

Title 15. Natural Resources and Economic Development

Chapter VIII. Arkansas Economic Development Commission, Department of Commerce

Subchapter C. Community Development Grants

Part 189. Arkansas Rural Connect Broadband Grant Program

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 2. Introduction

As broadband access becomes more necessary to normal modern life, there is growing concern about a digital divide, whereby some areas are cut off from opportunities for economic development by a lack of adequate broadband service. To help close that digital divide, the ARC Program is being instituted to help communities incentivize providers to deploy adequate broadband service to their residents. The program will provide funds to internet service providers (ISPs) to serve target municipalities at the request of those municipalities. ARC funds will be allocated on a competitive and transparent basis, with efforts made to maximize the impact of scarce state funds.

Section 3. Authority

This proposed Rule is issued by the Director of the Arkansas Economic Development Commission ("AEDC") under Ark. Code Ann. § 15-4-209(b) (5) which provides that AEDC may promulgate rules necessary to implement the programs and services offered by AEDC. On or about August 9, 2019, Governor Asa Hutchinson authorized a transfer of funding for the implementation and administration of the ARC Program to AEDC. Pursuant to Ark. Code Ann. § 15-4-209(a)(1), AEDC is authorized to administer grants to assist with the economic development in the State. The ARC Program is therefore authorized to administer the ARC grant and authorized to establish administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC.

"Section 12. Severability Clause

A. Any section or provision of this rule held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision.

Section 13. Effective Date

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State."

Subpart 1. General Provisions

15 CAR § 189-101. Purpose.

(a) The purpose of this part is to help implement polices advanced in the Arkansas State Broadband Plan (hereafter, the "broadband plan report") as issued by the office of Governor Asa Hutchinson on May 15, 2019.

(b) This part is intended to establish requirements for governmental entities to participate in the Arkansas Rural Connect Broadband Grant Program (hereafter, "ARC" or the "ARC Grant Program") in order to provide or expand broadband services consistent with the broadband plan report, resulting in increased educational opportunities, healthcare opportunities, and economic development opportunities and ensuring all Arkansans have equal access to the services they can use to improve:

- (1) Their quality of life;
- (2) Their community; and
- (3) This state.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-102. Definitions.

As used in this part:

(1) "25/3" means minimum speed twenty-five megabits per second (25 Mbps) download/three megabits per second (3 Mbps) upload;

(2) "AEDC" means the Arkansas Economic Development Commission;

(3) "ARC" means Arkansas Rural Connect;

(4) "ASBO" means Arkansas Department of Commerce Broadband Office;

(5) "Available" means, in the case of broadband service, that a provider stands ready to provide broadband service to a location within thirty (30) days of a request for service being made;

(6) "Broadband" means an internet connection by fiber optic cable, coaxial copper wire, DSL, or fixed wireless with:

(A) At least twenty-five megabits per second (25 Mbps) download/three megabits per second (3 Mbps) upload speeds;

(B) Latency less than one hundred milliseconds (100 ms); and

(C) No data usage caps or throttling below one hundred fifty gigabytes (150 GB) per month;

(7) "Community" means a:

(A) Municipality;

(B) Unincorporated community; or

(C) County;

(8) "ESRI Shapefile" means a geospatial vector data format that can be utilized by ESRI or other GIS software;

(9)(A) "Interdependent projects" means projects which:

(i) Are part of a set of projects involving the same ISP, each of which the ISP commits to implement only if all of the projects in the set get funded; and

(ii) Will be assumed, for purposes of project selection, to be less desirable to implement if some of the projects in the set are not funded.

(B) This may occur, for example, if deployment involves creating shared assets that need to recover costs from multiple projects to be economically justifiable.

(C) The Arkansas Department of Commerce Broadband Office will:

(i) Take note of the interdependent nature of the projects; and

(ii) Avoid approving any interdependent project if the other projects in the interdependent set are not also funded;

(10) "ISP" means internet service provider, its successors, or assigns;

(11) "Location" means any structure that is legally fit for occupancy as a commercial or residential dwelling;

(12) "Mbps" means megabits per second;

(13) "Municipality" means a legally incorporated municipality under Arkansas law;

(14) "Project cost" is the entire capital cost of a broadband project;

(15) "Project footprint" is the geographic territory within which a project will provide broadband coverage;

(16)(A) "Project organizers" means public officials, ISPs, civic groups, or anyone else who takes a leading role in developing an Arkansas Rural Connect broadband project.

(B) While projects may be catalyzed, initiated, organized, and developed, in principle, by anyone, the set of people who can actually submit applications for Arkansas Rural Connect grants is more limited, as explained in 15 CAR § 189-401 et seq.;

(17) "RFA" means request for applications;

(18) "State grant" is the amount of money that grant applicants:

(A) Request from Arkansas Rural Connect in order to close the business case for a project; and

(B) Will receive from the state if their project is approved and deployment proceeds as anticipated;

(19)(A) "Unincorporated community" means a population center with historic boundaries that are understood in local custom and amenable to mapping, but which is not legally incorporated as a municipality.

(B) Census designated places recognized by the United States Bureau of the Census are automatically recognized as unincorporated communities, while other unincorporated communities' status and boundaries must be established by maps and narratives, as explained in 15 CAR § 189-305(c)(2)(A); and

(20) "Unserved" means that a location lacks access to broadband service by fiber optic cable, coaxial copper wire, DSL, or fixed wireless at any price.

Authority. Arkansas Code § 15-4-209.

Codification Notes. "DSL" means digital subscriber lines.

"ESRI" means Environmental Systems Research Institute, Inc.

"GIS" means geographic information system.

Subpart 2. Arkansas Rural Connect Grant Program Funding

15 CAR § 189-201. Fund utilization.

(a) The Arkansas Economic Development Commission may utilize any funds appropriated to the commission for purposes of expanding high-speed broadband services to rural communities.

(b) Likewise, the commission may utilize those funds in conjunction with the ARC Grant Program to provide grants to ISPs in return for commitments from applicants to make broadband service, as defined by this part, available to residents of those communities.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-202. Reimbursement.

(a) Funds will be used to reimburse ISPs on a proportional basis for capital expenditures on approved projects, such that they will be owed by the state an amount of money equal to their capital expenditures on the project, multiplied by the ratio of the approved state grant to the total project cost, and capped at the grant award, with eighty percent (80%) of this debt paid as quarterly reimbursements and the remaining

twenty percent (20%) upon completion of the deployment and the achievement of project goals.

(b)(1) To receive reimbursement, ISPs shall submit:

(A) Receipts for all reimbursable expenses; and

(B) A concise quarterly project narrative of less than one thousand (1,000) words accompanied, if necessary, by photographs, maps, tables, or timelines explaining their investment activities.

(2)(A) Quarterly project narratives and receipts are due within sixty (60) days of the end of the quarters ending on March 31, June 30, September 30, and December 31 of each year.

(B) The receipts shall be labeled with unique numbers, and the project narrative should allude to receipts by number and explain, in the context of the project, the purpose of the expenditure.

(3)(A) The narrative shall:

(i) Be sufficiently detailed to be verified by physical inspection of the sites where investment activities took place; and

(ii) Also update the Arkansas Department of Commerce Broadband Office on the:

(a) Number of locations connected to broadband; and

(b) Likelihood that the project will be completed on schedule.

(B) Known delays in the project timeline should be noted.

(4) Within thirty (30) days of the receipt of these materials, the broadband office shall either approve the reports or request more information.

(5) Funds shall be disbursed to ISPs within fourteen (14) days of the approval of the quarterly project narrative.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-203. Allowable expenses.

(a) Allowable expenses do not include the following:

(1) Ongoing pole attachment fees, as distinct from make-ready expenses, which are allowable;

(2) Full purchase price of capital equipment that is used for the build phase of the project and that will have value for other construction work after the project is complete;

(3) Operating expenses not related to the project build; or

(4) Any other operating expenses that will be incurred on an ongoing basis after project completion.

(b) Allowable expenses are costs directly related to the construction of broadband infrastructure, including but not limited to the following:

(1) Make-ready expenses for attaching broadband facilities to poles;

(2) Reimbursement for rental or depreciation costs for capital equipment that represent the real opportunity cost of using that capital equipment for construction activities on the project;

(3) Wages of workers physically deploying infrastructure;

(4) Engineering costs related to project design;

(5) Legal costs related to the acquisition of rights needed for broadband deployment;

(6) Costs of fiber optic cable, modems, and other necessary plant for the delivery of 25/3 broadband services;

(7) Costs of obtaining construction permits;

(8) Purchases of indefeasible rights of use in dark fiber; and

(9) Installation and testing of broadband.

(c) Also allowable are expenses for conducting outreach and training for customers and potential customers living in the project footprint to:

(1) Educate them on the value of the internet and how to use it; and

(2) Encourage them to subscribe.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-204. Municipality, unincorporated community, and county participation.

(a) Participating municipalities, unincorporated communities, and counties shall assist ISPs in the acquisition of rights needed for broadband deployment, including all leases, permits, or easements necessary for the purpose of construction and placement of broadband infrastructure on public property.

(b) In connection therewith, participating municipalities and counties shall not charge ISPs fees for pole attachments or permits.

Authority. Arkansas Code § 15-4-209.

Subpart 3. Process Overview

15 CAR § 183-301. Request for applications.

(a) Each round of ARC grant funding will begin when the Arkansas Department of Commerce Broadband Office releases an RFA.

(b) The RFA will include a list of major dates for the round, including:

(1) A deadline for receiving from ISPs maps of broadband coverage that is either currently available or scheduled to become available under the terms of federal or state programs from which they have accepted funding (approximately four (4) weeks after RFA announcement);

(2) The planned date of the release by the broadband office of a map of the areas in Arkansas currently enjoying broadband coverage or scheduled to receive broadband coverage with federal support (approximately eight (8) weeks after RFA announcement);

(3) The date when an application window opens (approximately twelve (12) weeks after RFA announcement);

(4) The date when an application window closes (approximately twenty (20) weeks after RFA announcement); and

(5) The date when grant awards will be announced (approximately thirty-two (32) weeks after RFA announcement).

(c) The broadband office:

(1) May adjust the dates at the time of the RFA announcement to work around major holidays;

(2) May postpone dates and deadlines especially when unforeseen circumstances arise; and

(3) Shall give fourteen (14) days' notice at its discretion.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-302. Internet service provider coverage maps.

(a) At the same time as the RFA announcement, the Arkansas Department of Commerce Broadband Office will request that ISPs operating in Arkansas submit maps of the areas in which they either:

(1) Provide broadband coverage (25/3, low latency, no data usage caps or throttling below one hundred fifty gigabytes (150 GB) per month, as stated in 15 CAR § 189-102); or

(2) Have made commitments to governmental agencies like the United States Department of Agriculture, the Federal Communications Commission, or the broadband office (in the event of subsequent rounds of ARC grant funding) to establish broadband coverage in return for financial support.

(b) The goal of this data collection is to target funds to areas that currently lack and are not publicly scheduled to receive broadband service.

(c)(1) For ISPs which do not submit broadband coverage maps, the broadband office will use data from the most recent release of the FCC Form 477 data to map their coverage.

(2) ISPs are not required to submit broadband coverage maps, and are encouraged not to do so if the most recent release of FCC Form 477 data to the public adequately describes their current broadband coverage.

(3) But ISPs that have expanded their broadband coverage footprint too recently for the expansion to be captured in public FCC Form 477 data are encouraged to submit coverage maps both in:

(A) The public interest to prevent subsidies being targeted to areas of lesser need; and

(B) Their own private interest to avoid a risk of facing a publicly subsidized competitor.

(d)(1) After ISPs submit maps of current broadband coverage and government-backed commitments to broadband deployment, the broadband office will combine this information with FCC Form 477 data to create a map of current and scheduled broadband coverage in the state of Arkansas.

(2) This will assist mayors and county judges to ascertain whether the municipalities, unincorporated communities, and counties they represent will be eligible for ARC broadband grant funding.

(e)(1) Municipalities, unincorporated communities, and counties are eligible for ARC broadband grant funding if:

(A) No more than eighty percent (80%) of their populations are served;

(B) They have at least five hundred (500) people; and

(C) They have at least two hundred (200) people unserved.

(2) For more details on service area eligibility, see 15 CAR § 189-401(a).

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-303. Stakeholder roles.

(a) Project organizers who aspire to bring broadband to an unserved area with the help of an ARC grant shall:

(1) Develop an implementation plan with a budget; and

(2) Define roles for all stakeholders.

(b)(1) The necessary stakeholders in every project are:

(A) A local government, county or municipal, as represented by a public official, who may be a:

(i) Mayor or county judge in the case of an incorporated municipality;

or

(ii) County judge in the case of an unincorporated community or county; and

(B) The ISP or ISPs that will deliver retail service to consumers.

(2) Other stakeholders might include businesses or nonprofits that commit to provide funding or purchase service.

(c)(1) The public official shall first serve as a spokesperson for the preferences and the economic development ambitions of the community that will receive broadband service, then later, if a grant is awarded, assist the Arkansas Department of Commerce Broadband Office in monitoring the ISP's performance.

(2) The ISP or ISPs, and not the public official, will be responsible for building the facilities and providing broadband service to customers.

(d) Other allocations of responsibilities between local governments and ISPs may be considered by the broadband office on a case-by-case basis.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-304. Grant eligibility.

(a)(1) Each ARC grant project shall identify a specific municipality, unincorporated community, or county that will receive broadband coverage.

(2) The public official who coapplies for the grant must represent that community.

(b) To be eligible, the municipality, unincorporated community, or county applying for an ARC grant shall have at least:

(1) Five hundred (500) people;

(2) Twenty percent (20%) of its population currently lacking broadband coverage; and

(3) Two hundred (200) people lacking broadband coverage.

(c)(1) Interdependent projects involving the same ISP (see 15 CAR § 189-311(a) and following) are exempt from these eligibility criteria as applied at the level of a single community.

(2) Instead, the criteria will be applied to the combined territories of the communities covered by the interdependent projects.

(d) Communities with less than five hundred (500) people may apply through their counties or by developing joint projects with other communities.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-305. Project footprints.

(a)(1) Each ARC grant project shall have a well-defined planned geographic service area, henceforward the "project footprint".

(2)(A) The project footprint shall include the entire territory of the municipality, unincorporated community, or county targeted for service that currently lacks broadband coverage.

(B) It may also include other contiguous areas that help to strengthen the business case for the project.

(3) The project shall include a plan to make broadband service available to all locations in the project footprint, where service is considered available if a location can be connected within thirty (30) days of a request for service being made.

(b)(1)(A) Project footprints may be defined which extend beyond the boundaries of the municipality, unincorporated community, or county that is applying, and such extended project footprints can expand the range of allowable expenses under the grant.

(B) However, enlarging the project footprint will not:

(i) Raise the cap for the grant request; or

(ii) Make the project more competitive for funding.

(2) It is expected that extending project footprints to include anchor clients or areas of consumer density that happen to be located outside the borders of a town or county will sometimes:

(A) Attract paying stakeholders;

(B) Help to make the project financially self-supporting after deployment;

and/or

(C) Provide the convenience of making the grant project footprint coincide with the technical project footprint.

(3) Residents of an extended project footprint not resident in the applicant community will enjoy the same rights to broadband coverage as residents of the applicant community.

(c)(1) If the project footprint corresponds exactly to the legal boundaries of a municipality or county or with the established boundaries of a census designated place, no proposed coverage map shall be submitted with the application.

(2) But maps in KML or ESRI Shapefile format are required as part of the application in the following cases:

(A) For unincorporated communities that are not coextensive with census designated places, maps shall be provided indicating where the boundaries of the unincorporated community are, along with a narrative of less than one thousand (1,000) words describing the character and history of the unincorporated community;

(B) Where a community is partially served with broadband, project organizers may submit maps distinguishing areas that already enjoy broadband coverage currently and where, therefore, the ISP applying for ARC grant funding will not be obligated to provide broadband coverage, from areas where broadband coverage is currently lacking and will be provided by the applicant ISP as a result of the proposed project;

(C) Where a project involves more than one (1) coapplicant ISPs, maps must be provided clearly displaying which ISP will have a service obligation at each point in the project footprint; and

(D) Where project organizers choose to extend the project footprint beyond the borders of the applicant municipality, unincorporated community, or county, maps should be provided that clearly establish the boundaries of the project footprint.

Authority. Arkansas Code § 15-4-209.

Codification Notes. "ESRI" means Environmental Systems Research Institute, Inc.

"KML" means keyhole markup language.

15 CAR § 189-306. Capital expenditures and operating expenses.

Project organizers shall estimate the:

(1) Total capital expenditures that will be needed in order to implement the project and document these projected costs for inclusion in an application; and

(2)(A) Ongoing operating expenses that are anticipated in order to provide broadband coverage after deployment is complete, as well as the revenues that can be expected.

(B)(i) Based on these estimates, they shall forecast whether the project will be financially self-supporting after deployment is complete.

(ii) If not, the project is not suitable for ARC grant funding.

(iii) If so, the expected revenues and costs of the project after deployment shall be documented for inclusion in an application.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-307. Securing local resources.

(a) Project organizers may make efforts to secure resources locally to help support the project.

(b) A municipality or county wanting to apply for Arkansas Rural Connect funding may assess what funds it has available that might be contributed to the project.

(c) Local businesses and other anchor clients may be contacted to see whether they might join the project in the role of stakeholders and commit funds.

(d) The ISP itself shall consider whether the anticipated net income resulting from the project justifies the ISP in making a commitment to private coinvestment, and if so, how much.

(e) Funds distributed through federal universal service programs, if they have not already obligated the ISP receiving them to deploy broadband as defined here (especially 25/3 speeds), may also contribute to the overall financing of an ARC grant project, reducing the state grant needed.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-308. Grant size — Maximum grant amounts.

(a)(1) As project capital costs and net income after deployment are calculated and local funding sources are identified, project organizers shall consider the size of the state grant that will be needed to make the project acceptable to all parties and arrive at a decision before applying.

(2)(A) As general guidance for project organizers in setting the state grant request, ARC seeks to make, for each project, the minimum state grant needed to close the business case and make all stakeholders willing to participate.

(B) But the Arkansas Department of Commerce Broadband Office will not attempt to verify whether the state grants requested actually correspond to this minimum, relying instead on the competitive character of the overall grantmaking process to discipline the size of grant requests.

(3) While the project narrative provided with the application shall include at least a brief description of how the state grant request was set, and obvious improprieties might potentially be disqualifying, project organizers may exercise considerable discretion.

(b)(1) Project organizers shall estimate the number of currently unserved households living in the target municipality, unincorporated community, or county that will receive broadband coverage as a result of the project.

(2)(A) This number of households should then be multiplied by three thousand dollars (\$3,000), yielding the maximum state grant that can be applied for by the target community.

(B) Also, ARC grant requests cannot exceed the maximum of two million dollars (\$2,000,000) or twenty percent (20%) of the total funding available for a round.

(3) If the state grant deemed necessary to make the project viable is greater than the relevant maximum, project organizers may either look for other funding sources or abandon the project.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-309. Project requirements.

(a) Each project must include:

(1) Exactly one (1) municipality, unincorporated community, or county as an applicant; and

(2) At least one (1) but potentially multiple ISPs.

(b)(1) Each eligible municipality, unincorporated community, or county may submit multiple (up to three (3)) applications.

(2) Each application shall be for one (1) project, i.e., one (1) strategy (even if it involves more than one (1) ISP) for achieving the goal of broadband service to all locations.

(c) At most one (1) project per municipality, unincorporated community, or county can be approved.

Authority. Arkansas Code § 15-4-209.

15 CAR § 183-310. Application for multiple projects.

(a) If a municipality, unincorporated community, or county applies for multiple projects, it shall:

- (1) Choose which projects it wants most, second most, and third most; and
- (2) Indicate the rank order of each project with respect to its preferences.

(b) The Arkansas Department of Commerce Broadband Office's selection process will fund, for each community, the most preferred project that can be funded within the budget constraint for the ARC round.

(c) If applications are received both from a county and from municipalities and/or unincorporated communities within a county:

- (1) The countywide project will be prioritized; and
- (2) Projects for municipalities and unincorporated communities within it will be eligible for funding only if the countywide project is rejected.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-311. Projects covering multiple eligible municipalities.

(a)(1) If an ISP wants to launch a project that would cover multiple eligible municipalities, unincorporated communities, and/or counties, it shall:

- (A) Divide the project into subprojects that each cover a single eligible municipality, unincorporated community, or county; and
- (B) Consider whether the subprojects would be worth implementing if they were funded separately.

(2)(A) If the subprojects are commercially feasible as separate projects, the ISP may choose, if the public officials representing the affected communities are willing, to cosubmit separate applications for each subproject.

(B) Otherwise, the ISP may choose to alert the public officials of the interdependent character of proposed projects and, with their agreement, cosubmit the projects as interdependent projects.

(3) The interdependent projects option may also be used to achieve eligibility for ARC grants by combining communities that are too small to be eligible on their own.

(b)(1) When an ISP coapplies with multiple communities on interdependent projects, the ISP shall indicate to the community that the project is interdependent with one (1) or more other projects, such that they cannot be funded and executed separately.

(2) The community, if it still wishes to apply for that project, shall then indicate on the application:

(A) That the project is interdependent with other projects; and

(B) Which other projects it is interdependent with.

(3) The ISP:

(A) Will have the opportunity to view the community's portion of an application before it is submitted; and

(B) Shall check to confirm that the community has accurately represented whether the project is interdependent and with which other projects it is interdependent.

(4) The Arkansas Department of Commerce Broadband Office's project selection process, described below, will then ensure that projects which form an interdependent set are either all approved or all rejected.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-312. Ranking of internet service providers by public officials.

(a)(1) In choosing whom to apply with and how to rank projects, public officials representing municipalities, unincorporated communities, and counties shall prioritize a reasonable conception of the public interest of those communities over any private interests they might have in the ISPs.

(2) They shall:

(A) Disclose all ownership, family ties, campaign contributions, or other substantial ties they may have to the ISPs applying for grants that might be suspected of biasing them in favor of one (1) ISP over others; and

(B) Not coapply with an ISP on behalf of a community if their private interest in that ISP is substantial.

(b)(1) Public officials coapplying for ARC grants shall provide a narrative explanation of less than one thousand (1,000) words about how they developed the application, emphasizing efforts to make the process:

- (A) Transparent;
- (B) Competitive; and
- (C) In the public interest.

(2) This narrative shall be submitted with the application.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-313. Stakeholder requirements.

All official stakeholders in the project, at the application stage, shall:

- (1) Indicate their awareness of ARC rules;
- (2) Read and affirm the accuracy of all information in the application; and
- (3) Declare their consent and commitment to perform the roles allotted to them in the implementation plan.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-314. Submission of additional evidence to support eligibility.

(a) If there is doubt whether a municipality, unincorporated community, or county meets the eligibility criteria for ARC grants based on data about population and/or the quality of current internet service, applicants may submit, along with their applications, evidence that they believe will help to establish their eligibility for an ARC grant-funded project.

(b) The Arkansas Department of Commerce Broadband Office maps of current broadband coverage described in 15 CAR § 189-302(d) and (e) will help applicants

anticipate whether their eligibility can be assumed or will need to be established with the help of extra evidence.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-315. After application window closes.

(a)(1) After the application window closes, the Arkansas Department of Commerce Broadband Office will arrange for eligibility review, as explained in 15 CAR § 189-601(b), process review, as explained in 15 CAR § 189-601(c), and technical review, as explained in 15 CAR § 189-601(d), of all applications received to ensure that projects are feasible and implementation plans are sufficient to achieve project objectives.

(2) Applications that pass technical review, and which are the most preferred project from their county or, in case of no county projects, their municipality or unincorporated community, will then be ranked in ascending order of the project score, as calculated using the rubric in 15 CAR § 189-601(e).

(b)(1) An iterative process will eliminate projects that lie outside the budget constraint or are interdependent with other eliminated projects.

(2) The process shall substitute for eliminated projects, where available, less preferred projects according to the ranking provided by the county or, where countywide projects were not proposed or have been eliminated, by municipalities or unincorporated communities.

(3) This process shall culminate in a list of awardable projects with grant requests totaling to less than the available funds.

(4) 15 CAR § 189-601(f) elaborates on this, and full details of the selection process for the round will be provided along with the announcement of grant awards.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-316. Funding awarded.

(a) When interdependent projects are awarded funding, they shall be treated as a single project to the extent possible for purposes of reporting requirements, certifying completion of deployment, assessing penalties, etc.

(b) After grant awards are announced, ISPs will begin to deploy, collecting receipts and submitting them to the Arkansas Economic Development Commission for proportional reimbursement on a quarterly basis, along with a project narrative, as explained in 15 CAR § 189-202.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-317. After coverage becomes available.

(a)(1) When broadband coverage is available to at least ninety-five percent (95%) of the locations in the project footprint and all other project objectives have been achieved, the ISP may:

(A) Alert the Arkansas Department of Commerce Broadband Office and the municipality, unincorporated community, or county of the fact; and

(B) Initiate the process by which deployment is certified to be complete and the remaining reimbursements are released.

(2)(A) The responsible public official shall then collect, or cause to be collected, information to confirm that deployment has been completed and broadband service is available to at least ninety-five percent (95%) of locations.

(B) If necessary, the broadband office shall provide a process for how to collect this information.

(3) At this point, the portion of the reimbursement that has been held back by the Arkansas Economic Development Commission to ensure project completion may be released to the ISP.

(4) The ISP may wait to establish service to the remaining five percent (5%) of the locations in the project footprint until it is getting positive net income from the project, but it shall not transfer any net income from the project to shareholders or

other projects, reinvesting it instead, until one hundred percent (100%) of locations have been served.

(b) After deployment is complete:

(1) The broadband office may request reports on project status from the ISP up to twice per year, as explained in section 15 CAR § 189-804(b); and

(3) The municipality, unincorporated community, or county shall submit biannual reports to the broadband office, as explained in 15 CAR § 189-804(c).

(c) If service is never established, or is suspended, without a waiver from the broadband office, penalties will be assessed against the ISP, as described in 15 CAR § 189-503(5).

(d)(1) Full project closure will occur on January 1, 2030, for all ARC projects unless otherwise specified in the application materials, and obligations to report and to provide service will cease at that time.

(2) If the ISP and the coapplicant public official agree to a different project closure date in the original application, project closure without penalties may occur at an agreed upon date earlier, but not later, than January 1, 2030.

Authority. Arkansas Code § 15-4-209.

Subpart 4. Eligibility Criteria

15 CAR § 189-401. Eligibility criteria.

(a)(1) Municipalities, unincorporated communities, and counties, or interdependent sets of these jurisdictions as described in 15 CAR § 183-311(a) and following, will be eligible for ARC grant funding if they meet the following criteria:

(A) No more than eighty percent (80%) of the population currently has broadband coverage;

(B) The population is at least five hundred (500); and

(C) The population unserved with broadband is at least two hundred (200).

(2) The determination of eligibility shall be made, in the absence of special data collection efforts, using the best available data sources that are consistent across geographies and sufficiently granular, which at the time of writing are the:

(A) FCC Form 477 data for broadband coverage; and

(B) Most recent United States Bureau of the Census data for the block level.

(3) Where special data collection efforts are organized in order to establish ARC grant eligibility, the Arkansas Department of Commerce Broadband Office shall:

(A) Assess the validity of the data; and

(B) Make an eligibility determination with full disclosure of its reasons for finding an area eligible or ineligible, by the criteria, on the basis of the evidence provided in combination with public data sources.

(b) ISPs will be eligible to participate in ARC grant-funded projects if they have:

(1) A one-year track record of providing broadband coverage (meaning at least 25/3 speeds, at least one hundred fifty gigabytes (150 GB) of data usage per month without throttling, and no more than one hundred milliseconds (100 ms) latency, see 15 CAR § 189-102) to at least five hundred (500) retail customers; and

(2) Enough working capital to carry on construction activities in pursuit of project goals in advance of quarterly reimbursement from the Arkansas Economic Development Commission, as demonstrated by appropriate financial statements (see 15 CAR § 189-503(7)).

Authority. Arkansas Code § 15-4-209.

Subpart 5. Application Submittal Process

15 CAR § 189-501. Generally.

(a) Each application shall be initiated by the municipality, represented by a mayor or county judge, or unincorporated community or county, represented by a county judge, that stands to gain broadband service as a result of the project.

(b) Applications shall include the following documents.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-502. Municipality requirements.

Municipalities, unincorporated communities, and counties will be required to submit:

- (1) The name of the community applying to get service;
- (2) The rank of the application in the community's order of preference if multiple applications would qualify for funding, since no more than one (1) application can be funded for each community;
- (3) The provider or providers to whom residents will be able to apply for consumer broadband service after the project is completed;
- (4) Any caveats about the interdependence of projects that may be applicable;
- (5) A statement of any cost sharing or facilitation that the community commits to do in order to assist the deployment process;
- (6) If applicable, statements from any nonprofits or local businesses of any financial or other support that they have offered to provide to assist the project;
- (7) If applicable, statements of any commitments that the ISP has made on pricing in return for the community agreeing to coapply for ARC grant funding;
- (8) The name and office of the public official who will submit biannual reports to the Arkansas Department of Commerce Broadband Office;
- (9) Disclosure of any conflicts of interest on the part of public officials representing the community;
- (10) A narrative explanation of less than one thousand (1,000) words about how the community developed the application, emphasizing efforts to make the process:
 - (A) Transparent;
 - (B) Competitive; and
 - (C) In the public interest;

(11) A declaration of the project closure date if it is earlier than January 1, 2030; and

(12) An affirmation that all the information submitted by coapplicants has been reviewed and is acceptable.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-503. Internet service provider requirements.

ISPs shall be required to submit:

(1) An implementation plan that explains how broadband will be deployed to reach all residences in the municipality, unincorporated community, or county, including the technology that will be used;

(2) A project timeline that includes a date of anticipated completion of project deployment and establishment of service availability no later than November 2022;

(3) A map of the project footprint if it extends beyond the community's legal boundaries or involves multiple ISPs serving different parts of the town;

(4)(A) A narrative of less than five hundred (500) words describing the company's experience providing consumer broadband service, which may include total numbers of customers served and revenues earned.

(B) The purpose of this narrative is to establish that a company has a one-year track record of providing consumer broadband;

(5)(A) Unless otherwise specified in accordance with 15 CAR § 189-317(d), a commitment to continue providing broadband service through January 1, 2030, after the project is complete or pay penalties in accordance with a predetermined schedule, unless the Arkansas Department of Commerce Broadband Office, in consultation with the relevant local government, agrees that it is in the public interest to waive the penalties because the service has been overbuilt and/or become obsolete or superfluous.

(B) The penalties are as follows:

(i) If service ceases to meet standards between January 1, 2029, and January 1, 2030, the minimum of five percent (5%) of the total ARC grant and the total funds disbursed by ARC for the project;

(ii) If service ceases to meet standards between January 1, 2028, and January 1, 2029, the minimum of ten percent (10%) of the total ARC grant and the total funds disbursed by ARC for the project;

(iii) If service ceases to meet standards between January 1, 2027, and January 1, 2028, the minimum of fifteen percent (15%) of the total ARC grant and the total funds disbursed by ARC for the project;

(iv) If service ceases to meet standards between January 1, 2026, and January 1, 2027, the minimum of twenty-five percent (25%) of the total ARC grant and the total funds disbursed by ARC for the project;

(v) If service ceases to meet standards between January 1, 2025, and January 1, 2026, the minimum of thirty-five percent (35%) of the total ARC grant and the total funds disbursed by ARC for the project;

(vi) If service ceases to meet standards between January 1, 2024, and January 1, 2025, the minimum of fifty-five percent (55%) of the total ARC grant and the total funds disbursed by ARC for the project;

(vii) If service ceases to meet standards before January 2024, the minimum of seventy-five percent (75%) of the total ARC grant and the total funds disbursed by ARC for the project; and

(viii) If service never meets standards, the minimum of the total ARC grant and the total funds disbursed by ARC for the project.

(C) Service may cease to meet standards either by:

(i) Being canceled altogether;

(ii) Ceasing to provide the required:

(a) Speeds;

(b) Latencies; and

(c) Data caps; or

(iii) Ceasing to offer service to at least ninety-five percent (95%) of households.

(D) Penalties can be triggered by sustained degradation of network performance due to intensive utilization;

(6)(A) An affirmation that all the information provided by the coapplicant public official, inasmuch as it relates directly to the ISP's intended activities under the project, is correct and acceptable.

(B) This requirement is intended to prevent any misunderstandings of the project between the ISP and public officials representing the communities to be served;

(7)(A) Except in the cases below specified, financial statements for the three (3) most recent years, with CEO and CFO certification, including the following:

- (i) Balance sheet;
- (ii) Income statement;
- (iii) Depreciation schedule;
- (iv) Debt schedule;
- (v) Accounts receivable aging; and
- (vi) Accounts payable aging.

(B)(i) The financial statement for the most recent year must be:

(a) Audited for grant requests exceeding two million dollars (\$2,000,000); and

(b) Either audited or reviewed for grant requests exceeding five hundred thousand dollars (\$500,000).

(ii) For grant requests under five hundred thousand dollars (\$500,000), financial statements shall be provided but the broadband office shall have discretion to accept financial statements that have not been audited or reviewed as sufficient evidence of the company's working capital adequacy.

(C) These financial statements may demonstrate to the broadband office that the ISP has sufficient unencumbered resources to pay for planned investment activities under the ARC project, in advance of receiving reimbursements from grant funds, with a reasonable buffer of cash and other liquid assets in case of cost overruns.

(D) Note that the broadband office cannot guarantee that financial statements of ISPs applying for ARC grant projects will enjoy immunity from being required to be released to members of the public under Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., requests.

(E) Alternatively, ISPs may provide the following in lieu of complete financial statements:

(i) **Option 1:**

(a) An estimate of the working capital needs of the project; and

(b) A sworn statement by the CFO of the ISP and a third-party CPA that the ISP has at least that amount of unencumbered funds; or

(ii) **Option 2.**

(a) Documentation showing that the ISP has provided internet service to at least one thousand (1,000) subscribers in Arkansas for at least five (5) years.

(b) Note that such documentation can also be used to establish the ISP's capacity to deploy broadband so as to remove the need to get a professional engineer stamp (see 15 CAR § 189-602); and

(8) Disclosure of any conflicts of interest that might affect, or be suspected to affect, the decisions of the public officials involved in the project.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-504. Stakeholder requirements.

Stakeholders listed as coapplicants on a grant other than public officials representing the applicant communities and ISPs shall submit the following documents:

(1) A declaration that they have read all the application materials and affirm their accuracy;

(2) A declaration of their commitment to perform the roles allotted to them in the implementation plan;

(3) Evidence of their capacity to perform the roles allotted to them in the implementation plan; and

(4) Disclosure of any conflicts of interest that might affect stakeholders' support of the project.

Authority. Arkansas Code § 15-4-209.

Subpart 6. Application Review and Approval Process

15 CAR § 189-601. Application review and approval process.

(a) The application review and approval process will consist of four (4) stages.

(b)(1) First, the Arkansas Department of Commerce Broadband Office will determine, for each application or set of interdependent applications, the eligibility of the municipality, unincorporated community, county, or group of these for which a project is proposed.

(2) It will use the best generally available and sufficiently granular data sources, which at the time of writing are the:

(A) FCC Form 477 data for broadband coverage; and

(B) Most recent United States Bureau of the Census data for population.

(3) If other evidence related to eligibility is provided with the application, it will be assessed at this time.

(4) On this basis, a determination will be made by the broadband office about whether the project covers an eligible area or not.

(5) Projects from ineligible areas will be eliminated from consideration.

(c)(1) Second, the broadband office will:

(A) Conduct a process review by studying the project development process documentation in an effort to discern possible conflicts of interest; and

(B) Examine the financial information about the applicant ISP to confirm that they have:

(i) Sufficient working capital to carry out the project in advance of reimbursement; and

(ii) A one-year track record of delivering consumer broadband service.

(2) The broadband office may eliminate projects where:

(A) Public officials representing municipalities, unincorporated communities, or counties appear not to have acted in the public interest; or

(B) One (1) or more ISP applicants appear to be undercapitalized or insufficiently experienced.

(d)(1) Third, technical reviewers selected by the broadband office will:

(A) Examine the implementation plan and budget for the project as well as information on the service track record and financial situation of the ISP; and

(B) Affirm or deny that the:

(i) Project is feasible and sufficient to achieve project objectives; and

(ii) Budget is appropriate.

(2) Technical reviewers may request more information from ISPs in order to assist with their determination.

(e)(1) The broadband office will assign a score to each project, using the following rubric:

Points	Measure	Calculation method
60	Grant request per household connected	$\left(\$3,000 - \frac{\text{state grant requested}}{\text{number of unserved households connected}} \right) / \$3,000$
25	Current service deficiency	25 if 90% of project footprint is unserved by 10/1 Else 0
15	Poverty	$15 \times (100 - \text{Percentile of income per capita})$ Example: poorest town receives 15, richest town receives 0

(2) The project score for each project will be the sum of the points awarded for:

- (A) Cost effectiveness;
- (B) Current service deficiency; and
- (C) Poverty.

(f)(1) For each application that passes technical and process review, the broadband office will calculate the percentage of the maximum state grant that the project will request.

(2) It will then perform the following process iteratively:

(A)(i) Compile a candidate list of all noneliminated projects that are ranked by applicant counties, or municipalities and unincorporated communities that are partly or wholly located in counties that did not apply for ARC grants or have been eliminated, as their most preferred among noneliminated projects in ascending order of project score.

(ii) If multiple projects have equal project scores, they will be ranked in descending order of the number of locations to be served;

(B) Compute, for each project, the cumulative grant request for that project and all those ahead of it in the queue;

(C) Eliminate all projects for which the cumulative grant request exceeds the available budget for the ARC round;

(D) Eliminate all projects which are interdependent with eliminated projects;

(E) Check whether each eliminated project comes from a municipality, unincorporated community, or county that also has less-preferred projects, and if so, place less-preferred projects into the candidate list to replace eliminated projects;

(F) Also, if a county project is eliminated and there are no other project proposals from that county, check whether any municipalities or unincorporated towns fully or partly contained within that county have projects, and if so, add the most preferred projects from each municipality or unincorporated town to the list; and

(G)(i) If the total grant request for all projects remaining in the candidate list is less than the budget constraint, stop.

(ii) Otherwise, return to step 1.

(3) This process will result in a list of projects for which the grant requests are less than the budget for the ARC round, and which will tend to economize state tax dollars and maximize their impact.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-602. Plan confirmation by the internet service provider.

(a)(1) After each ARC grant is approved, the ISP receiving the grant will have forty-five (45) days to send it to a licensed professional engineer for confirmation that the plans are technically adequate.

(2) The resulting PE stamp shall be provided to the Arkansas Department of Commerce Broadband Office before any further grant funds are disbursed.

(b) Projects that fail to win PE approval will be canceled, but the grant recipient can still pay the PE from the grant funds before the remainder of the funds reverts to Arkansas Rural Connect.

(c) ISPs can be exempted from the PE stamp requirement if they provide documentation that they have provided broadband coverage to at least one thousand (1,000) subscribers in the state for at least five (5) years.

Authority. Arkansas Code § 15-4-209.

Codification Notes. "PE" means professional engineer.

Subpart 7. Federal Complementarity

15 CAR § 189-701. Federal complementarity.

(a)(1) In addition to state and private efforts to deploy broadband, the federal government is making extensive, well-funded efforts to promote rural broadband deployment, principally through the Federal Communications Commission and the United States Department of Agriculture.

(2) It is likely that federal funding for rural broadband in Arkansas in the next decade will much exceed any funding from the state.

(b)(1) In order to make ARC broadband grants impactful, many state officials recognize the need to consider the ways that ARC will interact with federal funds.

(2) There are plausible scenarios in which ARC broadband grants leverage federal funds, and plausible scenarios in which ARC broadband grants crowd out federal funds.

(3) Announcements of new federal programs, rules, dates, and deadlines, etc., are hard to predict, and coordination between state and federal programs is difficult and may be incompatible with due process at the state level.

(c) In view of the difficulty of explicit coordination, the Arkansas Department of Commerce Broadband Office shall have discretion to adjust program rules relating to project footprints, technological specifications, and service obligations on a case-by-case basis in consultation with and in the interests of affected communities and ISPs in order to make the ARC program as complementary as possible to federal programs that fund rural broadband.

Authority. Arkansas Code § 15-4-209.

Subpart 8. Project Monitoring and Dispute Resolution

15 CAR § 189-801. Build phase.

(a) During the build phase of the project, the ISP shall not be required to deliver broadband service to premises in the project footprint.

(b)(1) During the build phase of the project, the ISP shall be required to submit quarterly reports to the Arkansas Department of Commerce Broadband Office reporting their activities in fulfillment of grant objectives.

(2) These reports will be:

(A) Submitted within sixty (60) days of the quarters ending on March 31, June 30, September 30, and December 31 of each year; and

(B) Reviewed as explained in 15 CAR § 189-202(b).

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-802. Internet service providers that complete deployment to 95% of locations.

(a)(1) When the ISP has completed deployment to ninety-five percent (95%) of locations in the project footprint, it shall notify the Arkansas Department of Commerce Broadband Office and the municipality, unincorporated community, or county of that fact.

(2) At that time, the broadband office shall do a desk assessment of whether the ISP is in fact advertising the services that it promised to deliver so that citizens living in the project footprint could discover and sign up for the service.

(3) The responsible public officials shall:

(A) Collect, or cause to be collected, with the advice of the broadband office as needed, information sufficient to affirm that the project appears to be complete and broadband service has been made available to at least ninety-five percent (95%) of project footprint residents; and

(B) Publish the contact info of an official tasked with hearing complaints from citizens who believe that their homes are still not being offered service as required by the ARC grant.

(4) The broadband office shall:

(A) Review this information as well as evidence from its own desk research; and

(B) If the evidence is sufficient:

(i) Announce that the project has completed the main deployment phase; and

(ii) Authorize the release of any remaining disburseable grant funds.

(b)(1) After deployment to ninety-five percent (95%) of locations has been completed, the ISP may cease broadband deployment activities within the project footprint until its cumulative revenues exceed its cumulative operating costs within the project footprint.

(2) If this never happens prior to full project closure on January 1, 2030, the ISP will never be required under the terms of the ARC grant to make broadband service available to the remaining five percent (5%) of locations.

(3) But if revenues exceed operating costs in the project footprint, resulting in positive net income, this net income shall be reinvested in deployment to the remaining five percent (5%) of locations until one hundred percent (100%) of the locations in the project footprint have broadband service available.

(4) When one hundred percent (100%) of locations have broadband service available, any further net income is at the ISP's disposal to return to owners as profit or invest in other projects.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-803. Internet service providers that fail to deploy service to 95% of locations.

(a) If the ISP fails to deploy to ninety-five percent (95%) of locations in the project footprint by November 2022, the ISP is obligated to return all ARC grant funds disbursed to it for that project unless this requirement is waived by the Arkansas Department of Commerce Broadband Office.

(b) The broadband office may waive up to eighty percent (80%) of penalties if:

(1) A substantial proportion of locations in the project footprint have received broadband coverage; and

(2) The ISP exerted bona fide best efforts to achieve project goals but was prevented from doing so by adverse circumstances.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-804. Research and reporting after completion of deployment.

(a) From the completion of deployment until project closure, the Arkansas Department of Commerce Broadband Office shall continue to conduct desk research from time to time to ensure that 25/3 broadband service is still available from the grant-funded ISP within ARC project footprints.

(b)(1) From the completion of deployment until project closure, the broadband office may request a report from an ISP concerning any ARC project up to twice a year.

(2) Upon receiving such a request, the ISP shall provide, within ninety (90) days:

(A) A confirmation that 25/3 broadband service is still available in the project footprint;

(B) Information about pricing schedules;

(C) Numbers of subscribers;

(D) Take rates;

(E) Information about any known service interruptions; and

(F) Any other information the ISP may deem relevant.

(c)(1) From the completion of deployment until project closure, each municipality, unincorporated community, or county shall submit biannually to the broadband office a report that may include:

(A) An overall judgment of whether the ISP is fulfilling its service obligations;

(B) Complaints about nonprovision or poor quality service that may have validity; and

(C) Information about service interruptions that are known to have occurred.

(2) They are also encouraged to include:

(A) Positive feedback from the public about the ARC project; and

(B) Instances of the economic development impact of the ARC project.

(3) Such reports shall be submitted within thirty (30) days of the ends of the six-month periods from January to June and July to December of each year.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-805. Succession in municipal or county offices.

In case of succession in the offices of mayor or county judge for a community that has received an ARC grant-funded project, the mayor or county judge shall notify his or her successor of his or her rights and obligations as the responsible public official for an ARC grant project area.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-806. Early project closure.

(a) Early project closure may be requested by the ISP or initiated by the Arkansas Department of Commerce Broadband Office based on evidence that broadband service is no longer being provided by the ISP to ninety-five percent (95%) or more of the locations in the project footprint.

(b) If early project closure occurs, the broadband office and the municipality, unincorporated community, or county, as represented by a mayor or county judge, shall consult and decide whether or not the ISP may be required to pay penalties as described in 15 CAR § 189-503(5).

(c) If they determine that it is in the public interest for the service to be terminated because it is obsolete or superfluous and is no longer desired by customers, they may agree to waive penalties.

Authority. Arkansas Code § 15-4-209.

15 CAR § 189-807. Change in ownership.

No penalties will be assessed against an ISP that ceases to provide broadband in an ARC grant-funded project footprint due to ownership changes, if the successor entity continues to provide the service.

Authority. Arkansas Code § 15-4-209.