

# Memorandum

June 10, 2022



## Summary of the Broadband Equity, Access and Deployment Program (BEAD) NOFO

In November 2021, President Biden signed a \$1 trillion bipartisan Infrastructure Investment and Jobs Act (IIJA) act into law. The single largest broadband funding program in the IIJA is the Broadband Equity, Access and Deployment Program (BEAD) program. The BEAD (State Grants for Infrastructure Deployment) will provide \$42.5 billion for broadband deployment. Funding will be overseen by the National Telecommunications Information Administration (NTIA) but given to states to award. On May 13, NTIA released the [Notice of Funding Opportunity \(NOFO\)](#) outlining the program rules and launching the program. Page number references below are to the full text of the NOFO. More information is available at [www.internetforall.gov](http://www.internetforall.gov).

### Allocation of funding by state (p. 3):

- Minimum allocation per state: \$100 million
- Minimum allocation of \$25 million per territory.
- Additional funds beyond the minimum \$100 million will be allocated by formula based on new FCC broadband data and maps, to be released later in 2022 (p.28)
- Initial Planning Funds: States may request up to \$5 million and territories up to \$1.25 million in Initial Planning Funds by August 15, 2022

### Eligible Entities (state or territory):

- Eligible Entities: 50 U.S. States, Washington, D.C., and Puerto Rico,
- Other territories: U.S. Virgin Islands, Guam, American Samoa, The Commonwealth of the Northern Mariana Islands

### Eligible Subgrantees:

- The term “subgrantee” or “subrecipient” means an entity that receives grant funds from an Eligible Entity to carry out eligible activities (i.e., the respective broadband provider). Full list of subgrantee qualifications can be found on pages 71-75 of the NOFO.
- Eligible Entity may not exclude, as a class, cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility as a subgrantee (p.37)

### Eligible Areas:

Eligible Entities (States) must first address unserved, then underserved, then community anchor institutions (p. 37):

- Unserved locations – Areas 80% lacking access to 25/3 Mbps
- Underserved locations – Areas lacking access to 100/20 Mbps
- Community Anchor Institution lacking 1 Gbps symmetrical
- In identifying an Unserved Service Project or Underserved Service Project, an Eligible Entity may not treat as “unserved” or “underserved” any location that is already subject to an enforceable federal,

state, or local commitment to deploy qualifying broadband as of the date that the challenge process described in Section IV.B.6 of this NOFO is concluded

- Locations served exclusively by satellite, services using entirely unlicensed spectrum, or a technology not specified by the FCC for purposes of the Broadband DATA Maps, do not meet the criteria for Reliable Broadband Service and so will be considered “unserved”

### **Evaluation Criteria for Last Mile Projects:**

Primary Criteria: Eligible Entities must give the greatest weight (e.g., substantial points or credits) to the following criteria (p. 43):

- *Minimal BEAD Program Outlay* – preference for applications that minimize the outlay of BEAD funding to complete the project. Accounting for both total projected cost and prospective subgrantee’s proposed match (i.e., the higher the match the lower the BEAD outlay, the higher ranking of the application)
  - Matching contribution (minimum of 25%) may be provided by the subgrantee, an Eligible Entity, a unit of local government, a utility company, a cooperative, a nonprofit or philanthropic organization, a for-profit company, regional planning or governmental organization, a federal regional commission or authority, or any combination thereof.
  - An Eligible Entity may seek, and the NTIA may grant, a partial or full waiver of the non-federal match requirement where warranted.
- *Affordability* - Prospective subgrantee’s commitment to provide the most affordable total price to the customer for 1/1 Gbps service in the project area
- *Fair Labor Practices* – Priority given to projects based on a prospective subgrantee’s demonstrated record of and plans to maintain compliance with Federal labor and employment laws (p. 43, 45)

Secondary Criteria: Eligible Entities must also give weight (some weight or scoring less than primary criteria) to the following criteria (p. 45):

- *Speed to Deployment* - all subgrantees must deploy the planned broadband network and begin providing services, in the project area, within four years of award
- *Speed of Network and Other Technical Capabilities* - Eligible Entities must weigh the speeds, latency, and other technical capabilities of the technologies proposed by prospective subgrantees seeking to deploy projects that are not Priority Broadband Projects.
  - Applications proposing to use technologies that exhibit greater ease of scalability with lower future investment (as defined by the Eligible Entity) and whose capital assets have longer useable lives should be afforded additional weight over those proposing technologies with higher costs to upgrade and shorter capital asset cycles.

Additional Prioritization Factors: - Eligible Entities may develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the outlined primary criteria, and are approved by NTIA (p. 45):

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

## **Allowable Uses for Funding:**

### Eligible uses of funding include (p. 39):

- Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service
- Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including infeasible right-of-use (IRU) agreements
- Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building
- Engineering design, permitting, and work related to environmental, historical, and cultural reviews
- Personnel costs, including salaries and fringe benefits for staff and consultants for services directly connected to the implementation of the BEAD Program (project managers, program directors, and subject matter experts)
- Network software upgrades, including cybersecurity
- Training for cybersecurity professionals who will be working on BEAD-funded networks
- Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training for broadband-related occupations

### Non-deployment eligible uses of funding (p. 39-40):

- User training with respect to cybersecurity, privacy, and other digital safety matters.
- Remote learning or telehealth services/facilities.
- Digital literacy/upskilling (from beginner-level to advanced).
- Computer science, coding and cybersecurity education programs.
- Implementation of Eligible Entity digital equity plans (to supplement, but not to duplicate or supplant, Planning Grant funds received by the Eligible Entity in connection with the Digital Equity Act of 2021).
- Broadband sign-up assistance and programs that provide technology support.
- Multi-lingual outreach to support adoption and digital literacy.
- Prisoner education to promote pre-release digital literacy, job skills, online job acquisition skills, etc.
- Digital navigators.
- Direct subsidies for use toward broadband subscription, where the Eligible Entity shows the subsidies will improve affordability for the end user population (and to supplement, but not to duplicate or supplant, the subsidies provided by the Affordable Connectivity Program).
- Costs associated with stakeholder engagement, including travel, capacity-building, or contract support.
- Other allowable costs necessary to carrying out programmatic activities of an award, not to include ineligible costs described below in Section V.H.2 of this NOFO.

## **Timeline:**

- State, Territory Letter of Intent Due: July 18, 2022
- Initial State Planning Funds Application Due: August 15, 2022
- 5 Year Action Plan: Due 270 Days after Initial Planning Funds received by States
- Initial Proposal– Due no later than 180 days after release of new broadband maps and Notice of Available Amounts
- Eligible Entities will be notified of future submission deadlines following the FCC’s release of the required new broadband data and maps

## **Other Considerations:**

### Letter of Credit (p. 72):

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

### Buy American Requirements (p. 87):

- All funds made available through the BEAD Program for broadband infrastructure must comply with the Build America, Buy America Act, which requires all 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 U.S. unless a waiver is granted.
- The Secretary of Commerce may waive the application of this preference under certain circumstances

### Challenge Process (p.34):

- Each Eligible Entity shall develop a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds
- The process must allow for challenges regarding whether a particular location is unserved or underserved as those terms are defined in the Infrastructure Act and Section I.C if this NOFO

### State Final Plan Requirements (p. 47-48):

The final plan submitted by an Eligible Entity (State) must include many things (full list on p. 47-48). A few of note are:

- A description of efforts undertaken by the Eligible Entity to ensure the participation of non-traditional broadband providers (such as municipalities or political subdivisions, cooperatives, non-profits, Tribal Governments, and utilities), including an explanation for awards to traditional broadband providers when one or more non-traditional providers submitted competing proposals to serve an area consistent with the requirements of Section IV.C.1.a
- Steps that the Eligible Entity has taken or intends to take to promote streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements
- Labor and workforce activities, including how the Eligible Entity implemented and applied the labor-related subgrantee selection criterion required herein;
  - Utilization of minority businesses, women-owned business enterprises, and labor surplus area firms;
  - Low-cost plan requirements; and
  - Climate change and resilience;
- Information regarding specific commitments made by provisionally selected subgrantees to warrant a project's treatment as a Priority Broadband Project
- Information regarding specific commitments made by provisionally selected subgrantees to warrant benefits in the Eligible Entity's subgrantee selection process (e.g., the primary and secondary criteria)