

## **Title 15. Natural Resources and Economic Development**

### **Chapter VIII. Arkansas Economic Development Commission, Department of Commerce**

#### **Subchapter C. Community Development Grants**

#### **Part 192. Addendum 1 to Arkansas Rural Connect Coronavirus Rule**

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

##### "SECTION 2. AUTHORITY

This Rule is authorized to be 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 economic development in the state. The ARC Program is therefore authorized to administer ARC grants and to issue administrative rules under Ark. Code Ann. § 15-4-209(b)(5) as a service offered by AEDC."

##### "SECTION 6. EFFECTIVE DATE

This Rule is effective ten days upon filing of the approved final rule with the Arkansas Secretary of State."

#### **Subpart 1. Generally**

##### **15 CAR § 192-101. Background.**

(a)(1) The Director of the Arkansas Economic Development Commission ("director") issues this part to respond to urgent telecommunication needs in this state for communities impacted by the coronavirus 2019 (COVID-19) pandemic.

(2) On or about February 21, 2020, the director issued the Arkansas Rural Connect Broadband Grant Program rule, 15 CAR pt. 189, to implement the Arkansas Rural Connect Broadband Grant Program (hereafter, "Arkansas Rural Connect", "Arkansas Rural Connect Program", or "ARC").

(3) The Arkansas Rural Connect Broadband Grant Program rule was promulgated prior to the issuance of state and federal public health guidelines responding to the coronavirus 2019 (COVID-19) pandemic.

(b)(1) The coronavirus 2019 (COVID-19) pandemic has severely impacted the citizens of this state.

(2) Coronavirus 2019 (COVID-19) has brought about an urgent and immediate need for broadband internet access.

(3) Broadband enables:

(A) Workers to telework;

(B) Patients to use telemedicine services;

(C) K-12 and college students and unemployed workers in need of reskilling to participate in distance education;

(D) Religious people to participate in online worship services; and

(E) All citizens to:

(i) Shop online;

(ii) Interact with friends through Skype and other video chat tools;

and

(iii) Keep up with the latest news and public health guidelines.

(c)(1) The federal government has instituted a major relief effort under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136.

(2) The state benefited from the Coronavirus Aid, Relief, and Economic Security Act but still was in need.

(3)(A) The federal government then passed the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

(B) These funds allowed states to broaden and strengthen their broadband infrastructure in unserved or underserved areas.

(C) All American Rescue Plan Act of 2021 fiscal recovery funds must be obligated by December 31, 2024.

(D) The period of performance will run until December 31, 2026.

(d)(1) The Arkansas Rural Connect program promotes broadband deployment in rural areas of Arkansas that lack meaningful and efficient broadband services.

(2) The ARC program and its purposes align with allowable uses of American Rescue Plan Act of 2021 funds.

(e) Due to the urgent need for broadband for distance learning and telemedicine and the need for telework necessitated by the coronavirus 2019 (COVID-19) pandemic, this addendum to the Arkansas Rural Connect Coronavirus Rule, 15 CAR pt. 190, is being issued so that funds may be disbursed immediately and to accelerate the continued deployment of broadband network infrastructure in rural Arkansas, to the extent possible.

**Authority.** Arkansas Code § 15-4-209.

**15 CAR § 192-102. Purpose and qualification for receiving American Rescue Plan Act of 2021 funds.**

(a)(1) The purpose of this part is to conform the ARC program with the Interim Final Rule for Coronavirus State and Local Fiscal Recovery Funds and any subsequently promulgated rules and guidance issued by the United States Department of the Treasury (the "federal rules") whenever American Rescue Plan Act of 2021, Pub. L. No. 117-2, funds are the source of funding for ARC grants.

(2) The Arkansas Rural Connect Broadband Grant Program rule, 15 CAR pt. 189, and Arkansas Rural Connect Coronavirus Rule, 15 CAR pt. 190, will govern the terms of any grants issued using American Rescue Plan Act of 2021 funds except when

the terms of the Arkansas Rural Connect Coronavirus Rule and Arkansas Rural Connect Broadband Grant Program rule conflict with the applicable federal rules, in which case the federal rules will control and be incorporated into the ARC program grant agreement with the ISP.

(b)(1) Under the federal rules, projects funded in whole or in part with American Rescue Plan Act of 2021 funds must be able to provide synchronous bandwidths of one hundred megabits per second (100 Mbps) download and one hundred megabits per second (100 Mbps) upload.

(2) Where impractical due to geographical, topographical, or financial constraints the upload speed can be between twenty megabits per second (20 Mbps) and one hundred megabits per second (100 Mbps) in such instances.

(3) The internet service provider (ISP) must submit a letter detailing why the upload speeds cannot be obtained at one hundred megabits per second (100 Mbps), and the Arkansas Department of Commerce Broadband Office ("broadband office") will determine if the ISP letter is approved for the requested bandwidth modification.

(4) Those projects with an approved request for bandwidth modification must be scalable to one hundred megabits per second (100 Mbps) upload speed.

(c)(1) Guidance issued by the United States Department of the Treasury in connection with the promulgation of its interim final rule indicates that a fiber-optic or wireline infrastructure may be used to build out broadband networks using American Rescue Plan Act of 2021 funds.

(2) The broadband office has requested clarification from the United States Department of the Treasury as to whether fixed wireless infrastructure may be used when funded with American Rescue Plan Act of 2021 funds.

(3) In the absence of confirmation from the United States Department of the Treasury that American Rescue Plan Act of 2021 funds may be used to deploy fixed wireless infrastructure, the broadband office will not approve any ARC program applications that rely on fixed wireless infrastructure.

**Authority.** Arkansas Code § 15-4-209.

**Codification Notes.** "ARC" means Arkansas Rural Connect Broadband Grant Program.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote to subsection (a) following the phrase "to conform the ARC program with the Interim Final Rule for Coronavirus State and Local Fiscal Recovery Funds" as follows:

"31 C.F.R. § 35.6 (2021)."

**15 CAR § 192-103. Deadlines — Unserved and underserved areas.**

(a)(1) Broadband infrastructure builds using American Rescue Plan Act of 2021, Pub. L. No. 117-2, funds must be completed no later than December 31, 2023.

(2) The Department of Commerce Broadband Office will determine the dates by which awarded projects shall be completed within these allowed deadlines.

(b) Priority attention will be given to projects that:

(1) Contain a detailed and aggressive timeline for completing the project; and

(2) Provide confirmation that the mayor or county judge, as coapplicant for the project, has been provided proposed pricing for the broadband services covered by the project.

(c)(1) American Rescue Plan Act of 2021 funds must be used in unserved and underserved areas in Arkansas.

(2) For purposes of American Rescue Plan Act of 2021 funds, "unserved and underserved areas" are rural incorporated and unincorporated cities or communities where residents lack access to a wireline connection capable of reliably delivering at least minimum speeds of twenty-five megabits per second (25 Mbps) download and three megabits per second (3 Mbps) upload.

**Authority.** Arkansas Code § 15-4-209.

**15 CAR § 192-104. Maps.**

(a)(1) The Arkansas Department of Commerce Broadband Office, at its discretion, may request from the applicants maps and other information necessary to make informed decisions as to the proper unserved or underserved locations in Arkansas to expend funds.

(2) Applicants that accept funding under this part shall follow all the requirements under the ARC rules.

(b) Again, each project deployment shall be completed by the date specified by the broadband office, but in any event, each project funded with American Rescue Plan Act of 2021, Pub. L. No. 117-2, funds shall be completed no later than December 31, 2023.

**Authority.** Arkansas Code § 15-4-209.

**Codification Notes.** "ARC" means Arkansas Rural Connect Broadband Grant Program.