

Guidelines for Treasury Department Implementation of Capital Projects Fund

In the development of guidelines for the Capital Projects Fund (Section 604) of the American Rescue Plan, we encourage Treasury to release guidance stipulating eligible uses for critical projects grants to eligible entities for broadband deployment and connectivity. These guidelines should ensure affordable access to remote learning, telework, or telehealth resources, involving capital projects (or ancillary services or cost-support efforts *related* to capital projects) that close the digital divide during the COVID-19 pandemic.

Eligible uses should include:

- **Capital projects:** Capital-intensive projects to enable telework, online education, and telehealth in connection with COVID-19, such as:
 - Construction of new broadband infrastructure; upgrades of existing broadband infrastructure to support increased coverage or higher speeds
- **Ancillary services:** Supportive efforts that increase efficient deployment or utilization of capital projects, such as:
 - Broadband mapping efforts (in coordination with Broadband DATA Act mapping efforts conducted by the FCC and NTIA); Distance learning efforts (including expenditures for equipment and devices to extend school and library services beyond school campuses), in coordination with education efforts funded under section 7402; Broadband adoption programs; Digital inclusion and digital literacy efforts
- **Cost-support efforts:** Measures that promote equitable utilization of capital project-enabled services, such as:
 - Affordable broadband programs (including providing free- or reduced-cost broadband service or preventing disconnection of existing broadband service)

Definitions:

- Secretary – the term ‘Secretary’ means the Secretary of the Treasury;
- State – the term ‘State’ means each of the 50 States, the District of Columbia, and Puerto Rico;
- Tribal Government – the term ‘Tribal government’ has the meaning given such term in section 602 (g); Eligible entity – the term ‘eligible entity’ means a State (including District of Columbia and Puerto Rico, units of a state government, a territory, or a Tribal Government);
- Subgrantee – the term ‘subgrantee’ means an entity that receives grant funds from an eligible entity to carry out activities under this Fund
- Unserved – the term ‘unserved’, with respect to a household or area, means the household or area lacks access to broadband service above 25 megabits per second for download speed and above 3 megabits per second for upload speed.

Grant Process:

Like the Coronavirus Relief Fund (CRF), Treasury shall specify the amount available to each state, but unlike the CRF, Treasury shall allow localities to apply for Critical Projects Fund grants in coordination with eligible entities (States, Territories, Tribal Governments). In awarding grants, Treasury may consult with the Assistant Secretary of Commerce for Communications and Information in developing the grant process.

Within 45 days of enactment:

- Treasury shall release guidance on the process by which eligible applicants may apply and issue a notice containing the amount available to the eligible entity and inviting eligible entities to submit letters of intent for grants under Section 604.
- Treasury shall outline the requirements for letters of intent for grants and the allowed use of grants awarded under this section (see eligible uses above). Treasury shall publish a model letter of intent, including the certification requirements, including the reporting requirements (see below).

Letters of Intent:

- Within 90 days of Treasury issuing notice of the grants an eligible entity may submit a letter of intent, in a format specified by the Secretary, that:
 - describes the amount of grant funds to be used; and
 - certifies the intent of the eligible entity to comply with all applicable requirements, including the reporting requirements (see below)
- States shall, to the greatest extent practicable, work with units of local government, including regional governmental entities, to submit a single letter of intent, which can specify multiple eligible projects/programs seeking grant funding.
- An eligible entity may submit only 1 letter of intent.
- Not later than 30 days after receipt of a letter of intent for a grant, the Secretary shall
 - Acknowledge receipt;
 - Evaluate whether the letter of intent describes an eligible use of grant funds;
 - If the letter of intent is complete, allocate the grant funds to the eligible entity; and
 - If the letter of intent is incomplete, notify the eligible entity and provide the eligible entity with 30 days to resubmit the letter of intent.
- Not later than 60 days after receiving a letter of intent, the Secretary shall approve or deny the letter of intent.
- In the event both a state and a unit of that state both apply for grant funding, Treasury shall work with States to ensure non-duplication of effort that results in the greatest number of individuals benefitting from eligible uses under the program.
- If a unit of local government of a State receives a critical projects grant, Treasury shall reduce the amount determined for that State by the amount granted to the unit of local government of that State.
- Eligible entities that receive funding under this section shall ensure that any subgrantee is capable of carrying out the project for which the subgrant is awarded in a competent manner in compliance with all applicable Federal, State, and local laws; and has the

financial, technical, and operational capacity to meet obligations set forth by Treasury. An eligible entity shall stipulate, in any contract with a subgrantee for the use of grant funds received under this section, reasonable provision for recovery of funds for nonperformance.

Administrative Expenses: An eligible entity may use not more than 2 percent of grant funds received under this section for administrative purposes.

Broadband Infrastructure Deployment:

Priority: In using grant funds received under this section for new construction of broadband infrastructure, an eligible entity shall prioritize:

- Funding for deployment of broadband infrastructure to unserved households; and
- Projects that will deploy broadband with a download speed of not less than 100 megabits per second and an upload speed of not less than 10 megabits per second.
- Minimum Expenditure for Unserved Households: If an eligible entity uses any grant funds received under this section for construction of broadband infrastructure, the eligible entity shall use not less than 25 percent of those funds to provide broadband to unserved households.

Matching Requirement: In allocating grant funds received under this section for construction of broadband infrastructure, an eligible entity shall require a subgrantee to provide a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority), of not less than 10 percent of projects costs

- An eligible entity may reduce the required matching contribution to not less than 5 percent for a broadband infrastructure project if the average amount of new capital investment per premise passed (which shall not include operating costs) is more than \$3,000.

Source of Match: A matching contribution:

- May be provided by an eligible entity, a political subdivision of a State, a utility company, a cooperative, a nonprofit organization, a for-profit company, a regional planning organization, or a Federal regional commission or authority (i.e. Appalachian Regional Commission, Delta Regional Authority, Northern Border Regional Commission) and may include in-kind contributions

Extensions: The Secretary may extend a deadline under this section for submission of a letter of intent or obligation of funds for an eligible entity for reasons such as administrative or project delays, supply chain disruptions, unforeseen circumstances, or other reasons as the Secretary determines necessary.

Post-award Review and Reporting Requirements:

Treasury shall ensure that the program includes sufficient notice, transparency, accountability, and oversight measures to provide the public with notice of the assistance provided under the program and deter waste, fraud, and abuse of program funds.

Treasury shall establish a process to provide transparency by requiring grant recipients (including sub-grantees awarded funds under a grant awarded to a State or locality) to file:

- An initial report describing the planned use of funds and any process for awarding funds to sub-grantees, along with a description of mechanisms by which the State or local grantee will ensure compliance with eligible uses defined by Treasury.
- A semiannual report beginning at least one year after the receipt of grant funds describing how the State or local grantee (or sub-grantee, as applicable) has expended the funds, along with a certification of compliance with requirements established by Treasury.
- A final report no later than 1 year after expending all amounts of funds received describing how the State expended the funds, including funds expended by local grantees (or sub-grantees, as applicable), along with certification of compliance with requirements established by Treasury.
- Treasury shall also provide data collected to the Federal Communications Commission, National Telecommunications and Information Administration, and U.S. Department of Agriculture to be used when determining whether to award funds for deployment of broadband under any program administered by those agencies.

Not later than 1 year after enactment, Treasury shall report to Congress on how grant funds have been expended, including an analysis based on compliance reports from grantees (and sub-grantees) on the impact of grant funding.