

Title 15. Natural Resources and Economic Development

Chapter VIII. Arkansas Economic Development Commission, Department of Commerce

Subchapter C. Community Development Grants

Part 193. Addendum 2 to Arkansas Rural Development 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 the economic development in the State. AEDC is therefore authorized to administer the ARC grant program and further authorized to issue administrative rules under Ark. Code Ann. § 15-4-209(b) (5)."

Subpart 1. Generally

15 CAR § 193-101. 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) In response to the pandemic, Arkansas has received federal funds:

(A) Under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136; and

(B) From the State and Local Fiscal Recovery Fund under the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

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

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

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

(d)(1) The need still exists for broadband infrastructures that directly enable work, education, and health monitoring in response to the effects of coronavirus 2019 (COVID-19).

(2) American Rescue Plan Act of 2021 federal guidance was modified April 1, 2022, adding significant requirements.

(3) The Arkansas Department of Commerce Broadband Office is modifying its rule through this part to harmonize with the changed federal guidance.

(4) Additionally, the broadband office has submitted an application to the United States Department of the Treasury for up to one hundred fifty-eight million dollars (\$158,000,000) in funding for broadband projects through the Coronavirus Capital Projects Fund.

(5) The Coronavirus Capital Projects Fund is a distinct funding program under American Rescue Plan Act of 2021 and has requirements that differ from the State and Local Fiscal Recovery Fund.

(e)(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 the State and Local Fiscal Recovery Fund and Coronavirus Capital Projects Fund.

(f) 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, there is a need to issue this part to:

(1) Disburse funds immediately; and

(2) Accelerate the continued deployment of broadband network infrastructure.

(g)(1) Additionally, on April 18, 2022, the Arkansas Broadband Master Plan: Assessment and Recommendations (the "broadband master plan") was published by Broadband Development Group pursuant to a study commissioned by the broadband office and requested by the General Assembly.

(2) Changes to this part also incorporate recommendations made by the broadband master plan.

Authority. Arkansas Code § 15-4-209.

15 CAR § 193-102. Purpose and qualification for receiving American Rescue Plan Act of 2021 funds.

(a)(1) The purpose of this addendum is to harmonize with recent federal guidance as it relates to dispensing American Rescue Plan Act of 2021, Pub. L. No. 117-2, funds, including funding through State and Local Fiscal Recovery Fund and Coronavirus Capital Projects Fund, for the expansion of broadband network infrastructure for the unserved and underserved areas of Arkansas.

(2) Unserved and underserved areas are locations without access to a reliable wireline connection of 100/20 Mbps.

(b)(1) All American Rescue Plan Act of 2021-approved projects funded through the State and Local Fiscal Recovery Fund 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 as low as twenty megabits per second (20 Mbps) but must be scalable to one hundred megabits per second (100 Mbps) in such instances.

(3) Whenever bandwidths are asynchronous, 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.

(c)(1) All American Rescue Plan Act of 2021-approved projects funded through the Coronavirus Capital Projects Fund 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) Projects funded through the Coronavirus Capital Projects Fund will not permit temporary, asynchronous speeds allowed under the State and Local Fiscal Recovery Fund.

(d)(1) Priority will be given to fiber-optic infrastructures where feasible, as such advanced technology better supports scalability to meet expected increases in bandwidth demand.

(2) Regardless of technology infrastructure deployed, the ISP must demonstrate that it will reliably deliver a minimum of 100/20 Mbps in the case of State and Local Fiscal Recovery Fund-funded projects, and 100/100 Mbps in the case of Coronavirus Capital Projects Fund-funded service throughout the service area.

(3) The American Rescue Plan Act of 2021 program also requires the ISP to submit its customer pricing list with its project application.

(4) The ISP is also required to participate in the Federal Communications Commission's Affordable Connectivity Program.

(5) As indicated below, affordability of broadband service will be a significant factor in determining grant awards.

(6) Applications that include at least one (1) low-cost option (less than fifty dollars (\$50.00) per month) at speeds of at least 100/20 Mbps without data usage caps or the obligation to purchase bundled services will be awarded extra points in the scoring rubric.

(7) Applicants must include with their application a narrative demonstrating that their proposed pricing is affordable for consumers in the proposed project service area.

(e)(1) The broadband office or its designee will define:

(A) Project areas available for grant awards;

(B) Funding source (i.e., State and Local Fiscal Recovery Fund or Coronavirus Capital Projects Fund); and

(C) Deadlines for submitting applications.

(2) Each project area will be composed of full and partial census blocks identified as unserved and underserved areas in the broadband master plan defined by a set of polygons in a GIS shapefile.

(3) It is anticipated that multiple applicants will submit applications for each project area.

(f)(1) All applicants must have a System for Award Management (SAM) number issued by the federal government to participate in the ARC program.

(2) ISPs must submit with their applications:

(A) Audited financial statements made by an independent certified public accountant for the past two (2) years or, in the absence of audited financial statements, such other financial and operational documentation reasonably acceptable to the broadband office that demonstrates:

(i) The financial stability of the applicant; and

(ii) Its ability to fulfill the obligations under the grant agreement; and

(B)(i) The endorsement of the application by each mayor or county judge within the proposed project area.

(ii) It is expected that each mayor and county judge may endorse multiple applications.

(iii) If the ISP is unable to secure the endorsement of a mayor or the county judge, then it must submit with its application a statement to that effect along with:

(a) A description of its efforts to obtain an endorsement; and

(b) The reason, if any, that was given as to why an endorsement was not provided by the mayor or county judge.

(g)(1) Each project will be scored using eight (8) different scoring metrics:

(A) Speed of service, ten percent (10%) of total score;

(B) Future-proof, ten percent (10%) of total score;

(C) Quality of coverage, i.e., reliability and scalability of service, fifteen percent (15%) of total score;

(D) Time to deploy, fifteen percent (15%) of total score;

(E) Qualifications/experience/financial strength of applicant, ten percent (10%) of total score;

(F) Applicant's contribution toward project costs, ten percent (10%) of score;

(G) Cost of project, fifteen percent (15%) of total score; and

(H) Affordability of service to the consumer, fifteen percent (15%) of total score.

(2)(A) The maximum score for this rubric is one hundred (100) points.

(B) All projects will be scored individually, with the highest scored applications receiving ARC grant funding awards.

(C) There is no minimum or maximum limit on project size or dollar amount requested for ARC grant program applications, but overall project cost is a key factor of consideration.

(3)(A) Where there is a tie for project awards the broadband office or its designee will make an administrative decision as to which project it will award.

(B) The broadband office or its designee will consider the scores for the most important factors such as project price, quality of service, deployment timeline, and affordability of service to the consumer to break ties.

(C) Next, if the tie is not resolved, the broadband office or its designee will consider:

(i) The mayor and county judge project preferences; and

(ii) Customer service complaints made to the broadband office or its designee.

(4)(A) Please keep in mind that verified customer complaints, depending on nature or frequency, from prior or present ARC projects could result in an application not being awarded an ARC grant no matter the project score.

(B) This is also true if the broadband office learns of verified complaints from customers from an ISP's preexisting network or networks.

(5)(A) All projects for application submissions will be subject to a challenge process.

(B) See 15 CAR § 193-107.

(h)(1) Qualified project areas subject to ARC grant funding must not have a federal commitment, i.e., a grant from the Rural Digital Opportunity Fund that will provide a reliable wireline connection of at least 100/20 Mbps.

(2) Each ISP applicant receiving a grant using American Rescue Plan Act of 2021 funds will guarantee broadband service to the citizens of Arkansas, within its project footprint, for a minimum of ten (10) years from the time of completed infrastructure deployment.

(3) Grant awardees who fail to reliably deliver service within the project footprint for the required ten-year period will be subject to the penalty provisions of the Arkansas Rural Connect Broadband Grant Program rule, 15 CAR pt. 189.

Authority. Arkansas Code § 15-4-209.

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

"ISP" means internet service provider.

15 CAR § 193-103. Project funding.

(a)(1) The Arkansas Department of Commerce Broadband Office will fund up to seventy-five percent (75%) percent of the total cost of the project.

(2) The applicant shall fund a minimum of twenty-five percent (25%) of the project costs.

(3)(A) Internet service providers shall maintain an irrevocable standby letter of credit equal to one hundred percent (100%) of the grant award amounts disbursed to the internet service provider.

(B) The irrevocable standby letter of credit:

(i) Shall follow the same standards found in 47 C.F.R. § 54.804(c)(2);

and

(ii) Will be accompanied by an opinion letter from applicant's legal counsel stating that the irrevocable standby letter of credit and its proceeds will not be subject to a Chapter 11 bankruptcy proceeding.

(4) The broadband office may allow the letter of credit amount to be reduced to no less than twenty-five percent (25%) of the grant award as the project progresses and defined milestones in the project deployment plan are met.

(5) The letter of credit must remain in place until the project is completed and acceptance testing by the broadband office is satisfactorily concluded.

(b)(1) In lieu of a letter of credit the internet service provider will be required to furnish a performance bond in an amount equal to the grant award.

(2) The performance bond will be in the form of a surety bond issued by a surety company as a guarantee of delivery of goods/services in accordance with the specifications and within the time period established in the grant agreement.

(3) Surety bonds must be:

(A) Issued by a surety company authorized to do business in Arkansas;
and

(B) Signed by a resident local agent licensed by the Insurance Commissioner to represent the surety company.

(4) The resident agent's power-of-attorney must accompany the surety bond.

(5) The company issuing the surety bond must:

(A) Comply with all stipulations herein; and

(B) Be named in the United States Department of the Treasury listing of companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies.

(6) Any excess between the face amount of the bond and the underwriting limitation of the bonding company shall be protected by reinsurance provided by an acceptable reinsuring company.

(c)(1) Please note, the broadband office or its designee reserves the right to stop funding should it learn that grantee's vendors or subcontractors are not getting paid for work performed on ARC projects.

(2) Funding will resume when the broadband office or its designee is satisfied the matter has been resolved.

Authority. Arkansas Code § 15-4-209.

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

15 CAR § 193-104. Deadlines — Unserved and underserved areas.

(a) American Rescue Plan Act of 2021, Pub. L. No. 117-2, funds must be obligated by December 31, 2024, and all broadband network deployments completed by December 31, 2026.

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

Authority. Arkansas Code § 15-4-209.

15 CAR § 193-105. Maps and rule obligations.

(a) 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 grant funds.

(b) Applicants that accept funding under this part shall follow all the requirements under the State and Local Fiscal Recovery Fund guidance and the Coronavirus Capital Projects Fund guidance, as applicable, and ARC rules.

(c) Every applicant is responsible for knowing both the state rules and federal guidelines without exception.

(d) In the event of any conflict between this rule and the federal rules and guidance applicable to broadband deployments funded with American Rescue Plan Act of 2021, Pub. L. No. 117-2, funds, the federal rules and guidance will control.

Authority. Arkansas Code § 15-4-209.

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

15 CAR § 193-106. Effective date — Coordination with Arkansas Rural Connect Broadband Grant Program rule.

(a) This part is effective ten (10) days after filing with the Secretary of State of the final rule that has been reviewed and approved by the Legislative Council.

(b) This part is incorporated into and made a part of the Arkansas Rural Connect Broadband Grant Program rule, 15 CAR pt. 189, as amended effective February 7, 2022.

(c) In the event of any conflict between the terms of this part and the Arkansas Rural Connect Broadband Grant Program rule, the terms of this part shall control.

Authority. Arkansas Code § 15-4-209.

15 CAR § 193-107. Arkansas Rural Connect Broadband Grant Program request for project challenge information.

(a) **Definitions.** The following definitions were added:

(1) "Challengers" means a:

(A) Unit of local government;

(B) Nonprofit organization; or

(C) Broadband service provider (ISP);

(2) "Point shapefiles" means shapefiles that show each proposed passing in the application area as a singular mapped point in the application or challenged area containing attribute data showing the addresses of each point;

(3) "Polygon shapefiles" means shapefiles delineating the general project area or areas; and

(4) "Received signal strength indicator (RSSI)" means an estimated measure of power level that a wireless client device is receiving from an access point or router.

(b) Project challenge information request process.

(1)(A) The purpose of this process is to ensure the Arkansas Department of Commerce Broadband Office ("broadband office") or its designee selects the best projects that truly bridge the digital divide in Arkansas.

(B) This process is to gather additional information before making a final award.

(C)(i) To streamline this process, challengers must provide point and polygon shapefiles as defined in this part.

(ii) All shapefiles or KMZs must be functional.

(D) In addition, if someone submits information regarding a wireless project, the challenger is required to include shapefiles of heat maps indicating RSSI measures in the challenged area.

(E) The broadband office or its designee may, at its discretion, require any other kind of file to complete its analysis.

(2)(A) Planned service to a proposed project area is eligible for the purpose of a submission to the broadband office or its designee if:

(i) State or federal funds have been awarded; or

(ii) Private funds will be used within a reasonable period of time.

(B) Additionally, the provider must be committed to providing service to the areas using private, state, or federal funds.

(C) Areas adjacent to private, state, or federally funded areas may be eligible to submit information to the broadband office or its designee if the challenger demonstrates, to the broadband office's or its designee's satisfaction, existing awards or a self-funded project will cover the adjacent area.

(D) The challenger must commit to serving the adjacent areas, in writing, at speeds of one hundred megabits per second (100 Mbps)/one hundred megabits per second (100 Mbps) symmetrical or greater.

(E) The challenger may be required to enter into a written agreement with the state to complete the adjacent project within a certain time frame.

(F) The state will not issue awards in the adjacent area as consideration for the agreement.

(3)(A) The broadband office recognizes the nature of wireless projects has an inherent potential for overlap.

(B)(i) Recognizing the unique circumstances of this technology, wireless projects will be allowed to exceed the twenty-five percent (25%) overlap allowance of existing networks, provided the wireless signal strength, measured in RSSI, is less than -90 in those areas.

(ii) It is the determination of the broadband office that RSSI measures below -90 are unable to reliably deliver broadband.

(C) The broadband office or its designee will post ARC projects, for challenges, twenty (20) business days following the announcement of the challenge information request.

(D) The announcement will be on the broadband office's website or its designee's website.

(4) Challengers wishing to submit information to the broadband office or its designee must provide the required information in this section no later than 5:00 p.m., twenty (20) business days after posting ARC projects – no exceptions.

(5)(A) Providers wishing to submit information to the broadband office or its designee on multiple applications must submit information separately for each application.

(B) Challengers can submit information to the broadband office or its designee concerning portions of a proposed project area without invalidating the entire project.

(C) The broadband office or its designee reserves the right to:

(i) Invalidate a portion or portions of a proposed project area;

(ii) Aggregate challenges by different providers to determine the percentage of serviceable units served in a proposed project area; and

(iii) Invalidate insufficient submissions.

(D)(i) Challengers must demonstrate that:

(a) More than ten percent (10%), for wireline projects, or twenty-five percent (25%), for wireless projects, of serviceable units in the project area have access to speeds at or above 100/20 Mbps as of the date of the application; or

(b) The application is ineligible because of committed state or federal funding subject to the conditions described above.

(ii) These percentages may be changed by the broadband office or its designee based on the funding source and federal guidance.

(6)(A) The broadband office or its designee must receive all the information detailed below or the submission will be deemed incomplete and invalid.

(B) Challengers must provide:

(i) A signed and notarized affidavit affirming the attached information is true;

(ii) Current Federal Communications Commission Form 477 or equivalent;

(iii) Minimum/maximum speeds available for residents and businesses in the proposed project area;

(iv)(a) Number of serviceable units within the proposed project area.

(b) Provide the speeds those serviceable units can receive, including the technology, i.e., fiber, fixed wireless, etc.;

(v) Street-level data of customers receiving service within the proposed project area;

(vi)(a) Point shapefiles that show each proposed passing in the questioned area, designated by a singular mapped point, in the questioned area containing attribute data showing the addresses of each point.

(b) Polygon shapefiles delineating the area or areas of concern;

(vii) For wireless providers – Heat maps indicating RSSI in the challenged area;

(viii)(a) Using the project area map submitted by the applicant, create a map indicating where the challenger's serviceable units are in the proposed project area.

(b) Challengers are encouraged to submit additional maps and information if necessary; and

(ix) If submitting due to planned private, state, or federal funding, documentation detailing commitment to provide service in or adjacent to the proposed project area is required.

(7)(A) The broadband office or its designee reserves the right to request verified speed tests on all or a portion or portions of the questioned area.

(B) The broadband office or its designee reserves the right to require any awardee to rescope its ARC application/project footprint and amend funding request post award.

(C) The broadband office or its designee may also require any applicant to alter its project and funding request if it is in the best interest of the state.

(D) After all information has been submitted and reviewed, the broadband office or its designee will evaluate the additional information to determine if it will let the project footprint:

- (i) Stand;
- (ii) Be altered; or
- (iii) Be removed.

(E) The broadband office or its designee, after administrative review, will post the final project areas no later than 5:00 p.m. two (2) weeks after all information has been evaluated.

(F) Due to the volume of applications and submissions there can be necessary delays to this timeline.

Authority. Arkansas Code § 15-4-209.

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