



## TA Recommendations for State plan implementation disruptions due to COVID-19

*Important note: These recommendations are subject to change*

### **Are we allowed to continue Council operations?**

Yes, unless your State/Territory government has directed all state agencies to close. Council staff will want to stay up to date on current legal obligations and guidance provided by your relevant State/Territory authorities and other authorities as appropriate. For example, rapidly changing policies and directives about keeping offices open in remote or home-based locations, expansion of open meetings law requirements, and restrictions on gatherings of people are things that are impacted during this time.

### **My State/Territory has restricted all public gatherings or has a shelter-in-place policy and we had planned events scheduled. Is this interference?**

No, this is a matter of public safety and applies to all entities (rather than just being applied to the Council).

### **What are some things we should consider if we change planned events?**

For meetings: Question to what extent the meeting/event can be held remotely and whether available technology be sufficiently reliable.

For events: If the Council has executed contracts in place for associated meetings/events, Council staff may want to consider a few of the following questions. If a Council or its subrecipient has signed a contract with a meeting location, will a failure to fulfill obligations result in any financial repercussions? Will the effects of COVID-19, or any response to it, be caught by a Force Majeure\* provision (note – sometimes this is also referred to as an “impossibility clause”)? Will any relevant Government response trigger change in law provisions or render performance illegal? Will failure to perform one contract have implications on other contracts? And, if you renegotiate terms of a contract, properly document the new terms. Please check in with legal Counsel through the Designated State Agency or other acquired legal help to navigate contract items.

If the Council or a sub-recipient must cancel a meeting or event, consider putting into action strategies for postponing or cancelling the meeting/event to include refunding registration payments or providing notice of when the meeting or event will be rescheduled or whether alternate programming will be made available.

\* A Force Majeure Clause is a contract provision present in most commercial contracts that excuses a party's performance of its obligations under the contract when certain circumstances arise beyond the party's control making performance inadvisable, commercially impracticable, illegal, or impossible. Force Majeure Clauses provide a list of extreme events (generally called force majeure events) that, if they occur, can excuse a party's performance under the contract. Force Majeure Clauses can vary greatly in language and length; however, many include events like epidemics or pandemics, along with war, terrorist attacks, "acts of God," famine, strikes, and fire in the list of events excusing overall performance or delay in performance.

<https://www.natlawreview.com/article/boilerplate-contract-language-coming-to-forefront-force-majeure-clauses-and-covid-19>

### **How can we continue our work without meeting face-to-face?**

DD Council staff members, grantees, and other stakeholders who typically conduct meetings face-to-face should consider web (online) meetings. Zoom, Adobe connect, and other platforms are easily available and affordable to Councils. The quality of web (online) meetings has greatly improved over the recent years. For example, Zoom is simpler to use, and the video and audio quality is reliable.

Meeting online is more efficient as many people can be accommodated. Physical space does not need to be scheduled and you will not run out of space. If you meet on weekends, or during non-standard hours, a web (online) meeting is more feasible.

We are passing along the following suggestions from Insider Higher Ed when hosting a web (online) meeting:

- 1) Have an agenda – this will help everyone stay focused on the points and move through the discussion in a productive way.
- 2) Do a Roll Call – Start each meeting with reading the list of attendees or have everyone identify themselves – this will help the group communicate when lacking social and visual cues.
- 3) Actively Facilitate the Conversation – online meetings require a higher level of facilitation than an in-person meeting. The host will need to take an active role in moving the conversation along by actively inviting comments, calling on meeting participants by name and direct the conversation through the agenda and involve all participants.
- 4) Create space for everyone to contribute – It is important to note that there is no correlation between the amount of time that someone speaks and the quality of their contribution. Information inequalities can be actively addressed by the meeting host (facilitator) with focus on creating space for everyone in the meeting to contribute.
- 5) Make Space for Dissent – the meeting host or facilitator should always make clear that an online meeting is a safe space for contrary opinions and should invite dissent. It might be necessary to assign some people in the meeting to play the role of devil's advocate as way to fully explore an issue and to avoid the risks of groupthink.

- 6) Have clear next steps and end on time! The meeting host must leave time on the agenda to talk about next steps. Plan for this time so the conversation will not be rushed. Email the next steps to the meeting participants. Always end the online meeting on time.
- 7) Give careful thought to facilitating mixed in-person (when safe to do so) and online meetings. Councils may want to think about blended meetings – some people in the room and other online. Again, the host or meeting facilitator must make an active effort to invite contributions from remote attendees – tip: ask individual remote participants, by name, to report and to respond.

**We have been told we cannot hold in-person meetings to conduct Council business and our Open Meeting law prohibits video conferencing or teleconferencing options. What do we do?**

If the State/Territory Open Meeting law (sometimes called Sunshine Law) prohibits video, teleconference, or other electronic forms of meetings, Council leadership may want to contact the appropriate office in the State to request permission to conduct business through electronic means. Some Governors have lifted the “ban” so that public bodies can continue to do business. Please know the Council will need to make the meeting open to the public and can provide a toll-free number for the public to call in to hear the meeting and deliberations.

Some Councils have a process in place that allows the Executive Committee to make decisions on behalf of the Council in-between regular meetings. This process is usually outlined in the Council bylaws.

Some Councils have the ability to conduct meetings by video or teleconference but are uncomfortable using this method because it is more difficult for members with developmental disabilities to participate. Consider keeping the agenda short and focused on necessary decisions that need to be made and ensuring the member has the necessary information in advance to be able to participate meaningfully. Follow applicable Open Meeting law guidelines when providing information or orally reviewing the information that will be addressed in the meeting.

**My Council wants to take up COVID-19 related initiatives. Is this okay?**

Yes. When considering adding activities to the approved State plan and annual work plan, please remember all activities must be supported by goals and/or objectives that were submitted with the FY 2020 State plan update (or amendment). As a reminder, the FY 2020 Annual Work plan populates the FY 2020 Program Performance Report.

When adding COVID-19 related activities, Council staff will need to review the approved goals and objectives of the state plan and determine where the new activities will align (and be reported). *Examples of DD Council goals and/or objectives that may cover COVID-19 activities include but are not limited to health and health care, informal and formal community supports, individual or family advocacy efforts and emergency preparedness.*

If the current State plan does not have an approved current objective that will support the COVID-related activity/activities but has a 5-year goal that will support the COVID-19 related activity/activities, Council staff will need to report the outcomes in Section IV: State Plan Implementation Progress Report in the field that calls for a Council to describe overall progress being made in achieving the intended outcomes of the goal for the year.

If your Council included an “emerging needs” objective (as recommended by the ITACC during the creation of the current state plan), any COVID-19 related activities could be reported in this area.

**Will we have extra time to obligate, spend, and do project work?**

The ITACC has no formal communication on this question. However, we understand the Administration for Community Living will communicate directly with grantees about any administrative remedies that will be afforded to grantees as a result of the impact of COVID-19.