

Title 15. Natural Resources and Economic Development

Chapter VIII. Arkansas Economic Development Commission, Department of Commerce

Subchapter C. Community Development Grants

Part 194. Arkansas BEAD Challenge Process

Subpart 1. Background, Definitions, and Coordination with Other Broadband Rules

15 CAR § 194-101. Background.

(a) The Arkansas Economic Development Commission and the Arkansas Department of Commerce Broadband Office (ARConnect) issue this part to implement the Broadband, Equity, Access, and Deployment (BEAD) Program.

(b) The BEAD program allocates state grants for the:

- (1) Construction of broadband networks;
- (2) Establishment of affordable high-speed internet access; and
- (3) Creation of training programs to equip users with digital skills.

(c) This part details the process for challenging the Broadband Funding Map published by the Federal Communications Commission identifying locations that are eligible for BEAD funding.

Authority. Arkansas Code § 15-4-209.

15 CAR § 194-102. Definitions.

As used in this part:

(1) "25/3 Mbps" means an internet speed of twenty-five megabits per second (25 Mbps) for downloading content and three megabits per second (3 Mbps) for uploading content;

(2) "100/20 Mbps" means an internet speed of one hundred megabits per second (100 Mbps) for downloading content and twenty megabits per second (20 Mbps) for uploading content;

(3) "Affordable Connectivity Program" means a Federal Communications Commission benefit program that provides a discount of up to thirty dollars (\$30.00) per month for internet access for households below a certain income threshold, or seventy-five dollars (\$75.00) per month for areas that qualify as high-cost according to the Federal Communications Commission;

(4) "Area" means a census block group as that term is used by the United States Bureau of the Census;

(5) "Area or MDU challenge" means a single challenge lodged by two (2) or more permissible challengers, rather than those challengers each filing their own challenge;

(6) "BEAD" means the Broadband Equity, Access, and Deployment Program established by the Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58;

(7) "Broadband serviceable location" or "BSL" means a business or residential location at which mass-market fixed broadband internet access service is, or can be, installed;

(8) "Buy It Now Threshold" means the threshold above which competitive tranche-1 bids will be granted provisional awards;

(9) "Community anchor institution" or "CAI" means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to:

(A) Low-income individuals;

(B) Unemployed individuals;

(C) Children; and

(D) Aged individuals;

(10) "Competitive bid" means an applicant's bid for a project area that overlaps with a bid from a different applicant;

(11) "Conduit" means a protective tube or trough through which fiber is run;

(12) "Data cap" means an internet service provider-imposed limit on the amount of data that a consumer can use over a certain time period;

(13) "Deployment" means the build-out of broadband infrastructure to unserved and underserved locations;

(14) "Digital Skills and Opportunity Plan" means Arkansas's document outlining the state's vision for digital opportunity in the context of its overarching strategy and goals;

(15) "Digital subscriber line" or "DSL" means a networking technology that provides broadband over conventional telephone lines;

(16) "Download speed" means the rate that digital data is transferred from the internet to a computer;

(17)(A) "Enforceable commitment" means a National Telecommunications and Information Administration classification for locations that are receiving broadband infrastructure build-outs from federal or state programs excluding BEAD.

(B) Such locations are considered served by these programs and are therefore ineligible for BEAD funding;

(18) "Extremely high cost per location threshold" means the point at which fiber deployment is no longer cost effective and alternate technologies are considered;

(19) "High-cost area" means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in underserved areas;

(20) "Infrastructure Investment and Jobs Act" or "IIJA" means the federal law passed in 2021 that established the BEAD program;

(21) "Latency" means the time it takes to send data and receive a response;

(22) "Low-cost plan" means a reduced cost internet service plan for areas below a certain income threshold;

(23) "Mbps" means megabits per second;

(24) "Minimum application score threshold" means a threshold below which ARConnect will consider other coverage options for an area that does not receive any bids scoring above the threshold;

(25) "Mobile test unit" means a testing apparatus that:

(A) Can be easily moved; and

(B) Simulates the equipment and installation (antenna, antenna mast, subscriber equipment, etc.) that would be used in a typical deployment of fixed wireless access service by the provider;

(26) "Multiple dwelling unit" or "MDU" means residential duplexes, triplexes, fourplexes, apartment buildings, condominiums, mobile home parks, trailer courts, or similar types of multi-unit arrangements on one (1) parcel of land often served by one (1) internet service provider;

(27) "National Broadband Map" means the map provided by the Federal Communications Commission that provides information about the internet services available to individual locations across the country, along with new maps of mobile coverage, as reported by ISPs in the Federal Communications Commission's ongoing broadband data collection;

(28) "National Telecommunications and Information Administration" or "NTIA" means the division of the United States Department of Commerce that is responsible for overseeing the BEAD program;

(29) "Nondeployment projects" means projects that boost technological capacity, educational resources, and digital skills and opportunity for the adoption of broadband;

(30) "Project area" means the set of one (1) or more areas that will be serviced as part of a bid;

(31) "Reference subsidy" means a target BEAD subsidy for each area that ARConnect will establish to guide applicants' bids;

(32) "Right-of-way" means a legal right, established by a grant from a landowner or long usage, to pass along a specific route through property belonging to another;

(33) "Served" means receiving an internet speed greater than or equal to 100/20 Mbps;

(34) "Severe convective storm" means a local storm associated with thunder, lightning, heavy rain, hail, strong winds, or sudden temperature changes that is capable of producing:

(A) A tornado;

(B) Hail greater than or equal to one inch (1") in diameter; and/or

(C) Winds greater than fifty-eight miles per hour (58 m.p.h.);

(35) "Speed test" means a measurement of speed between a device and a test server using a device's internet connection;

(36) "Standard operating procedure" means a specific process for challenge evaluators to follow when reviewing challenge applications;

(37)(A) "Subgrantee" means an internet service provider (ISP) that has been awarded a portion of Arkansas's federal BEAD grant to build broadband infrastructure for a given area of the state.

(B) For nondeployment projects, a subgrantee may be a nonprofit organization, unit of local government, business, or other entity awarded a portion of BEAD funding to implement nondeployment initiatives;

(38) "Underserved" means receiving an internet speed less than 100/20 Mbps but greater than or equal to 25/3 Mbps;

(39) "Unserved" means receiving an internet speed less than 25/3 Mbps; and

(40) "Upload speed" means the rate that data is transferred from a computer to the internet.

Authority. Arkansas Code § 15-4-209.

Subpart 2. Challenge Process

15 CAR § 194-201. DSL modifications.

(a) ARConnect will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is "served") delivered via DSL as "underserved".

(b) This modification will better reflect the locations eligible for BEAD funding because it will facilitate the phase-out of legacy copper facilities and ensure the delivery of “future-proof” broadband service.

Authority. Arkansas Code § 15-4-209.

15 CAR § 194-202. Enforceable commitments.

(a) ARConnect will enumerate locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit and consulting several data sets, including, but not limited to:

(1) The Broadband Funding Map published by the Federal Communications Commission pursuant to Section 60105 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58;

(2) Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the United States Department of the Treasury; and

(3) State and local data collections of existing enforceable commitments.

(b)(1) ARConnect will create a list of BSLs subject to enforceable commitments based on state/territory and local grants or loans.

(2) If necessary, ARConnect will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations.

(3) ARConnect will submit this list to the National Telecommunications and Information Administration in the format specified by the Federal Communications Commission Broadband Funding Map.

(c)(1) ARConnect will review its repository of existing state and local broadband grant programs to validate the upload and download speeds of existing binding agreements to deploy broadband infrastructure.

(2) Where state or local programs did not specify broadband speeds, or when there is reason to believe the provider deployed higher broadband speeds than

required, ARConnect will verify the deployment speeds of the binding commitment with the provider.

(3) ARConnect will document this process by requiring providers to sign a binding agreement certifying the actual broadband speeds deployed.

(d) ARConnect drew on these provider agreements, along with its existing database on state and local broadband funding programs' binding agreements, to determine the set of state and local enforceable commitments.

Authority. Arkansas Code § 15-4-209.

Codification Notes. Section 60105 of the Infrastructure Investment and Jobs Act of 2021 is codified at 47 U.S.C. § 1704.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote to subdivision (a)(1) of this section as follows:

"The broadband funding map published by FCC pursuant to IIJA § 60105 is referred to as the "FCC Broadband Funding Map.""

15 CAR § 194-203. Permissible challengers.

During the BEAD challenge process, ARConnect will only allow challenges from nonprofit organizations, units of local government, and internet service providers, as recognized by the State of Arkansas.

Authority. Arkansas Code § 15-4-209.

15 CAR § 194-204. Permissible challenges.

ARConnect will only allow challenges on the following grounds:

(1) The identification of eligible community anchor institutions, as defined by ARConnect;

- (2) Community anchor institution BEAD eligibility determinations;
- (3) BEAD eligibility determinations for existing broadband serviceable locations;
- (4) Enforceable commitments; or
- (5) Planned service.

Authority. Arkansas Code § 15-4-209.

15 CAR § 194-205. Challenge process overview.

The challenge process conducted by ARConnect will include four (4) phases, spanning approximately ninety (90) days:

(1)(A) Publication of eligible locations.

(B) Prior to beginning the Challenge Phase, ARConnect will publish the locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of the National Telecommunications and Information Administration BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process).

(C) ARConnect will also publish a list of ineligible locations, as they may be challenged;

(2)(A) Challenge Phase.

(B)(i) During the Challenge Phase, a permissive challenger will submit the challenge through the ARConnect challenge portal.

(ii) This challenge will be visible to the service provider whose service availability and performance is being contested.

(iii) The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response.

(iv) After this stage, the location be considered challenged.

(C) **Minimum level of information sufficient to establish a challenge.**

(i) The challenge portal will verify that the address provided can be found in the Fabric and is a BSL.

(ii) The challenge portal will confirm that the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service.

(iii) The challenge portal will confirm that the email address is reachable by sending a confirmation message to the listed contact email.

(iv) For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition.

(v) For availability challenges, ARConnect will manually verify that the evidence submitted falls within the categories stated in the National Telecommunications and Information Administration BEAD Challenge Process Policy Notice and the document is unredacted and dated.

(D) Timeline.

(i) Following the publication of eligible locations, the challenge phase will commence on a set date determined by ARConnect.

(ii) Permissible challengers will have thirty (30) calendar days to submit a challenge from the time the initial list of eligible and ineligible locations is posted;

(3)(A) Rebuttal Phase.

(B)(i) Only a challenged service provider may rebut the reclassification of a location or area, causing the challenge to be designated as "disputed".

(ii) If a challenge that meets the minimum level of evidence is not rebutted, the challenge is sustained.

(iii) A provider may also agree with the challenge, resulting in the challenge being sustained.

(iv) Providers must regularly check the challenge portal notification method for notifications of submitted challenges.

(C) Timeline. Providers will have thirty (30) calendar days from the end of the challenge phase to provide rebuttal information to ARConnect; and

(4)(A) Final Determination Phase.

(B) During the Final Determination Phase, ARConnect will make the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected”.

(C) **Timeline.** ARConnect will make all final challenge determinations within thirty (30) calendar days of the onset of the final determination period.

Authority. Arkansas Code § 15-4-209.

15 CAR § 194-206. Evidence and review approach.

(a) To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, ARConnect will review all applicable challenge and rebuttal information in detail, without bias, before deciding to sustain or reject a challenge.

(b) ARConnect will provide justification for all challenge determinations, and all challenges will be reviewed uniformly.

(c) ARConnect will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

Authority. Arkansas Code § 15-4-209.

15 CAR § 194-207. Area and MDU challenge.

(a) ARConnect will administer area and multiple dwelling unit (MDU) challenges for challenge types A, S, L, D, and T.

(b)(1) An area challenge reverses the burden of proof for availability, speed, latency, data caps, and technology if a defined number of challenges for a particular category, across all challengers, have been submitted for a provider.

(2) Thus, the provider receiving an area challenge or MDU must demonstrate that they are indeed meeting the availability, speed, latency, data cap, and technology

requirement, respectively, for all (served) locations within the area or all units within an MDU.

(3) The provider can use any of the permissible rebuttals listed in the table above.

(c) An area challenge is triggered if six (6) or more broadband serviceable locations within a single census block group using a particular technology and a single provider within a census block group submit the same type of challenge.

(d) An MDU challenge requires challenges by at least three (3) units or ten percent (10%) of the unit count listed in the Fabric within the same broadband serviceable location, whichever is larger.

(e)(1) Each type of challenge and each technology and provider is considered separately, i.e., an availability challenge (A) does not count towards reaching the area threshold for a speed (S) challenge.

(2) If a provider offers multiple technologies, such as DSL and fiber, each is treated separately since they are likely to have different availability and performance.

(f)(1) Area challenges for availability need to be rebutted with evidence that service is available for all BSLs within the census block group, e.g., by network diagrams that show fiber or hybrid fiber-coaxial infrastructure or customer subscribers.

(2) For fixed wireless service, the challenge system will randomly sample at least ten (10) broadband serviceable locations from the area in contention where the provider must demonstrate service availability and speed (e.g., with a mobile test unit).

Authority. Arkansas Code § 15-4-209.

15 CAR § 194-208. Speed test requirements.

(a)(1) ARConnect will accept speed tests as evidence for substantiating challenges and rebuttals.

(2) Each speed test consists of three (3) measurements, taken on different days.

(3) Speed tests cannot predate the beginning of the challenge period by more than sixty (60) days.

(b) Speed tests can take four (4) forms:

(1) A reading of the physical line speed provided by the residential gateway, i.e., DSL modem, cable modem (for HFC), optical network terminal (for fiber-to-the-home), or fixed wireless subscriber module;

(2) A reading of the speed test available from within the residential gateway web interface;

(3) A reading of the speed test found on the service provider's web page; or

(4) A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using a speed test application from the list of National Telecommunications and Information Administration-approved speed test applications.

(c) Each speed test measurement must include:

(1) The time and date the speed test was conducted; and

(2) The provider-assigned internet protocol (IP) address, either version 4 or version 6, identifying the residential gateway conducting the test.

(d) Each group of three (3) speed tests must include:

(1) The name and street address of the customer conducting the speed test;

(2) A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's last invoice); and

(3) An agreement, using an online form provided by ARConnect, that grants access to these information elements to:

(A) ARConnect;

(B) Any contractors supporting the challenge process; and

(C) The service provider.

(e) The IP address and the subscriber's name and street address are considered personally identifiable information and thus are not disclosed to the public (e.g., as part of a challenge dashboard or open data portal).

(f)(1)(A) Each location must conduct three (3) speed tests on three (3) different days.

(B) The days do not have to be adjacent.

(2) The median of the three (3) tests (i.e., the second highest (or lowest) speed) is used to trigger a speed-based (S) challenge, for either upload or download.

(3) For example, if a location claims a broadband speed of 100/25 Mbps and the three (3) speed tests result in download speed measurements of 105, 102, and 98 Mbps, and three (3) upload speed measurements of 18, 26, and 17 Mbps, the speed tests qualify the location for a challenge, since the measured upload speed marks the location as underserved.

(g) Speed tests may be conducted by subscribers, but speed test challenges must be gathered and submitted by:

- (1) Units of local government;
- (2) Nonprofit organizations; or
- (3) An internet service provider.

(h)(1) Subscribers submitting a speed test must indicate the speed tier they are subscribing to.

(2) If the household subscribes to a speed tier of between 25/3 Mbps and 100/20 Mbps and the speed test results in a speed below 25/3 Mbps, this broadband service will not be considered to determine the status of the location.

(3) If the household subscribes to a speed tier of 100/20 Mbps or higher and the speed test yields a speed below 100/20 Mbps, this service offering will not count towards the location being considered served or underserved.

(4) However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change.

(5) For example, if a location is served by 100 Mbps licensed fixed wireless and 500 Mbps fiber, conducting a speed test on the fixed wireless network that shows an effective speed of 70 Mbps does not change the status of the location from served to underserved.

(i)(1) A service provider may rebut an area speed test challenge by providing speed tests, in the manner described above, for at least ten percent (10%) of the customers in the challenged area.

(2) The customers must be randomly selected.

(3)(A) Providers must apply the 80/80 rule, i.e., eighty percent (80%) of these locations must experience a speed that equals or exceeds eighty percent (80%) of the speed threshold.

(B) For example, eighty percent (80%) of these locations must have a download speed of at least 20 Mbps (that is, eighty percent (80%) of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to meet the 100/20 Mbps speed tier.

(4) Only speed tests conducted by the provider between the hours of 7 p.m. and 11 p.m. local time will be considered as evidence for a challenge rebuttal.

Authority. Arkansas Code § 15-4-209.

Codification Notes. "HFC" means hybrid fiber-coaxial.

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote to subdivision (b)(4) of this section as follows:

"9 The NTIA has approved the following speed test applications: speedtest.net; <https://speed.measurementlab.net/#/>; <https://speed.cloudflare.com/>; <https://fast.com/>; or any ARConnect sponsored or operated speed test sites (including commercial aggregators such as <https://ready.net/>)."

This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote to subdivision (i)(3) of this section following the phrase "Providers must apply the 80/80 rule":

"10. The 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. See BEAD NOFO at 65, n. 80, Section IV.C.2.a"

15 CAR § 194-209. Transparency plan.

(a)(1) To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, ARConnect will, upon approval from the National Telecommunications and Information Administration, publicly post:

- (A) An overview of the challenge process phases;
- (B) Challenge timelines; and
- (C) Instructions on how to submit and rebut a challenge.

(2) This will include a form for all providers in the state to submit an email at which they would like to be contacted for challenge notifications.

(3) This documentation will be posted publicly for at least a week prior to opening the challenge submission window.

(4) Relevant stakeholders can sign up on ARConnect's website, <https://broadband.arkansas.gov>, for challenge process updates and newsletters, as well as to view an FAQ page listed under "FAQ".

(5) If a question is unanswered by the FAQ page, ARConnect can be reached by emailing broadband.challenges@arkansas.gov.

(b) Beyond actively engaging relevant stakeholders, ARConnect will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

- (1) The provider, nonprofit, or unit of local government that submitted the challenge;
- (2) The census block group containing the challenged broadband serviceable location;
- (3) The provider being challenged;
- (4) The type of challenge (e.g., availability or speed); and

(5) A summary of the challenge (building off a summary submitted by the challenger), including whether a provider submitted a rebuttal (building off a summary submitted by the provider).

(c)(1) ARConnect will not publicly post any personally identifiable information (PII) or proprietary information, including:

- (A) Subscriber names;
- (B) Subscriber street addresses; and
- (C) Customer IP addresses.

(2) To ensure all PII is protected, ARConnect will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website.

(3) Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly.

(d)(1) ARConnect will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law.

(2) Broadband service providers will also be required to submit a redacted version of any documents containing proprietary and confidential information.

(3) If any of these responses do contain information or data that the submitter deems to be confidential commercial information that should be exempt from disclosure under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., or is protected under applicable state privacy laws, that information should be identified as privileged or confidential.

(4) Otherwise, the responses will be made publicly available.

Authority. Arkansas Code § 15-4-209.

Codification Notes. "FAQ" means frequently asked questions.

"IP" means internet protocol.

Subpart 3. Coordination with Other Broadband Rules

15 CAR § 194-301. Coordination with other broadband rules.

(a) This part is applicable only to funding allocated under and projects undertaken pursuant to the BEAD program.

(b) In the event of any conflict between the terms of this part and Arkansas Rural Connect Broadband Grant Program, 15 CAR pt. 189, or any other state broadband rule, with respect to the BEAD program, the terms of this part shall control.

Authority. Arkansas Code § 15-4-209.

Appendix A. Table of Challenge Types, Specific Examples, and Permissible Rebuttals

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/385/15CARpt.194Tables.pdf>