

122:30-1-01            **Definitions.**

As used in rules of this division 122:30-1 of the Administrative Code:

- (A) "Applicant" is a broadband provider that submits an application to development during an application period. Only broadband providers are eligible to apply for the program.
- (B) "Adjacent" means operating in a contiguous census block to all or a part of the residential addresses contained in the application.
- (C) "Application period" has the meaning given to it in division (A) of rule 122:30-1-02 of the Administrative Code.
- (D) "Authority" means the broadband expansion authority established by section 122.403 of the Revised Code.
- (E) "Development" means the department of development, or any successor agency.
- (F) "Director" means the director of development.
- (G) "Broadband provider" has the same meaning as division (C) of section 122.40 of the Revised Code.
- (H) "Certified mail" means a commercial mail service, including the United States postal service, that provides proof of mailing via a receipt to the sender.
- (I) "Complete application" means either:
- (1) an application timely submitted within an application period containing all required information and documentation; or
  - (2) a resubmitted application containing all required information and documentation that had been previously determined incomplete by development, timely submitted within an application period, or within an extension period of no more than fourteen days granted by development for good cause shown under division (E)(2) of section 122.4019 of the Revised Code.
- (J) "Complete challenge" means a challenge timely submitted by a challenging provider by certified mail to development and the applicant that contains, at minimum, sufficient evidence to support the challenge to the whole or portion of the complete application being challenged, an email address at which the challenging provider will receive notifications, and a certification signed by a duly authorized representative of the challenging provider acknowledging and agreeing that in order to uphold a challenge the challenging provider may be responsible for the funding gap in the

- challenged application if the challenging provider fails to provide tier two service in the challenged area within two years.
- (K) "Distressed area" has the same meaning as division (A) of section 122.19 of the Revised Code.
- (L) "Economic feasibility" means the ratio where the numerator is the broadband funding gap and the denominator is the total project cost, subtracted from 1 and expressed as a percentage. For example, if a project has a broadband funding gap of \$100 and a total project cost of \$1,000, the economic feasibility would be 0.9 or ninety per cent. The closer the ratio is to one hundred per cent, the higher the economic feasibility of the project. Economic feasibility may also include other factors as determined by the authority.
- (M) "Financial stability to complete a project" means sufficient resources, assets, and revenues of the applicant, as determined by the director, to complete an eligible project
- (N) "Good cause" means failure to meet a program timeline or requirement due to circumstances outside of an applicant's reasonable control as determined by the director. In no event is submission of an application or information at or near the end of an application period or other time period set by the Revised Code, Administrative Code, or otherwise noticed to a broadband provider by development or the authority in and of itself good cause.
- (O) "Program" means the Ohio residential broadband expansion grant program as defined by division (F) of section 122.40 of the Revised Code.
- (P) "Noncompliance" as used in section 122.4046 of the Revised Code and this section 30 of chapter 122 of the Administrative Code means failure of a broadband provider entering into a program grant agreement to meet any of the requirements applicable to the program under chapter 122 of the Revised Code, or the terms of a program grant agreement.
- (Q) "Fiscal year" means the period beginning July 1 of each calendar year and ending June 30 of the subsequent calendar year. Each fiscal year is referred to as the calendar year in which the period will end. For example, the period beginning July 1, 1900 and ending June 30, 1901 would be Fiscal Year 1901.
- (R) "Public record information" means the information submitted by an applicant in an application or revised application, a challenging provider in a challenge, or county commissioners in a solicitation for applications determined to be public record by development after review under rule 122:30-1-03 of the Administrative Code.

(S) "Sufficient evidence" means such information provided by a challenging provider to development to allow development to determine that all or portion of a project is ineligible under the program. Sufficient evidence is, at minimum, the information required under section 122.4031 of the Revised Code and rule 122:30-1-04 of the Administrative Code for a complete challenge. It is in the director's discretion to determine whether evidence submitted with a challenge is sufficient evidence. Sufficient evidence is the minimum evidence required to support a challenge, but it does not, in and of itself, uphold a challenge. The determination to suspend all or part of an application based on the evidence submitted in a complete challenge is in the discretion of the authority.

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122:30-1-02**Application.**

(A) The director will make an application for the program available on the program website in a form determined by the director. The application will include the minimum information required by division (A)(1) through division (A)(17) of section 122.4020 of the Revised Code and any additional information included in the application form by development as published on the program website at least thirty days prior to the beginning of an application period. In addition, the application will request the applicant to provide the following information:

(1) Identifying applicant information, including applicant name, authorized representative name, federal employer identification number, project contact name, and email address to contact the company;

(2) Sufficient evidence that shows the residential addresses in the application are eligible;

(3) Total project cost;

(4) Whether the project uses state infrastructure;

(5) Whether the project leverages existing infrastructure within the project area;

(6) Whether the project leverages existing infrastructure adjacent to the project area;

(7) Letters of support;

(8) Whether the project is located partially or entirely within a distressed area;

(9) Whether the project is located partially or entirely within an opportunity zone; and

(10) Other information determined by the director.

(B) The application will contain a statement, as required by division (A)(2) of section 122.4019 and division (A)(16) of section 122.4020 of the Revised Code that failure to comply with the Ohio residential broadband expansion program as set forth in section 122.40 through 122.4077 of the Revised Code, this division 30 of Chapter 122 of the Administrative Code, and any other program requirements or failure to meet the required tier two broadband service proposed in the application may require the refund of all or a portion of the program grant awarded for the project. The statement is to be submitted with the application on a document signed by a duly authorized representative of the applicant with the signature of the representative notarized.

(C) The application will also contain a statement that neither the applicant nor any other individual or entity has commenced construction of any portion of the project in the

application, no portion of the project will commence construction prior to receipt of a program grant, and that the receipt of a program grant is essential to the applicant's ability to undertake the project. The statement is to be submitted with the application on a document signed by a duly authorized representative of the applicant with the signature of the representative notarized.

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122:30-1-03**Application and Award Procedure.**

(A) Application period. Each fiscal year for which funds are allocated for the program there will be a minimum of one but no more than two application periods in accordance with division (B) of section 122.4019 of the Revised Code. The authority will set the number of days each application period will remain open. No late applications will be accepted by development except for good cause or due to state of Ohio network error.

(1) For each fiscal year, the application period will begin on the date, or dates if the authority determines there will be two application periods in a fiscal year, determined by the authority.

(2) The director will post application materials and the scoring criteria developed by the authority on the program website at least thirty days prior to each application period and provide notification of each application period through the automated notification process established by section 122.4024 of the Revised Code prior to the opening of each application period.

(B) Submission of applications. Upon receipt of an application from an applicant, development will promptly review the application for completeness.

(1) Applications submitted by certified mail will be deemed received by development on the date delivered to the address indicated in the application materials.

(2) Applications submitted in person will be deemed received when physically delivered to and accepted by an authorized individual at the address indicated in the application materials.

(3) Applications submitted by electronic mail will be deemed received at the time indicated by the electronic time stamp given by the electronic mailbox indicated in the application materials.

(4) Applications uploaded to the designated program website will be deemed received at the time indicated by the time stamp assigned by the program website.

(C) Incomplete Applications.

(1) Notice. If, upon its review of a submitted application, development determines that an application is incomplete, development will notify the applicant by electronic mail of what information or documentation is needed for the application to be complete. Applicants are solely responsible for providing an accurate email address in an application and monitoring the provided email address for notifications from development or the authority related to an application. An applicant's failure to receive an email notification because



it provided an incorrect email address or because an email notification was filtered is not good cause.

(2) Resubmission. In its notice development will provide the applicant instructions for providing the missing information and the deadline date to provide missing information to complete the application. Applicants will have no less than the difference in time from the date of notice of an incomplete application to the end of the application period. If the period of time from the date of notice to the end of the application period is less than twenty-four hours, the director may grant the applicant a number of additional days only for good cause, as determined by the director.

(3) Incomplete application determination. Any applicant that submits an application in an application period that is found incomplete on development review, is provided proper notice, and the applicant either fails to resubmit the missing information within the required time or submits additional information that, upon review by development, is insufficient to complete the application is not eligible for scoring for a program grant by the authority in that application period. An applicant that submits an incomplete application in any one application period may reapply for the program in future application periods.

(D) Complete applications.

(1) If following receipt and review of a submitted application or timely resubmission of missing information from an incomplete application development determines that an application is complete, it will notify the applicant in writing through electronic mail.

(2) In accordance with division (C)(1) of section 122.4019 of the Revised Code, development will post on the program website for each complete application the name of the applicant, contact information of the applicant, and a list of all residential addresses included in the complete application by no later than five days following the end of an application period.

(3) In accordance with division (C)(2) of section 122.4019 of the Revised Code, development will post all public record information from each complete application on the program website no later than thirty-five days from the end of an application period

(E) Challenge period. For sixty-five days from the close of an application period a challenging provider, as defined by division (A) of section 122.4030 of the Revised Code, may challenge a complete application in accordance with section 122.4030

through 122.4036 of the Revised Code and rule 122:30-1-04 of the Administrative Code.

(F) Scoring by Authority.

- (1) Development will provide complete applications to the authority for scoring at the earlier of (i) the end of the challenge period for complete applications that are not challenged; (ii) the authority determining a challenge is rejected and approving the complete application as submitted under division (A)(2) of section 122.4033 of the Revised Code; or (iii) the authority's acceptance under section 122.4035 of the Revised Code of a revised application timely submitted by the applicant to the authority in response to a whole or partially suspended application under an initially upheld application challenge under section 122.4034 of the Revised Code and rule 122:30-1-04 of the Administrative Code.
  - (2) For each application period the authority may set a minimum score for a complete application to be awarded funds under the program. In the event the authority sets a minimum score for an application period, the authority is not required to make full or partial awards to complete applications receiving the minimum score.
  - (3) For applications that receive the same score in an application period the authority may distinguish between individual scoring criteria to determine which complete applications to fund, whether to make partial awards, the amount of partial awards, or to otherwise distinguish between applications as the authority may deem necessary to award funds.
- (G) In accordance with section 122.4040 and 122.4041, the authority will score complete applications delivered to it by development and award funds allocated for program grants each fiscal year to complete applications from the highest scored completed applications down each application period to the extent funds are available for grants in the fiscal year. Any complete applications pending, whether due to exhaustion of funds available for program awards for the fiscal year awarded to complete applications that received higher scores, exhaustion of funds during the duration of an ongoing challenge, or otherwise will be deemed denied at the end of the fiscal year, in accordance with division (B) of section 122.4018 of the Revised Code. Any applicant denied at the end of a fiscal year may reapply in future application periods.
- (H) Each applicant awarded funds by the authority will receive notification of award in writing by electronic mail. As required by division (C) of section 122.4043 of the Revised Code, the authority will notify all applicants of the award decisions for the

application period by email at the earlier of when all awards have been made for the application period or the exhaustion of funds for the fiscal year.

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122:30-1-04**Challenges.**

A challenging provider may submit a challenge only after a complete application is posted on the program website by development but no later than sixty-five days after the close of an application period, or for an extended period as may be granted by the director. The director may only grant a challenging provider an extended period to submit a challenge to an application for good cause and no extended period may be longer than fourteen days.

(A) Only a challenging provider as defined by division (A) of section 122.4030 of the Revised Code may submit a challenge. A challenging provider must provide evidence satisfactory to the director that (i) it is providing service to the residential addresses contained within the application, or (ii) it is providing service in the area adjacent to the residential addresses contained within the application.

(B) In order for the authority to consider a challenge, the challenging provider is to timely submit a complete challenge to both development and the applicant by certified mail. A challenging provider is to mail its challenge to development at the address provided for challenges on the program website and to the applicant at the contact address listed for the application on the program website. Only challenges submitted containing the requirements for a complete challenge, including sufficient evidence, an email address for notification, and a certificate acknowledging and agreeing to responsibility to provide tier-two service within two years if the challenge is upheld will be accepted by development for consideration. A challenge will be deemed submitted on the date the challenge is received by development. Challenges that are not received by the applicant being challenged on or about the date the challenge is received by development may either be rejected or not considered until the challenge is received by the applicant.

(C) Development may only consider submitted challenges that are a complete challenge. Only non-material supplemental information, as determined in development's discretion, may be requested from a challenging provider to cure information submitted in a challenge that is not sufficient evidence to support the challenge. Development will only request supplemental information through written request sent by electronic mail. Failure of a challenging provider to submit a complete challenge within the challenge period or to provide supplemental information to development in the time and manner requested by development will result in the challenge being rejected by the authority.

(D) Authority determination to suspend application or reject challenge. Development will provide complete challenges to the authority for its determination to suspend a challenged application in whole or in part or to reject the challenge. The authority will make its determination and notify the applicant and challenger of its decision in writing by electronic mail within thirty days of receipt of a complete challenge by development in accordance with section 122.4033 of the Revised Code and update

the status of the complete application on the program website accordingly. The authority will only provide a determination to a challenging provider by certified mail if a challenging provider explicitly and conspicuously requests a determination be provided by certified mail in its complete challenge.

(1) Suspended application. If the authority upholds a complete challenge, in whole or in part, it will suspend the application upon receipt of the return of a signed copy of the authority's decision to suspend the application or portion of the application from the challenging provider, acknowledging and accepting its responsibility to complete the provision of tier two services within two years from the date of the suspension. The determination to suspend the application in whole or in part will provide an explanation of why the challenge is upheld and describe what information is required for the applicant to revise its application.

(a) Revised application submission. An applicant that has its application suspended may revise and resubmit its application to development as directed in the authority's suspension determination within the time allowed by division (A) of section 122.4034 of the Revised Code. The applicant will also provide a copy of its revised application to the challenging provider by electronic mail or certified mail. Development will review revised and resubmitted applications upon receipt for completeness and public record information. Development will publish the public record information contained in revised and resubmitted applications on the program website following completion of its review.

(i) Failure of an applicant to respond to a suspension determination by timely submitting a revised application is a withdrawal of the portion of the application suspended. Failure of an applicant to provide all of the information requested in the determination to suspend the application in whole or in part is a failure to respond and a withdrawal of the suspended portion of the application. A withdrawal of a suspended application is final and the withdrawn part or whole of the application suspended may not be resubmitted by the applicant in a future application period.

(ii) Development may request non-material supplemental information it determines is necessary for the authority to review the revised application. Failure of an applicant to timely respond to a request for supplemental information by development may be determined to be a withdrawal, in whole or in part, of a revised application. The need for supplemental information for the authority to review the revised application may be good cause under division (A) of section 122.4034 of the Revised Code, in development's discretion.

(b) Development will provide complete revised applications timely received to the authority for review. The authority will review and issue a determination to accept the revised application or uphold the challenge within the time allowed by section 122.4035 of the Revised Code. The determination will be provided in writing by electronic mail to the applicant and challenging provider and the status of the application will be updated on the program website.

(2) Rejected Challenge. If the authority rejects a complete challenge, it will provide its determination in writing by electronic mail to the challenging provider and applicant within the time allowed by section 122.4033 of the Revised Code. Development will update the status of the application on the program website and provide the complete application to the authority for scoring. The authority may score the application upon its determination to reject a challenge or at its next meeting at which applications will be scored.

(E) De Facto Challenge

(1) Where two applications submitted in any one application period both propose to serve any identical residential addresses and both applications would be approved for funding but for the other serving identical addresses, the authority will choose which application will be funded for those residential addresses. This decision will be based upon the score each application receives. In the event both applications score equally, the decision will be based on objective distinguishing criteria determined in the authority's discretion. The applicant that was not awarded a grant for the identical addresses may revise its application to be considered for other addresses that are not part of the identical set.

(2) Where the authority has granted funds to serve residential addresses in an application period, it shall not provide funds in a later application period to serve the same residential addresses except where a broadband provider previously awarded a grant for those addresses has been found to be noncompliant under the Revised Code and division 122:30 of the Administrative Code.

(3) Where the authority has upheld a challenge to residential addresses because a challenging provider already provides service within the area, any application for the identical residential addresses will be considered automatically challenged for those addresses that were part of the prior challenge. The applicant will be required to provide evidence to the authority that tier two broadband service is not available in the area to receive funding.

(4) Where the authority has upheld a challenge to residential addresses because a challenging provider planned to provide service within two years of the challenge:

(a) Any application will be partially rejected for any of the same residential addresses from the successful challenge during the two years following the date the challenge is upheld.

(b) If a challenging provider fails to provide tier two service to the challenged addresses within the two years following the date its challenge is upheld, then the authority will consider those addresses eligible for project grants.



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122:30-1-05**Grant Agreement; Changes to Projects; Reporting.**

- (A) Each applicant awarded program funds by the authority in a fiscal year will enter into a grant agreement with the authority setting forth the terms and the conditions of the program grant. The authority may rescind an award of funds to a broadband provider for failure to execute a program grant agreement within ninety days of the determination of the authority to approve the provider's complete application.
- (B) The grant agreement will incorporate the eligible project as set forth in the applicant's complete application. Expansion to the scope of a project by a broadband provider from what was included in its complete application is only eligible for additional funding if submitted as a new project in a future application period. The applicant may not change the scope of the project to reduce the residential addresses served or type or speed of service to be provided.
- (C) Development will set forth in the grant agreement conditions for disbursement of grant funds and amounts to be disbursed at completion of each condition. In accordance with section 122.4045 of the Revised Code, development will set forth the amount of disbursement of grant funds within the following parameters:
- (1) A portion of grant funds not to exceed thirty per cent of total grant funds awarded for the project will be disbursed prior to the commencement of project construction.
  - (2) A portion of grant funds not to exceed sixty per cent of total grant funds awarded to the project will be disbursed by periodic payments, to be based on measurable project construction progression milestones prior to project completion as determined by development from the application materials. Development will include the progress reporting required to be submitted to development for the applicant to receive a periodic disbursement in the program grant agreement.
  - (3) At least ten per cent of grant funds will be disbursed upon proof of project completion by submission of a project completion report to the authority within sixty days of project completion.
- (D) Annual progress report. Each broadband provider that enters into a grant agreement will submit the annual progress report required by division (A) of section 122.4070 to development in the manner set forth in the agreement. The broadband provider will include all information required by division (B) of section 122.4071 of the Revised Code and any additional information required under the program grant agreement in the form and manner required by development. Each broadband provider will submit its annual progress report by the date indicated in the grant agreement by the first annual progress report due date following the date it enters into a program grant agreement through the annual progress report due date prior to project completion.

(E) Project completion report. Each broadband provider entering into a program grant agreement will promptly upon completion of its project provide notice to development and the authority that the project is complete in the manner and form set forth in the program grant agreement. Within sixty days following completion of the project, the broadband provider will submit a project completion report to development containing all information required by division (B) of section 122.4071 of the Revised Code, all information required in the program grant agreement, and any other information development may request in the form and manner required by development. The project completion report is also the broadband provider's first operational report required under division (B) of section 122.4070 of the Revised Code.

(F) Operational report. On or before the date that is sixty days from the project completion date, as indicated in the project completion notification, and for four years following the year the broadband provider submits its project completion report, the broadband provider will submit an operational report to development. The broadband provider will include in its operational report all information required under division (B) of section 122.4071 of the Revised Code, the program grant agreement, and any other information requested by development in the form and manner required by development.

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122:30-1-06**Noncompliance; Remedies.**

- (A) Notification of noncompliance. As required by division (A) of section 122.4046 of the Revised Code, development will notify a broadband provider that is noncompliant with its grant agreement in writing by electronic mail that of its noncompliance. The notice will contain a reasonable description of the particular noncompliance, what actions are required for the broadband provider to be in compliance, and the time required for the broadband provider to cure its noncompliance.
- (B) Opportunity to explain or cure. Within the time set forth by development in its notice to the broadband provider, the broadband provider will either provide an explanation of good cause for its noncompliance or cure its noncompliance, if the noncompliance is of such a nature that it is possible to be cured. In the event a broadband provider's noncompliance is capable of cure but incapable of being cured within the time required by development in its notice, the broadband provider will provide a plan and timeline setting forth in reasonable detail how it will cure its noncompliance, which may be accepted or denied by the director, in its discretion.
- (C) Refund. If the director determines, in its discretion, that a broadband provider's explanation for noncompliance or plan to cure is insufficient, the broadband provider fails to cure its noncompliance, or a broadband provider fails to respond to the notice of noncompliance within the time required in the notice, development may do either or both of (i) require the broadband provider to refund all or a portion of the program grant funds awarded to the broadband provider or (ii) require the broadband provider to refund all of the funds contributed toward the broadband funding gap by a municipal corporation, township, or county to the same. Development will provide the broadband provider its decision in writing by electronic mail. The broadband provider will refund the amount determined by development within thirty days of development's determination.
- (D) Termination of agreement. In the event a broadband provider is noncompliant and fails to cure its noncompliance through actions or accepted explanation, development, in addition to requiring a refund under this rule and section 122.4046 of the Revised Code, may terminate the program grant agreement and the broadband provider will be ineligible for any remaining undisbursed program grant funds and ineligible to apply for the program in any future application periods.

Any residential addresses that were part of a broadband provider's grant agreement that is terminated for noncompliance are no longer subject to de facto challenge under rule 122:30-1-04 of the Administrative Code.

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122:30-1-07**Review for Public Record Information.**

Development will review all submitted information in an application, challenge to an application, or program grant report for proprietary or trade secret information or information that is otherwise exempt from public record under the Revised Code. Trade secret and proprietary information has the same meaning as the term trade secret in division (D) of section 1333.61 of the Revised Code. If a broadband provider fails to conspicuously identify information as trade secret or proprietary to development when submitted it may be public record information unless an exemption under the Revised Code otherwise applies.

(A) Development will complete its review of all submitted information in applications submitted during an application period within thirty-five days of the close of each application period.

(B) Development will complete its review of all submitted information in revised applications submitted in response to partially or wholly suspended applications under an upheld challenge within fourteen days of the receipt of the revised application.

(C) All other information submitted to development will be reviewed for proprietary or trade secret information prior to all required public information being posted on the program website as may be required under chapter 122 of the Revised Code.

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122:30-1-08**Broadband Expansion Program Authority.**

- (A) The authority will adopt bylaws for the conduct of its meetings, procedures for notice for and conduct of public hearings required by section 122.408 of the Revised Code, and other activities of the authority required by section 122.407 of the Revised Code or as it deems necessary to fulfill its responsibilities under chapter 122 of the Revised Code.
- (B) The authority will hold a regular meeting quarterly. Development will provide notice of the time and place of each regular meeting at least forty-eight hours prior to the meeting. The authority may hold special meetings, in its discretion, if it provides notice of the time, place and purpose of such meeting at least twenty-four hours prior to the meeting to the news media that have requested notification from development in accordance with section 121.22 of the Revised Code.

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122:30-1-09**Request by County Commissioners for Solicitation of Applications.**

(A) Development will make available on the program website an application and instructions for county commissioners to request development to solicit applications for the program on the county commissioner's behalf for eligible projects in the municipal corporations and townships of a county.

At minimum, an application for solicitation of applications from county commissioners requires submission of a duly adopted resolution to solicit applications for eligible projects and identification of the residential addresses in unserved or tier one areas of the county.

(B) Development will solicit applications on behalf of a board of county commissioners by publishing the relevant information and unserved or underserved addresses on the program website. Development will maintain a solicitation on its website for the lesser of two application periods or two years from the date the solicitation is published.

(C) Development may include response to a solicitation for applications as a secondary weighted scoring criterion for the scoring of applications by the authority, in its discretion under division (B) of section 122.4041 of the Revised Code.

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