

# ARPA-funded broadband infrastructure projects in NC: legal layers and restrictions



Barring legislative changes, local governments in North Carolina are not likely to be able to use ARPA's Local Fiscal Recovery Funds (LFRF) to construct broadband infrastructure for broad public use.

Why?

It is not just Treasury's Interim Final Rule that determines eligible uses of funds for LFRF recipients. Existing federal and state laws also apply, and in some instances a state law may restrict what is an eligible use according to federal guidance. Such is the case for relevant state laws in North Carolina restricting broadband infrastructure projects.



## What Treasury guidance says

The Interim Final Rule allows local governments that are recipients of LFRF to "make necessary investments in water, sewer, or broadband infrastructure."

The allowable uses in this category involving broadband infrastructure include:

- Expanding broadband internet access to unserved or underserved households and businesses.
- Providing services, upon completion, that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps.

Treasury's Compliance and Reporting Guidance for Fiscal Recovery Funds provides two categories of expenditures for broadband infrastructure projects:

- "Last Mile" projects
- Other projects



## What State law authorizes

G.S. 160A-17.1 provides the statutory authority to North Carolina local governments to accept LFRF. They still must spend the funds consistent with federal requirements and within state law.

Under state law, counties do not have authority to construct or fund broadband infrastructure, except as needed for county operations. They can provide grants to private providers to expand service in unserved areas, but only "unrestricted general fund revenue" can be used to make these grants. LFRF are restricted funds so they can't be used for this.

Municipalities have authority to fund broadband infrastructure, but are severely limited to do so by having to meet substantive requirements in G.S. Ch. 160A, Art. 16A.



## Implications for local governments

Unless new legislative authority arises, the existing state laws restrict local governments from using LFRF for broadband infrastructure as outlined in Treasury guidance.

State law does not restrict local governments wanting to use LFRF to address cybersecurity needs. Treasury explicitly lists addressing cybersecurity needs to protect water or sewer infrastructure as an allowable use of funds.

Keep in mind: local governments must encumber LFRF on or before Dec. 31, 2024, and all LFRF expenditures and deliverables must be complete by Dec. 31, 2026.