

NOTICE OF FUNDING OPPORTUNITY

MIDDLE MILE GRANT PROGRAM

EXECUTIVE SUMMARY

A. Federal Agency Name

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

B. Funding Opportunity Title

Middle Mile Grant Program

C. Announcement Type

Initial

D. Funding Opportunity Number

NTIA-MMG-2022

E. Assistance Listing (CFDA Number)

11.033

F. Key Dates

Complete applications must be received by NTIA through the Application Portal no later than 11:59 p.m. Eastern Daylight Time (EDT) on **September 30, 2022**.

NTIA expects to complete its review, selection of successful applicants, and award processing by **February 16, 2023**. NTIA expects that the start date for awards under this Notice of Funding Opportunity (NOFO) will be no earlier than **March 1, 2023**.

G. Application Submission Address

Complete application packets must be submitted electronically through the NTIA Application Portal. Complete applications or portions thereof submitted by postal mail, courier, email, facsimile, or other means will not be accepted. *See* Section IV of this NOFO for detailed information concerning application submission requirements.

H. Funding Opportunity Description

The Middle Mile Broadband Infrastructure Grant (MMG) Program provides funding for the construction, improvement, or acquisition of middle mile infrastructure. The purpose of the grant program is to expand and extend middle mile infrastructure to reduce the cost of connecting areas that are unserved or underserved to the internet backbone. *See* Section I of this NOFO for the full Program Description.

I. Funding Instrument

Grant.

J. Eligibility

To apply for the MMG Program, an entity must be a State, political subdivision of a State, Tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning council, Native entity, economic development authority, or any partnership of two (2) or more of these entities.

K. Anticipated Amounts

NTIA will make up to \$980,000,000 available for federal assistance under the MMG Program (\$1,000,000,000 minus two percent set aside to cover NTIA's administrative costs). NTIA expects to make awards under this program within the following funding range: \$5,000,000 to \$100,000,000. The period of performance for grants issued pursuant to this program ends five years from the date on which the grant funds are made available to the eligible entity.

L. Cost Sharing/Matching

The amount of a middle mile grant awarded to an eligible entity through this program may not exceed 70 percent of the total project cost.¹

FULL ANNOUNCEMENT TEXT

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¹ Infrastructure Investment and Jobs Act of 2021, Division F, Title IV, § 60401(f), Public Law 117-58, 135 Stat. 429 (November 15, 2021).

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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 for the Middle Mile Grant (MMG) Program, authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title IV, Section 60401, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act), also known as the Bipartisan Infrastructure Law. The MMG Program provides funding for the construction, improvement, or acquisition of middle mile infrastructure.

A. Overview of the Middle Mile Grant Program

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: Broadband 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 that every American must have access to a reliable, affordable, high-speed broadband connection. Full participation in our twenty-first century economy requires no less. 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. This digital divide is particularly acute for communities of color and lower-income areas and spans both urban and rural areas of the country.

Passed on a bipartisan basis, the Infrastructure Act established the Middle Mile Grant Program to complement other programs focused on internet connectivity and digital equity. Middle mile infrastructure does not reach the end user’s location, but typically aggregates large quantities of traffic for carriage between networks. The variety of middle mile arrangements is broad. Middle mile infrastructure might carry traffic via undersea cable to remote locations such as Hawaii or American territories and possessions elsewhere in the Pacific, may “backhaul” wireless traffic via a fiber-optic link from an antenna mounted on a tower to the provider’s wired network, may bring the internet to previously unserved Tribal or Native lands, or may simply connect neighboring towns. Middle mile service, moreover, might be offered by a wide range of entities, from traditional retail Internet Service Providers, large technology companies that do not offer retail broadband at all, or electric utilities that increasingly recognize their capability to transform the communications market. Regardless of who deploys and operates them, middle mile connections are crucial to connectivity and competition.

Recognizing the middle mile’s central importance, Congress appropriated \$1 billion for the MMG Program and identified two key objectives: to “encourage the expansion and extension of middle mile infrastructure to reduce the cost of connecting unserved and underserved areas to the backbone of the internet” and to “promote broadband connection resiliency through the creation of alternative network connection paths that can be designed to prevent single points of failure on a broadband network.”²

NTIA looks forward to receiving and reviewing a broad range of applications proposing creative ways to fill the gaps in our nation’s middle mile infrastructure and advance our national goals of increasing connectivity, affordability, and equity.

B. Definitions

(1) Anchor Institution.—The term “anchor institution” means a school, library, medical or healthcare provider, community college or other institution of higher education, or other community support organization or entity.

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

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

(4) Eligible Entity.—The term “eligible entity” means— (A) a State, political subdivision of a State, Tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning council, Native entity, or economic development authority; or (B) a partnership of two (2) or more entities described in (A).

(5) FCC Fixed Broadband Map.—The term “FCC fixed broadband map” means the map created by the Commission under Section 802(c)(1)(B) of the Communications Act of 1934 (47 U.S.C. § 642(c)(1)(B)).

(6) Indian Tribe.—The term “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. § 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Interconnect.—The term “interconnect” means the physical linking of two networks for the mutual exchange of traffic on non-discriminatory terms and conditions.

² Infrastructure Act § 60401(b)(1).

(8) Internet Exchange Facility.—The term “internet exchange facility” means physical infrastructure through which internet service providers and content delivery networks exchange internet traffic between their networks.

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

(10) Middle Mile Grant.—The term “middle mile grant” means a grant awarded under the MMG Program.

(11) Native Entity.—The term “Native entity” means— (A) an Indian Tribe; (B) an Alaska Native Corporation; (C) a Native Hawaiian organization (as defined in Section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7517)); (D) the Department of Hawaiian Home Lands; and (E) the Office of Hawaiian Affairs.

(12) State.—The term “State” means any State of the United States, the District of Columbia and the U.S. Territories and possessions.

(13) Submarine Cable Landing Station.—The term “submarine cable landing station” means a cable landing station, as that term is used in Section 1.767(a)(5) of Title 47, Code of Federal Regulations (or any successor regulation), that can be utilized to land a submarine cable by an entity that has obtained a license under the first Section of the Act entitled “An Act relating to the landing and operation of submarine cables in the United States”, approved May 27, 1921 (47 U.S.C. § 34) (commonly known as the “Cable Landing Licensing Act”).

(14) Tribal Land.—The term “Tribal Land” means (A) any land located within the boundaries of— (i) an Indian reservation, pueblo, or rancheria; or (ii) a former reservation within Oklahoma; (B) any land not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held— (i) in trust by the United States for the benefit of an Indian Tribe or an 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. § 8 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.

(15) Tribal Government.—The term “Tribal government” means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published by the Secretary of the Interior most recently as of the date of enactment of the Act pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 5131).³

(16) Trust Land.—The term “trust land” means any land that (A) is held in trust by the United States for Native Americans; (B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (C) is owned by a Regional Corporation or Village Corporation, as such terms are defined in Section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. § 1602(g), (j)); or (D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary of the Interior.

(17) Underserved.—The term “underserved,” with respect to an area, means an area— (A) that is designated as a Tribally underserved area through the process set forth in Section III.G.2 of this NOFO; or (B) that— (i) is of a standard size not larger than a census block, as established by the Commission; (ii) is not an unserved area; and (iii) as determined in accordance with the FCC fixed broadband map, does not have access to broadband service with— (I) except as provided in (II) — (aa) a download speed of not less than 100 megabits per second; and (bb) an upload speed of not less than 20 megabits per second; or (II) minimum download and upload speeds established as benchmarks by the Commission for purposes of the Act after the date of enactment of the Act, if those minimum speeds are higher than the minimum speeds required under (I).

(18) Unserved.—The term “unserved,” with respect to an area, means an area— (A) that is designated as a Tribally underserved area through the process set forth in Section III.G.2 of this NOFO; or (B) that— (i) is of a standard size not larger than a census block, as established by the Commission; and (ii) as determined in accordance with the FCC fixed broadband map, does not have access to broadband service with— (I) except as provided in (II)— (aa) a download speed of not less than 25 megabits per second; and (bb) an upload speed of not less than 3 megabits per second; or (II) minimum download and upload speeds established as benchmarks by the Commission for purposes of this Act after the date of enactment of this Act, if those minimum speeds are higher than the minimum speeds required under (I).

II. Federal Award Information

A. Funding Availability

NTIA will make up to \$980,000,000 available for federal assistance under the MMG Program.

³ See Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, at 86 Fed. Reg. 7554 (Jan. 29, 2021); *see also* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs; Correction, 86 Fed. Reg. 18552 (Apr. 9, 2021) (updated by the Secretary of the Interior).

B. Period of Performance

To be eligible to obtain a middle mile grant, an eligible entity shall agree to complete the buildout of the middle mile infrastructure described in the application by not later than five (5) years after the date on which amounts from the grant are made available to the eligible entity.

1. Extensions

An eligible entity may submit a request for an extension, which must include the justification for such an extension and all relevant circumstances. At the request of an eligible entity, the Assistant Secretary may extend the buildout deadline by not more than one (1) year if the eligible entity certifies that:

- (i) the eligible entity has a plan for use of the grant funds;
- (ii) the project to build out middle mile infrastructure is underway; or
- (iii) extenuating circumstances require an extension of time to allow completion of the project to build out middle mile infrastructure.

Requests for extensions will be granted at the sole discretion of the Assistant Secretary. If an extension is granted, the Assistant Secretary shall modify any milestones as necessary under the extension.

2. Reversion of Funds

Unless the Assistant Secretary has granted an eligible entity an extension of time to complete its project, NTIA will make any grant funds not expended by the eligible entity by the end of the performance period set forth in the Infrastructure Act available to other eligible entities for the purposes provided in the MMG Program.

C. Award Amount

NTIA expects to make awards under this program within the following funding range: \$5,000,000 to \$100,000,000. This range is not a required minimum or maximum, but eligible entities requesting amounts for projects outside of this range must provide a reasonable explanation for the variance.

D. Treatment of Unallocated Funds

In the event that any funds remain available after grants have been awarded to eligible entities that submitted approved applications during the initial round of funding for the MMG Program, the Assistant Secretary shall either direct that additional applications submitted in response to this NOFO be subject to further review, issue a new Notice of Funding Opportunity to address disbursement of remaining funds, or both.

E. Type of Funding Instrument

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

III. Eligibility Information and Program Details

A. Eligible Applicants

An applicant must be an eligible entity as defined in Section I.B of this NOFO.

B. MMG Program Applicant Qualifications

Prior to entering into any award agreement, the Assistant Secretary shall ensure, consistent with the requirements below, that any prospective middle mile grant recipient:

1. Is capable of carrying out the proposed project in a competent manner, including a plan to attract, train, or retain an appropriately skilled and credentialed workforce; and
2. Has the financial, managerial, technical, and operational capability to carry out the proposed project and operate the resulting middle mile broadband network.

To allow the Assistant Secretary to ensure the eligible entity meets the requirements set forth above, each eligible entity must take the steps set forth below in connection with any application for a middle mile grant. Additional threshold, project-specific, eligibility criteria are detailed in Section V.A.1.

1. Financial Capability

a. Certifications

Each applicant must supply a certification from an officer-level employee (or individual of comparable rank) attesting that it is 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 MMG Program requirements, including service milestones. To the extent the Grants Officer disburses funding only upon completion of the associated tasks, each applicant 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 Grants Officer authorizes additional disbursements.

b. Letter of Credit

During the application process, each applicant must submit a letter from a bank meeting 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 applicant. The letter shall at a minimum provide the dollar amount of credit offered and the issuing bank's agreement to follow the terms and conditions of NTIA's model letter of credit. NTIA shall establish a model letter of credit substantially similar to the model letter of credit established by the Federal Communications Commission in connection with the Rural Digital Opportunity Fund (RDOF).⁴

⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

NTIA will ensure, prior to issuing a middle mile grant award, that each eligible entity obtains an acceptable, irrevocable standby letter of credit in a value of no less than 25 percent of the award amount.

Each eligible entity shall provide with its letter of credit an opinion letter from its 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 bidder's bankruptcy estate under Section 541 of the Bankruptcy Code.

An eligible entity may obtain a new letter of credit or renew its existing letter of credit to reduce its value in accordance with the following limitations:

- Upon demonstrating to the satisfaction of the Assistant Secretary that it has completed the buildout of 40 percent of project miles, an eligible entity may obtain a new letter of credit or renew its existing letter of credit so that it is valued at no less than 20 percent of the award amount.
- Upon demonstrating to the satisfaction of the Assistant Secretary that it has completed the buildout of 60 percent of project miles, an eligible entity may obtain a new letter of credit or renew its existing letter of credit so that it is valued at no less than 15 percent of the award amount.
- Upon demonstrating to the satisfaction of the Assistant Secretary that it has completed the buildout of 80 percent of project miles, an eligible entity may obtain a new letter of credit or renew its existing letter of credit so that it is valued at no less than 10 percent of the award amount.

c. Audited Financial Statements

Each applicant shall submit financial statements from the three prior fiscal years that are audited by an independent certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must submit unaudited financial statements from the three prior fiscal years and certify that it will provide financial statements from the three prior fiscal years that are audited by an independent certified public accountant by an NTIA specified deadline. The Assistant Secretary will not approve any middle mile grant award unless the Assistant Secretary determines that the documents submitted demonstrate the applicant's financial capability with respect to the proposed project.

2. Managerial Capability

Applicants shall submit to the Assistant Secretary one-page resumes for (a) all key management personnel and (b) all key personnel of subcontractors or other entities that will play substantial roles in building, managing, or operating the middle mile network built using MMG Program funding. In addition, each applicant shall submit any necessary organizational chart(s) detailing all of its parent companies, subsidiaries, and affiliates. Each applicant must also provide a narrative describing the applicant's readiness to manage a middle mile broadband network. This narrative should describe the experience and qualifications of key management set to undertake this project, the applicant's experience undertaking projects of similar size and scope, recent and upcoming organizational changes including mergers and acquisitions, and relevant organizational policies. The Assistant Secretary will not approve any middle mile grant unless the Assistant Secretary determines that the documents submitted demonstrate the applicant's managerial capability with respect to the proposed project.

3. Technical Capability

Each applicant must certify that it is technically qualified to complete and operate the proposed 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 III.I of this NOFO).

Each applicant must submit a network design diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing that the applicant will complete build-out and the initiation of service within five years from the date on which the grant funds are made available to the eligible entity and will meet interim buildout requirements set forth herein and in any other binding document. The Assistant Secretary will not approve any middle mile grant unless the Assistant Secretary determines that the materials submitted demonstrate the applicant's technical capability with respect to the proposed project.

4. Compliance With Laws

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

5. Operational Capability

Each applicant must supply a certification from an officer-level employee (or individual of comparable rank) attesting to the applicant's operational capability to complete and operate the proposed project. If applicable, the applicant must submit a certification from an officer-level employee (or individual of comparable rank) that it has operated a middle mile broadband network for at least two years or that it is a wholly owned subsidiary of such an entity and must specify the number of years the applicant or its parent company has been operating.

If the applicant 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, it must 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 applicant 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.

The Assistant Secretary will not approve any middle mile grant award unless the Assistant Secretary determines that the documents submitted demonstrate the applicant's operational capability with respect to the proposed project.

6. Ownership

Each applicant shall provide ownership information consistent with the requirements set forth in 47 C.F.R. § 1.2112(a)(1)-(7).

C. Cost Sharing or Matching

The amount of a middle mile grant awarded to an eligible entity may not exceed 70 percent of the total project cost.⁵ Except for grants made to Tribal Governments and Native entities, the Infrastructure Act does not contemplate waiver of this requirement, and the Assistant Secretary will not entertain requests for such waivers.

Matching funds may be in the form of either cash or in-kind contributions consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200.⁶ In-kind contributions, which 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.⁷ 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, which, 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, in-kind contributions could include, consistent with federal cost principles, access to rights of way, pole attachments, conduits,

⁵ Infrastructure Act § 60401(f).

⁶ See 2 C.F.R. § 200.306.

⁷ See *id.*

easements, or access to other types of infrastructure. It is important to note that federal funds may not be used as non-federal match, except as expressly provided by federal statute.⁸

D. Buildout Benchmarks

Buildout benchmarks will be established as a condition of any middle mile grant. An eligible entity that receives a middle mile grant shall demonstrate to the satisfaction of the Assistant Secretary that it has completed the buildout of 40 percent of project miles by the end of the second year after the award date, 60 percent of project miles by the end of the third year, 80 percent of project miles by the end of the fourth year, and 100 percent of project miles by the end of the fifth year. For the sake of clarity, the project must be completed, lit, and operating no later than five years from the date on which the grant funds are made available to the eligible entity.

The Assistant Secretary retains the authority to modify buildout benchmarks after consultation with an applicant, imposing more aggressive or less aggressive buildout benchmarks if the nature of and circumstances surrounding the project make it reasonable to do so (*e.g.*, the project covers a short distance or can be deployed in large part using existing conduit, or the project will leverage infrastructure slated to be constructed using other federal funds, but the schedule for the deployment of that infrastructure is incompatible with the benchmarks set out above).

E. Prioritization of Applications Meeting Statutory Criteria

As directed by Section 60401(d)(2) of the Infrastructure Act, the MMG Program will prioritize applications that meet at least two of the following five criteria:

1. The eligible entity adopts fiscally sustainable middle mile strategies.⁹
2. The eligible entity commits to offering non-discriminatory interconnection to terrestrial and wireless last mile broadband providers and any other party making a bona fide request.
3. The eligible entity identifies specific terrestrial and wireless last mile broadband providers that have (i) expressed written interest in interconnecting with middle mile infrastructure planned to be deployed by the eligible entity; and (ii) demonstrated sustainable business plans or adequate funding sources with respect to such interconnection described in (i).

⁸ See *id.*

⁹ In particular, applicants should submit with their application financial studies, analyses, or other materials demonstrating that reasonably anticipated revenues associated with middle mile projects that are constructed, improved, or acquired using MMG Program funds will be sufficient to allow long-term provision of service in light of reasonably anticipated costs. The required documentation includes organizational historical financials, audited financials, pro-forma financial projections and analysis to substantiate the sustainability of the proposed project, and submission of a letter of credit valued at no less than 25 percent of the requested award amount.

4. The eligible entity has identified supplemental investments or in-kind support (such as waived franchise or permitting fees) that will accelerate the completion of the planned project.
5. The eligible entity has demonstrated that the middle mile infrastructure will benefit national security interests of the United States and the Department of Defense.¹⁰

F. Connections to Anchor Institutions

Each applicant seeking an award to build middle mile infrastructure using fiber-optic technology shall certify that the proposed project, upon completion, will include direct interconnection facilities that will facilitate the provision of broadband service, at speeds not less than 1 Gigabit per second for downloads and 1 Gigabit per second for uploads to anchor institutions located within 1,000 feet of the middle mile infrastructure.

An eligible entity applying for a middle mile grant may seek, and the Assistant Secretary may grant, a waiver of the requirements set out in the previous paragraph, in full or in part, to the extent the eligible entity demonstrates that the requirement is not technically or economically feasible. *See* Section VIII.E.

G. Special Rules for Tribal Governments and Native Entities

1. Waivers and Alternative Requirements

The Infrastructure Act permits the Assistant Secretary, in consultation with Tribal governments and Native entities, to waive, or specify alternative requirements in connection with, most directives governing the MMG Program if the Assistant Secretary finds that waiver or modification of the requirement is necessary for (a) the effective delivery and administration of middle mile grants to Tribal governments or (b) the construction, improvement, or acquisition of middle mile infrastructure on trust land.

2. Tribal Unserved and Underserved Areas

A Tribal Government may certify whether an area within its own Tribal Land is unserved or underserved based on criteria of its choosing. Any such Tribal Government must certify that the areas where middle mile service is proposed (including any such areas where a provider offers, or has proposed to offer, last-mile service) are unserved or underserved and provide a statement on Tribal Letterhead explaining how the determination that the area is unserved or underserved was made and additional supporting information if available. The Department of Hawaiian Home Lands may also certify whether Tribal Lands in Hawaii are unserved. Neither a Tribal Government nor the Department of Hawaiian Home Lands may certify Tribal Lands as unserved or underserved if there exists a legally binding agreement between (a) a Tribal Government, the

¹⁰ Relevant considerations here include, but are not limited to, whether the funded middle mile infrastructure will increase the redundancy and resiliency of telecommunications networks that support broadband services, other commercial telecommunications services, protection of other critical national infrastructure (*e.g.*, the national power grid and power transmission facilities), border security, or other physical infrastructure sensor and monitoring.

Department of Hawaiian Home Lands, or an authorized agent thereof and (b) a broadband service provider under which the broadband service provider is committed to deploying and providing broadband internet services at speeds of no less than 100 Mbps downstream and 20 Mbps upstream. A Tribal Government and the Department of Hawaiian Home Lands must disclose whether it has terminated an existing agreement of this type in order to support a certification that an area is unserved or underserved under this provision.

H. Fair Labor Practices

Applicants must have a demonstrated record of and plans to be in compliance with federal labor and employment laws where applicable. This will help ensure that projects are carried out in accordance with the law, assist NTIA in ensuring that a prospective awardee is capable of carrying out activities funded by an award in a competent manner in compliance with all applicable federal, State, and local laws, and promote the effective and efficient completion of high-quality middle mile broadband infrastructure projects by ensuring a reliable supply of skilled workers and minimizing disruptive and costly delays.

In order for NTIA to evaluate an applicant's demonstrated record of and plans to be in compliance with federal labor and employment laws, each applicant must provide the following:

1. Information on their record of compliance with federal labor and employment laws, as well as the records of any other entities participating 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 applicant should provide data on its 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.
2. A certification from an Officer/Director-level employee (or equivalent) of the applicant evidencing consistent past compliance with federal labor and employment laws by the applicant, as well as contractors and subcontractors.
3. Written disclosure of any instances in which the applicant, 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.
4. A written plan for ensuring compliance with federal labor and employment laws. These plans must address, at a minimum, how the applicant 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 applicant 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. An effective plan for compliance with federal labor and employment laws can include an applicant'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;¹¹
- 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.

NTIA will offer technical assistance and may provide additional guidance on this issue.

I. Highly Skilled Workforce

To ensure that applicants have the technical and operational capacity to carry out the project, applicants must submit a plan for ensuring that the project workforce will be an appropriately skilled and credentialed workforce (including by the applicant and each of its contractors and subcontractors). For purposes of this Section, the “project workforce” includes those employees of the applicant, its contractors, or subcontractors directly engaged in the physical construction of the middle mile infrastructure, but does not include support staff of senior management. The plan for a highly skilled workforce should include the following information:

- The ways in which the applicant 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;

¹¹ 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.

- 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 applicant plans to contract and subcontract with in carrying out the proposed work.

If the project workforce or any applicant's, contractor's, or subcontractor's workforce is not unionized, the applicant 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.

J. 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 well-trained workforce will also allow for the safe deployment of sustainable networks. To meet the workforce needs of the MMG Program, applicants must make appropriate investments to develop a skilled, diverse workforce for the jobs that the applicants need to fill.

Each applicant must provide the information described below as part of its application:

1. A description of how it will support the development and use of a highly skilled workforce capable of carrying out MMG Program work in a manner that is safe and effective.
2. A description of the applicant's participation in sector-based partnerships among employers, education and training providers, unions and any other labor-management organizations, 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.¹²

¹² 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>.

3. A description of how the applicant 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 applicant will ensure that the job opportunities created by the MMG Program and other broadband funding programs are available to a diverse pool of workers, including by engaging in targeted outreach to populations that have traditionally been underrepresented in broadband and information technology jobs, including but not limited to women and people of color. Applicants should be prepared to report on the demographics of the workforce (including contractors and subcontractors) that is engaged on a project utilizing MMG Program grant funding (this will be aggregate workforce data only, not personally identifiable information), and should expect that this data will be made public.
5. A description of other equitable workforce development and job quality activities the applicant participates in, including, for example:
 - a. Providing 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 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.
 - b. Offering “quality jobs.”¹³
 - c. Prioritizing the hiring of local workers, implementing robust and specific plans to recruit historically underrepresented populations facing labor market barriers, and ensuring that they have reasonable access to the job opportunities created by the applicant. 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).

¹³ A “quality job” is defined as a job that (a) 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 (b) 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>.

K. Climate Resilience

Applicants must demonstrate that they have sufficiently accounted for current and future weather- and climate-related risks to new MMG Program 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, applicants 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.¹⁴

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, applicants should make use of available tools and resources from the National Oceanic and Atmospheric Administration (NOAA) and other federal agencies, as well as applicant-level resources and centers of expertise, in drawing up their MMG Program applications. Each applicant must explain in its application 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. Applicants 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 the project, additional onsite power resources, use of established plans and processes to deal with extreme weather related risks, 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 middle mile infrastructure. In particular, each applicant should clearly demonstrate, at a minimum, that it is conducting each of the following:

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;

¹⁴ 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.

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 applicant;
3. Characterize any weather and climate risks to new middle mile infrastructure deployed using MMG 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 applicant's plans for periodically repeating this process over the life of the project 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, applicants 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 project's region, review and cite the regional chapters found in the 2018 National Climate Assessment (<https://nca2018.globalchange.gov/>).
2. For more applicant-specific information on current and projected climate conditions and risks, refer to the NOAA's 2022 state climate summaries (<https://statesummaries.ncics.org/>).
3. In assessing current weather-related risks for specific regions, applicants 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. Applicants are also encouraged to consult FEMA-approved Hazard Mitigation Plans prepared by states in which they propose to build middle mile infrastructure to help identify key risks and hazards.

To understand and access climate and weather information, applicants 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.

L. 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 MMG Program funding to a prospective awardee, NTIA will require the prospective awardee 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 state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
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 applicant must demonstrate in its application that it will account for and satisfy the following authorities or explain why they are not applicable:

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 Executive Order 11246 and Department of Labor regulations implementing Executive Order 11246 (41 C.F.R. § 60-1.4(b)).
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 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.

M. Other

1. Eligible and Ineligible Uses of Project Funds

See Section IV.I of this NOFO for information concerning the eligible and ineligible uses of project funding (including non-federal cost share) under the MMG Program.

2. State Coordination on Broadband Projects

Prospective non-State and non-Tribal Government applicants must, prior to submitting an application, coordinate and consult with the State Broadband Office or other coordinating body

located in the jurisdiction in which the eligible entity proposes to deploy middle mile infrastructure to ensure that the proposal is consistent with the State's broadband plan and priorities.

IV. Application and Submission Information

A. 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.

B. Content and Form of Applications

Applications for the MMG Program must be complete, must follow the format described in NTIA's Application Portal, and must otherwise comply with this NOFO. Complete applications must be received through the NTIA Application Portal no later than 11:59 p.m. Eastern Daylight Time (EDT) on **September 30, 2022**. NTIA will not accept any application materials submitted prior to the public release of this NOFO.

A complete application packet consists of the information that will be required by the Application Portal at <https://grants.ntia.gov/>. Required information will include (but not necessarily be limited to) the following:

1. Standard Form 424: Application for Federal Assistance
2. Standard Form 424C: Budget Information for Construction Programs (SF-424C)
3. CD-511 Certification Regarding Lobbying
4. Standard Form LLL, Disclosure of Lobbying Activities (if applicable)
5. Detailed Budget
6. Budget Narrative
7. Project Details and Narrative
8. Negotiated Indirect Cost Rate Agreement (if applicable)
9. Any materials on which the applicant seeks to rely in demonstrating its satisfaction of the eligibility criteria, merit review criteria, and programmatic review criteria set forth in Section V.A of this NOFO.

The Project Details and Narrative, along with the above forms, shall be filled out by the applicant in NTIA's Grant Application Portal. Proposed project application information to be collected will include the following:

1. An Executive Summary of the project, not to exceed two (2) pages (approximately 1,000 words). Please note that if an applicant's proposal is selected for funding, NTIA may use all or a portion of the Executive Summary as part of a press release issued by NTIA, or for other public information and outreach purposes. Applicants are advised not to incorporate information that concerns business trade secrets or other confidential commercial or financial information as part of the Executive Summary. *See also* 15 C.F.R. § 4.9(c) concerning the designation of business information by the applicant;

2. Project Purpose/Need/Beneficiaries

- a. A description of how the applicant's proposal will advance the objectives of the MMG Program—namely, to “encourage the expansion and extension of middle mile infrastructure to reduce the cost of connecting unserved and underserved areas to the backbone of the internet” and/or “promote broadband connection resiliency through the creation of alternative network connection paths that can be designed to prevent single points of failure on a broadband network;”¹⁵
- b. An overview of the proposed route or service area(s), including information regarding rurality and socio-economic indicators in the area to be served by the proposed project;
- c. A description of need in the proposed service area(s), including communities considered unserved and/or underserved in the proposed service area(s);
- d. Target last mile service objectives, including last mile service provider letters of commitment, agreements, or contracts;
- e. Letters of intent, agreements, or contracts pertaining to other expected users of the proposed middle mile facilities;
- f. Information on existing middle mile offerings in the area, if any, including competitor data if applicable; and
- g. A list of anchor institutions (and types) within 1,000 feet of the proposed route (for fiber projects only).

3. Proposed Project – Technical Approach, Service Area, Build Out Plan

- a. Network route map(s);
- b. Network diagram and system design;
- c. Technical details of the proposed project, *e.g.*, technology type;
- d. List of all proposed interconnection points and point-of-interest locations along the proposed route;
- e. A description of the proposed service offerings, including the pricing of the services to be offered over the proposed facility;
- f. A description of the applicant's nondiscrimination, interconnection, and network management plans;

¹⁵ Infrastructure Act § 60401(b)(1).

- g. A timeline for the build-out/implementation of the project with critical path, including key milestones for implementation of the project, preparations, and risk factors;
 - h. A plan for using an appropriately skilled and credentialed project workforce (including by the applicant, contractors, and subcontractors), as described in Section III.B.3 above.
 - i. Description of the applicant's efforts to ensure climate resilience for the project and demonstration that the applicant has sufficiently accounted for current and future weather- and climate-related risks to new middle mile infrastructure projects;
 - j. A service-area environmental description that describes the physical project area and its surroundings (*e.g.*, disturbed or developed land vs. open space; adjacent natural resources, such as rivers, wetlands, or forestlands; and any protected lands or resources in or near the project area), including site photographs and aerial photographs (*e.g.*, Google Earth or Google Maps images), if the project includes construction and/or ground disturbing activities.
4. Project Financials and Organization Financial Capacity
- a. Details regarding the federal grant request and non-federal cost share;
 - b. Details on the project budget and funding, including the level of need for federal funding and details on other federal broadband deployment funding received by the applicant;
 - c. Non-federal cost share sources, including the proposed percentage of cash vs. in-kind contribution and the source of any contribution (if not the applicant itself);
 - d. Historical financials for the last three (3) years;
 - e. Historical Certified Public Accountant (CPA) audits for the last one (1) year;
 - f. The Letter of Credit referenced in Section III.B.1.b of this NOFO; and
 - g. Pro forma financial projection and analysis related to the project's sustainability, inclusive of subscriber (*e.g.*, last mile network connections, other wholesale services), across an eight-year forecast period.
5. Project Implementation Team and Organizational Capacity
- a. Information regarding the organization's capacity and readiness;
 - b. Project and organizational chart;
 - c. Management team and key project personnel resumes, including resumes of key personnel of partner organizations or third parties that will be performing a significant role in the project's completion;
 - d. Project governance documents and a description of key partnerships;
 - e. List of all funded and unfunded project collaborators, including partners, consultants, subrecipients, match providers, major contractors/suppliers, details on role/scope of work for project;

- f. A description of whether and, if so, how the project will incorporate strong labor standards, including project labor agreements and community benefit agreements that offer wages at or above the prevailing rate and include local hire provisions, and a description of the applicant's workforce plans and practices, per Section III.H of this NOFO (Fair Labor Practices);
 - g. A description of how the applicant will support equitable workforce development and job quality objectives, per Section III.I of this NOFO (Highly Skilled Workforce).
- 6. Government and Community Involvement
 - a. Information on the applicant's coordination with applicable State, Tribal, and local governments, including their awareness of the proposed project and any potential impact to respective service areas; and
 - b. Information regarding the applicant's involvement and coordination with community organizations, unions and worker organizations, or other relevant partners in the proposed service area.

1. Budget Narrative and Detailed Budget Justification

Each applicant must submit a Budget Narrative and a Detailed Budget Justification Spreadsheet through the Application Portal at <https://grants.ntia.gov/>. All budget information must support the dollar amounts identified in the SF-424 and SF-424C and demonstrate that the project or activity meets the eligible use requirements in the Infrastructure Act and this NOFO.

The Detailed Budget Justification Spreadsheet must reflect the cost categories that appear on the SF-424C (*e.g.*, administrative and legal expenses; land; structures; rights-of-way; appraisals; construction, etc.) and include itemized calculations for each cost placed under those categories.

The Budget Narrative must explain the necessity and basis for all costs, clearly correspond to the information included in the Detailed Budget Justification Spreadsheet and reflect only allowable costs that are consistent with the project scope. Information on cost allowability is available in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200, which apply to awards in this program.

With respect to the cost-sharing or matching funds included in the budget, the applicant must identify the non-federal source (*e.g.*, State funding) and distinguish the non-federal and federal portions of the budget in the Detailed Budget Justification and Budget Narrative. Information regarding cost sharing or matching funds is available in 2 C.F.R. § 200.306.

C. Application Format

NTIA will only accept applications submitted electronically via its online Application Portal. Paper, email, and facsimile submissions will not be accepted.

D. Requirements for Attachments Submitted through NTIA's Grant Application System

1. Figures, graphs, images, and pictures

Should be of a size that is easily readable or viewable and may be presented in landscape orientation.

2. Font

Easy to read font (11-point minimum). Smaller type may be used in figures and tables but must be clearly legible.

3. Line spacing

Applicants may use single spacing or double spacing.

4. Margins

One inch top, bottom, left, and right.

5. Page layout

Portrait orientation except for figures, graphs, images, and pictures. Paragraphs are to be clearly separated from each other by double spacing, paragraph formatting or equivalent.

6. Page numbering

Number pages sequentially.

7. Page size

Pages must be 8½ inches by 11 inches, excluding maps of proposed service areas or network or system diagrams.

8. Application language

English.

9. Typed document

All applications, including forms, must be typed.

E. Certifications Regarding Debarment and Suspension (applies to all recipients)

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

1. Instructions for Primary Tier Participant Certification

- a. 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.
- b. 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.
- c. 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.
- d. 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 that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. 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.
- f. 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.
- g. 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.

- h. 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/>).
- i. 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.
- j. Except for transactions authorized under paragraph f of this Section IV.E.1, 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

- a. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency;
 - ii. 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, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(ii) of this certification; and
 - iv. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, State, or local) terminated for cause or default.

- b. 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 subrecipients)

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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>).

- h. 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.
- i. Except for transactions authorized under paragraph e 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

- a. 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.
- b. 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.

F. 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.

G. Submission Dates and Times

Complete applications must be received through the NTIA Application Portal no later than 11:59 p.m. Eastern Daylight Time (EDT) on **September 30, 2022**. Complete applications or portions thereof submitted by postal mail, courier, email, or by facsimile will not be accepted. All application forms and documents must be included with an applicant's complete application packet submission through the NTIA Application Portal.

When developing the submission timeline, each applicant should keep in mind that: (a) all applicants are required to have current registrations in the electronic System for Award

Management (SAM.gov); and (b) 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.

NTIA expects to complete its review, selection of successful applicants, and award processing by **February 16, 2023**. NTIA expects that awards under this Notice of Funding Opportunity (NOFO) will be issued no earlier than **March 1, 2023**.

H. Intergovernmental Review

Applications from a State or a political subdivision of the State under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," which requires intergovernmental consultation with State and local officials. All State applicants are required to submit a copy of their applications to their designated Single Point of Contact (SPOC) offices to the extent they utilize a SPOC.¹⁶

I. Funding Restrictions

1. Eligible Uses of Funds for the MMG Program

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 MMG 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,¹⁷ as well as in the grant program's authorizing legislation. In addition, costs must be reasonable, necessary, allocable, and allowable for the proposed project, and conform to generally accepted accounting principles. Except as set out in paragraph d below (addressing allowable pre-application expenses), federal and non-federal funds committed to an award may only be used to cover allowable costs incurred and for allowable closeout costs incurred during the grant closeout process.

Based on the scope of the MMG Program, below are non-exclusive examples of eligible uses of MMG Program funds:

- a. Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to deploy middle mile broadband facilities;

¹⁶ See 7 C.F.R. Part 3015, Subpart V.

¹⁷ 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, local or Federally-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).

- b. Engineering design, permitting and work related to environmental, historical and cultural reviews;
- c. Personnel costs, including salaries and fringe benefits for staff and consultants required for the implementation of the MMG Program (such as project managers, program directors, subject matter experts, grant administrators, financial analysts, accountants, and attorneys);
- d. Reasonable, post-NOFO, pre-application expenses in an amount not to exceed \$50,000. Pre-application expenses, which include expenses related to preparing an application, 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, except that lobbying costs and contingency fees are not reimbursable from grant funds. These costs should be clearly identified in the proposed project budget and must be approved by NTIA and the Grants Officer in writing to be considered allowable. Additionally, pre-application costs are incurred at the sole risk of the applicant and will not be reimbursed by NTIA if the proposed project does not receive an award pursuant to this program; and
- e. Other costs necessary to carrying out programmatic activities of an award, not to include ineligible costs described below in Section IV.I.2 of this NOFO.

2. Ineligible Costs for the MMG Program

Ineligible costs include those costs that are unallowable under the applicable federal cost principles. Please note that costs ineligible for the MMG Program may not be paid for with the non-federal cost share committed to an award. In addition, the following costs are specifically identified as prohibited under the MMG Program:

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

An award recipient or subrecipient (including contractors and subcontractors) may not use grant funds received under the MMG 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 award recipient or subrecipient is not an allowable cost under this Program.

c. Prohibition on Use of Grant Funds to Support or Oppose Union Organizing

An award recipient or any subrecipient may not use grant funds, whether directly or indirectly, to support or oppose union organizing.

d. Prohibition on Use of Grants Funds for Non-Middle Mile Infrastructure

An award recipient or subrecipient may not use grant funds received under the MMG Program for broadband infrastructure costs that are not necessary to complete the project that was proposed by the recipient and approved by NTIA.

3. Other

As a condition of receiving a grant under the MMG Program, a provider of broadband service that is receiving the grant is prohibited from using grant amounts:

- a. As collateral for a loan made by any public or private lender;
- b. For pre-application expenses, including previously incurred administrative costs or previously purchased equipment or construction activities, except as allowed in Section IV.I.1.d of this NOFO.

J. Material Representations and Public Disclosure of Applications

All forms and supporting documents submitted as part of the complete application packet will be treated as a material representation of fact upon which NTIA will rely in awarding grants. Applicants should be aware that NTIA may make all or portions of their applications for grants under the MMG Program publicly available as required under applicable federal laws. *See* Section VIII.B of this NOFO for additional information concerning the confidentiality of information contained in an application.

K. Other Submission Requirements

Complete applications for the MMG Program must be electronically submitted through the NTIA Application Portal, available at grants.ntia.gov. Late or incomplete applications and applications submitted by mail, courier, or by facsimile will not be accepted.

1. Timely Receipt Requirements and Proof of Timely Submission

Proof of timely submission is automatically recorded by the NTIA Application Portal. An electronic date/time stamp is generated within the system when the application is successfully submitted in the NTIA Application Portal. The applicant with the Authorized Organization Representative (AOR) role who submitted the application will receive an email acknowledgement of receipt from the NTIA Application Portal with the successful transmission of their application. Applications received in the NTIA Application Portal after the established due date for the program will be considered late and will not be considered for funding by NTIA.

2. Material Revisions

An applicant shall not be permitted to make any material revision to its application after the submission deadline. NTIA may, however, request or accept clarifications, revisions or

submissions for completeness that are non-material. It is in the Assistant Secretary's sole discretion whether a revision is material or not.

3. Amendments

Any amendments to this NOFO or additional program guidance will be announced on [NTIA.gov](https://www.ntia.gov) and [BroadbandUSA.NTIA.gov](https://www.broadbandusa.ntia.gov).

V. Application Review Information

A. Review Process for the MMG Program

The review process will be divided into several stages, as outlined below:

1. Initial Administrative and Eligibility Review of Complete Application Packets

NTIA will conduct an initial review of timely received applications submitted in response to this NOFO to determine eligibility, completeness, and responsiveness to the minimum threshold requirements and programmatic requirements of the MMG Program, including a review of the project narrative and budget justification. Applications submitted by any entity other than an eligible applicant will be eliminated from further review as well as any applications that fail to meet any of the requirements of Section III.B of this NOFO. NTIA may continue the initial administrative review process for an application that is timely submitted by an eligible applicant, but that is missing certain information or documentation required by this NOFO and will request missing or incomplete information from the applicant as needed. The applicant will have seven (7) calendar days to submit materials responsive to the feedback provided by NTIA, unless this period is extended by NTIA. An eligible applicant's failure to remedy deficiencies in a timely manner may result in NTIA's denial of the application.

After determining that an application is complete, NTIA will evaluate whether the proposed project meets the Infrastructure Act's threshold eligibility criteria (*see* Section III above) before entering proposals into the Merit Review stage (described below).

First, as directed by Section 60401(d)(3) of the Infrastructure Act (and detailed in Section III.B above), each applicant must provide evidence sufficient to demonstrate that it "is capable of carrying out a proposed project in a competent manner, including by demonstrating that the eligible entity has the financial, technical and operational capability to carry out the proposed project and operate the resulting middle mile broadband network."

Second, as directed by Section 60401(e)(3)(A) of the Infrastructure Act, each applicant (*i.e.*, eligible entity) must certify that the proposed project will, upon completion, be capable of supporting retail broadband service.

Third, as directed by Section 60401(f) of the Infrastructure Act, each applicant must commit to a non-federal cost share of no less than 30 percent of the total project cost. Under the statute, only Tribal governments and Native entities may request a partial or complete waiver of this

requirement for (i) the effective delivery and administration of middle mile grants to Tribal governments; or (ii) the construction, improvement, or acquisition of middle mile infrastructure on trust land. In the event that a Tribal government or Native entity seeks such a waiver, such entities must submit documentation substantiating the need for that waiver. *See* Section III.G.

Fourth, as directed by Section 60401(e) of the Infrastructure Act, each applicant must make a binding commitment to prioritize at least one of the following via the funded middle mile network:

- a. Connecting middle mile infrastructure to last mile networks that provide or plan to provide broadband service to households in unserved areas;¹⁸
- b. Connecting non-contiguous trust lands; or
- c. The offering of wholesale broadband service at reasonable rates on a carrier-neutral basis.

Fifth, as directed by Section 60401(e)(3)(D) of the Infrastructure Act, an eligible entity that receives a middle mile grant award to build a middle mile project using fiber-optic technology shall offer interconnection in perpetuity, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. Such interconnection must include both the ability to connect to the public internet and physical interconnection for the exchange of traffic.

2. Merit Review

Applications satisfying the Initial Administrative and Eligibility Review will be evaluated by at least three objective reviewers who have demonstrated expertise in the programmatic and technical aspects of the Middle Mile Grant Program. Reviewers may be federal employees or non-federal persons. During the review process, the reviewers may discuss the applications with each other, but scores will be determined on an individual basis. As applicable, each reviewer will be required to sign and submit a nondisclosure and confidentiality form pertaining to the dissemination of confidential information and to potential financial and other conflicts of interest. Reviewers will evaluate applications according to the following evaluation criteria and will independently score each application based on a scale of 0-100.

a. Project Purpose and Benefits (60 points)

1. Extent to which the project will either (a) facilitate deployment of high-speed broadband networks to currently unserved or underserved areas or (b) improve affordability in already-served markets (*e.g.*, by reducing interconnection costs for last-mile providers or providing opportunities for competitive providers to offer last-mile service). (20 points)

¹⁸ Applicants must specify the date upon which they referenced the FCC fixed broadband map in any application. If the FCC Fixed Broadband Map is not available, NTIA and the applicants may use the most recent mapping data available as set forth in Section 60401(e)(3)(B)(i) of the Infrastructure Act in connection with the application and review process.

2. Whether the project will offer non-discriminatory interconnection in perpetuity, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. Such interconnection must include both the ability to connect to the public internet and physical interconnection for the exchange of traffic.¹⁹ (10 points)
3. Whether the provider commits to offering access to the funded middle mile infrastructure, in perpetuity, on an open access basis.²⁰ (10 points)
4. Extent to which the project will otherwise benefit the proposed service area, including, but not limited to, by (a) facilitating development of carrier-neutral interconnection facilities; (b) improving the redundancy or resiliency of existing middle mile infrastructure; or (c) including direct interconnect facilities that will facilitate the provision of broadband service to anchor institutions located within 1,000 feet of the middle mile infrastructure at speeds of at least 1 Gbps symmetrical. (10 points)
5. Comprehensiveness and appropriateness of the proposed technical solution for meeting the community's needs, considering the offering's capacity and performance characteristics. Reviewers will consider the proposed network's ability to serve anticipated last mile networks, and to meet the increasing needs of the households, businesses, and anchor institutions in the areas linked by the middle mile facilities at issue. Reviewers will score favorably construction projects that are "shovel ready" and capable of completion within a two-year period. (10 points)

b. Project Sustainability (40 points)

1. Applicant's organizational capability to complete the specific project proposed.²¹ (5 points)

¹⁹ As noted above, such interconnection is required of applicants seeking to construct fiber-based middle mile infrastructure. The points allocated during Merit Review will be available both to fiber projects (which will automatically receive full points, because they cannot reach Merit Review without committing to interconnection meeting this requirement) and to non-fiber projects. This approach will ensure that fiber projects are not disadvantaged via other projects in the scoring process, while providing strong incentives for applicants proposing non-fiber projects to commit to the same interconnection required of fiber-based providers.

²⁰ As used in this context, "open access" refers to an arrangement in which the eligible entity offers nondiscriminatory access to and use of its network on a wholesale basis to other providers seeking to provide middle mile carriage using the eligible entity's funded network, at just and reasonable wholesale rates.

²¹ While applicants must demonstrate their capability in order to enter Merit Review at all, this scoring criterion will account for the extent to which an applicant is *particularly* capable of completing the project at issue. Reviewers will consider the experience and expertise of the project management team and the organization's track record with respect to projects of similar size and scope, as well as the organization's capacity and readiness. Reviewers will also assess the applicant's partnership and/or subrecipient strategy, including how that strategy complements the applicant's organizational capacity, as well as the project approach, feasibility, and timely completion of proposed project.

2. Reasonableness of the applicant's proposed budget.²² (10 points)
3. Project's fiscal sustainability beyond the award period.²³ (10 points)
4. Applicant's commitment to contribute a non-federal cost share of more than 30 percent of the total eligible project costs as reflected in the proposed project budget. (5 points for non-federal share between 30 and 40 percent, 10 points for non-federal share between 41 and 50 percent, 15 points for more than 50 percent non-federal share)

3. Programmatic Review

a. Prioritization

Applications will be prioritized for programmatic review as follows:

1. NTIA will first review any application that received a mean score of 80 or higher during the Merit Review *and* for which the applicant has demonstrated that it will meet at least two of the five requirements set forth in Section 60401(d)(2) of the Infrastructure Act (*see* Section V.A.1);
2. NTIA will next review any other application receiving a mean score of 80 or higher during the Merit Review;
3. Applications receiving scores below 80, for which the applicant has demonstrated that it will meet at least two of the five requirements set forth in Section 60401(d)(2) of the Infrastructure Act (*see* Section V.A.1), may be entered into Programmatic Review after review of the prioritized applications in the event that (a) the Programmatic Review results in a slate of proposals that do not utilize the entirety of available MMG Program funds or (b) evaluation of other applications is deemed warranted at a later stage in the process to ensure geographic diversity or appropriate diversity in project sizes. At this stage of the review, applications with scores below 80 for which the applicant has demonstrated that it will meet at least two of the five requirements set forth in Section 60401(d)(2) of the Infrastructure Act (*see* Section V.A.1) will receive priority before other applications with scores below 80.

b. Programmatic Review Process

Programmatic Review will involve two steps:

²² Reviewers will evaluate the reasonableness of the budget based on (a) its clarity, level of detail, comprehensiveness, appropriateness to the proposed technical and programmatic solutions, (b) the reasonableness of its costs, (c) whether the allocation of funds is sufficient to complete the tasks outlined in the project plan, (d) the extent to which the project will leverage existing rights-of-way, assets, and infrastructure, and (e) the extent to which the applicant has secured reduction in permitting or other regulatory barriers.

²³ Reviewers will consider business plans, market projections, third-party funding commitments, and such other data as may be appropriate to the nature of the applicant and the proposed project. Reviewers will consider, among other things, demonstrations of community commitments or anchor tenant commitments that would help promote sustainability.

First, NTIA may ask applicants to submit additional information, as appropriate, to clarify or to further substantiate the representations made in their applications. NTIA Program Staff will review the supplemental information, along with all information submitted with the application, to confirm eligibility and ensure that the application warranted the score assigned during Merit Review. Applicants whose supporting documents are not complete, accurate, and timely submitted or that do not adequately substantiate the representations in their applications may be denied. NTIA will request supplemental documentation before deciding to deny such applications and will reevaluate the application package based on all of the information presented. Applicants will have five (5) calendar days to submit information responsive to the feedback provided by NTIA, unless this time period is extended by NTIA.

Second, NTIA will assess all projects that reach Programmatic Review to consider the extent to which those applications meet the criteria listed below and will calculate weighted scores to reflect each project's likelihood of advancing those goals. Specifically, based on the factors listed below, each project's mean Merit Review Score will be multiplied by between 1.0 (for projects that do not meet any of the objectives listed below) and 1.8 for projects that meet all of the criteria listed below). Weights will be assigned based on the following criteria:

1. Applicant's ability to demonstrate likelihood of material reduction in end-user broadband prices resulting from funded middle mile infrastructure (*e.g.*, by demonstrating decline in middle mile costs that are likely to flow through to consumer broadband prices).
2. Applicant's ability to demonstrate likelihood of material reduction in latency experienced by end users in remote or insular areas (*e.g.*, Hawaii and Pacific Ocean territories) resulting from funded middle mile infrastructure.
3. Applicant's ability to demonstrate that substantial benefits stemming from funded middle mile infrastructure will accrue to (a) high-poverty counties,²⁴ (b) persistent poverty counties,²⁵ and/or (c) a substantial number of end users/households that meet 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 meets the qualifications of 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;

²⁴ 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.

²⁵ For the purposes of this requirement, 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.

- b. Any member of the household meets the qualifications of 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, including through the USDA Community Eligibility Provision;
 - e. Any member of the household received a Federal Pell Grant during the current award year;
 - f. The household meets the eligibility criteria for a participating provider's existing low-income internet program.
4. Applicant's ability to demonstrate that substantial benefits stemming from funded middle mile infrastructure will accrue to (a) previously unserved locations, and/or (b) Tribal Lands.
 5. Applicant's ability to demonstrate that the route of the proposed middle mile infrastructure is designed to enable connection of unserved anchor institutions, including Tribal anchor institutions.
 6. Applicant's ability to demonstrate compliance with requirements set forth in Sections III.H, III.I, III.J, and III.L related to Fair Labor Practices, Highly Skilled Workforce, Advancing Equitable Workforce Development and Job Quality Objectives, and Civil Rights and Non-Discrimination Law Compliance.
 7. Applicant's ability to demonstrate the climate resilience of the project in accordance with Section III.K.
 8. Applicant's proposed use of community benefit agreements.²⁶

With respect to each item above, each applicant should specify which of the above criteria it believes its project meets, and provide evidence that supports its position with respect to each criterion. Programmatic reviewers will consider the evidence presented on its own merit and will not seek out or consider material not included in the application except insofar as they request additional information to clarify or to further substantiate representations made in an application.

NTIA reserves the right at any time during the Programmatic Review process to negotiate with the applicant relative to specific modifications to the application, including but not limited to the resolution of any differences that may exist between the applicant's original request and NTIA's determination of Middle Mile Grant Program funding priorities. NTIA may also ask the applicant to modify its proposal (*e.g.*, to reduce its scope by removing or limiting proposed routes).

Upon completion of the Programmatic Review, NTIA Program Staff will summarize their analysis for each application reviewed, and will provide a ranked list of proposed projects, based on each project's weighted score, to the Associate Administrator for the Office of Internet

²⁶ A community benefit agreement is an agreement signed by community benefit groups and a developer, identifying the community benefits a developer agrees to deliver, in return for community support of the project.

Connectivity and Growth (OICG Associate Administrator). In the event the list of proposed projects does not account for the entirety of the funding available, NTIA Program Staff shall conduct a Programmatic Review for any application that attained a mean score of between 70 and 79 during Merit review and will add the projects with the highest weighted scores to the list it provides to the OICG Associate Administrator.

4. OICG Associate Administrator Review

Following the conclusion of the Programmatic Review, the OICG Associate Administrator will compose a list of the projects with the highest weighted scores, beginning with the highest-scored application, and moving in order down the list until the projects on the list account for all available MMG Program funds (or until addition of the next project listed would cause demand to exceed available funds), and prepare a package of recommended awards to the Selection Official for consideration, review, and approval. The OICG Associate Administrator's recommendations to the Selecting Official may differ from the ranked list of applications based on consideration of the following selection factors: (a) geographic diversity and (b) appropriate diversity in the size of the funding amount of proposed awards and will make substitutions as warranted.

5. Final Project Selection

After conducting the review described above, the OICG Associate Administrator shall provide a package of recommended awards to the Assistant Secretary for final review. As the Selecting Official, the Assistant Secretary retains discretion to select and recommend an application for funding that was not recommended by the OICG Associate Administrator and/or not to select an application that was recommended for funding by the OICG Associate Administrator based on (a) geographic diversity and (b) appropriate diversity in the size of the funding amount of proposed awards.

The Assistant Secretary will submit the applications recommended for funding, along with the basis for the selection decisions, to the National Institute of Science and Technology (NIST) Grants Officer, who serves as the Grants Officer for the Middle Mile Grant 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. All awards are subject to the availability of federal award funds at the time of award. Unsuccessful applicants will be notified in writing after all selections are finalized.

B. Federal Awarding Agency Review of Risk Posed by Applicants

After applications are proposed for funding by the Selecting Official, the NIST Grants Management Division (GMD) will perform pre-award risk assessments in accordance with 2 C.F.R. § 200.206, which may include a review of the financial stability of an applicant, 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 (FAPIS). 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 expects to complete its review, selection of successful applicants, and award processing by **February 16, 2023**. NTIA expects that start dates for awards under this NOFO will be no earlier than **March 1, 2023**. NTIA anticipates announcing awards made under the MMG Program on a rolling basis during calendar year 2023.

VI. Federal Award Administration Information

A. Federal Award Notices

A grants officer from the NIST Grants Office will serve as the Grants Officer for awards issued pursuant to this NOFO. Applicants will be notified in writing by the NIST Grants Officer if their 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 Applicants

Unsuccessful applicants will be notified by e-mail and will have the opportunity to receive a debriefing after the opportunity is officially closed. Applicants must make a request within 10 business days of the email notification to receive a debrief from NTIA. NTIA will then work with the unsuccessful applicant in arranging a date and time of the debrief.

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 VII of this NOFO 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 VII of this NOFO 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 applicant proposals and awardee projects seeking funding under the MMG Program. Applicants with projects containing construction and/or ground disturbing activities are required to submit all required environmental documentation in their application package or describe in their project narrative the physical project location, photographs, and how they will comply with applicable environmental and national historical preservation requirements. It is the applicant's responsibility to obtain all necessary federal, State, and local governmental permits and approvals necessary for the proposed work to be conducted. Applicants are expected to design their projects so that they minimize the potential for adverse impacts on the environment. Applicants 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. The failure to do so may be grounds for not making an award. Applications 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 applications. 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 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, and intangible property, acquired or improved with a federal award must be held in trust by the recipient or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the federal government retains an undivided, equitable reversionary interest in the property (Federal Interest). 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 subrecipient file certain public notices (*e.g.*, UCC-1, Covenant of Purpose, Use and Ownership, etc.) with respect to grant-acquired property. NTIA may 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 MMG Program for broadband infrastructure must comply with the Build America, Buy America Act.²⁷ 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, 2022,²⁸ 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 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.

²⁷ Infrastructure Investment and Jobs Act of 2021, Division G, Public Law 117-58, 135 Stat. 429 (November 15, 2021).

²⁸ 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).

In determining whether a product is produced in America, applicants 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, MMG funding may not be used 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).

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, any eligible entity that receives an award 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:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring subrecipients to take the affirmative steps listed above as it relates to its subcontractors.

E. Reporting

Eligible Entities 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 (a) in support of federal agency obligations under the ACCESS BROADBAND Act, 47 U.S.C. § 1307, and

Infrastructure Act § 60105; and (b) on the use and performance of middle mile infrastructure funded under this MMG Program.

1. Bi-annual Performance Reporting and Final Report

An eligible entity that receives an award shall biannually, until the funds have been expended, submit to the Assistant Secretary (via email to the NTIA Federal Program Officer listed in the recipient's award documents) a report, with respect to the six-month period immediately preceding the report date, that:

1. Describes how the eligible entity expended the funds and includes an SF-425 form and all required financial reporting information.
2. Certifies that the eligible entity complied with the requirements of the Infrastructure Act and the MMG Program, including:
 - a. A description of each service provided with the grant funds; and
 - b. Information regarding the middle mile infrastructure constructed, improved, or acquired, including material describing specific routes deployed, splice points and interconnection points along such routes, interconnection points, any interconnection or wholesale agreements in place with third parties, and connections to last-mile infrastructure.
3. Describes whether the project prioritizes local hires.
4. Describes whether the project has a Community Benefit Agreement, with a description of any such agreement.
5. Identifies each subrecipient that received a subaward or subcontract from the eligible entity and a description of the specific project for which grant funds were provided.
6. Technical progress reporting information as prescribed in 2 C.F.R. § 200.329 (<http://go.usa.gov/xkVgP>) and [Department of Commerce Financial Assistance Standard Terms and Conditions](#) (dated November 12, 2020), Section A.01.
7. For projects over \$5,000,000 (based on expected total cost):
 - a. A recipient 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, an awardee 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.²⁹
- b. If a recipient 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 recipient 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 III.B), 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;
 - 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.

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

Reports must be submitted on a biannual basis for the periods ending March 31 and September 30 of each year. Reports will be due within 30 days after the end of the reporting period. Eligible entities shall certify that the information in the report is accurate.

²⁹ 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.

Eligible entities that receive an award shall comply with any other reasonable reporting requirements determined necessary by the Assistant Secretary. Further, in addition to the above requirements and those reporting requirements found in 2 C.F.R. Part 200, eligible entities that receive an award will be required to submit a final report as a part of the grant close-out process that describes the programmatic objectives achieved through the funding and completion of the grant-funded project, including those elements collected in the bi-annual report.

2. Provision of Information to NTIA, FCC, Relevant Tribal Governments, and State Broadband Offices

In accordance with and subject to the provisions of Section 60401(e)(3)(B)(ii) of the Infrastructure Act, an applicant that receives a middle mile grant award shall share the location of all middle mile broadband infrastructure constructed, improved, or acquired using such grant with the Assistant Secretary, the Commission, any Tribal government with jurisdiction over the area that will be served by the infrastructure, and the State broadband office for the State in which the area that will be served by the middle mile infrastructure is located.

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 200,³⁰ 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.

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 project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Applicants 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.

³⁰ *See* 2 C.F.R. Part 200, Appendix XII, available at <http://go.usa.gov/cTBwC>.

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.³¹

VII. Federal Awarding Agency Contact(s)

A. Please direct programmatic inquiries to:

Sarah Bleau
Director of Middle Mile
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: middlemile@ntia.gov

B. Please direct grant management inquiries to:

Scott McNichol
NIST Grants Officer
Grants Management Division
National Institute of Standards and Technology
325 Broadway
Boulder, CO 80305
Phone: (303) 497-3444
Email: scott.mcnichol@nist.gov

³¹ See Office of Management and Budget (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>.

C. 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

VIII. Other Information

A. Transparency

The Infrastructure Act contains robust reporting requirements for Eligible Entities, 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 MMG 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

The applicant acknowledges and understands 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 the applicant, 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, applicants 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), applicants 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 applicant 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.

C. Funding Availability and Limitation of Liability

Funding for the program listed in this NOFO is contingent upon the continued availability of appropriations. In no event will NTIA, NIST or the Department of Commerce be responsible for application preparation costs, including, but not limited to, if the program fails to receive funding or is cancelled because of agency priorities. Publication of this NOFO does not oblige NTIA, NIST or the Department of Commerce to award any specific project or to obligate any available funds. NTIA will fund only projects that are deemed likely to achieve the MMG Program's goals and for which funds are available.

D. Third Party Beneficiaries

The MMG 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, under extraordinary circumstances and when it is in the best interest of the federal government, 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 extraordinary circumstances for the request.

F. Paperwork Reduction Act

This NOFO contains an information collection requirement subject to the Paperwork Reduction Act (PRA) (44 U.S.C. § 3501 *et seq.*). The PRA requires each federal agency to seek and obtain OMB approval before collecting information from the public. Federal agencies may not collect information unless it displays a currently valid OMB control number. For purposes of the MMG Program, NTIA will use the MMG forms in the Application for Broadband Grant Programs

information collection (0660-0046) and Standard Forms 424 (Application for Federal Assistance), 424C (Budget Information for Construction Programs), 425 (Federal Financial Report), and SF-LLL (Disclosure for Lobbying Activities) under the respective control numbers 4040-0004, 4040-0008, 4040-0014, and 4040-0013.

G. Transparency, Accountability, And Oversight Required

1. Generally

NTIA, recipients, and subrecipients have a critical role to play in ensuring that the MMG 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 middle mile grants 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, and other applicable law; and
3. Allow the public to understand and monitor grants and subawards awarded under the Program.

To that end, NTIA shall:

1. Conduct such audits of recipients and subrecipients as are necessary and appropriate.
2. Develop monitoring plans, subject to the approval of the Assistant Secretary, that 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 award recipient and/or subrecipient shall, as appropriate:

1. Comply with the reporting requirements set forth in Section VI.E above.
2. Comply with the obligations set forth in 2 C.F.R. Part 200 and DOC Financial Assistance Standard Terms and Conditions.
3. Establish and widely publicize telephone numbers and email addresses for the recipient's internal ethics office (or comparable entity) for the purpose of reporting waste, fraud, or abuse in the Program. Recipients shall produce copies of materials used for such purpose on 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 recipients as necessary and appropriate. A recipient (or applicable subrecipient) that fails to comply with any requirement under Section 60401 of the Infrastructure Act or this NOFO shall be required to return up to the entire amount of the award at the discretion of the Assistant Secretary (or, in the case of a subrecipient, the Assistant Secretary or the recipient).

NTIA 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 a MMG Program recipient or subrecipient has expended grant funds received under the MMG Program in violation of the requirements set forth in Section 60401 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.