

CHAPTER 10. BROADBAND GOVERNING BOARD GRANT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS [NEW]

93:10-1-1. Purpose [NEW]

The purpose of the Broadband Governing Board Grant program is to use federal funds distributed to the State of Oklahoma pursuant to the American Rescue Plan Act, Pub. L. No. 117-2 (Mar. 11, 2021) (“ARPA”) and/or the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021) (“IIJA”) to ensure that affordable, high-speed internet is available to all Oklahomans. The Broadband Governing Board (“BGB”) is a pass-through entity through which federal funding will be further distributed to grantees for specific broadband expansion projects, including, but not limited to, creating a State Broadband Plan, broadband mapping, and capital improvements to broadband infrastructure. See H.B. 3363, 58th Leg., 2d Reg. Sess. (Okla. 2022).

93:10-1-2. Definitions [NEW]

When used in this chapter, the following words or terms shall have the following meaning, unless the context clearly indicates otherwise:

“ACP” means the Affordable Connectivity Program.

“ARPA” means the American Rescue Plan Act, Pub. L. No. 117-2 (Mar. 11, 2021), as amended.

“BEAD” means Broadband Equity, Access, and Deployment.

“Board” means the Broadband Governing Board.

“C.F.R.” means Code of Federal Regulations, available at <https://www.ecfr.gov>.

“Council” means the Broadband Expansion Council.

“DEA” means Digital Equity Act.

“Grantee” means a recipient of federal funds awarded through the Broadband Governing Board Grant program, regardless of whether the recipient is a “pass-through entity” or “subrecipient.”

“FCC” means the Federal Communications Commission.

“IIJA” means the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), as amended..

“NTIA” means the National Telecommunications and Information Administration.

“OBO” means the Oklahoma Broadband Office.

“OMES” means Office of Management and Enterprise Services.

“Pass-through entity” or “PTE” means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program, consistent with the definition at 2 C.F.R., § 200.1.

“SAM” means System for Award Management.

“Subrecipient” means an entity that receives a subaward from a pass-through entity to carry out part of a federal award, but does not include an individual that is a beneficiary of such award, consistent with the definition at 2 C.F.R., § 200.1.

“U.S. Treasury” means United States Department of the Treasury.

SUBCHAPTER 3. PROGRAM ADMINISTRATION [NEW]

93:10-3-1. System for Award Management (“SAM”) [NEW]

All eligible grantees must have an active registration with SAM.gov pursuant to Part 25 of Title 2 of the C.F.R. This registration must be active prior to the submission of mandatory reporting.

93:10-3-2. Award process [NEW]

(a) Grant applicants will submit applications through an online intake portal. A Risk Assessment will be done. Submission of a final application does not guarantee the award of a grant.

(b) The BGB may assign preference to a class of applicants for any application.

(c) At the judgment of the BGB, applications may be evaluated and scored by OBO employees, content experts, proposal review panels or any combination of employees, experts, or review panels. Evaluation results and recommendations shall be provided to the directors for each application reviewed.

(d) Applications approved by the OBO staff will then be presented to the BGB for final approval.

(e) Applications submitted to the agency remain confidential until a decision is made by the BGB.

(f) The final decision to award shall be made at the sole discretion of the BGB.

(g) All applicants will receive written notification of final award status.

(h) Disbursement and reporting policies and cadences will be determined by the completed risk assessment and will also include the federal rules and regulations set forth for each grant program

(i) Approved applications will then enter a grant agreement with the OBO.

(j) The BGB may use the contents of applications in conjunction with reporting duties of the BGB and OBO.

93:10-3-3. Capital expenditures [NEW]

(a) In accordance with Section 35.6(b)(4) of the Treasury Final Rule, grantees expending \$1,000,000 or more for capital expenditures related to the response to the COVID-19 public health emergency or its negative economic impacts, must provide the following written justification:

(1) A description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. The grantee may provide

- quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.
- (2) An explanation of why a capital expenditure is appropriate. For example, a grantee should explain why existing equipment or facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
 - (3) A comparison of the proposed capital project against at least two (2) alternative capital expenditures and a demonstration of why the proposed capital expenditure is superior. Grantees should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two (2) alternative capital expenditures.
- (b) Funding for grantees expending \$1,000,000 or more of a Broadband Governing Board Grant for capital expenditures will not be distributed until the complete written justification for capital expenditure as detailed above is received and approved by
- (1) The BGB and OMES as to an ARPA grant, or
 - (2) The BGB as to an IJA grant.
- (c) If the capital expenditures amount to \$10,000,000 or more, the written justification will also have to be submitted as part of regular reporting.

93:10-3-4. Competitive bidding [NEW]

- (a) All projects, programs, services, or activities sponsored in whole or in part with federal funds will be purchased in accordance with the State Purchasing Director's Guide to Competitive Purchasing with ARPA and GEER II Funds, available at <https://oklahoma.gov/content/dam/ok/en/omes/documents/ARPAGuide.pdf>, and in accordance with applicable state and federal law, including but not limited to, 2 C.F.R., §§ 200.310 through .316 (property standards), and 2 C.F.R., §§ 200.317 through .327 (procurement standards).
- (b) All grantees that utilize competitive bidding procurement methods must provide BGB with documentation of the process, including, but not limited to, copies of the bids received and justification of how a decision was reached to award a contract to a specific vendor.

93:10-3-5. Reporting [NEW]

- (a) All grantees will appropriately maintain accounting records for compiling and reporting accurate, compliant financial data in accordance with generally accepted accounting standards and principles.
- (b) All grantees of ARPA funds are required to submit Project and Expenditure Reports at the close of each month or quarter, in accordance with OMES' Subrecipient Monitoring Schedule. These reports must include, at a minimum, the status of the overall project, a listing of obligations expenditures, any applicable program income, and a description of the project

demographic distribution. A template for the reports will be sent to all grantees, and the complete report shall be submitted to BGB within thirty (30) days of the end of the reporting period, or as otherwise directed by OMES or the BGB. The BGB, in turn, will submit all requested monthly and quarterly data to OMES to report as needed to the U.S. Treasury.

- (c) Pursuant to the State and Local Fiscal Recovery Funds (“SLFRF”) Compliance and Reporting Guide, some grantees with larger projects may be required to submit an annual Recovery Plan Performance Report (“Recovery Plan”). The Recovery Plan must detail how the grantee will ensure program outcomes are achieved in an effective, efficient, and equitable manner. The Recovery Plan, if required, must be submitted annually to BGB and the U.S. Treasury; in addition, the Recovery Plan must be posted on the grantee’s public-facing website.
- (d) Final reporting will be due at the completion of the grant program.

93:10-3-6. Labor reporting for construction projects [NEW]

(a) For ARPA projects with over \$10,000,000 in capital expenditures (based on total expected cost), the grantee shall submit labor reporting requirements, including, but not limited to:

(1) A Project Employment and Impact Report; and

(2) A Project Workforce Continuity Plan.

(3) These reports must be updated on a quarterly basis and submitted to BGB within thirty (30) days of the end of the reporting period.

(b) Projects funded entirely by ARPA dollars are not subject to the Davis-Bacon Act, Pub. L. No. 107-217 (Aug. 21, 2002), as amended; however, for projects that are funded in part by other federal dollars, grantees must determine whether their other funding source will require compliance with said act.

(c) Pursuant to the U.S. Treasury’s Final Rule, and regardless of the expected cost for construction projects, grantees are expected to use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.

93:10-3-7. Reimbursements [NEW]

(a) **Prior authorization.** Grantees must receive written prior authorization from OBO before making purchases exceeding a prior authorization threshold amount. This amount will be based upon the grantee’s risk assessment, as well as the overall scope of the proposed project. Grantees shall be informed in writing of the prior authorization threshold amount. A grantee shall upload the quote and a brief justification to the grant software designated by OBO for review and prior authorization by the OBO Grants Manager. Any purchase over the threshold amount that has not been prior authorized by the Grants Manager may not be reimbursed by the Broadband Governing Board Grant program.

- (b) **Invoices.** In order to obtain reimbursement, grantees shall electronically send monthly invoice packets to the OBO Grants Manager. These packets must be received by OBO by the date prescribed by the Grant Agreement.
- (1) Invoice packets must include the following:
- (A) Signed receipts/invoices for all purchases;
- (B) A brief justification of all expenses (1-2 sentences explaining how the purchase benefits the project); and
- (C) Bidding documentation with justification for why the vendor was chosen.
- (2) Invoices shall not be submitted to OBO for reimbursement before performance is completed by the vendor and accepted by the grantee, including physical receipt of goods. A grantee must sign the invoice or receipt to verify that the item or service has been received.

93:10-3-8. Audit requirements [NEW]

(a)The Grantee shall complete the Subrecipient Annual Report annually within forty-five (45) days after its fiscal year end, informing the State of Oklahoma whether a Single Audit is required for the prior fiscal year. If a Single Audit is required, the grantee shall submit a copy of the audit report to the State of Oklahoma within nine (9) months. A Single Audit is required if the grantee expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with Subpart F of Part 200 of Title 2 of the C.F.R.

(1) BGB will review the grantee's audit and issue any management decisions thereon within six (6) months of acceptance of the audit report by the Federal Audit Clearinghouse. Prior to issuing the management decision, BGB may request additional information or documentation from the grantee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs.

(2) After review of the audit, if it is determined that funds are owed to the State of Oklahoma, BGB may issue a management decision letter to the grantee. Pursuant to 2 C.F.R., § 200.521, the management decision will include:

(A) A clear statement of whether or not the audit finding is sustained, the reasons for the decision, and the actions the grantee is expected to take (including, for example, repaying disallowed costs, making financial adjustments, or taking other actions);

(B) A description of the appeals process available to the grantee; and

(C) The reference numbers the auditor assigned to each audit finding.

A grantee aggrieved by an BGB management decision may initiate an appeal of that decision. In order to initiate an appeal, the grantee must complete and submit the appropriate form provided by BGB and made available on its website, within twenty (20) calendar days of the date of the management decision letter. If the form is not timely received, the BGB or the hearing officer designated by the BGB will issue a letter stating that the appeal will not be heard.

(3) Appeals of management decisions shall be conducted in accordance with OAC 93:10-5-3.

(b) Even if a grantee is exempt from federal audit requirements for a particular fiscal year, it shall still make its records available for review or audit by appropriate officials of the U.S. Treasury, OMES, BGB, and Government Accountability Office, as requested. Moreover, all “government entities,” as such term is defined by law, shall comply with the applicable provisions of 74 O.S., § 212A relating to the Oklahoma State Auditor & Inspector’s Office.

93:10-3-9. Compliance with federal requirements [NEW]

Grantees must establish and maintain effective internal controls over the federal award that provide reasonable assurance that they are managing the awards in compliance with federal statutes, regulations, and the terms and conditions of the award. Some of the applicable federal compliance, reporting, and contract requirements include:

- (a) American Rescue Plan Act, Pub. L. No. 117-2 (Mar. 11, 2021), as amended;
- (b) Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), as amended;
- (c) U.S. Treasury Final Rule, Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4338 (Jan. 27, 2022), and all other applicable federal rules, policies, guidance, procedures, and directives including reporting and compliance guidance, as amended;
- (d) Uniform Guidance (Part 200 of Title 2 of the C.F.R.), including Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as amended; and
- (e) Single Audit Act Amendments of 1996, Pub. L. No. 104-156 (July 5, 1996), as amended.

93:10-3-10. Grantee assurances [NEW]

Grantee must agree to and abide by all state and federally required assurances, including those set out in Grantee’s Grant Agreement.

SUBCHAPTER 5: VIOLATIONS AND CORRECTIVE ACTIONS [NEW]

93:10-5-1. Program violations [NEW]

The State shall find that a violation of the Broadband Governing Board Grant program policies and procedures occurred under certain circumstances, including, but not limited to, the following:

- (a) A grantee provided false or misleading information in proposed project applications and/or project reports;
- (b) The requirements of federal statute, federal regulations, Oklahoma statute, or rules of BGB have not been met or have been violated;
- (c) There is a significant deviation from the grant agreement;
- (d) Significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not or cannot be put into effect, in the judgment of BGB staff, within a reasonable timeframe; or

- (e) There has been a finding of fraud, waste, or mismanagement of any current or prior state- or federally-funded project.

93:10-5-2. Corrective and remedial actions [NEW]

After having determined that a program violation has occurred, BGB may take the following actions:

- (a) BGB may adjust specific award conditions as needed, after providing notification consistent with the requirements in 2 C.F.R., § 200.208, including:
 - (1) Requiring payments as reimbursements rather than advance payments;
 - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
 - (3) Requiring additional, more detailed financial reports;
 - (4) Requiring additional project monitoring;
 - (5) Requiring the grantee to obtain technical or management assistance; or
 - (6) Establishing additional prior approvals; or
- (b) If, after determining that noncompliance cannot be remedied by imposing additional conditions, BGB may, in accordance with 2 C.F.R., § 200.339:
 - (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or more severe enforcement action by the U.S. Treasury or OMES;
 - (2) Disallow all or part of the cost of the activity or action not in compliance;
 - (3) Wholly or partly suspend or terminate the grant;
 - (4) Recommend the U.S. Treasury initiate suspension or debarment proceedings under Part 180 of Title 2 of the C.F.R.;
 - (5) Withhold further federal awards for the project or program; or
 - (6) Take other remedies that are legally available.

93:10-5-3. Individual Proceedings [NEW]

- (a) In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.
 - (1) Notice of hearing shall be mailed to the last known address of all parties by registered mail at least fifteen (15) calendar days in advance of the hearing.
 - (2) The notice shall include the time, date, location and statement of the matters asserted.
 - (3) The notice shall also include a statement of the legal authority and jurisdiction under which the hearing is to be held and a reference to the particular sections of the statutes, rules, and grant agreement provisions involved.
- (b) Hearings will be conducted by one of the following methods, as determined by the BGB:
 - (1) By the BGB; or
 - (2) By a hearing officer designated by the BGB.

- (c) The hearing authority may require the furnishing of information; the attendance of witnesses; and the production of books, records, papers or other objects as may be necessary and proper for the purposes of the hearing.
- (d) Any party to a proceeding may take depositions of witnesses in the same manner as provided by law in civil actions before courts of record and such depositions may be admitted into evidence subject to the right of objection at the time of the hearing in accordance with the law.
- (e) The hearing shall be conducted in an orderly manner by the hearing examiner or Chairman of the BGB. The rules of evidence shall be those specified by Article II of the Oklahoma Administrative Procedures Act.
- (f) The Chairman of the BGB, or hearing examiner, shall rule upon the admissibility of evidence and objections thereto, and shall rule upon other motions or objections arising in the course of the hearing.
- (g) A record of the hearing, by means of tape recording or shorthand notes, will be made of all hearings conducted, unless the hearing authority designates otherwise. A transcript of the proceeding shall not be transcribed except upon written application and a cash deposit provided by the requesting party sufficient to pay for having the record transcribed.
- (h) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director in counsel with the Chairman of the BGB.
- (i) At any individual hearing not heard by a majority of the members of the BGB, the decision, if adverse to a party to the proceeding, shall not be made until a proposed order is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present brief and oral argument to the BGB. The proposed order shall be accompanied by a statement of the reasons therefore and for each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing, or by one who has read the record. Exceptions must be filed with the Executive Director of the OBO within ten (10) calendar days of mailing the proposed order to the complainant. If exceptions are filed, the Executive Director shall set the time and the place for the BGB to consider the proposed order and the exceptions to it, and cause notice of such time and place to be mailed to the complainant. Such time shall not be less than twenty (20) calendar days after such notice is mailed. Briefs in support of exceptions must be filed with the BGB at least seven (7) calendar days before such hearing. The complainant may personally or through counsel, be present and present oral argument to the BGB in support of the exceptions. If no exceptions are filed, the BGB will consider the proposed order at its next regular or special meeting, or at such other time as is convenient to the BGB.
- (j) A final order adverse to a party in an individual proceeding shall be in writing or stated in the record. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of the order shall be mailed forthwith to each party.
- (k) All hearings before the BGB or its designated hearing officer shall be conducted in accordance with the Oklahoma Administrative Procedures Act, 75 O.S., §§ 250-323.

