

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.

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

	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 of 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.