



Metro

Los Angeles County
Metropolitan Transportation Authority

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**Los Angeles County Metropolitan Transportation Authority
Business Interruption Fund**

**Administrative Guidelines
Updated 7/19/18**

I. Introduction

The Board of Directors of the Los Angeles County Metropolitan Transportation Authority (Metro) on October 2, 2014, voted to immediately establish a pilot Business Interruption Fund (BIF) for “mom and pop” businesses located along three specified Metro construction projects; and on December 3, 2015, voted to expand the BIF for “mom and pop” businesses impacted by unprecedented full street closures with a duration greater than six continuous months along the Metro construction projects as defined below. On December 1, 2016 Metro’s Board voted to expand the BIF to “mom and pop” businesses located along the Purple Line Extension, Section 2. Metro’s goal through the BIF is to mitigate the financial impact of rail construction on small businesses. This goal shall be achieved by awarding small business grants to cover certain fixed operating expenses. The BIF, indeed, is a demonstration of Metro’s commitment to being a trusted community builder, partner, and stakeholder.

Qualifying businesses for BIF awards shall be those with at least two years of operating history along one of the three specified Metro construction corridors; 25 or fewer total full-time employees; in good standing with local, state and federal taxing and licensing authorities; and able to produce financial records demonstrating a loss of business revenue directly related to the period of construction disruption. Owners of commercial properties will also qualify if they can demonstrate that current or future leases have been terminated as a result of certain Metro construction projects. Participation in the BIF will be limited to businesses whose revenues decreased as a result of construction activities from specified Metro construction projects. The BIF will not compensate businesses for interruptions or property damages caused by Metro contractors. These Administrative Guidelines and all other aspects of the Business Interruption Fund are subject to change throughout the course of the program.

II. General Provisions

A. Definitions

1. **Small “mom and pop” businesses** for the purposes of this program are defined as for-profit businesses or non-religious, non-profit businesses with 25 or fewer total full-time employees meeting the eligibility requirements (as specified in Section II.B).
2. **Relevant Metro Construction Projects** refers to the following:
 - The Crenshaw/LAX Line
 - The Regional Connector (Little Tokyo section and 2nd/Broadway segment)
 - Section 1 and Section 2 of the Purple Line Extension.



Metro

3. **Immediately adjacent to a rail corridor** refers to a business whose property line abuts or faces the rail corridor or a designated construction staging or construction storage area, including a business located in a mall or strip-mall that is similarly situated. A map of parcels in which such businesses are located is available.
4. **Construction period** refers to the period after Metro issued a Notice to Proceed to the construction project's Design Build Contractor in which activity related to a Metro rail construction project (as specified in Section II.A.2) occurred in front of a business or on the block in which a business is situated.
5. **Solvency** is defined as the ability to pay legal debts. Businesses in bankruptcy, as a documented result of Metro construction projects, are still considered solvent as long as they are reorganizing and have not filed Chapter 7 for liquidation.
6. **Revenue decrease and therefore impact** is defined as a decrease in business revenues throughout the quarter(s) containing construction periods (as defined in Section II.A.4) from a specified Metro rail construction project (as specified in Section II.A.2) occurred as compared to the same quarter(s) one year prior to the construction period. For commercial property owners, revenue decrease and impact may be defined differently and other special provisions may apply.
7. **Business** refers to entities registered with and defined by the Internal Revenue Service as a Sole Proprietorship, a Partnership, a Corporation, an S Corporation, or a Limited Liability Corporation.
8. **Non-profits** refers to organizations qualified as tax-exempt by the Internal Revenue Service.
9. **Commercial Property Owners** are defined as owners who rent or lease property for retail, office, or other non-residential use.

B. Eligible Businesses

Businesses eligible to receive awards from the BIF must meet all of the eligibility criteria listed below:

1. For-profit businesses or non-religious non-profit organizations (as defined in Section II.A.7 and Section II.A.8)
2. Businesses located immediately adjacent to a Metro rail construction project (as specified in Section II.A.2 and Section II.A.3) which experienced impacts during construction periods as defined in Sections II.A.4 and II.A.6.



Metro

3. Businesses that meet the following technical qualifications to participate in the program:
 - Businesses which have 25 or fewer total full-time employees as of the period covered by their claim or claims. Full-time employees (who work 35+ hours per week) are each counted as one;
 - Businesses which have been in continuous operation for at least two years (24 months) immediately adjacent to a specified Metro rail construction project (as specified in Section II.A.2);
 - Businesses with the ability to provide all relevant documents listed in Section IV.B and any other documents required by the BIF administrator's Required Documents Checklist, including all records necessary to verify eligibility and/or construction-related revenue losses.
4. Businesses which are solvent (as defined in Section II.A.5).
5. Businesses which are in good standing with all local, state, and federal taxing and licensing authorities.
6. Businesses which have experienced a revenue decline in the most recent quarter(s) since the construction period (defined in Section II.A.4) began as compared to the same quarter(s) one year prior to the beginning of the construction period (as specified in Section II.A.6).
7. Businesses which do not meet any of the criteria specified in Section II.C.

C. Ineligible Businesses

The following types of businesses are ineligible to participate in the Business Interruption Fund even if they meet other criteria outlined in Section II.B:

1. Non-profit businesses engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs.
2. Businesses generating over 60% of revenues from the sale of alcoholic beverages.
3. Businesses generating revenues from the sale of marijuana.
4. Businesses with any products or services of a sexual nature representing over 50% of their revenue.
5. National or regional chain retailers or outlets unless operated under a franchise agreement and which otherwise meet all eligibility criteria.
6. Owners of residential property or properties.
7. Businesses that relocate on the construction alignment after being displaced from a commercial property by Metro through Eminent Domain Action and compensated for said displacement and loss of goodwill pursuant to California Code of Civil Procedure section 1263.510 may not receive awards from BIF for losses of business revenue at their new location on the alignment.

Note: Metro compensates business owners for the projected financial business loss related to the displacement through the loss of goodwill payment. Business owners release and hold harmless Metro against any and all future claims for compensation through the Acceptance and Release (Loss of Goodwill Claim).



Metro

D. Eligibility Requirements for Commercial Property Owners

1. Commercial property owners must meet all eligibility requirements listed in Section II.B.
2. BIF will not accept applications where the property was unoccupied at the beginning of the construction period (as defined in Section II.A.4) and the owner alleges they are unable to rent/lease property due to construction.
3. If a property is occupied, the owner must provide documentation from the tenant that they have ended or will end their lease due to a specified Metro rail construction projects (as specified in Section II.A.2).
4. If a tenant has indicated the intention to end a lease, a commercial property owner must demonstrate continuous efforts to acquire a new tenant through active listing and advertisement of the property.
5. Commercial property owners may not apply for an award if their tenant is also in the Program and is receiving reimbursement to cover rent.
6. A commercial property owner that is both a small business and a landlord (Lessor) may demonstrate dual eligibility up to the maximum program grant limits as specified in Section V.A.1 herein if the “mom and pop” small business is a separate legal entity (as defined in Section II.A.7 and Section II.A.8) and the business and commercial property owner meet the eligibility requirements as stated in Sections II.B.1-7 and II.D.1-6 herein. In the event of dual eligibility, separate applications are required for the small business and commercial property owner.

III. Financial Assistance

A. Eligible Expenses

Upon approval for a BIF award, the grantee must first use the payment to cover past due amounts for the following fixed operating expenses:

1. Utilities
2. Insurance
3. Rent or Mortgage payments
4. Payroll, or
5. BIF program manager may consider other types of documented business-related expenses.
6. Commercial property owners may only file a claim for mortgage, utilities, insurance and other expenses as determined by the BIF program manager.

Federal and State taxes are not deemed fixed operating expenses for the purposes of BIF grant payments.



Metro

IV. Application Process

A. Application Submission

1. Businesses may submit claims no more frequently than on a quarterly basis, and claim periods should be aligned to standard calendar quarterly increments (i.e. January-March, April-June, July-September, October-December). A business must submit a claim for the quarter that corresponds to the beginning of the construction period (as defined in Section II.A.4). Should the construction period (as defined in Section II.A.4) extend past the end of that quarter, a business may submit subsequent quarterly claims throughout the duration of the construction period provided the business has not already received the maximum allowable amount of \$50,000 per calendar year or 60% of its annual revenue losses (as specified in Section V.A.1). A business whose annual revenue losses exceed the maximum allowable amount may not receive additional BIF grants in a subsequent year for any portion of the excess revenue losses that were not reimbursable in a prior year.
2. Businesses may submit a claim that corresponds to construction impacts that occur **after** the first 24 months of operating history immediately adjacent to a specified Metro rail construction project (as specified in Sections II.A.2 and II.B.3).
3. The business must submit an initial claim within **180 calendar days** from the end of the quarter in which the construction period occurred (as defined in Sections II.A.4 and Sections IV.A.1).
4. In the case of businesses with multiple owners, only one application for each claim may be submitted per business. The signatories to the application must include all owners of the business.
5. In the case of owners with multiple businesses at different locations, each business may submit a claim if it is a separate legal entity (as defined in Section II.A.7 and Section II.A.8) and meets the eligibility requirements (as defined in Section IV.B.1-10). Each separate business may be eligible for a BIF award for up to the maximum allowable amount (as specified in Section V.A.1); separate applications are required for each business.
6. Businesses that are relocated on the construction alignment after being displaced from a commercial property by Metro through Eminent Domain Action and compensated for said displacement through loss of goodwill pursuant to California Code of Civil Procedure section 1263.510 must disclose their acceptance of loss of goodwill upon submitting a BIF claim. Business owners that receive loss of goodwill compensation are ineligible for the BIF (as specified in Section II.C.7). A copy of the Acceptance and Release (Loss of Goodwill Claim) will be supplied by either the business owner or Metro's Real Estate Department. If a business owner that is displaced from a commercial property by Metro through Eminent Domain Action waives loss of goodwill compensation, the owner must provide a statement and/or



Metro

waiver from Metro's Real Estate Department as verification. In the event of a documented waiver of loss of goodwill, the owner's eligibility to participate in the BIF program will be based on the eligibility requirements (as defined in Section IV.B.1-10).

- B.** Applicants must be pre-qualified to participate in the program. In order to pre-qualify, a business will be required to provide the documents from the following list which are relevant to their particular business:
1. Business and personal federal tax returns from the most recently completed federal tax year.
 2. California Employment Development Department payroll tax returns.
 3. Verification of "good standing" status from the California Secretary of State.
 4. Board of Equalization sales tax reports.
 5. Current lease agreement(s)/rental agreement(s) and those from at least 24 months prior to application date (for both tenants and property owners).
 6. Current property title(s) and deed(s) (for property owners).
 7. Current verification from the Internal Revenue Service attesting to tax-exempt status (for non-profits).
 8. Three months of bank statements covering the construction period (as defined in Section II.A.4) and the comparable period one year prior.
 9. Copies of delinquent bills or debt payments due.
 10. Any additional records requested by the BIF administrator to determine eligibility and/or loss of revenue concurrent with the construction period (as defined in Section II.A.4).
- C.** The above mentioned items will be used to determine both the eligibility of a business for an award from the BIF and an appropriate amount of a BIF award. Approval will be based upon a combination of factors including: confirmation of eligibility and pre-qualification, the financial stability and viability of the company as an ongoing concern, length of time in business, recent past financial performance, and the overall impact of the construction on the business. Management and technical assistance will be available through Pacific Coast Regional Small Business Development Corporation (PCR) serving as Metro's Fund Administrator and/or the respective Business Solution Center (BSC) in the compilation of requisite documents to determine financial viability.
- D.** Once an application is complete, including all supporting documentation noted elsewhere in these guidelines, the assigned BIF advisor will review and analyze it for completeness and, assuming impact can be demonstrated, will calculate a recommended BIF award and prepare a Grant Recommendation Form. This recommendation will be submitted to PCR's BIF review committee, comprised of two PCR senior staff members and PCR's president or another PCR board member, for a total of 3 members.



Metro

If the president or other PCR senior staff member performs the tasks of business advisor, they may not participate as a member of the BIF review committee but will have to be substituted by a PCR board member.

- E. Any requests that do not meet the requirements outlined herein will not qualify for BIF assistance; but all businesses seeking aid will be offered the full menu of services offered by the BSC and/or PCR which include but are not limited to ongoing business technical assistance and referrals to small business loan programs.
- F. Awards will be distributed by PCR in accordance with a Grant and Funds Disbursement Agreement to be agreed to and signed by both the business owner(s) and PCR.

V. Construction Impacts: Awards

A. Loss of Revenue

1. Calculation of Award Amount: A business that can demonstrate a decline in gross revenue during a construction period from a specified Metro rail construction project (as defined in Sections II.A.2, II.A.4, and II.A.6) may receive an award in the amount of its lost quarterly revenue. Awards to each business are limited to a maximum of the lesser of 60% of the business' total annual revenue loss or \$50,000; if 60% of the annual loss is less than \$50,000, the award shall be the amount of the actual loss up to \$50,000. Three examples are shown below, each with the assumption of proper licensing, current taxes, proper location, minimum time in business, and otherwise meeting all other qualifying criterion.

Example A. - XYZ Company's most recent 3-months of bank statements, internal financial statement, and/or sales tax receipts (since the construction period as defined in Section II.A.4 began) reveal revenues of \$50,000 per month, or \$150,000 for the quarter, which, when compared to the revenues from the same 3-month period in the previous year (\$187,500) from last year's tax return (or financial statement), showed revenues down by 20%. This is summarized as follows:

Quarterly revenues during construction	\$150,000
Less: Prior year's quarterly revenue	<u>-\$187,500</u>
Revenue Reduction/Impact	< \$37,500 > = 20% reduction

Thus, XYZ Company has been impacted, and qualifies for a BIF award in the amount of \$37,500.

Example B. – Acme Market's most recent sales tax receipts would indicate sales of \$400,000 for the 90 days since the construction period (as defined in Section II.A.4). The market's tax return, sales tax receipts and other evidence reveal that sales for the



Metro

same period last year were \$600,000, which would represent a reduction of 33%, or \$200,000 from one reporting period to the next.

Quarterly revenues during construction	\$400,000
Less: Prior year's quarterly revenue	<u>-\$600,000</u>
Revenue Reduction/Impact	< \$200,000 > = 33% reduction

The market has thus been impacted in the amount of \$200,000. However, Acme Market's BIF award amount would be limited to the maximum annual BIF award of \$50,000.

Example C. – Construction began outside of ABC Cleaners in April 2014 and lasted through May 2014. ABC's most recent internally prepared financial statement and bank statements indicate revenues of \$85,000 for the 2nd quarter of 2014, which is 26% below the quarterly revenues of \$115,000 for the same quarter in 2013. This is summarized as follows:

Quarterly revenues during construction	\$85,000
Less: Prior year's quarterly revenue	<u>-\$115,000</u>
Revenue Reduction/Impact	< \$30,000 > = 26% reduction

ABC Cleaners' BIF award amount for this quarter would be \$30,000.

Additionally, construction continued outside of ABC Cleaners throughout the 3rd quarter of 2014. During this quarter, ABC's internally prepared financial statement and bank statements indicate revenues of \$90,000, compared to \$125,000 for the 3rd quarter of 2013. Thus, ABC's revenue losses for the 3rd quarter of 2014 are as follows:

Quarterly revenues in 3 rd quarter 2014:	\$90,000
Less: Prior year's quarterly revenue	<u>-\$125,000</u>
Revenue Reduction/Impact	< \$35,000 > = 28% reduction

Although ABC's revenue losses for this quarter are \$35,000, awarding the business the full amount would exceed the \$50,000 annual maximum, since it had previously received \$30,000 for the second quarter. Accordingly, ABC Cleaners would receive an award of \$20,000 and would not be eligible for any further awards in 2014.

Should construction activity continue in front of ABC Cleaners into 2015, the business would be eligible to apply for an additional BIF award for construction periods in that year. ABC Cleaners may submit subsequent quarterly claims throughout the duration of the construction period provided the business has not already received the maximum allowable amount for the annual period when the construction impact occurred.



Metro

A commercial property owner that can demonstrate a decline in gross revenue during a construction period from a specified Metro rail construction project (as defined in Sections II.A.2, II.A.4, and II.A.6) may receive an award in the amount of its lost quarterly revenue. Two examples are shown below, each with the assumption of proper licensing, current taxes, proper location, minimum time in business, and otherwise meeting all other commercial property owner qualifying criteria (as defined in Section II.D).

Example D. – Commercial Property Owner A has a tenant with an executed lease. The lease states the rent is \$1,000 per month. Since Metro construction began (as defined in Section II.A. 4), the tenant has experienced revenue loss in the 4th quarter of 2017. The tenant was able to make a partial payment of \$500 for the first month of the quarter but was unable to pay rent the last two months of the quarter. The property owner applies for the BIF to recoup lost rent revenue for that quarter. This scenario is summarized as follows:

Rent billed for 4th quarter of 2017	\$3,000	
Less: Rent revenue received	<u>- \$500</u>	
Revenue Reduction/Impact		< \$2,500 > = 83% reduction

Thus, Commercial Property Owner A has been impacted, and qualifies for a BIF award in the amount of \$2,500. In the example above, per Section II.D.5, commercial property owners may not apply for an award if their tenant is also in the Program and is receiving reimbursement to cover rent.

Example E. - Property Owner B has a tenant with an executed lease. The lease states the rent is \$1,000 per month. Since Metro construction began (as defined in Section II.A. 4), the tenant experienced revenue loss due to ongoing construction impacts. As a result, the tenant broke its lease and left the premises at the beginning of the 4th quarter of 2017. The property owner tries unsuccessfully to re-rent the space vacated by the former tenant. The property owner applies for the BIF to recoup lost rent revenue for that quarter. This scenario is summarized as follows:

Rent billed for 4th quarter of 2017	\$3,000	
Less: Rent revenue received	<u>- \$0</u>	
Revenue Reduction/Impact		< \$3,000 > = 100% reduction

Thus, Property Owner B has been impacted, and qualifies for a BIF award in the amount of \$3,000. In the example above, per Sections II.D.3 and II.D.4, the commercial property owner must provide documentation from the tenant that it ended its lease due to a specified Metro rail construction project (as specified in Section II.A.2) and the commercial property owner must also demonstrate continuous efforts to acquire a new tenant through active listing and advertisement of the property.



Metro

2. Calculation of Award Amount for Recurring Decline in Gross Revenue: A business that can demonstrate recurring declines in gross revenue during multiple years of construction of a specified Metro rail construction project (as defined in Sections II.A.2, II.A.4, and II.A.6) may receive an award in the amount of its lost quarterly revenue (as defined in Section V.A.1) based on the pre-impact base year for the initial BIF award and payment.

B. Additional Considerations for Awards

1. Eligible businesses that have been acquired by new owners may qualify using a history of past performance by the previous owner, provided that the product/services offerings and pricing of such products and/or services have not materially changed after the acquisition.
2. Revenue losses attributable to physical property damage or business interruption caused by the actions of a Metro contractor are not compensable under the BIF.
3. The portion of a business' revenues derived from online sales will be factored into the determination of the overall BIF award amount for qualifying businesses.

VI. Appeals Process

- a. A business denied BIF assistance may request reconsideration of their denial. Such requests must be in writing and include an explanation of why the denial should be reconsidered along with any supporting documentation. Requests must be sent to:

Pacific Coast Regional Small Business Development Corporation (PCR)
3255 Wilshire Blvd., #1501
Los Angeles, CA 90010

Attn: Angela B. Winston
Program Manager
Business Interruption Fund

- b. The review will be conducted by the BIF Program Manager who will refer his/her recommendation to a committee to include a member of the Metro Ethics staff, and two members of the board of directors of PCR. Said members shall comprise the members of the Metro/PCR board review committee. The review shall be completed within **10 business days of receipt** of the request for reconsideration.
- c. The decision of the Metro/PCR board review committee is final.



Metro

VII. Grantee Certification and Indemnification

Upon approval of a BIF award Grantees shall execute a Grant and Funds Disbursement Agreement that shall at a minimum certify, acknowledge and agree that:

- a. Participation in the BIF is voluntary.
- b. Metro is not responsible for closures by entities other than Metro.
- c. Metro is not responsible for scheduled business disruptions of less than one business day.
- d. Funds received from the BIF shall constitute income for tax purposes and are reportable.
- e. All BIF funds shall be used for the purpose(s) stated during the application process, and any deviation shall constitute a breach of this Agreement.
- f. Grantee's best efforts will be made to continue the business in its current location. Such efforts could include but not be limited to seeking assistance from the Metro Business Solution Center and/or PCR-SBDC.
- g. All financial records submitted by Grantee to obtain BIF aid are true and correct representations of grantee's financial performance; and there have been no material changes to such records since submitted that would diminish the Grantor's reliance on them for consideration of Grantee's BIF aid. If, subsequent to an award of BIF aid, Grantor discovers discrepancies, errors or misstatements in Grantees submitted financial records, this discovery shall constitute a breach of this Agreement by Grantee. In this case Grantor, in its sole discretion, shall pursue all of its legal remedies to secure full repayment of BIF aid.

VIII. Audit

An annual audit of the Program will be conducted by Metro in addition to Metro's ability to audit at any time.

REVISION HISTORY

- Revision 1 – 2/5/15
- Revision 2 – 4/17/15
- Revision 3 – 10/28/15
- Revision 4 – 1/26/16
- Revision 5 – 8/17/16
- Revision 6 – 4/1/17
- Revision 7 – 3/23/18
- Revision 8 – 7/19/18