

# WEST VIRGINIA CODE: §12-6C-11A

## §12-6C-11a. Broadband Loan Insurance Program; requirements.

(a) *Definitions.* — For the purposes of this section, the following terms have the following meanings:

- (1) “Authority” refers to the West Virginia Economic Development Authority.
- (2) “Board” refers to the West Virginia Board of Treasury Investments.
- (3) “Broadband Loan Insurance Program” or the “program” refers to the program through which the authority issues loan insurance, as authorized by §31-15-8a of this code.
- (4) “Debt instrument” means any note, loan agreement, or any other form of indebtedness whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of credit.
- (5) “Eligible broadband provider” has the same meaning provided in §31-15-8a of this code.
- (6) “Financial institution” means the bank, insurance company, or other institution in the business of lending money, that conditions issuance of a debt or security instrument on loan insurance by the authority, as described in §31-15-8a(b)(2) of this code.

(b) *Loan for broadband deployment.* —

- (1) The loan previously authorized by §12-6C-11(h) of this code is hereby continued, subject to the requirements of this section.
- (2) Subject to a liquidity determination and cash availability, the board shall provide a nonrecourse revolving loan to the authority, from the Consolidated Fund, in an amount not to exceed \$80 million, for the purpose of funding the Broadband Loan Insurance Program authorized by §31-15-8a of this code.
- (3) The board shall make the loan moneys available to the authority upon receipt of the following:
  - (A) A written request by the authority that the board transfer a specific amount of loan moneys to the authority; and
  - (B) A written statement by the authority certifying that the authority is in full compliance with all applicable provisions of federal and state law, as well as any agreements entered into with the board.
- (4) The authority may not award an amount of the loan moneys exceeding \$20 million, in any

single calendar year, to insure the debt or security instruments, or costs related thereto, of any one broadband provider.

(5) The authority shall maintain the loan moneys made available pursuant to this section in an account that is separate and segregated from its other assets and programs. The loan moneys may not be transferred to any other fund or account or used for any purpose other than to insure debt and security instruments, as expressly authorized in §31-15-8a of this code. The authority may withdraw the loan moneys from the account only as provided in subsection(d) of this section.

(6) The authority may not deduct or use any amount of loan moneys transferred pursuant to this subsection to pay for the authority's operating or administrative expenses.

*(c) Loan terms and requirements. —*

(1) The loan authorized by this section shall be classified by the board as a long-term fixed income investment and shall bear interest on the outstanding principal balance of the loan at a variable interest rate equal to the 12-month average of the board's yield on its West Virginia Money Market pool. The rate shall be the rate set on July 1, 2017, under prior enactment of §12-6C-11(h) of this code and adjusted quarterly during each year thereafter. The maximum annual adjustment may not exceed one percent.

(2) The loan authorized by this section is nonrecourse. Upon payment in full of any said insured debt instruments or release in full of any security instruments, the authority shall reduce the outstanding balance of the loan by a like amount. Additionally, quarterly, the authority shall determine the outstanding balance of all such insured debt and security instruments and shall accordingly adjust the outstanding balance of the loan to equal the outstanding obligations of the authority for all said insured debt and security instruments. The authority shall notify the board, in writing, of any such adjustment.

(3) The loan is secured by a security interest that pledges and assigns the cash proceeds of all collateral securing all insurance agreements entered into by the authority pursuant to §31-15-8a of this code. In the event moneys received by the authority respecting any individual insured debt or security instrument relating to providing broadband service under §31-15-8a of this code is insufficient to pay when due the principal or interest installments, or both, with respect to the loan authorized by this section by the board to the authority, the principal or interest, or both, as the case may be, due on the loan made to the authority pursuant to this section shall be deferred and any and all past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the authority of all moneys respecting said debt instruments.

*(d) Withdraw of moneys in event of default. -* The authority may withdraw loan moneys from the separate and segregated account required by subdivision (5), subsection (b) of this section, only in the event that a broadband provider has defaulted on a debt instrument or security interest insured by the authority. The loan monies may not be used for any purpose

other than to pay amounts due to a financial institution resulting from the broadband provider's default, according to a loan insurance agreement entered into pursuant to §31-15-8a of this code. Prior to withdrawing any amount of loan monies from the separate and segregated account, the authority shall provide notice of the default to the board and certify to the board that:

(1) The broadband provider has defaulted on a debt instrument or security interest insured by the authority and the broadband provider does not have the option to enter into a forbearance agreement with the financial institution; and

(2) The authority has pursued or will pursue any reasonable remedies to recoup the costs to the state resulting from the default, including, but not limited to, instituting a legal action to seize the collateral described in subdivision (3), subsection (c) of this section.

(e) *Inspection of records.* - Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to the Broadband Loan Insurance Program. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan insurance applications, loan insurance agreements, authority meeting minutes, audit reports, and transaction records. Records of the authority that may be held from time to time by the board pursuant to this subsection shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 *et seq.* of this code.