What is the new line of business?
  - How is it different from current line of business?
  - Why is the difference significant?
  - What new market or market segment would be served?
  - What are the new job categories that will be created?
- VEPC staff will summarize the information in the staff write-up to the VEPC Board, include the incentive levels with and without the waiver, and include a waiver recommendation to the VEPC Board.
- The Board will make the waiver determination at the monthly meeting when the Initial Application is considered and a motion to approve the incentive would include the waiver determination.