

Summary of Notice of Funding Opportunity for the Broadband, Equity, Access and Deployment (BEAD) Program

The National Telecommunications and Information Administration (NTIA) at the U.S. Department of Commerce released the Notice of Funding Opportunity (NOFO) for the Broadband Equity, Access and Deployment (BEAD) Program on May 13, 2022. The BEAD Program will make up to \$41.6 billion available for broadband deployment and related activities through grants to the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands (collectively “States”). The NOFO contains information on the allocation of funding, program eligibility and requirements, eligible and ineligible uses of funds, and the nine-stage process through which funding will be distributed.

Allocation of Funds/Matching Funds

The initial recipients of funding will be States, which then will allocate funding primarily to individual “subgrantees”—public and private entities that most importantly will be responsible for building out broadband infrastructure and providing broadband Internet access service on an ongoing basis.

Allocation of Funds: Each of the 50 states, along with the District of Columbia and Puerto Rico, is entitled to a minimum grant of \$100 million, which includes initial planning funds of up to \$5 million that may be used to develop the jurisdiction’s BEAD Program. Guam, American Samoa, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands will each be entitled to a minimum grant of \$25 million, which includes initial planning funds of up to \$1.25 million. Initial planning funds may be spent on research and data collection, community outreach, technical assistance to potential subgrantees (the entities that will actually deploy broadband), employee training and related functions to support the States’ BEAD Program.

An additional \$4.245 billion in BEAD Program funds will be allocated among each State according to its proportion of unserved locations in high-cost areas, compared to the nationwide total of unserved high-cost locations, as determined by the Federal Communications Commission’s (FCC) in-development broadband coverage maps. Thus, if one State has 10 percent of the nation’s total unserved locations in high-cost areas, it will receive \$424.5 million, or one-tenth of the high-cost allocation.

The remaining \$37.1 billion in funds will be divided among the States in a manner similar to the allocation of high-cost funds. Each State will receive an amount determined by its total number of unserved locations relative to the national total. Thus, if one State has 10 percent of the nation’s total unserved locations, it will receive \$3.71 billion, or one-tenth of the unserved-location allocation.

Matching Funds: States generally must require matching funds to be provided that are not less than 25 percent of a broadband deployment project's cost, although this requirement does not apply to designated high-cost areas, and NTIA has the authority to issue waivers of this requirement in exceptional circumstances. These matching funds can come from a variety of sources, including funding from a federal regional commission or authority, the Families First Coronavirus Response Act, the CARES Act, the Consolidated Appropriations Act, 2021, or the American Rescue Plan Act, which all contained funding for infrastructure and/or broadband. However, funding from other federal programs, such as the Universal Service Fund, may not be used as a source of matching funds.

States may accept matching funding in the form of in-kind contributions that minimize BEAD Program outlays such as property, equipment, supplies, hardware or software, and even potentially employee or volunteer services. And while there is a preference that matching contributions come from the subgrantees themselves, the matching funds may come from a variety of sources including the State itself, a local government, a utility company, a cooperative, a nonprofit or philanthropic organization, a for-profit company, a regional planning or governmental organization, a federal regional commission or authority, or any combination thereof.

Program Requirements

NTIA has set minimum requirements for participation in the BEAD Program for both States and subgrantees.

State Requirements

Administrative Entity: The governor of each State participating in the BEAD Program (and the D.C. Mayor) must select a single administrative entity to serve as the applicant for and recipient of any awarded BEAD Program funds. Most States are likely to select existing entities such as state broadband offices. The selected entities will act as the administering entity for all of the State's grant application materials.

However, if a State fails to submit a required application at any stage of the process by the applicable deadline or fails to cure any identified deficiencies with an application, NTIA will issue a public notice inviting a political subdivision or consortium of political subdivisions in the State to submit the applicable type of covered application in place of the State.

Eligible Subgrantees: States must ensure the broadest possible participation in the Program by considering a wide range of potential broadband provider types. This means they may not exclude cooperatives, nonprofit organizations, public-private partnerships, public or private utilities, public utility districts or local governments from participation. If a State has laws that prohibit participation by a particular type of entity (e.g., municipal broadband), it must explain to NTIA whether it will waive such laws, and how they will impact the State's application review.

However, States may not use BEAD Program funds for satellite projects or projects exclusively using unlicensed spectrum unless no technology defined by NTIA as reliable could be deployed consistent with the requirements contained in the NOFO for a subsidy at a particular location that is less than a State's pre-established per-location cost threshold.

Eligible Areas: States may provide subgrantees with funds for projects to primarily deploy broadband to locations that are currently deemed “unserved,” which is defined as lacking broadband service providing at least 25 Mbps downlink and 3 Mbps uplink. So long as all unserved areas will be covered, subgrantees may also use funding for projects to primarily deploy broadband to “underserved” locations, which have service of at least 25/3 Mbps, but lack at least 100/20 Mbps service. A broadband project targeting unserved areas must contain at least 80 percent unserved locations while a broadband project targeting underserved areas must contain at least 80 percent underserved locations. Thus, funded broadband deployment projects can include some already served locations. Subgrantees may also deploy broadband to “community anchor institutions” which lack access to gigabit-speed broadband service. States will be afforded an opportunity to define “community anchor institutions” themselves, but they must include institutions like schools, libraries and hospitals.

Areas served solely by satellite and/or by wireless broadband provided exclusively over unlicensed spectrum must also be considered “unserved” for purposes of the BEAD Program, regardless of claimed service speeds.

However, locations that are currently unserved or underserved by broadband but are subject to an enforceable federal, state or local commitment through a federal, state or local grant, loan, loan guarantee or support program for the deployment of at least 100/20 Mbps broadband with latency less than or equal to 100 milliseconds using an acceptable technology will not be considered unserved or underserved for purposes of the BEAD Program absent a waiver from NTIA.

Accountability: States must ensure that subgrantees are held accountable for the funding they receive through the BEAD Program. This involves the distribution of funds on a reimbursable basis that allows funds to be withheld if the subgrantee fails to deploy; the inclusion of claw back provisions in any agreements with subgrantees allowing the recoupment of any funds disbursed; the imposition of regular reporting mandates on subgrantees; and the development of robust subgrantee monitoring practices.

Affordability: Apart from requiring subgrantees to offer a low-cost broadband plan to eligible subscribers, an obligation which is discussed in more detail below, States must develop a middle-class affordability plan to ensure that all middle-class consumers have access to affordable high-speed broadband in a BEAD-funded network’s service area.

Local Coordination: Each State must develop its plans and proposals with the input of various stakeholders and must coordinate with political subdivisions, Tribal Governments, local and community-based organizations, and unions and worker organizations within its territory. These efforts must be documented and included in the State’s submissions to NTIA.

Small and Minority-Owned Businesses: States must take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises and labor surplus area firms are used when possible. These steps must include: placing qualified small, minority and women’s businesses on bid solicitation lists and ensuring they are solicited whenever they are potential sources of equipment or services; dividing requirements into smaller tasks or quantities and establishing delivery schedules that

permit maximum participation of small, minority and women businesses where economically feasible; seeking assistance from the Small Business Administration and Minority Business Development Agency; and requiring subgrantees to employ these steps with respect to subcontractors.

Equitable Workforce Development. States must design their programs to promote the equitable development of the workforce. This will require States to work with unions and worker organizations, education and training providers, as well as community-based organizations. States must also have a plan to create equitable on-ramps to broadband-related jobs that maintain their quality over time. States should require subgrantees to hire from a diverse pool of workers by targeting outreach to populations that have traditionally been underrepresented in broadband and information technology.

Subgrantee Requirements

Networks: Subgrantees must meet minimum network and service requirements in order to be eligible to receive funding. For example, all networks funded through the BEAD Program must provide speeds of at least 100/20 Mbps with latency less than 100 milliseconds to residential subscribers. Subgrantees providing service to community anchor institutions must provide symmetrical 1 Gbps service.

BEAD-funded networks must demonstrate an ability to achieve these speed results in accordance with the FCC's Performance Measures Order. That requires 80 percent of a subgrantee's upload and download measurements to be at or above 80 percent of the required speed. Additionally, 95 percent of latency measurements must be at or below 100 milliseconds. Further, networks must be resilient, and must not experience more than 48 hours of outages within a 365-day period, except in rare circumstances like natural disasters.

Subgrantees must also develop cybersecurity and supply chain risk management plans based on established best practices.

Deployment. Subgrantees must be able to provide service to any customer that requests service in the project area within four years of receiving the subgrant, though States must establish interim buildout milestones to ensure regular progress. NTIA may extend the four-year deadline to complete buildout under certain conditions: namely, if the subgrantee has a specific plan for the funds, which will be completed within a year of the deadline; construction is underway; or extenuating circumstances warrant an extension.

Subgrantees laying optical fiber or conduit underground must also include conduit access points at regular intervals for interconnection by unaffiliated entities. Where a subgrantee proposes to lay conduit, States must require 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 must consider the adequacy of the subgrantee's proposed excess conduit capacity and access points when evaluating the application. Additionally, any subgrantee that receives funds to deploy middle-mile infrastructure in connection with deployment to unserved or underserved locations must permit other providers to interconnect with that middle mile infrastructure on a just, reasonable and nondiscriminatory basis.

Low-Cost Plan: Subgrantees receiving BEAD funding must offer a low-cost broadband plan to eligible subscribers in their project area. States will determine the features of the low-cost option, such as speed and monthly cost, and may impose additional requirements on subgrantees, such as participation in the FCC's Affordable Connectivity Program (ACP). In the NOFO, NTIA provides an example of a low-cost broadband plan that States might require, which would be offered to qualifying customers for no more than \$30 per month (or \$75 if on Tribal lands), allows the ACP subsidy to be applied to cover the cost of the plan, provides service at 100/20 Mbps with latency below 100 milliseconds, and does not include data caps. Additionally, NTIA suggests that if a provider were to later introduce a low-cost plan with higher speeds, it should upgrade existing low-cost subscribers' service.

Subscribers may demonstrate eligibility for the low-cost program in a number of ways. If the subscriber qualifies for the FCC's ACP subsidy, the subscriber will be eligible for the low-cost option that BEAD recipients must offer. Additionally, subscribers can be eligible if they belong to a household that earns less than 200 percent of the poverty line, or receives benefits through federal programs such as Medicaid, SNAP, WIC, housing assistance, supplemental security income, veterans and survivors pension benefits, subsidized school lunch or breakfast programs, or Pell Grants. If a subscriber is eligible for an existing low-cost option that the provider offers, the subscriber must be eligible for the low-cost option under the BEAD Program as well. NTIA will also consider other low-cost eligibility criteria that States may propose.

Service: Subgrantees may not impose data caps on any subscriber using BEAD-funded networks, or implement any unjust or unreasonable network management practices in such networks. Subgrantees also must provide access to broadband service to each customer served by the project that wants broadband service on terms and conditions that are reasonable and nondiscriminatory.

Promotion: Subgrantees must 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 and the ACP. Once a BEAD-funded network has been deployed, each subgrantee must provide public notice, online and through other means, of that fact to individuals residing in the locations for which broadband service is available and share the public notice with the State that awarded the subgrant.

Continuity of Project: If a subgrantee, at any time, is no longer able to provide broadband service on a retail basis to the end-user locations covered by the subgrant, the State, in consultation with NTIA, 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 that commits to providing services under the terms of the BEAD Program.

Reporting Requirements: All subgrantees must report, at least semiannually during the term of the subgrant, to the State on the status of the project and the effectiveness of the funds provided. The reports must describe the eligible activities carried out with the funds, and must include detailed information on several topics, including: a list of

addresses or location identifications (as depicted in the FCC's Broadband Serviceable Location Fabric) that will be served by the subgrantee and the status of deployment to each location, and whether each location is residential, commercial or a community anchor institution; any locations newly served since the previous report, and the service taken; the types of facilities installed, advertised speeds of the service offered, the non-promotional prices and associated fees of the services being offered; and actual peak and off-peak speeds of the services offered; and all interconnection agreements that have been requested and the status of those agreements.

Subgrantees must also report on compliance with prevailing wage requirements under the Davis-Bacon Act or corresponding state prevailing wage laws. Subgrantees with projects with total costs exceeding \$5 million may provide a certification that all laborers and mechanics employed by contractors and subcontractors are paid at least the prevailing wage in the project area as determined by the U.S. Department of Labor or the appropriate State entity pursuant to applicable state prevailing-wage-in-construction laws. Or, in lieu of a certification, subgrantees may provide a project employment and local impact report that details the number of contractors and subcontractors working on the project; the number of workers hired directly or through a third party; the wages and benefits of workers on the project by job classification; and whether wages are below the prevailing wages determined by the U.S. Department of Labor or corresponding state agencies.

If a subgrantee is unable to certify that it will use either a unionized project workforce or a pre-hire collective bargaining agreement under the National Labor Relations Act, it must alternatively provide a project workforce continuity plan that includes: the steps taken to ensure the project will have sufficient access to the skilled and unskilled labor necessary for completing construction of the project, including descriptions of any required professional certifications, in-house training, apprenticeships, labor-management partnership training programs, and partnerships with unions and community-based colleges or groups; the steps taken to minimize the risks of labor disputes that could delay project completion; the steps taken to ensure workplace health and safety, including descriptions of safety training, certification or licensing under OSHA rules; the names of any subcontracted entities performing work on a project and the total number of workers employed by each, disaggregated by job title; and steps taken to ensure that workers receive sufficient wages and benefits to secure an adequately skilled workforce in the project's labor market.

Qualifications: Each subgrantee must demonstrate that it: (1) is capable of carrying out activities funded by the subgrant in a competent manner and in compliance with all applicable federal, State 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 NTIA or the State; (3) and has the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award.

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 subgrant and that they will comply with all BEAD Program requirements, including service milestones.

Prior to entering into any subgrantee agreement, each subgrantee must obtain an irrevocable standby letter of credit of a value of no less than 25 percent of the subgrant amount. States 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 State upon verification that the subgrantee has met optional or required service milestones.

Each subgrantee shall submit to the State financial statements from the prior fiscal year that are audited by an independent certified public accountant. If the 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 State.

Subgrantees must submit business plans and related analyses that demonstrate 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 after the targeted completion of project.

Subgrantees must submit to the State resumes for all key management personnel and any necessary organizational charts detailing all parent, subsidiaries and affiliates. Each subgrantee must also provide a narrative describing the prospective subgrantee's readiness to manage a broadband services network.

Each 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.

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.

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.

Subgrantees must certify that they possess the operational capability to qualify to complete and operate the project. A subgrantee that has provided a voice, broadband and/or electric transmission or distribution service for at least the two consecutive years prior to the date of its application submission or 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 subgrantee has provided a voice and/or broadband service, it must certify that it has timely filed FCC 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 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 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.

For a new entrant to the broadband market, a subgrantee must provide evidence sufficient to demonstrate that the newly formed entity has obtained, through internal or external resources, sufficient operational capabilities.

Uses of Funds

Eligible Uses of Funds: BEAD funds can be used to deploy and/or upgrade broadband network facilities in connection with a project to primarily provide service to unserved locations or a project to primarily provide service to underserved locations. BEAD funds can also be used to deploy and/or upgrade broadband network facilities to provide or improve service to an eligible community anchor institution as well as for data collection, broadband mapping and planning to facilitate the goals and deliverables of the BEAD Program. Funds may also be used for Internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multi-family residential building, with priority given to residential buildings that have a substantial share of unserved households or are in a location in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line is higher than the national percentage of such individuals.

Funding may be used for middle-mile infrastructure if it is technically or financially required to support service to an unserved location, underserved location or eligible community anchor institution.

BEAD funds may also be used for broadband adoption, including programs to provide affordable Internet-capable devices, and other non-deployment activities that support the goals of the BEAD Program, such as digital literacy, broadband sign-up assistance, and remote learning or telehealth services and facilities. However, a State is only allowed to use funding for non-deployment purposes if it can first demonstrate to NTIA that it has a plan to bring affordable, high-speed broadband service to all unserved and underserved locations in its jurisdiction. If a State chooses to award funds to subgrantees to carry out a non-deployment activity rather than carrying out an activity itself, a State must still use a competitive process to select those subgrantees.

Equipment and Services from Unsecure Vendors. No BEAD funding may be used to purchase any communications equipment or services on the FCC's list of covered communications equipment under the Secure and Trusted Communications Networks Act of 2019. The list currently includes equipment and/or services provided by Huawei Technologies Co., ZTE Corp., Hytera Communications Corp., Hangzhou Hikvision Digital Technology Co., Dahua Technology Co., AO Kaspersky Lab, China Mobile International USA, Inc. and China Telecom (Americas) Corp.

Profits and Fees. BEAD funds may not be used to pay any profit, fee, or charge above actual cost incurred by the State or subgrantee under the Program.

Collective Bargaining. BEAD funds may not be used to either support or oppose collective bargaining.

Administrative Expenses. States may not use more than two percent of the BEAD Program funds they receive for direct and indirect administrative expenses.

Restrictions on Matching Funds: The limitations on eligible costs apply both to BEAD funds directly and to non-federal matching funds, whether from the States directly or otherwise. In other words, in making subgrants, States are expressly prohibited from allowing any non-federal matching funds that are committed as part of an award to pay costs that could not otherwise be paid through BEAD funding.

Buy American: BEAD Program funds must be expended in compliance with the Build America, Buy America Act. Under that law, all manufactured products and constructions materials, including communications equipment and building materials such as fiber-optic cable, iron, and steel, must be produced in the United States. Subgrantees may request a waiver of the Build America, Buy America Act requirements from the Secretary of Commerce in certain cases. For example, waivers are available where products or materials are not produced within the United States in necessary quantities or quality, or where using domestically produced products and materials would increase the overall cost of the project by 25 percent compared to using foreign-sourced materials. In addition, BEAD funding may not be used to purchase fiber made in China, unless a waiver is granted under the same standard as the Build America, Buy America requirements, and NTIA is satisfied that national security concerns are satisfied.

State Application Process

There are nine stages to the BEAD Program, though some may be combined into a single step.

Letter of Intent: The first step will be an initial Letter of Intent from the State broadband office (or equivalent) to NTIA expressing the State's intent to participate in the BEAD Program, which is due to NTIA by July 18, 2022. Upon receipt of the Letter of Intent, NTIA will assign each State a designated contact at NTIA to guide the State through the process.

Planning Funds: With the Letter of Intent, a State may request the aforementioned planning funds to which it is entitled. Alternatively, planning funds may be requested as late as August 15, 2022.

Five Year Action Plan: States must all submit Five Year Action Plans ("Five Year Plans") to NTIA detailing their broadband goals and priorities for the coming years, including how broadband will be aligned with economic and workforce development, telehealth, digital equity, and other initiatives. The Five Year Plan must be developed through collaboration with state, local, and Tribal entities (if applicable), as well as unions and other worker organizations. The Five Year Plan must be submitted to NTIA within 270 days of receipt of the initial planning funds.

The Five Year Plan shall detail the organization of the State broadband office, existing funding and efforts for broadband deployment, and potential obstacles that may be encountered. It should incorporate all existing data on broadband availability, affordability, and adoption to identify gaps and needs, and develop a comprehensive program to address these needs. The Five Year Plan must include a timeline and cost estimate for universal service, potential funding sources, technical assistance that might be needed, areas selected for priority, an assessment of how public-private partnerships might aid deployment, and strategies to address affordability and workforce issues. Each Five Year Plan must also address the State's digital equity and inclusion needs, although this requirement may be satisfied by the completion of a State Digital Equity Plan under the Digital Equity Act, also administered by NTIA.

Available Funding: Once the FCC releases the new broadband maps currently under development pursuant to the Broadband DATA Act, NTIA will use those maps to determine the amount of high-cost and remaining funding available to each State. According to the most recent public statements by government officials, it appears as though the earliest that these maps will be ready is November.

Initial Proposal: Once the State is informed of its available funding, it will have 180 days to submit an Initial Proposal to NTIA, which is a comprehensive plan to ensure universal service within its jurisdiction. States must again work with local and Tribal governments, as well as community organizations and worker organizations, to develop the Initial Proposal. The Initial Proposal must identify all unserved and underserved locations in the State, as well as all community-anchor institutions (and must set forth the State's own definition of "community-anchor institution").

Each State must also explain its plan for a challenge process and the criteria it will rely upon when selecting projects for BEAD funding. States must also identify any projects the State may choose to implement itself rather than delegate through a subgrant. States are also required to assess climate threats and detail how the State will ensure the infrastructure to be deployed will survive through various weather events; describe the low-cost plans that subgrantees will be required to offer; describe how the State will use its initial 20 percent of funds, which may be released upon approval of the Initial Proposal (the remaining 80 percent must generally wait until approval of the Final Proposal); describe all laws the State plans to waive regarding barriers to municipal broadband; and describe policy changes the State will take to accelerate broadband deployment, such as dig-once policies, streamlined permitting, and cost-effective access to poles.

States must also certify their commitment to requiring strong labor standards as well as supporting a diverse workforce and minority- and women-owned businesses. Prior to submitting an Initial Proposal to NTIA, a State must put it out for public comment and incorporate feedback received through local coordination.

NTIA may immediately approve a State's Initial Proposal, or it may provide feedback and ask the State to revise and resubmit the Initial Proposal. Once approved, NTIA will release 20 percent of the State's funding, or a higher amount at the discretion of the NTIA Administrator.

Challenge Process: After submitting its Initial Proposal, each State must carry out a challenge process designed to allow local and Tribal governments, nonprofit

organizations, and broadband providers the opportunity to challenge whether particular locations in a State should be considered unserved, underserved, or served. A State's challenge process will be included in its Initial Proposal and must be approved by NTIA. After each challenge is resolved, and at least 60 days before allocating grant funds to a project, the State must provide public notice of the classification of each unserved location, underserved location, or community anchor institution. If the challenge process necessitates any changes to the Initial Proposal, the State must inform NTIA. NTIA retains the power to overrule any State decision regarding the eligibility of any location or community anchor institution.

Subgrantee Selection Process: States must select subgrantees pursuant to the competitive process described in their approved Initial Proposals. The process must safeguard against bias, collusion, conflicts of interest, and arbitrary decisions, while incorporating the priorities of the BEAD Program. The priorities include complete coverage of unserved and underserved locations, followed by community anchor institutions, as well as the use of end-to-end fiber optic architecture.

States may solicit proposals from subgrantees at the geographic level of the State's choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. A State may alternatively solicit proposals for project areas it defines or ask subgrantees to define their own proposed project areas.

Priority Broadband Projects. Priority must be given to projects using end-to-end fiber architecture. Unless the per-location BEAD subsidy for a proposed fiber project would exceed a per-location cost threshold set by a State ("Extremely High Cost Per Location Threshold"), a waiver is obtained from NTIA for a particular project, or a proposed fiber project does not meet all of the requirements set forth in the NOFO, a State must select a fiber project if one is proposed for a location or set of locations as opposed to a non-fiber project.

When selecting among competing Priority Broadband Projects, States must weight (e.g., give substantial points or credits in the scoring mechanism the State develops) certain criteria higher than others.

The most weight must be given to three primary criteria, which together must account for at least 75 percent of the points or credits available in the process. The first primary criterion is the minimization of BEAD Program outlays, meaning projects that are able to reduce the funding required on a per-location basis—either through increased matching funds or lower overall cost—must be given greater points or credits. The second primary criterion is the affordability of the final consumer product, as measured by the subgrantee's commitment to provide symmetrical 1 Gbps service at the most affordable price. The third primary criterion is the subgrantee's demonstrated record of and commitment to fair labor standards. New entrants without records of compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards.

The only secondary criterion is speed to deployment, which must receive some amount of points or credits less than the amount awarded for the primary criteria. While all subgrantees must begin providing service to all locations within four years (absent a waiver), States must award points or credits to those subgrantees that make binding commitments enforceable through contractual penalties to deploy broadband even faster than required.

States may choose additional criteria for which to award points and make selections among competing Priority Broadband Projects, but NTIA offers a few recommendations. The first recommendation is the adoption of selection criteria regarding a subgrantee's enforceable commitments to advance equitable workforce development and job quality objectives. To score well on workforce development objectives, subgrantees would have to demonstrate they will draw employees from a diverse pool, adequately train employees and build partnerships with educational and training organizations, and create equitable on-ramps to broadband-related jobs that give workers a voice. The second recommendation is that subgrantees be awarded additional points or credits if they agree to provide open access to their BEAD-funded networks on fair, equal, and neutral terms. The last recommendation is that subgrantees be scored according to the support received from Tribal and local governments, and whether Tribal and local governments will have an oversight role in the project.

Non-Priority Broadband Projects. For competing Non-Priority Broadband Projects, NTIA requires use of a similar weighting and scoring rubric as with Priority Broadband Projects, but with slightly different criteria, given the underlying differences. The first primary criterion must still be the minimization of BEAD Program outlays, meaning projects that reduce the funding required on a per location basis—either through increased matching funds or lower overall cost—should be given greater points or credits. The second primary criterion is the affordability of the final consumer product, meaning the subgrantee's commitment to provide 100/20 Mbps service at the most affordable price. The third primary criterion is the subgrantee's demonstrated record of and commitment to fair labor standards. Again, new entrants without a record of compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards.

There are two secondary criteria for Non-Priority Broadband Projects. The first is speed to deployment, with greater weight going to subgrantees that make enforceable commitments to deploy earlier than required. The second is the speed of the network and other technical capabilities. States must not only weight the speed and latency of the service to be offered, but also score for other factors like scalability and the use of capital assets with longer usable lives.

NTIA makes the same recommendations for additional criteria to score Non-Priority Broadband Projects as Priority Broadband Projects, namely, commitments to advancing equitable workforce development and job quality objectives, providing open access to BEAD-funded networks, and the level of support and involvement of Tribal and local governments.

Use of the 20 Percent Funding Release: Upon the approval of the Initial Proposal and completion of the challenge process, States may receive 20 percent of their funding allocations from NTIA (or more at the sole discretion of NTIA). The funds may be spent to fully fund deployment projects that consist of at least 80 percent unserved locations and are in areas where a greater than average number of individuals are living below 150 percent of the poverty line. Use of these funds for other purposes will require a waiver from NTIA.

Final Proposal and Release of Remaining Funds: The Final Proposal must be submitted to NTIA within 12 months of NTIA's approval of the Initial Proposal. Upon

approval of the Final Proposal, NTIA will release to a State its remaining allocated funds.

A Final Proposal must contain a detailed plan for service, including a timeline for deployment and the results of the challenge process. Additionally, States must detail how they selected the subgrantees for individual buildout projects pursuant to the competitive selection process, and detail all uses of BEAD Program funding that go to purposes other than last-mile broadband deployment.

States must also detail all the steps they have taken or plan to take to ensure BEAD funding goes further, such as streamlined permitting, and also address activities related to labor and workforce issues, minority- and women-owned businesses, low-cost broadband plan requirements, and climate resiliency. States will also be required to document how they will comply with environmental and historic preservation requirements that may be impacted by deployment, as well as to demonstrate they have received any required consent from Tribal governments.

The Final Proposal must also list each application that was denied or affected by State laws concerning broadband or utility services (e.g., municipal broadband restrictions), and explain why those laws were not waived. States will need to explain whether those laws predated the Infrastructure Investment and Jobs Act, and how they impacted the individual decisions to deny applications.

Like the Initial Proposal, NTIA may request edits to the Final Proposal prior to approving or disapproving it. Even after NTIA disapproves of a Final Proposal, the State may correct the deficiencies and resubmit at a date determined by NTIA.

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