
Program Procedures for West Virginia ARPA Broadband Investment Plan

GigReady Incentive Program

Updated June 30, 2022

The West Virginia Department of Economic Development (“Department”), in coordination with the West Virginia Broadband Enhancement Council and the State Broadband Office, will administer this GigReady Incentive Program (“Program”) to increase the availability of broadband services available to West Virginians. The Program is part of the West Virginia Broadband Investment Plan (WVBIP) and is designed to encourage the collaborative partnerships needed for successful broadband development. This program provides an opportunity for local governments and organizations to dedicate funds available through the American Rescue Plan Act (ARPA), or other local funding, to a broadband development initiative in partnership with the agencies and offices listed above.

The GigReady program will assist participants in two distinct phases. In phase one, the program will provide technical assistance to help communities scope projects, select private partners and vendors, and complete other necessary steps in the broadband development process. In phase two, upon completion of the technical assistance phase, participants may then be eligible for implementation funding through the GigReady program or other funding sources. Participants who have qualifying, shovel ready projects that do not need technical assistance can apply to proceed directly to phase two by submitting a complete application, including all information listed as “optional” in the application.

Source of Funds and Allocation

The West Virginia Department of Economic Development intends to support this Program using funds allocated to the State of West Virginia through the Capital Projects Fund (CPF) of the American Rescue Plan Act (ARPA). According to guidance published by the U.S. Treasury, states will be required to provide a plan describing how they intend to use allocated funds under the Capital Projects Fund consistent with the

American Rescue Plan and guidance issued by Treasury.¹ Treasury has begun to accept applications for review. The Department intends to include this Program in its application for funding that Congress has allocated to West Virginia through the Capital Projects Fund. While the Department expects that projects conforming to the requirements of this Program will be eligible for funding under the Capital Projects Fund, U.S. Treasury must approve use of Capital Projects Fund allocated funding for this Program.

Approximately \$40 million is Targeted for this funding opportunity. Actual funds awarded may be more or less depending on the volume of applications received, the need of proposed projects for grant support, and the requirements of the U.S. Treasury. The Department reserves the right to reevaluate program outcomes and reallocate funds to other announced grant programs or create new programs. The Department reserves the right to reject any or all applications made to the Program.

Use of ARPA funds allocated to West Virginia local governments through the Coronavirus Local Fiscal Recovery Fund (CLFRF) will be subject to requirements of U.S. Treasury for that Fund.²

Eligible Entities

County and municipal governments and affiliated organizations (economic development corporations, regional planning and development councils, etc.) may apply to participate. Regional consortia of local governments may participate. Participating local governments will be strongly encouraged to develop partner or vendor relationships with private for-profit or non-profit companies through the technical assistance program. This may also be a requirement to receive implementation funding from the Program.

A single geographic area participating in the program may not receive assistance as part of overlapping local efforts. If a municipality and a county containing that municipality both wish to participate in a project covering the municipality, the municipality may be asked to join with the county effort. In a similar way, counties and

¹ <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>

² <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

municipalities may be asked to join with a regional effort if one exists and is seeking to participate.

Technical Assistance

Participating local governments will receive technical assistance provided by the Department as required. The level and length of technical assistance provided may vary depending on the level of prior planning and preparation in the local community, its local capacity for implementation, and the number of organizations seeking to participate in the program. The same level of participation will not necessarily be required for all applicants. If a proposal comes from a community that has already done extensive planning, has a project with strong fundamentals, and meets the objectives of the program, then technical assistance will only seek to review and validate prior work performed prior to a funding decision. For communities with more nascent projects, more extensive assistance may be required to receive implementation funding. Technical assistance may include help for participating communities to:

- Identify Targeted areas within their communities,
- Create high-level designs and cost estimates for potential projects,
- Prepare business-case analyses,
- Solicit, select, and structure agreements with private partners / vendors,
- Identify and apply for additional federal funding,
- Seek additional match from private partners, and
- Ensure efficient utilization of all funding streams for broadband expansion.

Technical assistance will be provided as a service to participating communities, not as funding for technical assistance. The program will seek to complete technical assistance in each community as soon as possible, but none later than June 2022.

Technical assistance will not be a substitute for participating local governments retaining qualified professional expertise to oversee, manage, and perform key tasks or functions on their behalf such as:

- Advice on key vendor and partner selection,
- Detailed network engineering and design,
- Project management and construction management,
- Financial oversight and fiscal management, and
- Oversight of legal and reporting obligations.

Technical assistance may assist communities to identify and solicit the professional expertise that they will need to engage on an ongoing basis.

Participating communities must have or create a broadband planning committee made up of citizens, staff, or local elected officials empowered by their local jurisdiction(s) to make planning decisions during the technical assistance process and be responsible for communication with their local governments and communities. The suggested committee size is 3–7 members, or more for larger regional projects. Active participation during the technical assistance process by the committee members will be a requirement of continued participation in the Program.

Allowed Expenditures

Projects which are selected to receive implementation funding may be reimbursed for actual capital expenses up to a maximum project cost identified in the award. Costs must be directly related upfront investment associated with installing and/or upgrading existing broadband facilities on the proposed project on a one-time, capital improvement basis.

Eligible project activities and costs include:

1. Network and access equipment costs;
2. Outside plant costs;
3. Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments;
4. Equipment shelter, land, site preparation, and site restoration costs;
5. Customer premises equipment: Funding only covers up to the network demarcation point (*e.g.*, NID or ONT);
6. Professional services: Includes engineering and project management costs involved in designing and constructing the proposed project;
7. Testing;
8. Tower costs, Including the construction of new towers (where required infrastructure does not exist) and costs involved with structural changes to existing towers,
9. Other upfront costs: Includes any other upfront costs not covered in other categories, such as site preparation, permits, required licenses, sales tax applicable to new equipment purchases, shipping and warehousing expenses, and miscellaneous minor material; and

10. Long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service on the proposed project.

Internal labor costs incurred as part of eligible project activities are only reimbursable up to the proportion of employees' time spent exclusively on project activities during the period for which reimbursement is sought. When seeking reimbursement, applicants must submit such costs as line-items and provide supporting documentation for the expense. Supporting documentation shall include time spent by each employee on project activities, total time spent by each employee during the period for which reimbursement is sought, and an hourly cost that may include employee salary, itemized payroll taxes and benefits. Indirect costs are not reimbursable.

Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed.

Ineligible costs include:

1. Internal administrative activities;
2. Fundraising activities;
3. Computers or office equipment;
4. Vehicles;
5. Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point,
6. Operating expenses,
7. Expenses incurred prior to the date of the grant award announcement;
8. Acquisition of spectrum licenses;
9. Short-term operating leases;
10. Payment of interest or principal on outstanding debt instruments, or other debt service costs;
11. Fees or issuance costs associated with the issuance of new debt;
12. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or
13. To support or oppose collective bargaining.³

³ This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4.

Expenditures on ineligible costs cannot be used as match. Match may be provided by the local communities applying to the program, or their identified private partners.

Projects must primarily serve Targeted addresses. Facilities that are needed to deliver last-mile broadband service to Targeted addresses and incidentally cover non-Targeted addresses are reimbursable, but expenditures solely to benefit non-Targeted addresses are not reimbursable. Customer drops, installations, and equipment at non-Targeted addresses are not eligible for reimbursement.

Targeted Areas

For the purposes of this Program, “Targeted addresses” are those with no current access to internet service with at least 25 Mbps download and 3 Mbps upload (25/3 Mbps), and not in an area with an existing state, federal, or locally funded project to deliver mass-market broadband service of at least 25/3 Mbps. Addresses with current or future access to service only by satellite providers or mobile wireless networks are considered Targeted if they are not also served by a terrestrial broadband provider of fixed home broadband service offering service with a speed of at least 25/3 Mbps.

The Department will publish a map of Target Areas identified by address. Target Areas will be categorized as “Targeted” locations eligible for funding.

Application Deadline

Applications from counties and municipalities to participate in the program will be accepted starting October 28, 2021 through January 31, 2022. Applications must be submitted to the Department by January 31, 2022, at 3:00 p.m., Eastern Standard Time.

Major Program Requirements

Eligible Areas

Proposals based on planning prior to the application must show that they will primarily serve Target Areas, identified in the most recent Target Area map published by the Department at <https://broadband.wv.gov/>. The Department may request modifications to eliminate overlaps with projects proposed under other broadband programs run concurrently by the Department. The Department may defer a project’s final scoring and prioritization pending submission of revisions. Otherwise, proposed projects’ service areas will be identified through the technical assistance program based on:

- The location and distribution of Target Area addresses in the community,
- The amount of funds available from all sources, and the requirements of those sources,
- The location of other funded broadband projects,
- The priorities of the community, and
- The ability of the project to be technically and financially feasible.

Participants in the technical assistance program will be encouraged to include Targeted addresses at the “end of the line” in locations that would be very difficult to reach except by overbuilding the proposed project.

Size of and Scope Project

There is no minimum size project to participate in the program. However, participants will be required to demonstrate through the technical assistance process that their project will have sufficient operating scale to be viable. Small projects may be asked or required to join with nearby projects to receive implementation funding from the Program.

Required Performance and Service Tiers

Applicants will be encouraged to develop projects that provide speeds of at least 1000/500 Mbps. At a minimum, projects receiving implementation funds must be capable of offering last-mile broadband services of at least 100 Mbps download and 20 Mbps upload and 100 ms latency and must propose to offer at least one service tier to mass-market consumers with performance meeting or exceeding this threshold. Applicants proposing projects that cannot reliably provide upload speeds of 100 Mbps as proposed must identify how their proposed project will be scalable to a minimum of 100 Mbps symmetrical speeds in the future. Such applicants must also describe the reasons why it would not be practicable at the present time to deliver 100 Mbps symmetrical through the proposed project.

Construction Timeline

Construction must be able to be completed and ready to serve customers within 24 months from award of implementation funding; this may be extended up to an additional 6 months for delays not caused by the Applicant.

Cost Reasonableness

Proposed costs must be reasonable and proportional to the density and difficulty of the proposed project.

Matching Funds

Local communities seeking to participate in the program must pledge a budgetary amount that can be used to partially fund a project in their communities. The community must be willing to match at least 25% of project costs. The minimum match must be provided by the local community applicant(s). Match above the minimum may come from private partners or the applicant(s) and is encouraged. Match must be spent on allowed expenditures. In-kind matching funds will not be accepted. Applicants will have the opportunity to understand the estimated project scope and cost before the match pledge becomes binding. For those applicants that do not enter the program with a well-defined project scope and total budget, the early technical assistance process will focus on quickly creating high-level estimates which the community can use to make decisions about continued participation.

The technical assistance program will also seek to identify additional sources of federal and private partner match and other financial participation in the project costs. The resulting project plans may contain phases contingent on these other funding sources.

Some projects may be required to reduce parts of planned projects to receive implementation funding from the Program or to defer phases until additional funding can be obtained. It also means that local community funding of reduced projects may stay constant in absolute dollars but rise above a 25% share.

Affordability

Applicants will be required to participate in federal programs that provide low-income consumers with subsidies on broadband Internet access services within funded areas. Initially, Applicants will be required to participate in the Federal Communications Commission's (FCC) Emergency Broadband Benefit (EBB) program. Once the EBB program has terminated, the U.S. Treasury will identify other program(s) Applicants will be required to participate in to meet this requirement. Applicants will be informed of new affordability programs the U.S. Treasury identifies as a requirement of projects

receiving Capital Projects Funds. Treasury will not identify affordability programs requiring Eligible Telecommunications Carrier (ETC) designation.⁴

Waivers

The Secretary of the Department may grant waivers of certain program eligibility requirements for a proposed project. Waivers may be granted upon a determination that to do so is in the best interest of the state and furthers the program goal of expanding broadband service in West Virginia, and that the proposed project would not be feasible or advisable without the requested waiver. The Department may prioritize funding applications not requesting a waiver over those applications seeking a waiver. An application seeking a waiver that is not granted may become ineligible for further consideration. Applicants may request waivers of the following eligibility requirements:

- **Construction Timeline.** Applicants seeking a waiver of the requirement that awarded projects be completed within 24 months must specifically identify an alternative proposed completion timeline for the project, which should be as short as is feasible, and in no event concluding later than December 31, 2026. The applicant must identify the circumstances not under the control of the applicant that would make the proposed project infeasible to complete within 24 months.
- **Matching Funds.** Applicants seeking a waiver of the minimum matching funds requirement or to allow funds not provided by the applicant to serve as match must specifically identify and justify the reasons why it is infeasible for the applicant to provide the match in full or in part. The applicant must document any efforts made to obtain matching fund commitments for the project from capital funding sources.

The Department may request additional information from applicants requesting waivers to assist it in advising the Secretary in a determination.

⁴ <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>

Application Requirements

Applicants must submit proposals with all required information through the Department of Economic Development's On-line Grant Application at <https://broadband.wv.gov/>.

Applicant Information and Attestation

Proposals must include the applicant organization name, as well as all municipalities, counties, and regional consortia participating in the proposal. Proposals must identify the project's proposed planning committee members. Applications must include contact information for a primary point of contact for the application who is knowledgeable about the proposed project and can answer questions.

Proposed Funded Service Area and Proposed Network

Proposed Funded Service Areas, the proposed network technology and standard or standards to be used in the proposed network, and the proposed high-level network design are not required at the time of application but may be provided if known. Applicants that have not identified these at the time of application will be expected to identify them through the technical assistance process.

Project Budget and Funding Sources

A proposed budget and maximum project cost are not required at the time of application but may be provided if known. Applicants that have not identified these at the time of application will be expected to identify them through the technical assistance process. The proposed project cost must be broken down by major cost categories provided using a Microsoft Excel spreadsheet template provided by the Program and available as a download within the On-line Grant Application.

Applications must propose an Applicant contribution to proposed project implementation cost and the source of the funding, ARPA, or otherwise. This proposed amount is not final and binding until a proposed project cost is known, either at the time of application, or after the completion of the technical assistance process. If known at the time of application, the application should detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost.

Project Plan

A project plan is not required at the time of application but may be provided if known. Applicants that have not identified one at the time of application will be expected to

identify it through the technical assistance process. Projects approved for implementation funding must include a proposed project plan and timeline with major milestones showing that the proposed project can be completed within 24 months.

Proposed Services

Proposed services are not required at the time of application but may be provided if known. Applicants that have not identified services at the time of application will be expected to identify it through the technical assistance process. Projects approved for implementation funding must include a list of common service tiers, including upload and download speeds, data caps, and prices to be offered on the proposed network. Prices provided should include charges for common equipment, applicable fees and surcharges, and data overages. Bundled and promotional pricing may be provided, but in addition to, not instead of non-promotional pricing and pricing for stand-alone internet service. The services description should identify any non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops.

Pro Forma Cash Flow

A pro forma cash flow for the project is not required at the time of application but may be provided if known. Applicants that have not provided a pro forma cash flow at the time of application will be expected to develop it through the technical assistance process. The pro forma cash flow should include:

1. Expected revenues, detailing assumptions about
 - a. revenue sources and/or customer classes and
 - b. projected customer numbers, take rates, and average revenue per customer in each customer class.
2. Expected operating costs, detailing assumptions about major cost categories.
3. Expected initial capital costs, detailing assumptions about major cost categories.
4. Expected capital refresh/reinvestment in the network, detailing assumptions about major cost categories.
5. Assumed capital funding sources, including grants, cash reserves, debt, and partner equity.
6. Assumed debt and capital lease servicing costs.

The pro forma analysis should be for not less than a 10-year period, or the length of any expected debt or capital leases, whichever is longer. Applicants must identify any

periods during which the project is expected to have a net operating revenue loss and identify the expected source of funds to cover those losses.

Governance and Management

Proposals must describe how the project will be managed by one or more public entities or by a private partner, and the governance structure overseeing the management and operations of the resulting projects prior to receiving implementation funding. Applicants that have not identified these at the time of application will be expected to develop them through the technical assistance process.

Vendors and Partnerships

Proposals must describe any key partners or vendors that the project will use in the design, construction, and operations of the project prior to receiving implementation funding, or have a credible plan for obtaining these partners or vendors. Applicants that have not identified these at the time of application will be expected to develop a plan for them through the technical assistance process.

Funding Decisions and Project Prioritization

The Program will prioritize implementation funding for applications from communities with strong last-mile projects that have already undergone extensive prior planning and that the community is willing to support with substantial matching funds. The Program will seek to identify any projects among the applications received that meet this description by February 2022, to allow for early funding decisions. Applicants are encouraged to apply early once the application window opens, as the Department will begin to review the proposals of early applicants prior to the close of the application window.

The Program will seek to provide implementation funding to remaining participating communities to the extent that remaining funds allow. The Program will provide implementation funding to those projects that Department judges to be viable at the conclusion of the technical assistance process. The Department will re-assess project readiness and viability among remaining participating projects and make additional awards at the end of April and July, 2022, subject to the availability of funds. The determination of a proposed project's viability will consider:

- Technical feasibility,
- Financial sustainability,

- Project governance, and
- Experience and capacity of the managers, partners, and vendors selected to build and operate the resulting project.

Should the volume of applications received exceed the targeted funds not yet awarded to earlier projects, awards will be prioritized among viable projects. Evaluation will score the viable proposal in three areas: Technical/Operational, Financial and Broadband Development Impact.

One hundred points may be awarded in the Technical/Operational evaluation based on the following prioritization factors:

1. Project Readiness, the degree to which the proposed project demonstrates that (i) the completion of preliminary engineering, (ii) the attainment of necessary permits, right-of-way access, and easements, and (iii) the completion of necessary pole and conduit licenses.
 - a. Demonstration of full readiness on all factors—up to 30 points.
 - b. Demonstration of substantial readiness on the majority of factors—up to 20 points.
 - c. Demonstration of substantial readiness on some factors—up to 10 points.
2. Operational Readiness, the degree to which the proposed project demonstrates (i) an experienced leadership team and a strong governance model, (ii) the strength of support from key vendors, contractors, and partners, including the degree to which agreements are in place, and (iii) the degree of maturity of operating systems and processes that will support the proposed project—up to 30 points.
3. The ability of the proposed project to serve customers at a gigabit speed (1000/500 Mbps)— up to 40 points.

One hundred points may be awarded in the Financial evaluation based on the on the following prioritization factors:

4. Cost-efficiency relative to the difficulty of the project proposed. Evaluation will include as key metrics the proposed grant amount per Targeted premise passed by the project and proposed grant amount per mile of new cable or fiber plant proposed. The Department may also consider factors that may make certain

areas more difficult and costly to serve, such low density, extensive make-ready costs or unavoidable underground construction, to the extent that the applicant is able to provide evidence for such conditions.

- a. Very high efficiency, meaning a very low grant cost per mile and per Targeted premise passed, relative to the difficulty of the proposed project—up to 40 points.
 - b. High efficiency, meaning a low grant cost per mile and per Targeted premise, relative to the difficulty of the proposed project—up to 30 points.
 - c. Moderate efficiency, meaning a moderate grant cost per mile and per Targeted premise passed, relative to the difficulty of the proposed project—up to 20 points.
 - d. Low efficiency, meaning a high moderate grant cost per mile and per Targeted premise passed, relative to the difficulty of the proposed project—up to 10 points.
5. Financial resiliency. The Department will consider the financial sustainability of the project under adverse assumptions such as delays in project completion, lower-than-expected take rate or revenue and higher-than-expected initial capital or ongoing operating costs.
- a. Very high sustainability, meaning financial resiliency under most plausible adverse scenarios—up to 30 points.
 - b. High sustainability, meaning financial resiliency under many common adverse scenarios—up to 20 points.
 - c. Moderate sustainability, meaning financial sustainability under moderately adverse scenarios—up to 10 points.
6. The commitment of proposed match sources—up to 10 points
7. The amount of matching funding provided —one point for every 3% in non-state grant funding provided over 25% of project costs up to a maximum of 20 points.

One hundred points may be awarded in the Broadband Development Impact evaluation based on the on the following prioritization factors:

8. Affordability—
 - a. Price of the lowest generally available non-promotional residential service tier with speeds not less than 25/3 Mbps and no data cap—one point for every \$5 under \$85/month, up to a maximum of 10 points.
 - b. Offering a discounted service tier to low-income customers with speeds not less than 25/3 Mbps and no data cap for a cost that is fully subsidized by the FCC's Emergency Broadband Benefit Program and subsequent affordability programs identified by the U.S. Treasury as a requirement of ARPA Capital Projects Fund funding.—10 points.
9. Community impact factors—up to 80 points based on impact within the community, for reasons such as:
 - a. The project's location in an area of low or moderate income, high poverty, high unemployment or economic distress;
 - b. The project supports a credible plan to increase broadband adoption and improve digital literacy in the affected communities, especially among populations that have experienced inequities in access to work, education, and health care or health information that resulted from, was made apparent or was exacerbated by the COVID-19 public health emergency;
 - c. The project would provide service that supports a major economic development initiative identified by a regional planning or development council or economic development authority;
 - d. The project supports or implements a recent broadband planning initiative in a county or region;
 - e. The project is coordinated with or builds upon other nearby projects that will provide greater regional benefit;
 - f. The project has strategic partnerships involved in the proposed project, for example, electric utilities, universities, and federal, state, or local agencies;
 - g. The project addresses Targeted premises in a region of the state with high need but relatively few funded projects;
 - h. The project supports adopted state plans or priorities not otherwise addressed by other prioritization factors.

Projects with a high point value in all three areas, Technical/Operational, Financial, and Broadband Development Impact, will be the highest priorities for available funding. The Department may consider other proposed projects to the extent that funds are available and may carry projects over for consideration at a later date.

Technical assistance will help communities not receiving implementation funding plan projects that they can support using local APRA funds, other grant funds, and other partner contributions, or which can be ready to fund if additional budget becomes available.

Post-Award Notification Process

Projects selected for award will receive a Preliminary Approval Announcement, which will be published on <http://broadband.wv.gov>. Internet Service Providers other than the applicant will receive an opportunity to submit data demonstrating that the ISP currently offers broadband service at 25/3 Mbps or greater to addresses within the Proposed Project Funded Service Area. Data submitted must meet all the requirements described in the Process for Soliciting Information Regarding Unserved Areas, which the Department published on July 12, 2021. Notwithstanding the response deadline stated in the Process for Soliciting Information Regarding Unserved Areas, ISPs providing data must submit to the Department data related to projects receiving Preliminary Approval Announcement not later than 14 days after the publication of the Announcement. Based on submitted data, the Department may request that a preliminary awardee submit a revised project removing parts that solely benefit some or all addresses identified as non-Targeted, the Department may withdraw the preliminary approval, or the Department may allow the preliminary award to proceed without changes. ISP-submitted data alone will not be dispositive. In making its determination, the Department will also consider:

- Previous opportunities that the ISP submitting information has had to provide data to the Department;
- Any data provided by the preliminary awardee about availability of services in the proposed service area;
- The extent of overlap between the proposed project and existing services, and the impact that modification of the proposed project would have on the ability of the proposed project to serve Targeted addresses;

- Whether the proposed project will offer services superior to the existing available services, and especially if existing services offer speeds less than 100/20 Mbps;
- Information about user experiences on the current network, to the extent available, such as whether users actually receive internet service at or above speed thresholds at all hours of the day, or whether factors other than speed such as latency or jitter, or deterioration of the existing connections make their user experience unreliable;
- Whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier); and
- Other available data including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, and interviews with community members and business owners, and reports from community organizations.

Grant Distribution Agreement and Standard Terms

Awardees will be required to enter into a Grant Distribution Agreement (GDA) with the Department. Additional terms may be required by U.S. Treasury. All projects will include a retainer equal to 10% of awarded funds withheld until project completion and until all close out documents and reporting are submitted and approved. To the extent necessary, the Program reserves the right to create additional requirements that awardees must fulfill prior to disbursement of funds.

Grant Recipient Obligations and Post Award Monitoring

Awardees of grant funds must comply with post-award monitoring and reporting requirements to maintain continued eligibility for disbursement of grant funds. Awardees are responsible for active technical, financial, and project management of awarded projects by contracting with well-qualified professional engineers and managers. Awardees must retain professional management expertise for the project design and construction phases and for ongoing oversight of operations. Awardees should also expect to cooperate with technical and financial monitoring and review provided by Department contractors and staff.

Awardees must submit engineered designs prior to reimbursement. Designs must be prepared under the review of a P.E. or an engineer with substantial demonstrated

experience designing broadband networks of the type proposed whose credentials are submitted along with the design.

Disbursement of grant funds will require submission of proof of expenditures on eligible costs for review prior to reimbursement. Awardees must cooperate with field audits performed by Program contractors to verify constructed plant completeness and quality and must submit as-built network documentation prior to final close-out of the grant.

Reporting

Awardees will be required to complete quarterly progress reports through project completion. Progress reports will require information on:

- Project expenditures.
- Number of communities served.
- Number of jobs created.

Awardees will be required to cooperate with the Department's federal reporting obligations for ARPA funding, the Capital Projects Fund and/or the Coronavirus Local Fiscal Recovery Fund, including as a subrecipient of federal funds. Awardees should expect to provide information such as:

- Projected construction start date (month/year).
- Projected initiation of operations date (month/year).
- Actual construction start date (month/year).
- Actual initiation of operations date (month/year).
- Project location (for broadband geospatial location data).
- Information provided in Applicant proposals such as, speeds/pricing tiers to be offered, technology to be deployed, miles of fiber, cost per mile, and cost per passing
- Information regarding:
 - Number of households projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload.
 - Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download.
 - Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- Number of institutions and businesses projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization.
- The number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download.
- The number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

This is not a comprehensive list of reporting requirements. Such terms and conditions will be contained in the GDA. For projects supported by both the State and Local Fiscal Recovery Fund and Capital Projects Fund, the Department may request that awardees enter into cooperative agreements with the Department or Regional Planning and Development Council for consolidated administration of reporting requirements.

Labor Standards

Awardees must comply with all applicable federal labor laws and regulations, and with all requirements for state, and local laws and ordinances to the extent that such requirements do not conflict with federal laws. U.S. Treasury encourages recipients of Capital Projects Funds funding to incorporate strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate. Projects funded through Capital Project Fund or State and Local Fiscal Recovery Funds will have requirements specific to those programs, some of which are specific to the size of the project. Potential applicants should become familiar with federal requirements and guidance specific to those programs.⁵

Federal Davis–Bacon Act prevailing wage rate requirements do not apply to projects funded solely by the Capital Projects Fund (CPF) program or the State and Local Fiscal Recovery Program (SLFRF). If, however, CPF or SLFRF funds are used on a construction

⁵ For example, see US Dept. of Treasury Guidance for the Coronavirus Capital Projects Fund, § I(E), pages 11-12, and US Dept. of Treasury Coronavirus State and Local Fiscal Recovery Funds, Compliance and Reporting Guidance, § 3(h)(1), page 21.

project in conjunction with another source of federal funds which requires Davis–Bacon Act compliance, then the project may be subject to compliance with the Davis–Bacon Act. Additionally, corollary state prevailing–wage–in–construction laws (commonly known as “baby Davis–Bacon Acts”) may apply to projects.

Project and Expenditure Labor Reporting Requirements – Projects above certain thresholds

The following reporting requirements apply to Grantees for SLFRF–funded projects over \$10 million in expected total cost, and for CPF–funded projects receiving \$5 million or more in CPF funding based on expected total cost:

1. Grantees may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis–Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing–wage–in–construction law (commonly known as “baby Davis–Bacon Acts”).
2. If the above certification is not provided, a recipient must provide a **project employment and local impact report** detailing:
 - The number of employees of contractors and sub–contractors working on the project;
 - The number of employees on the project hired directly and hired through a third party;
 - The wages and benefits of workers on the project by classification; and
 - Whether those wages are at rates less than those prevailing. (As determined by US Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code (“Davis–Bacon Act”))

- Grantees must maintain sufficient records to substantiate this information upon request.
3. In addition, Grantees may provide a certification that a project includes a **project labor agreement**, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)).

If the recipient does not provide such certification, the recipient must provide a **project workforce continuity plan**, detailing:

- How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
 - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
 - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
 - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
 - Whether the project has completed a project labor agreement.
4. Grantees will also report on whether the project prioritizes local hires.

5. Grantees will report on whether the project has a Community Benefit Agreement, with a description of any such agreement.

Compliance with Other Federal Funds Obligations

The U.S. Treasury has released Guidance for the Coronavirus Capital Projects Fund.⁶ Awardees must comply with ARPA funding recipient obligations for the Capital Projects Fund, including obligations of a subrecipient of federal funds, in addition to reporting obligations.

The U.S. Treasury has published an Interim Final Rule for the Coronavirus State and Local Fiscal Recovery Funds⁷ and Compliance and Reporting Guidance.⁸ Applicants receiving funding from the CPF through the Program or providing funding from the CLFRF should be prepared to comply with programmatic and reporting obligations described in ARPA, the Interim Final Rule, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”),⁹ including as a subrecipient of federal funds. Awardees should expect to comply with requirements of other applicable federal statutes, regulations, and executive orders applicable to recipients of federal funds used by the Department for awards made under the program or by the awardee.¹⁰ Applicants should consider how and whether certain aspects of these requirements may apply.

Awardees will be subject to audit or review by the U.S. Treasury Inspector General and Government Accountability Office.

This is not a comprehensive list of federal funding obligations. Awardee obligations are more fully described in the Department’s *Guide to Reporting and Compliance Obligations for West Virginia ARPA Broadband Investment Plan Recipients*.¹¹ Applicants

⁶ <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>

⁷ <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

⁸ <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

⁹ 2 CFR Part 200

¹⁰ See the *Financial Assistance Agreement* for states and territories from the U.S. Treasury for the Coronavirus State Fiscal Recovery Fund, <https://home.treasury.gov/system/files/136/Financial-Assistance-Agreement-States-and-Territories.pdf>.

¹¹ This document will be made available at <https://broadband.wv.gov>.

should review this *Guide* and the applicable guidance provided and requirements identified by U.S. Treasury.

Cooperation with State Broadband Mapping

In accordance with W.Va. Code §31G-1A-3, awardees must agree to provide information about broadband availability, pricing and speeds in response to data collection requests the State Broadband office on an annual basis. Address-level reporting will be required immediately for grant-funded projects but may be deferred for non-grant funded projects to allow coordination with new Federal Communications Commission Digital Opportunity Data Collection initiative.¹²

¹² See <https://www.fcc.gov/BroadbandData>.