



(ATTACHMENT 1)

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Guidance to Staff on Local Agency Technical Assistance Rules and Application

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1. Purpose

To advance the California Advanced Services Fund (CASF) goal of Public Utilities Code section 281 to encourage deployment of broadband to all Californians, these Guidelines provide rules under which technical assistance grants are available to local governments and tribal governments to reimburse such entities for costs related to the development of broadband network deployment projects to benefit unserved Californians, including the costs of joint powers authority formation,<sup>1</sup> environmental studies, network design, and engineering study expenses.

Because funding for the Local Agency Technical Assistance Grant Program stems from federal Coronavirus State and Local Fiscal Recovery Funds, projects authorized through this program will be subject to federal rules in addition to the Guidelines adopted herein. Under the federal rules, funds may be used for broadband infrastructure projects that are designed to provide service to unserved or underserved households and businesses<sup>2</sup> and that are designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds.<sup>3</sup> Federal guidance clarifies that pre-project costs are also eligible for funding and should be tied to an eligible project as described above, or should be reasonably expected to lead to such a project.<sup>4</sup>

2. Amount Available for Grants

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<sup>1</sup> A “joint powers agency” or “joint powers authority” means an agency or entity formed pursuant to the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1) that is formed for the local performance of governmental functions that includes the provision of municipal services. Cal. Gov. Code § 56057.7.

<sup>2</sup> “Unserved and underserved households or businesses” means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.” Coronavirus State and Local Fiscal Recovery Funds, 86 Fed. Reg. 26,786, 26,823 (May 17, 2021) (to be codified at 31 C.F.R. pt. 35). The unserved or underserved locations need not be the only locations served by the proposed project. Dept. of the Treasury, Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions at 30 (as of July 19, 2021), available at <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

<sup>3</sup> The federal rules further state that, in cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting those symmetrical standards, the infrastructure should be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Coronavirus State and Local Fiscal Recovery Funds, 86 Fed. Reg. 26,786, 26,823 (May 17, 2021) (to be codified at 31 C.F.R. pt. 35).

<sup>4</sup> Dept. of the Treasury, Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions at 31 (as of July 19, 2021), available at <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

To support local agencies and tribal governments in these pursuits, the Commission allocates \$50 million in Coronavirus Fiscal Recovery funds (pursuant to AB 164) to be made available for technical assistance grants. The Commission directs staff to disburse grants to qualifying local agencies and tribal governments in amounts not to exceed \$500,000 per local agency or tribal government, per fiscal year.

Ten percent of the funding allocated for this program will be set aside for tribal grantees. In the event that all funds set aside for tribal applicants are encumbered for specific tribal grantees, Commission staff may set aside up to ten percent of then-remaining funds for tribal grantees. The Commission's Tribal Technical Assistance Program remains an alternative program through which tribes may apply for technical assistance, allowing flexibility for tribes to decide which programs' requirements and benefits best suit their needs. These rules do not modify the rules for the Tribal Technical Assistance Grant Program, adopted in D.20-08-005.

3. Definitions:

A. Technical assistance: For the purpose of the Local Agency Technical Assistance Grant Program, "technical assistance" means reimbursement for work product resulting from activities such as the preparation of environmental, feasibility, and engineering design studies or reports, and/or assistance in the development of needs assessments, market studies, broadband strategic plans, or business plans that support local agencies in their pursuit of the provision of service to unserved and underserved communities. Assistance may also include, but is not limited to, costs incurred in pursuit of forming a Joint Powers Authority for the purposes of the provision of broadband service to unserved and underserved communities, and consultant and community-based organization services secured to complete reimbursable work product. "Technical Assistance" includes reimbursement for local agency or tribal staff hours that are expended on reimbursable activities and are incremental to the grant recipient's pre-grant award scope of work, i.e., the specific task performed during the hours for which reimbursement is requested would not be performed by the staff person absent the grant award. Separately, up to 15 percent of the total requested for reimbursement may be used to reimburse the local agency or tribal government for administrative costs associated with the securing or completion of reimbursable work products, other than the cost of local agency staff hours.<sup>5</sup>

B. Local agency: For the purposes of the Local Agency Technical Assistance Grant Program, local agencies are eligible applicants; "local agency" has the same

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<sup>5</sup> We define administrative costs as "indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself." Applicants seeking additional funds will require Commission approval via draft resolution.

meaning as that provided in Government Code section 53167 (e), as amended by SB 156, wherein “local agency” means any agency of local government authorized by law to provide broadband internet access service, including the following:

- i. A city
- ii. A county, including a county service area
- iii. A community services district
- iv. A public utility district
- v. A municipal utility district
- vi. A joint powers authority
- vii. A local educational agency, as defined in section 47640 of the Education Code
- viii. A sovereign tribal government
- ix. An electrical cooperative, as defined in section 2776 of the Public Utilities Code

C. Reimbursable work product: For the purpose of the Local Agency Technical Assistance Grant Program, a “reimbursable work product” is the final report, study, or agreement resulting from any one of the eligible activities listed as reimbursable “Technical Assistance,” above (see Section 3. A). Applicants may propose multiple reimbursable work products per application, with a total requested reimbursement not to exceed \$500,000 per local agency, per fiscal year. For final payment, grantees must submit a copy of the reimbursable work product authorized for funding, as further described in Section 11. Before payment, grantees must also submit the invoice(s) and supporting documentation described in Section 11, showing the costs of each individual reimbursable work product authorized for funding. Grantees may request reimbursement for a reimbursable work product when that reimbursable work product is completed, and need not wait for all reimbursable work products authorized under one grant to be completed before requesting reimbursement for completed reimbursable work product. Staff may authorize only one Local Agency Technical Assistance grant per reimbursable work product; that is, if Local Agency Technical Assistance funding has already been authorized for completion of a reimbursable work product, that reimbursable work product is not eligible for additional funding under the Local Agency Technical Assistance Grant Program.

D. Sovereign Tribal Government: For the purpose of the Local Agency Technical Assistance Grant Program, a “sovereign tribal government” means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004, (see Cal. Pub. Res. Code § 21073). For purposes of the Local Agency Technical Assistance Grant Program, “sovereign tribal government” also

includes wholly-owned tribal corporations, tribal nonprofits, and tribal utility companies with proof of authorization to apply by the Tribe's Council or other governing body.

#### 4. Eligibility Criteria

Local agencies, as defined in 3(B) and 3(D), above, are deemed eligible for Local Agency Technical Assistance Grants. The Commission may approve applications for technical assistance from separate local agencies operating in the same geographic jurisdiction through the resolution process, unless otherwise stated below; eligible agencies that have overlapping jurisdictions with other eligible agencies are encouraged to collaborate for the efficient use of resources. For the purposes of this program, sovereign tribal governments do not have overlapping jurisdictions with other eligible local agencies. In addition, for the purposes of this program, cities do not have overlapping jurisdictions with the county or counties in which the city is located. As further described in Section 6, below, these Guidelines require agencies to include with their applications a support letter from the county or other relevant political subdivision (such as a city council) that details the efforts made towards this collaboration, if applicable. Applicants representing tribes are required to submit a letter of support from the tribal chair, administrator, or council, though these letters need not detail coordination efforts.

Proposals for reimbursable work products that are reasonably expected to result in broadband infrastructure projects that will be designed to provide service to unserved or underserved households and businesses and that are designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds are eligible for Local Agency Technical Assistance Grants.<sup>6</sup>

#### 5. Technical Assistance Grant Amounts

For applications that meet Ministerial Review criteria (Section 8), Commission staff may authorize grants to fund 100 percent of the cost of technical assistance, not to exceed \$500,000 per local agency, per fiscal year.<sup>7</sup> Grant requests that would cause an applicant to exceed \$500,000 in technical assistance, if authorized, may be approved by Commission resolution, up to \$1 million, per local agency, per fiscal year. As noted above, only 15 percent of the total requested for reimbursement may be used to reimburse local agencies for their administrative costs, other than the costs of local agency staff hours, which are reimbursable to the extent that they are incremental to the staff's pre-grant award scope of work.

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<sup>6</sup> See notes 3 and 4, above.

<sup>7</sup> This limitation is based on the date of grant authorization.

Applications that satisfy general Application Requirements (Section 6) but do not meet the Ministerial Review funding criteria may only be approved by the Commission via resolution; the Commission will conduct a reasonableness review and may adjust budgets via the Resolution Review process (Section 9 below). All applications shall be approved or denied through the Ministerial Review process or marked for further review with potential award by the Commission through a resolution.

6. Application Requirements:

To be considered, applicants must submit a completed Commission staff-provided application form (to be made available on the Commission's website) and required supporting documents. Each applicant is required to provide the following information as part of its application for technical assistance:

- a project summary.
- confirmation that the technical assistance will advance the CASF program goal "to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies[.]"<sup>8</sup>
- confirmation that the technical assistance is tied to (or that it could reasonably be expected to lead to) a broadband infrastructure project designed to provide service to unserved or underserved households and businesses and that are designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds.<sup>9</sup>
- affirmation, under penalty of perjury, that any staff hours expended on reimbursable activities, and for which reimbursement will be requested, are incremental to the applicant's pre-grant award scope of work, i.e., the specific task performed during the hours for which reimbursement is requested would not be performed by the staff person absent the grant award.
- agreement that the scope of work contemplated by the local agency contract(s) included in the application will be concluded within 24 months of the date of Commission approval.
- affirmation, under penalty of perjury, that to the best of their knowledge all statements and representations made in the application are true and correct with the accompanying appropriate signature of a person authorized to act on behalf of the local agency or tribe.

Applications that do not include each item listed above will not be approved.

As supporting documents, the local agency applicant must provide a proposed contract(s) from the local agency's contractor(s) with a scope of the work that will be performed for the purpose of the technical assistance. If the reimbursable work product

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<sup>8</sup> Pub. Util. Code § 281(a).

<sup>9</sup> See notes 2 and 3, above.

stemming from the technical assistance is to be developed in-house, a written project proposal will suffice. This contract or project proposal must provide details of the proposed reimbursable work product(s) resulting from the contract or project proposal, including scope of work, a detailed cost estimate (including hourly rate(s) of each individual performing the technical assistance and estimated total hours for each individual), and a proposed timeline for completion of the work performed under the scope of the contract or project proposal. The application should identify each reimbursable work product expected to result from the contract(s) or project proposal. While more than one reimbursable work product may result from a contract or project proposal, every reimbursable work product proposed in the application must be supported by a contract or project proposal.

Applications must also include a letter of support from the local agency's relevant political subdivision (city, county, or tribe). This letter must include information relating to coordination performed with other eligible local agencies with geographic jurisdiction that overlaps with the local agency applicant's geographic jurisdiction, if the applicant is not a sovereign tribal government. Since tribal jurisdictions are not overlapping jurisdictions for the purposes of this program, applicants representing tribes are not required to demonstrate coordination performed with other eligible local agencies, though a letter of support from the Tribal administrator, chair, council or other applicable governing body is required.

In addition to the application, supporting documents and letter of support noted above, applicants must also submit a notarized affidavit containing, at minimum, the following attestations, the final form of which will be made available on the Commission's website:

- An applicant must attest that the individual completing the application has the authority to do so on behalf of the local agency applicant and personal knowledge of the facts contained in the application.
- An applicant must further agree to abide by the CASF program rules the Commission establishes, as well as all other applicable state and federal rules and regulations concerning broadband services.
- An applicant agrees that by receiving a Technical Assistance grant, the grantee agrees to comply with the terms, conditions, and requirements of the grant and thus submits to the jurisdiction of the Commission with respect to the disbursement and administration of the grant.
- An applicant agrees to comply with the Commission Rules of Practice and Procedure, in particular Rules 1, 1.11, and 2.2, and to be subject to Public Utilities Code sections 2108, 2110 and 2111 for failure to meet the program and project compliance requirements as the Commission determines.

7. Submission Requirements and Timelines:

As noted above, applicants must submit a Commission staff-provided application form. Applicants may electronically submit their completed application form, along with required supporting documents and attestation, using an email address to be provided by Commission staff via notice to the service list of Rulemaking 20-08-021. Larger files can be submitted via secure file transfer (url: <https://cpucftp.cpuc.ca.gov/>).

Applications may be submitted at any time. However, staff will consider applications submitted on a monthly basis, ending on the last day of each calendar month, until the funding is exhausted. If the last day of the calendar month falls on a weekend or state holiday, the monthly application period will be extended to the close of the next business day. Staff shall notify an applicant by letter or email specifying reasons for rejection/denial should an application fail to meet the Local Agency Technical Assistance eligibility criteria.

Notice of applications received will be published on the Commission's web page on a monthly basis.

8. Criteria for Ministerial Review

The Commission assigns to Communications Division staff the task of reviewing and approving applications that meet all of the following criteria:

- A. Applicant requests a grant not exceeding \$500,000 per local agency per fiscal year.
- B. The Commission has not received a separate application for Local Agency Technical Assistance from an agency with a jurisdiction overlapping that of the subject application during the current application period or within the prior year, unless such application(s) was denied. This limitation does not apply to:
  - 1) applications from sovereign tribal governments, which may be reviewed ministerially if they satisfy items A and C in this subsection.
  - 2) applications from cities located in counties that have pending applications or applicable grant awards, or to applications from counties that include cities with pending applications or applicable grant awards, which may be reviewed and approved ministerially if they satisfy items A and C in this subsection and provided that such applicants' support letters describe the coordination that occurred between the city and county to prevent duplication of efforts.
- C. The application meets all the other requirements of a Local Agency Technical Assistance grant included in Sections 4, 5, 6, and 7 of these Rules.

When an application meets all of the criteria for Ministerial Review, staff is authorized to approve via ministerial approval. The Commission may also consider such applications for approval via resolution.

9. Criteria for Resolution Review

When an application does not meet the Ministerial Review criteria, staff may refer the application to the Commission for review and approval via the resolution process. The Commission will issue approval of qualifying applications, together with the grant amount per application, through a Commission resolution(s).

The Commission assigns staff to propose administrative changes to the CASF LATA via resolution for Commission review and approval of those changes.

10. Guidelines for Award Notification, Monthly and Completion Reporting, and Public Posting

The Communications Division Director or his/her/their designee will notify grantees of awards made via ministerial review by letter. Award letters will be regularly posted to the Commission's website.

Staff will create a mechanism for the monthly reporting required by SB 156. SB 156 requires each entity that receives CASF funding to report the following information to the Commission monthly:

- A. The name and contractor's license number of each licensed contractor and subcontractor undertaking a contract or subcontract in excess of twenty-five thousand dollars (\$25,000) to perform work on a project funded or financed pursuant to this section.
- B. The location where a contractor or subcontractor described in subparagraph (A) will be performing that work.
- C. The anticipated dates when that work will be performed.

Upon completion of the technical assistance and before final payment, the applicant must provide a signed completion form stating that the technical assistance work has been completed. This form includes a request for a short summary of the reimbursable work product(s) performed under the contract, including demonstration that the reimbursable work product(s) identify broadband infrastructure deployment projects that will help achieve the CASF deployment goal, and identification of the area(s) where the applicant intends to deploy broadband based on the reimbursable work product(s), suitable for posting on the Commission's web page. A short summary of the work/activities completed pursuant to the Local Agency Technical Assistance Grant will be posted on the Commission's web page.



Upon completion of the reimbursable work product and before final payment, local agency grantees must provide staff a copy of each reimbursable work product's final report(s), plan(s), studies, etc., produced under the scope of the contract.

In addition to the reporting required above, local agency grantees must also comply with reporting requirements found in the American Rescue Plan Act State and Local Fiscal Recovery Funds "Compliance and Reporting Guidance," detailed in Section 13, below.<sup>10</sup>

#### 11. Guidelines for Payment

Payment will be made directly to the local agency as the grant recipient. Local agency grantees may request partial reimbursement if they complete one or more of the approved reimbursable work products prior to completion of other reimbursable work products approved in the same grant authorization. Payment will be based upon receipt and approval of an invoice(s) submitted by the local agency showing the expenditures incurred for the reimbursable work product, along with the reimbursable work product final report/study/joint powers agreement, etc., and the completion reporting required in Section 10, above. The invoice(s) must be supported by documentation including but not limited to the actual cost of labor and any other expense that will be recovered by the grant.

To the extent that any portion of an award was used to reimburse a local agency for administrative costs associated with securing or completing a reimbursable work product, the local agency must submit an itemized accounting of such costs, demonstrating the total requested for reimbursement does not exceed 15 percent of the total authorized award.

If the grantee cannot complete the project within the 24-month timeline, the grantee must notify the Commission or Director of Communications Division as soon as they become aware that they may not meet the project deadline. In the event the grantee fails to notify the Commission or Director of Communications Division, the Commission may withhold or reduce payment.

If any portion of reimbursement is found to be out of compliance, grantees will be responsible for refunding any disallowed amount along with appropriate interest rates determined in accordance with applicable Commission decisions.

Grantees are required to maintain records such as files, invoices, and other related documentation for five years after final payment. Grantees shall make these records and invoices available to the Commission upon request and agree that these records are

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<sup>10</sup> <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>

subject to a financial audit by the Commission at any time within five years after the final payment made to a grantee.

## 12. Guidelines for Execution and Performance

The Commission has the right to conduct any necessary audit, verification, and discovery for work proposed or completed under the technical assistance for local agencies to ensure that CASF funds are spent in accordance with Commission rules and with the terms of approval granted by the Commission. The grantee must complete the project with the 24-month timeframe. If the grantee is unable to complete the proposed project within the required 24-month timeframe, it must notify the Commission or Director of Communications Division as soon as it becomes aware of this prospect. The Commission reserves the right to reduce or withhold payment for failure to satisfy this requirement.

Invoices from the local agency or its approved contractor will be subject to financial audit by the Commission at any time within five years of completion of the work. The grantee must complete all performance on the project before the termination date in accordance with the terms of approval granted by the Commission. In the event that the applicant or contractor fails to complete the work in accordance with the approval granted by the Commission, and as described in the contract, the local agency must reimburse some or all of the funds that it has received.

All grantees must sign and submit a Consent Form within 30 calendar days from the date of the award agreeing to the terms stated in the resolution or award letter authorizing the CASF award. Should the grantee not accept the award through failure to submit the Consent Form within 30 calendar days from the date of this letter's adoption, the CPUC will deem the grant null and void. The agreement will provide the name of the person who is managing the contract and must be signed by an authorized agent of the grantee.

The grantee must communicate in writing to the Communications Division Director any changes to the substantive terms and conditions underlying Commission approval of the grant (such as changes to a reimbursable work product contract, work plan, or budget) at least 30 days before the anticipated change is to be effected. Substantive changes may require approval by either the Communications Division Director or by Commission resolution before becoming effective.

13. Reporting consistent with the American Rescue Plan Act State and Local Fiscal Recovery Funds “Compliance and Reporting Guidance.”<sup>11</sup>

Reporting is required. The following is guidance to staff on reporting guidelines and completion report templates to publish in order to collect information necessary to comply with American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (SLRF) reporting. Staff is directed to use information already within its possession to the extent practicable to report on authorized projects.

For specific reporting, staff is directed to ensure the required information in the Compliance and Reporting Guidance for broadband infrastructure projects is available for each Local Agency Technical Assistance Grant. A summary of the type of required information may include the following:

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial location data)
- Speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering
- Technology to be deployed
- Miles of fiber
- Cost per mile
- Cost per passing
- Number of previously unserved households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards
- Number of previously unserved institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization
  - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and
  - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload

**(END OF ATTACHMENT 1)**

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<sup>11</sup> <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>