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# Program Procedures for West Virginia ARPA Broadband Investment Plan

## Major Broadband Project Strategies Program

Updated March 22, 2023

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 Major Broadband Project Strategies Program (“Program”) to increase the availability of broadband services available to West Virginians. The Major Broadband Project Strategies Program (MBPS) Program is part of the West Virginia Broadband Investment Plan (WVBIP) and is designed for projects that can transform broadband availability across a significant part of West Virginia. The Program will fund larger scale projects designed to serve large numbers of Targeted addresses.

### 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<sup>1</sup>. The Department intends to include this Program in its application for funding that Congress has allocated to West Virginia through the Capital Projects Fund.

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

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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 \$45 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.

### Eligible Entities

Applicants may be private for-profit or non-profit corporations, partnerships, or municipalities, counties, or affiliated organizations (economic development corporations, regional planning and development councils, etc.) Regional consortia of local governments may participate. Applicants must have a current statement of existence from the West Virginia Secretary of State. Applicants must have no prior default or significant violations under any federal, state, or local broadband expansion funding program, and no suspension or debarment as a vendor by the State of West Virginia or any Federal agency within three years prior to filing an application with the Department for Program funding. Projects proposed by Eligible Applicants are subject to review and possible approval, denial, or modification under the Review Guidelines.

Support from local communities and partnerships between private and public entities are strongly encouraged. Applicants that are not local governments must at a minimum include with their applications letters of support from the municipal or county legislative body or bodies in the Eligible Areas for which they are submitting applications. Local governments may also provide greater support for private applicants, such as capital funding, agreements to purchase service, or access to public land or facilities that could be used to deploy broadband infrastructure or services.

Applicants which are local governments or affiliated organizations must identify in their applications partners which are private for-profit or non-profit companies with experience in the development and operation of broadband networks and services. If awarded, such partners shall be considered subrecipients of grant funds.

## Reimbursable Expenditures

Projects receiving 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. Tower and pole costs: Includes the construction of new towers (where required infrastructure does not exist) and costs involved with structural changes to existing towers;
4. Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments;
5. Equipment shelter, land, site preparation, and site restoration costs;
6. Customer premises equipment: Funding only covers up to the network demarcation point (*e.g.*, NID, ONT, or wireless subscriber module);
7. Professional services: Includes engineering and project management costs involved in designing and constructing the proposed project;
8. Testing;
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.

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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.<sup>2</sup>

Expenditures on ineligible costs cannot be used as match.

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.

### [Application Deadline](#)

Applications must be submitted to the Department by January 31, 2022, at 3:00 p.m., Eastern Standard Time.

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<sup>2</sup> This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4.

## Primary Program Requirements

### Eligible Service 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 services with a speed of at least 25/3 Mbps.

The Department separately will publish a map at <https://broadband.wv.gov> of Eligible Service Areas with an estimate of the number and location of Targeted addresses for each area. Proposals will be required to serve all Targeted addresses in awarded Eligible Service Areas. Proposals can include non-contiguous Eligible Service Areas.

### Additional Service Areas

Applicants may propose to serve Additional Service Areas containing unserved addresses not identified as “Targeted addresses” and not contained in Eligible Service Areas. An “unserved address” must lack access to wireline mass-market broadband service of at least 25/3 Mbps. Applicants must identify the Additional Service Areas at the time of application, along with the location of claimed unserved addresses within them. Additional Service Areas may not overlap with Funded Projects. The Department separately will publish a map at <https://broadband.wv.gov> of addresses which may not be included in Additional Service Areas because they are considered to have a Funded Project. The Department may accept or reject proposed Additional Service Areas in whole or in part based on the information provided in the application and other information available to the Department about the availability of service in the proposed Additional Service Areas. Proposed unserved addresses in Additional Service Areas accepted by the Department will be considered Targeted addresses.

### Required Performance and Service Tiers

Applicants are encouraged to develop projects that provide speeds of at least 1000/500 Mbps. At a minimum, projects receiving 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 must

propose projects offering 100 Mbps or greater symmetrical speeds when practicable. Applicants proposing projects that cannot reliably provide upload speeds of 100 Mbps symmetrical as proposed must identify how their proposed project will be scalable to 100 Mbps symmetrical speeds or greater 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; 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

Applicants must commit to provide at a minimum the lesser of (i) \$500 of matching funds per address passed by fiber or cable lines or covered by wireless facilities funded by the program or (ii) 25% of the eligible costs proposed for the project. Applicants who propose to use option (i) and provide less than 25% match must include in the count of the project's potential subscriber locations both:

1. The number of Targeted addresses within the proposed Eligible Service Area(s) in the proposed project, as estimated by the Department for those Service Areas, and
2. The number of non-Targeted addresses that the proposal identifies will be passed by the proposed project.

Non-Targeted addresses must be considered "passed" if they are within 250 feet of a proposed project fiber or cable route and the facilities along the route will be capable of providing last-mile services to those addresses. Applicants may include in their count additional non-Targeted addresses set back further than 250 feet from the proposed project route. All Targeted addresses within the proposed Eligible Service Area must be passed or covered by the proposed project, including those set back more than 250 feet from the proposed project route.

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Matching funds must be spent by applicant prior to reimbursement by grant funds. Match must be spent on allowed expenditures.

Proposals with no contingent sources of match are preferred, and the Department may decline to consider proposals that identify contingencies for substantial portions of proposed match, or for which there is significant risk that contingencies will not be met if the project is funded. In-kind contributions may not be used as match. The minimum matching funds must be provided by the applicant, or if the applicant is a municipality, county, or an affiliated organization, from its private partner. Public partners or other grant funds may provide additional match.

### 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.<sup>3</sup>

### Governance and Management

Proposals from local governments and affiliated organizations 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. All applicants must demonstrate that they will have the technical and managerial experience required to successfully operate the proposed project.

### 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

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<sup>3</sup> <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>

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:

- **Eligible Service Areas.** Applicants seeking a waiver of the requirement that awarded projects serve all Targeted addresses in awarded Eligible Service Areas must specifically identify those parts of the proposed Eligible Service Area(s) for which the applicant is seeking a waiver. The applicant must identify why such area(s) are technically infeasible for the proposed network to serve or are more appropriately served by a project other than one associated with the proposed Eligible Service Area(s).
- **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.

### 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's legal name and d/b/a. 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. Applications must include a statement from an officer or authorized employee of the applicant attesting that the statements and information contained within it are true to the best of his or her knowledge.

#### Network Technology Standard

Proposals must identify the network technology standard or standards to be used in the proposed network, such as DOCSIS 3.x, GPON, EPON, NG-PON2, XGSPON, and Active Ethernet. Networks using a PON architecture must identify the split ratio(s) to be used on the proposed facilities.

#### Proposed Funded Service Area and Proposed Network

Projects must identify the Eligible Service Areas included in the proposed project, and Additional Service Areas, if applicable. Proposals must include the proposed broadband infrastructure utilized to reach the Targeted addresses within the proposed Eligible Service Areas and Additional Service Areas. This should include the proposed network technology and standard or standards to be used in the proposed network, and the proposed high-level network design.

High-level designs for networks utilizing fiber or cable technology must include but not be limited to the proposed fiber or cable routes to reach the proposed Targeted addresses. Proposed routes submitted must include any new routes needed to connect to the applicant's existing network. If interconnected with an existing network, proposals must also show the applicant's existing fiber or cable network routes within the municipalities (or if in an unincorporated area the county magisterial district) in or from which the applicant is proposing to extend its network. Existing routes may be either actual cable or fiber line routes, or the roads along which the applicant has existing network in the municipality or municipalities.

Proposals utilizing wireless technology must include a projected propagation plot of coverage from the proposed access points for point-to-multipoint networks and links for point-to-point elements, and an accompanying description of key assumptions used. The key assumptions shall include the prediction tool used, terrain and clutter resolution used to generate the plot, the signal strength (RSSI or RSRP for an LTE network) threshold at which areas are considered covered or uncovered, and the assumed height above ground level of subscriber equipment. Propagation plots may show multiple levels of service, but at a minimum should clearly identify signal

strength at which users could expect to receive service in excess of 100/100 Mbps and 100/20 Mbps.

Respondents utilizing wireless technology must identify the sites used in the coverage projection. For each access point, the response must identify:

1. The latitude and longitude of the site,
2. Base station antenna information including manufacturer, model, azimuth, down tilt, and center line,
3. Base station equipment information with manufacturer, model number, and EIRP,
4. Whether the support structure at the site is existing or planned, whether the applicant intends to lease or own the structure, and whether the applicant has already acquired rights to use the site.

Information must be provided by sector for sectorized sites. If a proposal includes point-to-point wireless links, the proposal shall identify the points linked, the frequency to be used, data transmission rate supported, and link budget.

Proposals must include manufacturer data sheets for key radio equipment and antennas that are consistent with the projected coverage or reach shown on the planned network, including for point-to-point links, point-to-multipoint access points and end user equipment.

Proposals utilizing wireless technology must provide the same information for any adjacent sites in the applicant's existing network (sites which may provide overlapping coverage from the proposed sites). Upgrades to existing sites must provide site information before and after the proposed upgrade. If the use of licensed spectrum is proposed information must be provided demonstrating applicants' permitted use of the spectrum.

#### Support for Additional Service Areas

Applicants must submit information to define Additional Service Areas, if any are proposed, and to demonstrate to the Department that the areas are unserved.

Applicants must submit GIS polygons defining the proposed Additional Service Areas and GIS points defining the claimed unserved addresses within them. At a minimum, supporting documentation demonstrating that the proposed addresses are unserved must include end-of-line surveys of cable or fiber infrastructure on poles for the nearest cable or fiber-to-the-premise network or networks to the proposed Additional Service Areas. The submitted end-of-line surveys routes must show either actual

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coaxial cable or fiber line routes, or the roads along which cable or fiber serving customers exists in the community, and the routes surveyed along which no cable or fiber infrastructure serving customers was observed.

#### Map Information Format

Map information must be provided in electronic format. Proposed and existing fiber or cable routes or proposed and existing access point sites and propagation plots, end-of-line surveys, proposed Additional Service Areas, and claimed unserved addresses may be submitted as either an ESRI shapefile or a KMZ/KML file.

#### Project Budget and Funding Sources

Applications must include a proposed budget and maximum project cost using a Microsoft Excel spreadsheet template provided by the Program available as a download within the On-line Grant Application. The proposed project cost must be broken down by major cost categories provided in the template.

Applications must detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost. The application must identify the amount of grant funding sought from the program, and the amount of other funding from other sources including match from the applicant and any other sources of grant funds. The application must identify if any matching funds are from loans or backed by loan guarantees specifically backed or secured by the assets or revenues of the proposed project.

#### Project Plan

Applications must include a proposed project plan and timeline with major milestones showing that the proposed project can be completed within 24 months of award. The plan should include any major contingencies in the plan. It should include at a minimum major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), site acquisition and permitting, (including timely submission of required permits) construction of routes, and activation of customers. Projects utilizing wireless technology should include major milestones related to site acquisition and permitting, including timely permit applications, tower construction, and access point activation.

### Proposed Services

Applications must include a list of common service tiers, including upload and download speeds, data caps, and prices that the applicant proposes to offer to residential and small business customers in West Virginia on the applicant's 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 application should identify any discounts currently offered by the applicant or through government programs to low-income households. The application 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. Applicants must include the cost of long drops to Targeted locations within proposed Eligible Service Areas within the proposed project cost instead of treating these locations as non-standard installations.

### Maximum Project Size

An applicant may submit multiple Proposals, but each Proposal should contain an estimated number of Targeted addresses not greater than 5,000. The grant amount requested for each Proposal should not be greater than \$20,000,000.

### Overlaps

For each Proposal, the applicant must submit the percent of the Proposal that the applicant would accept to be eliminated due to overlaps with competing Proposals, measured by the estimated Targeted addresses in the Proposal's Eligible Service Areas. The percent overlap will be assessed based on the estimated Targeted locations within the Eligible Service Areas. Applicants must accept up to 20% reduction in their project due to overlaps, with a reduction in grant funding proportional to the reduction in Targeted addresses in the project. Applicants may specify a higher percentage reduction that they would be willing to accept. At its option, The Department may request an applicant make modifications greater than this percentage to eliminate overlaps with projects proposed under other broadband programs run concurrently by the Department, while submitting a revised budget. The Department may defer a project's final scoring and prioritization pending submission of revisions.

### Applicant Experience

Proposals must describe the experience of the applicant and its selected partners and vendors sufficient to successfully build and operate the proposed network.

### Applicant and Project Financials

Applicants who propose a project that would cover Targeted addresses greater than 10% of the count of their existing subscribers in West Virginia must provide its audited financial statements covering the most recent two years completed prior to the application deadline and a pro forma cash flow for the proposed project. If an applicant does not have audited financial statements, it may provide unaudited statements, but must complete an audit prior to receipt of grant funds.

In the alternative, applicants who have substantial operations outside of West Virginia may fulfill the requirement by submitting information documenting the approximate scale of operations across the company relative to the size of the proposed project.

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, partner contributions, cash reserves, debt, and 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.

## Application Review

### Department Information Requests

During the application review process the Department, (including through its contracted technical reviewers), may request clarification from applicants regarding information submitted, additional supporting documentation, or opportunities to cure minor deficiencies related to eligibility criteria. The Department may also make requests for clarification or additional supporting documentation related to project prioritization factors.

The Department will initiate a request via an e-mail message to the primary contact listed in the application. Requests will include a deadline to respond to the request, which will typically be between one and four business days. Responses to requests will become part of the application.

The Department may review submitted applications based on information submitted by the Applicants by the application deadline, without making additional requests. If made, requests will be to further the Department's interests in considering a broad range of applications and bringing improved broadband to as many West Virginia Targeted locations as possible in a technically sound and cost-effective manner. Applicants should not rely on an opportunity to supplement or clarify information after the application deadline and should take care to include all information requested by the application in a clear and understandable manner.

### Project Prioritization

Awards will be prioritized among proposals and applicants meeting Program eligibility requirements ("Eligible Proposals"). Evaluation will score the Eligible 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.

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- 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.

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- 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 proposed by the applicant— 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. Level of demonstrated community support through formation of a public-private partnership, local government land, facilities, or matching funds provided, local agreements to take service, response to presubscription campaigns—up to 30 points.



10. Community impact factors—up to 50 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; or
  - 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.

#### 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

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Proposed Project Funded Service Area. For submissions made in response to Announcements issued before February 3, 2023, 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 started 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.

For submissions made in response to Announcements issued on or after February 3, 2023, data submitted must meet the BDC Availability Data Specifications for submission to the Federal Communications Commission (FCC) as part of its Broadband Data Collection mapping initiative. ISPs may only submit data on existing service that they have reported to the FCC for the reporting period ending December 31, 2022, unless they can demonstrate that they are reporting on service made available on or after January 1, 2023. In addition, ISPs must include in any submission their existing fiber or cable network routes within the municipalities (or if in an unincorporated area the county magisterial district) in which they are claiming to provide service.

ISPs submitting data in support of a claim of existing service may request that the Department treat as confidential information about the ISPs network that is not otherwise available to the public. However, the Department will not treat as confidential and may publish the locations claimed to be served by the submitting ISPs and the services, speeds, and prices that the ISP claims to offer at these locations, and any other information submitted by the ISP that the FCC publishes.

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;

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- 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 through their own staff and/or by hiring and managing well-qualified contractors. 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 cable or fiber networks whose credentials are submitted along with the design. To expedite construction and with the prior approval of the Department, Awardees may receive reimbursements prior to submission of engineered designs:

- For preconstruction costs,
- On projects which require phasing of construction, for those phases for which the Awardee has submitted an engineered design, and
- Up to the first 15 days of construction costs of an awarded project or project phase.

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 Department contractors to verify constructed plan 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, 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).

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- 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 awarded to local governments or affiliated organizations, 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. Potential applicants should become familiar with federal requirements and guidance specific to the Capital Projects Fund.<sup>4</sup>

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 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;

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<sup>4</sup> For example, see US Dept. of Treasury Guidance for the Coronavirus Capital Projects Fund, § I(E), pages 11-12.

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- 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);

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- 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 Federal Funds Obligations

The U.S. Treasury has released Guidance for the Coronavirus Capital Projects Fund.<sup>5</sup> 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. 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.<sup>6</sup> 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*.<sup>7</sup> Applicants should review this *Guide* and the applicable guidance provided and requirements identified by U.S. Treasury.

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<sup>5</sup> <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>

<sup>6</sup> 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>.

<sup>7</sup> This document will be made available at <https://broadband.wv.gov>.



### 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.<sup>8</sup>

### Modification of Grant Funding Awarded

The Secretary, upon request of the awardee, may modify the amount awarded to a grant recipient up to 10% of the originally awarded amount, or modify the awarded areas, upon a determination that to do so is in the best interest of the state and that the modification is necessary for or consistent with the continued feasibility of the project and to ensure that the greatest number of unserved locations possible receive broadband service.

Applicants may request a modification because (i) completion of project requires extraordinary costs that the awardee could not reasonably have foreseen at the time of application, or (ii) the actual Targeted addresses in awarded Eligible Service Areas are greater than the estimated number of Targeted addresses, and the applicant neither was nor should have been aware of such Targeted addresses at the time of application. Modification of grant funding amounts are subject to availability of funds remaining to the Program.

Awardees may request modifications to allow use grant funds awarded but not needed to complete the awarded project due to achievement of cost savings. Awardees may request such modifications to further expand broadband service to additional unserved addresses outside the originally awarded Eligible Service Areas and Additional Service Areas. Awardees shall accompany such requests with the information required to propose Additional Service Areas.

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<sup>8</sup> See <https://www.fcc.gov/BroadbandData>.