

RHODE ISLAND COMMERCE CORPORATION
315 IRON HORSE WAY
PROVIDENCE, RHODE ISLAND

_____))
In re Cox Communications,))
 Petitioner.))
_____))

D.O. No. 2024-1

DECISION ON REQUEST FOR DECLARATORY ORDER

On July 6, 2024,¹ Cox Communications (“Cox”) delivered to the Rhode Island Commerce Corporation (“Corporation”) a Petition for a Declaratory Order (“Petition”) made pursuant to R.I. Gen. Laws § 42-35-8 and applicable regulations. *See* Petition for Declaratory Order (“Petition”), attached hereto as **Exhibit A**. For the reasons set forth herein, the Corporation denies the request for a declaratory order as set forth in the Petition.

BACKGROUND²

On November 15, 2021, the President of the United States of America signed into law the Infrastructure Investment and Jobs Act (“Act”), which, among other things, allocated \$42.5 billion to the U.S. Department of Commerce for the Broadband Equity, Access, and Deployment Program (“BEAD”) for the purpose of funding the deployment of high-speed broadband internet access networks in the United States. Under BEAD, the National Telecommunications and Information Administration (“NTIA”) awards funds to eligible States and Territories (collectively referred to

¹ July 6, 2024 was the Saturday of the Fourth of July weekend. As such, the Corporation did not actually receive a copy of the Petition until the following Monday, July 8, 2024. However, it was not received pursuant to applicable regulations because the Petition was not hand delivered to a Corporation representative. *See* 870-RICR-10-00-3.4(B). The Corporation subsequently received the Petition via overnight courier on July 9, 2024.

² The background set forth below is not intended to be comprehensive; it is, instead, limited only to facts and issues relevant to the Petition.

as “Eligible Entities”³) and those Eligible Entities then award BEAD funds to recipients for the purpose of deploying broadband networks. To solicit applications for BEAD funding from Eligible Entities, NTIA issued a Notice of Funding Opportunity (“NOFO”), “to describe the requirements under which it will award grants for the” BEAD. *See* NOFO, attached hereto as **Exhibit B**, at 2. Pursuant to the NOFO, an Eligible Entity seeking BEAD funding was required to make several submissions to NTIA, including, among others, a letter of intent, a request for initial planning funds, a five-year action plan, and, most relevant to the Petition, an initial proposal (“IP”). *See id.* at 22.

A. *The Initial Proposal.*

An IP is a “first draft” of an Eligible Entity’s plan for using BEAD funds to pay for broadband networks, *see id.* at 30, and it is separated into two volumes: volume one (1) and volume two (2),⁴ *see* NTIA Initial Proposal Guidance (“IP Guidance”), attached hereto as **Exhibit C** at 6.⁵ The two-volume structure “reduce[s] delays in awarding funding and to support iterative reviews,” and allows an Eligible Entity “to proceed with subsequent phases of the BEAD [] more quickly.” *See* IP Guidance at 5-6, 10.

Volume I of the IP (“IPV1”) must include, at a minimum, a description of existing broadband funding; identification of unserved and underserved locations using the most recent Federal Communications Commission’s broadband data maps (“FCC Maps”); identification of

³ An “Eligible Entity” means “any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands” NOFO at 12.

⁴ Because the Petition does not relate to the volume two requirement, volume two of the Corporation’s IP will not be discussed herein.

⁵ The IP Guidance is “not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific application requirements set forth in the NOFO.” IP Guidance at 4.

community anchor institutions; and a detailed plan to conduct a challenge process. *See id.* at 6-7; *see also* Department of Commerce, National Telecommunications and Information Administration Policy Notice (“Policy Notice”), attached hereto as **Exhibit D**, at 7.⁶ In connection with identifying unserved and underserved locations, an Eligible Entity may—in its IPV1—propose to reclassify the FCC Map’s designation of locations as served, unserved, or underserved, subject to the challenge process.⁷ *See* Policy Notice at 10 (an Eligible Entity may “modify the designation of a location as served, underserved or unserved on the [FCC Maps],” subject to the challenge process); *see also* IP Guidance at 18 (an Eligible Entity may “modify the classification of locations identified as eligible for funding on the [FCC Maps] subject to the approval of the Assistant Secretary”).

A draft IP must be submitted to NTIA, and NTIA must approve the IPV1 before the Eligible Entity begins its challenge process. *See* Policy Notice at 7 (“In no circumstance may an Eligible Entity begin its challenge process . . . before receiving approval of Volume 1 from NTIA”); *see also* IP Guidance at 7 (“[o]nce Volume I is approved and Volume II is submitted, the Eligible Entity may begin executing their Challenge Process”).

B. *The Challenge Process.*

In its IPV1, an Eligible Entity must propose “a transparent, evidence-based, fair, and expeditious challenge process” under which an entity, including a broadband service provider, can

⁶ The Policy Notice does not supersede, modify, or alter the NOFO. *See* Policy Notice at 1 n. 1 (“This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific requirements set forth in the NOFO. In all cases, statutory and regulatory mandates, and the requirements set forth in the NOFO, shall prevail over any inconsistencies contained in this document”).

⁷ By way of example, an Eligible Entity may propose “[t]o treat as ‘underserved’ locations that the [FCC Maps] shows to be ‘served’ if rigorous speed test methodologies demonstrate that the ‘served’ locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream.” *See* Policy Notice at 10.

challenge the Eligible Entity’s classification of a particular location as served, unserved, or underserved. *See* Policy Notice at 13; *see also* IP Guidance at 23; NOFO at 34. A challenge process must include four components: (1) an Eligible Entity’s publication of locations eligible for BEAD funding (“Eligible Locations”), which results from classifications of locations that are served, unserved, or underserved based upon the FCC Maps and as modified by the Eligible Entity’s reclassification of locations on the FCC Maps; (2) a challenge submission process to challenge the classifications of the published Eligible Locations; (3) a rebuttal process; and (4) a final determination, which makes the final determination of the classifications of challenged locations. *See* Policy Notice at 13.

The challenge process must be fair. *See id.* at 20 (“Eligible Entities must ensure their challenge process is fair”). An Eligible Entity can demonstrate that its proposed challenge process is fair by detailing (1) “[a]n approach that ensures that sufficient opportunity and time is given to all relevant parties to initiate, rebut, and substantiate challenges”; and (2) “[a]n approach that ensures the challenge process standards of review are applied uniformly to all challenges submitted, allowing for unbiased and uniform challenge adjudication.” *Id.* at 20-21.

NTIA developed a model challenge process (“Model Challenge Process”) to save Eligible Entities “significant time when designing a robust and comprehensive challenge process.” *See* IP Guidance at 18. The Model Challenge Process provides an Eligible Entity “with the flexibility to adopt different modules for speed test and area challenge requirements, depending on the [Eligible Entity’s] preferences and technical capacity.” *Id.* An Eligible Entity may adopt the Model Challenge Process in its entirety or with modifications. *See id.*

The Assistant Secretary of Commerce for Communications and Information (“Assistant Secretary”) may modify an Eligible Entity’s proposed challenge process “as necessary” prior to approval of the Eligible Entity’s IPV1. *See* NOFO at 35; Policy Notice at 7.

C. Public Comment.

After the IP is developed, but before it is submitted to NTIA for review and approval, an Eligible Entity must release it for public comment. *See* NOFO at 9. The public comment period must not be any less than thirty days. *See* IP Guidance, at 27. IPV1 and IPV2 can be posted for public comment at the same time. *See id.* at 8.

D. Submission and Approval of IP and Challenge Process.

After submission of an IP, the Assistant Secretary reviews it to determine whether the use of funds proposed in the IP (1) complies with § 60102(f) of the Act; (2) is in the public interest; and (3) effectuates the purpose of the Act. *See* NOFO at 33-34; *see also* IP Guidance at 9. That review includes the proposed challenge process. If the IP meets those criteria, then the Assistant Secretary approves the IP and makes available to the Eligible Entity twenty percent of its total allocation under BEAD. *See* NOFO at 34. Notably, the Assistant Secretary may approve the IP by volume, which allows the Eligible Entity to proceed with initiating its challenge process while NTIA reviews the remaining requirements of its Initial Proposal. *See* IP Guidance at 9; *see also* Policy Notice at 7-8.

FACTS

In or about May 2022, NTIA issued the NOFO. Consistent with the NOFO’s mandates, Governor Daniel J. McKee submitted a letter of intent to the Assistant Secretary on July 5, 2022, indicating the State of Rhode Island’s (“State”) intent to receive funding under BEAD, designating the Corporation as the recipient of and administering agent of the funds, and requesting \$5 million

in initial planning funds. *See* **Exhibit E**. Thereafter, on November 10, 2022, NTIA notified the Corporation that the State had been awarded \$5 million in funding for BEAD planning (“BEAD Planning”). *See* **Exhibit F**.

Over the following year, the Corporation engaged vendors and consultants to assist with its BEAD Planning and to begin drafting the State’s IP. As part of its BEAD Planning, the Corporation engaged Ookla, LLC (“Ookla”) to perform speed tests to determine if any of the classifications on the FCC Maps needed to be modified as part of a reclassification process prior to, but subject to, a challenge process.

On June 30, 2023, NTIA informed the Corporation that BEAD funding available to the State totaled approximately \$108 million. *See* **Exhibit G**. As the Corporation moved closer to the due date for its IP, its staff presented the IP review and approval process to the Corporation’s Board of Directors (“Board”) at the Board meeting held on October 23, 2023. *See* **Exhibit H** at 6.

After the Board met, the Corporation sent a draft of its IP—which included both volumes one (1) and two (2)—to NTIA for review on October 27, 2023, and NTIA returned an edited version of the IP to the Corporation on November 1, 2023. Two days later, the Corporation posted the revised IP on its website for a thirty-day public comment period, and contemporaneously delivered it to the Board for review and feedback. The Corporation also shared a copy of the IP with the State’s Broadband Advisory Council (“BAC”) on November 14, 2023. *See* **Exhibit I**. Shortly thereafter, on November 20, 2023, the Corporation’s staff presented the IP to the Board at a public meeting. The public comment period on the IP ended on December 4, 2023. On December 18, 2023, the Board approved the IP for submission to NTIA for approval, and the Corporation filed the IP—both volumes one (1) and two (2)—with NTIA on December 22, 2023.

Between December 22, 2023 and May 5, 2024, the Corporation’s staff and NTIA worked to cure any deficiencies in the IP and, on May 6, 2024, NTIA approved IPV1. *See* **Exhibit J**. Then, on May 14, 2024, the Corporation’s staff updated the BAC on the challenge process set forth in IPV1, *see* **Exhibit K**, and posted that volume on the Corporation’s website on May 21, 2024. As approved by NTIA, as presented to the BAC, and as posted on the Corporation’s website, the IP included, among other things, a challenge process to challenge the Corporation’s reclassifications of certain locations on the FCC Maps as served, unserved, or underserved (“Challenge Process”).

Relevant to the Petition, the IP describes the requirements an internet service provider (“ISP”) must meet in order to rebut changes in the FCC Maps made by the Corporation based on the reclassifications due to results of speed tests conducted by Ookla (“Area Speed Test Reclassifications”) as set forth below:

An ISP may rebut an Area Challenge lodged with download or upload speed tests as evidence or an Area Speed Test Reclassification lodged with download speed tests by providing speed tests, in the manner described above, *for at least 75 percent of the ISP’s customers in the challenged area*. The customers must be *randomly selected*.

To ensure networks meet the standards established by NTIA when Rhode Islanders use networks concurrently, ISPs must administer speed tests *simultaneously for all tested* [broadband serviceable locations (“BSLs”)] within the area subject to the rebuttal. When evaluating speed tests provided by ISPs, the Corporation will apply the 80/80 rule, i.e., 80 percent of these locations must experience a speed that equals or exceeds 80 percent of the speed threshold (the 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. *See* BEAD NOFO at 65, n. 80, Section IV.C.2.a). For example, 80 percent of these locations must have a download speed of at least 20 Mbps (that is, 80 percent of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to meet the 100/20 Mbps speed tier.

An ISP may rebut an Area Challenge lodged with latency tests as evidence or an Area Speed Test Reclassification lodged with latency tests by providing latency tests, in the manner described above, *for at least 75 percent of the ISP's customers in the challenged area. The customers must be randomly selected.* To ensure networks meet the standards established by NTIA when Rhode Islanders use networks concurrently, *ISPs must administer latency tests simultaneously* for all tested BSLs within the area subject to the rebuttal. When evaluating latency tests provided by ISPs, the Corporation will apply the 95 percent rule (see NTIA BEAD Notice of Funding Opportunity at 65). Under that rule, if less than or equal to 95 percent of latency tests show download and upload latency measurements of 100 milliseconds or less, the Corporation will not accept an ISP's rebuttal.

See **Exhibit L** at 45-46 (emphasis added). Accordingly, in order to rebut an Area Speed Test Reclassification, an ISP must (1) submit speed tests for seventy-five percent of the ISP's customers in the challenged area (i.e., a census block group); (2) conduct those tests simultaneously; and (3) randomly select customers for the testing (collectively, the "Challenge Requirements"). *See id.*

The Challenge Process began on June 6, 2024, and ended on July 6, 2024. On July 3, 2024—just three days before the Challenge Process concluded—Cox sent a letter ("July 3 Letter")⁸ to Secretary of Commerce Elizabeth M. Tanner, Esq. ("Secretary Tanner").⁹ See **Exhibit N**. In its July 3 Letter, Cox sought a waiver of the Challenge Requirements, claiming that it was impossible to test seventy-five percent of its customers in a census block group simultaneously or randomly. *See id.* at 2 ("I am writing to formally request a waiver on behalf of Cox for the 75% simultaneous and random testing requirement as part of the Rhode Island Broadband Challenge Process"). Instead of testing seventy-five percent of its customers in a census block group, Cox

⁸ The July 3 Letter also requested a waiver pertaining to a challenge process for Community Anchor Institutions and inquired about Cox's request for records under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1, *et seq.* Neither were substantively addressed in the Petition and therefore are not discussed herein.

⁹ Also on July 3, 2024, the NTIA approved volume two of the IP, *see* **Exhibit M**, and the Corporation's staff published that version of the IP on its website on July 18, 2024.

offered a different proposal: testing only ten percent of its customers in a census block, which constituted a sixty-five percentage point deviation from the Challenge Requirements to be applied in a significantly smaller geographic area (census block as opposed to a census block group). *See id.* (“As I explain below, we respectfully request a waiver of the testing requirement so that Cox can submit data on 10% of our customers in a census block”). In support of its request, Cox indicated that, to comply with the Challenge Requirements, it would need to conduct 315,000 tests, which Cox claimed was impossible to conduct remotely because five percent of its customers own their own modems, which necessitated manual—not remote—testing. Such manual testing, Cox claimed, was impossible because it would incur “exorbitant” expense in conducting the manual testing and, even if it could incur that expense, Cox claimed it still could not meet the seventy-five percent threshold. *See id.* at 3 (“Even if Cox dedicated every one of its technicians across the country at exorbitant expense to come to Rhode Island, it still could not complete all of the testing required by the 75% testing threshold”).

Two days later—on July 5, 2024—the Corporation responded to the July 3 Letter via email (“July 5 Response”). *See* **Exhibit O**. The Corporation indicated that it could not unilaterally, without NTIA’s approval, grant Cox’s waiver request because it could not—without authority from NTIA—change the requirements of its IP. In addition, the Corporation provided other reasons why it could not grant Cox’s request: (1) Cox’s request would eliminate the goal of conducting speed tests simultaneously when users are utilizing the network concurrently; (2) Cox’s request would allow it to comply with a far more limited (and less informative) testing requirement than other ISPs; (3) Cox’s request was not supported with sufficient justification or narrowly tailored to address concerns about customer-owned modems; and (4) the timing of Cox’s request—only three days prior to the close of the Challenge Process—did not allow the

Corporation adequate time to address the matter before the close of the Challenge Process. *See id.* at 1. Nevertheless, the Corporation explained to Cox that if presented with a narrowly tailored request, then the Corporation would consider the request and respond. *See id.*

On July 6, 2024, Cox purportedly delivered the Petition to the Corporation by posting it to the door of the Corporation's offices. In the Petition, Cox made three requests, namely that:

“A fair and equitable process will be applied to Cox that will ensure efficient and effective use of Rhode Island's BEAD funds in a manner consistent with the law and intent of the program;

A waiver will be provided to Cox from the Corporation's testing requirements in Section 1.4 of the Corporation's Broadband Equity, Access, and Deployment (BEAD) Program, Initial Proposal, Volume 1 (May 1, 2024), so that Cox can submit data on 10% of its customers in a census block group, without simultaneous testing; and

An extension of time to July 26, 2024 for Cox to submit challenges to the Corporation's Volume 1 Broadband Map.”

Petition at 10. Essentially, the Petition reasserts the two waiver requests in the July 3 Letter: a waiver of testing seventy-five percent of Cox customers in a census block group; and a waiver of the simultaneity and randomness requirements.

On July 6, 2024, Cox also submitted its rebuttals to the Corporation's Area Speed Test Reclassifications (“Cox Challenges”). Those challenges were set forth in an Excel sheet template provided by the Corporation, which listed addresses, a date and time of speed tests, and results of those tests. Included in the Cox Challenges were attestations signed by Curt Stamp, Cox's Vice President of Regulatory and Government Affairs. In signing those attestations, Mr. Stamp agreed to the following:

I attest that the speed and latency tests (“Tests”) were conducted in a manner consistent with the requirements set forth in the Rhode Island Broadband Equity, Access, Deployment (BEAD) Initial

Proposal Volume 1 (IPV1). Those requirements include, but are not limited to, the following:

- (1) the Tests must take one of the five forms set forth in the IPV1;
- (2) the customers must be randomly selected; and
- (3) the Tests must be administered simultaneously for all tested BSLs within the area subject to the rebuttal.

On July 9, 2024, Cox—through its counsel—provided clarification on its July 3 Letter via email (“July 9 Clarification”). It stated:

The wording in our July 3 letter was a little confusing. To clarify, roughly 70% of Cox’ customers have Cox modems, and those locations can be speed tested remotely. Cox customers without a Cox modem would have to have a speed test conducted in person by having a technician visit the customer’s home. The Rhode Island BEAD challenge process requires an entity (like Cox) to test 75% of the locations served in a given Census Block Group (CBG). Because the process requires the locations to be randomly selected, there’s no guarantee that 70% of the locations selected would have Cox modems, and any location without a Cox modem would have to be manually tested. Assuming, that of the randomly selected locations an average of 70% had Cox modems, that would still leave 5% to be tested manually, which given the number of affected locations in the Cox footprint, could be 5,200 locations, which is far beyond Cox’s capability, or that of any other provider.

The Corporation never received the narrowly tailored waiver request from Cox, as requested in the July 5 Response. Despite that, the Corporation still submitted Cox’s waiver requests to the NTIA by email on August 11, 2024. Five days later, NTIA responded, indicating that if the Corporation were to consider Cox’s waiver requests, it would need to amend its IP, submit the amended IP to the Assistant Secretary for review and approval, and reopen the Challenge Process. In short, to do so, the Corporation would need to restart the entire IP process.

APPLICABLE LAW

Pursuant to R.I. Gen. Laws § 42-35-8(a), “[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the

petitioner.” Within sixty days of receiving such a petition, “an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” Sec. 42-35-8(c).

If an agency declines to issue a declaratory order, it must notify the petitioner of its decision, which must include a brief statement of the reasons for declining. Sec. 42-35-8(d). If, however, an agency opts to issue a declaratory order, then “the order must contain the names of all parties to the proceeding, the facts on which it is based, and the reasons for the agency’s conclusion.” Sec. 42-35-8(e).

ANALYSIS

The Petition expressly limits itself to the Challenge Requirements and their application to Cox. It states: “[t]he Rule and Guidance Document at issue is the Corporation’s [BEAD IPV1].” Petition at 3. As a result, this Declaratory Order only addresses IPV1 and Cox’s request for declarations that: (1) “[a] fair and equitable process will be applied to Cox that will ensure efficient and effective use of Rhode Island’s BEAD funds in a manner consistent with the law and intent of the program”; (2) “a waiver will be provided to Cox from the Corporation’s testing requirements in Section 1.4 of the Corporation’s [BEAD] Initial Proposal, Volume 1 (May 1, 2024), so that Cox can submit data on 10% of its customers in a census block group, without simultaneous testing”; and (3) “[a]n extension of time to July 26, 2024 for Cox to submit challenges to the Corporation’s Volume 1 Broadband Map.” *See* Petition at 10.

A. Cox’s request for a declaratory order that a “fair and equitable process will be applied to Cox that will ensure efficient and effective use of Rhode Island’s BEAD funds in a manner consistent with the law and intent of the program.”

In the Petition, Cox requests that “[a] fair and equitable process will be applied to Cox that will ensure efficient and effective use of Rhode Island’s BEAD funds in a manner consistent with

the law and intent of the program.” *See* Petition at 10. Cox claims that the Challenge Process is unfair, because the Corporation did not utilize NTIA’s model challenge process and, instead, “established significantly higher thresholds that are not consistent with every other state or territory eligible for BEAD funding where Cox offers high speed internet.” *Id.* at 3, ¶ 12. Cox also alleges that the Challenge Process is unfair because the information that Ookla has made publicly available is inconsistent with the Corporation’s Area Speed Test Reclassifications. *Id.* at 5, ¶ 22.

Cox requests a declaratory order that a “fair” and “equitable” process be applied to it. The Policy Notice outlines the minimum requirements of fairness in a challenge process: “[a]n approach that ensures that sufficient opportunity and time is given to all relevant parties to initiate, rebut, and substantiate challenges”; and “[a]n approach that ensures the challenge process standards of review are applied uniformly to all challenges submitted, allowing for unbiased and uniform challenge adjudication.” *See* Policy Notice at 20-21.

After a careful review of the IP and the Challenge Process, I find that the Challenge Process is fair and equitable for several reasons. The predominant reason supporting my conclusion is that the Challenge Process was approved by the NTIA. As set forth above, the Policy Notice indicates that the State must demonstrate fairness in its challenge process in its IP. *See* Policy Notice at 20-21 (“Eligible Entities must ensure their challenge process is fair,” and detailing the ways to demonstrate fairness). It follows, then, that if the Challenge Process were not fair, the NTIA would not—and could not—have approved it. Because the NTIA approved the IP, it approved the Challenge Process, and, in doing so, found that the Challenge Process was, indeed, fair. I do not disagree with the NTIA’s determination. While I find that NTIA’s determination is dispositive on all of Cox’s allegations, I will—for purposes of completeness—also address Cox’s specific arguments as to fairness below.

Cox argues that the Challenge Process is unfair because the Corporation deviated from NTIA's Model Challenge Process and implemented more rigorous Challenge Requirements than other states. *See* Petition at 3, ¶¶ 11-12. That allegation fails, however, because each deviation was permissible under the NOFO and approved by NTIA when it approved the Corporation's IP. *See* IP Guidance at 18 (providing an Eligible Entity "with the flexibility to adopt different modules for speed test and area challenge requirements, depending on the Eligible Entity's preferences and technical capacity"). A permissible deviation from the Model Challenge Process as approved by NTIA bears no indicia of unfairness or inequity.

Cox next contends that unfairness is evident because the Corporation's classifications of BSLs is inconsistent with Ookla's Speedtest Global Index, April 2024, which, according to the Petition, states that "[a]t the state level, Rhode Island showed the fastest median download speeds over fixed broadband in the U.S. during Q4 2023 at 257.48 Mbps." *See* Petition at 6, ¶ 22. That statement is facially flawed; it expressly states that the test was for *median* download speed *across the State*. In that way, Cox's argument misses the mark. As set forth above, the Corporation engaged Ookla to conduct speed tests on a more granular basis. Those speed tests resulted in download and upload speed data for specific locations within census block groups, which illustrated that portions of the State experienced lower quality broadband service. By reclassifying locations within census block groups where the speed tests showed insufficient broadband service quality in its IP, the Corporation advanced the BEAD program's intent of providing broadband to unserved and underserved locations. A statewide median of download speed is not only inconsistent with the NOFO, but it is not as reliable as the Ookla speed tests utilized by the Corporation as the basis for its Area Speed Test Reclassifications. I again find no evidence of unfairness or inequity given the specificity of the Corporation's use of Ookla's download and

upload testing data and the inapplicability of median, statewide download speeds to the BEAD program or its goals.

I therefore deny the Petition and find that the Challenge Process is fair and equitable.

- B. Cox’s request for a declaratory order that a “waiver will be provided to Cox from the Corporation’s testing requirements in Section 1.4 of the Corporation’s [IP], so that Cox can submit data on 10% of its customers in a census block group, without simultaneous testing.”**

In the Petition, Cox seeks a waiver of the Challenge Requirements, because, according to Cox, (a) it is impossible for Cox to comply with the Challenge Requirements, and, (b) even if it could comply, it would come at the cost of exorbitant expense and effort, Petition at 7, ¶¶ 28-29, 33, which is inconsistent with 47 U.S.C. § 642(b)(5)’s mandate that the Corporation consider “the need to mitigate the time and expense incurred by, and the administrative burdens placed on” entities such as Cox, *id.* at 3, ¶ 10. I find that unpersuasive.

First, the Corporation invited Cox to submit a narrowly tailored waiver request that the Corporation could review with NTIA. *See Exhibit O.* Cox declined to do so. Nevertheless, the Corporation still forwarded Cox’s waiver request to NTIA, which informed the Corporation that, to accommodate the waiver request, the Corporation would need to essentially re-start the entire IP challenge process by amending its IP, awaiting the Assistant Secretary’s approval, and reinitiating the Challenge Process. To do so would place the Corporation in the untenable position of being unable to meet its deadline of presenting the results of the Challenge Process to NTIA on or before October 2, 2024. In essence, accommodating Cox’s waiver request would place the entirety of BEAD program funding—over \$100 million—at risk, and that is a risk that the Corporation is unwilling to assume. If anything were to be unfair or inequitable, it would be the State losing a historic \$108.7 million investment to accommodate Cox’s waiver of the Challenge Requirements (1) to levels that are substantially less rigorous than those set forth in the IP or that

any other ISP would need to meet; or (2) to allow testing in a non-simultaneous and non-random manner, making the data from the testing less informative for purposes of the BEAD program.

Second, Cox has provided the Corporation with conflicting information, making a response to Cox's waiver request impracticable. In its July 3 Letter, Cox requested that it be permitted to test only ten percent of its customers, claiming that such deviation from the Challenge Requirements was necessary because five percent of its customers own their own modems. *See Exhibit N* at 3 (“... approximately 5% of Cox customers have their own modems”). Cox claimed that meeting the Challenge Requirements by remotely testing Cox modems and manual testing customer-owned modems was impossible and therefore needed a waiver to test only ten percent of its customers. *See id.* (“Even if Cox dedicated every one of its technicians across the country at exorbitant expense to come to Rhode Island, it still could not complete all of the testing required by the 75% testing threshold”).

Then, despite requesting in the July 3 Letter to test only ten percent of its customers in a census block, Cox indicated in the July 9 Clarification that it *could test seventy percent* of its customers remotely. Given this concession, Cox's request to test only ten percent of its customers is factually unsupported.

But the most concerning fact relative to Cox's waiver request is its misrepresentations to the Corporation during the Challenge Process. Mr. Stamp signed the attestations for the submitted Cox Challenges, which attested, among other things, that the tests were “conducted in a manner consistent with the requirements” set forth in the IP; and that the tests were administered simultaneously. From reviewing the Cox Challenges, it is plainly evident that the tests were not conducted simultaneously: the date and time for the tests span over a period of days and hours, and few tests—if any—were conducted at the same time.

In addition, the attestations in the Cox Challenges, the July 3 Letter, and the Petition are inconsistent. On one hand, Cox expressly states in the July 3 Letter and in the Petition that it is *impossible* to meet the seventy-five percent threshold in the Challenge Requirements. *See id.* (“Even if Cox dedicated every one of its technicians across the country at exorbitant expense to come to Rhode Island, it still could not complete all of the testing required by the 75% testing threshold”); *see also* Petition at 7, ¶ 28 (“Cox has informed the Corporation that it is impossible for Cox to fulfil the requirements of the [] Challenge Process”). But, on the other hand, in the attestations of the Cox Challenges, Mr. Stamp attests that the tests that Cox performed “were conducted in a manner consistent with the requirements” set forth in the IP—*i.e.*, the testing of seventy-five percent of its customers simultaneously and randomly. Cox’s assertions in the July 3 Letter and the Petition are irreconcilable with Mr. Stamp’s attestation. Putting aside Cox’s misrepresentations to the Corporation, Cox has, at a minimum, failed to establish a need for a waiver based upon the conflicting information presented to the Corporation.

Third, the timing of Cox’s waiver request is fatal. The IP (and the proposed Challenge Process) was made publicly available on May 21, 2024. Arguably, Cox knew about the Challenge Process even earlier, on May 14, 2024, when the Challenge Process was presented to the BAC, of which a Cox representative, Mark Preston, is a member. While Mr. Preston did not attend the meeting, Stephen Iannazzi, a Cox representative, was in attendance. *See Exhibit K.* Despite that, Cox’s first written request for a waiver of the Challenge Requirements was made in the July 3 Letter, which was transmitted to the Corporation only *three* days before the end of the Challenge Process. Additionally, the July 3 Letter was sent the day before the Fourth of July holiday and left the Corporation with a woefully insufficient amount of time to collaborate with NTIA, which ultimately had to approve the waiver request, before the Challenge Process ended three days later.

To suggest that the Corporation and other stakeholders and participants should restart the IP challenge process to accommodate a waiver request made at the eleventh-hour flies in the face of fairness and equity. Put another way, any delay on Cox’s part is substantially outweighed by the need to proceed with the BEAD program and secure the federal funding for the program.

For the above reasons, I deny the Petition relative to Cox’s request for a waiver of any of the Challenge Requirements.

C. Cox’s request for a declaratory order that it be granted “[a]n extension of time to July 26, 2024 for Cox to submit challenges to the Corporation’s Volume 1 Broadband Map.”

Cox’s final request is for an extension of time to submit challenges to the Corporation’s classifications of certain areas. *See* Petition at 10. I deny that request for the following reasons. First, I have, above, denied a waiver of the Challenge Requirement, making an extension of time to submit challenges based upon waived criteria unnecessary. Second, Cox has submitted the Cox Challenges in a timely manner, which renders moot any extension of time to submit challenges.

CONCLUSION

The Corporation denies the Petition for the reasons set forth above. This decision constitutes a denial to issue a declaratory order requested under R.I. Gen. Laws § 42-35-8(a). Pursuant to § 42-35-8(d), this order may be subject to judicial review.

CERTIFICATION

I hereby certify that on this 8th day of September, that a copy of the within Decision was sent via electronic mail to:

Cox Communications
c/o Robert C. Corrente, Esq.
rcorrente@whelancorrente.com

/s/ Elizabeth Tanner
Elizabeth M. Tanner, Esq.
Secretary of Commerce

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT A



Robert C. Corrente, Esq.
rcorrente@whelancorrente.com
Direct: (401) 270-1333

July 6, 2024

Rhode Island Commerce Corporation
Attn: Rules Coordinator
315 Iron Horse Way, Suite 301
Providence, RI 02908

In Re: COX COMMUNICATIONS

To Whom It May Concern:

Enclosed please find a Petition for Declaratory Judgment on behalf of Cox Communications.

Thank you.

Sincerely,

Robert C. Corrente, Esq.

RCC/ldl
Enclosure

00105494.DOCX

STATE OF RHODE ISLAND
RHODE ISLAND COMMERCE CORPORATION

In re COX COMMUNICATIONS,)
)
Petitioner.) No. 2024-_____

PETITION FOR DECLARATORY ORDER

Pursuant to R.I. Gen. Laws § 42-35-8 and Title 870, Chapter 10, Part 3 of the Regulations of the Rhode Island Commerce Corporation (“Corporation”), Petitioner Cox Communications respectfully requests a Declaratory Order as provided below and states as follows:

Petitioner

1. The Petitioner, Cox Communications (“Petitioner” or “Cox”), maintains an office at 9 J. P. Murphy Industrial Highway, West Warwick, Rhode Island, 02893. Petitioner can be contacted through the undersigned counsel.

The Federal Program

2. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (“IIJA”) into law.
3. Among other things, the IIJA appropriated roughly \$42.5 billion to the Department of Commerce for the Broadband Equity, Access and Deployment Act (“BEAD”) to be allocated by the National Telecommunications and Information Administration (“NTIA”) to the states and territories (“states”).
4. BEAD funds are to be used by the states to fund broadband deployment

projects targeted to (1) unserved, (2) underserved and (3) community anchor institutions, with priority to unserved areas. BEAD funds may also be used by the State of Rhode Island for nondeployment activities, including affordability, digital equity and other state priorities.

5. For purposes of the BEAD program, IIJA defines “unserved” as having less than 25 mbps download and 3 mbps upload speeds (“25/3”) and “underserved” as having less than 100 mbps download and 20 mbps upload speeds (“100/20”).

6. According to the Broadband Availability Map published by the Federal Communications Commission (“FCC”), Rhode Island is 99.3% served, according to the BEAD 25/3 threshold.

7. States are required to submit plans for approval by the NTIA on the process and methodology for determining areas targeted for funding, and the process for awarding those funds.

The Rhode Island Program

8. The State of Rhode Island has been allocated \$108.7M for the BEAD program.

9. The Corporation has been designated as the entity to administer the State of Rhode Island’s allocation including its procedure for broadband challenges.

10. Under the BEAD Challenge Policy Notice from NTIA, the challenge process must be “fair,” with “an approach that ensures that sufficient opportunity and time is given to all relevant parties to initiate, rebut, and substantiate challenges,” (section 7.5 of the policy), and there must be “sufficient justification” that the

modifications to the national map “more accurately reflect the locations eligible for BEAD funding.” (Section 6.1 of policy). See BEAD Challenge Policy Notice, attached hereto as Exhibit 1. Similarly, the federal statute on challenging broadband maps (47 U.S.C. § 642(b)(5)) requires consideration of “the need to mitigate the time and expense incurred by, and the administrative burdens placed on” entities like Cox in challenging the accuracy of a coverage map.

11. NTIA provided a recommended model challenge process which it encouraged eligible entities to use, despite the encouragement the Corporation chose not to use the model challenge process.

12. Instead, the Corporation established significantly higher thresholds that are not consistent with every other state or territory eligible for BEAD funding where Cox offers high speed internet. The Corporation has the power to waive application of its testing thresholds as part of the challenge process. The relevant statute explicitly contemplates that the Corporation will need to make modifications to Volume 1 as a result of executing the challenge process. 47 U.S.C. § 1702(h)(2)(C).

Rhode Island’s Challenge Process

13. The Rule and Guidance Document at issue is the Corporation’s Broadband Equity, Access, and Deployment (BEAD) Program, Initial Proposal, Volume 1 (May 1, 2024) (“Volume 1”). A true and accurate copy of Volume 1 is attached hereto as Exhibit 2.

14. Specifically, Section 1.4 of Volume 1 sets forth the Corporation’s Broadband Challenge Process for Rhode Island.

15. Section 1.4.6.6 of Volume 1, Speed & Latency Test Requirements, page 45

to 46, provides that:

An ISP may rebut an Area Challenge lodged with download or upload speed tests as evidence or an Area Speed Test Reclassification lodged with download speed tests by providing speed tests, in the manner described above, for at least 75 percent of the ISP's customers in the challenged area. The customers must be randomly selected.

To ensure networks meet the standards established by NTIA when Rhode Islanders use networks concurrently, ISPs must administer speed tests simultaneously for all tested BSLs within the area subject to the rebuttal. When evaluating speed tests provided by ISPs, the Corporation will apply the 80/80 rule, i.e., 80 percent of these locations must experience a speed that equals or exceeds 80 percent of the speed threshold (the 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. See BEAD NOFO at 65, n. 80, Section IV.C.2.a). For example, 80 percent of these locations must have a download speed of at least 20 Mbps (that is, 80 percent of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to meet the 100/20 Mbps speed tier.

An ISP may rebut an Area Challenge lodged with latency tests as evidence or an Area Speed Test Reclassification lodged with latency tests by providing latency tests, in the manner described above, for at least 75 percent of the ISP's customers in the challenged area. The customers must be randomly selected. To ensure networks meet the standards established by NTIA when Rhode Islanders use networks concurrently, ISPs must administer latency tests simultaneously for all tested BSLs within the area subject to the rebuttal. When evaluating latency tests provided by ISPs, the Corporation will apply the 95 percent rule (see NTIA BEAD Notice of Funding Opportunity at 65). Under that rule, if less than or equal to 95 percent of latency tests show download and upload latency measurements of 100 milliseconds or less, the Corporation will not accept an ISP's rebuttal.

Id.

16. After Cox filed an Access to Public Records Act (APRA) request with the Corporation on May 16, 2024, Rhode Island's approved Volume 1 plan was released to Cox on May 21, 2024. Rhode Island's approved Volume 1 plan is dated May 1, 2024. On information and belief, the Corporation had submitted an initial Volume 1 proposal containing a challenge process that was different from the final version. Cox did not know the contents of Volume 1 and the Corporation's broadband challenge requirements until Cox received the response to the APRA request or about May 21, 2024. Because the challenge process is different from the process the Corporation shared in its initial draft for public comment, Cox was not provided an opportunity to provide public comments on the challenge process that the Corporation is now implementing in the Volume 1 plan.

17. Among other things, Volume 1 includes Rhode Island's plan for identifying unserved and underserved areas.

18. Rhode Island's Volume 1 includes the process whereby eligible entities (e.g. ISPs, state and local governments, and non-profits) can submit challenges for locations deemed by the Corporation on its map to be "served."

19. NTIA's guidance includes speed as a challenge type, and clarifies that for purposes of speed test challenges, the speed test shall be conducted on at least 10% of the locations, and no sooner than 60 days prior to the commencement of the challenge period.

20. The Corporation published its Volume 1 Broadband Map on or about May 29, 2024, which showed significant reclassifications made by the Corporation from the

Broadband Availability Map published by the FCC.

21. Prior to the release of its Volume 1 Broadband Map, the Corporation layered Ookla speed test data from the past 12 months over the FCC map, and “reclassified” as “underserved” any location which had a speed test result of less than 100 mpbs.

22. The information which Ookla makes publicly available is inconsistent with the reclassifications made by the Corporation. According to the Ookla Speedtest Global Index, April 2024, “[a]t the state level, Rhode Island showed the fastest median download speeds over fixed broadband in the U.S. during Q4 2023 at 257.48 Mbps.” The same index showed Cox as having the fastest median download speeds in Rhode Island at 264.94 Mbps, more than two and a half times the threshold set by the Corporation.

23. Cox has requested on multiple occasions access to the Ookla data and methodology used by the Corporation in determining these reclassifications.

24. The Corporation has not produced such data and methodology.

25. The result of the Corporation’s reclassification of locations is that approximately 30,000 locations in 238 Census Block Groups currently served by Cox, all of which have 1000 Mbps/35 Mbps available and many of which have 2000 Mbps/100 Mbps available, are reclassified as “underserved.”

26. The window to submit challenges under the Rhode Island Broadband Challenge Process began on June 6, 2024, and ends on July 6, 2024.

27. Cox has met or discussed with the Corporation on May 31, June 12, June

17 and June 27, 2024 to discuss its concerns related to Rhode Island Broadband Challenge Process as applied to Cox.

28. Cox has informed the Corporation that it is impossible for Cox to fulfil the requirements of the Broadband Challenge Process. Cox submitted a written request for a waiver on July 3, 2024.

29. To submit a challenge under the current Rhode Island Broadband Challenge Process, since Cox has approximately 140,000 locations in the challenged areas, it would need to run 105,000 tests (75% of 140,000) three times, for a total of 315,000 tests. Cox can do many of the tests remotely. However, a substantial number of the total would need to be done manually, since a significant percentage of Cox customers have their own modems. This means, for example, that for a Census Block Group with 1,000 customers, assuming 5% of Cox customers have their own modem (a number that could be significantly higher because of the random requirement of the challenge process) for the Census Block Group, Cox would have to run manual tests in 50 locations simultaneously by 50 field technicians – meaning Cox would need 50 technicians just for that one test in that one Census Block Group, and then repeat the test again two more times in those affected locations, which is impossible when extrapolated to the affected locations in the challenged area who use their own modems. Even if Cox dedicated every one of its technicians across the country at exorbitant expense to come to Rhode Island, it still could not complete all the testing required by the 75% testing threshold in Volume 1.

30. The makeup of Cox's customer base in the affected areas is much different

from the rationale in the Corporation's submission to NTIA as part of its Volume I submission. According to Footnote 11 in the Rhode Island BSL Area Speed Test Pre-Challenge Reclassification Proposal, attached to its Vol. I submission attached to this Petition as Exhibit 3, the Corporation assumed that an ISP would have 12 customers in a census block, meaning it would have to test only 9 customers (without taking into account whether the tests would be done manually by a technician), which the Corporation described as a "slightly greater number of samples" than the 6 customers that the Corporation used to designate an entire census block as undeserved.

31. This assumption is simply not what Cox faces – it is required to test many more customers than 9 customers per block under the current challenge process.

32. On information and belief, no other service provider is subject to the same level of testing in Rhode Island as Cox in terms of the number and scope of locations required to be tested.

33. The Rhode Island BEAD Broadband Challenge Process is significantly different and exponentially more labor intensive than every other state where Cox offers high speed internet. Requiring Cox to visit thousands of locations three times and test simultaneously would be extremely expensive and burdensome even if it were possible.

34. The 75% testing requirement in areas with large numbers of customers is not necessary or required under statistical modeling, particularly when the national model generally requires 10% testing, and the vast majority other states where Cox offers high speed internet require 10% testing.

35. In the areas subject to challenge in Rhode Island, the Cox network is capable of offering 1000/35 service and in many areas it offers 2 gig service.

36. The allegedly underserved areas on the Corporation's Broadband Map include some of the most affluent areas of the State. These include the Nayatt neighborhood in Barrington, see Exhibit 4, and the area of Newport with its famous mansions and some of the most expensive real estate on the east coast. See Exhibit 5.

37. Committing public funds administered by the Corporation to areas that already have high speed internet will result in significant overbuilding, instead of prioritizing adoption and affordability to communities in need, and is inconsistent with the intent of the IJA.

Request for Declaratory Order

Pursuant to R.I. Gen. Laws § 42-35-8(a), "[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner."

Pursuant to Title 870, Chapter 10, Part 3.4.A5. of the Regulations of the Rhode Island Commerce Corporation, a request for a Declaratory Order must include "[a] plain statement requesting a Declaratory Order, and further indicating whether Petitioner seeks:

- a. An interpretation or application of a statute administered by the Corporation;
- b. Clarification as to whether a rule, guidance document, or order issued by the Corporation applies to Petitioner; and/or

c. Clarification as to how a rule, guidance document, or order issued by the Corporation applies to Petitioner.”

Accordingly, Cox respectfully seeks a Declaratory Order that:

- a. A fair and equitable process will be applied to Cox that will ensure efficient and effective use of Rhode Island’s BEAD funds in a manner consistent with the law and intent of the program;
- b. A waiver will be provided to Cox from the Corporation’s testing requirements in Section 1.4 of the Corporation’s Broadband Equity, Access, and Deployment (BEAD) Program, Initial Proposal, Volume 1 (May 1, 2024), so that Cox can submit data on 10% of its customers in a census block group, without simultaneous testing; and
- c. An extension of time to July 26, 2024 for Cox to submit challenges to the Corporation’s Volume 1 Broadband Map.

[signatures on the following page]

Respectfully submitted,

Petitioner,

COX COMMUNICATIONS,

By its Attorneys,

/s/ Robert Clark Corrente

/s/ Joseph D. Whelan

Robert Clark Corrente (#2632)

Joseph D. Whelan (#5694)

Timothy Baldwin (#7889)

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Dated: July 6, 2024

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2024, the foregoing document was filed sent by e-mail to rulescoordinator@commerceri.com and delivered by hand to:

Rhode Island Commerce Corporation

Attn: Rules Coordinator

315 Iron Horse Way, Suite 301

Providence, RI 02908

/s/ Robert Clark Corrente

WC105511

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT B

NOTICE OF FUNDING OPPORTUNITY

BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM

EXECUTIVE SUMMARY

A. Federal Agency Name

National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

B. Funding Opportunity Title

Broadband Equity, Access, and Deployment Program

C. Announcement Type

Initial

D. Funding Opportunity Number

NTIA-BEAD-2022

E. Assistance Listing (CFDA Number)

11.035

F. Key Dates

Completed Letters of Intent must be received by NTIA through the application portal no later than 11:59 p.m. Eastern Daylight Time (EDT) on **July 18, 2022**. Upon submission of the Letter of Intent, the Point of Contact for each Eligible Entity may request Initial Planning Funds through the application portal. The portal will provide additional information about submission requirements for funding, including but not limited to standard forms and a budget narrative. All supplemental information must be submitted by 11:59 p.m. Eastern Daylight Time (EDT) on **August 15, 2022**.

Eligible Entities that receive Initial Planning Funds (*see* Section IV.B.2) must submit a Five-Year Action Plan to NTIA within 270 days of receipt of Initial Planning Funds, as described in Section IV.B.3 below.

Eligible Entities will be notified of future submission deadlines following the Federal Communications Commission's (Commission's) release of the maps required by the Broadband

Deployment Accuracy and Technology Availability (DATA) Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Maps). Initial Proposals may be submitted immediately upon issuance of the Notices of Available Amounts described in Section IV.B.4.b and will be due to NTIA no later than 180 days after such issuance. Final Proposals will be due to NTIA no later than 365 days after the approval of the Initial Proposal by the Assistant Secretary. *See* Section IV.B of this Notice of Funding Opportunity (NOFO) for additional timeline and program sequencing information.

G. Application Submission Address

Complete Letters of Intent, Requests for Initial Planning Funds, Five-Year Action Plans, Initial Proposals, and Final Proposals must be submitted electronically through NTIA’s online application portal, available at <https://grants.ntia.gov/>. Complete program materials or portions thereof submitted by postal mail, courier, email, facsimile, or other means will not be accepted. *See* Section V of this NOFO for detailed information concerning submission requirements.

H. Funding Opportunity Description

NTIA issues this NOFO to describe the requirements under which it will award grants for the Broadband Equity, Access, and Deployment (BEAD) Program (Program), authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act) also known as the Bipartisan Infrastructure Law. The BEAD Program provides new federal funding for NTIA to grant to all fifty states, the District of Columbia, and Puerto Rico (States), as well as American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands (Territories), and in certain circumstances political subdivisions of these States and Territories, for broadband planning, deployment, mapping, equity, and adoption activities. Funding is distributed primarily based on the relative number of “unserved” locations (*i.e.*, broadband-serviceable locations that lack access to Reliable Broadband Service at speeds of at least 25 Mbps downstream and 3 Mbps upstream and latency levels low enough to support real-time, interactive applications) in each State and Territory. Each State is eligible to receive a minimum of \$100,000,000 and each Territory is eligible to receive a minimum of \$25,000,000. *See* Section I of this NOFO for the full Program Description.

I. Funding Instrument

Grant.

J. Eligibility

Eligible Entities authorized to apply to NTIA for grants under the BEAD Program are the entities identified in Section 60102(a)(2)(F) of the Infrastructure Act—specifically, any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. *See* Section III of this NOFO for additional information concerning the BEAD Program’s eligibility requirements.

K. Anticipated Amounts

Each State is eligible to receive a minimum allocation of \$100,000,000. Each State may request up to \$5,000,000 of its minimum allocation in Initial Planning Funds. American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands each are eligible to receive a minimum allocation of \$25,000,000. Each of those territories may request up to \$1,250,000 of its minimum allocation in Initial Planning Funds. Not less than twenty percent of the total allocation for a State or Territory will be made available at the approval of the Initial Proposal with remaining funds released upon approval of the Final Proposal.

After the publication of broadband coverage maps being prepared by the Federal Communications Commission (Broadband DATA Maps), which will be used to determine the number of unserved locations in every State and Territory, NTIA will notify Eligible Entities of their total funding allocations, calculated in accordance with Sections 60102(c)(1) and (c)(3) of the Infrastructure Act, and inclusive of the minimum initial allocation and Initial Planning Funds.

See Section II of this NOFO for additional information pertaining to award amounts and to the period of performance for grants issued pursuant to this NOFO.

L. Cost Sharing/Matching

Except in certain specific circumstances described herein (including projects in designated “high-cost areas,” as defined in Section 60102(a)(2)(G), and other cases in which NTIA has waived the matching requirement pursuant to Section 60102(h)(3)(A)(ii)), for each broadband deployment project utilizing BEAD grant funding, each Eligible Entity shall provide, require its subgrantee to provide, or provide in concert with its subgrantee, matching funds of not less than 25 percent of project costs. Funds from federal programs, including funds from the Commission’s Universal Service Fund programs, generally may not be used as matching funds; however, the Infrastructure Act expressly provides that matching funds for the BEAD Program may come from a federal regional commission or authority and from funds that were provided to an Eligible Entity or a subgrantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281), the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4), to the extent permitted by those laws. See Section III.B of this NOFO for more information pertaining to the cost sharing requirements for this Program.

FULL ANNOUNCEMENT TEXT

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I. Program Description

The National Telecommunications and Information Administration (NTIA) issues this Notice of Funding Opportunity (NOFO) to describe the requirements under which it will award grants in connection with the Broadband Equity, Access, and Deployment (BEAD) Program (Program), authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act) also known as the Bipartisan Infrastructure Law. The BEAD Program provides federal funding for grants to Eligible Entities for broadband planning, deployment, mapping, equity, and adoption activities.

A. NOFO Structure

This NOFO presents information relevant to entities eligible for direct receipt of BEAD funding (*i.e.*, States and Territories, referred to in the Infrastructure Act as “Eligible Entities”), as well as entities that may seek subgrants from those Eligible Entities to conduct the numerous activities that are eligible uses for BEAD funding. It is generally organized as follows:

Section I (Program Description) provides an overview of the BEAD Program, including background material related to the Infrastructure Act broadly, as well as an overview of the Program’s procedural framework. It then defines key terms used throughout the NOFO.

Section II (Federal Award Information) provides basic information such as the amounts made available under the BEAD Program, key dates, the circumstances in which the Assistant Secretary may grant extensions, and the treatment of unallocated and unawarded funds.

Section III (Eligibility Information) describes entities eligible for BEAD Program grants (generally, States and Territories of the United States), requirements relating to the provision of matching funds by Eligible Entities and/or other actors, and circumstances that might warrant waiver of the match requirements.

Section IV (Program Sequencing, Structure, and Requirements) provides information regarding the BEAD Program’s structure, describing in detail the nine principal steps in the

process: (1) the Letter of Intent, (2) the Request for Initial Planning Funds, (3) the Five-Year Action Plan, (4) Program Fund Allocation and the Notice of Available Amounts, (5) the Initial Proposal, (6) the Challenge Process, (7) the Subgrantee Selection Process, (8) the 20 Percent Funding Release, and (9) the Final Proposal and Release of Remaining Funds. NTIA urges entities seeking to participate in the BEAD Program as Eligible Entities or as subgrantees to review this section especially closely. NTIA plans to provide detailed technical assistance to Eligible Entities regarding all matters addressed in this section.

Section V (Application and Submission Information) sets out information regarding how Eligible Entities may apply for and use BEAD Program funding, including a link to the online application portal, formatting instructions, certification requirements, submission timelines, and eligible uses for funding. It also provides information regarding certifications that prospective subgrantees must make in order to be eligible for subgrants.

Section VI (Application Review Information) briefly describes the review process that NTIA will undertake in assessing submissions by Eligible Entities in connection with the BEAD Program.¹

Section VII (Federal Award Administration Information) explains the process NTIA will employ to approve applications, notify successful and unsuccessful applicants of the process's results, and various legal obligations applicable to grant recipients (including, but not limited to, those relating to domestic procurement preferences ("Buy American" requirements) and contracting with small and minority businesses, women's business enterprises, and labor surplus area firms).

Section VIII (Federal Awarding Agency Contacts) provides contact information for individuals to whom interested parties may direct inquiries regarding the BEAD Program.

Section IX (Other Information) details information regarding topics including audit and reporting requirements, mandatory transparency, accountability, and oversight measures, and consequences associated with the unauthorized use of BEAD Program funds.

B. Overview

1. Background

In recent decades, access to the internet has played a critical and growing role in the ways in which Americans work, learn, receive health care, and participate in democracy. The COVID-19 pandemic crystalized what many have known for a very long time: High-speed internet access is not a luxury, but a necessity, for all Americans, regardless of their age, race, or income, irrespective of where they live, what languages they speak, what resources they have at their disposal, and what specific challenges they may face in their daily lives.

Recognizing broadband's fundamental role in today's society and its centrality to our nation's continued health and prosperity, President Biden has pledged to make sure that every American

¹ NIST is the entity within the Department of Commerce that will administer BEAD Program grants.

has access to reliable, affordable, high-speed internet. Full participation in our twenty-first century economy requires no less. Digital equity is necessary for civic and cultural participation, employment, lifelong learning, and access to essential services. Yet affordable, reliable, high-speed internet access has remained elusive to many for too long, because they live in a location where no service is available, the speed or quality of the service available is unreliable, or the offering available is unaffordable or inadequate. Internet connectivity itself is a necessary, but not sufficient, condition for eradicating the digital divide. Many on the wrong side of that divide require equipment, digital skills, financial resources, and more to realize the internet's full potential. Those who lack these resources face substantial barriers to digital equity, even in places where fast broadband connections are physically available. This digital divide is particularly acute for communities of color, Tribal nations, and lower-income areas and spans both urban and rural areas of the country.

Passed on a bipartisan basis, the Infrastructure Act includes \$42.45 billion to create the BEAD Program. The law charges NTIA—the President's chief advisor on telecommunications and information policy matters, housed within the United States Department of Commerce (DOC)—with administering this program.

This NOFO describes how, in partnership with other federal actors, as well as States, Territories, Tribal nations, cities, towns, counties and other localities, the non-profit sector, academia, unions and worker organizations, and industry, NTIA intends to administer the BEAD Program. This program will lay critical groundwork for widespread access, affordability, equity, and adoption of broadband, create good-paying jobs; grow economic opportunities, including for local workers, provide increased access to healthcare services, enrich educational experiences of students, close long-standing equity gaps, and improve the overall quality of life across America.

The Program's principal focus will be on deploying broadband service to *unserved* locations (those without any broadband service at all or with broadband service offering speeds below 25 megabits per second (Mbps) downstream/3 Mbps upstream) and *underserved* locations (those without broadband service offering speeds of 100 Mbps downstream/20 Mbps upstream). Eligible Entities that demonstrate they will be able to ensure service to all unserved and underserved locations will be free to propose plans that use remaining funds in a wide variety of ways, but NTIA underscores its strong preference that Eligible Entities also ensure deployment of gigabit connections to community anchor institutions such as libraries and community centers that lack such connectivity. Eligible Entities can apply any additional funding to pursue eligible access-, adoption-, and equity-related uses, as well as any other uses approved by the Assistant Secretary that support the Program's goals.

With respect to the deployment of last-mile broadband infrastructure, the Program prioritizes projects designed to provide fiber connectivity directly to the end user. It also requires all projects to provide a low-cost option to eligible subscribers, requires all states to have plans to address middle-class affordability, and further prioritizes proposals that improve affordability to ensure that networks built using taxpayer dollars are accessible to all Americans. The framework set out below will provide Eligible Entities flexibility to pursue deployments in the manner best suited to their populations – including, for example, the deployment of Wi-Fi service within multi-family buildings.

NTIA envisions and welcomes extensive coordination and cooperation with all relevant stakeholders. States and Territories have an important statutory role in the BEAD process. Localities and groups representing historically excluded communities can and must make their voices heard to ensure that longstanding equity gaps are finally closed. Existing broadband providers and new entrants must communicate well with Federal, State, Territorial, local, and Tribal partners to ensure that deployments proceed as expected and that non-deployment activities are designed and implemented in ways that most benefit the communities they are designed to serve. And, of course, NTIA urges individual stakeholders to engage throughout the process—with NTIA, with State, Territorial, and Tribal Governments, with providers, and with civil society groups—to ensure that this historic investment effectuates the purposes of the Infrastructure Act.

2. Process Overview

Successful execution of the BEAD Program will require close collaboration between NTIA, as the Program administrator, and the Eligible Entities, which must ensure that affordable, reliable, high-speed internet is accessible at every location within their jurisdictions and that other BEAD Program objectives are achieved. Eligible Entities, in turn, can succeed only by committing to close and ongoing coordination with their political subdivisions, subgrantees, and outside stakeholders, including current and prospective broadband providers, citizens, civil rights- and equity-focused organizations, community-based organizations, civil society and consumer-focused groups, unions and worker organizations, workforce boards, economic development organizations, schools, community colleges, neighborhood and housing associations, and the communities that stand to benefit from these unprecedented investments.

The Assistant Secretary and the staff of NTIA look forward to close communication during all phases of the process described in this NOFO. Broadly speaking, the process contemplated by the Infrastructure Act and this NOFO is as follows:

| Stage | Description |
|------------------------------------|--|
| Letter of Intent | July 18, 2022 is the deadline for an Eligible Entity to submit a Letter of Intent to participate in the Program. |
| Request for Initial Planning Funds | Either with its Letter of Intent or afterwards, an Eligible Entity that is a State (including the District of Columbia and Puerto Rico) may request up to \$5,000,000 in Initial Planning Funds. American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands each may request up to \$1,250,000. Each Eligible Entity’s Initial Planning Funds will be drawn from that Eligible Entity’s Minimum Initial Allocation. If the Eligible Entity requests Initial Planning Funds, it must submit an application for Initial Planning Funds by 11:59 p.m. Eastern Daylight Time (EDT) August 15, 2022, and a Five-Year Action Plan within 270 days of receipt of Initial Planning Funds. |

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| Notice of Available Amounts | On or after the date on which the Broadband DATA Maps are made public, the Assistant Secretary will notify each Eligible Entity of the estimated amount of funding that NTIA will make available to the Eligible Entity under the Program (Notice of Available Amounts) and invite the submission of an initial grant proposal (Initial Proposal) and a final grant proposal (Final Proposal). |
| Technical Assistance | Leading up to submission of the Initial Proposal and throughout the remainder of the process, NTIA will provide support and technical assistance to help ensure that the Eligible Entity’s proposals fully meet the requirements of the Infrastructure Act and the goals of the Program. This technical assistance will include iterative feedback on draft Initial and Final Proposals. |
| Initial Proposal | Eligible Entities will have 180 days from receipt of the Notice of Available Amounts to develop and submit an Initial Proposal, which will, among other things, describe the competitive process the Eligible Entity proposes to use to select subgrantees to construct broadband projects. Prior to submission to NTIA, the Initial Proposal must be made available for public comment, and the Initial Proposal must incorporate local coordination feedback for the Assistant Secretary’s review. |
| Challenge Process | After submission of its Initial Proposal and before allocating BEAD funds received for the deployment of broadband networks to subgrantees, an Eligible Entity must conduct a challenge process. Under this process, a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for the grant funds, including whether a particular location is unserved or underserved, and Eligible Entities must submit any successful challenges to NTIA for review and approval. |
| Initial Funding Availability | NTIA will review Initial Proposals as expeditiously as possible. Once an Initial Proposal is approved, NTIA will make available to the Eligible Entity not less than 20 percent of the total grant funds allocated to the Eligible Entity. |
| Subgrantee Selection | An Eligible Entity may initiate its competitive subgrantee selection process upon approval of its Initial Proposal and will have up to one year to conduct additional local coordination, complete the selection process, and submit a Final Proposal to NTIA. NTIA will provide support and technical assistance to help ensure that the Final Proposal fully meets the requirements of the Infrastructure Act and the goals of |

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| | the Program. The Eligible Entity may, at this point, utilize the funding provided (not less than 20 percent of the Eligible Entity’s total grant funds) to initiate certain eligible activities (<i>see</i> Section IV.B.8) before submission and approval of their Final Proposals. |
| Final Proposal | After the Eligible Entity has selected subgrantees and otherwise executed its approved Initial Proposal, it will submit to NTIA a Final Proposal describing how it complied with that Initial Proposal and the results of its processes. NTIA will award the remaining funds allocated to the Eligible Entity upon approval of the Eligible Entity’s Final Proposal, and Eligible Entities will initiate their subgrants for the remaining 80 percent of funding and any portion of the original 20 percent that the Eligible Entity has not yet awarded as a subgrant. Prior to submission to NTIA the Final Proposal must be made available for public comment. |
| Ongoing Monitoring, Reporting, and Performance Management | Throughout the BEAD Program, NTIA will conduct ongoing monitoring of an Eligible Entity’s progress against its plans and ensure that the requirements of the Infrastructure Act are met. Eligible Entities will be required to comply with reporting requirements and monitor subgrantee compliance. |

NTIA strongly encourages each Eligible Entity participating in the BEAD Program to concurrently participate in the programs established under the Digital Equity Act of 2021, which provides \$2.75 billion to further advance federal goals relating to digital equity and digital inclusion. Just as the BEAD Program begins with a Five-Year Action Plan, the Digital Equity Act begins with State Digital Equity Planning Grants, which is the subject of a separate NOFO. Eligible Entities should view this NOFO and the State Digital Equity Planning Grant NOFO holistically as complementary efforts aimed at a singular, unified objective of closing the digital divide.

The Five-Year Action Plan that an Eligible Entity develops for the BEAD Program should therefore incorporate the Eligible Entity’s State Digital Equity Plan, as an Eligible Entity cannot have a Five-Year Action Plan that does not address digital equity. Moreover, Initial Proposals and Final Proposals developed for the BEAD Program should be informed by and be complementary to and closely integrated with the Eligible Entity’s Five-Year Action Plans and State Digital Equity Plans to address the goal of universal broadband access and adoption. So too each Eligible Entity should ensure overlap—or at least substantial interaction—between those tasked with developing the Five-Year Action Plan, Initial Proposal, Final Proposal, and State Digital Equity Plan. For example, Eligible Entities should ensure coordination between BEAD planning teams and State Digital Equity planning teams and should establish a formal and direct communication and collaboration pathway between the teams that remain in place throughout the entire planning process. This will be particularly important to reduce the burden and confusion on community stakeholders when fulfilling the local coordination requirements in this NOFO.

NTIA is committed to working closely with, and providing support and technical assistance to, Eligible Entities to help ensure that the Initial Proposals and Final Proposals fully meet the requirements of the Infrastructure Act and the goals of the Program. NTIA will provide submission templates throughout the process to provide clarity on expectations and reduce the administrative burden on Eligible Entities. When the Final Proposals have been approved and Eligible Entities begin to initiate Program activities, NTIA will work closely with the Eligible Entities to monitor progress, troubleshoot, and provide technical assistance as necessary and appropriate.

C. Definitions

The following definitions are applicable to the BEAD Program:

(a) Aging Individual—The term “aging individual” means an individual who is 60 years of age or older.²

(b) Assistant Secretary—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information or the individual who holds any successor position.

(c) Broadband; Broadband Service—The term “broadband” or “broadband service” has the meaning given the term “broadband internet access service” in Section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation, meaning it is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.

(d) Broadband DATA Maps—The term “Broadband DATA Maps” means the maps created by the Federal Communications Commission under Section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. § 642(c)(1)).

(e) Commission—The term “Commission” means the Federal Communications Commission.

(f) Community Anchor Institution (CAI)—The term “community anchor institution” means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization³, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals. An Eligible Entity may propose to NTIA that additional types

² NTIA adopts the definition for “aging individual” set forth in Title III of the Infrastructure Act. *See* Section 60302(3) of the Infrastructure Act.

³ This term is used broadly and includes any public housing agency, HUD-assisted housing organization, or Tribal housing organization.

of institutions should qualify as CAIs within the entity’s territory. If so, the Eligible Entity shall explain why it has determined that the institution or type of institution should be treated as such and affirm that the institution or class of institutions facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

(g) Digital Equity—The term “digital equity” means the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.⁴

(h) Eligible Community Anchor Institution—The term “eligible community anchor institution” means a community anchor institution that lacks access to Gigabit-level broadband service.

(i) Eligible Entity—The term “Eligible Entity” means any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands or, in the case of an application failure, a political subdivision or consortium of political subdivisions that is serving as a Substitute Entity.

(j) Eligible Subscriber—The term “Eligible Subscriber” means any household seeking to subscribe to broadband internet access service that (1) qualifies for the Affordable Connectivity Program⁵ (ACP) or any successor program, or (2) is a member of a household that meets any of the following criteria:

- A) Household income for the most recently completed calendar year was at or below 200 percent of the Federal Poverty Guidelines;
- B) Any member of the household receives benefits under the Supplemental Nutrition Assistance Program, Medicaid, Federal Public Housing Assistance, Supplemental Security Income, Veterans and Survivors Pension benefit, or Special Supplemental Nutrition Program for Women, Infants, and Children;
- C) Any member of the household participates in Tribal specific assistance programs, such as Bureau of Indian Affairs General Assistance, Tribal TANF, Tribal Head Start, or Food Distribution Program on Indian Reservations;
- D) Any member of the household has applied for and been approved to receive benefits under the National School Lunch Program or the School Breakfast Program, or at least one member of the household is enrolled in a school or school district that participates in the USDA Community Eligibility Provision;
- E) Any member of the household received a Federal Pell Grant during the current award year;

⁴ NTIA adopts the definition for “digital equity” set forth in Title III of the Infrastructure Act. *See* Section 60302(10) of the Infrastructure Act.

⁵ The Affordable Connectivity Program was established in the Infrastructure Act as the successor to a previous program that has since been discontinued. The Commission in 2022 issued the *Affordable Connectivity Program Report and Order*, which sets out details regarding the ACP’s operation. *See* *Affordable Connectivity Program, Report and Order and Further Notice of Proposed Rulemaking*, FCC 22-2, (rel. Jan. 21, 2022).

- F) The household meets the eligibility criteria for a participating provider's existing low-income internet program; or
- G) The household satisfies any other additional criteria proposed by the Eligible Entity in its Initial Proposal and Final Proposal and approved by the Assistant Secretary.

(k) Extremely High Cost Per Location Threshold— an “Extremely High Cost Per Location Threshold” is a BEAD subsidy cost per location to be utilized during the subgrantee selection process described in Section IV.B.7 of this NOFO above which an Eligible Entity may decline to select a proposal if use of an alternative technology meeting the BEAD Program’s technical requirements would be less expensive.⁶

(l) Funded Network—The term “Funded Network” means any broadband network deployed and/or upgraded with BEAD Program funds.

(m) High-Cost Area—The term “high-cost area” means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States (as determined by the Assistant Secretary, in consultation with the Commission), incorporating factors that include— (I) the remote location of the area; (II) the lack of population density of the area; (III) the unique topography of the area; (IV) a high rate of poverty in the area; or (V) any other factor identified by the Assistant Secretary, in consultation with the Commission, that contributes to the higher cost of deploying broadband service in the area. For purposes of defining “high-cost area,” the term “unserved area” means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations. NTIA will release further information regarding the identification of high-cost areas for purposes of BEAD funding allocations at a later date.

(n) Location; Broadband-Serviceable Location — The terms “location” and “broadband serviceable location” mean “a business or residential location in the United States at which fixed broadband Internet access service is, or can be, installed.”⁷

(o) Middle Mile Infrastructure — The term “middle mile infrastructure” (A) means any broadband infrastructure that does not connect directly to an end-user location, including a

⁶ Each Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.6.b of this NOFO. NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible. NTIA looks forward to working with each Eligible Entity to help develop an appropriate Extremely High Cost Per Location Threshold.

⁷ Section 60102(a)(2)(H) states that the terms “location” and “broadband-serviceable location” “have the meanings given those terms by the Commission under rules and guidance that are in effect, as of the date of enactment of this Act.” *See* § 60102(a)(2)(H) of the Infrastructure Act. In the Third Broadband Data Collection Report and Order, the Commission adopted “as the fundamental definition of a ‘location’ for purposes of the [Broadband Serviceable Location] Fabric: a business or residential location in the United States at which fixed broadband Internet access service is, or can be, installed.” *See* Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36 FCC Rcd 1126, 1175 para. 126 (2021).

community anchor institution; and (B) includes—(i) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and (ii) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.⁸

(p) Non-Traditional Broadband Provider—The term “non-traditional broadband provider” means an electric cooperative, nonprofit organization, public-private partnership, public or private utility, public utility district, Tribal entity, or local government (including any unit, subdivision, authority, or consortium of local governments) that provides or will provide broadband services.

(q) Open Access— The term “open access” refers to an arrangement in which the subgrantee offers nondiscriminatory access to and use of its network on a wholesale basis to other providers seeking to provide broadband service to end-user locations, at just and reasonable wholesale rates for the useful life of the subsidized network assets. For this purpose, “just and reasonable wholesale rates” means rates that include a discount from the provider’s retail rates reflecting the costs that the subgrantee avoids by virtue of not providing retail service to the end user location (including, for example, marketing, billing, and collection-related costs).

(r) Priority Broadband Project—The term “Priority Broadband Project” means a project that will provision service via end-to-end fiber-optic facilities to each end-user premises.⁹ An Eligible Entity may disqualify any project that might otherwise qualify as a Priority Broadband Project from Priority Broadband Project status, with the approval of the Assistant Secretary, on the basis that the location surpasses the Eligible Entity’s Extremely High Cost Per Location Threshold (as described in Section IV.B.7 below), or for other valid reasons subject to approval by the Assistant Secretary.

(s) Program—The term “Program” means the Broadband Equity, Access, and Deployment Program.

(t) Project—The term “project” means an undertaking by a subgrantee to construct and deploy infrastructure for the provision of broadband service. A “project” may constitute a single unserved or underserved broadband-serviceable location, or a grouping of broadband-serviceable locations in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations or underserved locations.

⁸ NTIA adopts the definition of “middle mile infrastructure” set forth in Title IV of the Infrastructure Act, modified slightly to reflect the term “community anchor institution” used in the BEAD Program. *See* Infrastructure Act § 60401(a)(9).

⁹ A project that will rely entirely on fiber-optic technology to each end-user premises will ensure that the network built by the project can easily scale speeds over time to meet the evolving connectivity needs of households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services. *See* Infrastructure Act § 60102(a)(2)(I). *See also* Section IV.B.7.b.i of this NOFO.

(u) Reliable Broadband Service—The term “Reliable Broadband Service” means broadband service that the Broadband DATA Maps show is accessible to a location via:¹⁰ (i) fiber-optic technology;¹¹ (ii) Cable Modem/ Hybrid fiber-coaxial technology;¹² (iii) digital subscriber line (DSL) technology;¹³ or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.¹⁴

(v) State—The term “State” means, for the purposes of the BEAD Program, any State of the United States, the District of Columbia, and Puerto Rico.

(w) Subgrantee/Subrecipient—The term “subgrantee” or “subrecipient” means an entity that receives grant funds from an Eligible Entity to carry out eligible activities.¹⁵

(x) Territory— The term “Territory” means, for the purposes of the BEAD Program, American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(y) Tribal Lands— The term “Tribal Lands” means (A) any land located within the boundaries of— (i) an Indian reservation, pueblo, or rancharia; or (ii) a former reservation within Oklahoma; (B) any land not located within the boundaries of an Indian reservation, pueblo, or rancharia, the title to which is held— (i) in trust by the United States for the benefit of an Indian Tribe or an

¹⁰ The Infrastructure Act defines “reliable broadband service” as “broadband service that meets performance criteria for service availability, adaptability to changing end-user requirements, length of serviceable life, or other criteria, other than upload and download speeds, as determined by the Assistant Secretary in coordination with the Commission.” *Id.* § 60102(a)(2)(L). For the purposes of this definition, the Assistant Secretary adopts the criteria that Reliable Broadband Service must be (1) a fixed broadband service that (2) is available with a high degree of certainty, (3) both at present and for the foreseeable future, and finds, after coordination with the Commission, that the definition of Reliable Broadband Service set forth in this NOFO best meets those criteria.

¹¹ Broadband Data Collection Fixed Technology Code 50. *See* Federal Communications Commission, Broadband Data Collection Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data at 11, Table 4.1 (Apr. 5, 2022), *available at* <https://us-fcc.app.box.com/v/bdc-availability-spec> (BDC Specifications).

¹² Broadband Data Collection Fixed Technology Code 40. *Id.*

¹³ Broadband Data Collection Fixed Technology Code 10. *Id.* NTIA acknowledges concerns that, in some cases, DSL arrangements fail to provide consistent access to advertised speeds. To the extent a particular location is identified on the Broadband DATA Maps as served by DSL at speeds that warrant treatment of that location as “served” or “underserved” but is not in fact reliably served at such speeds, this would be a proper basis for challenging the relevant location’s service status during the challenge process created by the Eligible Entity.

¹⁴ Broadband Data Collection Fixed Technology Code 71. *Id.*

¹⁵ This NOFO generally uses the terms “subgrantee” and “subgrant” because these are the terms used in the relevant Infrastructure Act provisions. We note, though, that applicable regulations governing federal financial assistance generally use the term “subrecipient” to refer to what the Infrastructure Act calls “subgrantees” and the term “subaward” to refer to what the Infrastructure Act calls “subgrants.” *See generally* 2 C.F.R. Part 200. As used herein, the terms “subgrantee” and “subgrant” herein are meant to have the same meaning, respectively, as the terms “subrecipient” and “subaward” in those regulations and other governing authorities.

individual Indian; (ii) by an Indian Tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or (iii) by a dependent Indian community; (C) any land located within a region established pursuant to section 7(a) of the Alaska Native Claims Settlement Act (43 U.S.C. § 1606(a)); (D) Hawaiian Home Lands, as defined in section 801 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. § 4221); or (E) those areas or communities designated by the Assistant Secretary of Indian Affairs of the Department of the Interior that are near, adjacent, or contiguous to reservations where financial assistance and social service programs are provided to Indians because of their status as Indians; and the term.

(z) Tribal Government—The term “Tribal Government” means the governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually recognized (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 5131).¹⁶

(aa) Underrepresented Communities—The term “underrepresented communities” refers to groups that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, including: low-income households, aging individuals, incarcerated individuals, veterans, persons of color, Indigenous and Native American persons, members of ethnic and religious minorities, women, LGBTQI+ persons, persons with disabilities, persons with limited English proficiency, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality.

(bb) Underserved Location—The term “underserved location” means a broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.¹⁷

(cc) Underserved Service Project—The term “Underserved Service Project” means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations or underserved locations. An “Underserved Service Project” may be as small as a single underserved broadband-serviceable location.

¹⁶ See Department of the Interior, Bureau of Indian Affairs, Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554 (Jan. 29, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-01-29/pdf/2021-01606.pdf>.

¹⁷ The definitions of “unserved location” and “underserved location” set forth in Section 60102(a)(1) require that a location have Reliable Broadband Service with “a latency sufficient to support real-time, interactive applications.” See Infrastructure Act § 60102(a)(1)(A)(ii)(II), (C)(ii)(II). NTIA interprets this to mean a latency of less than or equal to 100ms for the reasons articulated by the FCC’s Wireline Communications Bureau in the 2013 Connect America Fund *Phase II Service Obligations Order*. See *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15068-76 paras. 19-38 (*Phase II Service Obligations Order*).

(dd) Unserved Location—The term “unserved location” means a broadband-serviceable location that the Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 25 Mbps for downloads; and (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.¹⁸

(ee) Unserved Service Project—The term “Unserved Service Project” means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations. An “Unserved Service Project” may be as small as a single unserved broadband-serviceable location.

II. Federal Award Information

This Section provides basic information such as the amounts made available under the BEAD Program, key dates, the circumstances in which the Assistant Secretary may grant extensions, and the treatment of unallocated and unawarded funds.

A. Funding Availability

NTIA will make up to \$41,601,000,000 available for federal assistance under the Broadband Equity, Access, and Deployment Program.¹⁹

B. Period of Performance

Completed Letters of Intent must be received by NTIA through the application portal no later than 11:59 p.m. Eastern Daylight Time (EDT) on **July 18, 2022**. Either with its Letter of Intent or afterwards, an Eligible Entity may submit a request for Initial Planning Funds. Upon submission of the Letter of Intent, the Point of Contact for each Eligible Entity that requests Initial Planning Funds through the application portal will be provided with additional information about submission requirements for that funding, including but not limited to standard forms and a budget narrative template. All requests for Initial Planning Funds and supplemental information must be submitted by 11:59 p.m. Eastern Daylight Time (EDT) on **August 15, 2022**.

Eligible Entities that receive Initial Planning Funds must submit their Five-Year Action Plans to NTIA no later than 270 days after their receipt of Initial Planning Funds.

Eligible Entities will be notified of future submission deadlines after the Commission’s Broadband DATA Maps are released. Eligible Entities’ Initial Proposals may be submitted immediately after Eligible Entities are formally notified of their formula allocations and will be due to NTIA no later than 180 days after that date. Final Proposals will be due to NTIA no later than 365 days after the approval of the Initial Proposal by the Assistant Secretary.

¹⁸ *See id.*

¹⁹ This figure reflects the \$42,450,000,000 appropriated for the BEAD program minus the two percent of that sum allocated for administrative purposes. *See* Section 60102(d) of the Infrastructure Act.

Eligible Entities may submit their Letters of Intent, Five-Year Action Plans, Initial Proposals, and Final Proposals at any time during the windows established in this NOFO, and are encouraged to file their submissions as soon as they are prepared to do so.

As established in Section 60102(h)(4)(C) of the Infrastructure Act, subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband service within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.

1. Extensions

Extensions may be granted for both the Eligible Entity and subgrantees under the following circumstances:

An Eligible Entity may extend the four-year network deployment deadline for subgrantees by not more than one year if: (1) the subgrantee has a specific plan for use of the grant funds, with project completion expected by a specific date not more than one year after the four-year deadline; (2) the construction project is underway; or (3) extenuating circumstances require an extension of time to allow the project to be completed.

Extensions for Eligible Entities for any part of the process may be granted at the sole discretion of the Assistant Secretary when extenuating circumstances demonstrate that additional time will support the overall goals of the BEAD Program.

2. Petition for Extension

Each Eligible Entity must develop a process by which subgrantees may request extensions and provide documentation about the qualifying circumstance that warrants the extension.

If an Eligible Entity is seeking an extension for any part of the process with respect to which the Infrastructure Act does not authorize the Eligible Entity itself to grant such extension, it shall make a request in writing to NTIA and explain the need for such an extension. Such requests will then be evaluated by the Assistant Secretary based on the text of the Infrastructure Act and the goals of the BEAD Program.

C. Award Amount

States may request up to \$5,000,000 in Initial Planning Funds. Further, each State is eligible to receive a minimum initial allocation of \$100,000,000 (inclusive of the Initial Planning Funds). Territories may request up to \$1,250,000 of in Initial Planning funds and are each eligible to receive an initial minimum allocation of \$25,000,000. Remaining funds will be allocated to Eligible Entities based on the formulas provided in Section 60102(c)(1) and (c)(3) of the Infrastructure Act.

NTIA will notify Eligible Entities of the funding allocations available to each Eligible Entity according to the process described in Section IV.B.4.c.

D. Treatment of Unallocated and Unused Funds

If an Eligible Entity fails to submit a covered application (*i.e.*, a Letter of Intent, Initial Proposal, or Final Proposal) by the applicable deadline or any subsequent resubmission deadlines if revisions are needed, a political subdivision or consortium of political subdivisions of the Eligible Entity may submit the applicable type of covered application in place of the Eligible Entity. For more information on the ability of political subdivisions to apply in place of Eligible Entities see Section IV.B.10 of this NOFO.

Subject to the application failure provisions set forth in Section IV.B.10, if an Eligible Entity (including an Eligible Entity's political subdivision or a consortium of such subdivisions) fails to submit a covered application by the applicable deadline (including any deadlines for resubmission if revisions are needed) and no extension is granted, the Assistant Secretary may reallocate the amounts that would have been available to that Eligible Entity to the Eligible Entities that did submit and receive approval by the applicable deadline. Such reallocation will be based on the percentage of unserved locations in each Eligible Entity. If an Eligible Entity fails to use the full allocation made to that Eligible Entity by the applicable deadline, the Assistant Secretary may reallocate the unused amounts to other Eligible Entities with approved Final Proposals based on the percentage of unserved locations in each Eligible Entity. The number of unserved locations in each Eligible Entity for the purposes of such reallocations will be made using the most recently published version of the Broadband DATA Maps available as of the date the Assistant Secretary determines reallocation is appropriate.

E. Type of Funding Instrument

The funding instrument for awards made pursuant to this NOFO will be a grant.

III. Eligibility Information

This Section describes entities eligible for BEAD Program grants (generally, States and Territories of the United States), requirements relating to the provision of matching funds by Eligible Entities and/or other actors, and circumstances that might warrant waiver of the match requirements.

A. Eligible Applicants

Eligible Entities authorized to apply for grants under the BEAD Program are any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. In cases of application failure, an Eligible Entity's political subdivision, or a consortium of such subdivisions, may seek to act in the place of the Eligible Entity. For more information on the ability of political subdivisions to apply in place of Eligible Entities see Section IV.B.10 of this NOFO.

B. Cost Sharing or Matching

1. Match Generally

Except in certain specific circumstances described herein (including projects in designated “high-cost areas” and other cases in which NTIA has waived the matching requirement), in the context of subgrants used to fund broadband network infrastructure deployment, each Eligible Entity shall provide, require its subgrantee to provide, or provide in concert with its subgrantee, matching funds of not less than 25 percent of project costs. Funds from other Federal programs (including funds from the Commission’s Universal Service Fund programs) generally may not be used as matching funds; however, the Infrastructure Act expressly provides that matching funds for the BEAD Program may come from a federal regional commission or authority and from funds that were provided to an Eligible Entity or a subgrantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281), the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4), to the extent permitted by those laws.

Eligible Entities should rigorously explore ways to cover a project’s cost with contributions outside of the BEAD program funding. Matching contributions, including in-kind contributions that lower project costs, demonstrate commitment to a particular project and minimize BEAD funding outlay, extend the reach of the BEAD program funding and help to ensure that every unserved location and underserved location in the United States has access to reliable, affordable, high-speed internet. In some cases, though, a match requirement could deter participation in the BEAD Program by small and non-traditional providers, in marginalized or low-income communities, or could threaten affordability (*i.e.*, if an applicant seeks to offset the cost of a substantial match through higher end user prices). In those cases, an Eligible Entity should consider ways to cover part or all of the provider’s match through Eligible Entity or other funds or seek a match waiver through the process explained below.

A matching contribution may be provided by the subgrantee, an Eligible Entity, a unit of local government, a utility company, a cooperative, a nonprofit or philanthropic organization, a for-profit company, regional planning or governmental organization, a federal regional commission or authority, or any combination thereof. As detailed in Section III.B.5, an Eligible Entity may seek, and the Assistant Secretary may grant, a partial or full waiver of the non-federal match requirement where warranted.

2. Preference for Maximum Subgrantee Contribution and Minimal BEAD Subsidy

While the match may be provided by multiple sources, Eligible Entities are encouraged to require a match from the subgrantee rather than utilizing other sources where it deems the subgrantee capable of providing matching funds.²⁰ This approach will maximize the impact of

²⁰ Rather than using State, Territorial, or local funds as a match to BEAD projects, Eligible Entities are encouraged to use these funding sources on broadband separately and leverage additional subgrantee match commitments. Eligible Entities also must use BEAD Program funds to supplement, and not

Eligible Entity funds and funds provided via other federal programs. As detailed below with regard to the subgrantee selection process for last-mile broadband deployment projects, Eligible Entities are also required to incentivize matches of greater than 25 percent from subgrantees wherever feasible (especially where expected operational costs and revenues are likely to justify greater investment by the subgrantee) by focusing on minimizing the BEAD funding outlay on a particular project, to the extent consistent with other programmatic goals described in this NOFO.²¹

NTIA will provide technical assistance to Eligible Entities to assist in making these determinations. Eligible Entities will be expected to explain in their Initial Proposals how they intend to ensure that subgrantees will offer the maximum feasible match for each project.²²

3. Matches from Other Federal Programs and Entities

Except as expressly provided for in the Infrastructure Act, funds from other Federal programs (including funds from the Commission’s Universal Service Fund programs) may not be used as matching funds. The Infrastructure Act expressly provides that matching funds for the BEAD Program may come from a federal regional commission or authority and from funds that were provided to an Eligible Entity or a subgrantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281), the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4), to the extent permitted by those laws. Eligible Entities are encouraged to consider terms and conditions that may be associated with potential sources of match funds and how those may impact the project overall. For example, if an Eligible Entity utilizes federal regional commission funding as a match, the project will need to comply with all BEAD programmatic requirements and any requirements imposed by the federal regional commission. Likewise, Eligible Entities that use funds from the Coronavirus State and Local Fiscal Recovery Funds or Coronavirus Capital Projects Fund as the source of matching funds for the BEAD Program must comply with the requirements of both the BEAD Program and the relevant Treasury program. Loan funding issued through a federal agency, such as through the USDA ReConnect Program, may also be used as match funding.

4. In-Kind Matches

Matching funds may be provided in the form of either cash or in-kind contributions, so long as such contributions are made consistent with the Uniform Administrative Requirements, Cost

supplant, the amounts that the Eligible Entity would otherwise make available for the purposes for which the grant funds may be used.

²¹ See *supra* Section IV.B.7. If the Eligible Entity is considering competing proposals that are materially identical, and one includes a higher proposed total cost but a larger match, whereas the other includes a lower proposed total cost and smaller match, the key consideration for comparative purposes is the amount of the subsidy required, not the proportion of the stated cost that the prospective subgrantee is willing to match.

²² See *supra* Section IV.B.7.

Principles, and Audit Requirements for Federal Awards set forth at 2 C.F.R. Part 200.²³ In-kind contributions, which may include third-party in-kind contributions, are non-cash donations of property, goods or services, which benefit a federally assisted project, and which may count toward satisfying the non-federal matching requirement of a project's total budgeted costs when such contributions meet certain criteria.²⁴ In-kind contributions must be allowable and allocable project expenses. The rules governing allowable in-kind contributions are detailed and encompass a wide range of properties and services. NTIA encourages applicants to thoroughly consider potential sources of in-kind contributions that, depending on the particular property or service and the applicable federal cost principles, could include employee or volunteer services; equipment; supplies; indirect costs; computer hardware and software; and use of facilities. In the broadband context this could include, consistent with federal cost principles, waiver of fees associated with access to rights of way, pole attachments, conduits, easements, or access to other types of infrastructure.

5. Match Waivers

In evaluating requests for waiver of the BEAD Program's non-federal match requirement, NTIA will carefully balance the Program's various objectives. It is NTIA's policy to ensure that BEAD funds are used to bring affordable broadband to all Americans. Thus, the Assistant Secretary will generally seek to minimize the BEAD funding outlay on a particular project to extend the Program's reach, and expects to grant waivers only in special circumstances, when waiver is necessary to advance objectives that are critical to the Program's success. In order to be considered for a waiver, an Eligible Entity must submit a request that describes the special circumstances underlying the request and explain how a waiver would serve the public interest and effectuate the purposes of the BEAD Program. The Assistant Secretary retains the discretion to waive any amount of the match, including up to the full 25 percent requirement.

IV. Program Structure, Sequencing and Requirements

This Section provides information regarding the BEAD Program's structure, describing in detail the nine principal steps in the process: (1) the Letter of Intent, (2) the Request for Initial Planning Funds, (3) the Five-Year Action Plan, (4) Program Fund Allocation and the Notice of Available Amounts, (5) the Initial Proposal, (6) the Challenge Process, (7) the Subgrantee Selection Process, (8) the 20 Percent Funding Release, and (9) the Final Proposal and Release of Remaining Funds. NTIA urges entities seeking to participate in the BEAD Program as Eligible Entities or as subgrantees to review this section especially closely. NTIA plans to provide detailed technical assistance to Eligible Entities regarding all matters addressed in this section.

A. Program Structure

As described in greater detail below, the BEAD Program involves multiple steps and stages of application review, a robust and competitive subgrantee selection process, and ongoing reporting and monitoring obligations. NTIA will provide robust technical assistance throughout the Program's application, implementation, and reporting processes. NTIA intends to collaborate

²³ *See id.* and 2 C.F.R. § 200.306.

²⁴ *See* 2 C.F.R. § 200.306.

with Eligible Entities to maximize the effectiveness of allotted funding and ensure compliance with all federal requirements, while allowing Eligible Entities to tailor program design to the unique needs within their boundaries. Eligible Entities are encouraged to utilize resources that will be made available by NTIA or other partner organizations and should reach out to Program contacts whenever additional assistance is needed. Achieving programmatic goals will require a partnership and ongoing dialogue between NTIA and Eligible Entities.

B. Program Sequencing

As set forth in the Infrastructure Act and outlined in greater detail below, the BEAD Program is sequenced as follows:

1. Letter of Intent
2. Request for Initial Planning Funds
3. Five-Year Action Plan
4. Program Fund Allocation and Notice of Available Amounts
5. Initial Proposal
6. Challenge Process
7. Subgrantee Selection Process
8. 20 Percent Funding Release
9. Final Proposal and Release of Remaining Funds

The BEAD Program sequencing set forth in this Section contemplates that Eligible Entity submissions and NTIA review will occur on a rolling basis. The deadlines set forth below are the maximum amount of time allowed for each step in the process, absent an extension (*see* Section II.B.1).²⁵ Eligible Entities are encouraged, however, to submit materials as early as possible during each submission window to expedite implementation of the Program. NTIA will begin its review of submissions from Eligible Entities in the order they are received.

1. Letter of Intent

a. Timing

Each Eligible Entity that wishes to participate in the Program must file a Letter of Intent (LOI) to participate in the Program no later than 11:59 p.m. Eastern Daylight Time (EDT) on **July 18, 2022**. The Assistant Secretary reserves the right to extend this deadline; however, the Assistant Secretary will be reluctant to grant a waiver of the LOI deadline except in extraordinary circumstances.

b. Letter of Intent Form and Content

An Eligible Entity may submit only a single LOI. The LOI should be in letter form and signed by the Governor (or equivalent official, *e.g.*, the Mayor of the District of Columbia). The LOI must include:

²⁵ Eligible Entities may request an extension from the Assistant Secretary in extenuating circumstances, which will be granted if the Assistant Secretary determines good cause is shown.

1. A statement that the Eligible Entity intends to participate in the Program;
2. Identification of the agency, department, or office that will serve as the recipient of, and administering agent for, any BEAD Program award for the Eligible Entity and the main point of contact at that agency, department, or office for the purposes of the BEAD Program;
3. If the Eligible Entity so chooses, a request to access not more than \$5,000,000 (States) or not more than \$1,250,000 (Territories) for initial planning activities (the “Initial Planning Funds”),²⁶ for use as described in Section IV.B.3 of this NOFO. The Eligible Entity may instead submit a request for Initial Planning Funds and associated documentation at a later date. All requests and required documentation for Initial Planning Funds must, however, be submitted through the application portal by 11:59 p.m. Eastern Daylight Time (EDT) on August 15, 2022.

2. Request for Initial Planning Funds

Upon receipt of the Letter of Intent, NTIA will provide the Point of Contact for each Eligible Entity instructions on how to submit a request for Initial Planning Funds through the application portal at <https://grants.ntia.gov/>. These instructions will provide additional information regarding what materials must be submitted, including but not limited to standard forms and a budget narrative. All supplemental information must be submitted no later than 11:59 p.m. Eastern Daylight Time (EDT) on **August 15, 2022**.

Eligible Entities that receive Initial Planning Funds may use those funds for the following planning and pre-deployment activities:

1. Research and data collection, including initial identification of unserved locations and underserved locations consistent with the rules, regulations, and processes the Commission has established for making these determinations in the Broadband DATA Maps;
2. The development of a preliminary budget for pre-planning activities;
3. Publications, outreach, and communications support related to broadband planning, deployment, mapping, equity and adoption;
4. Providing technical assistance to potential subgrantees, including through workshops and events;
5. Training for employees of the broadband program or office of the Eligible Entity or employees of political subdivisions of the Eligible Entity, and related staffing capacity or consulting or contracted support to effectuate the goals of the BEAD Program;
6. Establishing, operating, or increasing capacity of a broadband office that oversees broadband programs and broadband deployment in an Eligible Entity;
7. Asset mapping across the Eligible Entity to catalogue broadband adoption, affordability, equity, access and deployment activities occurring within the Eligible Entity;
8. Conducting surveys of unserved, underserved, and underrepresented communities to better understand barriers to adoption;

²⁶ American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not request more than \$1,250,000 each in planning funds. Each Eligible Entity’s Initial Planning Funds will be drawn from that Eligible Entity’s Minimum Initial Allocation.

9. Costs associated with meeting the local coordination requirements in Section IV.C.1.c of this NOFO including capacity building at the local and regional levels or contracted support;
10. Reasonable post-NOFO, pre-Initial Planning Funds expenses in an amount not to exceed \$100,000 relating to the preparation of program submissions to NTIA (such as the Letter of Intent) or adding additional capacity to State or Territorial broadband offices in preparation for the BEAD Program may be reimbursed if they are incurred after the publication date of this NOFO and prior to the date of issuance of the grant award from NTIA;²⁷ and
11. Other uses approved in advance writing by the Assistant Secretary (including in response to an Eligible Entity's request) that support the goals of the Program.²⁸

In determining uses of Initial Planning Funds, Eligible Entities should take into consideration that NTIA will provide guidance on a variety of issues which include, but are not limited to, model job functions and descriptions for broadband office staff, grant support, asset management and data collection, policy considerations for broadband expansion, and outreach and engagement. Once NTIA approves an Eligible Entity's Letter of Intent, NTIA will provide a list of existing resources that are currently available, which will include NTIA slide decks, program and issue overviews, NTIA points of contact and where appropriate, share outside resources that may be able to assist Eligible Entities. Eligible Entities are strongly encouraged to utilize free resources provided by NTIA and other partners and are discouraged from using Initial Planning Funds for resources that can be accessed by the Eligible Entity for free. An NTIA Infrastructure Act website will have resources that are available to Eligible Entities. NTIA will have a robust technical assistance program that will continually share updated resources to Eligible Entities.

3. Five-Year Action Plan

An Eligible Entity that receives Initial Planning Funds must submit to the Assistant Secretary a Five-Year Action Plan that establishes the State or Territory's broadband goals and priorities and serves as a comprehensive needs assessment that will inform the State or Territory's Initial Proposal.

The Five-Year Action Plan developed using Initial Planning Funds must (a) be informed by collaboration with local, regional, and Tribal (as applicable) entities, as well as unions and worker organizations, (b) detail the Eligible Entity's investment priorities and associated costs, and (c) align the State or Territory's planned spending with its economic development, community benefit, workforce, telehealth, digital equity, and other related efforts.

²⁷ Lobbying costs and contingency fees are not reimbursable from grant funds. Pre-award expenses should be clearly identified in the proposed budget. Additionally, pre-award costs are incurred at the sole risk of the applicant and will not be reimbursed by NTIA if the proposed project or other eligible activity does not receive an award pursuant to this Program. Pre-award expenses must be approved by NTIA and the Grants Officer in writing to be considered allowable;

²⁸ Requests for approval of uses not listed here should be made in writing to the Assistant Secretary and submitted through the appropriate Federal Program Officer. Eligible Entities should make such requests on a timely basis to facilitate resolution prior to the point at which the Eligible Entity seeks to make the expenditure or expenditures at issue.

NTIA urges each Eligible Entity to apply for Initial Planning Funds and develop a Five-Year Action Plan to ensure that it has comprehensively evaluated the broadband needs of its communities and notes that much of the information required for the Five-Year Action Plan also will be required in the Initial Proposal. NTIA expects to offer technical assistance with regard to the Five-Year Action Plan and to provide specific feedback in response to each plan submitted, which can facilitate later steps in the BEAD Program's process.

a. Five-Year Action Plan Timing

A completed Five-Year Action Plan must be submitted to NTIA within 270 days of receipt of Initial Planning Funds. The Assistant Secretary reserves the right to extend this deadline; however, the Assistant Secretary will be reluctant to grant a waiver except in extraordinary circumstances.

b. Five-Year Action Plan Form and Content

Preparing a Five-Year Action Plan gives Eligible Entities the opportunity to identify their communities' broadband access, affordability, equity and adoption needs and to adopt strategies, goals and initial measures for meeting those needs using BEAD and other funds. At a minimum, an Eligible Entity's Five-Year Action Plan must:

1. Provide details of the existing broadband program or office within the Eligible Entity, including any activities that the program or office currently conducts, any previous entity-wide plans or goals for availability of broadband, and any prior experience awarding broadband deployment grants.
2. Identify the funding that the Eligible Entity currently has available for broadband deployment and other broadband-related activities, including data collection and local planning, and the sources of that funding, including whether the funds are from the Eligible Entity or from the federal government.
3. Identify existing efforts funded by the federal government, including the Universal Service Fund, or an Eligible Entity to deploy broadband and close the digital divide.
4. Identify the current full-time and part-time employees of the Eligible Entity who will assist in implementing and administering the BEAD Program and the duties assigned to those employees, as well as any existing contracted support, and any planned expansion of employees or contractors.
5. Identify known or potential obstacles or barriers to the successful implementation of the BEAD Program and the Eligible Entity's corresponding plans to address them.
6. Include an asset inventory that catalogues broadband adoption, affordability, equity, access, and deployment activities occurring within the Eligible Entity and identifies and provides details regarding any relevant partners, such as community-based organizations and CAIs that may inform broadband deployment and adoption planning.
7. Include a description of the Eligible Entity's external engagement process, demonstrating collaboration with local, regional, and Tribal (as applicable) entities (governmental and non-governmental) and reflective of the local coordination requirements outlined herein,

including outreach to underrepresented communities and unions and worker organizations. The engagement required must be undertaken both during the development of the Five-Year Action Plan itself and following submission of the plan, reflecting ongoing collaboration throughout the BEAD Program.

8. Incorporate available federal, Eligible Entity, or local broadband availability and adoption data, including but not limited to Affordable Connectivity Program enrollment data. Other federal broadband federal data sources include the NTIA Internet Use Survey,²⁹ the NTIA Indicators of Broadband Need Map,³⁰ and the American Community Survey.³¹

9. Identify local and regional broadband service needs and gaps within the Eligible Entity's boundaries, including unserved or underserved locations and CAIs without gigabit service, and/or any plans to make these determinations where service availability is unclear.

10. Provide a comprehensive, high-level plan for providing reliable, affordable, high-speed internet service throughout the Eligible Entity, including:

- a. The estimated timeline and cost for universal service,
- b. The planned utilization of federal, Eligible Entity, and local funding sources,
- c. Prioritization of areas for federal support,
- d. Any consideration afforded to the use of public-private partnerships or cooperatives in addressing the needs of the Eligible Entity's residents,
- e. Strategies to address affordability issues, including but not limited to strategies to increase enrollment in the Affordable Connectivity Program by eligible households; and
- f. Strategies to ensure an available and highly skilled workforce (including by subgrantees, contractors, and subcontractors) to minimize project disruptions, including any plans to ensure strong labor standards and protections, such as those listed in Section IV.C.1.e; and plans to attract, retain, or transition the skilled workforce needed to achieve the plan's goals, including describing the involvement and partnerships of sub-grantees, contractors, and sub-contractors with existing in-house skills training programs, unions and worker organizations; community colleges and public school districts; supportive services providers; Registered Apprenticeship programs and other labor-management training programs, or other quality workforce training providers.

11. Identify digital equity and inclusion needs, goals, and implementation strategies, including ways in which the Eligible Entity plans to utilize BEAD funding, Digital Equity Act funding and/or other funding streams in concert to remedy inequities and barriers to inclusion. Accordingly, the Five-Year Action Plan should set forth a vision for digital equity, include the results of a needs assessment for underrepresented communities and an asset inventory of ongoing digital equity activities, and detail holistic strategies around affordability, devices, digital skills, technical support, and digital navigation. This requirement may be satisfied by the completion of a State Digital Equity Plan under the

²⁹ See NTIA Data Central, <https://www.ntia.gov/data>.

³⁰ See Indicators of Broadband Need Map, <https://broadbandusa.ntia.gov/indicatorsmap>.

³¹ See American Community Survey (ACS), <https://www.census.gov/acs>.

Digital Equity Act.³² Please refer to the Digital Equity Act State Planning Grant Program NOFO for the requirements and deadlines applicable to that program.

12. Detail alignment of the Five-Year Action Plan with other existing and planned economic development, telehealth, workforce development, related connectivity efforts, and other Eligible Entity priorities.

13. Describe technical assistance and additional capacity needed for successful implementation of the BEAD Program.

The Assistant Secretary will publish at www.grants.ntia.gov an online template for submission of the Five-Year Action Plan. Use of this template is optional. To the extent an Eligible Entity has an existing plan that meets the requirements set forth above and has been completed in the last 12 months from the date of receipt of Initial Planning Funds, it may submit that plan as its Five-Year Action Plan. If an Eligible Entity has an existing plan that meets the requirements set forth above in part, it may submit that plan as part of the Five-Year Action Plan, along with supplemental materials sufficient to fulfill all of the requirements set forth above. However, with regard to the statements above, please note that an Eligible Entity may not use BEAD funds to pay for previously incurred costs (subject to limited exceptions described in Section IV.B.2 of this NOFO). If an Eligible Entity does not utilize the online template published by NTIA, the Eligible Entity must also provide an index, crosswalk, or similar document to allow the reader to quickly and efficiently locate relevant content.

4. Program Fund Allocation and Notice of Available Amounts

a. Criteria for Reliable Broadband Service

For the purposes of the BEAD Program, locations served exclusively by satellite,³³ services using entirely unlicensed spectrum,³⁴ or a technology not specified by the Commission for purposes of the Broadband DATA Maps,³⁵ do not meet the criteria for Reliable Broadband Service and so will be considered “unserved.”³⁶

³² It is anticipated that each Eligible Entity participating in the BEAD Program will concurrently participate in the Digital Equity Program, which is the subject of a separate Notice of Funding Opportunity. Eligible Entities should consider the minimum content requirements of the State Digital Equity Plan listed in the State Digital Equity Planning Grants NOFO as the minimum content required here. Eligible Entities that do not participate in the Digital Equity Program should refer to the State Digital Equity Planning Grants NOFO for additional information.

³³ Broadband Data Collection Fixed Technology Codes 60 and 61. *See* BDC Specifications at 11, Table 4.1.

³⁴ Broadband Data Collection Fixed Technology Code 70. *Id.*

³⁵ Broadband Data Collection Fixed Technology Code 0. *Id.*

³⁶ *See* Section I.C of this NOFO (defining “Reliable Broadband Service”). Note that Eligible Entities may consider funding such services under certain circumstances during their subgrantee selection processes. *See* Section IV.B.7.a.ii of this NOFO.

b. Form and Content of Notice of Available Amounts

On or after the date on which the Broadband DATA Maps are made public, the Assistant Secretary, in coordination with the Commission, shall issue a notice to each Eligible Entity that contains the estimated amount of Program funds that will be available to the Eligible Entity pursuant to the funding allocation process described below (the Eligible Entity’s “Total Allocation”).

This “Notice of Available Amounts” will invite the Eligible Entity to submit an Initial Proposal and Final Proposal in accordance with Sections IV.B.5 and IV.B.9 below.

c. Funding Allocation Process

The Assistant Secretary will, in coordination with the Commission, choose a date certain upon which the Broadband DATA Maps will be utilized to identify unserved locations (the “Allocation Date”). Each Eligible Entity’s Total Allocation will be the sum of the Eligible Entity’s (i) Minimum Initial Allocation; (ii) High-Cost Allocation; and (iii) Remaining Funds Allocation, each calculated as follows:

i. Minimum Initial Allocation

The “Minimum Initial Allocation” for (i) each State of the United States, the District of Columbia, and Puerto Rico is \$100,000,000, and (ii) for American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands is \$25,000,000.

ii. High-Cost Allocation

The “High-Cost Allocation” for each Eligible Entity will be calculated by (i) dividing the number of unserved locations in high-cost areas in the Eligible Entity by the total number of unserved locations in high-cost areas in the United States and (ii) multiplying the quotient obtained by \$4.245 billion.

NTIA will provide further information regarding its designation of high-cost areas in future guidance and/or related documents.

iii. Remaining Funds Allocation

The funds remaining after subtracting each of (i) the total Minimum Initial Allocations; and (ii) the total High-Cost Allocation from \$41,601,000,000 are the “Remaining Funds.”³⁷

Each Eligible Entity’s Remaining Funds Allocation shall be computed by dividing the number of unserved locations in the Eligible Entity by the total number of unserved locations in the United States and multiplying the result by the Remaining Funds.

³⁷ This figure reflects the \$42,450,000,000 appropriated for the BEAD program minus the two percent of that sum allocated for administrative purposes. *See* Infrastructure Act § 60102(d); Section II.A of this NOFO.

5. Initial Proposal

The Initial Proposal is the “first draft” of an Eligible Entity’s Final Proposal for grant funding, and, among other things, should explain (as described below) how the Eligible Entity intends to ensure that every resident has access to a reliable, affordable, high-speed broadband connection, utilizing all funding available to be brought to bear to accomplish this goal, including but not limited to BEAD Program funds.

a. Initial Proposal Timing

On the date that an Eligible Entity’s Notice of Available Amounts is issued, the Assistant Secretary will invite each Eligible Entity to submit an Initial Proposal. Each Eligible Entity will have 180 days to submit its Initial Proposal but Eligible Entities are encouraged to submit Initial Proposals earlier, if possible. Eligible Entities should not wait until the Notice of Available Amounts is issued to begin preparing their Initial Proposals. Rather, they should begin this process immediately upon receiving the online template. If an Eligible Entity fails to submit an Initial Proposal by the deadline, this will be treated as an application failure by the Eligible Entity pursuant to Section IV.B.10 of this NOFO. The Assistant Secretary reserves the right to extend this deadline; however, the Assistant Secretary will be reluctant to grant a waiver except in extraordinary circumstances.

b. Form and Content of Initial Proposal

NTIA will provide Eligible Entities with an online template for submission of the Initial Proposal. An Eligible Entity may submit only a single Initial Proposal.³⁸

The Initial Proposal must, at a minimum:

1. Outline long-term objectives for deploying broadband, closing the digital divide, addressing access, affordability, equity, and adoption issues, and enhancing economic growth and job creation including information developed by the Eligible Entity as part of the Five-Year Action Plan and information from any comparable strategic plan otherwise developed by the Eligible Entity, if applicable.³⁹
2. Identify, and outline steps to support, local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide and describe coordination with local and Tribal Governments, along with local, Tribal, and regional broadband planning processes.⁴⁰

³⁸ Leading up to submission of the Initial Proposal and through the review and approval process, NTIA will provide support and technical assistance to help ensure that the proposal fully meets the requirements of the statute and the goals of the Program, up to and including iterative feedback on draft Initial Proposals.

³⁹ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

⁴⁰ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

3. Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands.⁴¹
4. Certify that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, unions and worker organizations, and other groups, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, describe the coordination conducted, summarize the impact such coordination had on the content of the Initial Proposal, detail ongoing coordination efforts, and set forth the plan for how the Eligible Entity will fulfill the coordination requirements associated with its Final Proposal.
5. Identify each unserved location and underserved location under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands, using the most recently published Broadband DATA Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the Broadband DATA Maps used for such identification.
6. Describe how the Eligible Entity applied the statutory definition of the term “community anchor institution,” identified all eligible CAIs in its jurisdiction, identified all eligible CAIs in applicable Tribal Lands, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations.
7. Include a detailed plan to conduct a challenge process as described in Section IV.B.6.
8. Include a detailed plan to competitively award subgrants consistent with Section IV.B.7.a of this NOFO with regard to both last-mile broadband deployment projects and other eligible activities. With respect to last-mile broadband deployment projects, the plan must explain how the Eligible Entity will ensure timely deployment of broadband and minimize the BEAD subsidy required to serve consumers consistent with Section IV.B.7 and the other priorities set out in this NOFO. The Initial Proposal must include identification of, or a detailed process for identifying, an Extremely High Cost Per Location Threshold to be utilized during the subgrantee selection process described in Section IV.B.7 of this NOFO. Each Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.7.b of this NOFO. NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.
9. With respect to non-deployment eligible activities, explain any preferences the Eligible Entity will employ in selecting the type of initiatives it intends to support using BEAD Program funds, the means by which subgrantees for these eligible activities will be selected, how the Eligible Entity expects the initiatives it pursues to address the needs of the Eligible Entity’s residents, the ways in which engagement with localities and stakeholders will inform

⁴¹ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

the selection of eligible activities, and any efforts the Eligible Entity will undertake to determine whether other uses of the funds might be more effective in achieving the BEAD Program's equity, access, and deployment goals.

10. Describe any initiatives the Eligible Entity proposes to implement as the recipient without making a subgrant, and why it proposes that approach.

11. Detail how the Eligible Entity will ensure that subgrantees, contractors, and subcontractors use strong labor standards and protections, such as those listed in Section IV.C.1.e, and how the Eligible Entity will implement and apply the labor-related subgrantee selection criteria described below in Section IV.C.1.e of this NOFO.

12. Detail how the Eligible Entity will ensure an available, diverse, and highly skilled workforce consistent with Section IV.C.1.e of this NOFO.

13. Describe the process, strategy, and data tracking method(s) that the Eligible Entity will implement to ensure that minority businesses, women-owned business enterprises, and labor surplus area firms are recruited, used, and retained when possible.

14. Identify steps that the Eligible Entity will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements.⁴²

15. Provide an assessment of climate threats within the Eligible Entity and proposed mitigation methods consistent with the requirements of Section IV.C.1.h of this NOFO.

16. Describe the low-cost plan(s) that must be offered by subgrantees consistent with the requirements of Section IV.C.2.c.i of this NOFO.

17. Describe the intended use of the 20 percent of total funding allocation that is made available upon approval of the Initial Proposal consistent with Section IV.B.8 of this NOFO.

18. Disclose (1) whether the Eligible Entity will waive all laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act, that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer; and (2) if it will not waive all such laws for BEAD Program project selection purposes, identify those that it will not waive and describe how they will be applied in connection with the competition for subgrants.

19. Certify the intent of the Eligible Entity to comply with all applicable requirements of the Program, including the reporting requirements, and describe subgrantee accountability procedures.

⁴² Consistent with the goal that Eligible Entities seek to minimize the BEAD funding outlay on a particular project, Eligible Entities and their political subdivisions are strongly encouraged to remove time and cost barriers associated with BEAD projects, including by expediting permitting timelines and waiving fees where applicable, where doing so does not undermine other critical policy goals.

Additional requirements for the Initial Proposal may be provided to Eligible Entities when the Notices of Available Amounts are released.

In drafting its Initial Proposal, an Eligible Entity should keep in mind that it may allocate grant funds for the following:

1. Deploying and/or upgrading broadband network facilities in connection with an Unserved Service Project or an Underserved Service Project;⁴³
2. Deploying and/or upgrading broadband network facilities to provide or improve service to an eligible community anchor institution;⁴⁴
3. Data collection, broadband mapping, and planning to the extent necessary beyond the planning fund allocation to facilitate the goals and deliverables of the BEAD Program;
4. Installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multi-family residential building, with priority given to a residential building that has substantial share of unserved households or is in a location in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line⁴⁵ applicable to a family of the size involved is higher than the national percentage of such individuals;
5. Broadband adoption, including programs to provide affordable internet-capable devices;
6. Training and workforce development; and
7. Other uses, including other Digital Equity programs not already included above, proposed by Eligible Entities and approved in advance in writing by the Assistant Secretary that support the goals of the Program.⁴⁶

The Assistant Secretary may request and accept corrections to the Initial Proposal of an Eligible Entity after the Initial Proposal has been submitted.

c. Review process

After receipt of an Initial Proposal, the Assistant Secretary shall acknowledge receipt and begin the review process in the order in which Initial Proposals are received. This review process is intended to be iterative and may require Eligible Entities to submit revised, updated, or corrected

⁴³ This can potentially include deployment of Middle Mile Infrastructure where the Middle Mile Infrastructure is in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of an Unserved Service Project or an Underserved Service Project.

⁴⁴ This can potentially include deployment of Middle Mile Infrastructure where the Middle Mile Infrastructure is in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of an Unserved Service Project or an Underserved Service Project.

⁴⁵ As determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)).

⁴⁶ Requests for approval of uses not listed here should be made in writing to the Assistant Secretary and submitted through the appropriate Federal Program Officer. Eligible Entities should make such requests on a timely basis to facilitate resolution prior to the point at which the Eligible Entity seeks to make the expenditure or expenditures at issue.

Initial Proposals after the Initial Proposal has been submitted. In reviewing the Initial Proposal, the Assistant Secretary shall determine whether the use of funds proposed in the Initial Proposal:

1. Complies with Section 60102(f) of the Infrastructure Act;
2. Is in the public interest; and
3. Effectuates the purposes of the Infrastructure Act.

d. Actions upon completion of review

i. Approval

If the Assistant Secretary determines that the Initial Proposal meets the standards set forth in Section IV.B.5.c, the Assistant Secretary shall approve the Initial Proposal, inform the Eligible Entity, and make available to the Eligible Entity 20 percent of its Total Allocation; or a higher percentage at the sole discretion of the Assistant Secretary, for uses as described in Section IV.B.8 of this NOFO.

ii. Disapproval

If the Initial Proposal is incomplete, or the Assistant Secretary determines that the use of funds proposed in the Initial Proposal does not meet the standards set forth in Section IV.B.5.c, the Assistant Secretary shall notify the Eligible Entity of deficiencies in the proposal, provide the Eligible Entity with an opportunity to resubmit the Initial Proposal, and establish a deadline for resubmission. If an Eligible Entity fails to resubmit an Initial Proposal that remedies the deficiencies identified by the Assistant Secretary by the applicable deadline, the Eligible Entity will be treated as an application failure pursuant to Section IV.B.10. NTIA will provide technical assistance to Eligible Entities in the revision process with the goal of ensuring an approved Initial Proposal for each participating Eligible Entity.

6. Challenge Process

Each Eligible Entity shall develop and describe in the Initial Proposal, a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as those terms are defined in the Infrastructure Act and Section I.C if this NOFO.⁴⁷ Eligible Entities should update the data provided in their Initial Proposal to reflect the most recently published version of the Broadband DATA Maps available as of the initiation of the challenge process.

⁴⁷ The fact that a location is served does not preclude its inclusion in an Unserved Service Project or an Underserved Service Project, as these terms contemplate that such projects may include served and (in the case of Unserved Service Projects) underserved locations. For example, a particular Unserved Service Project containing 10 total locations may have 8 unserved locations and 2 that are served.

The Assistant Secretary may modify the challenge process proposed by the Eligible Entity as necessary and shall inform the Eligible Entity of any modifications required. Once an Eligible Entity makes any required modifications, the Assistant Secretary shall approve the challenge process, either in conjunction with, or prior to, approval of the Eligible Entity's Initial Proposal. The Eligible Entity shall conduct the approved challenge process before allocating grant funds received from BEAD for the deployment of broadband networks to subgrantees.⁴⁸

After resolving each challenge and at least 60 days before allocating grant funds for network deployment, an Eligible Entity must provide public notice of the final classification of each unserved location, underserved location, or Eligible Community Anchor Institution within the jurisdiction of the Eligible Entity. An Eligible Entity must also notify NTIA of any modifications to the Initial Proposal that are necessitated by successful challenges to its initial determinations. Pursuant to the discretionary authority granted to the Assistant Secretary in the Infrastructure Act, NTIA may reverse the determination of an Eligible Entity with respect to the eligibility of a particular location or community anchor institution.

7. Subgrantee Selection Process

Each Eligible Entity must establish fair, open, and competitive processes for selecting subgrantees.⁴⁹ The selection of subgrantees is a critically important process that will determine which providers will bring service to all Americans, and in many cases, which entities will stand up and operate training programs and take other actions aimed at closing the digital divide.⁵⁰ Eligible Entities' selection processes must be made clear to potential subgrantees and must be described in the Eligible Entity's Initial Proposal and Final Proposal. NTIA recognizes that there may be a variety of competitive processes Eligible Entities might use to select subgrantees and does not mandate any specific approach. Each Eligible Entity is encouraged to invite participation in the process by a broad cross-section of potential subgrantees, including minority-owned business and other socially or economically disadvantaged individual-owned businesses. NTIA will provide further guidance and technical assistance on approaches to subgrantee selection.

a. General Principles Governing Subgrantee Selection

i. Protecting the Integrity of the Selection Process

In establishing a fair, open, equitable, and competitive selection process, each Eligible Entity must ensure that adequate safeguards are in place to protect the integrity of the competition, including safeguards against collusion, bias, conflicts of interest, arbitrary decisions, and other factors that could undermine confidence in the process.

⁴⁸ Eligible Entities may, but are not required to, update their post-challenge data to reflect updates to the Broadband DATA Maps that occur after conclusion of the challenge process.

⁴⁹ Subgrantees must meet the minimum qualifications set forth in Section IV.D of this NOFO.

⁵⁰ Eligible Entities must subgrant funds in connection with broadband deployment projects and may also subgrant funds for non-deployment activities. As a recipient, however, an Eligible Entity may also decide to carry out non-deployment activities themselves.

ii. Last-Mile Broadband Deployment Projects

When selecting subgrantees to provide broadband service to Unserved Service Projects, Underserved Service Projects, and Eligible Community Anchor Institutions (“last-mile broadband deployment projects”), each Eligible Entity must apply a process that abides by the following principles:

1. An “Unserved Service Project” or “Underserved Service Project” can be as small as a single unserved or underserved location, respectively. This principle will help ensure that isolated unserved and underserved locations that cannot be aggregated in groups that are 80 percent or more unserved or underserved are addressed by the BEAD Program.
2. An “Unserved Service Project” or “Underserved Service Project” may include Middle Mile Infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing service to an unserved location, underserved location, or eligible CAI.⁵¹
3. In identifying an Unserved Service Project or Underserved Service Project, an Eligible Entity may not treat as “unserved” or “underserved” any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband as of the date that the challenge process described in Section IV.B.6 of this NOFO is concluded.⁵² The

⁵¹ See Infrastructure Act § 60102(h)(4)(E).

⁵² An enforceable commitment for the deployment of qualifying broadband to a location exists when the commitment to deploy qualifying broadband service to that location was made as a condition of:

- Any grant, loan, or loan guarantee provided by an Eligible Entity to the provider of broadband service;
- Any grant, loan, or loan guarantee provided by the Secretary of Agriculture under:
 - Title VI of the Rural Electrification Act of 1936 (7 U.S.C. § 950bb *et seq.*), including: any program to provide grants, loans, or loan guarantees under Sections 601 through 603 of that Act (7 U.S.C. § 950bb *et seq.*); and the Community Connect Grant Program established under Section 604 of that Act (7 U.S.C. § 950bb–3); or
 - The broadband loan and grant pilot program known as the “Rural eConnectivity Pilot Program” or the “ReConnect Notice of Funding Opportunity Program” authorized under Section 779 of division A of the Consolidated Appropriations Act, 2018 (Public Law 115–141; 132 Stat. 348);
- Any high-cost universal service support provided under Section 254 of the Communications Act of 1934 (47 U.S.C. § 254), except that in the case of the Rural Digital Opportunity Fund, a location will be considered to have an enforceable commitment for qualifying broadband only (a) after the Federal Communications Commission has announced in a Public Notice that RDOF support for that location is ready-to-authorize or is authorized, and (b) the provider does not rely on satellite technologies to deliver service;
- Any grant provided under Section 6001 of the American Recovery and Reinvestment Act of 2009 (47 U.S.C. § 1305);
- Amounts made available for the Education Stabilization Fund established under the heading “DEPARTMENT OF EDUCATION” in title VIII of division B of the CARES Act (Public Law 116–136; 134 Stat. 564), and funded under the CARES Act, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act), and the American Rescue Plan Act (ARP Act);

Assistant Secretary may waive such treatment of locations or areas with prior enforceable commitments at the request of the Eligible Entity in cases where the Eligible Entity can demonstrate to the satisfaction of the Assistant Secretary that such treatment of such locations or areas is necessary to achieve the goals of the program, including where purported commitments do not have the appropriate documentation with respect to Tribal lands consistent with requirements set out above.⁵³ For the purposes of the subgrantee selection process, “qualifying broadband” to a location that is not a CAI is Reliable Broadband Service with (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds; “qualifying broadband” to a CAI is Reliable Broadband Service with (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.

4. An Eligible Entity must establish a competitive process designed to maximize the public benefits achieved through the subgrant process by increasing subgrantee-provided match and reducing costs to consumers. The type of competitive process selected is at the discretion of the Eligible Entity, subject to the Assistant Secretary’s approval in reviewing the Eligible Entity’s Initial Proposal and to the criteria and other requirements set forth in this NOFO.

5. The Eligible Entity may seek proposals to serve unserved locations, underserved locations, and CAIs collectively or separately, so long as the Eligible Entity awards funding in a manner that prioritizes Unserved Service Projects and once it certifies that it will ensure coverage of all unserved locations within the Eligible Entity, prioritizes Underserved Service Projects.

6. The Eligible Entity may not exclude, as a class, cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility as a subgrantee.

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- Amounts made available for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) established under the American Rescue Plan Act of 2021 (Public Law 117–2; 135 Stat. 4) (ARPA);
 - Amounts made available for the Capital Projects Fund established by Section 604 of the Social Security Act, as added by Section 9901 of ARPA; or
 - Any other grant, loan, or loan guarantee provided by, or funded in whole or in part by, the federal government or a State or Territorial government for the provision of broadband service.

Eligible Entities may fund Unserved Service Projects and Underserved Service Projects that include locations in an area that has an enforceable commitment for the deployment of qualifying broadband to less than 100 percent of the locations in that area. *See, e.g.*, 47 C.F.R. § 54.308(a). Eligible Entities must, however, seek to identify as part of the challenge process described in Section IV.B.6 of this NOFO those unserved locations and underserved that will not be served by qualifying broadband service as a result of such enforceable commitment, and use that information in determining whether to treat each location as unserved or underserved within the relevant area.

Further, for unserved locations and underserved on Tribal Lands, a commitment that otherwise meets the criteria set forth above shall not constitute an enforceable commitment for the deployment of qualifying broadband unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.

⁵³ *See supra* note 52.

7. The Eligible Entity may solicit proposals from prospective subgrantees at the geographic level of its choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. An Eligible Entity may alternatively solicit proposals for project areas it defines or ask prospective subgrantees to define their own proposed project areas. If the Eligible Entity allows prospective subgrantees to define proposed project areas, it must develop a mechanism for de-conflicting overlapping proposals (for example, by de-scoping some locations from a provider’s proposed project area) to allow for like-to-like comparison of competing proposals. Whatever process is selected, the Eligible Entity must ensure it has a plan for serving all unserved and (where it has sufficient funding) underserved locations.

8. Each Eligible Entity must require that each proposal from a prospective subgrantee identify, for each location to be served in the proposal, the amount of BEAD funding the prospective subgrantee is seeking to serve that location.

9. If, after soliciting proposals, the Eligible Entity has received no proposals to serve a location or group of locations that are unserved, underserved, or a combination unserved and underserved, the Eligible Entity may engage with existing providers and/or other prospective subgrantees to find providers willing to expand their existing or proposed service areas. An Eligible Entity may consider inducements such as use of state funding toward the match requirement set forth in Section III.B or benefits during the grant selection process (*e.g.*, points or credits). The Eligible Entity shall, in this circumstance, work to ensure that its approach is as transparent as possible. For the avoidance of doubt, this provider-specific outreach is only appropriate after the Eligible Entity has solicited proposals and failed to obtain one or more proposals to serve the location or locations at issue.

10. As discussed further in Section IV.B.9.b, if an Eligible Entity’s Final Proposal includes plans to deploy broadband to Unserved Service Projects or Underserved Service Projects that include any locations on Tribal Lands, the Eligible Entity must submit proof of the Tribal Government’s consent to such deployment.

11. Notwithstanding any of the above:

- An Eligible Entity may decline to select a proposal that requires a BEAD subsidy that exceeds the Extremely High Cost Per Location Threshold for any location to be served in the proposal if use of an alternative Reliable Broadband Service technology meeting the BEAD Program’s technical requirements would be less expensive. Subject to the overarching requirement to run a fair, open, and competitive process, the Eligible Entity has discretion to design a selection process that allows it to engage with a prospective subgrantee to revise the proposal to ensure that no location requires a subsidy that exceeds the Extremely High Cost Per Location Threshold.
- If no Reliable Broadband Service technology meeting the BEAD Program’s technical requirements would be deployable for a subsidy of less than the Extremely High Cost Per Location Threshold at a given location, an Eligible Entity is authorized to select a proposal involving a less costly technology for that location, even if that technology does *not* meet the definition of Reliable Broadband Service but otherwise satisfies the Program’s technical requirements.

In this instance, Eligible Entities are directed to seek out the most robust, affordable, and scalable technologies achievable under the circumstances particular to that location.

Eligible uses of funding in connection with last-mile broadband deployment projects include the following:⁵⁴

1. Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings.
2. Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements.
3. Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building.
4. Engineering design, permitting, and work related to environmental, historical and cultural reviews.
5. Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts).
6. Network software upgrades, including, but not limited to, cybersecurity solutions.
7. Training for cybersecurity professionals who will be working on BEAD-funded networks.
8. Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training for broadband-related occupations to support deployment, maintenance, and upgrades.

iii. Non-Deployment Uses

As detailed above, an Eligible Entity that can demonstrate it has a plan for bringing affordable, high-speed broadband service to all unserved and underserved locations within its jurisdiction may also allocate funding to non-deployment activities. Such eligible non-deployment uses include, but are not limited to, the following:

1. User training with respect to cybersecurity, privacy, and other digital safety matters.
2. Remote learning or telehealth services/facilities.
3. Digital literacy/upskilling (from beginner-level to advanced).
4. Computer science, coding and cybersecurity education programs.
5. Implementation of Eligible Entity digital equity plans (to supplement, but not to duplicate or supplant, Planning Grant funds received by the Eligible Entity in connection with the Digital Equity Act of 2021).⁵⁵

⁵⁴ These also are the uses to which an Eligible Entity must in the first instance devote funding in the initial 20 percent funding distribution, pursuant to Section IV.B.7 of this NOFO.

⁵⁵ Note that an Eligible Entity that wishes to obtain a Digital Equity Capacity Grant under the Digital Equity Act of 2021 must first apply for and receive a Digital Equity Planning Grant in order to do so. The application for BEAD funding will not be considered an application for a grant under the Digital Equity Act of 2021. Use of BEAD funds for digital equity purposes will not alone render the Eligible Entity

6. Broadband sign-up assistance and programs that provide technology support.
7. Multi-lingual outreach to support adoption and digital literacy.
8. Prisoner education to promote pre-release digital literacy, job skills, online job-acquisition skills, *etc.*
9. Digital navigators.⁵⁶
10. Direct subsidies for use toward broadband subscription, where the Eligible Entity shows the subsidies will improve affordability for the end user population (and to supplement, but not to duplicate or supplant, the subsidies provided by the Affordable Connectivity Program).
11. Costs associated with stakeholder engagement, including travel, capacity-building, or contract support.
12. Other allowable costs necessary to carrying out programmatic activities of an award, not to include ineligible costs described below in Section V.H.2 of this NOFO.

When selecting subgrantees for non-deployment uses of BEAD funds, an Eligible Entity must adhere to the Infrastructure Act’s requirement that subgrants be awarded “competitively.”⁵⁷ NTIA recognizes that the breadth of potential non-deployment eligible activities could necessitate a broad range of subgrantee selection processes, even within a single Eligible Entity, and that such processes might even require the Eligible Entity to compare and choose among very different proposals (*e.g.*, whether to allocate funds to an affordability program, a cybersecurity training program, or a digital literacy drive).⁵⁸ Accordingly, NTIA does not prescribe any specific framework. NTIA reminds Eligible Entities that federal grant regulations “flow through” to subrecipients (*i.e.*, subgrantees), and that subrecipients are responsible for adherence to applicable Federal program requirements specified in the Federal award.⁵⁹ As with deployment projects, NTIA encourages Eligible Entities to promote participation by minority-owned businesses and other socially or economically disadvantaged individual-owned businesses.

b. Prioritization and Scoring in Selection of Last-Mile Broadband Deployment Projects

An Eligible Entity may choose its own means of competitively selecting subgrantees for last-mile broadband deployment projects, subject to approval by the Assistant Secretary (during review of the Eligible Entity’s Initial Proposal). Each Eligible Entity’s subgrantee selection process must, however, incorporate the following principles to satisfy the Infrastructure Act’s mandates and the BEAD Program’s goals.

eligible for a Digital Equity Planning Grant.

⁵⁶ “Digital Navigators are individuals who address the whole digital inclusion process — home connectivity, devices, and digital skills — with community members through repeated interactions.” National Digital Inclusion Alliance, *The Digital Navigator Model: Adding Digital Equity to Our Social Safety Net*, available at <https://www.digitalinclusion.org/digital-navigator-model/>.

⁵⁷ See Infrastructure Act § 60102(f).

⁵⁸ An Eligible Entity could also run multiple competitions for different categories of activities.

⁵⁹ See, *e.g.*, 2 C.F.R. §§ 200.101(b)(2); 200.331.

1. ***Complete Coverage of Unserved Locations and Underserved Locations, Followed by Prioritization of Eligible CAIs.*** The Eligible Entity, in awarding subgrants for the deployment of a broadband network, shall award funding in a manner that ensures the deployment of service to all unserved locations within the Eligible Entity's jurisdiction. If the Eligible Entity has sufficient funds to ensure deployment of service to all underserved locations within its jurisdiction, it must ensure such deployment as well. If the Eligible Entity lacks sufficient funds to ensure deployment of service to all underserved locations, it must commit the remainder of its BEAD funds to ensure deployment to underserved locations. Eligible Entities must submit Initial Proposals and Final Proposals that will result in coverage for all unserved locations, and (to the extent funds are available) all underserved locations. The Assistant Secretary will only approve an Initial Proposal or Final Proposal that includes a plan to ensure deployment of broadband to all unserved and underserved locations within the State or Territory or that provides a strong showing that the Eligible Entity is financially incapable of ensuring universal coverage of all unserved and underserved locations. To the extent that an Eligible Entity demonstrates that there are insufficient funds available to fund deployment to all unserved, underserved, or eligible CAI locations, the Eligible Entity must prioritize projects within each of those categories based on a strong preference for projects in high poverty areas or persistent poverty counties.⁶⁰

In ensuring deployment of service to all unserved and underserved locations within its jurisdiction, the Eligible Entity may opt to fund deployment of Wi-Fi infrastructure to multi-family buildings that lack high-speed broadband access in their entirety or contain units that lack such access. Such an Eligible Entity must give priority to residential buildings that (1) have a substantial share of unserved households or (2) are in locations in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved⁶¹ is higher than the national percentage of such individuals.⁶²

NTIA strongly urges Eligible Entities that are able to fund deployment to all unserved and underserved locations to allocate remaining funds to eligible CAIs, and to move to alternative eligible uses only if they are able to fund deployments to all unserved locations, underserved locations, and eligible CAIs. An Eligible Entity that proposes to use BEAD funds to pursue objectives in lieu of the deployment of service to eligible CAIs must provide a strong rationale for doing so in its Initial Proposal.

The requirement that an Eligible Entity have a plan to ensure deployment to all unserved and underserved locations before contemplating non-deployment uses of funds does not

⁶⁰ For the purposes of this requirement, high poverty areas are areas in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) is higher than the national percentage of such individuals. Persistent poverty counties are counties that have had poverty rates of 20 percent or greater for at least 30 years as calculated by the Economic Research Service in the Department of Agriculture.

⁶¹ For this purpose, the applicable poverty line for a family of the relevant size is to be determined consistent with section 673(2) of the Community Services Block Grant Act, 42 U.S.C. § 9902(2).

⁶² See Infrastructure Act § 60102(g)(1)(D).

impose any temporal requirement as to the order in which BEAD-funded initiatives are undertaken or completed. NTIA recognizes that broadband deployment projects often take months or years to complete, whereas certain other eligible uses of BEAD funds can be implemented more quickly. Thus, if an Eligible Entity has a plan to deploy service to all unserved and underserved locations within its jurisdiction, it may pursue non-deployment initiatives using BEAD funds before or while deployment projects are underway. For example, while an Eligible Entity is only permitted to pursue a device-subsidy program using BEAD funds if it has a plan to deploy service to all unserved and underserved locations within its jurisdiction, an Eligible Entity proposing such a program is both permitted and encouraged to implement it as soon as is feasible once its Initial Proposal has been approved.

2. ***Selection Among Competing Proposals for the Same Location or Locations.*** An Eligible Entity's process in selecting subgrantees for last-mile broadband deployment projects must first assess which locations or sets of locations under consideration are subject to one or more proposals that (1) constitute Priority Broadband Projects and (2) satisfy all other requirements set out in this NOFO with respect to subgrantees. In the event there is just one proposed Priority Broadband Project in a location or set of locations, and that proposal does not exceed the Eligible Entity's Extremely High Cost Per Location Threshold, that proposal is the default winner, unless the Eligible Entity requests, and the Assistant Secretary grants, a waiver allowing the Eligible Entity to select an alternative project.⁶³ To the extent there are multiple proposals in a location or set of locations that (1) constitute Priority Broadband Projects and (2) satisfy all other requirements with respect to subgrantees, the Eligible Entity shall use its approved competitive process to select a project subject to the selection criteria set forth below.

i. Selection Among Priority Broadband Projects

Definition. The Infrastructure Act provides that a “priority broadband project” is one designed to (1) “provide broadband service that meets speed, latency, reliability, consistency in quality of service, and related criteria as the Assistant Secretary shall determine” and (2) “ensure that the network built by the project can easily scale speeds over time to ... meet the evolving connectivity needs of households and businesses” and “support the deployment of 5G, successor wireless technologies, and other advanced services.”⁶⁴ NTIA has determined that “Priority Broadband Projects” are those that use end-to-end fiber-optic architecture. Only end-to-end fiber will “ensure that the network built by the project can easily scale speeds over time to ... meet the evolving connectivity needs of households and businesses” and “support the deployment of 5G, successor wireless technologies, and other advanced services.”⁶⁵ End-to-end fiber networks can be updated by replacing equipment attached to the ends of the fiber-optic facilities, allowing for quick and relatively inexpensive network scaling as compared to other technologies. Moreover, new fiber deployments will facilitate the deployment and growth of 5G and other advanced wireless services, which rely extensively on fiber for essential backhaul.

⁶³ The Eligible Entity need not seek a waiver before rejecting a project whose costs, on average or for a given location, exceed the Eligible Entity's Extremely High Cost Per Location Threshold.

⁶⁴ Infrastructure Act § 60102(a)(1)(I).

⁶⁵ *Id.*

Primary Criteria. In deciding among competing Priority Broadband Projects covering the same location or locations, Eligible Entities must give the greatest weight (*e.g.*, substantial points or credits) to the following criteria:⁶⁶

- **Minimal BEAD Program Outlay.** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the prospective subgrantee's proposed match (which must, absent a waiver, cover no less than 25 percent of the project cost), with the specific points or credits awarded increasing as the BEAD outlay decreases. In comparing the project's BEAD outlay and the prospective subgrantee's match commitments, Eligible Entities should consider the cost to the Program per location while accounting for any factors in network design that might make a project more expensive, but also more scalable or resilient.
- **Affordability.** The prospective subgrantee's commitment to provide the most affordable total price to the customer for 1 Gbps/1 Gbps service in the project area.
- **Fair Labor Practices.** Eligible Entities must give priority to projects based on a prospective subgrantee's demonstrated record of and plans to be in compliance with Federal labor and employment laws. New entrants without a record of labor and employment law compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects. This prioritization requirement is described in further detail in Section IV.C.1.e of this NOFO.

Secondary Criterion. Eligible Entities must also give weight (*e.g.*, some number of points or quantity of credits less than the amount given to the criteria above) to the following criterion:

- **Speed to Deployment.** All subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband services within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity. Eligible Entities must give secondary criterion prioritization weight to the prospective subgrantee's binding commitment to provide service by an earlier date certain, subject to contractual penalties to the Eligible Entity, with greater benefits awarded to applicants promising an earlier service provision date.⁶⁷

⁶⁶ The primary criteria must collectively account for no less than three-quarters of the total benefits available across all the criteria the Eligible Entity employs in choosing between or among competing proposals.

⁶⁷ Nothing herein supersedes the requirement that, barring an extension granted by the Assistant Secretary, any subgrantee that receives BEAD Program funds for network deployment must deploy the

Additional Prioritization Factors. Eligible Entities may develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the primary criteria and the approval of the Assistant Secretary in the Initial and Final Proposal process. In particular, NTIA encourages Eligible Entities to incorporate the following as selection criteria:

- **Equitable Workforce Development and Job Quality.** NTIA encourages Eligible Entities to adopt selection criteria relating to the subgrantee’s enforceable commitments with respect to advancing equitable workforce development and job quality objectives, *see* Section IV.C.1.f of this NOFO.
- **Open Access.** NTIA encourages Eligible Entities to adopt selection criteria promoting subgrantees’ provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.
- **Local and Tribal Coordination.** NTIA encourages Eligible Entities to adopt selection criteria reflecting a prospective subgrantee’s support from the local and/or Tribal Government with oversight over the location or locations to be served.

ii. Selection Among Other Last-Mile Broadband Deployment Projects

With respect to locations or sets of locations for which the Eligible Entity did not receive a proposal to deploy a Priority Broadband Project, the Eligible Entity shall first identify any locations with only one proposal that satisfies all other requirements with respect to subgrantees. In those locations or sets of locations, the entity submitting the sole proposal is the default winner, unless the Eligible Entity requests, and the Assistant Secretary grants, a waiver allowing the Eligible Entity to seek other potential subgrantees. To the extent there are multiple proposals seeking to serve a location or area that satisfy all other requirements with respect to subgrantees, the Eligible Entity shall undertake its competitive process to choose between or among those proposals.

Primary Criteria. In deciding among competing projects that are not Priority Broadband Projects covering the same locations or area, Eligible Entities must give the greatest weight (*e.g.*, substantial points or credits) to the following criteria:⁶⁸

- **Minimal BEAD Program Outlay.** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the prospective subgrantee’s proposed match (which must, absent a waiver, cover no

planned broadband network and begin providing services to each customer that desires broadband service within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.

⁶⁸ The primary criteria must collectively account for no less than three-quarters of the total benefits available across all the criteria the Eligible Entity employs in choosing between or among competing proposals.

less than 25 percent of the project cost), with the specific benefits awarded increasing as the BEAD outlay decreases. In comparing the project's BEAD outlay and the prospective subgrantee's match commitments, Eligible Entities should consider the cost to the Program per location while accounting for any factors in network design that might make a project more expensive, but also more scalable or resilient.

- **Affordability.** The prospective subgrantee's commitment to provide the most affordable total price to the customer for 100/20 Mbps service in the proposed service area.
- **Fair Labor Practices.** Eligible Entities must give priority to projects based on a prospective subgrantee's demonstrated record of and plans to be in compliance with Federal labor and employment laws. New entrants without a record of labor and employment law compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects. This prioritization requirement is described in further detail in Section IV.C.1.e of this NOFO.

Secondary Criteria. Eligible Entities must also give weight (*e.g.*, some number of points or credits less than the amount given to the criteria above) to the following criteria:

- **Speed to Deployment.** The prospective subgrantee's binding commitment to provision service by a date certain, subject to contractual penalties to the Eligible Entity, with greater benefits awarded to prospective subgrantees promising an earlier service provision date.
- **Speed of Network and Other Technical Capabilities.** Eligible Entities must weigh the speeds, latency, and other technical capabilities of the technologies proposed by prospective subgrantees seeking to deploy projects that are not Priority Broadband Projects. Applications proposing to use technologies that exhibit greater ease of scalability with lower future investment (as defined by the Eligible Entity) and whose capital assets have longer useable lives should be afforded additional weight over those proposing technologies with higher costs to upgrade and shorter capital asset cycles.

Additional Prioritization Factors. Eligible Entities may develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the primary criteria and the approval of the Assistant Secretary in the Initial and Final Proposal process. In particular, NTIA encourages Eligible Entities to incorporate the following as selection criteria:

- **Equitable Workforce Development and Job Quality.** NTIA encourages Eligible Entities to adopt selection criteria relating to the subgrantee's enforceable commitments with respect to advancing equitable workforce development and job quality objectives, *see* Section IV.C.1.f of this NOFO.

- **Open Access.** NTIA encourages Eligible Entities to adopt selection criteria promoting subgrantees' provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.
- **Local and Tribal Coordination.** NTIA encourages Eligible Entities to adopt selection criteria reflecting a prospective subgrantee's support from the local and/or Tribal Government with oversight over the location or locations to be served.

8. 20 Percent Funding Release and Eligible Uses

If the Assistant Secretary determines that the Initial Proposal meets the standards set forth in Section IV.B.5.c, the Assistant Secretary shall make available to the Eligible Entity 20 percent of the grant funds that were allocated to the Eligible Entity, or a higher percentage at the sole discretion of the Assistant Secretary, for uses as described in Section IV.B.3 of this NOFO.

Upon completion of the challenge process described in Section IV.B.6 and the subgrantee selection process described in Section IV.B.7, an Eligible Entity may use the funds made available under this Section to fully fund deployment projects that:

1. Consist of at least 80 percent unserved locations; and
2. Are in a location in which the percentage of individuals with a household income at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) that is higher than the national percentage of such individuals.

An Eligible Entity may use the funds made available under this Section of the NOFO for other eligible uses described under Section IV.B.7 of this NOFO (*i.e.*, for uses other than deployment of last-mile broadband infrastructure to unserved and underserved locations or eligible CAIs) only if the Eligible Entity is able to demonstrate to the satisfaction of the Assistant Secretary that the Eligible Entity has a plan to meet the unserved and underserved location broadband deployment commitments set forth in the Eligible Entity's Final Proposal, in which case the Assistant Secretary may waive, in whole or in part, limitations on the use of this funding round.⁶⁹ Additional information on how to request the use of funds for other purposes and the associated documentation required to demonstrate such plan will be provided at a later date.

9. Final Proposal

a. Timing

To receive the remaining grant funds that were allocated to the Eligible Entity, an Eligible Entity shall submit a Final Proposal no later than twelve (12) months after the date upon which the Assistant Secretary approves the Eligible Entity's Initial Proposal. If an Eligible Entity fails to

⁶⁹ As described above, moreover, the Eligible Entity need not wait for its last-mile deployment projects to be completed before it can pursue its approved non-deployment uses. Rather, it is both permitted and encouraged to undertake those non-deployment activities as soon as is feasible.

submit a Final Proposal by this deadline, this will be treated as the Eligible Entity's application failure pursuant to Section IV.B.10. The Assistant Secretary reserves the right to extend this deadline; however, the Assistant Secretary will not grant a waiver of the Final Proposal deadlines except in extraordinary circumstances.

b. Form and Content of Final Proposal

NTIA will provide Eligible Entities an online template for submission of the Final Proposal. An Eligible Entity may submit only one final proposal.

The Final Proposal must include, at a minimum:

1. A detailed plan that specifies the outcome of the Eligible Entity's subgrantee selection process and how the Eligible Entity will:
 - a. allocate grant funds to subgrantees for the deployment of broadband networks to unserved locations, underserved locations, and (if applicable) CAIs in accordance with the prioritization framework described in Section IV.B.7.b of this NOFO; and
 - b. align the grant funds allocated to the Eligible Entity under the BEAD Program, where practicable, with the use of other funds for broadband that the Eligible Entity receives from the federal government, an Eligible Entity, or any other source.
3. A timeline for implementation of the detailed plan and completion of each project and other eligible activity to be funded;
4. Processes for oversight and accountability to ensure the proper use of the grant funds allocated to the Eligible Entity under the BEAD Program consistent with Section IX.G of this NOFO;
5. Certification that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, and unions and worker organizations, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, a description of the coordination conducted, and a summary of the impact such coordination had on the content of the Final Proposal;
6. Description of the results of the challenge process conducted by the Eligible Entity under Section IV.B.6;
7. Certification that the Eligible Entity will provide service to all unserved and underserved locations, if the Eligible Entity is seeking to use BEAD funding for deployment to CAIs or for other eligible activities;
8. A detailed description of all planned uses of BEAD funding that are not last-mile broadband deployment projects, including the nature of each funded initiative, how those uses are consistent with Section IV.B.7.a.iii of this NOFO, how the Eligible Entity expects the initiative to address the needs of the Eligible Entity's residents, the ways in which engagement with localities and stakeholders informed the selection of such eligible activities, and any efforts the Eligible Entity undertook to determine whether other uses of the funds might have been more effective in achieving the BEAD Program's equity, access, and deployment goals;

9. The means by which subgrantees for non-deployment eligible activities were selected, if the Eligible Entity pursued those initiatives via subgrant, or, alternatively, how the Eligible Entity determined that it should undertake the initiative itself;
10. A description of efforts undertaken by the Eligible Entity to ensure the participation of non-traditional broadband providers (such as municipalities or political subdivisions, cooperatives, non-profits, Tribal Governments, and utilities), including an explanation for awards to traditional broadband providers when one or more non-traditional providers submitted competing proposals to serve an area consistent with the requirements of Section IV.C.1.a;
11. Implementation status of plans described in the Initial Proposal related to:
 - a. Steps that the Eligible Entity has taken or intends to take to promote streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements;
 - b. Labor and workforce activities, including how the Eligible Entity implemented and applied the labor-related subgrantee selection criterion required herein;
 - c. Utilization of minority businesses, women-owned business enterprises, and labor surplus area firms;
 - d. Low-cost plan requirements; and
 - e. Climate change and resilience;
12. Information regarding specific commitments made by provisionally selected subgrantees to warrant a project's treatment as a Priority Broadband Project;
13. Information regarding specific commitments made by provisionally selected subgrantees to warrant benefits in the Eligible Entity's subgrantee selection process (*e.g.*, the primary and secondary criteria);
14. Environmental documentation associated with any construction and/or ground-disturbing activities and a description of how the Eligible Entity will comply with applicable environmental and national historical preservation requirements.
15. To the extent an Eligible Entity's Final Proposal includes plans to deploy broadband to Unserved Service Projects or Underserved Service Projects on Tribal Lands, the Eligible Entity must submit a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed⁷⁰.

⁷⁰ In the case of consortiums, a Tribal resolution is required from each Tribal Government on whose Tribal Lands the infrastructure will be deployed. For projects deploying to locations on Tribal Lands in Hawaii, consent must be obtained from the Department of Hawaiian Home Lands. For projects deploying to locations in Alaska, with the exception of deployments on the Metlakatla Reservation, an Eligible Entity must gain the consent (by Tribal resolution) of 51 percent or more of the federally recognized tribal governments in the Alaska Native Region in which the infrastructure will be deployed. Consent from the Metlakatla Reservation will not be required for deployments in the Southeast Alaska Region Village. Conversely, deployments within the Metlakatla Reservation will require only the consent (via Tribal resolution) of the Metlakatla Reservation's Tribal Government. If a Tribal Government is not meeting due to COVID-19 restrictions or will not meet between release of this NOFO and submission of the Eligible Entity's Initial Proposal, NTIA will allow the submission of a Letter of Consent from the Governing Body of the Tribe with the Eligible Entity's Final Proposal.

16. A description of (1) each unsuccessful application that was affected by laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act, that the Eligible Entity did not waive for purposes of BEAD Program project selection and that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer; and (2) how those laws impacted the decision to deny each such application.

Additional requirements for the Final Proposal may be provided to Eligible Entities when the approval of the Initial Proposal is granted.

c. Review process

After receipt of a Final Proposal, the Assistant Secretary shall acknowledge receipt and begin the review process in the order in which Final Proposals are received. Upon determination that the Final Proposal is complete, the Assistant Secretary shall determine whether the use of funds proposed in the Final Proposal:

1. Complies with Section 60102(f) of the Infrastructure Act;
2. Is in the public interest; and
3. Effectuates the purposes of the Infrastructure Act.

The Assistant Secretary may request and accept corrections to the Final Proposal of an Eligible Entity after the Final Proposal has been submitted.

d. Actions Upon Completion of Review

i. Approval

If the Assistant Secretary determines that the Final Proposal meets the standards set forth in Section IV.B.9.c, the Assistant Secretary shall approve the Final Proposal, so inform the Eligible Entity, and make available to the Eligible Entity the remaining Program funds identified in the Eligible Entity's Notice of Available Amounts to be used to implement the Eligible Entity's Final Proposal.

ii. Disapproval

If the Final Proposal is incomplete, or the Assistant Secretary determines that the use of funds proposed in the Final Proposal does not meet the standards set forth in Section IV.B.9.c, the Assistant Secretary will notify the Eligible Entity of the deficiencies in the proposal, provide the Eligible Entity with an opportunity to resubmit the Final Proposal, and establish a deadline for resubmission. If an Eligible Entity fails to resubmit its Final Proposal remedying the deficiencies identified by the Assistant Secretary or otherwise does not satisfy the standards set forth in Section IV.B.9.c by the applicable deadline, the Eligible Entity's application may be treated as an application failure pursuant to Section IV.B.10.

10. Application Failures

If an Eligible Entity fails to submit a covered application (*i.e.*, a Letter of Intent, Initial Proposal, or Final Proposal) by the applicable deadline (and following any relevant opportunity to cure deficiencies), NTIA will issue a public notice inviting a political subdivision or consortium of political subdivisions of the Eligible Entity (a “Substitute Entity”) to submit the applicable type of covered application in place of the Eligible Entity. In the case where an Eligible Entity has missed a deadline opening the process to a Substitute Entity, NTIA will publish a public notice to facilitate meaningful participation of political subdivisions.

In the case of a Substitute Entity that submits a covered application:

1. The Assistant Secretary shall, if necessary, establish revised deadlines for the Substitute Entity to meet the requirements of this NOFO; and
2. Any reference in this NOFO to an Eligible Entity in a geographic sense shall be deemed to refer to the Eligible Entity in whose place the Substitute Entity submitted the covered application.

If no Substitute Entity applies or if the Substitute Entity fails to meet a submission deadline without the grant of extension, an Eligible Entity’s Program funds may be reallocated pursuant to Section II.D above.

C. Program Requirements

As set forth in the Infrastructure Act and outlined in greater detail below, the programmatic requirements applicable to Eligible Entities and subgrantees are as follows:

1. Eligible Entity Obligations
 - a. Consider All Provider Types
 - b. Ensure Subgrantee Accountability
 - c. Local Coordination
 - d. Equitable and Nondiscriminatory Distribution of Funds
 - e. Fair Labor Practices and Highly Skilled Workforce
 - g. Civil Rights and Nondiscrimination Law Compliance
 - h. Climate Resilience
2. Subgrantee Obligations
 - a. Network Capabilities
 - b. Deployment Requirements
 - c. Service Obligations

1. Eligible Entity Obligations

a. Consider All Provider Types

Competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service. As required by the Infrastructure Act, in awarding subgrants for the deployment of a broadband network using grant funds, Eligible Entities may

not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments (“potential providers”) from eligibility for grant funds. In determining whether to approve an Eligible Entity’s Initial or Final Proposal, NTIA will consider whether the Eligible Entity has, after the enactment of the Infrastructure Act, adopted new laws, regulations, policies, procedures or any other form of rule or restriction that, in the determination of NTIA, seeks to exclude or has the effect of excluding any potential providers from eligibility for its subgrant competition. This could include new laws that have the effect of excluding providers from offering broadband service or rendering them incapable of effectively competing for subgrants.

Some laws of Eligible Entities concerning broadband, utility services, or similar subjects that *predate* the enactment of the Infrastructure Act may either preclude certain public sector providers from participation in the subgrant competition or may impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer. NTIA strongly encourages Eligible Entities to waive all such laws for purposes of the Program. If an Eligible Entity does not do so, the Eligible Entity must identify all such laws in its Initial Proposal and describe how the laws will be applied in connection with the competition for subgrants. Such Eligible Entity must, in its Final Proposal, disclose each unsuccessful application affected by such laws and describe how those laws impacted the decision to deny the application.

b. Ensure Subgrantee Accountability

In addition to demonstrating how it expects to satisfy the subrecipient monitoring and management requirements identified in 2 C.F.R. Part 200 Subpart D, each Eligible Entity must include sufficient accountability procedures within its program to ensure subgrantee compliance with all applicable Program requirements. Each Eligible Entity must, at a minimum, include in any subgrant agreement reasonable provisions allowing for recovery of funds in the event of a subgrantee’s noncompliance with the BEAD Program’s requirements, including but not limited to failure to deploy network infrastructure in accordance with mandated deadlines. Each Eligible Entity must, at a minimum, employ the following practices: (1) distribution of funding to subgrantees for, at a minimum, all deployment projects on a reimbursable basis (which would allow the Eligible Entity to withhold funds if the subgrantee fails to take the actions the funds are meant to subsidize); (2) the inclusion of clawback provisions (*i.e.*, provisions allowing recoupment of funds previously disbursed) in agreements between the Eligible Entity and any subgrantee; (3) timely subgrantee reporting mandates; and (4) robust subgrantee monitoring practices. NTIA will review proposed subgrant processes during the Initial Proposal and Final Proposal review phases and will reject Proposals that fail to provide sufficient recourse against subgrantees that do not fulfill their legal and contractual responsibilities. NTIA likewise will pursue clawback of funds directly from Eligible Entities that fail to ensure subgrantee accountability to the fullest extent of the law.

c. Local Coordination

Each Eligible Entity must develop a comprehensive local coordination approach that will begin in the development of the Five-Year Action Plan and continue at each stage of the BEAD

Program through the awarding of all subgrant funding. Local and Tribal coordination and stakeholder engagement is critical to the BEAD Program's success, to eliminating barriers to broadband access and adoption, and to rapidly and economically building out new broadband networks. NTIA views strong involvement between Eligible Entities and local and Tribal communities as key to ensuring that the broadband needs of all unserved and underserved locations and underrepresented communities are accounted for in Initial and Final Plans. Local coordination promotes alignment of priorities between Eligible Entity and local and Tribal officials and helps ensure visibility of local needs and preferences. Robust engagement efforts increase initial adoption rates once the broadband is deployed in an area and stimulate awareness about the programs that can support the local community.

Accordingly, each Eligible Entity is required to coordinate with political subdivisions, Tribal Governments, local and community-based organizations, and unions and worker organizations within its territory to ensure full representation and inclusion of unserved, underserved, and underrepresented communities throughout the planning and deployment processes. Each Eligible Entity must document its local coordination and outreach activities by providing a detailed description of their efforts to engage local governments, community groups, union and worker organizations, Tribal Governments, and underrepresented populations in its Five-Year Action Plan, Initial Proposal, and Final Proposal, relative to each stage in the BEAD Program process. Each Eligible Entity is strongly encouraged to integrate its local coordination efforts with any outreach and coordination efforts it is required to undertake pursuant to the Digital Equity Act. *See* Section V of this NOFO for additional information concerning application materials.

In evaluating whether local coordination and outreach efforts meet the programmatic requirements, the Assistant Secretary will assess whether plans and activities undertaken ensure: (1) full geographic coverage of the Eligible Entity; (2) meaningful engagement and outreach to diverse stakeholder groups, labor organizations, and community organizations, including to promote the recruitment of women and other historically marginalized populations for workforce development opportunities and jobs related to BEAD-funded eligible activities; (3) utilization of multiple awareness and participation mechanisms and different methods to convey information and outreach; (4) transparency of processes, to include the documentation and publication of results and outcomes of such coordination and outreach efforts, including additions or changes to the Eligible Entity's Initial Proposal and/or Final Proposal; and (5) outreach to and direct engagement of unserved and underserved communities to include historically underrepresented and marginalized groups and/or communities. These requirements are designed to allow Eligible Entities to tailor the program for the unique environments within its boundaries. In evaluating the sufficiency of local coordination efforts, the Assistant Secretary will consider quantitative measures as well as the quality of the engagements.

The requirements of this section are critical to ensuring that Eligible Entities are coordinating with all communities, including their marginalized and underrepresented populations. Broadband availability, or lack thereof, is not new to localities and in many instances, they have undertaken data collection, planning and outreach and engagement efforts to identify the specific and unique needs of their communities. Bringing these stakeholders to the table will not only result in Eligible Entities developing and implementing a successful broadband plan that carries out the intent of the Infrastructure Act, but fosters buy-in from the people the plan and these programs

are meant to serve. It also builds stronger relationships between Eligible Entities and localities and creates opportunities for them to further coordinate with each other. Eligible Entities should track all engagement efforts they conduct and provide a synopsis of the needs identified and if they were addressed (or not) in the appropriate portions of their Initial Proposals, Final Proposals, and reporting to NTIA.

i. Geographic Coverage

Each Eligible Entity must demonstrate that its engagement with its political subdivisions and applicable Tribal Governments include sufficient geographic granularity to demonstrate full participation within the Eligible Entity. Engagement must include Tribal, rural, suburban, and urban areas to the extent applicable in the Eligible Entity and must address diverse stakeholder groups. Each political subdivision and federally recognized Tribe must be given an opportunity to submit its own plan⁷¹ to the Eligible Entity for consideration in the development of the Eligible Entity's Proposals. Likewise, each political subdivision and federally recognized Tribe must be given an opportunity to comment on the Proposals of the Eligible Entity before submission to the Assistant Secretary. The Eligible Entity must detail how it addressed each submitted plan in each relevant Proposal.

ii. Diverse stakeholder groups

Throughout its local coordination and outreach activities, each Eligible Entity must ensure that a diverse set of stakeholders is involved in development of its Five-Year Action Plan, Initial Proposal, and Final Proposal. To the extent the Eligible Entity encompasses sovereign Tribal or Native entities, the Eligible Entity must ensure that such entities are involved in development of the Eligible Entity's plans, including, but not limited to a formal Tribal consultation process with the Eligible Entity. In addition, Eligible Entities must coordinate with local stakeholders—such as entities that carry out workforce development programs and labor unions—to provide a written explanation of their approach to ensuring a reliable supply of skilled workers, eliciting feedback on plans for creating good-paying jobs, and to recruiting and hiring women and other historically marginalized groups for the job opportunities created through the BEAD program. Other examples of stakeholder groups for consideration include but are not limited to the following:

- State and Territorial agencies, including departments and offices charged with overseeing transportation, economic development, community development, education, information technology, health and human services, labor, agriculture, and natural resources; County and municipal governments and regional associations of governments;
- Tribal Governments, Alaska Native entities, and Native Hawaiian organizations;
- Community anchor institutions;
- Nonprofit and community-based organizations;
- Civil rights organizations;
- Labor organizations and unions;

⁷¹ Plans in this context refer to formal, local broadband plans addressing deployment, equity, or other issues relevant to the BEAD program goals.

- Entities that carry out workforce development programs, including labor-management partnership training programs (like Registered Apprenticeship programs and pre-apprenticeships tied to Registered Apprenticeships);
- Higher education institutions, including community colleges, Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), and Minority-Serving Institutions (MSIs);
- Local educational agencies;
- Eligible Entity agencies that are responsible for administering or supervising adult education and literacy activities in the Eligible Entity;
- Public housing authorities or owners/operators of HUD-assisted housing in the Eligible Entity;
- Organizations that represent:
 - Individuals with disabilities, including organizations that represent children with disabilities;
 - Individuals who are 60 years of age or older;
 - Individuals with language barriers, including English learners and individuals with low levels of literacy;
 - People of color;
 - LGBTQI+ people;
 - Immigrants;
 - Veterans; and
 - Individuals in that Eligible Entity who are incarcerated;
- Economic development organizations, local businesses/chambers of commerce, including small and disadvantaged businesses and chambers of commerce (*e.g.*, chambers of commerce serving underrepresented groups);
- Internet Service Providers (ISPs) of all types;
- Public Utility Commissions (PUCs) and equivalents;
- Consumer advocates and advocacy groups;
- Faith-based organizations;
- Neighborhood associations; and
- Other organizations that serve as representatives of underrepresented communities.

iii. Awareness, Outreach and Participation Mechanisms

Successful coordination requires multiple mechanisms to ensure broad awareness and participation. Each Eligible Entity must design and implement efforts that promote inclusivity. This should be accomplished through facilitating broad outreach efforts that promote engagement in different ways to ensure that all unserved, underserved and underrepresented communities are included. Examples of such methods include but are not limited to:

1. Listening sessions, or public meetings (in-person within the community and virtual);
2. Eligible Entity websites and/or email address to submit comments directly;
3. Informational materials such as fact sheets, brochures, Frequently Asked Questions, and newsletters;
4. Social media (blogs, Twitter, Facebook, Instagram, *etc.*);

5. Email notifications and use of traditional mail;
6. Utilization of community anchor institutions to help promote and distribute information);
and
7. Local Advertisements and Public Service Announcements.

iv. Transparency

In conducting local coordination and outreach activities, Eligible Entities must establish, document, and adhere to clear procedures to ensure transparency. This includes publicly posting the Proposals prior to submission to NTIA as well as plans or comments submitted by local political subdivisions or Tribal Governments and explanations of how local recommendations were addressed. Examples of ways to promote and document transparency include but are not limited to publicly available information and easily navigable websites with up-to-date information, periodic reporting/reports to local and community stakeholders, and involvement of diverse stakeholders in the planning, implementation and execution of coordination and outreach efforts and activities, and in-person meetings and mailings.

v. Underrepresented Engagement

Specific engagement efforts must be targeted at underrepresented communities within the Eligible Entity. Underrepresented communities have historically faced barriers in participating in federal programs and therefore Eligible Entities must identify these communities and determine specific outreach and engagement strategies tailored to their needs, including providing outreach in the languages used in the communities these eligible activities serve. Examples of activities that might be used to reach unserved, underserved, and underrepresented communities include but are not limited to:

1. The creation of an Eligible Entity-wide task force or advisory board with representatives from underrepresented communities;
2. Frequent engagement with State, Territorial, county, Tribal, and municipal associations that may have a greater reach to these communities through their local elected official members;
3. Engagement with other Eligible Entity departments or agencies that regularly serve these communities and can help identify and engage with them, such as Eligible Entity departments of education, health and human services, workforce development, and/or public health;
4. Utilization of the mechanisms listed in Section IV.C.1.c.iii that demonstrates a targeted focus on the above identified communities; and
5. Investment in surveys, data collection, and mapping initiatives to better understand gaps in connectivity and needs.

Each Eligible Entity should combine multiple strategies to develop a comprehensive approach that ensures equitable and broad participation from all stakeholders. Each Eligible Entity also must document, publish and integrate its local coordination activities with the outreach and coordination efforts it will undertake pursuant to the Digital Equity Act. It is strongly

recommended that Eligible Entities conduct BEAD and Digital Equity Act program local coordination efforts in tandem as one cohesive effort.

d. Equitable and Nondiscriminatory Distribution of Funds

Consistent with Section 60102(g)(2)(C) of the Infrastructure Act, Eligible Entities must distribute funds in an equitable and nondiscriminatory manner and ensure, through stipulations in any subgrantee contracts, that each subgrantee uses the funds in an equitable and nondiscriminatory manner.

e. Fair Labor Practices and Highly Skilled Workforce

As set forth above in Section IV.B.7, Eligible Entities must give priority to projects based on (among other things) a demonstrated record of and plans to be in compliance with federal labor and employment laws. Eligible Entities are required to give preferential weight to projects based on the strength of the showing in their application on this factor. Doing so will help ensure that projects are carried out in accordance with the law, assist Eligible Entities in ensuring that a prospective subgrantee is capable of carrying out activities funded by a subgrant in a competent manner in compliance with all applicable federal, state, and local laws, and promote the effective and efficient completion of high-quality broadband infrastructure projects by ensuring a reliable supply of skilled workers and minimizing disruptive and costly delays.

Evaluation of a prospective subgrantee's demonstrated record of and plans to be in compliance with federal labor and employment laws requires focus on several components. First, Eligible Entities must obtain and evaluate information on the prospective subgrantee's record of compliance with federal labor and employment laws, as well as the records of any other entities that will participate in the project, including contractors and subcontractors. This information must include, at a minimum, information on these entities' compliance with federal labor and employment laws on broadband deployment projects in the last three years. For example, the Eligible Entity should collect data on a prospective subgrantee's historical use of contracting and subcontracting arrangements, including staffing plans, and at least one example of each contractor and subcontractor's past performance in the context of a similar project. Eligible Entities will be required to describe in their Initial and Final Proposals what specific information they will require prospective subgrantees to provide in their applications and how they will weight that information in their competitive selection process. This should include, but not be limited to, (1) a certification from an Officer/Director-level employee (or equivalent) of the prospective subgrantee evidencing consistent past compliance with federal labor and employment laws by the subgrantee, as well as all contractors and subcontractors, and (2) written confirmation that the prospective subgrantee discloses any instances in which it or its contractors or subcontractors have been found to have violated laws such as the Occupational Safety and Health Act, the Fair Labor Standards Act, or any other applicable labor and employment laws for the preceding three years.

Second, Eligible Entities must require submission of, and evaluate, the prospective subgrantee's plans for ensuring compliance with Federal labor and employment laws. These plans must address, at a minimum, how the prospective subgrantee will ensure compliance in its own labor and employment practices, as well as that of its contractors and subcontractors, including (1)

information on applicable wage scales and wage and overtime payment practices for each class of employees expected to be involved directly in the physical construction of the broadband network and (2) how the subgrantee will ensure the implementation of workplace safety committees that are authorized to raise health and safety concerns in connection with the delivery of deployment projects. Eligible Entities will be required to describe in their Initial and Final Proposals what specific information they will require prospective subgrantees to provide in their applications and how they will weight that information in their competitive selection processes.

An effective plan for compliance with federal labor and employment laws can include a subgrantee's binding commitment to strong labor standards and protections for the project workforce (including contractors and subcontractors), which include:

- Using a directly employed workforce, as opposed to a subcontracted workforce;
- Paying prevailing wages and benefits to workers, including compliance with Davis-Bacon and Service Contract Act requirements, where applicable, and collecting the required certified payrolls;
- Using project labor agreements (*i.e.*, pre-hire collective bargaining agreements between unions and contractors that govern terms and conditions of employment for all workers on a construction project);
- Use of local hire provisions;
- Commitments to union neutrality;
- Use of labor peace agreements;⁷²
- Use of an appropriately skilled workforce, *e.g.*, through Registered Apprenticeships or other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded);
- Use of an appropriately credentialed workforce (*i.e.*, satisfying requirements for appropriate and relevant pre-existing occupational training, certification, and licensure); and
- Taking steps to prevent the misclassification of workers.

If an Eligible Entity includes any of these as mandatory requirements for all subgrantees (including contractors and subcontractors), it should describe these requirements in detail its Initial and Final Proposal and explain how it will incorporate them as binding legal commitments in the subgrants it makes. An Eligible Entity taking this approach can reduce the showing that prospective subgrantees need to make in their applications regarding their plans to comply with federal labor and employment laws.

⁷² Ability to require labor peace agreements:

- By a governmental entity: Where a governmental entity receives NTIA grant funds, whether directly as an Eligible Entity or as a subgrantee, and the governmental entity uses those funds for the construction of facilities over which it will maintain a proprietary interest (*e.g.*, governmental ownership of the network), it is authorized and encouraged to require labor peace agreements, unless prohibited by state or local law.
- By a non-governmental subgrantee: Subgrantees that are non-governmental entities, and construct broadband facilities over which no governmental entity maintains a proprietary interest, are authorized and encouraged to require labor peace agreements, unless prohibited by state or local law.

To ensure that subgrantees have the technical and operational capacity to carry out the subgrant, prospective subgrantees must have a plan for ensuring that the project workforce will be an appropriately skilled and credentialed workforce (including by the subgrantee and each of its contractors and subcontractors). For purposes of this section, the “project workforce” includes those employees of the subgrantee, its contractors, or subcontractors directly engaged in the physical construction of the broadband network. The plan for a highly skilled workforce should include the following information:

- The ways in which the subgrantee will ensure the use of an appropriately skilled workforce, *e.g.*, through Registered Apprenticeships or other joint labor-management training programs that serve all workers;
- The steps that will be taken to ensure that all members of the project workforce will have appropriate credentials, *e.g.*, appropriate and relevant pre-existing occupational training, certification, and licensure;
- Whether the workforce is unionized;
- Whether the workforce will be directly employed or whether work will be performed by a subcontracted workforce; and
- The entities that the proposed subgrantee plans to contract and subcontract with in carrying out the proposed work.

If the project workforce or any subgrantee’s, contractor’s, or subcontractor’s workforce is not unionized, the subgrantee must also provide with respect to the non-union workforce:

- The job titles and size of the workforce (FTE positions, including for contractors and subcontractors) required to carry out the proposed work over the course of the project and the entity that will employ each portion of the workforce;
- For each job title required to carry out the proposed work (including contractors and subcontractors), a description of:
 - safety training, certification, and/or licensure requirements (*e.g.*, OSHA 10, OSHA 30, confined space, traffic control, or other training as relevant depending on title and work), including whether there is a robust in-house training program with established requirements tied to certifications, titles; and
 - information on the professional certifications and/or in-house training in place to ensure that deployment is done at a high standard.

f. Advancing Equitable Workforce Development and Job Quality Objectives

A skilled workforce is critical to meeting infrastructure buildout timelines under the Infrastructure Act and connecting households across the country to reliable, affordable, high-speed broadband. A highly skilled workforce will also allow for the safe deployment of sustainable networks. To meet the workforce needs of this program, Eligible Entities and their subgrantees should make appropriate investments to develop a skilled, diverse workforce for the jobs that the subgrantees need to fill.⁷³

⁷³ Workforce development programs that provide high-skilled workers that support BEAD-funded projects are an eligible use of grant funds. *See* Section V.K for eligible uses.

i. Requirements. Eligible Entities are required to include in their Initial and Final Proposals:

1. A description of how the Eligible Entity will ensure that subgrantees support the development and use of a highly skilled workforce capable of carrying out work in a manner that is safe and effective.
2. A description of how the Eligible Entity will develop and promote sector-based partnerships among employers, education and training providers, the public workforce system, unions and worker organizations, and community-based organizations that provide relevant training (including through Registered Apprenticeships and pre-apprenticeships that are integrated with Registered Apprenticeships, or other quality work-based learning programs) and provide wrap-around services to support workers to access and complete training (such as child care, transportation, mentorship, *etc.*), to attract, train, retain, or transition to meet local workforce needs and increase high-quality job opportunities.⁷⁴
3. A description of how the Eligible Entity will plan to create equitable on-ramps into broadband-related jobs (*e.g.*, how entities plan to engage or partner with stakeholders like State, Territorial, and local workforce boards, training partners, labor and community organizations); maintain job quality for new and incumbent workers engaged in the sector; and continually engage with labor organizations and community-based organizations to maintain worker voice throughout the planning and implementation process;
4. A description of how the Eligible Entity will ensure that the job opportunities created by the BEAD Program and other broadband funding programs are available to a diverse pool of workers, including by engaging in targeted outreach, and seek subgrantees with effective plans for outreach, to populations that have traditionally been underrepresented in broadband and information technology jobs, including but not limited to women and people of color. Eligible Entities should be prepared to report on the demographics of each subgrantee workforce that is engaged on a project or other eligible activity utilizing BEAD grant funding (this will be aggregate workforce data only, not personally identifiable information), and should expect that this data will be made public.

ii. Other Considerations. NTIA encourages Eligible Entities to consider workforce development goals when selecting subgrantees. This could include setting requirements applicable to all subgrantees or establishing scoring factors. Eligible Entities can accomplish this in various ways, including the following:

1. Ensuring that subgrantees require their contractors and subcontractors to provide Registered Apprenticeships and pre-apprenticeships tied to a Registered Apprenticeship, joint labor management partnerships, and other high-quality, on-the-job training opportunities, which may include minimum requirements of contractor or subcontractor job hours to be performed by apprentices; and ensuring that such programs lead to

⁷⁴ For additional information on sector-based partnerships, Eligible Entities should review the Economic Development Administration's Good Jobs Challenge NOFO, EDA-HDQ-ARPGJ-2021-2006964, available at <https://www.grants.gov/web/grants/view-opportunity.html?oppID=334720>.

employment with wages at rates not less than the rates prevailing on projects and other eligible activities of a similar character in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

2. Ensuring that subgrantees offer “quality” jobs.⁷⁵ For example, an Eligible Entity should consider scoring applicants based in part on the extent to which they will deliver on the quality jobs standard.
3. Ensuring that subgrantees prioritize hiring local workers and have robust and specific plans to recruit historically underrepresented populations facing labor market barriers and ensure that they have reasonable access to the job opportunities created by subgrantees. Such populations may include communities of color, women, and other groups (such as persons with disabilities, LGBTQI+ people, disconnected youth, individuals in recovery, individuals with past criminal records, including justice-impacted and reentry participants, serving trainees participating in the SNAP, TANF, and WIC, and veterans and military spouses).

g. Civil Rights and Nondiscrimination Law Compliance

No person in the United States may, on the ground of actual or perceived race, color, national origin, sex, gender identity, sexual orientation, age, disability, or handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving federal financial assistance. Prior to distributing any BEAD funding to a subgrantee, an Eligible Entity must require the subgrantee to agree, by contract or other binding commitment, to abide by the non-discrimination requirements set forth in the following legal authorities, to the extent applicable, and to acknowledge that failure to do so may result in cancellation of any award and/or recoupment of funds already disbursed:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and the Department of Commerce’s implementing regulations, published at 15 C.F.R. Part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by Eligible Entity and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

⁷⁵ A “quality job” is defined as a job that (1) exceeds the local prevailing wage for an industry in the region, includes basic benefits (*e.g.*, paid leave, health insurance, retirement/savings plan), and/or is unionized, and (2) helps the employee develop the skills and experiences necessary to advance along a career path. *See* Economic Development Administration, ARPA Good Jobs Challenge NOFO, EDA-HDQ-ARPGJ-2021-2006964, at n. 1, available at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=334720>.

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce implementing regulations published at 15 C.F.R. Part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
6. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, which provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. Note in this regard that Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities;" and
7. Any other applicable non-discrimination law(s). Application requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

In addition, each Eligible Entity must demonstrate in its Initial Proposal and Final Proposal that its selection of subgrantees will account for and satisfy the following authorities:

1. Parts II and III of Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319), which requires that federally assisted construction contracts incorporate and fulfill the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).⁷⁶
2. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (65 Fed. Reg. 50121), which requires federal agencies to examine the services that they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. Note that the Department of Commerce issued policy guidance on March 24, 2003 (68 Fed. Reg. 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-federal entities provide meaningful access to their LEP applicants and beneficiaries.
3. Executive Order 13798, Promoting Free Speech and Religious Liberty, and Office of Management and Budget, M-20-09—Guidance Regarding Federal Grants and Executive

⁷⁶ Among other things, entities undertaking either wholly or partially federally funded construction projects may not "discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin," and must "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin." Executive Order 11246 § 202.

Order 13798 (January 16, 2020), which provide that States or other public grantees may not condition sub-awards of federal grant money in a manner that would disadvantage grant applicants based on their religious character.

h. Climate Resilience

In establishing their Initial Proposals and Final Proposals, Eligible Entities must demonstrate that they have sufficiently accounted for current and future weather- and climate-related risks to new infrastructure projects. At present, weather- and climate-related risks to broadband networks include wildfires, extreme heat and cold, inland and coastal flooding, and the extreme winds produced by weather events such as tornadoes, hurricanes, and other weather events. Because retrofitted and new infrastructure for broadband might be expected to have a lifetime of 20 years or more, Eligible Entities must account not only for current risks but also for how the frequency, severity, and nature of these extreme events may plausibly evolve as our climate continues to change over the coming decades. Future projected climate change is expected to continue to result in higher seasonal temperatures and an increased likelihood of extreme heat events, higher risk of wildfires, more intense rainfall events, sea level rise and coastal inundation, permafrost thaw in Alaska, and the potential for stronger hurricanes when they do form, and other climate change related impacts.⁷⁷

Communities that lack broadband are also often the most vulnerable to extreme weather and climate events. This combination often results in a lack of crucial communications infrastructure to respond during these emergencies. Building climate-resilient broadband infrastructure for such communities provides emergency response preparedness and thus greater climate resilience for the community itself.

In light of the above, Eligible Entities should make use of available tools and resources from the National Oceanic and Atmospheric Administration (NOAA) and other federal agencies, as well as Eligible Entity-level resources and centers of expertise, in drawing up their Proposals pursuant to the BEAD Program. Each Eligible Entity must explain in its Initial and Final Proposal how it has utilized these tools and resources to account for, mitigate, and where possible, avoid the known and identifiable risks of current and future projected weather and climate conditions. Eligible Entities also should explain how they addressed these risks through measures such as (but not necessarily limited to) choice of a technology platform suitable to the climate risks of the region, reliance on alternative siting of facilities (*e.g.*, underground construction where appropriate), retrofitting or hardening of existing assets that are critical to BEAD-funded offerings, additional onsite and in-home power resources, use of established plans and processes to deal with extreme weather related risks, the speed of restoration of service in the case of an outage, and use of network and facility redundancies to safeguard against threats to infrastructure. In particular, in its Initial Proposal and Final Proposal, each Eligible Entity should, at a minimum, clearly do each of the following:

⁷⁷ For example, in accordance with Section 2(a)(1) of Executive Order 11988, as amended by Executive Order 13690, before taking an action, the applicant, in coordination with NTIA, must determine whether a proposed action will occur in a floodplain.

1. Identify the geographic areas that should be subject to an initial hazard screening for current and future weather- and climate-related risks and the time scales for performing such screenings;
2. Identify which weather and climate hazards may be most important to account for and respond to in these areas and over the relevant time horizons, utilizing the tools and resources recommended below or other resources available to the Eligible Entity;
3. Characterize any weather and climate risks to new infrastructure deployed using BEAD Program funds for the 20 years following deployment;
4. Identify how the proposed plan will avoid and/or mitigate the weather and climate risks identified; and
5. Detail the Eligible Entity's plans for periodically repeating this process over the life of the Program to ensure that evolving risks are understood, characterized and addressed, and that the most up-to-date tools and information resources are utilized.

For flooding hazards, the Eligible Entity should take into account the Federal Flood Risk Management Standard and Implementing Guidelines established through in Executive Order 14030, *Climate-Related Financial Risk* (86 FR 27967) and Executive Order 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input* (80 FR 6425). The Executive Orders and Guidelines can be found at <https://www.fema.gov/floodplain-management/intergovernmental/federal-flood-risk-management-standard>.

In implementing the above requirements, Eligible Entities should make use of the user-friendly resources and tools provided below. The information contained within these tools and resources should be carefully reviewed to understand key characteristics of the information and data provided (e.g., geographic scale of the information, timeframe of the information, levels of confidence in the information).

1. For broad, coarse-level screening of current and projected future weather- and climate-related risks for the region and Eligible Entity, review and cite the regional chapters found in the 2018 National Climate Assessment (<https://nca2018.globalchange.gov/>).
2. For more Eligible Entity-specific information on current and projected climate conditions and risks, refer to NOAA's 2022 state climate summaries (<https://statesummaries.ncics.org/>).
3. In assessing current weather-related risks for specific regions, Eligible Entities can use NOAA's disaster and risk mapping tool (<https://www.ncdc.noaa.gov/billions/mapping>), and NOAA's storms event database (<https://www.ncdc.noaa.gov/stormevents/>).
4. The NOAA tools [Climate Explorer](#) and [Digital Coast](#) (updated with recently-published regional sea level rise scenarios) allow users to look up historic and future projected environmental variables (e.g., changes in temperature thresholds, sea level rise) for their region.
5. FEMA's National Risk Index (<https://hazards.fema.gov/nri/learn-more>) provides a composite risk index for all regions across the United States, incorporating a range of natural

hazards (most of which, but not all, are weather- and climate-related). FEMA’s flood risk maps (<https://msc.fema.gov/portal/home>) for current conditions and for specific locations.

6. Eligible Entities are also encouraged to consult their FEMA-approved Hazard Mitigation Plans to help identify key risks and hazards.

To understand and access climate and weather information, Eligible Entities are encouraged to work with NOAA and its partners at the State and regional levels (National Weather Service Weather Forecast Offices (<https://www.weather.gov/srh/nwsoffices>), Regional Climate Centers (<https://www.ncei.noaa.gov/regional/regional-climate-centers>), Regional Climate Services Directors (<https://www.ncei.noaa.gov/regional/regional-climate-services-directors>), academic and other partners under NOAA’s RISA program (<https://cpo.noaa.gov/Meet-the-Divisions/Climate-and-Societal-Interactions/RISA/RISA-Teams>), State climatologists (https://stateclimate.org/state_programs/), and any other relevant centers of expertise at the Eligible Entity and local level.

2. Obligations for Subgrantees Deploying Network Projects

a. Network Capabilities

Eligible Entities shall ensure that any subgrant agreement for a Funded Network permits the subgrantee to use the subgrant to deploy broadband infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing broadband service to an unserved location, underserved location, or Eligible Community Anchor Institution.

Pursuant to Section 60102(g)(1)(A) of the Infrastructure Act, which directs the Assistant Secretary to establish quality-of-service standards to which each subgrantee must comply, each Eligible Entity shall ensure that every Funded Network meets the following criteria:

i. Speed and Latency

To ensure that Funded Networks meet current and future use cases and to promote consistency across federal agencies, NTIA adopts the compliance standards and testing protocols for speed and latency established and used by the Commission in multiple contexts, including the Connect America Fund and the Rural Digital Opportunity Fund.⁷⁸ In order to demonstrate continued compliance with these standards, subgrantees must perform speed and latency tests from the customer premises of an active subscriber to a remote test server at an end-point consistent with the requirements for a Commission-designated IXP.⁷⁹

Subject to the exceptions identified in Section IV.B.7.a, Funded Networks shall deliver Reliable Broadband Service with speeds of not less than 100 Mbps for downloads and 20 Mbps for

⁷⁸ See, e.g., *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (*Performance Measures Order*); *Connect America Fund*, Order on Reconsideration, WC Docket No. 10-90, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*).

⁷⁹ See *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10114-16, paras. 17-19.

uploads.⁸⁰ In addition, 95 percent of latency measurements during testing windows must fall at or below 100 milliseconds round-trip time.⁸¹ This approach ensures a connection that supports reasonably foreseeable real-time applications. In the limited circumstance where even a fiber deployment cannot achieve this latency threshold (for example in a remote territory), NTIA may expand the latency threshold for specific Funded Networks at the request of an Eligible Entity.

Funded Network connections to Eligible Community Anchor Institutions shall be capable of delivering service at speeds not less than 1 Gigabit per second for downloads and 1 Gigabit per second for uploads.⁸² Eligible Entities shall ensure that such connections can be used to provide business data services.⁸³

ii. Network Outages

Each Funded Network's outages should not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence. Each Eligible Entity should ensure a prospective network is designed to meet this requirement and should develop metrics for measuring outages to be utilized in connection with this requirement once the network is operational.

b. Deployment Requirements

i. Deployment Deadlines and Benchmarks

Eligible Entities shall ensure that each subgrantee deploys its Funded Networks and begins providing broadband service to each customer that desires broadband service not later than four years after the date on which the subgrantee receives the subgrant for the applicable network.⁸⁴ Eligible Entities shall establish interim buildout milestones, enforceable as conditions of the subgrant, sufficient to ensure that subgrantees are making reasonable progress toward meeting the four-year deployment deadline. Eligible Entities may, following consultation with the NTIA and with the approval of the Assistant Secretary, extend the deadlines under this subparagraph if the Eligible Entity reasonably determines that (i) the subgrantee has a specific plan for use of the grant funds, with project completion expected by a specific date not more than one year after the four-year deadline; (ii) the construction project is underway; or (iii) extenuating circumstances require an extension of time to allow the project to be completed.

⁸⁰ 80 percent of a provider's download and upload measurements must be at or above 80 percent of the required speed (*i.e.*, an 80/80 standard). *See Performance Measures Order*, 34 FCC Rcd at 6528, para. 51.

⁸¹ *See id.*, 34 FCC Rcd at 6527-28, para. 50.

⁸² These requirements are consistent with § 60401(e)(3)(C) of the Infrastructure Act.

⁸³ The term "business data service" refers to the dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections. *See Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 *et al.*, Report and Order, 32 FCC Rcd 3459, 3463 para. 6 (2017).

⁸⁴ As detailed below, each subgrantee that uses BEAD Funding to undertake a broadband infrastructure deployment project has a continuing obligation to provide access to broadband service to each customer served by the project that desires such service on terms and conditions that are reasonable and non-discriminatory. *See* Section IV.C.2.c.iii of this NOFO.

ii. Conduit Access Points

Any Funded Network deployment project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities. Where a project proposes to lay conduit, Eligible Entities shall require prospective subgrantees to propose to deploy a reasonable amount of excess conduit capacity and to propose a conduit access point interval as part of the grant application process and shall consider the adequacy of the prospective subgrantee's proposed excess conduit capacity and access points when evaluating the application.

c. Service Obligations

i. Affordability and Low-Cost Plans

The Infrastructure Act's BEAD provisions are premised on Congress's determination that "[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States," and that "[t]he persistent 'digital divide' in the United States is a barrier to" the nation's "economic competitiveness [and the] equitable distribution of essential public services, including health care and education."⁸⁵ Accordingly, each Eligible Entity must include in its Initial and Final Proposals a middle-class affordability plan to ensure that *all* consumers have access to *affordable* high-speed internet. We expect that Eligible Entities will adopt diverse strategies to achieve this objective. For example, some Eligible Entities might require providers receiving BEAD funds to offer low-cost, high-speed plans to all middle-class households using the BEAD-funded network. Others might provide consumer subsidies to defray subscription costs for households not eligible for the Affordable Connectivity Benefit or other federal subsidies. Others may use their regulatory authority to promote structural competition. Some might assign especially high weights to selection criteria relating to affordability and/or open access in selecting BEAD subgrantees.⁸⁶ And others might employ a combination of these methods, or other methods not mentioned here. Ultimately, however, each Eligible Entity must submit a plan to ensure that high-quality broadband services are available to all middle-class families in the BEAD-funded network's service area at reasonable prices. Eligible Entities will be required to ensure that services offered over Funded Networks allow subscribers in the service area to utilize the ACP.

In addition, the Infrastructure Act requires that each subgrantee receiving BEAD funding to deploy network infrastructure offer at least one low-cost broadband service option. Each Eligible Entity must consult with the Assistant Secretary and prospective subgrantees regarding a proposed definition of the term "low-cost broadband service option." Each Eligible Entity shall thereafter submit a proposed definition to the Assistant Secretary for approval in its Final Proposal. The Infrastructure Act directs the Assistant Secretary to define the subscribers eligible for such low-cost plans.

Eligible Entities must propose low-cost broadband service option parameters that best serve the needs of residents within their jurisdictions. Low-cost broadband service options must remain

⁸⁵ Infrastructure Act § 60101.

⁸⁶ *See supra* Section IV.B.7.

available for the useful life of the network assets. In crafting proposals, NTIA emphasizes that access to *affordable* broadband is among the Infrastructure Act’s objectives. In determining whether to approve an Eligible Entity’s proposed definition of “low-cost broadband service option,” the Assistant Secretary will consider, among other factors, (1) whether prospective subgrantees will be required to participate in the Affordable Connectivity Program, any successor program, and/or any other household broadband subsidy programs; (2) the expected cost (both monthly and non-recurring charges) to an Eligible Subscriber for a typical broadband internet access service plan after the application of any subsidies; and (3) the performance characteristics of the proposed options, including download and upload speeds, latency, data caps, and reliability commitments.

A definition of low-cost broadband service option should address, at a minimum: (1) all recurring charges to the subscriber, as well as any non-recurring costs or fees to the subscriber (*e.g.*, service initiation costs); (2) the plan’s basic service characteristics (download and upload speeds, latency, any limits on usage or availability, and any material network management practices, (3) whether a subscriber may use any Affordable Connectivity Benefit subsidy toward the plan’s rate; and (4) any provisions regarding the subscriber’s ability to upgrade to any new low-cost service plans offering more advantageous technical specifications. For example, a definition of low-cost broadband service option could be as follows:

1. The proposed service option:

- a. Costs \$30 per month or less, inclusive of all taxes, fees, and charges if the subscriber does not reside on Tribal Lands, or \$75 per month or less, inclusive of all taxes, fees, and charges if the subscriber resides on Tribal Lands, with no additional non-recurring costs or fees to the consumer;
- b. Allows the end user to apply the Affordable Connectivity Benefit subsidy to the service price;
- c. Provides the greater of (a) typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps, or the fastest speeds the infrastructure is capable of if less than 100 Mbps/20 Mbps or (b) the performance benchmark for fixed terrestrial broadband service established by the Federal Communications Commission pursuant to Section 706(b) of the Communications Act of 1934, as amended;⁸⁷
- d. Provides typical latency measurements of no more than 100 milliseconds; and
- e. Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere;
- f. In the event the provider later offers a low-cost plan with higher speeds downstream and/or upstream, permits Eligible Subscribers that are subscribed to a

⁸⁷ 47 U.S.C. § 1302(b). The current performance benchmark for fixed terrestrial broadband service is 25 Mbps for downloads and 3 Mbps for uploads. *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report, GN Docket No. 20-269, 36 FCC Rcd 836, 841 para. 12 (2021).

low-cost broadband service option to upgrade to the new low-cost offering at no cost;⁸⁸

2. Subgrantees are required to participate in the Affordable Connectivity Program or any successor program, and Eligible Subscribers that are eligible for a broadband service subsidy can apply the subsidy to the proposed service option.

NTIA recognizes, however, that different Eligible Entities face different circumstances. NTIA will review and consider any definition proposed by an Eligible Entity in accordance with the terms of the BEAD statute. In all cases, an Eligible Entity must explain in its Initial and Final Proposal why the selected definition best effectuates the purposes of the program. NTIA may provide additional guidance to Eligible Entities on the development of the low-cost broadband service option definition.

ii. Consumer Protections

Each Eligible Entity shall ensure that each prospective subgrantee does not impose data usage caps on any plans offered over a Funded Network or impose unjust or unreasonable network management practices.⁸⁹ Subgrantees shall certify through the semiannual reporting requirements described in Section VII.E of this NOFO that the plans offered over Funded Networks do not contain data usage caps for subscribers.

iii. Access to Service

Operators of Funded Networks shall provide access to broadband service to each customer served by the project that desires broadband service on terms and conditions that are reasonable and non-discriminatory.

iv. Public Notice

Eligible Entities shall require subgrantees to carry out public awareness campaigns in their service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers. Awareness campaigns must include information about low-cost service plans and any federal subsidies for low-income households such as the Lifeline Program, the Affordable Connectivity Program, and any successor programs. Further, awareness campaigns must be conducted in an equitable and nondiscriminatory manner. Subgrantees must utilize a variety of communications media (*e.g.*, online, print, radio) and provide information in languages other than English when warranted based on the demographics of the community.

Eligible Entities shall require that once a Funded Network has been deployed, each subgrantee shall provide public notice, online and through other means, of that fact to individuals residing in

⁸⁸ By way of example, if a customer is subscribed to a low-cost broadband service option that provides service at 100/20 Mbps and the customer's service provider offers a new low-cost broadband service option at 200/20 Mbps after the FCC issues a new report pursuant to section 706(a) of the Communications Act of 1934, as amended, the customer would be allowed to upgrade to the 200/20 Mbps offering at no charge.

⁸⁹ Providers may apply otherwise-applicable acceptable use policies to BEAD-funded networks.

the locations to which broadband service has been provided and share the public notice with the Eligible Entity that awarded the subgrant. Each Eligible Entity shall require each prospective subgrantee seeking to deploy or upgrade network facilities to explain in its application how it intends to notify relevant populations of the new or newly upgraded offerings available in each area. Such proposals shall be designed in a manner that reflects any unique needs of the specific demographics of the area at issue (including, for example, languages prominently spoken in the area and the best means of ensuring that the population is likely to encounter the subgrantee's public notice).

v. Interconnection Requirements and Wholesale Access

Any subgrantee receiving funds to deploy Middle Mile Infrastructure under this Program in connection with service to an Unserved Service Project or an Underserved Service Project shall permit other broadband service providers to interconnect with its funded Middle Mile Infrastructure network facilities on a just, reasonable, and nondiscriminatory basis. An Eligible Entity awarding funds for construction of Middle Mile Infrastructure shall require the subgrantee, via contract or other binding mandate, to allow such interconnection at any technically feasible point on the Middle Mile Infrastructure network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of the subgrantee's Middle Mile Infrastructure to a requesting party's facilities for the exchange of traffic. In addition, subgrantees shall connect to the public internet directly or indirectly and provide requesting parties with an ability to connect to the internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory. Each Eligible Entity shall require each subgrantee that obtains funding for the deployment or upgrade of Middle Mile Infrastructure to negotiate in good faith with any requesting party (including public, Tribal, private, non-profit, or other parties) making a bona fide request for interconnection. Subgrantees shall report through the subgrantee reporting process established in Section VII.E.2 of this NOFO any interconnection requests made to the subgrantee during that year and the status of those requests. In selecting subgrantees for last-mile deployments to Unserved Service Projects and Underserved Service Projects, NTIA encourages Eligible Entities to give preference to prospective subgrantees who commit to offering wholesale broadband services at rates and terms that are reasonable and nondiscriminatory.

Eligible Entities shall require that if a subgrantee, at any time, is no longer able to provide broadband service to the end user locations covered by the subgrant at any time on a retail basis remedial action be taken to ensure continuity of service. In consultation with NTIA, the Eligible Entity shall require the subgrantee to sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program.⁹⁰ The Eligible Entity may pursue either remedial action so long as such action results in continued retail service to end users in the grant area.

⁹⁰ If the subgrantee is no longer viable as a going concern, or if it is unable to provide sustained service over the network at issue, the Eligible Entity should work with the subgrantee and NTIA to assist in sale of the assets to a new owner that can assume the original subgrantee's service and programmatic responsibilities.

vi. Cybersecurity and Supply Chain Risk Management

The Infrastructure Act directs the Assistant Secretary to specify prudent cybersecurity and supply-chain risk management practices for subgrantees deploying or upgrading broadband networks using BEAD funds. NTIA recognizes the importance of (a) protecting American communications networks and those who use them from domestic and international threat actors, and (b) promoting the natural evolution of cybersecurity and supply-chain risk management practices in a manner that allows flexibility in addressing evolving threats. To that end, we impose baseline requirements herein, though an Eligible Entity may propose additional measures it believes necessary to safeguard networks and users falling within its jurisdiction for consideration by the Assistant Secretary.

With respect to cybersecurity, prior to allocating any funds to a subgrantee, an Eligible Entity shall, at a minimum, require a prospective subgrantee to attest that:

1. The prospective subgrantee has a cybersecurity risk management plan (the plan) in place that is either:
 - a. operational, if the prospective subgrantee is providing service prior to the award of the grant; or
 - b. ready to be operationalized upon providing service, if the prospective subgrantee is not yet providing service prior to the grant award;
2. The plan reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
3. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
4. The plan will be submitted to the Eligible Entity prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the Eligible Entity within 30 days. The Eligible Entity must provide a subgrantee's plan to NTIA upon NTIA's request.

With respect to supply chain risk management (SCRM), prior to allocating any funds to a subgrantee, an Eligible Entity shall, at a minimum, require a prospective subgrantee to attest that:

1. The prospective subgrantee has a SCRM plan in place that is either:
 - a. operational, if the prospective subgrantee is already providing service at the time of the grant; or
 - b. ready to be operationalized, if the prospective subgrantee is not yet providing service at the time of grant award;
2. The plan is based upon the key practices discussed in the NIST publication NISTIR 8276, *Key Practices in Cyber Supply Chain Risk Management: Observations from Industry* and related SCRM guidance from NIST, including NIST 800-161, *Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations* and specifies the supply chain risk management controls being implemented;

3. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
4. The plan will be submitted to the Eligible Entity prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the Eligible Entity within 30 days. The Eligible Entity must provide a subgrantee's plan to NTIA upon NTIA's request

An Eligible Entity also must ensure that, to the extent a BEAD subgrantee relies in whole or in part on network facilities owned or operated by a third party (*e.g.*, purchases wholesale carriage on such facilities), obtain the above attestations from its network provider with respect to both cybersecurity and supply chain risk management practices.

D. Subgrantee Qualifications

Eligible Entities shall ensure that any prospective subgrantee is capable of carrying out activities funded by the subgrant in a competent manner and in compliance with all applicable federal, State, Territorial, and local laws. Eligible Entities also shall ensure that prospective subgrantees have the *competence, managerial* and *financial* capacity to meet the commitments of the subgrant and any requirements of the Program, as well as the *technical* and *operational* capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award.

Specific showings that Eligible Entities must require from prospective subgrantees seeking to deploy network facilities using BEAD funds are further detailed in Section IV.D.2. NTIA acknowledges that prospective subgrantees may be able to, or required, to demonstrate their capabilities in a variety of manners. A newly established special purpose vehicle established by a consortium of entities may point to the capabilities and experience of those entities in support of its application. A prospective subgrantee that has significant experience deploying broadband networks but no experience operating them may be able to demonstrate operational capability by entering a binding contract with another entity with such experience. The types of evidence available to municipal entities seeking to demonstrate financial capability may well differ from the kinds of evidence expected of commercial enterprises; Eligible Entities should accommodate these differences in establishing their requirements. The Assistant Secretary invites Eligible Entities to propose alternatives to the specific showings set forth herein if they are necessary and sufficient to ensure that the Program's objectives are met.

1. General Qualifications

Prior to entering into any subgrantee agreement, each Eligible Entity shall ensure that any prospective subgrantee:

1. Is capable of carrying out activities funded by the subgrant in a competent manner in compliance with all applicable federal, Eligible Entity, and local laws;
2. Has the financial and managerial capacity to meet the commitments of the subgrantee under the subgrant, the requirements of the Program and such other requirements as have been prescribed by the Assistant Secretary or the Eligible Entity; and

3. Has the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award.

Eligible Entities shall, *at a minimum*, take the steps detailed below to evaluate the ability of a prospective subgrantee to meet the requirements set forth above prior to entering into any subgrant agreement.

2. Specific Qualifications for Subgrantees Deploying Network Facilities

a. Financial Capability

With the exception of the certifications required under Section IV.D.2.a.i below, Eligible Entities may, with the permission of the Assistant Secretary, allow prospective subgrantees that have the ability to issue public bonds (*e.g.*, municipalities) to provide comparable evidence in support of their financial capabilities. NTIA will provide additional guidance regarding acceptable comparable evidence after publication of this NOFO.

i. Certifications

Prospective subgrantees must certify that they are financially qualified to meet the obligations associated with a Project, that they will have available funds for all project costs that exceed the amount of the grant, and that they will comply with all Program requirements, including service milestones. To the extent the Eligible Entity disburses funding to subgrantees only upon completion of the associated tasks (a practice that NTIA encourages Eligible Entities to adopt, as described in Section IV.C.1.b of this NOFO), each prospective subgrantee must also certify that it has and will continue to have sufficient financial resources to cover its eligible costs for the Project until such time as the Eligible Entity authorizes additional disbursements.

ii. Letter of Credit

Each Eligible Entity shall establish a model letter of credit substantially similar to the model letter of credit established by the Commission in connection with the Rural Digital Opportunity Fund (RDOF).⁹¹

During the application process, prospective subgrantees shall be required to submit a letter from a bank that meets eligibility requirements consistent with those set forth in 47 C.F.R. § 54.804(c)(2) committing to issue an irrevocable standby letter of credit, in the required form, to the prospective subgrantee. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Eligible Entity's model letter of credit.

Prior to entering into any subgrantee agreement, each prospective subgrantee shall obtain an irrevocable standby letter of credit, which shall be acceptable in all respects to the Eligible Entity

⁹¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

and in a value of no less than 25 percent of the subaward amount.⁹² Eligible Entities may adopt rules under which a subgrantee may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a lesser amount than originally required by the Eligible Entity upon verification that the subgrantee has met optional or required service milestones.⁹³ In no event, however, shall the letter of credit have a value of less than 25 percent of the subaward amount.

A prospective subgrantee shall provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code.

iii. Audited Financial Statements

Each prospective subgrantee shall submit to the Eligible Entity from which it seeks funding financial statements from the prior fiscal year that are audited by an independent certified public accountant. If the potential subgrantee has not been audited during the ordinary course of business, in lieu of submitting audited financial statements, it must submit unaudited financial statements from the prior fiscal year and certify that it will provide financial statements from the prior fiscal year that are audited by an independent certified public accountant by a deadline specified by the Eligible Entity.

An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee’s financial capability with respect to the proposed project.

iv. Sustainability / Pro Forma Analyses of Proposed Project

The Eligible Entity shall require prospective subgrantees to submit business plans and related analyses that substantiate the sustainability of the proposed project. This can be provided in the form of pro forma statements or analyses, inclusive of cash flow and balance sheet projections and should include at least three years of operating cost and cash flow projections post targeted completion of project.

b. Managerial Capability

Prospective subgrantees shall submit to the Eligible Entity resumes for all key management personnel and any necessary organizational chart(s) detailing all parent, subsidiaries, and affiliates. Each prospective subgrantee must also provide a narrative describing the prospective subgrantee’s readiness to manage a broadband services network. This narrative should describe the experience and qualifications of key management for undertaking this project, its experience

⁹² At this step, the subgrantee must obtain an actual letter of credit, in contrast to bank’s commitment to issue the letter of credit, which is what is required during the application process.

⁹³ *See, e.g.*, 47 C.F.R. § 54.804(c)(1).

undertaking projects of similar size and scope, recent and upcoming organizational changes including mergers and acquisitions, and relevant organizational policies. An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee's managerial capability with respect to the proposed project.

Eligible Entities may require a prospective subgrantee to agree to special grant conditions relating to maintaining the validity of representations a prospective subgrantee has made regarding its organizational structure and key personnel.

c. Technical Capability

Each prospective subgrantee seeking funding to deploy or upgrade a broadband network must certify that it is technically qualified to complete and operate the Project and that it is capable of carrying out the funded activities in a competent manner, including that it will use an appropriately skilled and credentialed workforce (*see* Section IV.C.1.e of this NOFO).

Prospective subgrantees must submit a network design, diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity receives the subgrant, all certified by a professional engineer, stating that the proposed network can deliver broadband service that meets the requisite performance requirements to all locations served by the Project. An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the materials submitted to it demonstrate the prospective subgrantee's technical capability with respect to the proposed project.

d. Compliance With Laws

Each prospective subgrantee must demonstrate that it is capable of carrying out funded activities in a competent manner in compliance with all applicable Federal, State, Territorial, and local laws. To ensure that a subgrantee complies with occupational safety and health requirements, subgrantees must permit workers to create worker-led health and safety committees that management will meet with upon reasonable request.

e. Operational Capability

Prospective subgrantees must certify that they possess the operational capability to qualify to complete and operate the Project. A prospective subgrantee that has provided a voice, broadband, and/or electric transmission or distribution service for at least the two (2) consecutive years prior to the date of its application submission or that it is a wholly owned subsidiary of such an entity, must submit a certification that attests to these facts and specifies the number of years the prospective subgrantee or its parent company has been operating.

If the prospective subgrantee has provided a voice and/or broadband service it must certify that it has timely filed Commission Form 477s and the Broadband DATA Act submission, if applicable, as required during this time period, and otherwise has complied with the Commission's rules and regulations. Alternatively, a prospective subgrantee should explain any

pending or completed enforcement action, civil litigation, or other matter in which it failed to comply or was alleged to have failed to comply with Commission rules or regulations.

If the prospective subgrantee has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.⁹⁴

For a new entrant to the broadband market, a prospective subgrantee must provide evidence sufficient to demonstrate that the newly formed entity has obtained, through internal or external resources, sufficient operational capabilities. Such evidence may include resumes from key personnel, project descriptions and narratives from contractors, subcontractors, or other partners with relevant operational experience, or other comparable evidence.

An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee's operational capability with respect to the proposed project.

f. Ownership

Eligible Entities shall require each prospective subgrantee to provide ownership information consistent with the requirements set forth in 47 C.F.R. § 1.2112(a)(1)-(7).

g. Other Public Funding

Eligible Entities shall require each prospective subgrantee to disclose, for itself and for its affiliates,⁹⁵ any application the subgrantee or its affiliates have submitted or plan to submit, and every broadband deployment project that the subgrantee or its affiliates are undertaking or have committed to undertake at the time of the application using public funds, including but not limited to funds provided under: the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281), the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan of 2021 (Public Law 117-2; 135 Stat. 4), any federal Universal Service Fund high-cost program (e.g., RDOF, CAF), or any Eligible Entity or local universal service or broadband deployment funding program. At a minimum, the Eligible Entity shall require the disclosure, for each broadband deployment project, of: (a) the speed and latency of the broadband service to be provided (as measured and/or reported under the applicable rules), (b) the geographic area to be

⁹⁴ Acceptable submissions for this purpose will be the Rural Utilities Service (RUS) Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; or the CoBank Form 7; or the functional replacement of one of these reports. *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719, n. 202.

⁹⁵ The term "affiliate" shall be defined consistent with 47 U.S.C. § 153(2) ("The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.").

covered, (c) the number of unserved and underserved locations committed to serve (or, if the commitment is to serve a percentage of locations within the specified geographic area, the relevant percentage),⁹⁶ (d) the amount of public funding to be used, (e) the cost of service to the consumer, and (f) the matching commitment, if any, provided by the subgrantee or its affiliates.

V. Application and Submission Information

This Section sets out information regarding how Eligible Entities may apply for and use BEAD Program funding, including a link to the online application portal, formatting instructions, certification requirements, submission timelines, and eligible uses for funding. It also provides information regarding certifications that prospective subgrantees must make in order to be eligible for subgrants.

A. Single Application

The governor (or equivalent official) of an Eligible Entity that wishes to be awarded a grant under the BEAD Program shall select an administering entity for that Eligible Entity, which shall serve as the recipient of, and administering agent for, any BEAD Program grant awarded to the Eligible Entity under this Section. An Eligible Entity may submit only one LOI, request for Initial Planning Funds, one Initial Proposal, and one Final Proposal, subject to the revision provisions described in Sections IV.B.5.d.ii and IV.B.9.d.ii.

B. Address to Request Application Package

Application forms and instructions are available at <https://grants.ntia.gov/>. Applications will be accepted until the deadline and will be processed as received. Application packages, or portions thereof, submitted by email, paper, or facsimile will not be accepted.

With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, NTIA is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Act of 1998.

C. Content and Form of Applications

See Section IV.B .

D. Certifications Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the BEAD Program, the Eligible Entity is making the following certifications (*see* Line 21 on Form SF-424, Application for Federal Assistance):

⁹⁶ See, e.g., 47 C.F.R. § 54.802.

1. Instructions for Primary Tier Participant Certification:

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 C.F.R. Parts 180, 1200 and 1326.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 C.F.R. Parts 180, 1200 and 1326. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 C.F.R. Parts 180, 1200 and 1326.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each

participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate the transaction for cause or default.

2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Tier Covered Transactions:

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency;
 - i. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, Eligible Entity, or local) transaction or contract under a public transaction; violation of federal or Eligible Entity antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - ii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, Eligible Entity or local) with commission of any of the offenses enumerated in paragraph 1.a.i of this certification; and
 - iii. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, Eligible Entity, or local) terminated for cause or default.
2. Where the prospective primary tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Lower Tier Participant Certification (applies to subgrantees):

1. By submitting this proposal and accepting federal funding, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 C.F.R. Parts 180, 1200 and 1326.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 C.F.R. Parts 180, 1200 and 1326. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Instructions for Lower Tier Participant Certification” including the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 C.F.R. Parts 180 and 1200.
 - a. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov>).
 - b. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - c. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the

federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

E. Unique Entity Identifier and System for Award Management

Pursuant to 2 C.F.R. Part 25, an applicant or recipient (as the case may be) is required to: (i) be registered in the System for Award Management (SAM) before submitting its complete application packet; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency, unless otherwise excepted from these requirements pursuant to 2 C.F.R. § 25.110. NTIA will not make a federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time that NTIA is ready to make a federal award pursuant to this NOFO, NTIA may determine that the applicant is not qualified to receive a federal award.

1. Unique Entity Identifier

The U.S. government will use the unique entity identifier (UEI), found in an entity's SAM.gov registration, for federal awards management, including but not limited to, contracts, grants, and cooperative agreements. The UEI is the primary key to identify an entity throughout the federal awarding lifecycle and in SAM gov. Each Eligible Entity must obtain a UEI. Each subrecipient must obtain a UEI and provide it to the Eligible Entity. Subrecipients are not required to complete full SAM registration to obtain a UEI. 2 C.F.R. § 25.300.

The SAM-generated UEI (SAM) became the official identifier in April 2022.

For more information on the establishment of an entity's UEI, please visit <http://www.sam.gov>.

2. System for Award Management

Eligible Entities must register in the SAM before submitting any submissions through the application portal. Additionally, the Eligible Entity must maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Entities can register for the SAM at <https://www.sam.gov/>.

F. Submission Dates and Times

Completed letters of intent must be received by NTIA through the application portal no later than 11:59 p.m. Eastern Daylight Time (EDT) on **July 18, 2022**. Eligible Entities that wish to request Initial Planning Funds must submit their requests and required documentation by 11:59 p.m. Eastern Daylight Time (EDT) August 15, 2021. Eligible Entities that receive Initial Planning Funds must submit their Five-Year Action Plans to NTIA within 270 days of their receipt of Initial Planning Funds.

Eligible Entities will be notified of future submission deadlines after the Commission's Broadband DATA Maps are released and the Initial Proposal and Final Proposal process begins. Initial Proposals will be due to NTIA no later than 180 days after issuance of their Notice of Available Amounts.

Submissions submitted by postal mail, courier, email, facsimile, or other means aside from those detailed herein will not be accepted. All application forms and documents must be included with an applicant's complete application packet submission via NTIA's application portal.

When developing the submission timeline, each eligible applicant should keep in mind that: (1) all applicants are required to have current registrations in the electronic System for Award Management (SAM.gov) and the free annual registration process in SAM.gov generally takes between three (3) and five (5) business days but can take more than three weeks. Please note that a federal assistance award cannot be issued if the designated recipient's registration in SAM.gov is not current at the time of the award.

G. Intergovernmental Review

Applications from an Eligible Entity or a political subdivision of the Eligible Entity under this Program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," which requires intergovernmental consultation with State, Territorial, and local officials. All applicants are required to submit a copy of their applications to their designated Single Point of Contact (SPOC) offices.⁹⁷

H. Funding Restrictions

1. Eligible Uses of BEAD Program Funds

Grant recipients may only use federal award funds and any non-federal cost share committed to an award to pay for allowable costs under the BEAD Program. Allowable costs are determined in accordance with the cost principles identified in 2 C.F.R. Part 200, including Subpart E of such regulations for States and non-profit organizations, and in 48 C.F.R. Part 31 for commercial organizations,⁹⁸ as well as in the grant program's authorizing legislation. In addition, costs must

⁹⁷ See 7 C.F.R. Part 3015, Subpart V.

⁹⁸ The government has established a set of principles for determining eligible or allowable costs. Allowable costs are determined in accordance with the cost principles applicable to the entity incurring the costs. For example, the allowability of costs incurred by State, Territorial, local or Federally

be reasonable, necessary, allocable, and allowable for the proposed project or other eligible activity and conform to generally accepted accounting principles. Funds committed to an award may only be used to cover allowable costs incurred during the period of performance, except for reasonable pre-award expenses as described above, and for allowable closeout costs incurred during the grant closeout process.

2. Ineligible Costs

Ineligible costs include those costs that are unallowable under the applicable federal cost principles. Please note that costs ineligible for the BEAD Program may not be paid for with matching funds committed to an award. If an Eligible Entity is found to have used grant or matching funds on a prohibited cost, the Assistant Secretary may take remedial action, including but not limited to deobligation or clawback of funding.

In addition, grant funds awarded to an Eligible Entity under this program shall be used to supplement, and not supplant, the amounts that the Eligible Entity would otherwise make available for the purposes for which the grant funds may be used.

The following costs are specifically identified as prohibited under the BEAD Program:

a. Prohibition On Use of Grant Funds for Covered Communications Equipment or Services under the Secure and Trusted Communications Networks Act

An Eligible Entity or subgrantee (including contractors and subcontractors of subgrantees) may not use grant funds received under the BEAD Program to purchase or support any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608)).

b. Prohibition on Profit and Fees

A profit, fee, or other incremental charge above actual cost incurred by an Eligible Entity or subgrantee is not an allowable cost under this Program.

c. Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining

An Eligible Entity or a subgrantee may not use grant funds, whether directly or indirectly, to support or oppose collective bargaining.

Recognized Indian Tribal Governments is determined in accordance with the provisions of 2 C.F.R. Part 200, Subpart E and the allowability of costs for commercial organizations is determined in accordance with the provisions of 48 C.F.R. Part 31, unless the Grants Officer decides in writing to apply the cost principles in 2 C.F.R. Part 200, Subpart E, to commercial organizations pursuant to 2 C.F.R. § 200.101(a)(2).

3. Administrative Expenses

An Eligible Entity may not use more than two percent of the grant amounts received under the BEAD Program for expenses relating (directly or indirectly) to administration of the grant under Section 60102(d)(2)(B) of the Infrastructure Act. NTIA will release further guidance on what expenses qualify as “expenses relating (directly or indirectly) to administration of the grant” subject to the statutory two percent limitation on these expenses.

I. Material Representations and Public Disclosure of Applications

All forms and supporting documents submitted as part of the Letter of Intent, Initial Proposal, and Final Proposal will be treated as material representations of fact upon which NTIA will rely in awarding grants. Applicants should acknowledge that NTIA may make all or portions of their applications for grants under the BEAD Program publicly available consistent with applicable federal law. See Section IX.B of this NOFO for additional information concerning the confidentiality of information contained in an application.

J. Other Submission Requirements

Complete applications for the BEAD Program must be electronically submitted through grants.ntia.gov. Late or incomplete applications and applications submitted by mail, courier, or by facsimile will not be accepted.

1. How to Register to Apply and Submit an Application

Applicants should carefully follow specific instructions on the application site at <https://grants.ntia.gov/>.

2. Timely Receipt Requirements and Proof of Timely Submission

Applicants should carefully follow specific instructions on the application site at <https://grants.ntia.gov/> to successfully submit an application or other required materials. Applicants, specifically the Authorized Organization Representative submitting the application and materials, will receive a time and date stamped email from the NTIA Grants Portal confirming the submission and receipt of the application or other required documents, *e.g.*, Letter of Intent, Initial Proposal, Final Proposal.

3. Amendments

Any amendments to this NOFO or additional Program guidance will be announced on NTIA.gov and BroadbandUSA.NTIA.gov.

VI. Application Review Information

This Section briefly describes the review process that NTIA will undertake in assessing submissions by Eligible Entities in connection with the BEAD Program.

A. Review Process for the BEAD Program

Letters of Intent, Initial Planning Funds requests, Initial Proposals, and Final Proposals will be evaluated by the Assistant Secretary to determine compliance with all necessary requirements outlined in the Infrastructure Act, this NOFO, and additional regulations and/or guidance that may be issued by NTIA.

After receipt of a completed Initial Proposal, the Assistant Secretary shall determine whether the use of funds proposed in the Initial Proposal complies with applicable Program guidelines, is in the public interest, and effectuates the purposes of the Infrastructure Act. Based on that assessment, the Assistant Secretary will approve or disapprove the Initial Proposal. If the Initial Proposal is approved, the Assistant Secretary will make at least 20 percent of the total allocation available to the Eligible Entity. If the Initial Proposal is incomplete or is disapproved, the Assistant Secretary shall notify the Eligible Entity and provide the Eligible Entity with an opportunity to resubmit the Initial Proposal for consideration under the factors mentioned above.

After receipt of a completed Final Proposal, the Assistant Secretary shall determine whether the use of funds proposed in the Final Proposal complies with applicable Program guidelines, is in the public interest, and effectuates the purposes of the Infrastructure Act. Based on that assessment, the Assistant Secretary will approve or disapprove the Final Proposal. If the Final Proposal is approved, the Assistant Secretary will make the remainder of the grant funds allocated available to the Eligible Entity. If the Final Proposal is incomplete or is disapproved the Assistant Secretary shall notify the Eligible Entity and provide the Eligible Entity with an opportunity to resubmit the Final Proposal for consideration under the factors mentioned above. If an Eligible Entity fails to meet any applicable deadline and has not secured an extension from the Assistant Secretary before the applicable deadline, a political subdivision or consortium of political subdivisions of the Eligible Entity may submit the applicable type of covered application in place of the Eligible Entity.

Eligible Entities are encouraged to maintain an ongoing dialogue with NTIA throughout proposal development as a part of the technical assistance process. This partnership allows Eligible Entities to receive interim feedback and ensure alignment of Eligible Entity and federal priorities.

B. Federal Awarding Agency Review of Risk Posed by Applicants

After applications are proposed for funding by the Selecting Official for the BEAD Program (specifically, the Assistant Secretary or the Assistant Secretary's designee), the NIST Grants Management Division (GMD) will perform pre-award risk assessments in accordance with 2 C.F.R. § 200.206. Such assessments may include review of the financial stability of an applicant (*i.e.*, an Eligible Entity), the quality of the applicant's management systems, the history of performance, reports and findings from audits, and/or the applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-federal entities. In addition, prior to making an award where the total federal share is expected to exceed the simplified acquisition threshold (currently \$250,000), NIST GMD will review and consider the non-publicly available information about that applicant in the Federal Awardee Performance and Integrity Information System (FAPIIS). Upon completion of the pre-award risk assessment,

NIST GMD will determine whether the applicant is qualified to receive the award and, if so, whether appropriate specific award conditions that correspond to the degree of risk posed by the applicant should be applied to the award.

C. Anticipated Announcement and Award Dates

NTIA will review Letters of Intent, requests for Initial Planning Funds, Initial Proposals, and Final Proposals on a rolling basis. Additional timeline details will be provided to Eligible Entities once the Commission's Broadband DATA Maps have been released and allocations have been calculated.

VII. Federal Award Administration Information

This Section explains the process NTIA will employ to approve applications, notify successful and unsuccessful applicants of the process's results, and various legal obligations applicable to grant recipients (including, but not limited to, those relating to domestic procurement preferences ("Buy American" requirements) and contracting with small and minority businesses, women's business enterprises, and labor surplus area firms).

A. Federal Award Notices

The Assistant Secretary, or the Assistant Secretary's designee, will submit the applications recommended for funding, along with the bases for the recommendation, to the National Institute of Standards and Technology (NIST) Grants Officer, who serves as the Grants Officer for the BEAD program. The final approval of selected applications and the issuance of awards will be made by the NIST Grants Officer. The award decisions of the NIST Grants Officer are final.

An applicant will be notified in writing by the NIST Grants Officer if its application is selected for an award. If the application is selected for funding, the NIST Grants Officer will issue the grant award (Form CD-450), which is the authorizing financial assistance award document. By signing the Form CD-450, the recipient agrees to comply with all award provisions, terms, and conditions.

If an applicant is awarded funding, neither NTIA nor NIST is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment of an award to extend the period of performance is at the discretion of NTIA and the NIST Grants Officer.

B. Notification to Unsuccessful Applications.

As detailed in Section VI.A of this NOFO, Eligible Entities will be notified if either the Initial Proposal or Final Proposal is not approved by the Assistant Secretary and given a chance to resubmit the proposal.

C. Retention of Unsuccessful Applications.

Unsuccessful applications will be retained in accordance with NTIA recordkeeping requirements.

D. Administrative and National Policy Requirements

Grant recipients will comply with applicable statutes and regulations, including but not limited to:

1. Uniform Administrative Requirements, Cost Principles and Audit Requirements.

Through 2 C.F.R. § 1327.101, the Department of Commerce adopted Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200, which apply to awards in this Program. Refer to <http://go.usa.gov/SBYh> and <http://go.usa.gov/SBg4>.

2. Department of Commerce Financial Assistance Standard Terms and Conditions.

The Department of Commerce will apply to each award in this Program, the Financial Assistance Standard Terms and Conditions in effect on the date of award. The current version, dated November 12, 2020, is accessible at [Department of Commerce Financial Assistance Standard Terms and Conditions](#). Refer to Section VIII of this NOFO (Federal Awarding Agency Contact(s)) if you need more information.

3. Pre-Award Notification Requirements.

The Department of Commerce will apply the Pre-Award Notification Requirements for Grants and Cooperative Agreements dated December 30, 2014 (79 FR 78390), accessible at <http://go.usa.gov/hKkR>. Refer to Section VIII of this NOFO (Federal Awarding Agency Contact(s)) if you need more information.

4. Environmental and National Historical Preservation Requirements.

Awarding agencies are required to analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*) and the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*) for Eligible Entity proposals and awardee projects and other eligible activities seeking funding under the BEAD Program. Eligible Entities with projects or other eligible activities containing construction and/or ground-disturbing activities are required to submit all required environmental documentation to NTIA with their Final Proposals, which also must describe how they will comply with applicable environmental and national historical preservation requirements. It is the Eligible Entity's and subgrantee's responsibility to obtain all necessary federal, Eligible Entity, and local governmental permits and approvals necessary for the proposed work to be conducted. Projects and other eligible activities are expected to be designed so that they minimize the potential for adverse impacts on the environment. Eligible Entities also will be required to cooperate with NTIA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects or other eligible activities. The failure to do so may be grounds for not making an award. Proposals will be reviewed to ensure that they contain sufficient information to allow agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be

submitted to NTIA, along with the recommendation for funding of the selected projects or other eligible activities. If additional information is required after an application is accepted for funding, funds can be withheld by NTIA under a specific award condition requiring the awardee to submit additional environmental compliance information sufficient for the agency to make an assessment of any impacts that a project or other eligible activity may have on the environment.

5. Property Trust Relationship and Public Notice Filings for Grant-Acquired Property.

In accordance with 2 C.F.R. § 200.316, any real property, equipment, or intangible property acquired or improved with a federal award must be held in trust by the Eligible Entity or subgrantee as trustee for the beneficiaries of the project, other eligible activity, or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the federal government retains an undivided, equitable reversionary interest in the property (Federal Interest). In this connection, NTIA may require the non-federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a federal award and that use and disposition conditions apply to the property. Awards issued pursuant to this NOFO may contain specific award conditions pertaining to the use and disposition of grant-acquired property and to a requirement that the recipient or subgrantee file certain public notices (*e.g.*, UCC-1, Covenant of Purpose, Use and Ownership, *etc.*) with respect to grant-acquired property. NTIA will provide information regarding the useful life schedules associated with assets acquired with grant funds.

6. Domestic Preference for Procurements (Buy American).

The Infrastructure Act presents an important opportunity to ensure that American taxpayer dollars are spent procuring needed products and supplies from American workers and businesses, strengthening and growing U.S. domestic manufacturing capacity. Accordingly, all funds made available through the BEAD Program for broadband infrastructure must comply with the Build America, Buy America Act.⁹⁹ The Build America, Buy America Act requires that all of the iron, steel, manufactured products (including but not limited to fiber-optic communications facilities), and construction materials used in the project or other eligible activities are produced in the United States unless a waiver is granted. Under the Build America, Buy America Act and the Buy America Guidance issued by the Office of Management and Budget on April 18, 2022,¹⁰⁰ the Secretary of Commerce (Secretary) may waive the application of this preference when (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory

⁹⁹ Infrastructure Investment and Jobs Act of 2021, Division G, Public Law 117-58, 135 Stat. 429 (November 15, 2021).

¹⁰⁰ See Shalanda D. Young, Director, OMB, *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, M-22-11 (Apr. 18, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf> (Buy America Guidance).

quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project or other eligible activities by more than 25 percent. Consistent with the waiver principles detailed in Sec. 70921(b)(1) of the Build America, Buy America Act and the Buy America Guidance, the Secretary will seek to minimize waivers, and any waivers will be limited in duration and scope.

In determining whether a product is produced in America, subgrantees must comply with definitions included in Section 70912 of the Build America, Buy America Act, which provides that a manufactured product is considered produced in the United States if the manufactured product was manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

In addition to the provisions above, subgrantees may not use BEAD funding to purchase or support any covered communications equipment or service, as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608).

Additionally, the Infrastructure Act expressly prohibits subgrantees from using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China unless a waiver of this requirement is received from the Assistant Secretary. Waivers of the ban on Chinese-made fiber will be based on a demonstration from the Eligible Entity that application of this prohibition would unreasonably increase the cost of or delay the project or other eligible activities. Waiver applicants will need to provide concrete evidence of this circumstance and will be held to a high burden of proof. Waiver policy in this case will be guided by the same principles set out in Section 70921(b)(1) of the Build America, Buy America Act, meaning that the Assistant Secretary will be disposed against waivers. In addition, NTIA will consider any national security issues particular to Chinese-made fiber, and even where domestic production is not feasible, will be reluctant to waive the ban if another foreign supplier could meet the need at similar cost.

7. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Minority Businesses Enterprises (MBEs) and Women's Business Enterprises (WBEs) are major catalysts for economic growth and job creation. However, data shows that MBEs and WBEs historically face significant contracting disparities compared to other businesses. Pursuant to 2 C.F.R. § 200.321, Eligible Entities must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring subgrantees to take the affirmative steps listed above as it relates to its subcontractors.

Eligible Entities are strongly encouraged to establish MBE and WBE utilization plans consistent with their Initial and Final Proposals.

E. Reporting

Both Eligible Entities and subgrantees will be required to comply with reporting requirements. In addition to the reporting requirements found in 2 C.F.R. Part 200, NTIA will provide additional reporting instructions in connection with the requirements set forth in this Section, including details on the manner and format that Eligible Entities will be required to report information in support of federal agency obligations under the ACCESS BROADBAND Act, 47 USC § 1307, and Infrastructure Act § 60105.¹⁰¹

1. Reporting Requirements - Eligible Entities

Not later than 90 days after receiving any Program grant funds, for the sole purposes of providing transparency and providing information to inform future federal broadband planning, an Eligible Entity shall submit to the Assistant Secretary an **initial report** that (i) describes the planned and actual use of funds; (ii) describes the planned and actual subgrant process; (iii) identifies the establishment of appropriate mechanisms by the Eligible Entity to ensure that all subgrantees of the Eligible Entity comply with the eligible uses prescribed under the BEAD Program and (iv) includes any other information required by the Assistant Secretary.

Not later than 1 year after receiving grant funds under this Section, and semiannually thereafter until the funds have been expended, an Eligible Entity shall submit to the Assistant Secretary a **semiannual report**, with respect to the 6-month period immediately preceding the report date, that tracks the progress the Eligible Entity is making against its approved plans. Any such report should include, at a minimum, the following information: (i) a description of how the Eligible Entity expended the grant funds; (ii) a description of each service provided with the grant funds and the status of projects or other eligible activities supported by such funds; (iii) a description of the locations at which broadband service was made or will be made available using the grant funds, the locations at which broadband service was utilized, and the comparative demographics of those served; and (iv) a certification that the Eligible Entity complied with the requirements of this Section and with any additional reporting requirements prescribed by the Assistant

¹⁰¹ In addition to the requirements set forth herein, Eligible Entities and subgrantees must comply with the mandates set out in Section VI.F of this NOFO.

Secretary. The semiannual report must also include an SF-425 and a Federal Financial Report and must meet the requirements described in 2 C.F.R. §§ 200.328 and the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports. The semiannual report shall contain information as prescribed in 2 C.F.R. § 200.329.

Not later than one year after an Eligible Entity has expended all grant funds received under this Section, the Eligible Entity shall submit to the Assistant Secretary a final report that (i) describes how the Eligible Entity expended the funds; (ii) describes each service provided with the grant funds; (iii) describes the locations at which broadband service was made available using the grant funds, the locations at which broadband service was utilized, and the comparative demographics of those served; (iv) includes each report that the Eligible Entity received from a subgrantee under Section 60102(j) of the Infrastructure Act; and (v) certifies that the Eligible Entity complied with the requirements of this Section and with any additional reporting requirements prescribed by the Assistant Secretary.

As noted below, an Eligible Entity must also make every report submitted to it by a subgrantee available to NTIA upon request.

2. Reporting Requirements - Subgrantees

The recipient of a subgrant from an Eligible Entity under this Section shall submit to the Eligible Entity a regular reporting, at least semiannually, for the duration of the subgrant to track the effectiveness of the use of funds provided. Each report shall describe each type of project and/or other eligible activities carried out using the subgrant and the duration of the subgrant. Eligible Entities may add additional reporting requirements or increase the frequency of reporting with the approval of the Assistant Secretary and must make all subgrantee reports available to NTIA upon request. In the case of a broadband infrastructure project, the report must, at minimum:

1. Include a list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
2. Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);
3. Identify whether each address or location is residential, commercial, or a community anchor institution;
4. Describe the types of facilities that have been constructed and installed;
5. Describe the peak and off-peak actual speeds of the broadband service being offered;
6. Describe the maximum advertised speed of the broadband service being offered;
7. Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
8. List all interconnection agreements that were requested, and their current status;
9. Report the number and amount of contracts and subcontracts awarded by the subgrantee disaggregated by recipients of each such contract or subcontracts that are MBEs or WBEs;

10. Include any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;
11. Include an SF-425, Federal Financial Report and meet the requirements described in the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports;
12. For projects over \$5,000,000 (based on expected total cost):
 - a. A subgrantee may provide a certification that, for the relevant Project, all laborers and mechanics employed by contractors and subcontractors in the performance of such Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a Recipient must provide a project employment and local impact report detailing:
 - i. The number of contractors and sub-contractors working on the Project;
 - ii. The number of workers on the Project hired directly and hired through a third party;
 - iii. The wages and benefits of workers on the Project by classification; and
 - iv. Whether those wages are at rates less than those prevailing.¹⁰²
 - b. If a subgrantee has not provided a certification that a Project either will use a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)), then the subgrantee must provide a project workforce continuity plan, detailing:
 - i. Steps taken and to be taken to ensure the Project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the Project (as required in Section IV.C.1.e), including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor-management partnership training programs, and partnerships with entities like unions, community colleges, or community-based groups;

¹⁰² As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

- ii. Steps taken and to be taken to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Project;
- iii. Steps taken and to be taken to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (*e.g.*, OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;
- iv. The name of any subcontracted entity performing work on the Project, and the total number of workers employed by each such entity, disaggregated by job title; and
- v. Steps taken and to be taken to ensure that workers on the Project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market.

13. Comply with any other reasonable reporting requirements determined by the Eligible Entity to meet the reporting requirements established by the Assistant Secretary; and certify that the information in the report is accurate.

Subgrantees must maintain sufficient records to substantiate all information above upon request.

3. Provision of Information to Federal Communications Commission and United States Department of Agriculture.

The Assistant Secretary will provide the information collected under Section I.E.2 of this NOFO, and such other Program information as is necessary, to the Commission, the Department of Agriculture, the Department of the Treasury, and any other federal agency that funds broadband deployment, to be used, as applicable, in determining whether to award funds for the deployment of broadband under any program administered by those agencies.

F. Recipient Integrity and Performance Matters

In accordance with Section 872 of Public Law 110-417, as amended, *see* 41 U.S.C. § 2313, if the total value of a recipient's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of an award made under this NOFO, then the recipient shall be subject to the requirements specified in Appendix XII to 2 C.F.R. Part 200,¹⁰³ for maintaining the currency of information reported to SAM that is made available in the Federal Awardee Performance and Integrity Information System (FAPIIS) about certain civil, criminal, or administrative proceedings involving the recipient.

¹⁰³ *See* 2 C.F.R. Part 200, Appendix XII, *available at* <http://go.usa.gov/cTBwC>.

G. Audit Requirements

2 C.F.R. Part 200, Subpart F, adopted by the Department of Commerce through 2 C.F.R. § 1327.101 requires any non-federal entity that expends federal awards of \$750,000 or more in the recipient's fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Subpart. Additionally, unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (*e.g.*, commercial entities) that expend \$750,000 or more in grant funds during their fiscal year must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards; or (ii) a program-specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Eligible Entities and its subgrantees are reminded that NTIA, the Department of Commerce Office of Inspector General, or another authorized federal agency may conduct an audit of an award at any time.

H. Federal Funding Accountability and Transparency Act of 2006

In accordance with 2 C.F.R. Part 170, all recipients of a federal award made on or after October 1, 2010, are required to comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). In general, all recipients are responsible for reporting sub-awards of \$30,000 or more. In addition, recipients that meet certain criteria are responsible for reporting executive compensation. Applicants must ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.¹⁰⁴

VIII. Federal Awarding Agency Contact(s)

Please direct programmatic inquiries to:

Evan Feinman

Director of BEAD

Office of Internet Connectivity and Growth

National Telecommunications and Information Administration

U.S. Department of Commerce

1401 Constitution Avenue, NW

Washington, DC 20230

Phone: (202) 482-2048

Email: BEAD@ntia.gov

Please direct grant management inquiries to:

Scott McNichol

NIST Grants Officer

¹⁰⁴ See OMB, Requirements for Federal Funding Accountability and Transparency Act Implementation, Interim final guidance to agencies with opportunity to comment, 75 FR 55663 (Sept. 14, 2010), available at <http://go.usa.gov/hKnQ>.

Grants Management Division
National Institute of Standards and Technology
325 Broadway
Boulder, CO 80305
Phone: (301) 975-8449
Email: scott.mcnichol@nist.gov

Please direct media inquiries to:

Stephen F. Yusko
Public Affairs Specialist
Office of Public Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4897
Washington, DC 20230
Phone: (202) 482-7002
Email: press@ntia.doc.gov

IX. Other Information

This Section details information regarding topics including audit and reporting requirements, mandatory transparency, accountability, and oversight measures, and consequences associated with the unauthorized use of BEAD Program funds.

A. Transparency

The Infrastructure Act contains robust reporting requirements for Eligible Entities and subgrantees, and requires NTIA, the Commission, and other agencies to coordinate to make information regarding federal broadband funding, low-cost plans, and other aspects of the BEAD Program readily available to and understandable by the public. NTIA will fulfill its obligations to the fullest extent possible. Recipients of U.S. Department of Commerce and NTIA grants also should be cognizant of the access to records requirements set forth at 2 C.F.R. § 200.337.

B. Protected and Proprietary Information

Eligible Entities and subgrantees acknowledge and understand that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance, and other reports submitted by either entity, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs and for statistical purposes. For this purpose, information and data may be accessed, reviewed, and evaluated by Department of Commerce employees, other federal employees, federal agents and contractors, and/or by non-federal personnel, all of whom enter into appropriate confidentiality and nondisclosure agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, Eligible Entities and subgrantees are expected to support Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and

by cooperation with the Department of Commerce and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), Eligible Entities and subgrantees are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.

NTIA will protect confidential and proprietary information from public disclosure consistent with applicable law, including the Trade Secrets Act, as amended (18 U.S.C. 1905) and the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*). In the event that a submission contains information or data deemed to be confidential commercial information or that otherwise should not be publicly disclosed, that information should be identified, bracketed, and marked as Privileged, Confidential, Commercial or Financial Information. Based on these markings, the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law.

Additionally, some of the information submitted in the course of applying for funding under this Program, or provided in the course of its grant management activities, may be considered law enforcement sensitive or otherwise important to national security interests. This may include threat, risk, and needs assessment information, and discussions of demographics, transportation, public works, and industrial and public health infrastructures. In the event that a submission contains such information or data, that information should be identified, bracketed, and marked appropriately. Based on these markings, the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law. The Eligible Entity and subgrantee should be familiar with the regulations governing Protected Critical Infrastructure Information (6 C.F.R. Part 29) and Sensitive Security Information (49 C.F.R. Part 1520), as these designations may provide additional protection to certain classes of homeland security information.

In addition to the public disclosure requirements of this program, the Eligible Entity is encouraged to consult its own laws and regulations regarding the release of information, which should be considered when reporting sensitive matters in the grant application. The Eligible Entity may consult with NTIA regarding concerns or questions about the release of information or how omitting sensitive information could impact NTIA's assessment of the Eligible Entity's application.

C. Funding Availability and Limitation of Liability

Funding for the Program is contingent upon the continued availability of appropriations. Publication of this NOFO does not oblige NTIA, NIST or the Department of Commerce to award any specific project or other eligible activity or to obligate any available funds. NTIA will recommend for funding only projects and other eligible activities that are deemed likely to achieve the BEAD Program goals and for which funds are available.

D. Third Party Beneficiaries

The BEAD Program is not intended to and does not create any rights enforceable by third party beneficiaries.

E. Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this NOFO. However, at the discretion of the Assistant Secretary, NTIA, upon its own initiative or when requested, may waive the provisions in this NOFO. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the circumstances for the request.

F. Paperwork Reduction Act and Administrative Procedures Act

Section 60102(o) specifically exempts the BEAD Program from the requirements of the Paperwork Reduction Act (44 U.S.C. § 3506) and the Administrative Procedures Act.

G. Transparency, Accountability, And Oversight Required

1. Generally

NTIA, Eligible Entities, and subgrantees each have a critical role to play in ensuring that the BEAD Program is implemented in a manner that ensures transparency, accountability, and oversight sufficient to, among other things:

1. Minimize the opportunity for waste, fraud, and abuse;
2. Ensure that recipients of grants under the Program use grant funds to further the overall purpose of the Program in compliance with the requirements of the Infrastructure Act, this NOFO, 2 C.F.R. Part 200, the terms and conditions of the award, and other applicable law; and
3. Allow the public to understand and monitor grants and subgrants awarded under the Program.

To that end, NTIA and Eligible Entities shall:

1. Conduct such audits of grantees and subgrantees as are necessary and appropriate, including audit requirements described in Section VII.G. Eligible Entities shall report the full results of any audits they conduct to the appropriate Federal Program Officer.
2. Develop monitoring plans, subject to the approval of the Assistant Secretary, which may include site visits or desk reviews, technical assistance, and random sampling of compliance requirements.
3. Impose specific conditions on grant awards designed to mitigate the risk of nonperformance where appropriate.

Each Eligible Entity and/or subgrantee shall, as appropriate:

1. Comply with the reporting requirements set forth in Section I.E of this NOFO.

2. Comply with the obligations set forth in 2 C.F.R. Part 200 and the Department of Commerce Financial Assistance Standard Terms and Conditions.
3. Establish and widely publicize telephone numbers and email addresses for the Eligible Entity's Office of Inspector General (or comparable entity) or subgrantees' internal ethics office (or comparable entity) for the purpose of reporting waste, fraud or abuse in the Program. Eligible Entities and subgrantees shall produce copies of materials used for such purpose upon request of the Federal Program Officer.

2. U.S. Department of Commerce Office of Inspector General

The U.S. Department of Commerce Office of Inspector General (OIG) seeks to improve the efficiency and effectiveness of the Department's programs, including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department activities, including grants, cooperative agreements, loans, and contracts.

a. Disclosures

Recipients of financial assistance originating from the U.S. Department of Commerce, including NTIA, shall timely disclose, in writing, to the OIG and awarding agency, whenever, in connection with the award, performance, or closeout of this grant or sub-award thereunder, the recipient has credible evidence that a principal, employee, agent, or sub-recipient has committed:

1. A violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
2. A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

b. Reporting

The OIG maintains a hotline to receive allegations of fraud, waste, or abuse. To report such allegations, please visit <https://www.oig.doc.gov/Pages/Hotline.aspx>. Upon request, the OIG will take appropriate measures to protect the identity of any individual who reports misconduct, as authorized by the Inspector General Act of 1978, as amended. Reports to the OIG may also be made anonymously.

3. Whistleblower Protection

Recipients, sub-recipients, and employees working on this grant award will be subject to the whistleblower rights and remedies established under 41 U.S.C. § 4712.

An employee of a recipient or sub-recipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of: gross mismanagement of a federal contract or award; a gross waste of federal funds; an abuse of authority (*i.e.*, an arbitrary and capricious exercise of authority that is inconsistent with the mission of NTIA or the U.S. Department of Commerce or the successful

performance of a contract or grant awarded by NTIA or the Department) relating to a federal contract or award; a substantial and specific danger to public health or safety; or a violation of a law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The recipient or sub-recipient shall inform its employees and contractors, in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described above and at <https://www.oig.doc.gov/Pages/Whistleblower-Protection-Program.aspx>.

4. Enforcement

NTIA shall take enforcement action against Eligible Entities and, if necessary, subgrantees, and Eligible Entities shall take enforcement action against subgrantees, as necessary and appropriate:

1. A subgrantee that fails to comply with any requirement under Section 60102 of the Infrastructure Act or this NOFO shall be required to return up to the entire amount of the subgrant to the Eligible Entity, at the discretion of the Eligible Entity or the Assistant Secretary.
2. If a subgrantee fails to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act, the Assistant Secretary may take corrective action, including recoupment of funds from the subgrantee.
3. NTIA and Eligible Entities may also enforce applicable rules and laws by imposing penalties for nonperformance, failure to meet statutory obligations, or wasteful, fraudulent, or abusive expenditure of grant funds. Such penalties include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation/clawback of funds, and debarment of organizations and/or personnel.

H. Unauthorized Use of Funds.

To the extent that the Assistant Secretary or the Inspector General of the Commerce Department determines that an Eligible Entity or subgrantee has expended grant funds received under the BEAD Program in violation of the requirements set forth in Section 60102 of the Infrastructure Act, 2 C.F.R. Part 200, the terms and conditions of the award, or other applicable law, the Assistant Secretary shall, if appropriate, recover the amount of funds that were so expended.

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT C

INTERNET FOR ALL

Broadband Equity, Access, and Deployment (BEAD) Program

Initial Proposal Guidance



U.S. Department of Commerce
National Telecommunications and Information Administration

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Introduction

This document is intended solely to assist recipients in better understanding the Broadband Equity, Access, and Deployment (BEAD) Program and the requirements set forth in the Notice of Funding Opportunity (NOFO) for this program. This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific application requirements set forth in the NOFO. In all cases, statutory and regulatory mandates, and the requirements set forth in the NOFO, shall prevail over any inconsistencies contained in this document.

Current Status of BEAD Program

NTIA issued the Broadband Equity, Access, and Deployment (BEAD) Program [Notice of Funding Opportunity](#) (NOFO) in May 2022, describing the requirements under which it will award grants for the Program. The BEAD Program provides eligible states, territories, and the District of Columbia (“Eligible Entities”) the opportunity to receive federal grant funding to expand high-speed Internet access by funding planning, infrastructure deployment, and adoption programs. Currently in the BEAD Program timeline, Eligible Entities have submitted their Letters of Intent (LOIs), have received Initial Funds, and may have started developing and submitting their Five-Year Action Plans.

Through the Five-Year Action Plans, an Eligible Entity will establish its broadband goals and priorities, and provide a comprehensive needs assessment. The Five-Year Action Plans will present foundational information that will inform and be complementary to the Initial and Final Proposals. Eligible Entities that have already submitted their Five-Year Action Plans may be able to directly copy a limited number of Requirements from their Five-Year Action Plans into their Initial Proposals, as outlined in the BEAD NOFO and within this document. This Initial Proposal Guidance document aims to assist Eligible Entities to complete their Initial Proposals by providing specific guidance, examples, and additional resources necessary to fulfill each Initial Proposal Requirement according to the requirements set by the Assistant Secretary in the BEAD NOFO.



IMPORTANT

BEAD Five-Year Action Plan guidance is separate from Initial Proposal guidance and can be found on the [BroadbandUSA website](#).

Overview of the Initial Proposal Requirements

The Initial Proposal is the “first draft” of an Eligible Entity’s Final Proposal for BEAD grant funding, and, among other things, should explain how States and Territories will ensure that every resident has access to a reliable, affordable, and high-speed broadband connection, drawing on all funding available to accomplish this goal, including but not limited to BEAD Program funds. The BEAD NOFO, Section IV.B.5.b outlines 19 Requirements of the Initial

Proposal. Section IV.C.2.c.i also requires Eligible Entities to submit a middle-class affordability plan, which will henceforth be considered the twentieth requirement of the Initial Proposal.

After the publication of the updated [National Broadband Map](#) in June 2023, Eligible Entities will receive a Notice of Available Amounts. An Eligible Entity will have 180 days from receipt of their Notice of Available Amounts to submit a completed Initial Proposal and, if applicable, an Initial Proposal Funding Package to the Assistant Secretary. Eligible Entities should not wait until the Notice of Available Amounts is issued to begin preparing their Initial Proposals. Eligible Entities are encouraged to submit Initial Proposals as early as possible within the 180-day window. The Assistant Secretary reserves the right to extend the deadline for submissions if requested; however, the Assistant Secretary will be reluctant to grant an extension except when extenuating circumstances demonstrate that additional time will support the overall goals of the BEAD Program.



IMPORTANT

While the Middle-Class Affordability Plan is not aligned to a specific Initial Proposal Requirement outlined in Section IV.B.5 of the BEAD NOFO, it is required as part of Initial Proposal submissions, and will be considered Requirement 20.

As outlined in the BEAD NOFO, NTIA will provide technical assistance to Eligible Entities throughout the BEAD Program.

If you have any questions or require technical assistance in the development of the Initial Proposal, please reach out to your assigned Federal Program Officer.

The Assistant Secretary will publish resources on the [BroadbandUSA website](#), including an online template, to help Eligible Entities prepare their Initial Proposals. The template will include prompts where Eligible Entities must provide narratives, structured data, and certifications to meet the requirements of the Initial Proposal. This template will contain the same elements and questions as the online form required to submit the Initial Proposal via the NTIA Grants Portal; therefore, it is **strongly encouraged** that Eligible Entities use the template to draft the Initial Proposal offline. Eligible Entities can also use this template to post their Initial Proposal for public comment prior to submission.

Initial Proposal Structure

BEAD is a unique federal grant program, and NOFO guidance allows flexibility in the submission and review processes. Eligible Entities will submit their Initial Proposals via the NTIA Grants Portal in two volumes to reduce the delays in awarding funding and to support

iterative reviews. The volumes approach will enable Eligible Entities to proceed with subsequent phases of the BEAD Program more quickly. For example, NTIA’s review and approval of Volume I prior to the other Initial Proposal requirements will allow Eligible Entities to begin conducting their Challenge Processes before *approval* (but after submission) of the full Initial Proposal.

The contents of each volume and the separate Initial Funding Proposal Funding Request (IPFR) are outlined in Table 1 below.


Table 1: Initial Proposal and IPFR Requirements by Document

| Document | Contents |
|-----------------------------------|---|
| Volume I of the Initial Proposal | <ul style="list-style-type: none"> Existing Broadband Funding (Requirement 3) – <i>may be satisfied by completion of the Five-Year Action Plan</i> Unserved and Underserved Locations (Requirement 5) Community Anchor Institutions (CAIs) (Requirement 6) Challenge Process (Requirement 7) |
| Volume II of the Initial Proposal | <ul style="list-style-type: none"> Objectives (Requirement 1) – <i>may be satisfied by completion of the Five-Year Action Plan</i> Local, Tribal, and Regional Broadband Planning Coordination (Requirement 2) – <i>may be satisfied by completion of the Five-Year Action Plan</i> Local Coordination (Requirement 4) Deployment Subgrantee Selection (Requirement 8) Non-deployment Subgrantee Selection (Requirement 9) Eligible Entity Implementation Activities (Requirement 10) Labor Standards and Protections (Requirement 11) Workforce Readiness (Requirement 12) Minority Business Enterprises (MBEs)/ Women’s Business Enterprises (WBEs)/ Labor Surplus Firms Inclusion (Requirement 13) Cost and Barrier Reduction (Requirement 14) Climate Assessment (Requirement 15) Low-Cost Broadband Service Option (Requirement 16) Middle Class Affordability (Requirement 20)¹ Use of 20 Percent of Funding (Requirement 17) Eligible Entity Regulatory Approach (Requirement 18) Certification of Compliance with BEAD Requirements (Requirement 19) |
| Initial Proposal Funding Request | <ul style="list-style-type: none"> Project Plan/Narrative Consolidated Budget Form |

Volume I will describe the Eligible Entity’s plan for the Challenge Process and includes Existing Broadband Funding (Requirement 3), Unserved and Underserved Locations (Requirement 5), Community Anchor Institutions (Requirement 6), and Challenge Process (Requirement 7). **NTIA strongly encourages Eligible Entities to develop and submit Volume I first.** This sequencing is critical for Eligible Entities seeking to proceed quickly with

¹ The Middle-Class Affordability Plan is not aligned to a specific Initial Proposal requirement listed in section IV.B.5 of the NOFO. However, section IV.C.2.c.i of the NOFO does require that Eligible Entities submit this plan as part of their Initial Proposal submissions.

completing pre-requisite Challenge Process activities and the Subgrantee Selection Process (in sequence) prior to submitting their Final Proposals. Once submitted, the Assistant Secretary may either approve the Volume I proposed by the Eligible Entity or notify the Eligible Entity of deficiencies in the Volume I, provide the Eligible Entity with an opportunity to resubmit the Volume I, and establish a deadline for resubmission. Once an Eligible Entity makes any required modifications, the Assistant Secretary will approve Volume I, either in conjunction with, or prior to, approval of the Eligible Entity’s full Initial Proposal. Eligible Entities may also refer to the [BEAD Challenge Process Policy Notice](#) for additional guidance on Volume I and may choose to adopt the BEAD Model Challenge Process in whole or in part to expedite the development, submission, and approval of Volume I.

 **IMPORTANT**

NTIA **highly encourages** Eligible Entities to submit their Initial Proposals early to accelerate the review process and enable quicker access to funding.

Volume II will include the remaining Initial Proposal Requirements, Requirements 1, 2, 4 and 8-20. Eligible Entities are encouraged to begin drafting Volume II prior to the Notice of Available Funding Amounts and opening of the NTIA Grants Portal submission module. Once Volume I is approved and Volume II is submitted, the Eligible Entity may begin executing their Challenge Process.

Last, the optional Initial Proposal Funding Request is a separate document that Eligible Entities are only required to submit if they are seeking funding at this stage of the BEAD program. It includes requirements set forth by NIST to request BEAD funds. The Initial Proposal Funding Package includes two Requirements: Project Plan/Narrative and a Consolidated Budget Form. The NOFO does not require an Eligible Entity to submit an Initial Proposal Funding Request with its Initial Proposal.. Under the Infrastructure Act, if the Assistant Secretary approves an Initial Proposal, NTIA will make 20 percent of an Eligible Entity’s funding allocation available to it for allowable expenses listed in the Initial Proposal related to programmatic costs, such as the execution of the Challenge Process and Subgrantee Selection Process; broadband deployment projects, subject to the limitations related to high poverty areas for deployment prior to approval of the Final Proposal; digital equity projects subject to the requirement of demonstrating sufficient funding to serve all unserved and underserved areas; and costs related to the administration of the Eligible Entity’s grant (not to exceed 2 percent).²

² An Eligible Entity may request less than 20 percent of its funding allocation if it so chooses. All individual costs, and the total amount requested, must be substantiated in the Eligible Entity’s Initial Proposal.

Eligible Entities may request more than 20 percent of funding before the Final Proposal if they

demonstrate a need and develop a comprehensive plan for using the additional funds. Eligible Entities may also request the full amount (100 percent) of their funding allocations in the Initial Proposal round, if they demonstrate a specific need, such as but not limited to, a state requirement (e.g., anti-deficiency clause) that would require the obligation of all funding prior to conducting the Subgrantee



IMPORTANT

An Eligible Entity requesting funding must **submit its Initial Proposal Funding Request along with Volume II** for Assistant Secretary approval. It is **highly recommended** that Eligible Entities request funding to accelerate their access and use of funds prior to approval of the Final Proposal.

Selection Process. Additional information on the funding scenarios is in the guidance for [Requirement 17: Use of 20 Percent of Funding](#).

Initial Proposal Development and Public Comment Period

Eligible Entities are strongly encouraged to utilize the support of their assigned Federal Program Officer (FPO) for informal reviews and feedback while drafting the Initial Proposal before it is published for public comment. NTIA encourages Eligible Entities to utilize the template format when making their Initial Proposals available for public comment prior to submission to NTIA. This format will facilitate the public’s review of Volumes I and II of the Initial Proposal. Eligible Entities may choose to post their Volumes I and II at the same time, or separately, but each volume must be available for public comment for no less than 30 days.



IMPORTANT

Volumes I and II can be posted for public comment prior to the Notice of Available Amounts. NTIA requires a public comment period of at least 30 days for Volumes I and II.

The public comment period is intended to promote transparency by gathering feedback from stakeholders. Eligible Entities must conduct outreach and engagement activities to encourage broad awareness and participation during the public comment period, particularly among Tribal Governments, local community organizations, unions and worker organizations, and other underrepresented groups. Eligible Entities may utilize outreach mechanisms including, but not limited to, public meetings, informational brochures, local media, relevant social media channels, and direct mail. Eligible Entities must provide a high-level summary of the comments received during the public comment period and demonstrate how the Eligible Entity incorporated feedback in its Initial Proposal submission, if applicable.

Initial Proposal Submission and Review

Following the public comment period, Eligible Entities must submit the Initial Proposal via the [NTIA Grants Portal](#). Eligible Entities may include waiver requests when submitting their Initial Proposal. NTIA will review the Initial Proposal in sequence by volume. Each submission will be reviewed by the NTIA Office of Internet Connectivity and Growth prior to being sent to the Assistant Secretary for final approval. The Assistant Secretary may approve the Initial Proposal by volume, with an Eligible Entity’s Volume I approved before Volume II. This approach will allow the Eligible Entity to proceed with initiating their Challenge Process while NTIA reviews the remaining Requirements of its Initial Proposal.



IMPORTANT

NTIA will provide additional guidance to Eligible Entities on utilizing the NTIA Grants Portal to submit and, if necessary, correct deficiencies within their Initial Proposals prior to the Notice of Funding Amounts.

When drafting Initial Proposals, Eligible Entities:

- Must ensure the Initial Proposal proposes uses of funds that:
 - Comply with Section 60102(f) of the Infrastructure Act;
 - Are in the public interest; and
 - Effectuate the purpose of the Infrastructure Act; and
- Should ensure the Initial Proposal:
 - Provides a layperson a full understanding of the Eligible Entity goals;
 - Communicates, in its entirety, all material steps in the process of ensuring that every resident of the Eligible Entity has access to a reliable, affordable, high-speed broadband connection, utilizing all funding available to be brought to bear to accomplish this goal, including but not limited to BEAD Program funds;
 - Identifies and describes each significant decision point; and
 - Articulates the manner in which the Eligible Entity will determine the proposed course of action at each decision point.

Initial Proposal and State Digital Equity Plan Alignment

The State Digital Equity Planning Grant (SDEPG) and State Digital Equity Capacity Grant (SDECG) Programs were authorized by the Infrastructure Investment and Jobs Act of 2021 (November 15, 2021), also known as the Bipartisan Infrastructure Law. These Programs provide new federal funding for grants to states, territories, and tribes to further advance federal goals relating to digital equity and digital inclusion.

It is anticipated that each Eligible Entity participating in the BEAD Program will concurrently participate in the SDEPG Program. There are opportunities to integrate digital inclusion activities to both satisfy requirements of the State Digital Equity Plan and the BEAD Initial Proposal. For example, Requirement 9 of the Initial Proposal allows an Eligible Entity that can demonstrate it has a plan for bringing affordable, high-speed broadband service to all unserved and underserved locations within its jurisdiction to also allocate funding to non-deployment

activities, including the implementation of an Eligible Entity’s digital equity plans. Thus, a non-deployment activity is to supplement, not duplicate, Planning and Capacity Grant funds received by the Eligible Entity in connection with Digital Equity Act of 2021.

Additionally, an Eligible Entity that is also relying on funding from the SDEPG should coordinate the stakeholder engagement that they conduct for the purposes of that plan with the stakeholder engagement conducted for the development of the Initial Proposal. For example, for both efforts, an Eligible Entity should assemble comprehensive lists of stakeholders, identify overlaps, and coordinate or combine outreach to those stakeholders through combined listening sessions, surveys, and site visits. This will help limit confusion and reduce the burden on mutually relevant stakeholders. Further, the Initial Proposal must be informed by collaboration with Tribal entities as applicable. It is the responsibility of the Eligible Entity under the BEAD Program and a state’s Administering Entity for the State Digital Equity Planning Grant Program to understand and address the broadband needs of Tribal and Native entities.

How to use the Initial Proposal Guidance and Template

The following pages outline a proposed template and associated guidance to meet the requirements of the Initial Proposal. The proposed structure for the Initial Proposal includes two volumes:

- [Volume I \(Requirements 3, 5 - 7\)](#), and
- [Volume II \(Requirements 1, 2, 4, 8 - 20\)](#).

Eligible Entities that are requesting use of initial 20 percent of funding are required to submit an Initial Proposal Funding Package. Additional guidance, training, and FAQs on the Initial Proposal Funding Package will be provided separately at a later date.

The appendix includes a list of the Initial Proposal’s [20 Requirements](#), as written in the BEAD NOFO, Section IV.B.5.b.

The attachments include:

- The template for the Initial Proposal, and
- Templates for structured data elements to be submitted with the Initial Proposal.

The guidance—and template—are structured to align with the Initial Proposal’s 20 Requirements. As such, the sections of the guidance with these requirements include call-out boxes with the NOFO language, for reference. The guidance also includes an overview of the purpose of each proposed section, importance of the content for the success of the program, and other optional information or data that the Eligible Entity may consider when developing its Initial Proposal.

Volume I (Requirements 3, 5 – 7)

Initial Proposal Volume I Guidance Introduction

An Eligible Entity may find an outline of the submission requirements for Initial Proposal Volume I in the BEAD NOFO. However, much of the guidance and additional substantive requirements outlined in this document are derived from the [NTIA BEAD Challenge Process Policy Notice](#) and the [NTIA BEAD Model Challenge Process](#).

Existing Broadband Funding (Requirement 3)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands.⁴¹

⁴¹ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

An Eligible Entity that has already completed its Five-Year Action Plan may directly copy Existing Programs (Requirement 3 in the Five-Year Action Plan) into the Initial Proposal to satisfy this Requirement. An Eligible Entity that is still drafting its Five-Year Action Plan must ensure that its responses to this Requirement in the Initial Proposal and the Five-Year Action Plan are consistent.

The purpose of this section is to identify existing broadband efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to minimize duplication of efforts or funding. Documenting the current state of broadband efforts is important to understand current resources and relationships, identify gaps and barriers that may exist, and inform and improve future planning and implementation efforts to deploy broadband and close the digital divide.

1.1.1 Attachment: As a required attachment, submit the file identifying sources of funding, a brief description of the broadband deployment and other broadband-related activities, the total funding, the funding amount expended, and the remaining funding amount available. Eligible Entities may copy directly from their Five-Year Action Plans.

To identify existing sources of funding, an Eligible Entity is required to upload a file identifying funding source(s), their purpose, the total funding amount, the expended funding amount, and the remaining funding amount. The file must be a five-column file. Examples of funding include, but are not limited to, other NTIA competitive grant programs, USDA telecom and broadband programs, American Rescue Plan funding, Treasury funding, and other federal, state, and local government programs.

The Eligible Entity may consider resources, such as [USASpending.gov](#) to populate this and identify funding sources being spent within a State or Territory. The funding could be stated as a sum for each of the funding programs. The Eligible Entity must know of individual projects to know where the unserved/underserved locations remain.

In addition to the relevant requirements above, the Eligible Entity may also choose to include information or resources related to broadband deployment and digital inclusion, including existing state policies, mapping, or other technological resources used to inform broadband-related activities, studies and best practices, or outreach endeavors.

To download a copy of the NTIA Template for Existing Broadband Funding, please see the file named “BEAD Initial Proposal_Volume I_Broadband Funding Sources Template.xlsx”

Unserved and Underserved Locations (Requirement 5)

Relevant Requirements from the NOFO, pages 31:

Identify each unserved location and underserved location under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands, using the most recently published Broadband DATA Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the Broadband DATA Maps used for such identification.

1.2.1 Attachment: As a required attachment, submit one CSV file with the location IDs of each unserved location including unserved locations in applicable Tribal Lands.

1.2.2 Attachment: As a required attachment, submit one CSV file with the location IDs of each underserved location including underserved locations in applicable Tribal Lands.

An Eligible Entity is required to identify each unserved and underserved location under its jurisdiction, including unserved and underserved locations in applicable Tribal Lands. To derive its list of unserved and underserved locations, an Eligible Entity must consult the latest version of the Federal Communication Commission (FCC)'s National Broadband Map. The Eligible Entity can do so through the BEAD Eligible Entity Planning Toolkit. The BEAD Eligible Entity Planning Toolkit, expected for release in Summer 2023, is a collection of NTIA-developed technology tools that, among other things, overlay multiple data sources to capture federal, state, and local enforceable commitments. For reference, the National Broadband Map can be accessed and downloaded at this link: <https://broadbandmap.fcc.gov/>.

To report the set of unserved and underserved locations identified, the Eligible Entity is required to upload two separate CSV files containing the location IDs of unserved and underserved locations. One CSV file must contain the location IDs of unserved locations (named "unserved.csv"), and the other CSV file must contain the location IDs of underserved locations (named "underserved.csv"). Both CSV files must be single-column files. For this question, the definition of reliable broadband service follows the BEAD NOFO definition (pg.15), without any changes in the list of technologies. The Eligible Entity must refer to [NTIA BEAD Challenge Process Policy Notice](#) Appendix A for additional guidance as needed.

In the file attachment, the Eligible Entity must follow the format of the NTIA template.

To download a copy of the NTIA Templates for Unserved and Underserved Locations, please see the files named "unserved.csv" and "underserved.csv"

1.2.3 Date Selection: Identify the publication date of the National Broadband Map that was used to identify the unserved and underserved locations.

The Eligible Entity will need to identify the publication date of the National Broadband Map to ensure that the most recently published National Broadband Map (as of the date of submission of the Initial Proposal) is used in identifying unserved and underserved locations. Only the first edition of the National Broadband Map in each month can be selected. The publication date of the National Broadband Map cannot predate submission of the Initial Proposal by more than 59 days, a timeframe designed to allow the Eligible Entity sufficient time to identify eligible locations from the National Broadband Map and submit the Initial Proposal.

Community Anchor Institutions (Requirement 6)

Relevant Requirements from the NOFO, page 31:

Describe how the Eligible Entity applied the statutory definition of the term “community anchor institution,” identified all eligible CAIs in its jurisdiction, identified all eligible CAIs in applicable Tribal Lands, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations.

1.3.1 Text Box: Describe how the statutory definition of “community anchor institution” (e.g., schools, libraries, health clinics) was applied, how eligible CAIs were identified, and how network connectivity needs were assessed, including the types of CAIs that the Eligible Entity intends to serve.

The identification of Community Anchor Institutions (CAIs) is essential to facilitate greater use of broadband service by vulnerable populations and to advance the goals of the BEAD program. Given the variability in the types of CAIs to be identified and served, it is important that an Eligible Entity uses consistent criteria in identifying CAIs and accurately assess the network connectivity needs for each institution. NTIA does not expect an Eligible Entity to identify an exhaustive list of every CAI in within its jurisdiction. However, to the best of its ability, an Eligible Entity must identify CAIs within its jurisdiction that lack access to 1 Gpbs symmetrical broadband.

In describing the process to identify eligible Community Anchor Institutions, the Eligible Entity must include:

1. A description of how the Eligible Entity applied the statutory definition of the term “community anchor institution.”
2. The Eligible Entity identified which categories of institutions that fall within broad categories of CAIs it considered but declined to classify as CAIs, including based on public comment.
 - a. The Eligible Entity provided a reasonable justification for declining to define the aforementioned categories of institutions as CAIs and explained why it determined those categories of institutions did not facilitate greater use of broadband service by vulnerable populations.
3. If the Eligible Entity identified one or more categories of CAI that are not specifically a “school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals,” the Initial Proposal provided a reasonable basis on which the Eligible Entity determined that each such category of CAI facilitates greater use of broadband service by vulnerable populations.

4. The Eligible Entity described how the Eligible Entity identified eligible CAIs in its jurisdiction, including eligible CAIs in applicable Tribal Lands.
5. The Eligible Entity describes how the Eligible Entity assessed the needs of eligible CAIs, including what types of CAIs it intends to serve.

To do so, an Eligible Entity should:

1. Document standardized **criteria used to include and exclude specific classes or types** of such institutions.
2. Outline the **definitions and sources** used to support the identification of CAIs and types of CAIs. The categories of CAIs identified may include, but not limited to, the following examples:



Schools: K-12 schools may include all K-12 schools participating in the FCC E-Rate program or that have an NCES (National Center for Education Statistics) ID in the categories “public schools” or “private schools”.



Libraries: Libraries may include all libraries that participate in the FCC E-Rate program as well as all member libraries, and their branches, of the American Library Association (ALA).



Health Clinic, Health Center, Hospital, or other Medical Providers: The list of health clinics, health centers, hospitals and other medical providers may include all institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier.



Public Safety Entities: Public safety entities may include fire houses, emergency medical service station, police station, among others. An Eligible Entity can obtain records of primary and secondary [Public Safety Answering Points \(PSAP\)](#) to determine the network connectivity needs of public safety organizations across the state.



Institutions of Higher Education: Institutions of higher education may include all institutions that have an NCES ID in the category “college,” including junior colleges, community colleges, universities, or other educational institutions.



Public Housing Organizations: Public housing organizations may be identified by contacting the [Public Housing Agencies \(PHAs\)](#) for the state or territory enumerated by the U.S. Department of Housing and Urban Development. The nonprofit organizations Public and Affordable Housing Research Corporation (PAHRC) and National Low-Income Housing

Coalition maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).



Community Support Organizations: Community support organizations may include any organization that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. An Eligible Entity can access a list of job training centers using the [American Job Center Finder](#). An Eligible Entity may also find senior center locations through the [National Council on Aging \(NCOA\)](#).

The Eligible Entity is also encouraged to draw on state, territorial, tribal, county/parish and municipal resources to identify additional types of eligible community anchor institution and include justification for including such type or instances of CAIs identified.

3. Engage relevant **government agencies or stakeholders** across the state or territory to better understand network connectivity needs:



Government Agencies: An Eligible Entity can compile data from agencies such as the Eligible Entity Department of Health and Human Services that maintains records on Eligible Entity-run health centers, or the Eligible Entity Department of Education or Procurement Offices that may collect and keep records of the broadband service available at CAIs across the Eligible Entity.



Nonprofit Organizations: An Eligible Entity can also reach out to nonprofit organizations, such as community support organizations that support elderly individuals or other vulnerable members of the population, to determine connectivity needs.



Umbrella Organizations: An Eligible Entity can conduct outreach to umbrella organizations that work with CAIs to gather information on the needs of their members and ensure network connectivity needs are being met.

An Eligible Entity can refer to the [NTIA BEAD Model Challenge Process](#) for example responses to **Section 1.3.1** An Eligible Entity may also refer to the [NTIA BEAD Challenge Process Policy Notice](#) Section 5.2 for additional guidance.

1.3.2 Attachment: As a required attachment, submit the CSV file (named “cai.csv”) that lists eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service, to the best of the Eligible Entity’s knowledge.

An Eligible Entity must include a list of each CAI location identified within the jurisdiction of the Eligible Entity, to the best of the Eligible Entity’s knowledge, including the National Broadband Map location ID (if applicable) and/or latitude and longitude for each eligible CAI in the data format in Appendix A. The Eligible Entity must complete all mandatory fields in the file named “cai.csv” as outlined in Appendix A of the [BEAD Challenge Process Policy Notice](#), including:

1. **Type:** Enumerated character identifying the type of CAI;
2. **Entity Name:** Official name of the CAI;
3. **Entity Number:** USAC assigned unique identifying number to each school or library that participates in the E-Rate program;
4. **CMS number:** The CMS certification number (CCN);
5. **FRN:** FCC registration number if applicable;
6. **Location ID:** The identifier for the broadband serviceable location from the BDC;
7. **Street Address:** Street number, street name, and any applicable prefix or suffix of the first address line (primary address) of the CAI;
8. **City:** Full name of the city, town, municipality, or census designated place associated with address;
9. **State or Territory:** Two-letter USPS abbreviation identifying the state or territory associated with address;
10. **Zip code:** Five-digit USPS ZIP code associated with address, including any leading zeros.
11. **Longitude:** Unprojected (WGS-84) geographic coordinate longitude in decimal degrees for the CAI, with a minimal precision of 6 decimal digits;
12. **Latitude:** Unprojected (WGS-84) geographic coordinate latitude in decimal degrees for the CAI, with a minimal precision of 6 decimal digits;
13. **Explanation:** For CAIs of type C, provide a brief explanation of how the institution facilitates greater broadband use and the population it serves, either as text or as a reference to a longer explanation accompanying the submission. For example, the submitter may define a set of sub-categories of CAI category C and describe how they meet the conditions;
14. **Broadband Need:** The broadband need on the CAI, denoted in Mbps download speeds.
15. **Broadband Availability:** The highest available broadband service speed of the CAI, denoted in Mbps download speeds.

The Eligible Entity must enter the address of the physical location of the Community Anchor Institutions, not the administrative location. For example, the address must describe the location of the school building, not that of the board of education administrative building.

An Eligible Entity is not expected to submit an exhaustive list of eligible community anchor institutions within their jurisdiction. However, submitting a list of community anchor institutions that is as complete as possible will expedite the review of eligible community anchor institutions during the challenge process.

To download a copy of the NTIA Template for CAIs, please see the file named “cai.csv”

Challenge Process (Requirement 7)

NTIA BEAD Model Challenge Process Adoption

1.4.1 Yes/No Box: Select if the Eligible Entity plans to adopt the NTIA BEAD Model Challenge Process for Requirement 7.



IMPORTANT:

An Eligible Entity may choose to adopt NTIA’s Model Challenge Process to meet NTIA’s requirements and expedite the approval process.

When designing its BEAD Challenge Process, an Eligible Entity will have access to the [NTIA BEAD Model Challenge Process](#). The goal of the NTIA BEAD Model Challenge Process is to provide Eligible Entities a baseline framework in the design of the challenge process. Eligible Entities are encouraged to review the NTIA pre-approved answers and adopt the NTIA BEAD Model Challenge Process.

The NTIA BEAD Model Challenge Process is expected to save Eligible Entities significant time when designing a robust and comprehensive challenge process. The NTIA BEAD Model Challenge Process will also provide Eligible Entities with the flexibility to adopt different modules for speed test and area challenge requirements, depending on the Eligible Entity’s preferences and technical capacity.

An Eligible Entity must select whether it plans to adopt the NTIA BEAD Model Challenge Process for Initial Proposal Requirement 7. The Eligible Entity should refer to “How to Use the NTIA BEAD Model Challenge Process” section of the NTIA BEAD Model Challenge Process if choosing to adopt the model for Initial Proposal Requirement 7.

Looking Ahead

Eligible Entities will be required to submit the results of their challenge process to NTIA for review and approval.

An Eligible Entity must copy and paste the Model text into the appropriate response textbox and complete all required additional information (indicated in blue text throughout the Model) if adopting the NTIA BEAD Model Challenge Process.

An Eligible Entity may also choose to adopt the optional modules if choosing to accept speed tests, conduct area challenges, or make modifications to reflect data not present in the National Broadband Map.

Modifications to Reflect Data Not Present in the National Broadband Map

1.4.2 Text Box: If applicable, describe any modifications to classification of broadband serviceable locations in the Eligible Entity’s jurisdiction as “served,” “underserved,” or “unserved,” and provide justification for each modification.

An Eligible Entity may modify the classification of locations identified as eligible for funding on the National Broadband Map subject to the approval of the Assistant Secretary. If an Eligible Entity plans to modify the classification of locations identified as eligible for funding, a description of the proposed modifications and associated justification must be included in the description.

An Eligible Entity that chooses to adopt the NTIA BEAD Model Challenge Process may adopt one of the optional modules outlined in the NTIA BEAD Model Challenge Process:

1. Optional module 1: No modifications

- The broadband office will make no modifications to the National Broadband Map’s list of unserved and underserved locations.

2. Optional module 2: Digital Subscriber Line (DSL) modifications

- The broadband office will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is “served”) delivered via DSL as “underserved.”

3. Optional module 3: Speed test modifications

- The broadband office will treat as “underserved” locations that the National Broadband Map shows to be “served” if rigorous speed test methodologies (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module) demonstrate that the “served” locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream.

An Eligible Entity must copy and paste the chosen module text into the appropriate response box. The Eligible Entity should refer to [NTIA BEAD Challenge Process Policy Notice](#) Section 6.1 for additional guidance.

Deduplication of Funding

Relevant Requirements from the NOFO, pages 36 – 37:
 3. In identifying an Unserved Service Project or Underserved Service Project, an Eligible Entity may not treat as “unserved” or “underserved” any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband as of the date that the challenge process described in Section IV.B.6 of this NOFO is concluded.

NOFO Footnote 52, pages 36 – 37:
 An enforceable commitment for the deployment of qualifying broadband to a location exists when the commitment to deploy qualifying broadband service to that location was made as a condition of:

- Any grant, loan, or loan guarantee provided by an Eligible Entity to the provider of broadband service;
- Any grant, loan, or loan guarantee provided by the Secretary of Agriculture under:
 - Title VI of the Rural Electrification Act of 1936 (7 U.S.C. § 950bb et seq.), including: any program to provide grants, loans, or loan guarantees under Sections 601 through 603 of that Act (7 U.S.C. § 950bb et seq.); and the Community Connect Grant Program established under Section 604 of that Act (7 U.S.C. § 950bb-3); or
 - The broadband loan and grant pilot program known as the “Rural eConnectivity Pilot Program” or the “ReConnect Notice of Funding Opportunity Program” authorized under Section 779 of division A of the Consolidated Appropriations Act, 2018 (Public Law 115-141; 132 Stat. 348);
 - Any high-cost universal service support provided under Section 254 of the Communications Act of 1934 (47 U.S.C. § 254), except that in the case of the Rural Digital Opportunity Fund, a location will be considered to have an

enforceable commitment for qualifying broadband only (a) after the Federal Communications Commission has announced in a Public Notice that RDOF support for that location is ready-to-authorize or is authorized, and (b) the provider does not rely on satellite technologies to deliver service;

- Any grant provided under Section 6001 of the American Recovery and Reinvestment Act of 2009 (47 U.S.C. § 1305);
- Amounts made available for the Education Stabilization Fund established under the heading “DEPARTMENT OF EDUCATION” in title VIII of division B of the CARES Act (Public Law 116-136; 134 Stat. 564), and funded under the CARES Act, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act), and the American Rescue Plan Act (ARP Act);
- Amounts made available for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) established under the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4) (ARPA);
- Amounts made available for the Capital Projects Fund established by Section 604 of the Social Security Act, as added by Section 9901 of ARPA; or
- Any other grant, loan, or loan guarantee provided by, or funded in whole or in part by, the federal government or a State or Territorial government for the provision of broadband service.

Eligible Entities may fund Unserved Service Projects and Underserved Service Projects that include locations in an area that has an enforceable commitment for the deployment of qualifying broadband to less than 100 percent of the locations in that area. See, e.g., 47 C.F.R. § 54.308(a). Eligible Entities must, however, seek to identify as part of the challenge process described in Section IV.B.6 of this NOFO those unserved locations and underserved that will not be served by qualifying broadband service as a result of such enforceable commitment, and use that information in determining whether to treat each location as unserved or underserved within the relevant area.

Further, for unserved locations and underserved on Tribal Lands, a commitment that otherwise meets the criteria set forth above shall not constitute an enforceable commitment for the deployment of qualifying broadband unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.

1.4.3 Yes/No Box: Select if the Eligible Entity plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.



IMPORTANT:

Eligible Entities are strongly encouraged to use the BEAD Eligible Entity Planning Toolkit (expected release Summer 2023), which is a collection of NTIA-developed technology tools that will overlay multiple data sources to capture enforceable commitments.

An Eligible Entity must select whether it plans to use the BEAD Eligible Entity Planning Toolkit (expected to be released in Summer 2023) to identify existing federal enforceable commitments within its jurisdiction. The BEAD Eligible Entity Planning Toolkit is a collection of NTIA-developed technology tools that, among other things, overlays multiple data sources to capture federal, state, and local

enforceable commitments. The BEAD Eligible Entity Planning Toolkit is intended to help Eligible Entities quickly and efficiently identify existing federal enforceable commitments.

1.4.4 Text Box: Describe the process that will be used to identify and remove locations subject to enforceable commitments.

An Eligible Entity must describe the process used to identify and remove locations subject to enforceable commitments, and outline whether the Eligible Entity plans to use the BEAD Eligible Entity Planning Toolkit. If the Eligible Entity does not plan to use the BEAD Eligible Entity Planning Toolkit, the Eligible Entity must also include the following information:

1. A description of the technology or tool to be used for deduplication, including explanation of its capacity to aggregate multiple data sources to create an accurate list of existing federal, state, and local commitments.
2. Assurance that the process to identify and remove enforceable commitments will analyze, at a minimum:
 1. All programs included in the Broadband Funding Map published by FCC (pursuant to the Infrastructure Act § 60105), as of the date of the deduplication of funding process. These may include:
 - Programs administered by NTIA, including the Broadband Infrastructure Program, the Tribal Broadband Connectivity Program, and Middle Mile Broadband Infrastructure Grant Program.
 - Programs administered by FCC, including the Rural Digital Opportunity Fund (RDOF), Connect America Fund Phase II Auction, Alternative Connect America Model (A-CAM), Connect America Fund Broadband Loop Support (CAF BLS), and Alaska Plan.³
 - Programs administered by USDA, including the ReConnect Loan and Grant Program, Community Connect Grant Program, Telecommunications Infrastructure Loans and Loan Guarantees, and programs established by the Agriculture Improvement Act of 2018 (also known as the Farm Bill).
 2. All state broadband deployment programs that utilize funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.

In addition to the programs specified above, Eligible Entities must consider any additional programs specified by OICG, prior to the initiation of the challenge process.

³ FCC.gov has publicly-available data for the amount of Universal Service Fund (USF) High-Cost/Connect America Fund support distributed to each state. The FCC’s [Federal-State Joint Board Monitoring Reports](#) include data on funding received each year from the various USF High-Cost distribution mechanisms and the FCC [Public Reporting System](#) includes results from the Rural Digital Opportunity Fund Phase I and Connect America Fund Phase II auctions.

1.4.5 Attachment: As a required attachment, submit the list of the federal, state/territorial, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding.



IMPORTANT:

If an Eligible Entity plans to use the BEAD Eligible Entity Planning Toolkit, it will be required to submit the state/territory program location data at a later date to support the deduplication of funding process.

If the Eligible Entity **plans to use the BEAD Eligible Entity Planning Toolkit**,

the Eligible Entity must list any state or territorial and local programs that will be used to identify existing enforceable commitments.

If the Eligible Entity **does not plan to use the BEAD Eligible Entity Planning Toolkit**, the Eligible Entity must list the federal, state or territorial, and local programs that will be analyzed to identify existing enforceable commitments. These programs must include, at a minimum:

1. All programs included in the Broadband Funding Map published by FCC (pursuant to the Infrastructure Act § 60105), including:
 - Programs administered by NTIA, including the Broadband Infrastructure Program, the Tribal Broadband Connectivity Program, and Middle Mile Broadband Infrastructure Grant Program.
 - Programs administered by FCC, including the Rural Digital Opportunity Fund (RDOF), Connect America Fund Phase II Auction, Alternative Connect America Model (A-CAM), Connect America Fund Broadband Loop Support (CAF BLS), and Alaska Plan.⁴
 - Programs administered by USDA, including the ReConnect Loan and Grant Program, Community Connect Grant Program, Telecommunications Infrastructure Loans and Loan Guarantees, and programs established by the Agriculture Improvement Act of 2018 (also known as the Farm Bill).
2. All state broadband deployment programs that utilize funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.

To download a copy of the NTIA Template for Deduplication of Funding, please see the file named “BEAD Initial Proposal_Volume I_Deduplication of Funding Programs Template.xlsx”

Challenge Process Design

Relevant Requirements from the [NOFO](#), pages 34-35:

Each Eligible Entity shall develop and describe in the Initial Proposal, a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is

⁴ See *id.*

eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as those terms are defined in the Infrastructure Act and Section I.C of this NOFO. Eligible Entities should update the data provided in their Initial Proposal to reflect the most recently published version of the National Broadband Maps available as of the initiation of the challenge process.

The Assistant Secretary may modify the challenge process proposed by the Eligible Entity as necessary and shall inform the Eligible Entity of any modifications required. Once an Eligible Entity makes any required modifications, the Assistant Secretary shall approve the challenge process, either in conjunction with, or prior to, approval of the Eligible Entity’s Initial Proposal. The Eligible Entity shall conduct the approved challenge process before allocating grant funds received from BEAD for the deployment of broadband networks to subgrantees.

After resolving each challenge and at least 60 days before allocating grant funds for network deployment, an Eligible Entity must provide public notice of the final classification of each unserved location, underserved location, or Eligible Community Anchor Institution within the jurisdiction of the Eligible Entity. An Eligible Entity must also notify NTIA of any modifications to the Initial Proposal that are necessitated by successful challenges to its initial determinations. Pursuant to the discretionary authority granted to the Assistant Secretary in the Infrastructure Act, NTIA may reverse the determination of an Eligible Entity with respect to the eligibility of a particular location or community anchor institution.

1.4.6 Text Box: Describe the plan to conduct an evidence-based, fair, transparent, and expeditious challenge process.



In designing its challenge process to be evidence-based, fair, transparent, and expeditious, an Eligible Entity is encouraged to adopt the [NTIA BEAD Model Challenge Process](#). An Eligible Entity not adopting the NTIA BEAD Model Challenge Process in full is still encouraged to consider adopting the approaches outlined by NTIA wherever possible.

An Eligible Entity that adopts the NTIA Model Challenge Process must copy and paste the full text response to **Section 1.4.6** outlined in the NTIA BEAD Model Challenge Process, while also submitting individualized responses (where indicated in blue text) in the NTIA BEAD Model Challenge Process.

In its response, an Eligible Entity must include:

1. The proposed approach for the challenge process, including the publication of eligible locations, challenge phase, rebuttal phase, and final determination phase.
2. Challenge types permitted, including the identification of Community Anchor Institutions, existing Broadband Serviceable Location (BSL) and Community Anchor Institution BEAD funding eligibility determinations, enforceable commitments, and planned service.
3. Challengers permitted, including units of local and tribal government, nonprofit organizations, and broadband service providers.

4. Proposed evidentiary review process through which the Eligible Entity will review and make determinations based on challenges and rebuttals received. If the Eligible Entity decides to add any additional data sources to or remove from the list as outlined in Table 3 “Examples of Acceptable Evidence for BEAD Challenges and Rebuttals” in Section 7.4 of the BEAD Challenge Process Policy Notice, it must respond to question 1.4.6 and outline the proposed sources and requirements that will be considered acceptable evidence.
5. Requirements for acceptable speed tests (e.g., number of speed tests, geographic distribution, speed test collection time), if applicable.
6. Plan to ensure that sufficient opportunity and time is given to all relevant parties to initiate, rebut, and substantiate challenges, and that the challenge process standards of review are applied uniformly to all challenges submitted.
7. The plan to ensure transparency, including:
 - a. The plan to publicly post documentation explaining the challenge process once it is approved by NTIA (prior to beginning the challenge process)
 - b. The plan to post all submitted challenges and rebuttals before final determinations are made, including information from Section 7.6 of the NTIA BEAD Challenge Process Policy Notice.
 - c. The plan to host a website, including the link to the website’s URL, if the hosting website already exists.
 - d. The plan to inform units of local government, relevant nonprofit organizations and broadband providers to the challenge process, its deadlines, and how providers and other affected parties will be notified of challenges.
8. The plan to ensure the protection of Personally Identifiable Information (PII) and proprietary information, including anyone who will have access to any PII submitted through the challenge process (e.g., provider’s subscriber PII), including through state/territory public records processes.
9. The overall timeline, with tentative dates of initiation and completion, for the challenge process. An Eligible Entity may determine the specific timeframes for the various Requirements of the challenge process (e.g., challenge submission, rebuttal window) if the requirements below are met. The Eligible Entity is encouraged to extend the submission and rebuttal window, as possible, based on the Eligible Entity’s preferred timelines and capacity. The timeline must also include a plan to ensure that:
 - a. The proposed challenge process will be completed within 120 days, starting with the initiation of the challenge submission window;
 - b. The proposed challenge process will allow a minimum challenge submission window of at least 14 days;
 - c. The proposed challenge process will include a minimum 14-day window to file a rebuttal after the challenge is available on the challenge portal;
 - d. Following approval by NTIA, the proposed challenge process will publicly post final classification of eligible locations after resolving each challenge, at least 60 days before allocating grant funds for network deployment.

The Eligible Entity must also indicate which modules from the NTIA Model Challenge Process , if any, the Eligible Entity plans to adopt, including the speed test module and the area challenge module. If the Eligible Entity chooses to not adopt the modules, the Eligible Entity must indicate whether it plans to accept speed tests or conduct an area challenge and if so, it must include its plans for doing so. NTIA will review the proposed speed test requirements and/or area challenge plan.

The Eligible Entity should refer to [NTIA BEAD Challenge Process Policy Notice](#) Section 7 for additional guidance for designing the challenge process.

1.4.6 Optional Attachment: As a required attachment only if the Eligible Entity is not using the NTIA BEAD Model Challenge Process, outline the proposed sources and requirements that will be considered acceptable evidence.

An Eligible Entity adopting the [NTIA BEAD Model Challenge Process](#) is not required to upload the attachment.

An Eligible Entity not adopting the NTIA BEAD Model Challenge Process must list any proposed data sources that will be accepted as sufficient evidence that are not included in Section 7.4 of the NTIA BEAD Challenge Process Policy Notice. The Eligible Entity must also include any data sources that are included in Section 7.4 of the NTIA BEAD Challenge Process Policy Notice that will not be accepted as sufficient evidence.

- **To add an additional data source:** complete all columns and indicate in column 3 (“Proposed Change to NTIA Policy Notice”) whether the Eligible Entity will add or remove this data source as outlined in Section 7.4 of the NTIA BEAD Challenge Process Policy Notice.
- **To remove an approved data source:** skip columns 4 and 5 (e.g., “Data Source Requirement” and “Permissible Rebuttal” and fill out only columns 1 and 2 (e.g., “Challenge Type” and “Data Source”).

The Eligible Entity should refer to NTIA BEAD Challenge Process Policy Notice Section 7.4 for additional guidance.

Table 2: Proposed Data Sources

Complete the table below to identify any data sources the Eligible Entity is proposing to add or remove from the list of acceptable evidence sources in NTIA BEAD Challenge Process Policy Notice Section 7.4. The Eligible Entity must follow the instructions for each column when submitting any potential data sources additions or removals.

| Challenge Type | Data Source | Proposed Change to NTIA Policy Notice | Data Source Requirements | Permissible Rebuttal |
|---|---|--|--|---|
| <i>Type of challenge based on BEAD Challenge Process Policy Notice Table 3: “Examples of Acceptable Evidence for BEAD Challenges and Rebuttals in the BEAD Policy Notice”</i> | <i>Brief description of the data source</i> | <i>Whether Eligible Entity will add or remove this data source as outlined in the BEAD Challenge Process Policy Notice</i> | <i>Brief description of the requirements associated with each data source being added to the list of acceptable sources. If proposing removal, indicate N/A.</i> | <i>Brief description of the acceptable rebuttal evidence and any associated requirements for each source being added to the list of acceptable sources. If proposing removal, indicate N/A.</i> |

In the file attachment, the Eligible Entity must follow the format of the NTIA template.

To download a copy of the NTIA Template for Evidence Data Sources, please see the file named “BEAD Initial Proposal_Volume I_ Evidence Data Sources Template.xlsx”

Volume I Public Comment

1.5.1 Text Box: Describe the public comment period and provide a high-level summary of the comments received during the Volume I public comment period and how they were addressed by the Eligible Entity. The response must demonstrate:

- a. The public comment period was no less than 30 days; and
- b. Outreach and engagement activities were conducted to encourage feedback during the public comment period.



IMPORTANT

The Eligible Entity must conduct a public comment period for **no less than 30 days**.

The Eligible Entity must describe how it conducted a public comment period for no less than 30 days, provide a high-level summary of the comments received, and demonstrate how the Eligible Entity incorporated feedback in its Initial Proposal

submission, as applicable. The Eligible Entity is not required to respond to all individual comments but must capture where public comments impacted the contents of the Initial Proposal submission.

The Eligible Entity must also demonstrate how it conducted outreach and engagement activities to encourage broad awareness, participation, and feedback during the public comment period, particularly among Tribal Governments, local community organizations, unions and worker organizations, and other underrepresented groups. Examples of outreach mechanisms include, but are not limited to, public meetings, informational brochures, local media, relevant social media channels, and direct mail.

1.5.2 Optional Attachment: As an optional attachment, submit supplemental materials to the Volume I submission and provide references to the relevant requirements. Note that only content submitted via text boxes, certifications, and file uploads in sections aligned to Initial Proposal requirements in the NTIA Grants Portal will be reviewed, and supplemental materials submitted here are for reference only.

The Eligible Entity may upload additional documentation, such as formatted text, tables, or graphics, relevant to any of the requirements in Volume I. If the Eligible Entity chooses to upload supplemental materials, they must provide a crosswalk to the relevant requirement(s). In the responses to Volume I requirements, the Eligible Entity may reference the materials uploaded here to provide additional context to their responses. However, content submitted here will not be reviewed for sufficiency in meeting Initial Proposal requirements; only responses to requirements in previous sections of the NTIA Grants Portal will be evaluated for meeting the standard of review required for approval.

Volume II (Requirements 1, 2, 4, 8 – 20)

Objectives (Requirement 1)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Outline long-term objectives for deploying broadband, closing the digital divide, addressing access, affordability, equity, and adoption issues, and enhancing economic growth and job creation including information developed by the Eligible Entity as part of the Five-Year Action Plan and information from any comparable strategic plan otherwise developed by the Eligible Entity, if applicable.³⁹

³⁹ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

An Eligible Entity that has already completed its Five-Year Action Plan may directly copy Objectives from its Five-Year Action Plan into the Initial Proposal to satisfy this requirement. An Eligible Entity that is still drafting its Five-Year Action Plan should ensure that its responses to this requirement in its Initial Proposal and its Five-Year Action Plan are substantively the same.

2.1.1 Text Box: Outline the long-term objectives for deploying broadband; closing the digital divide; addressing access, affordability, equity, and adoption issues; and enhancing economic growth and job creation. Eligible Entities may directly copy objectives included in their Five-Year Action Plans.

In this section, the Eligible Entity is required to explicitly outline long-term objectives covering **each** of the following:



Broadband Deployment



Closing the Digital Divide



Addressing Access, Affordability, Equity, or Adoption Issues



Enhancing Economic Growth and Job Creation

Objectives are specific, measurable, attainable, relevant, and time-based and support the attainment of long-term goals. Example objectives may include:

- Develop broadband investment and deployment strategies for unserved and underserved areas.
- Leverage all resources, including BEAD Program funding and support from other federal, state or territory, and local programs and binding commitments from Internet providers, to achieve the Eligible Entity's broadband deployment goals.
- Develop and strengthen partnerships with community stakeholders to identify opportunities for an Eligible Entity to support and coordinate broadband deployment and equity initiatives.
- Enhance economic growth and job creation by promoting sector-based partnerships among employers and education providers.

Objectives **are not required** to be specific to the BEAD Program funds. Instead, the Eligible Entity may also include objectives related to other federal, state or territory, and local programs.

Local, Tribal, and Regional Broadband Planning Processes (Requirement 2)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Identify, and outline steps to support local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide and describe coordination with local and Tribal Governments, along with local, Tribal, and regional broadband planning processes.

⁴⁰ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

An Eligible Entity that has already completed its Five-Year Action Plan may directly copy its Stakeholder Engagement Process (Requirement 7 in the Five-Year Action Plan) into the Initial Proposal to satisfy this requirement. An Eligible Entity that is still drafting its Five-Year Action Plan must ensure that the response to this requirement in its Initial Proposal and its Five-Year Action Plans are substantively the same.

2.2.1 Text Box: Identify and outline steps that the Eligible Entity will take to support local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide. In the description, include how the Eligible Entity will coordinate its own planning efforts with the broadband planning processes of local and Tribal Governments, and other local, Tribal, and regional entities. Eligible Entities may directly copy descriptions in their Five-Year Action Plans.

The purpose of this section is to identify and outline steps to support local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide through coordination with local and Tribal Governments, and other local, Tribal, and regional entities.

The Eligible Entity must describe existing local and regional planning or deployment efforts, including those in Tribal areas. The Eligible Entity must describe how it has coordinated with local and, if applicable, Tribal Governments in developing statewide strategies, and how the Eligible Entity will continue this engagement moving forward. The Eligible Entity may provide an inventory of existing broadband planning efforts across the Eligible Entity or describe how it is conducting and/or plans to conduct outreach activities to facilitate coordination with local and Tribal Governments, and other local, Tribal, and regional entities.

Local Coordination (Requirement 4)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Certify that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, unions and worker organizations, and other groups, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, describe the coordination conducted, summarize the impact such coordination had on the content of the Initial Proposal, detail ongoing coordination efforts, and set forth the plan for how the Eligible Entity will fulfill the coordination requirements associated with its Final Proposal.

Relevant Requirements from the [NOFO](#), page 52:

In evaluating whether local coordination and outreach efforts meet the programmatic requirements, the Assistant Secretary will assess whether plans and activities undertaken ensure: (1) full geographic coverage of the Eligible Entity; (2) meaningful engagement and outreach to diverse stakeholder groups, labor organizations, and community organizations, including to promote the recruitment of women and other historically marginalized populations for workforce development opportunities and jobs related to BEAD-funded eligible activities; (3) utilization of multiple awareness and participation mechanisms and different methods to convey information and outreach; (4) transparency of processes, to include the documentation and publication of results and outcomes of such coordination and outreach efforts, including additions or changes to the Eligible Entity’s Initial Proposal and/or Final Proposal; and (5) outreach to and direct engagement of unserved and underserved communities to include historically underrepresented and marginalized groups and/or communities. These requirements are designed to allow Eligible Entities to tailor the program for the unique environments within its boundaries. In evaluating the sufficiency of local coordination efforts, the Assistant Secretary will consider quantitative measures as well as the quality of the engagements.

The purpose of this section is to detail how an Eligible Entity has coordinated and will continue to coordinate with all communities within its jurisdiction, including its marginalized and underrepresented populations. Local government, Tribal, and stakeholder coordination is essential to the BEAD Program’s success because it promotes full representation and inclusion of unserved, underserved, and underrepresented communities throughout the planning and deployment processes, and fosters strong relationships and buy-in from the individuals this Program is designed to serve. The Eligible Entity should refer to the [Local Coordination Resources One-Pager](#) for additional information on conducting local coordination including guidance on creating accessible meetings and how to conduct effective community engagement.

Looking Ahead

In the Final Proposal, the Eligible Entity will be required to certify and describe local coordination conducted, including a summary of the impact such coordination had on the content of the Final Proposal.

2.3.1 Text Box: Describe the coordination conducted, summarize the impact such impact has on the content of the Initial Proposal, and detail ongoing coordination efforts. Set forth the plan for how the Eligible Entity will fulfil the coordination associated with its Final Proposal.

2.3.1.1 Attachment: As a required attachment, submit the Local Coordination Tracker Tool to certify that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, unions and work organizations, and other groups.

The Eligible Entity must submit both a narrative summarizing their local coordination efforts and the Local Coordination Tracker Tool detailing specific coordination activities the Eligible Entity has conducted.

The Eligible Entity is required to describe local coordination conducted, ongoing coordination efforts, and the impact of such coordination on the content of the Initial Proposal. The Eligible



IMPORTANT

It is strongly recommended that the Eligible Entity conducts local coordination for the BEAD and Digital Equity Act in tandem as one cohesive effort. This approach will be particularly important to avoid confusion and reduce the burden on local stakeholders.

Entity must coordinate with political subdivisions, Tribal Governments, local and community-based organizations, and unions and worker organizations within its jurisdiction to promote full representation and inclusion of unserved,

underserved, and underrepresented communities throughout the planning and deployment processes.



The Eligible Entity must address **each** of the following five criteria mentioned in the [BEAD NOFO](#) in its descriptions of local coordination efforts.

Local Coordination Evaluation Criteria



1 Geographic Coverage

The Eligible Entity must describe how its local coordination efforts within its political subdivisions and applicable Tribal Governments include sufficient geographic granularity to demonstrate full participation within the Eligible Entity. Engagement must include Tribal, rural, suburban, and urban areas as well as all key demographic groups within the Eligible Entity’s jurisdiction, to the extent these categories are applicable in the Eligible Entity.

INTEGRATION OF LOCAL AND TRIBAL PLANS

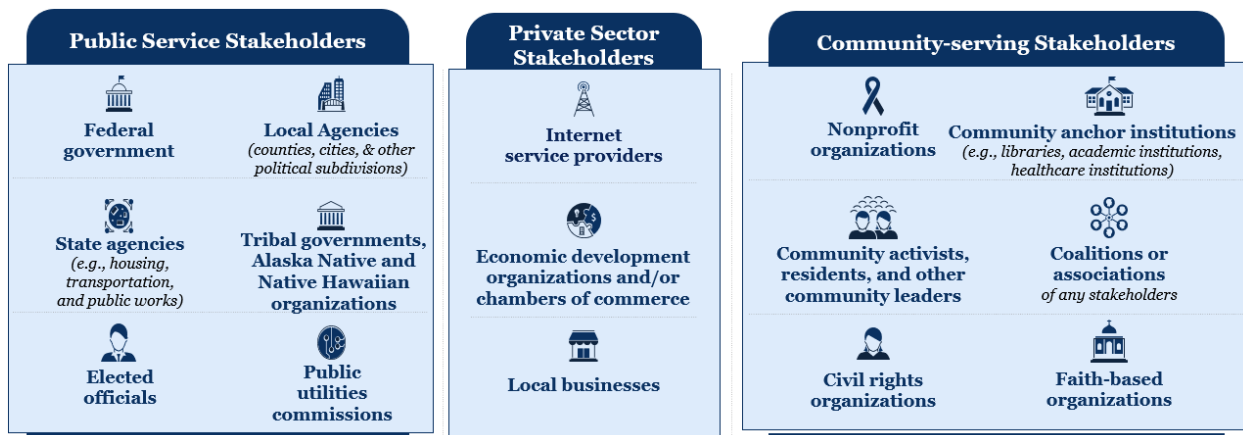
Each political subdivision and federally recognized Tribe must be given an opportunity to submit its own plan to the Eligible Entity for consideration in the development of the Eligible Entity’s Initial Proposal. Plans in this context refer to formal, local broadband plans addressing deployment, equity, or other issues relevant to the BEAD Program goals. The Eligible Entity must detail how it addressed each submitted plan in the Initial Proposal.

2 Outreach to Diverse Groups

Throughout its local coordination and outreach activities, the Eligible Entity must involve a diverse set of stakeholders in the development of its Initial Proposal. The Eligible Entity must coordinate with local governments, Tribal governments, and stakeholders to solicit input on relevant portions of their Initial Proposals. For example, the Eligible Entity should seek input from groups that carry out workforce development programs and labor unions, to develop an approach to ensuring a reliable supply of skilled workers, elicit feedback on plans for creating well-paid jobs, and to recruit and hire women and other historically marginalized groups for the job opportunities created through the BEAD Program.

Examples of stakeholder groups for consideration include, but are not limited to the following:


Figure 1: Broadband Stakeholders



3 Multiple Awareness Mechanisms

The Eligible Entity must describe multiple mechanisms it is using or intends to use to promote broad awareness and participation from various stakeholder groups. It is **not** sufficient to only utilize one type of awareness mechanism. Examples of such methods include but are not limited to those listed in Figure 2 below.

Figure 2: Examples of Awareness Mechanisms



Awareness Mechanisms

- Listening sessions, or public meetings (in-person within the community and virtual);
- Eligible Entity websites and/or email address to submit comments directly;
- Informational materials such as fact sheets, brochures, Frequently Asked Questions, and newsletters;
- Social media (blogs, Twitter, Facebook, Instagram, etc.);
- Email notifications and use of traditional mail;
- Utilization of community anchor institutions to help promote and distribute information);
- Local Advertisements and Public Service Announcements.

Note that the Local Coordination Tracker Tool is required to reflect a wide-ranging use of awareness mechanisms in the conducted and planned engagement activities.

4 Transparency

In conducting local coordination and outreach activities, the Eligible Entity must establish, document, and adhere to clear procedures to promote transparency. The Eligible Entity must describe how it makes information on planned broadband activities accessible to a diverse set of stakeholder groups.

Examples of ways to promote and document transparency include:

- Posting publicly available information to easily navigable websites with up-to-date information;
- Conducting periodic reporting/reports on broadband efforts to local and community stakeholders;
- Involving a diverse set of stakeholders in the planning, implementation and execution of coordination and outreach efforts and activities, and in-person meetings and mailings; and
- Providing information in commonly used languages other than English to be accessible to a broad range of community members.

5 Underrepresented Engagement

The Eligible Entity must describe direct engagement efforts with underrepresented communities within its jurisdictions and highlight any feedback provided by these groups. The Eligible Entity must identify these communities and determine specific outreach and engagement strategies tailored to their needs, including providing outreach in the languages used in the communities these eligible activities serve.

Examples of activities that might be used to reach unserved, underserved, and underrepresented communities include, but are not limited to:

- The creation of an Eligible Entity-wide task force or advisory board with representatives from underrepresented communities;
- Frequent engagement with State, Territorial, county, Tribal, and municipal associations that may have a greater reach to these communities through their local elected official members;
- Engagement with other Eligible Entity departments or agencies that regularly serve these communities and can help identify and engage with them, such as Eligible Entity departments of education, health and human services, workforce development, and/or public health;
- Utilization of the awareness mechanisms listed above that demonstrates a targeted focus on the above identified communities; and
- Investment in surveys, data collection, and mapping initiatives to better understand gaps in connectivity and needs.

An Eligible Entity that is also utilizing funding from the State Digital Equity Planning Grant Program (SDEPG) is encouraged to make sure that the stakeholder engagement that is conducted for the purposes of the Digital Equity plan is coordinated and aligned with the stakeholder engagement conducted for the development of the Initial Proposal. For example, for both efforts, the Eligible Entity is encouraged to assemble comprehensive lists of stakeholders, identify overlaps, and coordinate or combine outreach to those stakeholders through combined listening sessions, surveys, and site visits. This will be particularly important to avoid confusion and reduce the burden on community stakeholders.



IMPORTANT

An Eligible Entity that has already completed the Local Coordination Tracker Tool for the Digital Equity program may submit the same document for the Initial Proposal, as long as it fulfills the five coordination criteria required by the [BEAD NOFO](#).

For the attachment, the Eligible Entity is required to submit a [Local Coordination Tracker Tool](#) to document coordination efforts conducted, including with Tribal Governments, local community organizations, unions and worker organizations, and other

groups. A completed Local Coordination Tracker must demonstrate compliance with all five coordination criteria required by the [BEAD NOFO](#).

The Local Coordination Tracker tool includes several important tabs, including:

- **Overview:** The Overview tab outlines the purpose of the tool and provides descriptions for each tab including how they relate to specific BEAD NOFO requirements.
- **List of Organizations:** The List of Organizations tab is an area to document and record each organization and stakeholder group engaged and the purpose of the engagement. The List of Organizations must illustrate engagement with a diverse set of stakeholders (see Figure 1), including underrepresented communities, and reflect that local coordination efforts have met the requirement for sufficient geographic coverage.

- Stakeholder Engagement Tracker:** The Stakeholder Engagement Tracker tab provides an area to document and record engagement with each stakeholder group. This list must comprise a diverse set of stakeholders (see Figure 1), including underrepresented communities, and reflect that local coordination efforts have met the requirement for sufficient geographic coverage. Note that the Eligible Entity is not required to complete the column for “Covered Populations Reached” since this is a Digital Equity Program requirement, but it is encouraged to do so in coordination with the development of the State Digital Equity Plan.
- Local Plans:** The Local Plans tab provides an area to document any plans submitted to the Eligible Entity or existing plans or programs instituted by municipal, regional, or local governments and/or Tribal Entities, as well as notes on how these plans will be incorporated into the Initial Proposal. Each political subdivision and federally recognized Tribe must be given an opportunity to submit its own local broadband plan to the Eligible Entity for consideration in the development of the Eligible Entity’s Proposals. Each Eligible Entity must detail how it addressed each submitted plan in its Initial Proposal.
- Public Comment Disclosure:** The Public Comment Disclosure tab provides an area to capture any feedback and public comments from political subdivisions, Tribal Governments, and stakeholders, and how the Eligible Entity will address the feedback.

2.3.2 Text Box: Describe the formal tribal consultation process conducted with federally recognized Tribes, to the extent that the Eligible Entity encompasses federally recognized Tribes. If the Eligible Entity does not encompass federally recognized Tribes, note “Not applicable.”

2.3.2.1 Optional Attachment: As a required attachment only if the Eligible Entity encompasses federally recognized Tribes, provide evidence that a formal tribal consultation process was conducted, such as meeting agendas and participation lists.

Where an Eligible Entity encompasses federally recognized Tribes, the Eligible Entity must describe the formal consultation process conducted with federally recognized Tribal or Native entities to promote alignment and visibility of broadband needs and priorities between the Eligible Entity and Tribal officials.

The Eligible Entity must describe how it provided multiple opportunities for Tribes to provide input and ensure that feedback is both recorded (e.g., through recordings, detailed notes, or summary reports) and incorporated into the Initial Proposal.

Where an Eligible Entity encompasses federally recognized Tribes, the Eligible Entity must submit evidence that a formal tribal consultation process was conducted. Evidence may include, but not be limited to:

- Documenting meeting details and feedback in the Local Coordination Tracker Tool
- Providing Tribal consultation summary reports, meeting agendas, and participant lists
- Providing a copy of a Dear Tribal Leader Letter (DTLL) sent as request to engage with Tribal Governments

An Eligible Entity may refer to and leverage pre- and post-consultation [materials](#) previously developed for the Tribal Broadband Connectivity Program (TBCP) as examples for documentation of Tribal engagements for the BEAD Program. This includes Dear Tribal Leader Letters (DTTLs), agendas, summary reports, and consultation transcripts and recordings. Additionally, English Entities may refer to the [Memorandum on Uniform Standards for Tribal Consultation](#) for more information on how Tribal consultations are to be conducted.

If an Eligible Entity does not encompass sovereign Tribal or Native entities, please note “Not applicable” within this text box.

Deployment Subgrantee Selection (Requirement 8)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Include a detailed plan to competitively award subgrants consistent with Section IV.B.7.a of this NOFO with regard to both last-mile broadband deployment projects and other eligible activities. With respect to last-mile broadband deployment projects, the plan must explain how the Eligible Entity will ensure timely deployment of broadband and minimize the BEAD subsidy required to serve consumers consistent with Section IV.B.7 and the other priorities set out in this NOFO. The Initial Proposal must include identification of, or a detailed process for identifying, an Extremely High Cost Per Location Threshold to be utilized during the Subgrantee Selection Process described in Section IV.B.7 of this NOFO. Each Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.7.b of this NOFO. NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.

The purpose of this section is to provide a detailed plan to competitively award subgrants. This is a critical Requirement of the Initial Proposal as subgrantees will be primarily responsible for completing eligible deployment activities. Figure 3 below provides examples of eligible uses of funding related to broadband deployment projects, as outlined in the [BEAD NOFO](#).

Figure 3: Eligible Uses of Funding Related to Deployment Projects

- Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings.
- Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements.
- Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building.
- Engineering design, permitting, and work related to environmental, historical and cultural reviews.
- Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts).
- Network software upgrades, including, but not limited to, cybersecurity solutions.
- Training for cybersecurity professionals who will be working on BEAD-funded networks.
- Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training for broadband-related occupations to support deployment, maintenance, and upgrades

Please note that while requirements vary in this section, most responses should integrate strong grants management practices, including establishing and following best practices on 1) policies and procedures; 2) transparency; 3) and internal controls. Figure 4 provides several helpful tips that can be applied across requirements for both Deployment Subgrantee Selection (Requirement 8) and Non-Deployment Subgrantee Selection (Requirement 9).

Figure 4: Best Practices for Subgrantee Selection Grants Management

When an Eligible Entity is required to identify or outline a detailed process for a requirement of the Initial Proposal, they should consider the following grants management best practices.



TIE YOUR RESPONSE TO ESTABLISHED POLICIES, PROCESSES, & PROCEDURES

Established and approved policies, processes, and procedures are fundamental to ensuring Eligible Entities are properly managing, monitoring, and assessing subgrantees. Eligible Entities should include **all established policies, processes, & procedures** when responding to each subgrantee selection requirement.

- If an Eligible Entity is developing a new process, this should be noted and **tied back** to an existing internal control or policy document. This makes the process easier to justify and explain to potential subgrantees and auditors.

What Policies Should Eligible Entities Have?

- Procurement Policy
- Record Retention Policy
- Subgrantee Selection Policy
- Subgrantee Monitoring Policy

Eligible Entities should highlight **strong record retention** policies when writing responses that include details on subgrantee certification.



INCLUDE AS MUCH TRANSPARENCY AS POSSIBLE TO YIELD BETTER APPLICATIONS/OUTCOMES

- The more transparent an Eligible Entity is with their potential subrecipients, the **better applications/submissions and eventually outcomes** will be. Subrecipients will have a better understanding of what is needed, what is required, and what will make a good application.
- Eligible Entities should consider **developing support documents**, where needed, and including these materials in their subgrantee selection responses. Materials could include checklists, samples, outreach plans, etc.
- Eligible Entities should also include **conflict of interest rules** in their approach to increase transparency and reduce risk.

For responding to each subgrantee selection requirement consider responding with: 1) Who is responsible for the requirement? 2) Why is the requirement necessary for the project/program outcome? 3) What is the level of detail a subgrantee would need to understand this



NOTE STRONG INTERNAL CONTROLS AS THEY INSTILL CONSTANCY AND CONFIDENCE IN PLANS TO VALIDATE SUBGRANTEE QUALIFICATION REQUIREMENTS

- Strong responses should include references to **internal control plans** for all phases of the subgrantee selection lifecycle.

Pre-Award

- Plan to develop solicitation documents, application guidance, technical assistance, etc., for grantees.

Award

- Plan to document and retain records for evaluation review, including rules and submission packages.

Post-Award

- Plan to document clear, explicit terms and conditions along with processes to revise or amend subawards.

Deployment Projects Subgrantee Selection Process & Scoring Approach

2.4.1 Text Box: Describe a detailed plan to competitively award subgrants to last-mile broadband deployment projects through a fair, open, and competitive process.

The Eligible Entity must provide detailed description of the selection process that is fundamentally fair, open, and competitive.

The Eligible Entity must describe the safeguards to ensure the subgrantee selection process is **fair**, including safeguards against **each** of the following:

- Collusion
- Bias
- Conflicts of interest
- Arbitrary decisions

The Eligible Entity must ensure the subgrantee selection process is **open** by describing how the Eligible Entity will provide adequate public notice to potential subgrantees to enable participation by a wide variety of potential applicants, to ensure an open and competitive process, and to prevent favoritism, collusion, and abuse.

The Eligible Entity must also describe how it ensured the subgrantee selection process is **competitive**, such as by using a competitively neutral evaluation criteria that does not favor one type of provider over another, except certain preferences expressed neutrally and in advance. Such preferences may only be included as secondary criteria.

As part of creating a plan to competitive award subgrants to last-mile broadband deployment projects, Eligible Entities should understand the regulations outlined in the BEAD NOFO and document their adherence to these regulations in a set of Sub-granting Accountability Procedures. In accordance with the BEAD NOFO, subgrant agreements should, at a minimum, include the following in their Sub-granting Accountability Procedures:

- Disbursement of funding to subgrantees for all deployment projects, at a minimum, on a reimbursable basis (which would allow the state or territory to withhold funds if the subgrantee fails to take the actions the funds are meant to subsidize);
- The inclusion of clawback provisions (i.e., provisions allowing recoupment of funds previously disbursed) in agreements between the state or territory and any subgrantee;
- Timely subgrantee reporting mandates; and
- Robust subgrantee monitoring practices.

When developing their Sub-granting Accountability Procedures, Eligible Entities should demonstrate how they intend to satisfy the comprehensive monitoring and management requirements of their awarded subgrantees. Eligible Entities are encouraged to conduct periodic comprehensive monitoring of all awarded subgrantees to ensure they are demonstrating strong performance throughout the lifecycle of the program.

Additionally, when developing a plan to competitively award subgrants, Eligible Entities should be aware of restrictions surrounding Conflict of Interest in the BEAD NOFO. Conflict of Interest applies when two parties have concerns that can be incompatible, or there exists a conflict between the private interests and the official responsibilities of a person in a position of trust.

For additional information on creating a competitive application process, please reference the [Subgrantee Selection Primer](#).

2.4.2 Text Box: Describe how the prioritization and scoring process will be conducted and is consistent with the BEAD NOFO requirements on pages 42 – 46.

2.4.2.1 Attachment: As a required attachment, submit the scoring rubric to be used in the subgrantee selection process for deployment projects. Eligible Entities may use the template provided by NTIA, or use their own format for the scoring rubric.

The Eligible Entity must describe how the prioritization and scoring process will be conducted and how the subgrantee selection process is consistent with the principles for I) selection among Priority Broadband Projects covering the same location or locations and/or II) selection among Other Last-Mile Broadband Deployment Projects.

- Priority Broadband Projects:**⁵ An Eligible Entity’s process in selecting subgrantees for last-mile broadband deployment projects must first assess which locations or sets of locations under consideration are subject to one or more proposals that (1) constitute Priority Broadband Projects and (2) satisfy all other requirements set out in this NOFO with respect to subgrantees. In the event there is just one proposed Priority Broadband Project in a location or set of locations, and that proposal does not exceed the Eligible Entity’s Extremely High Cost Per Location Threshold, that proposal is the default winner, unless the Eligible Entity requests, and the Assistant Secretary grants, a waiver allowing the Eligible Entity to select an alternative project. To the extent there are multiple proposals in a location or set of locations that (1) constitute Priority Broadband Projects and (2) satisfy all other requirements with respect to subgrantees, the Eligible Entity must competitively select a project based on the criteria set by the BEAD NOFO.
- Other Last-Mile Broadband Deployment Projects:** In deciding among competing projects that are not Priority Broadband Projects covering the same locations or area, the Eligible Entity must use the criteria detailed in the BEAD NOFO.

Selection Criteria for Priority Broadband Projects

Relevant Requirements from the NOFO, pages 43 – 44:

Primary Criteria. In deciding among competing Priority Broadband Projects covering the same location or locations, Eligible Entities must give the greatest weight (*e.g.*, substantial points or credits) to the following criteria:¹

- Minimal BEAD Program Outlay.** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the prospective subgrantee’s proposed match (which must, absent a waiver, cover no less than 25 percent of the project cost), with the specific points or credits awarded increasing as the BEAD outlay decreases. In comparing the project’s BEAD outlay and the prospective subgrantee’s match commitments, Eligible Entities should consider the cost to the Program per location while accounting for any factors in network design that might make a project more expensive, but also more scalable or resilient.

⁵ The term “Priority Broadband Project” means a project that will provision service via end-to-end fiber-optic facilities to each end-user premises BEAD NOFO at 14.

- **Affordability.** The prospective subgrantee’s commitment to provide the most affordable total price to the customer for 1 Gbps/1 Gbps service in the project area.
- **Fair Labor Practices.** Eligible Entities must give priority to projects based on a prospective subgrantee’s demonstrated record of and plans to be in compliance with federal labor and employment laws. New entrants without a record of labor and employment law compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects. This prioritization requirement is described in further detail in Section IV.C.1.e of this NOFO.

Secondary Criterion. Eligible Entities must also give weight (*e.g.*, some number of points or quantity of credits less than the amount given to the criteria above) to the following criterion:

- **Speed to Deployment.** All subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband services within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity. Eligible Entities must give secondary criterion prioritization weight to the prospective subgrantee’s binding commitment to provide service by an earlier date certain, subject to contractual penalties to the Eligible Entity, with greater benefits awarded to applicants promising an earlier service provision date.²

The Eligible Entity may develop additional prioritization criteria to be given weight that aligns with Eligible Entity and local priorities. The Eligible Entity may incorporate the following as additional prioritization criteria:

Additional Prioritization Factors.

- **Equitable Workforce Development and Job Quality.** NTIA encourages Eligible Entities to adopt selection criteria relating to the subgrantee’s enforceable commitments with respect to advancing equitable workforce development and job quality objectives, *see* Section IV.C.1.f of this NOFO.
- **Open Access.** NTIA encourages Eligible Entities to adopt selection criteria promoting subgrantees’ provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.
- **Local and Tribal Coordination.** NTIA encourages Eligible Entities to adopt selection criteria reflecting a prospective subgrantee’s support from the local and/or Tribal Government with oversight over the location or locations to be served.

¹ The primary criteria must collectively account for no less than three-quarters of the total benefits available across all the criteria the Eligible Entity employs in choosing between or among competing proposals.

² Nothing herein supersedes the requirement that, barring an extension granted by the Assistant Secretary, any subgrantee that receives BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband service within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.

Selection Criteria for Other Last-Mile Broadband Deployment Projects

Relevant Requirements from the [NOFO](#), pages 44 – 45:

Primary Criteria. In deciding among competing projects that are not Priority Broadband Projects covering the same locations or area, Eligible Entities must give the greatest weight (e.g., substantial points or credits) to the following criteria:

- **Minimal BEAD Program Outlay.** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the prospective subgrantee’s proposed match (which must, absent a waiver, cover no less than 25 percent of the project cost), with the specific benefits awarded increasing as the BEAD outlay decreases. In comparing the project’s BEAD outlay and the prospective subgrantees match commitments, Eligible Entities should consider the cost to the Program per location while accounting for any factors in network design that might make a project more expensive, but also more scalable or resilient.
- **Affordability.** The prospective subgrantee’s commitment to provide the most affordable total price to the customer for 100/20 Mbps service in the proposed service area.
- **Fair Labor Practices.** Eligible Entities must give priority to projects based on a prospective subgrantee’s demonstrated record of and plans to be in compliance with federal labor and employment laws. New entrants without a record of labor and employment law compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects. This prioritization requirement is described in further detail in Section IV.C.1.e of this NOFO.

Secondary Criteria. Eligible Entities must also give weight (e.g., some number of points or credits less than the amount given to the criteria above) to the following criteria:

- **Speed to Deployment.** The prospective subgrantee’s binding commitment to provision service by a date certain, subject to contractual penalties to the Eligible Entity, with greater benefits awarded to prospective subgrantees promising an earlier service provision date.
- **Speed of Network and Other Technical Capabilities.** Eligible Entities must weigh the speeds, latency, and other technical capabilities of the technologies proposed by prospective subgrantees seeking to deploy projects that are not Priority Broadband Projects. Applications proposing to use technologies that exhibit greater ease of scalability with lower future investment (as defined by the Eligible Entity) and whose capital assets have longer useable lives should be afforded additional weight over those proposing technologies with higher costs to upgrade and shorter capital asset cycles.

Additional Prioritization Factors. Eligible Entities may develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the primary criteria and the approval of the Assistant Secretary in the Initial and Final Proposal process. In particular, NTIA encourages Eligible Entities to incorporate the following as selection criteria:

- **Equitable Workforce Development and Job Quality.** NTIA encourages Eligible Entities to adopt selection criteria relating to the subgrantee’s enforceable commitments with respect to advancing equitable workforce development and job quality objectives, see Section IV.C.1.f of this NOFO.
- **Open Access.** NTIA encourages Eligible Entities to adopt selection criteria promoting subgrantees’ provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.
- **Local and Tribal Coordination.** NTIA encourages Eligible Entities to adopt selection criteria reflecting a prospective subgrantee’s support from the local and/or Tribal Government with oversight over the location or locations to be served.

Regardless of whether the Eligible Entity is selecting among Priority Broadband Projects, the Eligible Entity must describe how primary criteria will account for at least 75% of the total scoring or bidding credits. Secondary criteria can account for no more than 25% of total scoring or bidding credits. This criterion must be reflected in the scoring rubric(s) to be used in each proposed subgrantee selection process.

An Eligible Entity that includes advancing equitable workforce development and job quality objectives should make sure that those objectives are also included in its response to [Requirement 12 \(Workforce Readiness\)](#).

For the attachment, the Eligible Entity must submit a scoring rubric to be used in the proposed subgrantee selection process. The Eligible Entity may reference the subgrantee selection scoring rubric template to help complete the attachment. The Eligible Entity may submit a scoring rubric using their own format or may use the template provided below.

To download a copy of the NTIA Template for the Subgrantee Selection Process Scoring Rubric, please see the file named “BEAD Initial Proposal_Volume II_Subgrantee Selection Scoring Rubric.xlsx.” The Eligible Entity may also reference the sample Subgrantee Selection Process Scoring Rubric for guidance when completing their submission.

2.4.3 Text Box: Describe how the proposed subgrantee selection process will prioritize Unserved Service Projects in a manner that ensures complete coverage of all unserved locations prior to prioritizing Underserved Service Projects followed by prioritization of eligible CAIs.

Relevant Requirements from the NOFO, page 41:

The Eligible Entity, in awarding subgrants for the deployment of a broadband network, shall award funding in a manner that ensures the deployment of service to all unserved locations within the Eligible Entity’s jurisdiction. If the Eligible Entity has sufficient funds to ensure deployment of service to all underserved locations within its jurisdiction, it must ensure such deployment as well. If the Eligible Entity lacks sufficient funds to ensure deployment of service to all underserved locations, it must commit the remainder of its BEAD funds to ensure deployment to underserved locations. Eligible Entities must submit Initial Proposals and Final Proposals that will result in coverage for all unserved locations, and (to the extent funds are available) all underserved locations.

The Eligible Entity must describe how the proposed subgrantee selection process is consistent with the principle for funding broadband deployment to all unserved locations and underserved locations, followed by prioritization of eligible CAIs. Eligible Entities that are able to fund

deployment to all unserved and underserved locations are to allocate remaining funds to eligible CAIs, and to move to alternative eligible uses only if they are able to fund deployments to all unserved locations, underserved locations, and eligible CAIs.



IMPORTANT

The Assistant Secretary will only approve an Initial Proposal and Final Proposal that include a plan to ensure deployment of broadband to all unserved and underserved locations within the Eligible Entity or that provides a strong showing that the Eligible Entity is financially incapable of ensuring universal coverage of all unserved and underserved locations.

More specifically, the Eligible Entity must describe how it will award funding in a manner that ensures the deployment of service to all **unserved and underserved locations** within the Eligible Entity’s jurisdiction. Eligible Entities must submit Initial Proposals and Final Proposals that will result in coverage for all unserved locations, and (to the

extent funds are available) all underserved locations.

For this section, the Eligible Entity may describe how it will use multiple rounds of funding to ensure coverage for areas without successful bids in earlier rounds, provide special consideration for hard to serve areas, and specifically plan to engage with providers to expand into areas without initial applications or bids.

The requirement that an Eligible Entity has a plan to ensure deployment to all unserved and underserved locations before contemplating non-deployment uses of funds does not impose any temporal requirement as to the order in which BEAD-funded initiatives are undertaken or completed. If an Eligible Entity has a plan to deploy service to all unserved and underserved locations within its jurisdiction, it may pursue nondeployment initiatives using BEAD funds before or while deployment projects are underway.

To the extent that an Eligible Entity demonstrates that there are insufficient funds available to fund deployment to all unserved, underserved, or eligible CAI locations, the Eligible Entity must prioritize projects within each of those categories based on a strong preference for projects in high poverty areas or persistent poverty counties.

Looking Ahead
The Eligible Entity will be required to certify that it provided service to all unserved and underserved locations in its Final Proposal.

The BEAD NOFO defines high poverty areas as areas in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) is higher than the national percentage of such individuals. Persistent poverty counties are counties that have had poverty rates of 20 percent or greater for at least 30 years as calculated by the Economic Research Service in the Department of Agriculture.

2.4.4 Text Box: If proposing to use BEAD funds to prioritize non-deployment projects prior to, or in lieu of the deployment of services to eligible CAIs, provide a strong rationale for doing so. If not applicable to plans, note “Not applicable.”

If an Eligible Entity proposes to use BEAD funds to prioritize non-deployment projects prior to, or in lieu of the deployment of service to eligible CAIs, the Eligible Entity must provide a strong

rationale for doing so. For example, the Eligible Entity may provide an explanation of why the remaining CAIs do not need gigabit symmetrical service to meet the needs of the organization or why the planned non-deployment uses are essential to achieving BEAD Program goals. Refer to the BEAD NOFO page 41 for more information related to the prioritization of BEAD funds.

2.4.5 Text Box: The proposed subgrantee selection process is expected to demonstrate to subgrantees how to comply with all applicable Environmental and Historic Preservation (EHP) and Build America, Buy America Act (BABA)⁶ requirements for their respective project or projects. Describe how the Eligible Entity will communicate EHP and BABA requirements to prospective subgrantees, and how EHP and BABA requirements will be incorporated into the subgrantee selection process.

Looking Ahead

The Eligible Entity will be required to provide environmental documentation associated with all eligible activities and a description of how the Eligible Entity will comply with applicable EHP requirements in its Final Proposal.

The Eligible Entity must describe how it will communicate EHP and BABA requirements to prospective subgrantees. Additionally, the Eligible Entity must describe how EHP and BABA requirements will be incorporated into the subgrantee selection process. The Eligible Entity will also be responsible for monitoring subgrantees' compliance with EHP requirements over the duration of its specific projects.

For EHP requirements, the Eligible Entity may refer to the [EHP and Climate Resiliency Preparation Checklist](#) for additional information on engaging prospective subgrantees on this topic.

The Eligible Entity must provide a description of how they plan to work with prospective subgrantees to obtain EHP-related information and review it for completeness and technical sufficiency prior to delivering it to NTIA for review and next steps.

⁶ Infrastructure Investment and Jobs Act of 2021, Division G, Public Law 117-58, 135 Stat. 429 (Nov. 15, 2021).

Further guidance around BABA will be finalized at a later date. However, the Eligible Entity must still describe its understanding of BABA requirements and how it will integrate these requirements into its subgrantee selection process.

Looking Ahead

EHP requirements are a critical path issue as no construction or deployment may begin until they are fulfilled, therefore Eligible Entities are strongly encouraged to begin engaging in and documenting the following activities:

- Coordination with federal land-and resource managing agencies, including but not limited to the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the National Marine Fisheries Service, the U.S. Army Corps of Engineers, the U.S. Coast Guard, the U.S Forest Service, and others, to understand any restrictions or special conditions that may apply to infrastructure proposed on federal land, or that may impact federally managed resources such as wetlands, threatened or endangered species, navigable waterways, and others.
- Coordination with state agencies that may have a role in EHP requirements, such as the State Historic Preservation Office, as well as state agencies that may need to issue their own permits for any proposed projects.
- Exploring contracting vehicles to retain EHP-related subject matter expertise and technical support if such resources are not currently available within the existing organization to support compliance activities, including EHP program management support and possibly the preparation of EHP documentation for subgrantees, if desired.

Last-Mile Broadband Deployment Project Areas

Relevant Requirements from the [NOFO](#), page 38:

7. The Eligible Entity may solicit proposals from prospective subgrantees at the geographic level of its choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. An Eligible Entity may alternatively solicit proposals for project areas it defines or ask prospective subgrantees to define their own proposed project areas. If the Eligible Entity allows prospective subgrantees to define proposed project areas, it must develop a mechanism for de-conflicting overlapping proposals (for example, by de-scoping some locations from a provider’s proposed project area) to allow for like-to-like comparison of competing proposals. Whatever process is selected, the Eligible Entity must ensure it has a plan for serving all unserved and (where it has sufficient funding) underserved locations. ...

9. If, after soliciting proposals, the Eligible Entity has received no proposals to serve a location or group of locations that are unserved, underserved, or a combination unserved and underserved, the Eligible Entity may engage with existing providers and/or other prospective subgrantees to find providers willing to expand their existing or proposed service areas. An Eligible Entity may consider inducements such as use of state funding toward the match requirement set forth in Section III.B or benefits during the grant selection process (e.g., points or credits). The Eligible Entity shall, in this circumstance, work to ensure that its approach is as transparent as possible. For the avoidance of doubt, this provider-specific outreach is only appropriate after the Eligible Entity has solicited proposals and failed to obtain one or more proposals to serve the location or locations at issue.

2.4.6 Text Box: Describe how the Eligible Entity will define project areas from which they will solicit proposals from prospective subgrantees. If prospective subgrantees will be given the option to define alternative proposed project areas, describe the mechanism for de-conflicting overlapping proposals to allow for like-to-like comparisons of competing proposals.

The Eligible Entity must describe how it intends to solicit proposals at a geographic level of its choosing for project areas it defines or if the Eligible Entity intends to ask prospective subgrantees to define the proposed project areas. Geographic levels may be chosen, per project, on a per-location basis, per-census block basis, per-town, per-county, or another geographic unit that the Eligible Entity may define. An “Unserved Service Project” or “Underserved Service Project” may be as small as a single unserved or underserved location, respectively.

If the Eligible Entity allows prospective subgrantees to define proposed project areas, it must develop a mechanism for de-conflicting overlapping proposals to allow for like-to-like comparison of competing proposals (e.g., by de-scoping some locations from a provider’s proposed project area). Eligible Entities may solicit proposals at multiple geographic levels (e.g., per-location in certain circumstances and per-census block in others).

2.4.7 Text Box: If no proposals to serve a location or group of locations that are unserved, underserved, or a combination of both are received, describe how the Eligible Entity will engage with prospective subgrantees in subsequent funding rounds to find providers willing to expand their existing or proposed service areas or other actions that the Eligible Entity will take to ensure universal coverage.

The Eligible Entity must describe how the Eligible Entity will engage in outreach to specific existing providers or to other prospective subgrantees willing to expand their existing or proposed service areas **only if** it receives no proposals to serve a location or group of locations that are unserved or underserved.

The Eligible Entity must ensure transparency by clearly explaining the steps it will take in the described situation, including the methods it will use to make prospective subgrantees aware of the “no response” situation, and any changes of rules it will make to get a response, including but not limited to inducements to serve all unserved and underserved locations, such as the use of state funding toward the match requirement or other benefits. If an Eligible Entity decides to use inducements, the Eligible Entity must describe when and what inducements will be offered, and how the Eligible Entity will ensure that all interested parties were made aware of them.

Other actions that the Eligible Entity may take to ensure universal coverage could include conducting multiple funding rounds for areas not selected initially or structuring bidding or application areas in ways that group higher cost areas with lower cost areas.

2.4.8 Text Box: Describe how the Eligible Entity intends to submit proof of Tribal Governments’ consent to deployment if planned projects include any locations on Tribal Lands.

To the extent an Eligible Entity encompasses federally recognized Tribal lands, Eligible Entities must describe how it intends to submit a Resolution of Consent or other formal demonstration of consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed. The Eligible Entity should consider when the consent documentation will be collected (e.g., with the applications or bids to serve these areas or after preliminary selection of a project) and describe the approach it intends to take. The Eligible Entity is encouraged to discuss this process with Tribal Governments during the consultation and engagement process. Refer to page 48, footnote 70 of the BEAD NOFO for more information on Resolution of Consent, particularly related to consent for projects deployed on Tribal lands in Hawaii and Alaska.

Looking Ahead

The Final Proposal requires an Eligible Entity to submit a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed.

Extremely High Cost Per Location Threshold

Relevant Requirements from the [NOFO](#), page 13:

An Extremely High Cost Per Location Threshold is a BEAD subsidy cost per location to be utilized during the subgrantee selection process described in Section IV.B.7 of the BEAD NOFO above which an Eligible Entity may decline to select a proposal if use of an alternative technology meeting the BEAD Programs technical requirements would be less expensive.⁶

⁶Each Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.6.b of the BEAD NOFO. NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.

2.4.9 Text Box: Identify or outline a detailed process for identifying an Extremely High Cost Per Location Threshold to be utilized during the subgrantee selection process. The explanation must include a description of any cost models used and the parameters of those cost models, including whether they consider only capital expenditures or include the operational costs for the lifespan of the network.

The Eligible Entity must identify or outline a detailed process for identifying an Extremely High Cost Per Location Threshold to be used during the subgrantee selection process. This includes the identification of data to be used in determining the threshold and the threshold to be applied against this data. An Eligible Entity that intends to use the functionality within the Eligible Entity Planning Tool to support the identification of the Extremely High Cost Per Location Threshold (available Summer 2023) may indicate that they intend to use NTIA’s data set.

An Eligible Entity that does not plan to use the Eligible Entity Planning Tool must identify or include a detailed process for identifying the data set to be used in determining their Extremely High Cost Per Location Threshold to be used during the subgrantee selection process. The explanation must include a description of any cost models used and the parameters of those cost models, including whether they consider only capital expenditures or include the operational costs for the lifespan of the network.



IMPORTANT

The Extremely High Cost Per Location Threshold is distinct from High-Cost Area. NTIA will release further information regarding the identification of high-cost areas for purposes of BEAD funding allocations at a later date.

The Eligible Entity is given discretion to determine the threshold that is appropriate for its jurisdiction and should consider the competing goals of encouraging fiber deployment to as many areas as possible and ensuring universal coverage. NTIA expects that an Eligible Entity with a surplus of funding to achieve universal coverage would set a higher

threshold to ensure greater fiber coverage. Conversely, NTIA recommends that an Eligible Entity with tighter budget constraints should set a lower threshold to ensure universal coverage.


2.4.10 Text Box: Outline a plan for how the Extremely High Cost Per Location Threshold will be utilized in the subgrantee selection process to maximize the use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.6.b of the BEAD NOFO. The response must describe:

- a. The process for declining a subgrantee proposal that exceeds the threshold where an alternative technology is less expensive.
- b. The plan for engaging subgrantees to revise their proposals and ensure locations do not require a subsidy.
- c. The process for selecting a proposal that involves a less costly technology and may not meet the definition of Reliable Broadband.

The Eligible Entity must explain how the Extremely High Cost Per Location Threshold will be implemented in the subgrantee selection process, including the process for **each** of the following:

- Declining a proposal that requires a BEAD subsidy that exceeds the Extremely High Cost Per Location Threshold for any location to be served in the proposal if use of an alternative technology meeting the BEAD program’s technical requirements for Reliable Broadband Service would be less expensive;
- Engaging with a prospective subgrantee to revise the proposal to ensure that no location requires a subsidy; and
- Selecting a proposal involving a less costly technology and may not meet the BEAD program's requirements for Reliable Broadband Service (while otherwise satisfying the Program's technical requirements) because no technology meeting the Reliable Broadband Service requirements can be deployed for less than the Extremely High Cost Per Location Threshold at a given location.

The Eligible Entity has the opportunity (but is not required) to decline to fund projects that exceed the Extremely High Cost Per Location Threshold. In this circumstance, the Eligible Entity may instead fund a different Reliable Broadband Technology that can be provided at a lower cost or a technology that does not meet the definition of reliable but will provide service at a minimum of 100/20 and latency less than or equal to 100 milliseconds at a lower cost. The Eligible Entity must explain the process that will be followed in exercising this discretion and any planned engagement with providers to reduce the cost of a project below the Extremely High Cost Per Location Threshold.

 **IMPORTANT**

Reliable Broadband Service refers to broadband service that the National Broadband Map shows is accessible to a location via: (i) fiber-optic technology; (ii) Cable Modem/Hybrid fiber-coaxial technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

Deployment Subgrantee Qualifications

2.4.11 Text Box: Describe how the Eligible Entity will ensure prospective subgrantees deploying network facilities meet the minimum qualifications for financial capability as outlined on pages 72-73 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- a. Detail how the Eligible Entity will require prospective subgrantees to certify that they are qualified to meet the obligations associated with a Project, that prospective subgrantees will have available funds for all project costs that exceed the amount of the grant, and that prospective subgrantees will comply with all Program requirements, including service milestones. To the extent the Eligible Entity disburses funding to subgrantees only upon completion of the associated tasks, the Eligible Entity will require each prospective subgrantee to certify that it has and will continue to have sufficient financial resources to cover its eligible costs for the Project until such time as the Eligible Entity authorizes additional disbursements.
- b. Detail how the Eligible Entity plans to establish a model letter of credit substantially similar to the model letter of credit established by the FCC in connection with the Rural Digital Opportunity Fund (RDOF).
- c. Detail how the Eligible Entity will require prospective subgrantees to submit audited financial statements.
- d. Detail how the Eligible Entity will require prospective subgrantees to submit business plans and related analyses that substantiate the sustainability of the proposed project.

2.4.11.1 Optional Attachment: As an optional attachment, submit application materials related to the BEAD subgrantee selection process, such as drafts of the Requests for Proposals for deployment projects, and narrative to crosswalk against requirements in the Deployment Subgrantee Qualifications section.

The Eligible Entity must articulate how it will ensure prospective subgrantees deploying network facilities will meet the minimum qualifications for financial capability. The Eligible Entity must explain the information it will require of subgrantees, how it will collect or require this information, and how it will assess this information during the subgrantee selection process. As a best practice, the Eligible Entity should also consider including information on how they will revise certifications/terms and conditions, as needed, due to a potential Special Award Conditions (SACs). For information on how to successfully create a plan to revise terms and conditions, please see Figure 5.

The Eligible Entity must detail how it is prepared to gather and assess prospective subgrantees' certifications that they are financially qualified to meet the obligations associated with a Project, letters of credit, audited financial statements, and sustainability/ pro forma analyses of a proposed Project.

The Eligible Entity may refer to the [RDOF sample letters of credit](#) and other resources to help detail its plans for establishing a similar model letter of credit. The Eligible Entity may satisfy this requirement by uploading guidelines for the program and/or application materials using the "Optional Attachment" feature in 2.4.11.1 and providing reference to page numbers that are responsive to this question.

For the optional attachment, an Eligible Entity may provide supplementary materials, such as application questions or Requests for Proposals (RFPs), to help demonstrate that the Eligible Entity is planning to employ subgrantees that meet the qualifications set by the [BEAD NOFO](#). This attachment will apply to all questions in the Deployment Subgrantee Qualifications section, and the Eligible Entity should reference page numbers in the attachment to show the information that they will require from prospective subgrantees to demonstrate their qualifications.

2.4.12 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for managerial capability as outlined on pages 73 – 74 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- a. Detail how the Eligible Entity will require prospective subgrantees to submit resumes for key management personnel.
- b. Detail how it will require prospective subgrantees to provide a narrative describing their readiness to manage their proposed project and ongoing services provided.

The Eligible Entity must clearly articulate how it will ensure prospective subgrantees deploying network facilities will meet the minimum qualifications for managerial capability. The Eligible Entity must explain the information it will require of subgrantees, how it will collect or require this information, and how it will assess this information during the subgrantee selection process.

The Eligible Entity must detail how it is prepared to gather and assess prospective subgrantees' narratives for describing the experience and qualifications of its key management, their experience undertaking projects of similar size and scope, recent and upcoming organizational changes including mergers and acquisitions, and relevant organizational policies.

2.4.13 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for technical capability as outlined on page 74 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- a. Detail how the Eligible Entity will require prospective subgrantees to certify that they are technically qualified to complete and operate the Project and that they are capable of carrying out the funded activities in a competent manner, including that they will use an appropriately skilled and credentialed workforce.
- b. Detail how the Eligible Entity will require prospective subgrantees to submit a network design, diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity receives the subgrant, all certified by a professional engineer, stating that the proposed network can deliver broadband service that meets the requisite performance requirements to all locations served by the Project.

The Eligible Entity must clearly articulate how it will ensure prospective subgrantees deploying network facilities will meet the minimum qualifications for technical capability. The Eligible Entity must explain the information it will require of subgrantees, how it will collect or require this information, and how it will assess this information during the subgrantee selection process. Example responses may include:

- A description of how the Eligible Entity will ensure that the prospective subgrantees are licensed and in good standing with governing bodies (e.g., safety violations) and have a demonstrated experience designing and delivering similar projects.
- A description of how the Eligible Entity will ensure that the engineer who certifies the design, diagram, project costs, etc., holds a current, applicable license in the state or territory in which the network is being constructed.
- A description of how the project plan will clearly identify the steps (planning, design, implementation, and operation) to which the capital investment schedule will cross reference to.

As a best practice, when requesting plans from prospective subgrantees, and in order to guarantee the adherence to the predetermined standards of technical capabilities, the Eligible Entity should undertake the responsibility to establish specific criteria for technical capability, corresponding to industry standards, BEAD NOFO requirements and best practices.

The prospective subgrantees should be subjected to rigorous evaluations, which include but are not limited to, assessment of their previous project performances, analysis of their technical project plan (encompassing network design, diagrams, project costs, build-out timeline, and milestones for the project), and an appraisal of their technical workforce's proficiency.

To connect with a professional engineer in their states, the Eligible Entity is encouraged to reach out to the following resources:

- **State Licensing Board:** Each state in the U.S. has a separate engineering licensing board. These boards can provide information about licensed professional engineers in their respective states.
- **National Society of Professional Engineers (NSPE):** The NSPE has state societies in all 50 states as well as the District of Columbia, Puerto Rico, and Guam. These societies can often assist in providing information about professional engineers in their respective regions.

2.4.14 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for compliance with applicable laws as outlined on page 74 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- a. Detail how the Eligible Entity will require prospective subgrantees to demonstrate that they are capable of carrying out funded activities in a competent manner in compliance with all applicable federal, state, territorial, and local laws.
- b. Detail how the Eligible Entity will require prospective subgrantees to permit workers to create worker-led health and safety committees that management will meet with upon reasonable request.

The Eligible Entity must clearly articulate how it will ensure prospective subgrantees deploying network facilities will meet the minimum qualifications for compliance with all applicable federal, state, territorial, and local laws. For example, the Eligible Entity must ensure that prospective subgrantees adhere to relevant federal and state or territory procurement laws.

To foster a successful sub-granting process, Eligible Entities should understand the critical components related to procurement. Both legally binding regulations and agency-specific policies work together to create a process unique to each Eligible Entity. Before creating a competitive selection process, Eligible Entities should work to recognize existing federal, state or territory, and local requirements, document relevant procedures, and develop new policies, where needed. For further guidance on federal and state or territory procurement components, including how they work together, please reference the [Subgrantee Selection Primer](#).

The Eligible Entity must detail how it is prepared to gather and assess prospective subgrantees' submission of its network design, diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity receives the subgrant.

The Eligible Entity must also detail how it will require prospective subgrantees to permit workers to create work-led health and safety committees. The Eligible Entity must explain the

information it will require of subgrantees, how it will collect or require this information, and how it will assess this information during the subgrantee selection process. For additional information and best practices on working with labor groups, please reference the [NTIA Internet For All: Workforce Planning Guide](#).

2.4.15 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for operational capability as outlined on pages 74 – 75 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- a. Detail how the Eligible Entity will require prospective subgrantees to certify that they possess the operational capability to qualify to complete and operate the Project.
- b. Detail how the Eligible Entity will require prospective subgrantees to submit a certification that have provided a voice, broadband, and/or electric transmission or distribution service for at least two (2) consecutive years prior to the date of its application submission or that it is a wholly owned subsidiary of such an entity, attests to and specify the number of years the prospective subgrantee or its parent company has been operating.
- c. Detail how the Eligible Entity will require prospective subgrantees that have provided a voice and/or broadband service, to certify that it has timely filed Commission Form 477s and the Broadband DATA Act submission, if applicable, as required during this time period, and otherwise has complied with the Commission’s rules and regulations.
- d. Detail how the Eligible Entity will require prospective subgrantees that have operated only an electric transmission or distribution service, to submit qualified operating or financial reports, that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.
- e. In reference to new entrants to the broadband market, detail how the Eligible Entity will require prospective subgrantees to provide evidence sufficient to demonstrate that the newly formed entity has obtained, through internal or external resources, sufficient operational capabilities.

The Eligible Entity must clearly articulate how it will ensure prospective subgrantees deploying network facilities will meet the minimum qualifications for operational capability. The Eligible Entity must explain the information it will require of subgrantees, how it will collect or require this information, and how it will assess this information during the subgrantee selection process. Please refer to Figure 5 for additional best practices on incorporating information on strong processes in this response. For additional guidance on record retention for certifications, reference the BIL Grant File Management Guide Best Practices document.

2.4.16 Text Box: Describe how the Eligible Entity will ensure that any prospective subgrantee deploying network facilities meets the minimum qualifications for providing information on ownership as outlined on page 75 of the BEAD NOFO. If the Eligible Entity opts to provide

application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- a. Detail how the Eligible Entity will require prospective subgrantees to provide ownership information consistent with the requirements set forth in 47 C.F.R. § 1.2112(a)(1)-(7).

The Eligible Entity must clearly articulate how it will ensure prospective subgrantees deploying network facilities will meet the minimum qualifications for providing information on ownership. The Eligible Entity must explain the information it will require of subgrantees, how it will collect or require this information, and how it will assess this information during the subgrantee selection process. For most Eligible Entities, this information will be included in the subgrantees' standard terms and conditions. For information on how to write strong terms and conditions to include in this question's response, see Figure 5.

Figure 5: Terms and Conditions Best Practices

How to Write Strong Terms and Conditions

For each qualification, or amendment to a qualification, the Eligible Entity should ensure terms and conditions:

1. Are specific and clearly defined;
2. Are measurable in whether or not they are achieved;
3. Have a specific timeframe; and
4. Note the reviewing party and associated responsibilities.

2.4.17 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for providing information on other public funding as outlined on pages 75 – 76 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- a. Detail how it will require prospective subgrantees to disclose for itself and for its affiliates, any application the subgrantee or its affiliates have submitted or plan to submit, and every broadband deployment project that the subgrantee or its affiliates are undertaking or have committed to undertake at the time of the application using public funds.
- b. At a minimum, the Eligible Entity shall require the disclosure, for each broadband deployment project, of: (a) the speed and latency of the broadband service to be provided (as measured and/or reported under the applicable rules), (b) the geographic area to be covered, (c) the number of unserved and underserved locations committed to serve (or, if the commitment is to serve a percentage of locations within the specified geographic area, the relevant percentage), (d) the amount of public funding to be used, (e) the cost of service to the consumer, and (f) the matching commitment, if any, provided by the subgrantee or its affiliates.

The Eligible Entity must clearly articulate how it will ensure prospective subgrantees deploying network facilities will meet the minimum qualifications for providing information on other public funding. The Eligible Entity must explain the information it will require of subgrantees,

how it will collect or require this information, and how it will assess this information during the subgrantee selection process.

The Infrastructure Act defines Reliable Broadband Service as “broadband service that meets performance criteria for service availability, adaptability to changing end-user requirements, length of serviceable life, or other criteria, other than upload and download speeds, as determined by the Assistant Secretary in coordination with the Commission.” This definition is incorporated into the BEAD NOFO, which defines the minimum criteria for speed and latency for subgrantees. When reviewing subgrantee applications, Eligible Entities are strongly encouraged to explain how they will specifically meet the performance measurement requirements of the Program.

Non-Deployment Subgrantee Selection (Requirement 9)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

With respect to non-deployment eligible activities, explain any preferences the Eligible Entity will employ in selecting the type of initiatives it intends to support using BEAD Program funds, the means by which subgrantees for these eligible activities will be selected, how the Eligible Entity expects the initiatives it pursues to address the needs of the Eligible Entity's residents, the ways in which engagement with localities and stakeholders will inform the selection of eligible activities, and any efforts the Eligible Entity will undertake to determine whether other uses of the funds might be more effective in achieving the BEAD Program's equity, access, and deployment goals.

The purpose of this section is to outline non-deployment eligible activities an Eligible Entity may support using BEAD Program funds. Non-deployment eligible activities are important because they help provide the information technology capacity, educational resources, and skills necessary to adopt broadband and advance digital inclusion.

Eligible Entities may only fund non-deployment eligible activities if they have a plan to ensure



IMPORTANT

An Eligible Entity may use non-deployment funds to support the implementation of Digital Equity Plans.

deployments to all unserved and underserved locations and can demonstrate the effectiveness of that plan to satisfaction of the Assistant Secretary. An Eligible Entity that proposes to use BEAD funds to pursue non-deployment objectives in lieu of the deployment of

service to eligible CAIs must provide a strong rationale for doing so. An Eligible Entity that has a plan to deploy service to all unserved and underserved locations within its jurisdiction may pursue eligible non-deployment uses prior to its last-mile deployment projects being completed. Where an Eligible Entity has sufficient funding to pursue non-deployment uses, Eligible Entities are encouraged to begin non-deployment activities as soon as is feasible, before or while deployment projects are underway. For example, while an Eligible Entity is only permitted to pursue a device-subsidy program using BEAD funds if it has a plan to deploy service to all unserved and underserved locations within its jurisdiction, an Eligible Entity approved for such a program is both permitted and encouraged to implement it as soon as is feasible once its Initial Proposal has been approved.

An Eligible Entity should consider the list of eligible non-deployment activities in Figure 6.

Figure 6: Examples of Eligible Non-Deployment Uses

| EXAMPLES OF ELIGIBLE NON-DEPLOYMENT USES |
|--|
| <ul style="list-style-type: none"> • User training with respect to cybersecurity, privacy, and other digital safety matters. • Remote learning or telehealth services/facilities. • Digital literacy/upskilling (from beginner-level to advanced). • Computer science, coding and cybersecurity education programs. • Implementation of Eligible Entity digital equity plans (to supplement, but not to duplicate or supplant, Planning Grant funds received by the Eligible Entity in connection with the Digital Equity Act of 2021). • Broadband sign-up assistance and programs that provide technology support. • Multi-lingual outreach to support adoption and digital literacy. • Prisoner education to promote pre-release digital literacy, job skills, online job-acquisition skills, etc. • Digital navigators. • Direct subsidies for use toward broadband subscription, where the Eligible Entity shows the subsidies will improve affordability for the end user population (and to supplement, but not to duplicate or supplant, the subsidies provided by the Affordable Connectivity Program). • Costs associated with stakeholder engagement, including travel, capacity-building, or contract support. • Other allowable costs necessary to carrying out programmatic activities of an award, not to include ineligible costs described below in Section V.K.2 of this NOFO. |

2.5.1 Text Box: Describe a fair, open, and competitive subgrantee selection process for eligible non-deployment activities. Responses must include the objective means, or process by which objective means will be developed, for selecting subgrantees for eligible non-deployment activities. If the Eligible Entity does not intend to subgrant for non-deployment activities, indicate such.

If the Eligible Entity does not anticipate engaging in non-deployment activities or anticipates engaging in non-deployment activities directly as opposed to subgranting, the Eligible Entity may indicate as such in response to this question. If the Eligible Entity is not yet able to determine if they will have sufficient funds to engage in non-deployment activities after completing their deployment activities to achieve universal coverage, they should indicate such and must respond to the prompts to indicate their plan for non-deployment subgrantee selection, should they have the ability to do so.

When selecting subgrantees for non-deployment uses of BEAD Program funds, an Eligible



IMPORTANT

An Eligible Entity may carry out non-deployment initiatives as a recipient without making a subgrant. Refer to Eligible Entity Implementation Activities ([Requirement 10](#)) for more information.

Entity must adhere to the Infrastructure Act’s requirement that subgrants be awarded competitively. Apart from this, NTIA does not prescribe any specific framework for selecting subgrantees given that the breadth of potential non-deployment eligible activities could necessitate a broad range of subgrantee selection processes, even within a single

Eligible Entity, and that such processes might require the Eligible Entity to compare and choose among very different proposals. As with deployment projects, NTIA encourages the Eligible Entity to promote participation of minority-owned businesses and other socially or economically disadvantaged individual-owned businesses.

If the Eligible Entity intends to subgrant for non-deployment activities, the Eligible Entity must provide a detailed description of the selection process that is fundamentally fair, open, and competitive.

The Eligible Entity must describe the safeguards to ensure the subgrantee selection process is **fair**, including safeguards against **each** of the following:

- Collusion
- Bias
- Conflicts of interest
- Arbitrary decisions

The Eligible Entity must ensure the proposed subgrantee selection process is **open** by describing how the Eligible Entity will provide adequate public notice, at the discretion of the Eligible Entity, to potential subgrantees to enable participation by a wide variety of potential applicants, to ensure an open and competitive process and to prevent favoritism, collusion, and abuse.

The Eligible Entity must also describe how it ensured the subgrantee selection process is **competitive**, such as by using a competitively neutral evaluation criteria that does not favor one type of provider over another, except certain preferences expressed neutrally and in advance (e.g., giving more weight to Tribally or municipally-owned ISPs, or small businesses). Such preferences may only be included as secondary criteria.

2.5.2 Text Box: Describe the Eligible Entity’s plan for the following:

- a. How the Eligible Entity will employ preferences in selecting the type of non-deployment initiatives it intends to support using BEAD Program funds;
- b. How the non-deployment initiatives will address the needs of residents within the jurisdiction;
- c. The ways in which engagement with localities and stakeholders will inform the selection of eligible non-deployment activities;
- d. How the Eligible Entity will determine whether other uses of the funds might be more effective in achieving the BEAD Program’s equity, access, and deployment goals.

Looking Ahead

An Eligible Entity will be required to provide a detailed description of all planned uses of BEAD funding that are not last-mile broadband deployment projects in its Final Proposal.

If the Eligible Entity does not anticipate engaging in any non-deployment activities, it may indicate as such in response to this question. If the Eligible Entity is not yet able to determine whether it will have sufficient funds to engage in non-deployment activities after completing deployment activities to achieve universal coverage, it should indicate as such in response to this question and should still describe its *plan* for non-deployment activities, should it have the ability to implement them.

2.5.1.a: The Eligible Entity must describe the preferences employed in selecting the type of initiatives it intends to support.

2.5.2.b: The Eligible Entity is required to justify how the non-deployment initiatives will address the needs of residents within its jurisdiction. An Eligible Entity proposing multiple non-deployment initiatives may describe how needs vary by resident demographics. For example, residents in a more rural area may require different programs than residents living in another part of the Eligible Entity.

2.5.2.c: The Eligible Entity is required to describe how local coordination and engagement has or will inform the selection of eligible non-deployment activities. The Eligible Entity must select eligible non-deployment activities that will address local broadband needs. The Eligible Entity may consider the data collected as part of the Local Coordination Tracker ([Requirement 4: Local Coordination](#)) to inform the selection of eligible activities.

2.5.2.d: If the Eligible Entity chooses to fund non-deployment activities other than those outlined in the BEAD NOFO, it must describe how those uses are more effective in achieving the BEAD Program’s equity, access, and deployment goals. This response should reference the unique needs of the residents within the Eligible Entity’s jurisdiction to justify why the non-deployment activities other than those outlined in the BEAD NOFO should receive BEAD Program funding.

2.5.3 Text Box: Describe the Eligible Entity’s plan to ensure coverage to all unserved and underserved locations prior to allocating funding to non-deployment activities.

The Eligible Entity must describe how it will award funding in a manner that ensures the deployment of service to all unserved and underserved locations prior to allocating funds to non-deployment activities. An Eligible Entity must submit Initial Proposals and Final Proposals that will result in coverage for all unserved locations, and (to the extent funds are available) all underserved locations.

If the Eligible Entity does not anticipate engaging in non-deployment activities, they may indicate such in response to this question. The Eligible Entity may also indicate that they are not yet able to determine if they will have sufficient funds to engage in non-deployment activities after completing their deployment activities to achieve universal coverage.

The requirement that an Eligible Entity has a plan to ensure deployment to all unserved and underserved locations before contemplating non-deployment uses of funds does not impose any temporal requirement as to the order in which BEAD-funded initiatives are undertaken or completed.

2.5.4 Text Box: Describe how the Eligible Entity will ensure prospective subgrantees meet the general qualifications outlined on pages 71 – 72 of the NOFO.

If the Eligible Entity does not anticipate subgranting for non-deployment activities, the Eligible Entity may indicate as such in response to this question. If the Eligible Entity is not yet able to determine if they will have sufficient funds to engage in non-deployment activities after completing their deployment activities to achieve universal coverage, it should indicate such and must respond to the prompts to indicate their plan for non-deployment subgrantee selection, should it have the ability to do so.

The Eligible Entity must ensure that prospective subgrantees meet the **three general qualifications** below:

- Can carry out activities funded by the subgrant in a competent manner in compliance with all applicable federal, Eligible Entity, and local laws;
- Have the financial and managerial capacity to meet the commitments of the subgrantee under the subgrant, the requirements of the Program and such other requirements as have been prescribed by the Assistant Secretary or the Eligible Entity; and
- Have the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award.

The Eligible Entity must describe the following for **each of the three qualifications separately**:

- The minimum **standards** applied to determine compliance;
- **Methods** used to determine a prospective subgrantee meets the necessary standards; and
- **Evidence** the Eligible Entity will accept in making its determination.

Eligible Entity Implementation Activities (Requirement 10)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Describe any initiatives the Eligible Entity proposes to implement as the recipient without making a subgrant, and why it proposes that approach.

2.6.1 Text Box: Describe any initiatives the Eligible Entity proposes to implement as the recipient without making a subgrant, and why it proposes that approach.

In this section, the Eligible Entity must describe any initiatives it proposes to implement as the recipient. Examples of initiatives the Eligible Entity may propose include administrative activities to manage the grant, implementation of the Challenge Process, implementation of the subgrantee selection process, workforce development related to the deployment of broadband, digital equity, or broadband adoption activities (as long as the Eligible Entity has sufficient funding for unserved and underserved areas), and mapping or data collection. An Eligible Entity may not propose broadband deployment projects without conducting a competitive sub-granting process.

The Eligible Entity may also decide to carry out non-deployment activities itself as a recipient. Examples of non-deployment activities can be found in [Requirement 9: Non-Deployment Subgrantee Selection](#).

The Eligible Entity is required to outline *why* it proposes to implement the initiative without making a subgrant. For example, an Eligible Entity may justify implementing pre-existing activities as a recipient if the Eligible Entity is already running them, such as mapping or data collection.

If the Eligible Entity does anticipate implementing any initiatives without making a subgrant, it may indicate such in response to this question.

Labor Standards and Protection (Requirement 11)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Detail how the Eligible Entity will ensure that subgrantees, contractors, and subcontractors use strong labor standards and protections, such as those listed in Section IV.C.1.e, and how the Eligible Entity will implement and apply the labor related Subgrantee Selection criteria described below in Section IV.C.1.e of this NOFO.

The purpose of this section is to ensure jobs created by BEAD investments create good jobs and safe work environments. The Eligible Entity must explain how they will account for and oversee subgrantee adherence to federal labor and employment laws that mandate minimum safety, wage, anti-discrimination, and other workplace standards for all businesses in the United States.

The Eligible Entity must outline its approach to comply with and oversee subgrantee adherence to the laws listed in the BEAD NOFO and the [Workforce Planning Guide](#). States, territories, and Tribal entities may have additional applicable labor and employment requirements which Eligible Entities and subgrantees alike must follow.

2.7.1 Text Box: Describe the specific information that prospective subgrantees will be required to provide in their applications and how the Eligible Entity will weigh that information in its competitive subgrantee selection processes. Information from prospective subgrantees must demonstrate the following and must include information about contractors and subcontractors:

- a. Prospective subgrantees' record of past compliance with federal labor and employment laws, which:
 - i. Must address information on these entities' compliance with federal labor and employment laws on broadband deployment projects in the last three years;
 - ii. Should include a certification from an Officer/Director-level employee (or equivalent) of the prospective subgrantee evidencing consistent past compliance with federal labor and employment laws by the subgrantee, as well as all contractors and subcontractors; and
 - iii. Should include written confirmation that the prospective subgrantee discloses any instances in which it or its contractors or subcontractors have been found to have violated laws such as the Occupational Safety and Health Act, the Fair Labor Standards Act, or any other applicable labor and employment laws for the preceding three years.
- b. Prospective subgrantees' plans for ensuring compliance with federal labor and employment laws, which must address the following:
 - i. How the prospective subgrantee will ensure compliance in its own labor and employment practices, as well as that of its contractors and subcontractors, including:
 1. Information on applicable wage scales and wage and overtime payment practices for each class of employees expected to be involved directly in the physical construction of the broadband network; and
 2. How the subgrantee will ensure the implementation of workplace safety committees that are authorized to raise health and safety concerns in connection with the delivery of deployment projects.

2.7.1.a: The Eligible Entity must describe what specific information it will require subgrantees to provide in their applications, specifically as it relates to the prospective subgrantees’ record of past compliance with federal labor and employment laws, as well as the records of any other entities that will participate in the project, including contractors and subcontractors. This information must include, at a minimum, information on these entities’ compliance with federal labor and employment laws on broadband deployment projects in the last three years. New entrants without a record of labor and employment law compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects (BEAD NOFO pg. 43).

The Eligible Entity will be required to describe what specific information it will require prospective subgrantees to provide and how the information will be weighed in the selection process. This should include, but is not limited to:



A certification from an **Officer/Director-level employee** (or equivalent) of the prospective subgrantee evidencing **consistent past compliance** with federal labor and employment laws by the subgrantee, as well as all contractors and subcontractors



Written confirmation that the prospective subgrantee **discloses any instances in which it or its contractors or subcontractors have been found to have violated laws** such as the Occupational Safety and Health Act, the Fair Labor Standards Act, or any other applicable labor and employment laws for the preceding three years

2.7.1.b: Additionally, the Eligible Entity must describe what specific information it will require subgrantees to provide in their applications to demonstrate their plans for ensuring compliance with federal labor and employment laws. These plans must address, at a minimum, how the prospective subgrantee will ensure compliance in its own labor and employment practices, as well as that of its contractors and subcontractors, including:

- Information on applicable wage scales and wage and overtime payment practices for each class of employees expected to be involved directly in the physical construction of the broadband network, and
- How the subgrantee will ensure the implementation of workplace safety committees that are authorized to raise health and safety concerns in connection with the delivery of deployment projects.



IMPORTANT

The subgrantee selection scoring rubric submitted in Requirement 8 must include how the subgrantees’ record of compliance with Federal Labor and employment laws will be weighed.

The Eligible Entity must describe how the subgrantees’ record of compliance with federal labor and employment laws will be weighed in the competitive subgrantee selection process. When evaluating subgrantee applications, NTIA requires that Eligible Entities give

priority to fair labor practices, based on records of and plans to be in compliance with federal labor and employment laws.

2.7.2 Text Box: Describe in detail whether the Eligible Entity will make mandatory for all subgrantees (including contractors and subcontractors) any of the following and, if required, how it will incorporate them into binding legal commitments in the subgrants it makes:

- a. Using a directly employed workforce, as opposed to a subcontracted workforce;
- b. Paying prevailing wages and benefits to workers, including compliance with Davis-Bacon and Service Contract Act requirements, where applicable, and collecting the required certified payrolls;
- c. Using project labor agreements (i.e., pre-hire collective bargaining agreements between unions and contractors that govern terms and conditions of employment for all workers on a construction project);
- d. Use of local hire provisions;
- e. Commitments to union neutrality;
- f. Use of labor peace agreements;
- g. Use of an appropriately skilled workforce (e.g., through Registered Apprenticeships or other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded);
- h. Use of an appropriately credentialed workforce (i.e., satisfying requirements for appropriate and relevant pre-existing occupational training, certification, and licensure); and
- i. Taking steps to prevent the misclassification of workers.

The Eligible Entity must describe in detail whether it will make any of the labor standards and protections listed on page 57 of the BEAD NOFO mandatory for all subgrantees (including contractors and subcontractors), and if required, how it will incorporate them into binding legal commitments in the subgrants it makes. The Eligible Entity may respond by indicating that they do not intend to make any labor standards and protections mandatory for subgrantees.

While the above actions are not required, an Eligible Entity that is taking this approach can reduce the showing that prospective subgrantees need to make in their applications regarding their plans to incorporate labor standards and protections. This response should comport with the Eligible Entity's responses for Requirements 8 and 9 regarding the consideration of prospective subgrantee's commitments to labor standards and protections during the subgrantee selection process.

Workforce Readiness (Requirement 12)

Relevant Requirements from the NOFO, pages 30 - 32:

Detail how the Eligible Entity will ensure an available, diverse, and highly skilled workforce consistent with Section IV.C.1.e of this NOFO.

The purpose of this section is to outline how the Eligible Entity will ensure an available, diverse, and highly skilled workforce. A highly skilled workforce is essential in ensuring job applicants have the skills and training they need to be competitive in the telecommunications labor market, while creating a strong talent pool for prospective subgrantees. The Eligible Entity is encouraged to refer to the [Workforce Planning Guide](#) for support in defining skilled workforce requirements and guidance for their subgrantees that will shape the experiences of workers on job sites building and servicing broadband infrastructure.

These requirements may vary by state or territory, and each Eligible Entity can set requirements for subgrantee participation and evaluation for BEAD funding that will be approved by NTIA throughout the BEAD submission process. Setting strong requirements for skilled workforce in areas such as pay and credentialing will ensure that Internet For All projects balance worker competence, training, and certifications with a competitive and attractive environment for workers in local and regional markets.

2.8.1 Text Box: Describe how the Eligible Entity and their subgrantees will advance equitable workforce development and job quality objectives to develop a skilled, diverse workforce. At a minimum, this response should clearly provide each of the following, as outlined on page 59 of the BEAD NOFO:

- a. A description of how the Eligible Entity will ensure that subgrantees support the development and use of a highly skilled workforce capable of carrying out work in a manner that is safe and effective;
- b. A description of how the Eligible Entity will develop and promote sector-based partnerships among employers, education and training providers, the public workforce system, unions and worker organizations, and community-based organizations that provide relevant training and wrap-around services to support workers to access and complete training (e.g., child care, transportation, mentorship), to attract, train, retain, or transition to meet local workforce needs and increase high-quality job opportunities;
- c. A description of how the Eligible Entity will plan to create equitable on-ramps into broadband-related jobs, maintain job quality for new and incumbent workers engaged in the sector; and continually engage with labor organizations and community-based organizations to maintain worker voice throughout the planning and implementation process; and
- d. A description of how the Eligible Entity will ensure that the job opportunities created by the BEAD Program and other broadband funding programs are available to a diverse pool of workers.

The Initial Proposal is required to describe how the Eligible Entity and its subgrantees will make appropriate investments to develop a skilled, diverse workforce. At a minimum, this includes providing **each** of the following:



Use of highly trained workforce

Description of how the Eligible Entity will ensure subgrantees support the development of a skilled workforce capable of carrying out BEAD Program work in a manner that is safe and effective



Participation in partnerships

Description of how the Eligible Entity will promote sector-based partnerships that provide skills-based training and wrap-around services to support local workers (e.g., Registered Apprenticeships)



Equitable on-ramps into broadband jobs

Description of how the Eligible Entity will create equitable on-ramps into broadband-related jobs by removing barriers to entry, and by maintaining job quality and worker voice



Job availability to diverse worker pool

Description of how the Eligible Entity will ensure job opportunities created by broadband funding programs are available to a diverse pool of workers

Example responses may include:

- A description of how the Eligible Entity plans to support subgrantee programs that promote diversity in hiring practices, including the promotion of Registered Apprenticeship, pre-apprenticeship, training, and/or mentoring programs targeting underrepresented groups in the industry (e.g., women, people of color).
- A description of how the Eligible Entity will form partnerships with minority-serving institutions to create a pipeline of workforce candidates.
- A description of how Eligible Entities will give preference to subgrantees that prioritize hiring local workers and are committed to recruiting underrepresented populations.

The Eligible Entity may refer to Section IV.C.1.e of the [BEAD NOFO](#) for more examples of how the Eligible Entity and its subgrantees can invest in a skilled and diverse workforce.

The Eligible Entity is also encouraged to implement requirements for subgrantees, such as those that prioritize the hiring of local workers and/or require robust plans to recruit historically underrepresented populations facing labor market barriers to ensure that they have reasonable access to the job opportunities created by subgrantees.

2.8.2 Text Box: Describe the information that will be required of prospective subgrantees to demonstrate a plan for ensuring that the project workforce will be an appropriately skilled and credentialed workforce. These plans should include the following:

- a. The ways in which the prospective subgrantee will ensure the use of an appropriately skilled workforce, e.g., through Registered Apprenticeships or other joint labor-management training programs that serve all workers;
- b. The steps that will be taken to ensure that all members of the project workforce will have appropriate credentials, e.g., appropriate and relevant pre-existing occupational training, certification, and licensure;
- c. Whether the workforce is unionized;

- d. Whether the workforce will be directly employed or whether work will be performed by a subcontracted workforce; and
- e. The entities that the proposed subgrantee plans to contract and subcontract with in carrying out the proposed work.

If the project workforce or any subgrantee’s, contractor’s, or subcontractor’s workforce is not unionized, the subgrantee must also provide with respect to the non-union workforce:

- a. The job titles and size of the workforce (FTE positions, including for contractors and subcontractors) required to carry out the proposed work over the course of the project and the entity that will employ each portion of the workforce;
- b. For each job title required to carry out the proposed work (including contractors and subcontractors), a description of:
 - i. Safety training, certification, and/or licensure requirements (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training as relevant depending on title and work), including whether there is a robust in-house training program with established requirements tied to certifications, titles; and
 - ii. Information on the professional certifications and/or in-house training in place to ensure that deployment is done at a high standard.

To ensure that subgrantees have the technical and operational capacity to carry out the subgrant, the Eligible Entity must require prospective subgrantees to have a plan for ensuring that the project workforce will be appropriately skilled and credentialed (including by the subgrantee and each of its contractors and subcontractors). Section IV.C.1.e. of the BEAD NOFO highlighted below provides specific information required from prospective subgrantees as it relates to a plan for a highly skilled and credentialed workforce. The Eligible Entity must ensure that **each of the following NOFO requirements are included in its subgrantees’ plans.**

Minority Business Enterprises (MBEs/ Women's Business Enterprises (WBEs)/ Labor Surplus Area Firms Inclusion (Requirement 13)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Describe the process, strategy, and data tracking method(s) that the Eligible Entity will implement to ensure that minority businesses, women-owned business enterprises, and labor surplus area firms are recruited, used, and retained when possible.

NOFO Section VII.D.7:

Minority Businesses Enterprises (MBEs) and Women's Business Enterprises (WBEs) are major catalysts for economic growth and job creation. However, data shows that MBEs and WBEs historically face significant contracting disparities compared to other businesses. Pursuant to 2 C.F.R. § 200.321, Eligible Entities must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring subgrantees to take the affirmative steps listed above as it relates to its subcontractors.

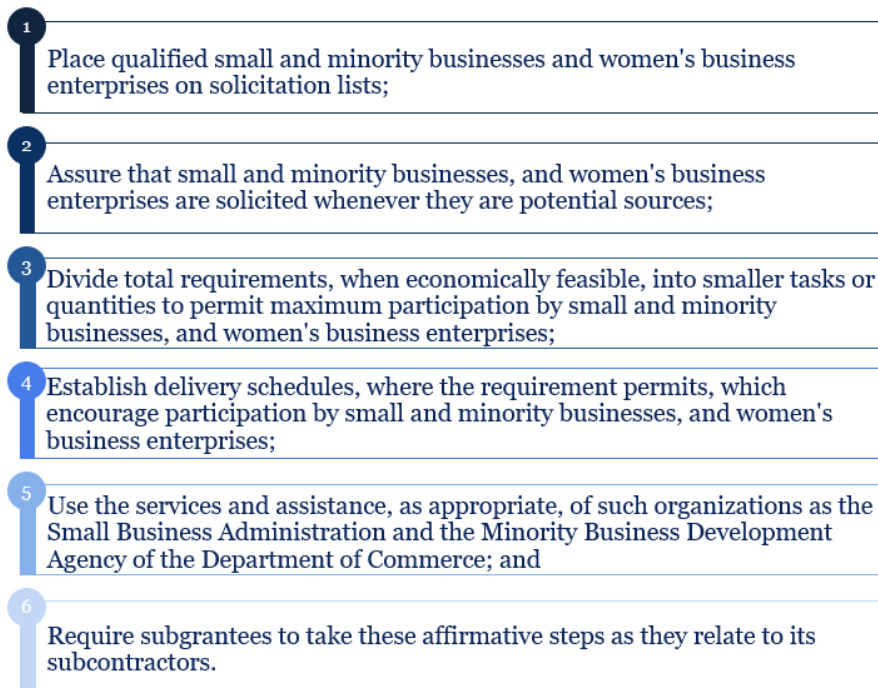
Eligible Entities are strongly encouraged to establish MBE and WBE utilization plans consistent with their Initial and Final Proposals.

The purpose of this section is to outline how the Eligible Entity will promote recruiting, utilizing, and retaining minority business enterprises (MBEs), women's business enterprises (WBEs), and labor surplus area firms, when possible. This is a critical step to promote MBE, WBE, and labor surplus area firm inclusion and to help curb contracting disparities that historically exist. The Eligible Entity is encouraged to refer to the [Workforce Planning Guide](#) for additional support in fulfilling this requirement.

2.9.1 Text Box: Describe the process, strategy, and the data tracking method(s) the Eligible Entity will implement to ensure that minority businesses, women-owned business enterprises (WBEs), and labor surplus area firms are recruited, used, and retained when possible.

The Eligible Entity is required to describe a strategy and detailed plan to take **each** of the steps detailed in Figure 7 to ensure that MBEs, WBEs, and labor surplus area firms are recruited, used, and retained when possible.

Figure 7: Affirmative Steps Towards Inclusion of MBEs, WBEs, and Labor Surplus Area Firms



As part of the requirement to use the services and assistance, as appropriate, of organizations such as the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA), the Eligible Entity may describe its plans to consult with SBA's [Small Business Development Centers](#) and MBDA's [State-Based Business Centers](#) for more information on multiple SMA contracting assistance programs, including:

- [Small Disadvantaged Business](#)
- [Women-Owned Small Business Federal Contract program](#)

The Eligible Entity may reference current policies or procedures to ensure minority-owned business, women-owned enterprises and labor surplus area firms are included in sub-granting practices. The Eligible Entity may also include strategies it may reference in its response to the workforce readiness requirement, such as a description of how the Eligible Entity will form partnerships with minority-serving institutions to create a pipeline of workforce candidates.

The Eligible Entity must include a description of its current tracking methods. The data tracking method(s) described should reasonably demonstrate a methodology that can be validated. The Eligible Entity's response may reference existing processes or tracking methods used in its jurisdictions for contracting purposes. For example, the Eligible Entity may describe how it will leverage a small business agency or local database to obtain a list of MBEs, WBEs, or Labor Surplus Area firms that it can reference when soliciting proposals.

2.9.2 Check Box: Certify that the Eligible Entity will take all necessary affirmative steps to ensure minority businesses, women’s business enterprises, and labor surplus area firms are used when possible, including the following outlined on pages 88 – 89 of the BEAD NOFO:

- a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring subgrantees to take the affirmative steps listed above as it relates to subcontractors.

The Eligible Entity must certify, by checking a box, that it plans to take necessary affirmative steps to ensure MBEs, WBEs, and labor surplus area firms are recruited, used, and retained, when possible.

Cost and Barrier Reduction (Requirement 14)

Relevant Requirements from the [NOFO](#), pages 30 - 32:

Identify steps that the Eligible Entity will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements.⁴²

⁴² Consistent with the goal that Eligible Entities seek to minimize the BEAD funding outlay on a particular project, Eligible Entities and their political subdivisions are strongly encouraged to remove time and cost barriers associated with BEAD projects, including by expediting permitting timelines and waiving fees where applicable, where doing so does not undermine other critical policy goals.

The purpose of this section is to identify steps that the Eligible Entity will take to reduce costs and barriers to deployment through promoting the use of existing infrastructure and promoting and adopting dig-once policies, streamlined permitting processes, and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements. Identifying steps to reduce costs and barriers is critical to ensuring that the Eligible Entity is utilizing BEAD Program funds efficiently, while also reducing unnecessary delays.

2.10.1 Text Box: Identify steps that the Eligible Entity will take to reduce costs and barriers to deployment. Responses may include but not be limited to the following:

- a. Promoting the use of existing infrastructure;
- b. Promoting and adopting dig-once policies;
- c. Streamlining permitting processes;
- d. Streamlining cost-effective access to poles, conduits, easements; and
- e. Streamlining rights of way, including the imposition of reasonable access requirements.

The Eligible Entity must identify steps to reduce costs and barriers to deployment, including through the following: promoting the use of existing infrastructure and/or promoting and adopting dig-once policies, streamlined permitting processes, and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements. The Eligible Entity is **not required to address each of these**; rather, the Eligible Entity may indicate which barriers it intends to address. The Eligible Entity should identify steps that are specific to its jurisdiction including its unique geography, demographics, political landscape, and regulatory environment, among other factors.

Example responses may include, but are not limited to the following:

- A description of how the Eligible Entity will establish an interagency working group to coordinate with different governmental bodies on permitting issues;
- A description of how the Eligible Entity will track permit applications and identify delays or other issues for escalation;
- A description of how the Eligible Entity plans to enhance consistency in permit application processes and requirements across State and local permitting authorities;

- A description of how the Eligible Entity will identify common standards of documentation for common elements of permitting applications;
- A description of how the Eligible Entity will identify any early coordination efforts that have taken place to understand requirements across permitting jurisdictions, how they intersect, and opportunities for change;
- A description of how permitting agencies will coordinate across state or territory, local, Tribal, and federal jurisdictions;
- A description of steps that the Eligible Entity will take to ensure subrecipients and other rights-of-way applicants are in current compliance on rights-of-way already granted at the local, state or territory, and federal levels; or
- A description of how rights-of-way grant holders will be provided an opportunity to come into compliance regarding issues of trespass, non-payment of rents, revised purpose, etc., on private, state or territory, local, federal, and tribal lands.

It is also acceptable for the Eligible Entity to identify other ways to reduce costs and barriers to deployment that are not listed above. The Eligible Entity can refer to the permitting resources on the [NTIA BEAD website](#), including the [Permitting Best Practices: Case Studies](#) and [Permitting Needs Assessment](#) documents, for additional information to incorporate in its response.

The [Permitting Best Practices: Case Studies](#) outlines case studies and examples of streamlining permitting, including Broadband Ready Communities, E-Permitting, and Rights-of-Way.

The [Permitting Needs Assessment](#) contains a checklist of four major permitting categories, including Rights-of-Way, Pole Attachments, Conduit Access, and Environment Planning/Historic Preservation.

Climate Assessment (Requirement 15)

Relevant Requirements from the NOFO, pages 30 - 32:

Provide an assessment of climate threats within the Eligible Entity and proposed mitigation methods consistent with the requirements of Section IV.C.1.h of this NOFO.

The purpose of this section is for an Eligible Entity to sufficiently account for and provide an assessment of current and future weather and climate-related risks to new broadband infrastructure. These risks include, but are not limited to, wildfires, extreme heat and cold, inland and coastal flooding, and the extreme winds produced by tornadoes and hurricanes. Communities that lack broadband are also most vulnerable to extreme weather and climate events. Thus, it is important for the Eligible Entity to assess these risks to build climate-resilient broadband infrastructure.

The Eligible Entity must complete the following sections to complete a climate assessment and fulfill this requirement. It is permissible for the Eligible Entity to provide a climate assessment that it has conducted previously in the last five years if the assessment covers the requirements outlined in the BEAD NOFO.

2.11.1 Text Box: Describe the Eligible Entity's assessment of climate threats and proposed mitigation methods. If an Eligible Entity chooses to reference reports conducted within the past five years to meet this requirement, it may attach this report and must provide a crosswalk narrative, with reference to page numbers, to demonstrate that the report meets the five requirements below. If the report does not specifically address broadband infrastructure, provide additional narrative to address how the report relates to broadband infrastructure. At a minimum, this response must clearly do each of the following, as outlined on pages 62 - 63 of the BEAD NOFO:

- a. Identify the geographic areas that should be subject to an initial hazard screening for current and projected future weather and climate-related risks and the time scales for performing such screenings;
- b. Characterize which projected weather and climate hazards may be most important to account for and respond to in these areas and over the relevant time horizons;
- c. Characterize any weather and climate risks to new infrastructure deployed using BEAD Program funds for the 20 years following deployment;
- d. Identify how the proposed plan will avoid and/or mitigate weather and climate risks identified; and
- e. Describe plans for periodically repeating this process over the life of the Program to ensure that evolving risks are understood, characterized, and addressed, and that the most up-to-date tools and information resources are utilized.

2.11.1.1 Optional Attachment: As an optional attachment, submit any relevant reports conducted within the past five years that may be relevant for this requirement and will be referenced in the text narrative above.

2.11.1.a: First, the Eligible Entity must provide a narrative on general geographic areas that are subject to an initial hazard screening, specifically areas that are susceptible to significant weather and climate related risks. The Eligible Entity does not need to provide specific location

IDs for this section but should broadly reference recognizable geographic areas within the jurisdiction of its Eligible Entity.

2.11.1.b: Second, the Eligible Entity must characterize which weather and climate hazards may be most important to account for and respond to in these areas and over the relevant time horizons. The Eligible Entity is strongly encouraged to leverage the resources and tools provided in Table 1 or other resources available to the Eligible Entity to understand and account for weather and climate-related risks. For example, the Eligible Entity may describe how it referred to the National Oceanic and Atmospheric Administration’s (NOAA) 2022 State Climate Summaries to research information on current and projected climate conditions and risks in their jurisdiction.

Table 3: Climate Resources and Tools

| Title | Purpose | Link |
|---|--|--|
| 2018 National Climate Assessment | Provides Eligible Entities a broad, coarse-level screening of current and projected future weather- and climate-related risks | <ul style="list-style-type: none"> • https://nca2018.globalchange.gov/ |
| NOAA’s 2022 State Climate Summaries | Provides Eligible Entity-specific information on current and projected climate conditions and risks | <ul style="list-style-type: none"> • https://statesummaries.ncics.org/ |
| NOAA’ Disaster and Risk Mapping Tool | Provides an assessment of current weather-related risks for specific regions | <ul style="list-style-type: none"> • https://www.ncdc.noaa.gov/billions/mapping |
| NOAA’s Climate Explorer and Digital Coast Tools | Provides Eligible Entities an ability to research historic and future projected environmental variables (e.g., changes in temperature thresholds, sea level rise) for their region | <ul style="list-style-type: none"> • https://coast.noaa.gov/digitalcoast/tools/climate-explorer.html • https://coast.noaa.gov/digitalcoast/tools/ |
| FEMA’s National Risk Index | Provides a composite risk index for all regions across the United States, incorporating a range of natural hazards (most of which, but not all, are weather- and climate-related) | <ul style="list-style-type: none"> • https://hazards.fema.gov/nri/learn-more |
| FEMA’s Flood Map | Provides flood hazard information and current conditions for specific locations | <ul style="list-style-type: none"> • https://msc.fema.gov/portal/home |
| Federal Flood Risk Management Standard | Provides Federal Flood Risk Management Standard and Implementing Guidelines established through Executive Orders | <ul style="list-style-type: none"> • https://www.fema.gov/floodplain-management/intergovernmental/federal-flood-risk-management-standard |
| Climate Mapping for Resilience and Adoption | Provides real-time statistics and maps documenting where | <ul style="list-style-type: none"> • https://resilience.climate.gov/ |

| Title | Purpose | Link |
|--|--|---|
| | climate-related hazards are impacting infrastructure | |
| USGS Earthquake Hazards by Region | Provides state-specific information on earthquake seismicity and hazard | <ul style="list-style-type: none"> • https://www.usgs.gov/programs/earthquake-hazards/information-region |
| Relevant centers of expertise at State and regional levels | Provides climate and weather-related information and programs at the state and regional levels | <ul style="list-style-type: none"> • https://www.weather.gov/srh/nws/offices • https://www.ncei.noaa.gov/regional/regional-climate-centers • https://www.ncei.noaa.gov/regional/regional-climate-services-directors • https://cpo.noaa.gov/Meet-the-Divisions/Climate-and-Societal-Interactions/RISA/RISA-Teams • https://stateclimate.org/state_programs/ |

2.11.1.c: The Eligible Entity must describe any projected weather and climate risks to new infrastructure deployed using BEAD Program funds. The Eligible Entity may use the resources and tools provided in Table 1 to characterize these risks. The Eligible Entity should particularly emphasize those weather and climate risks that are the most likely in these areas. For example, the Eligible Entity may describe how rising sea levels and coastal flooding may impact broadband infrastructure.

2.11.1.d: The Eligible Entity must identify how the proposed climate readiness plan will address the weather and climate risks identified through measures including, but not limited to:

- Choice of a technology platform suitable to the climate risks of the region, reliance on alternative siting of facilities (e.g., underground construction where appropriate);
- Retrofitting or hardening of existing assets that are critical to BEAD-funded projects;
- Additional onsite and in-home power resources;
- Use of established plans and processes to deal with extreme weather-related risks;
- The speed of restoration of service in the case of an outage; and
- Use of network and facility redundancies to safeguard against threats to infrastructure.

IMPORTANT

In the subgrantee selection process, an Eligible Entity may give preferential weight to subgrantees that plan to address or mitigate weather and climate risks.

2.11.1.e: Last, the Eligible Entity should describe a plan for identifying and addressing weather and climate-related risks over the life of the Program to ensure that evolving risks are

understood, characterized, and addressed, and that the most up-to-date tools and information resources are used. This includes a plan for periodically repeating (e.g., every 20 years or as needed to respond to observed changes in climate conditions) the climate assessment process. Eligible Entities must outline their approach for determining a cadence that is appropriate for their jurisdiction and climate risks therein.

Low-Cost Broadband Service Option (Requirement 16)

Relevant Instructions from NOFO Section IV.B.5:

Describe the low-cost plan(s) that must be offered by subgrantees consistent with the requirements of Section IV.C.2.c.i of this NOFO.

Relevant Instructions from NOFO Section IV.C.2.ii.c.i:

Eligible Entities must propose low-cost broadband service option parameters that best serve the needs of residents within their jurisdictions. Low-cost broadband service options must remain available for the useful life of the network assets. In crafting proposals, NTIA emphasizes that access to affordable broadband is among the Infrastructure Act’s objectives. In determining whether to approve an Eligible Entity’s proposed definition of “low-cost broadband service option,” the Assistant Secretary will consider, among other factors, (1) whether prospective subgrantees will be required to participate in the Affordable Connectivity Program, any successor program, and/or any other household broadband subsidy programs; (2) the expected cost (both monthly and non-recurring charges) to an Eligible Subscriber for a typical broadband internet access service plan after the application of any subsidies; and (3) the performance characteristics of the proposed options, including download and upload speeds, latency, data caps, and reliability commitments.

A definition of low-cost broadband service option should address, at a minimum: (1) all recurring charges to the subscriber, as well as any non-recurring costs or fees to the subscriber (e.g., service initiation costs); (2) the plan’s basic service characteristics (download and upload speeds, latency, any limits on usage or availability, and any material network management practices, (3) whether a subscriber may use any Affordable Connectivity Benefit subsidy toward the plan’s rate; and (4) any provisions regarding the subscriber’s ability to upgrade to any new low-cost service plans offering more advantageous technical specifications [...] NTIA recognizes, however, that different Eligible Entities face different circumstances. NTIA will review and consider any definition proposed by an Eligible Entity in accordance with the terms of the BEAD statute. In all cases, an Eligible Entity must explain in its Initial and Final Proposal why the selected definition best effectuates the purposes of the program. NTIA may provide additional guidance to Eligible Entities on the development of the low-cost broadband service option definition.

For example, a definition of low-cost broadband service option could be as follows:

1. The proposed service option:
 - a. Costs \$30 per month or less, inclusive of all taxes, fees, and charges if the subscriber does not reside on Tribal Lands, or \$75 per month or less, inclusive of all taxes, fees, and charges if the subscriber resides on Tribal Lands, with no additional non-recurring costs or fees to the consumer;
 - b. Allows the end user to apply the Affordable Connectivity Benefit subsidy to the service price;
 - c. Provides the greater of (a) typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps, or the fastest speeds the infrastructure is capable of

if less than 100 Mbps/20 Mbps or (b) the performance benchmark for fixed terrestrial broadband service established by the Federal Communications Commission pursuant to Section 706(b) of the Communications Act of 1934, as amended;

- d. Provides typical latency measurements of no more than 100 milliseconds; and
- e. Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere;
- f. In the event the provider later offers a low-cost plan with higher speeds downstream and/or upstream, permits Eligible Subscribers that are subscribed to a low-cost broadband service option to upgrade to the new low-cost offering at no cost

2. Subgrantees are required to participate in the Affordable Connectivity Program or any successor program, and Eligible Subscribers that are eligible for a broadband service subsidy can apply the subsidy to the proposed service option.

The purpose of this section is to outline how the Eligible Entity plans to ensure that all residents within its jurisdiction will have access to affordable broadband service options. The Eligible Entity must develop a low-cost broadband service option using the guidelines provided by NTIA in the BEAD NOFO.

Developing an equitable and robust low-cost service option promotes the uptake of BEAD-funded broadband networks among residents of varying socioeconomic and geographic backgrounds. Eligible Entities must ensure that services offered over BEAD Funded Networks allow subscribers in the service area to use the FCC’s Affordable Connectivity Program (ACP). A well-designed low-cost service option will also allow the residents of an Eligible Entity to take advantage of other federal programs aimed at easing the burden of broadband service connection.

2.12.1 Text Box: Describe the low-cost broadband service option(s) that must be offered by subgrantees as selected by the Eligible Entity, including why the outlined option(s) best services the needs of residents within the Eligible Entity’s jurisdiction. At a minimum, this response must include a definition of low-cost broadband service option that clearly addresses the following, as outlined on page 67 of the BEAD NOFO:

- a. All recurring charges to the subscriber, as well as any non-recurring costs or fees to the subscriber (e.g., service initiation costs);
- b. The plan’s basic service characteristics (download and upload speeds, latency, any limits on usage or availability, and any material network management practices);
- c. Whether a subscriber may use any Affordable Connectivity Benefit subsidy toward the plan’s rate; and
- d. Any provisions regarding the subscriber’s ability to upgrade to any new low-cost service plans offering more advantageous technical specifications.

The Eligible Entity is **strongly encouraged** to adopt the example low-cost broadband service option definition as outlined in the BEAD NOFO and provided in Figure 8 to fulfill this requirement.

Figure 8: NOFO Example - Definition of Low-cost Broadband Service Option

NOFO Example - Definition of Low-cost Broadband Service Option

1. The proposed broadband service option:
 - a. Costs \$30 per month or less, inclusive of all taxes, fees, and charges if the subscriber does not reside on Tribal Lands, or \$75 per month or less, inclusive of all taxes, fees, and charges if the subscriber resides on Tribal Lands, with no additional non-recurring costs or fees to the consumer;
 - b. Allows the end user to apply the Affordable Connectivity Benefit subsidy to the service price;
 - c. Provides the greater of (a) typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps, or the fastest speeds the infrastructure is capable of if less than 100 Mbps/20 Mbps or (b) the performance benchmark for fixed terrestrial broadband service established by the Federal Communications Commission pursuant to Section 706(b) of the Communications Act of 1934, as amended;
 - d. Provides typical latency measurements of no more than 100 milliseconds;
 - e. Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere;
 - f. In the event the provider later offers a low-cost plan with higher speeds downstream and/or upstream, permits Eligible Subscribers that are subscribed to a low-cost broadband service option to upgrade to the new low-cost offering at no cost.
2. Subgrantees are required to participate in the Affordable Connectivity Program or any successor program, and Eligible Subscribers that are eligible for a broadband service subsidy can apply the subsidy to the proposed service option

In designing the low-cost broadband service option definition, the Eligible Entity must include:

1. **Cost:** The plan’s expected cost (both monthly and non-recurring charges) to an Eligible Subscriber for a typical broadband Internet access service plan after the application of any subsidies;
 - If the Eligible Entity does not adopt the example low-cost broadband service option definition in the BEAD NOFO, the Eligible Entity must also provide the exact cost of the low-cost broadband service option, or the state/territory-derived formula based on objective economic data to be used.
2. **Basic Service Characteristics:** The plan’s basic service characteristics, including download and upload speeds, latency, any limits on usage or availability such as data caps, any material network management practices, and reliability.
3. **Affordable Connectivity Benefits Application:** A description of whether the plan will allow a subscriber to use any Affordable Connectivity Benefit subsidy toward the plan’s rate; and
4. **Available Technical Upgrades:** A description of whether there are any provisions regarding the subscriber’s ability to upgrade to any new low-cost service plans offering more advantageous technical specifications.

2.12.2 Checkbox: Certify that all subgrantees will be required to participate in the Affordable Connectivity Program or any successor program.

The Eligible Entity must certify, by checking a box, that all subgrantees will be required to participate in the Affordable Connectivity Program⁷ or any successor program.

⁷ The Affordable Connectivity Program was established in the Infrastructure Act as the successor to a previous program that has since been discontinued. The Commission in 2022 issued the *Affordable Connectivity Program Report and Order*, which sets out details regarding the ACP's operation. See *Affordable Connectivity Program, Report and Order and Further Notice of Proposed Rulemaking*, FCC 22-2, (rel. Jan. 21, 2022).

Middle Class Affordability Plans (Requirement 20)

Relevant Instructions from NOFO Section IV.C.2.i.c:

Accordingly, each Eligible Entity must include in its Initial and Final Proposals a middle-class affordability plan to ensure that all consumers have access to affordable high-speed internet. We expect that Eligible Entities will adopt diverse strategies to achieve this objective. For example, some Eligible Entities might require providers receiving BEAD funds to offer low-cost, high-speed plans to all middle-class households using the BEAD-funded network. Others might provide consumer subsidies to defray subscription costs for households not eligible for the Affordable Connectivity Benefit or other federal subsidies. Others may use their regulatory authority to promote structural competition. Some might assign especially high weights to selection criteria relating to affordability and/or open access in selecting BEAD subgrantees. Ultimately, however, each Eligible Entity must submit a plan to ensure that high-quality broadband services are available to all middle-class families in the BEAD-funded network’s service area at reasonable prices. Eligible Entities will be required to ensure that services offered over Funded Networks allow subscribers in the service area to utilize the ACP.

The purpose of this section is to outline how the Eligible Entity will adopt strategies as part of a middle-class affordability plan. The middle-class affordability plan will support the BEAD Program’s goal of ensuring every resident has access to a reliable, affordable, high-speed broadband connection.

2.13.1 Text Box: Describe a middle-class affordability plan that details how high-quality broadband services will be made available to all middle-class families in the BEAD-funded network’s service area at reasonable prices. This response must clearly provide a reasonable explanation of how high-quality broadband services will be made available to all middle-class families in the BEAD-funded network’s service area at reasonable prices.

The Eligible Entity must articulate a middle-class affordability plan designed to ensure that a BEAD-funded network’s service area provides high-quality broadband service to all middle-class households at reasonable prices, though the Eligible Entity has a wide degree of discretion in detailing an “affordable” standard.

The Eligible Entity’s middle-class affordability plan may include the following:

- Requiring providers receiving BEAD funds to offer low-cost, high-speed plans to all middle-class households using the BEAD-funded network;
- Providing consumer subsidies using BEAD funding, if the Eligible entity has surplus funds after meeting its obligation to connect all unserved and underserved areas;
- Using regulatory authority to promote structural competition such as eliminating barriers to entry, opening access to multi-dwelling units, or promoting alternative technologies;
- Promoting consumer pricing benchmarks that provide consumers an objective criterion to use in determining whether the rate offerings of broadband service providers are reasonable and to encourage providers to adopt affordable pricing; and

- Establishing a regime of continued monitoring and public reporting to ensure that high-speed Internet connections are affordable for middle-class households in their state or territory.

Whether these, a combination of these, or other strategies are used, the Eligible Entity is encouraged to develop a plan for affordability which recognizes the specific circumstances of its jurisdiction.

Use of 20 Percent of Funding (Requirement 17)

Relevant Requirements from the [NOFO](#), pages 30-32:

Describe the intended use of the 20 percent of total funding allocation that is made available upon approval of the Initial Proposal consistent with Section IV.B.8 of this NOFO.

Relevant Instructions from [NOFO](#) Section IV.B.8:

If the Assistant Secretary determines that the Initial Proposal meets the standards set forth in Section IV.B.5.c, the Assistant Secretary shall make available to the Eligible Entity 20 percent of the grant funds that were allocated to the Eligible Entity, or a higher percentage at the sole discretion of the Assistant Secretary, for uses as described in Section IV.B.3 of this NOFO. Upon completion of the challenge process described in Section IV.B.6 and the Subgrantee Selection Process described in Section IV.B.7, an Eligible Entity may use the funds made available under this Section to fully fund deployment projects that: 1. Consist of at least 80 percent unserved locations; and 2. Are in a location in which the percentage of individuals with a household income at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) that is higher than the national percentage of such individuals. An Eligible Entity may use the funds made available under this Section of the NOFO for other eligible uses described under Section IV.B.7 of this NOFO (i.e., for uses other than deployment of last-mile broadband infrastructure to unserved and underserved locations or eligible CAIs) only if the Eligible Entity is able to demonstrate to the satisfaction of the Assistant Secretary that the Eligible Entity has a plan to meet the unserved and underserved location broadband deployment commitments set forth in the Eligible Entity's Final Proposal, in which case the Assistant Secretary may waive, in whole or in part, limitations on the use of this funding round.⁶⁹

⁶⁹ Additional information on how to request the use of funds for other purposes and the associated documentation required to demonstrate such plan will be provided at a later date.



IMPORTANT:

If the Eligible Entity indicates in Volume II that they do not wish to request funding during the Initial Proposal phase, the Eligible Entity cannot change this determination once Volume II is submitted and under review.

The purpose of this section is to identify whether the Eligible Entity intends to access Initial Proposal funding and describe how the Eligible Entity intends to use the funding allocation that is made available upon approval of the Initial Proposal, contingent on specific guidelines outlined in the BEAD NOFO.

The Eligible Entity will have the opportunity to pursue one of three funding scenarios, which are detailed in Table 2 below.

Table 2: Funding Scenarios

| Funding Requested | Use of Funding |
|---|--|
| No funding requested | <ul style="list-style-type: none"> Eligible Entities may elect to not request funding during the Initial Proposal round. These Eligible Entities will defer funding until after the approval of the Final Proposal. |
| Less than or equal to 20 percent of funding allocation | <ul style="list-style-type: none"> Eligible Entities may request less than or equal to 20 percent of funding allocation during the Initial Proposal round. These Eligible Entities will defer the request for their remaining allocation until after the approval of the Final Proposal. |
| Greater than 20 percent of funding allocation | <ul style="list-style-type: none"> Eligible Entities may request more than 20 percent of funding allocation during the Initial Proposal round, which must be accompanied by a rationale for requesting funds greater than 20 percent of the funding allocation. Approval of such a request is at the sole discretion of the Assistant Secretary. Eligible Entities that request less than 100 percent of their funding allocation will defer the request for their remaining allocation until after the approval of the Final Proposal. |

2.14.1 Text Box: Describe the Eligible Entity’s planned use of any funds being requested, which must address the following:

- a. If the Eligible Entity does not wish to request funds during the Initial Proposal round, it must indicate no funding requested and provide the rationale for not requesting funds.
- b. If the Eligible Entity is requesting less than or equal to 20 percent of funding allocation during the Initial Proposal round, it must detail the amount of funding requested for use upon approval of the Initial Proposal, the intended use of funds, and how the proposed use of funds achieves the statutory objective of serving all unserved and underserved locations.
- c. If the Eligible Entity is requesting more than 20 percent (up to 100 percent) of funding allocation during the Initial Proposal round, it must detail the amount of funding requested for use upon approval of the Initial Proposal, the intended use of funds, how the proposed use of funds achieves the statutory objective of serving all unserved and underserved locations, and provide rationale for requesting funds greater than 20 percent of the funding allocation.

The Eligible Entity must follow the guidance for the sub-requirement relevant to their Initial Proposal Funding Request among 2.14.1.a, 2.14.1.b, or 2.14.1.c. For example, if the Eligible Entity is not requesting funding during this round, the Eligible Entity should refer to the guidance under 2.14.a to complete this text box.

2.14.1.a: If the Eligible Entity does not wish to request Initial Proposal funds, the Eligible Entity must indicate no funding requested and provide the rationale for not requesting funds and deferring the allocation to after the approval of the Final Proposal.

For example, an Eligible Entity may respond by explaining that they are not requesting Initial Proposal funds and that they are doing so because they have sufficient funding for their challenge and subgrantee selection processes without utilizing funding from this round and that

they do not have state/territory law requirements in place that would require the obligation of all funding prior to conducting a sub-granting process.

2.14.1.b: If the Eligible Entity is requesting less than or equal to 20 percent of funding allocation during the Initial Proposal round, it must detail the amount of funding requested upon approval of the Initial Proposal, the intended use of funds, and explain how the proposed use of funds achieves the statutory objective of serving all unserved and underserved locations. NTIA will prioritize ensuring funding for all unserved and underserved locations before other uses of funding when assessing the Eligible Entity’s justification for their ability to serve all unserved and underserved locations.

The use of funds includes (i) administrative costs, (ii) programmatic costs, such as funding the challenge or subgrantee selection processes, funding last-mile broadband deployment projects, and funding non-deployment uses, or (iii) a combination of these uses.

- i. Administrative costs may include expenses incurred by the grant recipients or subrecipients in support of the day-to-day operations, not directly tied to a specific programmatic purpose or activity. Approved funding for administrative expenses may be expended prior to the completion of the challenge and subgrantee selection processes.
- ii. Programmatic costs are costs that are directly tied to the delivery of a particular project, service, or activity undertaken by a grantee to achieve an outcome intended by the funding program. Approved funding for programmatic costs may be expended prior to the completion of the challenge and subgrantee selection processes.
 - o Funding for the challenge and subgrantee selection processes may include personnel costs specifically to conduct these processes (e.g., a digital equity specialist who will charge a set number of hours to support the subgrantee selection process from a digital equity lens); contractor(s) to carry out these processes; technology costs (e.g., website services to carry out these processes); and costs related to communications or awareness specifically for these processes). Approved funding for programmatic costs may be expended prior to the completion of the challenge and subgrantee selection processes.
 - o Funding for deployment projects may include any of the eligible costs outlined in Section IV.B.7.a.ii and in line with Section IV.B.8 of the BEAD NOFO. Approved funding for programmatic costs may be expended prior to the completion of the challenge and subgrantee selection processes.
 - o Funding for non-deployment projects may include any of the eligible costs outlined in Section IV.B.7.a.iii and in line with Section IV.B.8 of the BEAD NOFO. Approved funding for programmatic costs may be expended after the completion of the challenge and subgrantee selection processes.
- iii. The Eligible Entity may use funds for a combination of administrative and programmatic costs. For example, an Eligible Entity may indicate that it will use 2 percent of funds for administrative costs, and 1 percent of funds to implement their challenge and subgrantee selection processes (e.g., through hiring a contractor), and the remaining 17 percent to fully fund last-mile deployment projects outlined in Section IV.B.7.a.ii and in line with Section IV.B.8 of the BEAD NOFO.

2.14.1.c: If the Eligible Entity is requesting more than 20 percent (up to 100 percent) of funding allocation during the Initial Proposal funding round, it must detail the amount of funding requested upon approval of the Initial Proposal, the intended use of funds, and how the proposed use of funds achieves the statutory objective of serving all unserved / underserved locations. As noted in 2.14.b, the use of funds may include (i) administrative costs, (ii) programmatic costs, such as funding the challenge or subgrantee selection processes, funding last-mile broadband deployment projects, and funding non-deployment uses, or (iii) a combination of these uses.

The Eligible Entity must also provide a rationale for requesting funds greater than 20 percent of the funding allocation. The NOFO details that the Assistant Secretary shall make available 20 percent of the grant funds that are available to the Eligible Entity upon approval of the Initial Proposal, or a higher percentage if requested, but at the sole discretion of the Assistant Secretary. In this instance, the Eligible Entity must detail the amount of funding intended to be used after the Initial Proposal is approved and before the Final Proposal. Eligible Entities that request less than 100 percent of their funding allocation will defer the request for their remaining allocation until after the approval of the Final Proposal.

For example, the Eligible Entity may elect to request the full amount (100 percent) of their funding allocations in the Initial Proposal round if they demonstrate a specific need, such as a state or territory requirement (e.g., anti-deficiency clause) that would require the obligation of all funding prior to conducting the subgrantee selection process.

2.14.2 Financial Data Entry: Enter the amount of the Initial Proposal Funding Request. If not requesting initial funds, enter ‘\$0.00.’

The Eligible Entity should enter the total dollar amount of funding requested in the Initial Proposal Funding Request. This value should match the amount **intended** to be included in the Initial Proposal Funding Request.

2.14.3 Check Box: Certify that the Eligible Entity will adhere to BEAD Program requirements regarding Initial Proposal funds usage. If the Eligible Entity is not requesting funds in the Initial Proposal round and will not submit the Initial Funding Request, note “Not applicable.”

The Eligible Entity must certify, by checking a box, that it will adhere to BEAD Program requirements regarding Initial Proposal funds usage, including reporting requirements and conditions specific to the requested use of funds.

For costs related to the administration of the Eligible Entity’s grant, this certification indicates that the Eligible Entity will not exceed the two percent statutory cap for costs related to the administration of the Eligible Entity’s grant, including any subcontracts or subawards made to assist in the administration of the Eligible Entity’s grant. Please note that the two percent statutory cap does not apply to funds allocated during the Initial Planning Funds phase of the BEAD Program. Otherwise, the two percent statutory cap applies to all other BEAD Program funding. Please refer to the [BEAD FAQs 7.9 to 7.16](#) for more information on costs related to the administration of the Eligible Entity’s grant.

For a requested use of funds for non-deployment projects, this certification indicates that the Eligible Entity will ensure that funding initiated before the approval of the Final Proposal will not imperil the Eligible Entity’s ability to achieve universal service for all unserved and underserved locations within its jurisdiction.

For a requested use of funds for deployment projects, this certification indicates that the Eligible Entity will only use 20 percent of funds (unless requesting above 20 percent of funds) before the Final Proposal funding allocation to fully fund deployment projects that: (i) consist of at least 80 percent unserved locations; and (ii) are in a location in which the percentage of individuals with a household income at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) that is higher than the national percentage of such individuals. This certification also indicates that funds for this purpose will not be distributed until after the challenge process and subgrantee selection process are complete. The Assistant Secretary may waive this restriction on the Initial Proposal funding round if the Eligible Entity is able to demonstrate that it has a plan to meet the unserved and underserved location broadband deployment commitments set forth in its Final Proposal.

If the Eligible Entity requests use of funds for non-deployment projects, this certification indicates that the Eligible Entity will ensure that funding initiated before the approval of the Final Proposal will not imperil the Eligible Entity’s plan to achieve universal service for all unserved and underserved locations within its jurisdiction.

Additionally, this certification indicates that the Eligible Entity will comply with all relevant EHP and BABA requirements if the Eligible Entity intends to fund projects before the approval of the Final Proposal.

Eligible Entity Regulatory Approach (Requirement 18)

Relevant Requirements from the [NOFO](#), pages 30-32:

Disclose (1) whether the Eligible Entity will waive all laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act, that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer; and (2) if it will not waive all such laws for BEAD Program project selection purposes, identify those that it will not waive and describe how they will be applied in connection with the competition for subgrants.

Relevant Requirements from the [NOFO](#), pages 50-51:

Competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service. As required by the Infrastructure Act, in awarding subgrants for the deployment of a broadband network using grant funds, Eligible Entities may Notice of Funding Opportunity – 51 not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments (“potential providers”) from eligibility for grant funds. In determining whether to approve an Eligible Entity’s Initial or Final Proposal, NTIA will consider whether the Eligible Entity has, after the enactment of the Infrastructure Act, adopted new laws, regulations, policies, procedures or any other form of rule or restriction that, in the determination of NTIA, seeks to exclude or has the effect of excluding any potential providers from eligibility for its subgrant competition. This could include new laws that have the effect of excluding providers from offering broadband service or rendering them incapable of effectively competing for subgrants.

Some laws of Eligible Entities concerning broadband, utility services, or similar subjects that predate the enactment of the Infrastructure Act may either preclude certain public sector providers from participation in the subgrant competition or may impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer. NTIA strongly encourages Eligible Entities to waive all such laws for purposes of the Program. If an Eligible Entity does not do so, the Eligible Entity must identify all such laws in its Initial Proposal and describe how the laws will be applied in connection with the competition for subgrants. Such Eligible Entity must, in its Final Proposal, disclose each unsuccessful application affected by such laws and describe how those laws impacted the decision to deny the application.

The purpose of this section is to disclose whether the Eligible Entity will waive all laws of the Eligible Entity concerning broadband, utility services, or similar subjects that either preclude certain public sector providers from participation in the subgrant process or impose specific requirements and limitations on public sector entities.

This could include new laws that have the effect of excluding providers from offering broadband service or rendering them incapable of effectively competing for subgrants. The Eligible Entity may not exclude cooperatives, nonprofit organizations, public-private partnerships, public or private utilities, public utility districts, or local governments (“potential providers”) from

eligibility for BEAD Program funds. An example of such law could include a ban on municipal broadband or co-op providers.

2.15.1 Text Box

- a. Disclose whether the Eligible Entity will waive all laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer.
- b. If the Eligible Entity will not waive all such laws for BEAD Program project selection purposes, identify those that it will not waive (using the Excel attachment) and their date of enactment and describe how they will be applied in connection with the competition for subgrants. If there are no applicable laws, note such.

2.15.1.1 Optional Attachment: As a required attachment only if the Eligible Entity will not waive laws for BEAD Program project selection purposes, provide a list of the laws that the Eligible Entity will not waive for BEAD Program project selection purposes, using the Eligible Entity Regulatory Approach template provided.

NTIA strongly encourages the Eligible Entity to waive all laws that preclude or limit public sector participation. If an Eligible Entity does not waive all relevant laws, the Eligible Entity must disclose this, identify the laws that it will not waive (using the template provided), and describe how the laws will be applied in connection with the competition for subgrants.

If the Eligible Entity will waive all relevant laws, the Eligible Entity must disclose this, but does not need to submit the optional attachment.

If there are no laws of the Eligible Entity concerning broadband, utility services, or similar projects that hinder the participation of public sector entities, please write “Not applicable.”

If the Eligible Entity does not waive all laws of the Eligible Entity that either preclude or impose specific requirements and limitations on public sector entities, the Eligible Entity must attach a list of the laws it will not waive using the template provided. This attachment must include the name of the law, a publicly accessible link, brief description, the date on which it was enacted, and a description of how the law will be applied in connection to competition for the subgrants.

To download a copy of the NTIA Template for Eligible Entity Regulatory Approach, please see the files named “BEAD Initial Proposal_Volume II_Eligible Entity Regulatory Approach.xlsx”

Certification of Compliance with BEAD Requirements (Requirement 19)

Relevant Requirements from the [NOFO](#), pages 30-32:

Certify the intent of the Eligible Entity to comply with all applicable requirements of the Program, including the reporting requirements, and describe subgrantee accountability procedures.

The purpose of this section is to ensure that the Eligible Entity intends to comply with statutory requirements of the BEAD Program,

Looking Ahead

The Eligible Entity will be required to include the processes for oversight and accountability to ensure the proper use of the BEAD Program funds in their Final Proposals.

including the reporting requirements and subgrantee accountability procedures. It is critical for the Eligible Entity and its subgrantees to remain compliant for the success of the Program; failure to do so may result in delays or cancellation of any award and/or recoupment of funds already disbursed.

2.16.1 Check Box: Certify the Eligible Entity’s intent to comply with all applicable requirements of the BEAD Program, including the reporting requirements.

The Eligible Entity must certify, by checking a box, that it intends to comply will all applicable requirements of the Program, including the reporting requirements. Future reporting requirements for the BEAD Program include those outlined in NOFO Section VII.E. In advance of reporting due dates NTIA will provide additional instructions, including formatting requirements and other information on how to satisfy the reporting requirements.

2.16.2 Text Box: Describe subgrantee accountability procedures, including how the Eligible Entity will, at a minimum, employ the following practices outlined on page 51 of the BEAD NOFO:

- a. Distribution of funding to subgrantees for, at a minimum, all deployment projects on a reimbursable basis (which would allow the Eligible Entity to withhold funds if the subgrantee fails to take the actions the funds are meant to subsidize);
- b. The inclusion of clawback provisions (i.e., provisions allowing recoupment of funds previously disbursed) in agreements between the Eligible Entity and any subgrantee;
- c. Timely subgrantee reporting mandates; and
- d. Robust subgrantee monitoring practices.

Subgrantee accountability procedures enable the Eligible Entity to ensure the integrity of its BEAD projects. NTIA expects the Eligible Entity to proactively monitor their subgrantees throughout the duration of their projects to ensure compliance with all BEAD Program requirements.

At a minimum, the Eligible Entity will employ **each** of the practices outlined on Page 51 of the BEAD NOFO. The Eligible Entity may also have additional standard contracting procedures to describe in this section.



IMPORTANT

NTIA will reject Initial Proposals and Final Proposals that fail to provide sufficient recourse against subgrantees that do not fulfill their legal and contractual responsibilities. Likewise, NTIA will pursue claw back of funds directly from an Eligible Entity that fails to fully ensure subgrantee accountability of the law.

Example responses may include providing:

- A description of financial management practices that include distribution of funding exclusively through reimbursement
- A description of claw back provisions in subgrantee contracts
- An explanation of reporting requirements to include frequency and content of reports,
- An overview of monitoring processes to be implemented to include risk assessment and ongoing interaction with grantees corresponding to the risk level of each grantee.

2.16.3 Check Box: Certify that the Eligible Entity will account for and satisfy authorities relating to civil rights and nondiscrimination in the selection of subgrantees.

The Eligible Entity must certify, by checking a box, that their selection of subgrantees will account for and satisfy each of the following authorities:

- [Parts II and III of Executive Order 11246, Equal Employment Opportunity](#)
- [Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency](#)
- [Executive Order 13798, Promoting Free Speech and Religious Liberty](#)

Additionally, prior to distributing any BEAD funding to a subgrantee, the Eligible Entity must require the subgrantee to agree, by contract or other binding commitment, to abide by the non-discrimination requirements set forth in the following legal authorities, to the extent applicable, and to acknowledge that failure to do so may result in cancellation of any award and/or recoupment of funds already disbursed:

- [Title VI of the Civil Rights Act](#)
- [Title IX of the Education Amendments of 1972](#)
- [The Americans with Disabilities Act of 1990](#)
- [Section 504 of the Rehabilitation Act of 1973](#)
- [The Age Discrimination Act of 1975](#)
- Any other applicable non-discrimination law(s)

The Eligible Entity is encouraged to refer to the [Workforce Planning Guide](#) and [BEAD NOFO](#) Section IV.C.1.g. for more information on the laws to which Eligible Entities and subgrantees alike must adhere.

2.16.4 Check Box: Certify that the Eligible Entity will ensure subgrantee compliance with the cybersecurity and supply chain risk management requirements on pages 70 - 71 of the BEAD NOFO to require prospective subgrantees to attest that:

Cybersecurity

- 1) The prospective subgrantee has a cybersecurity risk management plan (the plan) in place that is either: (a) operational, if the prospective subgrantee is providing service prior to the award of the grant; or (b) ready to be operationalized upon providing service, if the prospective subgrantee is not yet providing service prior to the grant award;
- 2) The plan reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
- 3) The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- 4) The plan will be submitted to the Eligible Entity prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the Eligible Entity within 30 days.

Supply Chain Risk Management (SCRM)

- 1) The prospective subgrantee has a SCRM plan in place that is either: (a) operational, if the prospective subgrantee is already providing service at the time of the grant; or (b) ready to be operationalized, if the prospective subgrantee is not yet providing service at the time of grant award;
- 2) The plan is based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;
- 3) The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- 4) The plan will be submitted to the Eligible Entity prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the Eligible Entity within 30 days. The Eligible Entity must provide a subgrantee's plan to NTIA upon NTIA's request.

The Eligible Entity must certify, by checking a box, that it will ensure subgrantee compliance with the cybersecurity and supply chain risk management requirements on pages 70 – 71 of the BEAD NOFO.

The Eligible Entity also must ensure that, to the extent a BEAD subgrantee relies in whole or in part on network facilities owned or operated by a third party (*e.g.*, purchases wholesale carriage on such facilities), obtain the above attestations from its network provider with respect to cybersecurity practices and supply chain risk management practices.

Finally, the Eligible Entity must outline any additional cybersecurity or supply chain risk management requirements it plans to impose on subgrantees and explain why the additional measures are necessary to safeguard networks and users falling within its jurisdiction.

Volume II Public Comment

2.17.1 Text Box: Describe the public comment period and provide a high-level summary of the comments received during the Volume II public comment period and how they were addressed by the Eligible Entity. The response must demonstrate:

- c. The public comment period was no less than 30 days; and
- d. Outreach and engagement activities were conducted to encourage feedback during the public comment period.



IMPORTANT

The Eligible Entity must conduct a public comment period for **no less than 30 days**.

The Eligible Entity must describe how it conducted a public comment period for no less than 30 days, provide a high-level summary of the comments received, and demonstrate how the Eligible Entity incorporated feedback in its Initial Proposal

submission, as applicable. The Eligible Entity is not required to respond to all individual comments but must capture where public comments impacted the contents of the Initial Proposal submission.

The Eligible Entity must also demonstrate how it conducted outreach and engagement activities to encourage broad awareness, participation, and feedback during the public comment period, particularly among Tribal Governments, local community organizations, unions and worker organizations, and other underrepresented groups. Examples of outreach mechanisms include, but are not limited to, public meetings, informational brochures, local media, relevant social media channels, and direct mail.

2.17.2 Optional Attachment: As an optional attachment, submit supplemental materials to the Volume II submission and provide references to the relevant requirements. Note that only content submitted via text boxes, certifications, and file uploads in sections aligned to Initial Proposal requirements in the NTIA Grants Portal will be reviewed, and supplemental materials submitted here are for reference only.

The Eligible Entity may upload additional documentation, such as formatted text, tables, or graphics, relevant to any of the requirements in Volume II. If the Eligible Entity chooses to upload supplemental materials, they must provide a crosswalk to the relevant requirement(s). In the responses to Volume II requirements, the Eligible Entity may reference the materials uploaded here to provide additional context to their responses. However, content submitted here will not be reviewed for sufficiency in meeting Initial Proposal requirements; only responses to requirements in previous sections of the NTIA Grants Portal will be evaluated for meeting the standard of review required for approval.

Looking Ahead: Final Proposal

Final Proposal

To receive the remaining grant funds that are allocated to the Eligible Entity, an Eligible Entity must submit a Final Proposal no later than twelve months after the Assistant Secretary approves both Volumes I and II of the Eligible Entity’s Initial Proposal. If the Assistant Secretary approves Volume I prior to approving Volume II, the timing for the Final Proposal submission


will begin upon the approval of Volume II of the Initial Proposal. NTIA will award the remaining funds allocated to the Eligible Entity upon approval of the Eligible Entity’s Final Proposal, and the Eligible Entity will initiate its subgrants for the remaining 80 percent of funding and any portion of the

original 20 percent that the Eligible Entity has not yet awarded as a subgrant (if 20 percent was requested in the Initial Proposal Funding Request).

If the Final Proposal is incomplete or does not meet standards set forth in the BEAD NOFO, the Assistant Secretary will notify the Eligible Entity of the deficiencies in the proposal, provide the Eligible Entity with an opportunity to resubmit the Final Proposal, and establish a deadline for resubmission.

Failure to submit a Final Proposal by this deadline will be treated as an application failure. The Assistant Secretary reserves the right to extend this deadline; however, the Assistant Secretary will not grant a waiver of the Final Proposal deadlines except in extraordinary circumstances.

The 15 Requirements for the Final Proposal can be found in the appendix.



IMPORTANT

The Final Proposal must be made available for public comment prior to submission to NTIA.

Appendices

Waiver Guidance

Eligible Entities may submit waivers for Volume I, Volume II, and the Initial Proposal Funding Request at the time that they submit each volume in the NTIA Grants Portal. If NTIA identifies the need for a waiver after the Eligible Entity's submission, NTIA will coordinate with the Eligible Entity to submit a waiver request via the NTIA Grants Portal. Eligible Entities should work with their assigned FPO to receive further guidance on waivers.

The 20 Requirements of the Initial Proposal

At a minimum, the BEAD NOFO requires that an Eligible Entity’s Initial Proposal must:

1. Outline long-term objectives for deploying broadband, closing the digital divide, addressing access, affordability, equity, and adoption issues, and enhancing economic growth and job creation including information developed by the Eligible Entity as part of the Five-Year Action Plan and information from any comparable strategic plan otherwise developed by the Eligible Entity, if applicable.⁸
2. Identify, and outline steps to support, local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide and describe coordination with local and Tribal Governments, along with local, Tribal, and regional broadband planning processes.⁹
3. Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands.¹⁰
4. Certify that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, unions and worker organizations, and other groups, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, describe the coordination conducted, summarize the impact such coordination had on the content of the Initial Proposal, detail ongoing coordination efforts, and set forth the plan for how the Eligible Entity will fulfill the coordination requirements associated with its Final Proposal.
5. Identify each unserved location and underserved location under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands, using the most recently published Broadband DATA Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the Broadband DATA Maps used for such identification.
6. Describe how the Eligible Entity applied the statutory definition of the term “community anchor institution,” identified all eligible CAIs in its jurisdiction, identified all eligible CAIs in applicable Tribal Lands, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations.
7. Include a detailed plan to conduct a challenge process as described in Section IV.B.6.
8. Include a detailed plan to competitively award subgrants consistent with Section IV.B.7.a of this NOFO with regard to both last-mile broadband deployment projects and other eligible activities. With respect to last-mile broadband deployment projects, the plan must explain how the Eligible Entity will ensure timely deployment of broadband and minimize the BEAD

⁸ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

⁹ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

¹⁰ For States and Territories that have completed Five-Year Action Plans, reference to this plan satisfies this requirement.

subsidy required to serve consumers consistent with Section IV.B.7 and the other priorities set out in this NOFO. The Initial Proposal must include identification of, or a detailed process for identifying, an Extremely High Cost Per Location Threshold to be utilized during the Subgrantee Selection Process described in Section IV.B.7 of this NOFO. Each Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.7.b of this NOFO. NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.

9. With respect to non-deployment eligible activities, explain any preferences the Eligible Entity will employ in selecting the type of initiatives it intends to support using BEAD Program funds, the means by which subgrantees for these eligible activities will be selected, how the Eligible Entity expects the initiatives it pursues to address the needs of the Eligible Entity’s residents, the ways in which engagement with localities and stakeholders will inform the selection of eligible activities, and any efforts the Eligible Entity will undertake to determine whether other uses of the funds might be more effective in achieving the BEAD Program’s equity, access, and deployment goals.
10. Describe any initiatives the Eligible Entity proposes to implement as the recipient without making a subgrant, and why it proposes that approach.
11. Detail how the Eligible Entity will ensure that subgrantees, contractors, and subcontractors use strong labor standards and protections, such as those listed in Section IV.C.1.e, and how the Eligible Entity will implement and apply the labor-related Subgrantee Selection criteria described below in Section IV.C.1.e of this NOFO.
12. Detail how the Eligible Entity will ensure an available, diverse, and highly skilled workforce consistent with Section IV.C.1.e of this NOFO.
13. Describe the process, strategy, and data tracking method(s) that the Eligible Entity will implement to ensure that minority businesses, women-owned business enterprises, and labor surplus area firms are recruited, used, and retained when possible.
14. Identify steps that the Eligible Entity will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements.¹¹
15. Provide an assessment of climate threats within the Eligible Entity and proposed mitigation methods consistent with the requirements of Section IV.C.1.h of this NOFO.
16. Describe the low-cost plan(s) that must be offered by subgrantees consistent with the requirements of Section IV.C.2.c.i of this NOFO.
17. Describe the intended use of the 20 percent of total funding allocation that is made available upon approval of the Initial Proposal consistent with Section IV.B.8 of this NOFO.
18. Disclose (1) whether the Eligible Entity will waive all laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment

¹¹ Consistent with the goal that Eligible Entities seek to minimize the BEAD funding outlay on a particular project, Eligible Entities and their political subdivisions are strongly encouraged to remove time and cost barriers associated with BEAD projects, including by expediting permitting timelines and waiving fees where applicable, where doing so does not undermine other critical policy goals.

of the Infrastructure Act, that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer; and (2) if it will not waive all such laws for BEAD Program project selection purposes, identify those that it will not waive and describe how they will be applied in connection with the competition for subgrants.

19. Certify the intent of the Eligible Entity to comply with all applicable requirements of the Program, including the reporting requirements, and describe subgrantee accountability procedures.
20. Include a middle-class affordability plan to ensure that all consumers have access to affordable high-speed Internet.
 - a. The Middle-Class Affordability Plan is not aligned to a specific Initial Proposal Requirement as outlined in Section IV.B.5. However, it is required as part of Initial Proposal submissions.

The 15 Requirements of the Final Proposal

At a minimum, the BEAD NOFO requires that an Eligible Entity's Final Proposal must include:

1. A detailed plan that specifies the outcome of the Eligible Entity's Subgrantee Selection Process and how the Eligible Entity will:
 - a. allocate grant funds to subgrantees for the deployment of broadband networks to unserved locations, underserved locations, and (if applicable) CAIs in accordance with the prioritization framework described in Section IV.B.7.b of this NOFO; and
 - b. align the grant funds allocated to the Eligible Entity under the BEAD Program, where practicable, with the use of other funds for broadband that the Eligible Entity receives from the federal government, an Eligible Entity, or any other source.
2. A timeline for implementation of the detailed plan and completion of each project and other eligible activity to be funded;
3. Processes for oversight and accountability to ensure the proper use of the grant funds allocated to the Eligible Entity under the BEAD Program consistent with Section IX.G of this NOFO;
4. Certification that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, and unions and worker organizations, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, a description of the coordination conducted, and a summary of the impact such coordination had on the content of the Final Proposal;
5. Description of the results of the challenge process conducted by the Eligible Entity under Section IV.B.6;
6. Certification that the Eligible Entity will provide service to all unserved and underserved locations, if the Eligible Entity is seeking to use BEAD funding for deployment to CAIs or for other eligible activities;
7. A detailed description of all planned uses of BEAD funding that are not last-mile broadband deployment projects, including the nature of each funded initiative, how those uses are consistent with Section V.K of this NOFO, how the Eligible Entity expects the initiative to address the needs of the Eligible Entity's residents, the ways in which engagement with localities and stakeholders informed the selection of such eligible activities, and any efforts the Eligible Entity undertook to determine whether other uses of the funds might have been more effective in achieving the BEAD Program's equity, access, and deployment goals;
8. The means by which subgrantees for non-deployment eligible activities were selected, if the Eligible Entity pursued those initiatives via subgrant, or, alternatively, how the Eligible Entity determined that it should undertake the initiative itself;
9. A description of efforts undertaken by the Eligible Entity to ensure the participation of non-traditional broadband providers (such as municipalities or political subdivisions, cooperatives, non-profits, Tribal Governments, and utilities), including an explanation for awards to traditional broadband providers when one or more non-traditional providers submitted competing proposals to serve an area consistent with the requirements of Section IV.C.1.a;
10. Implementation status of plans described in the Initial Proposal related to:

- a. Steps that the Eligible Entity has taken or intends to take to promote streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements;
 - b. Labor and workforce activities, including how the Eligible Entity implemented and applied the labor-related Subgrantee Selection criterion required herein;
 - c. Utilization of minority businesses, women-owned business enterprises, and labor surplus area firms;
 - d. Low-cost plan requirements; and
 - e. Climate change and resilience;
11. Information regarding specific commitments made by provisionally selected subgrantees to warrant a project's treatment as a Priority Broadband Project;
 12. Information regarding specific commitments made by provisionally selected subgrantees to warrant benefits in the Eligible Entity's Subgrantee Selection Process (e.g., the primary and secondary criteria);
 13. Environmental documentation associated with any construction and/or ground-disturbing activities and a description of how the Eligible Entity will comply with applicable environmental and national historical preservation requirements.
 14. To the extent an Eligible Entity's Final Proposal includes plans to deploy broadband to Unserved Service Projects or Underserved Service Projects on Tribal Lands, the Eligible Entity must submit a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed.¹²
 15. A description of (1) each unsuccessful application that was affected by laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act, that the Eligible Entity did not waive for purposes of BEAD Program project selection and that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer; and (2) how those laws impacted the decision to deny each such application.

Additional requirements for the Final Proposal may be provided to Eligible Entities when the approval of the Initial Proposal is granted.

¹² In the case of consortiums, a Tribal resolution is required from each Tribal Government on whose Tribal Lands the infrastructure will be deployed. For projects deploying to locations on Tribal Lands in Hawaii, consent must be obtained from the Department of Hawaiian Home Lands. For projects deploying to locations in Alaska, with the exception of deployments on the Metlakatla Reservation, an Eligible Entity must gain the consent (by Tribal resolution) of 51 percent or more of the federally recognized tribal governments in the Alaska Native Region in which the infrastructure will be deployed. Consent from the Metlakatla Reservation will not be required for deployments in the Southeast Alaska Region Village. Conversely, deployments within the Metlakatla Reservation will require only the consent (via Tribal resolution) of the Metlakatla Reservation's Tribal Government. If a Tribal Government is not meeting due to COVID-19 restrictions or will not meet between release of this NOFO and submission of the Eligible Entity's Initial Proposal, NTIA will allow the submission of a Letter of Consent from the Governing Body of the Tribe with the Eligible Entity's Final Proposal.

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT D

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Policy Notice

ACTION: Notice

SUMMARY:

The Infrastructure Investment and Jobs Act (Infrastructure Act), enacted in November 2021, includes funding for robust investment in American infrastructure projects. The Infrastructure Act includes the Broadband Equity, Access, and Deployment (BEAD) Program, which provides \$42.45 billion of funding to achieve reliable, affordable, and high-speed Internet coverage throughout the United States. *See* Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (Nov. 15, 2021). The U.S. Department of Commerce, in keeping with its mission to create the conditions for economic growth and opportunity for all communities, is ready to lead the building of equitable access to universal high-speed Internet coverage in the United States, in partnership with other agencies and Departments.

The National Telecommunications and Information Administration (NTIA), as the agency responsible for administering the BEAD program, provides herein additional guidance to inform the submission and execution of the Initial Proposal, including the design and implementation of the BEAD Eligible Entity challenge processes. This Policy Notice elaborates on, but does not replace, the BEAD Eligible Entity (States, territories, and the District of Columbia) requirements outlined in the BEAD Notice of Funding Opportunity (NOFO) that each Eligible Entity must adhere to for the Assistant Secretary of Commerce for Communications and Information to approve its Initial Proposal.¹

An Eligible Entity that received NTIA approval of Volume I of its BEAD Initial Proposal prior to the publication of this updated guidance may wish to modify its Volume I to reflect this updated guidance. Before taking such action, that Eligible Entity must contact its Federal Program Officer for direction.

Version Number: 1.3

Last Modified: February 8, 2024

¹ This guidance document is intended to help BEAD Eligible Entities better understand the BEAD Program requirements set forth in the Infrastructure Act and the BEAD Notice of Funding Opportunity (NOFO). This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific requirements set forth in the NOFO. In all cases, statutory and regulatory mandates, and the requirements set forth in the NOFO, shall prevail over any inconsistencies contained in this document.

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1. Policy Notice Purpose

The goal of the BEAD Program is to achieve affordable, reliable high-speed Internet coverage. To help achieve this goal, the Infrastructure Act requires each Eligible Entity to determine the locations and community anchor institutions (CAIs) within its jurisdiction that are eligible for BEAD funding and conduct a challenge process to validate and finalize those eligibility determinations.² The Infrastructure Act and the BEAD NOFO provide the Assistant Secretary discretion to oversee the challenge process during two key phases: challenge process review, when NTIA reviews and may modify the challenge process proposed by Eligible Entities, and challenge results review and approval, when NTIA reviews and may modify the final eligibility determinations made by Eligible Entities following the challenge process.³

This document outlines NTIA’s additional guidance for Requirement #3, Requirement #5, Requirement #6, and Requirement #7 of the BEAD Initial Proposal as outlined in the [NOFO](#), which include the identification of existing broadband funding, deduplication of funding process, identification of eligible locations, identification of Eligible CAIs, and the design of the challenge process.⁴ These four requirements may be submitted prior to the complete Initial Proposal—as part of Volume 1 of the Initial Proposal—to enable Eligible Entities to begin administering the challenge process more quickly. As such, these four requirements will hereafter be referred to collectively as “Volume 1.” Eligible Entities **must adhere to the requirements listed in this document** to receive the Assistant Secretary’s approval to conduct their challenge process.

This Policy Notice includes nine sections:

- **Sequence of Events (Section 2):** This section outlines the sequence of events for the submission of the Initial Proposal, challenge process administration, and challenge results review.
- **BEAD Volume 1 Submission Process (Section 3):** This section outlines the timeline and process for submitting the BEAD Initial Proposal Volume 1 to NTIA for review and approval.
- **Existing Broadband Funding Requirements (Section 4):** This section outlines the requirement to identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands (Initial Proposal Requirement #3).
- **Initial Location Data Requirements (Section 5):** This section outlines requirements for using the National Broadband Map prior to the initiation of the challenge process, including identification of unserved and underserved locations (Initial Proposal Requirement #5) and eligible CAIs (Initial Proposal Requirement #6).
- **Modifications to Location Classifications (Section 6):** This section provides an overview of the requirement to run a deduplication of funding process to identify and remove locations with enforceable commitments prior to the initiation of the challenge process and requirements for pre-challenge process modifications of the location dataset.⁵

² See Infrastructure Act Section 60102(h)(2)(A).

³ See Infrastructure Act Section 60102(h)(2)(D)(i); BEAD NOFO at 34-35, Section IV.B.6 (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>. See also Appendix B of this document.

⁴ See BEAD NOFO at 31, Section IV.B.5.b (regarding Requirement #3, States and Territories that have completed Five-Year Action Plans may reference this plan to satisfy this requirement).

⁵ See BEAD NOFO at 36, n. 52, Section IV.B.7.a.ii.

- **BEAD Challenge Process Design Requirements (Section 7):** This section outlines the requirements for the design and implementation of the challenge process (Initial Proposal Requirement #7).
- **Post Challenge Process Updates (Section 8):** This section notes that Eligible Entities may, but are not required to, update their post-challenge data to reflect updates to the National Broadband Map that occur after the conclusion of the challenge process.
- **Post Challenge Process Review (Section 9):** This section outlines requirements for submission of the challenge process results to NTIA for review.

2. Sequence of Events

The BEAD challenge process is comprised of eleven distinct phases, depicted below:

Figure 1: BEAD Challenge Process Sequence of Events Overview

1. Eligible Entity Develops Initial Proposal Volume 1

Eligible Entities consult with the Federal Program Officer (FPO) to identify unserved and underserved locations using the National Broadband Map, identify eligible CAIs, and develop a **transparent, evidenced-based, fair, and expeditious challenge process** for review that includes their proposed pre-challenge process location modifications (*e.g.*, the proposed deduplication process).

2. Eligible Entity Submits Initial Proposal Volume 1 (optional)

Eligible Entities may first submit Initial Proposal Volume 1 (defined in Section 3 below), which includes the **initial identification of unserved and underserved locations, the definition of CAI classification applied, their proposed pre-challenge process location modifications (*e.g.*, the proposed deduplication process), and their proposed challenge process**. Volume 1 may be submitted prior to Volume 2 and the Initial Proposal Funding Package.

3. Eligible Entity Submits Full Initial Proposal (Volume 1 and Volume 2)

Eligible Entities submit their full Initial Proposal, which includes **Volumes 1 and 2** (see Section 3). (Eligible entities that have already submitted Volume 1, above, need only submit Volume 2 at this stage.)

4. NTIA Reviews and Approves Initial Proposal Volume 1

NTIA reviews, and may modify, Initial Proposal Volume 1. NTIA may review and approve Volume 1 prior to completing its review of Volumes 2 and the Initial Proposal Funding Package.

5. Eligible Entity Runs Approved Modifications and Deduplication of Funding Process

If NTIA approves an Eligible Entity's challenge process, the Eligible Entity modifies, if appropriate, the set of locations it proposes to make eligible for BEAD funding to reflect data not present in the National Broadband Map and runs the approved deduplication of funding process to identify and adjusts the status of locations that have funding commitments under another program for deploying qualifying broadband service.



Eligible Entity Activity



NTIA Activity

6. Eligible Entity Runs Approved Challenge Process

Eligible Entities run the approved challenge process to determine which locations are **served, unserved, or underserved**. In no circumstance may an Eligible Entity begin its challenge process prior to (a) receiving approval of the challenge process from NTIA and (b) submission of the full Initial Proposal (Volumes 1 and 2) to NTIA.

7. Eligible Entity Runs Another Deduplication of Funding Process

The Eligible Entity checks whether any locations that have turned unserved or underserved are covered by funding commitments and adjusts their status.

8. Eligible Entity Submits Challenge Results to NTIA

The Eligible Entity submits its challenge results and final eligibility determinations to NTIA to **approve or reverse**.

9. NTIA Reviews and Validates Challenge Results

NTIA **reviews challenge results** and determines whether to **approve or reverse** the Eligible Entity's determinations.

10. NTIA Communicates Determination to Eligible Entities

NTIA **communicates** the result of the challenge review to the respective Eligible Entity.

11. Eligible Entity Publishes Final Determinations

The Eligible Entity **provides public notice of the final determinations for each location and CAI** at least 60 days prior to allocating grant funds.



Eligible Entity Activity



NTIA Activity

3. BEAD Volume 1 Submission Process

Eligible Entities must submit their BEAD challenge processes as part of Volume 1 of the Initial Proposal. To expedite approvals and enable Eligible Entities to begin administering the challenge process more quickly, Eligible Entities may submit the Initial Proposal in volumes as follows:

- Volume 1 will include the following Initial Proposal requirements as outlined in the BEAD NOFO:⁶
 - a. Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands (Requirement #3).
 - b. Identify each unserved location and underserved location within the Eligible Entity (*i.e.*, under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands), using the most recently published National Broadband Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the National Broadband Maps used for such identification (Requirement #5).⁷
 - c. Describe how the Eligible Entity applied the statutory definition of the term “community anchor institution,” identified all Eligible CAIs in its jurisdiction, identified all Eligible CAIs in applicable Tribal Lands, and assessed the needs of Eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations (Requirement #6).
 - d. Include a detailed plan as to how the Eligible Entity will conduct a challenge process as described in Section IV.B.6 of the BEAD NOFO (Requirement #7).
- Volume 2 will include all additional Initial Proposal requirements outlined in Section IV.B.5.b of the BEAD NOFO (*i.e.*, Requirements #1, 2,4, and 8-19).
- *Optional*: In the case of Eligible Entities that opt to request funding along with their Initial Proposal, such Eligible Entities will also be required to submit an Initial Proposal Funding Package (*i.e.*, supporting budget documentation) to request funding. Additional information regarding the funding submission requirements will be provided in subsequent guidance. Eligible Entities will not need to have submitted the Initial Proposal Funding Package in order to obtain approval for Volumes 1 or 2.

NTIA will review and approve Volume 1 first to allow Eligible Entities to begin conducting their challenge process (if they desire) prior to full Initial Proposal approval. **In no circumstance may an Eligible Entity begin its challenge process prior to submission of the full Initial Proposal (Volumes 1 and 2) to NTIA and before receiving approval of Volume 1 from NTIA.**

Once submitted, the Assistant Secretary may modify the challenge process proposed by an Eligible Entity as necessary and will subsequently inform the Eligible Entity of any modifications required. Once an

⁶ See BEAD NOFO at 31, Section IV.B.5.b.

⁷ The National Broadband Map, referred to as the Broadband DATA Map in the BEAD NOFO, is the fixed broadband availability map created by the Federal Communications Commission under Section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. § 642(c)(1)).

Eligible Entity makes any required modifications, the Assistant Secretary shall approve the challenge process, either in conjunction with, or prior to, approval of the Eligible Entity's overall Initial Proposal.

NTIA *strongly encourages* Eligible Entities to regularly consult with their assigned FPO on any questions and to submit their Initial Proposal Volume 1 prior to submitting Volume 2. This will allow for faster processing and review of submitted challenge processes by NTIA, and subsequently allow Eligible Entities to begin conducting their challenge process more quickly.⁸

4. Existing Broadband Funding Requirements

As part of the Initial Proposal, Eligible Entities must identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands. For States and Territories that have completed Five-Year Action Plans, reference to the Five-Year Action Plan in the Initial Proposal would satisfy this requirement.⁹

5. Initial Location Data Requirements

The goal of the BEAD challenge process is to ensure Eligible Entities identify the full universe of locations that are eligible for BEAD funding. In support of this goal, this section outlines the requirements for Eligible Entities to use the National Broadband Map as a starting point to identify the list of BEAD-eligible locations within their jurisdiction, prior to conducting a challenge process. As the first step in Volume 1 of the Initial Proposal, Eligible Entities will identify unserved locations, underserved locations, and Eligible CAIs within their jurisdiction.

5.1 National Broadband Map Use

As part of Volume 1 of the Initial Proposal, Eligible Entities are required to identify each unserved location and underserved location within the Eligible Entity (*i.e.*, under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands), using the most recently published National Broadband Map as of the date of submission of the Initial Proposal.¹⁰ In their submissions, Eligible Entities must include the publication date of the National Broadband Map used for such identification. Additional guidance on the data format for unserved and underserved locations can be found in Appendix A.

If more than 60 calendar days have elapsed between submission of the Initial Proposal Volume 1 and the beginning of the challenge process, Eligible Entities are encouraged to use the most recent version of the National Broadband Map for the challenge process. Eligible Entities do **not** need to resubmit these updated lists of unserved and underserved locations to NTIA.

5.2 Community Anchor Institution Identification

As part of Volume 1 of the Initial Proposal, Eligible Entities are required to include the following:

⁸ Additional guidance on the complete Initial Proposal submission is forthcoming.

⁹ See BEAD NOFO at 31, Section IV.B.5.b.3.

¹⁰ See *id.*

- a. A description of how the Eligible Entity applied the statutory definition of the term “community anchor institution” and identified Eligible CAIs (*i.e.*, “a community anchor institution that lacks access to Gigabit-level broadband service”) in its jurisdiction and on applicable Tribal Lands;¹¹
- b. A description of how the Eligible Entity assessed the needs of Eligible CAIs, and of what types of CAIs the Eligible Entity intends to receive service under the BEAD Program;
- c. A description of the categories of institutions proposed as CAIs, including during the public comment period, if any, that the Eligible Entity considered but declined to classify as an Eligible CAI, and a description of the basis on which the Eligible Entity determined that such category of CAI does not facilitate greater use of broadband service by vulnerable populations;
- d. If the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations; and
- e. A list of each Eligible CAI location identified within the jurisdiction of the Eligible Entity, including the National Broadband Map location ID (if applicable) or the latitude and longitude for each Eligible CAI in the data format in Appendix A. Eligible Entities may rely on CAIs to identify their unmet broadband need. Where SBO capacity is limited, Eligible Entities should focus their efforts on enumerating those CAIs that are currently not served by gigabit broadband.

Categories of institutions may include but not be limited to the following:

- K-12 schools, junior colleges, community colleges, universities or other educational institutions;
- Libraries;
- Local, state, federal or Tribal government buildings that facilitate greater use of broadband service by vulnerable populations;
- Health clinics, health centers, hospitals, or other medical providers;
- Public safety entities such as fire houses, emergency medical service stations, police stations, or public safety answering points (PSAP);
- Public housing organizations;¹² and
- Community support organizations that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

6. Modifications to Location Classifications

This section outlines requirements each Eligible Entity is to undertake prior to implementing its challenge process.

As part of Volume 1 of the Initial Proposal, an Eligible Entity may, upon approval of the Assistant Secretary, modify the set of locations it proposes to make eligible for BEAD funding to reflect data not present in the National Broadband Map as described in Section 6.1. Eligible Entities also must submit a description of the deduplication process that will be conducted prior to implementing the challenge process. The deduplication process must meet the requirements outlined in Section 6.2 below. Upon approval of Volume 1 of the Initial Proposal, and prior to conducting the challenge process, Eligible Entities will complete any modification process approved under Section 6.1 and then the funding

¹¹ *Id.* at 12, Section I.C(h).

¹² This term is used broadly and includes any public housing agency, HUD-assisted housing organization, or Tribal housing organization. *Id.* at 11, n. 3, Section I.C.

deduplication process described in Section 6.2. The set of eligible locations established after execution of these pre-challenge process requirements will then be the subject of the challenge process described in Section 7.

6.1 Modifications to Reflect Data Not Present in the National Broadband Map (Pre-Challenge Process Modification)

Eligible Entities may, subject to the approval of the Assistant Secretary, modify the designation of a location as served, underserved or unserved on the National Broadband Map (see Section 5) and, subject to the challenge process, to reflect data not present in the National Broadband Map. Eligible Entities are required to provide sufficient justification that the modifications more accurately reflect the locations eligible for BEAD funding within the Eligible Entity’s jurisdiction.

Proposals may not (a) add or remove locations from the set of broadband serviceable locations the Commission has identified on the National Broadband Map (see Section 5), or (b) change the definitions of “unserved” and “underserved” from those set forth in the Infrastructure Act.

By way of example only, an Eligible Entity might propose the following:

- To treat locations that the National Broadband Map shows to have available qualifying broadband service (*i.e.*, a location that is “served”) delivered via DSL as “underserved” to facilitate the phase-out of legacy copper facilities and ensure the delivery of “future-proof” broadband service.
- To treat as “underserved” locations that the National Broadband Map shows to be “served” if rigorous speed test methodologies demonstrate that the “served” locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream.

Unless otherwise noted, all pre-challenge process modifications are rebuttable. They must be recorded in the challenge results file (Section 10.4), along with any rebuttals and the adjudication by the Eligible Entity.

The Assistant Secretary will not approve proposals to make wholesale changes to the classification of locations as unserved, underserved, or served based on an Eligible Entity’s views of the policies underpinning the Broadband DATA Act and the FCC’s implementation thereof. By way of example, the Assistant Secretary will not approve a proposal to require a standard service installation interval of less than 10 business days.¹³

6.2 Deduplication of Funding

An Eligible Entity may not treat as “unserved” or “underserved” any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband as of the date that the challenge process is concluded.¹⁴ In order to implement this requirement, Eligible Entities must identify

¹³ A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as “[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider.”

¹⁴ See BEAD NOFO at 36, Section IV.B.7.a.ii, item 3.

potential project locations where enforceable commitments¹⁵ to provide qualifying broadband¹⁶ already exist (*i.e.*, the deduplication process).¹⁷

For locations with an enforceable commitment to deploy reliable broadband that is less than 100/20 Mbps, the Eligible Entity must, subject to the exceptions outlined below, classify these locations as unserved or underserved based on the speed the commitment requires.¹⁸

If the service provided in such a commitment meets the BEAD definition and requirements of reliable broadband, it will be considered an enforceable commitment regardless of the type of reliable broadband technology deployed.

If a provider offers to deploy broadband service to an area that is faster than what was required by a preexisting enforceable commitment,¹⁹ Eligible Entities may, but are not required to, enter into a binding agreement with the provider that reflects the new, higher speed commitment and consider the locations in that area served with the higher speed.²⁰

For unserved locations and underserved locations on Tribal Lands, a commitment that otherwise meets the criteria set forth above shall not constitute an enforceable commitment for the deployment of qualifying broadband unless it includes a legally binding agreement which includes a Tribal Government Resolution between the Tribal Government of the Tribal Lands encompassing that location or its authorized agent and a service provider offering qualifying broadband service to that location.²¹

6.2.1 Deduplication Process

In Volume 1 of the Initial Proposal, Eligible Entities must detail the process they will employ, including use of the BEAD Eligible Entity Planning Toolkit described in Section 6.2.2 below or alternative tools to remove locations that are subject to enforceable commitments to provide qualifying broadband from the

¹⁵ For a definition of “enforceable commitment,” *see id.* at 36, n. 52, Section IV.B.7.a.ii.

¹⁶ For a definition of “qualifying broadband,” *see id.* at 36, Section IV.B.7.a.ii, item 3.

¹⁷ As described in the NOFO, Eligible Entities may fund locations in an area that has an enforceable commitment for the deployment of qualifying broadband if that commitment extends to less than 100 percent of the locations in that area. *Id.* at 36, n. 52, Section IV.B.7.a.ii. The challenge process must, however, seek to identify which locations in such an area will not be served by qualifying broadband service as a result of such enforceable commitment, and use that information in determining whether to treat each location as unserved or underserved within the relevant area. *Id.* To make this determination, Eligible Entities may require providers with enforceable broadband deployment commitments to disclose whether they will provide service at the locations covered by those commitments using a technology identified as Reliable Broadband Service or will rely on satellites or entirely unlicensed spectrum. *See id.* at 15, Section I.C.u. If a provider fails to provide this information, the Eligible Entity may presume for the purposes of the deduplication process that the provider has not committed to deploy Reliable Broadband Service at those locations and that, as a result, there is not a binding commitment to deploy qualifying broadband service at those locations. A provider that is impacted by such a presumption may challenge the status of such locations as described in section 7.2.

¹⁸ Eligible Entities may take into account the reliability and past performance of any company that is offering to build out future broadband infrastructure.

¹⁹ For example, a provider has a binding commitment only to provide 25/3 Mbps service under a state program but intends to deploy network facilities capable of delivering 100/20 Mbps service to meet that binding commitment and to offer 100/20 Mbps service over those facilities.

²⁰ Eligible Entities must also ensure that service commitments meet the requirement that latency be less than or equal to 100 milliseconds. *See* BEAD NOFO at 16, n. 17.

²¹ *See id.* at 36, n. 52, Section IV.B.7.a.ii.

list of locations that are eligible for funding and subject to the challenge process described in Section 7 below.

6.2.2 Tools for Identifying Potential Duplication of Funding

To support Eligible Entities as they administer the deduplication process mandated in the BEAD NOFO, NTIA will provide Eligible Entities with the option to use the BEAD Eligible Entity Planning Toolkit—NTIA-developed technology tools that, among other things, overlay multiple data sources to capture federal, state, and local enforceable commitments.

If an Eligible Entity declines to use the BEAD Eligible Entity Planning Toolkit,²² the Eligible Entity must:

- a. Certify that the Eligible Entity has the technological capability to aggregate multiple data sources to identify accurately the broadband-serviceable locations (BSLs) subject to existing federal, state, and local commitments;
- b. Certify that the Eligible Entity will use, at a minimum, the data available from the Broadband Funding Map published by the Federal Communications Commission pursuant to Section 60105 of the Infrastructure Act, data the Eligible Entity possesses from state broadband deployment programs (to include programs that utilize funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury), and such other datasets as NTIA shall specify prior to the initiation of challenge processes by Eligible Entities;
- c. Provide the list of programs included as part of the proposed deduplication of funding process; and
- d. Ensure the list of programs included in the proposed deduplication of funding process include all programs in the NTIA tool.

6.2.3 Deduplication Waivers

The BEAD NOFO also provides the Assistant Secretary with the ability to waive the requirement to exclude locations or areas with prior enforceable commitments at the request of the Eligible Entity in cases where the Eligible Entity can demonstrate that such a waiver is necessary to achieve the goals of the program.²³

To the extent that an Eligible Entity wishes to fund locations with prior enforceable commitments and exclude them from the deduplication of funding process, the Eligible Entity must request a waiver from NTIA (a) when it submits its proposed challenge process or (b) if the enforceable commitment was made after the proposed challenge process was submitted to the Assistant Secretary, prior to the initiation of the Eligible Entity's subgrantee selection process.

NTIA will review waiver requests on a case-by-case basis. The Assistant Secretary will grant such a waiver only for good cause shown, and when such approval will be in the best interest of the Federal Government. This standard will be satisfied if the Eligible Entity demonstrates to the satisfaction of the Assistant Secretary that treatment of certain locations subject to a prior enforceable commitment as “unserved” or “underserved” is necessary to achieve the goals of the program.

²² Additional guidance on the NTIA BEAD Eligible Entity Planning Toolkit is forthcoming.

²³ See BEAD NOFO at 36, Section IV.B.7.a.ii.3. This waiver authority will be implemented consistent with the statutory requirement that BEAD funds may only supplement, not supplant, the amounts that the Eligible Entity would otherwise make available for the purposes for which the grant funds may be used. See Infrastructure Act, Section 60102(l).

7. BEAD Challenge Process Design Requirements

Eligible Entities shall ensure a transparent, evidence-based, fair, and expeditious challenge process is included as part of their BEAD program implementation. To do so, Eligible Entities must adhere to the requirements outlined below when designing their challenge processes. Consistent with the record retention and access requirements applicable to all Federal awards, Eligible Entities must retain all records pertinent to their BEAD grants (including the Challenge Process) and allow access to such records by NTIA as requested.²⁴

7.1 Description of Challenge Process

Eligible Entities must describe in detail how they propose to administer the challenge process within their jurisdiction. While Eligible Entities may determine their preferred approach, the challenge process for each location must include the following four phases: (a) publication of eligible locations; (b) challenge; (c) rebuttal; and (d) final determination.

- a. **Publication of Eligible Locations:** The Eligible Entity publishes the set of locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 (*i.e.*, the full universe of locations potentially eligible for BEAD funding minus those removed in the modifications to location classifications process), as well as locations considered served. The status of these locations can be challenged.
- b. **Challenge:** A representative of one of the permissible challengers submits a challenge to the Eligible Entity, using an online portal maintained by the Eligible Entity (“challenge portal”). These challenges must be visible to the service provider whose service availability is being contested.²⁵ The location enters the “challenged” state.²⁶ Each Eligible Entity must define a minimum level of evidence that must be presented before a challenge will be recognized as valid and subject to rebuttal.²⁷
- c. **Rebuttal:** For challenges related to location eligibility, only the challenged service provider may rebut the reclassification of a location or area with evidence. If a provider claims gigabit service availability for a CAI or a unit of local government disputes the CAI status of a location, the CAI may rebut. All types of challengers may rebut planned service (P) and enforceable commitment (E) challenges. A rebuttal causes the location or locations to enter the “disputed” state. If a challenge that meets the minimum level of evidence is not rebutted within the rebuttal period, the challenge is considered sustained. A provider may also agree with the challenge and thus transition the location to the “sustained” state.
- d. **Final Determination:** If the challenge for a location is in the “disputed” state, the Eligible Entity makes the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected.”

²⁴ See 2 C.F.R. §§ 200.334-338.

²⁵ The portal *may*, but does not have to, notify the provider of the challenge by email or API call. NTIA will provide a definition of a data format that may be used to notify providers at a later date. Providers must check the notification method (e.g., email) on a regular basis.

²⁶ Optional **Area Challenge:** If the challenger determines that an area served by a provider within a census block group should be reclassified as unserved or underserved in step (1), the Eligible Entity may issue an area challenge (*i.e.*, may declare all locations by that provider within the area to be similarly unserved or underserved). All locations in that area enter the “challenged” state. Providers may rebut area challenges for some or all locations within the area.

²⁷ See Table 3 for examples of the minimum level of evidence.

7.2 Allowable Challenges

The following table outlines the classes of challenges that are allowable and unallowable as part of the BEAD challenge process. An Eligible Entity may propose other types of allowable challenges that facilitate the goals of the BEAD Program, subject to NTIA approval. Additional information on the acceptable evidence to be used in the BEAD challenge process is outlined in Section 7.4, Table 3.

Table 2: BEAD Challenge Process Allowable Challenges

| Scope | Challenge Class | Challenge Type | Detail |
|----------------------|------------------------------------|---|---|
| Allowable | Location eligibility determination | <ul style="list-style-type: none"> • Availability (A) • Speed (S) • Latency (L) • Business Service Only (B) • Data Cap (D) • Technology (T) | NTIA will permit challenges to the classification of a location as an unserved or underserved location eligible for BEAD funds (<i>i.e.</i> , challenges to the broadband service availability data) for existing BSLs included in the FCC’s Broadband Serviceable Location Fabric (Fabric). ²⁸ This includes the classification of individual BSLs that are multi-dwelling units (MDUs) based on the availability of broadband service to individual units within the BSL. ²⁹ |
| | CAI Eligibility Determination | <ul style="list-style-type: none"> • Qualifying broadband not available (G) • Qualifying broadband available (Q) | NTIA will permit challenges to the classification of a CAI as eligible for BEAD funds (<i>i.e.</i> , challenges that a CAI does not receive at least 1 Gigabit broadband speeds). |
| | Identification of CAIs | <ul style="list-style-type: none"> • Location is a CAI (C) • Location is Not a CAI (R) | NTIA will permit challenges to the Eligible Entity’s identification of CAIs. |
| | Enforceable Commitments | <ul style="list-style-type: none"> • Enforceable Commitment (E) • Not Part of an Enforceable Commitment (N) | NTIA will permit challenges to the identification of previous federal, state, or local enforceable commitments to minimize duplication of funding. |
| | Planned service | <ul style="list-style-type: none"> • Planned Service (P) | NTIA will permit challenges where a broadband provider offers convincing evidence that they are currently building out broadband to challenged locations without government subsidy or are building out broadband offering performance beyond the program requirements. |
| Not Allowable | Classification of BSLs | NTIA will not permit challenges to the classification of a BSL on the Fabric (<i>e.g.</i> , altering the BSL’s “Building Type” classification on the Fabric to reflect a BSL’s subscription to mass-market broadband service). | |
| | Addition or Removal of BSLs | NTIA will not permit new BSLs to be added to or removed from the Fabric. ³⁰ <i>See</i> , Infrastructure Act, 60102(a)(2)(H). | |

²⁸ All location eligibility challenge submissions must include the associated Location ID.

²⁹ An Eligible Entity may, for example, allow a challenge to the classification of a BSL that is a MDU based on the fact that qualifying broadband service is not available to every unit in the MDU. An Eligible Entity may not, however, offer or honor challenges that seek to reclassify a single BSL that is a MDU as multiple BSLs. NTIA expects, however, that Eligible Entities and potential subgrantees may seek to take the characteristics of BSLs that are MDUs into account during the subgrantee selection process.

³⁰ Note that BSLs may be added or removed through the FCC Broadband Data Collection challenge process, which will continue while Eligible Entities conduct their challenge processes.

7.3 Permissible Challengers

Eligible Entities may only allow challenges from the following parties:³¹

- units of local and tribal government,
- nonprofit organizations, and
- broadband service providers.

Residents can submit challenges through their unit of local government or a nonprofit, preferably via a web portal. This unit of local government or nonprofit will then upload the challenges to the state challenge portal, which in turn notifies the broadband provider of the challenge.

7.4 Evidence Requirements

Eligible Entities must ensure their challenge process is evidence-based.

In their challenge process submissions, Eligible Entities must outline a rigorous evidentiary review process through which they will review and make determinations based on challenges received. Eligible Entities may accept a wide range of data sources to substantiate challenges, as long as any potential source of evidence used to substantiate challenges is documented and verifiable by a third party.

To help Eligible Entities meet this standard, the table below provides examples of acceptable evidence for challenges and rebuttals for each potential challenge type. If an Eligible Entity proposes to accept a data source other than those described in Table 3 below, that proposal is subject to NTIA's review and approval, and the Eligible Entity must provide sufficient explanation of the circumstances under which it will be accepted (*e.g.*, when combined with another accepted data source). The data source categories below apply to both the challenge submission phase and the rebuttal phase of the challenge process.

In general, citizen surveys do not constitute acceptable evidence for either challenges or rebuttals. For speed tests, Eligible Entities must either follow the NTIA Model Challenge Process or describe, as part of Volume 1, how the Eligible Entity will ensure that the speed test data has been gathered in a scientifically rigorous and reliable manner, including the allowable speed test modalities (*e.g.*, permissible software or web pages; any restrictions on the time-of-day speed tests can be gathered) and the required number of speed tests and their geographic distribution that constitute sufficient evidence for a challenge or rebuttal.

Propagation studies for fixed wireless service are subject to NTIA evaluation of their methodology. The methodology must have been shown to reliably predict the actual network availability and minimum performance in the topography of the area subject to the challenge and for the specific wireless technology that is deployed in that area. For example, propagation studies that have only been tested in unobstructed line-of-sight environments may not accurately predict the performance and coverage in forested or mountainous topographies.

³¹ See Infrastructure Act Section 60102(h)(2)(A); BEAD NOFO at 34-35, Section IV.B.6.

Table 3: Examples of Acceptable Evidence for BEAD Challenges and Rebuttals

| Code | Challenge Type | Description | Specific Examples | Permissible rebuttals |
|------|----------------|--|---|---|
| A | Availability | The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU). | <ul style="list-style-type: none"> • Screenshot of provider webpage. • A service request was refused within the last 180 days (e.g., an email or letter from provider). • Lack of suitable infrastructure (e.g., no fiber on pole). • A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request.³² • A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a Provider quoted an amount in excess of the provider’s standard installation charge in order to connect service at the location. | <ul style="list-style-type: none"> • Provider shows that the location subscribes or has subscribed within the last 12 months, e.g., with a copy of a customer bill. • If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability. • The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location. |
| S | Speed | The actual speed of the service tier falls below the unserved or underserved thresholds. ³³ | Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests. | Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system. ³⁴ |
| L | Latency | The round-trip latency of the broadband service exceeds 100 ms. | Speed test by subscriber, showing the excessive latency. | Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system or the CAF performance measurements. ³⁵ |

³² A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as “[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider.”

³³ The challenge portal has to gather information on the subscription tier of the household submitting the challenge. Only locations with a subscribed-to service of 100/20 Mbps or above can challenge locations as underserved. Speed challenges that do not change the status of a location do not need to be considered. For example, a challenge that shows that a location only receives 250 Mbps download speed even though the household has subscribed to gigabit service can be disregarded since it will not change the status of the location to unserved or underserved.

³⁴ As described in the NOFO, provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed. *See Performance Measures Order*, 33 FCC Rcd at 6528, para. 51. *See* BEAD NOFO at 65, n. 80, Section IV.C.2.a.

³⁵ *Ibid.*

| | | | | |
|---|------------------------|---|--|--|
| D | Data cap | The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. ³⁶ | <ul style="list-style-type: none"> • Screenshot of provider webpage. • Service description provided to consumer. | Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap. |
| T | Technology | The technology indicated for this location is incorrect. | Manufacturer and model number of residential gateway (CPE) that demonstrates the service is delivered via a specific technology. | Provider has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service. |
| B | Business service only | The location is residential, but the service offered is marketed or available only to businesses. | Screenshot of provider webpage. | Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers. |
| E | Enforceable commitment | <p>1) All known state, local, and federal enforceable commitments identified as part of the Eligible Entity deduplication process (outlined in Section 6.2 of this document).</p> <p>2) Challenges received by the Eligible Entity whereby the challenger has knowledge that broadband will be deployed at this location by</p> | <ul style="list-style-type: none"> • Eligible Entities must record all known state, local, and federal enforceable commitments, to the best of their knowledge, as entries in the challenges.csv file (see Section 6.2 above). • Enforceable commitment by service provider (e.g., authorization letter). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue (see Section 6.2 above). • The broadband funding program or other source of the commitment, as applicable, must be recorded in the “resolution” column of the challenges.csv file. | Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern). |

³⁶ An unreasonable capacity allowance is defined as a data cap that falls below the monthly capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022). Alternative plans without unreasonable data caps cannot be business-oriented plans not commonly sold to residential locations. A successful challenge may not change the status of the location to unserved or underserved if the same provider offers a service plan without an unreasonable capacity allowance or if another provider offers reliable broadband service at that location.

| | | | | |
|---|-------------------------------------|--|---|---|
| | | the date established in the deployment obligation. | | |
| P | Planned service | The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an enforceable commitment or a provider is building out broadband offering performance beyond the requirements of an enforceable commitment. | <ul style="list-style-type: none"> • Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained. • Contracts or a similar binding agreement between the Eligible Entity and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (<i>i.e.</i>, a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024. | Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or that the planned deployment does not meet the required technology or performance requirements. |
| N | Not part of enforceable commitment. | This location is in an area that is subject to an enforceable commitment to less than 100% of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.) | Declaration by service provider subject to the enforceable commitment. | |
| C | CAI: Location is a CAI | The location should be classified as a CAI. | Evidence that the location falls within the definitions of CAIs set by the Eligible Entity. ³⁷ | Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation. |
| R | CAI: Location is not a CAI | The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation. | Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation. | Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational. |

³⁷ For example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.

| | | | | |
|---|--|--|--|--|
| G | CAI: Qualifying broadband unavailable. ³⁸ | The CAI cannot obtain qualifying broadband. | Evidence that the CAI has tried to acquire qualifying broadband but has been unsuccessful. | Evidence that qualifying broadband is available to the CAI. |
| Q | CAI: Qualifying broadband available. | The CAI can obtain qualifying broadband. | Evidence that the CAI can acquire symmetric gigabit service. | Evidence that qualifying broadband is not available to the CAI. |
| V | DSL | Pre-challenge modification for DSL technology. | No location-specific evidence required. | Not rebuttable. |
| F | Fixed wireless | Pre-challenge modification for fixed wireless technology. | No location-specific evidence required. | Rebuttal evidence described in the Eligible Entity’s approved IP Volume I. |
| M | Measurement challenge | Pre-challenge modification for a measurement- based challenge using anonymous speed tests. | No location-specific evidence required. | Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system. ³⁹ |
| X | Eligible Entity- specific pre- challenge modification 1 | NTIA-approved Eligible Entity pre-challenge modification. | No location-specific evidence required. | Rebuttal evidence described in the Eligible Entity’s approved IP Volume I submission. |
| Y | Eligible Entity- specific pre- challenge Modification 2 | NTIA-approved Eligible Entity pre-challenge modification. | No location-specific evidence required. | Rebuttal evidence described in the Eligible Entity’s approved IP Volume I submission. |
| Z | Eligible Entity- specific pre- challenge modification 3 | NTIA-approved Eligible Entity pre-challenge modification. | No location-specific evidence required. | Rebuttal evidence described in the Eligible Entity’s approved IP Volume I submission. |

The challenge process submission should identify which pre-challenge modification that is specific to the Eligible Entity maps to which challenge type (X, Y, or Z).

7.5 Fairness Requirements

Eligible Entities must ensure their challenge process is fair. To demonstrate fairness in their proposed challenge process submissions, Eligible Entities must detail, at a minimum:

- a. An approach that ensures that sufficient opportunity and time is given to all relevant parties to initiate, rebut, and substantiate challenges; and

³⁸ “Qualifying broadband” to a CAI is Reliable Broadband Service with (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.” NOFO, p. 37.

³⁹ As described in the NOFO, provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed. *See Performance Measures Order*, 33 FCC Rcd at 6528, para. 51. *See* BEAD NOFO at 65, n. 80, Section IV.C.2.a.

- b. An approach that ensures the challenge process standards of review are applied uniformly to all challenges submitted, allowing for unbiased and uniform challenge adjudication.

7.6 Transparency Requirements

Eligible Entities must ensure their challenge process is transparent. To demonstrate transparency in their proposed challenge process submissions, Eligible Entities must detail their plans to, at a minimum:

- a. Publicly post documentation explaining their challenge process once it is approved by NTIA and prior to beginning the challenge process;
- b. Actively inform units of local government, relevant nonprofit organizations and broadband providers to the challenge process, its deadlines and how providers and other affected parties will be notified of challenges;
- c. Publicly post all submitted challenges and rebuttals before final determinations are made, including:
 - 1. The nonprofit, unit of local government or provider making the challenge;
 - 2. The type of the challenge (e.g., availability);
 - 3. A summary of the challenge; and
 - 4. A summary of the rebuttal(s) to the challenge;
- d. Host a public-facing website on which all required documentation listed above will be posted; and
- e. Ensure the protection of Personally Identifiable Information (PII) and proprietary information as applicable.⁴⁰

Following the conclusion of the challenge process and NTIA’s review of challenge determinations, an Eligible Entity must also publicly post its final determination in three lists: unserved locations, underserved locations, and Eligible CAIs. The lists must be available at least 60 days prior to allocating grant funds.⁴¹

7.7 Timing Requirements

Eligible Entities must ensure their challenge process is expeditious. To demonstrate expediency in their proposed challenge process submissions, Eligible Entities must detail their plans to, at a minimum:

- a. Complete the entire challenge process within 120 calendar days, starting with the initiation of the challenge submission window and ending with submission to NTIA for review and approval the final classifications of each unserved location, underserved location, or Eligible CAI within the jurisdiction of the Eligible Entity after resolving each challenge;
- b. Allow challenges to be submitted for a minimum of 14 calendar days.
- c. Allow rebuttals for at least 14 calendar days after the challenge is available on the challenge portal maintained by the Eligible Entity;⁴² and

⁴⁰ Eligible Entities should follow relevant open records laws for any data gathered as a result of the BEAD challenge process.

⁴¹ See BEAD NOFO at 34-35, Section IV.B.6.

⁴² The rebuttal period may take place concurrently with the challenge submission period.

- d. Following approval by NTIA, publicly post the final classifications of each location or Eligible CAI within the jurisdiction of the Eligible Entity at least 60 days before allocating grant funds for network deployment.⁴³

These minimum timing requirements are intended to ensure that Eligible Entities have sufficient time to run the challenge process, publish final determinations, conduct subgrantee selection and prepare Final Proposals for submission to NTIA no later than 365 days after the approval of the Initial Proposal by the Assistant Secretary. Eligible Entities may, however, choose longer periods when determining the specific timeframes for the various components of the challenge process (*e.g.*, challenge submission, rebuttal window). In particular, Eligible Entities are encouraged to consider adopting longer submission and rebuttal windows, if possible, based on the Eligible Entity's preferred timelines and capacity. NTIA strongly recommends keeping both the challenge submission window and rebuttal window open for at least 30 days.

8. Location Updates After the Challenge Process

Upon the conclusion of the challenge process and prior to implementing the subgrantee selection process described in Section IV.B.7 of the BEAD NOFO, each Eligible Entity must conduct a final deduplication review process to remove from the list of locations that are eligible for BEAD funding any locations that are subject to enforceable broadband deployment commitments.⁴⁴

Before initiating the subgrantee selection process, Eligible Entities may, but are not required to, update the list of unserved and underserved locations to reflect updates to the National Broadband Map that occur after the conclusion of the challenge process.⁴⁵ Their Initial Proposal must spell out the types of changes they will implement during this update.

9. Post Challenge Process Review

Upon completion of the challenge process and the final deduplication of funding process and prior to implementing the subgrantee selection process described in Section IV.B.7 of the BEAD NOFO, each Eligible Entity must submit to NTIA for review and approval the required information (see Appendix C), including challenges, BSL challenge outcomes, CAI challenge outcomes, and the proposed classifications of each location within the Eligible Entity's jurisdiction as served, unserved, underserved, or an Eligible CAI.

Pursuant to the discretionary authority granted to the Assistant Secretary in the Infrastructure Act, NTIA may reverse the determination of an Eligible Entity with respect to the eligibility of a particular location or CAI.

⁴³ See BEAD NOFO at 34, Section IV.B.6.

⁴⁴ This post challenge deduplication process will remove, for example, locations that had their classification changed to unserved or underserved from served due to the challenge process but are subject to an enforceable broadband deployment commitment. It will also remove unserved and underserved locations that became subject to a new binding broadband deployment commitment during the course of the challenge process.

⁴⁵ See BEAD NOFO at 35, n. 48, Section IV.B.6.

10. Appendix A: Data Formats

This appendix describes the format of the data files Eligible Entities must submit to NTIA to meet the requirements of the NOFO.

10.1 List of Unserved and Underserved Locations

The Eligible Entity must submit two Comma Separated Value (CSV) files⁴⁶ named `unserved.csv` and `underserved.csv` that lists all unserved and underserved IDs, respectively. Each row contains one identifier. The first row should not contain a header field.

10.2 Community Anchor Institutions

The Eligible Entity must submit a CSV file named `cai.csv` that lists all eligible CAIs.

All fields are mandatory unless otherwise noted.

The Eligible Entity is responsible for defining the criteria that make an institution or building an Eligible CAI as defined in 47 U.S.C. § 1702(a)(2)(E).⁴⁷ The definitions given are thus illustrative and are not meant to enumerate all categories of institutions or require that all institutions that may match the colloquial definition of the term are included.

The Homeland Infrastructure Foundation Level Data (HIFLD)⁴⁸ lists several types of CAI. Eligible Entities should attempt to add FRNs, CMS certification numbers (CCN) and Fabric location IDs to these records to allow providers and CAIs to uniquely identify organizations and locations. A tool to look up entity numbers for schools and libraries can be found at <https://opendata.usac.org/E-rate/E-Rate-Entity-Search-Tool/59r2-zbdq>.

Address information must identify the physical location of the CAI, not the administrative location. For example, the address should describe the location of the school building, not that of the board of education administrative building.

⁴⁶ See “Common Format and MIME Type for Comma-Separated Values (CSV) Files,” *RFC Editor (The Internet Society)*, October 2005, [RFC 4180: Common Format and MIME Type for Comma-Separated Values \(CSV\) Files \(rfc-editor.org\)](https://rfc-editor.org/rfc/4180) for the formal specification of the file format.

⁴⁷ See Infrastructure Act, Section 60102(a)(2)(E).

⁴⁸ [HIFLD Open Data \(arcgis.com\)](https://arcgis.com)

Table 4: Guidance on Data Formats for CAIs (cai.csv)

| Field | Header | Data type | Example | Description / notes | | | | | | | | | | | | | | |
|---------------|--|-----------------------|----------------------|---|---|--|---|---------|---|---|---|---|---|---|---|-----------------------------|---|--|
| Type | type | enumerated string {1} | S | Enumerated character identifying the type of CAI: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">S</td> <td>K-12 school, junior college, community college, university, or other educational institution</td> </tr> <tr> <td style="text-align: center;">L</td> <td>library</td> </tr> <tr> <td style="text-align: center;">G</td> <td>local, state, federal or Tribal government building</td> </tr> <tr> <td style="text-align: center;">H</td> <td>health clinic, health center, hospital, or other medical provider</td> </tr> <tr> <td style="text-align: center;">F</td> <td>public safety entity such as a fire house, emergency medical service station, police station, or public safety answering point (PSAP)</td> </tr> <tr> <td style="text-align: center;">P</td> <td>public housing organization</td> </tr> <tr> <td style="text-align: center;">C</td> <td>community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals</td> </tr> </table> | S | K-12 school, junior college, community college, university, or other educational institution | L | library | G | local, state, federal or Tribal government building | H | health clinic, health center, hospital, or other medical provider | F | public safety entity such as a fire house, emergency medical service station, police station, or public safety answering point (PSAP) | P | public housing organization | C | community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals |
| S | K-12 school, junior college, community college, university, or other educational institution | | | | | | | | | | | | | | | | | |
| L | library | | | | | | | | | | | | | | | | | |
| G | local, state, federal or Tribal government building | | | | | | | | | | | | | | | | | |
| H | health clinic, health center, hospital, or other medical provider | | | | | | | | | | | | | | | | | |
| F | public safety entity such as a fire house, emergency medical service station, police station, or public safety answering point (PSAP) | | | | | | | | | | | | | | | | | |
| P | public housing organization | | | | | | | | | | | | | | | | | |
| C | community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals | | | | | | | | | | | | | | | | | |
| Entity name | entity_name | string | Leonia Middle School | Official name of the CAI. | | | | | | | | | | | | | | |
| Entity number | entity_number | integer | 7688 | USAC assigns a unique identifying number to each school or library that participates in the E-Rate program, the entity number. Mandatory if CAI participates in E-Rate program. Leave empty for CAIs that are neither type S nor L or do not participate in the E-Rate program. | | | | | | | | | | | | | | |
| CMS number | CMS number | string | 310045 | The CMS certification number (CCN) ⁴⁹ for CAIs of type H. Leave empty for other CAIs. | | | | | | | | | | | | | | |
| FRN | frn | string | 0015433808 | FCC registration number (if | | | | | | | | | | | | | | |

⁴⁹ See “S&C’s Quality, Certification and Oversight Reports (QCOR),” *Center for Medicare and Medicaid Services*, September 29, 2022, [S&C QCOR Home Page \(cms.gov\)](https://data.cms.gov/provider-characteristics/hospitals-and-other-facilities/provider-of-services-file-hospital-non-hospital-facilities), among other sources. A list of providers and their identifiers can be found at <https://data.cms.gov/provider-characteristics/hospitals-and-other-facilities/provider-of-services-file-hospital-non-hospital-facilities>.

| | | | | |
|------------------------|-----------------|----------------------|----------------|---|
| | | | | applicable; likely for type S, L, H) |
| Location ID | location_id | integer | 1081756084 | The identifier for the BSL from the National Broadband Map. Leave empty if the CAI has no location id. |
| Street address | address_primary | string | 500 Broad Ave | Street number, street name, and any applicable prefix or suffix of the first address line (primary address) of the CAI. |
| City | city | string | Leonia | Full name of the city, town, municipality, or census designated place associated with address. |
| State or territory | state | enumerated string{2} | NJ | Two-letter USPS abbreviation identifying the state or territory associated with address. |
| Zip code | zip_code | string{5} | 07605 | Five-digit USPS ZIP code associated with address, including any leading zeros. |
| Longitude | longitude | decimal(10,7) | -73.9838782322 | Unprojected (WGS-84) geographic coordinate longitude in decimal degrees for the CAI, with a minimal precision of 6 decimal digits. |
| Latitude | latitude | decimal(10,7) | 40.867420374 | Unprojected (WGS-84) geographic coordinate latitude in decimal degrees for the CAI, with a minimal precision of 6 decimal digits. |
| Explanation | explanation | string | senior center | For CAIs of type C, provide a brief explanation of how the institution facilitates greater broadband use and the population it serves, either as text or as a reference to a longer explanation accompanying the submission. For example, the submitter may define a set of sub-categories of CAI category C and describe how they meet the conditions. |
| Broadband need | need | integer | 1000 | Broadband need, in Mbps download speed. |
| Broadband availability | availability | integer | 1000 | Highest available broadband service speed, in Mbps download speed. Leave empty if not known. |

10.3 Challengers

The Eligible Entity must submit a CSV file named `challengers.csv` that enumerates the names, category and contact information of challengers, *i.e.*, organizations that submitted challenges.

Table 5: Guidance on Data Formats for Challengers (challengers.csv)

| Field | Header | Data type | Example | Description / notes |
|-----------------------|---------------|-------------------------|-----------------------|--|
| Challenger identifier | challenger | string | Anytown | Text key identifying the challenger organization. The string is not case sensitive, <i>i.e.</i> , ANYTOWN and Anytown are considered equivalent. |
| Category | category | enumerated {L, T, N, B} | L | L = unit of local government T = a Tribal government N = nonprofit organization B = broadband provider |
| Organization | organization | string | Anytown, PA | Official name of organization; include state or territory if unit of local government |
| Web page | webpage | string | https://example.com | Web page of unit of local government, nonprofit organization or broadband provider. |
| Provider | provider_id | string | 131425 | Only for challengers of category B: A unique 6-digit code generated by the FCC that identifies each service provider. Leave empty for challengers of category L and N. |
| Contact name | contact_name | string | Jane Broadband | Full name of the individual contact associated with the challenge at the location. |
| Email | contact_email | string | challenge@example.com | Email address of the challenger. |
| Phone | contact_phone | string | 201-555-2368 | Phone number of the contact in NNN-NPA-XXXX (000-000-0000) format; optional. |

10.4 Challenge Outcome

The challenge data set documents the challenge determinations made by the Eligible Entity.

The Eligible Entity must upload a file in CSV format, named `challenges.csv`, that matches the specification below. All columns are mandatory unless otherwise specified. The header row must use the field names listed. The specification is derived, but simplified, from the FCC Broadband Data Collection (BDC) Filer API specification⁵⁰ and the *Broadband Data Collection: Data Specifications for Bulk Fixed Availability Challenge and Crowdsourced Data*.⁵¹ It should only include US ASCII characters.

Some fields only apply for certain challenge types, listed in the “Challenge types” column. Leave these fields empty for other challenge types. If there is no entry in the “challenge types” column below, the

⁵⁰ See “Broadband Data Collection (BDC) Filer API Specifications,” *Federal Communications Commission*, January 26, 2023, <https://us-fcc.app.box.com/v/bdc-fixed-response-api-spec>.

⁵¹ See “Data Specifications for Bulk Fixed Availability Challenge and Crowdsourced Data,” *Federal Communications Commission*, January 12, 2023, <https://us-fcc.app.box.com/v/bdc-bulk-fixed-challenge-spec>.

field is mandatory for all challenge types. Information on challenge types and their corresponding codes is outlined in Section 6.4, Table 3.

A combination of a location, provider and technology can appear in multiple rows, either because it is subject to multiple distinct challenges, e.g., a pre-challenge modification and a challenge submitted by a unit of local government, or because multiple challengers submit the same challenge type.

Availability (A) challenges may record the highest speed tier that is actually available.

All pre-challenge modifications, Eligible-Entity-provided deduplications, and area challenges leave the “challenger” field empty since the entry is created by the Eligible Entity. Eligible Entities should include locations that have enforceable commitments that do not meet the requirements of reliable broadband (e.g., unlicensed fixed wireless) as challenges of type N, with an empty “challenger” field.

All dates must be in ISO 8601 extended date format, *i.e.*, with hyphens, such as 2023-07-01, not 20230701.

File names for evidence and responses must only contain US ASCII letters, the digits 0-9, hyphens (-) and underscore (_) characters. File names are not case sensitive. The file name extension must be pdf (PDF files); other file types may be permitted in the future.

Table 6: Guidance on Data Formats for Challenge Outcomes (challenges.csv)

| Field | Challenge Type | Header | Data type | Example | Description / notes |
|----------------------|----------------|----------------|--------------------------|-----------|--|
| Challenge identifier | | challenge | string (≤ 50 characters) | 74db-9797 | A unique identifier generated by the Eligible Entity, containing letters, digits, and hyphens. Not all identifiers have to be assigned. The CSV file does not need to be sorted by this field. |
| Challenge type | | challenge_type | enumerated string {1} | A | One of the challenge types identified in Table 3. |
| Challenger | | challenger | string | Anytown | String that uniquely identifies a challenger in the table challenger.csv. The string is not case-sensitive. Leave empty for Type V, F, M, X, Y, and Z challenges. Leave empty if Type E or N challenge |

| | | | | | |
|--------------------------|--|-----------------|-----------------------|------------|---|
| | | | | | was part of pre-challenge process deduplication. |
| Challenge date | | challenge_date | date | 2023-07-01 | Date challenge was submitted and deemed to be complete. This date may differ from the date a challenge was first submitted if the Eligible Entity determined that the information provided initially was incomplete or erroneous (e.g., did not identify a valid location). |
| Rebuttal date | | rebuttal_date | date | 2023-07-15 | Date rebuttal was submitted. Leave empty if there was no rebuttal. If multiple rebuttals, date of last rebuttal. The rebuttal date must be later than the challenge date. |
| Resolution date | | resolution_date | date | 2023-07-20 | Date the challenge was resolved with the disposition code below. Leave empty if the challenge has not been resolved. |
| Disposition of challenge | | disposition | enumerated string {1} | S | The disposition of the challenge: I – incomplete (the challenge data was incomplete and the challenger did not provide the missing data in time; thus, the challenge could not be submitted for rebuttal); considered “rejected” N – the provider did not respond within the rebuttal deadline; |

| | | | | | |
|------------|--|-------------|-------------|--------|---|
| | | | | | considered “sustained” A – the provider agreed with the challenge; considered “sustained” S – sustained (after rebuttal and evaluation) R – rejected (after rebuttal and evaluation) M – moot due to another successful challenge for the same location |
| Provider | | provider_id | integer | 131425 | A unique 6-digit code generated by the FCC that identifies each service provider. ⁵² |
| Technology | | technology | integer {2} | 50 | Code for the technology of the service being challenged, as shown on the Broadband Map. - Value must be one of the following codes: 10 – Copper Wire 40 – Coaxial Cable / HFC 50 – Optical Carrier / Fiber to the Premises 60 – Geostationary Satellite 61 – Non-geostationary Satellite 70 – Unlicensed Terrestrial Fixed Wireless 71 – Licensed Terrestrial Fixed Wireless 72 – Licensed-by-Rule Terrestrial |

⁵² For list of service IDs, see “BDC Provider ID Table of Service Providers (column hoconum),” *Federal Communications Commission*, <https://us-fcc.app.box.com/v/bdcprovideridtable>.

| | | | | | |
|---------------------------|---------------|---------------------------|------------|---------------------------|---|
| | | | | | Fixed Wireless 0 – Other |
| Location ID | | location_id | Integer | 1081756084 | Unique identifier for the location from the BSL Fabric at which the fixed availability information is being challenged. |
| Unit | A, D, L, S, T | unit | string | 3-G | The unit (apartment) where service is being challenged. Omit “Apt” and “#”. Leave empty if service for whole location is being challenged. |
| Availability reason | A | reason_code | enumerable | 1 | The evidence or reason for the availability challenge. See table below for values. |
| Evidence file | | evidence_file_id | string | E1234567.pdf | File name of evidence for this challenge. |
| Rebuttal file | | response_file_id | string | R1234567.pdf | File name of the response (rebuttal). Optional. |
| Resolution | | resolution | string | checked provider web page | Comments on resolution provided by Eligible Entity; required for E, I, S, and R. For E, include name of broadband funding program or other source of the commitment, as applicable. |
| Advertised download speed | A, E, L, P, S | advertised_download_speed | integer | 1000 | Download speed, in Mbps, advertised by the provider. Use 0 for speeds below 1 Mbps and round down (e.g., a speed of 2.6 Mbps is listed as 2, not 3). |
| Download | S, M | download_speed | float | 957 | Measured or |

| | | | | | |
|-------------------------|---------------|-------------------------|-------|-------|--|
| speed | | | | | available download speed in Mbps. |
| Advertised upload speed | A, E, L, P, S | advertised_upload_speed | int | 200 | Advertised upload speed in Mbps. Use 0 for speeds below 1 Mbps and round down. |
| Upload speed | S, M | upload_speed | float | 157.3 | Measured or available upload speed in Mbps. |
| Latency | L, M | latency | float | 27.5 | Measured round-trip latency in milliseconds (ms). |

The reason_code field for challenges of type A (availability) is drawn from the *FCC Broadband Data Collection: Data Specifications for Bulk Fixed Availability Challenge and Crowdsourced Data*.⁵³

| | |
|---|--|
| 1 | Provider failed to schedule a service installation within 10 business days of a request. |
| 2 | Provider did not install the service at the agreed-upon time. |
| 3 | Provider requested more than the standard installation fee to connect the location. |
| 4 | Provider denied the request for service. |
| 5 | Provider does not offer the technology entered above at this location. |
| 6 | Provider does not offer the speed(s) shown on the Broadband Map for purchase at this location. |
| 8 | No wireless signal is available at this location (only for technology codes 70 and above). |
| 9 | New, non-standard equipment had to be constructed at this location. |

If a unit number is provided, the reason applies only to the specific unit (e.g., apartment) within a broadband serviceable location.

10.5 Community Anchor Institution Challenge (Types C, G, Q, and R)

The Eligible Entity must upload a file in Comma Separated Value (CSV) format,⁵⁴ named cai_challenges.csv, that matches the specifications below. All columns are mandatory unless otherwise specified. The header row must use the field names listed. The specification is derived, but simplified, from the FCC Broadband Data Collection (BDC) Filer API specification⁵⁵ and the *Broadband Data Collection: Data Specifications for Bulk Fixed Availability Challenge and Crowdsourced Data*.⁵⁶ It should only include US ASCII characters.

⁵³ See “Broadband Data Collection: Data Specifications for Bulk Fixed Availability Challenge and Crowdsourced Data (Section 3.2),” *Federal Communications Commission*, January 12, 2023, [bdc-bulk-fixed-challenge-data-specifications.pdf](https://www.fcc.gov/broadband-data-collection-data-specifications-for-bulk-fixed-availability-challenge-and-crowdsourced-data).

⁵⁴ See “Common Format and MIME Type for Comma-Separated Values (CSV) Files,” *RFC Editor (The Internet Society)*, October 2005, [RFC 4180: Common Format and MIME Type for Comma-Separated Values \(CSV\) Files \(rfc-editor.org\)](https://www.rfc-editor.org/rfc/rfc4180) for the formal specification of the file format.

⁵⁵ See “Broadband Data Collection (BDC) Filer API Specifications,” *Federal Communications Commission*, January 26, 2023, <https://us-fcc.app.box.com/v/bdc-fixed-response-api-spec>.

⁵⁶ See “Data Specifications for Bulk Fixed Availability Challenge and Crowdsourced Data,” *Federal Communications Commission*, January 12, 2023, <https://us-fcc.app.box.com/v/bdc-bulk-fixed-challenge-spec>.

The file format for challenges for labeling CAIs or contesting their labeling uses the same fields as those in Table 4 along with additional fields to support identification of challenges. For challenges of type C, the fields describe the CAI the challenger believes to be missing in the list of CAIs provided by the Eligible Entity. For challenges of type R, the fields identify the location that the challenger believes to be mislabeled as a CAI, drawn from the CAI data provided by the Eligible Entity.

Table 7: Guidance on Data Formats for CAI Challenges (cai_challenges.csv)

| Field | Header | Data type | Example | Description / notes | | |
|--------------------------|--|-----------------------------------|---------------------------------|---|---|--|
| Challenge identifier | challenge | string (≤ 50 characters) | 1234567 | A unique identifier generated by the eligible entity. See Table 6. | | |
| Challenge type | challenge_type | enumerated string {1}, C, G, Q, R | C | Must be either C, G, Q, R. | | |
| Challenger | challenger | string | Anytown | String that uniquely identifies a challenger in the table challenger.csv. The string is not case-sensitive. | | |
| Rationale | category_code | enumerated string {1} | X | Reason for challenging the designation or non-designation of a location as a CAI. See table below. | | |
| Disposition of Challenge | disposition | enumerated string {1} | S | The disposition of the challenge: I – incomplete (the challenge data was incomplete and the challenger did not provide the missing data in time; thus, the challenge could not be submitted for rebuttal); considered “rejected” N – the CAI or provider did not respond within the rebuttal deadline; considered “sustained” A – the CAI or provider agreed with the challenge; considered “sustained” S – sustained (after rebuttal and evaluation) R – rejected (after rebuttal and evaluation) | | |
| Challenge Explanation | challenge_explanation | string | Ceased operation on 2023-01-30. | An explanation for the rationale, e.g., a date. | | |
| Type | type | enumerated string {1} | S | Enumerated character identifying the type of CAI: <table border="1" data-bbox="1045 1717 1382 1873"> <tr> <td>S</td> <td>K-12 school, junior college, community college, university, or other educational institution</td> </tr> </table> | S | K-12 school, junior college, community college, university, or other educational institution |
| S | K-12 school, junior college, community college, university, or other educational institution | | | | | |

| | | | | | |
|----------------|-----------------|---------|----------------------|---|--|
| | | | | L | library |
| | | | | G | local, state, federal or Tribal government building |
| | | | | H | health clinic, health center, hospital, or other medical provider |
| | | | | F | public safety entity such as a fire house, emergency medical service station, police station, or public safety answering point (PSAP) |
| | | | | P | public housing organization |
| | | | | C | community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals |
| Entity name | entity_name | string | Leonia Middle School | Official name of the CAI. | |
| Entity number | entity_number | integer | 7688 | USAC assigns a unique identifying number to each school or library that participates in the E-Rate program, the entity number. Mandatory if CAI participates in E-Rate program. Leave empty for CAIs that are neither type S nor L or do not participate in the E-Rate program. | |
| CMS number | CMS number | string | 310045 | The CMS certification number (CCN) ⁵⁷ for CAIs of type H. Leave empty for other CAIs. | |
| FRN | frn | string | 0015433808 | FCC registration number (if applicable; likely for type S, L, H) | |
| Location ID | location_id | integer | 1081756084 | The identifier for the BSL from the National Broadband Map. Leave empty if the CAI has no location id. | |
| Street address | address_primary | string | 500 Broad Ave | Street number, street name, and any applicable prefix or suffix | |

⁵⁷ See “S&C’s Quality, Certification and Oversight Reports (QCOR),” *Center for Medicare and Medicaid Services*, September 29, 2022, [S&C QCOR Home Page \(cms.gov\)](https://www.cms.gov/quality/other-quality-program-areas/qcra/qcor/qcor-home-page), among other sources. A list of providers and their identifiers can be found at <https://data.cms.gov/provider-characteristics/hospitals-and-other-facilities/provider-of-services-file-hospital-non-hospital-facilities>.

| | | | | |
|------------------------|--------------|----------------------|----------------|---|
| | | | | of the first address line (primary address) of the CAI. |
| City | city | string | Leonia | Full name of the city, town, municipality, or census designated place associated with address. |
| State or territory | state | enumerated string{2} | NJ | Two-letter USPS abbreviation identifying the state or territory associated with address. |
| Zip code | zip_code | string{5} | 07605 | Five-digit USPS ZIP code associated with address, including any leading zeros. |
| Longitude | longitude | decimal(10,7) | -73.9838782322 | Unprojected (WGS-84) geographic coordinate longitude in decimal degrees for the CAI, with a minimal precision of 6 decimal digits. |
| Latitude | latitude | decimal(10,7) | 40.867420374 | Unprojected (WGS-84) geographic coordinate latitude in decimal degrees for the CAI, with a minimal precision of 6 decimal digits. |
| Explanation | explanation | string | senior center | For CAIs of type C, provide a brief explanation of how the institution facilitates greater broadband use and the population it serves, either as text or as a reference to a longer explanation accompanying the submission. For example, the submitter may define a set of sub-categories of CAI category C and describe how they meet the conditions. |
| Broadband need | need | integer | 1000 | Broadband need, in Mbps download speed. |
| Broadband availability | availability | integer | 1000 | Highest available broadband service speed, in Mbps download speed. Leave empty if not known. |

Table 8: Guidance on Data Formats for Submitted Challenges (Codes)

| Rationale (category_code) | For challenge type | Explanation |
|----------------------------------|---------------------------|--|
| X | R | CAI has ceased operation. |
| B | R | Location does not require fiber broadband service appropriate for CAI. (For example, the location is a remote field station affiliated with a university.) |
| R | R | CAI is a private residence or a non-CAI business, <i>i.e.</i> , it is mislabeled in the CAI list. For example, a former school building has been converted into an apartment building. |

| | | |
|--------------|--------|--|
| D | C or R | Definition: The challenger believes that the location either satisfies the definition of a CAI established by the Eligible Entity (challenge type C) or fails to meet the definition (challenge type R). For example, while the location may be correctly labeled as a school, the challenger believes that it does not fall within the definition of a school put forth by the Eligible Entity. |
| N | C | New CAI, <i>i.e.</i> , CAI established or to be operational by June 30, 2024. |
| I (letter I) | C | Independent location, <i>i.e.</i> , this CAI is affiliated with a listed CAI, but is a separate location and requires its own broadband service. |
| T | C | The type of the CAI contained in the list provided by the Eligible Entity is wrong. The remainder of the fields should clearly identify the existing listing. The type field should describe the type the challenger believes to be correct. |
| O (letter O) | C or R | Other, as described in the explanation column. |

10.6 Post Challenge Process List of Locations

The Eligible Entity must submit one CSV file named `post_challenge_locations.csv` that follows the specifications below. It should list all served, unserved, and underserved location IDs following the conclusion of the Eligible Entity’s challenge process. Each row contains one identifier.

Table 9: Guidance on Data Formats for Post Challenge Process List of Locations
(`post_challenge_locations.csv`)

| Field | Header | Data type | Example | Description / notes |
|-------------------------|-----------------------------|-----------|------------|---|
| Location ID | <code>location_id</code> | integer | 1081756084 | The identifier for the BSL from the National Broadband Map. |
| Location Classification | <code>classification</code> | integer | 0 | Classification of the location after the challenge process. Include the applicable code below: 0 – Unserved 1 – Underserved 2 – Served |

10.7 Post Challenge Process List of Community Anchor Institutions

The Eligible Entity must submit a CSV file named `post_challenge_cai.csv` that lists all Eligible CAIs following the conclusion of the Eligible Entity’s challenge process. The file should match the specifications listed in “Table 4: Guidance on Data Formats for CAIs (`cai.csv`)” above.

11. Appendix B: Relevant Instructions from the Infrastructure Act and BEAD NOFO

A. Relevant Instructions from Infrastructure Investment and Jobs Act, Section 60102(h)(2)(A)

After submitting an initial proposal under subsection (e)(3) and before allocating grant funds received under this section for the deployment of broadband networks, an eligible entity shall ensure a transparent, evidence-based, and expeditious challenge process under which a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the eligible entity in the initial proposal as to whether a particular location or community anchor institution within the jurisdiction of the eligible entity is eligible for the grant funds, including whether a particular location is unserved or underserved.

B. Relevant Instructions from Infrastructure Investment and Jobs Act Section 60102(h)(2)(D)(i)

The Assistant Secretary – (i) may modify the challenge process required under subparagraph (A) as necessary; and (ii) may reverse the determination of an eligible entity with respect to the eligibility of a particular location or community anchor institution for grant funds under this section.

C. Relevant Instructions from Infrastructure Investment and Jobs Act 60102(a)(1)(E)

ELIGIBLE COMMUNITY ANCHOR INSTITUTION. —The term “eligible community anchor institution” means a community anchor institution that lacks access to gigabit-level broadband service.

D. Relevant Instructions from BEAD NOFO Section IV.B.6

Each Eligible Entity shall develop and describe in the Initial Proposal, a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as those terms are defined in the Infrastructure Act and Section I.C of this NOFO. Eligible Entities should update the data provided in their Initial Proposal to reflect the most recently published version of the National Broadband Maps available as of the initiation of the challenge process.

The Assistant Secretary may modify the challenge process proposed by the Eligible Entity as necessary and shall inform the Eligible Entity of any modifications required. Once an Eligible Entity makes any required modifications, the Assistant Secretary shall approve the challenge process, either in conjunction with, or prior to, approval of the Eligible Entity’s Initial Proposal. The Eligible Entity shall conduct the approved challenge process before allocating grant funds received from BEAD for the deployment of broadband networks to subgrantees.

After resolving each challenge and at least 60 days before allocating grant funds for network deployment, an Eligible Entity must provide public notice of the final classification of each unserved

location, underserved location, or Eligible Community Anchor Institution within the jurisdiction of the Eligible Entity. An Eligible Entity must also notify NTIA of any modifications to the Initial Proposal that are necessitated by successful challenges to its initial determinations. Pursuant to the discretionary authority granted to the Assistant Secretary in the Infrastructure Act, NTIA may reverse the determination of an Eligible Entity with respect to the eligibility of a particular location or community anchor institution.

E. Relevant Instructions from BEAD NOFO Section IV.B.5

Initial Proposals must, at a minimum... Identify each unserved location and underserved location under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands, using the most recently published National Broadband Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the National Broadband Maps used for such identification.

F. Relevant Instructions from BEAD NOFO Section IV.B.7.a.ii

In identifying an Unserved Service Project or Underserved Service Project, an Eligible Entity may not treat as “unserved” or “underserved” any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband as of the date that the challenge process described in Section IV.B.6 of this NOFO is concluded.

G. Relevant Instructions from BEAD NOFO Section I.C.u

Reliable Broadband Service—The term “Reliable Broadband Service” means broadband service that the National Broadband Maps show is accessible to a location via: (i) fiber-optic technology; (ii) Cable Modem/ Hybrid fiber-coaxial technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

H. Relevant Instructions from BEAD NOFO Section I.C.f

Community Anchor Institution (CAI)—The term “community anchor institution” means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals. An Eligible Entity may propose to NTIA that additional types of institutions should qualify as CAIs within the entity’s territory. If so, the Eligible Entity shall explain why it has determined that the institution or type of institution should be treated as such and affirm that the institution or class of institutions facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

I. Relevant Instructions from BEAD NOFO Section IV.B.7.a.ii, Page 36, Footnote 52

An enforceable commitment for the deployment of qualifying broadband to a location exists when the commitment to deploy qualifying broadband service to that location was made as a condition of:

- Any grant, loan, or loan guarantee provided by an Eligible Entity to the provider of broadband service;
- Any grant, loan, or loan guarantee provided by the Secretary of Agriculture under:
 - Title VI of the Rural Electrification Act of 1936 (7 U.S.C. § 950bb et seq.), including: any program to provide grants, loans, or loan guarantees under Sections 601 through 603 of that Act (7 U.S.C. § 950bb et seq.); and the Community Connect Grant Program established under Section 604 of that Act (7 U.S.C. § 950bb-3); or
 - The broadband loan and grant pilot program known as the “Rural eConnectivity Pilot Program” or the “ReConnect Notice of Funding Opportunity Program” authorized under Section 779 of division A of the Consolidated Appropriations Act, 2018 (Public Law 115-141; 132 Stat. 348);
 - Any high-cost universal service support provided under Section 254 of the Communications Act of 1934 (47 U.S.C. § 254), except that in the case of the Rural Digital Opportunity Fund, a location will be considered to have an enforceable commitment for qualifying broadband only (a) after the Federal Communications Commission has announced in a Public Notice that RDOF support for that location is ready-to-authorize or is authorized, and (b) the provider does not rely on satellite technologies to deliver service;
- Any grant provided under Section 6001 of the American Recovery and Reinvestment Act of 2009 (47 U.S.C. § 1305);
- Amounts made available for the Education Stabilization Fund established under the heading “DEPARTMENT OF EDUCATION” in title VIII of division B of the CARES Act (Public Law 116-136; 134 Stat. 564), and funded under the CARES Act, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act), and the American Rescue Plan Act (ARP Act);
- Amounts made available for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) established under the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4) (ARPA);
- Amounts made available for the Capital Projects Fund established by Section 604 of the Social Security Act, as added by Section 9901 of ARPA; or
- Any other grant, loan, or loan guarantee provided by, or funded in whole or in part by, the federal government or a State or Territorial government for the provision of broadband service.”

Eligible Entities may fund Unserved Service Projects and Underserved Service Projects that include locations in an area that has an enforceable commitment for the deployment of qualifying broadband to less than 100 percent of the locations in that area. *See, e.g.*, 47 C.F.R. § 54.308(a). Eligible Entities must, however, seek to identify as part of the challenge process described in Section IV.B.6 of this NOFO those unserved locations and underserved that will not be served by qualifying broadband service as a result of such enforceable commitment, and use that information in determining whether to treat each location as unserved or underserved within the relevant area.

Further, for unserved locations and underserved on Tribal Lands, a commitment that otherwise meets the criteria set forth above shall not constitute an enforceable commitment for the deployment of

qualifying broadband unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.

J. Relevant Instructions from BEAD NOFO Section IV.B.7.a.ii.3

For the purposes of the subgrantee selection process, “qualifying broadband” to a location that is not a CAI is Reliable Broadband Service with (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds; “qualifying broadband” to a CAI is Reliable Broadband Service with (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.

K. Relevant Instructions from BEAD NOFO Section IV.B.7.a.ii, Page 36, Footnote 52

Eligible Entities may fund Unserved Service Projects and Underserved Service Projects that include locations in an area that has an enforceable commitment for the deployment of qualifying broadband to less than 100 percent of the locations in that area. See, e.g., 47 C.F.R. § 54.308(a). Eligible Entities must, however, seek to identify as part of the challenge process described in Section IV.B.6 of this NOFO those unserved locations and underserved that will not be served by qualifying broadband service as a result of such enforceable commitment, and use that information in determining whether to treat each location as unserved or underserved within the relevant area.

L. Relevant Instructions from BEAD NOFO Section IV.B.7.a.ii.3

The Assistant Secretary may waive such treatment of locations or areas with prior enforceable commitments at the request of the Eligible Entity in cases where the Eligible Entity can demonstrate to the satisfaction of the Assistant Secretary that such treatment of such locations or areas is necessary to achieve the goals of the program, including where purported commitments do not have the appropriate documentation with respect to Tribal lands consistent with requirements set out above.

M. Relevant Instructions from BEAD NOFO Section IV.B.6, Page 35, Footnote 48

Eligible Entities may, but are not required to, update their post-challenge data to reflect updates to the National Broadband Maps that occur after conclusion of the challenge process.

N. Relevant Instructions from BEAD NOFO Section I.2.C.u, Page 15, Footnote 13

NTIA acknowledges concerns that, in some cases, DSL arrangements fail to provide consistent access to advertised speeds. To the extent a particular location is identified on the National Broadband Maps as served by DSL at speeds that warrant treatment of that location as “served” or “underserved” but is not in fact reliably served at such speeds, this would be a proper basis for challenging the relevant location’s service status during the challenge process created by the Eligible Entity.

12. Appendix C: Challenge Results Submission Guidance

This appendix is intended to assist Eligible Entities in understanding the challenge results submission process.

Upon completion of its NTIA-approved challenge process, the Eligible Entity's challenge results must be submitted to NTIA via the [NTIA Grants Portal](#). Each submission will be reviewed by NTIA for the approval or reversal of final determinations, as required by the BEAD NOFO.⁵⁸

The Eligible Entity must submit:

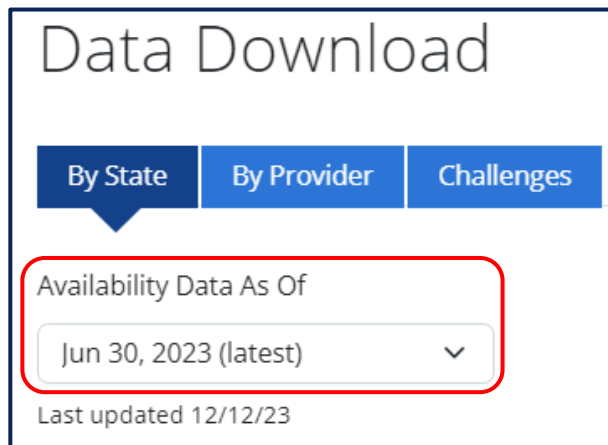
- **Challenger Data:** A CSV file named `challengers.csv` detailing the challengers who submitted challenges to the Eligible Entity's initial set of BEAD-eligible locations. Additional guidance detailing the data format of this file can be found in Appendix A: Data Formats. To download a copy of the NTIA template for challenger data, please see the file named `challengers.csv`.
- **Challenge Outcome Data:** A CSV file named `challenges.csv` detailing the challenges the Eligible Entity received and determinations made while conducting the challenge process, in addition to the Eligible Entity's pre-challenge process modifications, area challenges, and local, state, and federal enforceable commitments. Additional guidance detailing the data format of this file can be found in Appendix A: Data Formats. To download a copy of the NTIA template for challenge outcome data, please see the file named `challenges.csv`.
- **Community Anchor Institution (CAI) Challenge Outcome Data:** A CSV file named `cai_challenges.csv` detailing all challenges received and determinations made for challenges submitted regarding the Eligible Entity's identification of CAIs. Additional guidance detailing the data format of this file can be found in Appendix A: Data Formats. To download a copy of the NTIA template for CAI challenge outcome data, please see the file named `cai_challenges.csv`.
- **Post Challenge Process Location Data:** A CSV file named `post_challenge_locations.csv` detailing all served, unserved and underserved locations within the jurisdiction of the Eligible Entity following the conclusion of the Eligible Entity's challenge process. Additional guidance detailing the data format of this file can be found in Appendix A: Data Formats. To download a copy of the NTIA template for post-challenge process location data, please see the file named `post_challenge_locations.csv`.
- **Post Challenge Process Eligible Community Anchor Institutions:** A CSV file named `post_challenge_cai.csv` detailing all Eligible CAIs within the jurisdiction of the Eligible Entity following the conclusion of the Eligible Entity's challenge process. Additional guidance detailing the data format of this file can be found in Appendix A: Data Formats. To download a copy of the NTIA template for post-challenge process CAI data, please see the file named `post_challenge_cai.csv`.
- **Summary Question Responses:** A summary of the challenge results detailed in the required CSV files, key dates from the challenge process timeline, and a description of any outstanding comments, in response to the questions outlined below. To answer the summary questions, the Eligible Entity must reference its data compiled throughout the challenge process, including BSL and CAI challenges. The Eligible Entity will be prompted to answer the questions below in the

⁵⁸ See BEAD NOFO at 33-35.

NTIA Grants Portal. For items d through h the Entity should enter the total number of challenges inclusive of BSL and CAI challenges.⁵⁹

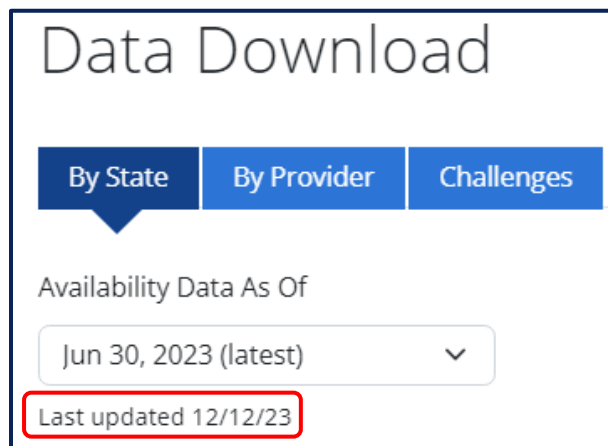
- *Challenge Results Summary*
 - For the National Broadband Map used in the challenge process, what was the “availability data as of” date?

Figure 1: Screenshot of FCC National Broadband Map Data Download “Availability Data As Of” Date⁶⁰



- What was the updated publication date of the National Broadband Map Broadband Availability data used in the challenge process?

Figure 2: Screenshot of FCC National Broadband Map Data Download “Last Updated” Date⁶¹



⁵⁹ BSL challenges should be inclusive of Area and MDU challenges.

⁶⁰ See “FCC National Broadband Map: Data Download,” *Federal Communications Commission*, December 12, 2023, [Data Download - By State | FCC National Broadband Map](#).

⁶¹ *Ibid.*

- What was the publication date of the Federal Broadband Funding Map used for deduplication?

Figure 3: Screenshot of FCC Broadband Funding Map Data Download “Broadband Funding Map data last updated” Date⁶²



- How many total challenges were received?
- How many challenges were submitted by units of local government?
- How many challenges were submitted by nonprofits?
- How many challenges were submitted by broadband service providers?
- How many challenges were resolved by each type of challenge disposition, listed in the Policy Notice?
 - Sustained (S)
 - Rejected (R)
 - Incomplete (I)
 - The provider agreed with the challenge (A)
 - The provider did not respond within the rebuttal deadline (N)
 - The challenge was not resolved since it was moot due to another successful challenge for the same location (M)
- *Challenge Process Timeline*
 - On what date was the challenge submission window opened?
 - On what date did the challenge submission window close?
 - On what date was the final challenge determination made?
- *Other Comments (Optional)*
 - Are there any other comments the Eligible Entity would like to share on the implementation of the challenge process?

Consistent with the record retention and access requirements applicable to all Federal awards, Eligible Entities must retain all records pertinent to their BEAD grants (including the Challenge Process) and allow access to such records by NTIA as requested.⁶³ This includes all evidence and rebuttal files submitted for each challenge. NTIA reserves the right to request the evidence and rebuttal files from each challenge, as required.

Upon the completion of NTIA review, NTIA will notify the Eligible Entity of its final determination, including which of the Eligible Entity’s challenge determinations have been approved or reversed.

⁶² See FCC Broadband Funding Map Data Download, *Federal Communications Commission, December 14, 2023, Data Download | Broadband Funding Map (fcc.gov)*

⁶³ See 2 C.F.R. § 200.334-338.

13. Appendix D: Challenge Process Policy Notice Change Log

This appendix tracks changes to the BEAD Challenge Process Policy Notice.

| Version Number | Page Number | Date of Change (mm/dd/yyyy) | Location of Change | Description of Change |
|----------------|-------------|-----------------------------|--------------------|---|
| 1.1 | 9, 21 | 08/30/2023 | §§ 5.1, 7.6 | <ul style="list-style-type: none"> Clarified use of calendar days. |
| 1.1 | 21 | 08/30/2023 | § 7.6, n. 40 | <ul style="list-style-type: none"> Clarified the challenge submission and rebuttal phases may be run concurrently. |
| 1.1 | 22, 23 | 09/07/2023 | Table 4 | <ul style="list-style-type: none"> Updated CMS identifier terminology and corrected example. |
| 1.1 | 37 | 08/30/2023 | Appendix C | <ul style="list-style-type: none"> Added an appendix to clarify submission guidance for Eligible Entity challenge process results. |
| 1.2 | 9 | 11/01/2023 | § 5.2 | <ul style="list-style-type: none"> Clarified that to qualify as CAIs, government buildings must facilitate greater use of broadband service by vulnerable populations. |
| 1.2 | 13 | 11/01/2023 | § 7.1 | <ul style="list-style-type: none"> Clarified which entities can rebut the planned service and enforceable commitment challenges. |
| 1.2 | 14 | 11/01/2023 | § 7.2 | <ul style="list-style-type: none"> Added sentence clarifying that an Eligible Entity can propose its own challenge type, subject to NTIA review. |
| 1.2 | 16 | 11/01/2023 | Table 2 | <ul style="list-style-type: none"> Clarified that Eligible Entities only need to denote if a location can be classified as a CAI or not. |
| 1.2 | 17 | 11/01/2023 | Table 3, fn. 33 | <ul style="list-style-type: none"> Clarified in footnote 33 that speed tests may only be used to change status of locations from served to underserved. |
| 1.2 | 20 | 11/01/2023 | Table 3 | <ul style="list-style-type: none"> Added challenge types G and Q, indicating whether qualifying broadband is available to the CAI. |
| 1.2 | 22 | 11/01/2023 | § 8 | <ul style="list-style-type: none"> Clarified latest time in which Eligible Entities may update their list of BEAD-eligible locations for use in subgrantee selection. |
| 1.2 | 25 | 11/01/2023 | Table 4 | <ul style="list-style-type: none"> Clarified that Eligible Entities are required to denote their eligible CAIs' broadband needs. |

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| 1.2 | 26 | 11/01/2023 | Table 5 | <ul style="list-style-type: none"> Added category ‘T’. |
| 1.2 | 32 | 11/01/2023 | Table 7 | <ul style="list-style-type: none"> Removed repeated challenge type R. |
| 1.3 | 10 | 2/8/2024 | §6.1 | <ul style="list-style-type: none"> Added clarification that pre-challenge modifications are challengeable, unless noted otherwise. |
| 1.3 | 15 | 2/8/2024 | Table 3 | <ul style="list-style-type: none"> Added challenge types V, F, M, X, Y, and Z to represent pre-challenge modifications. Updated challenge type “E” to require that Eligible Entities include all state and local enforceable commitments, to the best of their knowledge, in their challenges.csv file submission to NTIA. |
| 1.3 | 22 | 2/8/2024 | §8 | <ul style="list-style-type: none"> Clarified “unserved and underserved” in the sentence “Eligible Entities may, but are not required to, update the list of unserved and underserved locations to reflect updates to the National Broadband Map that occur after the conclusion of the challenge process.” |
| 1.3 | 22 | 2/8/2024 | §9 | <ul style="list-style-type: none"> Clarified that Eligible Entities must submit challenge, challenge outcome, and CAI challenge outcome CSV files as part of their challenge results submission. Updated requirement that Eligible Entities submit the final classification of all locations (served, unserved, and underserved) and eligible CAIs within their jurisdiction. |
| 1.3 | 24 | 2/8/2024 | Table 4 | <ul style="list-style-type: none"> Noted name of CSV file (cai.csv) in Table title. Clarified that FRN data type is “string”, to ensure leading zeros will not get dropped as an integer. |
| 1.3 | 26 | 2/8/2024 | Table 5 | <ul style="list-style-type: none"> Noted name of CSV file (challengers.csv) in Table title. |
| 1.3 | 27 | 2/8/2024 | §10.4 | <ul style="list-style-type: none"> Updated submission guidance to clarify that Eligible Entities can |

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| | | | | receive multiple challenges for a single location. |
| 1.3 | 27, 28, 31, 32 | 2/8/2024 | Table 6 | <ul style="list-style-type: none"> • The challenge identifier can now be an alphanumeric string up to 50 characters long. • Clarified that for Type V, F, M, X, Y, and Z challenges the Eligible Entity should leave the “Challenger” fields empty. • Clarified that the “Challenger” field should be left empty for Type E challenges that occurred as a result of pre-challenge process deduplication. • Clarified that in the “Resolution” field, the broadband program name should be included for Type E challenges. • Noted name of CSV file (challenges.csv) in Table title. • Clarified to include the date of the last rebuttal as the rebuttal date if there were multiple rebuttals. • Added “M” as a challenge type for Download speed, Upload speed, and Latency fields. • Added M (moot) as outcome. |
| 1.3 | 32 | 2/8/2024 | §10.5 | <ul style="list-style-type: none"> • Updated Challenge Types for CAI Challenges. |
| 1.3 | 31-34 | 2/8/2024 | Table 7 | <ul style="list-style-type: none"> • Noted name of CSV file (cai_challenges.csv) in Table title. • The challenge identifier can now be an alphanumeric string up to 50 characters long. • Clarified required CSV fields to include Type, Disposition of Challenge, Entity name, Entity number, CMS number, FRN, Location ID, Street address, City, State or territory, Zip Code, Longitude, Latitude, Explanation, Broadband Need, and Broadband Availability to match challenges.csv file. • Clarified that FRN data type is “string”, to ensure leading zeros |

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| | | | | <p>will not get dropped as an integer.</p> <ul style="list-style-type: none"> • Clarified naming since there were two “Explanation” fields. |
| 1.3 | 35 | 2/8/2024 | §10.6 | <ul style="list-style-type: none"> • Added requirement that Eligible Entities must submit one CSV file containing their post-challenge process list of served, unserved, and underserved locations. |
| 1.3 | 35 | 2/8/2024 | §10.7 | <ul style="list-style-type: none"> • Added requirement that Eligible Entities must submit a CSV file containing their post-challenge process list of Eligible CAIs. |
| 1.3 | 40-42 | 2/8/2024 | §12 | <ul style="list-style-type: none"> • Clarified that the challenges.csv file should contain an Eligible Entity’s pre-challenge modifications, area challenges, and state, local, and federal enforceable commitments in addition to its received challenges and final determinations. • Added additional summary intake questions for the National Broadband Map’s as of date, the publication date of the National Broadband Map’s Broadband Availability data used in the challenge process, and the publication date of the Federal Funding Map used for deduplication. Also added an additional summary intake question to track the number of challenges that were not resolved because it was moot due to another successful challenge for the same location. • Added relevant screenshots from FCC’s Broadband Funding Map and Federal Funding Map websites to clarify the correct publication dates for Eligible Entities to select when answering the respective summary intake questions. • Added requirement that Eligible Entities submit post-challenge process list, in CSV file format, |

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| | | | | <p>of served, unserved, and underserved locations.</p> <ul style="list-style-type: none"> • Added requirement that Eligible Entities submit post-challenge process list, in CSV file format, of Eligible Community Anchor Institutions. • Clarified that for items (d) through (h) of the summary intake questions, the Eligible Entity should enter the total number of challenges inclusive of BSL and CAI challenges. • Noted, via footnote 59, that BSL and CAI challenges are inclusive of area and MDU challenges. |
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DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT E



STATE OF RHODE ISLAND
OFFICE OF GOVERNOR DANIEL J. MCKEE

July 5, 2022

Alan Davidson, Assistant Secretary
US Department of Commerce
Washington DC, 20230

Re: Revised Broadband Equity, Access, and Deployment (BEAD) Letter of Intent

Dear Assistant Secretary Davidson,

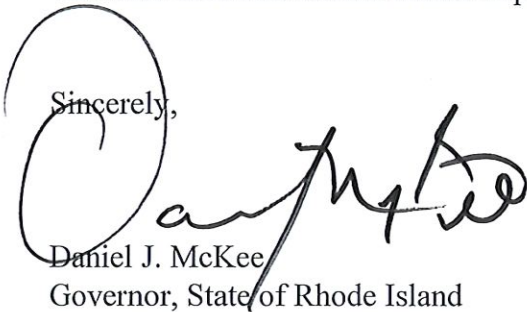
On behalf of the State of Rhode Island, I am declaring our intent to participate in the Broadband Equity, Access, and Deployment (BEAD) Program.

The Rhode Island Commerce Corporation will serve as the recipient of, and administering agent for, any BEAD Program award for this eligible entity. The following individual will serve as the point of contact for all correspondence:

Daniela Fairchild
Director of Operations and Special Projects
Executive Office of Commerce
Daniela.Fairchild@commerceri.com
401-278-9187

The State of Rhode Island is also requesting up to \$5,000,000 in initial planning funds.

Sincerely,

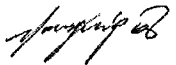
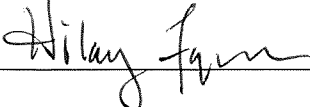
A handwritten signature in black ink, appearing to read "Daniel J. McKee", is written over the typed name and title. The signature is fluid and cursive.

Daniel J. McKee
Governor, State of Rhode Island

cc: Herb Tyson, Director of Intergovernmental Affairs, National Telecommunications and Information Agency

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT F

| | |
|---|---|
| FORM CD-450 (REV. 10/18) | U.S. DEPARTMENT OF COMMERCE X GRANT COOPERATIVE AGREEMENT FEDERAL AWARD ID NUMBER 44-20-B072 |
| FINANCIAL ASSISTANCE AWARD RECIPIENT NAME Rhode Island Commerce Corporation | PERIOD OF PERFORMANCE 11/15/2022 - 11/14/2027 |
| STREET ADDRESS 315 Iron Horse Way Suite 101 | FEDERAL SHARE OF COST \$5,000,000.00 |
| CITY, STATE ZIP Providence, RI 02908-5625 | RECIPIENT SHARE OF COST \$0.00 |
| AUTHORITY Section 60102, Public Law 117-58, 135 Stat. 429 | TOTAL ESTIMATED COST \$5,000,000.00 |
| CFDA NO. AND NAME 11.035 Broadband Equity, Access, and Deployment Program | |
| PROJECT TITLE: State of Rhode Island BEAD Project | |
| <p>This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modifications by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.</p> <p>X DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS</p> <p>R & D AWARD</p> <p>FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE</p> <p>X SPECIFIC AWARD CONDITIONS</p> <p>X LINE ITEM BUDGET</p> <p>X 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101</p> <p>48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES</p> <p>X MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIFIC AWARD CONDITION.</p> <p>X OTHER(S): Refer to Specific Award Condition #18 (Period of Performance and Funding Limitations) for the Multi-Year Specific Award Condition.</p> <p>GENERAL TERMS AND CONDITIONS for the NTIA BROADBAND EQUITY, ACCESS & DEPLOYMENT PROGRAM (BEAD) INITIAL PLANNING FUNDS, July 2022 (see attached).</p> | |
| SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER Yongming Qiu  | DATE Digitally signed by YONGMING QIU Date: 2022.11.10 09:29:55 -05'00' |
| PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL  | DATE 12-2-22 |

Award Number: 44-20-B072, Amendment Number 0

Federal Program Officer: Stuart Freiman

Requisition Number: BEA72

Employer Identification Number: 050356994

UEI Number: HCNJFC71CHQ1

Recipient ID: 4419230

Requestor ID: 4419230

Award ACCS Information

| Bureau | FCFY | Project-Task | Organization | Object Class | Obligation Amount |
|--------|------|--------------|------------------------|--------------|-------------------|
| 61 | 2023 | 4700001-000 | 06-00-0000-00-00-00-00 | 41-19-00-00 | \$5,000,000.00 |

Award Contact Information

| Contact Type | Contact Name | Email | Phone |
|----------------|-------------------|-----------------------------|--------------|
| Administrative | Mrs. Hilary Fagan | hilary.fagan@commerceri.com | 401-278-9100 |

NIST Grants Officer:

Darren Olson
100 Bureau Drive, MS 1650
Gaithersburg, MD 20899-1650
(301) 975-0000

NIST Grants Specialist:

John Vilella
100 Bureau Drive, MS 1650
Gaithersburg, MD 20899-1650
(301) 975-4448

NIST Financial Assistance Award Number: 44-20-B072

Amendment: NEW

Recipient: Rhode Island Commerce Corporation

**NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM
FINANCIAL ASSISTANCE
SPECIFIC AWARD CONDITIONS**

1. Introduction:

The National Institute of Standards and Technology (NIST), servicing for the National Telecommunications and Information Administration (NTIA), hereby enters into this Grant number 44-20-B072 with Rhode Island Commerce Corporation to support the work described in the proposal entitled “State of Rhode Island BEAD Project” dated 8/15/2022, and any revisions received during the application review, which are hereby incorporated into this award by reference. Where the terms of this award and the proposal differ, the terms of this award shall prevail.

2. Recipient Contact Information:

Technical:

Hilary Fagan
President/Chief Operating Officer
Rhode Island Commerce Corporation
315 IronHorse Way
Providence, RI 02908-5637
Telephone: 401-278-9100
Email: hilary.fagan@commerceri.com

Administrative:

Justin Medeiros
CFO
Rhode Island Commerce Corporation
315 IronHorse Way
Providence, RI 02908-5637
Telephone: 401-278-9100
Email: justin.medeiros@commerceri.com

3. NTIA Contact Information:

Federal Program Officer:

Stuart Freiman
National Telecommunications and Information Administration
1401 Constitution Avenue, NW
Washington, DC 20230
Email: sfreiman@ntia.gov

4. NIST Award Contact Information:

NIST Financial Assistance Award Number: 44-20-B072

Amendment: NEW

Recipient: Rhode Island Commerce Corporation

Grants Officer:

Darren Olsen

National Institute of Standards and Technology

100 Bureau Drive, Mail Stop 1650

Gaithersburg, MD 20899-1650

Email: darren.olson@nist.gov

Grants Specialist:

John Villella

National Institute of Standards and Technology

100 Bureau Drive, Mail Stop 1650

Gaithersburg, MD 20899-1650

Telephone: 301-975-4448

Email: john.villella@nist.gov

5. Award Payments:

This award is hereby funded through advanced payments using the Department of Treasury's Automated Standard Application for Payments (ASAP) system. Payments will be issued in accordance with 2 CFR § 200.305 and the Department of Commerce Financial Assistance Standard Terms and Conditions, B.02, dated November 12, 2020.

Payments for allowable costs may be drawn down as needed by the Recipient enrolled in ASAP. Funds may be requested through ASAP by the authorized *Payment Requestor* who is the individual designated by the Recipient to access Federal funds.

This award has the following control or withdrawal limits set in ASAP:

- None
- Agency Review required for all withdrawals (see explanation below)
- Agency Review required for all withdrawal requests over \$ _____ (see explanation below)
- Maximum Draw Amount controls (see explanation below)
 - \$ _____ each month
 - \$ _____ each quarter
 - \$3,940,00.00 Max drawdown amount

Explanation:

The project budget contains costs for subawards in the amount of \$1,060,000.00. The budget information provided in the budget narrative and justification is not sufficient for NIST to evaluate the allowability of such costs. Please see SAC#26 for what need to be provided.

6. Return Payments for Funds Withdrawn through ASAP:

NIST Financial Assistance Award Number: 44-20-B072

Amendment: NEW

Recipient: Rhode Island Commerce Corporation

Funds that have been withdrawn through ASAP may be returned to ASAP via the Automated Clearing House (ACH) or via FEDWIRE. The ACH or FEDWIRE transaction may only be completed by the Recipient's financial institution. Full or partial amounts of payments received by a Payment Requestor/Recipient Organization may be returned to ASAP. All funds returned to the ASAP system will be credited to the ASAP Suspense Account. The Suspense Account allows the Regional Financial Center to monitor returned items and ensure that funds are properly credited to the correct ASAP account. Returned funds that cannot be identified and classified to an ASAP account will be dishonored and returned to the originating depository financial institution (ODFI). The Payment Requestor/Recipient Organization should notify the NIST Grants Office and provide a reason whenever return payments are made.

It is essential that the Payment Requestor/Recipient Organization provide its financial institution with ASAP account information (ALC, Recipient ID and Account ID) to which the return is to be credited. Additional detailed information is accessible at: <https://www.fiscal.treasury.gov/asap/>.

7. Notice of Funding Opportunity - Broadband Equity, Access, and Deployment Program:

The Department of Commerce, National Telecommunications and Information Administration (NTIA) Notice of Funding Opportunity (NOFO) No. [NTIA-BEAD-2022](#) dated May 13, 2022, is incorporated by reference into this award.

It is accessible at: <https://www.grants.gov/web/grants/view-opportunity.html?oppId=340304> (under the Related Documents tab). If the application period is closed, select "Closed" or "Archived" Opportunity Status to view the NOFO.

8. Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements:

[The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements](#) as published in the *Federal Register* on December 30, 2014 (79 FR 78390), are incorporated by reference into this award.

They are accessible at: <http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-30297.pdf>.

9. Department of Commerce Financial Assistance Standard Terms and Conditions:

As indicated on the Form CD-450 for this award, the Department of Commerce Financial Assistance Standard Terms and Conditions (ST&C) issued November 12, 2020 are incorporated by reference into this award. The Department's ST&C, as well as a link to 2 CFR Part 200, are accessible at: [https://www.commerce.gov/sites/default/files/2020-11/DOC Standard Terms and Conditions - 12 November 2020 PDF_0.pdf](https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF_0.pdf).

NIST Financial Assistance Award Number: 44-20-B072

Amendment: NEW

Recipient: Rhode Island Commerce Corporation

10. Uniform Administrative Requirements, Cost Principles and Audit Requirements:

As indicated on the Form CD-450 for this award, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200 are incorporated by reference into this award. Through 2 C.F.R. § 1327.101, the Department of Commerce adopted the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200, which apply to awards in this program. Refer to <https://www.ecfr.gov/on/2022-01-19/title-2/subtitle-A/chapter-II/part-200> and <https://www.ecfr.gov/on/2022-01-19/title-2/subtitle-B/chapter-XIII/part-1327>. Awards issued pursuant to this program may be subject to specific award conditions as authorized by 2 C.F.R. § 200.208.

11. Department of Commerce Financial Assistance Standard Terms and Conditions Section B.06 Indirect or Facilities and Administrative Costs:

The Recipient will be reimbursed for indirect or F&A costs in accordance with 2 C.F.R. § 200.414 and Section B.06. of the Department of Commerce Financial Assistance Standard Terms and Conditions, dated November 12, 2020.

If an indirect cost rate has not been established, and the Department of Commerce is identified as the cognizant agency for indirect costs in accordance with 2 C.F.R. § 200.1, “Cognizant agency for indirect costs,” within 90 calendar days of the award start date, the Recipient must electronically submit to gmdaudit@nist.gov the documentation (indirect cost rate proposal, cost allocation plan, etc.) necessary to allow the Department of Commerce (through NIST or through another Commerce agency) to perform an indirect cost rate proposal review. Organizations that have previously established indirect cost rates with the Department of Commerce, including with one of its agencies, must submit a new indirect cost rate proposal for indirect costs within six months after the end of the organization’s fiscal year.

If your submission includes Personally Identifiable Information (PII) or Business Identifiable Information (BII), please send an email to gmdaudit@nist.gov to request a secure link.

The requirements for determining the relevant cognizant agency and for developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in 2 C.F.R. § 200.414 and in Appendices III-VII to 2 C.F.R. Part 200. For additional guidance on preparing indirect cost proposals, please review the Department of Labor’s Guide for Indirect Cost Determination at: <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>. [Section I.B](#) and I.C lists the various types of indirect cost rates and the circumstances under which such rates would apply. The guide also addresses common indirect cost problems and contains useful FAQs.

12. Infrastructure Investment and Jobs Act:

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Amendment: NEW

Recipient: Rhode Island Commerce Corporation

The Recipient must comply with the terms of the Infrastructure Investment and Jobs Act (Infrastructure Act), Public Law 117-58 (Nov. 15, 2021), Division F, Title I – Broadband Grants for States, District of Columbia, Puerto Rico, and Territories, including the terms of section 60102 of that title, which establishes the BEAD Program. The text of the Infrastructure Act is available at: <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

13. General Terms and Conditions for the BEAD Initial Planning Funds

The General Terms and Conditions for the BEAD Initial Planning Funds are incorporated by reference into this award.

14. BEAD Program Sequencing:

As described in the NOFO, the BEAD Program has several application steps and phases to the award, the timing of which are as follows:

- (a) Letter of Intent
- (b) Request for Initial Planning Funds
- (c) Five-Year Action Plan—Due 8/12/2023
- (d) Program Fund Allocation and Notice of Available Amounts—To be made on or after the date on which the Federal Communications Commission publishes the Broadband DATA Maps, once NTIA determines the BEAD Program allocations
- (e) Initial Proposal—Due no later than 180 days from the date of issuance of the Notice of Available Amounts
- (f) 20 Percent Funding Release—Upon approval of the Initial Proposal by the Assistant Secretary, NTIA will make available to the Eligible Entity not less than 20 percent of the total grant funds allocated to the Eligible Entity
- (g) Final Proposal—Due no later than 365 days from the date the Assistant Secretary approves the Initial Proposal.

The Recipient of this initial funded award action has completed the steps associated with the submission of a Letter of Intent and the Request for Initial Planning Funds. Funding associated with this action may only be used for the specific planning and pre-deployment activities outlined in that request, consistent with the planning activities contemplated by the NOFO and described in special award condition no. 15.

Future award actions associated with the release of additional funding to implement other phases of the project will include additional specific award conditions concerning the use of funds and other requirements associated with those phases, such as, but not limited to, environmental and national historical preservation requirements, and provisions implementing the Buy American, Build America Act.

15. Allowable Uses of Initial Planning Funds for the BEAD Program:

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Amendment: NEW

Recipient: Rhode Island Commerce Corporation

The purpose of the Initial Planning Funds is to support the Eligible Entity's broadband planning efforts, including creating the required five year action plan and capacity development programmatic efforts to support its execution of the BEAD program, as outlined in Section IV.B.2 of the NOFO. The NOFO allows for the use of the initial planning funds only for the following activities:

- (a) Research and data collection, including initial identification of unserved locations and underserved locations consistent with the rules, regulations, and processes the Commission has established for making these determinations in the Broadband DATA Maps;
- (b) The development of a preliminary budget for pre-planning activities;
- (c) Publications, outreach, and communications support related to broadband planning, deployment, mapping, equity and adoption;
- (d) Providing technical assistance to potential subgrantees, including through workshops and events;
- (e) Training for employees of the broadband program or office of the Eligible Entity or employees of political subdivisions of the Eligible Entity, and related staffing capacity or consulting or contracted support to effectuate the goals of the BEAD Program;
- (f) Establishing, operating, or increasing capacity of a broadband office that oversees broadband programs and broadband deployment in an Eligible Entity;
- (g) Asset mapping across the Eligible Entity to catalogue broadband adoption, affordability, equity, access and deployment activities occurring within the Eligible Entity;
- (h) Conducting surveys of unserved, underserved, and underrepresented communities to better understand barriers to adoption;
- (i) Costs associated with meeting the local coordination requirements in Section IV.C.1.c of the BEAD NOFO, including capacity building at the local and regional levels or contracted support;
- (j) Reasonable post-NOFO, pre-Initial Planning Funds expenses in an amount not to exceed \$100,000 relating to the preparation of program submissions to NTIA (such as the Letter of Intent) or adding additional capacity to State or Territorial broadband offices in preparation for the BEAD Program may be reimbursed if they were incurred after the publication date of the NOFO and prior to the date of issuance of this grant award from NTIA (such pre-award expenses must be approved by NTIA and the Grants Officer in writing to be considered allowable); and
- (k) Other uses approved in advance in writing by the Assistant Secretary (including in response to an Eligible Entity's request) that support the goals of the Program.

Entities that wish to request other uses of funds must submit such requests via email to UGAM@nist.gov for consideration by the Assistant Secretary. Work may not begin, nor costs incurred for requested activities until written approval is provided by the NIST Grants Officer.

Under no circumstances may planning funds awarded via this action be used for any construction or ground disturbing activities, or the build out of any infrastructure.

16. Ineligible Costs

Regardless of the award phase under the BEAD Program, profits, fees, or other incremental charge above actual cost incurred by the Recipient or subgrantee(s) are not allowable costs under this Program.

Additionally, the Recipient or subgrantee(s), including contractors or subcontractors of subgrantees, may not use funds received under the BEAD Program to:

- (a) Purchase Covered Communications Equipment or Services, as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608); or
- (b) Directly or indirectly support or oppose collective bargaining.

17. Five Year Action Plan Requirements:

A five year action plan is required to be submitted to NTIA within 270 days of the award start date authorizing planning funding and is due by 8/12/2023. This plan must (a) be informed by collaboration with local, regional, and Tribal (as applicable) entities, as well as unions and worker organizations, (b) detail the Eligible Entity's investment priorities and associated costs, and (c) align the State or Territory's planned spending with its economic development, community benefit, workforce, telehealth, digital equity, and other related efforts.

Minimum requirements for the action plan are identified in the NOFO. Additionally, NTIA will make a template available to Recipients on the [NTIA Grants Portal](#). Recipients are not required to use this template as long as the proposed plan addresses the minimum requirements of the Infrastructure Act and NOFO.

18. Period of Performance and Funding Limitations:

Due to the nature of the BEAD program and its associated phases, the approved scope of work and the associated budget of each phase will evolve over the life of the award. As a result, the period of performance and funding limitations will also increase over each phase of this program. To accommodate this overall program structure, this specific award condition will be revised in future funding actions to take into account the needs of each phase and its impacts to the period of performance and funding.

The scope of work and budget incorporated into this award action cover only the planning phase of the BEAD program with an initial period of performance from 11/15/2022 to 11/14/2027 (referred to as the "project period"), for a total of \$5,000,000.00 in Federal funds.

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Receipt of any funding beyond what is specified at this time up to the level projected under this award is contingent upon the availability of funds, satisfactory performance, and continued relevance to program objectives, and will be at the sole discretion of NTIA and NIST. The Grants Officer may require additional clarification to support the budget. If that results in changes to the budget or budget narrative, the Recipient must submit, in writing, a revised budget and/or budget narrative to the Grants Officer for approval.

The Recipient may not obligate, incur any expenditure, nor engage in any activity that involves a commitment of Federal funds under this Agreement in excess of the Federal amount presently available. Should such an excess obligation, expenditure, or commitment occur, no legal liability will exist or result on the part of the Federal Government for payment of funds.

No legal liability exists or will result on the part of the Federal Government for payment of any portion of the remaining funds, which have not been made available under this award. If additional funds are not made available, any allowable expenses incurred related to termination or closeout activities must be funded from the amount already made available under this award.

As described in the NOFO, on or after the date that the Broadband Data Maps are made public and NTIA determines the BEAD Program allocations, the Assistant Secretary will notify each Recipient of the estimated amount of funding that NTIA will make available to the Recipient and invite submission of an Initial Proposal and Final Proposal.

The notice of availability or non-availability of additional funding for subsequent funding or budget periods will be made in writing by the Grants Officer after the submission of the Initial and Final Proposals and their subsequent review and approval by NTIA and NIST. Only the Grants Officer is authorized to obligate funds. No other verbal or written notice should be relied upon by the Recipient. In the absence of a written notice of additional funding by the Grants Officer on Form CD-451, "Amendment to Financial Assistance Award," no assumption should be made by the Recipient that the funds will be forthcoming.

19. Deviation to the Department of Commerce Financial Assistance Standard Terms and Conditions, Section A.01 "Reporting Requirements":

Initial Report

Not later than 2/13/2023, the Recipient shall submit an Initial Report that:

- (a) describes the planned and actual use of funds;
- (b) describes the planned and actual subgrant process;

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- (c) identifies the establishment of appropriate mechanisms by the Eligible Entity to ensure that all subgrantees of the Eligible Entity comply with the eligible uses prescribed under the BEAD Program; and
- (d) includes any other information required by the Assistant Secretary.

Additionally, the Recipient shall submit an SF-425, Federal Financial Report, in conjunction with the Initial Report described above, that meets the requirements described in 2 C.F.R § 200.328 and the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020).

Semi-Annual Reports

First report due no later than July 30, 2023, for the period ending June 30, 2023. Thereafter, reports are due semi-annually, for the period between January 1 and June 30, which shall be due on July 30, and for the period between July 1 and December 31, which shall be due on January 30, or any portion thereof. The Recipient shall submit a report that includes:

- (a) a description of how the Recipient expended the grant funds;
- (b) a description of each service provided with the grant funds and the status of projects or other eligible activities supported by such funds;
- (c) a description of the locations at which broadband service was made or will be made available using the grant funds, the locations at which broadband service was utilized, and the comparative demographics of those served;
- (d) a certification that the Recipient complied with the requirements of Section 60102 of the Infrastructure Act and with any additional reporting requirements prescribed by the Assistant Secretary; and
- (e) any additional information as prescribed in 2 C.F.R § 200.329.

Additionally, the Recipient shall submit an SF-425, Federal Financial Report, in conjunction with the semi-annual report described above that meets the requirements described in 2 C.F.R § 200.328 and the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020).

Final Reports

The Recipient shall submit a final SF-425, Federal Financial Report and final Performance Progress Report within 120 days after the expiration of the period of performance that meets the requirements described in 2 C.F.R § 200.328 and the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020).

Additionally, no later than one year after the Recipient has expended all grant funds under the BEAD Program (to include all phases of the award, not just the initial planning phase) the Recipient shall submit a report that:

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- (a) describes how the Eligible Entity expended the funds;
- (b) describes each service provided with the grant funds;
- (c) describes the locations at which broadband service was made available using the grant funds, the locations at which broadband service was utilized, and the comparative demographics of those served;
- (d) includes each report that the Eligible Entity received from a subgrantee under Section 60102(j) of the Infrastructure Act; and
- (e) certifies that the Eligible Entity complied with the requirements of Section 60102 of the Infrastructure Act and with any additional reporting requirements prescribed by the Assistant Secretary.

Reporting forms for the 90 Day report, Semi-Annual reports, Final reports and SF-425 Federal Financial reports will be available in the [NTIA Grants Portal](#). All reports for the BEAD program must be submitted via email to GReports@nist.gov with a copy to the NTIA Federal Program Officer listed in the award document.

The Recipient organization name, award number, and reporting period must be included in the email subject line. The Recipient contact information should be included in the body of the message. To the greatest extent possible, SF-425 and Performance Progress Reports should be submitted together in the same email.

Reports must not be sent directly to NIST personnel (e.g., Grants Specialist, Grants Officer). Any SF-425 or Performance Progress Reports sent directly to NIST personnel will be returned to the sender with instructions on how to submit through the GReports@nist.gov mailbox.

No other correspondence may be sent through this mailbox; timely responses to any other inquiries received in this mailbox are not guaranteed. The mailbox will not be used for any other purpose *except* for purposes identified above.

20. Unfunded Grant Actions Mailbox (UGAM):

Requests for unfunded award actions, which include, but are not limited to, requests for no-cost extension, change in key personnel, change in scope of work, budget revisions, award transfer, and novation, must be submitted to: UGAM@nist.gov, within the prescribed timeframes identified in the terms and conditions of the award.

Unfunded award action requests and related correspondence, including justification to support the request, sent to the mailbox *must* contain the following information in the email subject line: (1) Recipient name; (2) NIST award number; (3) Principal Investigator/Project Director; and (4) Action being requested (e.g. no cost extension, change in key personnel, etc.).

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Unfunded award action requests must not be sent directly to NIST personnel (*e.g.* Grants Specialist, Grants Officer, Administrative Assistant, GMD Division Chief, Federal Program Officer, etc.).

Any requests sent directly to NIST personnel will be returned to the sender with instructions on how to submit through the UGAM@nist.gov mailbox.

No other correspondence may be sent through this mailbox; timely responses to any other inquiries received in this mailbox are not guaranteed. The mailbox will not be used for any other purpose *except* for purposes identified above.

Requests that are processed will be authorized via a Form CD-451 Amendment to the Financial Assistance Award or a Non-Funded Administrative Change Letter.

21. Federal and Non-Federal Cost Sharing:

The BEAD Program requires non-federal cost sharing/local match, however the cost share requirements do not apply to the initial planning phase of funding associated with this award action. This specific award condition will be updated and revised to incorporate cost share requirements in future funding actions, as applicable.

22. Change in Funded Project Participant

Any change to the Administering Entity designated in the Letter of Intent and approved under this award requires prior written approval by the Grants Officer.

23. Supplanting of Funds

Grant funds awarded to a Recipient under the BEAD program shall be used to supplement, and not supplant, the amounts of federal or non-Federal funds that the Recipient would otherwise make available for the purposes for which the grant funds may be used.

24. Administrative Expenses

The Recipient may not use more than two percent of the grant amounts received under the BEAD Program for expenses relating (directly or indirectly) to the administration of the grant, in accordance with Section 60102(d)(2)(B) of the Infrastructure Act. This requirement does not apply to the planning phase of funding awarded with this action and this specific award condition will be updated and revised in future funding actions to incorporate these requirements, as applicable.

25. Restriction on Human Subjects Research Work and Costs Incurred

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Amendment: NEW

Recipient: Rhode Island Commerce Corporation

BEAD grant recipients must comply with Department of Commerce (DOC) regulations relating to the protection of human subjects for all research conducted or supported pursuant to an NTIA grant award. The DOC regulations related to the protection of human subjects are found in 15 C.F.R. Part 27.

The [Human Subjects Research Guidance \(posted August 29, 2022\)](#) (HSR) for the Broadband Equity Access and Deployment (BEAD) Program is incorporated by reference into this specific award condition and identifies three HSR classification categories: Category 1 – Not Conducting Human Subjects Research, Category 2 – Exemption Request, and Category 3 – Human Subject Research Non-Exempt.

To satisfy the BEAD HSR requirements, recipients must submit, no later than 45 calendar days after the award start date, (via email to UGAM@nist.gov with a copy to their BEAD FPO), a letter or memorandum addressed to the Grants Officer that provides the following information:

- a. Which HSR classification category is applicable; and
- b. Examples of planned BEAD project activities that justify inclusion in that category.

If a project requires a human subjects research exemption request (Category 2) or IRB approval for non-exempt human subjects research (Category 3), research activities involving human subjects are not authorized to start under this award until the appropriate documentation, as set forth by the DOC Standard Terms & Conditions (dated November 12, 2020) Section G.05.i.3, is approved in writing by the Grants Officer.

If a recipient conducts human subjects research before receiving NTIA approval of an exemption or before receiving IRB approval for non-exempt research, recipients will be considered in material non-compliance with award terms and conditions, and any costs incurred to conduct the research may be disallowed.

Notwithstanding the above prohibition on starting human subjects research, work may be initiated, or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

Sample HSR memos are available in the Human Subjects Research Guidance (posted August 29, 2022), *Guidance for Human Subjects Research Protection*. (<https://broadbandusa.ntia.doc.gov/sites/default/files/2022-08/BEAD-Planning-Grant-HSR-Guidance-Final-9-29-2022.pdf>)

26. Budget Narrative and Justification

The project budget contains costs for subawards. The budget information provided in the budget narrative and justification is not sufficient for NIST to evaluate the allowability of such costs. Within 45 calendar days of the award start date, Recipient must provide a

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detailed budget and justification for each item listed above to ensure such costs are allowable (see 2 C.F.R. §200.403). No funds associated with the above identified item(s) shall be released by NIST until the detailed budget and justification is submitted by the recipient and approved by the NIST Grants Officer via an award amendment or administrative letter.

End of Specific Award Conditions

GENERAL TERMS AND CONDITIONS
for the
NTIA BROADBAND EQUITY, ACCESS & DEPLOYMENT PROGRAM (BEAD)
INITIAL PLANNING FUNDS

July 2022

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1. Project Management Conference

After the award start date, the NIST Grants Officer (on behalf of NTIA) may contact the Recipient to arrange a project management conference. The purpose of the project management conference is to explain to the Recipient its responsibilities for administration of the award, including its responsibilities with respect to the Terms and Conditions of the award and applicable Federal requirements.

2. Property Trust Relationship and Public Notice Filings for Grant-Acquired Property

In accordance with 2 CFR § 200.316 (Property trust relationship), real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity (*i.e.*, Recipient or Subrecipient) as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). The non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

The Grants Officer may require a non-Federal entity (*i.e.*, a Recipient or Subrecipient) to execute and to record (as applicable) a statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part pursuant to a Broadband Equity, Access, and Deployment Program (BEAD) award is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (Form UCC-1), lien, mortgage or other public notice must be acceptable in form and substance to NTIA and to the NIST Grants Officer and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the NIST Grants Officer may further require the non-Federal entity to provide NTIA and the NIST Grants Officer with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be promptly returned to the NIST Grants Officer. The non-Federal entity may use model documentation made available by NTIA.

Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes NTIA and/or the NIST Grants Officer to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The NIST Grants Officer may

elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the NIST Grants Officer are made.

3. Recipient and Contractor Compliance with Applicable Requirements

The Recipient shall comply, and must require each subrecipient or contractor, including lower tier subrecipients or subcontractors, to comply with all applicable Federal, state, and local laws and regulations. The Recipient is responsible for ensuring that all contracts, including those necessary for design and construction of the Project facilities, are implemented in compliance with the Terms and Conditions of this Award.

4. Environmental and Historic Preservation Compliance

NTIA has evaluated the allowable grant-funded activities enumerated in Section IV.B.2 of the NOFO and in Specific Award Condition (SAC) No. 15 for compliance with the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act of 1966 (NHPA). The activities as described would have no potential to effect historic properties, and qualify for the following DOC Categorical Exclusions:

A8: Planning activities and classroom-based training and classroom-based exercises using existing conference rooms and training facilities.

A11: Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.

At this time, no further NEPA or NHPA review is required for the expenditure of Initial Planning Funds. This determination does not apply to activities other than those allowable expenses specified in Section IV.B.2 of the NOFO and in SAC No. 15, nor does it apply to any infrastructure project implementation activities. Once planning and design activities are complete, individual projects will need to be evaluated for compliance with NEPA, NHPA, and other applicable laws, regulations, and Executive Orders prior to project initiation.

5. Domestic Preference for Procurements (Buy American)

Pursuant to 2 CFR § 200.322, the Recipient should, to the greatest extent practicable under the BEAD award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). The requirements of 2 CFR § 200.322 must be included in all subawards, including all contracts and purchase orders for work or products pursuant to this program.

6. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

Pursuant to 2 CFR § 200.321, the Recipient and its subrecipients must take all necessary affirmative steps (as described in 2 CFR § 200.321) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

7. Prevention of Waste, Fraud, and Abuse

Consistent with statutory requirements in Section 905(e)(3) of the Consolidated Appropriations Act, 2021, and the principles in 2 CFR part 200, at any time(s) during the grant period of performance, NTIA may direct a Recipient’s key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing the Recipient’s finances and overseeing any contractors, sub-contractors or sub-recipients (for financial matters and/or general oversight related to the grant). NTIA will provide instructions on when and how to take such training(s), and costs incurred by a Recipient relative to the training (*e.g.*, staff time) are eligible for reimbursement pursuant to the NTIA award.

Further, Recipients must monitor award activities for common fraud schemes, including but not limited to:

- false claims for materials and labor;
- bribes related to the acquisition of materials and labor;
- product substitution;
- mismarking or mislabeling on products and materials; and
- time and materials overcharging.

Should a Recipient detect any fraud schemes or any other suspicious activity, the grant Recipient must contact its assigned NTIA Federal Program Officer and the Department of Commerce, Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible. Additionally, in accordance with 2 CFR § 200.113, an applicant or Recipient must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR § 200.339. (*See also* 2 CFR Part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.)

8. Protection of Whistleblowers

The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award. Section F.05 of these Terms and Conditions

states that each award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

A person that believes they have been the subject of retaliation for protected whistleblowing can contact the Department of Commerce, Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Hotline.aspx>, or the U.S. Office of Special Counsel, toll free at 1-800-872-9855.

BUDGET INFORMATION - Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.

| COST CLASSIFICATION | a. Total Cost | b. Costs Not Allowable for Participation | c. Total Allowable Costs (Columns a-b) |
|--|----------------|--|--|
| 1. Administrative and legal expenses | \$ 1,774,693.3 | \$ | \$ 1,774,693.3 |
| 2. Land, structures, rights-of-way, appraisals, etc. | \$ | \$ | \$ 0 |
| 3. Relocation expenses and payments | \$ | \$ | \$ 0 |
| 4. Architectural and engineering fees | \$ | \$ | \$ 0 |
| 5. Other architectural and engineering fees | \$ 20,000 | \$ | \$ 20,000 |
| 6. Project inspection fees | \$ | \$ | \$ 0 |
| 7. Site work | \$ | \$ | \$ 0 |
| 8. Demolition and removal | \$ | \$ | \$ 0 |
| 9. Construction | \$ | \$ | \$ 0 |
| 10. Equipment | \$ | \$ | \$ 0 |
| 11. Miscellaneous | \$ 3,205,306.7 | \$ | \$ 3,205,306.7 |
| 12. SUBTOTAL (sum of lines 1-11) | \$ 5,000,000 | \$ 0 | \$ 5,000,000 |
| 13. Contingencies | \$ | \$ | \$ 0 |
| 14. SUBTOTAL | \$ 5,000,000 | \$ 0 | \$ 5,000,000 |
| 15. Project (program) income | \$ | \$ | \$ 0 |
| 16. TOTAL PROJECT COSTS (subtract #15 from #14) | \$ 5,000,000 | \$ 0 | \$ 5,000,000 |
| FEDERAL FUNDING | | | |

17. Federal assistance requested, calculate as follows:
(Consult Federal agency for Federal percentage share.)
Enter the resulting Federal share.

Enter eligible costs from line 16c Multiply X 100 %

\$ 5,000,000

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT G



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

June 30, 2023

Justin Medeiros
315 Iron Horse Way
Suite 101
Providence, RI 20908-5625

Re: BEAD Program Notice of Available Amounts

Dear Justin Medeiros,

Pursuant to the Infrastructure Investment and Jobs Act (IIJA), the National Telecommunications and Information Administration (NTIA) administers the \$42.45 billion Broadband Equity, Access, and Deployment (BEAD) Program. I am pleased to provide you, by this letter, notice of the amount of BEAD Program funds available to Rhode Island and invite you to submit an Initial Proposal and Final Proposal for a BEAD Program grant.¹

NTIA has calculated the available amounts as required by Section 60102(c) of the Infrastructure Act, utilizing data published to the Federal Communications Commission's National Broadband Map on June 26, 2023.² A description of how NTIA determined Rhode Island's allocation is set forth in the attachment to this letter.

The Total Allocation for Rhode Island is \$108,718,820.75.

I invite Rhode Island to submit an Initial Proposal and Final Proposal in accordance with Sections 60102(e)(3) and (e)(4) of the IIJA and Sections IV.B.5 and IV.B.9 of the BEAD Notice of Funding Opportunity (NOFO) through the BEAD application portal at <https://grants.ntia.gov/>. Initial proposals are due no later than December 27, 2023. Questions about the Total Allocation, the Initial Proposal, or the Final Proposal should be directed to your Federal Program Officer, Stuart Freiman, at sfreiman@ntia.gov.

Thank you for your partnership in this once-in-a-generation investment to connect everyone in America to affordable, reliable, high-speed Internet service.

Alan Davidson
Assistant Secretary of Commerce for Communications and Information

¹ Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102(e)(2), Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or IIJA).

² *Id.* § 60102(c). The National Broadband Map is the name the Commission currently applies to the maps created under section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. 642(c)(1)), referred to in the IIJA as the "Broadband DATA Maps." *See id.* § 60102(a)(2)(C).

Appendix: Calculation for Total Allocation

As set forth in IJA § 60102(c), each Eligible Entity's Total Allocation is the sum of the Eligible Entity's (I) Minimum Initial Allocation; (II) High-Cost Allocation; and (III) Remaining Funds Allocation.¹ Rhode Island's allocation of \$108,718,820.75 was determined as follows:

I. Minimum Initial Allocation

The Minimum Initial Allocation for (i) each State of the United States, the District of Columbia, and Puerto Rico is \$100,000,000, and (ii) for American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands is \$25,000,000.² *The Minimum Initial Allocation for Rhode Island is \$100,000,000.00.*

II. High-Cost Allocation

The "High-Cost Allocation" for each Eligible Entity was calculated by (i) dividing the number of unserved locations in high-cost areas in the Eligible Entity by the total number of unserved locations in high-cost areas in the United States and (ii) multiplying the quotient obtained by \$4.245 billion.³ *The High-Cost Allocation for Rhode Island is \$0.00.*

III. Remaining Funds Allocation

The funds remaining after subtracting each of (i) the total Minimum Initial Allocations; and (ii) the total High-Cost Allocation from \$41,601,000,000 are the "Remaining Funds."⁴ Each Eligible Entity's Remaining Funds Allocation was computed by dividing the number of unserved locations in the Eligible Entity by the total number of unserved locations in the United States and multiplying the result by the Remaining Funds.⁵ *The Allocation for Rhode Island from the Remaining Amounts is \$8,718,820.75.*

¹ IJA § 60102(c).

² *Id.* § 60102(c)(2). Each State of the United States, the District of Columbia, and Puerto Rico requested and have previously been awarded up to \$5 million of the Minimum Initial Allocation as Initial Planning Funds. IJA § 60102(e)(1)(C)(i); BEAD NOFO at 18, § II.C. Each of American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands requested and have previously been awarded up to \$1.25 million as Initial Planning Funds. IJA § 60102(e)(1)(C)(i); BEAD NOFO at 18, § II.C.

³ IJA § 60102(c)(1); BEAD NOFO at 29, § IV.B.4.c.ii. The number of unserved locations in each high-cost area was determined using data published to the Federal Communications Commission's National Broadband Map on June 26, 2023.

⁴ This figure reflects the \$42,450,000,000 appropriated for the BEAD program minus the two percent of that sum allocated for administrative purposes. *See* IJA § 60102(d).

⁵ *Id.* § 60102(c)(3). The number of unserved locations in each Eligible Entity was determined using data published to the Federal Communications Commission's National Broadband Map on June 26, 2023.

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT H

RHODE ISLAND COMMERCE CORPORATION
MEETING OF DIRECTORS
PUBLIC SESSION
October 23, 2023

The Board of Directors of the Rhode Island Commerce Corporation (the “Corporation”) met on October 23, 2023, in Public Session, beginning at 5:00 p.m., pursuant to the public notice of meeting, a copy of which is attached hereto as **Exhibit A**, as required by applicable Rhode Island law.

The following Directors were present and participated throughout the meeting as indicated: Governor Daniel J. McKee, Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Directors absent were: David Chenevert, Mary Jo Kaplan, George Nee, and Carol ODonnell.

Also present were: Secretary of Commerce Elizabeth Tanner; William Ash, Interim President & COO; and Christopher J. Fragomeni, Esq.

1. **CALL TO ORDER AND OPENING REMARKS.**

The Governor called the meeting to order at 5:04 p.m., indicating that a quorum was present.

2. **TO CONSIDER FOR APPROVAL MEETING MINUTES.**

Upon motion duly made by Ms. Sams and seconded by Dr. Dann-Messier, the following vote was adopted:

VOTED: To approve the public session meeting minutes for the September 18, 2023 meeting as presented to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

3. **TO CONSIDER AN AWARD TO NORPAK, LLC UNDER THE RHODE ISLAND QUALIFIED JOBS INCENTIVE ACT.**

Jeff Miller, the Corporation’s Vice President of Investments, explained that Norpak, LLC (“Norpak”), a manufacturer of specialized paper in the food industry, was before the Board for two requests: (1) a waiver of the minimum salary for manufacturing jobs; and (2) to add one extension year of its eligibility commencement date to January, 2026. Mr. Miller explained that, normally, companies have two years from the date of the Board meeting before their eligibility

commencement date. However, given the date of the Board's approval, that normal two year period would be shortened because Norpak's eligibility commencement date would be January 1, 2025. Mr. Wadensten noted that the Investment Committee recommended approval of Norpak's requests, and that its relocation to the State will add seventy-five jobs.

Upon motion duly made by Dr. Dann-Messier and seconded by Ms. Sams, the following vote was adopted:

VOTED: To approve an award to Norpak, LLC under the Rhode Island Qualified Jobs Incentive Act pursuant to the resolution submitted to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

A copy of the resolution is attached hereto as **Exhibit B**.

4. **TO CONSIDER AN AMENDMENT TO THE AWARD TO INFINITY MEAT SOLUTIONS, LLC UNDER THE RHODE ISLAND QUALIFIED JOBS INCENTIVE ACT.**

Mr. Miller recounted that Infinity Meat Solutions, LLC ("Infinity Meat") was previously approved for an incentive under the Qualified Jobs Incentive Act in May 2018. Since then, he stated, Infinity Meat built a ground-up facility in the Quonset Business Park to prepare case-ready meats for resale. He noted that in 2018, Infinity Meat projected hiring 700 employees, but, due to the COVID-19 pandemic and inflation, that projection has been lowered to 475 employees. He stated that Infinity Meat is asking the Board to approve the lowering of the hiring requirement from 700 to 475, and, in exchange, Infinity Meat will return approximately \$1.1 million in an award it received under the Rebuild Rhode Island Tax Credit program. In response to a question by Mr. Wadensten, Mr. Miller recounted how the Qualified Jobs program and Rebuild Rhode Island program work. Mr. Stone noted that the Investment Committee reviewed the proposal before the Board, and, due to inflation in salaries, the amount that the State will receive from the cumulative tax withholdings of the 475 newly-hired employee is more than if Infinity Meat hired all 700 employees at lower salaries. Mr. Wadensten and a representative of Infinity Meat discussed input cost increases and beef cost increases.

Upon motion duly made by Mr. Stone and seconded by Dr. Dann-Messier, the following vote was adopted:

VOTED: To approve an amendment to the award to Infinity Meat Solutions, LLC under the Rhode Island Qualified Jobs Incentive Act pursuant to the resolution submitted to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

A copy of the resolution is attached hereto as **Exhibit C**.

5. **TO CONSIDER THE EXTENSION OF A CONTRACT WITH THE CADMUS GROUP, LLC.**

Karen Stewart, the Renewable Energy Fund Program Manager, requested that the Board approve a three-month extension of the Corporation's contract with The Cadmus Group, LLC ("Cadmus"), which provides inspection services for the Renewable Energy Fund projects. She stated that the extension is necessary because Cadmus' contract expires at the end of the year, and the Corporation needs additional time to conduct a request for proposals process early in 2024. She noted that the Corporation previously received only Cadmus' response to a prior request for proposals. In response to a question from Dr. Dann-Messier, Ms. Stewart indicated that the few responses to the prior request for proposals was likely due to the fact that it was issued during the COVID-19 pandemic. Mr. Wadensten questioned how Cadmus is paid, and Ms. Stewart indicated that Cadmus is paid per inspection.

Upon motion duly made by Mr. Stone and seconded by Dr. Dann-Messier, the following vote was adopted:

VOTED: To approve the extension of a contract with The Cadmus Group, LLC pursuant to the resolution submitted to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

A copy of the resolution is attached hereto as **Exhibit D**.

6. **TO CONSIDER INNOVATION VOUCHERS FOR APPROVAL.**

Lisa Carnevale, the Corporation's Vice President of Innovation Initiatives, indicated that three Innovation Vouchers were before the Board for approval. The first, she stated, was Jaia Robotics, Inc. ("Jaia"), which makes a robotic, autonomous, underwater collection device vehicle to measure temperatures, currents, and salinity of water, among other things. She explained that Jaia will work with Roger Williams University to assist with water filtration and analyzation implementation into the device.

Upon motion duly made by Ms. Sams and seconded by Dr. Dann-Messier, the following vote was adopted:

VOTED: To approve Jaia Robotics, Inc. for an Innovation Voucher pursuant to the resolution submitted to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

A copy of the resolution is attached hereto as **Exhibit E**.

Ms. Carnevale explained that a second company—Kenesia, Inc. (“Kenesia”)—is developing a system that can be used in physical therapy rehabilitation that contains controlled algorithms to anticipate reflexes in patients. In response to a question by Mr. Stone, a representative of Kenesia indicated that it has received a provisional patent for the product, and that the Innovation Voucher would fund a partnership with the University of Rhode Island for design and development of the system. Mr. Stone expressed his concern that neither principal of Kenesia will work on this project full time and that there is only a conceptual idea of a product. He indicated that taxpayer dollars should not support the project. In response, a principal of Kenesia stated that after meeting with professors at URI, they agreed to be a sponsor for the project to help develop a proof of concept and transition it to commercial sales.

Ms. Carnevale indicated that a review committee noted the amount of experience of the owners of Kenesia, one of whom has over twenty patents; a gap in the market for this item; and the ability to diversity the Innovation Voucher portfolio by making an award to Kenesia. Mr. Ash noted that the Corporation has made several Innovation Voucher awards to early-stage companies that are pre-revenue. Mr. Wadensten cautioned Kenesia’s principals that other companies have been in this market.

Upon motion duly made by Dr. Dann-Messier and seconded by Ms. Sams, the following vote was adopted:

VOTED: To approve Kenesia, Inc. for an Innovation Voucher pursuant to the resolution submitted to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, and Michael Solomon.

Voting against the foregoing were: Bill Stone and Karl Wadensten.

A copy of the resolution is attached hereto as **Exhibit E**.

Ms. Carnevale stated that Nimbus Research Laboratory, LLC (“Nimbus”) is a research laboratory that fabricates rescue kits that deliver lifesaving tools in critical emergencies. She stated that they previously received an Innovation Voucher, which helped Nimbus develop the rescue kit boxes and bring them to market; however, Nimbus has now found a need to develop a system to track the supplies in the rescue kit box. This Innovation Voucher, she stated, will assist Nimbus create a smart container system to track the supplies in the rescue kit box.

Upon motion duly made by Mr. Stone and seconded by Dr. Dann-Messier, the following vote was adopted:

VOTED: To approve Nimbus Research Laboratory, LLC for an Innovation Voucher pursuant to the resolution submitted to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

A copy of the resolution is attached hereto as **Exhibit E**.

7. **TO CONSIDER A SUBGRANT TO THE CITY OF WOONSOCKET TO ENGAGE IN OUTREACH EFFORTS RELATIVE TO THE AFFORDABLE CONNECTIVITY PROGRAM.**

Brian Thorn, the Corporation's Director of Broadband Strategy, recounted that the Board previously established the Affordable Connectivity Program to provide outreach and awareness for a federal program that provides a \$30 per month subsidy of internet costs. He noted that the Corporation issued a request for proposals in two rounds. In the first round, which closed on October 2, the City of Woonsocket was the only respondent. Mr. Thorn explained that Woonsocket has proposed to perform outreach at community events and conduct digital and social media marketing campaigns that will reach required outreach metrics. Mr. Thorn explained that the second round of the request for proposals will close on October 30, 2023, and approximately \$150,000 is available for the second round. In response to a question by Dr. Dann-Messier, Mr. Thorn stated that the program is prioritizing municipalities and nonprofits in collaboration with municipalities.

Upon motion duly made by Mr. Stone and seconded by Dr. Dann-Messier, the following vote was adopted:

VOTED: To approve a subgrant to the City of Woonsocket to engage in outreach efforts relative to the Affordable Connectivity Program pursuant to the resolution submitted to the Board.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

A copy of the resolution is attached hereto as **Exhibit F**.

8. **TO CONSIDER AN AMENDMENT TO THE CORPORATION'S PENSION PLAN.**

Justin Medeiros, the Corporation's Chief Financial Officer, explained that the Corporation's subsidiary—the Quonset Development Corporation ("QDC")—has decided to spin off their share of the pension plan to ultimately terminate that plan. As a result, he stated, the Corporation will have a Corporation-specific plan after the QDC portion is spun off. He explained that, as part of that process, the plan needs to be amended to cease any additional QDC employee benefit accruals. Once that occurs, he stated, the QDC portion of the plan can be spun off. Mr. Medeiros stated that there will be no impact on any of the Corporation's active or non-active plan participants. In response to a question by Mr. Wadensten, Mr. Medeiros stated that while the plan had a loss for fiscal year 2022, the plan is now very healthy and overfunded due to improving market conditions. Mr. Stone opined that the Board needed a legal opinion that indicated that the spin off was permitted under the plan documents and applicable law.

Upon motion duly made by Mr. Stone and seconded by Mr. Wadensten, the following vote was adopted:

VOTED: To approve an amendment to the Corporation's pension plan pursuant to the resolution and written consent submitted to the Board, subject to the Board's receipt of a legal opinion that the requested action is consistent with the plan documents and does not violate any applicable laws.

Voting in favor of the foregoing were: Elizabeth Catucci, Dr. Brenda Dann-Messier, An Le, Donna Sams, Michael Solomon, Bill Stone, and Karl Wadensten.

Voting against the foregoing were: none.

A copy of the resolution is attached hereto as **Exhibit G.**

9. **TO RECEIVE AN UPDATE ON THE INITIAL PLAN TO BE SUBMITTED FOR THE BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM.**

Mr. Thorn presented to the Board the PowerPoint presentation attached hereto as **Exhibit H.**

Mr. Stone noted that—after the last meeting—he was approached by individuals that were very complimentary about the Corporation's responsiveness. He thanked the staff and leadership.

There being no further business in public session, the meeting was adjourned by unanimous consent at 6:26 p.m. upon motion made by Mr. Stone and seconded by Mr. Wadensten.

/s/ Christopher J. Fragomeni
Christopher J. Fragomeni, Secretary

OCTOBER 23, 2023 PUBLIC SESSION MEETING MINUTES

EXHIBIT A

RHODE ISLAND COMMERCE CORPORATION
PUBLIC NOTICE OF MEETING

A meeting of the Board of Directors of the Rhode Island Commerce Corporation (“Corporation”) will be held on **October 23, 2023** beginning at **5:00 p.m.** at the offices of the Corporation, 315 Iron Horse Way, #101, Providence, RI 02908. The meeting will be held for the following purposes:

1. To consider for approval meeting minutes.
2. To consider an award to Norpak, LLC under the Rhode Island Qualified Jobs Incentive Act (see exhibit 1, which follows, for additional detail).*
3. To consider an amendment to the award to Infinity Meat Solutions, LLC under the Rhode Island Qualified Jobs Incentive Act.*
4. To consider the extension of a contract with The Cadmus Group, LLC.
5. To consider Innovation Vouchers for approval (see exhibit 1, which follows, for additional detail).*
6. To consider a subgrant to the City of Woonsocket to engage in outreach efforts relative to the Affordable Connectivity Program.
7. To consider an amendment to the Corporation’s pension plan.
8. To receive an update on the Initial Plan to be submitted for the Broadband Equity, Access, and Deployment Program.
9. To consider the utilization of the Corporation’s incentive programs for the investment of public funds.*

*Board members may convene in Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(7) to consider the investment of public funds or the disposition of publicly held property in regards to this Agenda item.

This notice shall be posted at the office of the Corporation, at the State House, and by electronic filing with the Secretary of State’s Office.

Savage Law Partners, LLP,
Counsel to the Corporation

The location is accessible to the handicapped. Those requiring interpreter services for the hearing impaired must notify the Rhode Island Commerce Corporation at 278-9100 forty-eight (48) hours in advance of the meeting. Also, for the hearing impaired, assisted listening devices are available onsite, without notice, at this location.

Dated: October 19, 2023.

EXHIBIT 1

Agenda Item 2:

Norpak, LLC will locate a manufacturing facility in West Kingston, Rhode Island and create new full-time jobs in the state. The company is a manufacturer of high-quality paper food wrapping products.

Agenda Item 5:

| <u>Applicant</u> | <u>Amount</u> |
|---------------------------------|---------------|
| Jaia Robotics, Inc. | \$74,535 |
| Kenesia, Inc. | \$75,000 |
| Nimbus Research Laboratory, LLC | \$74,876 |

OCTOBER 23, 2023 PUBLIC SESSION MEETING MINUTES

EXHIBIT B

RHODE ISLAND COMMERCE CORPORATION
RESOLUTION AUTHORIZING THE ISSUANCE OF INCENTIVES
UNDER THE QUALIFIED JOBS TAX CREDIT ACT

October 23, 2023

WHEREAS: The Rhode Island Commerce Corporation (the “Corporation”) was created and exists as a public corporation, governmental agency and public instrumentality of the State of Rhode Island (the “State”) under Chapter 64 of Title 42 of the General Laws of Rhode Island, as amended (the “Enabling Act”); and

WHEREAS: Chapter 48.3 of Title 44 of the General Laws of Rhode Island (the “Act”), as amended, authorizes the Corporation to approve the issuance of tax credits in relation to the creation of new jobs in the State; and

WHEREAS: The Corporation received an application for incentives under the Act from Norpak, LLC, (together with affiliates, successors and assigns, the “Recipient”), which is anticipated to result in the creation of new full-time jobs in the State; and

WHEREAS: The Corporation’s Investment Committee has reviewed and considered the proposed incentives to the Recipient and has voted to recommend to the Board of Directors (the “Board”) of the Corporation the approval of the incentives; and

WHEREAS: The Board has received a presentation detailing the proposed incentives together with a recommendation from the staff of the Corporation to approve the issuance of incentives to the Recipient in accordance with the Act.

NOW, THEREFORE, acting by and through its Board, the Corporation hereby resolves as follows:

RESOLVED:

1. To accomplish the purposes of the Enabling Act and the Act, the Corporation approves the issuance of tax credits to the Recipient up to the amount of seventy-five (75) jobs; and
2. The authorization provided herein is subject to the following conditions:
 - a. The execution of an incentive agreement between the Corporation and the Recipient meeting the requirements of the Act in such form and with such provisions as one of the Authorized Officers (hereinafter defined) shall deem appropriate in the sole discretion of such Officer;
 - b. The creation of not less than the minimum required new full-time jobs under the Act, which earn no less than the median hourly wage as most recently reported by the United States Bureau of Labor Statistics for the State of Rhode Island; and

- c. Such additional conditions as any of the Authorized Officers, acting singly, shall deem appropriate in the sole discretion of such Officer.
3. The Board of the Corporation hereby finds and determines that: (a) the approval will prevent, eliminate, or reduce unemployment or underemployment in the State and will generally benefit economic development of the State; (b) that, to the extent applicable, the provisions of RIGL § 42-64-10(a)(1)(ii) through (v) have been satisfied; (c) that the Recipient has demonstrated an intention to create the requisite number of new full-time jobs as required under the Act; (d) the creation of the new full-time jobs would not occur in the State but for the provision of the tax credits under the Act and (e) good cause exists to extend the time that the company will have for the filing its initial request for certification as permitted under 870-RICR-30-00-4.16 for a period of up to one year.
 4. Prior to the execution of an incentive agreement with the Recipient, the Corporation shall prepare and publicly release an analysis of the impact that the issuance of the incentives will or may have on the State considering the factors set forth in RIGL § 42-64-10(a)(2) (a copy of which is annexed hereto as Exhibit 1).
 5. The Authorized Officers of the Corporation for purposes of this Resolution are the Chair, the Vice Chair, the Secretary of Commerce, the President & COO, the Chief Financial Officer or the Executive Vice President Investment (the “Authorized Officers”). Any one of the Authorized Officers of the Corporation, acting singly, is hereby authorized to execute, acknowledge and deliver and/or cause to be executed, acknowledged or delivered any documents necessary or appropriate to consummate the transactions authorized herein with such changes, insertions, additions, alterations and omissions as may be approved by any such Authorized Officers, and execution thereof by any of the Authorized Officers shall be conclusive as to the authority of such Authorized Officers to act on behalf of the Corporation. The Authorized Officers of the Corporation shall have no obligation to take any with respect to the authorization granted hereunder and the Corporation shall in no way be obligated in any manner to the Recipient by virtue of having adopted this Resolution. The Secretary or the Assistant Secretary of the Corporation, and each, acting singly, is hereby authorized to affix a seal of the Corporation on any of the documents authorized herein and to attest to the same.
 6. All covenants, stipulations, and obligations and agreements of the Corporation contained in this Resolution and the documents authorized herein shall be deemed to be covenants, stipulations, obligations and agreements of the Corporation to the full extent authorized and permitted by law and such covenants, stipulations, obligations and agreements shall be binding upon any board or party to which any powers and duties affecting such covenants, stipulations, obligations and agreements shall be transferred by and in accordance with the law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Corporation or the members thereof, by the provisions of this Resolution and the documents authorized herein shall be exercised and performed by the Corporation, or by such members, officers, board or body as may be required by law to exercise such powers and perform such duties.

7. From and after the execution and delivery of the documents hereinabove authorized, any one of the Authorized Officers, acting singly, are hereby authorized, empowered and directed to do any and all such acts and things and to execute and deliver any and all such documents, including, but not limited to, any and all amendments to the documents, certificates, instruments and agreements hereinabove authorized, as may be necessary or convenient in connection with the transaction authorized herein.
8. All acts of the Authorized Officers which are in conformity with the purposes and intents of this Resolution and the execution, delivery and approval and performance of such documents authorized hereby and all prior actions taken in connection herewith are, ratified, approved and confirmed.
9. This Resolution shall take effect immediately upon passage.

EXHIBIT 1

Rhode Island Commerce Corporation
Qualified Jobs Incentive Tax Credits – Economic Impact Analysis
Norpak LLC Application

Introduction

The Rhode Island Commerce Corporation (“Corporation”) may issue Qualified Jobs Incentive tax credits to Norpak LLC (“Norpak”) a manufacturer of food packaging products (including food wrapping paper and paper bags) founded in 1952. Norpak is proposing to relocate its manufacturing operations from Newark, New Jersey to an existing industrial building in West Kingston, Rhode Island that it plans to acquire and renovate in 2024.

Norpak is requesting that the Corporation issue Qualified Jobs Incentive tax credits in conjunction with its plans to employ 40 workers in Rhode Island in 2026, rising to 65 in 2026 and 75 in 2027. The Company is requesting Qualified Jobs Incentive tax credits with an estimated value of \$768,000 over ten years.

This analysis was prepared by Appleseed, a consulting firm with more than twenty-five years of experience in economic impact analysis.

Jobs Analysis

Initial capital costs

As shown below in Table 1, Norpak estimates that it would invest approximately \$14.5 million in renovating, fitting out and equipping its new facility in West Kingston.

Table 1: Initial capital investment (in \$ millions of 2024 dollars)

| | Cost |
|---|-------------|
| Acquisition | \$7.5 |
| Redevelopment and fit-out | \$2.0 |
| Relocation of existing equipment | \$2.0 |
| Purchase of new equipment | \$3.0 |
| Total | \$14.5 |

Using the IMPLAN input-output modeling system, a modeling tool commonly used in economic impact analyses, Appleseed estimates (as shown in Table 2) that in 2024, \$1.5 million in spending on construction and fit-out will directly and indirectly support:

- 12 jobs in Rhode Island in construction and related industries, with approximately \$930,000 in earnings (in 2024 dollars);
- \$1.90 million in statewide economic output; and
- A one-time increase of \$1.06 million in Rhode Island’s GDP.⁵

Table 2: Direct, indirect and total annual impact of initial capital spending (income, value-added and output in thousands of 2024 dollars)

| | Jobs | Earnings | Value added | Output |
|-----------------|------|----------|-------------|-----------|
| Direct | 10 | \$798.4 | \$844.3 | \$1,500.0 |
| Indirect | 2 | 131.2 | \$218.0 | \$402.8 |
| Total | 12 | \$929.6 | \$1,062.3 | \$1,902.8 |

Annual operations

As noted above, Norpak plans to employ a minimum of 40 full-time workers at its new Rhode Island location by the end of 2026, 65 by the end of 2026 and 75 by the end of 2027. The majority of these workers will be directly engaged in manufacturing, including machine operators and mechanics, along with some warehousing and distribution workers, and possibly a few administrative employees. Annual wages are expected to range from approximately \$32,800 to \$55,300, with an average annual wage of \$40,040 and median annual wage of \$38,355.

Based on data provided by Norpak, Appleseed estimates that in 2027, its ongoing operations in Rhode Island would directly and indirectly account for:

- 91 jobs in Rhode Island;
- \$4.32 million in annual earnings (in 2026 dollars);
- \$20.59 million in statewide economic output; and
- An increase of nearly \$6.02 million in Rhode Island’s annual GDP.

These impacts are summarized below in Table 4. The *direct impact* of Norpak’s operations reflects its direct employment, its direct spending on wages and salaries, the value its operations add to Rhode Island’s GDP, and the total value of the goods and services it produces. Its *indirect impact* is the effect of Norpak’s spending on purchases of goods and services from other in-state businesses on employment, earnings, value-added and output in Rhode Island.

⁵ The Company is not requesting State assistance in financing its investment in developing and equipping its West Kingston manufacturing facility. Information on the impact the Company’s spending on reconstruction and fit-out of the plant is included here for

Table 4: Direct, indirect and total annual impact of ongoing operations (income, value-added and output in thousands of 2027 dollars)

| | Jobs | Earnings | Value added | Output |
|-----------------|------|-----------|-------------|------------|
| Direct | 75 | \$3,066.9 | \$3,917.1 | \$16,547.2 |
| Indirect | 16 | \$1,248.5 | \$2,099.6 | \$4,044.0 |
| Total | 91 | \$4,315.4 | \$6,016.7 | \$20,591.2 |

In addition to the impacts on employment, earnings, output and state GDP cited above, Norpak’s new operations in Rhode Island would, in 2027, make a projected increase of approximately \$147,000 in annual state tax revenues, including:

- \$83,000 in state personal income taxes paid by workers employed by Norpak in its new Rhode Island operations; or by Rhode Island workers whose jobs are indirectly attributable to Norpak’s Rhode Island operations;
- \$54,000 in state sales taxes paid on those workers’ taxable household spending; and
- \$10,000 in state business taxes.

As noted above, the 75 new direct jobs cited in Table 4 represent the minimum number of jobs Norpak would be committed to adding by 2027 and maintaining for a minimum of twelve years. If Norpak achieves its projected sales targets, the number of workers employed in its West Kingston facility could grow beyond the 75 jobs projected for 2027.

Hiring

Norpak typically recruits job candidates through local advertising or word-of-mouth; and occasionally by posting job openings on sites such as Indeed.com. Many Norpak positions do not require job-specific prior experience. All new employees are fully trained and evaluated during a three-month probationary period, after which they are considered permanent.

Benefits

Norpak’s employee benefits include medical insurance, participation in the company’s pension plan, paid holidays, and vacation and sick days.

Impact

The state fiscal impact of the requested tax credits is estimated to be approximately \$768,000 in forgone state revenue. Direct and indirect economic and fiscal benefits of the proposed project include the estimated increase in annual state GDP of \$6.02 million in 2027, the estimated associated job creation, and a gross increase of approximately \$1.676 million in personal income, sales and business tax revenues during the twelve-year commitment period beginning in 2026. These benefits are detailed in the foregoing analysis.

In addition to the economic and tax revenue impacts cited above, development and operation of Norpak's manufacturing facility in West Kingston would benefit Rhode Island in other ways, including:

- Redevelopment and reuse of an underutilized, 50-year-old industrial building
- Generating local real property and personal property tax revenues
- Highlighting the State's attractiveness as a site for manufacturing operations

Beyond the fiscal impact noted above, there is no anticipated financial exposure to the state. Various features of the Qualified Jobs Incentive program mitigate risk to the state; and the value of Qualified Jobs Incentive tax credits would be determined on the basis of the number of workers actually employed and the wages actually paid by Norpak.

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EXHIBIT C

RHODE ISLAND COMMERCE CORPORATION
RESOLUTION AUTHORIZING THE ISSUANCE OF INCENTIVES
UNDER THE QUALIFIED JOBS TAX CREDIT ACT

October 23, 2023

WHEREAS: The Rhode Island Commerce Corporation (the “Corporation”) was created and exists as a public corporation, governmental agency and public instrumentality of the State of Rhode Island (the “State”) under Chapter 64 of Title 42 of the General Laws of Rhode Island, as amended (the “Enabling Act”); and

WHEREAS: Chapter 48.3 of Title 44 of the General Laws of Rhode Island (the “Act”), as amended, authorizes the Corporation to approve the issuance of tax credits in relation to the creation of new jobs in the State; and

WHEREAS: The Corporation received a request to amend an existing award of incentives under the Act from Infinity Meat Solutions, LLC, (together with affiliates, successors and assigns, the “Recipient”), which is anticipated to result in the creation of new full-time jobs in the State; and

WHEREAS: The Corporation’s Investment Committee has reviewed and considered the proposed incentives to the Recipient and has voted to recommend to the Board of Directors (the “Board”) of the Corporation the approval of the incentives; and

WHEREAS: The Board has received a presentation detailing the proposed incentives together with a recommendation from the staff of the Corporation to approve the issuance of incentives to the Recipient in accordance with the Act.

NOW, THEREFORE, acting by and through its Board, the Corporation hereby resolves as follows:

RESOLVED:

1. To accomplish the purposes of the Enabling Act and the Act, the Corporation approves the issuance of tax credits to the Recipient for creating and maintaining four hundred seventy-five (475) jobs during the remainder of their term of eligibility under the Act; and
2. The authorization provided herein is subject to the following conditions:
 - a. The execution of an amended incentive agreement between the Corporation and the Recipient meeting the requirements of the Act in such form and with such provisions as one of the Authorized Officers (hereinafter defined) shall deem appropriate in the sole discretion of such Officer;
 - b. The creation of not less than the minimum required new full-time jobs under the Act, which earn no less than the median hourly wage as most recently reported by the United States Bureau of Labor Statistics for the State of Rhode Island; and

- c. Such additional conditions as any of the Authorized Officers, acting singly, shall deem appropriate in the sole discretion of such Officer.
3. The Board of the Corporation hereby finds and determines that: (a) the approval will prevent, eliminate, or reduce unemployment or underemployment in the State and will generally benefit economic development of the State; (b) that, to the extent applicable, the provisions of RIGL § 42-64-10(a)(1)(ii) through (v) have been satisfied; (c) that the Recipient has demonstrated an intention to create the requisite number of new full-time jobs as required under the Act; (d) the creation of the new full-time jobs would not occur in the State but for the provision of the tax credits under the Act and (e) good cause exists to extend the time that the company will have for the filing its initial request for certification as permitted under 870-RICR-30-00-4.16 for a period of up to one year.
 4. Prior to the execution of an incentive agreement with the Recipient, the Corporation shall prepare and publicly release an analysis of the impact that the issuance of the incentives will or may have on the State considering the factors set forth in RIGL § 42-64-10(a)(2) (a copy of which is annexed hereto as Exhibit 1).
 5. The Authorized Officers of the Corporation for purposes of this Resolution are the Chair, the Vice Chair, the Secretary of Commerce, the President & COO, the Chief Financial Officer or the Executive Vice President Investment (the "Authorized Officers"). Any one of the Authorized Officers of the Corporation, acting singly, is hereby authorized to execute, acknowledge and deliver and/or cause to be executed, acknowledged or delivered any documents necessary or appropriate to consummate the transactions authorized herein with such changes, insertions, additions, alterations and omissions as may be approved by any such Authorized Officers, and execution thereof by any of the Authorized Officers shall be conclusive as to the authority of such Authorized Officers to act on behalf of the Corporation. The Authorized Officers of the Corporation shall have no obligation to take any with respect to the authorization granted hereunder and the Corporation shall in no way be obligated in any manner to the Recipient by virtue of having adopted this Resolution. The Secretary or the Assistant Secretary of the Corporation, and each, acting singly, is hereby authorized to affix a seal of the Corporation on any of the documents authorized herein and to attest to the same.
 6. All covenants, stipulations, and obligations and agreements of the Corporation contained in this Resolution and the documents authorized herein shall be deemed to be covenants, stipulations, obligations and agreements of the Corporation to the full extent authorized and permitted by law and such covenants, stipulations, obligations and agreements shall be binding upon any board or party to which any powers and duties affecting such covenants, stipulations, obligations and agreements shall be transferred by and in accordance with the law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Corporation or the members thereof, by the provisions of this Resolution and the documents authorized herein shall be exercised and performed by the Corporation, or by such members, officers, board or body as may be required by law to exercise such powers and perform such duties.

7. From and after the execution and delivery of the documents hereinabove authorized, any one of the Authorized Officers, acting singly, are hereby authorized, empowered and directed to do any and all such acts and things and to execute and deliver any and all such documents, including, but not limited to, any and all amendments to the documents, certificates, instruments and agreements hereinabove authorized, as may be necessary or convenient in connection with the transaction authorized herein.
8. All acts of the Authorized Officers which are in conformity with the purposes and intents of this Resolution and the execution, delivery and approval and performance of such documents authorized hereby and all prior actions taken in connection herewith are, ratified, approved and confirmed.
9. This Resolution shall take effect immediately upon passage.

EXHIBIT 1

Rhode Island Commerce Corporation
Rebuild Rhode Island and Qualified Jobs Incentive Tax Credits –
Economic Impact Analysis

Infinity Meat Solutions LLC Application

Introduction

The Rhode Island Commerce Corporation (the “Corporation”) has issued Rebuild Rhode Island and Qualified Jobs Incentive tax credits to Infinity Meat Solutions LLC (“the Company”), which is owned by Retail Business Services LLC (RBS). RBS provides a range of support services to 2,100 stores and distribution centers in 23 U.S. states that are owned by or affiliated with RBS’s parent company, Netherlands-based Ahold Delhaize, one of the world’s largest food retailers. The credits were issued in connection with the Company’s decision to locate a new facility in Rhode Island for preparation, packaging and distribution of fresh meat products. The facility, which opened in 2020, supplies Ahold-owned or affiliated stores, distribution centers and online retailers in New England and New York.

The Company’s facility is located in Quonset Business Park in North Kingstown. It is staffed and operated by Cargill, Inc., a Minnesota-based worldwide provider of food, agricultural, industrial and financial products and services. The plant currently employs 475 full-time workers, with median annual wages of \$44,720 in 2023.

In 2018 the Company was awarded:

- \$1.915 million in Rebuild Rhode Island tax credits;
- An exemption from sales and use taxes due on construction materials and furnishings, with an estimated value of \$1.388 million; and
- \$9.001 million in Qualified Jobs Incentive tax credits, to be disbursed over a ten-year period.

Since its new plant began operating in 2020, the Company has not yet created the number of new jobs in Rhode Island (702) that were envisioned in its 2018 proposal. The number of new jobs created (475) is nevertheless substantial; and the median earnings of the plant’s employees (\$44,720) are significantly higher than had been projected.

Taking these factors into account, Corporation staff are proposing that:

- The total value of Rebuild RI tax credits awarded to Infinity Meat Solutions be reduced to \$766,000;
- The number of new jobs required for the Company to maintain its eligibility for Qualified Jobs tax credits be reduced to 475; and

- The total value of Qualified Jobs tax credits for which the Company is eligible be adjusted to reflect the increases in employees' wages that have occurred since 2018.

This analysis was prepared by Appleseed, a consulting firm with more than twenty-five years' experience in economic impact analysis.

Jobs Analysis

Construction

As shown in Table 1, the Company has estimated the total cost of building and equipping its 200,000 square-foot facility at \$111.3 million.

Table 1: Infinity Meat Solutions estimated total project cost (\$ millions)

| Component | Estimated cost |
|--------------------------|----------------|
| Site development | \$15.1 |
| Building construction | 42.3 |
| Process equipment, other | 53.9 |
| Total | \$111.3 |

After excluding certain costs that do not have a direct impact on Rhode Island's economy (such as site acquisition and process equipment, which we assume will be procured out-of-state), Appleseed estimates that the Company will spend approximately \$68.2 million in Rhode Island on development and construction of the plant. Appleseed estimates that direct expenditures of approximately \$68.2 million directly and indirectly generated:

- 510 person-years¹ of work in Rhode Island, with \$37.4 million in earnings (in 2019 dollars);
- Approximately \$86.6 million in statewide economic output²; and
- A one-time increase of \$43.0 million in Rhode Island's GDP.

These impacts are summarized below in Table 2. The projects *direct impact* is the impact of the company's direct spending on design and construction. Its *indirect impact* is the effect of spending by contractors for goods and services (insurance, construction materials, etc.) purchased from other Rhode Island businesses.

¹ A person-year is equivalent to the time worked by one person who is employed full-time for a year. It could for example represent the work of two people who are each employed full-time for six months; or the work of one person who is employed half-time for two years.

² Output is a measure of the total sales by Rhode Island companies (including the "sale" of labor by Rhode Island households) generated by the project.

**Table 2: Direct, indirect and induced impact of construction and related spending
(employment in person-years; income, value-added and output in millions of 2019 dollars)**

| | Employment | Earnings | Value added | Output |
|---------------------|------------|---------------|---------------|---------------|
| Direct Effect | 426 | \$31.4 | \$33.0 | \$68.2 |
| Indirect Effect | 84 | \$6.0 | \$10.0 | \$18.4 |
| Total Effect | 510 | \$37.4 | \$43.0 | \$86.6 |

In addition to the impacts on employment, earnings, output and state GDP cited in Table 2, direct spending of \$64.8 million generated a one-time increase of approximately \$1.176 million in taxes paid to the State during construction, including:

- \$685,000 in state personal income taxes paid by Rhode Island workers employed on the project, or whose jobs are indirectly attributable to the project;
- \$406,000 in state sales taxes paid on those workers' taxable household spending; and
- \$85,000 in state business taxes.

Most of the activity reflected in Table 2 occurred between the summer of 2018 and the fall of 2020. The estimated wage rates for construction jobs are shown below in Table 3, using the median hourly wage for these occupations in Rhode Island as of May 2016.

Table 3: Anticipated wages during construction

| Occupation | RI median hourly wage ³ |
|----------------------|------------------------------------|
| Architect | \$42.50 |
| Construction manager | \$50.86 |
| Carpenter | \$22.42 |
| Electrician | \$25.26 |
| Plumber | \$24.84 |
| Painter | \$18.69 |
| Laborer | \$18.68 |

Fringe benefits associated with these jobs were paid in accordance with industry norms, with the cost of such benefits generally ranging between 22 and 28 percent of wages. Workers who fill these jobs are expected to be drawn primarily from the Providence-Warwick RI-MA New England City and Town Area (NECTA).

³ Rhode Island Department of Labor and Training, Occupational Employment Statistics, 2016

Annual operations

As noted above, Cargill, Inc., the Company's operating partner, employs 475 full-time workers at the Company's North Kingstown facility, including managers, administrative and support staff, machine operators and other production workers, and shipping and receiving workers. As of 2023, these employees earn an average of \$50,985 annually, with a median annual wage of \$44,720.

Based on data provided by the Company, and using the IMPLAN input-output modeling system, Appleseed estimates that ongoing operations associated with full-time jobs the Company would be committed to creating and maintaining will directly and indirectly support:

- 718 jobs in Rhode Island;
- \$40.7 million in annual earnings (in 2023 dollars);
- \$239.8 million in statewide economic output; and
- An increase of \$51.1 million in Rhode Island's annual GDP.

These impacts are summarized below in Table 4.

Table 4: Direct, indirect and total annual impact of ongoing operations (employment in FTE; income, value-added and output in millions of 2023 dollars)

| | Jobs | Earnings | Value added | Output |
|------------------------|------------|---------------|---------------|----------------|
| Direct Effect | 475 | \$23.9 | \$24.8 | \$191.1 |
| Indirect Effect | 243 | \$16.8 | \$26.3 | 48.7 |
| Total Effect | 718 | \$40.7 | \$51.1 | \$239.8 |

In addition to the impacts on employment, earnings, output and state GDP cited above, the facility's ongoing operations account for an estimated increase of approximately \$1.431 million in annual state tax revenues, including:

- \$767,000 in state personal income taxes (in 2023 dollars) paid by workers newly employed by Cargill at the Company's North Kingstown facility, or by Rhode Island workers whose jobs are indirectly attributable to the facility's operations;
- \$567,000 in state sales taxes paid on those workers' taxable household spending; and
- \$97,000 in state business taxes.

Benefits

Cargill, Inc. provides a comprehensive package of employee benefits that include medical, dental and vision coverage; wellness programs; 401(k) and employee stock ownership plans; health care and wellness programs; life, long-term disability and accidental death and dismemberment insurance; tuition reimbursement and adoption assistance.

Hiring

Cargill, Inc. has its own internal recruiting operation, which it supplements as needed with assistance from temporary staffing organizations, placement agencies and professional recruiters.

Impact

The state fiscal impact of the requested tax credits and sales tax exemption is estimated to be approximately \$11.031 million in foregone state tax revenue. Direct and indirect economic and fiscal benefits of the proposed project include the estimated increase in annual state GDP of \$51.1 million in the second year of operation, the estimated associated job creation, and a gross increase of \$18.348 million in personal income, sales and business tax revenues (in 2023 dollars) during the initial construction period and the twelve-year commitment period. These benefits are detailed in the foregoing analysis.

In addition to the economic and tax revenue impacts cited above, the Company's North Kingstown facility benefits Rhode Island in other ways, including:

- Highlighting the state's attractiveness as a location for manufacturing, processing and distribution facilities serving the surrounding region
- Increasing local payments in lieu of taxes and tangible personal property tax revenues
- Company donations to local food banks and other community organizations

Beyond the fiscal impact noted above, there is no anticipated financial exposure to the state. Various features of the Rebuild Rhode Island program mitigate risks to the state. With this project in particular, the fact that the facility was completed and commenced operation several years ago strictly limits any potential risk to the state.

Various features of the Qualified Jobs Incentive program similarly mitigate risk to the state. The value of Qualified Jobs Incentive tax credits is determined on the basis of the number of people actually employed and the wages actually paid by the Company; and the Company is obligated to maintain the projected level of employment in Rhode Island through the twelve-year commitment period.

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EXHIBIT D

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE RHODE ISLAND COMMERCE CORPORATION**

October 23, 2023

(With Respect to the Extension of The Cadmus Group's Contract)

WHEREAS, in January, 2022, the Rhode Island Commerce Corporation's ("Corporation") Board of Directors ("Board") authorized the Corporation to engage The Cadmus Group, LLC ("Cadmus") to perform inspection services for renewable energy projects between January 1, 2023 and December 31, 2023 ("Initial Term"); and

WHEREAS, the Board received a recommendation from the Corporation's staff to extend the Initial Term an additional three months ("Extension Period").

NOW THEREFORE, the Corporation, acting by and through its Board of Directors, hereby resolves as follows:

Section 1: Any of the Chairperson, Vice Chairperson, Secretary of Commerce, President and COO, Chief Financial Officer and/or Chief Marketing Officer, acting singly, shall have the authority to negotiate and execute any and all documents or take any and all action in connection with extending the Initial Term of the contract with Cadmus by three months; provided, however, that Cadmus' hourly rate during the Extension Period shall be the same as it was during the Initial Term.

Section 2: This resolution shall take effect on passage.

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EXHIBIT E

**RHODE ISLAND COMMERCE CORPORATION
RESOLUTION AUTHORIZING THE ISSUANCE OF INNOVATION VOUCHERS
UNDER THE INNOVATION INITIATIVE ACT**

October 23, 2023

WHEREAS: The Rhode Island Commerce Corporation (the “Corporation”) was created and exists as a public corporation, governmental agency and public instrumentality of the State of Rhode Island and Providence Plantations (the “State”) under Chapter 64 of Title 42 of the General Laws of Rhode Island, as amended (the “Act”); and

WHEREAS: Chapter 64.28 of Title 42 of the General Laws of Rhode Island (the “Innovation Act”), as amended, authorizes the Corporation to award Innovation Vouchers for Small Businesses to receive technical or other assistance as set forth in Rule 6 of the Rules (defined below); and

WHEREAS: The Corporation promulgated rules and regulations (the “Rules”) governing the program established by the Innovation Act. Capitalized terms used herein but not defined shall have the meaning as set forth in the Rules; and

WHEREAS: The Corporation received applications from each company identified on Exhibit 1 annexed hereto (the “Recipients”) for awards of an Innovation Voucher (the “Voucher”); and

WHEREAS: The Board of Directors of the Corporation (the “Board”) received a presentation detailing the Voucher proposed to be granted to the applicant together with a recommendation from the staff of the Corporation to approve the award of Voucher to the Recipients in accordance with the Innovation Act and the Rules.

NOW, THEREFORE, acting by and through its Board, the Corporation hereby resolves as follows:

RESOLVED:

1. To accomplish the purposes of the Act and the Innovation Act, the Corporation approves the award of a Voucher to each Recipient in the amounts set forth in Exhibit 1.
2. The authorization provided herein is subject to the following conditions:
 - a. The execution of a Voucher Agreement between the Corporation and the Recipients meeting the requirements of the Innovation Act and the Rules in such form as one of the Authorized Officers (hereinafter defined) shall deem appropriate in the sole discretion of such Officer;
 - b. Verification by the Corporation of compliance with the Eligibility Requirements of Rule 7 of the Rules prior to issuance of a Voucher; and

- c. Such additional conditions as any of the Authorized Officers, acting singly, shall deem appropriate in the sole discretion of such Officer.
3. The Authorized Officers of the Corporation for purposes of this Resolution are the Chair, the Vice Chair, the Secretary of Commerce, the President & COO, the Chief Financial Officer or the Innovation Director (the “Authorized Officers”). Any one of the Authorized Officers of the Corporation, acting singly, is hereby authorized to execute, acknowledge and deliver and/or cause to be executed, acknowledged or delivered any documents necessary or appropriate to consummate the transactions authorized herein with such changes, insertions, additions, alterations and omissions as may be approved by any such Authorized Officers, and execution thereof by any of the Authorized Officers shall be conclusive as to the authority of such Authorized Officers to act on behalf of the Corporation. The Authorized Officers of the Corporation shall have no obligation to take any action with respect to the authorization granted hereunder and the Corporation shall in no way be obligated in any manner to the Recipients by virtue of having adopted this Resolution. The Secretary or the Assistant Secretary of the Corporation, and each, acting singly, is hereby authorized to affix a seal of the Corporation on any of the documents authorized herein and to attest to the same.
4. All covenants, stipulations, and obligations and agreements of the Corporation contained in this Resolution and the documents authorized herein shall be deemed to be covenants, stipulations, obligations and agreements of the Corporation to the full extent authorized and permitted by law and such covenants, stipulations, obligations and agreements shall be binding upon any board or party to which any powers and duties affecting such covenants, stipulations, obligations and agreements shall be transferred by and in accordance with the law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Corporation or the members thereof, by the provisions of this Resolution and the documents authorized herein shall be exercised and performed by the Corporation, or by such members, officers, board or body as may be required by law to exercise such powers and perform such duties.
5. From and after the execution and delivery of the documents hereinabove authorized, any one of the Authorized Officers, acting singly, are hereby authorized, empowered and directed to do any and all such acts and things and to execute and deliver any and all such documents, including, but not limited to, any and all amendments to the documents, certificates, instruments and agreements hereinabove authorized, as may be necessary or convenient in connection with the transaction authorized herein.
6. All acts of the Authorized Officers which are in conformity with the purposes and intents of this Resolution and the execution, delivery and approval and performance of such documents authorized hereby and all prior actions taken in connection herewith are, ratified, approved and confirmed.
7. This resolution shall take effect immediately upon adoption by the Board.

EXHIBIT 1

| <u>Applicant</u> | <u>Amount</u> |
|---------------------------------|---------------|
| Jaia Robotics, Inc. | \$74,535 |
| Kenesia, Inc. | \$75,000 |
| Nimbus Research Laboratory, LLC | \$74,876 |

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EXHIBIT F

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE RHODE ISLAND COMMERCE CORPORATION**

October 23, 2023

(With Respect to a Subgrant to the City of Woonsocket)

WHEREAS, the Rhode Island Commerce Corporation (“Corporation”) applied for (“Application”) and received \$300,000 in funding from the Federal Communications Commission (“FCC”) Affordable Connectivity Outreach Grant Program (“ACP”) to support outreach and awareness of the ACP (“Grant Purpose”);

WHEREAS, the Corporation’s Board of Directors (“Board”) authorized the establishment of a subgrant program (“Subgrant Program”) to support the Grant Purpose;

WHEREAS, the Corporation issued a request for proposals (“RFP”) for municipalities, nonprofits, and other public entities to carry out the Grant Purpose under the Subgrant Program;

WHEREAS, the City of Woonsocket (“Woonsocket”) responded to the RFP; and

WHEREAS, the Board has received a recommendation from the Corporation’s staff to authorize a subgrant under the Subgrant Program to Woonsocket to carry out the Grant Purpose.

NOW THEREFORE, the Corporation, acting by and through its Board, hereby resolves as follows:

Section 1: The Board hereby authorizes the Corporation to provide a subgrant to Woonsocket in an amount not to exceed \$18,000 to carry out the Grant Purpose; provided that such Grant Purposes is consistent with FCC requirements and all requirements relative to the expenditure of federal funding, including, but not limited to, 2 C.F.R. 200.

Section 2: Any of the Chairperson, Vice Chairperson, Secretary of Commerce, President and COO, Chief Financial Officer and/or Chief Marketing Officer, acting singly, shall have the authority to negotiate and execute any and all documents or take any and all action in connection with negotiating and executing a subgrant with Woonsocket consistent with this resolution.

Section 2: This resolution shall take effect on passage.

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EXHIBIT G

**AMENDMENT TO THE
RHODE ISLAND COMMERCE CORPORATION PENSION PLAN AND TRUST**

WHEREAS, Rhode Island Commerce Corporation and Quonset Development Corporation (collectively, the “Employer”) maintain the Rhode Island Commerce Corporation Pension Plan and Trust (the “Plan”) for the benefit of their employees, which Plan was originally effective as of December 18, 1975; and

WHEREAS, the Plan was thereafter amended from time to time, including a complete restatement effective as of July 1, 2019; and

WHEREAS, the Employer wishes to further amend the Plan;

NOW, THEREFORE, pursuant to the power reserved to the Employer in Article Ten of the Plan, the Plan is hereby amended as follows, effective October 31, 2023:

FIRST: Section 1.1 of the Plan is amended by the addition of the following new paragraph to the end thereof to read as follows:

“Notwithstanding the foregoing provisions of this Section 1.1, the Accrued Benefit of a Participant who is an Employee of Quonset Development Corporation shall not be increased after October 31, 2023.”

SECOND: Section 1.8 of the Plan is amended by the addition of the following new paragraph to the end thereof to read as follows:

“Notwithstanding the foregoing provisions of this Section 1.8, Compensation paid after October 31, 2023 shall not be taken into account for purposes of determining Compensation under the Plan for a Participant who is an Employee of Quonset Development Corporation.”

THIRD: Section 1.25 of the Plan is amended by the addition of the following new paragraph to the end thereof to read as follows:

“Notwithstanding the foregoing provisions of this Section 1.25, for purposes of determining the Accrued Benefit under the Plan of a Participant who is an Employee of Quonset Development Corporation, no credit shall be given for Years of Service after October 31, 2023.”

FOURTH: Section 4.1 of the Plan is amended by the addition of the following new paragraph to the end thereof to read as follows:

“Notwithstanding the foregoing provisions of this Section 4.1, the Accrued Benefit of a Participant who is an Employee of Quonset Development Corporation shall not be increased after October 31, 2023.”

FIFTH: Section 4.2 of the Plan is amended by the addition of the following new paragraph to the end thereof to read as follows:

“Notwithstanding the foregoing provisions of this Section 4.2, the Accrued Benefit of a Participant who is an Employee of Quonset Development Corporation shall not be increased after October 31, 2023.”

SIXTH: Section 4.3 of the Plan is amended by the addition of the following new paragraph to the end thereof to read as follows:

“Notwithstanding the foregoing provisions of this Section 4.3, the Accrued Benefit of a Participant who is an Employee of Quonset Development Corporation shall not be increased after October 31, 2023.”

SEVENTH: Section 4.4 of the Plan is amended by the addition of the following new paragraph to the end thereof to read as follows:

“Notwithstanding the foregoing provisions of this Section 4.4, the Accrued Benefit of a Participant who is an Employee of Quonset Development Corporation shall not be increased after October 31, 2023.”

IN WITNESS WHEREOF, the Employer, by their duly authorized officers, has caused this Amendment to be executed this _____ day of _____, 2023.

RHODE ISLAND COMMERCE CORPORATION

By: _____

QUONSET DEVELOPMENT CORPORATION

By: _____

RHODE ISLAND COMMERCE CORPORATION
WRITTEN CONSENT OF THE BOARD OF DIRECTORS

The undersigned, being members of the Board of Directors of Rhode Island Commerce Corporation (the “Employer”), hereby take the following action by written consent and agree to the following actions:

- That the accrual of benefits for employees of Quonset Development Corporation under the Rhode Island Commerce Corporation Pension Plan and Trust (the “Plan”) shall cease, effective October 31, 2023.
- That the Employer adopt the Amendment to the Plan to effect the cessation of benefit accruals for employees of Quonset Development Corporation, in the form presented, effective October 31, 2023.
- That the cessation of benefit accruals under the Plan for employees of Quonset Development Corporation, and the spinoff of the Quonset Development Corporation participants into a separate plan to be sponsored by Quonset Development Corporation, will not have any impact on the benefits of Rhode Island Commerce Corporation active, terminated and retired participants under the Plan.
- That the appropriate officers of the Employer are hereby authorized and directed to take such action as may be necessary, appropriate or advisable to effectuate the cessation of benefit accruals under the Plan for employees of Quonset Development Corporation, the spinoff of the Quonset Development Corporation participants under the Plan into a separate plan to be sponsored by Quonset Development, and the termination of that separate plan by Quonset Development Corporation, including the execution of the Amendment and the making of subsequent amendments to the Plan that may be required or that the officers deem necessary, appropriate or advisable.

Executed this ____ day of _____, 2023.

Director

Director

Director

OCTOBER 23, 2023 PUBLIC SESSION MEETING MINUTES

EXHIBIT H

Broadband Updates



Input from the Commerce Corporation Board will be needed prior to submission of Rhode Island's BEAD Initial Proposal

Broadband Funding Sources

Broadband Equity, Access, and Deployment (BEAD) Program

- Approximately **\$108.7M** in funding, primarily to be used **to ensure universal broadband service in Rhode Island**
- Funds must be used by 2028 (within 5 years of receiving funding)

Capital Projects Fund (CPF)

- **\$25M** of Rhode Island's CPF grant **allocated to match or augment BEAD funding**
- Funds to be allocated by December 31, 2024 and used by December 31, 2026

Digital Equity Act (DEA)

- Rhode Island awarded \$500k for planning in advance of receiving a DEA grant
- RI expected to receive Digital Equity Capacity Building Grant (amount to be announced)

ConnectRI Objectives

Expand fiber infrastructure in the Rhode Island

- Connect all Rhode Islanders with best-in-class, future-proof networks
- Fiber optic infrastructure provides high-speed internet that is high-bandwidth and low-latency
- The technology is future-ready, capable of supporting both current and emerging broadband demand

Eliminate cost as a barriers

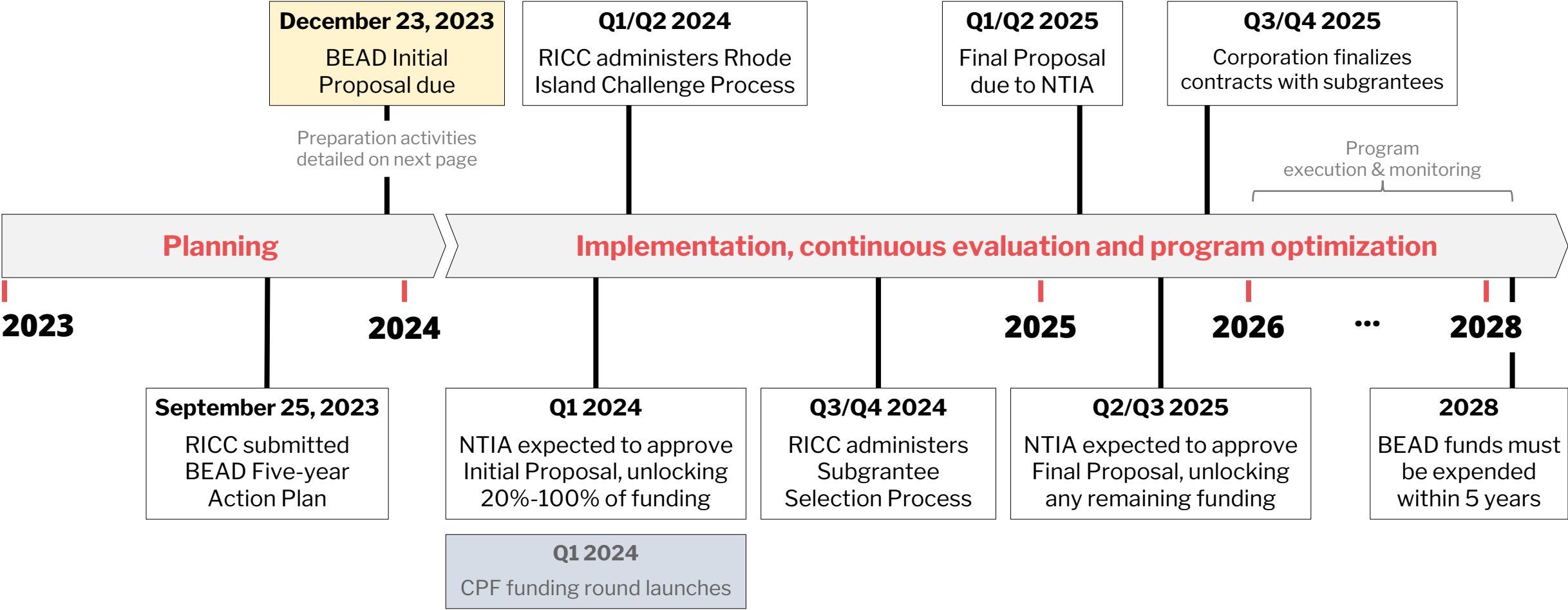
- Guarantee that cost is not a barrier for any Rhode Islander to access high-speed broadband service
- Ensure high-speed broadband is affordable in both the short- and long-term

Encourage & facilitate digital equity

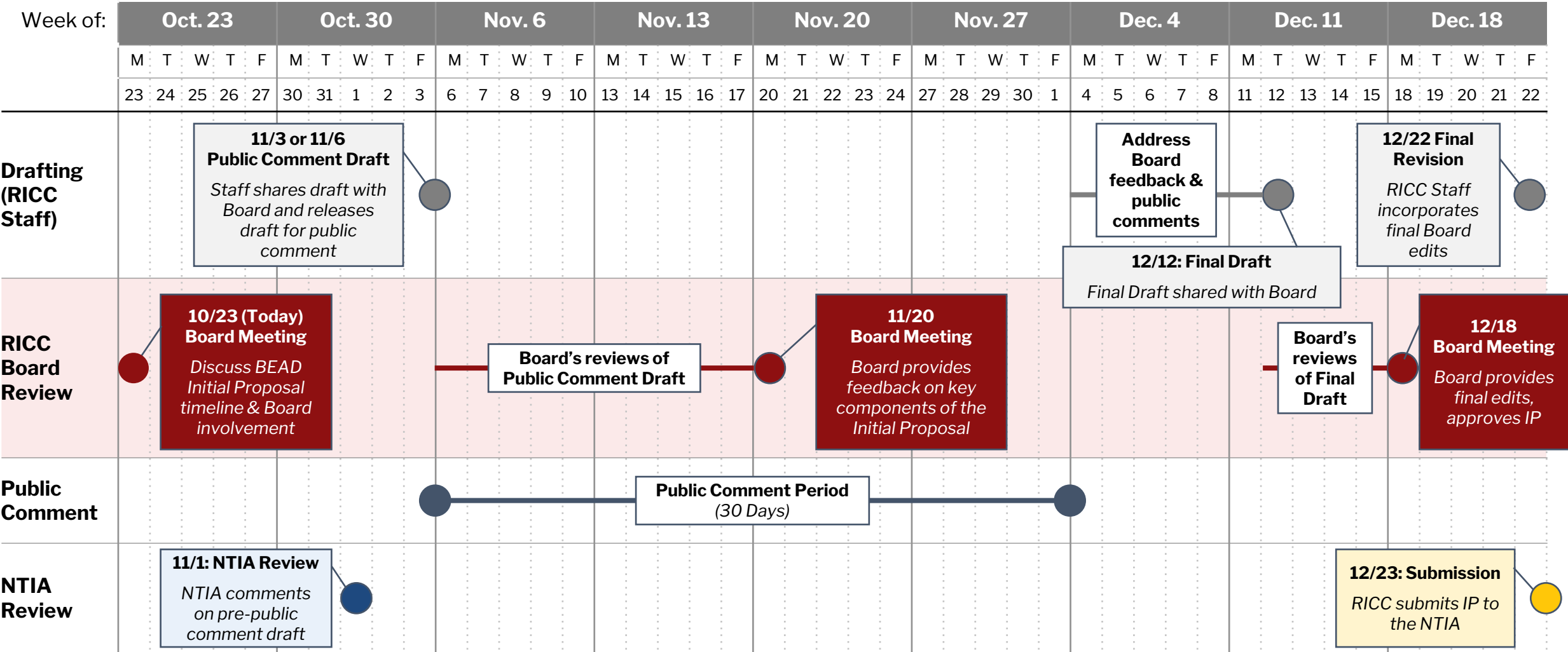
Foster an inclusive digital advancement ecosystem by:

- Cultivating strong implementation partners
- Meeting communities where they are
- Pacing & prioritizing impact
- Building & maintaining reliable data systems for decision making
- Empowering residents with essential digital skills, including literacy and safety

BEAD Milestones and Deadlines



BEAD Initial Proposal (IP) – Board Review Process



DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT I

Broadband Advisory Council

Minutes

November 14, 2023 at 2:00PM

Broadband Advisory Council,

315 Iron Horse Way, Suite 101, Providence, RI 02908

The members of the Broadband Advisory Council (the “Council”) met on November 14, in Public Session beginning at 2:00 PM, pursuant to the public notice of meeting, a copy of which is attached as *Appendix A*, as required by applicable Rhode Island law.

Council Members Present: Ernie Almonte, Rhonda Mitchell, Mark Preston, Gary Rebello, Brian Thorn, Deb Ruggiero

Council Members not present: William Fazioli, Armand Randolph, Lauren Slocum.

Public attendees included: Stuart Freiman (NTIA); Doug Alexander (OSHEAN); Ryan Holt (Capitol City Group); Peter O’Keefe; Stephen Iannazzi (Cox); Theodore Pietz (Aquidneck Light); Lisa Carnevale, Debra Medeiros Overly, Kate Felder, Olivia Read (RI Commerce)

Call to Order

With a quorum, Chair Brian Thorn called the meeting to order at 2:04PM.

The Powerpoint presentation used to guide the meeting is included as *Appendix B*.

Consideration of Approval of Minutes

Chair Thorn began the meeting with a request to review, discuss, and approve the minutes from the September 2023 Council meeting.

VOTED: *Mr. Almonte moved to approve the minutes of the September 23, Council Meeting. Ms. Mitchell seconded. The Council voted unanimously to approve the minutes.*

Opening Remarks

Chair Thorn welcomed the Council members and invited all attendees to introduce themselves.

Update on the Ocean Tech Hub Designation for Rhode Island and Southeastern Massachusetts.

Chair Thorn introduced Lisa Carnevale, Vice President of Innovation Initiatives at RI Commerce, and invited her to share an update on the state’s new designation as an Ocean Tech Hub. Ms. Carnevale shared that RI was one (1) of 31 applicants that received a hub designation; one (1) of only 11 that received a strategy grant; and the sole applicant for – and recipient of – an explicitly ocean-technology-focused designation. Ms. Carnevale went on to explain the regional nature of the Tech Hubs and that our application was joint with Southeastern Massachusetts. She explained that the designation provides the opportunity to apply for funds of between \$40m-\$70m for three (3) to eight (8) projects. This grant application is due at the end of February 2024. Ms. Carnevale provided a brief overview of ocean technology, noting that it is a cutting-edge and rapidly expanding technology sector. Ms. Carnevale indicated that this technology also supports and expands knowledge related to climate change. Ms. Carnevale shared that the goal is to encourage individuals and companies to locate to Rhode Island because of the associated employment opportunities.

Deb Ruggiero stated that it was a commendable project and represented the future. She noted that advances in ocean technology will require robust broadband speeds, download and upload, along RI's coastline, including on Aquidneck Island.

Overview of Broadband Equity, Access, and Deployment (BEAD) Draft Initial Proposal, public comment period, and timeline.

Chair Thorn provided an overview of the status and next steps in the BEAD process. Chair Thorn shared that the BEAD Initial Proposal was posted for public comment on the website on November 3rd and will be open for feedback through December 4th. He stated that all comments need to be submitted through the website RICommerce.com/broadband; this includes comments from the Broadband Advisory Council or its members. Chair Thorn indicated that today's meeting was intended as a technical overview. He stated that the official proposal submission deadline is December 27th, although Rhode Island has internally set the due date for December 23rd.

Ms. Ruggiero asked if it was possible to submit prior to December 23rd and Chair Thorn stated that it was not feasible to complete the process sooner as it needs to be approved by the RI Commerce Board, which meets on December 18th.

Chair Thorn shared the goals for ConnectRI are accessibility, affordability, and equity. He stated that ConnectRI is prioritizing end-to-end fiber for the following reasons: 1) legal requirement of the NTIA's Notice of Funding Opportunity; 2) futureproofing technology; 3) greater reliability; 4) lower cost to operate; and 5) longer asset lifespan. Furthermore, data can travel faster via fiber than other technologies, making it the preferred material for deployment.

Chair Thorn reviewed the ConnectRI funding sources, which are as follows: 1) BEAD - \$108m; 2) Capital Projects Fund - \$25m; and 3) Digital Equity (amount TBD). Chair Thorn reiterated that the planning phase for BEAD is quickly drawing to its conclusion. He shared that the NTIA has already reviewed a draft Initial Proposal, but it is unknown when it will be officially approved. The BEAD funding will need to be expended by December 2028.

Chair Thorn stated Rhode Island's BEAD deployment program align with NTIA's priorities for deployment, which are as follows: 1) Unserved broadband serviceable locations (BSLs); 2) Underserved BSLs; and 3) Community Anchor Institutions (CAIs). Chair Thorn shared that RI can define CAIs and is taking a broad approach to be as inclusive as possible. If there are any funds remaining after deployment, non-deployment (e.g. digital equity) activities would be eligible for funding.

Ms. Ruggiero stated that the state needs a vision for the future to ensure that the state remains competitive.

Chair Thorn stated that Rhode Island is engaging in robust stakeholder engagement and conducting speed tests to gain a full understanding of statewide needs and to ensure the most accurate broadband map for the state, further improving upon the FCC's current National Broadband Map (NBM).

Mr. Preston asked how speed tests were being performed and measured. Chair Thorn explained that a vendor, Ookla, was conducting speed tests on behalf of RI Commerce, and that RI Commerce was also encouraging RI households to take a broadband speed test and survey. Chair Thorn stated that RI Commerce believes that our methodology is sound, but that the challenge process will need to be completed for confirmation. Ms. Ruggiero stated that it was critical that we do this right, as there will

not be funding for broadband deployment available post-BEAD and Rhode Island needs to competitively position itself to continue long-term broadband access.

Challenge Process Overview

Chair Thorn provided the draft timeline for the BEAD Challenge process, which is as follows: 1) Pre-Challenge; 2) Challenge (30 days); 3) Rebuttal (30 days); and 4) Determination (30 days). Chair Thorn explained that individuals are not eligible challengers; rather, eligible challengers include internet service providers, local and tribal governments, and non-profit organizations. Chair Thorn added that municipalities can serve as conveners, bringing together individuals within their communities to submit challenges.

Ms. Ruggiero asked how RI Commerce was communicating the challenge process to the municipalities, as many municipalities may lack the staff capacity and IT expertise to collate the information. Chair Thorn acknowledged the validity of that concern. He added that RI Commerce is designing the challenge process to minimize the administrative burden on municipalities.

Mr. Preston requested clarification on the 30-day comment process. Chair Thorn stated that it was an NTIA-requested timeframe adopted by many other states.

Discussion pertaining to BEAD Draft Initial Proposal

Chair Thorn reviewed eligible BEAD grantees, the subgrantee selection process and the scoring criteria. Chair Thorn stated that 75% of the selection criteria is mandated by NTIA, with 25% determined by the state.

Chair Thorn briefly addressed non-deployment activities, sharing that these would be funded after deployment is completed. Chair Thorn does not anticipate that non-deployment activities will be a significant portion of the grant program.

Mr. Almonte asked if there were any aspects of the BEAD Initial Proposal that required a vote by the BAC. Chair Thorn responded there were not. However, he asked the BAC if they would be open to writing and signing a letter of support that approved the outlined approach. Ms. Ruggiero stated that one letter signed by everyone would be beneficial. Mr. Almonte agreed with this statement.

Ms. Ruggiero volunteered to write a first draft; Mr. Almonte and Mr. Preston would be the next reviewers with a goal of sharing it with the group for feedback by December 3rd. Members of the council discussed the benefits of aligning the timing of the letter with the December board meeting as opposed to the public comment timeline.

Report-back on Digital Inclusion Week

Ms. Felder shared that Digital Equity working group was very involved in the planning and implementation of the week's activities; there were many events that were well attended. Translation services were available at many activities to maximize impact and participation. Ms. Felder stated that both Governor McKee and Secretary Tanner created and shared videos outlining the importance of digital literacy.

Ms. Felder also shared an update on the statewide digital equity event that RI Commerce hosted on November 9th. Members of the Digital Equity Working Group served as facilitators and the event focused on collecting specific data points needed to complete the state's digital equity plan.

Participants included local activists, community-based agencies, and education and training organizations, among others.

Ms. Felder shared that the impact of the state’s outreach efforts is an ACP adoption rate of 45%, surpassing the national average of 40%. Ms. Felder stated that there are still funds remaining for ACP outreach grants to support even more Rhode Islander’s enrolling in this important program.

Adjournment

Ms. Ruggiero motioned to adjourn and Mr. Rebello seconded. The meeting was adjourned by unanimous consent at 3:05PM.

Brian Thorn, Chair and Secretary

DRAFT

APPENDIX A

DRAFT

**STATEWIDE BROADBAND ADVISORY COUNCIL
PUBLIC NOTICE OF MEETING**

A meeting of the Statewide Broadband Advisory Council (“Council”) will be held on **November 14, 2023** beginning at **2:00 p.m.** at the offices of the Rhode Island Commerce Corporation, 315 Iron Horse Way, #101, Providence, RI 02908.

The meeting will be held for the following purposes:

1. Approval of September meeting minutes.
2. Update on the Ocean Tech Hub Designation for Rhode Island and Southeastern Massachusetts.
3. Overview of Broadband Equity, Access, and Deployment (BEAD) Draft Initial Proposal, public comment period, and timeline.
4. Discussion pertaining to BEAD Draft Initial Proposal.
5. Report-back on Digital Inclusion Week.

This notice shall be posted at the office of the Council, at the State House, and by electronic filing with the Secretary of State’s Office.

The location is accessible to the handicapped. Those requiring interpreter services for the hearing impaired must notify the Council at 401-278-9100 forty-eight (48) hours in advance of the meeting. Also, for the hearing impaired, assisted listening devices are available onsite, without notice, at this location.

Dated: November 9, 2023

APPENDIX B

DRAFT



Rhode Island Broadband Advisory Council Meeting



November 14, 2023

**RHODE
ISLAND**
COMMERCE

Agenda

- **Approval of September meeting minutes**
- **Update on the Ocean Tech Hub Designation for RI and Southeastern MA**
- **Overview of Broadband Equity, Access, and Deployment (BEAD) Draft Initial Proposal, public comment period, and timeline**
- **Discussion pertaining to BEAD Draft Initial Proposal**
- **Report-back on Digital Inclusion Week**

Approval of September meeting minutes

Update on the Ocean Tech Hub Designation for RI and Southeastern MA

Overview of Broadband Equity, Access, and Deployment (BEAD) Draft Initial Proposal, public comment period, and timeline

ConnectRI Goals and Objectives

Accessibility

Expand fiber infrastructure in the Rhode Island

- **Connect all Rhode Islanders** with best-in-class, future-proof networks
- Provide high-speed internet with **fiber infrastructure** achieving at least 100/100 Mbps speeds (download/upload)
- Use technology that can support **both current and future broadband demand**

Affordability

Eliminate cost as a barrier

- **Eliminate cost as a barrier** for any Rhode Islander to access high-speed broadband service
- Ensure high-speed broadband is **affordable in both the short- and long-term**

Equity

Facilitate Digital Equity

Foster an inclusive digital advancement ecosystem by:

- Cultivating **implementation partners**
- **Meeting communities** where they are
- Pacing & **prioritizing impact**
- Building & maintaining reliable **data systems for decision making**
- **Empowering residents** with essential digital skills

Why does ConnectRI prioritize end-to-end fiber?

End-to-end fiber is legally required and has practical advantages

A legal requirement

The National Telecommunications and Information Administration (NTIA) requires the Corporation to prioritize federal funds allocated for network deployment to use end-to-end fiber optic infrastructure as much as possible.¹

Practical & technical advantages

Preferencing end-to-end fiber optic technology over alternatives results in the following advantages:

- “Future-proofed” infrastructure, with the capability to accommodate current and future broadband demand
- Greater reliability
- Lower cost to operate and maintain
- Longer lifespan

Source: 1) BEAD Notice of Funding Opportunity, p. 42

ConnectRI Funding Sources

Broadband Equity, Access, and Deployment (BEAD) Program

Today's Focus

- Approximately **\$108M** in funding, primary use is **to ensure universal broadband service in Rhode Island**
- Initial Proposal due to NTIA on December 23, 2023
- Funds must be used by 2028 (within 5 years of receiving funding)

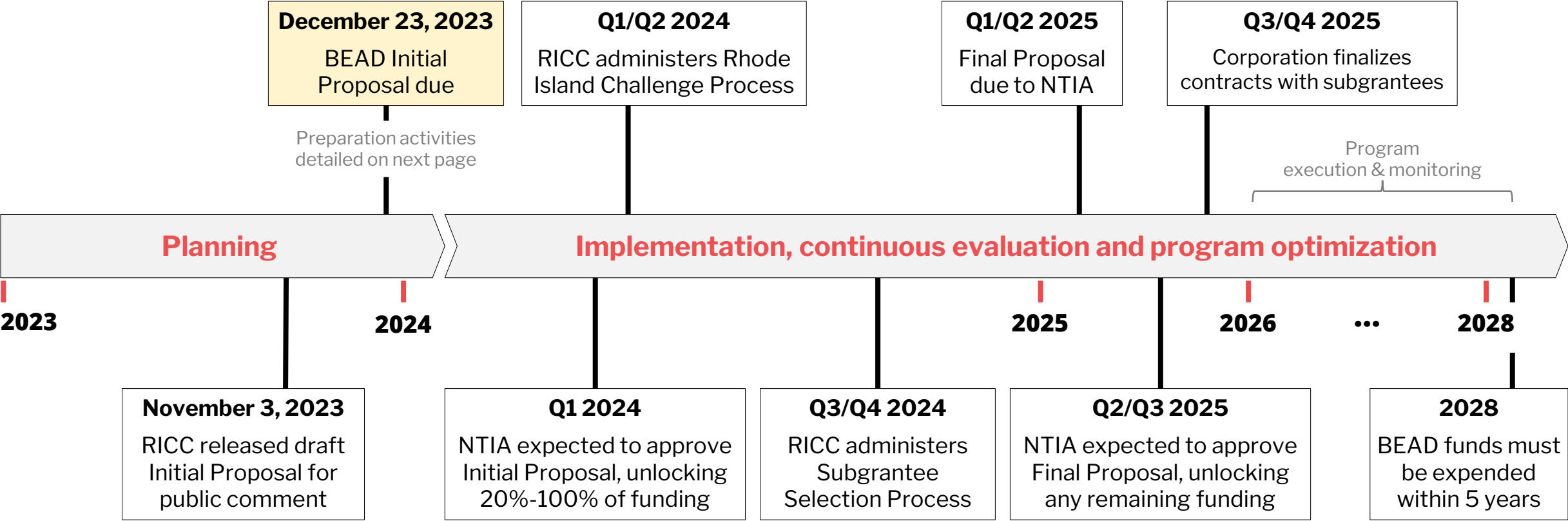
Capital Projects Fund (CPF)

- **\$25M** of Rhode Island's CPF grant (approx. \$112M+ in total, the majority of which will be used to construct or renovate multipurpose community facilities) **allocated to match or augment BEAD funding**
- Funds to be used by January 1, 2027

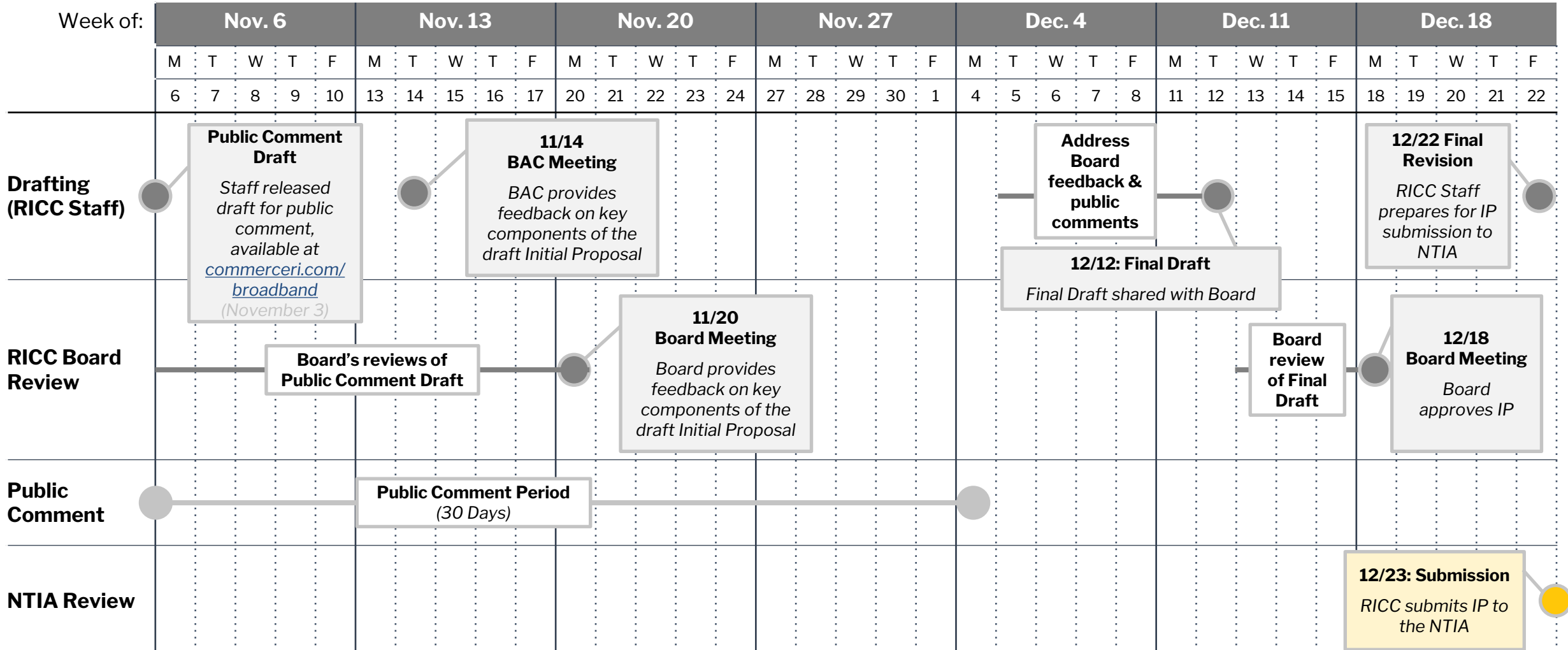
Digital Equity Act (DEA)

- Rhode Island awarded **\$500k for planning in advance of receiving a DEA grant**
- RI expected to receive Digital Equity Capacity Building Grant (amount to be announced)

BEAD Milestones and Deadlines



BEAD Initial Proposal Submission Process

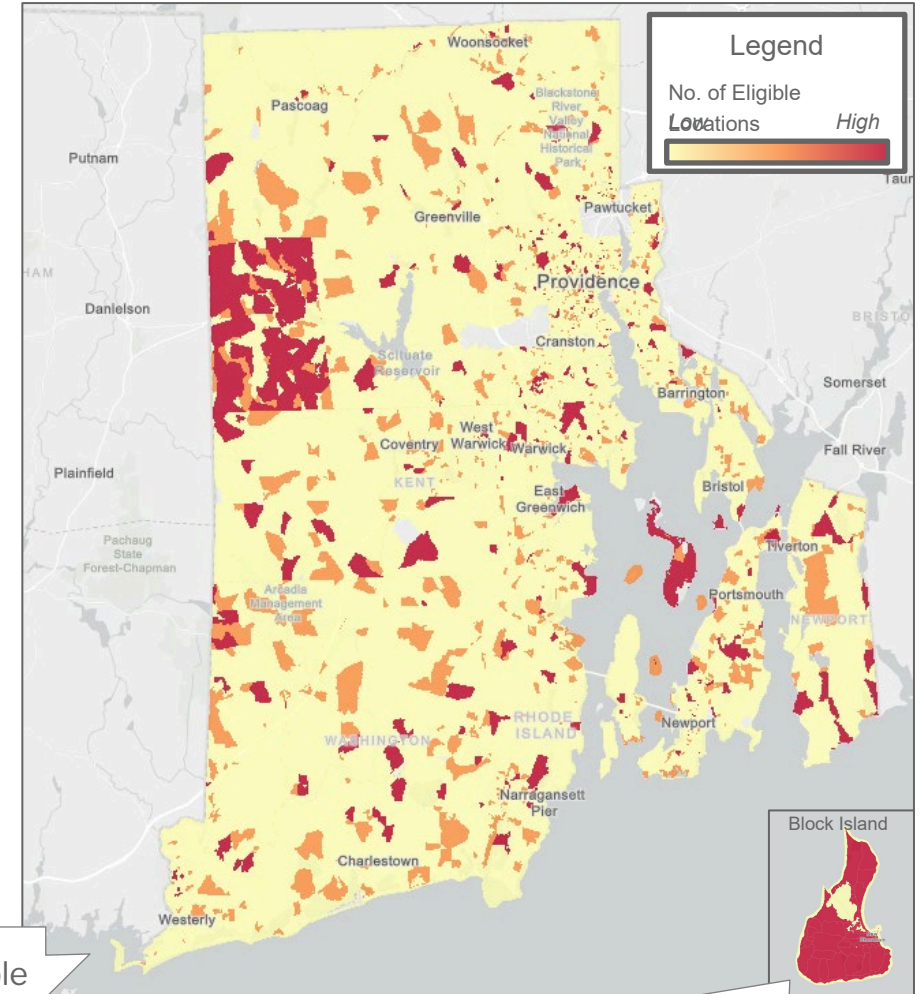


Eligible Locations

Locations eligible for deployment funds:

| Type | Location Type | Speed Threshold | Latency Threshold |
|---|--|---|-------------------|
| Unserviced | Residential or Business | < 25 Mbps / 3 Mbps | > 100ms |
| Underserved | Residential or Business | >= 25 Mbps / 3 Mbps < 100 Mbps / 20 Mbps | > 100ms |
| Community Anchor Institutions (CAIs) | Community institutions that help expand broadband access to the broader community, such as schools and libraries | < 1 Gbps / 1 Gbps | > 100ms |

The Corporation will continue to identify eligible locations and will publish an official list of eligible locations before the Challenge Process.



Block Island's Broadband BI coverage is not yet represented in the National Broadband Map, but will be incorporated in the next iteration

Community Anchor Institutions (CAIs)

CAIs are institutions that offer services and resources that help expand broadband access to vulnerable populations

CAIs identified by NTIA & the Corporation include:

1 Schools

K-12 public or private schools



2 Libraries

Public libraries and branches of the American Library Assoc.



3 Healthcare facilities

Health clinics/centers, hospitals, or medical providers



4 Public safety entities

Firehouses, emergency medical service, police stations



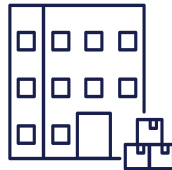
5 Higher education

Colleges and universities



6 Public housing facilities

Public housing agency, HUD-assisted housing or Tribal housing organization, shelters



7 Community support organizations

Organizations which facilitate greater use of broadband service by vulnerable populations such as:

- Community action agencies & non-profits
- Government buildings like town halls
- Correctional facilities
- Cultural centers
- Community centers
- Job training /workforce development centers
- Senior centers
- Transit centers

BEAD Funding Prioritization

Most BEAD funds will be used to deploy end-to-end fiber networks to connect all eligible locations. If BEAD funds remain after deployment, non-deployment initiatives may be funded.

Funds will be prioritized to deploy to the following eligible locations:



Highest Priority

Lowest Priority

Pre-Challenge Phase

To ensure the right locations receive funding, the Corporation plans to use the following approaches, pending NTIA approval, to identify eligible locations:

- A National Broadband Map:** The Corporation’s identification of unserved and underserved locations started with the latest version of the FCC’s National Broadband Map
- B DSL Modification:** Locations with qualifying broadband through DSL will be reclassified as “underserved”
- C Speed Test Modification:** Locations where rigorous speed test methodologies demonstrate that “served” locations receive service materially below 100 Mbps downstream and 20 Mbps upstream
- D Area Speed Test Reclassification:** All locations in a census block, in which 6 or more locations experience speeds below 100/20 Mbps speeds (download/upload) according to Ookla speed tests, will be reclassified

see next slide

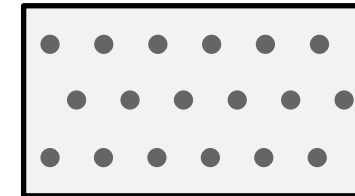
The Corporation will notify ISPs if their locations are classified differently than in the FCC National Broadband Map. Reclassified locations may be challenged during the Challenge Process.

Area Speed Test Reclassification

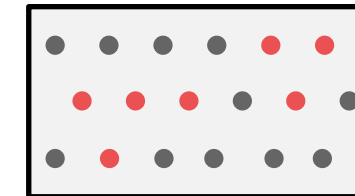
The Area Speed Test reclassification step will reclassify “served” locations in the National Broadband Map census blocks where speed tests demonstrate a lack of reliable high-speed broadband service

- The Corporation will use **Ookla speed tests** (conducted over a 12-month period) to determine experienced speeds
- All locations in a census block will be reclassified as **unserved** if:
 - 6 locations or more experience slow speeds (<25 Mbps / 3 Mbps), and
 - Less than 80% of a census block’s locations experience >80% of qualifying speeds (20 Mbps / 2.4 Mbps)
- All locations in a census block will be reclassified as **underserved** if:
 - 6 locations or more experience slow speeds (<100 Mbps / 20 Mbps, but >25/3 Mbps) and
 - Less than 80% of a census block’s locations experience >80% of qualifying speeds (80 Mbps / 16 Mbps)

Example Area Reclassification



FCC National Broadband Map marks all locations in a census block as served



Ookla speed tests show more than 6 locations in the census block experience <25/3 Mbps speeds



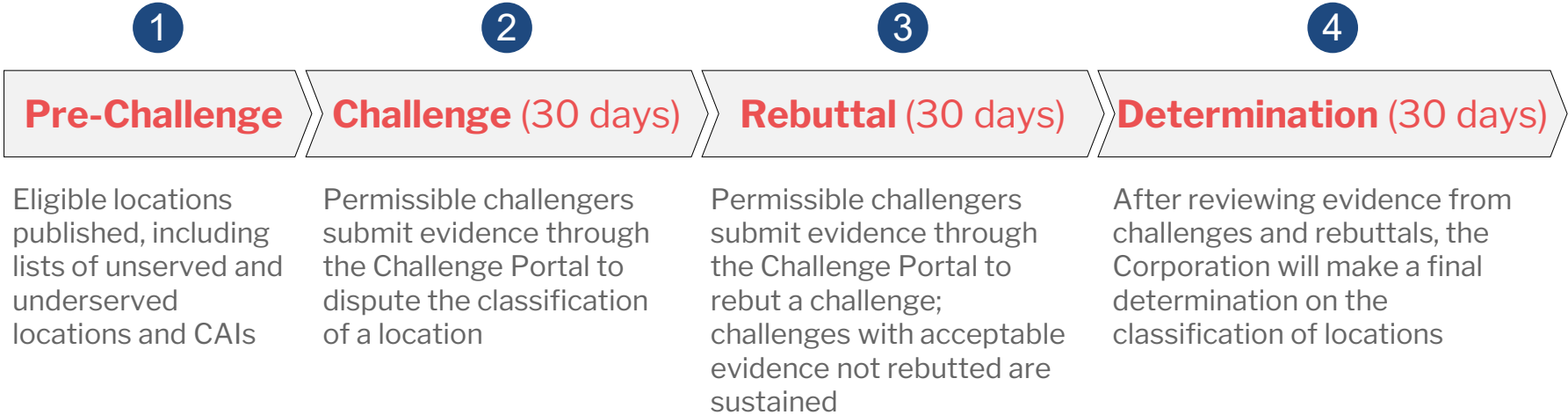
All locations in the census block are reclassified as “unserved”

Challenge Process

The Challenge Process allows Permissible Challengers to dispute the eligible locations identified by the Corporation

- Permissible Challengers must submit evidence through the Challenge Portal
- Challenges require evidence (e.g., speed tests to prove slower-than-reported speeds)

Challenge Process Phases



Permissible Challengers

- Internet Service Providers
- Local and tribal governments
- Non-profits

Individuals may not submit challenges, but organizations can submit on their behalf.

BEAD-Eligible Subgrantees

Any entity or group of entities with high-level qualifications to deploy broadband infrastructure or to administer a non-deployment initiative may submit a proposal

Types of Subgrantees

- Internet Service Providers (ISPs)
- Open Access Networks (OANs)
- Municipalities or government entities, including tribal governments
- Community anchor organizations (CAIs) like universities
- Non-profits
- Public or private utilities
- Public-private partnerships

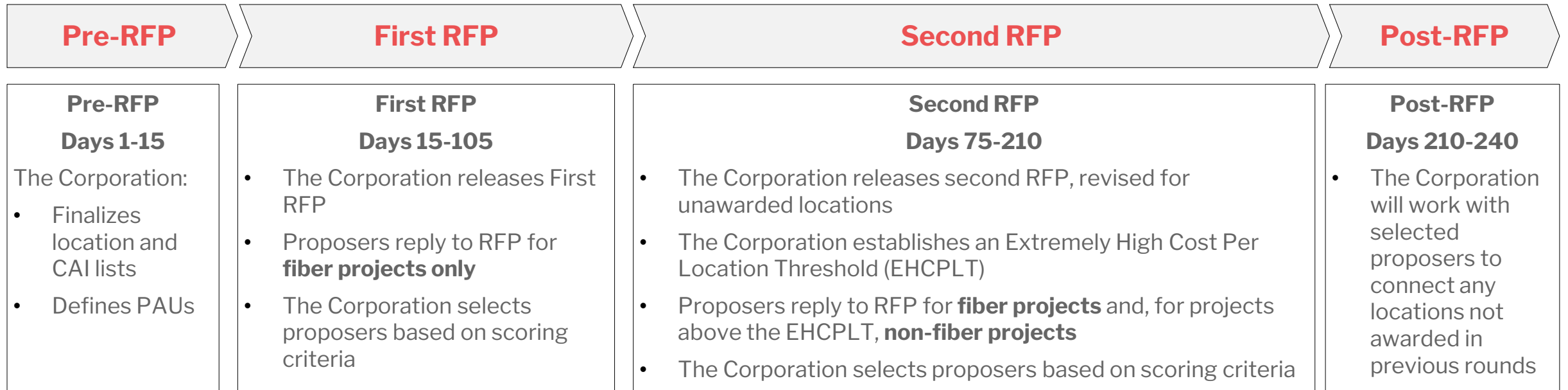
Qualifications

- In the Subgrantee Selection Process, proposers must demonstrate the operational, technical, financial and managerial qualification of one or more of the entities submitting the proposal
- New entrants to the broadband market may provide evidence demonstrating sufficient operational capabilities to deploy broadband
- Non-deployment projects will require similar qualifications depending on the RFP

Subgrantee Selection Process and Timeline

There will be 2 rounds of Subgrantee Selection: The first RFP will award project area units to fiber projects; the second will award remaining project area units to both fiber and non-fiber projects

After the Challenge Process, the Corporation will define groups of eligible locations in project area units (PAUs), for which proposers will submit proposals; a proposer must build to all locations within a PAU.



Subgrantee Selection Criteria

| Scoring Criteria | Maximum Points | | Details |
|---|----------------|---------------------|--|
| | Fiber Projects | Non-Fiber Projects* | |
| Affordability | 35 pts. | 35 pts. | <ul style="list-style-type: none"> Lowest price to the consumer will get max points All proposers must accept participate in ACP |
| Minimal BEAD Outlay | 30 pts. | 30 pts. | <ul style="list-style-type: none"> A function of the project's costs and the proposer's match, which must be >25% of project costs |
| Fair Labor Standards | 10 pts. | 10 pts. | <ul style="list-style-type: none"> Demonstrated compliance with and commitment to fair labor practices |
| Equitable Workforce Development & Job Quality | 6 pts. | 6 pts. | <ul style="list-style-type: none"> The commitment to develop a diverse workforce in Rhode Island's communities Minority Business Enterprise participation will earn extra points |
| Open Access | 6 pts. | 6 pts. | <ul style="list-style-type: none"> Proposers' provision of wholesale open access to last-mile broadband service providers |
| Local and Tribal Coordination | 6 pts. | 6 pts. | <ul style="list-style-type: none"> Demonstrated partnerships with nonprofits, community organization, local and/or tribal governments |
| Speed to Deployment | 4 pts. | 4 pts. | <ul style="list-style-type: none"> Completion time must be less than 48 months; faster deployments will earn more points |
| Network Resilience | 3 pts. | n/a | <ul style="list-style-type: none"> For fiber projects, demonstration of measures to ensure network resilience like redundancy, security |
| Speed of Network and Other Capabilities | n/a | 3 pts. | <ul style="list-style-type: none"> For non-fiber projects, proposed technologies are evaluated on technical capabilities like speed, latency, and reliability |

*For EHCPLT locations only

Requirements of BEAD Subgrantees

Rhode Island’s BEAD program will require and help Subgrantees to operate under the following principles:

- Fair Labor Standards & Employment Practices**
 - Subgrantees must comply with federal labor and employment laws
 - Subgrantees must disclose past labor violations
 - Subgrantees must provide examples of contractor/subcontractor evaluation with respect to employment law
 - Subgrantees must provide labor and employment plans including wage scale timelines, payment practices and implementation of workplace safety protocols
- Workforce Development**
 - Employees must be properly credentialed
 - Subgrantees are encouraged to utilize statewide and federal government agencies, initiatives and resources, liaise with unions and workers’ organizations, and offer job training or apprenticeships to prospective talent
- Diversity and Inclusion**
 - The Corporation will provide ongoing support to reach qualified MBE/WBE firms through liaising with relevant government and nonprofit entities and leveraging job boards, training programs and other resources
- Cost Efficiency**
 - Proposers will be rewarded for creating cost efficiencies in their build plans during the selection process
 - The Corporation will liaise with relevant state and local entities to ease build progress for subgrantees, such as streamlining permitting processes and using existing infrastructure
- Climate Risk Mitigation**
 - Proposers must address climate risks present in their proposed project areas in their proposed build plans
 - Subgrantees must commit to ongoing service of BEAD-funded projects for 20 years despite climate related risks

Non-Deployment Activities

In the event BEAD funds remain after all unserved, underserved, and CAI locations are awarded, the Corporation will pursue various non-deployment activities in line with the goals of the BEAD program

- Digital equity initiatives
 - Broadband sign-up assistance & technology support
 - Multilingual outreach to support adoption and digital literacy
 - Digital navigators
 - User training with respect to cybersecurity, privacy and other digital safety matters
 - Computer science, coding and cybersecurity education programs
 - Prisoner education to promote pre-release digital literacy, job skills, online job acquisition skills and other digital literacy benefits
 - Remote learning or telehealth services / facilities
- Stakeholder engagement
- Broadband subsidies

Discussion pertaining to BEAD Draft Initial Proposal

Report-back on Digital Inclusion Week

**RHODE
ISLAND**
COMMERCE

Digital Inclusion Week – October 2-6, 2023

Digital Inclusion Week is an annual week of awareness, recognition, and celebration. With support from the National Digital Inclusion Alliance, orgs across the country hosted special events, ran social media campaigns, and share their digital inclusion actions and progress with media.



At Connect RI, we have planned inclusive events for each day of the week. These events were thoughtfully planned to reach community members where they reside and socialize, involve community partners from a federal, state, and local level, and include people of all abilities at no cost.

DIW Week 2023

Shared videos of Governor McKee and Secretary Tanner about state broadband efforts and how they are important to the state's plan.

Basic digital skills workshop at American Job Centers in Providence and West Warwick

Hosted Digital Ecosystem Webinar – in person and being recorded at Providence Public Library on Empire Street

ACP enrollment events with Providence Housing Authority

Info Services Digital Navigation: 1-on-1 Tech Help and Digital Navigation at PPL in Workshop Shared Meeting Space B





DIW Week 2023

Basic digital skills workshops offered in English and Spanish at American Job Centers in Providence and West Warwick

AARP and OATS (Older Adults Technology Services) – ConnectRI held this listening session to poll seniors about their internet experience at home and will share ACP information.

West End Food Pantry – low income residents picked up 250 pre-registered boxes and additional free produce provided by Farm Fresh RI. Senior art classes taught by PVD employee. ACP info table. Chair yoga.

 **Cranston Public Library**
85 followers
1mo • 

Conceptos Básicos del Correo Electrónico
Viernes, Octubre 13 | 9:30 - 11:30 AM @ Cranston Senior Enrichment Center
[...see more](#)

[See translation](#)



Talleres gratuitos de habilidades digitales en el Cranston Senior Center.

Conceptos Básicos de Ciberseguridad

Viernes, Octubre 6 | 9:30 - 11:30 AM

@ Cranston Senior Enrichment Center

Statewide Digital Equity Event– 11/9/2023

Over forty community partners joined us at the Cranston Library – Hall Branch for ***I Scream for Digital Equity*** – a workshop created to gather additional data for the DEA Plan/ice cream social.

Members from our DE Working Group served as facilitators for working sessions. Stations and discussion groups were set up for feedback from local experts in the following fields: Broadband, Devices/Tech, Digital Skills, Online Privacy, Online Accessibility of Public Services.



Statewide Digital Equity Event – 11/9/2023



“What would education look like for RI if digital equity was achieved?”

“What existing assets are available for health needs?”



“What is needed to achieve this vision for essential services for covered populations?”



Statewide Digital Equity Event Community Activist – Amin Faquiry

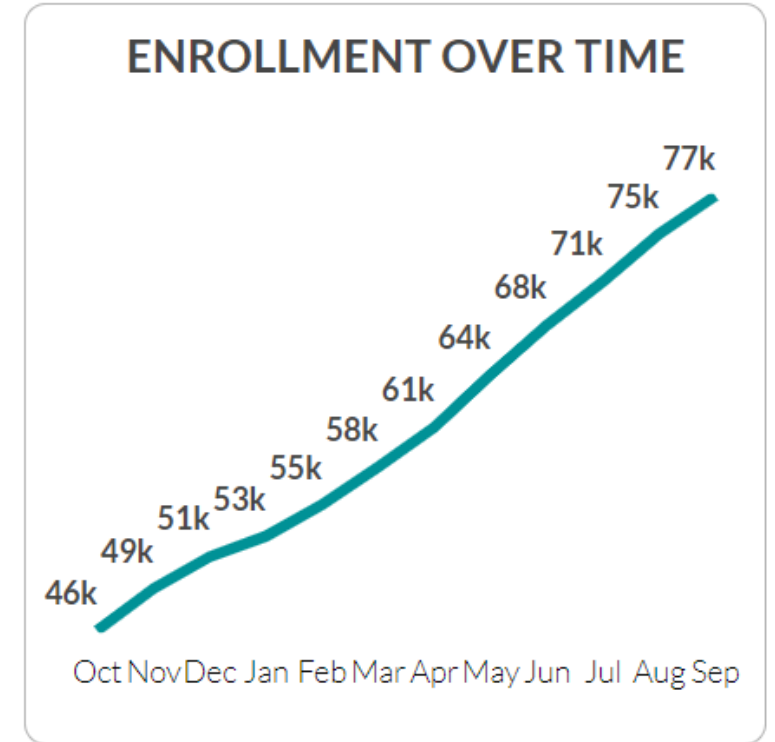
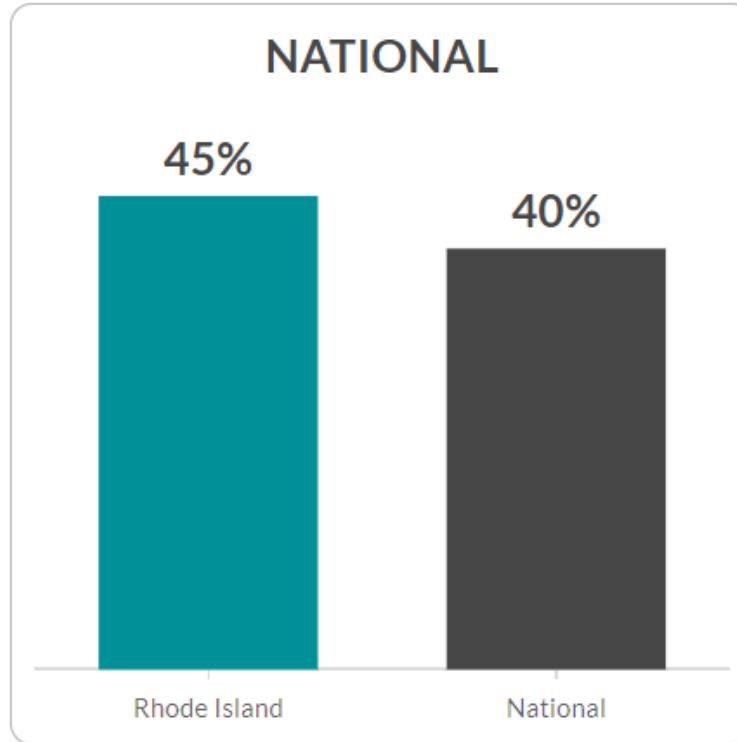
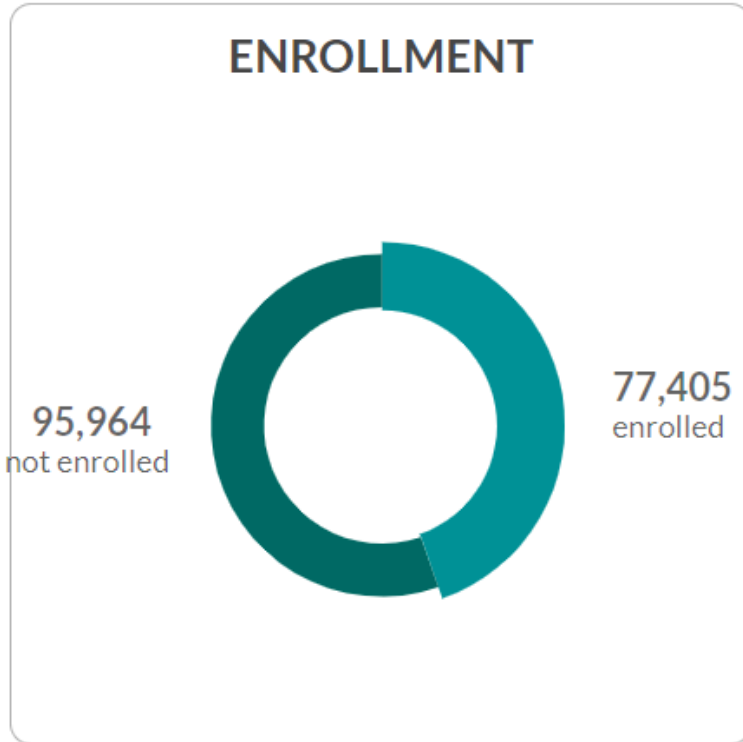
Amin Faquiry is Afghan refugee who worked as frontline interpreter for US Military for twelve years. Amin was given a special immigrant visa on behalf of the US government in Afghanistan through Dorcas International. Amin and his family now call Rhode Island home. The device they were given through Digitunity and the benefit of the Affordable Connectivity Program, communication with family in Afghanistan is possible.

Statewide Digital Equity Event Community Activist – Tommy Sheehan

Tommy Sheehan is a resident of Donovan Manor, a public housing unit in Newport. During COVID, Tommy found his neighbors being unable to do homework or talk to their families because they did not have an internet connection. With the help of his community, a Community Development Block Grant was awarded to provide fixed wireless broadband to 1200 residents. Thanks to Tommy's leadership and support from local this can now be used as a model for other states.



ACP Adoption Update



Latest data from EducationSuperHighways' website. 69K left in ACP Outreach Grant. East Bay CAP, City of Cranston, City of Woonsocket have applied.

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT J



UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899-1650

May 6, 2024

Justin Medeiros
Chief Financial Officer
Rhode Island Commerce Corporation
315 Iron Horse Way, Suite 101
Providence, RI 20908-5625

Subject: Approval of Initial Proposal Vol. 1
Award Number/FAIN: 44-20-B072
Admin POC: Kaleena Harrington
Grants Specialist: Cynthia Romanski
Program Officer: Stuart Freiman

Dear Justin Medeiros,

Volume one of your entity's initial proposal, submitted on December 22, 2023, including any revisions during the review, has been approved by the Assistant Secretary for NTIA. This includes approval of the challenge process proposed in volume one.

This approval only applies to volume one and does not constitute an approval of your entity's volume two submission or initial proposal funding request, if submitted. Therefore, no additional funding is authorized by this approval, nor is your entity authorized to begin executing activities proposed in volume two or the initial proposal funding request (IPFR). Those activities and/or additional funding will be authorized once review of those parts of your initial proposal and the IPFR are deemed complete and approved by NTIA and NIST.

It is your entity's responsibility to execute the approved challenge process consistent with your volume one submission and revisions that took place during the review of that submission.

Please retain a copy of this letter in your official award file.

Melissa Abdullah
Grants Officer

cc: NIST Grants Management Information System, NTIA Program Staff

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT K

Broadband Advisory Council
Public Session Meeting Minutes
May 14, 2024

315 Iron Horse Way, Suite 101, Providence, RI 02908

The members of the Broadband Advisory Council (the “Council”) met on May 14, 2024 in Public Session beginning at 2:00 p.m., pursuant to the public notice of meeting, a copy of which is attached as *Exhibit A*, as required by applicable Rhode Island law.

Council Members Present: Ernie Almonte, William Fazioli, Rhonda Mitchell, Armand Rudolph, Deb Ruggiero, Lauren Slocum, and Brian Thorn.

Council Members not present: Mark Preston and Gary Rebelo.

Public attendees included: Stuart Freiman (NTIA); Stephen Iannazzi (Cox); Theodore Pietz (Aquidneck Light); and Daniela Fairchild, Debra Medeiros Overly, Kate Felder, and Olivia Read (RI Commerce)

1. **Call to Order.**

With a quorum, Chair Brian Thorn called the meeting to order at 2:01 p.m. The PowerPoint presentation used to guide the meeting is included as *Appendix B*.

2. **Consideration of Approval of Minutes.**

Chair Thorn began the meeting with a request to review, discuss, and approve the minutes from the November 2023 Council meeting. Upon motion duly made by Mr. Almonte and seconded by Ms. Ruggiero, the following vote was adopted:

VOTED: To approve the minutes of the meeting held in November 2023.

Voting in favor of the foregoing were: Ernie Almonte, William Fazioli, Rhonda Mitchell, Armand Rudolph, Deb Ruggiero, Lauren Slocum, and Brian Thorn.

Voting against the foregoing were: none.

3. **Overview of Broadband Equity, Access, and Deployment (BEAD) Timeline and BEAD Challenge Portal.**

Chair Thorn provided a status update on the BEAD timeline, stating that the planning phase has concluded and that the project is moving towards its implementation phase. Chair Thorn shared that Rhode Island received official approval from National Telecommunications and Information Administration (NTIA) of its Initial Proposal Volume I (IPV1) and that we are still waiting on approval for Initial Proposal Volume 2 (IPV2). Chair Thorn stated that with the approval of IPV1, Rhode Island can start the NTIA-required state-administered challenge process (“Challenge Process”).

Chair Thorn outlined the Challenge Process timeline required by NTIA, sharing that the state is currently in the pre-challenge phase, which includes incorporating reclassification changes in the Rhode Island Broadband Map, which will be used for the Challenge Process, based on the NTIA-approved methodology. Chair Thorn stated that the Challenge Portal timeline is prescribed by NTIA and requires a 90-day process, which includes 30 days for challenges, 30 days for rebuttals, and 30 days for determination. Chair Thorn stated that, pending any unanticipated issues, the anticipated start date for the Challenge Process to officially begin is May 29th. Chair Thorn added that the portal will open one week early for registration.

Chair Thorn shared that individuals are not eligible challengers; however, all residents are encouraged to use the map and provide information on their service issues. Chair Thorn stated that municipalities are being asked to take responsibility for submitting challenges on behalf of residents.

Ms. Ruggiero asked if many challenges were anticipated. In response, Chair Thorn responded that this was an unknown, however, based on feedback from other states that have started their Challenge Process, he anticipated robust participation from Internet Service providers (ISPs). Chair Thorn also stated that it is his understanding that participation from residents and municipalities has widely varied among states. To support participation, Chair Thorn stated that the ConnectRI Team has engaged in direct outreach to municipalities to make them aware that there needs to be at least one eligible location within their community to receive funding. To maximize awareness of the Challenge Process, Chair Thorn shared that the ConnectRI team was engaging in an outreach campaign that includes a webinar, marketing materials – including flyers that can be shared by the municipalities and hosting a Help Desk for anyone needing assistance in navigating the Challenge Portal. Chair Thorn also invited Committee Members to reach out to him if they had any outreach ideas and/or would like the ConnectRI team to host a Challenge Portal Demonstration in their community or in any other location.

Chair Thorn also shared that Providers would receive notification of challenges and would have the opportunity to rebut any challenges. The Rhode Island Commerce Corporation will serve as the adjudicators of the Challenges.

4. **Demonstration of RI Broadband Map and BEAD Challenge Portal.**

Chair Thorn provided a demonstration of the Challenge Portal. Chair Thorn stated that the current data in the Challenge Portal is the Federal Communications Commission (FCC) map, so this will be different at the time of the portal opening as a result of the NTIA reclassification process. Chair Thorn opened the portal and showed that there were instructions to make the interface more user-friendly, which was one of the ConnectRI team's goals for the Challenge Portal.

Chair Thorn demonstrated that once residents access the map, they can enter their address, which will take them to their location and list all current service providers. Chair Thorn stated that using the exact address is the easiest way to navigate the portal. Chair Thorn stated that there are several options for individuals to report service challenges, one of which is sharing speed issues. Chair Thorn stated that residents can take speed tests with the following possible outcomes:

1. If the speed test is at, or above, 100/20 mbps, the individual will not be able to submit a challenge.
2. If the speed test is below 100/20 mbps, it will be recorded in the portal; this test will need to be retaken for two additional consecutive days, per NTIA requirements. After the first test, an email will be triggered to remind residents to take the follow-up tests.

Chair Thorn stated that the window for submitting challenges, including via speed test, is May 29, 2024 – June 29, 2024. Ms. Ruggiero inquired about ISP ability to temporarily increase speeds during this timeframe. Chair Thorn responded that there is no provision in the RI Challenge Process to monitor this.

Chair Thorn responded to several questions related to the Challenge Portal logistics from Council members. Chair Thorn shared that the map is located at www.ri.broadbandnavigator.com and walked the Council through the individual log-in process. Chair Thorn stated that there is a 'box' for residents to check for their address, which will provide evidence of where the test was taken. Ms. Read, a member of the ConnectRI team, responded to a question related to inadvertent user error, stating that if an eligible challenger or community member incorrectly submits and issue that the ConnectRI team will receive notification of this error and will be able to provide help desk support. To provide clarification regarding Community Anchor Institutions (CAIs) submissions, Ms. Read stated that an individual affiliated with a CAI can take a test or submit a service issue on behalf of that organization.

Chair Thorn responded to concerns raised by the Council related to the burden placed upon municipalities in this process. Chair Thorn stated that municipalities will have greater access than individuals and navigated to this part of the Challenge Portal to share what would be available for them to review, which includes the information related to issues submitted by individual community members.

In response to Ms. Slocum's question related to the due diligence process, Chair Thorn stated that speed tests are just one of the options for eligible challengers and that there are other service issues that eligible challengers and residents can report, which will require evidentiary support. Chair Thorn added that municipalities would have access to these reports and would also be responsible for aggregating these service issues. Ms. Fairchild shared that the Broadband Serviceable Locations (BSLs) are for businesses, as well as residences.

In response to Ms. Ruggiero's question related to communicating with municipalities, Chair Thorn stated that outreach has been ongoing for the past several months and that he also presented at the Rhode Island League of Cities and Towns Annual Meeting. Ms. Read added that during meetings with the municipalities that she and Ms. Felder, a member of the ConnectRI team, are requesting that information be shared widely with residents. Ms. Read stated that she believes some municipalities are engaging in mini-marketing campaigns, which includes distributing flyers, posting on their websites and other 'boots on the ground' activities. Ms. Slocum stated that the ConnectRI team should let the Council know if there are any municipalities that are having difficulty reaching so that they can assist with making those connections. Chair Thorn recognized that the Challenge Portal could be burdensome for the towns. Chair Thorn stated that the goal of contracting with Connected Nation is to help municipalities review evidence and advance service issues through the approval process.

In response to Mr. Almonte's question related to supporting the Tribe, Chair Thorn stated that the Narragansett Tribe provided comments to IPVI, but he has not been successful in continuing that contact. Ms. Fairchild added that the Tribal Lands received money through another program and that this may address their needs. Mr. Almonte stated that he might be able to help in making a connection with the Narragansett Tribe. Chair Thorn stated that there is only one recognized tribe in Rhode Island – the Narragansett Tribe – and that per NTIA, states are only required to work with federally recognized tribes.

To conclude the demonstration, Chair Thorn showed that residents would receive a 'pop-up' that a submission was successful.

5. Update on Capital Projects Fund Timeline.

Chair Thorn shared the update on the Capital Projects Fund timeline. Chair Thorn stated that the Project Plan is currently with US Treasury and that once feedback is provided, the Corporation will be able to launch the competitive Request for Proposals process. Chair Thorn stated that it is anticipated that the funds will have final contracts by December 2024. In response to Ms. Ruggiero's question related to the 100/100 mbps requirement, Chair Thorn stated that UST went beyond the NTIA's minimum speed requirement of 100/20 mpbs, with a preference for fiber networks. Chair Thorn stated that the Corporation is on track to achieve its timeline.

6. Overview of the Digital Equity Strategic Plan and Timeline.

Chair Thorn shared that the Corporation's Digital Equity (DE) Plan was submitted to – and approved by – NTIA. Ms. Felder stated that prior to its submission, the DE Plan was posted for public comment, which resulted in significant amount of feedback, the majority of which was related to a desire for a continuation of the Affordable Connectivity Program. Chair Thorn stated that Rhode Island received an allocation of approximately \$4.5 million through DEA, which is less than what was anticipated. Chair Thorn stated that the ConnectRI Team is working on a plan to maximize the impact of the available funds for all state residents.

In response to Ms. Ruggiero's questions Ms. Felder stated that she believes funds will be well distributed throughout the state and that libraries will receive some of the funding. Ms. Felder and Chair Thorn also shared that it is potential that additional money will be made available by the NTIA, but that is not a guarantee and that a lot can change prior to another potential release of funds that would impact this plan. Chair Thorn also shared that the \$4.5 million was a formula amount and would not be reduced and could only increase.

7. Update on the Affordable Connectivity Program.

Chair Thorn shared that the Affordable Connectivity Program (ACP) was anticipated to end by the end of the month due to not being renewed by Congress. Chair Thorn stated that this was disappointing as it was one of the few broadband subsidy programs available to Rhode Islanders. In response to Ms. Ruggiero's question related to the impact on the households that would no longer receive this funding, Ms. Felder stated that it was the ISP's responsibility to share the program's discontinuation with families. To maximize awareness, Ms. Felder stated that she hosted a wind-down seminar for community partners so that they had the knowledge to support families through the disenrollment process. Ms. Felder stated that the Digital Equity Working Group also engaged in public awareness activities. Ms. Ruggiero expressed her concern related to the potential for adverse impact related to the 30-day timeline from notification to disenrollment. Chair Thorn stated that the ISPs have all the information related to subscribers; it's not information available to the ConnectRI Team. Ms. Felder stated that most subscribers were notified by the ISPs by February about the potential for the program's end in May. Ms. Felder stated that she has not heard from anyone directly – or through any networks – of individuals having concerns related to the process. Chair Thorn stated that the ConnectRI team would share information on any new affordability programs as they become available.

8. Adjournment.

Mr. Almonte motioned to adjourn and Ms. Ruggiero seconded. The meeting was adjourned by unanimous consent at 2:46PM.

Brian Thorn, Chair

Exhibit A: Public Notice of Meeting

STATEWIDE BROADBAND ADVISORY COUNCIL PUBLIC NOTICE OF MEETING

A meeting of the Statewide Broadband Advisory Council (“Council”) will be held on **May 14, 2024** beginning at **2:00 p.m.** at the offices of the Rhode Island Commerce Corporation, 315 Iron Horse Way, #101, Providence, RI 02908.

The meeting will be held for the following purposes:

1. To consider for approval meeting minutes.
2. To receive an overview of Broadband Equity, Access, and Deployment Timeline and BEAD Challenge Portal.
3. To receive a demonstration of RI Broadband Map and BEAD Challenge Portal.
4. To receive an update on Capital Projects Fund Timeline.
5. To receive an overview of the Digital Equity Strategic Plan and Timeline.
6. To receive an update on the Affordable Connectivity Program.

This notice shall be posted at the office of the Council, at the State House, and by electronic filing with the Secretary of State’s Office.

The location is accessible to the handicapped. Those requiring interpreter services for the hearing impaired must notify the Council at 401-278-9100 forty-eight (48) hours in advance of the meeting. Also, for the hearing impaired, assisted listening devices are available onsite, without notice, at this location.

Dated: May 10, 2024



Broadband Advisory Council Meeting



May 14, 2024

**RHODE
ISLAND**
COMMERCE

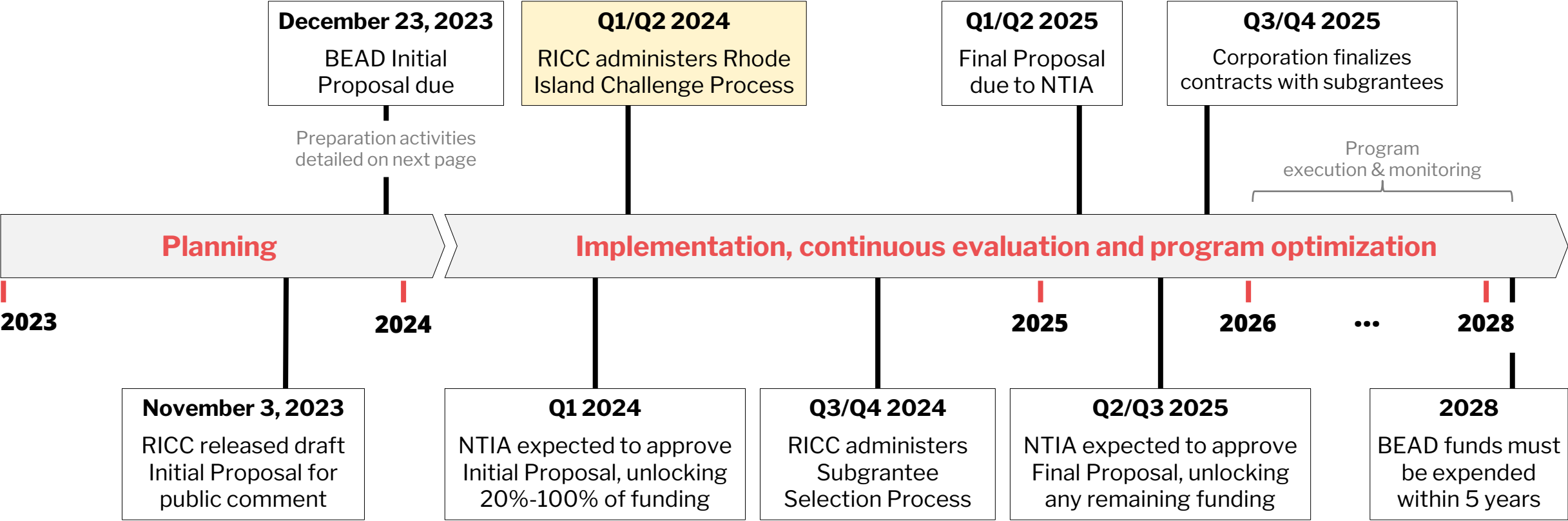
Agenda

- **Approval of November meeting minutes**
- **Overview of Broadband Equity, Access, and Deployment (BEAD) Timeline and BEAD Challenge Portal**
- **Demonstration of RI Broadband Map and BEAD Challenge Portal**
- **Update on Capital Projects Fund (CPF) Timeline**
- **Overview of the Digital Equity Plan and Timeline**
- **Update on the Affordable Connectivity Program (ACP)**

Approval of November meeting minutes

Overview of Broadband Equity, Access, and Deployment (BEAD) Timeline and BEAD Challenge Portal

BEAD Milestones and Deadlines

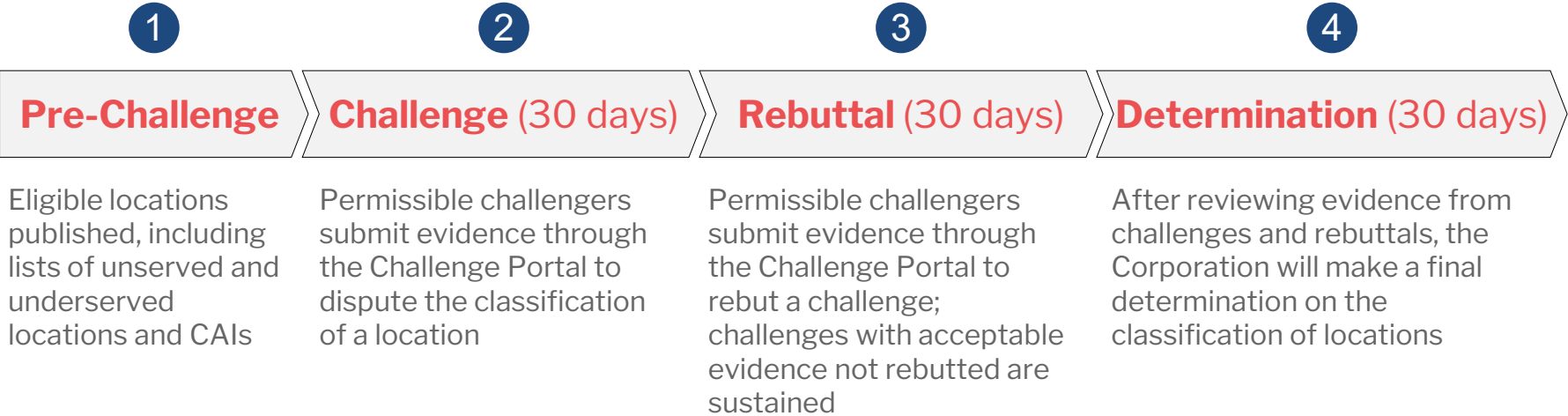


Challenge Process

The Challenge Process allows Permissible Challengers to dispute the eligible locations identified by the Corporation

- Permissible Challengers must submit evidence through the Challenge Portal
- Challenges require evidence (e.g., speed tests to prove slower-than-reported speeds)

Challenge Process Phases



Permissible Challengers

- Internet Service Providers
- Local and tribal governments
- Non-profits

Individuals may not submit challenges, but organizations can submit on their behalf.

Update on the Capital Projects Fund (CPF) Timeline

Capital Projects Fund Timeline

CPF: Run by US Treasury and spend must happen by 2026; May launch

- \$25M must be obligated by 2024
- ConnectRI: Plan is to run first round of grants using CPF funding
- CPF-funded investment must provide 100/100Mbps
- Rough estimate of impacted locations provided to UST: 7,500

Overview of the Digital Equity Plan and Timeline

Digital Equity Plan



- Public comment period was open for 30 days beginning in mid-January. The online portal offered English and Spanish translations.
- Several virtual and in-person events were held to encourage participation and our digital equity working group members helped spread the word.
- Over 460 public comments were received. Most comments requested support for ACP funding, support for RI libraries that offer digital skills training, and support for senior programs/low-cost options. All comments were reviewed, considered, and noted in the Plan.
- Submitted to NTIA for review on February 12. Approved on March 25.
- Notice of Funding Opportunity released on March 31. RI awarded \$4.5M to implement the strategies described in the Digital Equity Plan. The grant application is due May 28.

DEP Implementation Strategy

Summary of Strategies and Core Activities

| STRATEGY | CORE ACTIVITIES |
|--|---|
| <p>Strategy 1: Create and align opportunities for Rhode Islanders to obtain the digital skills necessary to achieve our state’s priorities.</p> | <ul style="list-style-type: none"> 1.1. Provide technical assistance for digital skills integration into workforce training, education, small business support, and Covered Population-serving systems statewide. 1.2. Invest in existing Covered Population-serving ecosystems to ensure all geographic regions (five counties) have access to comprehensive digital inclusion services. 1.3. Incorporate online privacy and cybersecurity skill-building in all digital inclusion services. 1.4. Explore new family-sustaining career opportunities for Covered Population residents to deliver digital inclusion services. |
| <p>Strategy 2: Increase access to affordable, high-quality, large-screen, internet-enabled devices and technical support for those devices that meets residents’ needs.</p> | <ul style="list-style-type: none"> 2.1. Identify and support partner organizations to provide devices, preparation and refurbishment, and help desk and technical support. 2.2. Deploy devices through Covered Population-serving organizations and networks. |

DEP Implementation Strategy

| | |
|--|---|
| <p>Strategy 3: Build partnerships and coordinate funding for affordable high-quality broadband service for Covered Populations.</p> | <p>3.1. Explore the use of broadband infrastructure funds and other state funding sources to provide a statewide affordable housing broadband program.</p> <p>3.2. Coordinate with RIDOC on efforts to bring connectivity to the state’s correctional facilities.</p> <p>3.3. Explore funding to sustain ACP or other affordable broadband options.</p> |
| <p>Strategy 4: Leverage digital equity ecosystem to support Rhode Island’s Ongoing Digital Government Initiatives.</p> | <p>4.1. Integrate online public resource assistance and feedback into digital inclusion services.</p> |
| <p>Strategy 5: Plan for long-term sustainability and continuity of services.</p> | <p>5.1. Sustain and expand the state’s Digital Equity Working Group, transforming it into a coalition to advance digital equity for Rhode Islanders.</p> <p>5.2. Leverage partnerships to integrate digital equity activities within existing regional, local, and statewide programs and initiatives.</p> <p>5.3. Evaluate digital equity programs for impact on state priorities.</p> |

Update on the Affordable Connectivity Program (ACP)

Update on the ACP

- The state of Rhode Island has an Affordable Connectivity Program enrollment rate of 48% - the highest percentage in New England. 83,514 of the 173,369 eligible RI households were enrolled as of March 2024.
- The ACP stopped accepting new applications and enrollments on February 8th. April was the last month enrolled households received the full benefit. Consumers had to be approved and enrolled with a service provider by February 7th to receive the ACP benefit. ConnectRI hosted a 'Wind Down' webinar on February 2, 2024.
- The Corporation was awarded \$300k intended to subaward to non-profits and municipalities in support of ACP enrollment and engaged in a competitive RFP Process to select subrecipients. Due to the wind down order, the Corporation was only able to expend an estimated 30 percent of these funds; the ACP grant was designated for the specific purpose of ACP outreach.

Why many in RI may lose their monthly internet subsidies | Opinion

Submitted opinion column: Deborah Ruggiero is president of DR Communications Group, a marketing communications firm.

COLUMNS Deborah Ruggiero Feb. 25, 2024



DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT L

The State of Rhode Island

Rhode Island Commerce Corporation



**RHODE
ISLAND**
COMMERCE

CONNECT RI

FAST & AFFORDABLE INTERNET FOR ALL

Broadband Equity, Access, and Deployment (BEAD) Program

Initial Proposal *Volume 1*

May 1, 2024

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Dear Fellow Rhode Islanders,

The Rhode Island Commerce Corporation (Corporation) is pleased to share Volume 1 of Rhode Island's Initial Proposal for the Broadband Equity, Access, and Deployment (BEAD) Program. Volume 1 articulates the Corporation's response to the third (3rd), fifth (5th), sixth (6th), and seventh (7th) requirements of the Initial Proposal, as articulated in the National Telecommunications and Information Administration's (NTIA) notice of funding opportunity. The Corporation will articulate its responses to NTIA's other Initial Proposal requirements in the forthcoming Volume 2.

The Corporation created this document as part of its ConnectRI program, which is responsible for allocating federal broadband dollars from BEAD, the Digital Equity Act (DEA, which NTIA administers), and the Capital Projects Fund (CPF, which the Department of the Treasury administers). ConnectRI aims to achieve universal service and work toward digital equity, driven by the following principles (informed by the state's needs and federal guidance): expand fiber infrastructure in the state, eliminate cost as a barrier, and foster an inclusive digital advancement ecosystem.

Should you have any questions, please contact ConnectRI via email at broadband@commerceri.com. For more information about the Corporation and ConnectRI, please visit <https://commerceri.com/broadband>.

Sincerely,



Brian Thorn
Director of Broadband Strategy
Rhode Island Commerce Corporation

Definitions and Abbreviations

| | |
|----------------|---|
| ARPA | American Rescue Plan Act |
| BDC | Broadband Data Collection |
| BEAD | Broadband Equity, Access, And Deployment |
| BSL | Broadband Serviceable Location |
| CAIs | Community Anchor Institution |
| CPF | Capital Projects Fund |
| DEA | Digital Equity Act |
| DSL | Digital Subscriber Line |
| FCC | Federal Communications Commission |
| HFC | Hybrid Fiber-Coaxial |
| HIFLD | Homeland Infrastructure Foundation-Level Data |
| HUD | Housing And Urban Development |
| IP | Internet Protocol |
| IRS | Internal Revenue Service |
| ISBE | Independent Small Business Enterprise |
| ISP | Internet Service Provider |
| MDU | Multi-Dwelling Unit |
| NCES ID | National Center for Education Statistics Identification |
| NCOA | National Council on Aging |

| | |
|--------------------|--|
| NHPD | National Housing Preservation Database |
| NTIA | National Telecommunications and Information Administration |
| OCR | Optical Character Recognition |
| ONT | Optical Network Terminal |
| PII | Personally Identifiable Information |
| PSAPs | Public Safety Answering Points |
| Corporation | Rhode Island Commerce Corporation |
| USAC | Universal Service Administrative Company |

1.1 Existing Broadband Funding (Requirement 3)

1.1.1 Attachment: Existing Broadband Funding

As a required attachment, submit the file identifying sources of funding, a brief description of the broadband deployment and other broadband-related activities, the total funding, the funding amount expended, and the remaining funding amount available. Eligible Entities may copy directly from their Five-Year Action Plans.

The State is set to receive a total of \$108.7 million from the National Telecommunications and Information Administration’s (NTIA) Broadband Equity, Access, and Deployment (BEAD) program for investments in last-mile broadband infrastructure to bring high-speed, reliable broadband service where it is needed the most. The State has also received a Digital Equity Planning Grant from the Digital Equity Act (DEA) to plan for digital equity efforts and will receive a Digital Equity Capacity Grant to implement digital equity and inclusion initiatives. These federal funding sources complement a \$25 million investment that the State has made to new broadband infrastructure from the Department of the Treasury’s Capital Projects Fund (CPF), part of the American Rescue Plan Act (ARPA). The Rhode Island Commerce Corporation (Corporation) will ensure throughout that funding provided by the BEAD program will not be duplicative to other funding sources.

Details of current broadband funding available are provided in the following table, a copy of which is available for download [here](#).

| Source | Purpose | Total | Expended or obligated | Available |
|-------------------|--|---------------|---|--|
| NTIA BEAD Program | State planning and implementation grant for BEAD, from Bipartisan Infrastructure Law | \$108,718,821 | \$4,800,000 <i>(approximate total of budgeted and obligated items to date)</i> | Available: \$200,000 Forthcoming: \$103,918,821 Total: |

| Source | Purpose | Total | Expended or obligated | Available |
|---|--|--------------|--|---|
| | | | | \$104,118,821 |
| NTIA DEA Program | State planning and implementation grant for Digital Equity, from Bipartisan Infrastructure Law | \$506,100 | \$506,100 <i>(approximate total of budgeted and obligated items to date)</i> | \$0 |
| U.S. Treasury Capital Projects Fund | ARPA Capital Projects Fund for broadband infrastructure and deployment. A portion of the state's award is reserved for creating broadband infrastructure | \$24,956,500 | \$1,798,002 <i>(approximate total of budgeted and obligated items to date)</i> | \$23,158,498 <i>(The Corporation is committed to using these funds for 100/100 Mbps broadband infrastructure subgrants.)</i> |
| FCC Connect America Fund - Phase II | FCC Connect America Fund (CAF) for building out broadband across the United States. | \$475,303 | \$475,303 <i>(Includes the Frozen High-Cost Support Funds issued by the FCC since 2013)</i> | \$0 |
| FCC Rural Digital Opportunity Fund (RDOF) | Funding for rural broadband development in remote or otherwise difficult to access rural areas. <i>Please note that RDOF</i> | \$1,273,784 | \$10,205 | \$1,263,579 |

| Source | Purpose | Total | Expended or obligated | Available |
|--------|--|-------|-----------------------|-----------|
| | <p><i>Funds in Rhode Island were granted to Hughes Network, a satellite provider, which does not conflict with BEAD Priority Broadband Projects.</i></p> | | | |

1.2 Unserved and Underserved Locations (Requirement 5)

1.2.1 Attachment: Unserved Locations

As a required attachment, submit one CSV file with the location IDs of each unserved location, including unserved locations in applicable Tribal Lands.

A list of unserved locations, as defined by NTIA and FCC, is available [here](#).

1.2.2 Attachment: Underserved Locations

As a required attachment, submit one CSV file with the location IDs of each underserved location, including underserved locations in applicable Tribal Lands.

A list of underserved locations, as defined by NTIA and FCC, is available [here](#).

1.2.3 Date Selection

Date Selection: Identify the publication date of the National Broadband Map that was used to identify the unserved and underserved locations.

The Corporation identified unserved locations and underserved locations from V3 of the BSL Fabric and Broadband Data Collection (BDC) filings last updated on November 14, 2023.

1.3 Community Anchor Institutions (CAIs) (Requirement 6)

1.3.1 CAI Definition

Describe how the statutory definition of “community anchor institution” (e.g., schools, libraries, health clinics) was applied, how eligible CAIs were identified, and how network connectivity needs were assessed, including the types of CAIs that the Eligible Entity intends to serve.

[START OF 01.03.01 CAI Statutory Definition Text Box]

The Corporation defines Community Anchor Institutions (CAIs) in Rhode Island as schools (including higher educational institutions), libraries, health care facilities, public safety entities, public housing (including any public housing agency, Housing and Urban Development-assisted housing organization, or Tribal housing organization), and community support organizations lack access to broadband service with a speed of not less than 1 Gbps for downloads and uploads alike, and latency less than or equal to 100 milliseconds.

Community support organizations, which are more fully defined below, are understood to be those institutions that facilitate broadband use for vulnerable populations. Rhode Island defines vulnerable populations using the Digital Equity Act’s (DEA) definition of covered populations: (1) individuals who live in low-income households, (2) aging individuals, (3) incarcerated individuals, other than individuals who are incarcerated in a Federal correctional facility, (4) veterans, (5) individuals with disabilities, (6) individuals with a language barrier, including individuals who are English learners and have low levels of literacy, (7) racial and ethnic minorities, and (8) rural inhabitants. (See Digital Equity Act Sec. 60302(8) and 47 U.S. Code 1702 (a)(2)(E) in the definition of “Community Anchor Institution”).

The Corporation has expanded upon NTIA’s definition of each category to include CAIs that serve local communities throughout Rhode Island. These expanded definitions include certain additional municipal buildings where public spaces and resources can be used and accessed by all, such as local town halls, and correctional facilities, where incarcerated individuals can utilize broadband resources to further

their education, career, and other rehabilitative endeavors.

There are no categories of institutions to report as having been considered by the Corporation but ultimately excluded from classification as a CAI: the Corporation considered all categories of institutions that fall within the broad categories of CAIs and the Corporation did not exclude any category of institutions that falls within these the broad categories from its definition of Community Anchor Institutions.

The Corporation identified CAIs through a large-scale public engagement process and via consultation with various state sources and databases containing lists of locations falling into those categories, such as schools, hospitals, public safety answering points (PSAPs), and homeless shelters. This work has been continuously updated through the Corporation's Digital Equity Ecosystem Mapping Tool, available at <https://commerceri.com/broadband>. This online tool enumerates all CAIs within Rhode Island, solicits input from the public to identify additional CAIs, and solicits input from each CAI regarding their programs, services, broadband availability and broadband need.

To identify CAIs on Tribal Lands, the Corporation will seek additional input from the Narragansett Indian Tribe (Tribe), the only federally recognized tribe in Rhode Island. The Corporation's engagement with the Tribe is ongoing as of the submission of this Initial Proposal. This engagement has included a formal Dear Tribal Leader Letter (sent via certified mail on November 7, 2023) and virtual consultations with the Tribe's Director of Community Planning & Natural Resources and Program Assistant, the last of which occurred on December 6, 2023. Both the Corporation and the Tribe are enthusiastic about coordinating future broadband efforts through BEAD and other programs. As of the submission of this Initial Proposal, the Corporation awaits the results of the Tribal Council's discussions on broadband. In the interim, the Corporation identified CAIs listed on the Tribe's website and institutions found on public mapping websites (e.g., Google Maps). The Corporation will amend the list of CAIs following input from the Tribe.

To assess the connectivity needs of relevant CAIs, the Corporation used National Broadband Map data and the network maps of several ISPs to identify CAIs that lacked access to broadband infrastructure that can provide speeds of at least 1 Gbps

(1000 Mbps) symmetrically. Those CAIs with available download and upload speeds of less than 1 Gbps were determined to have sufficient need for BEAD funding. CAIs that do not subscribe to 1 Gbps symmetrical service, even where it is available, are designated as “served” and therefore not included as an unserved or underserved CAI.

The following enumerates all CAI categories the Corporation has identified:

Code: S

CAI Category: Schools

Definition: K-12 public or private schools with a National Center for Education Statistics (NCES) ID or primary and secondary education facilities identified by the NCES or are a part of the FCC E-Rate program.

Source(s): National Center for Educational Statistics, US Department of Education, Universal Service Administrative Company (USAC) Open Data

Code: L

CAI Category: Libraries

Definition: All public libraries, including those participating in the FCC E-Rate program as well as all member libraries, and their branches, of the American Library Association (ALA)

Source(s): USAC Open Data

Code: H

CAI Category: Health care facilities

Definition: Health clinics, health centers, hospitals, or medical providers that have a Centers for Medicare and Medicaid Services (CMS) identifier.

Source(s): Homeland Infrastructure Foundation-Level Data (HIFLD), US Department of Veteran Affairs, CMS

Code: F

CAI Category: Public safety entities

Definition: Public safety entities may include fire houses, emergency medical service stations, police stations, among others, as well as public safety answering points (PSAPs)

Source(s): HIFLD, US Geological Survey, Department of Justice, FCC PSAP registry

Code: U

CAI Category: Higher education

Definition: Any higher educational institution whose NCES ID category is “College.” Examples include: Colleges and universities, junior colleges, community colleges, minority serving institutions, tribal colleges, supplemental colleges, and other higher educational institutions (The Corporation added the following examples, as they were not included by NTIA: minority serving institutions, tribal colleges, and supplemental colleges).

Source(s): NCES

Code: P

CAI Category: Public housing facilities

Definition: Any public housing agency, HUD-assisted housing organization, publicly funded or non-profit funded MDU affordable housing, organization in Rhode Island that facilitates decent and safe housing for vulnerable populations, or Tribal housing organization. Homeless shelters and affordable housing common areas or community spaces are also included in this category.

Source(s): US Department of Housing and Urban Development (HUD), National Housing Preservation Database (NHPD)

Code: C

CAI Category: Community support organizations

Definition: Organizations which facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. The Corporation defines the following as community support organizations: Community action agencies, including non-profits; Government buildings where residents gather, such as town halls, courthouses, and tribal administrative buildings; Correctional facilities; Cultural centers such as houses of worship, organizations around ethnic identity or immigration status, or other identity-based community centers; Community centers such as the Boys and Girls Club or the YMCA; Job training or workforce development centers; Senior centers; and Transit centers. (NB: The Corporation added the following examples, as they were not included by NTIA: community action agencies, cultural centers, government buildings, correctional facilities, community centers, transit centers.)

A brief description of each group and a brief explanation of how each institution facilitates greater broadband use follows (please note that the attached list of CAIs references the list below to provide a brief explanation of how each category of institution facilitates greater broadband use and the population it serves):

##

Institution: Community action agencies

Description: Community action agencies serve the community through providing in-person social services and resources for vulnerable populations. These agencies serve a wide range of populations, including low-income families, seniors, and people with disabilities.

How they facilitate greater broadband use: Community action agencies offer clients discounted internet service. They also provide digital literacy training and other resources to help clients learn how to use broadband to access essential services and information. Community action agencies also provide public computers and internet access in community rooms or other common areas.

##

Institution: Government buildings

Description: Government buildings are the local, county, state, tribal, and federal government buildings where Rhode Island residents are likely to gather, such as town halls, courthouses or tribal administrative buildings.

How they facilitate greater broadband use: Rhode Islanders of all backgrounds gather regularly at town halls and tribal administration buildings; access to high-speed broadband at these locations will improve digital equity, increase civic engagement, improve transparency and accountability, and expand access to services.

##

Institution: Correctional facilities

Description: Correctional facilities include residential detention centers or juvenile detention centers which house incarcerated individuals.

How they facilitate greater broadband use: Correctional facilities require high-speed connectivity so incarcerated individuals can utilize online resources to further their education, career, and other rehabilitative endeavors.

##

Institution: Cultural centers

Description: Cultural centers provide community around race, ethnicity, religion, or immigration status, serving members of those groups at a physical location for community gathering and services or programs.

How they facilitate greater broadband use: Cultural organizations are a hub for religious and ethnic communities to gather. Some organizations offer classes in digital literacy and skills trainings, or provide a location for students to study or use computers provided in common spaces.

##

Institution: Community centers

Description: Community centers serve all members of the community, regardless of age, income, or education level.

How they facilitate greater broadband use: Community centers offer digital literacy classes, computer workshops, and other programs to help people learn how to use broadband. They also provide public computers and internet access to residents who may not have access at home, including children in after school programs.

##

Institution: Workforce development and job centers

Description: Workforce development and job centers serve people who are looking to train for new jobs or advance their careers. These facilities are often used by unemployed and/or low-income individuals.

How they facilitate greater broadband use: Workforce development centers can offer digital literacy training and other resources to help participants learn how to use broadband to find jobs, research training opportunities, and complete online courses. Job training or workforce development centers also provide public computers and internet access in community rooms or other common areas.

##

Institution: Senior centers

Description: Senior centers serve older adults, typically those aged 60 and over.

How they facilitate greater broadband use: Senior centers offer digital literacy classes, computer workshops, and other programs to help older adults learn how to use broadband. They also provide public computers and internet access to older adults who may not have access at home.

##

Institution: Transit centers

Description: Transit centers serve people who use public transportation to get around.

How they facilitate greater broadband use: Transit centers can provide internet access to riders while they are waiting for their bus or train. Public transportation is typically used by low-income individuals compared to other populations.

##

Source(s): Department of Labor “American Job Center” database, National Council on Aging (NCOA), Internal Revenue Service (IRS), HIFLD, RI Department of Human Resources, RI Department of Corrections, Federal Bureau of Prisons

**

[END OF 01.03.01 CAI Statutory Definition Text Box]

1.3.2 Attachment: CAIs

As a required attachment, submit the CSV file (named cai.csv) that lists eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service, to the best of the Eligible Entity's knowledge.

For CAIs of type C, provide a brief explanation of how the institution facilitates greater broadband use and the population it serves, either as text or as a reference to a longer explanation accompanying the submission. For example, the submitter may define a set of sub-categories of CAI category C and describe how they meet the conditions.

A list of eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service, to the best of the Corporation's knowledge, is available for download as a CSV file [here](#). Please note that the Corporation created this list on a best-efforts basis, as directed by NTIA, and that additional CAIs may be added over time.

1.4 Challenge Process (Requirement 7)

1.4.1 NTIA BEAD Model Challenge Process Adoption

Select if the Eligible Entity plans to adopt NTIA Challenge Process Model for Requirement 7

The Corporation will not adopt the NTIA Challenge Process Model. The Corporation developed a Challenge Process similar to NTIA's Model but made modifications to accommodate Rhode Island's Area Speed Test Pre-Challenge Reclassification process.

1.4.2 Modifications to Reflect Data Not Present in the National Broadband Map

If applicable, describe any modifications to classification of broadband serviceable locations in the Eligible Entity's jurisdiction as "served," "underserved," or "unserved," and provide justification for each modification.

[START OF 01.04.02 Modifications to National Broadband Map Text Box]

Rhode Islanders from some parts of the state and from diverse groups have reported to the Corporation that they lack access to affordable, high-speed broadband. In listening sessions, workshops, round table discussions, survey responses, speed test submissions, and other forums, some Rhode Islanders report they are unable to access broadband with download speeds greater than or equal to 100 Mbps and/or upload speeds greater than or equal to 20 Mbps and latency equal to or below 100 milliseconds. These reports appear to be inconsistent with the National Broadband Map, which classifies ~99.3 percent of locations as served (the National Broadband Map classifies only 2,500 locations in Rhode Island, ~0.7 percent of all locations, as either underserved or unserved).

To reflect the available evidence regarding the quality of broadband in Rhode Island, ensure the most accurate broadband data maps inform the ConnectRI program, and

rectify the differences between the experiences of some Rhode Islanders and the data within the National Broadband Map, the Corporation will modify the NTIA Challenge Process Model and undertake a reclassification process to create the Rhode Island Broadband Map, following NTIA’s approval of Rhode Island’s Initial Proposal. The Corporation makes this modification in alignment with NTIA guidance that “[a]s part of Volume 1 of the Initial Proposal, an Eligible Entity may, upon approval of the Assistant Secretary, modify the set of locations it proposes to make eligible for BEAD funding to reflect data not present in the National Broadband Map.” For example, an Eligible Entity may propose to NTIA that it modify the National Broadband Map before the challenge process by “treat[ing] as ‘underserved’ locations that the National Broadband Map shows to be ‘served’ if rigorous speed test methodologies demonstrate that the ‘served’ locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream.” Once NTIA has approved an Eligible Entity’s proposed methodology for modifying the National Broadband Map (as well as modifying the map to reflect the deduplication process), the Eligible Entity “will complete” such modification, and “[t]he set of eligible locations established after execution of these pre-challenge process requirements will then be the subject of the challenge process.” (See NTIA BEAD Challenge Process Policy Notice at 9-10, “Challenge Process Policy Notice”).

The Rhode Island Broadband Map will not (a) add or remove locations from the set of broadband serviceable locations the Federal Communications Commission has identified on the National Broadband Map, nor (b) change the definitions of “unserved” and “underserved” from those set forth in the Infrastructure Act. The Rhode Island Broadband Map, however, will modify the designation of a location as served, underserved or unserved on the National Broadband Map using the following approach:

1. **National Broadband Map:** First, as required by NTIA, the Corporation’s identification of unserved and underserved locations started with the latest version of the FCC’s National Broadband Map. Unserved locations are defined as those locations with access to download/upload speeds less than 25/3 Mbps, and latency greater than 100 milliseconds. Underserved locations are defined as those locations with access to download/upload speeds greater

than or equal to 25/3 Mbps and less than 100/20 Mbps, and latency greater than 100 milliseconds.

2. **Optional Module 2 – DSL Modifications:** Second, the Corporation will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is “served”) delivered via DSL as “underserved.” This modification will better reflect the locations eligible for BEAD funding because it will facilitate the phase-out of legacy copper facilities and ensure the delivery of “future-proof” broadband service. This designation cannot be challenged or rebutted by the ISP.

3. **Area Speed Test Reclassification:** Third, the Corporation proposes to use the results of hundreds of thousands of speed tests conducted by Ookla (collected over a 12-month period; the Corporation maintains a license to Ookla data, which is updated monthly. Upon NTIA approval of the Rhode Island Area Speed-Test Pre-Challenge Reclassification process, the Corporation will utilize the data set from the most recent 12-month period prior to the Challenge Process) to identify those Broadband Serviceable Locations (BSLs) in Rhode Island that are classified as “served” in the Federal Communication Commission’s (FCC’s) National Broadband Map, but which the available evidence shows speeds that are materially below 100/20 Mbps (download/upload) and/or latency that is materially above 100 milliseconds. Accordingly, in congruence with the methodology described in detail below, Rhode Island will reclassify as underserved all BSLs located in census block groups where speed tests demonstrate that BSLs lack access to one or more provider(s) of reliable, high-speed broadband service (download speeds of 100 Mbps or greater, upload speeds of 20 Mbps or greater, and latency equal to or less than 100 milliseconds).
 - a. *Notification of Speed Test Reclassifications:* Rhode Island will notify ISPs that offer broadband service in census block groups that have been reclassified of the reclassified status of the BSLs in those census block groups. The Corporation will specifically note the Location IDs of the

BSLs that have been reclassified due to Area Speed Test Reclassification. ISPs will be given the opportunity to challenge the area reclassifications by submitting speed tests of their own during the state-administered challenge process. Rhode Island hopes and expects that, by utilizing both the results of the Ookla speed tests in the pre-challenge area reclassification process and ISP-conducted speed tests during the Challenge Process (along with other information submitted in the State-administered Challenge Process), the final version of the Rhode Island Broadband Map will be an accurate and reliable basis for selecting and awarding last-mile broadband projects in the proposer selection process.

- b. *Details regarding the Ookla Broadband Performance Dataset:* The Broadband Performance Dataset contains attributes related to speed tests captured, including, are not limited to, date and time, unique test ID, ISP common name, upload and download speed, latency measurements, longitude and latitude, connection type (fixed or mobile), and a GPS reading indicator flag. The speed test data does not include some of the information that is included in the Optional Speed Test Module in the Model Challenge Process. In particular, the Ookla data does not include the address of the BSLs subject to Ookla speed tests, the name of the end user associated with each BSL, or the speed tier the customer subscribes to (see National Telecommunications and Information Administration, U.S. Department of Commerce, Broadband Equity, Access and Deployment Program, BEAD Model Challenge Process at 19, “Model Challenge Process,” describing information to be provided with speed tests).
 - i. The absence of the address of the BSLs does not undermine the reliability or usefulness of the tests. The speed tests contain latitude and longitude location information that identifies the location of the device subject to the test within a margin for error of approximately 110 meters (as described below, speed test data will be filtered to only include tests that have latitude and

longitude data). While this margin for error means that Ookla speed tests cannot be associated with specific BSLs in many cases, the latitude and longitude information allow for checks, as described below, to ensure that speed tests have been conducted in distinct geographic locations. These checks will ensure that this Area Speed Test Reclassification will not be based on a small subset of the locations within a census block group.

- ii. While the Ookla speed tests do not contain information regarding the speed tier to which the customer subscribes, the Corporation believes the absence of such information does not undermine the reliability or usefulness of the tests.
 1. Download: The Corporation understands that all fiber and cable broadband service plans currently offered by ISPs in Rhode Island are advertised to provide download speeds of 100 Mbps or more; the Corporation, therefore, reasonably understands that all Ookla speed tests have been conducted by Rhode Islanders that subscribe to a download speed tier of at least 100 Mbps.
 2. Upload: One ISP in Rhode Island offers several broadband service plans with advertised upload speeds below 20 Mbps; the Corporation, therefore, will forego the use of upload speed tests for the purposes of this Area Speed Test Reclassification.
 3. Latency: As all fiber and cable broadband service plans currently offered by ISPs in Rhode Island are advertised (within their published Broadband Consumer Labels) to provide typical latencies less than 100 milliseconds, the Corporation understands that all Ookla speed tests have been conducted by Rhode Islanders that have a subscription which provides latency less than 100 milliseconds.

- c. *Ookla Speed Tests included within the Area Speed Test Reclassification:*
- i. Each Ookla speed test measurement must include:
 1. The time and date the test was conducted,
 2. The ISP-assigned internet protocol (IP) address,
 3. The ISP’s common name, and
 4. The device type.
 - ii. The Corporation will only use “Fixed” speed test data, thereby removing all speed tests taken on mobile networks (the data set categorizes speed tests into “Attribute Portal Categories,” which will be filtered to exclude “Mobile Broadband” and include “All Fixed” categories, which constitutes laptops or desktops). The Corporation will discard any speed test without a GSP location or with a location accuracy greater than 100 meters. The Corporation otherwise will use all speed test data in the Broadband Performance Dataset; speed test data will not be “cherry picked” or culled in any way.
 - iii. The Corporation will exclude tests that indicate poor Wi-Fi connectivity, indicated by high first-hop latency, and tests where the speed test server was chosen manually.
- d. *Methodology for Area Speed Test Reclassification:* Rhode Island will follow a methodology that is consistent with NTIA’s Crowdsourced Speed Test Modification. First, the Corporation will use speed test data, as described below, to determine the level of service provided by each ISP within each census block group. Second, the Corporation will evaluate the maximum level of service provided across all ISPs within the census block group; if no ISP within the census block group provides service that meets or exceeds the standard for determining that a BSL is “served” (download speeds of 100 Mbps or greater and latency equal to or less than 100 milliseconds – as described above, the Corporation will not consider Upload speed tests for the purposes of the Area Speed Test Reclassification), the Corporation will reclassify all BSLs within the census block group as underserved.

- i. First, the Corporation will evaluate the level of service provided by each ISP:
 1. The Corporation will only evaluate the level of service of an ISP in census block groups where there are speed tests in at least 12 unique locations for that ISP. This will ensure that speed tests are conducted in a variety of locations throughout a census block group, and not solely in a small area within the census block group. As the precise location of devices subject to Ookla speed tests can be identified only within a margin of error of approximately 110 meters, the Corporation will group speed tests into “tiles” (polygons each with a radius of approximately 110 meters); a census block group must have at least 12 of these so-called “tiles” with speed tests to be considered.
 2. The Corporation will only evaluate the level of service of an ISP in census block groups where there are 54 or more unique speed tests for that ISP.
 3. The Corporation will not evaluate the level of service of an ISP in a census block group if it provides service via multiple technologies, as the Corporation can only attribute speed tests to a location and provider, but not to a specific technology.
 4. The Corporation will evaluate an ISP’s level of service for all BSLs within a census block group to be Underserved if 80 percent or more of the unique speed tests for that ISP within that census block group do not experience download speeds of at least 80% of 100 Mbps (i.e. 80 Mbps) (this is the “80/80 test” – see NTIA BEAD Model Challenge Process at 19, “Model Challenge Process”).
 5. The Corporation will evaluate an ISP’s level of service for all BSLs within a census block group to be Underserved if 95 percent or more of the unique speed tests for that ISP within the census block group do not experience latency

below 100 milliseconds (this is the “95 percent rule” for latency test results – see NTIA BEAD Notice of Funding Opportunity at 65).

- ii. Second, the Corporation will evaluate the maximum level of service provided across all ISPs within the census block group: The Corporation will first assess the level of service for each ISP serving the census block group, as described above. The Corporation will then reclassify BSLs in the census block group based on the maximum level of service available by any ISP. For example, if one ISP’s level of service in the census block group is evaluated as Unserved, and the only other present ISP’s level of service in the census block group is evaluated as Underserved, then the BSLs in the census block group would all be reclassified to the maximum level of service, “Underserved”. Alternatively, if one ISP’s level of service is evaluated as either Unserved or Underserved, but another present ISP’s level of service is evaluated as Served, then the BSLs in this census block group would not be reclassified because the maximum level of service would be “Served”.

4. **Optional Module 3 – Location Speed Test Modifications:** Fourth, the Corporation will reclassify individual BSLs that the National Broadband Map shows to be “served” if the median of three or more unique speed tests speed tests – as described in the detailed methodology below – demonstrate that there is not at least one provider capable of providing service of at least 100 Mbps downstream, 20 Mbps upstream, or latency less than or equal to 100 milliseconds. This modification will better reflect the locations eligible for BEAD funding because it will consider the actual speeds and latency at these locations. As described below, such speed tests can be challenged by the ISP during the Challenge Process.

- a. *Notification of Speed Test Reclassifications:* Like the Area Speed Test

Reclassification, Rhode Island will notify ISPs that offer broadband service at a particular BSL that has been reclassified of the reclassified status of that BSL. The Corporation will specifically note the Location ID of the BSL that have been reclassified due to Optional Module 3. ISPs will be given the opportunity to challenge the reclassifications by submitting speed tests of their own during the State-administered Challenge Process.

- b. *Speed Tests Used:* Like the Area Speed Test Reclassification, the Corporation will use the Ookla Broadband Performance Dataset to perform speed test modifications under Optional Module 3: Please refer to discussion above regarding the Ookla Broadband Performance Dataset for further information.
- c. *Methodology for Location Speed Test Reclassification:* Rhode Island will follow a methodology that is consistent with NTIA’s model challenge process (see NTIA BEAD Model Challenge Process at 17-18, “Model Challenge Process”). The following parameters will apply:
 - i. Each Ookla speed test measurement will include:
 1. The time and date the test was conducted,
 2. The ISP-assigned internet protocol (IP) address,
 3. The ISP’s common name, and
 4. The device type.
 - ii. The Corporation will only use “Fixed” speed test data, thereby removing all speed tests taken on mobile networks (the data set categorizes speed tests into “Attribute Portal Categories,” which will be filtered to exclude “Mobile Broadband” and include “All Fixed” categories, which constitutes laptops or desktops). The Corporation will discard any speed test without a GSP location or with a location accuracy greater than 100 meters. The Corporation otherwise will use all speed test data in the Broadband Performance Dataset; speed test data will not be “cherry picked” or culled in any way. Only one speed test per

- location is required.
- iii. The Corporation will exclude tests that indicate poor Wi-Fi connectivity, indicated by high first-hop latency, and tests where the speed test server was chosen manually.
 - iv. The Corporation will consider each technology and ISP separately. The Corporation will exclude speed tests at locations where an ISP offers broadband service utilizing multiple technologies, as it cannot reliably attribute such tests to one technology or another. A BSL will only be reclassified as “Unserved” if it lacks access to at least one ISP capable of providing service with download/upload speeds of between 25/3 Mbps and 100/20 Mbps, and latency less than or equal to 100 milliseconds. A BSL will only be reclassified as “Underserved” if it lacks access to at least one ISP capable of providing service with download/upload speeds of at least 100/20 Mbps, and latency less than or equal to 100 milliseconds.
 - v. The Corporation will only consider speed tests for Optional Module 3 that it can confidently associate with a single BSL. As the precise location of devices subject to Ookla speed tests can be identified only within a margin of error of approximately 110 meters, the Corporation will only consider speed tests in “tiles” (polygons with a radius of approximately 110 meters) with a single BSL, as these speed tests can be attributable to no other location. If there is more than one BSL within the so-called “tile,” the Corporation will not consider this speed test and will not attempt to reclassify these BSLs within the Location Speed Test Modification methodology.
 - vi. The Corporation will only seek to reclassify BSL under this Optional Module 3 if at least one of its speed tests demonstrate upload speeds of 20 Mbps or greater, as this indicates that the BSL’s subscription tier is likely above 20Mbps, but the performance is below 20 Mbps.
 - vii. The Corporation will reclassify a BSL as unserved if the median of

three or more unique speed tests demonstrates download speeds less than 25 Mbps and/or upload speeds less than 3 Mbps, and the BSL lacks access to any ISP that may provide service with download/upload of at least 25/3 Mbps.

- viii. The Corporation will reclassify a BSL as underserved if the median of three or more unique speed tests demonstrates download speeds greater than or equal to 25 Mbps and less than 100 Mbps and/or upload speeds greater than or equal to 3 Mbps and less than 20 Mbps, and the BSL lacks access to any ISP that may provide service with download/upload of at least 100/20 Mbps.
- ix. The Corporation will reclassify a BSL as underserved if the median of three or more unique speed tests demonstrates download or upload latency above 100 milliseconds, and the BSL lacks access to any ISP that may provide service with download or upload latency of less than or equal to 100 milliseconds.

[END OF 01.04.02 Modifications to National Broadband Map Text Box]

1.4.3 Deduplication of Funding – BEAD Eligible Entity Planning Toolkit

Select if the Eligible Entity plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

Yes, the Corporation plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

1.4.4 Deduplication of Funding – Process

Describe the process that will be used to identify and remove locations subject to enforceable commitments.

Where applicable, the Corporation will enumerate locations subject to enforceable commitments by leveraging the BEAD Eligible Entity Planning Toolkit, and plans to refer to at least the following data sources:

1. The Broadband Funding Map published by the FCC pursuant to IIJA § 60105.8
2. Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.
3. Data sets from state broadband deployment programs that rely on funds from the Connect America Fund (CAF), Frozen High-Cost Support Fund, and Rural Digital Opportunity Fund (RDOF) administered by the Federal Communications Commission.
4. Data sets from state broadband deployment programs that rely on funds from the Tribal Broadband Connectivity Program and Digital Equity Act, administered by NTIA.
5. Rhode Island and local data collections of existing enforceable commitments.

The Corporation will make a best effort to create a list of BSLs subject to enforceable commitments based on state/territory or local grants or loans. If necessary, the Corporation will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. The Corporation will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.

The Corporation will review its repository of existing state and local broadband grant programs to validate the upload and download speeds of existing binding agreements to deploy broadband infrastructure. In cases where the broadband speed requirements were not clearly delineated by the State or Corporation, or when there was reason to believe an ISP deployed higher broadband speeds than required, the Corporation will reach out to the ISP to verify the deployment speeds of the binding commitment. The Corporation will document this process by requiring ISPs to sign a binding agreement certifying the actual broadband deployment speeds deployed.

The Corporation will draw on these ISP agreements, along with its existing database on state and local broadband funding programs' binding agreements, to determine

the set of state and local enforceable commitments.

1.4.5 Attachment: Deduplication of Funding

As a required attachment, submit the list of the federal, state/territorial, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding.

The Corporation has assembled a list of the federal, state/territorial, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding, which are also outlined in Section 1.1 Existing Broadband Funding, or Requirement 3 of the Initial Proposal. The file is available [here](#).

1.4.6 Plan to Conduct an Evidence-Based, Fair, Transparent, and Expedient Challenge Process.

Describe the plan to conduct an evidence-based, fair, transparent, and expeditious challenge process.

[START OF 01.04.06 Challenge Process Design Text Box]

Based on NTIA BEAD Challenge Process Policy Notice, as well as the Corporation's understanding of the goals of the BEAD program, the Corporation's Volume 1 proposal represents a transparent, fair, expeditious and evidence-based challenge process.

1.4.6.1 Permissible Challenges

The Corporation will only allow challenges on the following grounds:

- The identification of community anchor institutions (CAIs),
- The determination of eligibility for CAIs,
- The identification of service at existing Broadband Serviceable Locations

(including evidence contradicting the Corporation's Area Speed Test Reclassifications),

- The determination of enforceable commitments, and
- Planned service.

1.4.6.2 Permissible Challengers

During the BEAD Challenge Process, the Corporation will only allow challenges from nonprofit organizations (that is, organizations with a designated nonprofit tax status), units of local and tribal governments, and Internet Service Providers.

1.4.6.3 Challenge Process Overview

The challenge process conducted by the Corporation will include four phases over 90 days or less, as required by NTIA. As noted below, the timeline for each phase is tentative, as the Challenge Process will not begin until Rhode Island receives approval from NTIA.

The Corporation proposes that Rhode Island's Challenge Process contains the following phases:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phases, the Corporation will publish the set of locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of NTIA BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process). The Corporation will also publish locations considered served, as they may be challenged. At the time of publication of eligible locations, the Corporation will notify ISPs of locations they provide service to that are impacted by Speed Test reclassifications. The Corporation will provide an explanation as to how an ISP may utilize its own speed tests to submit a challenge during the next phase of the Rhode Island Challenge Process.

- a. Timeline: The Corporation intends to have eligible locations published 7 to 14 calendar days following NTIA's approval of this document (Rhode Island's Volume 1 of the Initial Proposal). The exact dates for the Challenge Process are dependent on NTIA's approval of this document. However, as the Corporation expects NTIA to approve the Initial Proposal on approximately May 20, 2024, the Corporation anticipates it will publish Eligible Locations by June 3, 2024.

2. **Challenge Phase**: A challenger (a non-profit organization, a unit of local and tribal governments, or an ISP) will submit a challenge through the Corporation's challenge portal. This challenge will be visible to all permissible challengers and to the ISP whose service availability and performance is being contested via the challenge portal. The portal will notify the ISP of the challenge through an automated email, which will include related information about timing for the ISP's response. After this stage, the location will enter the "challenged" state.
 - a. During this phase, ISPs that provide service to locations reclassified because of the Corporation's Area Speed Test Pre-Challenge Reclassification may present evidence using the Corporation's challenge portal to rebut the Corporation's reclassifications based on the speed test modification.
 - b. In this phase, permissible challengers may submit challenges – based either on speed tests or another permissible challenge approach – to further support the Corporation's reclassification of locations because of the Area Speed Test Pre-Challenge Reclassification or the Location Speed Test Reclassification (Optional Module 3).
 - c. Permissible challengers may submit area or Multi-Dwelling Unit (MDU) challenges during this phase, as described below (see "General Area Challenge and General MDU Challenge" below).
 - d. The Corporation will support non-profit organizations and units of local and tribal governments in aggregating individual challenges via the Corporation's challenge process portal. This portal will allow individuals to draft challenges and share such challenges with non-profit

organizations and units of local and tribal governments. Via the portal, non-profit organizations and units of local and tribal governments will be able to easily review, aggregate, and submit these challenges on behalf of such individuals. Prior to the start of the Challenge Process, the Corporation will provide technical assistance to non-profit organizations and units of local and tribal governments on this element of the portal.

- e. *Timeline:* Challengers will have thirty (30) calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted by the Corporation. The exact dates for the Challenge Process are dependent on NTIA’s approval of this document. However, the Corporation anticipates the Challenge Phase will take place between June 3, 2024, and July 3, 2024.
3. **Rebuttal Phase:** Any permissible challenger may rebut a Challenge with evidence, causing the location or locations to enter the “disputed” state. If a Challenge that meets the minimum level of evidence is not rebutted, the challenge is sustained, and the area or location will be updated to the “sustained” state. A permissible challenger may also agree with the challenge and thus transition the location to the “sustained” state. Permissible challengers must regularly check the challenge portal for notifications of submitted challenges.
- a. *Timeline:* Permissible challengers will have thirty (30) calendar days from the submission of a challenge to provide rebuttal information to the Corporation. The rebuttal period begins once the ISP is notified of the challenge, and thus may occur concurrently with the challenge phase. The exact dates for the Challenge Process are dependent on NTIA’s approval of this document. However, the Corporation anticipates the Rebuttal Phase will take place between July 3, 2024, and August 2, 2024.

4. **Final Determination Phase:** During the Final Determination phase, the Corporation will make the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected.”
 - a. *Timeline:* Following intake of challenge rebuttals, the Corporation will make a final challenge determination within thirty (30) calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. The exact dates for the Challenge Process are dependent on NTIA’s approval of this document. However, the Corporation anticipates the Final Determination Phase will take place between August 2, 2024, and September 1, 2024.

1.4.6.4 Evidence & Review Approach

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, the Corporation will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. The Corporation will document the standards of review to be applied in a Standard Operating Procedure and will require reviewers to document their justification for each determination. The Corporation plans to ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted. The Corporation will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

Minimum Level of Evidence Sufficient to Establish a Challenge: The challenge portal will verify that the address provided can be found in the Fabric and is a BSL. The challenge portal will confirm that the challenged service is listed in the Rhode Island Broadband Map and meets the definition of reliable broadband service. The challenge will confirm that the email address is reachable by sending a confirmation message to the listed contact email. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, the Corporation will manually verify that the evidence submitted falls within the categories stated in NTIA BEAD Challenge Process Policy Notice and the document is unredacted and dated.

The following details permissible challenge types and permissible rebuttals:

**

Code: A

Challenge Type: Availability

Description: The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).

Example(s) of permissible challenge evidence:

- Time-stamped screenshot of ISP webpage.
- A service request was refused within the last 180 days (e.g., an email or letter from ISP).
- Lack of suitable infrastructure (e.g., no fiber on pole as evidenced, for example, by network diagrams or recent photos).
- A letter or email dated within the last 365 days that an ISP failed to schedule a service installation, offer an installation date within 10 business days of a request, or required an installation fee above normal rate. (the standard broadband installation is defined in the Broadband DATA Act, 47 U.S.C. § 641(14)).
- A letter or email dated within the last 365 days indicating that an ISP requested more than the standard installation fee to connect this location or that an ISP quoted an amount in excess of the ISP's standard installation charge in order to connect service at the location.

Example(s) of permissible rebuttal evidence:

- ISP shows that the location subscribes to or has subscribed within the last 12 months, e.g., with a copy of a customer bill.
- If the evidence was a screenshot and believed to be in error, a time-stamped screenshot that shows service availability.
- The ISP submits evidence that service is now available as a standard installation, e.g., network design diagrams.

**

Code: S

Challenge Type: Speed

Description: The actual speed of the service tier falls below the unserved or underserved thresholds, for either download or upload. (Only locations with a subscribed-to service of 100/20 Mbps or above can challenge locations as underserved, while only locations with a service of 25/3 Mbps or above can challenge locations as unserved.)

Example(s) of permissible challenge evidence: Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests, as detailed below (see Section 1.4.6.6, “Speed Test Requirements,” below for further details regarding permissible speed test methodology).

Example(s) of permissible rebuttal evidence: ISP has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system. (As described in the NOFO, a provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed) (see Section 1.4.6.6, “Speed Test Requirements,” below for further details regarding permissible speed test methodology).

**

Code: L

Challenge Type: Latency

Description: The download or upload latency of the broadband service exceeds 100 milliseconds.

Example(s) of permissible challenge evidence: Speed test by subscriber, showing the excessive latency.

Example(s) of permissible rebuttal evidence: ISP has countervailing speed test

evidence showing latency at or below 100 milliseconds, e.g., from their own network management system or the CAF performance measurements.

**

Code: D

Challenge Type: Data cap

Description: The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. An unreasonable capacity allowance is defined as a data cap that falls below the monthly capacity allowance of 600 GB.

Example(s) of permissible challenge evidence: Time-stamped screenshot of ISP webpage; Service description provided to consumer.

Example(s) of permissible rebuttal evidence: ISP has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.

**

Code: T

Challenge Type: Technology

Description: The technology indicated for this location is incorrect.

Example(s) of permissible challenge evidence: Manufacturer and model number of residential gateway (Customer Premise(s) Equipment) that demonstrates the service is delivered via a specific technology.

Example(s) of permissible rebuttal evidence: ISP has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service.

**

Code: B

Challenge Type: Business service only

Description: The location is residential, but the service offered is marketed or available only to businesses.

Example(s) of permissible challenge evidence: Time-stamped screenshot of ISP webpage.

Example(s) of permissible rebuttal evidence: ISP documentation that the service listed in the BDC is available at the location and is marketed to consumers.

**

Code: E

Challenge Type: Enforceable Commitment

Description: The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.

Example(s) of permissible challenge evidence: Enforceable commitment by ISP (e.g., authorization letter). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the ISP for the location(s) at issue (see Section 6.2 above).

Example(s) of permissible rebuttal evidence: Documentation that the ISP has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern).

**

Code: P

Challenge Type: Planned service

Description: The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an enforceable commitment or an ISP is building

out broadband offering performance beyond the requirements of an enforceable commitment. This is only considered an acceptable challenge if there is a binding and enforceable commitment from the challenger.

Example(s) of permissible challenge evidence:

- Construction contracts, specific pole attachment license, or similar evidence of on-going, binding deployment, along with evidence that all necessary permits have been applied for or obtained.
- Contracts or a similar binding agreement between the Corporation and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (i.e., a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024.

Example(s) of permissible rebuttal evidence: Documentation showing that the ISP is no longer able to meet the commitment (e.g., is no longer a going concern) or that the planned deployment does not meet the required technology or performance requirements.

**

Code: N

Challenge Type: Not part of enforceable commitment.

Description: This location is in an area that is subject to an enforceable commitment to less than 100 percent of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.)

Example(s) of permissible challenge evidence: Declaration by ISP subject to the enforceable commitment.

**

Code: C

Challenge Type: Location is a CAI

Description: The location should be classified as a CAI.

Example(s) of permissible challenge evidence: Evidence that the location falls within the definitions of CAIs set by the Corporation (for example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but the Corporation may rely on other reliable evidence that is verifiable by a third party).

Example(s) of permissible rebuttal evidence: Evidence that the location does not fall within the definitions of CAIs set by the Corporation or is no longer in operation.

**

Code: R

Challenge Type: Location is not a CAI

Description: The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.

Example(s) of permissible challenge evidence: Evidence that the location does not fall within the definitions of CAIs set by the Corporation or is no longer in operation.

Example(s) of permissible rebuttal evidence: Evidence that the location falls within the definitions of CAIs set by the Corporation or is still operational.

**

1.4.6.5 Area Challenge and MDU Challenge

The Corporation will administer area and MDU challenges for challenge types A, S, L, D, and T. An area challenge reverses the burden of proof for availability, speed, latency, data caps and technology if a defined number of challenges for a particular category, across all challengers, have been submitted for an ISP. Thus, the ISP

receiving an area challenge or MDU must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all (served) locations within the area or all units within an MDU. The ISP can use any of the permissible rebuttals listed above.

An **Area Challenge** (different from the Area Speed Test Reclassification, which are described in Section 1.4.2) is triggered if six (6) or more broadband serviceable locations using a particular technology and a single ISP within a census block group are challenged during the Challenge Phase.

An **MDU Challenge** will reclassify an entire MDU based on challenges from individual units. For MDUs having fewer than 15 units, one unit must challenge; for MDUs of between 16 and 24 units, two units must challenge; and for larger MDUs (24 units or more), at least three units must challenge. Here, the MDU is defined as one broadband serviceable location listed in the Fabric with more than one housing unit contained therein. An MDU challenge counts towards an area challenge (i.e., six successful MDU challenges in a census block group may trigger an area challenge).

Each type of challenge and each technology and ISP is considered separately. For instance, an availability challenge does not count towards reaching the area threshold for a speed challenge. If an ISP offers multiple technologies, such as DSL and fiber, each is treated separately since they are likely to have different availability and performance.

Area Challenges for availability (different from the Area Speed Test Reclassification, which are described in Section 1.4.2) need to be rebutted with evidence that service is available for all BSL within the census block group (e.g., by network diagrams that show fiber or Hybrid Fiber-Coaxial (HFC) infrastructure or customer subscribers). For fixed wireless service, the challenge system will offer representative random, sample of the area in contention, but no fewer than 10, where the ISP has to demonstrate service availability and speed (e.g., with a mobile test unit, which is a testing apparatus that can be easily moved, which simulates the equipment and installation (antenna, antenna mast, subscriber equipment, etc.) that would be used in a typical deployment of fixed wireless access service by the provider).

1.4.6.6 Speed & Latency Test Requirements

The Corporation will accept speed and/or latency tests as evidence for substantiating challenges and/or rebuttals. Each speed or latency test consists of three measurements, taken on different days. Speed and latency tests cannot predate the beginning of the challenge period by more than 60 calendar days.

Speed and latency tests can take any of the following forms:

1. A reading of the physical line speed/latency provided by the residential gateway, (e.g., DSL modem, cable modem [for HFC]).
2. A reading of the physical line speed/latency provided by the Optical Network Terminal (ONT) (for Fiber-to-the-Home), or fixed wireless subscriber module.
3. A reading of the speed/latency test available from within the residential gateway web interface.
4. A reading of the speed/latency test found on the ISP's web page.
5. A speed/latency test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using a commonly used speed test application to be specified by the Corporation.

Each speed and latency test measurement must include:

- The time and date the speed/latency test was conducted.
 - o ISPs that submit speed and/or latency tests must conduct such tests between the hours of 7pm and 11pm local time.
- The ISP-assigned internet protocol (IP) address, either version 4 or version 6, identifying the residential gateway conducting the test.

Each group of three speed/latency tests must include:

- The name and street address of the customer conducting the speed/latency test.
- A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's last invoice).

- An agreement, using an online form provided by the Corporation that grants access to these information elements to the Corporation, any contractors supporting the challenge process, and the ISP.

The IP address and the subscriber's name and street address are considered personally identifiable information (PII) and thus are not disclosed to the public (e.g., as part of a challenge dashboard or open data portal).

Each location must conduct three speed/latency tests on three different days; the days do not have to be adjacent. The median of the three tests (i.e., the second highest (or lowest) speed) is used to trigger a challenge, for either upload, download, or latency. For example, if a location claims a broadband speed of 100 Mbps/25 Mbps and the three speed tests result in download speed measurements of 105, 102 and 98 Mbps, and three upload speed measurements of 18, 26 and 17 Mbps, the speed tests used in the challenge will be 102 Mbps for download and 18 Mbps for upload.

Speed/latency tests may be conducted by subscribers, but speed/latency test challenges must be gathered and submitted by units of local or tribal government, nonprofit organizations, or an ISP. Subscribers submitting a speed test must indicate the speed tier they are subscribing to. Since speed/latency tests can only be used to change the status of locations from "served" to "underserved", only speed/latency tests of subscribers that subscribe to tiers at 100/20 Mbps and above are considered. If the household subscribes to a speed tier of 100/20 Mbps or higher and the speed/latency test yields a speed below 100/20 Mbps, this service offering will not count towards the location being considered served. However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change. For example, if a location is served by 100 Mbps licensed fixed wireless and 500 Mbps fiber, conducting a speed test on the fixed wireless network that shows an effective speed of 70 Mbps does not change the status of the location from served to underserved.

An ISP may rebut an Area Challenge lodged with download or upload speed tests as evidence or an Area Speed Test Reclassification lodged with download speed tests by providing speed tests, in the manner described above, for at least 75 percent of the ISP's customers in the challenged area. The customers must be randomly selected.

To ensure networks meet the standards established by NTIA when Rhode Islanders use networks concurrently, ISPs must administer speed tests simultaneously for all tested BSLs within the area subject to the rebuttal. When evaluating speed tests provided by ISPs, the Corporation will apply the 80/80 rule, i.e., 80 percent of these locations must experience a speed that equals or exceeds 80 percent of the speed threshold (the 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. See BEAD NOFO at 65, n. 80, Section IV.C.2.a). For example, 80 percent of these locations must have a download speed of at least 20 Mbps (that is, 80 percent of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to meet the 100/20 Mbps speed tier.

An ISP may rebut an Area Challenge lodged with latency tests as evidence or an Area Speed Test Reclassification lodged with latency tests by providing latency tests, in the manner described above, for at least 75 percent of the ISP's customers in the challenged area. The customers must be randomly selected. To ensure networks meet the standards established by NTIA when Rhode Islanders use networks concurrently, ISPs must administer latency tests simultaneously for all tested BSLs within the area subject to the rebuttal. When evaluating latency tests provided by ISPs, the Corporation will apply the 95 percent rule (see NTIA BEAD Notice of Funding Opportunity at 65). Under that rule, if less than or equal to 95 percent of latency tests show download and upload latency measurements of 100 milliseconds or less, the Corporation will not accept an ISP's rebuttal.

1.4.6.7 Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, the Corporation will, upon approval from NTIA, publicly post an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge. This documentation, available at the Corporation's website <https://commerceri.com/broadband>, will be posted publicly for at least a week prior to opening the challenge submission window.

The Corporation also plans to actively inform non-profits, units of local and tribal governments, and ISPs of its challenge process and set up regular touchpoints to address any comments, questions, or concerns. The Corporation will take the following approach to ensure it has the appropriate contact information for eligible challengers:

- *Non-Profits:* As noted in section 1.3, the Corporation has developed a list of CAIs in Rhode Island. The Corporation will make reasonable efforts via email (based on information posted online) to contact each CAI to inform them of the challenge process. For CAIs without an online presence, the Corporation will make a reasonable effort to make contact either via mail or phone.
- *Units of local and tribal governments:* The Corporation maintains a list of local governmental stakeholders and will inform them via email and newsletter of the Challenge Process. Additionally, the Corporation will advertise the Challenge Process via the Rhode Island League of Cities and Towns and the monthly municipal leaders call hosted by the Governor’s office. The Corporation will also make every reasonable effort to engage with the Narragansett Indian Tribe, the only federally recognized tribe in Rhode Island.
- *ISPs:* The Corporation has an existing working relationship with each ISP currently operating in the state; the Corporation will work through these relationships to ensure each an appropriate email address is on file for each ISP for challenge notifications.
- Stakeholders can sign up on the Corporation’s website <https://commerceri.com/broadband> for challenge process updates/newsletters and will be eligible to apply there for access to the Challenge Process Portal.
- Stakeholders can also engage with the Corporation via email at broadband@commerceri.com to request to be notified of the Challenge Process.

The Corporation will notify ISPs that offer broadband service in census blocks that have been reclassified because of the Corporation’s Area Speed Test Pre-Challenge Reclassification. The Corporation will notify ISPs of Challenges to locations they service both via email and via the Corporation’s challenge portal. The Corporation will provide further information regarding the challenge portal prior to the start of the

Challenge Process.

Beyond actively engaging relevant stakeholders, the Corporation will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

- the ISP, nonprofit, or unit of local government that submitted the challenge,
- the census block group containing the challenged broadband serviceable location,
- the ISP being challenged,
- the type of challenge (e.g., availability or speed), and
- a summary of the challenge, including whether a permissible challenger submitted a rebuttal.

The Corporation will publicly post the results of the challenge process, including the final classification of each unserved location, underserved location, or eligible community anchor institution on its website <https://commerceri.com/broadband>. The Corporation will publicly post the results of the challenge process, after resolving each challenge and rebuttal, at least 60 days prior to awarding grant funds for network deployment (i.e., the Corporation will not announce any recipient of BEAD funding for network deployment until at least 60 days after the Challenge Process concludes).

Only authorized personnel at the Corporation responsible for reviewing and adjudicating challenges will have access to any personally identifiable information (PII) or proprietary information submitted by permissible challengers during the Challenge Process. The Corporation will not make PII (including subscriber names, street addresses and customer IP addresses) or proprietary information available to the public or to permissible challengers.

To ensure all PII and proprietary information is protected, the Corporation will review all information and materials submitted as part of a challenge and/or rebuttals and will remove all PII and proprietary information prior to the challenge/rebuttal being posted. Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly. To this end, the Corporation will

treat information submitted by an ISP and expressly designated as proprietary and/or confidential as proprietary information, consistent with applicable federal law and state law, including Rhode Island’s Access to Public Records law, R.I. Gen. Laws section 38-2-2, which provides an exemption for “[t]rade secrets and commercial or financial information obtained from a person, firm or corporation that is of a privileged or confidential nature.” Therefore, Challengers should label any information that is a trade secrets or commercial or financial information that is of a privileged or confidential nature.

Further, the Corporation is designing the Challenge Portal with multiple layers of security protocols and measures to safeguard PII and proprietary information. Any individuals who are accessing evidence submitted as part of a challenge must be authenticated. Authenticated accounts are only to be created or approved by the Corporation. Any action taken on a challenge (i.e., accepting or rejecting evidence) is logged. The specific credentials used to access the dashboard are encrypted. Additionally, all traffic to/from the system is encrypted via HTTPS protocol. Challenge-related data and credentials are also encrypted at rest. This comprehensive strategy ensures that challenge-related data always remains confidential and secure, meeting best practices for data protection and privacy.

[END OF 01.04.06 Challenge Process Design Text Box]

1.4.7: Optional Attachment: Challenge Process

As a required attachment only if the Eligible Entity is not using NTIA BEAD Model Challenge Process, outline the proposed sources and requirements that will be considered acceptable evidence.

Details regarding the proposed sources and requirements of the Corporation’s Challenge Process are described above. The Corporation will share Ookla data directly with the NTIA if required and permissible under the terms of its license with Ookla.

1.5 Volume 1 Public Comment

1.5.1: Public Comment

Describe the public comment period and provide a high-level summary of the comments received during the Volume 1 public comment period and how they were addressed by the Eligible Entity. The response must demonstrate:

- a. The public comment period was no less than 30 days; and*
- b. Outreach and engagement activities were conducted to encourage feedback during the public comment period.*

[START OF 01.05.01 Volume 1 Public Comment Text Box]

The Corporation solicited input and comments regarding this document from all Rhode Islanders and other stakeholders. The Corporation posted the Proposal to its website, <https://commerceri.com/broadband>, and announced its release through a press release, its newsletter (700+ contacts), and social media channels. Additionally, the Corporation verbally informed key stakeholders of the public comment period for the Initial Proposal through meetings with the Broadband Advisory Council, ISPs operating in the state, and municipal government representatives; feedback was solicited and encouraged in communications about the Initial Proposal. Feedback was provided during the public comment period, beginning November 3, 2023, and ending December 4, 2023. The Corporation carefully reviewed and considered all feedback submitted through the online comment form previously available on the Corporation's website.

Following the public comment period, the Corporation updated this document prior to its submission to NTIA. This updated document includes a high-level summary of the comments received and details regarding how the Corporation addressed these comments below.

Summary of Public Comments

**

Section 1.1

Summary of Comment(s): Consider using CPF funds as the basis of a block grant program. CPF funds can be put to work more swiftly, not subject to the challenge process, and are less constrained than BEAD funds therefore, we recommend CPF funds be freed up for innovative initial and model deployment models, such as what the Massachusetts Broadband Institute is proposing for its \$145 million Gap Networks Grant Program. Additionally, through the CPF, ConnectRI can “seed smaller and more agile pilot FTTP concepts that will ensure home-grown broadband success stories.”

Response: The Corporation will administer a separate CPF program, which is separate but complementary to BEAD.

**

Section 1.2

Summary of Comment(s): Reserve funds for non-deployment activities.

Response: Rhode Island intends to use funds for non-deployment activities, should monies remain after all deployment projects have been awarded.

**

Section 1.2

Summary of Comment(s): Narragansett Indian Tribe requests additional engagement.

Response: The Corporation has engaged directly with the Tribe via the contact information provided.

**

Section 1.3

Summary of Comment(s): [Redacted] requests to be classified as a CAI.

Response: The Corporation will include [Redacted], a public housing organization, in the list of eligible CAIs, if it does not currently have access to 1/1 Gbps service.

**

Section 1.3

Summary of Comment(s): Clarify that HUD-assisted housing organization includes any long-term deed-restricted affordable housing development, publicly- or privately-owned, that has constructed in part through the utilization of any type of HUD capital tools.

Response: The Corporation does not want to limit the definition of public housing unintentionally.

**

Section 1.3

Summary of Comment(s): Clarify that Public Housing Organization includes not only public housing (owned by public housing agencies), but any HUD-assisted housing organization (including private owners of Section 8-assisted housing).

Response: The Initial Proposal already includes HUD-assisted housing organization within CAI definition.

**

Section 1.3

Summary of Comment(s): Public housing units and project-based Section 8 units should be eligible as CAIs.

Per NTIA, public housing units themselves are classified as BSLs, not CAIs.

**

Section 1.3

Summary of Comment(s): Expand definition of to include public housing facilities to include (1) Publicly-funded or non-profit funded MDU affordable housing and (2) Organizations in Rhode Island that facilitate decent and safe housing for vulnerable populations.

Response: The Corporation has adopted this recommendation.

**

Section 1.3

Summary of Comment(s): Support of inclusion of correctional institutions as CAIs.

Response: *No response or action required.*

**

Section 1.4

Summary of Comment(s): Use the most recent version of BDC data (June 2023) to inform the Rhode Island Broadband Map.

Response: The Corporation will rely upon the latest version of the National Broadband Map; as of publication, the most recent version was published in November 2023.

**

Section 1.4

Summary of Comment(s): Challenge Process should be 120 days, 45 days for both the Challenge Phase and the Rebuttal Phase instead of 30 days each. This timeline is expedited vs. NTIA guidance.

Response: The Corporation is required to administer the Challenge Process and the Subgrantee Selection Process in 365 days. Given this extremely limited timeline, no additional time can be allocated to the Challenge Process.

**

Section 1.4

Summary of Comment(s): Remove Affordability as a Challenge.

Response: The Corporation has adopted this recommendation.

**

Section 1.4

Summary of Comment(s): Modify evidence required for Availability challenges to limit to within the last 6 months, before which could be “too stale to be credible.”

Response: The Corporation has adopted NTIA’s guidance on the recency of data required.

**

Section 1.4

Summary of Comment(s): Modify evidence required for availability challenge rebuttals to clarify that providers: (1) are not required to disclose customers’ bills to rebut availability challenges; and (2) are able to provide additional, satisfactory forms of rebuttal evidence that service is available as a standard installation at a certain location

Response: The Corporation does not require IPSs to provide customers’ bills to rebut availability challenges; customer bills are listed only as an example.

**

Section 1.4

Summary of Comment(s): Reclassify locations on licensed fixed wireless as “unserved.”

Response: The Corporation will classify any BSL not served by speeds of at least 100/20 Mbps and with latency greater than 100ms, regardless of technology, as unserved or underserved.

**

Section 1.4

Summary of Comment(s): Endorses the Optional Area Challenge Module as detailed in NTIA's BEAD Model Challenge Process.

Response: *No response or action required*

**

Section 1.4

Summary of Comment(s): Adopt Missouri's proposed FCC Area Modifications, which would classify as unserved/underserved locations in census block group or census tract that are subject to successful availability challenges through the FCC's challenge process. See Missouri's BEAD IPV1 – FCC Area Modifications (p. 12-13).

Response: The Corporation's proposed Pre-Challenge Area Speed Test Reclassification will likely address similar concerns but to a greater degree, as there have been limited FCC availability challenges to locations in Rhode Island to date.

**

Section 1.4

Summary of Comment(s): Include a Statewide Terms of Service Challenge about data caps imposed by a provider—the statewide terms of service challenge reverses the burden of proof for all BSLs associated with the state provider, technology and broadband upload/download speeds. May be rebutted with evidence that a specific set of BSLs can subscribe to service without an unreasonable capacity allowance.

Response: The Corporation does not believe that existing providers in Rhode Island currently impose unreasonable data caps.

**

Section 1.4

Summary of Comment(s): Remove MDU Challenge as it adds complexity and is not sufficiently defined.

Response: The Corporation adopted NTIA's recommended MDU Challenge as it believes the additional complexity is a worthwhile tradeoff to ensure the most accurate list of Eligible Locations.

**

Section 1.4

Summary of Comment(s): Remove Area Challenge as it adds complexity and is not

sufficiently defined.

Response: The Corporation adopted NTIA's recommended Area Challenge as it believes the additional complexity is a worthwhile tradeoff to ensure the most accurate list of Eligible Locations.

**

Section 1.4

Summary of Comment(s): Update MDU challenge module to conform to NTIA guidance released last month: "An MDU challenge requires challenges for one unit for MDUs having fewer than 15 units, for two units for MDUs of between 16 and 24 units, and at least three units for larger MDUs. Here, the MDU is defined as one broadband serviceable location listed in the Fabric. An MDU challenge counts towards an area challenge (i.e., six successful MDU challenges in a census block group may trigger an area challenge)."

Response: The Corporation has adopted this recommendation.

**

Section 1.4

Summary of Comment(s): Planned service should not be an acceptable challenge unless there is a binding and enforceable commitment from the challenger, or additional requirements about the progress of construction.

Response: The Corporation has adopted this recommendation.

**

Section 1.4

Summary of Comment(s): Evidence for planned service challenges may be satisfied with evidence of a construction contract, pole attachment license, franchise agreement or similar evidence of deployment, is sufficient to demonstrate that broadband will be deployed to a location.

Response: The Corporation has partially adopted this recommendation as it relates to binding pole attachment licenses.

**

Section 1.4

Summary of Comment(s): Speed tests from Ookla may not be reliable and should be subject to prior verification of the ISP's then-current network topology instead of relying on third party guesswork.

Response: Speed tests from Ookla are the best source of data available to the Corporation, given its lack of access to ISP data. ISPs should participate in the Challenge Process to assist the Corporation in developing an accurate map of eligible locations.

**

Section 1.4

Summary of Comment(s): Removing speed test challenges as they are optional for challenges and including reliable speed tests would require significant effort on the part of the State and the entity that needs to compile all of them. Additionally, FCC states that most households experience advertised speeds, so the Corporation shouldn't have to rely on speed tests.

Response: Speed tests from Ookla are the best source of data available to the Corporation, given its lack of access to ISP data. The Corporation is willing to understand the associated effort to produce the most accurate list of eligible locations. ISPs should participate in the Challenge Process to assist the Corporation in developing an accurate map of eligible locations. The absence of information regarding the speed tier the customer subscribes to does not undermine the reliability or usefulness of the tests for because fiber and cable broadband service plans currently offered by ISPs in Rhode Island are advertised to provide download speeds of 100 Mbps or more. Although ISPs offer service plans with advertised upload speeds below 20 Mbps, ISPs can challenge the reclassification as described in the IPV1.

**

Section 1.4

Summary of Comment(s): If using speed tests, it should be a part of the Challenge Process, not a pre-Challenge modification.

Response: Speed Tests are included as part of the Challenge Process. The Corporation will use speed tests prior to the Challenge Process to develop the most accurate list of eligible locations as possible. Speed tests are the best source of data available to the Corporation, given its lack of access to ISP data.

**

Section 1.4

Summary of Comment(s): Speed tiers are an important consideration of speed test

data. Substantiating speed tiers (e.g. through a customer invoice) should be required to sustain reclassification.

Response: The absence of information regarding the speed tier the customer subscribes to does not undermine the reliability or usefulness of the tests for because fiber and cable broadband service plans currently offered by ISPs in Rhode Island are advertised to provide download speeds of 100 Mbps or more. Although ISPs offer service plans with advertised upload speeds below 20 Mbps, ISPs can challenge the reclassification as described in the Initial Proposal.

**

Section 1.4

Summary of Comment(s): Provide definitions for Eligible Challengers, namely CAIs and non-profits.

Response: The Corporation adopted NTIA's recommended for Eligible Challengers.

**

Section 1.4

Summary of Comment(s): Change 200/20 test to 400 / 20 to verify claimed FWA/"5G at home" coverage speeds on FCC maps. We recommend doubling the threshold to 400 (market share of at least roughly 43% of the BSLs in the census block group), to be in alignment with the download challenge process market share (45%). That would mean with "at least 20 percent have Qualifying Subscriptions has at least" 80 customers "with qualifying service, or just over" eight (8) "percent of the BSLs in a census block group."

Response: The Corporation has studied this recommendation but could not determine a compelling rationale for adopting.

**

Section 1.4

Summary of Comment(s): More robust standards for operational availability are needed. Latency requirement of <100 ms is easily achievable by all technologies except high-earth satellite.

Response: 100 ms is the standard set by NTIA. The Corporation is not permitted to modify this definition.

**

[END OF 01.05.01 Volume 1 Public Comment Text Box]

1.5.2: Optional Attachment: Supplemental Materials

As an optional attachment, submit supplemental materials to the Volume I submission and provide references to the relevant requirements. Note that only content submitted via text boxes, certifications, and file uploads in sections aligned to Initial Proposal requirements in NTIA Grants Portal will be reviewed, and supplemental materials submitted here are for reference only.

Not applicable

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT M



UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899-1650

July 3, 2024

Justin Medeiros
Chief Financial Officer
Rhode Island Commerce Corporation
315 Iron Horse Way, Suite 101
Providence, RI 02908-5625

Subject: Approval of Initial Proposal Vol. 2
Award Number/FAIN: 44-20-B072
Admin POC: Kaleena Harrington
Grants Specialist: Tezeta Desta
Program Officer: Stuart Freiman

Dear Justin Medeiros,

Volume two of your entity's initial proposal, submitted on December 22, 2023, including any revisions during the review, has been approved by the Assistant Secretary for NTIA.

This approval, in conjunction with the Assistant Secretary's prior approval of Volume I, constitutes approval of the Rhode Island Commerce Corporation Initial Proposal as a whole. As explained in Section IV.B.9a of the NOFO, a Final Proposal is due no later than twelve (12) months after approval of the Initial Proposal. This is not an approval of your entity's initial proposal funding request, if submitted. Therefore, no additional funding is authorized by this approval, nor is your entity authorized to begin executing activities proposed in Volume 2 or the initial proposal funding request (IPFR). Those activities and/or additional funding will be authorized once review of the IPFR is deemed complete and approved by NTIA and NIST.

Please retain a copy of this letter in your official award file.

Melissa Abdullah
Grants Officer

cc: NIST Grants Management Information System, NTIA BEAD Program

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT N



July 3, 2024

VIA ELECTRONIC MAIL ONLY

Elizabeth M. Tanner, Esq.
Secretary of Commerce
State of Rhode Island
Executive Office of Commerce
317 Iron Horse Way, Suite 203
Providence, RI 02908

Re: BEAD Broadband Challenge Process for Rhode Island

Dear Madam Secretary:

Thank you for taking the time to meet with me and the Cox Communications team last week to discuss our shared goal of partnering together to ensure all Rhode Islanders have quality, affordable, high-speed internet, and to discuss the challenges we are facing with Rhode Island's BEAD Broadband Challenge Process. Cox is committed to being a partner with the State of Rhode Island, and we want to have a positive working relationship with you and your office.

I write to notify you, your team, and the Rhode Island Commerce Corporation of three outstanding issues regarding the Rhode Island BEAD Challenge Process in advance of the July 6, 2024 deadline for challenges: (1) our June 19, 2024 Access to Public Records Act request; (2) a written request for a waiver of the 75% simultaneous and random testing requirement for the BEAD Broadband Challenge Process; and (3) the deadline for submitting challenges to the Broadband Access Map. Each of these issues is discussed in detail below.

1) Cox's June 19, 2024 Access to Public Records Act ("APRA") request

Cox sent an APRA request to the Rhode Island Commerce Corporation on June 19, 2024, seeking the following information:

- The complete data set and testing results, from Ookla and any other sources, used by Rhode Island Commerce/ConnectRI, or done so by a third party on behalf of Rhode Island Commerce/ConnectRI, to create the Rhode Island Broadband Map that is being used for the state's BEAD Challenge Process.
- Any and all versions of the Rhode Island Broadband Map created by Rhode Island Commerce/ConnectRI, or done so by a third party on behalf of Rhode Island Commerce/ConnectRI drafted between January 1, 2022 to present.
- Any and all information and data used to reclassify locations as served, underserved and unserved including any and all communications (emails, meeting notes, etc.) as they relate to determining the rationale for making reclassification decisions as well as the actual making of the determinations that appear on the Rhode Island Broadband Map being used for the state's BEAD Challenge Process.

In response, we received the following response from your team on July 1, 2024:

“Based on the quantity of documents that would need to be retrieved, reviewed, and redacted, which are estimated to total approximately 206,459 pages, it is estimated that the total length of time required to comply with your request is approximately 3,498.50 hours, of which approximately 58.5 hours will be devoted to document retrieval and approximately 3,440 hours will be committed to reviewing documents for redaction purposes. As APRA provides that the first hour is free, the estimated cost for search, retrieval, and review of documents would total \$52,462.50.

Please remit payment to the Corporation, 315 Iron Horse Way, Suite 101, Providence, RI 02908 c/o Accounting Department, in the amount of \$52,462.50 by certified check or money order.”

I write to explore whether there is any subset of documents that we requested that would not require 3,440 hours for redaction and 58.5 hours for retrieval. In the short term, we are most interested in the Ookla testing data used to reclassify locations served by Cox. It is our understanding that the Ookla testing data referenced in the first bullet point above is generally data voluntarily provided by users, and to the extent there is any personal data that requires redaction, it can be accomplished by redacting columns in a spreadsheet in an efficient manner. Please let us know if we are correct about this, which types of documents that we requested require redaction, and if there is any data that we requested that is not onerous for your team to provide. In addition, please let us know how many people would be assigned to perform the redactions, so that we can have an estimate of when we would receive the data. Assuming a 40-hour work week, if one person were assigned to complete the task, the current estimate of 3,440 hours for redaction amounts to 86 weeks. Obviously, this timeframe of 86 weeks is well outside the parameters for the BEAD Broadband Challenge Process.

If we were to pay the amount referenced above, what date can we expect to receive all of the requested documents.

2) Formal Request for a Waiver of the 75% Testing Requirement

I am writing to formally request a waiver on behalf of Cox for the 75% simultaneous and random testing requirement as part of the Rhode Island Broadband Challenge Process. We have discussed this issue in the past with you or your team in meetings, conversations, or emails on multiple occasions, and most recently on June 27, 2024. As I explain below, we respectfully request a waiver of the testing requirement so that Cox can submit data on 10% of our customers in a census block.

Rhode Island Commerce Corporation has reclassified approximately 33,000 locations of Cox customers in 286 census blocks. To submit a challenge under the current Rhode Island Broadband Challenge Process, since Cox has 140,000 locations in the challenged areas, it would need to run 105,000 tests (75% of 140,000) three times, for a total of 315,000 tests. Cox can do many of the tests remotely. However, approximately 5% of the total would need to be done

manually, since approximately 5% of Cox customers have their own modems. This means, for example, that for a Census Block Group with 1,000 customers, Cox would have to run manual tests in 50 locations simultaneously by 50 field technicians – meaning Cox would need 50 technicians just for that one test in that one Census Block Group, and then repeat the test again two more times in those affected locations, which is impossible when extrapolated to the approximately 5,200 affected locations (5% of 140,000) in the challenged area who use their own modems. ***Even if Cox dedicated every one of its technicians across the country at exorbitant expense to come to Rhode Island, it still could not complete all of the testing required by the 75% testing threshold.***

The makeup of Cox’s customer base in the affected areas is much different from the rationale in the Rhode Island Commerce Corporation’s submission to the NTIA as part of its Volume I submission. According to the Footnote 11 in the Rhode Island BSL Area Speed Test Pre-Challenge Reclassification Proposal, attached to its Vol. I submission, Rhode Island Commerce Corporation assumed that an ISP would have 12 customers in a census block, meaning it would have to test only 9 customers (without taking into account whether the tests would be done manually by a technician), which Rhode Island Commerce Corporation described as a “slightly greater number of samples” than the 6 customers that Rhode Island Commerce Corporation used to designate an entire census block as undeserved. This assumption is simply not what Cox faces – it is required to test many more customers than 9 customers per block under the current challenge process.

In addition, under the BEAD Challenge Policy Notice from the NTIA, the challenge process must be “fair,” with “an approach that ensures that sufficient opportunity and time is given to all relevant parties to initiate, rebut, and substantiate challenges,” (section 7.5 of the policy), and there must be “sufficient justification” that the modifications to the national map “more accurately reflect the locations eligible for BEAD funding.” (Section 6.1 of policy). Similarly, the federal statute on challenging broadband maps (47 U.S.C. § 642(b)(5)) requires consideration of “the need to mitigate the time and expense incurred by, and the administrative burdens placed on” entities like Cox in challenging the accuracy of a coverage map.

The Rhode Island BEAD Broadband Challenge Process is significantly different and exponentially more labor intensive than every other state where Cox offers high speed internet. Requiring Cox to visit thousands of locations three times and test simultaneously would be extremely expensive and burdensome even if it were possible. We fail to see how a 75% testing requirement in areas with large numbers of customers is necessary or required under statistical modeling, particularly when the national model generally requires 10% testing, and other states where Cox offers high speed internet require 10% or at most 20% testing. We also think it significant that in all of the areas subject to challenge in Rhode Island, the Cox network is capable of offering 1000/35 service and in many areas we offer 2 gig service; the affected neighborhoods include some of the most affluent areas of state; and committing federal funds to areas that already have high speed internet will result in significant overbuild, instead of prioritizing adoption and affordability to communities in need.

For all these reasons, we respectfully request a waiver from the 75% simultaneous testing requirement, and we hope that you, your team, and Rhode Island Commerce Corporation will grant us a waiver of the testing requirement.

I also stress that Cox is continuing to test as many locations as it can, given the operational constraints caused by the Rhode Island BEAD Challenge Process, and we will provide that data to the Rhode Island Commerce Corporation as part of the challenge process by July 6, 2024.

3) The Deadline to Submit Challenges to the Rhode Island Broadband Map

With respect to the challenge process for Community Anchor Institutions (CAIs), it is our understanding from an email dated July 1, 2024, from Brian Thorn that your team is discussing with the NTIA the possibility of extending the challenge process, specifically for CAIs or perhaps more broadly. Please let us know if the Rhode Island Commerce Corporation will provide Cox with 30 days from June 27, 2024, to challenge the CAIs or other aspects of the Rhode Island Broadband Access Map, or if there will be a different deadline.

We recognize that we have discussed these issues in the past and we are reviewing our options. We look forward to working through them with you and your team to meet our shared goal of ensuring that all Rhode Islanders have quality, affordable, high-speed internet. Following up on our meeting on June 27 and my email on June 28, 2024, we are happy to provide Rhode Island Commerce with any outstanding data sets that your team believes remain outstanding that we can provide before July 6, 2024.

Thank you for your attention to these important issues.

Sincerely,

Stephen Iannazzi

cc:

Daniela Fairchild, Chief Strategy Officer
Brian Thorn, Director of Broadband Strategy
Matthew Touchette, Director of Communications
Joseph D. Whelan, Esq.
Robert C. Corrente, Esq.

DECISION ON REQUEST FOR DECLARATORY ORDER

EXHIBIT O

From: Thorn, Brian <Brian.Thorn@commerceri.com>
Sent: Friday, July 5, 2024 5:30 PM
To: Iannazzi, Steve (CCI-Northeast)
Cc: Tanner, Liz (COMM); Georgakis, Julietta (COMM); Fairchild, Daniela; Touchette, Matthew; Sawyer, Scott; Christopher Fragomeni; thomasjones@thomasjonespllc.com; Nelson, Ross (CCI-Northeast); Curt.Stamp@coxinc.com; kevin.mcnulty@coxinc.com; rcorrente@whelancorrente.com; Joseph D. Whelan; cvitale@hvlawltd.com
Subject: RE: [EXTERNAL] FW: Cox/RI Commerce

Good evening, Steve:

Thank you for your letter to Secretary Tanner dated July 3, 2024. I have responded to the three subject matter areas raised in your letter below.

Regarding your prior APRA request submitted to the Corporation, in your letter you indicate that you would like to explore the possibility of limiting the scope of responsive documents and question the extent of redaction of that limited scope of documents. I have discussed this part of your letter with Matt Touchette, the Corporation's Director of Communications and APRA coordinator. After discussion with him, and in response to your inquiry, you may submit a more refined request, and, if you do so, the Corporation will respond pursuant to APRA. If there are costs associated with your request, the Corporation will inform you of them and let you know its estimate on how many hours it will take to comply with your request.

Regarding your request for a waiver of the randomness, simultaneity, and 75 percent requirements applicable to ISPs seeking to challenge pre-challenge reclassifications, as you know, these requirements are set forth in the Rhode Island BEAD Initial Proposal, Volume One (IPV1). As with all aspects of that document, the provisions for which you seek a waiver were subject to rigorous scrutiny by NTIA, and they were approved only after Rhode Island made significant and required changes to ensure that they are fair and designed to produce the most accurate Rhode Island broadband map possible. I hope that Cox will take advantage of the procedures for challenging the results of the pre-challenge reclassification process so that Rhode Island can produce an accurate broadband map for the BEAD program. I am encouraged by your statement that Cox is conducting speed tests, presumably to do just that.

The Corporation cannot, however, grant your request that Cox be permitted to submit challenges based on speed tests for 10 percent or more of its customers in a census block. Importantly, the Corporation does not have the authority, by itself, to waive the requirements set forth in the IPV1. NTIA must approve any such waiver. Additionally, it would be inappropriate to grant the waiver you have requested. As explained in the IPV1 (p.46), the requirement that ISPs conduct speed tests simultaneously for at least 75 percent of their customers in the relevant census block group ensures that the test results reflect the speeds provided when Rhode Islanders use the network concurrently. Cox's proposal would fail to achieve that objective. Moreover, far from promoting fairness, Cox's proposal would give Cox the right to comply with a far more limited (and, again, a likely less informative) testing requirement than other ISPs. Absent justification, this would not be acceptable, and you have not provided sufficient justification. Your proposal is not narrowly tailored to address your concern about testing customer-owned modems. It is instead effectively a rewritten testing standard based on Cox's policy preferences.

Cox's approach to addressing its concerns about customer-owned modems has effectively prevented timely and meaningful engagement on that subject. The IPV1 was made public long before the start of the 30-day window for submitting challenges. The RI Broadband Map was further made available for review one week before the 30-day window for submitting challenges. But I am unaware of Cox raising its concerns about customer-owned routers

until last Thursday (June 27th), just eight days before end of the 30-day window for submitting challenges (July 6th), and Cox did not set forth those concerns in writing and request a waiver until your letter dated July 3rd, three days before the deadline. In addition, by submitting a proposal that would undermine the reliability and fairness of the procedures set forth in the IPV1 and that is not narrowly tailored to the customer-owned modem concern, Cox effectively precluded the Corporation from addressing the matter before the close of the 30-day window for submitting challenges. The Corporation's goal is to ensure that the challenge process yields the most accurate broadband map for Rhode Island possible, and ISP challenges to the results of the pre-challenge reclassification are an important part of achieving that objective. To the extent ISPs are unable to comply with the procedures set forth in the IPV1, the Corporation requires timely and constructive engagement by the relevant ISP to ensure that the testing can be conducted consistent with the spirit of IPV1. In this case, Cox has provided neither.

Nevertheless, if Cox presents a timely, narrowly tailored waiver request for the concern raised related to its claim that 5 percent of its customers own their own router, the Corporation will promptly consider and respond to such proposal. Please be advised that the Corporation cannot, in sole discretion, provide a waiver nor extend the challenge window.

With regards to the challenge process for Community Anchor Institutions, you are correct that the Corporation, in consultation with NTIA, is considering an extension of the challenge process. The Corporation is separately communicating the terms of such extension in an announcement to all eligible proposers.

Regards,
Brian



Brian Thorn

Director of Broadband Strategy

Rhode Island Commerce Corporation

315 Iron Horse Way, Suite 101, Providence, RI 02908

O: 401.278.9186

CommerceRI.com | CommerceRI.com/broadband

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From: Iannazzi, Steve (CCI-Northeast) <Steve.Iannazzi@cox.com>

Sent: Wednesday, July 3, 2024 11:39 AM

To: Thorn, Brian <Brian.Thorn@commerceri.com>

Cc: Tanner, Liz (COMM) <Liz.M.Tanner@commerce.ri.gov>; Georgakis, Julietta (COMM)

<julietta.t.georgakis@commerce.ri.gov>; Fairchild, Daniela <Daniela.Fairchild@commerceri.com>; Touchette, Matthew <matthew.touchette@commerce.ri.gov>; rcorrente@whelancorrente.com; Joseph D. Whelan <JWhelan@whelancorrente.com>

Subject: RE: [EXTERNAL] FW: Cox/RI Commerce

Importance: High

Good morning Brian,

Please see attached letter addressed to Secretary Tanner in response to your July 1 email.

Kind regards,
Steve

Stephen Iannazzi
Director, Government Affairs
C 401.222.9169
9 J. P. Murphy Industrial Highway West Warwick, RI 02893



From: Thorn, Brian <Brian.Thorn@commerce.ri.gov>
Sent: Monday, July 1, 2024 3:15 PM
To: Iannazzi, Steve (CCI-Northeast) <Steve.Iannazzi@cox.com>
Cc: Tanner, Liz (COMM) <Liz.M.Tanner@commerce.ri.gov>; Georgakis, Julietta (COMM) <julietta.t.georgakis@commerce.ri.gov>; Fairchild, Daniela <Daniela.Fairchild@commerce.ri.gov>; Nelson, Ross (CCI-Northeast) <Ross.Nelson@cox.com>; Stamp, Curt (CEI-Atlanta) <Curt.Stamp@coxinc.com>
Subject: FW: [EXTERNAL] FW: Cox/RI Commerce

Hi Steve,

Your June 28 email to Secretary Tanner was forwarded to me for a response.

On June 7, 2024, I transmitted the full list of Cox Communications' locations that had been reclassified from served to unserved or underserved. My email to you and your confirmation of receipt are attached to this response.

The list of eligible community anchor institutions ("CAIs") that require qualifying broadband service and do not currently have access to such service, to the best of the Corporation's knowledge, were set forth in Volume 1 of the Corporation's Initial Proposal (IPV1) (see page 19), which was sent on May 21, 2024 and has been posted on the Corporation's web page since May 21, 2024. IPV1 was approved by NTIA on May 6, 2024. NTIA communicated its approval to the Corporation on May 10, 2024. It is true there was a glitch in the Corporation's challenge portal that temporarily suppressed the functionality for identifying eligible CAIs. As a result, we are discussing with the NTIA the possibility of extending the challenge process, specifically for CAIs.

The Corporation will respond to your APRA request within the parameters provided under the APRA statute. We anticipate providing you with a preliminary response within the next business day or so. I would note that the scope of your APRA request is expansive.

I hope this information is helpful.

Regards,
Brian



Brian Thorn
Director of Broadband Strategy
Rhode Island Commerce Corporation
315 Iron Horse Way, Suite 101, Providence, RI 02908
O: 401.278.9186
CommerceRI.com | CommerceRI.com/broadband

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From: Iannazzi, Steve (CCI-Northeast) <Steve.Iannazzi@cox.com>

Sent: Friday, June 28, 2024 12:51 PM

To: Tanner, Liz (COMM) <Liz.M.Tanner@commerce.ri.gov>

Cc: Fairchild, Daniela <Daniela.Fairchild@commerceri.com>; Georgakis, Julietta (COMM)

<Julietta.T.Georgakis@commerce.ri.gov>; Stamp, Curt (CEI-Atlanta) <Curt.Stamp@coxinc.com>; Nelson, Ross (CCI-Northeast) <Ross.Nelson@cox.com>

Subject: Cox/RI Commerce

Madam Secretary,

Thank you for taking the time to meet with us to discuss the challenges we are facing with Rhode Island's BEAD challenge process. Cox is committed to being a partner with the state, and we want to have a positive working relationship with you and your office.

In the spirit of partnership, we will be happy to provide Rhode Island Commerce any outstanding data sets that your team believes remain, as of today we are not aware of any data requests we have not fulfilled.

In addition, there are a number of datasets that we have requested from Rhode Island Commerce that have not yet been received. Specifically:

1) Unserved/Underserved/Served Location Lists & Unserved/Served CAI Lists Feeding The Challenge Map:

- On 6/5/24, I initially requested this information via an email to Daniela Fairchild. On 6/6/24, Daniela emailed me and advised that Brian Thorn would provide the list and additional information. We have not yet received that information.
- Community Anchor Institutions (CAIs) are expected to be part of this initial challenge process that the state has advised closes on July 5th. However, the state broadband map did not reflect CAIs until the evening of June 27, 2024. (See attached 6/27/2024 5:11pm email from B. Thorn). Because the map was not complete until the inclusion of the CAIs on June 27th, Cox believes it should have 30 days from June 27th to challenge those CAIs.

Will the state provide Cox with 30 days from June 27th to challenge those CAI?

2) Complete Datasets and Testing Results relied upon to create the RI Broadband Map used for the state's BEAD challenge program

- On 6/20/24, I filed an Access to Public Records Request with the Rhode Island Commerce Corporation, both through your online portal and through email correspondence to Matthew Touchette. The request seeks:
 - the complete data set and testing results (from Ookla and any other sources) used by Rhode Island Commerce/ConnectRI or prepared by a third party on behalf of Rhode Island Commerce/ConnectRI to create the Rhode Island Broadband Map that is being used for the state's BEAD Challenge Process
 - any and all versions of the Rhode Island Broadband Map created by Rhode Island Commerce/ConnectRI, or done so by a third party on behalf of Rhode Island Commerce/ConnectRI drafted between January 1, 2022 to present
 - any and all information and data used to reclassify locations as served, underserved and unserved including any and all communications (emails, meeting notes, etc.) as they relate to determining the rationale for making reclassification decisions, as well as the determinations that appear on the Rhode Island Broadband Map being used for the state's BEAD Challenge Process.

Once again, thank you for meeting with us. We look forward to partnering together to ensure all Rhode Islanders have quality, affordable, high speed internet.

Due to the tight timeline we are up against, I respectfully request a response by **Monday at noon**.

Steve

Stephen Iannazzi

Director, Government Affairs

C 401.222.9169

9 J. P. Murphy Industrial Highway West Warwick, RI 02893



Bringing us closer