



Model Procedure for CRA Business Assistance

Businesses within redevelopment areas across Florida are at risk of permanently closing due to the drastic temporary economic effects of the societal and governmental response to the COVID-19 pandemic. In response, Community Redevelopment Agencies are exploring options to help businesses survive the crisis and thereby prevent the reintroduction of slum and blight in redevelopment areas. The following is a suggested procedure for CRAs intending to provide business assistance in the form of payments or loans to district businesses in response to the pandemic.

Background

As explained in a separate memorandum, the legal question of whether CRA trust moneys may be used for direct business assistance in the form of subsidies or loans under the Community Redevelopment Act (the “Act”) is unresolved. Under ordinary circumstances, courts would likely determine that such business assistance efforts are beyond the authority provided to CRAs under the Act. Further, since the question of whether CRAs may render business assistance is an issue of spending authority, all taxpayers within the taxed area would likely have standing to contest a business assistance program. *See Dep’t of Educ. v. Lewis*, 416 So. 2d 455, 459 (Fla. 1982)(discussing that taxpayers have standing when government exceeds its taxing and spending powers); *and* Op. Att’y Gen. Fla. 2010-40 (Sep. 27, 2010) (indicating that CRA spending issues are questions of taxing and spending powers). However, given the extraordinary economic circumstances surrounding the pandemic and the fact that temporary business assistance may be the only measure available to prevent irreversible damage to redevelopment efforts, CRAs have a strong argument that direct business assistance is authorized in this limited scenario.

Given this background, the following is a series of steps we recommend before expending CRA funds pursuant to a business assistance program involving direct subsidies or loans. The overall goal of these steps is: (1) to ensure that the CRA has the maximum authority available when it comes to business assistance spending; (2) to ensure that any business assistance spending complies with general laws regarding expenditures from the trust fund; and (3) to tailor the business assistance spending as closely

as possible to the objectives of the Act. By following these steps, a CRA will put themselves in a stronger position in any contest regarding the validity of their business assistance program.¹

A Note on Direct Cash Grants

The steps recommended below are applicable to all forms of business assistance which involve spending CRA funds. However, a CRA should take extraordinary care before rendering assistance through direct cash grants. Providing straight cash payments to private, for-profit businesses from a CRA trust fund is much more likely to raise the ire of a court than other forms of assistance which generate assets and returns for the CRA. For this reason, CRAs electing to provide cash grants should be sure to (1) generate a substantial record showing the redevelopment benefits of the cash grants and to (2) tailor the program to redevelopment objectives as closely as possible.

Recommended Steps

Each individual CRA will need to create its own specific policy based on its own business assistance goals, as well as its existing plan and budget. The recommended steps can be summarized as follows:

1. Coordinate with Taxing Authorities
 - o Ideally, enter an interlocal agreement with all relevant taxing authorities regarding the form and substance of the business assistance.
2. Check for Other Funding Restrictions
 - o If your CRA has obtained grants or private contributions, ensure that you are complying with the conditions of that funding.
3. Delegate Additional Powers to the CRA, if Necessary
 - o Ensure your CRA has been delegated the general contracting powers² which should serve as the authorization to provide business assistance.
4. Amend the Redevelopment Plan, if Necessary

¹ The Act and various AG opinions interpreting the same have expressed a clear preference if not requirement that CRA funds be spent on bricks and mortar type improvements in the plan and in the district. Nevertheless, the current COVID-19 pandemic makes offering direct financial assistance to businesses that are at the core of redevelopment and thereby protecting a CRA's prior investment in brick and mortar improvements in the district a reasonable course to consider. This memo is an attempt to suggest how this might be done but is not a guaranty that such actions will be upheld in a court challenge.

² In a Charter County all powers of the CRA must first be delegated to it by the County but we have also seen that some non-charter county CRAs have not been given all statutory powers by their creating bodies so this should be verified rather than assumed.

- Add a business assistance element explaining the business assistance program and when the program might be available (*i.e.* in the event of a declared emergency having significant adverse economic impacts).
- 5. Amend the CRA Budget
 - Make sure the business assistance spending is reflected in the CRA's annual budget.
- 6. Place Conditions on the Assistance
 - Require recipients of business assistance to comply with certain conditions which will serve the redevelopment goals of the business assistance program.

Coordinate with Taxing Authorities

If possible, obtain the consent of all authorities which levy ad valorem taxes within the redevelopment area. While taxpayers may have standing to contest business assistance spending, the taxing authorities would have the strongest claim given that they provide CRA funding through increment revenues, which must be returned to the taxing authorities if unspent or unallocated. *See* F.S. § 163.387(7). Obtaining the consent of these taxing authorities will reduce the chance of a conflict regarding the CRA's authority, both in court and at public meetings. Ideally, the consent should be formalized through an interlocal agreement. *See* Fla. Stat. § 163.387(3)(b).

This is an especially important step for municipal CRAs operating pursuant to an interlocal agreement with their county. The interlocal agreement may contain additional relevant spending restrictions which may need to be addressed with the county prior to undertaking business assistance. The municipal CRA may also desire the county's cooperation for the delegation of additional redevelopment powers, as discussed below.

Check for Other Funding Restrictions

While increment revenues are the main source of CRA funding, some CRAs will have obtained other grants and contributions which may come with their own conditions and restrictions. Before diverting any funds to a business assistance program, the CRA should ensure that the funds being diverted are not subject to any such additional restrictions, or otherwise confirm that the proposed form of business assistance complies with the restrictions.

Delegate Additional Powers to the CRA, if Necessary

A CRA only has the powers delegated to it by the local government that created the CRA. *See* F.S. § 163.358. For municipal CRAs within charter counties, the county must first delegate the powers to the municipality, who may then delegate the powers to the CRA. F.S. § 163.410. The powers available for

delegation have changed throughout the life of the Act. Some delegations of authority incorporate all powers available under the Act in a general manner, while others provide a specific list of powers.

Ideally, a CRA undertaking business assistance will have been delegated the following general powers, which provide the greatest support for engaging in business assistance:

- J “To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under [the Act].” F.S. § 163.370(2)(a).
- J Within the redevelopment area, “[t]o enter into any contracts necessary to effectuate the purposes of [the Act].” F.S. § 163.370(2)(e)(6).
- J “To appropriate such funds and make such expenditures as are necessary to carry out the purposes of [the Act]” F.S. § 163.370(2)(l).

We recommend that any CRAs without a clear delegation of these powers from their county or municipality obtain such a delegation prior to adopting a plan or budget amendment as discussed below. This delegation should be accomplished by either ordinance or resolution, based on the prior method of delegation. If the prior delegation was by ordinance, the new delegation should be by ordinance as well. In the case of municipal CRAs in charter counties the county may first need to delegate these powers to the governing body of the municipality, as discussed in F.S. § 163.410.

Amend the Redevelopment Plan, if Necessary

Money may not be spent from the CRA trust fund except pursuant to a duly adopted redevelopment plan. See F.S. § 163.387(6). In our experience, plans do not tend to include provisions regarding direct payments or loans to businesses due to economic impacts caused by public emergencies. Additionally, many redevelopment plans spell out the powers available to the CRA, which may not include the general powers discussed above that provide the most legal support for business assistance programs.

First, check if the redevelopment plan includes language delineating the CRA’s available powers, and if so, whether that language includes the general powers discussed above. If the redevelopment plan includes a list of powers but does not include said general powers, prepare an amendment to the language to provide for the use of those powers.

Second, prepare a business assistance element to be added to the redevelopment plan, if not already present. This element should describe (1) the extraordinary conditions in which business assistance may be undertaken, (2) the forms of business assistance available, and (3) the conditions that will be placed on the business assistance to ensure that the assistance will specifically benefit the redevelopment area.

We recommend that business assistance programs only be available when a public emergency or disaster causes severe, temporary economic disruption to the redevelopment area such that blight is likely to arise without direct monetary intervention. We have also provided some potential conditions on business assistance in the final section of this model procedure.

Note that amendments to the Plan will be subject to approval by the body that created the CRA as well as numerous special notice requirements, as discussed in Sections 163.346 and 163.361, *Florida Statutes*. Because of the time period required to comply with these provisions, CRAs may want to prioritize work on a plan amendment in the early steps of adopting a business assistance program.

Amend the CRA Budget

Under Section 163.387(6), *Florida Statutes*, money may only be expended from the redevelopment trust fund pursuant to an annual budget. The budget and budgeting process must comply with Section 189.016, which allows for mid-year budget amendments.

Regardless of whether the CRA itself will distribute the business assistance funds, the CRA should amend its budget to reflect the spending. Assuming such business assistance will increase the total appropriations for expenditures within the fiscal year, any amendment must be adopted by resolution by the CRA's governing board. See F.S. § 189.016(6)(c).

Place Conditions on Assistance

The CRA's powers are at their maximum when spending on projects within the CRA's redevelopment area. See, e.g., F.S. § 163.170. Thus, we would recommend placing conditions on the business assistance funds to ensure that the funds are used only for the intended businesses within the redevelopment area, and only for purposes that contribute to the goals of redevelopment.

Some examples of potential conditions on business assistance to consider:

-) A requirement that the recipient only use the funding on business location(s) within the redevelopment area.
-) A requirement that the businesses not issue any shareholder dividends for a period of time.
-) A requirement that the business remains open and/or maintains certain staffing levels for a period of time.
-) A requirement that the recipient keep detailed records of the use of the funding.
-) A requirement of a personal guarantee from a chief executive or owner of the business.
-) When appropriate, a requirement to provide in-kind services to the CRA for redevelopment efforts.

) In the case of assistance in the form of loans, partial forgiveness of the loans in the case that the business successfully performs the requirements above.

For local officials considering administering business assistance through the general municipal or county government rather than the CRA, we would recommend spelling out these conditions through a resolution of the general body before transferring money from the trust fund.³

³ We would recommend that the CRA itself administer the business assistance program, as it would strengthen the position that the program is a valid redevelopment effort for the benefit of the redevelopment area. Additionally, the Attorney General has indicated that CRAs themselves should administer redevelopment spending under the Act. See Op. Att’y Gen. Fla. 2010-40 (opining that CRAs may spend funds to promote the redevelopment area but may not provide grants to nonprofit organizations which similarly promote development).