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## Program Procedures for West Virginia ARPA Broadband Investment Plan

### Line Extension Advancement and Development Program Round 2 Funding

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 Line Extension Advancement and Development Program (“Program”) to increase the availability of broadband services available to West Virginians. The Line Extension Advancement and Development (LEAD) Program is part of the West Virginia Broadband Investment Plan (WVBIP) and will fund extensions of existing last-mile cable modem and fiber-to-the-premise broadband networks that can be constructed quickly. This second round of program funding will build off the first round of the program, first launched on November 4, 2021, with minimal changes to the overall program:

- Maximum per project funding increased from \$5,000,000 to \$8,000,000.
- Individual proposed projects may not contain Targeted addresses from more than two counties in West Virginia; Applicants may, however, submit more than one proposed project containing Targeted Addresses from more than two counties in the aggregate.
- 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.
- One submission deadline, not rolling submissions with three deadlines.

### 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 State and Local

Fiscal Recovery Fund (SLFRF)<sup>1</sup> and Capital Projects Fund (CPF) of the American Rescue Plan Act (ARPA).<sup>2</sup>

Approximately \$30 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

Internet service providers are eligible if they have an existing fiber-to-the-premise or cable network offering service of at least 100 Mbps download and 20 Mbps upload to mass-market users that can be extended to Targeted premises in West Virginia. 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.

### 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 to the 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;

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<sup>1</sup> <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

<sup>2</sup> <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>

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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. 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
9. 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. Short-term operating leases;
9. Payment of interest or principal on outstanding debt instruments, or other debt service costs;
10. Fees or issuance costs associated with the issuance of new debt;
11. 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
12. To support or oppose collective bargaining.<sup>3</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 served addresses are reimbursable, but expenditures solely to benefit served addresses are not reimbursable. Customer drops, installations, and equipment at served 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.

### Application Deadline

The application deadline is March 29, 2023, at 11:59 p.m., Eastern Standard Time.

### Funding Decisions / Preferred and Non-Preferred Applications

Applications to the Program may be either “Preferred” or “non-Preferred” depending on whether they reach addresses at the “end of the line” in locations that would be very difficult to reach except by overbuilding the proposed project. “Preferred” applications

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

will be prioritized for review and funding decisions after each application deadline. “Non-Preferred” applications may also be funded but may take longer to review and be carried over into subsequent rounds for review and decision, and/or only funded after first funding some or all “Preferred” applications.

*Table 1: Program Preference Conditions*

<b>Program Preference Conditions</b>	<b>Preferred</b>	<b>Non-Preferred</b>
<b>Project Scope</b>	Projects that reach the “end of the line”	Projects that do not reach the “end of the line”

### Primary Program Requirements

#### Eligible Areas

The Department will publish a map at <https://broadband.wv.gov> of Target Areas locations eligible for funding, identified by address. Applicants may propose projects to extend cable or fiber lines to addresses that are within Target Areas. Applicants are encouraged to include Targeted addresses at the “end of the line.” Proposed projects must build to the serving pole (for aerial plant) or property line (for underground plant) of any Targeted addresses included in the project. A proposal may include multiple non-contiguous proposed service areas.

#### Size of Project

Applicants are encouraged but not required to group projects into packages of not fewer than 50 Targeted addresses. Proposed projects may not each contain address counts exceeding 10% of applicants’ existing customers counts in West Virginia and neighboring states. Applicants submitting proposals requesting more than \$8,000,000 in grant funding may be asked to divide the proposal. Individual proposed projects may not contain Targeted addresses from more than two counties in West Virginia. Applicants may, however, submit more than one proposed project containing Targeted Addresses from more than two counties in the aggregate.

#### Required Performance and Service Tiers

Proposed projects must be capable of offering services of at least 100 Mbps download and 20 Mbps upload and less than 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 symmetrical speeds when practicable. Applicants must already be delivering proposed service tiers in West Virginia or a neighboring state and must offer tiers on the proposed project that are no less favorable than those typically offered to the applicant's other mass-market customers in West Virginia. Applicants proposing projects that cannot reliably provide upload speeds of 100 Mbps as proposed must describe 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. Where practicable, applicants are encouraged to offer higher speed service tiers, including Gigabit service (1000 Mbps download / 500 Mbps upload).

#### 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 least \$500 of matching funds per address passed by fiber or cable lines funded by the program, whether the address passed is Targeted or non-Targeted. Matching funds must be spent by the awardee prior to reimbursement. Match must be spent on allowed expenditures. Applicants must commit to matching funds at time of application; no contingent matching sources are allowed. In-kind contributions may not be used as match.

The Secretary of the Department may grant waivers of the minimum matching funds requirement or to allow funds not provided by the applicant to serve as match for a proposed project. Applicants seeking a waiver must include the request with the application and 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. 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 request additional information from applicants requesting waivers to assist it in advising the Secretary in a determination.

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.

#### *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. Specifically, Applicants must participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program.

#### *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 Routes

Proposed projects must identify the Targeted addresses to be served by the proposed project. Addresses submitted must be addresses found on the Target Area maps published by the Program.

Proposals must include the proposed fiber or cable route to reach the proposed Targeted addresses. Proposed routes submitted must include all new routes needed to connect to the applicant's 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 must also identify the additional served addresses expected to be passed to reach the Targeted addresses. Addresses must be considered "passed" if they are within 250 feet of the proposed project route and the facilities along the route will be capable of providing last-mile services to those addresses. Applicants may include addresses set back further than 250 feet from the proposed project route. Applicants are strongly encouraged to include all Targeted addresses as passed by the proposed project route, including those locations set back more than 250 feet from the proposed route. Projects that do not do so may be considered not to have gone to the "end of the line" and may be considered non-Preferred.

Map information must be provided in electronic format. Addresses may be submitted as either an ESRI shapefile or CSV file but must include the unique ID code for each address on the Target Area maps. Proposed and existing fiber or cable routes may be submitted as either an ESRI shapefile or a KMZ/KML file. Proposed and existing routes must be submitted as separate files.

### Project Budget and Funding Sources

Applications must include a proposed budget and maximum project cost using a Microsoft Excel spreadsheet template provided 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. It should include, at a minimum, major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), permitting (including timely submission of required permits) construction of routes, and activation of customers.

### Existing and Proposed Services

Applications must include a list of common service tiers, including upload and download speeds, data caps, and prices currently offered to residential and small business customers in West Virginia on the applicant's existing network. If an applicant has no facilities in West Virginia but does have facilities in a neighboring state, the application should describe services in the state nearest to the proposed project. The application should describe typical latency experienced by users on the 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 non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops. The application should identify any existing discounts offered by the applicant or through government programs to low-income households.

### 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 or factors affecting an application's preferred or non-preferred status. 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. Requests related to clarification or revision of a proposal related to Non-Preferred Preference Condition may take longer than this timeframe, which may result in deferral of a funding decision for the project.

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, Financial and Broadband Development Impact.

Fifty points may be awarded in the technical evaluation based on the following prioritization factors:

1. Project Readiness, the degree to which the proposed project demonstrates:
  - (i) the commitment of proposed match sources, (ii) the completion of preliminary engineering, (iii) the attainment of necessary permits, right-of-way access, and easements, and (iv) 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.

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- c. Demonstration of substantial readiness on some factors—up to 10 points.
- 2. The ability of the proposed project to serve customers at a gigabit speed (1000/500 Mbps)— 20 points.

Fifty points may be awarded in the financial evaluation based on the on the following prioritization factors:

- 3. 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.
- 4. The amount of matching funding proposed by the applicant—one point for every \$100 in matching funding provided over \$500 per passed address, up to a maximum of 10 points (which equals \$1500 per passed address).

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

- 5. Affordability–

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- 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 \$10 under \$85/month, up to a maximum of 5 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 Affordable Connectivity Program—5 points.
6. Community impact factors—up to 40 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 unemployment, high poverty, 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 within 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.

An Eligible Project will be evaluated relative to other projects submitted on or before the application deadline by which the project was submitted. Projects with a high point value in all three areas, Technical, 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 into subsequent rounds.

### Project Overlaps

If multiple Eligible Projects contain overlapping Proposed Service Areas, the Department may request one or more applicants revise their proposals to eliminate the overlaps. The Department may also 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.

### 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 the BDC Availability Data Specifications for submission to the Federal Communications Commission (FCC) as part of its Broadband Data Collection mapping initiative.<sup>4</sup> 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 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. 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.

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<sup>4</sup> See <https://www.fcc.gov/BroadbandData>.

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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 served, 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 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.

### Review of Designs, Reimbursement Requests, and Completed Networks

Awardees must submit engineered designs for awarded projects 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. This review requirement may be waived by the Department for projects awarded less than \$1,000,000 in grant funding to facilitate projects with a rapid project construction schedule. 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 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:

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- 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).
- 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.

### 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 (CPF) or State and Local Fiscal Recovery Funds (SLFRF) for broadband projects 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 Project Fund<sup>5</sup> and State and Local Fiscal Recovery Funds.<sup>6</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 \$8 million in expected total cost, and for CPF–funded projects receiving \$5 million or more in CPF funding based on expected total cost:

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<sup>5</sup> For example, see US Dept. of Treasury Guidance for the Coronavirus Capital Projects Fund, § I(E), pages 11-12 (<https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>).

<sup>6</sup>SLFRF Final Rule, 87 Fed. Reg. 4393 (Jan. 27, 2022) (<https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>).

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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:

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- 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 Federal Funds Obligations

The U.S. Treasury has released Guidance for the Coronavirus Capital Projects Fund,<sup>7</sup> as well as the State and Local Fiscal Recovery Fund.<sup>8</sup> Awardees of Treasury funding, whether CPF or SLFRF funds, must comply with ARPA funding recipient obligations,

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<sup>7</sup> <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>

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

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. 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>9</sup> Applicants 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. Information must be reported statewide at the address level for all broadband networks operated by the awardee. The Department intends to coordinate information requested with required reporting under the Federal Communications Commission's Broadband Data Collection initiative to minimize reporting burdens.<sup>10</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 completion of the project requires extraordinary costs that the awardee could not reasonably have foreseen at the time of

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<sup>9</sup> This document will be made available at <https://broadband.wv.gov>.

<sup>10</sup> See <https://www.fcc.gov/BroadbandData>.

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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 Targeted addresses outside the originally awarded Targeted addresses.