

Fact Sheet- Qualified Broadband Project Bonds

OVERVIEW: The Infrastructure Investment and Jobs Act of 2021 amends the Internal Revenue Code and authorizes a new type of exempt facility bond to be issued for “Qualified Broadband Projects”.

PURPOSES: Qualified Broadband Projects must:

- Provide broadband service to one or more rural areas in which more than 50% of residential households do not have access to fixed, terrestrial broadband service at certain minimum speeds; and
- Result in gigabit capable internet access to residential or commercial locations where a broadband service provider previously did not provide service or did not provide service at certain minimum speeds in 90% of such area.

Thresholds for certain minimum speeds referenced above are at least 25 megabits per second downstream and at least 3 megabits service upstream. Rural means a city or town with not more than 50,000 people nor urbanized and contiguous or adjacent to such a city or town.

Notices to Broadband Providers: A project will not be a Qualified Broadband Project unless before bonds are issued, certain notices outlining the project’s services and scope must be sent to existing broadband providers in the area. Notices must also request existing providers to supply information regarding its ability to deliver a network capable of offering gigabit capable internet access to such locations. Such notices must allow existing providers at least 90 days to respond.

Volume Cap: Unless all of the property to be financed by the net proceeds of the issue is to be owned by a governmental entity, a “qualified bond” requires an allocation of state volume cap. Only 25% of the face amount of any such bond is subject to volume cap

Public Approvals: Under federal tax law, a tax-exempt private activity bond issue must comply with the Internal Revenue Code’s “TEFRA” approval process which requires approval, after published notice and a public hearing, by the governmental unit issuing the bonds (an “issuer approval”) and by each governmental unit having jurisdiction over the site of the financed facilities (a “host approval”).

Like other private activity bonds, Pennsylvania law requires the approval of the Department of Community and Economic Development for bonds issued for qualified broadband projects by an industrial development authority.