

TRANSPORTATION AND INFRASTRUCTURE

Indiana Department of Transportation

This section outlines the Indiana Department of Transportation's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

INDOT did not have a department dedicated to DEI initiatives.

DEI Staff Positions

INDOT did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

INDOT does not have a mission or value statement including DEI.

Programs Administered to the Public

- INDOT's website lists a strategic goal of the agency to "continue to develop a transportation network that increases access, equity, and environmental sustainability through research, public-private partnerships, and federal initiatives/funding/programs."
- In Oct. 2024, INDOT hosted a public meeting regarding Revive I-70. During the public meeting, a slide deck was shared that includes INDOT's work on equity services. The Equity Initiative Services, now known as the Business Opportunity Division, administers INDOT's federal disadvantaged business program (DBE), codified by 49 CFR 26. By federal statute, INDOT is required to administer the DBE program as a requirement of receiving federal highway funds for road construction projects.
- On INDOT's webpage, there are minutes from a Bloomington Monroe County Metropolitan Planning Organization (BMCMPPO) meeting on June 14th, 2024. In the minutes, they address and present findings from focus groups, including a diversity, equity, and inclusion focus group. This was a public involvement meeting related to INDOT's Statewide Transportation Plan (STIP). INDOT is required to host public meetings to afford public involvement for our STIP pursuant to 49 USC 5304. Such meetings are conducted pursuant to Indiana's Open Door Law, IC 5-14-1.5.

Grant Conditions

- INDOT does not have any DEI grant conditions.

Training/Instruction Administered to the Employees

- INDOT allows Employee Friend Resource Groups (EFRG). EFRGs are voluntary groups led by employees who may share a common characteristic or life experience. INDOT will rename EFRG's to Colleague Engagement Networks (CEN). CENs would be a group of INDOT team members that are linked by common purpose, interest, or goal. This program would support INDOT employees while increasing retention and organizational commitment to INDOT. (See Appendix 1 and 2)
- INDOT uses job profiles from SPD, which often include DEI language. As we are required to use SPD job profiles, we will look to SPD to release updated language in the job profiles removing DEI language.
- INDOT has recently revised its Equitable Guide to Hiring, removing all references to DEI and replacing with language that captures a fair and efficient hiring process. (See Appendix 3 and 4)

Job Applicant Requirements

- INDOT does not have any DEI job applicant requirements.

Appendix 1



INDIANA DEPARTMENT OF TRANSPORTATION

Purpose

Employee & Friends Resource Group (EFRG) are voluntary groups led by employees who may share a common characteristic or life experience, such as age, gender, religion, etc. The goal of EFRGs is to provide support to their members and help foster a diverse, equitable, and inclusive workplace. The purpose of this document is to highlight key points from the State of Indiana's EFRG policy. For more detailed information, please refer to the state EFRG website.

Scope

This policy applies to all full-time and part-time employees of the Indiana Department of Transportation (INDOT).

Description

- The State of Indiana supports employees' ability to freely associate and form EFRGs.
- EFRGs are independent of, and operate separately from, the State of Indiana, and their activities are not state action.
- If you elect to establish and operate an EFRG, it must be done in a way that does not violate the Indiana Code of Ethics or the Information Resource Agreement ([IRUA](#)).
- EFRGs must be open to **all** INDOT employees regardless of any attributes that make each person unique and cannot exclude non-members from its activities.
- Please be mindful that as you establish and operate your EFRG that uses state property, such as your state computer or state email account, for communication or other purposes involving your group, it could result in a public record.

Establishing an EFRG

INDOT will follow the guidelines established by the Indiana Office of the Chief Equity, Inclusion, and Opportunity Officer. Here is a summary of the requirements

- Review and understand the State of Indiana's policy on EFRGs.
- Consult with the Chief Equity, Inclusion, and Opportunity Officer (CEIOO) office on guidelines & best practices.
- Review and identify the areas of focus for your EFRG as identified in the SOI policy on EFRGs
- Create a Charter Proposal for the EFRG
- Although not required, it is recommended you find an executive sponsor (Director level or above).
- Submit your EFRG request to INDOT's Equity and Inclusion team at inclusionandbelonging@indot.in.gov. Once you have received notice of receipt from INDOT's Equity and Inclusion team you may submit your plan to the office of CEIOO.

FAQs

- Q: Can the group meet during work hours?

-

A: EFRG's operate independent of the State so as a general rule meetings and events must take place outside of work hours which includes your lunch break. Under the WHOLE policy, agencies can be flexible with their employees' schedules if the event is considered professional/organizational development, community outreach or philanthropy focused.

Q: Will INDOT fund EFRGs?

A: EFRGs are employee-funded and may not use state funds. However, in some instances state funds may be requested if being used for approved, operational activities related to work.

- Q: How much support can we expect from INDOT?

A: We will support by integrating EFRG leaders into the I&B teams, helping them gain visibility to opportunities and leverage various internal and external networks to achieve their goals. INDOT supports EFRGs and appreciates the value they bring to the agency. Currently, the process and approval of EFRG's are completely managed by the Office of the Chief Equity, Inclusion, and Opportunity Officer. INDOT will and abide by all guidelines and policies set forth by the Governor's Office.

- Q: How many members do I need?

A: At least 10 members to start. There is no limit on the maximum number of members.

- Q: Is there anything leaders need to submit to the CEIOO regularly?

A: Yes – EFRG leaders need to submit quarterly reports and annual action plans & goals.

References:

[IRUA Policy](#)

[WHOLE Policy](#)

Appendix 2

Categories of Colleague Engagement Networks

To determine eligibility of events and initiatives, a CEN must fall into one of the three recognized categories:

- Peer Networking and Support
 - This network can provide a mechanism for employees to share information, advice, support and guidance with each other.
- Career Progression
 - This network may help promote the professional development of specific employee groups in areas such as business practice, presentation and/or leadership skills.
- Shared Interest
 - This network can provide space for colleagues who share a similar interest, hobby, or demographic.

Establishing a Colleague Engagement Network

1. A chair and co-chair of the suggested CEN must be decided and in agreement with the goals and focus of the group that align with one of the CEN categories outlined in this guidance.
2. Establish the operating structure and recruit initial members to join.
3. Complete the Colleague Engagement Network Proposal Worksheet to submit to the Talent Management Inbox (TalentManagement@indot.in.gov).
 - a. Proposals for the creation of CENs are reviewed upon receipt of the proposal. The Employee Engagement Representative will get back to you with a request for further information, approval, and/or denial of your proposal within 5 business days.
4. Continue to recruit members, meet once every quarter, and maintain open communication with your Executive Sponsor to maintain active status.

Sustaining a Colleague Engagement Network

Each Chair and Co-Chair of the active CENs will be required to meet with the Employee Engagement Representative in a bi-annual CEN group meeting. At this time, all CENs will be required to provide the current list of members, the name of their Executive Sponsor, a list of meetings/ events the CEN conducted since the last meeting, and their schedule of meetings/ events planned before the next meeting.

Use of State and People Resources

“Peer Networking and Support” or “Career Progression” Category:

- Eligible to operate during agency hours, pull in members of the agency to assist or participate in initiatives and/or meetings, and host meetings during agency hours.

“Shared Interest” Category:

- Intended to operate outside of agency hours and only offer certain initiatives during agency hours with the Talent Management Representative and Executive Sponsor’s approval.

All Colleague Engagement Networks:

- Eligible to operate on agency time during meetings called by the Employee Engagement Representative and/or the Executive Sponsor.
- Must create communications (flyers) using personal resources to market events, initiatives, or membership.
 - CENs can hang flyers in the office
- Can only use free resources provided by INDOT.
 - Microsoft Teams channel to communicate with one another and plan meetings.
 - CENs cannot create a CEN-related Outlook Email.

DEFINITIONS

Colleague Engagement Network (CEN)

- A group of Indiana Department of Transportation (INDOT) team members that are linked by a common purpose, interest, or goal.

Chair

- Will guide the network and play a key role in shaping its agenda and be the lead contact for the Executive Sponsor.

Co-Chair

- Supports the activities of the Chair, assists in coordination and is second in command in the event the Chair is unavailable.

Executive Sponsor

- A senior executive that can advocate on behalf of the network, guide the network's strategy and direction, help solve any issues, and generally raise the profile and influence of the network within the agency.

Talent Management Representative

- Typically, a member of Employee Engagement, the Talent Management Representative regulates and follows up with all CENs regularly to ensure compliance and follow-through on the goals and initiatives set out in the CEN Proposal Worksheet.

Colleague Engagement Network Proposal Worksheet

- The document needed to be submitted to the Talent Management Representative to establish a new CEN. This document also provides an overview of the operating structure of your network, identifies the goals and mission of the CEN, guides key activities, and determines eligibility of events and meetings to be held within working hours.

Active Status

- A CEN that is still eligible to continue operating within the expectations of this guidance and the initiative set out in the CEN Proposal Worksheet.

REFERENCES

Colleague Engagement Network Proposal Worksheet

Appendix 3

EQUITABLE HIRING GUIDE

2023



Table of Contents

Introduction 4

Highlights 5

Before the Interview 6

The Screening Interview 7

First/Second-Round Sample Interview Questions 9

 Interview Rubrics 12

 Legally Impermissible Personal Questions Chart 15

 Behavioral Guidelines for Conducting Interviews 19

Deciding to Hire..... 21

After You Hire 22

 The Importance of Belonging 23

 Inclusion and Belonging at INDOT 24

Contacts 25

Introduction

Welcome! The Equitable Hiring Guide was designed to assist hiring managers across INDOT with equitable interviewing practices during the hiring process. The purpose of this tool is to standardize the interviewing process so we can offer the best experience to candidates.

Additionally, and most importantly, we aim to ensure that the interviewing process operates through an equitable and inclusive lens that promotes diversity. INDOT values Diversity, Equity, and Inclusion, and is committed to hiring a talented and highly skilled workforce to serve all Hoosiers.

The guide flows in order from prepping before the interview(s), conducting the interview(s), deciding to hire, and then welcoming the new hire to the team.

Your role as a hiring manager is a crucial one. We appreciate your efforts, and we want to make the process easier for you, no matter if you are a seasoned pro or are hiring for the first time. By following the guide, you will be able to create a smooth, effective process that results in a positive candidate experience.



Highlights

- About how long should each interview be?
 - Screening Interview (optional): 15-20 minutes.
 - First-round: 45-60 minutes.
 - Second-round (if needed): 45-60 minutes.
 - **See page 6 for more information.**
- What questions should I ask in a screening interview?
 - Basic questions (e.g., tell me about yourself), resume details, interest in the position, salary expectations.
 - **See page 7 for more information.**
- Rubrics for second-round interviews make evaluating candidates easier for you, help reduce bias, and provide a more objective review of candidates.
 - **See pages 12-14 for a template you can print.**
- It is important to keep biases in check. Two common types of bias that can show up when interviewing:

“Just Like Me” Bias	Halo/Horns Effect
This is being biased in favor of candidates who are like you. Maybe this candidate went to the same college as you, grew up in the same town, or they have a similar personality to you. This is not a harmful thing, but it can mean that other qualified candidates are overlooked.	The halo effect occurs when a positive impression or seeing one trait positively leads you to treat someone more favorably and overlook their bad traits. Conversely, the horns effect occurs when a negative impression/trait leads you to treat someone more poorly and this overshadows positive traits. See page 20 for more information.

- How do I foster a sense of belonging for a new employee?
 - There are many things you can do, such as celebrating accomplishments or personalizing introductions more.
 - **See page 23 for more information.**
- What do I do if a candidate asks me questions about equity and inclusion?
 - Avoid sharing your personal views and share the agency’s stance.
 - **See page 24 for more information.**

Before the Interview

There is ample planning and prep work that occurs before the actual interview. The target time to hire metric is 20 days or less.

Interviewing should take place within **two weeks** of posting a position. Tip: Select an ideal start date for your new position and move backwards to schedule. For example, if you ideally want a traffic engineer to start on May 1st, you will then aim to finish interviewing, decide on a top candidate, and notify them by April 14th and complete pre-hire checks/provide a final offer by April 20th.

If you will be using an interview panel, identify panel members as early as possible (even before posting the job) and work with them to block off adequate time on their calendars for interviews. Also, carefully consider who to include on the panel. Does the panel embody diverse perspectives and identities? Do they represent INDOT well?

How many rounds of interviews should I do?

We recommend no more than 3 interviews total, including the screening interview. We want to be respectful of interviewees' time and not lose top talent from having too long of a process.

Should the interviews be in person or virtual?

We recommend conducting a brief phone screen, then having either an in-person or Teams interview, or both if you are doing 3 interviews. It is important to acknowledge possible differences in preferred mode of interview as well. If you only conduct in-person interviews, this may be a barrier for candidates and thus, you could be missing out on high-quality talent. With a diverse candidate pool of applicants, we suggest a virtual interview first followed by an in-person interview so that everyone can shine in the format they are comfortable with. This way, we have an equitable process for everyone.

How long should each interview be?

Interview Mode	Recommended Length of Time
Screening Interview (Optional)	15-20 minutes
First-Round	45-60 minutes
Second-Round (If needed)	45-60 minutes



Remember! Be sure to accommodate any reasonable needs if requested by the candidate, such as an accessible parking space, a break for a breastfeeding mother to express milk, a private space for prayer, etc. If you do not know how to reserve rooms or where accessible parking is, you can reach out to your HR Representative. For more information, visit: <https://www.in.gov/spd/policies-and-procedures/americans-with-disabilities-act/>

The Screening Interview

The first stage of interviewing is the screening interview. The purpose of the screening interview is to get an overall impression, clarify the resume, and weed out those who do not meet qualifications. Screening interviews are meant to be brief, and is not the time to ask the in-depth, open-ended questions.

How to conduct a phone screen:

1. Introduce yourself and ask the candidate how they are doing.
 - a. If there is a piece of their resume or experience you connect with – bring it up. For example, if you see they previously lived in a state you love to visit, say so. Kind, authentic small talk can put the candidate more at ease.
2. Outline what to expect during the interview.
3. Ask the **basic questions**.
4. Ask **resume details**.
5. Ask about their **interest in the position**.
6. Ask about **salary expectations**.
7. Ask and answer if there are any questions the candidate may have for you.
8. Thank them and provide details on next steps.

Here are some examples of questions to ask for each category. Pick one or two from each category.

Basic Questions

- Can you walk me through your background?
- Tell me a little bit about yourself.
- When could you begin working? (Note: this may give the impression that the candidate is further along in the process.)

Resume Details

- What skills have you gained that match this position?
- Can you tell me more about [one previous job or experience that may be relevant to position]?

Desire for the Position

- What attracted you to this position?
- Why did you apply for this position?
- How did you hear about this position?

Salary Expectations

- How much would you like to earn in this position?

Red Flags:

- ❗ Talking negatively about a previous employer.
- ❗ Extreme focus on the pay.
- ❗ Shows no interest in the specific role.
- ❗ Shows a lack of preparedness.

Tips:



Although you may want to knock out all the screening interviews in a block of time, don't schedule calls back-to-back. You would then be rushing through questions, and if one call ran late then all the following calls would start late.



Be mindful of time. Do not ask too many questions and leave time at the end for any questions they have for you.



Keep an open mind and be mindful of your biases to limit its influence on your decision-making concerning the candidate. **See Page 18 for more information on bias.**

First/Second-Round Sample Interview Questions

You've scheduled the next round of interviews with candidates, and now you need to plan what questions to ask. Creating interview questions could be the most challenging part of the process for a hiring manager. Included here are sample questions you can use. It is important to think about what questions will best give you the information you need to determine a candidate's skills for the job.

What makes a good interview question?

- ✓ They are open-ended, meaning that they cannot be answered with a simple "yes" or "no."
- ✓ They do not intend to trick the interviewee.
- ✓ They illustrate a direct link to the competencies and knowledge necessary for the position.

What is a competency-based question?

A competency-based question is a behavioral interview question that seeks to assess a specific skill or competency needed for the position. It lets you know how a person has handled a situation in the past and/or how they may handle a situation in the future.

Which round should I ask competency-based questions?

You can use these questions for any round. However, for a screening interview, it may be best to use fewer of these types of questions, if any, and focus more on walking through the candidate's resume and asking why they are interested in the position.

When deciding on what questions to ask, first think about what skills/competencies matter most for the position. Then you can narrow down what specific questions you want to ask.

Additional Considerations:

- Historical questions ("tell me about a time when") and easy to prepare questions may result in a good storyteller and could be inaccurate in predicting success in a position.
- Instead of asking typical problem-solving questions, you can provide candidates a description of a real problem they will face on the job and have them walk you through steps they would take to solve it.
- Sell the position and INDOT. You can proactively ask, "what are the top factors that you'll use to consider a job offer?" and then give compelling information in response to their top factors.



Remember! Be mindful of how many questions you can feasibly ask in a set amount of time. Also, you'll want to leave about 10 minutes for the interviewee to ask you questions. They are interviewing you too!

Example Interview Questions	Competency
<p>How have you worked well with someone who had a different experience, education, training, or perspective than you?</p> <p>What makes an inclusive work environment and how do you plan to promote inclusion and a sense of belonging in this position?</p> <p>Tell me about an occasion when you were able to connect people from different backgrounds/cultures in a united effort.</p>	Diversity
<p>Describe a time when a team experience was rewarding. What made that experience rewarding?</p> <p>Describe a time when you helped a team member solve a problem without being asked.</p>	Teamwork
<p>What challenges have occurred when coordinating work with other departments/units/divisions?</p> <p>Give an example of a time when you had to change your communication style with a particular person.</p>	Communication
<p>Outline the steps you'd take to adapt when a dramatic, unexpected change occurs.</p> <p>Tell me about a time when you had to adapt to an uncomfortable situation.</p>	Adaptability
<p>How do you develop a project's goals and project plan?</p> <p>What is a significant project that you managed and how did you make sure that everything was getting done correctly and on time?</p>	Project Management
<p>What are challenges leaders may face and how would you overcome them?</p> <p>What leadership skills do you find most useful?</p> <p>Tell me about a time when you effectively demonstrated leadership skills.</p>	Leadership
<p>Outline the steps you would take in dealing with an especially difficult employee or coworker. What would a successful outcome look like?</p> <p>Give an example of a situation where you disagreed with a coworker's idea. How did you express your opposition and what happened as a result?</p>	Conflict Resolution
<p>Give an example of a time when you used effective time management skills to complete a project ahead of schedule. What was the project and how did you prioritize tasks?</p> <p>Tell me about a time when you missed a deadline. How did you handle it?</p> <p>How do you limit distractions?</p>	Time Management

<p>How have you dealt with failure in the past?</p> <p>Give an example of how you have acted with integrity in your work.</p> <p>What does integrity in the workplace mean to you?</p>	Integrity
<p>Tell me about a time when you recognized a potential problem as an opportunity.</p> <p>Give an example of something you have done to make your job easier or more interesting.</p>	Initiative/Motivation
<p>Describe a time when you had a project that required you to work well under pressure. How did you deal with it?</p> <p>What steps do you take to prevent a situation from becoming too stressful to manage?</p>	Stress Management
<p>Tell me about a time when you helped resolve a group problem. What caused the problem and what was the solution?</p> <p>Describe a time when you faced an unexpected challenge at work.</p>	Problem-Solving
<p>Give an example of a situation when your ability to notice another person's feelings or concerns enabled you to proactively address an issue.</p> <p>Describe a work situation that required you to really listen and display compassion for a coworker who was telling you about a personal or sensitive issue. What did you do?</p>	Empathy
<p>How do you build team spirit in an environment of low morale?</p> <p>How do you celebrate an individual's or your team's successes?</p>	Building Morale
<p>Outline the steps you'd take to continuously learn and maintain your expertise in one important technical area.</p> <p>What is something you plan to learn for this position?</p> <p>Outline your learning process when learning a new skill.</p>	Learning

For additional competencies used by the State, check out these resources:

SAP Competencies List:

<https://www.in.gov/indot/files/SAP-Competencies-List.pdf>

Competency Development Guide:

https://www.in.gov/indot/files/COMPETENCY-DEVELOPMENT-GUIDE_Final.pdf

Interview Rubrics

Using rubrics to evaluate responses to interview questions is a great way to assess a candidate's skills and have a record of notes for later reference. Rubrics help maintain consistency and fairness with evaluating and ranking candidates. This consistency results in a more objective review of candidates and helps with reducing bias.

What is a rubric?

A rubric is a matrix that allows you to assign a score to how the question was answered. It defines the thresholds for various levels and the must-haves of the role.

See the example of an abbreviated interview rubric on the following page. This Communicating Effectively example is just one section of a whole interview. This format can be repeated with multiple question sets concerning competencies such as critical thinking, organization, and/or other competencies you want to assess.

We encourage you to take this rubric example and use it for your own interviews. Feel free to incorporate questions best targeted for the position (see our Sample Interview Questions).

INTRODUCTIONS

1. Introductions: Name, Title, & Short Description of Your Role
 - a. Order of Introductions:

2. What aspects of this position are you excited about and best fit your interests and skills?

[Category of Questions] Example: COMMUNICATING EFFECTIVELY

3. We find that what works with one person does not necessarily work with another. We must be flexible in our style of relating to others. Give an example of when you had to vary your communication style with a particular person.

4. Follow Up: When communicating across differences (such as race, gender identity, etc.) how do you effectively convey your message?

	Beginner (1)	Benchmark (2)	Milestones (3)	Advanced (4)
COMMUNICATE EFFECTIVELY	Experiments with communicating effectively. Ability to learn new methods is doubtful.	Participates in communicating across difference in a silo, unintentionally. Ability to learn new methods is uncertain.	Demonstrates the knowledge to communicate effectively and across while they may see connections to workplace issues. Ability to learn new systems is apparent.	Demonstrates the knowledge to communicate effectively and across difference while also clearly seeing the connection to workplace issues. Ability to learn new, complex methods is apparent.

At the end of the interview:

CANDIDATE WRAP-UP

5. What questions do you have for us?

Next Steps:

- Thank you for taking the time to go through this process and interview with us!

Candidate Strengths	Candidate Areas of Growth
<p>1. Strong communication skills</p> <p>2. Excellent problem-solving abilities</p> <p>3. Proven leadership experience</p> <p>4. High level of integrity and ethics</p> <p>5. Strong team player</p>	<p>1. Public speaking confidence</p> <p>2. Time management skills</p> <p>3. Networking abilities</p> <p>4. Strategic thinking</p> <p>5. Emotional intelligence</p>

Overall Score (Out of 16; Up to 4 points per category): _____

Communicating Effectively Score: _____

[Category] Score: _____

[Category] Score: _____

[Category] Score: _____

Legally Impermissible Personal Questions Chart

There are some topics that are legally off-limits to ask an interviewee due to Title VII of the Civil Rights Act of 1964, such as age, disabilities, national origin, citizenship, criminal record, marital status, or military discharges, while other topics may be acceptable depending on what you are specifically asking. The table below provides different topic areas and what is prohibited and permissible to ask.

TOPIC	DON'T ASK THIS	ASK THIS INSTEAD
Address/Residence	<ul style="list-style-type: none">• About foreign addresses that would indicate a national origin• Who do you live with?• Do you own or rent?	<ul style="list-style-type: none">• Phone number and other contact information, like current address.
Age	<ul style="list-style-type: none">• How old are you?• When were you born?• Any question that would tend to identify persons who are 40 and older (“Do you remember working before e-mail was around?”)	<ul style="list-style-type: none">• No questions should be asked about a person’s age. Your HR Representative will verify age, if necessary.
Arrest and Conviction	<ul style="list-style-type: none">• Have you ever been arrested?• Have you ever gone to jail?	Your HR Representative will conduct a background check which includes the candidate’s criminal convictions.
Attendance/Reliability	<ul style="list-style-type: none">• Who is going to babysit your children?• Do you have pre-school age children at home?• Do you have a car?	<ul style="list-style-type: none">• What hours and days can you work?• Are there specific times that you cannot work?
Citizenship/National Origin	<ul style="list-style-type: none">• What is your national origin?• Are you native-born or naturalized?• Where are your parents from?• What is your maiden name?• (Before hiring) Can you show proof of citizenship?	<ul style="list-style-type: none">• No questions should be asked about a person’s citizenship or national origin. Your HR Representative will verify if the new hire is authorized to work in the United States.

TOPIC	DON'T ASK THIS	ASK THIS INSTEAD
Credit Record	<ul style="list-style-type: none"> • Do you own your home? • Have your wages ever been garnished? • Have you ever declared bankruptcy? 	<ul style="list-style-type: none"> • No questions about credit history or a person's finances should be asked.
Disabilities/Handicaps/ Illness	<ul style="list-style-type: none"> • Do you have any disabilities? • About the nature of or severity of a disability/handicap • Have you ever been addicted to illegal drugs or treated for drug or alcohol abuse, received workers compensation, or been hospitalized/treated for physical or mental health conditions, or ever been absent from work due to illness? 	<ul style="list-style-type: none"> • Can you perform the duties of the job you are applying for (describe duties to candidate)? • Can you meet the attendance requirements? <p>*If a candidate discloses that they have a disability and asks if they can perform the job with an accommodation, we may need to provide an accommodation depending on what accommodation is requested and if the accommodation would cause and undue hardship. Ask the candidate what they would need.</p>
Education	<ul style="list-style-type: none"> • When did you graduate from high school or college? 	<ul style="list-style-type: none"> • Do you have a high school diploma or equivalent? • What level of education have you completed?
Gender/Sex	<ul style="list-style-type: none"> • Do you wish to be addressed as Mr.? Mrs.? Miss? Ms.? Mx.? • Are you female or male? 	<ul style="list-style-type: none"> • No questions about gender or sex should be asked.
Language	<ul style="list-style-type: none"> • What is your native language? • Inquiry into how the candidate acquired the ability to read, write or speak a foreign language. 	<ul style="list-style-type: none"> • What languages do you speak and write fluently? (If the job requires additional languages.)
Military Record	<ul style="list-style-type: none"> • What type of military discharge did you receive? 	<ul style="list-style-type: none"> • What type of education, training, work experience related to this position did you receive while in the military?

TOPIC	DON'T ASK THIS	ASK THIS INSTEAD
Organizational Affiliation	<ul style="list-style-type: none"> • What clubs, societies and lodges do you belong to? 	<ul style="list-style-type: none"> • Inquiry into the candidate's membership in organizations which the candidate considers relevant to their ability to perform the job such as, professional organizations (e.g., Society for Human Resource Management).
Parental/Marital Status	<ul style="list-style-type: none"> • Do you have children? • Do you plan to have children? • Are you married, divorced, engaged, separated, widowed? • Is your spouse in the military? 	<ul style="list-style-type: none"> • No questions about parental or marital status should be asked.
Physical Features	<ul style="list-style-type: none"> • Weight, height, impairment, or other non-specified job-related physical data. 	<ul style="list-style-type: none"> • No questions should be asked about physical features
Race or Color (See also Citizenship/ National Origin)	<ul style="list-style-type: none"> • Anything directly or indirectly related to race. 	<ul style="list-style-type: none"> • No questions should be asked about a person's race or color.
Reference Checking	<ul style="list-style-type: none"> • What is your father's surname? • What are the names of your relatives? 	<ul style="list-style-type: none"> • By whom were you referred for this position? • Names of people willing to provide references.
Religion or Creed	<ul style="list-style-type: none"> • Do you attend church? • What church do you attend? • What religious holidays do you observe 	<ul style="list-style-type: none"> • Can advise candidate about normal hours and days of work required by the job to avoid possible conflict with religious or other observances.
Sexual Orientation	<ul style="list-style-type: none"> • Are you LGBTQ+? 	<ul style="list-style-type: none"> • No questions about sexual orientation should be asked
Worker's Compensation	<ul style="list-style-type: none"> • Have you ever filed for worker's compensation? • Have you had any prior work injuries? 	<ul style="list-style-type: none"> • No questions about worker's compensation should be asked

It is critical that you do not violate equal employment opportunity laws. The reason some topics are illegal is because that information could be used to discriminate against a potential employee. All settings and all interactions are part of the interview. It is best to make sure anyone who will have possible contact with the candidate is knowledgeable about what is appropriate to discuss. When in doubt, keep it about work!

What if a candidate discloses personal information?

Sometimes candidates share information related to these impermissible topics. For example, they may say, “I have three kids,” “I go to church,” or “My spouse is in the military.” Even though the candidate willingly brought it up, do not follow up on this information and do not write it down in your interview notes. Acknowledge what was said by nodding and saying, “Ok,” or “I see” or some other neutral response, then move forward with your prepared questions or another topic of conversation.

Behavioral Guidelines for Conducting Interviews

You have everything prepped for the interview, so you are all set, right? Well, how you conduct yourself during the interview is another important piece that you need to be prepared for. Candidates will want to see someone who is professional, honest, and engaged. Below are some tips on conducting yourself appropriately and professionally during an interview.

Responsive Listening Technique

Responsive listening, or active listening, is a communication technique in which you show that you understand what is being said and recognizing others' emotions through verbal and nonverbal cues. It is a way to be engaged and enthusiastic in the conversation. Responsive listening is useful when interviewing because it can make the candidate more comfortable, keep the conversation going, and allow the candidate to answer questions fully. Responsive listening is a skill to be practiced and will reflect well on your professionalism.

Key behaviors of a responsive listener:

- **Eye contact** while talking.
- **Gestures** such as uncrossing your arms, leaning, or smiling.
- **Pausing** and giving space for the candidate to fully respond.
- **Clarifying** to ensure you understand what was said.
- **Acknowledging** what you heard. "I agree," or "Great point."

Body Language

You may have heard before that most of communication is what we don't say, meaning we communicate a lot with nonverbal cues (i.e., body language). Even if unintentional, hiring managers could send negative messages based on their body language. It's critical to have a professional demeanor during interviews because as a hiring manager, you are representing INDOT, and candidates are evaluating you as much as you are evaluating them. Here are some negative messages you could send with your body language and suggestions of how to keep it in check.

Body Language		The Message	Do This Instead
Sighing, rubbing your neck or back of your head, resting your chin on your hand.	→	"I'm bored"	Loosely clasp your hands in front of you or rest them on your lap. Avoid sighing.
Crossing your arms over your chest, leaning back in your chair, resting one ankle on top of your other knee.	→	"I'm better than you"	Sit upright with your torso facing the candidate.

Shaking one leg or wiggling a foot. A lot of leg movement.	→	“I’m uncomfortable”	Place both feet flat on the floor or sit with your legs crossed at the ankles.
Rubbing your face or drumming your fingers on the table/desk.	→	“I’m annoyed”	Loosely clasp your hands in front of you or rest them on your lap.

Avoiding Bias

Bias is defined as having prejudice for or against a person or group. For example, a hiring manager can be biased against older adults because they think they may not be able to do the job well. Bias is sneaky and can show up during the interview process without you knowing it! So, it is good to be prepared and reflect on what possible biases you may have so that you can prevent it from interfering with interviews. Read about some of the distinct types of biases relevant to interviewing below.



“Just Like Me” Bias: This is being biased in favor of candidates who are like you. Maybe this candidate went to the same college as you, grew up in the same town, or they have a similar personality to you. Perhaps this person even reminds you of yourself. This is not a harmful thing, but it can mean that other qualified candidates are overlooked. Further, this bias reduces diversity in the workforce if everyone you hire is just like you. That is not an ideal outcome because diversity enriches the workplace by boosting creativity, productivity, and problem-solving.



Halo/Horns Effect: This is a two-part bias. The halo effect occurs when a positive impression or seeing one trait positively leads you to treat someone more favorably and overlook their bad traits. Conversely, the horns effect occurs when a negative impression/trait leads you to treat someone more poorly and this overshadows positive traits. Either way, your perception of a person is unfairly influenced by a single trait. For instance, research has found that viewing a person as attractive leads people to believe they are also intelligent¹. This type of bias prevents hiring managers from being objective and viewing the whole person holistically.

Pet Names

Avoid calling the candidates names such as girl, boy, gal, honey, sweetie, dear, son, kiddo, etc. Although it may be a habit or a term of endearment, names like these may be viewed negatively by the candidate. Additionally, it could misgender a candidate if you use a pet name that does not match how they identify.

Consistency & Communication

To be fair to all the candidates, they should all be asked the same set of questions for every interview. Follow-up questions may differ though. Doing this will also make it simpler to evaluate candidates' responses. Communicating effectively is also necessary for a good interviewing experience. Respond to candidates' emails promptly (within 2 business days), acknowledge any thank you emails, and always let them know the next steps in the process including how they will be notified. For candidates who do not move forward, be sure to disposition them in SuccessFactors as soon as you decide to not continue with them. When candidates are placed in the “Not Selected” disposition in SuccessFactors, the system will generate an automatic email informing them of the decision.

¹ <https://news.st-andrews.ac.uk/long-reads/smart-at-first-sight/>

Deciding to Hire

You have completed all the interviews, so now it is time to select your top choice and extend an offer! How do you know that you are making the best decision? Have you made an effort to keep your biases in check? Deciding to hire is a big step in the process and should be taken very seriously. It's important to not be rash in deciding, but a balance must be found in deciding in a timely manner so that you don't lose the candidate.

Questions to ask yourself/committee when evaluating top/shortlisted candidates:

- Is this person qualified for the job?
- Can this person do the core aspects of the job?
- How does this person fit into the team and the vision of INDOT?
- Are any of my biases impacting my judgement of this person?

How do I decide between two excellent candidates?

If you have two similar candidates who both meet all the requirements, go to your preferred qualifications list, and evaluate them. Preferred qualifications are not required for a candidate to be considered but go beyond the minimum job requirements and are desired qualifications. Preferred qualifications may include things like specific years of experience with a certain software, being bilingual, or a master's degree.

Once you have made a selection, do not delay in updating it in SuccessFactors and notifying the candidate. You should first call then email an informal offer letter to them. Lengthy hiring practices is one of the top reasons candidates turn down offers². Below is an email example from workable.com you can use.

New message

To

Cc Bcc

Subject

Job Offer from INDOT

Dear [candidate's name],

I hope this email finds you well.

We are pleased to offer you a position as a [role title] at INDOT. We think that your experience and skills will be a valuable asset to the agency. We would love to have you on our team.

If you are to accept this offer, you will be eligible to the following in accordance with INDOT's policies:

- Annual gross salary/hourly wage and/or biweekly wage of \$[total annual salary or hourly wage]
- Standard benefits including: [list benefits from job posting]

Your expected hire date will be [date] and your immediate supervisor will be [supervisor's name]. To accept this offer, please email us back by [date]. Feel free to contact me if you have any questions or concerns.

We look forward to welcoming you to INDOT.

Sincerely,

[your name]

A📎😊🔗🖼️🗑️☰

Send

² <https://www.inc.com/kelly-main/hiring-job-interviews-great-resignation.html>

After You Hire



Congratulations! You have hired a new employee. The hardest parts are over, but there are still some action items to complete after a candidate accepts the position to ensure a smooth onboarding process and help the new hire feel welcomed at INDOT.

- ✓ Quickly notify unselected candidates via SuccessFactors or email.
 - It is professional and kind to let candidates know they are not moving forward. We still want them to have a good impression of INDOT. SuccessFactors sends an automatic email when a candidate is moved to the “Not Selected” bucket, but it may be a good idea to also write a more personal email.
 - Example: Thank you for taking the time to meet with me for the [role title] position at INDOT. It was a pleasure to meet you and learn about your experiences. I regret to inform you that you have not been selected to move forward in the process. [optional: provide a brief reason for your decision]. Thanks again for applying to INDOT and I wish you the best in your future endeavors.
- ✓ Stay in communication with the new hire and help them prepare for their first day.
 - Provide them a start time, directions to the office, and any other relevant information. It would be good to also give them an outline of what they’ll be specifically doing their first day/week.
 - If the new hire notifies you of a need for a reasonable accommodation for a disability, work with your HR representative to get them a request form. For more information, go to <https://www.in.gov/spd/policies-and-procedures/americans-with-disabilities-act/>
- ✓ Get the new hire’s workspace ready to go by their first day.
 - Include their necessary equipment like a laptop. Consider putting up a welcome note or sign.
- ✓ Email an announcement to your whole team to welcome the new employee.
 - See an example template below that you can use.

Email Announcement:

New message

To

Cc Bcc

Subject

Welcome [new employee name]

Hello everyone,

I am delighted to announce that [new employee name] has joined our team here in [department name] as the [job title]. [New employee name] will be reporting to [name of supervisor/manager] and will be working on [details of role].

[New employee name] comes to us from [previous role or where they moved from]. [Share any other personal details or fun facts].

Please join me in giving a warm welcome to [new employee name]! We are thrilled to have them with us. [New employee name] will be sitting in [provide details], so come say hello and introduce yourself.

Best,

[your name]

A🔒😊🔗🖼️🗑️☰

Send

The Importance of Belonging

Having a sense of belonging in the workplace is vital for employee well-being, preventing burnout, and retention. Belonging is about the feeling of security and support, and that one's uniqueness is accepted and celebrated. It allows for everyone to be their true authentic selves at work. Teams need to make a conscious effort for all employees, especially employees from underrepresented groups who are more likely to feel as though they don't belong. For new employees, they may experience "belonging uncertainty," where people have concern and spend energy wondering whether they belong or not in a new environment. This feeling may be more prevalent in underrepresented groups as well.

Fostering belonging starts with leadership. A new employee's sense of belonging in their first week may predict whether they stay for a long time or not. From day one, you can take steps toward making your department welcoming for your new hire.

- Say "Welcome to **our** team" instead of "Welcome to the team."
- Personalize introductions more. Instead of only saying, "This is [name]," add some hobbies or interests of theirs.
- Be open and actively ask for employee feedback, and don't brush things under the rug if there are disagreements.
- Recognize and celebrate accomplishments and efforts, big or small.
- Develop social bonds by arranging team building opportunities, such as going bowling.
- Avoid micromanagement because it erodes a sense of trust.



Inclusion and Belonging at INDOT

Diversity, Equity, and Inclusion are important to many candidates. With Generation Z (“Gen Z”; born in the late 1990s to early 2010s) entering the workforce, INDOT should be aware that they are the most diverse generation yet³ and that they are likely to show interest in this topic and make it a priority when looking for jobs, as 87% of them say Diversity, Equity, and Inclusion (DEI) is very important to them when selecting an employer⁴. So, it is best for you to be prepared for candidates’ questions about what INDOT is doing to promote Diversity, Equity, and Inclusion and take these questions seriously.

If you get questions about INDOT’s DEI program, please use the following information to help you answer. It’s important to remember that you’re representing the agency, so please avoid sharing your own personal views. If the candidate requires more information than is listed here, please reach out to the Inclusion and Belonging team for assistance.

INDOT’s Statement on Diversity, Equity, and Inclusion

The Indiana Department of Transportation is committed to fostering, cultivating, and preserving a culture of Inclusion and Belonging which includes a respectful and supportive workplace that attracts and retains a diverse and talented workforce. We believe that fostering an inclusive work environment provides an atmosphere that allows employees to attain their greatest potential and provide excellent service to the citizens of Indiana.

We believe that creating an inclusive work environment where employees are engaged and empowered strengthens our work and fosters a culture where all are inspired to work hard, challenge themselves, and be innovative in their thinking.

Every employee is unique and has a variety of traits that influence their thoughts and behaviors. Inclusion is feeling a part of the group. We strive to build an atmosphere in which all people feel valued, respected, included, and have access to the same opportunities. An inclusive work environment makes employees feel safe and welcome.

The goals for our program are simple:

1. To be an employer of choice where we offer a supportive and robust workplace environment where all employees at all levels can reach their fullest potential.
2. Equip employees at all levels with the tools and support necessary to create an inclusive organization that fosters innovation.

Tactics we’re implementing to help with our Inclusion & Belonging efforts:

1. Unified Strategic Plan
2. Equity, Inclusion, and Belonging Champions across the agency
3. Education and learning opportunities
4. Targeted outreach and recruitment
5. Mentor Program
6. Community engagement

We are consistently thinking about our journey— where we want to be, and how we will get there. We don’t have all the answers, but we’re prepared to make difficult decisions and listen to a range of opinions to make progress.

If you have questions, please contact your Inclusion and Belonging Team via email at inclusionandbelonging@indot.in.gov. This team was formed to increase the agency’s focus on Diversity, Inclusion, and Belonging through the implementation of an agency-wide education and initiatives.

3 <https://www.pewresearch.org/social-trends/2018/11/15/early-benchmarks-show-post-millennials-on-track-to-be-most-diverse-best-educated-generation-yet/>

4 <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/consumer-business/welcome-to-gen-z.pdf>

Contacts

Thank you for taking the time to read through the Equitable Hiring Guide. We hope you feel prepared and confident in interviewing for your next open position.

If you have any questions about the material or need additional help with the hiring process, please contact your local HR Representative.



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Appendix 4

INTERVIEW & HIRING GUIDE

2025



Table of Contents

Introduction.....	4
Highlights.....	5
Before the Interview	6
The Screening Interview.....	7
First/ Second Round Sample Interview Questions.....	9
Interview Rubrics.....	12
Questions and Topics to Avoid	15
Behavioral Guidelines for Conducting Interviews.....	19
Deciding to Hire	21
After You Hire.....	22
Creating a Welcoming Environment.....	23
Contacts	24

Introduction

Welcome! The Hiring Guide was designed to assist hiring managers across INDOT with best interviewing practices during the hiring process. The purpose of this tool is to standardize the interviewing process so we can offer the best experience to candidates.

Additionally, and most importantly, we aim to ensure that the interviewing process is fair and efficient. INDOT is committed to hiring a talented and highly skilled workforce to serve all Hoosiers.

The guide flows in order from prepping before the interview(s), conducting the interview(s), deciding to hire, and then welcoming the new hire to the team.

Your role as a hiring manager is a crucial one. We appreciate your efforts, and we want to make the process easier for you, no matter if you are a seasoned pro or are hiring for the first time. By following the guide, you will be able to create a smooth, effective process that results in a positive candidate experience.

Highlights

- How long should each interview be?
 - Screening Interview (optional): 15-20 minutes.
 - First-round: 45-60 minutes.
 - Second-round (if needed): 45-60 minutes.
 - **See page 6 for more information.**
- What questions should I ask in a screening interview?
 - Basic questions (e.g., tell me about yourself), resume details, interest in the position, salary expectations.
 - **See page 7 for more information.**
- Rubrics for second-round interviews make evaluating candidates easier for you and provide a more objective review of candidates.
 - **See pages 12-14 for a template you can print.**
- How do I make a new employee feel welcome?
 - There are many things you can do, such as celebrating accomplishments or personalizing introductions more.
 - **See page 23 for more information.**

Before the Interview

There is ample planning and prep work that occurs before the actual interview. The target time to hire metric is 20 days or less.

Interviewing should take place within **two weeks** of posting a position. **Tip:** Select an ideal start date for your new position and move backwards to schedule. For example, if you ideally want a Traffic Engineer to start on May 1st, you will then aim to finish interviewing, decide on a top candidate, and notify them by April 14th and complete pre-hire checks/provide a final offer by April 20th.

If you will be using an interview panel, identify panel members as early as possible (even before posting the job) and work with them to block off adequate time on their calendars for interviews. Also, carefully consider who to include on the panel. Ask yourself, does the panel represent INDOT well?

How many rounds of interviews should I do?

We recommend no more than 3 interviews in total, including the screening interview. We want to be respectful of interviewees' time and not lose top talent from having too long of a process.

Should the interviews be in person or virtual?

We recommend conducting a brief phone screen, then having either an in-person or Teams interview, or both if you are doing 3 interviews. It is important to acknowledge possible differences in preferred mode of interview as well. If you only conduct in-person interviews, this may be a barrier for candidates and thus, you could be missing out on high-quality talent. We suggest a virtual interview first followed by an in-person interview so that everyone can shine in the format they are comfortable with. This way, we have a fair process for everyone.

How long should each interview be?

Interview Mode	Recommended Length of Time
Screening Interview (Optional)	15-20 minutes
First-Round	45-60 minutes
Second-Round (If needed)	45-60 minutes



Remember! Be sure to accommodate any reasonable needs if requested by the candidate, such as an accessible parking space, a break for a breastfeeding mother to express milk, a private space for prayer, etc. If you do not know how to reserve rooms or where accessible parking is, you can reach out to your HR Representative. For more information, visit: <https://www.in.gov/spd/policies-and-procedures/americans-with-disabilities-act/>

The Screening Interview

The first stage of interviewing is the screening interview. The purpose of the screening interview is to get an overall impression, clarify the resume, and sort out those who do not meet qualifications. Screening interviews are meant to be brief, and is not the time to ask the in-depth, open-ended questions.

How to conduct a phone screen:

1. Introduce yourself and ask the candidate how they are doing.
 - a. If there is a piece of their resume or experience, you connect with – bring it up. For example, if you see they previously lived in a state you love to visit, say so. Kind, authentic small talk can put the candidate more at ease.
2. Outline what to expect during the interview.
3. Ask the **basic questions**.
4. Ask for **resume details**.
5. Ask about their **interest in the position**.
6. Ask about **salary expectations**.
7. Ask and answer if there are any questions the candidate may have for you.
8. Thank them and provide details on the next steps.

Here are some examples of questions to ask for each category. Pick one or two from each category.

Basic Questions

- Can you walk me through your background?
- Tell me a little bit about yourself.
- When could you begin working? (Note: this may give the impression that the candidate is further along in the process.)

Resume Details

- What skills have you gained that match this position?
- Can you tell me more about [one previous job or experience that may be relevant to position]?

Desire for the Position

- What attracted you to this position?
- Why did you apply for this position?
- How did you hear about this position?

Salary Expectations

- How much would you like to earn in this position?

Red Flags:

- ❗ Talking negatively about a previous employer.
- ❗ Extreme focus on the pay.
- ❗ Shows no interest in the specific role.
- ❗ Shows a lack of preparedness.

Tips:



Although you may want to knock out all the screening interviews in a block of time, do not schedule calls back-to-back. You would then be rushing through questions, and if one call ran late then all the following calls would start late.



Be mindful of time. Do not ask too many questions and leave time at the end for any questions they have for you.



Keep an open mind and be mindful of your attitudes and behaviors to limit influence on your decision-making concerning the candidate. **See Page 20 for more information.**

First/Second-Round Sample Interview Questions

You have scheduled the next round of interviews with candidates, and now you need to plan what questions to ask. Creating interview questions could be the most challenging part of the process for a hiring manager. Included here are sample questions you can use. It is important to think about what questions will best give you the information you need to determine a candidate's skills for the job.

What makes a good interview question?

- ✓ They are open-ended, meaning that they cannot be answered with a simple “yes” or “no.”
- ✓ They do not intend to trick the interviewee.
- ✓ They illustrate a direct link to the competencies and knowledge necessary for the position.

What is a competency-based question?

A competency-based question is a behavioral interview question that seeks to assess a specific skill or competency needed for the position. It lets you know how a person has handled a situation in the past and/or how they may handle a situation in the future.

Which round should I ask competency-based questions?

You can use these questions for any round. However, for a screening interview, it may be best to use fewer of these types of questions, if any, and focus more on walking through the candidate's resume and asking why they are interested in the position.

When deciding on what questions to ask, first think about what skills/competencies matter most for the position. Then you can narrow down what specific questions you want to ask.

Additional Considerations:

- Historical questions (“tell me about a time when”) and easy to prepare questions may result in a good storyteller and could be inaccurate in predicting success in a position.
- Instead of asking typical problem-solving questions, you can provide candidates with a description of a real problem they will face on the job and have them walk you through steps they would take to solve it.
- Sell the position and INDOT. You can proactively ask, “what are the top factors that you will use to consider a job offer?” and then give compelling information in response to their top factors.



Remember! Be mindful of how many questions you can feasibly ask in a set amount of time. Also, you'll want to leave about 10 minutes for the interviewee to ask you questions. They are interviewing you too!

Example Interview Questions	Competency
<p>Outline the steps you would take to adapt when a dramatic, unexpected change occurs.</p> <p>Tell me about a time when you had to adapt to an uncomfortable situation.</p>	Adaptability
<p>How do you build team spirit in an environment of low morale? How do you celebrate an individual's or your team's successes?</p>	Building Morale
<p>What challenges have occurred when coordinating work with other departments/units/divisions?</p> <p>Give an example of a time when you had to change your communication style with a particular person.</p>	Communication
<p>Outline the steps you would take in dealing with an especially difficult employee or coworker. What would a successful outcome look like?</p> <p>Give an example of a situation where you disagreed with a coworker's idea. How did you</p>	Conflict Resolution
<p>Give an example of a situation when your ability to notice another person's feelings or concerns enabled you to proactively address an issue.</p> <p>Describe a work situation that required you to really listen and display compassion for a coworker who was telling you about a personal or sensitive issue. What did you do?</p>	Empathy
<p>Tell me about a time when you recognized a potential problem as an opportunity.</p> <p>Give an example of something you have done to make your job easier or more interesting.</p>	Initiative/Motivation
<p>How have you dealt with failure in the past?</p> <p>Give an example of how you have acted with integrity in your work.</p> <p>What does integrity in the workplace mean to you?</p>	Integrity
<p>What are challenges leaders may face and how would you overcome them?</p> <p>What leadership skills do you find most useful?</p> <p>Tell me about a time when you effectively demonstrated leadership skills.</p>	Leadership

<p>Outline the steps you would take to continuously learn and maintain your expertise in one important technical area.</p> <p>What is something you plan to learn for this position? Outline your learning process when learning a new skill.</p>	Learning
<p>Tell me about a time when you helped resolve a group problem. What caused the problem and what was the solution?</p> <p>Describe a time when you faced an unexpected challenge at work.</p>	Problem-Solving
<p>How do you develop project goals and project plan?</p> <p>What is a significant project that you managed and how did you make sure that everything was getting done correctly and on time?</p>	Project Management
<p>Describe a time when you had a project that required you to work well under pressure. How did you deal with it?</p> <p>What steps do you take to prevent a situation from becoming too stressful to manage?</p>	Stress Management
<p>Describe a time when a team experience was rewarding. What made that experience rewarding?</p> <p>Describe a time when you helped a team member solve a problem without being asked.</p>	Teamwork
<p>Give an example of a time when you used effective time management skills to complete a project ahead of schedule. What was the project and how did you prioritize tasks?</p> <p>Tell me about a time when you missed a deadline. How did you handle it?</p> <p>How do you limit distractions?</p>	Time Management

For additional competencies used by the State, check out these resources:

[SAP Competencies List](#)

[Competency Development Guide](#)

Interview Rubrics

Using rubrics to evaluate responses to interview questions is a great way to assess a candidate's skills and have a record of notes for reference later. Rubrics help maintain consistency and fairness with evaluating and ranking candidates. This consistency results in a more objective review of candidates.

What is a rubric?

A rubric is a matrix that allows you to assign a score to how the question was answered. It defines the thresholds for various levels and the must-haves of the role.

See the example of an abbreviated interview rubric on the following page. This Communicating Effectively example is just one section of a whole interview. This format can be repeated with multiple question sets concerning competencies such as critical thinking, organization, and/or other competencies you want to assess.

We encourage you to take this rubric example and use it for your own interviews. Feel free to incorporate questions best targeted for the position (see our Sample Interview Questions).

INTRODUCTIONS

1. Introductions: Name, Title, & Short Description of Your Role
 - a. Order of Introductions:

2. What aspects of this position are you excited about and best fit your interests and skills?

[Category of Questions] Example: COMMUNICATING EFFECTIVELY

3. We find that what works with one person does not necessarily work with another. We must be flexible in our style of relating to others. Give an example of when you had to vary your communication style with a particular person.

	Beginner (1)	Benchmark (2)	Milestones (3)	Advanced (4)
COMMUNICATE EFFECTIVELY	Experiments with communicating effectively. Ability to learn new methods is doubtful.	Participates in communicating across difference in a silo, unintentionally. Ability to learn new methods is uncertain.	Demonstrates the knowledge to communicate effectively and across while they may see connections to workplace issues. Ability to learn new systems is apparent.	Demonstrates the knowledge to communicate effectively and across difference while also clearly seeing the connection to workplace issues. Ability to learn new, complex methods is apparent.

AT THE END OF THE INTERVIEW:

CANDIDATE WRAP-UP

5. What questions do you have for us?

Next Steps:

- Thank you for taking the time to go through this process and interview with us!

Candidate Strengths

Candidate Areas of Growth

Overall Score (Out of 16; Up to 4 points per category):

Communicating Effectively Score:

[Category] Score:

[Category] Score:

[Category] Score:

Questions and Topics to Avoid

There are some topics that are legally off-limits to ask an interviewee due to Title VII of the Civil Rights Act of 1964, such as age, disabilities, national origin, citizenship, criminal record, marital status, or military discharges, while other topics may be acceptable depending on what you are specifically asking. The table below provides different topic areas and what is prohibited and permissible to ask.

TOPIC	DON'T ASK THIS	ASK THIS INSTEAD
Address/Residence	<ul style="list-style-type: none"> • About foreign addresses that would indicate a national origin • Who do you live with? • Do you own or rent? 	<ul style="list-style-type: none"> • Phone number and other contact information, like current address.
Age	<ul style="list-style-type: none"> • How old are you? • When were you born? • Any question that would tend to identify persons who are 40 and older (“Do you remember working before e-mail was around?”) 	<ul style="list-style-type: none"> • No questions should be asked about a person’s age. Your HR Representative will verify age, if necessary.
Arrest and Conviction	<ul style="list-style-type: none"> • Have you ever been arrested? • Have you ever gone to jail? 	<ul style="list-style-type: none"> • Your HR Representative will conduct a background check which includes the candidate’s criminal convictions.
Attendance/Reliability	<ul style="list-style-type: none"> • Who is going to babysit your children? • Do you have pre-school age children at home? • Do you have a car? 	<ul style="list-style-type: none"> • What hours and days can you work? • Are there specific times that you cannot work?
Citizenship/National Origin	<ul style="list-style-type: none"> • What is your national origin? • Are you native-born or naturalized? • Where are your parents from? • What is your maiden name? • (Before hiring) Can you show proof of citizenship? 	<ul style="list-style-type: none"> • No questions should be asked about a person’s citizenship or national origin. Your HR Representative will verify if the new hire is authorized to work in the United States.

TOPIC	DON'T ASK THIS	ASK THIS INSTEAD
Credit Record	<ul style="list-style-type: none"> • Do you own your home? • Have your wages ever been garnished? • Have you ever declared bankruptcy? 	<ul style="list-style-type: none"> • No questions about credit history or a person's finances should be asked.
Disabilities/Handicaps/ Illness	<ul style="list-style-type: none"> • Do you have any disabilities? • About the nature of or severity of a disability/handicap • Have you ever been addicted to illegal drugs or treated for drug or alcohol abuse, received workers compensation, or been hospitalized/treated for physical or mental health conditions, or ever been absent from work due to illness? 	<ul style="list-style-type: none"> • Can you perform the duties of the job you are applying for (describe duties to candidate)? • Can you meet the attendance requirements? <p>*If a candidate discloses that they have a disability and asks if they can perform the job with accommodation, we may need to provide an accommodation depending on what accommodation is requested and if the accommodation would cause undue hardship. Ask the candidate what they would need.</p>
Education	<ul style="list-style-type: none"> • When did you graduate from high school or college? 	<ul style="list-style-type: none"> • Do you have a high school diploma or equivalent? • What level of education have you completed?
Gender/Sex	<ul style="list-style-type: none"> • Do you wish to be addressed as Mr.? Mrs.? Miss? Ms.? Mx.? • Are you female or male? 	<ul style="list-style-type: none"> • No questions about gender or sex should be asked.
Language	<ul style="list-style-type: none"> • What is your native language? • Inquiry into how the candidate acquired the ability to read, write or speak a foreign language. 	<ul style="list-style-type: none"> • What languages do you speak and write fluently? (If the job requires additional languages.)
Military Record	<ul style="list-style-type: none"> • What type of military discharge did you receive? 	<ul style="list-style-type: none"> • What type of education, training, work experience related to this position did you receive while in the military?

Organizational Affiliation	<ul style="list-style-type: none"> • What clubs, societies and lodges do you belong to? 	<ul style="list-style-type: none"> • Inquiry into the candidate's membership in organizations which the candidate considers relevant to their ability to perform the job such as, professional organizations (e.g., Society for Human Resource Management).
Parental/Marital Status	<ul style="list-style-type: none"> • Do you have children? • Do you plan to have children? • Are you married, divorced, engaged, separated, widowed? • Is your spouse in the military? 	<ul style="list-style-type: none"> • No questions about parental or marital status should be asked.
Physical Features	<ul style="list-style-type: none"> • Weight, height, impairment, or other non-specified job-related physical data. 	<ul style="list-style-type: none"> • No questions should be asked about physical features
Race or Color (See also Citizenship/ National Origin)	<ul style="list-style-type: none"> • Anything directly or indirectly related to race. 	<ul style="list-style-type: none"> • No questions should be asked about a person's race or color.
Reference Checking	<ul style="list-style-type: none"> • What is your father's surname? • What are the names of your relatives? 	<ul style="list-style-type: none"> • By whom were you referred for this position? • Names of people willing to provide references.
Religion or Creed	<ul style="list-style-type: none"> • Do you attend church? • What church do you attend? • What religious holidays do you observe 	<ul style="list-style-type: none"> • Can advise the candidate about the normal hours and days of work required by the job to avoid possible conflict with religious or other observances.
Sexual Orientation	<ul style="list-style-type: none"> • Are you LGBTQ+? 	<ul style="list-style-type: none"> • No questions about sexual orientation should be asked
Worker's Compensation	<ul style="list-style-type: none"> • Have you ever filed for worker's compensation? • Have you had any prior work injuries? 	<ul style="list-style-type: none"> • No questions about worker's compensation should be asked

It is critical that you do not violate equal employment opportunity laws. The reason some topics are illegal is because that information could be used to discriminate against a potential employee. All settings and all interactions are part of the interview. It is best to make sure anyone who will have possible contact with the candidate is knowledgeable about what is appropriate to discuss. When in doubt, keep it about work!

What if a candidate discloses personal information?

Sometimes candidates share information related to these impermissible topics. For example, they may say, “I have three kids,” “I go to church,” or “My spouse is in the military.” Even though the candidate willingly brought it up, do not follow up on this information and do not write it down in your interview notes. Acknowledge what was said by nodding and saying, “Ok,” or “I see” or some other neutral response, then move forward with your prepared questions or another topic of conversation.

Behavioral Guidelines for Conducting Interviews

You have everything prepared for the interview, so you are all set, right? Well, how you conduct yourself during the interview is another important piece that you need to be prepared for. Candidates will want to see someone who is professional, honest, and engaged. Below are some tips on conducting yourself appropriately and professionally during an interview.

Responsive Listening Technique

Responsive listening, or active listening, is a communication technique in which you show that you understand what is being said and recognizing others' emotions through verbal and nonverbal cues. It is a way to be engaged and enthusiastic in conversation. Responsive listening is useful when interviewing because it can make the candidate more comfortable, keep the conversation going, and allow the candidate to answer questions fully. Responsive listening is a skill to be practiced and will reflect well on your professionalism.

Key behaviors of a responsive listener:

- **Eye contact** while talking.
- **Gestures** such as uncrossing your arms, leaning, or smiling.
- **Pausing** and giving space for the candidate to fully respond.
- **Clarifying** to ensure you understand what was said.
- **Acknowledging** what you heard. "I agree," or "Great point."

Body Language

You may have heard before that most communication is what we do not say, meaning we communicate a lot with nonverbal cues (i.e., body language). Even if unintentional, hiring managers could send negative messages based on their body language. It is critical to have a professional demeanor during interviews because as a hiring manager, you are representing INDOT, and candidates are evaluating you as much as you are evaluating them. Here are some negative messages you could send with your body language and suggestions of how to keep it in check.

Body Language		The Message	Do This Instead
Sighing, rubbing your neck or back of your head, resting your chin on your hand.	➔	"I'm bored"	Loosely clasp your hands in front of you or rest them on your lap. Avoid sighing.
Crossing your arms over your chest, leaning back in your chair, resting one ankle on top of your other knee.	➔	"I'm better than you"	Sit upright with your torso facing the candidate.

Shaking one leg or wiggling a foot. A lot of leg movement.	➔	“I’m uncomfortable”	Place both feet flat on the floor or sit with your legs crossed at the ankles.
Rubbing your face or drumming your fingers on the table/desk.	➔	“I’m annoyed”	Loosely clasp your hands in front of you or rest them on your lap.

Unfair Perceptions

Holding unfair perceptions and attitudes of candidates can negatively impact the hiring process and prevent you from being objective. For example, a hiring manager may not want to hire older adults because they think an older adult may not be able to do the job well. These attitudes can show up during the interview process without you knowing it! So, it is good to be prepared and reflect on your perceptions so that you can prevent it from interfering with interviews. Read about some situations relevant to interviewing below.



“Just Like Me” Effect: This is favoring candidates who are like you. Maybe this candidate went to the same college as you, grew up in the same town, or they have a similar personality to you. Perhaps this person even reminds you of yourself. This is not a harmful thing, but it can mean that other qualified candidates are overlooked.



Halo/Horns Effect: This is a two-part effect. The halo effect occurs when a positive impression or seeing one trait positively leads you to treat someone more favorably and overlook their bad traits. Conversely, the horns effect occurs when a negative impression/trait leads you to treat someone more poorly and this overshadows positive traits. Either way, your perception of a candidate is unfairly influenced by a single trait. For instance, research has found that viewing a person as attractive leads people to believe they are also intelligent¹. The halo/horns effect prevents hiring managers from being objective and viewing the whole person holistically.

Pet Names

Avoid calling the candidates names such as girl, boy, gal, honey, sweetie, dear, son, kiddo, etc. Although it may be a habit or a term of endearment, names like these may be viewed negatively by the candidate.

Consistency & Communication

To be fair to all the candidates, they should all be asked the same set of questions for every interview. Follow-up questions may differ though. Doing this will also make it simpler to evaluate candidates’ responses. Communicating effectively is also necessary for a positive interview experience. Respond to candidates’ emails promptly (within 2 business days), acknowledge any thank you emails, and always let them know the next steps in the process including how they will be notified. For candidates who do not move forward, be sure to disposition them in SuccessFactors as soon as you decide not to continue with them. When candidates are placed in the “Not Selected” disposition in SuccessFactors, the system will generate an automatic email informing them of the decision.

¹ <https://news.st-andrews.ac.uk/long-reads/smart-at-first-sight/>

Deciding to Hire

You have completed all the interviews, so now it is time to select your top choice and extend an offer! How do you know that you are making the best decision? Deciding to hire is a big step in the process and should be taken very seriously. It is important not to be rash in deciding, but a balance must be found in deciding in a timely manner so that you do not lose the candidate.

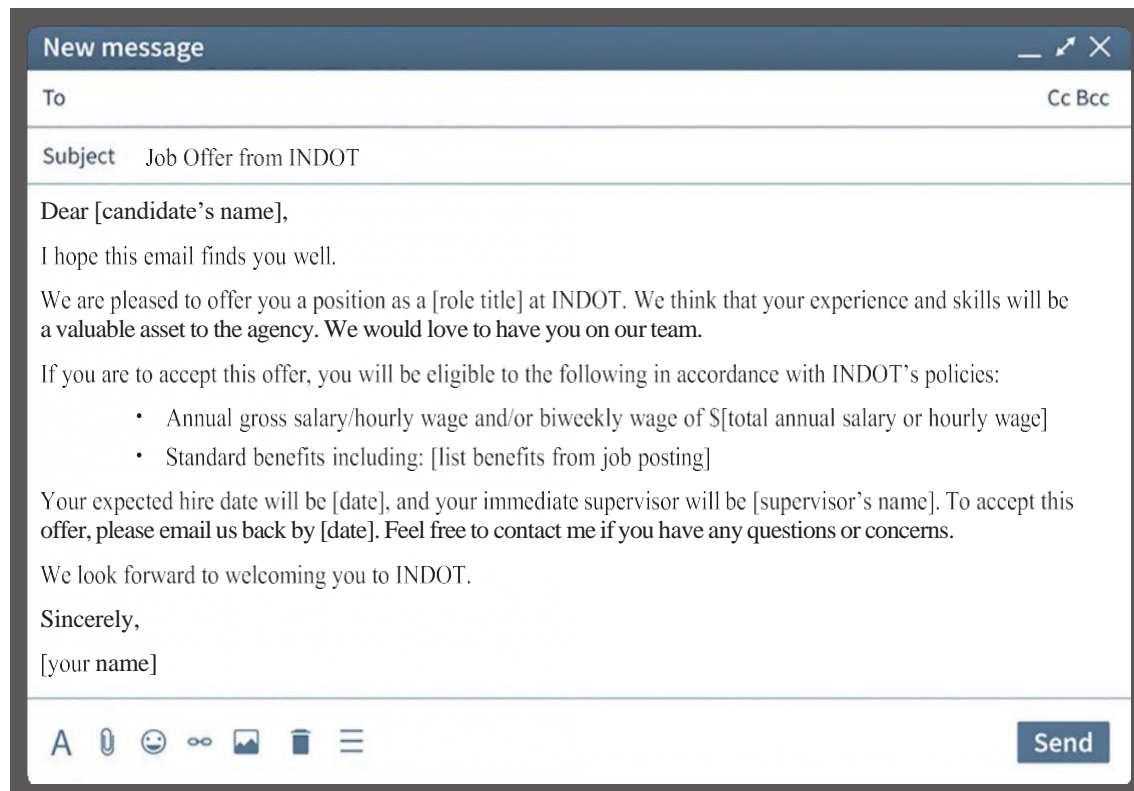
Questions to ask yourself/committee when evaluating top/shortlisted candidates:

- Is this person qualified for the job?
- Can this person do the core aspects of the job?
- How does this person fit into the team and the vision of INDOT?

How do I decide between two excellent candidates?

If you have two similar candidates who both meet all the requirements, go to your preferred qualifications list, and evaluate them. Preferred qualifications are not required for a candidate to be considered but go beyond the minimum job requirements and are desired qualifications. Preferred qualifications may include things like specific years of experience with certain software, being bilingual, or a master's degree.

Once you have made a selection, do not delay in updating it in SuccessFactors and notifying the candidate. You should first call then email an informal offer letter to them. Lengthy hiring practices are one of the top reasons candidates turn down offers². Below is an email example from workable.com you can use.



² <https://www.inc.com/kelly-main/hiring-job-interviews-great-resignation.html>

After You Hire



Congratulations! You have hired a new employee. The hardest parts are over, but there are still some action items to complete after a candidate accepts the position to ensure a smooth onboarding process and help the new hire feel welcomed at INDOT.

- ✓ Quickly notify unselected candidates via SuccessFactors and/or email.
 - It is professional and kind to let candidates know they are not moving forward. We still want them to have a good impression of INDOT. SuccessFactors sends an automatic email when a candidate is moved to the “Not Selected” bucket, but it may be a good idea to also write a more personal email.
 - Example: Thank you for taking the time to meet with me for the [role title] position at INDOT. It was a pleasure to meet you and learn about your experiences. I regret to inform you that you have not been selected to move forward in the process. [optional: provide a brief reason for your decision]. Thanks again for applying to INDOT and I wish you the best in your future endeavors.
- ✓ Stay in communication with the new hire and help them prepare for their first day.
 - Provide them with a start time, directions to the office, and any other relevant information. It would be good to also give them an outline of what they will be specifically doing on their first day/week.
 - If the new hire notifies you of a need for a reasonable accommodation for a disability, work with your HR representative to get them a request form. For more information, [click here](#).
- ✓ Get the new hire’s workspace ready to go by their first day.
 - Include their necessary equipment like a laptop. Consider putting up a welcome note or sign.
- ✓ Email an announcement to your whole team to welcome the new employee.
 - See an example template below that you can use.

Email Announcement:

The screenshot shows an email composition window titled "New message". The "To" field is empty, and the "Cc Bcc" link is visible. The "Subject" field contains the text "Welcome [new employee name]". The body of the email is as follows:

Hello everyone,

I am delighted to announce that [new employee name] has joined our team here in [department name] as the [job title]. [New employee name] will be reporting to [name of supervisor/manager] and will be working on [details of role].

[New employee name] comes to us from [previous role or where they moved from].
[Share any other personal details or fun facts].

Please join me in giving a warm welcome to [new employee name]! We are thrilled to have them with us. [New employee name] will be sitting in [provide details], so come say hello and introduce yourself.

Best,

[your name]

At the bottom of the email editor, there is a toolbar with icons for text formatting (A), links, images, and a "Send" button.

Creating a Welcoming Environment

Feeling welcomed in a new workplace is vital for employee well-being, preventing burnout, and retention. Starting a new job can be quite stressful and overwhelming. Therefore, teams need to make a conscious effort to give a warm welcome to all new hires.

Fostering a warm, welcoming work environment starts with leadership. A new employee's experience in their first week may predict whether they stay for a long time or not. From day one, you can take steps toward making your department welcoming for your new hire.

- Say “Welcome to **our** team” instead of “Welcome to the team.”
- Personalize introductions more. Instead of only saying, “This is [name],” add some hobbies or interests of theirs.
- Be open and actively ask for employee feedback, and do not brush things under the rug if there are disagreements.
- Recognize and celebrate accomplishments and efforts, big or small.
- Develop social bonds by arranging team building opportunities, such as volunteering.
- Avoid micromanagement because it erodes a sense of trust.
- Make yourself and your team available to help.
- If you are in the office, give a tour and introduce the new hire to other employees

Contacts

Thank you for taking the time to read through the Hiring Guide. We hope you feel prepared and confident in interviewing for your next open position.

If you have any questions about the material or need additional help with the hiring process, please contact your local HR Representative.



Indiana Department of Transportation

100 North Senate Avenue, Room N758
Indianapolis, IN 46204

www.in.gov/indot

Appendix 5

Generational Differences

[Request a Class](#)

[Recommend](#)



Course Information

Type: Instructor-Led

Duration: 2.50 hours

Course Details

Description

There are multiple generations in the workforce and each generation has unique wants, perspectives, and motivations. Learn how to create an inclusive working environment for all generations and enable staff of different ages to work together in synergy.

Upcoming Classes

No classes available

[Request a Class](#)

▼ Course Information

Contact Hours: 2.50	Course ID: INDOT_I&B_000003	Version: Version 1, 8/8/2023
Source: Internal		

Respectful Workplace: Say the Right Thing

[Request a Class](#)[Recommend](#)

Course Information

Type: Instructor-Led

Duration: 1.50 hours

Course Details

Description

Ensure employees understand INDOT's expectations for a respectful workplace, identify ways to contribute to a respectful work environment, and develop the skills to manage respect and inclusion at work.

Upcoming Classes

No classes available

[Request a Class](#)

▼ Course Information

Contact
Hours:
1.50

Course ID:
INDOT_I&B_000002

Version:
Version 1,
8/8/2023

Source:
Internal

Bureau of Motor Vehicles

This section outlines the Bureau of Motor Vehicles' internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The Bureau of Motor Vehicles did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The Bureau of Motor Vehicles did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The Bureau of Motor Vehicles did not have any DEI principles in its Mission Statement or Values Statement.

Programs Administered to the Public

- The Bureau of Motor Vehicles did not administer any programs based on race.

Grant Conditions

- The Bureau of Motor Vehicles did not administer any grant programs that had agreements tailored to support students solely based on race.

Training/Instruction Administered to the Employees

- The Bureau of Motor Vehicles administered two programs that contained DEI programming, training, or instruction to its employees.
- In 2023, the Bureau of Motor Vehicles conducted "all in days", which are days for all staff to come in the office. During these days, employees hear from guest speakers, and some of the speakers spoke about equity and inclusion.ⁱ
- In February 2025, the Bureau of Motor Vehicles provided a LinkedIn Learning video learning path for employees. This learning path was not mandatory and the videos themselves are all available through the State Personnel Department's LinkedIn Learning benefit.ⁱⁱ

Job Applicant Requirements

- The Bureau of Motor Vehicles did not have any DEI related job application requirements.

ⁱ See Item 1.

ⁱⁱ See Item 2.



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BMV 2025 February Learning Collection: Inclusive Language

Updated 3 weeks ago

This collection will allow us to broaden our communications skills by sharing communication tips that are considerate of diverse identities. We will learn terms to avoid while focusing on concepts like gender-neutral language, removing assumptions when discussing disabilities, and being mindful of cultural sensitivities in communication. Lastly, we will discover the best course of action when we make a mistake.

Learning path details

24m 6s of content

7 items of learning content

[Start Learning Path](#)

7 ITEMS • 24m 6s



2m 5s

Video

What is inclusion?

Li • Update... • From the course: Confronting ..

"Diversity is being invited to the party. Inclusion is being asked to dance." Learn the difference and why it matters.

640,627 learners

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○



3m 40s

Video

Creating a culture of inclusion

[in](#) Lir • Updat... • From the course: Understandin...

In this video, learn action steps to take for creating a more inclusive workplace culture, including what not to do. Everyone has a role in creating inclusive workplaces, regardless of position, and having tangible action steps helps people feel more confident and empowered in taking those actions.

20,336 learners

○



5m 33s

Video

Unlearning language: Fostering inclusive communication

[in](#) Li • Upda... • From the course: Learning to Unl..

In this video, learn how to recognize and unlearn language biases, enabling you to communicate inclusively and effectively in diverse settings. This video highlights the importance of using the UNLEARN process for unlearning language biases, which can perpetuate stereotypes, create division, and hinder collaboration in diverse environments.

3,473 learners

○



3m 41s

Video

Inclusive language

[in](#) Link • Updated... • From the course: Understan..

Effective communication is a necessary component of a successful team working together on the same frequency of thought. After watching this video, you will be able to utilize intersectionality-conscious speech so as to ensure no team member is disregarded or excluded from a discussion.

5,530 learners

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Video

Inclusive vs. prejudicial language

[in](#) Lir • Updat... • From the course: Inclusion and ...

In this video, learn how to identify prejudicial language. This enables you to choose more appropriate neutral language to ensure workers with disabilities feel included and are treated with equity.

17,595 learners



Video

Combating gaslighting

[in](#) Lir • Updat... • From the course: Communicati...

After watching this video, you'll recognize what gaslighting is its negative impact, and how to avoid doing it. This is important because gaslighting may be unintentional but drives disconnection.

35,292 learners




Video

What can you do if you say or do the wrong thing?


[in](#) Li • Update... • From the course: Confronting ..

In this video, learn how tools for apologizing and using mistakes to grow, as well as practicing micro-affirmations, checking and updating the language you use, and expanding your comfort zone.

585,442 learners

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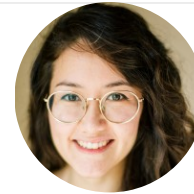
Cybersecurity



Vernā Myers
Inclusion
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Huffington**
Founder of
Huffington Post
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Indiana Broadband Office

This section outlines the IBO's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The IBO did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The IBO did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The IBO did not have any DEI principles in its Mission Statement or Values Statement.

Programs Administered to the Public

- **The IBO does not administer any DEI programs to the public.**
- The Governor's Office identified the following program in its initial review: "IBO's webpage has an IBO Challenge Process document that discusses Indiana Bead. This document appears to have been part of a webinar, but there is no information about the webinar. Throughout the document, there are references to equity and inclusion for broadband and internet/digital access."
 - To clarify, the presentation's references to "equity and inclusion" relate to expanded access to and use of broadband internet for all Americans. These are the overarching goals set forth by federal statute for the BEAD Programⁱ and Digital Equity Actⁱⁱ, both housed in the Infrastructure Investment and Jobs Act (IIJA). There is nothing in the federal statute, federal agency guidanceⁱⁱⁱ, or the BEAD/DE NOFOs^{iv} that permit our office to grant preferential treatment based on a person's particular race, color, ethnicity, or national origin, over that of another person.

Grant Conditions

- The Governor's Office identified the following grant condition its initial review: "In the IBO's Initial proposal for Connecting Indiana, which is a grant program using BEAD funds, they outline in section 9 how they will encourage all prospective sub grantees to utilize minority business enterprises and women's business enterprises (XBE). The

subgrantees would be required to highlight these enterprises involved in their proposal.”

- To clarify, new guidance from the National Telecommunications and Information Administration (NTIA) - the federal agency that oversees the BEAD Program – recently released updated guidance^v that removes the “Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms” section from the BEAD NOFO. To comply with the new guidance, our office submitted a BEAD Initial Proposal Correction Letter^{vi} incorporating the changes from the updated guidance which removes the XBE provisions deleted from the NOFO.
- However, the IBO must still comply with 2 CFR 200.321^{vii}, which outlines rules regarding contracting with specific entities, such as minority and veteran owned businesses.

Training/Instruction Administered to the Employees

- The IBO did not administer any DEI programming, training, or instruction to its employees.

Job Applicant Requirements

- The IBO does not have any job applicant requirements for DEI.

ⁱ See Item 1.

ⁱⁱ See Item 2.

ⁱⁱⁱ See Item 3.

^{iv} See Item 4.

^v See Item 5.

^{vi} See Item 6.

^{vii} See Item 7.

DIVISION F—BROADBAND

TITLE I—BROADBAND GRANTS FOR STATES, DISTRICT OF COLUMBIA, PUERTO RICO, AND TERRITORIES

47 USC 1701.

SEC. 60101. FINDINGS.

Congress finds the following:

(1) Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States.

(2) The persistent “digital divide” in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education.

(3) The digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all.

(4) In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service.

(5) The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing.

47 USC 1702.

SEC. 60102. GRANTS FOR BROADBAND DEPLOYMENT.**(a) DEFINITIONS.—**

(1) **AREAS, LOCATIONS, AND INSTITUTIONS LACKING BROADBAND ACCESS.**—In this section:

(A) **UNSERVED LOCATION.**—The term “unserved location” means a broadband-serviceable location, as determined in accordance with the broadband DATA maps, that—

- (i) has no access to broadband service; or
- (ii) lacks access to reliable broadband service offered with—

(I) a speed of not less than—

(aa) 25 megabits per second for downloads;

and

(bb) 3 megabits per second for uploads;

and

(II) a latency sufficient to support real-time, interactive applications.

(B) **UNSERVED SERVICE PROJECT.**—The term “unserved service project” means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations.

(C) **UNDERSERVED LOCATION.**—The term “underserved location” means a location—

- (i) that is not an unserved location; and

(ii) as determined in accordance with the broadband DATA maps, lacks access to reliable broadband service offered with—

- (I) a speed of not less than—
 - (aa) 100 megabits per second for downloads; and
 - (bb) 20 megabits per second for uploads; and
- (II) a latency sufficient to support real-time, interactive applications.

(D) **UNDERSERVED SERVICE PROJECT.**—The term “underserved service project” means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations or underserved locations.

(E) **ELIGIBLE COMMUNITY ANCHOR INSTITUTION.**—The term “eligible community anchor institution” means a community anchor institution that lacks access to gigabit-level broadband service.

(2) **OTHER DEFINITIONS.**—In this section:

(A) **ASSISTANT SECRETARY.**—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(B) **BROADBAND; BROADBAND SERVICE.**—The term “broadband” or “broadband service” has the meaning given the term “broadband internet access service” in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation.

(C) **BROADBAND DATA MAPS.**—The term “broadband DATA maps” means the maps created under section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. 642(c)(1)).

(D) **COMMISSION.**—The term “Commission” means the Federal Communications Commission.

(E) **COMMUNITY ANCHOR INSTITUTION.**—The term “community anchor institution” means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

(F) **ELIGIBLE ENTITY.**—The term “eligible entity” means a State.

(G) **HIGH-COST AREA.**—

(i) **IN GENERAL.**—The term “high-cost area” means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States (as determined by the Assistant Secretary, in consultation with the Commission), incorporating factors that include—

- (I) the remote location of the area;
- (II) the lack of population density of the area;
- (III) the unique topography of the area;
- (IV) a high rate of poverty in the area; or
- (V) any other factor identified by the Assistant Secretary, in consultation with the Commission,

Determination.
Consultations.

that contributes to the higher cost of deploying broadband service in the area.

(ii) UNSERVED AREA.—For purposes of clause (i), the term “unserved area” means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.

(H) LOCATION; BROADBAND-SERVICEABLE LOCATION.—The terms “location” and “broadband-serviceable location” have the meanings given those terms by the Commission under rules and guidance that are in effect, as of the date of enactment of this Act.

(I) PRIORITY BROADBAND PROJECT.—The term “priority broadband project” means a project designed to—

Criteria.
Determination.

(i) provide broadband service that meets speed, latency, reliability, consistency in quality of service, and related criteria as the Assistant Secretary shall determine; and

(ii) ensure that the network built by the project can easily scale speeds over time to—

(I) meet the evolving connectivity needs of households and businesses; and

(II) support the deployment of 5G, successor wireless technologies, and other advanced services.

(J) PROGRAM.—The term “Program” means the Broadband Equity, Access, and Deployment Program established under subsection (b)(1).

(K) PROJECT.—The term “project” means an undertaking by a subgrantee under this section to construct and deploy infrastructure for the provision of broadband service.

Criteria.
Determination.

(L) RELIABLE BROADBAND SERVICE.—The term “reliable broadband service” means broadband service that meets performance criteria for service availability, adaptability to changing end-user requirements, length of serviceable life, or other criteria, other than upload and download speeds, as determined by the Assistant Secretary in coordination with the Commission.

Applicability.

(M) STATE.—The term “State” has the meaning given the term in section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942), except that that definition shall be applied by striking “, and any other territory or possession of the United States”.

(N) SUBGRANTEE.—The term “subgrantee” means an entity that receives grant funds from an eligible entity to carry out activities under subsection (f).

Grants.
Deadline.

(b) BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary shall establish a grant program, to be known as the “Broadband Equity, Access, and Deployment Program”, under which the Assistant Secretary makes grants to eligible entities, in accordance with this section, to bridge the digital divide.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Assistant Secretary to carry out the Program \$42,450,000,000.

(3) OBLIGATION TIMELINE.—The Assistant Secretary shall obligate all amounts appropriated pursuant to paragraph (2) in an expedient manner after the Assistant Secretary issues the notice of funding opportunity under subsection (e)(1). Notice.

(4) TECHNICAL SUPPORT AND ASSISTANCE.—

(A) PROGRAM ASSISTANCE.—As part of the Program, the Assistant Secretary, in consultation with the Commission, shall provide technical support and assistance to eligible entities to facilitate their participation in the Program, including by assisting eligible entities with— Consultation.

(i) the development of grant applications under the Program;

(ii) the development of plans and procedures for distribution of funds under the Program; and Plans.
Procedures.

(iii) other technical support as determined by the Assistant Secretary. Determination.

(B) GENERAL ASSISTANCE.—The Assistant Secretary shall provide technical and other assistance to eligible entities—

(i) to support the expansion of broadband, with priority for—

(I) expansion in rural areas; and

(II) eligible entities that consistently rank below most other eligible entities with respect to broadband access and deployment; and

(ii) regarding cybersecurity resources and programs available through Federal agencies, including the Election Assistance Commission, the Cybersecurity and Infrastructure Security Agency, the Federal Trade Commission, and the National Institute of Standards and Technology.

(c) ALLOCATION.—

(1) ALLOCATION FOR HIGH-COST AREAS.—

(A) IN GENERAL.—On or after the date on which the broadband DATA maps are made public, the Assistant Secretary shall allocate to eligible entities, in accordance with subparagraph (B) of this paragraph, 10 percent of the amount appropriated pursuant to subsection (b)(2). Effective date.

(B) FORMULA.—The Assistant Secretary shall calculate the amount allocated to an eligible entity under subparagraph (A) by—

(i) dividing the number of unserved locations in high-cost areas in the eligible entity by the total number of unserved locations in high-cost areas in the United States; and

(ii) multiplying the quotient obtained under clause (i) by the amount made available under subparagraph (A).

(2) MINIMUM INITIAL ALLOCATION.—Of the amount appropriated pursuant to subsection (b)(2)—

(A) except as provided in subparagraph (B) of this paragraph, \$100,000,000 shall be allocated to each State; and

(B) \$100,000,000 shall be allocated to, and divided equally among, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Effective date.

(3) ALLOCATION OF REMAINING AMOUNTS.—

(A) IN GENERAL.—On or after the date on which the broadband DATA maps are made public, of the amount appropriated pursuant to subsection (b)(2), the Assistant Secretary shall allocate to eligible entities, in accordance with subparagraph (B) of this paragraph, the amount remaining after compliance with paragraphs (1) and (2) of this subsection.

(B) ALLOCATION.—The amount allocated to an eligible entity under subparagraph (B) shall be calculated by—

(i) dividing the number of unserved locations in the eligible entity by the total number of unserved locations in the United States; and

(ii) multiplying the quotient obtained under clause (i) by the amount made available under subparagraph (A).

(4) AVAILABILITY CONDITIONED ON APPROVAL OF APPLICATIONS.—The availability of amounts allocated under paragraph (1), (2), or (3) to an eligible entity shall be subject to approval by the Assistant Secretary of the letter of intent, initial proposal, or final proposal of the eligible entity, as applicable, under subsection (e).

(5) CONTINGENCY PROCEDURES.—

(A) DEFINITION.—In this paragraph, the term “covered application” means a letter of intent, initial proposal, or final proposal under this section.

(B) POLITICAL SUBDIVISIONS AND CONSORTIA.—

(i) APPLICATION FAILURES.—The Assistant Secretary, in carrying out the Program, shall provide that if an eligible entity fails to submit a covered application by the applicable deadline, or a covered application submitted by an eligible entity is not approved by the applicable deadline, a political subdivision or consortium of political subdivisions of the eligible entity may submit the applicable type of covered application in place of the eligible entity.

(ii) TREATMENT OF POLITICAL SUBDIVISION OR CONSORTIUM AS ELIGIBLE ENTITY.—In the case of a political subdivision or consortium of political subdivisions that submits a covered application under clause (i) that is approved by the Assistant Secretary—

(I) except as provided in subclause (II) of this clause, any reference in this section to an eligible entity shall be deemed to refer to the political subdivision or consortium; and

(II) any reference in this section to an eligible entity in a geographic sense shall be deemed to refer to the eligible entity in whose place the political subdivision or consortium submitted the covered application.

(C) REALLOCATION TO OTHER ELIGIBLE ENTITIES.—

(i) APPLICATION FAILURES.—The Assistant Secretary, in carrying out the Program, shall provide that if an eligible entity fails to submit a covered application by the applicable deadline, or a covered application submitted by an eligible entity is not approved by the applicable deadline, as provided in subparagraph

(A)), and no political subdivision or consortium of political subdivisions of the eligible entity submits a covered application by the applicable deadline, or no covered application submitted by such a political subdivision or consortium is approved by the applicable deadline, as provided in subparagraph (B), the Assistant Secretary—

(I) shall reallocate the amounts that would have been available to the eligible entity pursuant to that type of covered application to other eligible entities that submitted that type of covered application by the applicable deadline; and

(II) shall reallocate the amounts described in subclause (I) of this clause in accordance with the formula under paragraph (3).

(ii) FAILURE TO USE FULL ALLOCATION.—The Assistant Secretary, in carrying out the Program, shall provide that if an eligible entity fails to use the full amount allocated to the eligible entity under this subsection by the applicable deadline, the Assistant Secretary—

(I) shall reallocate the unused amounts to other eligible entities with approved final proposals; and

(II) shall reallocate the amounts described in subclause (I) in accordance with the formula under paragraph (3).

(d) ADMINISTRATIVE EXPENSES.—

(1) ASSISTANT SECRETARY.—The Assistant Secretary may use not more than 2 percent of amounts appropriated pursuant to subsection (b) for administrative purposes.

(2) ELIGIBLE ENTITIES.—

(A) PRE-DEPLOYMENT PLANNING.—An eligible entity may use not more than 5 percent of the amount allocated to the eligible entity under subsection (c)(2) for the planning and pre-deployment activities under subsection (e)(1)(C).

(B) ADMINISTRATION.—An eligible entity may use not more than 2 percent of the grant amounts made available to the eligible entity under subsection (e) for expenses relating (directly or indirectly) to administration of the grant.

(e) IMPLEMENTATION.—

(1) INITIAL PROGRAM DEPLOYMENT AND PLANNING.—

(A) NOTICE OF FUNDING OPPORTUNITY; PROCESS.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary shall—

(i) issue a notice of funding opportunity for the Program that—

(I) notifies eligible entities of—

(aa) the establishment of the Program; and

(bb) the amount of the minimum initial allocation to each eligible entity under subsection (c)(2);

(II) invites eligible entities to submit letters of intent under subparagraph (B) in order to—

(aa) participate in the Program; and

Deadline.

- (bb) receive funding for planning and pre-deployment activities under subparagraph (C); (III) contains details about the Program, including an outline of the requirements for—
- (aa) applications for grants under the Program, which shall consist of letters of intent, initial proposals, and final proposals; and
- (bb) allowed uses of grant amounts awarded under this section, as provided in subsection (f); and
- (IV) includes any other information determined relevant by the Assistant Secretary;
- (ii) establish a process, in accordance with subparagraph (C), through which to provide funding to eligible entities for planning and pre-deployment activities;
- (iii) develop and make public a standard online application form that an eligible entity may use to submit an initial proposal and final proposal for the grant amounts allocated to the eligible entity under subsection (c);
- (iv) publish a template—
- (I) initial proposal that complies with paragraph (3)(A); and
- (II) final proposal that complies with paragraph (4)(A); and
- (v) in consultation with the Commission, establish standards for how an eligible entity shall assess the capabilities and capacities of a prospective subgrantee under subsection (g)(2)(A).
- (B) LETTER OF INTENT.—
- (i) IN GENERAL.—An eligible entity that wishes to participate in the Program shall file a letter of intent to participate in the Program consistent with this subparagraph.
- (ii) FORM AND CONTENTS.—The Assistant Secretary may establish the form and contents required for a letter of intent under this subparagraph, which contents may include—
- (I) details of—
- (aa) the existing broadband program or office of the eligible entity, including—
- (AA) activities that the program or office currently conducts;
- (BB) the number of rounds of broadband deployment grants that the eligible entity has awarded, if applicable;
- (CC) whether the eligible entity has an eligible entity-wide plan and goal for availability of broadband, and any relevant deadlines, as applicable; and
- (DD) the amount of funding that the eligible entity has available for broadband deployment or other broadband-related activities, including data collection and local planning, and the sources of that funding, including whether the funds are

from the eligible entity or from the Federal Government under the American Rescue Plan Act of 2021 (Public Law 117–2);

(bb) the number of full-time employees and part-time employees of the eligible entity who will assist in administering amounts received under the Program and the duties assigned to those employees;

(cc) relevant contracted support; and

(dd) the goals of the eligible entity for the use of amounts received under the Program, the process that the eligible entity will use to distribute those amounts to subgrantees, the timeline for awarding subgrants, and oversight and reporting requirements that the eligible entity will impose on subgrantees;

Timeline.
Requirements.

(II) the identification of known barriers or challenges to developing and administering a program to administer grants received under the Program, if applicable;

(III) the identification of the additional capacity needed by the eligible entity to implement the requirements under this section, such as—

(aa) enhancing the capacity of the broadband program or office of the eligible entity by receiving technical assistance from Federal entities or other partners, hiring additional employees, or obtaining support from contracted entities; or

(bb) acquiring additional programmatic information or data, such as through surveys or asset inventories;

(IV) an explanation of how the needs described in subclause (III) were identified and how funds may be used to address those needs, including target areas;

(V) details of any relevant partners, such as organizations that may inform broadband deployment and adoption planning; and

(VI) any other information determined relevant by the Assistant Secretary.

Determination.

(C) PLANNING FUNDS.—

Determinations.

(i) IN GENERAL.—The Assistant Secretary shall establish a process through which an eligible entity, in submitting a letter of intent under subparagraph (B), may request access to not more than 5 percent of the amount allocated to the eligible entity under subsection (c)(2) for use consistent with this subparagraph.

(ii) FUNDING AVAILABILITY.—If the Assistant Secretary approves a request from an eligible entity under clause (i), the Assistant Secretary shall make available to the eligible entity an amount, as determined appropriate by the Assistant Secretary, that is not more than 5 percent of the amount allocated to the eligible entity under subsection (c)(2).

(iii) **ELIGIBLE USE.**—The Assistant Secretary shall determine the allowable uses of amounts made available under clause (ii), which may include—

(I) research and data collection, including initial identification of unserved locations and underserved locations;

(II) the development of a preliminary budget for pre-planning activities;

(III) publications, outreach, and communications support;

(IV) providing technical assistance, including through workshops and events;

(V) training for employees of the broadband program or office of the eligible entity or employees of political subdivisions of the eligible entity, and related staffing capacity or consulting or contracted support; and

(VI) with respect to an office that oversees broadband programs and broadband deployment in an eligible entity, establishing, operating, or increasing the capacity of such a broadband office.

(D) **ACTION PLAN.**—

(i) **IN GENERAL.**—An eligible entity that receives funding from the Assistant Secretary under subparagraph (C) shall submit to the Assistant Secretary a 5-year action plan, which shall—

(I) be informed by collaboration with local and regional entities; and

(II) detail—

(aa) investment priorities and associated costs;

(bb) alignment of planned spending with economic development, telehealth, and related connectivity efforts.

(ii) **REQUIREMENTS OF ACTION PLANS.**—The Assistant Secretary shall establish requirements for the 5-year action plan submitted by an eligible entity under clause (i), which may include requirements to—

(I) address local and regional needs in the eligible entity with respect to broadband service;

(II) propose solutions for the deployment of affordable broadband service in the eligible entity;

(III) include localized data with respect to the deployment of broadband service in the eligible entity, including by identifying locations that should be prioritized for Federal support with respect to that deployment;

(IV) ascertain how best to serve unserved locations in the eligible entity, whether through the establishment of cooperatives or public-private partnerships;

(V) identify the technical assistance that would be necessary to carry out the plan; and

(VI) assess the amount of time it would take to build out universal broadband service in the eligible entity.

Time period.

Proposal.

Assessment.

(2) NOTICE OF AVAILABLE AMOUNTS; INVITATION TO SUBMIT INITIAL AND FINAL PROPOSALS.—On or after the date on which the broadband DATA maps are made public, the Assistant Secretary, in coordination with the Commission, shall issue a notice to each eligible entity that—

Effective date.
Coordination.

(A) contains the estimated amount available to the eligible entity under subsection (c); and

(B) invites the eligible entity to submit an initial proposal and final proposal for a grant under this section, in accordance with paragraphs (3) and (4) of this subsection.

(3) INITIAL PROPOSAL.—

(A) SUBMISSION.—

(i) IN GENERAL.—After the Assistant Secretary issues the notice under paragraph (2), an eligible entity that wishes to receive a grant under this section shall submit an initial proposal for a grant, using the online application form developed by the Assistant Secretary under paragraph (1)(A)(iii), that—

(I) outlines long-term objectives for deploying broadband, closing the digital divide, and enhancing economic growth and job creation, including—

(aa) information developed by the eligible entity as part of the action plan submitted under paragraph (1)(D), if applicable; and

(bb) information from any comparable strategic plan otherwise developed by the eligible entity, if applicable;

(II)(aa) identifies, and outlines steps to support, local and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide; and

(bb) describes coordination with local governments, along with local and regional broadband planning processes;

(III) identifies existing efforts funded by the Federal Government or a State within the jurisdiction of the eligible entity to deploy broadband and close the digital divide;

(IV) includes a plan to competitively award subgrants to ensure timely deployment of broadband;

Plan.

(V) identifies—

(aa) each unserved location or underserved location under the jurisdiction of the eligible entity; and

(bb) each community anchor institution under the jurisdiction of the eligible entity that is an eligible community anchor institution; and

(VI) certifies the intent of the eligible entity to comply with all applicable requirements under this section, including the reporting requirements under subsection (j)(1).

Certification.
Compliance.

(ii) LOCAL COORDINATION.—

(I) IN GENERAL.—The Assistant Secretary shall establish local coordination requirements for

Requirements.

eligible entities to follow, to the greatest extent practicable.

(II) REQUIREMENTS.— The local coordination requirements established under subclause (I) shall include, at minimum, an opportunity for political subdivisions of an eligible entity to—

Plans.

(aa) submit plans for consideration by the eligible entity; and

(bb) comment on the initial proposal of the eligible entity before the initial proposal is submitted to the Assistant Secretary.

(B) SINGLE INITIAL PROPOSAL.—An eligible entity may submit only 1 initial proposal under this paragraph.

(C) CORRECTIONS TO INITIAL PROPOSAL.—The Assistant Secretary may accept corrections to the initial proposal of an eligible entity after the initial proposal has been submitted.

(D) CONSIDERATION OF INITIAL PROPOSAL.—After receipt of an initial proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the initial proposal is complete—

Determinations.

(I) shall determine whether the use of funds proposed in the initial proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the initial proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the initial proposal under clause (ii)(II), shall make available to the eligible entity—

(aa) 20 percent of the grant funds that were allocated to the eligible entity under subsection (c); or

(bb) a higher percentage of the grant funds that were allocated to the eligible entity under subsection (c), at the discretion of the Assistant Secretary; and

Notification.

(iii) if the initial proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the initial proposal.

(E) CONSIDERATION OF RESUBMITTED INITIAL PROPOSAL.—After receipt of a resubmitted initial proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the initial proposal is complete—

Determinations.

(I) shall determine whether the use of funds proposed in the initial proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the initial proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the initial proposal under clause (ii)(II), shall make available to the eligible entity—

(aa) 20 percent of the grant funds that were allocated to the eligible entity under subsection (c); or

(bb) a higher percentage of the grant funds that were allocated to the eligible entity under subsection (c), at the discretion of the Assistant Secretary; and

(iii) if the initial proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the initial proposal. Notification.

(4) FINAL PROPOSAL.—

(A) SUBMISSION.—

(i) IN GENERAL.—After the Assistant Secretary approves the initial proposal of an eligible entity under paragraph (3), the eligible entity may submit a final proposal for the remainder of the amount allocated to the eligible entity under subsection (c), using the online application form developed by the Assistant Secretary under paragraph (1)(A)(iii), that includes—

(I) a detailed plan that specifies how the eligible entity will— Plan.

(aa) allocate grant funds for the deployment of broadband networks to unserved locations and underserved locations, in accordance with subsection (h)(1)(A)(i); and Allocation.

(bb) align the grant funds allocated to the eligible entity under subsection (c), where practicable, with the use of other funds that the eligible entity receives from the Federal Government, a State, or a private entity for related purposes;

(II) a timeline for implementation; Timeline.

(III) processes for oversight and accountability to ensure the proper use of the grant funds allocated to the eligible entity under subsection (c); and

(IV) a description of coordination with local governments, along with local and regional broadband planning processes.

(ii) LOCAL COORDINATION.—

(I) IN GENERAL.—The Assistant Secretary shall establish local coordination requirements for eligible entities to follow, to the greatest extent practicable. Requirements.

(II) REQUIREMENTS.— The local coordination requirements established under subclause (I) shall include, at minimum, an opportunity for political subdivisions of an eligible entity to—

(aa) submit plans for consideration by the eligible entity; and Plans.

(bb) comment on the final proposal of the eligible entity before the final proposal is submitted to the Assistant Secretary.

(iii) FEDERAL COORDINATION.—To ensure efficient and effective use of taxpayer funds, an eligible entity shall, to the greatest extent practicable, align the use of grant funds proposed in the final proposal under clause (i) with funds available from other Federal programs that support broadband deployment and access.

(B) SINGLE FINAL PROPOSAL.—An eligible entity may submit only 1 final proposal under this paragraph.

(C) CORRECTIONS TO FINAL PROPOSAL.—The Assistant Secretary may accept corrections to the final proposal of an eligible entity after the final proposal has been submitted.

(D) CONSIDERATION OF FINAL PROPOSAL.—After receipt of a final proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the final proposal is complete—

(I) shall determine whether the use of funds proposed in the final proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the final proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the final proposal under clause (ii)(II), shall make available to the eligible entity the remainder of the grant funds allocated to the eligible entity under subsection (c); and

(iii) if the final proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the final proposal.

(E) CONSIDERATION OF RESUBMITTED FINAL PROPOSAL.—After receipt of a resubmitted final proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the final proposal is complete—

(I) shall determine whether the use of funds proposed in the final proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the final proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the final proposal under clause (ii)(II), shall make available to the eligible entity the remainder of the grant funds allocated to the eligible entity under subsection (c); and

(iii) if the final proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the final proposal.

Determinations.

Notification.

Determinations.

Notification.

(f) **USE OF FUNDS.**—An eligible entity may use grant funds received under this section to competitively award subgrants for—

(1) unserved service projects and underserved service projects;

(2) connecting eligible community anchor institutions;

(3) data collection, broadband mapping, and planning;

(4) installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multi-family residential building, with priority given to a residential building that—

(A) has a substantial share of unserved households;

or

(B) is in a location 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;

(5) broadband adoption, including programs to provide affordable internet-capable devices; and

(6) any use determined necessary by the Assistant Secretary to facilitate the goals of the Program.

Determination.

(g) **GENERAL PROGRAM REQUIREMENTS.**—

(1) **SUBGRANTEE OBLIGATIONS.**—A subgrantee, in carrying out activities using amounts received from an eligible entity under this section—

(A) shall adhere to quality-of-service standards, as established by the Assistant Secretary;

(B) shall comply with prudent cybersecurity and supply chain risk management practices, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Commission;

Compliance.
Consultation.

(C) shall incorporate best practices, as defined by the Assistant Secretary, for ensuring reliability and resilience of broadband infrastructure; and

(D) may not use the amounts to purchase or support—

(i) 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); or

(ii) fiber optic cable and optical transmission equipment manufactured in the People's Republic of China, except that the Assistant Secretary may waive the application of this clause with respect to a project if the eligible entity that awards a subgrant for the project shows that such application would unreasonably increase the cost of the project.

Waiver.

(2) **ELIGIBLE ENTITY OBLIGATIONS.**—In distributing funds to subgrantees under this section, an eligible entity shall—

(A) ensure that any prospective subgrantee—

(i) is capable of carrying out activities funded by the subgrant in a competent manner in compliance with all applicable Federal, State, and local laws;

(ii) has the financial and managerial capacity to meet—

(I) the commitments of the subgrantee under the subgrant;

- (II) the requirements of the Program; and
 (III) such requirements as may be further prescribed by the Assistant Secretary; and
 (iii) has the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award;
- Contracts. (B) stipulate, in any contract with a subgrantee for the use of such funds, reasonable provisions for recovery of funds for nonperformance; and
 (C)(i) distribute the funds in an equitable and non-discriminatory manner; and
- Contracts. (ii) ensure, through a stipulation in any contract with a subgrantee for the use of such funds, that each subgrantee uses the funds in an equitable and nondiscriminatory manner.
- (3) DEOBLIGATION OF AWARDS; INTERNET DISCLOSURE.—The Assistant Secretary—
- Coordination. (A) shall establish, in coordination with relevant Federal and State partners, appropriate mechanisms to ensure appropriate use of funds made available under this section;
 (B) may, in addition to other authority under applicable law—
 (i) deobligate grant funds awarded to an eligible entity that—
 (I) violates paragraph (2); or
 (II) demonstrates an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary; and
 (ii) award grant funds that are deobligated under clause (i) to new or existing applicants consistent with this section; and
- Database.
 Web posting.
 Public information. (C) shall create and maintain a fully searchable database, accessible on the internet at no cost to the public, that contains information sufficient to allow the public to understand and monitor grants and subgrants awarded under the Program.
- (h) BROADBAND NETWORK DEPLOYMENT.—
 (1) ORDER OF AWARDS; PRIORITY.—
 (A) IN GENERAL.—An eligible entity, in awarding subgrants for the deployment of a broadband network using grant funds received under this section, as authorized under subsection (f)(1)—
 (i) shall award funding in a manner that—
 (I) prioritizes unserved service projects;
 (II) after certifying to the Assistant Secretary that the eligible entity will ensure coverage of broadband service to all unserved locations within the eligible entity, prioritizes underserved service projects; and
 (III) after prioritizing underserved service projects, provides funding to connect eligible community anchor institutions;
 (ii) in providing funding under subclauses (I), (II), and (III) of clause (i), shall prioritize funding for deployment of broadband infrastructure for priority broadband projects;

(iii) may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility for such grant funds; and

(iv) shall give priority to projects based on—

(I) deployment of a broadband network to persistent poverty counties or high-poverty areas;

(II) the speeds of the proposed broadband service;

(III) the expediency with which a project can be completed; and

(IV) a demonstrated record of and plans to be in compliance with Federal labor and employment laws.

(B) **AUTHORITY OF ASSISTANT SECRETARY.**—The Assistant Secretary may provide additional guidance on the prioritization of subgrants awarded for the deployment of a broadband network using grant funds received under this section.

(2) **CHALLENGE PROCESS.**—

(A) **IN GENERAL.**—After submitting an initial proposal under subsection (e)(3) and before allocating grant funds received under this section for the deployment of broadband networks, an eligible entity shall ensure a transparent, evidence-based, and expeditious challenge process under which a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the eligible entity in the initial proposal as to whether a particular location or community anchor institution within the jurisdiction of the eligible entity is eligible for the grant funds, including whether a particular location is unserved or underserved.

(B) **FINAL IDENTIFICATION; NOTIFICATION OF FUNDING ELIGIBILITY.**—After resolving each challenge under subparagraph (A), and not later than 60 days before allocating grant funds received under this section for the deployment of broadband networks, an eligible entity shall provide public notice of the final classification of each unserved location, underserved location, or eligible community anchor institution within the jurisdiction of the eligible entity.

Deadline.

(C) **CONSULTATION WITH NTIA.**—An eligible entity shall notify the Assistant Secretary of any modification to the initial proposal of the eligible entity submitted under subsection (e)(3) that is necessitated by a successful challenge under subparagraph (A) of this paragraph.

Notification.

(D) **NTIA AUTHORITY.**—The Assistant Secretary—

(i) may modify the challenge process required under subparagraph (A) as necessary; and

(ii) may reverse the determination of an eligible entity with respect to the eligibility of a particular location or community anchor institution for grant funds under this section.

(E) **EXPEDITING BROADBAND DATA COLLECTION ACTIVITIES.**—

(i) **DEADLINE FOR RESOLUTION OF CHALLENGE PROCESS UNDER BROADBAND DATA ACT.**—Section 802(b)(5)(C)(i) of the Communications Act of 1934 (47 U.S.C. 642(b)(5)(C)(i)) is amended by striking “challenges” and inserting the following: “challenges, which shall require that the Commission resolve a challenge not later than 90 days after the date on which a final response by a provider to a challenge to the accuracy of a map or information described in subparagraph (A) is complete”.

(ii) **PAPERWORK REDUCTION ACT EXEMPTION EXPANSION.**—Section 806(b) of the Communications Act of 1934 (47 U.S.C. 646(b)) is amended by striking “the initial rule making required under section 802(a)(1)” and inserting “any rule making or other action by the Commission required under this title”.

(iii) **IMPLEMENTATION.**—The Commission shall implement the amendments made by this subparagraph as soon as possible after the date of enactment of this Act.

(3) **NON-FEDERAL SHARE OF BROADBAND INFRASTRUCTURE DEPLOYMENT COSTS.**—

(A) **IN GENERAL.**—

(i) **MATCHING REQUIREMENT.**—In allocating grant funds received under this section for deployment of broadband networks, an eligible entity shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority), except in high-cost areas or as otherwise provided by this Act, of not less than 25 percent of project costs.

(ii) **WAIVER.**—Upon request by an eligible entity or a subgrantee, the Assistant Secretary may reduce or waive the required matching contribution under clause (i).

(B) **SOURCE OF MATCH.**—A matching contribution under subparagraph (A)—

(i) may be provided by an eligible entity, a unit of local government, a utility company, a cooperative, a nonprofit organization, a for-profit company, regional planning or governmental organization, a Federal regional commission or authority, or any combination thereof;

(ii) may include in-kind contributions; and

(iii) may include funds that were provided to an eligible entity or a subgrantee—

(I) under—

(aa) the Families First Coronavirus Response Act (Public Law 116–127; 134 Stat. 178);

(bb) the CARES Act (Public Law 116–136; 134 Stat. 281);

(cc) the Consolidated Appropriations Act, 2021 (Public Law 116–260; 134 Stat. 1182);

(dd) the American Rescue Plan Act of 2021 (Public Law 117–2; 135 Stat. 4); or

- (ee) any amendment made by an Act described in any of items (aa) through (dd); and
- (II) for the purpose of deployment of broadband service, as described in the applicable provision of law described in subclause (I).
- (C) DEFINITION.—For purposes of this paragraph, the term “Federal regional commission or authority” means—
 - (i) the Appalachian Regional Commission;
 - (ii) the Delta Regional Authority;
 - (iii) the Denali Commission; and
 - (iv) the Northern Border Regional Commission.
- (4) DEPLOYMENT AND PROVISION OF SERVICE REQUIREMENTS.—An entity that receives a subgrant under subsection (f)(1) for the deployment of a broadband network—
 - (A) in providing broadband service using the network—
 - (i) shall provide broadband service—
 - (I) at a speed of not less than 100 megabits per second for downloads and 20 megabits per second for uploads;
 - (II) with a latency that is sufficiently low to allow reasonably foreseeable, real-time, interactive applications; and
 - (III) with network outages that do not exceed, on average, 48 hours over any 365-day period; and
 - (ii) shall provide access to broadband service to each customer served by the project that desires broadband service;
 - (B) shall offer not less than 1 low-cost broadband service option for eligible subscribers, as those terms are defined in paragraph (5) of this subsection;
 - (C) shall deploy the broadband network and begin providing broadband service to each customer that desires broadband service not later than 4 years after the date on which the entity receives the subgrant, except that an eligible entity may extend the deadline under this subparagraph if—
 - (i) the eligible entity has a plan for use of the grant funds;
 - (ii) the construction project is underway; or
 - (iii) extenuating circumstances require an extension of time to allow the project to be completed;
 - (D) for any project that involves laying fiber optic cables or conduit underground or along a roadway, shall include interspersed conduit access points at regular and short intervals;
 - (E) may use the subgrant to deploy broadband infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing broadband service to an unserved location, underserved location, or eligible community anchor institution;
 - (F) once the network has been deployed, shall provide public notice, online and through other means, of that fact to the locations and areas to which broadband service

Time period.

Deadline.

Public
information.
Web posting.

has been provided and share the public notice with the eligible entity that awarded the subgrant;

(G) shall carry out public awareness campaigns in service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers; and

(H) if the entity is no longer able to provide broadband service to the locations covered by the subgrant at any time, shall sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to other broadband service providers or public sector entities.

(5) LOW-COST BROADBAND SERVICE OPTION.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “eligible subscriber” shall have the meaning given the term by the Assistant Secretary for purposes of this paragraph; and

(ii) the term “low-cost broadband service option” shall be defined by an eligible entity for subgrantees of the eligible entity in accordance with subparagraph (B).

(B) DEFINING “LOW-COST BROADBAND SERVICE OPTION”.—

(i) PROPOSAL.—An eligible entity shall submit to the Assistant Secretary for approval, in the final proposal of the eligible entity submitted under subsection (e)(4), a proposed definition of “low-cost broadband service option” that shall apply to subgrantees of the eligible entity for purposes of the requirement under paragraph (4)(B) of this subsection.

(ii) CONSULTATION.—An eligible entity shall consult with the Assistant Secretary and prospective subgrantees regarding a proposed definition of “low-cost broadband service option” before submitting the proposed definition to the Assistant Secretary under clause (i).

(iii) APPROVAL OF ASSISTANT SECRETARY.—

(I) IN GENERAL.—A proposed definition of “low-cost broadband service option” submitted by an eligible entity under clause (i) shall not take effect until the Assistant Secretary approves the final proposal of the eligible entity submitted under subsection (e)(4), including approval of the proposed definition of “low-cost broadband service option”.

(II) RESUBMISSION.—If the Assistant Secretary does not approve a proposed definition of “low-cost broadband service option” submitted by an eligible entity under clause (i), the Assistant Secretary shall—

(aa) notify the eligible entity and provide the eligible entity with an opportunity to resubmit the final proposal, as provided in subsection (e)(4), with an improved definition of “low-cost broadband service option”; and

(bb) provide the eligible entity with instructions on how to cure the defects in the proposed definition.

Effective date.

Notification.

(iv) PUBLIC DISCLOSURE.—After the Assistant Secretary approves the final proposal of an eligible entity under subsection (e)(4), and before the Assistant Secretary disburses any funds to the eligible entity based on that approval, the Assistant Secretary shall publicly disclose the eligible entity’s definition of “low-cost broadband service option”.

(C) NONPERFORMANCE.—The Assistant Secretary shall develop procedures under which the Assistant Secretary or an eligible entity may—

Procedures.

(i) evaluate the compliance of a subgrantee with the requirement under paragraph (4)(B); and

Evaluation.

(ii) take corrective action, including recoupment of funds from the subgrantee, for noncompliance with the requirement under paragraph (4)(B).

(D) NO REGULATION OF RATES PERMITTED.—Nothing in this title may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service.

(E) GUIDANCE.—The Assistant Secretary may issue guidance to eligible entities to carry out the purposes of this paragraph.

(6) RETURN OF FUNDS.—An entity that receives a subgrant from an eligible entity under subsection (f) and fails to comply with any requirement under this subsection shall return up to the entire amount of the subgrant to the eligible entity, at the discretion of the eligible entity or the Assistant Secretary.

(i) REGULATIONS.—The Assistant Secretary may issue such regulations or other guidance, forms, instructions, and publications as may be necessary or appropriate to carry out the programs, projects, or activities authorized under this section, including to ensure that those programs, projects, or activities are completed in a timely and effective manner.

(j) REPORTING.—

(1) ELIGIBLE ENTITIES.—

(A) INITIAL REPORT.—Not later than 90 days after receiving grant funds under this section, for the sole purposes of providing transparency and providing information to inform future Federal broadband planning, an eligible entity shall submit to the Assistant Secretary a report that—

(i) describes the planned and actual use of funds;

(ii) describes the planned and actual process of subgranting;

(iii) identifies the establishment of appropriate mechanisms by the eligible entity to ensure that all subgrantees of the eligible entity comply with the eligible uses prescribed under subsection (f); and

(iv) includes any other information required by the Assistant Secretary.

(B) SEMIANNUAL REPORT.—Not later than 1 year after receiving grant funds under this section, and semiannually thereafter until the funds have been expended, an eligible entity shall submit to the Assistant Secretary a report, with respect to the 6-month period immediately preceding the report date, that—

Time period.

- (i) describes how the eligible entity expended the grant funds;
- (ii) describes each service provided with the grant funds;
- (iii) describes the number of locations at which broadband service was made available using the grant funds, and the number of those locations at which broadband service was utilized; and
- (iv) certifies that the eligible entity complied with the requirements of this section and with any additional reporting requirements prescribed by the Assistant Secretary.
- Certification. (C) FINAL REPORT.—Not later than 1 year after an eligible entity has expended all grant funds received under this section, the eligible entity shall submit to the Assistant Secretary a report that—
- (i) describes how the eligible entity expended the funds;
- (ii) describes each service provided with the grant funds;
- (iii) describes the number of locations at which broadband service was made available using the grant funds, and the number of those locations at which broadband service was utilized;
- (iv) includes each report that the eligible entity received from a subgrantee under paragraph (2); and
- (v) certifies that the eligible entity complied with the requirements of this section and with any additional reporting requirements prescribed by the Assistant Secretary.
- Certification.
- Coordination. (D) PROVISION TO FCC AND USDA.—Subject to section 904(b)(2) of division FF of the Consolidated Appropriations Act, 2021 (Public Law 116–260) (relating to an interagency agreement), the Assistant Secretary shall coordinate with the Commission and the Department of Agriculture, including providing the final reports received under subparagraph (C) to the Commission and the Department of Agriculture to be used when determining whether to award funds for the deployment of broadband under any program administered by those agencies.
- Determination.
- (E) FEDERAL AGENCY REPORTING REQUIREMENT.—
- (i) DEFINITIONS.—In this subparagraph, the terms “agency” and “Federal broadband support program” have the meanings given those terms in section 903 of division FF of the Consolidated Appropriations Act, 2021 (Public Law 116–260) (also known as the “ACCESS BROADBAND Act”).
- Data. (ii) REQUIREMENT.—An agency that offers a Federal broadband support program shall provide data to the Assistant Secretary, in a manner and format prescribed by the Assistant Secretary, to promote coordination of efforts to track construction and use of broadband infrastructure.
- (2) SUBGRANTEES.—
- (A) SEMIANNUAL REPORT.—The recipient of a subgrant from an eligible entity under this section shall submit to the eligible entity a semiannual report for the duration

of the subgrant to track the effectiveness of the use of funds provided.

(B) CONTENTS.—Each report submitted under subparagraph (A) shall—

(i) describe each type of project carried out using the subgrant and the duration of the subgrant;

(ii) in the case of a broadband infrastructure project—

(I) include a list of addresses or locations that constitute the service locations that will be served by the broadband infrastructure to be constructed;

List.

(II) identify whether each address or location described in subclause (I) is residential, commercial, or a community anchor institution;

(III) describe the types of facilities that have been constructed and installed;

(IV) describe the peak and off-peak actual speeds of the broadband service being offered;

(V) describe the maximum advertised speed of the broadband service being offered;

(VI) describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;

(VII) include any other data that would be required to comply with the data and mapping collection standards of the Commission under section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects; and

(VIII) comply with any other reasonable reporting requirements determined by the eligible entity or the Assistant Secretary; and

Compliance.
Determination.

(iii) certify that the information in the report is accurate.

Certification.

(3) STANDARDIZATION AND COORDINATION.—The Assistant Secretary and the Commission shall collaborate to—

(A) standardize and coordinate reporting of locations at which broadband service was provided using grant funds received under this section in accordance with title VIII of the Communications Act of 1934 (47 U.S.C. 641 et seq.); and

(B) provide a standardized methodology to recipients of grants and subgrantees under this section for reporting the information described in subparagraph (A).

(4) INFORMATION ON BROADBAND SUBSIDIES AND LOW-INCOME PLANS.—

(A) ESTABLISHMENT OF WEBSITE.—Not later than 2 years after the date of enactment of this Act, the Assistant Secretary, in consultation with the Commission, shall establish a publicly available website that—

Deadline.
Consultation.
Public
information.

(i) allows a consumer to determine, based on financial information entered by the consumer, whether the consumer is eligible—

(I) to receive a Federal or State subsidy with respect to broadband service; or

(II) for a low-income plan with respect to broadband service; and

(ii) contains information regarding how to apply for the applicable benefit described in clause (i).

(B) PROVISION OF DATA.—A Federal entity, State entity receiving Federal funds, or provider of broadband service that offers a subsidy or low-income plan, as applicable, with respect to broadband service shall provide data to the Assistant Secretary in a manner and format as established by the Assistant Secretary as necessary for the Assistant Secretary to carry out subparagraph (A).

(k) RELATION TO OTHER PUBLIC FUNDING.—Notwithstanding any other provision of law—

(1) an entity that has received amounts from the Federal Government or a State or local government for the purpose of expanding access to broadband service may receive a subgrant under subsection (f) in accordance with this section; and

(2) the receipt of a subgrant under subsection (f) by an entity described in paragraph (1) of this subsection shall not affect the eligibility of the entity to receive the amounts from the Federal Government or a State or local government described in that paragraph.

(l) SUPPLEMENT NOT SUPPLANT.—Grant funds awarded to an eligible entity under this section shall be used to supplement, and not supplant, the amounts that the eligible entity would otherwise make available for the purposes for which the grant funds may be used.

(m) SENSE OF CONGRESS REGARDING FEDERAL AGENCY COORDINATION.—It is the sense of Congress that Federal agencies responsible for supporting broadband deployment, including the Commission, the Department of Commerce, and the Department of Agriculture, to the extent possible, should align the goals, application and reporting processes, and project requirements with respect to broadband deployment supported by those agencies.

(n) JUDICIAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction to review a decision of the Assistant Secretary made under this section.

(2) STANDARD OF REVIEW.—In carrying out any review described in paragraph (1), the court shall affirm the decision of the Assistant Secretary unless—

(A) the decision was procured by corruption, fraud, or undue means;

(B) there was actual partiality or corruption in the Assistant Secretary; or

(C) the Assistant Secretary was guilty of—

(i) misconduct in refusing to review the administrative record; or

(ii) any other misbehavior by which the rights of any party have been prejudiced.

(o) EXEMPTION FROM CERTAIN LAWS.—Any action taken or decision made by the Assistant Secretary under this section shall be exempt from the requirements of—

(1) section 3506 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act”);

(2) chapter 5 or 7 of title 5, United States Code (commonly referred to as the “Administrative Procedures Act”); and

(3) chapter 6 of title 5, United States Code (commonly referred to as the “Regulatory Flexibility Act”).

SEC. 60103. BROADBAND DATA MAPS.

47 USC 1703.

(a) **DEFINITION.**—In this section, the term “Commission” means the Federal Communications Commission.

(b) **PROVISION OF INFORMATION.**—A broadband provider shall provide the Commission with any information, in the format, type, or specification requested by the Commission, necessary to augment the collection of data by the Commission under—

(1) title VIII of the Communications Act of 1934 (47 U.S.C. 641 et seq.); or

(2) the Form 477 data collection program.

(c) **NOTICE OF INITIAL BROADBAND DATA COLLECTION FILING DEADLINE.**—The Commission—

(1) shall provide notice to broadband providers not later than 60 days before the initial deadline for submission of data under section 802(a)(1)(A) of the Communications Act of 1934 (47 U.S.C. 642(a)(1)(A)); and

(2) notwithstanding any prior decision of the Commission to the contrary, shall not be required to provide notice not later than 6 months before the initial deadline described in paragraph (1).

(d) **AVAILABILITY OF CENSUS DATA.**—

(1) **IN GENERAL.**—Section 802(b)(1) of the Communications Act of 1934 (47 U.S.C. 802(b)(1)) is amended by adding at the end the following:

“(D) **AVAILABILITY OF CENSUS DATA.**—The Secretary of Commerce shall submit to the Commission, for inclusion in the Fabric, a count of the aggregate number of housing units in each census block, as collected by the Bureau of the Census.”.

(2) **PROVISION OF UPDATED 2020 CENSUS DATA.**—Not later than 30 days after receiving a request from the Commission, the Secretary of Commerce, in implementing the amendment made by paragraph (1), shall provide the Commission with a count of the aggregate number of housing units in each census block, as collected during the 2020 decennial census of population.

(e) **PUBLICATION OF BROADBAND DATA MAPS ON INTERNET.**—Section 802(c)(6) of the Communications Act of 1934 (47 U.S.C. 642(c)(6)) is amended, in the matter preceding paragraph (6), by inserting “, including on a publicly available website,” after “make public”.

SEC. 60104. REPORT ON FUTURE OF UNIVERSAL SERVICE FUND.

(a) **DEFINITIONS.**—In this section—

(1) the term “Commission” means the Federal Communications Commission; and

(2) the term “universal service goals for broadband” means the statutorily mandated goals of universal service for advanced telecommunications capability under section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).

(b) **EVALUATION.**—Not later than 30 days after the date of enactment of this Act, the Commission shall commence a proceeding to evaluate the implications of this Act and the amendments made by this Act on how the Commission should achieve the universal service goals for broadband. Deadline.

“(A) DEFINITION.—In this paragraph, the term ‘initial round of funding’—

“(i) means the allocation under paragraph (2)(E) of funds appropriated under subsection (b)(1); and

“(ii) does not include any reallocation of funds under paragraph (2)(F).

“(B) NEW FUNDING.—If Congress appropriates additional funds for grants under subsection (c) after the date of enactment of this Act, the Assistant Secretary—

“(i) may use a portion of the funds to fully fund any grants under that subsection for which the Assistant Secretary received an application and which the Assistant Secretary did not fully fund during the initial round of funding; and

“(ii) shall allocate any remaining funds through subsequent funding rounds consistent with the requirements of this section, except as provided in subparagraph (C) of this paragraph.

“(C) EXCEPTIONS.—If Congress appropriates additional funds for grants under subsection (c) after the date of enactment of this Act—

“(i) the Assistant Secretary shall not be required to issue an additional notice under paragraph (1) of this subsection, but shall inform eligible entities that additional funding has been made available for grants under subsection (c) and describe the changes made to the Tribal Broadband Connectivity Program under that subsection by section 60201 of the Infrastructure Investment and Jobs Act;

“(ii) the requirement under paragraph (2)(C) of this subsection shall be applied individually to each round of funding for grants under subsection (c);

“(iii) paragraph (2)(A) of this subsection shall be applied by substituting ‘180-day period beginning on the date on which the Assistant Secretary informs eligible entities that additional funding has been made available for grants under subsection (c)’ for ‘90-day period beginning on the date on which the Assistant Secretary issues the notice under paragraph (1)’; and

“(iv) notwithstanding paragraph (2)(F) of this subsection, in the case of funds appropriated under subsection (b)(1) that were not allocated during the initial round of funding, the Assistant Secretary may elect to allocate the funds during any subsequent round of funding for grants under subsection (c).”.

Allocation.

Applicability.

Time period.

TITLE III—DIGITAL EQUITY ACT OF 2021

Digital Equity Act of 2021.

SEC. 60301. SHORT TITLE.

This title may be cited as the “Digital Equity Act of 2021”.

47 USC 1701 note.

SEC. 60302. DEFINITIONS.

47 USC 1721.

In this title:

(1) ADOPTION OF BROADBAND.—The term “adoption of broadband” means the process by which an individual obtains daily access to the internet—

- (A) at a speed, quality, and capacity—
 - (i) that is necessary for the individual to accomplish common tasks; and
 - (ii) such that the access qualifies as an advanced telecommunications capability;
- (B) with the digital skills that are necessary for the individual to participate online; and
- (C) on a—
 - (i) personal device; and
 - (ii) secure and convenient network.

(2) **ADVANCED TELECOMMUNICATIONS CAPABILITY.**—The term “advanced telecommunications capability” has the meaning given the term in section 706(d) of the Telecommunications Act of 1996 (47 U.S.C. 1302(d)).

(3) **AGING INDIVIDUAL.**—The term “aging individual” has the meaning given the term “older individual” in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002).

(4) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term “appropriate committees of Congress” means—

- (A) the Committee on Appropriations of the Senate;
- (B) the Committee on Commerce, Science, and Transportation of the Senate;
- (C) the Committee on Appropriations of the House of Representatives; and
- (D) the Committee on Energy and Commerce of the House of Representatives.

(5) **ASSISTANT SECRETARY.**—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(6) **COMMUNITY ANCHOR INSTITUTION.**—The term “community anchor institution” means a public school, a public or multi-family housing authority, a library, a medical or healthcare provider, a community college or other institution of higher education, a State library agency, and any other nonprofit or governmental community support organization.

(7) **COVERED HOUSEHOLD.**—The term “covered household” means a household, the income of which for the most recently completed year is not more than 150 percent of an amount equal to the poverty level, as determined by using criteria of poverty established by the Bureau of the Census.

(8) **COVERED POPULATIONS.**—The term “covered populations” means—

- (A) individuals who live in covered households;
- (B) aging individuals;
- (C) incarcerated individuals, other than individuals who are incarcerated in a Federal correctional facility;
- (D) veterans;
- (E) individuals with disabilities;
- (F) individuals with a language barrier, including individuals who—
 - (i) are English learners; and
 - (ii) have low levels of literacy;
- (G) individuals who are members of a racial or ethnic minority group; and
- (H) individuals who primarily reside in a rural area.

(9) COVERED PROGRAMS.—The term “covered programs” means the State Digital Equity Capacity Grant Program established under section 60304 and the Digital Equity Competitive Grant Program established under section 60305.

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

(11) DIGITAL INCLUSION.—The term “digital inclusion”—

(A) means the activities that are necessary to ensure that all individuals in the United States have access to, and the use of, affordable information and communication technologies, such as—

(i) reliable fixed and wireless broadband internet service;

(ii) internet-enabled devices that meet the needs of the user; and

(iii) applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration; and

(B) includes—

(i) obtaining access to digital literacy training;

(ii) the provision of quality technical support; and

(iii) obtaining basic awareness of measures to ensure online privacy and cybersecurity.

(12) DIGITAL LITERACY.—The term “digital literacy” means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

(13) DISABILITY.—The term “disability” has the meaning given the term in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

(14) ELIGIBLE STATE.—The term “eligible State” means—

(A) with respect to planning grants made available under section 60304(c)(3), a State with respect to which the Assistant Secretary has approved an application submitted to the Assistant Secretary under section 60304(c)(3)(C); and

(B) with respect to capacity grants awarded under section 60304(d), a State with respect to which the Assistant Secretary has approved an application submitted to the Assistant Secretary under section 60304(d)(2), including approval of the State Digital Equity Plan developed by the State under section 60304(c).

(15) GENDER IDENTITY.—The term “gender identity” has the meaning given the term in section 249(c) of title 18, United States Code.

(16) INDIAN TRIBE.—The term “Indian Tribe” has the meaning given the term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

(17) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education”—

(A) has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); and

(B) includes a postsecondary vocational institution.

(18) **LOCAL EDUCATIONAL AGENCY.**—The term “local educational agency” has the meaning given the term in section 8101(30) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(30)).

(19) **POSTSECONDARY VOCATIONAL INSTITUTION.**—The term “postsecondary vocational institution” has the meaning given the term in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c)).

(20) **RURAL AREA.**—The term “rural area” has the meaning given the term in section 601(b)(3) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(b)(3)).

(21) **STATE.**—The term “State” means—

- (A) any State of the United States;
- (B) the District of Columbia; and
- (C) the Commonwealth of Puerto Rico.

(22) **VETERAN.**—The term “veteran” has the meaning given the term in section 101 of title 38, United States Code.

(23) **WORKFORCE DEVELOPMENT PROGRAM.**—The term “workforce development program” has the meaning given the term in section 3(66) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(66)).

47 USC 1722.

SEC. 60303. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) a broadband connection and digital literacy are increasingly critical to how individuals—

(A) participate in the society, economy, and civic institutions of the United States; and

(B) access health care and essential services, obtain education, and build careers;

(2) digital exclusion—

(A) carries a high societal and economic cost;

(B) materially harms the opportunity of an individual with respect to the economic success, educational achievement, positive health outcomes, social inclusion, and civic engagement of that individual; and

(C) exacerbates existing wealth and income gaps, especially those experienced by covered populations;

(3) achieving digital equity for all people of the United States requires additional and sustained investment and research efforts;

(4) the Federal Government, as well as State, tribal, territorial, and local governments, have made social, legal, and economic obligations that necessarily extend to how the citizens and residents of those governments access and use the internet; and

(5) achieving digital equity is a matter of social and economic justice and is worth pursuing.

47 USC 1723.

SEC. 60304. STATE DIGITAL EQUITY CAPACITY GRANT PROGRAM.

(a) **ESTABLISHMENT; PURPOSE.**—

(1) **IN GENERAL.**—The Assistant Secretary shall establish in the Department of Commerce the State Digital Equity Capacity Grant Program (referred to in this section as the “Program”)—

(A) the purpose of which is to promote the achievement of digital equity, support digital inclusion activities, and

build capacity for efforts by States relating to the adoption of broadband by residents of those States;

(B) through which the Assistant Secretary shall make grants to States in accordance with the requirements of this section; and

(C) which shall ensure that States have the capacity to promote the achievement of digital equity and support digital inclusion activities.

(2) CONSULTATION WITH OTHER FEDERAL AGENCIES; NO CONFLICT.—In establishing the Program under paragraph (1), the Assistant Secretary shall—

(A) consult with—

- (i) the Secretary of Agriculture;
- (ii) the Secretary of Housing and Urban Development;
- (iii) the Secretary of Education;
- (iv) the Secretary of Labor;
- (v) the Secretary of Health and Human Services;
- (vi) the Secretary of Veterans Affairs;
- (vii) the Secretary of the Interior;
- (viii) the Federal Communications Commission;
- (ix) the Federal Trade Commission;
- (x) the Director of the Institute of Museum and Library Services;
- (xi) the Administrator of the Small Business Administration;
- (xii) the Federal Co-Chair of the Appalachian Regional Commission; and
- (xiii) the head of any other agency that the Assistant Secretary determines to be appropriate; and

(B) ensure that the Program complements and enhances, and does not conflict with, other Federal broadband initiatives and programs.

(b) ADMINISTERING ENTITY.—

(1) SELECTION; FUNCTION.—The governor (or equivalent official) of a State that wishes to be awarded a grant under this section shall, from among entities that are eligible under paragraph (2), select an administering entity for that State, which shall—

(A) serve as the recipient of, and administering agent for, any grant awarded to the State under this section;

(B) develop, implement, and oversee the State Digital Equity Plan for the State described in subsection (c);

(C) make subgrants to any entity described in subsection (c)(1)(D) that is located in the State in support of—

(i) the State Digital Equity Plan for the State; and

(ii) digital inclusion activities in the State generally; and

(D) serve as—

(i) an advocate for digital equity policy and digital inclusion activities; and

(ii) a repository of best practice materials regarding the policies and activities described in clause (i).

(2) ELIGIBLE ENTITIES.—Any of the following entities may serve as the administering entity for a State for the purposes

of this section if the entity has demonstrated a capacity to administer the Program on a statewide level:

(A) The State, a political subdivision, agency, or instrumentality of the State, an Indian Tribe located in the State, an Alaska Native entity located in the State, or a Native Hawaiian organization located in the State.

(B) A foundation, corporation, institution, association, or coalition that is—

- (i) a not-for-profit entity;
- (ii) providing services in the State; and
- (iii) not a school.

(C) A community anchor institution, other than a school, that is located in the State.

(D) A local educational agency that is located in the State.

(E) An entity located in the State that carries out a workforce development program.

(F) An agency of the State that is responsible for administering or supervising adult education and literacy activities in the State.

(G) A public or multi-family housing authority that is located in the State.

(H) A partnership between any of the entities described in subparagraphs (A) through (G).

(c) STATE DIGITAL EQUITY PLAN.—

(1) DEVELOPMENT; CONTENTS.—A State that wishes to be awarded a grant under subsection (d) shall develop a State Digital Equity Plan for the State, which shall include—

(A) the identification of the barriers to digital equity faced by covered populations in the State;

(B) measurable objectives for documenting and promoting, among each group described in subparagraphs (A) through (H) of section 60302(8) located in that State—

- (i) the availability of, and affordability of access to, fixed and wireless broadband technology;
- (ii) the online accessibility and inclusivity of public resources and services;
- (iii) digital literacy;
- (iv) awareness of, and the use of, measures to secure the online privacy of, and cybersecurity with respect to, an individual; and
- (v) the availability and affordability of consumer devices and technical support for those devices;

(C) an assessment of how the objectives described in subparagraph (B) will impact and interact with the State's—

- (i) economic and workforce development goals, plans, and outcomes;
- (ii) educational outcomes;
- (iii) health outcomes;
- (iv) civic and social engagement; and
- (v) delivery of other essential services;

(D) in order to achieve the objectives described in subparagraph (B), a description of how the State plans to collaborate with key stakeholders in the State, which may include—

- (i) community anchor institutions;

Assessment.

- (ii) county and municipal governments;
- (iii) local educational agencies;
- (iv) where applicable, Indian Tribes, Alaska Native entities, or Native Hawaiian organizations;
- (v) nonprofit organizations;
- (vi) organizations that represent—
 - (I) individuals with disabilities, including organizations that represent children with disabilities;
 - (II) aging individuals;
 - (III) individuals with language barriers, including—
 - (aa) individuals who are English learners;
 - and
 - (bb) individuals who have low levels of literacy;
 - (IV) veterans; and
 - (V) individuals in that State who are incarcerated in facilities other than Federal correctional facilities;
- (vii) civil rights organizations;
- (viii) entities that carry out workforce development programs;
- (ix) agencies of the State that are responsible for administering or supervising adult education and literacy activities in the State;
- (x) public housing authorities in the State; and
- (xi) a partnership between any of the entities described in clauses (i) through (x); and

(E) a list of organizations with which the administering entity for the State collaborated in developing and implementing the Plan. List.

(2) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The administering entity for a State shall make the State Digital Equity Plan of the State available for public comment for a period of not less than 30 days before the date on which the State submits an application to the Assistant Secretary under subsection (d)(2).

(B) CONSIDERATION OF COMMENTS RECEIVED.—The administering entity for a State shall, with respect to an application submitted to the Assistant Secretary under subsection (d)(2)—

(i) before submitting the application—

(I) consider all comments received during the comment period described in subparagraph (A) with respect to the application (referred to in this subparagraph as the “comment period”); and

(II) make any changes to the plan that the administering entity determines to be worthwhile; and

(ii) when submitting the application—

(I) describe any changes pursued by the administering entity in response to comments received during the comment period; and

(II) include a written response to each comment received during the comment period.

Effective date.	(3) PLANNING GRANTS.— (A) IN GENERAL.—Beginning in the first fiscal year that begins after the date of enactment of this Act, the Assistant Secretary shall, in accordance with the requirements of this paragraph, award planning grants to States for the purpose of developing the State Digital Equity Plans of those States under this subsection.
Deadlines. Determination.	(B) ELIGIBILITY.—In order to be awarded a planning grant under this paragraph, a State— (i) shall submit to the Assistant Secretary an application under subparagraph (C); and (ii) may not have been awarded, at any time, a planning grant under this paragraph. (C) APPLICATION.—A State that wishes to be awarded a planning grant under this paragraph shall, not later than 60 days after the date on which the notice of funding availability with respect to the grant is released, submit to the Assistant Secretary an application, in a format to be determined by the Assistant Secretary, that contains the following materials:
Certification.	(i) A description of the entity selected to serve as the administering entity for the State, as described in subsection (b). (ii) A certification from the State that, not later than 1 year after the date on which the Assistant Secretary awards the planning grant to the State, the administering entity for that State shall develop a State Digital Equity Plan under this subsection, which—
Compliance.	(I) the administering entity shall submit to the Assistant Secretary; and (II) shall comply with the requirements of this subsection, including the requirement under paragraph (2)(B). (iii) The assurances required under subsection (e).
Determination.	(D) AWARDS.— (i) AMOUNT OF GRANT.—A planning grant awarded to an eligible State under this paragraph shall be determined according to the formula under subsection (d)(3)(A)(i).
Extension.	(ii) DURATION.— (I) IN GENERAL.—Except as provided in subclause (II), with respect to a planning grant awarded to an eligible State under this paragraph, the State shall expend the grant funds during the 1-year period beginning on the date on which the State is awarded the grant funds. (II) EXCEPTION.—The Assistant Secretary may grant an extension of not longer than 180 days with respect to the requirement under subclause (I). (iii) CHALLENGE MECHANISM.—The Assistant Secretary shall ensure that any eligible State to which a planning grant is awarded under this paragraph may appeal or otherwise challenge in a timely fashion the amount of the grant awarded to the State, as determined under clause (i).

(E) USE OF FUNDS.—An eligible State to which a planning grant is awarded under this paragraph shall, through the administering entity for that State, use the grant funds only for the following purposes:

(i) To develop the State Digital Equity Plan of the State under this subsection.

(ii)(I) Subject to subclause (II), to make subgrants to any of the entities described in paragraph (1)(D) to assist in the development of the State Digital Equity Plan of the State under this subsection.

(II) If the administering entity for a State makes a subgrant described in subclause (I), the administering entity shall, with respect to the subgrant, provide to the State the assurances required under subsection (e).

(d) STATE CAPACITY GRANTS.—

Deadline.

(1) IN GENERAL.—Beginning not later than 2 years after the date on which the Assistant Secretary begins awarding planning grants under subsection (c)(3), the Assistant Secretary shall each year award grants to eligible States to support—

(A) the implementation of the State Digital Equity Plans of those States; and

(B) digital inclusion activities in those States.

(2) APPLICATION.—A State that wishes to be awarded a grant under this subsection shall, not later than 60 days after the date on which the notice of funding availability with respect to the grant is released, submit to the Assistant Secretary an application, in a format to be determined by the Assistant Secretary, that contains the following materials:

(A) A description of the entity selected to serve as the administering entity for the State, as described in subsection (b).

(B) The State Digital Equity Plan of that State, as described in subsection (c).

(C) A certification that the State, acting through the administering entity for the State, shall—

Certification.

(i) implement the State Digital Equity Plan of the State; and

(ii) make grants in a manner that is consistent with the aims of the Plan described in clause (i).

(D) The assurances required under subsection (e).

(E) In the case of a State to which the Assistant Secretary has previously awarded a grant under this subsection, any amendments to the State Digital Equity Plan of that State, as compared with the State Digital Equity Plan of the State previously submitted.

(3) AWARDS.—

(A) AMOUNT OF GRANT.—

(i) FORMULA.—Subject to clauses (ii), (iii), and (iv), the Assistant Secretary shall calculate the amount of a grant awarded to an eligible State under this subsection in accordance with the following criteria, using the best available data for all States for the fiscal year in which the grant is awarded:

Criteria.

(I) 50 percent of the total grant amount shall be based on the population of the eligible State

in proportion to the total population of all eligible States.

(II) 25 percent of the total grant amount shall be based on the number of individuals in the eligible State who are members of covered populations in proportion to the total number of individuals in all eligible States who are members of covered populations.

Determinations.

(III) 25 percent of the total grant amount shall be based on the comparative lack of availability and adoption of broadband in the eligible State in proportion to the lack of availability and adoption of broadband of all eligible States, which shall be determined according to data collected from—

(aa) the annual inquiry of the Federal Communications Commission conducted under section 706(b) of the Telecommunications Act of 1996 (47 U.S.C. 1302(b));

(bb) the American Community Survey or, if necessary, other data collected by the Bureau of the Census;

(cc) the NTIA Internet Use Survey, which is administered as the Computer and Internet Use Supplement to the Current Population Survey of the Bureau of the Census; and

(dd) any other source that the Assistant Secretary, after appropriate notice and opportunity for public comment, determines to be appropriate.

(ii) MINIMUM AWARD.—The amount of a grant awarded to an eligible State under this subsection in a fiscal year shall be not less than 0.5 percent of the total amount made available to award grants to eligible States for that fiscal year.

Distribution.

(iii) ADDITIONAL AMOUNTS.—If, after awarding planning grants to States under subsection (c)(3) and capacity grants to eligible States under this subsection in a fiscal year, there are amounts remaining to carry out this section, the Assistant Secretary shall distribute those amounts—

(I) to eligible States to which the Assistant Secretary has awarded grants under this subsection for that fiscal year; and

(II) in accordance with the formula described in clause (i).

Puerto Rico.

(iv) DATA UNAVAILABLE.—If, in a fiscal year, the Commonwealth of Puerto Rico (referred to in this clause as “Puerto Rico”) is an eligible State and specific data for Puerto Rico is unavailable for a factor described in subclause (I), (II), or (II) of clause (i), the Assistant Secretary shall use the median data point with respect to that factor among all eligible States and assign it to Puerto Rico for the purposes of making any calculation under that clause for that fiscal year.

Effective date.

(B) DURATION.—With respect to a grant awarded to an eligible State under this subsection, the eligible State shall expend the grant funds during the 5-year period

beginning on the date on which the eligible State is awarded the grant funds.

(C) CHALLENGE MECHANISM.—The Assistant Secretary shall ensure that any eligible State to which a grant is awarded under this subsection may appeal or otherwise challenge in a timely fashion the amount of the grant awarded to the State, as determined under subparagraph (A).

(D) USE OF FUNDS.—The administering entity for an eligible State to which a grant is awarded under this subsection shall use the grant amounts for the following purposes:

(i)(I) Subject to subclause (II), to update or maintain the State Digital Equity Plan of the State.

(II) An administering entity for an eligible State to which a grant is awarded under this subsection may use not more than 20 percent of the amount of the grant for the purpose described in subclause (I).

(ii) To implement the State Digital Equity Plan of the State.

(iii)(I) Subject to subclause (II), to award a grant to any entity that is described in section 60305(b) and is located in the eligible State in order to—

(aa) assist in the implementation of the State Digital Equity Plan of the State;

(bb) pursue digital inclusion activities in the State consistent with the State Digital Equity Plan of the State; and

(cc) report to the State regarding the digital inclusion activities of the entity.

(II) Before an administering entity for an eligible State may award a grant under subclause (I), the administering entity shall require the entity to which the grant is awarded to certify that—

(aa) the entity shall carry out the activities required under items (aa), (bb), and (cc) of that subclause;

(bb) the receipt of the grant shall not result in unjust enrichment of the entity; and

(cc) the entity shall cooperate with any evaluation—

(AA) of any program that relates to a grant awarded to the entity; and

(BB) that is carried out by or for the administering entity, the Assistant Secretary, or another Federal official.

(iv)(I) Subject to subclause (II), to evaluate the efficacy of the efforts funded by grants made under clause (iii).

(II) An administering entity for an eligible State to which a grant is awarded under this subsection may use not more than 5 percent of the amount of the grant for a purpose described in subclause (I).

(v)(I) Subject to subclause (II), for the administrative costs incurred in carrying out the activities described in clauses (i) through (iv).

Requirement.
Certification.

Evaluation.

Evaluation.

(II) An administering entity for an eligible State to which a grant is awarded under this subsection may use not more than 3 percent of the amount of the grant for a purpose described in subclause (I).

(e) ASSURANCES.—When applying for a grant under this section, a State shall include in the application for that grant assurances that—

(1) if an entity described in section 60305(b) is awarded grant funds under this section (referred to in this subsection as a “covered recipient”), provide that—

(A) the covered recipient shall use the grant funds in accordance with any applicable statute, regulation, and application procedure;

(B) the administering entity for that State shall adopt and use proper methods of administering any grant that the covered recipient is awarded, including by—

(i) enforcing any obligation imposed under law on any agency, institution, organization, or other entity that is responsible for carrying out the program to which the grant relates;

(ii) correcting any deficiency in the operation of a program to which the grant relates, as identified through an audit or another monitoring or evaluation procedure; and

Procedures.

(iii) adopting written procedures for the receipt and resolution of complaints alleging a violation of law with respect to a program to which the grant relates; and

Evaluation.

(C) the administering entity for that State shall cooperate in carrying out any evaluation—

(i) of any program that relates to a grant awarded to the covered recipient; and

(ii) that is carried out by or for the Assistant Secretary or another Federal official;

(2) the administering entity for that State shall—

(A) use fiscal control and fund accounting procedures that ensure the proper disbursement of, and accounting for, any Federal funds that the State is awarded under this section;

Reports.

(B) submit to the Assistant Secretary any reports that may be necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under this section;

Records.
Determination.

(C) maintain any records and provide any information to the Assistant Secretary, including those records, that the Assistant Secretary determines is necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under this section; and

Public comment.

(D) with respect to any significant proposed change or amendment to the State Digital Equity Plan for the State, make the change or amendment available for public comment in accordance with subsection (c)(2); and

Compliance.

(3) the State, before submitting to the Assistant Secretary the State Digital Equity Plan of the State, has complied with the requirements of subsection (c)(2).

(f) TERMINATION OF GRANT.—

(1) IN GENERAL.—The Assistant Secretary shall terminate a grant awarded to an eligible State under this section if, after notice to the State and opportunity for a hearing, the Assistant Secretary—

(A) presents to the State a rationale and supporting information that clearly demonstrates that—

(i) the grant funds are not contributing to the development or execution of the State Digital Equity Plan of the State, as applicable; and

(ii) the State is not upholding assurances made by the State to the Assistant Secretary under subsection (e); and

(B) determines that the grant is no longer necessary to achieve the original purpose for which Assistant Secretary awarded the grant. Determination.

(2) REDISTRIBUTION.—If the Assistant Secretary, in a fiscal year, terminates a grant under paragraph (1), the Assistant Secretary shall redistribute the unspent grant amounts—

(A) to eligible States to which the Assistant Secretary has awarded grants under subsection (d) for that fiscal year; and

(B) in accordance with the formula described in subsection (d)(3)(A)(i).

(g) REPORTING AND INFORMATION REQUIREMENTS; INTERNET DISCLOSURE.—The Assistant Secretary—

(1) shall—

(A) require any entity to which a grant, including a subgrant, is awarded under this section to publicly report, for each year during the period described in subsection (c)(3)(D)(ii) or (d)(3)(B), as applicable, with respect to the grant, and in a format specified by the Assistant Secretary, on— Public information.

(i) the use of that grant by the entity;

(ii) the progress of the entity towards fulfilling the objectives for which the grant was awarded; and

(iii) the implementation of the State Digital Equity Plan of the State;

(B) establish appropriate mechanisms to ensure that each eligible State to which a grant is awarded under this section—

(i) uses the grant amounts in an appropriate manner; and

(ii) complies with all terms with respect to the use of the grant amounts; and Compliance.

(C) create and maintain a fully searchable database, which shall be accessible on the internet at no cost to the public, that contains, at a minimum— Database. Web posting.

(i) the application of each State that has applied for a grant under this section;

(ii) the status of each application described in clause (i);

(iii) each report submitted by an entity under subparagraph (A); Reports.

(iv) a record of public comments made regarding the State Digital Equity Plan of a State, as well as any written responses to or actions taken as a result of those comments; and Record.

- (v) any other information that is sufficient to allow the public to understand and monitor grants awarded under this section; and
- (2) may establish additional reporting and information requirements for any recipient of a grant under this section.
- (h) **SUPPLEMENT NOT SUPPLANT.**—A grant or subgrant awarded under this section shall supplement, not supplant, other Federal or State funds that have been made available to carry out activities described in this section.
- Contracts. (i) **SET ASIDES.**—From amounts made available in a fiscal year to carry out the Program, the Assistant Secretary shall reserve—
- (1) not more than 5 percent for the implementation and administration of the Program, which shall include—
- (A) providing technical support and assistance, including ensuring consistency in data reporting;
- (B) providing assistance to—
- (i) States, or administering entities for States, to prepare the applications of those States; and
- (ii) administering entities with respect to grants awarded under this section; and
- (C) developing the report required under section 60306(a);
- Native Americans. (2) not less than 5 percent to award grants to, or enter into contracts or cooperative agreements with, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations to allow those tribes, entities, and organizations to carry out the activities described in this section; and
- Territories. (3) not less than 1 percent to award grants to, or enter into contracts or cooperative agreements with, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State to enable those entities to carry out the activities described in this section.
- (j) **RULES.**—The Assistant Secretary may prescribe such rules as may be necessary to carry out this section.
- (k) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated—
- (1) \$60,000,000 for the award of grants under subsection (c)(3), which shall remain available until expended;
- (2) for the award of grants under subsection (d)—
- (A) \$240,000,000 for fiscal year 2022; and
- (B) \$300,000,000 for each of fiscal years 2023 through 2026; and
- (3) such sums as may be necessary to carry out this section for each fiscal year after the end of the 5-fiscal year period described in paragraph (2).
- 47 USC 1724. **SEC. 60305. DIGITAL EQUITY COMPETITIVE GRANT PROGRAM.**
- Deadline. (a) **ESTABLISHMENT.**—
- (1) **IN GENERAL.**—Not later than 30 days after the date on which the Assistant Secretary begins awarding grants under section 60304(d), and not before that date, the Assistant Secretary shall establish in the Department of Commerce the Digital Equity Competitive Grant Program (referred to in this section as the “Program”), the purpose of which is to award grants to support efforts to achieve digital equity, promote

digital inclusion activities, and spur greater adoption of broadband among covered populations.

(2) CONSULTATION; NO CONFLICT.—In establishing the Program under paragraph (1), the Assistant Secretary—

(A) may consult a State with respect to—

(i) the identification of groups described in subparagraphs (A) through (H) of section 60302(8) located in that State; and

(ii) the allocation of grant funds within that State for projects in or affecting the State; and

(B) shall—

(i) consult with—

(I) the Secretary of Agriculture;

(II) the Secretary of Housing and Urban Development;

(III) the Secretary of Education;

(IV) the Secretary of Labor;

(V) the Secretary of Health and Human Services;

(VI) the Secretary of Veterans Affairs;

(VII) the Secretary of the Interior;

(VIII) the Federal Communications Commission;

(IX) the Federal Trade Commission;

(X) the Director of the Institute of Museum and Library Services;

(XI) the Administrator of the Small Business Administration;

(XII) the Federal Co-Chair of the Appalachian Regional Commission; and

(XIII) the head of any other agency that the Assistant Secretary determines to be appropriate; and

Determination.

(ii) ensure that the Program complements and enhances, and does not conflict with, other Federal broadband initiatives and programs.

(b) ELIGIBILITY.—The Assistant Secretary may award a grant under the Program to any of the following entities if the entity is not serving, and has not served, as the administering entity for a State under section 60304(b):

(1) A political subdivision, agency, or instrumentality of a State, including an agency of a State that is responsible for administering or supervising adult education and literacy activities, or for providing public housing, in the State.

(2) An Indian Tribe, an Alaska Native entity, or a Native Hawaiian organization.

(3) A foundation, corporation, institution, or association that is—

(A) a not-for-profit entity; and

(B) not a school.

(4) A community anchor institution.

(5) A local educational agency.

(6) An entity that carries out a workforce development program.

(7) A partnership between any of the entities described in paragraphs (1) through (6).

(8) A partnership between—

(A) an entity described in any of paragraphs (1) through (6); and

(B) an entity that—

(i) the Assistant Secretary, by rule, determines to be in the public interest; and

(ii) is not a school.

(c) APPLICATION.—An entity that wishes to be awarded a grant under the Program shall submit to the Assistant Secretary an application—

(1) at such time, in such form, and containing such information as the Assistant Secretary may require; and

(2) that—

(A) provides a detailed explanation of how the entity will use any grant amounts awarded under the Program to carry out the purposes of the Program in an efficient and expeditious manner;

(B) identifies the period in which the applicant will expend the grant funds awarded under the Program;

(C) includes—

(i) a justification for the amount of the grant that the applicant is requesting; and

(ii) for each fiscal year in which the applicant will expend the grant funds, a budget for the activities that the grant funds will support;

(D) demonstrates to the satisfaction of the Assistant Secretary that the entity—

(i) is capable of carrying out—

(I) the project or function to which the application relates; and

(II) the activities described in subsection (h)—

(aa) in a competent manner; and

(bb) in compliance with all applicable Federal, State, and local laws; and

(ii) if the applicant is an entity described in subsection (b)(1), shall appropriate or otherwise unconditionally obligate from non-Federal sources funds that are necessary to meet the requirements of subsection (e);

(E) discloses to the Assistant Secretary the source and amount of other Federal, State, or outside funding sources from which the entity receives, or has applied for, funding for activities or projects to which the application relates; and

(F) provides—

(i) the assurances that are required under subsection (f); and

(ii) an assurance that the entity shall follow such additional procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

(d) AWARD OF GRANTS.—

(1) FACTORS CONSIDERED IN AWARD OF GRANTS.—In deciding whether to award a grant under the Program, the Assistant Secretary shall, to the extent practicable, consider—

(A) whether an application shall, if approved—

(i) increase internet access and the adoption of broadband among covered populations to be served by the applicant; and

(ii) not result in unjust enrichment;

(B) the comparative geographic diversity of the application in relation to other eligible applications; and

(C) the extent to which an application may duplicate or conflict with another program.

(2) USE OF FUNDS.—

(A) IN GENERAL.—In addition to the activities required under subparagraph (B), an entity to which the Assistant Secretary awards a grant under the Program shall use the grant amounts to support not less than 1 of the following activities:

(i) To develop and implement digital inclusion activities that benefit covered populations.

(ii) To facilitate the adoption of broadband by covered populations in order to provide educational and employment opportunities to those populations.

(iii) To implement, consistent with the purposes of this title—

(I) training programs for covered populations that cover basic, advanced, and applied skills; or

(II) other workforce development programs.

(iv) To make available equipment, instrumentation, networking capability, hardware and software, or digital network technology for broadband services to covered populations at low or no cost.

(v) To construct, upgrade, expend, or operate new or existing public access computing centers for covered populations through community anchor institutions.

(vi) To undertake any other project and activity that the Assistant Secretary finds to be consistent with the purposes for which the Program is established.

(B) EVALUATION.—

(i) IN GENERAL.—An entity to which the Assistant Secretary awards a grant under the Program shall use not more than 10 percent of the grant amounts to measure and evaluate the activities supported with the grant amounts.

(ii) SUBMISSION TO ASSISTANT SECRETARY.—An entity to which the Assistant Secretary awards a grant under the Program shall submit to the Assistant Secretary each measurement and evaluation performed under clause (i)—

Deadlines.

(I) in a manner specified by the Assistant Secretary;

(II) not later than 15 months after the date on which the entity is awarded the grant amounts; and

(III) annually after the submission described in subclause (II) for any year in which the entity expends grant amounts.

(C) ADMINISTRATIVE COSTS.—An entity to which the Assistant Secretary awards a grant under the Program may use not more than 10 percent of the amount of the

	grant for administrative costs in carrying out any of the activities described in subparagraph (A).
Effective dates.	(D) TIME LIMITATIONS.—With respect to a grant awarded to an entity under the Program, the entity— <ul style="list-style-type: none"> (i) except as provided in clause (ii), shall expend the grant amounts during the 4-year period beginning on the date on which the entity is awarded the grant amounts; and (ii) during the 1-year period beginning on the date that is 4 years after the date on which the entity is awarded the grant amounts, may continue to measure and evaluate the activities supported with the grant amounts, as required under subparagraph (B).
	(e) FEDERAL SHARE.— <ul style="list-style-type: none"> (1) IN GENERAL.—Except as provided in paragraph (2), the Federal share of any project for which the Assistant Secretary awards a grant under the Program may not exceed 90 percent.
Waiver.	(2) EXCEPTION.—The Assistant Secretary may grant a waiver with respect to the limitation on the Federal share of a project described in paragraph (1) if— <ul style="list-style-type: none"> (A) the applicant with respect to the project petitions the Assistant Secretary for the waiver; and
Petitions.	(B) the Assistant Secretary determines that the petition described in subparagraph (A) demonstrates financial need.
Determination.	(f) ASSURANCES.—When applying for a grant under this section, an entity shall include in the application for that grant assurances that the entity shall— <ul style="list-style-type: none"> (1) use any grant funds that the entity is awarded— <ul style="list-style-type: none"> (A) in accordance with any applicable statute, regulation, and application procedure; and (B) to the extent required under applicable law; (2) adopt and use proper methods of administering any grant that the entity is awarded, including by— <ul style="list-style-type: none"> (A) enforcing any obligation imposed under law on any agency, institution, organization, or other entity that is responsible for carrying out a program to which the grant relates; (B) correcting any deficiency in the operation of a program to which the grant relates, as identified through an audit or another monitoring or evaluation procedure; and
Procedures.	(C) adopting written procedures for the receipt and resolution of complaints alleging a violation of law with respect to a program to which the grant relates;
	(3) cooperate with respect to any evaluation— <ul style="list-style-type: none"> (A) of any program that relates to a grant awarded to the entity; and (B) that is carried out by or for the Assistant Secretary or another Federal official;
	(4) use fiscal control and fund accounting procedures that ensure the proper disbursement of, and accounting for, any Federal funds that the entity is awarded under the Program;
Reports.	(5) submit to the Assistant Secretary any reports that may be necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under the Program; and

(6) maintain any records and provide any information to the Assistant Secretary, including those records, that the Assistant Secretary determines is necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under the Program.

Records.
Determination.

(g) DEOBLIGATION OR TERMINATION OF GRANT.—In addition to other authority under applicable law, the Assistant Secretary may—

(1) deobligate or terminate a grant awarded to an entity under this section if, after notice to the entity and opportunity for a hearing, the Assistant Secretary—

(A) presents to the entity a rationale and supporting information that clearly demonstrates that—

(i) the grant funds are not being used in a manner that is consistent with the application with respect to the grant submitted by the entity under subsection (c); and

(ii) the entity is not upholding assurances made by the entity to the Assistant Secretary under subsection (f); and

(B) determines that the grant is no longer necessary to achieve the original purpose for which Assistant Secretary awarded the grant; and

Determination.

(2) with respect to any grant funds that the Assistant Secretary deobligates or terminates under paragraph (1), competitively award the grant funds to another applicant, consistent with the requirements of this section.

(h) REPORTING AND INFORMATION REQUIREMENTS; INTERNET DISCLOSURE.—The Assistant Secretary—

(1) shall—

(A) require any entity to which the Assistant Secretary awards a grant under the Program to, for each year during the period described in subsection (d)(2)(D) with respect to the grant, submit to the Assistant Secretary a report, in a format specified by the Assistant Secretary, regarding—

(i) the amount of the grant;

(ii) the use by the entity of the grant amounts; and

(iii) the progress of the entity towards fulfilling the objectives for which the grant was awarded;

(B) establish mechanisms to ensure appropriate use of, and compliance with respect to all terms regarding, grant funds awarded under the Program;

(C) create and maintain a fully searchable database, which shall be accessible on the internet at no cost to the public, that contains, at a minimum—

Database.
Web posting.

(i) a list of each entity that has applied for a grant under the Program;

List.


(ii) a description of each application described in clause (i), including the proposed purpose of each grant described in that clause;

(iii) the status of each application described in clause (i), including whether the Assistant Secretary has awarded a grant with respect to the application and, if so, the amount of the grant;

(iv) each report submitted by an entity under subparagraph (A); and

Reports.

Public information.	<p>(v) any other information that is sufficient to allow the public to understand and monitor grants awarded under the Program; and</p> <p>(D) ensure that any entity with respect to which an award is deobligated or terminated under subsection (g) may, in a timely manner, appeal or otherwise challenge that deobligation or termination, as applicable; and</p> <p>(2) may establish additional reporting and information requirements for any recipient of a grant under the Program.</p> <p>(i) SUPPLEMENT NOT SUPPLANT.—A grant awarded to an entity under the Program shall supplement, not supplant, other Federal or State funds that have been made available to the entity to carry out activities described in this section.</p>
Contracts.	<p>(j) SET ASIDES.—From amounts made available in a fiscal year to carry out the Program, the Assistant Secretary shall reserve—</p> <p>(1) 5 percent for the implementation and administration of the Program, which shall include—</p> <p>(A) providing technical support and assistance, including ensuring consistency in data reporting;</p> <p>(B) providing assistance to entities to prepare the applications of those entities with respect to grants awarded under this section;</p> <p>(C) developing the report required under section 60306(a); and</p> <p>(D) conducting outreach to entities that may be eligible to be awarded a grant under the Program regarding opportunities to apply for such a grant;</p>
Native Americans.	<p>(2) 5 percent to award grants to, or enter into contracts or cooperative agreements with, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations to allow those tribes, entities, and organizations to carry out the activities described in this section; and</p>
Territories.	<p>(3) 1 percent to award grants to, or enter into contracts or cooperative agreements with, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State to enable those entities to carry out the activities described in this section.</p>
Time periods.	<p>(k) RULES.—The Assistant Secretary may prescribe such rules as may be necessary to carry out this section.</p> <p>(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—</p> <p>(1) \$250,000,000 for each of the first 5 fiscal years in which funds are made available to carry out this section; and</p> <p>(2) such sums as may be necessary for each fiscal year after the end of the 5-fiscal year period described in paragraph (1).</p>
47 USC 1725.	<p>SEC. 60306. POLICY RESEARCH, DATA COLLECTION, ANALYSIS AND MODELING, EVALUATION, AND DISSEMINATION.</p> <p>(a) REPORTING REQUIREMENTS.—</p> <p>(1) IN GENERAL.—Not later than 1 year after the date on which the Assistant Secretary begins awarding grants under section 60304(d)(1), and annually thereafter, the Assistant Secretary shall—</p>



Frequently Asked Questions and Answers Version 10

Broadband, Equity, Access, and
Deployment (BEAD) Program



National Telecommunications and Information Administration
1401 Constitution Ave., NW Washington, DC 20230

CONTENTS

1.	NOFO Overview	4
2.	BEAD Restructuring Policy Notice	18
3.	Subgrantee Selection: Benefit of the Bargain.....	24
4.	Cost Sharing and Matching	30
	Appendix A: New Questions and Answers in V10	37

NOTE

This document is intended solely to assist recipients in better understanding the Broadband Equity, Access, and Deployment (BEAD) Program and the requirements set forth in the Infrastructure Investment and Jobs Act, [Notice of Funding Opportunity \(NOFO\)](#), as modified by the [BEAD Restructuring Policy Notice \(RPN\)](#). This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, the terms and conditions of the award, or the specific application requirements set forth in the NOFO not modified by the RPN. In all cases, statutory and regulatory mandates, the terms and conditions of the award, and follow-on policies and guidance, shall prevail over any inconsistencies contained in this document.

Please review the questions and answers carefully as the release of the RPN has impacted previously published answers. Versions of the BEAD Frequently Asked Questions and Answers published prior to the release of the RPN are no longer valid.

1. *NOFO Overview*

1.1 How does the BEAD program define an “unserved” location?

An unserved location is defined as a broadband-serviceable location that the Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with - (i) a speed of not less than 25 Mbps for downloads; and (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds (NOFO Section I.C.dd).

An unserved service project is defined as a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations. An “Unserved Service Project” may be as small as a single unserved broadband serviceable location (NOFO Section I.C. ee).

1.2 How does the BEAD program define an “underserved” location?

An underserved location is defined as a broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with - (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds (NOFO Section I.C.bb).

An underserved service project is defined as a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations or underserved locations. An “Underserved Service Project” may be as small as a single underserved broadband-serviceable location (NOFO Section I.C.cc).

1.3 How does IIJA define “Community Anchor Institution” (CAI)?

The term "community anchor institution" means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

1.4 Which Community Anchor Institutions are eligible to receive broadband access through the BEAD Program?

A Community Anchor Institution that lacks access to Gigabit-level broadband service is an eligible service location under the BEAD Program.

1.5 Are BEAD funds only restricted for use on last-mile broadband deployment? May funds be used for middle mile infrastructure?

As noted in Section IV.B.5.b. of the NOFO an “Unserved Service Project” or “Underserved Service Project” may include Middle Mile Infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing service to an unserved location, underserved location, or eligible CAI.

1.6 Is an Eligible Entity able to change the administering entity for the BEAD program after initial designation in the LOI?

Yes. An Eligible Entity may contact its Federal Program Officer or other designated program contact to change the designated administering entity or the point-of-contact. Eligible Entities must provide updates to Federal Program Officers of any personnel changes that result in changes to the designated point-of-contact.

1.7 How long do Eligible Entities have to spend Initial Planning Funds?

The period of performance for the planning grants will be 5 years from the date of award. Eligible Entities can spend initial planning funds over the 5-year period.

1.8 Are subgrantees required to retain ownership of assets that they build, or can ownership be transferred in exchange for arrangements like right of way?

The costs related to the assets are only allowed to be charged to the grant if they are necessary and reasonable for the performance of the BEAD award. As these assets would not be used in the performance of the BEAD award, they are not necessary and reasonable for the purpose of this grant and are thus not allowed (see 2 CFR 200.403(a)). The costs related to a plan to build grant-funded assets for eventual exchange, for example exchanging asset ownership for right of way, are not allowable. If a subgrantee sought to obtain a right of way using NTIA grant funds, and the costs related to obtaining that right of way were determined to be necessary and reasonable for the purpose of the grant, those costs would be an allowable use of NTIA grant funds.

In the event that original or replacement grant-funded equipment is no longer needed for the original project or program, the Eligible Entity and subrecipients must dispose of property in accordance with 2 CFR 200.313.

1.9 Will subgrantees be allowed to deploy other offerings over a Funded Network?

Yes, subgrantees may use BEAD-funded facilities to provide other offerings, such as telephone and video, over a Funded Network. It is important to note that income generated by a project over the period of performance is subject to project income regulations outlined in 2 CFR § 200.307.

1.10 Is it permissible for broadband providers to use BEAD funding to serve unserved locations within a different provider's service area?

Yes, if those areas are unserved or underserved locations.

1.11 Is the 25% non-federal match required for BEAD Planning funds?

A non-federal match is not required for Initial Planning Funds.

1.12 What is the 2% statutory cap for the BEAD program?

The BEAD program has a **cap of 2% of project funds only for costs related to the administration of the Eligible Entity's grant.** Programmatic costs and administrative costs that are not for the administration of the Eligible Entity's grants do not count towards this 2% cap. The 2% statutory cap includes any subcontracts or subawards made to assist in the administration of the Eligible Entities grant. The 2% statutory cap on costs related to the administration of the Eligible Entity's grant administrative costs does not apply to funds allocated during the Initial Planning Funds phase of the BEAD Program (see BEAD NOFO section IV.B.2). Otherwise, the 2% statutory cap applies to all other BEAD Program funding.

1.13 Do all administrative costs count towards the 2% admin cap?

No - Only those costs that are related to the administration of the Eligible Entity's grant count towards the 2% cap. Additionally, the 2% statutory cap does not apply to funds allocated during the Initial Planning Funds phase of the BEAD Program (see BEAD NOFO section IV.B.2).

In making a determination of whether an expense falls within the 2% caps, consider the following:

- **The 2% cap** may include expenses that are both indirect and direct administrative costs so long as those expenses are related to the administration of the Eligible Entity's grant.
- **Indirect costs** that are related to the administration of the Eligible Entity's grant count toward the 2% ceiling. By their nature, indirect costs are those recipient costs that are not directly associated with the recipient's execution of its grant-funded project, but that are necessary to the operation of the organization and the performance of its programs. A grantee should describe the types of indirect costs that it will charge to the grant. A grantee can never double-charge a cost as both a direct and an indirect administrative cost. The budget provided by the Eligible Entity must explain how they will account for direct and indirect personnel costs charged to the grant with the 2% administrative cost ceiling.
- **Examples of personnel expenses** relating to administration of the grant may include costs attributable to: accounting, auditing, contracting, budgeting, and general legal services.
- **Examples of expenses** include costs attributable to: accounting, auditing, contracting, budgeting, and general legal services; facility occupancy costs, e.g., rent, utilities, insurance, taxes, and maintenance; general liability insurance that protects the organization (not directly related to a program); depreciation on buildings and equipment; general office supplies; general and administrative salaries and wages; subgrants administration like staffing and/or contract support; and training for staff in relation to subgranting (e.g., federal grants compliance training)

1.14 Does the 2% statutory cap on costs related to grant administration apply to all BEAD funds?

No, the 2% statutory cap on costs only applies to the administration of an Eligible Entity's grant (see BEAD NOFO section IV.B.4). The 2% statutory cap does not apply to funds allocated during the Initial Planning Funds phase of the BEAD Program (see BEAD NOFO section IV.B.2).

1.15 How should applicants track their 2% administrative costs?

Recipients are required to maintain financial management systems that include records documenting compliance with Federal statutes, regulations and terms and conditions of Federal award, that is sufficient to permit the preparation of reports; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

As such, recipients will be required to track and report the costs associated with this requirement. For example, if any position funded by grant funds will incur direct administrative charges, you must note which position will be doing these activities, what the activities are, and how much time will be spent on these activities.

Additional information about how to report these costs and the frequency of the reporting will be provided at a future date and incorporated into the specific award conditions for the award during the initial-phase of the award (not in the planning phase).

Below are some strategies that NTIA recommends to help applicants track costs related to the administration of the grant:

Identify the 2% cap amount first to understand your budget for costs related to the administration of the Eligible Entity's grant:

- Track when direct administrative costs are incurred and retain documentation;
- Identify key personnel associated with administering the program. Record their salaries and fringe benefits;
- Report operating expenses of facilities required to administer the program;
- Check spent administrative costs against the 2% cap estimate on a monthly basis;
- Contact FPO if you have any questions about costs that may qualify as administrative costs;
- Create an internal fund code specific to administrative charges within your BEAD funding codes in your financial system and a more specific, separate

code of administrative charges related to the administration of the Eligible Entity's grant, and;

- This way, employees can charge their admin time directly to the administrative charge code and make it easier for you to track personnel administrative charges.
- Ensure your organization has a time and attendance policy that addresses tracking of administrative charges.

1.16 Are subgrantees subject to the 2% administrative cap? How does this affect the administrative cap for Eligible Entities?

Yes- subgrantees are subject to the 2% administrative cap, however the administrative cap only applies to administrative expenses related to administration of the Eligible Entity's grant. The administration cap requirement in section 60102(d)(2)(B) applies to the Eligible Entities and all subcontractors and subgrantees. Under 2 CFR 200.101 and DOC ST&Cs F.03, the terms and conditions of Federal awards generally flow down to subcontracts and subawards. So, this requirement will flow down to subrecipients.

Regarding the scope of this requirement, Section 60102(d)(2)(B) states that "An eligible entity may use not more than 2 percent of the grant amounts made available to the eligible entity under subsection (e) for expenses relating (directly or indirectly) to administration of the grant" (emphasis added).

The cap applies only to the expenses relating to the administration of the Eligible Entity's BEAD grant. If an Eligible Entity enters a subcontract or subaward for a subcontractor or subgrantee to undertake administrative activities related to the administration of the Eligible Entity's BEAD grant, those expenses would be included within the 2% cap. However, the cap does not apply to a subgrantee's administrative expenses to administer its subaward.

While the statutory requirement will apply to all grants and subgrants, the scope of the statutory requirement (and the 2% cap) is somewhat narrow. The majority of subgrants for broadband deployment will not be associated with the administrative

expenses related to the administration of the Eligible Entity's grant, and therefore will not fall within the 2% administrative cap.

1.17 What is a Direct Administrative Cost and what is an Indirect Administrative Cost?

Direct Administrative Costs are costs associated with specific work for the effective administration of the grant, and they must be specific to the program. Examples include salaries and fringe benefits for grant administration personnel, office supplies, postage, program coordination and project execution, and equipment required to administer the program.

Indirect Administrative Costs are costs incurred by the organization during the execution of the project, but not clearly identifiable to the project. Examples include depreciation of facilities, facility occupancy costs, general liability insurance, general legal services, taxes, rent and utilities, indirect salaries, and accounting fees.

1.18 Are facilities constructed using non-BEAD funding subject to BEAD network requirements?

No, facilities constructed using non-BEAD funding are not subject to BEAD network requirements unless those facilities are used to meet federal funding match requirements. If facilities count toward matching funds, they are subject to the same network requirements as those directly funded by BEAD projects. Accordingly, Eligible Entities should ensure all potential subgrantees are specific and precise in their proposals for funding usage and potential federal funding match opportunities.

1.19 Can U.S. Treasury Coronavirus Capital Projects Fund (CPF) grants, provided under the authority of the American Rescue Plan Act of 2021, be used for BEAD matching funds?

Yes, CPF grants may be used as matching funds for a BEAD broadband network infrastructure deployment subgrant, subject to all relevant match rules. Further, assets purchased with previously disbursed CPF grant funds may be used as an in-kind matching contribution for the BEAD program if the contribution is allowable as part of a BEAD broadband network infrastructure deployment project and meets all in-kind match requirements. As with any potential match contribution, Eligible Entities that want to contribute CPF funds as match for a BEAD broadband network infrastructure deployment project must use those funds in a way that complies with all requirements of both programs, as well as regulations regarding in-kind matches. Authorities that Eligible Entities should review regarding allowability of match include 47 U.S.C. 1702, the BEAD NOFO, the terms and conditions incorporated into their specific BEAD award, and 2 C.F.R. § 200.306.

1.20 Can Eligible Entities use grant funding to leverage, augment, upgrade, or modify existing infrastructure owned by their potential partners, subgrantees, political subdivisions, or associated federally recognized Tribes to meet BEAD goals (i.e. adding fiber lines to an existing electrical networks)?

Yes, this may be an allowable use of grant funds if leveraging the existing infrastructure aids or otherwise helps the entity achieve the goals of the BEAD Program. Use of such existing infrastructure could also potentially count towards matching funds requirements. Applicants are encouraged to review sections III.B and V.H.2 of the NOFO, FAQs in the “Cost Sharing and Matching Guidelines” section, and 2 CFR § 200.306 CFR for further information on matching funds.

1.21 Will NTIA grant period of performance extensions? How will these be granted?

Yes, under certain circumstances. NTIA may grant extensions for both the Eligible Entity and subgrantees under the following circumstances:

Section II.B.1. of the NOFO states that an Eligible Entity may extend the four-year network deployment deadline for subgrantees by not more than one year if:

1. the subgrantee has a specific plan for use of the grant funds, with project completion expected by a specific date not more than one year after the four-year deadline;
2. the construction project is underway; or
3. extenuating circumstances require an extension of time to allow the project to be completed

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

Section II.B.2. of the NOFO states that each Eligible Entity must develop a process by which subgrantees may request extensions and provide documentation about the qualifying circumstances that warrant the extension.

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

1.22 What are tips for mitigating waste, fraud, and abuse?

NTIA recommends the following tips for mitigating waste, fraud, and abuse:

- Develop and implement fair, transparent, and effective processes, including a system of accounting, procurement policies, internal controls, and records retention
- Examine existing processes and internal controls to identify areas vulnerable to fraud
- Host regular trainings to educate staff on risks
- Implement an internal compliance and ethics program that encourages the recognition and reporting of waste, fraud, abuse, and mismanagement
- Check that all financial and performance reports are supported with the required documentation
- Conduct monthly bank reconciliations to identify errors or irregularities

Allegations of waste, fraud, abuse, and mismanagement may be made anonymously through the OIG Hotline at 1-800-424-5197.

1.23 Can subgrantees submit audited financial statements at the parent-company level?

Yes, audited financial statements of a publicly traded parent company are sufficient to meet the BEAD Program requirements.

1.24 Is it sufficient to have an employee serving in the capacity of a network engineer certify a project instead of a professional engineer?

No, per NOFO Section IV.D.2.c the materials submitted by a prospective subgrantee must be certified by a professional engineer.

1.25 Are the lands described in subpoint (E) of the BEAD NOFO considered Tribal Lands for purposes of BEAD?

No. The Assistant Secretary has determined that a programmatic waiver of Subpoint (E) of the definition of “Tribal Lands” in Section I.C(y) of the BEAD NOFO should be granted. Subpart (E) of BEAD’s definition of Tribal Lands applies to areas

near or adjacent to reservations. These are not areas in which a Tribal authority has jurisdiction. Therefore, requiring Tribal consent for projects in these areas raises administrative challenges for Eligible Entities and subgrantees.

1.26 What is the Professional Engineer (PE) certification Requirement for Eligible Entities?

The Professional Engineer (PE) Certification requirement of the BEAD NOFO (page 74) states that prospective subgrantees need to present a network design, diagram, project costs, build-out timeline, milestones for project implementation, and a capital investment schedule certified by a professional engineer. This certification should confirm that the proposed network can deliver broadband service that meets the performance requirements to all locations served by the project. The PE Certification Requirement is partially waived as described: The requirement that a prospective subgrantee submit a “capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity receives the subgrant” that is “certified by a professional engineer” is waived. A professional engineer is still required to certify the remaining elements of the PE Certification Requirement. The prospective subgrantee must still submit the aforementioned capital investment schedule to avail itself of the waiver, but the schedule does not require PE certification. The professional engineer making certifications in connection with the PE Certification Requirement may be licensed in any of the 56 Eligible Entities.

1.27 Can BEAD Program funds be used to cover both capital expenditures (CapEx) and operating expenditures (OpEx)?

The BEAD Program does not restrict eligible uses of funds to capital expenses. However, the cost principles applied must be in accordance with 2 C.F.R. Part 200, Subpart E for States and non-profit organizations and in 48 C.F.R. Part 31 for commercial organizations.

Eligible Entities should refer to the RPN, as well as section IV.B.2 of the BEAD NOFO for a listing of eligible uses of Initial Planning Funds, section IV.B.5.b. for how

funds can be allocated for the Initial Proposal, and sections IV.B.7.a.ii and IV.B.7.a.iii for eligible use of funds for last-mile broadband deployment.

1.28 Are Eligible Entities and subgrantees subject to any unionized workforce requirements?

No. The BEAD NOFO provisions that applied to workforce requirements have been superseded by the RPN, which eliminates the non-statutory requirements in the NOFO related to labor, employment, and workforce development.

1.29 Who holds the title to BEAD-funded assets at the end of the period of performance?

Eligible Entities or subgrantees (when funding through a subgrant) will hold the title to BEAD-funded assets. All assets, however, are subject to NTIA guidelines regarding federal interest which may include 2 C.F.R. Part 200 Subpart D, the DOC General Terms and Conditions, and Specific Award Conditions.

1.30 What is the difference between a programmatic cost and an administrative cost?

Administrative costs are those expenses incurred by the grant recipients or subrecipients in support of their day-to-day operations. These overhead costs are the expenses that are not directly tied to a specific programmatic purpose or activity.

Programmatic costs are costs that are directly tied to the delivery of a particular project, service or activity undertaken by a Grantee to achieve an outcome intended by the funding program.

Please refer to the [Two Percent Grant Administration Spending Limitation Guidance](#) for more information.

1.31 Can an Eligible Entity reserve a pool of BEAD contingency funds that are not tied to one specific project so that it can later award those funds?

No. An Eligible Entity cannot reserve a pool of grant funds in its Consolidated Budget for contingency purposes, such as finishing projects that a subgrantee cannot complete. In other words, contingency funds are allowable as part of a subgrantee's budget for a specific construction project, but the Eligible Entity cannot include contingency funds in its own overall budget in anticipation of failed subgrantee projects. See 2 C.F.R. § 200.433. This could effectively duplicate the contingency funding and may lead to fraud, waste, and abuse.

2. *BEAD Restructuring Policy Notice*

2.1 Are Eligible Entities and subgrantees still bound to the NOFO requirements not addressed by the Restructuring Policy Notice (RPN)?

Yes. The RPN does not rescind the NOFO. Eligible Entities and subgrantees must still adhere to the NOFO provisions not addressed in the RPN (RPN, Summary, p. 1).

2.2 What is required from Eligible Entities within thirty (30) calendar days after the release of the RPN?

All Eligible Entities must, by July 7, 2025:

- **Update** the BEAD eligibility list with federal enforceable commitment defaults
 - Determine if locations are not served by another means
 - Certify if locations are unserved or underserved
 - Incorporate these locations into the list
- **Submit** a letter BEADCorrections@ntia.gov to request an IP correction using the Initial Proposal Correction Template (see RPN, Appendix D, p. 23).
- **Attach** updated eligibility list that reflects federal enforceable commitment defaults, if applicable
- **Submit** an IPFR budget modification, if desired

2.3 With the release of the RPN, should Eligible Entities continue to prioritize unserved, underserved, and CAI BSLs?

Yes. Eligible Entities must prioritize service to unserved service projects, underserved service projects, and then CAIs, consistent with the requirements of the Infrastructure Act.

2.4 When are Final Proposals due under the RPN?

All Eligible Entities have 90 calendar days from the publication of the RPN to comply with the obligations outlined in the RPN and submit a Final Proposal that reflects the results of the Benefit of the Bargain round. In other words, Final Proposals are due by September 4, 2025. This deadline replaces any deadline in place prior to the publication of the RPN. NTIA will complete its review of each Final Proposal within 90 calendar days of submission (RPN, 3.3, p.10).

2.5 The RPN removes local coordination requirements, but retains the public comment requirements in the FP. What are the FP public comment requirements?

Upon the conclusion of its public comment period, the Eligible Entity must:

- Describe how it conducted a public comment period
- Provide a high-level summary of the comments received, and;
- Demonstrate how it incorporated feedback in its FP submission, as applicable

The Eligible Entity is not required to respond to all individual comments but must capture where public comments impacted the contents of the FP submission. The Eligible Entity must also demonstrate how it conducted outreach and engagement activities to encourage broad awareness, participation, and feedback during the public comment period.

2.6 Does the RPN change EHP requirements?

No. The Environmental and National Historical Preservation requirements have not changed. However, per the RPN, Eligible Entities are “hereby required to use the Environmental Screening and Permitting Tracking Tool (ESAPTT) within the NTIA Grants Portal” (RPN, 6, p. 15).

2.7 Do costs incurred using Initial Planning Funds need to comply with the RPN?

Yes, otherwise the costs run the risk of being disallowed. Per Section 8 of the RPN: “any costs incurred by an Eligible Entity after the publication of the RPN that do not comply with the terms of the RPN may be disallowed” (p. 16).

2.8 How can an Eligible Entity confirm that there are no new federal enforceable commitment defaults that impact its eligible locations list?

Eligible Entities can contact their Federal Program Officer to confirm whether there were any new federal enforceable commitment defaults prior to the release of the RPN that impact their approved list of BEAD eligible locations.

2.9 Is the IP Corrections Letter a template and where can it be found?

Yes. The IP Corrections Letter is a template that Eligible Entities shall use to submit their IP Corrections to comply with the RPN. The template can be found in [Appendix D of the RPN](#) (RPN, Appendix D, p. 23).

2.10 May an Eligible Entity submit an IP Correction for a change other than what is required by the RPN?

No. Until the Final Proposal deadline, which is 90 days from the publication of the RPN (September 4, 2025), Eligible Entities may only submit an IP Correction that ensures their Initial Proposal complies with the RPN. Eligible Entities will use the template in Appendix D of the RPN to submit their IP Corrections (RPN, Appendix D, p. 23).

2.11 How does the modified definition of “Priority Broadband Project” affect applicants and Eligible Entities?

For applicants, the RPN broadly allows any applicant to request the Eligible Entity to treat its application as a Priority Broadband Project regardless of the technology used (RPN, 3.1, p. 9).

For Eligible Entities, the RPN establishes guardrails around what constitutes a Priority Broadband Project.

The RPN also affords Eligible Entities a significant role in discerning whether a given project falls within those guardrails, including the ability to make Priority Broadband Project determinations based on the specific project area. For example, an Eligible Entity may determine that a given application is not a Priority Broadband Project for a particular project area because the relevant technology cannot easily scale to meet evolving connectivity needs, but it may also determine that a different application in a different project area using the exact same technology is a Priority Broadband Project because it falls within the guardrails set forth in the RPN. NTIA may reverse a Priority Broadband Project determination if it is “unreasonable” (RPN, 3.1, p. 9).

2.12 How is Fabric Version 6 used with respect to the RPN?

The RPN does not allow Eligible Entities to add new BSLs from Fabric V6 (as of 2024-12-31) to BEAD-eligible location lists for subgrantee selection. Eligible Entities will continue to base the universe of BSLs to be served by BEAD on the version of the Fabric used in their approved Challenge Process. The use of Fabric V6 is limited to the following purposes:

- Identifying BSLs that were in the post-challenge list (regardless of classification) and have been removed from Fabric v6. These must be removed with non-service code 3.
- Identifying current service for BSLs that are in the Eligible Entity’s final list of BEAD-eligible locations used for subgrantee selection that may already be served by non-subsidized service (privately funded network, including

identification of ULFW services per the RPN) and removed from BEAD eligibility with non-service code 5.

Fabric v6 will not be used as a “true up” in the manner that was permitted in the BEAD Challenge Process and is not used to change BSL eligibility from served to unserved or underserved.

2.13 Can BSLs in Fabric version 6 that were not on the fabric used for the Eligible Entity Challenge Process be added to BEAD-eligible locations lists for Subgrantee Selection?

No.

2.14 Are Eligible Entities subject to minimum or maximum requirements governing the use of certain technologies?

No. While the RPN makes clear that the BEAD program is technology neutral—meaning all technologies should be treated equally—the RPN also affords Eligible Entities a significant role in discerning whether a given technology maximizes BEAD dollars for a particular project area. The requirement that all technologies must compete on a level playing field, which maximizes the benefits of competition, is not dispositive of outcomes in particular circumstances.

One of the primary objectives of the RPN is to ensure that Eligible Entities have flexibility to award the set of proposals that deliver high-quality service for a reasonable cost. In pursuit of that core objective, both NTIA and the public are keenly aware of the unique role that fiber plays in the Internet backbone and in providing backhaul capacity for all broadband technologies.

2.15 How will Eligible Entities ensure that people receive high-quality service when they are required to select the cheapest project proposal? How will applicants that previously applied remain competitive?

Eligible Entities are required by statute to prioritize “Priority Broadband Projects,” i.e., projects that meet certain performance standards described in the statute and the RPN. And as explained above, Eligible Entities have a significant role in determining what constitutes a Priority Broadband Project on a proposal-by-proposal basis.

When scoring competing Priority Broadband Projects and competing non-Priority Broadband Projects, the RPN directs Eligible Entities to prioritize “minimal program outlay,” which focuses on the overall cost to the BEAD program. Eligible Entities have the ability to balance a variety of factors in deciding among competing applications, including cost per location, cost per project, and the combination of proposals with the lowest overall cost to the program. Eligible Entities also have significant flexibility when deciding among proposals that are cost-competitive (i.e. within 15% of one another). Indeed, Eligible Entities have discretion to weigh cost-competitive proposals based on three criteria: speed to deployment, speed of network, and prior identification or selection.

The RPN does not open the door to the possibility of certain applicants gaming the new scoring rubric, including intentionally underbidding previous proposals that are publicly available. For starters, all applicants can submit new proposals. An applicant choosing to stand on a previous application may submit an appendix that explains why the application remains competitive.

Finally, the RPN clarifies that Eligible Entities must still ensure that applicants meet the financial and managerial capacity, technical and operational capability, and other requirements in 47 U.S.C. § 1702(g)(2)(A). BEAD subgrantees must “maintain risk management plans that account for technology infrastructure reliability and resilience, including from natural disasters (e.g., wildfires, flooding, tornadoes, hurricanes, etc.), as applicable, as well as cybersecurity best practices.” These measures require Eligible Entities to determine, prior to awarding a subgrant, that the applicant will deliver high-quality, reliable, and resilient service.

3. Subgrantee Selection: Benefit of the Bargain

3.1 What is the definition of Priority Broadband Project?

The Infrastructure Act defines a priority broadband project as one designed to:

- (i) provide broadband service that meets speed, latency, reliability, consistency in quality of service, and related criteria as the Assistant Secretary shall determine; and
- (ii) ensure that the network built by the project can easily scale speeds over time to -
 - a. meet the evolving connectivity needs of households and businesses; and
 - b. support the deployment of 5G, successor wireless technologies, and other advanced services (RPN, 3.1, p. 8-9)

The RPN restores the definition of Priority Broadband Project to its statutory definition and removes the fiber preference.

3.2 Which aspects of the original prequalification period must be reopened to comply with the RPN?

Under the RPN, Eligible Entities must reopen all prequalification processes that potential applicants must complete to determine eligibility for a BEAD subgrant (RPN, 3.3, p.10).

3.3 Can applicants that did not prequalify prior to the RPN resubmit a pre-qualification application for the Benefit of the Bargain round?

Yes. If an Eligible Entity had a prequalification process, this process must be reopened to all interested applicants, including those applicants that failed to pre-qualify in the past. Existing qualified applicants do not need to resubmit prequalification documentation (RPN, 3.3, p. 10-11).

3.4 Can a previous applicant be considered in the Benefit of the Bargain round without submitting a new application?

Yes. Existing pre-qualified applicants do not need to resubmit documentation for consideration in the Benefit of the Bargain round. However, if selected, subgrantees will not be permitted to recover costs that were budgeted to comply with the regulatory burdens eliminated in the RPN (RPN, 3.3, p. 11).

3.5 May Eligible Entities create or add their own scoring criteria for subgrantee selection?

No. No additional scoring factors outside of those explicitly listed in the RPN may be considered during subgrantee selection (RPN, 3.4, p. 11-13).

3.6 The Primary Criteria to choose a BEAD subgrantee is “... the option with the lowest cost based on minimal program outlay” (RPN, 3.4, p.12). However, Secondary Criteria are provided. Can you explain this?

Scoring subgrantee applications may consist of a two-part process.

First, the Eligible Entity must determine which Priority Broadband Projects (PBP) proposal costs the least according to the minimal BEAD program outlay definition (see RPN, 3.4, p. 12). (Note: If PBP proposals are too expensive, an Eligible Entity can move to less expensive non-PBPs.) If there are no proposals within 15% of the lowest cost proposal, and costs aren't excessive, that proposal wins.

Second, if there are other proposals for the same project area that are within 15% of the lowest cost proposal, the Eligible Entity then goes on to consider Secondary Criteria in order to determine a winner (RPN, 3.4, p. 12).

3.7 What steps must Eligible Entities take prior to opening the Benefit of the Bargain Round?

All Eligible Entities must take the following steps prior to reopening subgrantee selection:

- **Submit** the Initial Proposal correction letter and receive NTIA approval
- **Modify** the SGS process to score all applicants under same terms
- **Remove** non-statutory burdens from the application & scoring processes
- **Rescind** preliminary awards & notify applicants of next application round
- **Reopen** prequalification process, if applicable
 - Eligible Entities may choose to make prequalification submissions part of the application
- **Update** the eligible location list following the ULFW process

3.8 Do Eligible Entities need to receive approval of their IP Corrections Letter before beginning the subgrantee selection via the Benefit of the Bargain round?

Yes. Eligible Entities must have an approved IP Correction Letter prior to opening subgrantee selection in the Benefit of the Bargain round.

3.9 Which Eligible Entities can use the “Preliminary/Provisional Subgrantees” secondary scoring criteria?

Any Eligible Entity that has “already identified preliminary or provisionally selected subgrantees may give additional weight to those applications in the Benefit of the Bargain Round.” (RPN, 3.4, p. 13). For locations where an Eligible Entity has selected a preliminary subgrantee, regardless of whether the subgrantee has been notified,

it may employ the “Preliminary/Provisional Subgrantees” secondary criterion. As the RPN makes clear, Eligible Entities have significant discretion over how much weight to give the “Preliminary/Provisional Subgrantees” criterion.

3.10 Will NTIA second-guess how an Eligible Entity weighs the secondary criteria established in the RPN?

No. Eligible Entities may determine how much weight is given to each secondary criterion, and that may include giving no weight to one or two of the secondary criteria. NTIA reserves the right to review whether it was appropriate to apply the secondary criteria (ie the Eligible Entity may only use secondary criteria when scoring competing low-cost proposals within 15% of one another) and if the Eligible Entity employed an unauthorized secondary criterion (RPN, 3.4, p. 12-13).

3.11 Can Eligible Entities include secondary criteria if it is required by state law?

No. Any additional scoring criteria, beyond the three required in the RPN (see RPN, 3.4, p.12), cannot be used in subgrantee selection. If state law conflicts with the RPN, the Eligible Entity must seek a waiver from NTIA (RPN, 2, p. 4).

3.12 Are the costs associated with subgrantee selection subject to the 2% administrative cap?

No. Costs related to the subgrantee selection process are not subject to the 2% administrative cap.

Subgrantee selection process is a key programmatic component and therefore not an expense related to the administration of an Eligible Entity’s grant. Costs associated with the actual subgranting process (contracting, monitoring, disbursement of funds, etc.) are administrative costs but are not expenses related to the administration of the Eligible Entity’s grant. Please review Section 1 for additional questions and answers regarding the 2% cap.

3.13 Can applicants request reimbursement from the Eligible Entity for costs associated with preparing its application, including costs associated with submitting a Benefit of the Bargain application and costs for extending the time they must hold a Letter of Credit for a BEAD project?

It depends. If the Eligible Entity allows for pre-award costs in its NOFO, these costs may be allowable. If the Eligible Entity does not allow for pre-award costs in its NOFO, these costs may not be allowable.

All pre-award costs are incurred at the risk of the applicant. For guidance, applicants should discuss whether pre-award costs are allowable with their Eligible Entity.

Applicants concerned about the costs of applying may stand on their previous applications and acknowledge that recovering costs for eliminated regulatory burdens will not be allowed. However, revising applications should result in more competitive bids after accounting for the flexibility the RPN affords BEAD subgrantees, such as the ability to design their own Low-Cost Broadband Service Option.

If an applicant is not selected for an award, none of the application costs will be reimbursed, regardless of the Eligible Entity's allowability of such costs.

3.14 Can Eligible Entities run more than one Benefit of the Bargain round?

Yes. All Eligible Entities must conduct at least one Benefit of the Bargain subgrantee selection round for every BEAD-eligible BSL. Eligible Entities can choose to conduct more than one Benefit of the Bargain subgrantee selection round. However, for locations not included in any applications during the initial Benefit of the Bargain round, the Eligible Entity may elect to secure service commitments through direct negotiation instead of conducting another subgrantee selection round.

3.15 What should Eligible Entities consider when determining Minimal BEAD Program Outlay?

To determine Minimal Program Outlay, Eligible Entities must consider three factors:

1. The total BEAD funding required for the project (the total project cost minus the applicant's proposed match);
2. The cost per BSL of the project (the total BEAD funding that will be required to complete the project divided by the number of BSLs the project will serve); and
3. The combination of the proposals with the lowest overall cost to the Program

The third factor - the combination of the proposals with the lowest overall cost to the Program - is not a set "formula." For example, suppose a project area has 20 BSLs, and the Eligible Entity receives two Priority Broadband Project proposals to serve them:

- Proposal A is \$100 to serve 15 locations (It took out five locations due to excessive cost.)
- Proposal B is \$200 to serve all 20 locations

At first glance, one might conclude Proposal A is the most cost-effective. But the Eligible Entities should also consider how much it will cost to serve the five 'excessive cost' BSLs Proposal A omitted.

If funding another provider to serve those five remaining locations will cost \$500, the total cost to BEAD to serve the project area (Proposal A (\$100) + \$500 = \$600) far exceeds the cost of Proposal B (\$200), and thus Proposal B should be selected, if all other things are equal.

4. *Cost Sharing and Matching*

4.1 What are the matching requirements for BEAD?

As described in Section III.B.1. of the NOFO, except in certain specific circumstances (i.e., projects in “high-cost areas” and other cases in which NTIA has waived the matching requirement), in the context of subgrants used to fund broadband network infrastructure deployment, each Eligible Entity shall require its subgrantee to provide, or provide in concert with its subgrantee, matching funds of not less than 25 percent of project costs. A matching contribution may be provided by the subgrantee, an Eligible Entity, a unit of local government, a utility company, a cooperative, a nonprofit or philanthropic organization, a for-profit company, regional planning or governmental organization, a federal regional commission or authority, or any combination thereof. While the match may be provided by multiple sources, Eligible Entities are encouraged to the maximum extent possible to require a match from the subgrantee before utilizing other sources of matching funds.¹ Eligible Entities are also required to incentivize matches of greater than 25 percent from subgrantees wherever feasible (especially where expected operational costs and revenues are likely to justify greater investment by the subgrantee) to reduce the federal share of projects and extend the reach of BEAD Program funding.

¹ Rather than using state or local funds as a match to BEAD projects, Eligible Entities are encouraged to use these funding sources on broadband separately and leverage additional subgrantee match commitments. Eligible Entities also must use BEAD Program funds to supplement, and not supplant, the amounts that the Eligible Entity would otherwise make available for the purposes for which the grant funds may be used.

4.2 Can federal funds be used as matching funds? (e.g., ARPA Capital Projects Fund)

Federal funds may not be used as matching funds, except as expressly provided by federal statute. The Infrastructure Act expressly provides that for the BEAD Program matching funds may come from a federal regional commission or authority and from funds that were provided to an Eligible Entity or a subgrantee for the purpose of deploying broadband service under the following legislation, to the extent permitted by those laws

- Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178);
- CARES Act (Public Law 116-136; 134 Stat. 281)
- Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or
- American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4).

Eligible Entities are encouraged to consider terms and conditions that may be associated with potential sources of match funds and how those may impact the project overall. For example, if an Eligible Entity utilizes federal regional commission funding as a match, the project will need to comply with all BEAD programmatic requirements and any requirements imposed by the federal regional commission.

Additional information about matches from other federal programs can be found in Section III.B.3. of the NOFO.

4.3 What are circumstances under which NTIA may consider granting a match waiver?

As explained in Section III.B.5. of the NOFO, in evaluating requests for waiver of the BEAD Program's non-federal match requirement, NTIA will carefully balance the Program's various objectives. Thus, the Assistant Secretary will generally seek to minimize the BEAD funding outlay on a particular project to extend the Program's reach, and expects to grant waivers only in special circumstances, when waiver is necessary to advance objectives that are critical to the Program's success. In order to be considered for a waiver, an Eligible Entity must submit a request that

describes the special circumstances underlying the request and explain how a waiver would serve the public interest and effectuate the purposes of the BEAD Program. The Assistant Secretary retains the discretion to waive any amount of the match, including up to the full 25 percent requirement.

4.4 Can matching funds be provided in any form other than cash? What are allowable in-kind contributions?

Section III.B.4. of the NOFO states that matching funds may be provided in the form of either cash or in-kind contributions, so long as such contributions are made consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 C.F.R. Part 200. In-kind contributions, which may include third-party in-kind contributions, are non-cash donations of property, goods or services, which benefit a federally assisted project, and which may count toward satisfying the non-federal matching requirement of a project's total budgeted costs when such contributions meet certain criteria. In-kind contributions must be allowable and allocable project expenses.

The rules governing allowable in-kind contributions are detailed and encompass a wide range of properties and services. NTIA encourages applicants to thoroughly consider potential sources of in-kind contributions that, depending on the particular property or service and the applicable federal cost principles, could include

- Employee or volunteer services;
- Equipment;
- Supplies;
- Indirect costs;
- Computer hardware and software; and
- Use of facilities.

In the broadband context this could include, consistent with federal cost principles:

- Access to rights of way;
- Pole attachments;
- Conduits;
- Easements; or
- Access to other types of infrastructure.

4.5 Is the 25% non-federal match required for BEAD Planning Funds?

A non-federal match is not required for Initial Planning Funds.

As described in the NOFO, except in certain specific circumstances in the context of subgrants used to fund broadband network infrastructure deployment (i.e., projects in “high-cost areas” and other cases in which NTIA has waived the matching requirement), each Eligible Entity shall provide, require its subgrantee to provide, or provide in concert with its subgrantee, matching funds of not less than 25 percent of project costs. A matching contribution may be provided by the subgrantee, an Eligible Entity, a unit of local government, a utility company, a cooperative, a nonprofit or philanthropic organization, a for-profit company, regional planning or governmental organization, a federal regional commission or authority, or any combination thereof. While the match may be provided by multiple sources, Eligible Entities are encouraged to the maximum extent possible to require a match from the subgrantee before utilizing other sources of matching funds. Eligible Entities are also required to incentivize matches of greater than 25 percent from subgrantees wherever feasible (especially where expected operational costs and revenues are likely to justify greater investment by the subgrantee) to reduce the federal share of projects and extend the reach of BEAD Program funding (NOFO Section III.B.1).

4.6 Can state highway right of ways (ROWs) be used as match for the BEAD Program?

Yes, state highway ROWs can be used as a match subject to the requirements around in-kind contributions. In-kind contributions are non-cash donations of property, goods or services, such as waiver of fees associated with access to rights of way, pole attachments, conduits, easements, or access to other types of infrastructure (NOFO Section III.B.4).

4.7 Is it allowable for a grantee to contribute municipal revenue bond proceeds as matching funds for a BEAD?

The Infrastructure Act and BEAD NOFO include a matching requirement of not less than 25 percent of project costs, subject to certain waivers (Act Section 60102(h)(3)(A), and NOFO Section III.B.1). A non-Federal entity may contribute municipal revenue bond proceeds to meet its BEAD matching funds requirement, so long as the contributions meet the criteria laid out in 2 CFR § 200.306(b) and such use is consistent with the terms of the bond. Such a bond would be considered governmental revenue, and not program income, under 2 CFR § 200.307(c).

4.8 If a BEAD grantee contributes municipal revenue bond proceeds as matching funds, can the grantee then use program income to repay a revenue bond?

Under the Financial Assistance Standard Terms and Conditions (ST&Cs), unless otherwise indicated in a specific award term, program income may be used for any required cost sharing consistent with 2 CFR § 200.307 (see ST&Cs Section B.05). Any match contributions must meet the criteria of allowable costs (2 CFR § 200.306(b)(4)). Allowable costs for the BEAD Program are determined in accordance with the cost principles identified in 2 CFR Part 200, including Subpart E of such regulations, for States and non-profit organizations, and in 48 CFR Part 31 for commercial organizations (NOFO Section V.H). A recipient may request that the Grants Officer and NTIA consider the repayment of the principal of the bond as an allowable cost. However, the repayment of the interest portion of the municipal revenue bond would not be allowable for the proposed project purpose. The Grants Officer would have to approve any such a proposal to use program income to repay revenue bonds and may require special award conditions.

4.9 Can U.S. Treasury Coronavirus Capital Projects Fund (CPF) grants be used for BEAD matching funds?

Yes, CPF grants can be used as matching funds. Further, assets purchased with previously disbursed CPF grant funds may be used as an in-kind matching contribution for the BEAD program if the purchase of that asset was an eligible use of BEAD funding. Eligible Entities that use CPF funds as the source of matching funds must comply with the requirements of both programs, as well as regulations regarding in-kind matches.

4.10 Who is the beneficiary for the performance bond?

The Eligible Entity should be the primary beneficiary.

4.11 Does the performance bond amount need to include the match portion of the project or only the federal investment?

The performance bond only needs to be for the amount of the federal funds in the project.

4.12 Are LEO capacity subgrantees required to meet the 25% match requirement?

Yes, LEO capacity subgrantees are required to meet the 25% match requirement (BEAD NOFO, III.B.1. p. 20).

4.13 Do all cost sharing and matching funds need to comply with the RPN?

Yes. All costs incurred after June 6, 2025, including cost share and match, must comply with the terms of the RPN. Per Section 8 of the RPN “any costs incurred by an Eligible Entity after the publication of the RPN that do not comply with the

terms of the RPN may be disallowed” (p. 16). Remember that the BEAD cost sharing requirement only applies to broadband deployment projects.

Appendix A: New Questions and Answers in V10

New 1. NOFO Overview

1.27 Can BEAD Program funds be used to cover both capital expenditures (CapEx) and operating expenditures (OpEx)?

The BEAD Program does not restrict eligible uses of funds to capital expenses. However, the cost principles applied must be in accordance with 2 C.F.R. Part 200, Subpart E for States and non-profit organizations and in 48 C.F.R. Part 31 for commercial organizations.

Eligible Entities should refer to the RPN, as well as section IV.B.2 of the BEAD NOFO for a listing of eligible uses of Initial Planning Funds, section IV.B.5.b. for how funds can be allocated for the Initial Proposal, and sections IV.B.7.a.ii and IV.B.7.a.iii for eligible use of funds for last-mile broadband deployment.

1.28 Are Eligible Entities and subgrantees subject to any unionized workforce requirements?

No. The BEAD NOFO provisions that applied to workforce requirements have been superseded by the RPN, which eliminates the non-statutory requirements in the NOFO related to labor, employment, and workforce development.

1.29 Who holds the title to BEAD-funded assets at the end of the period of performance?

Eligible Entities or subgrantees (when funding through a subgrant) will hold the title to BEAD-funded assets. All assets, however, are subject to NTIA guidelines regarding federal interest which may include 2 C.F.R. Part 200 Subpart D, the DOC General Terms and Conditions, and Specific Award Conditions.

1.30 What is the difference between a programmatic cost and an administrative cost?

Administrative costs are those expenses incurred by the grant recipients or subrecipients in support of their day-to-day operations. These overhead costs are the expenses that are not directly tied to a specific programmatic purpose or activity.

Programmatic costs are costs that are directly tied to the delivery of a particular project, service or activity undertaken by a Grantee to achieve an outcome intended by the funding program.

Please refer to the [Two Percent Grant Administration Spending Limitation Guidance](#) for more information.

1.31 Can an Eligible Entity reserve a pool of BEAD contingency funds that are not tied to one specific project so that it can later award those funds?

No. An Eligible Entity cannot reserve a pool of grant funds in its Consolidated Budget for contingency purposes, such as finishing projects that a subgrantee cannot complete. In other words, contingency funds are allowable as part of a subgrantee's budget for a specific construction project, but the Eligible Entity cannot include contingency funds in its own overall budget in anticipation of failed subgrantee projects. See 2 C.F.R. § 200.433. This could effectively duplicate the contingency funding and may lead to fraud, waste, and abuse.

New 2. BEAD Restructuring Policy Notice

2.7 Do costs incurred using Initial Planning Funds need to comply with the RPN?

Yes, otherwise the costs run the risk of being disallowed. Per Section 8 of the RPN: “any costs incurred by an Eligible Entity after the publication of the RPN that do not comply with the terms of the RPN may be disallowed” (p. 16).

2.8 How can an Eligible Entity confirm that there are no new federal enforceable commitment defaults that impact its eligible locations list?

Eligible Entities can contact their Federal Program Officer to confirm whether there were any new federal enforceable commitment defaults prior to the release of the RPN that impact their approved list of BEAD eligible locations.

2.9 Is the IP Corrections Letter a template and where can it be found?

Yes. The IP Corrections Letter is a template that Eligible Entities shall use to submit their IP Corrections to comply with the RPN. The template can be found in [Appendix D of the RPN](#) (RPN, Appendix D, p. 23).

2.10 May an Eligible Entity submit an IP Correction for a change other than what is required by the RPN?

No. Until the Final Proposal deadline, which is 90 days from the publication of the RPN (September 4, 2025), Eligible Entities may only submit an IP Correction that ensures their Initial Proposal complies with the RPN. Eligible Entities will use the template in Appendix D of the RPN to submit their IP Corrections (RPN, Appendix D, p. 23).

2.11 How does the modified definition of “Priority Broadband Project” affect applicants and Eligible Entities?

For applicants, the RPN broadly allows any applicant to request the Eligible Entity to treat its application as a Priority Broadband Project regardless of the technology used (RPN, 3.1, p. 9).

For Eligible Entities, the RPN establishes guardrails around what constitutes a Priority Broadband Project.

The RPN also affords Eligible Entities a significant role in discerning whether a given project falls within those guardrails, including the ability to make Priority Broadband Project determinations based on the specific project area. For example, an Eligible Entity may determine that a given application is not a Priority Broadband Project for a particular project area because the relevant technology cannot easily scale to meet evolving connectivity needs, but it may also determine that a different application in a different project area using the exact same technology is a Priority Broadband Project because it falls within the guardrails set forth in the RPN. NTIA may reverse a Priority Broadband Project determination if it is “unreasonable” (RPN, 3.1, p. 9).

2.12 How is Fabric Version 6 used with respect to the RPN?

The RPN does not allow Eligible Entities to add new BSLs from Fabric V6 (as of 2024-12-31) to BEAD-eligible location lists for subgrantee selection. Eligible Entities will continue to base the universe of BSLs to be served by BEAD on the version of the Fabric used in their approved Challenge Process. The use of Fabric V6 is limited to the following purposes:

- Identifying BSLs that were in the post-challenge list (regardless of classification) and have been removed from Fabric v6. These must be removed with non-service code 3.
- Identifying current service for BSLs that are in the Eligible Entity’s final list of BEAD-eligible locations used for subgrantee selection that may already be served by non-subsidized service (privately funded network, including identification of ULFW services per the RPN) and removed from BEAD eligibility with non-service code 5.

Fabric v6 will not be used as a “true up” in the manner that was permitted in the BEAD Challenge Process and is not used to change BSL eligibility from served to unserved or underserved.

2.13 Can BSLs in Fabric version 6 that were not on the fabric used for the Eligible Entity Challenge Process be added to BEAD-eligible locations lists for Subgrantee Selection?

No.

2.14 Are Eligible Entities subject to minimum or maximum requirements governing the use of certain technologies?

No. While the RPN makes clear that the BEAD program is technology neutral—meaning all technologies should be treated equally—the RPN also affords Eligible Entities a significant role in discerning whether a given technology maximizes BEAD dollars for a particular project area. The requirement that all technologies must compete on a level playing field, which maximizes the benefits of competition, is not dispositive of outcomes in particular circumstances.

One of the primary objectives of the RPN is to ensure that Eligible Entities have flexibility to award the set of proposals that deliver high-quality service for a reasonable cost. In pursuit of that core objective, both NTIA and the public are keenly aware of the unique role that fiber plays in the Internet backbone and in providing backhaul capacity for all broadband technologies.

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When scoring competing Priority Broadband Projects and competing non-Priority Broadband Projects, the RPN directs Eligible Entities to prioritize “minimal program outlay,” which focuses on the overall cost to the BEAD program. Eligible Entities have the ability to balance a variety of factors in deciding among competing applications, including cost per location, cost per project, and the combination of proposals with the lowest overall cost to the program. Eligible Entities also have significant flexibility when deciding among proposals that are cost-competitive (i.e. within 15% of one another). Indeed, Eligible Entities have discretion to weigh cost-competitive proposals based on three criteria: speed to deployment, speed of network, and prior identification or selection.

The RPN does not open the door to the possibility of certain applicants gaming the new scoring rubric, including intentionally underbidding previous proposals that are publicly available. For starters, all applicants can submit new proposals. An applicant choosing to stand on a previous application may submit an appendix that explains why the application remains competitive.

Finally, the RPN clarifies that Eligible Entities must still ensure that applicants meet the financial and managerial capacity, technical and operational capability, and other requirements in 47 U.S.C. § 1702(g)(2)(A). BEAD subgrantees must “maintain risk management plans that account for technology infrastructure reliability and resilience, including from natural disasters (e.g., wildfires, flooding, tornadoes, hurricanes, etc.), as applicable, as well as cybersecurity best practices.” These measures require Eligible Entities to determine, prior to awarding a subgrant, that the applicant will deliver high-quality, reliable, and resilient service.

New 3. Subgrantee Selection: Benefit of the Bargain

3.8 Do Eligible Entities need to receive approval of their IP Corrections Letter before beginning the subgrantee selection via the Benefit of the Bargain round?

Yes. Eligible Entities must have an approved IP Correction Letter prior to opening subgrantee selection in the Benefit of the Bargain round.

3.9 Which Eligible Entities can use the “Preliminary/Provisional Subgrantees” secondary scoring criteria?

Any Eligible Entity that has “already identified preliminary or provisionally selected subgrantees may give additional weight to those applications in the Benefit of the Bargain Round.” (RPN, 3.4, p. 13). For locations where an Eligible Entity has selected a preliminary subgrantee, regardless of whether the subgrantee has been notified, it may employ the “Preliminary/Provisional Subgrantees” secondary criterion. As the RPN makes clear, Eligible Entities have significant discretion over how much weight to give the “Preliminary/Provisional Subgrantees” criterion.

3.10 Will NTIA second-guess how an Eligible Entity weighs the secondary criteria established in the RPN?

No. Eligible Entities may determine how much weight is given to each secondary criterion, and that may include giving no weight to one or two of the secondary criteria. NTIA reserves the right to review whether it was appropriate to apply the secondary criteria (ie the Eligible Entity may only use secondary criteria when scoring competing low-cost proposals within 15% of one another) and if the Eligible Entity employed an unauthorized secondary criterion (RPN, 3.4, p. 12-13).

3.11 Can Eligible Entities include secondary criteria if it is required by state law?

No. Any additional scoring criteria, beyond the three required in the RPN (see RPN, 3.4, p.12), cannot be used in subgrantee selection. If state law conflicts with the RPN, the Eligible Entity must seek a waiver from NTIA (RPN, 2, p. 4).

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No. Costs related to the subgrantee selection process are not subject to the 2% administrative cap.

Subgrantee selection process is a key programmatic component and therefore not an expense related to the administration of an Eligible Entity's grant. Costs associated with the actual subgranting process (contracting, monitoring, disbursement of funds, etc.) are administrative costs but are not expenses related to the administration of the Eligible Entity's grant.

Please review Section 1 for additional questions and answers regarding the 2% cap.

3.13 Can applicants request reimbursement from the Eligible Entity for costs associated with preparing its application, including costs associated with submitting a Benefit of the Bargain application and costs for extending the time they must hold a Letter of Credit for a BEAD project?

It depends. If the Eligible Entity allows for pre-award costs in its NOFO, these costs may be allowable. If the Eligible Entity does not allow for pre-award costs in its NOFO, these costs may not be allowable.

All pre-award costs are incurred at the risk of the applicant. For guidance, applicants should discuss whether pre-award costs are allowable with their Eligible Entity.

Applicants concerned about the costs of applying may stand on their previous applications and acknowledge that recovering costs for eliminated regulatory burdens will not be allowed. However, revising applications should result in more competitive bids after accounting for the flexibility the RPN affords BEAD subgrantees, such as the ability to design their own Low-Cost Broadband Service Option.

If an applicant is not selected for an award, none of the application costs will be reimbursed, regardless of the Eligible Entity's allowability of such costs.

3.14 Can Eligible Entities run more than one Benefit of the Bargain round?

Yes. All Eligible Entities must conduct at least one Benefit of the Bargain subgrantee selection round for every BEAD-eligible BSL. Eligible Entities can choose to conduct more than one Benefit of the Bargain subgrantee selection round. However, for locations not included in any applications during the initial Benefit of the Bargain round, the Eligible Entity may elect to secure service commitments through direct negotiation instead of conducting another subgrantee selection round.

3.15 What should Eligible Entities consider when determining Minimal BEAD Program Outlay?

To determine Minimal Program Outlay, Eligible Entities must consider three factors:

1. The total BEAD funding required for the project (the total project cost minus the applicant's proposed match);
2. The cost per BSL of the project (the total BEAD funding that will be required to complete the project divided by the number of BSLs the project will serve); and
3. The combination of the proposals with the lowest overall cost to the Program

The third factor - the combination of the proposals with the lowest overall cost to the Program - is not a set "formula." For example, suppose a project area has 20 BSLs, and the Eligible Entity receives two Priority Broadband Project proposals to serve them:

- Proposal A is \$100 to serve 15 locations (It took out five locations due to excessive cost.)
- Proposal B is \$200 to serve all 20 locations

At first glance, one might conclude Proposal A is the most cost-effective. But the Eligible Entities should also consider how much it will cost to serve the five 'excessive cost' BSLs Proposal A omitted.

If funding another provider to serve those five remaining locations will cost \$500, the total cost to BEAD to serve the project area (Proposal A (\$100) + \$500 = \$600) far exceeds the cost of Proposal B (\$200), and thus Proposal B should be selected, if all other things are equal.

New 4. Cost Sharing and Matching

4.13 Do all cost sharing and matching funds need to comply with the RPN?

Yes. All costs incurred after June 6, 2025, including **cost share and match**, must comply with the terms of the RPN. Per Section 8 of the RPN “any costs incurred by an Eligible Entity after the publication of the RPN that do not comply with the terms of the RPN may be disallowed” (p. 16). Remember that the BEAD cost sharing requirement only applies to broadband deployment projects.

INTERNET FOR ALL

Frequently Asked Questions and Answers Version 2.0

State Digital Equity Capacity Grant
Program



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

Note

The State Digital Equity Capacity Grant Program (Capacity Grant Program), authorized by Section 60304(d) of the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429 (November 15, 2021), also commonly known as the Bipartisan Infrastructure Law, provides federal funding to equip individuals and communities with the skills and tools needed for full participation in society and the economy. The following is the first in a series of FAQ documents intended to provide guidance on information set forth in NTIA's Notice of Funding Opportunity (NOFO) issued on March 29th, 2024. This FAQ document is applicable to States and Territories, additional guidance for Native Entities guidance will be forthcoming. Following the release of this document, further questions may be submitted to digitalequity@ntia.gov to be considered for inclusion in future FAQ documents.

The below FAQs are for informational purposes only and are intended solely to assist potential applicants in better understanding the State Digital Equity Capacity Grant Program (Capacity Grant Program) and the application requirements set forth in the Notice of Funding Opportunity (NOFO) for this program. The FAQs do not and are not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific application requirements set forth in the NOFO. In all cases, statutory and regulatory mandates, and the requirements set forth in the NOFO, shall prevail over any inconsistent information contained in the below FAQs.

Please note that all new questions are disbursed throughout the document in their appropriate sections. All new questions and answers are italicized.

Contents

- Note 1
- 1. General Capacity Grant Program Overview3
- 2. State Digital Equity Plans.....6
- 3. Application.....8
- 4. Awards and Funds/Allowable Uses 14
- 5. Additional Questions 18
- Appendix: *New Questions & Answers as of *Version 2.0*20

1. General Capacity Grant Program Overview

1.0 What is the State Digital Equity Capacity Grant Program?

The State Digital Equity Capacity Grant Program (Capacity Grant Program) will award grants to States and U.S. Territories for the purpose of **implementing** the State Digital Equity Plans developed as part of the State Digital Equity Planning Grant Program (Planning Grant Program) and to address barriers to digital equity for the Covered Populations identified in the Digital Equity Act of 2021 (Digital Equity Act). In addition, the Capacity Grant Program establishes a Competitive Grant Program to make both the Planning Grant Program funds and the Capacity Grant Program funds available to Indian Tribes, Alaskan Native entities, and Native Hawaiian organizations (Native Entities) to address digital equity and inclusion.

1.1 Who is eligible for the Capacity Grant Program?

Each Eligible State may apply for a grant under the Capacity Grant Program. An Eligible State is any State, including Washington D.C. and the Commonwealth of Puerto Rico, that has developed an accepted Digital Equity Plan that meets the requirements of 47 U.S.C. §1723(c). In addition, U.S. Territories (the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) are eligible to apply for an award. Finally, Native Entities, or a consortium of Native Entities, are eligible to apply for both Capacity Grant and Planning Grant funding.

The current Notice of Funding Opportunity (NOFO) will make \$840,000,000 available for grants under the Capacity Grant Program through fiscal year 2024. See Section K of the NOFO for an additional breakdown of funds.

1.2 What programs are in the Digital Equity Act, and what are the differences across the programs?

The Digital Equity Act established three programs:

1. The State Digital Equity Planning Grant Program (Planning Grant Program), a \$60 million program for grantees to develop Digital Equity Plans.
2. The State Digital Equity Capacity Grant Program (Capacity Grant Program), a \$1.44 billion program for grantees to implement their Digital Equity Plans and carry out digital inclusion activities.
3. The Digital Equity Competitive Grant Program (Competitive Grant Program), a \$1.25 billion program for grantees to develop and implement digital equity projects.

The Planning Grant Program was launched in 2022 and provided funding to States and four U.S. Territories to develop Digital Equity Plans that identify the barriers to digital equity faced by the Covered Populations.

The Capacity Grant Program will provide funds to States and U.S. Territories to implement the State Digital Equity Plans developed pursuant to the Planning Grant Program and carry out digital inclusion activities. The amount of funding available to States is based upon a statutory formula. Funding for U.S. Territories will consist of an equal distribution of the amount set

aside for U.S. Territories and possessions under the Digital Equity Act. The set-aside amount for U.S. Territories is one percent of the total funds appropriated in a given year. The Capacity Grant Program will also award funding to Native Entities on a competitive basis and will make available five percent of the total funds appropriated in a given year to Native Entities.

The Competitive Grant Program is the third Digital Equity Program and will provide funding on a competitive basis to eligible applicants including, for example, a political subdivision, agency, or instrumentality of a State, including an agency of a State that is responsible for adult education, literacy, or public housing, Native Entities, nonprofits (excepting schools), community anchor institutions, local educational agencies, workforce development organizations, and/or a partnership between these entities that will fund digital equity and inclusion activities.

1.3 What is an Administering Entity?

The term “Administering Entity” refers to the entity selected by the governor (or equivalent official) of each State to administer the Planning Grant Program the Capacity Grant Program. This must be the same entity selected for the purposes of the Planning Grant Program unless the governor (or equivalent official) selects a new entity to administer the Capacity Grant Program.

The administering entity shall—

1. Serve as the recipient of, and administering agent for, any grant awarded to a State under this program;
2. Develop, implement, oversee, and, as applicable, update the State Digital Equity Plan for the State;
3. Make subgrants to any entity, described in Section 1.7 of these FAQs that is located in the State in support of:
 - a. The State Digital Equity Plan for the State; and
 - b. Digital inclusion activities in the State generally; and
4. Serve as—
 - a. An advocate for digital equity policy and digital inclusion activities; and
 - b. A repository of best practice materials regarding the digital equity policies and digital inclusion activities.

An Administering Entity must have demonstrated a capacity to administer the program on a statewide level, and may be any of the following:

1. The State, a political subdivision, agency, or instrumentality of the State, an Indian Tribe located in the State, an Alaska Native entity located in the State, or a Native Hawaiian organization located in the State;
2. A foundation, corporation, institution, association, or coalition that is—
 - a. a not-for-profit entity;
 - b. providing services in the State; and
 - c. not a school;
3. A community anchor institution, other than a school, that is located in the State;
4. A local educational agency that is located in the State;
5. An entity located in the State that carries out a workforce development program;
6. An agency of the State that is responsible for administering or supervising adult education and literacy activities in the State;

7. A public or multi-family housing authority that is located in the State; or
8. A partnership between any of the previously listed entities (1) through (7).

1.4 What is an Administering Organization?

The term “Administering Organization” means the organization selected by the governor (or equivalent official) of a U.S. Territory to administer the Capacity Grant Program award. The organization selected by the U.S. Territory for the purposes of the Planning Grant Program must also administer the Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to serve in this role.

1.5 How can I change my Administering Entity for the State Digital Equity Capacity Program?

States are permitted to change the Administering Entity for the Capacity Grant Program. Officially changing a State’s Administering Entity requires a letter from the governor acknowledging and certifying the change and for the new Administering Entity to be named as such on the Capacity Grant Program application.

1.6 Who can receive a subgrant under the State Digital Equity Capacity Grant Program?

The Administering Entity of a State may use funds awarded under the Capacity Grant Program to award subgrants to the following entities to assist in the implementation of the State Digital Equity Plan of the State, pursue digital inclusion activities in the State consistent with the State Digital Equity Plan of the State, and report to the State regarding the digital inclusion activities of the entity:

1. A political subdivision, agency, or instrumentality of a State, including an agency of a State that is responsible for administering or supervising adult education and literacy activities, or for providing public housing, in the State.
2. An Indian Tribe, an Alaska Native entity, or a Native Hawaiian organization.
3. A foundation, corporation, institution, or association that is-
 - a. a not-for-profit entity; and
 - b. not a school.
4. A community anchor institution.
5. A local educational agency.
6. An entity that carries out a workforce development program.
7. A partnership between any of the entities described in paragraphs (1) through (6).
8. A partnership between-
 - a. an entity described in any of paragraphs (1) through (6); and
 - b. an entity that-
 - i. the Assistant Secretary, by rule, determines to be in the public interest; and
 - ii. is not a school.

States selecting subgrantees will be required to adhere to their procurement and solicitation processes.

2. State Digital Equity Plans

2.0 Is the Administering Entity allowed to update the Digital Equity Plan under the Capacity Grant Program?

Yes, funds awarded through the Capacity Grant Program can be used to update and implement State Digital Equity Plans that were accepted by NTIA under the Planning Grant Program. The grantee may not use more than 20% of grant funding for the purpose of updating State Digital Equity Plans.

2.1 Will the digital equity data used for formula allocations continue to be updated throughout the Capacity Program's life? Will the formula incorporate newer versions of data sources (e.g., new FCC maps) in later years?

The State funding allocations contained in the current NOFO are based upon a statutorily mandated allocation formula using the most current data. Once the challenge period for this allocation has ended, and the Assistant Secretary has made any needed adjustments, those allocations will be final. Future NOFOs will be based upon the same statutory formula but will be updated with the most current data. Each NOFO issued in connection with the Capacity Grant Program will detail how NTIA plans to implement the statutory funding formula for that phase of the program, including the current editions of each data source.

2.2 What is the process to get an updated plan approved by NTIA during the Capacity Grant application period?

The updated plan will be reviewed as part of the application process and will be subject to approval by the Assistant Secretary as part of the award made under the Capacity Grant Program. Applicants are expected to upload their accepted plan and a red-lined version of their updated plan which must meet all the requirements stated in the [Digital Equity Model Plan Guidance](#), as a part of their Capacity application.

Digital Equity Model Plan Guidance:

https://broadbandusa.ntia.doc.gov/sites/default/files/2023-08/Digital_Equity_Model_Plan_Guidance.pdf

2.3 If I want to update my plan under the Capacity Grant Program, what activities are allowable within the 20% cap?

All activities that were allowable under the Planning Grant Program are allowable under the Capacity Grant Program to update the State Digital Equity Plan, subject to the 20% cap. The updated State Digital Equity Plan must be submitted to NTIA for compliance review. Plans that change significantly will need to be posted for public comment before NTIA can approve the updated plan.

2.4 What is the Subgrantee Selection Process?

If a State or U.S. Territory applying for Capacity Grant Program funds intends to subgrant all or a portion of their award funds to subgrantees to implement their Digital Equity Plan through projects, it must establish, through its Administering Entity or Administering Organization, a

fair, transparent, equitable, and inclusive process, consistent with applicable State or Territory laws and administrative requirements for selecting subgrantees.

The applicant's selection processes must be made clear to potential subgrantees before subawards are made. NTIA strongly encourages States and Territories to take deliberate steps to ensure that subgrant opportunities are accessible to a diverse range of organizations, particularly those owned, led and/or managed by members of the Covered Populations. The subgrantee selection process must also comply with 2 C.F.R. Part 200.

3. Application

3.0 When are applications for the Capacity Grant Program due?

Applications for States, the District of Columbia, and the Commonwealth of Puerto Rico:

- a. Must be submitted by 11:59 p.m. Eastern Time (ET) 60 days after issuance of the NOFO (May 28, 2024).
- b. Must be received through the NTIA Grants Portal (<https://grants.ntia.gov>).

Applications for U.S. Territories:

- a. Must be submitted by 11:59 p.m. Eastern Time (ET) on July 31, 2024.
- b. Must be received through the NTIA Grants Portal (<https://grants.ntia.gov>)

Applications for Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (Native Entities):

- a. The application window for Native Entities will open 180 days after the issuance of this NOFO (September 25, 2024) and close 315 days after issuance of this NOFO (February 7, 2025).
- b. Must be submitted by 11:59 p.m. Eastern Time (ET) February 7, 2025.
- c. Must be received through the NTIA Grants Portal (<https://grants.ntia.gov>), by email (digitalequity@ntia.gov), or by mail or courier to:

Angela Thi Bennett
 Director of Digital Equity
 Office of Internet Connectivity and Growth
 National Telecommunications and Information Administration
 U.S. Department of Commerce
 1401 Constitution Avenue, NW
 Washington, DC 20230

Application materials are available at <https://broadbandusa.ntia.doc.gov>. Note that States and Territories have the same application requirements for the Capacity Grant Program, but further guidance and requirements for Native Entities will be released at a later date.

3.1 When will my Eligible State receive funds to implement the plan?

NTIA expects to begin issuing awards to Eligible States pursuant to this NOFO no later than August 28, 2024. NTIA expects to make additional awards on a rolling basis.

3.2 What must be included in a State's or Territory's application for the Capacity Grant Program?

Any State or Territory applying for the Capacity Grant Program must submit an application that includes the following information:

- a. A description of the entity selected to serve as the Administering Entity for the State (see definitions set forth in Section I.C of this NOFO) or in the case of a U.S. Territory, the Administering Organization.

- b. A Digital Equity Plan for the State meeting the requirements of 47 U.S.C. §1723(c) or the Digital Equity Plan for the Territory meeting the requirements of the Digital Equity Planning Grant award of the Territory.
- c. A certification that the State or Territory, acting through the Administering Entity for the State or through the Administering Organization for the Territory, shall not later than five (5) years after the date on which the Assistant Secretary awards the Capacity Grant to the State or Territory:
 - i. Implement the Digital Equity Plan of the State or Territory; and
 - ii. Make subgrants in a manner that is consistent with the aims of the Digital Equity Plan.
- d. The assurances required under 47 U.S.C. §1723(e) and set forth in Appendix C to the NOFO.
- e. A Project Narrative describing an overall implementation strategy and further details as outlined in the NOFO and Section 3.4 of these FAQs.
- f. A detailed description of how the State or Territory's implementation of the Digital Equity Plan, through Digital Equity Capacity Grant Program funding, will benefit each of the Covered Populations located within that State or Territory.
- g. A certification that the Capacity Grant funds will be used to supplement, not supplant, other Federal or State funds that have been made available to carry out the activities in the Digital Equity Plan and this NOFO.
- h. A description of all other funding sources (including funding applied for) the State or Territory intends to use to implement its Digital Equity Plan, the amount allocated, and the specific Digital Equity Plan elements they will fund. Applicants should include in this funding description other Federal programs, State or local government programs, and any private for-profit or not-for-profit funding. This description should include an explanation as to how this alternative funding is being used in a way that does not supplant, conflict with, or duplicate the activities for which the Capacity Grant Funds will be used.
- i. A Consolidated Budget Form, further details as outlined in the NOFO and Section 3.5 of these FAQs.
- j. The following standard federal financial assistance forms and documentation:
 - i. Standard Form 424: Application for Federal Assistance;
 - ii. CD-511 Certification Regarding Lobbying;
 - iii. Standard Form LLL, Disclosure of Lobbying Activities (if applicable); and
 - iv. Negotiated Indirect Cost Rate Agreement (as applicable).

3.3 What should Eligible States and Territories include in the Capacity Grant application Project Narrative?

An implementation strategy that is consistent with the Digital Equity Plan and that promotes the purposes of the Digital Equity Act and the NOFO. The Project Narrative must describe the details of **each specific project and activity to be funded by the State Digital Equity Capacity Grant Program** that has been identified at the time of application submission. If at the time of application, a State or Territory has not yet identified all of the projects to be used for Digital Equity Plan implementation, or is unable to provide all of the project details listed below, this information must be submitted to NTIA via the NTIA Grants Portal as soon as practicable, but **no later than nine months from the award start date**, unless extended in writing by

the Grants Officer, and will be subject to review and written approval by the Grants Officer before a State may draw down funds to implement the project(s) at issue.

*****The information that is in italics can be found in your accepted State Digital Equity Plan***

The Project Narrative must include (Section II.C.2.e of the NOFO):

- i. An Executive Summary of the overall implementation strategy and the project(s) to be funded (approximately 500 words). Please note, 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 15 C.F.R. §4.9(b) concerning the designation of business information by the applicant.
- ii. *Identification of the elements of the Digital Equity Plan to be implemented in this initial allocation of Capacity Grant Program funding, whether specific elements of the plan or specific Covered Populations are being prioritized, and the rationale for prioritizing those elements or Covered Populations consistent with the needs assessment within the Digital Equity Plan.*
- iii. For each of the specific implementation projects or activities to be funded by the State Digital Equity Capacity Grant Program, include:
 - 1) A brief summary of the specific activity or set of activities the project intends to complete or implement;
 - 2) *The barrier(s) to digital equity the project will address;*
 - 3) *The measurable objectives to be pursued and the data to be collected to demonstrate success in meeting these objectives, including quantitative baseline data;*
 - 4) *The Covered Populations to be served and the estimated number of individuals within those Covered Populations to be served;*
 - 5) *The specific geographies to be served (if not State-or Territory-wide);*
 - 6) Whether the State or Territory acting through its Administering Entity or Administering Organization (as applicable) will implement the activity directly or subgrant funds to implement the activity;
 - 7) If the State or Territory will subgrant the funds, the entity implementing the proposed project (if known at the time of application), including a description of its capacity to manage the project;
 - 8) How the proposed project or activity will be evaluated to determine successful implementation of the Digital Equity Plan of the State or Territory, including specific references to the Digital Equity Plan and quantitative baseline data; and
 - 9) Estimates of the anticipated outputs of each activity or project. (For example, the number of hours of training to be provided, the curricula to be developed, or the number of certifications to be awarded).

- iv. Confirmation that the State or Territory will not use more than 20% of the award amount to update its Digital Equity Plan, the activities it intends to conduct to update the Plan, and a timeline for updates, including publication for public comment;
- v. *A description of the ongoing collaboration efforts the State or Territory will conduct with key stakeholders in the State or Territory as listed at 47 U.S.C. §1723(c)(1)(D);*
- vi. To the extent the applicant intends to use subgrantees to implement grant projects and activities, a description of the process by which subgrantees will be selected and the safeguards in place to ensure the selection process fosters a sense of fairness and accountability by being open, transparent, equitable, and inclusive;
- vii. A description of the overall plan to evaluate how the proposed projects and activities will achieve the goals of the Digital Equity Plan;
- viii. *A description of how the project's success will be measured across the digital equity outcomes identified at 47 U.S.C. §1723(c)(1)(C):*
 - 1) *economic and workforce development*
 - 2) *education,*
 - 3) *health,*
 - 4) *civic and social engagement,*
 - 5) *delivery of other essential services, and*
 - 6) *any other digital equity outcomes specified in the Digital Equity Plan.*
- ix. *A description of how the benefits delivered to the Covered Populations will be measured to the extent not addressed above, and a description of any other proposed research activities, as applicable.*
- x. A Project Plan including:
 - 1) A description of all major project activities and timelines, including key milestones and when each major project activity will start and end; and
 - 2) A description of how progress on measurable objectives will be tracked and recorded alongside key milestones.
- xi. A description of the safeguards the applicant will put in place to prevent waste, fraud, and abuse in the implementation of the program.

3.4 What should Eligible States and Territories include in a Consolidated Budget Form?

All budget information in the Consolidated Budget Form must support the dollar amounts **identified in the SF-424** and demonstrate that the **project or activity meets the eligible use requirements** in the Digital Equity Act and the NOFO. The Consolidated Budget Form consists of a **budget narrative** and a **detailed budget spreadsheet**.

- a. The **budget narrative** (the 'Justification of Need' and 'Basis of Costs' columns in the detailed budget spreadsheet) must explain the necessity and basis for all costs, clearly correspond to the information included in the detailed budget spreadsheet and reflect only *allowable costs* that are consistent with the project scope.

- i. *Allowable costs* are determined in accordance with the cost principles identified in 2 C.F.R. Part 200, including Subpart E of such regulations and in 48 C.F.R. Part 31 for commercial organizations, as well as the Digital Equity Act.
- b. The **detailed budget spreadsheet** must reflect the cost categories that appear on the SF-424 and include itemized calculations for each cost placed under those categories.
- c. The budget should account for the State or Territory's:
 - i. **Administrative costs**, capped at 3% of the grant amount,
For this purpose, the 3% limitation on administrative costs includes the combined total of indirect costs and direct administrative costs charged to an award. The applicant must clearly describe in the budget narrative how it applied or calculated the 3% limitation on administrative costs. If indirect costs are included in the proposed budget, the applicant must provide a copy of the approved negotiated indirect cost rate agreement if this rate was negotiated with a cognizant federal agency or otherwise document those indirect costs consistent with 2 C.F.R. 200.414.
 - ii. **Program evaluation costs**, capped at 5% of the state's total award amount for the purposes of evaluating the efficacy of the efforts funded by grants made to subgrantees,
 - iii. **Digital Equity Plan updates and maintenance**, capped at 20% of the grant amount (see Section II.C.3. in the NOFO regarding limitations on plan updates and maintenance, program evaluation and administrative costs).
 - iv. **Affordable Broadband Programs**, capped at 10% of the grant amount for fund subsidies for the provision of broadband services through affordable broadband programs (see Section II.C.3.c. in the NOFO).

3.5 To what extent can an Eligible State or Territory use direct text from the Digital Equity Plan to complete the Capacity Grant Program application?

NTIA highly encourages entities to utilize direct text from their Digital Equity Plans to complete their Capacity applications. The Digital Equity Plans serve as the guiding roadmap and should form the foundational basis for the preparation of the Capacity applications. Utilizing direct language from your plan will help you align your Digital Equity Plan's measurable objectives, implementation strategies, and timelines with the activities and projects put forward in your Capacity application.

3.6 Capacity Grant Program NOFO application materials require an explanation of whether specific elements of the plan or specific Covered Populations are being prioritized and a rationale for that prioritization. What should an Eligible State or Territory submit to explain the approach to prioritization?

The State or Territory's Digital Equity Plan must address the barriers to digital equity faced by each of the Covered Populations. Implementation of the Digital Equity Plan will likewise address each of the Covered Populations. NTIA recognizes, however, that Plan implementation may not be able to simultaneously address every Covered Population. Accordingly, the State Digital Equity Capacity NOFO requires States and Territories to identify the manner in which the specific elements of the Digital Equity Plan or Covered Populations are being prioritized. This prioritization should be based upon the needs assessment completed as part of the Digital Equity Plan and demonstrate an objective basis for prioritizing one project or Covered Population over another. For example, a particular project may be selected for priority because it will reach the largest number of individuals within the State or Territory or because it will address an urgent need such as emergency health care or public safety services.

3.7 Given the time constraints associated with the 60-day application window, what elements must be submitted by an Eligible State or Territory with the Capacity Grant Program application materials?

The State Digital Equity Capacity NOFO requires the submission of a Project Narrative that provides both an overall implementation strategy and a detailed description of each of the projects and/or activities for which the State or Territory will seek funding. Recognizing that the limited 60-day application window imposed by the statute may not allow sufficient time to collect this level of detail for every project, however, NTIA allows for additional time to complete the provision of this more detailed information. This information must be submitted to NTIA via the NTIA Grants Portal as soon as practicable, but no later than nine months from the award start date, unless extended in writing by the Grants Officer, and will be subject to review and written approval by the Grants Officer before a State may draw down funds to implement the project(s) at issue.

Applicants can use the State Digital Equity Capacity Grant Program States and Territories [Application Guidance](#) document to understand the Capacity Grant Program Application components and how to complete the application.

3.8 What activities are subject to caps under the Capacity Grant Program NOFO?

Each State or U.S. Territory must consider Digital Equity Plan updates, program efficacy evaluation, and administrative costs. Below are caps for each activity:

- a. **20 Percent Cap on Digital Equity Plan Updates:** No more than 20 percent of the amount of the grant may be used to update or maintain the Digital Equity Plan of the State or of the Territory (as applicable).
- b. **5 Percent Cap on the Evaluation of Program Efficacy:** No more than 5 percent of the amount of the grant may be used to evaluate the efficacy of the efforts funded by grants made to subgrantees to: (a) assist in the implementation of the Digital Equity Plan of the State or Territory; (b) pursue digital inclusion activities in the State or Territory consistent with the Digital Equity Plan of the State or Territory; and (c) report to the State regarding the digital inclusion activities of the entity.
- c. **3 Percent Cap on Administrative Costs:** No more than 3 percent of the amount of the grant may be used for administrative costs (exclusive of costs for program evaluation and updating the Digital Equity Plan) in carrying out allowable activities under this program and described in an SDECGP award. For this purpose, the three percent limitation on administrative expenses includes the combined total of indirect costs and direct administrative costs charged to an award. The applicant must clearly describe in the budget narrative how it applied or calculated the 3 percent limitation on administrative costs.
- d. **10 Percent Cap on Affordable Broadband Programs:** No more than 10 percent of the amount of the grant may be used to fund subsidies for the provision of broadband services through affordable broadband programs.

4. Awards and Funds/Allowable Uses

4.0 How will funds be distributed?

The amount of funding Eligible States (including the District of Columbia and the Commonwealth of Puerto Rico) will receive through the Capacity Grant Program will be determined pursuant to the statutory formula set forth at 47 U.S.C. §1723(d)(3)(A)(I) and the NOFO. U.S. Territories will receive equal shares of the Capacity Grant Program funding set aside for U.S. Territories consistent with 47 U.S.C. §1723(a)(3).

Pursuant to §1723(d)(3)(A)(i) of the Digital Equity Act, the amount awarded to each Eligible State in a given fiscal year will be calculated by applying a formula in which:

- a. **Fifty (50) percent** of the total grant amount is based on the population of the Eligible State in proportion to the total population of all Eligible States;
- b. **Twenty-five (25) percent** of the total grant amount is based on the number of individuals in the Eligible State who are members of the Covered Populations, in proportion to the total number of individuals in all Eligible States who are members of the Covered Populations; and
- c. **Twenty-five (25) percent** of the total grant amount is based on the comparative lack of availability and adoption of broadband in the Eligible State relative to all Eligible States, as determined by data collected from the annual inquiry of the Federal Communications Commission pursuant to Section 706(b) of the Telecommunications Act of 1996, the American Community Survey, NTIA Internet Use Survey, and any other source that the Assistant Secretary, after appropriate notice and opportunity for public comment, determines to be appropriate.

** In the event that certain data on broadband availability or adoption are unavailable for the Commonwealth of Puerto Rico during a given fiscal year, the Assistant Secretary shall use the median value among all Eligible States for each affected factor in the formula and assign it to Puerto Rico for the purposes of making the calculations for that fiscal year.

After reviewing applications and determining which States are eligible to receive Capacity Grants, NTIA will apply the funding formula as detailed in Appendix A of the NOFO.

4.1 How much money will my territory receive under the State Digital Equity Capacity Grant Program?

Consistent with the Digital Equity Act, NTIA has reserved one (1) percent of the funds made available for fiscal years 2022, 2023, and 2024 (\$8,400,000) to award grants to, or enter into contracts or cooperative agreements with, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State, to enable those entities to carry out the activities described in the statute.

Further, the Assistant Secretary tentatively allocates \$2,100,000 to each of:

- a. the United States Virgin Islands,
- b. Guam,
- c. American Samoa, and
- d. the Commonwealth of the Northern Mariana Islands

for the purpose of implementing the Digital Equity Plans each U.S. Territory has developed pursuant to 47 U.S.C. §1723(c).

****This tentative funding amount may be modified if one of the named U.S. Territories does not apply, applies but fails to receive a grant under this Program, or is awarded a grant for an amount less than the tentative allocation identified in the NOFO.**

4.2 Can my State receive funding if we are receiving other sources of Federal or State funding for broadband?

Yes. However, duplication of federal or state funding must be avoided. Grants or subgrants awarded under the Grant Program must supplement, not supplant (e.g., supersede, replace, or take the place of), federal or state funds available to the State to carry out digital equity and inclusion activities.

4.3 Can my State implement its State Digital Equity Plan using funds from sources other than funding provided under the Capacity Grant Program?

Yes. Applicants are required to certify that the Capacity Grant funds will be used to supplement, **not supplant**, other Federal or State funds that have been made available to carry out the activities in the Digital Equity Plan and the State Digital Equity Capacity Grant NOFO. However, the NOFO recognizes that other sources of funding may be utilized. To maintain financial transparency and ensure the effective use of funds, any State or Territory that plans to use multiple funding sources in the implementation of its Digital Equity Plan must submit a description of all other funding sources (including funding applied for) the State or Territory intends to use, the amounts to be allocated, and the specific Digital Equity Plan elements to be funded using alternative sources. See Section II.C.5 of the NOFO for further information.

4.4 What are the allowable uses of Capacity Grant Program funds?

Grant recipients may only use federal award funds to pay for allowable costs under the Capacity Grant 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 and 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. Grant funds may be used to cover only eligible costs incurred by the recipient during the period of performance, and for allowable costs incurred by the recipient during the grant closeout process.

Applicants must comply with the requirements of 47 U.S.C. §1723(d)(3)(D) of the Digital Equity Act and the NOFO. An eligible State or Territory to which a Capacity Grant is awarded must, through its designated Administering Entity or Administering Organization (as applicable), use the grant funds **only** for the following purposes:

- i. To update or maintain the State Digital Equity Plan of the State or Territory, provided, however, that the awardee may not use more than 20 percent of the amount of the grant for this purpose.
- ii. To implement the State Digital Equity Plan of the State or Territory.
- iii. To make subgrants to any of the eligible entities identified at 47 U.S.C. §1724(b) that are located in the State or Territory to: (a) assist in the implementation of the Digital Equity Plan of the State or Territory; (b) pursue digital inclusion activities in the State or Territory consistent with the Digital Equity Plan of the State or Territory;

and (c) report to the State or Territory regarding the digital inclusion activities of the entity.

- 1) Before an Administering Entity or Administering Organization may award a subgrant, the Administering Entity or Administering Organization must require that the entity to which a subgrant is to be awarded certify that: The entity shall carry out the activities required under items (a), (b), and (c) of this subsection;
- 2) The receipt of the subgrant shall not result in unjust enrichment of the entity; and
- 3) The entity shall cooperate with any evaluation of the program as it relates to a grant awarded to the entity and that is carried out by or for the Administering Entity or Administering Organization, the Assistant Secretary, or another Federal official.

Failure to comply with these certification requirements will result in appropriate enforcement action in accordance with 2 CFR 200.339, up to and including termination under a Capacity Grant Program award.

- iv. To evaluate the efficacy of the efforts funded by grants made to subgrantees under paragraph iii above, provided that the Administering Entity or Administering Organization may not use more than 5 percent of the amount of the grant for this purpose.
- v. For administrative costs (exclusive of costs for program evaluation and updating the Digital Equity Plan) incurred in carrying out the activities described above, provided that an Administering Entity or Administering Organization may not use more than 3 percent of the amount of the grant for this purpose.

NTIA recognizes that Digital Equity Plans will contain a wide variety of potential programs, activities and interventions, and encourages the development of new and innovative strategies to address the barriers to digital equity. These programs must focus on creating the necessary conditions to empower individuals and communities with the technological capacity to fully participate in society and the economy.

Capacity Grant Program funding may include uses such as pursuing digital inclusion activities, facilitating adoption of high-speed Internet, implementing training and workforce development programs, or making equipment and software for high-speed Internet services available.

4.5 How much money will my State receive under the Capacity Grant Program?

As set forth in the NOFO, the Capacity Grant funds for States (including the District of Columbia and the Commonwealth of Puerto Rico) will be tentatively allocated (subject to challenges to the allocation formula and participation levels) in accordance with the Digital Equity Act. See Section II.A.4.b of the NOFO for the tentative State award allocation amounts. States, the District of Columbia and the Commonwealth of Puerto Rico may challenge their allocation amounts. Refer to Section II.A.4.c of the NOFO for additional guidance on the allocation Challenge Process.

4.6 When can project work begin on the Capacity Grant Program?

The period of performance for the Capacity Grant is 5 years from the effective date of the Federal award and will be listed in the grant award documents. In general, work may begin after the award is issued and has been signed by the recipient. Applicants may incur pre-award costs pursuant to 2 CFR § 200.458 which requires written approval from NTIA. Without prior written approval pre-award costs are incurred at the risk of the applicant.

4.7 What costs are considered pre-award costs?

Pre-award costs are those incurred prior to the effective date of the Federal award or subaward where such costs are necessary for efficient and timely performance of the negotiated scope of work. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.*, the Federal awarding agency is not required to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458. In addition, such costs are allowable only to the extent that they would have been allowable if incurred during the period of performance. If charged to the award, these costs must be charged within the period of performance of the award, unless otherwise specified by the NTIA or recipient. Additionally, as applicable, applicants must meet the terms of the Human Subjects Research (HSR) Specific Award Condition before beginning any project activities prior to the period of performance.

4.8 What costs are subject to the 3% Administrative Cap? What costs are not subject to the 3% Administrative Cap?*

As required by the Digital Equity Act¹, the Capacity Grant Program limits the amount of the grant to be used for administrative costs to no more than three (3) percent of the amount of the grant¹. The three (3) percent limitation on administrative expenses includes the combined total of indirect and direct administrative costs charged to an award. The administrative cost cap only applies to the administrative costs incurred by the administering entity and does not apply to administrative costs incurred by subrecipients. Administrative costs are distinct from programmatic costs. Programmatic costs are not subject to the 3% administrative cap. Eligible entities may use their Negotiated Indirect Cost Rate Agreements (NICRA), but should be mindful that their NICRA does not replace the 3% administrative cap. Not all costs included in an entity's NICRA are necessarily administrative costs subject to the 3% cap, so even when using a NICRA, the entity must still explain how they have determined which costs are administrative costs. In all cases, total direct and indirect administrative costs must be less than or equal to the 3% cap.

- **Administrative costs** are those expenses not related to the direct provision of program activities.
- **Programmatic costs** encompass expenses directly associated with the implementation and delivery of specific services or activities outlined in digital equity plans. These costs are directly attributable to the achievement of program objectives and the provision of services to Covered Populations and include program evaluation and updating, maintaining and/or amending the Digital Equity Plan.

¹ Digital Equity Capacity Grant Notice of Funding Opportunity (“NOFO”), Section II.C.3.a.v and Section II.C.3.c(iii), p. 33 & 36, (March 29, 2024).

Costs may be attributed to several categories for the Capacity Grant Program, depending on the activity. For example, if an employee is working on updating or maintaining their DE Plan, then that time is not subject to the administrative cost cap but would be subject to the twenty (20) percent cap on maintaining or updating their DE plan. If the employee is performing grant management activities, the costs associated with that time will likely fall under the 3% admin cap. If the employee is working on specific program activities, then that may fall outside the 3% admin cap as a general programmatic cost.

The Consolidated Budget Form requires applicants to split out costs subject to the administrative cap (3%) and costs related to subgrantee evaluation (5%)². Applicants are encouraged to additionally split out costs related to maintenance and updating their state plan (capped by statute at 20%³) and broadband device programs (capped in the NOFO at 10%⁴) in the budget justification section of the consolidated budget form and through the supplemental addenda. Any errors in categorization will be addressed during curing.

5. Additional Questions

² 47 U.S.C. § 1723(d)(3)(D)(iv)(II).

³ 47 U.S.C. § 1723(d)(3)(D)(i)(II).

⁴ NOFO Section II.C.3.c.iv, p. 36, (March 29, 2024).

5.0 When will the Digital Equity Competitive Grant Program begin?

The Bipartisan Infrastructure Law provides \$1.25 billion to NTIA to establish the Competitive Grant Program. The law requires NTIA to establish the program “not later than 30 days after the date on which the Assistant Secretary begins awarding [State Digital Equity Capacity Grants], and not before that date.”⁵

⁵ 47 U.S.C. §1724(a)(1).

Appendix: *New Questions & Answers as of Version 2.0

What costs are subject to the 3% Administrative Cap? What costs are not subject to the 3% Administrative Cap?

As required by the Digital Equity Act⁶, the Capacity Grant Program limits the amount of the grant to be used for administrative costs to no more than three (3) percent of the amount of the grant⁶. The three (3) percent limitation on administrative expenses includes the combined total of indirect and direct administrative costs charged to an award. The administrative cost cap only applies to the administrative costs incurred by the administering entity and does not apply to administrative costs incurred by subrecipients. Administrative costs are distinct from programmatic costs. Programmatic costs are not subject to the 3% administrative cap. Eligible entities may use their Negotiated Indirect Cost Rate Agreements (NICRA), but should be mindful that their NICRA does not replace the 3% administrative cap. Not all costs included in an entity's NICRA are necessarily administrative costs subject to the 3% cap, so even when using a NICRA, the entity must still explain how they have determined which costs are administrative costs. In all cases, total direct and indirect administrative costs must be less than or equal to the 3% cap.

- **Administrative costs** are those expenses not related to the direct provision of program activities.
- **Programmatic costs** encompass expenses directly associated with the implementation and delivery of specific services or activities outlined in digital equity plans. These costs are directly attributable to the achievement of program objectives and the provision of services to Covered Populations and include program evaluation and updating, maintaining and/or amending the Digital Equity Plan.

Costs may be attributed to several categories for the Capacity Grant Program, depending on the activity. For example, if an employee is working on updating or maintaining their DE Plan, then that time is not subject to the administrative cost cap but would be subject to the twenty (20) percent cap on maintaining or updating their DE plan. If the employee is performing grant management activities, the costs associated with that time will likely fall under the 3% admin cap. If the employee is working on specific program activities, then that may fall outside the 3% admin cap as a general programmatic cost.

The Consolidated Budget Form requires applicants to split out costs subject to the administrative cap (3%) and costs related to subgrantee evaluation (5%)⁷. Applicants are encouraged to additionally split out costs related to maintenance and updating their state plan (capped by statute at 20%)⁸ and broadband device programs (capped in the NOFO at 10%)⁹ in

⁶ Digital Equity Capacity Grant Notice of Funding Opportunity ("NOFO"), Section II.C.3.a.v and Section II.C.3.c(iii), p. 33 & 36, (March 29, 2024).

⁷ 47 U.S.C. § 1723(d)(3)(D)(iv)(II).

⁸ 47 U.S.C. § 1723(d)(3)(D)(i)(II).

⁹ NOFO Section II.C.3.c.iv, p. 36, (March 29, 2024).

the budget justification section of the consolidated budget form and through the supplemental addenda. Any errors in categorization will be addressed during curing.

NOTICE OF FUNDING OPPORTUNITY

BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM

EXECUTIVE SUMMARY

A. Federal Agency Name

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

B. Funding Opportunity Title

Broadband Equity, Access, and Deployment Program

C. Announcement Type

Initial

D. Funding Opportunity Number

NTIA-BEAD-2022

E. Assistance Listing (CFDA Number)

11.035

F. Key Dates

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

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

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

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

G. Application Submission Address

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

H. Funding Opportunity Description

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

I. Funding Instrument

Grant.

J. Eligibility

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

K. Anticipated Amounts

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

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

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

L. Cost Sharing/Matching

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

FULL ANNOUNCEMENT TEXT

Table of Contents

I. Program Description	5
A. NOFO Structure	5
B. Overview	6
C. Definitions	11

II. Federal Award Information	17
A. Funding Availability	17
B. Period of Performance	17
C. Award Amount	18
D. Treatment of Unallocated and Unused Funds	19
E. Type of Funding Instrument	19
III. Eligibility Information	19
A. Eligible Applicants	19
B. Cost Sharing or Matching	20
IV. Program Structure, Sequencing and Requirements	22
A. Program Structure	22
B. Program Sequencing	23
C. Program Requirements	50
D. Subgrantee Qualifications	71
V. Application and Submission Information	76
A. Single Application	76
B. Address to Request Application Package	76
C. Content and Form of Applications	76
D. Certifications Regarding Debarment and Suspension	76
E. Unique Entity Identifier and System for Award Management	80
F. Submission Dates and Times	81
G. Intergovernmental Review	81
H. Funding Restrictions	81
I. Material Representations and Public Disclosure of Applications	83
J. Other Submission Requirements	83
VI. Application Review Information	83
A. Review Process for the BEAD Program	84
B. Federal Awarding Agency Review of Risk Posed by Applicants	84
C. Anticipated Announcement and Award Dates	85
VII. Federal Award Administration Information	85
A. Federal Award Notices	85
B. Notification to Unsuccessful Applications	85
C. Retention of Unsuccessful Applications	85
D. Administrative and National Policy Requirements	86
E. Reporting	89
F. Recipient Integrity and Performance Matters	92
G. Audit Requirements	93
H. Federal Funding Accountability and Transparency Act of 2006	93

VIII. Federal Awarding Agency Contact(s)	93
IX. Other Information	94
A. Transparency	94
B. Protected and Proprietary Information	94
C. Funding Availability and Limitation of Liability	95
D. Third Party Beneficiaries	95
E. Waiver Authority	96
F. Paperwork Reduction Act and Administrative Procedures Act	96
G. Transparency, Accountability, And Oversight Required	96
H. Unauthorized Use of Funds	98

I. Program Description

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

A. NOFO Structure

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

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

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

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

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

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

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

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

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

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

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

B. Overview

1. Background

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

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

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

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

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

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

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

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

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

2. Process Overview

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

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

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

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

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

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

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

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

C. Definitions

The following definitions are applicable to the BEAD Program:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(y) Tribal Lands— The term “Tribal Lands” means (A) any land located within the boundaries of— (i) an Indian reservation, pueblo, or 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Federal Award Information

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

A. Funding Availability

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

B. Period of Performance

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

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

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

¹⁸ *See id.*

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

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

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

1. Extensions

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

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

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

2. Petition for Extension

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

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

C. Award Amount

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

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

D. Treatment of Unallocated and Unused Funds

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

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

E. Type of Funding Instrument

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

III. Eligibility Information

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

A. Eligible Applicants

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

B. Cost Sharing or Matching

1. Match Generally

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

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

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

2. Preference for Maximum Subgrantee Contribution and Minimal BEAD Subsidy

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

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

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

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

3. Matches from Other Federal Programs and Entities

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

4. In-Kind Matches

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

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

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

²² See *supra* Section IV.B.7.

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

5. Match Waivers

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

IV. Program Structure, Sequencing and Requirements

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

A. Program Structure

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

²³ See *id.* and 2 C.F.R. § 200.306.

²⁴ See 2 C.F.R. § 200.306.

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

B. Program Sequencing

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

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

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

1. Letter of Intent

a. Timing

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

b. Letter of Intent Form and Content

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

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

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

2. Request for Initial Planning Funds

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

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

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

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

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

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

3. Five-Year Action Plan

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

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

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

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

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

a. Five-Year Action Plan Timing

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

b. Five-Year Action Plan Form and Content

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Program Fund Allocation and Notice of Available Amounts

a. Criteria for Reliable Broadband Service

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

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

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

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

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

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

b. Form and Content of Notice of Available Amounts

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

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

c. Funding Allocation Process

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

i. Minimum Initial Allocation

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

ii. High-Cost Allocation

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

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

iii. Remaining Funds Allocation

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

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

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

5. Initial Proposal

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

a. Initial Proposal Timing

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

b. Form and Content of Initial Proposal

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

The Initial Proposal must, at a minimum:

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

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

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

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

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

4. Certify that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, unions and worker organizations, and other groups, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, describe the coordination conducted, summarize the impact such coordination had on the content of the Initial Proposal, detail ongoing coordination efforts, and set forth the plan for how the Eligible Entity will fulfill the coordination requirements associated with its Final Proposal.

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

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

7. Include a detailed plan to conduct a challenge process as described in Section IV.B.6.

8. Include a detailed plan to competitively award subgrants consistent with Section IV.B.7.a of this NOFO with regard to both last-mile broadband deployment projects and other eligible activities. With respect to last-mile broadband deployment projects, the plan must explain how the Eligible Entity will ensure timely deployment of broadband and minimize the BEAD subsidy required to serve consumers consistent with Section IV.B.7 and the other priorities set out in this NOFO. The Initial Proposal must include identification of, or a detailed process for identifying, an Extremely High Cost Per Location Threshold to be utilized during the subgrantee selection process described in Section IV.B.7 of this NOFO. Each Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.7.b of this NOFO. NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.

9. With respect to non-deployment eligible activities, explain any preferences the Eligible Entity will employ in selecting the type of initiatives it intends to support using BEAD Program funds, the means by which subgrantees for these eligible activities will be selected, how the Eligible Entity expects the initiatives it pursues to address the needs of the Eligible Entity’s residents, the ways in which engagement with localities and stakeholders will inform

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Review process

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

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

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

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

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

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

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

d. Actions upon completion of review

i. Approval

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

ii. Disapproval

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

6. Challenge Process

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

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

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

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

7. Subgrantee Selection Process

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

a. General Principles Governing Subgrantee Selection

i. Protecting the Integrity of the Selection Process

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

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

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

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

ii. Last-Mile Broadband Deployment Projects

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

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

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

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

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

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

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

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

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

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

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

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

⁵³ *See supra* note 52.

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

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

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

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

11. Notwithstanding any of the above:

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

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

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

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

iii. Non-Deployment Uses

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

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

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

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

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

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

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

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

eligible for a Digital Equity Planning Grant.

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

⁵⁷ See Infrastructure Act § 60102(f).

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

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

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

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

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

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

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

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

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

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

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

i. Selection Among Priority Broadband Projects

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

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

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

⁶⁵ *Id.*

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

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

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

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

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

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

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

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

ii. Selection Among Other Last-Mile Broadband Deployment Projects

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

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

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

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

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

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

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

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

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

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

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

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

8. 20 Percent Funding Release and Eligible Uses

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

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

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

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

9. Final Proposal

a. Timing

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

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

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

b. Form and Content of Final Proposal

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

The Final Proposal must include, at a minimum:

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

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

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

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

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

c. Review process

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

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

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

d. Actions Upon Completion of Review

i. Approval

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

ii. Disapproval

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

10. Application Failures

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

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

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

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

C. Program Requirements

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

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

1. Eligible Entity Obligations

a. Consider All Provider Types

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

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

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

b. Ensure Subgrantee Accountability

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

c. Local Coordination

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

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

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

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

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

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

i. Geographic Coverage

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

ii. Diverse stakeholder groups

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

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

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

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

iii. Awareness, Outreach and Participation Mechanisms

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

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

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

iv. Transparency

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

v. Underrepresented Engagement

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

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

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

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

d. Equitable and Nondiscriminatory Distribution of Funds

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

e. Fair Labor Practices and Highly Skilled Workforce

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

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

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

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

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

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

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

⁷² Ability to require labor peace agreements:

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

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

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

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

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

f. Advancing Equitable Workforce Development and Job Quality Objectives

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

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

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

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

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

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

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

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

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

g. Civil Rights and Nondiscrimination Law Compliance

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

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

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

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce implementing regulations published at 15 C.F.R. Part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;

6. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, which provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. Note in this regard that Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities;" and

7. Any other applicable non-discrimination law(s). Application requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

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

1. Parts II and III of Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319), which requires that federally assisted construction contracts incorporate and fulfill the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).⁷⁶

2. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (65 Fed. Reg. 50121), which requires federal agencies to examine the services that they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. Note that the Department of Commerce issued policy guidance on March 24, 2003 (68 Fed. Reg. 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-federal entities provide meaningful access to their LEP applicants and beneficiaries.

3. Executive Order 13798, Promoting Free Speech and Religious Liberty, and Office of Management and Budget, M-20-09—Guidance Regarding Federal Grants and Executive

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

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

h. Climate Resilience

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

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

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

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

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

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

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

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

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

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

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

2. Obligations for Subgrantees Deploying Network Projects

a. Network Capabilities

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

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

i. Speed and Latency

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

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

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

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

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

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

ii. Network Outages

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

b. Deployment Requirements

i. Deployment Deadlines and Benchmarks

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

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

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

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

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

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

ii. Conduit Access Points

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

c. Service Obligations

i. Affordability and Low-Cost Plans

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

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

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

⁸⁵ Infrastructure Act § 60101.

⁸⁶ *See supra* Section IV.B.7.

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

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

1. The proposed service option:

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

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

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

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

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

ii. Consumer Protections

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

iii. Access to Service

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

iv. Public Notice

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

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

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

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

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

v. Interconnection Requirements and Wholesale Access

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

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

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

vi. Cybersecurity and Supply Chain Risk Management

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

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

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

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

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

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

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

D. Subgrantee Qualifications

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

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

1. General Qualifications

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

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

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

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

2. Specific Qualifications for Subgrantees Deploying Network Facilities

a. Financial Capability

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

i. Certifications

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

ii. Letter of Credit

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

During the application process, prospective subgrantees shall be required to submit a letter from a bank that meets eligibility requirements consistent with those set forth in 47 C.F.R.

§ 54.804(c)(2) committing to issue an irrevocable standby letter of credit, in the required form, to the prospective subgrantee. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Eligible Entity's model letter of credit.

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

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

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

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

iii. Audited Financial Statements

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

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

iv. Sustainability / Pro Forma Analyses of Proposed Project

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

b. Managerial Capability

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

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

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

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

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

c. Technical Capability

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

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

d. Compliance With Laws

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

e. Operational Capability

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

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

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

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

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

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

f. Ownership

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

g. Other Public Funding

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

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

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

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

V. Application and Submission Information

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

A. Single Application

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

B. Address to Request Application Package

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

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

C. Content and Form of Applications

See Section IV.B .

D. Certifications Regarding Debarment and Suspension

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

⁹⁶ *See, e.g.*, 47 C.F.R. § 54.802.

1. Instructions for Primary Tier Participant Certification:

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

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

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

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

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

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

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

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

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

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

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

E. Unique Entity Identifier and System for Award Management

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

1. Unique Entity Identifier

The U.S. government will use the unique entity identifier (UEI), found in an entity's SAM.gov registration, for federal awards management, including but not limited to, contracts, grants, and cooperative agreements. The UEI is the primary key to identify an entity throughout the federal awarding lifecycle and in SAM gov. Each Eligible Entity must obtain a UEI.

Each subrecipient must obtain a UEI and provide it to the Eligible Entity. Subrecipients are not required to complete full SAM registration to obtain a UEI. 2 C.F.R. § 25.300.

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

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

2. System for Award Management

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

F. Submission Dates and Times

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

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

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

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

G. Intergovernmental Review

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

H. Funding Restrictions

1. Eligible Uses of BEAD Program Funds

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

⁹⁷ See 7 C.F.R. Part 3015, Subpart V.

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

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

2. Ineligible Costs

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

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

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

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

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

b. Prohibition on Profit and Fees

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

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

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

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

3. Administrative Expenses

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

I. Material Representations and Public Disclosure of Applications

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

J. Other Submission Requirements

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

1. How to Register to Apply and Submit an Application

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

2. Timely Receipt Requirements and Proof of Timely Submission

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

3. Amendments

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

VI. Application Review Information

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

A. Review Process for the BEAD Program

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

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

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

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

B. Federal Awarding Agency Review of Risk Posed by Applicants

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

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

C. Anticipated Announcement and Award Dates

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

VII. Federal Award Administration Information

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

A. Federal Award Notices

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

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

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

B. Notification to Unsuccessful Applications.

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

C. Retention of Unsuccessful Applications.

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

D. Administrative and National Policy Requirements

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

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

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

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

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

3. Pre-Award Notification Requirements.

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

4. Environmental and National Historical Preservation Requirements.

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

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

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

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

6. Domestic Preference for Procurements (Buy American).

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

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

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

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

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

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

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

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

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

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

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

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

E. Reporting

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

1. Reporting Requirements - Eligible Entities

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

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

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

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

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

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

2. Reporting Requirements - Subgrantees

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

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

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

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

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

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

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

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

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

F. Recipient Integrity and Performance Matters

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

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

G. Audit Requirements

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

H. Federal Funding Accountability and Transparency Act of 2006

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

VIII. Federal Awarding Agency Contact(s)

Please direct programmatic inquiries to:

Evan Feinman

Director of BEAD

Office of Internet Connectivity and Growth

National Telecommunications and Information Administration

U.S. Department of Commerce

1401 Constitution Avenue, NW

Washington, DC 20230

Phone: (202) 482-2048

Email: BEAD@ntia.gov

Please direct grant management inquiries to:

Scott McNichol

NIST Grants Officer

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

Grants Management Division
National Institute of Standards and Technology
325 Broadway
Boulder, CO 80305
Phone: (301) 975-8449
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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
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Washington, DC 20230
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Email: press@ntia.doc.gov

IX. Other Information

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

A. Transparency

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

B. Protected and Proprietary Information

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

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

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

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

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

C. Funding Availability and Limitation of Liability

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

D. Third Party Beneficiaries

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

E. Waiver Authority

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

F. Paperwork Reduction Act and Administrative Procedures Act

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

G. Transparency, Accountability, And Oversight Required

1. Generally

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

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

To that end, NTIA and Eligible Entities shall:

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

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

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

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

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

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

a. Disclosures

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

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

b. Reporting

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

3. Whistleblower Protection

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

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

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

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

4. Enforcement

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

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

H. Unauthorized Use of Funds.

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

NOTICE OF FUNDING OPPORTUNITY
STATE DIGITAL EQUITY CAPACITY GRANT PROGRAM
EXECUTIVE SUMMARY

A. Federal Awarding Agency Name

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

B. Funding Opportunity Title

State Digital Equity Capacity Grant Program

C. Announcement Type

Initial

D. Funding Opportunity Number

NTIA-SDECGP-2024

E. Assistance Listing (CFDA Number)

11.032

F. Key Dates

Complete applications from States (including the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico) must be received through the NTIA Grants Portal (<https://grants.ntia.gov>) no later than 11:59 p.m. Eastern Time (ET) on **May 28, 2024**. Application materials are available at <https://broadbandusa.ntia.doc.gov>.

Complete applications from U.S. Territories (other than the Commonwealth of Puerto Rico) must be received through the NTIA Grants Portal (<https://grants.ntia.gov>) no later than 11:59 p.m. Eastern Time (ET) on **July 31, 2024**.

The application window for Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (“Native Entities”) will open **September 25, 2024**, and close on **February 7, 2025**. All Native Entity applications must be received through the NTIA Grants Portal (<https://grants.ntia.gov>), by email (digitalequity@ntia.gov), or by mail or courier no later than 11:59 p.m. Eastern Time (ET) on **February 7, 2025**.

NTIA expects to begin issuing awards to Eligible States pursuant to this Notice of Funding Opportunity (“NOFO”) no later than August 28, 2024. NTIA expects to make additional awards on a rolling basis.

G. Application Submission Address

For States and U.S. Territories, complete application packets, including the Digital Equity Plan of the State or Territory, must be submitted electronically through the NTIA Grants Portal (<https://grants.ntia.gov>). Applications or portions thereof submitted by a State or Territory through postal mail, courier, email, facsimile, or other means will not be accepted.

For Native Entities, complete applications must be submitted (1) electronically through the NTIA Grants Portal (<https://grants.ntia.gov>), (2) by email (digitalequity@ntia.gov), or (3) by mail or courier.

See Section II.C of this NOFO for detailed information concerning application submission requirements for States and U.S. Territories. *See* Section III.C of this NOFO for detailed information concerning application submission requirements for Native Entities.

H. Funding Opportunity Description

This Notice of Funding Opportunity (“NOFO”) solicits applications for the State Digital Equity Capacity Grant Program (“Capacity Grant Program” or “Program”), the second of three digital equity programs authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title III, Public Law 117-58, 135 Stat. 429, 1209 (November 15, 2021) (“Infrastructure Act” or “IIJA”) also known as the (“Digital Equity Act” or “DE Act”). The Digital Equity Act appropriated \$2.75 billion to be awarded by the Assistant Secretary of Commerce for Communications and Information (“Assistant Secretary”) to promote digital inclusion activities and achieve digital equity.

The Digital Equity Act consists of three funding programs: (1) the \$60 million State Digital Equity Planning Grant Program; (2) the \$1.44 billion State Digital Equity Capacity Grant Program; and (3) the \$1.25 billion Competitive Grant Program. NTIA released the Notice of Funding Opportunity for the State Digital Equity Planning Grant Program (“Planning Grant Program”) on May 13, 2022, making funds available to States and Territories to develop State Digital Equity Plans (“Digital Equity Plans”). The Capacity Grant Program will provide funds to States and U.S. Territories to implement the State Digital Equity Plans developed pursuant to the State Digital Equity Planning Grant Program. The Digital Equity Plans identify the barriers to achieving digital equity faced by certain populations defined by the statute (i.e. “Covered Populations”), and include measurable objectives to promote: (1) the availability and affordability of access to broadband technology; (2) online accessibility and inclusivity of public resources and services; (3) digital literacy; (4) awareness of online privacy and cybersecurity; and (5) the availability and affordability of consumer devices and technical support for those devices.

In addition, this NOFO establishes a competitive process to make both State Digital Equity Planning Grant Program funds and State Digital Equity Capacity Grant Program funds available to Native Entities to carry out digital equity and inclusion activities consistent with the Digital Equity Act. These proposed projects must include measurable objectives and evaluation criteria as part of their program design and will likewise address barriers to digital equity and promote the availability and affordability of access to broadband technology, online accessibility and inclusivity of public resources and services, digital literacy, awareness of online privacy and cybersecurity, and the availability and affordability of consumer devices and technical support for those devices.

Because funding for States and U.S. Territories is based on a statutory allocation formula and funding for Native Entities will be determined through a separate competitive process, this NOFO is divided into sections to help clarify specific requirements applicable to different entities applying for funding. The procedures through which States and U.S. Territories can seek funding are outlined in Section II. Procedures for Native Entities to obtain funding are addressed in Section III. The remaining sections are common to both types of entities.

Recognizing that achieving digital equity for all people, including Indigenous peoples of the United States and Territories, is a matter of social and economic justice, this NOFO seeks to enable any entity that is awarded a grant under this Program to better understand, measure, and address systemic barriers to digital equity and, in collaboration with the communities most impacted, co-create the conditions necessary for long-lasting and meaningful change to ensure a sustainable future. Focusing investments on creating these conditions for change will allow entities awarded a grant under this Program to address the causes of socioeconomic disparities and will result in improved outcomes in health, education, economic stability, and quality of life among the Covered Populations.

I. Funding Instrument

Grant

J. Eligibility

Each State that has completed a Digital Equity Plan that meets the requirements of 47 U.S.C. §1723(c) is eligible to apply for grants under the Capacity Grant Program to implement its Digital Equity Plan and to carry out digital inclusion activities. In addition, U.S. Territories that submit a Digital Equity Plan consistent with the obligations of their State Digital Equity Planning Grant award are eligible to apply for grants under the Capacity Grant Program to implement its Digital Equity Plan and to carry out digital inclusion activities. Finally, Native Entities, or a consortium of Native Entities, with the necessary authorizations described in Section III.B.1 of this NOFO, are eligible to apply for both Capacity Grant and Planning Grant funding to promote the objectives of digital equity and inclusion. *See* Section II.B.1 of this NOFO for the eligibility requirements of States and Territories. *See* Section III.B.1 for the eligibility requirements of Native Entities.

K. Anticipated Amounts

Grant awards to Eligible States will be based upon the statutory formula established in the Digital Equity Act and will depend on the number and characteristics of the States that apply. Grant awards to the U.S. Territories will be made as an equal distribution of the territorial set aside provided for in 47 U.S.C. §1723(i)(3). Grant awards to Native Entities will be awarded on a competitive basis under the criteria outlined in Section III of this NOFO and will depend upon the number of applicants and the size of the proposals submitted.

Congress has appropriated \$840,000,000 for grants under the State Digital Equity Capacity Grant Program through fiscal year 2024 (\$240,000,000 for fiscal year 2022, \$300,000,000 for fiscal year 2023, and \$300,000,000 for fiscal year 2024). As statutorily required, no less than one (1) percent of the total amount of funding will be made available to Territories (\$8,400,000) and no less than five (5) percent of the total amount of funding will be made available to Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (\$42,000,000). Congress also authorizes the Assistant Secretary to set aside, from amounts made available each fiscal year, funds for salaries and expenses, administration, and oversight, \$1,000,000 of which must be transferred to the Office of Inspector General of the Department of Commerce for oversight. After eliminating administrative costs and transfers, and set asides for U.S. Territories and Native Entities, \$760,800,000 is being made available to Eligible States for federal financial assistance under the Capacity Grant Program.

In addition, \$3,000,000 that was set aside for Native Entities under the State Digital Equity Planning Grant Program, but which could not be released due to oversubscription, as well as approximately \$300,000 of unclaimed State Digital Equity Planning Grant Program funds will now be made available to Native Entities through this NOFO. In total, NTIA expects to make approximately \$45,300,000 available for Digital Equity Planning and Capacity Grants to Native Entities.¹ NTIA expects to make individual Digital Equity Capacity Grant Program awards to Native Entities within a range of \$500,000 to \$2,000,000. This funding range is not a required minimum or maximum, but Native Entities requesting funding for projects outside of this range must provide a reasonable explanation for the variance in their project size. Native Entities may also be included in State Digital Equity Plans.²

Future NOFOs are expected to make up to an additional \$300,000,000 available for implementation of Digital Equity Plans and digital inclusion activities in each of fiscal years 2025 and 2026.

¹ This amount is in addition to the approximately \$3 billion previously made available through the Tribal Broadband Connectivity Programs which included funds for broadband use and adoption to address the digital divide on Tribal Lands. See, [Tribal Broadband Connectivity Program Notice of Funding Opportunity](#).

² See, e.g., 47 U.S.C. §1723(c)(1)(D)(iv).

L. Cost Sharing/Matching

The Capacity Grant Program does not require cost sharing or matching, and NTIA will not give additional consideration during the evaluation process for applications proposing a non-federal cost-sharing contribution.

M. Notice of Funding Opportunity Summary

The following table provides a summary of key provisions within Sections II and III of this NOFO.

	States & U.S. Territories (Section II)	Native Entities (Section III)
Program Name	State Digital Equity Capacity Grant Program	State Digital Equity Capacity Grant Program
Eligible Entities	States (including D.C. and Puerto Rico) & U.S. Territories	Indian Tribes, Alaska Native entities, & Native Hawaiian organizations
Program Purpose	Implement Digital Equity Plans and carry out digital inclusion activities	Conduct digital equity planning and carry out digital equity and inclusion activities consistent with the Digital Equity Act
Amount of Total Funding Available	<ul style="list-style-type: none">• \$760,800,000 available for States (including D.C. and Puerto Rico)• \$8,400,000 available for U.S. Territories	<p>\$45,300,000, <i>of which</i></p> <ul style="list-style-type: none">• \$3,300,000 is from the State Digital Equity Planning Grant Program and is for digital equity planning purposes, and• \$42,000,000 is from the State Digital Equity Capacity Grant Program and is for digital equity and inclusion activities
Allocation Approach	Formula	Competitive

Expected Award Size Per Entity	<ul style="list-style-type: none"> • For States (including D.C. and Puerto Rico), see “Tentative State Award Allocation” table (Sec. II.A.4.b) • For U.S. Territories, \$2,100,000 	<p>\$500,000 - \$2,000,000</p> <p>While Native Entities are not required to seek Planning Grant funding, any Planning Grant funding requests must be capped at seven and one-quarter (7.25) percent of the total funds requested.</p>
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FULL ANNOUNCEMENT TEXT

Table of Contents

I	PROGRAM DESCRIPTION.....	12
A.	Overview of the State Digital Equity Capacity Grant Program.....	12
B.	Connections to the Broadband Equity, Access, and Deployment (BEAD) Program	15
C.	Definitions.....	15
II.	STATES AND U.S. TERRITORIES - APPLICATION REQUIREMENTS AND AWARD INFORMATION	20
A.	FEDERAL AWARD INFORMATION	20
1.	Funding Availability	20
2.	Period of Performance.....	21
3.	Performance Measurement and Evaluation.....	21
4.	Award Amounts	22
5.	Type of Funding Instrument.....	26
B.	ELIGIBILITY INFORMATION	26
1.	Eligible Applicants.....	26
2.	Cost Sharing or Matching	26
C.	APPLICATION AND SUBMISSION INFORMATION	27
1.	Address to Request Application Package.....	27
2.	Content and Form of Applications.....	27
3.	Funding Restrictions	32
4.	Subgrantee Selection Process.....	37
5.	Alternative Funding.....	37

6. Certifications Regarding Debarment and Suspension.....	38
7. System Award Management (SAM)	38
8. Submission Dates and Times	39
9. Intergovernmental Review	39
10. Material Representations and Public Disclosure.....	39
11. Other Submission Requirements	40
D. APPLICATION REVIEW INFORMATION	40
1. Overview	40
2. Initial Eligibility and Administrative Review	40
3. Merit Review.....	41
4. Award Process.....	41
5. Federal Awarding Agency Review of Risk Posed by Applicant	41
6. Anticipated Announcement and Award Dates.....	41
III. NATIVE ENTITIES – APPLICATION REQUIREMENTS AND AWARD	
INFORMATION.....	42
A. FEDERAL AWARD INFORMATION	42
1. Funding Availability	42
2. Period of Performance.....	42
3. Performance Measurement and Evaluation.....	42
4. Award Amounts	43
5. Type of Funding Instrument.....	44
B. ELIGIBILITY INFORMATION	44
1. Eligible Applicants.....	44
2. Cost Sharing or Matching	46

C. APPLICATION AND SUBMISSION INFORMATION	47
1. Address to Request Application Package.....	47
2. Content and Form of Applications.....	47
3. Funding Restrictions	52
4. Certification Regarding Debarment and Suspension	55
5. System Award Management (SAM).....	55
6. Submission Dates and Times	56
7. Material Representations and Public Disclosure.....	56
8. Other Submission Requirements.....	56
D. APPLICATION REVIEW INFORMATION	57
1. Initial Eligibility and Administrative Review	57
2. Merit Review.....	57
3. Programmatic Review.....	59
4. OICG Associate Administrator Review.....	61
5. Final Project Selection	62
6. Federal Awarding Agency Review of Risk Posed by Applicant	62
7. Anticipated Announcement and Award Dates.....	62
IV. FEDERAL AWARD ADMINISTRATION.....	63
A. Federal Award Notices	63
B. Notification to Unsuccessful Applicants	63
C. Retention of Unsuccessful Applications.....	63
D. Administrative and National Policy Requirements.....	63
1. Uniform Administrative Requirements, Cost Principles and Audit Requirements	63
2. Department of Commerce Financial Assistance Standard Terms and Conditions	63

3.	Pre-Award Notification Requirements.....	64
4.	Build America, Buy America Act Domestic Content Preference Requirements.....	64
5.	Domestic Preference for Procurements.....	65
6.	Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms	66
7.	Cybersecurity Best Practices.....	66
E.	Reporting.....	66
1.	Infrastructure Act Reporting Requirements (Annual Report).....	66
2.	Other Reporting Requirements.....	67
F.	Recipient Integrity and Performance Matters.....	68
G.	Audit Requirements	68
H.	Federal Funding Accountability and Transparency Act of 2006.....	68
I.	Public Database.....	69
V.	FEDERAL AWARDING AGENCY CONTACTS.....	70
VI.	OTHER INFORMATION	71
A.	Transparency.....	71
B.	Protected and Propriety Information.....	71
C.	Funding Availability and Limitation of Liability	72
D.	Third Party Beneficiaries	72
E.	Waiver Authority	72
F.	Paperwork Reduction Act.....	73
G.	Transparency, Accountability, and Oversight Required.....	73
1.	Generally.....	73
2.	U.S. Department of Commerce Office of Inspector General (OIG)	74

3. Whistleblower Protection.....	75
H. Unauthorized Use of Funds	75

I. PROGRAM DESCRIPTION

NTIA issues this Notice of Funding Opportunity (“NOFO”) to describe the requirements under which it will award grants for the State Digital Equity Capacity Grant Program (“Capacity Grant Program” or “Program”), authorized by § 60304(d) of the Infrastructure Investment and Jobs Act of 2021, Division F, Title III, Public Law 117-58, 135 Stat. 429, 1209 (November 15, 2021) (“Infrastructure Act” or “IIJA”), also known as the Digital Equity Act of 2021 (“Digital Equity Act” or “DE Act”).³ The Capacity Grant Program provides funding for the implementation of Digital Equity Plans created pursuant to 47 U.S.C. §1723(c), including the promotion of digital inclusion activities.

A. Overview of the State Digital Equity Capacity Grant Program

Broadband connections and digital literacy are increasingly critical to individual participation in the society, economy, and civic institutions of the United States.⁴ Broadband connections expand access to health care and essential services, education, and jobs. High-speed Internet access is not a luxury, but a necessity, for all people of the United States, regardless of their age, race, or income, irrespective of where they live, what languages they speak, what resources they have at their disposal, their disability status, and what specific challenges they may face in their daily lives.

Unfortunately, not all Americans have been afforded access to broadband services on an equal basis. Many Americans live in locations where no service is available, the speed or quality of the service is unreliable, and/or the offering available is unaffordable. Even where broadband service is available, many on the wrong side of the digital divide lack the equipment, digital skills training, financial assistance, and other resources necessary to realize the Internet’s full potential. Digital exclusion carries a high societal and economic cost. Lack of accessible broadband services, digital skills, and equipment materially harms the opportunity of an individual to achieve economic success, educational advancement, positive health outcomes, social inclusion, and civic engagement. The Digital Equity Act identifies those groups most vulnerable to this digital exclusion and creates a program to address their needs (the “Covered Populations”).⁵ The DE Act recognizes that individuals that live in households near the poverty

³ 47 U.S.C. §1701 *et seq.*

⁴ 47 U.S.C. §1722.

⁵ 47 U.S.C. §1721(8). The “Covered Populations” are: (a) individuals who live in covered households (defined as households with income of not more than 150% of the poverty level); (b) aging individuals; (c) incarcerated individuals (as defined by the State or Territory), other than individuals who are incarcerated in a Federal correctional facility; (d) veterans; (e) individuals with disabilities; (f) individuals with a language barrier, including individuals who are English learners and have low levels of literacy; (g) individuals who are members of a racial or ethnic minority group; and (h) individuals who primarily reside in a rural area.

level, aging individuals, incarcerated individuals, veterans, individuals with disabilities, individuals with a language barrier, members of racial or ethnic minority groups, and individuals living in rural areas all face barriers to digital inclusion that warrant additional efforts to ensure digital equity is achieved.

Achieving digital equity will strengthen the American economy. When members of the Covered Populations are excluded from the digital economy, they lose job opportunities and access to educational resources and workforce development opportunities. As the job market becomes increasingly digital, those without digital skills and access will face increasing challenges in securing well-paying employment. This lack of digital literacy can also reduce digital entrepreneurship and cost the United States significant opportunities for new business development and economic activity. Digital exclusion can also prevent individuals from accessing financial services, managing their finances efficiently, and building wealth – exacerbating existing wealth and income gaps. On an international scale, digital exclusion can reduce America’s competitiveness in the global economy.

Achieving digital equity will likewise improve personal welfare and promote civic engagement among the Covered Populations. Lack of access to telehealth services, which rely on digital technologies and have become vital in providing healthcare access, is leading to health disparities and increased healthcare costs, particularly in rural areas. The inability of members of the Covered Populations to access online services also undermines the ability of the government to provide more efficient services and share critical information and proceedings with the public. Expanding digital equity will enable members of the Covered Populations to access information and government services online and empower these individuals to engage in civic activities, such as voting, advocacy, and community involvement, contributing to a more participatory democracy.

Recognizing the devastating impact of digital exclusion, President Biden made a commitment that every household in America will have access to affordable, reliable, high-speed Internet, and the resources necessary to realize the Internet’s full potential. Passed on a bipartisan basis in both chambers of Congress, the Digital Equity Act of 2021 provides \$2.75 billion to address digital inclusion and advance digital equity. The law charges NTIA – the President’s principal advisor on telecommunications and information policy matters, housed within the United States Department of Commerce (DOC) – with administering these programs.

The Digital Equity Act creates a carefully structured process to address the core concerns of digital equity and digital inclusion for the members of the Covered Populations. The first step was the creation of detailed Digital Equity Plans. NTIA launched the State Digital Equity Planning Grant Program (“Planning Grant Program”) on May 13, 2022, awarding \$53.7 million to 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and four U.S. Territories, to develop Digital Equity Plans which identify the barriers to digital adoption for each of the eight Covered Populations identified in the statute. With this funding, all fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands have for the first time developed Digital Equity Plans designed to identify the barriers to digital equity faced

by the Covered Populations, establish measurable objectives for documenting and promoting the availability and affordability of access to fixed and wireless broadband services, online accessibility and inclusivity of public resources and services, digital literacy and skills, awareness of cybersecurity and protection of online privacy, and the availability of affordable consumer devices.

This Notice of Funding Opportunity will make funds available to begin implementation of these State⁶ and U.S. Territory⁷ Digital Equity Plans and will, in addition, empower Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (“Native Entities”) to address digital equity and inclusion consistent with the purposes of the Digital Equity Act.

States and U.S. Territories will receive funding to adopt sustainable, long-term programs that address digital equity through defined projects and activities, consistent with their Digital Equity Plans, that will have a measurable impact on the availability, affordability, and adoption of broadband technology, the accessibility and inclusivity of public resources, digital literacy and skills, awareness of the importance of cybersecurity, online privacy, and the availability and affordability of consumer devices. Native Entities will be able to undertake both planning and implementation projects to further digital equity through a competitive grant program with performance goals similar in scope to those outlined for States and Territories, including availability, affordability, and adoption of broadband technology, the accessibility and inclusivity of public resources, digital literacy and skills, cybersecurity, online privacy, and the availability and affordability of consumer devices.

As result of these programs, the DE Act will ensure that all Americans are able to benefit from the IIJA investment in broadband infrastructure. The success of the States and Territories in meeting these goals will be tracked through the reporting requirements on the applicable performance metrics outlined in Section II.A.3 below. The success of the Native Entities in meeting these goals will be tracked through the reporting requirements on the applicable performance metrics outlined in Section III.A.3 below. Recognizing that it is essential to ensure that Digital Equity Plans remain relevant, effective, and aligned with the changing community needs and advancements in technology, this Program will also allow States and Territories to utilize up to twenty (20) percent of their funds to update and maintain their Digital Equity Plans during the period of performance of a Capacity Grant Program award.

Digital equity is a multi-faceted issue that requires a “whole of government” approach to ensure that the various federal agencies are working together to create a more inclusive and equitable landscape for all Americans. This allows for the development of holistic solutions that address

⁶ As defined by the Digital Equity Act, and as used in this NOFO, the term “State” means any State of the United States; the District of Columbia; and the Commonwealth of Puerto Rico. 47 U.S.C. §1721(21).

⁷ The Digital Equity Act establishes a set aside for the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State (“U.S. Territory(ies)” or “Territory(ies)”). 47 U.S.C. §1723(i).

the root causes of digital disparities, such as lack of Internet access, digital skills, and affordability. Recognizing that one program alone cannot address the challenges to digital equity and inclusion that face the United States, the Digital Equity Act directs NTIA to engage in a cross-government consultation process to ensure that the Program complements and enhances, and does not conflict with, other federal broadband initiatives and programs. NTIA has launched a robust interagency coordination effort, receiving input from nine (9) agencies and the Federal Communications Commission, documenting the programs available to serve members of the Covered Populations, and discussing means by which these programs can be integrated into the Digital Equity Plans of States and Territories. NTIA will use this information to enhance the value of the Capacity Grant Program and ensure the United States derives the maximum benefit from this investment in digital equity.

This NOFO is divided into sections to help clarify specific requirements applicable to different entities applying for funding. The procedures through which States and U.S. Territories can seek funding are outlined in Section II. Procedures for Native Entities to obtain funding are addressed in Section III. The remaining sections are common to both types of entities.

B. Connections to the Broadband Equity, Access, and Deployment (BEAD) Program

The Digital Equity Act of 2021 is closely tied to the broader infrastructure deployment goals of the Broadband Equity, Access, and Deployment (BEAD) Program. The BEAD Program is an historic \$42.5 billion investment in grants to States and U.S. Territories for broadband planning, deployment, mapping, equity, adoption, and meaningful use projects. The BEAD Program includes a requirement that recipients submit a Five-Year Action Plan and an Initial Proposal, each of which must include descriptions of the recipient's plans to advance digital equity and inclusion.

Collaboration and coordination between the implementation of a State or Territory's Digital Equity Plan and the State or Territory's Five-Year Action Plan under BEAD are essential to maximize the impact of both initiatives, thereby ensuring that the resources devoted to each program are working in a complementary and non-duplicative manner. As noted in the DE Planning Grant NOFO, States and Territories should at a minimum establish formal and direct communications and collaboration pathways between the teams that remain in place throughout the entire implementation process. This will be particularly important to reduce the burden and confusion on community stakeholders when fulfilling the local coordination, outreach, and stakeholder engagement requirements of both programs. Similarly, Native Entities should ensure their projects are coordinated with other broadband projects, such as those funded by the Tribal Broadband Connectivity Program ("TBCP").

C. Definitions

(1) Assistant Secretary: The term "Assistant Secretary" means the Assistant Secretary of Commerce for Communications and Information or the individual who holds any successor position.

(2) Administering Entity: The term “Administering Entity” refers to the entity selected by the governor (or equivalent official) of each State to administer the State Digital Equity Planning and Capacity Grant Programs. The entity selected for the purposes of the Planning Grant Program must also administer the State Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to undertake all the responsibilities described below.

The administering entity shall—

1. Serve as the recipient of, and administering agent for, any grant awarded to a State under this Program;
2. Develop, implement, oversee, and, as applicable, update the State Digital Equity Plan for the State;
3. Make subgrants to any entity described in 47 U.S.C. §1723(c)(1)(D) of the Infrastructure Act that is located in the State in support of:
 - a. The State Digital Equity Plan for the State; and
 - b. Digital inclusion activities in the State generally; and
4. Serve as—
 - a. An advocate for digital equity policy and digital inclusion activities; and
 - b. A repository of best practice materials regarding the policies and activities described in clause (a).

An Administering Entity must have demonstrated a capacity to administer the Program on a statewide level, and may be any of the following:

1. The State, a political subdivision, agency, or instrumentality of the State, an Indian Tribe located in the State, an Alaska Native entity located in the State, or a Native Hawaiian organization located in the State;
2. A foundation, corporation, institution, association, or coalition that is—
 - a. A not-for-profit entity;
 - b. Providing services in the State; and
 - c. Not a school;
3. A community anchor institution, other than a school, that is located in the State;
4. A local educational agency that is located in the State;
5. An entity located in the State that carries out a workforce development program;
6. An agency of the State that is responsible for administering or supervising adult education and literacy activities in the State;
7. A public or multi-family housing authority that is located in the State; or
8. A partnership between any of the previously listed entities.

(3) Administering Organization: The term “Administering Organization” means the organization selected by the governor (or equivalent official) of a U.S. Territory to administer a State Digital Equity Capacity Grant Program award. The organization selected by the U.S. Territory for the purposes of the State Digital Equity Planning Grant Program must also administer the State Digital Equity Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to serve in this role.

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

(5) Alaska Native Entity: The term “Alaska Native entity” will refer to a tribally controlled entity in Alaska whose purpose or mission is to represent or advance the interests of one or more native Alaskan communities. This will include, but will not be limited to, subsidiary organizations of an Indian Tribe; entities that receive federal funding due to their status as an Indian or Native organization; and the Alaska Native Regional Nonprofit Organizations created to administer social, educational, and health services for Alaska Native people in their region.

(6) Commission: The term “Commission” refers to the Federal Communications Commission.

(7) Community Anchor Institution: The term “community anchor institution” means a public school, a public or multi-family housing authority, a library, a medical or healthcare provider, a community college or other institution of higher education, a State or Territory library agency, and any other nonprofit or governmental community support organization.

(8) Covered Household: The term “covered household” means a household, the income of which for the most recently completed year is not more than 150 percent of an amount equal to the poverty level, as determined by using criteria of poverty established by the Bureau of the Census.

(9) Covered Populations: The term “Covered Populations” means:

1. Individuals who live in covered households;
2. Aging individuals;
3. Incarcerated individuals (as defined by the State or Territory), other than individuals who are incarcerated in a federal correctional facility;
4. Veterans;
5. Individuals with disabilities;
6. Individuals with a language barrier, including individuals who—
 - a. Are English learners; and
 - b. Have low levels of literacy;
7. Individuals who are members of a racial or ethnic minority group; and
8. Individuals who primarily reside in a rural area.

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

(11) Digital Inclusion: The term “digital inclusion” –

1. Means the activities that are necessary to ensure that all individuals in the United States have access to, and the use of, affordable information and communication technologies, such as—

- a. Reliable fixed and wireless broadband internet service;
- b. Internet-enabled devices that meet the needs of the user; and
- c. Applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration; and

2. Includes—

- a. Obtaining access to digital literacy training;
- b. The provision of quality technical support; and
- c. Obtaining basic awareness of measures to ensure online privacy and cybersecurity.

(12) Digital Literacy: The term “digital literacy” means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

(13) Disability: The term “disability” means, with respect to an individual—

- 1. A physical or mental impairment that substantially limits one or more major life activities of such individual;
- 2. A record of such an impairment; or
- 3. Being regarded as having such an impairment.

(14) Eligible State: The term “Eligible State” means a State with respect to which the Assistant Secretary has approved an application submitted to the Assistant Secretary under this NOFO, including a State Digital Equity Plan developed by the State under 47 U.S.C. §1723(c).

(15) Indian Tribe: The term “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community (i.e., Tribal Organizations), including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 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.

(16) Native Hawaiian Organization (NHO): An organization that is registered with the U.S. Department of the Interior’s Office of Native Hawaiian Relations and Hawaiian Homes

Commission Act Beneficiary Associations and Homestead Associations, as defined under 43 C.F.R. §§ 47.10 and 48.6, or is the Department of Hawaiian Home Lands.

(17) Native Entity: As used in this NOFO, the term “Native Entity” refers to Indian Tribes, Alaska Native entities, and Native Hawaiian organizations as referenced in 47 U.S.C. 1723(i)(2) and that meet the eligibility criteria outlined in Section III.B.1 of this NOFO.

(18) Rural Area: The term “rural area” means any area other than –

1. A city or town that has a population of greater than 50,000 inhabitants;
2. Any urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants; and
3. In the case of a grant or direct loan, a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.

(19) State: The term “State” means:

1. any State of the United States;
2. the District of Columbia; and
3. the Commonwealth of Puerto Rico.

(20) Tribal Organization: The term “Tribal Organization” means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(21) U.S. Territory: The term “U.S. Territory,” “U.S. Territories” or “Territory(ies)” means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State.

(22) Veteran: The term “veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.

II. STATES AND U.S. TERRITORIES - APPLICATION REQUIREMENTS AND AWARD INFORMATION

This Section provides detailed information for States and U.S. Territories regarding federal award information, eligibility, the application and submission process for the Capacity Grant Program, and the review criteria to be used for these awards. Information for Native Entities regarding these subjects can be found in Section III of this NOFO.

A. FEDERAL AWARD INFORMATION

1. Funding Availability

To fund grants under the State Digital Equity Capacity Grant Program, Congress appropriated \$840,000,000 for fiscal years 2022 through 2024 (\$240,000,000 for fiscal year 2022, \$300,000,000 for fiscal year 2023, and \$300,000,000 for fiscal year 2024).⁸

47 U.S.C. §1723(i)(3) requires NTIA to set aside not less than one (1) percent of the total funds appropriated for each fiscal year “to award grants to, or enter into contracts or cooperative agreements with, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State.” Accordingly, NTIA has set aside \$8,400,000 for grants to the U.S. Territories to satisfy the Territorial set aside requirement of fiscal years 2022 through 2024.

47 U.S.C. §1723(i)(2) requires NTIA to set aside not less than five (5) percent of the total funds appropriated for each fiscal year “to award grants to, or enter into contracts or cooperative agreements with, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations.” Accordingly, NTIA has set aside \$42,000,000 for grants to Native Entities to satisfy the Native Entity set aside requirement for the fiscal years 2022 through 2024.⁹ As discussed in Section III.A.1, an additional \$3,000,000 will be made available to Native Entities under the Digital Equity Planning Grant Program, as well as approximately \$300,000 in unclaimed funds from the Planning Grant Program, for a total funding opportunity of approximately \$45,300,000 under this NOFO.

⁸ Because both 47 U.S.C. §1721(14)(B) and 47 U.S.C. §1723(d)(2)(B) require the completion of a State Digital Equity Plan before an Eligible State may apply for a State Digital Equity Capacity Grant, the State Digital Equity Capacity Grant Program could not be made available in 2022 and 2023.

⁹ In 2022, Congress appropriated \$60,000,000 for the State Digital Equity Planning Grant Program and \$240 million for the State Digital Equity Capacity Grant Program. The Digital Equity Planning Grant NOFO applied the required set aside of 1% for U.S. Territories and 5% for Native Entities to the \$60,000,000 Planning Grant appropriation for 2022. Through this NOFO, NTIA now sets aside the same percentages for the remaining \$240,000,000 appropriated in 2022, thus satisfying the requirement of 47 U.S.C. §1723(i) that NTIA set aside funds from the total amounts made available in a fiscal year.

Congress has also permitted the Assistant Secretary to set aside from amounts appropriated for each fiscal year, funds for salaries and expenses, administration, and oversight, \$1,000,000 of which must be transferred to the Office of Inspector General of the Department of Commerce for each fiscal year. NTIA has set aside \$28,800,000 for administrative and transfer costs of the State Digital Equity Capacity Program.

After accounting for administrative expenses, including transfers to the Department of Commerce Office of Inspector General, set asides for U.S. Territories, and set asides for Native Entities, NTIA will make available \$760,800,000 for States to be allocated as required by 47 U.S.C. §1723(d)(3)(A)(i) and Section II.A.4 of this NOFO. Subject to the availability of funding, future NOFOs are expected to make up to an additional \$300,000,000 available for implementation of Digital Equity Plans and digital inclusion activities in each of fiscal years 2025 and 2026.

2. Period of Performance

As established in 47 U.S.C. §1723(d)(3)(B), Eligible States “shall expend the grant funds during the 5-year period beginning on the date on which the Eligible State is awarded grant funds.”¹⁰ Under the terms of this NOFO, U.S. Territories will likewise be required to expend the grant funds during the 5-year period beginning on the date on which the entity is awarded grant funds.¹¹

3. Performance Measurement and Evaluation

Capacity Grant recipients and subrecipients are required to incorporate program measurement and evaluation activities as a part of their program design and implementation. These activities must include documentation of the State or Territory’s Digital Equity Plan implementation efforts and the progress made toward meeting the measurable objectives identified in those Digital Equity Plans, including the success of specific funded projects in meeting the performance objectives of the Program. States and Territories must protect personally identifiable information as required by 2 C.F.R. §200.303(e) and provide protection of human subjects as required by 15 C.F.R. Part 27.

Information collected must include the following data points:

- a. Number of Covered Population(s) served;
- b. Number of people served within each Covered Population;
- c. Total number of people served;

¹⁰ The five-year period begins on the first day of the period of performance identified in the grant agreement.

¹¹ Id.

- d. Number of programs implemented by type;
- e. Anecdotal/personal testimony demonstrating the positive impact of the Program;
- f. Quantifiable evidence of progress toward the measurable objectives identified in the Digital Equity Plan;
- g. Impact on the State or Territory's goals regarding:
 - i. Economic and workforce development outcomes;
 - ii. Educational outcomes;
 - iii. Health outcomes;
 - iv. Civic and social engagement; and
 - v. Delivery of essential services.

At the end of the period of performance, a State or Territory receiving funds under the Capacity Grant Program must submit an assessment of the effectiveness of the programs along with the results, protocols, and instruments used to collect the above data to NTIA. All program evaluation materials must be submitted in accordance with the terms and conditions of the subject grant award and no later than the final award closeout and may be posted publicly on NTIA's website.

4. Award Amounts

Funding amounts for Eligible States will be determined pursuant to the statutory formula set forth at 47 U.S.C. §1723(d)(3)(A)(i) and this NOFO. U.S. Territories will receive equal shares of the Capacity Grant Program funding set aside for U.S. Territories consistent with 47 U.S.C. §1723(i)(3).

a. Statutory Award Formula for States

Pursuant to §1723(d)(3)(A)(i) of the Digital Equity Act, the amount awarded to each Eligible State in a given fiscal year will be calculated by applying a formula in which:

- i. fifty (50) percent of the total grant amount is based on the population of the Eligible State in proportion to the total population of all Eligible States;
- ii. twenty-five (25) percent of the total grant amount is based on the number of individuals in the Eligible State who are members of the Covered Populations, in proportion to the total number of individuals in all Eligible States who are members of the Covered Populations; and
- iii. twenty-five (25) percent of the total grant amount is based on the comparative lack of availability and adoption of broadband in the Eligible State relative to all Eligible States, as determined by data collected from the annual inquiry of the Federal Communications Commission pursuant to Section 706(b) of the

Telecommunications Act of 1996,¹² the American Community Survey, NTIA Internet Use Survey, and any other source that the Assistant Secretary, after appropriate notice and opportunity for public comment, determines to be appropriate.

In the event that certain data on broadband availability or adoption are unavailable for the Commonwealth of Puerto Rico during a given fiscal year, the Assistant Secretary shall use the median value among all Eligible States for each affected factor in the formula and assign it to Puerto Rico for the purposes of making the calculations for that fiscal year.¹³

The capacity grant amount awarded to any Eligible State in a given fiscal year must not be less than one-half (0.5) percent of the total amount made available to award Capacity Grants to Eligible States during that fiscal year.¹⁴ Additionally, if there are amounts remaining available to NTIA after awarding the Digital Equity Capacity Grants to States in a given fiscal year, NTIA shall distribute those amounts to Eligible States to which NTIA has awarded Digital Equity Capacity Grants in accordance with the formula described at 47 U.S.C. §1723(d)(3)(A)(i). If additional Digital Equity Capacity Grant funds remain unclaimed following this distribution (for example, if one or more States decline the extra funds), the Assistant Secretary will add the remaining balance to the funds set aside for U.S. Territories and/or Native Entities.

After reviewing applications and determining which States are eligible to receive Capacity Grants, NTIA will apply the funding formula as detailed in Appendix A. NTIA and the U.S. Census Bureau have collaborated to create the “Digital Equity Act Population Viewer,” which shows Covered Population totals calculated by the Census Bureau for each state, alongside the other factors used as inputs into the funding formula. The Digital Equity Act Population Viewer can be accessed at <https://www.census.gov/data/data-tools/digital-equity-act-population.html>.

¹² 47 U.S.C. §1302(b).

¹³ 47 U.S.C. §1723(d)(3)(A)(iv).

¹⁴ 47 U.S.C. §1723(d)(3)(A)(ii).

b. Tentative State Award Allocation Amount

Tentative award allocation amounts per State, assuming that each State seeks and receives Digital Equity Capacity Grant funds, are as follows:

State	Amount	State	Amount
Alabama	\$13,702,566.00	Montana	\$6,938,534.64
Alaska	\$5,631,769.64	Nebraska	\$6,500,627.76
Arizona	\$16,170,760.44	Nevada	\$9,200,546.13
Arkansas	\$10,161,429.01	New Hampshire	\$4,942,018.62
California	\$70,226,453.82	New Jersey	\$18,094,857.62
Colorado	\$12,368,261.03	New Mexico	\$8,673,975.84
Connecticut	\$9,183,114.07	New York	\$36,984,641.81
Delaware	\$4,816,482.10	North Carolina	\$22,456,097.01
District of Columbia	\$3,804,000.00	North Dakota	\$4,549,772.25
Florida	\$41,748,794.74	Ohio	\$23,291,991.74
Georgia	\$22,455,639.68	Oklahoma	\$11,233,311.64
Hawaii	\$6,017,160.03	Oregon	\$9,947,586.17
Idaho	\$6,305,226.45	Pennsylvania	\$25,508,473.61
Illinois	\$23,732,912.78	Puerto Rico	\$9,807,187.39
Indiana	\$15,096,770.19	Rhode Island	\$4,540,059.53
Iowa	\$8,442,129.37	South Carolina	\$12,846,583.30
Kansas	\$8,229,246.17	South Dakota	\$5,010,234.08
Kentucky	\$12,123,531.39	Tennessee	\$15,814,288.00
Louisiana	\$12,727,887.98	Texas	\$55,641,147.86
Maine	\$5,784,349.60	Utah	\$7,795,149.91
Maryland	\$13,427,134.17	Vermont	\$5,299,150.18
Massachusetts	\$14,133,924.00	Virginia	\$18,330,732.47
Michigan	\$20,585,775.60	Washington	\$15,983,291.58
Minnesota	\$12,033,288.01	West Virginia	\$9,011,588.00
Mississippi	\$10,752,090.73	Wisconsin	\$13,248,029.83
Missouri	\$14,237,940.09	Wyoming	\$5,251,485.99

NTIA emphasizes that these allocations are tentative, and that a State's final allocation could be higher or lower than the amount listed here, depending on factors including the number of States that elect to participate in the program and the results of any challenges to this allocation.

c. Allocation Challenge Process for State Awards

As provided in the Digital Equity Act,¹⁵ a State may challenge the amount allocated to it as determined by the funding formula outlined in this NOFO. Any State that wishes to challenge the tentative award amount listed above shall submit a letter to the Assistant Secretary, through the NTIA programmatic contact listed in Section V of this NOFO, signed by the governor or equivalent official, within fourteen (14) calendar days of the publication of this NOFO. The letter shall describe, in as much detail as practicable, the error or other defect that the State believes to have occurred in NTIA's application of the formula or statutory requirements. The Assistant Secretary will determine the validity of the challenge and respond to the State in writing within twenty-one (21) calendar days of the end of this fourteen (14) day period. If the Assistant Secretary determines that a recalculation of formula amounts is appropriate, the Assistant Secretary will promptly notify the other States of this occurrence and of the results of any amendment to award amounts for all States. Additionally, a State receiving a Capacity Grant Award may challenge the amount allocated to it as determined by the funding formula after receiving its award in accord with this subsection, although NTIA strongly encourages States that wish to challenge funding allocations to do so within fourteen (14) calendar days of publication of this NOFO.

d. Awards to U.S. Territories and Possessions

47 U.S.C. §1723(i)(3) requires the Assistant Secretary to reserve not less than one (1) percent of the total funds appropriated in a given fiscal year to carry out the Program to award grants to, or enter into contracts or cooperative agreements with, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State, to enable those entities to carry out the activities described in the statute.¹⁶ Consistent with the Digital Equity Act, NTIA has reserved one (1) percent of the funds made available for fiscal years 2022, 2023, and 2024¹⁷ (\$8,400,000) for this purpose. Further, the Assistant Secretary tentatively allocates \$2,100,000 to each of: (a) the United States Virgin Islands, (b) Guam, (c) American Samoa, and (d) the Commonwealth of the Northern Mariana Islands, for the purpose of implementing the Digital Equity Plans each U.S. Territory has developed pursuant to 47 U.S.C. §1723(c). This tentative funding amount may be modified if one of the named U.S. Territories does not apply, applies but fails to receive a grant under this Program, or is awarded a grant for an amount less than the tentative allocation identified in this NOFO.

¹⁵ See, 47 U.S.C. §1723(d)(3)(C).

¹⁶ See, 47 U.S.C. §1723(i)(3).

¹⁷ Due to the sequencing of the State Digital Equity Planning and Capacity Grant Programs mandated by the IIJA and the statute's annual release of funds, funding from fiscal years 2022 and 2023 are being included in this NOFO along with fiscal year 2024 Digital Equity Capacity funding.

5. Type of Funding Instrument

The funding instrument for awards made to States pursuant to this NOFO will be a grant. NTIA also expects to award grants to U.S. Territories, although NTIA and the NIST Grants Officer¹⁸ reserve the right to issue cooperative agreements or contracts to such entities in accordance with 47 U.S.C. §1723(i)(3).

B. ELIGIBILITY INFORMATION

1. Eligible Applicants

Each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, that has completed a Digital Equity Plan that meets the requirements of 47 U.S.C. §1723(c) is eligible to apply for grants under this program. The governor or equivalent official of each State that wishes to be awarded a grant must designate an Administering Entity for that State to receive and administer the grant.¹⁹ The Administering Entity selected for the purposes of the Planning Grant Program must also administer the State's Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to serve as the Administering Entity for both programs. *See* Section I.C.2 of this NOFO for the definition of "Administering Entity," including the list of entities eligible to serve as Administering Entities and the roles and responsibilities of an Administering Entity.

U.S. Territories that submit a Digital Equity Plan consistent with the obligations of their State Digital Equity Planning Grant award are eligible to apply for grants under this program. The Administering Organization selected by the U.S. Territory for the purposes of the State Digital Equity Planning Grant Program must also administer the State Digital Equity Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to serve in this role.

2. Cost Sharing or Matching

The Digital Equity Act authorizing the establishment of this program does not contain a statutory non-federal cost sharing or matching funds requirement. Accordingly, NTIA will not require a State or U.S. Territory applying for a financial assistance award under this program to provide a non-federal cost contribution and will not give additional consideration during the evaluation process for applications proposing a non-federal cost-sharing arrangement.

¹⁸ The National Institute of Standards and Technology ("NIST") has been delegated the authority to act as the Grants Officer for the Department of Commerce and provides the business management and administrative platforms necessary to manage the Digital Equity Act grants on behalf of NTIA.

¹⁹See, 47 U.S.C. §1723(b).

C. APPLICATION AND SUBMISSION INFORMATION

1. Address to Request Application Package

Application forms and instructions are available on the NTIA Grants Portal at <https://grants.ntia.gov> and on its BroadbandUSA website <https://broadbandusa.ntia.gov>. Applicants should follow instructions set forth below and are encouraged to submit their applications early.

NTIA recommends that applicants participate in application technical assistance webinars and review the program and application guidance that will be posted on NTIA's BroadbandUSA website <https://broadbandusa.ntia.gov>. Applications 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.

2. Content and Form of Applications

State and U.S. Territory applications for Capacity Grants under the State Digital Equity Capacity Grant Program must be complete, must adhere to the instructions provided in this NOFO, and must be submitted in the format requested in the NTIA Grants Portal (<https://grants.ntia.gov>).

Any State or Territory applying for a State Digital Equity Capacity Grant must submit an application that includes the following information:

- a. A description of the entity selected to serve as the Administering Entity for the State (*see* definitions set forth in Section I.C of this NOFO) or in the case of a U.S. Territory, the Administering Organization.
- b. A Digital Equity Plan for the State meeting the requirements of 47 U.S.C. §1723(c) or the Digital Equity Plan for the Territory meeting the requirements of the Digital Equity Planning Grant award of the Territory.
- c. A certification that the State or Territory, acting through the Administering Entity for the State or through the Administering Organization for the Territory, shall not later than five (5) years after the date on which the Assistant Secretary awards the Capacity Grant to the State or Territory:
 - i. Implement the Digital Equity Plan of the State or Territory; and
 - ii. Make subgrants in a manner that is consistent with the aims of the Digital Equity Plan.

- d. The assurances required under 47 U.S.C. §1723(e) and set forth in Appendix C to this NOFO.
- e. Project Narrative. The Project Narrative should provide an overall implementation strategy that is consistent with the Digital Equity Plan and that promotes the purposes of the Digital Equity Act and this NOFO. The Project Narrative must describe the details of each specific project and activity to be funded by the State Digital Equity Capacity Grant Program that has been identified at the time of application submission (*see* Section II.C.3 of this NOFO for examples of permissible projects and activities). If at the time of application, a State or Territory has not yet identified all of the projects to be used for Digital Equity Plan implementation, or is unable to provide all of the project details listed below, this information must be submitted to NTIA via the NTIA Grants Portal as soon as practicable, but **no later than nine (9) months from the award start date**, unless extended in writing by the Grants Officer, and will be subject to review and written approval by the Grants Officer before a State may draw down funds to implement the project(s) at issue. The Project Narrative must include:
 - i. An Executive Summary of the overall implementation strategy and the project(s) to be funded (approximately 500 words). Please note, 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* 15 C.F.R. §4.9(b) concerning the designation of business information by the applicant.
 - ii. Identification of the elements of the Digital Equity Plan to be implemented in this initial allocation of Capacity Grant Program funding, whether specific elements of the plan or specific Covered Populations are being prioritized, and the rationale for prioritizing those elements or Covered Populations consistent with the needs assessment within the Digital Equity Plan.
 - iii. For each of the specific implementation projects or activities to be funded by the State Digital Equity Capacity Grant Program, include:²⁰
 - 1) A brief summary of the specific activity or set of activities the project intends to complete or implement;
 - 2) The barrier(s) to digital equity the project will address;

²⁰ If the information requested below is not available at the time the application is submitted, it must be submitted to NTIA via the NTIA Grants Portal within nine (9) months of award date.

- 3) The measurable objectives to be pursued and the data to be collected to demonstrate success in meeting these objectives including quantitative baseline data;
 - 4) The Covered Populations to be served and the estimated number of individuals within those Covered Populations to be served;
 - 5) The specific geographies to be served (if not State-or Territory-wide);
 - 6) Whether the State or Territory acting through its Administering Entity or Administering Organization (as applicable) will implement the activity directly or subgrant funds to implement the activity;
 - 7) If the State or Territory will subgrant the funds, the entity implementing the proposed project (if known at the time of application) including a description of its capacity to manage the project;
 - 8) How the proposed project or activity will be evaluated to determine successful implementation of the Digital Equity Plan of the State or Territory, including specific references to the Digital Equity Plan and quantitative baseline data; and
 - 9) Estimates of the anticipated outputs of each activity or project. (For example, the number of hours of training to be provided, the curricula to be developed, or the number of certifications to be awarded).
- iv. Confirmation that the State or Territory will not use more than twenty (20) percent of the award amount to update its Digital Equity Plan, the activities it intends to conduct to update the Plan, and a timeline for updates, including publication for public comment;
 - v. A description of the ongoing collaboration efforts the State or Territory will conduct with key stakeholders in the State or Territory as listed at 47 U.S.C. §1723(c)(1)(D);
 - vi. To the extent the applicant intends to use subgrantees to implement grant projects and activities, a description of the process by which subgrantees will be selected and the safeguards in place to ensure the selection process fosters a sense of fairness and accountability by being open, transparent, equitable, and inclusive;
 - vii. A description of the overall plan to evaluate how the proposed projects and activities will achieve the goals of the Digital Equity Plan;
 - viii. A description of how the project's success will be measured across the digital equity outcomes identified at 47 U.S.C. §1723(c)(1)(C):
 - 1) economic and workforce development,
 - 2) education,

- 3) health,
 - 4) civic and social engagement,
 - 5) delivery of other essential services, and
 - 6) any other digital equity outcomes specified in the Digital Equity Plan.
- ix. A description of how the benefits delivered to the Covered Populations will be measured to the extent not addressed above, and a description of any other proposed research activities, as applicable.
 - x. A Project Plan including:
 - 1) A description of all major project activities and timelines, including key milestones and when each major project activity will start and end; and
 - 2) A description of how progress on measurable objectives will be tracked and recorded alongside key milestones.
 - xi. A description of the safeguards the applicant will put in place to prevent waste, fraud, and abuse in the implementation of the program.
- f. A detailed description of how the State or Territory's implementation of the Digital Equity Plan, through Digital Equity Capacity Grant Program funding, will benefit each of the Covered Populations located within that State or Territory.
 - g. A certification that the Capacity Grant funds will be used to supplement, not supplant, other federal or State funds that have been made available to carry out the activities in the Digital Equity Plan and this NOFO.
 - h. A description of all other funding sources (including funding applied for) the State or Territory intends to use to implement its Digital Equity Plan, the amount allocated, and the specific Digital Equity Plan elements they will fund. Applicants should include in this funding description other federal programs, State or local government programs, and any private for-profit or not-for-profit funding. This description should include an explanation as to how this alternative funding is being used in a way that does not supplant, conflict with, or duplicate the activities for which the Capacity Grant Funds will be used.
 - i. A Consolidated Budget Form: All budget information in the Consolidated Budget Form must support the dollar amounts identified in the SF-424 and demonstrate that the project or activity meets the eligible use requirements in the Digital Equity Act and this NOFO. The Consolidated Budget Form consists of a budget narrative and a detailed budget spreadsheet. The budget narrative must explain the necessity and basis for all costs, clearly correspond to the information included in the detailed budget spreadsheet and reflect only allowable costs that are consistent with the project scope. Allowable costs are determined in accordance with the cost principles identified in 2 C.F.R. Part 200,

including Subpart E of such regulations and in 48 C.F.R. Part 31 for commercial organizations, as well as the Digital Equity Act. The detailed budget spreadsheet must reflect the cost categories that appear on the SF-424 and include itemized calculations for each cost placed under those categories.

The budget should account for the State or Territory's administrative costs, capped at three (3) percent of the grant amount, program evaluation costs, capped at five (5) percent of the grant amount, and Digital Equity Plan updates and maintenance, capped at twenty (20) percent of the grant amount (*see* Section II.C.3. below regarding limitations on plan updates and maintenance, program evaluation and administrative costs). For this purpose, the three (3) percent limitation on administrative costs includes the combined total of indirect and direct administrative costs charged to an award. **The applicant must clearly describe in the budget narrative how it applied or calculated the three (3) percent limitation on administrative costs.** If indirect costs are included in the proposed budget, the applicant must provide a copy of the approved negotiated indirect cost rate agreement if this rate was negotiated with a cognizant federal agency or otherwise document those indirect costs consistent with 2 C.F.R. 200.414.

- j. The following standard federal financial assistance forms and documentation:
 - i. Standard Form 424: Application for Federal Assistance;
 - ii. CD-511 Certification Regarding Lobbying;
 - iii. Standard Form LLL, Disclosure of Lobbying Activities (if applicable); and
 - iv. Negotiated Indirect Cost Rate Agreement (as applicable).

States and Territories that comply with the application requirements and that are deemed eligible to receive Capacity Grant funds will be informed of their final award amounts once NTIA reviews applications and makes determinations with respect to any challenges. If a final award amount differs from the tentative amount listed in this NOFO, NTIA may amend the award amount for the affected State or Territory. Applicants should bear in mind that the funding allocations listed in Section II.A.4.b of this NOFO could change based on the number of applicants that apply for funding or challenges to funding allocations, and that changes to the funding allocations could occur prior to or after an award has been made, depending upon when the initial application is submitted, reviewed, and when the revised formula allocations are determined by NTIA. If the allocation amount for an award changes from the tentative amounts listed in Section II.A.4.b of this NOFO, NTIA will provide instructions to the applicant regarding the revised application materials that must be submitted for review and the associated award process for their application.

3. Funding Restrictions

a. Allowable Uses of State Digital Equity Capacity Grant Funds

Grant recipients may only use federal award funds to pay for allowable costs under the Digital Equity Capacity Grant 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 and 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. Grant funds may be used to cover only eligible costs incurred by the recipient during the period of performance, and for allowable costs incurred by the recipient during the grant closeout process.

Applicants must comply with the requirements of 47 U.S.C. §1723(d)(3)(D) of the Digital Equity Act and this NOFO. An Eligible State or Territory to which a State Digital Equity Capacity Grant is awarded must, through its designated Administering Entity or Administering Organization (as applicable), use the grant funds **only** for the following purposes:

- i. To update or maintain the State Digital Equity Plan of the State or Territory, provided, however, that the awardee may not use more than twenty (20) percent of the amount of the grant for this purpose.
- ii. To implement the State Digital Equity Plan of the State or Territory.
- iii. To make subgrants to any of the eligible entities identified at 47 U.S.C. §1724(b) that are located in the State or Territory to: (a) assist in the implementation of the Digital Equity Plan of the State or Territory; (b) pursue digital inclusion activities in the State or Territory consistent with the Digital Equity Plan of the State or Territory; and (c) report to the State or Territory regarding the digital inclusion activities of the entity.

Before an Administering Entity or Administering Organization may award a subgrant, the Administering Entity or Administering Organization must require that the entity to which a subgrant is to be awarded certify that:

- 1) The entity shall carry out the activities required under items (a), (b), and (c) of this subsection;
- 2) The receipt of the subgrant shall not result in unjust enrichment of the entity; and
- 3) The entity shall cooperate with any evaluation of the program as it relates to a grant awarded to the entity and that is carried out by or for the Administering Entity or Administering Organization, the Assistant Secretary, or another federal official.

Failure to comply with these certification requirements will result in appropriate enforcement action in accordance with 2 CFR 200.339, up to and including termination under a Capacity Grant Program award.

- iv. To evaluate the efficacy of the efforts funded by grants made to subgrantees under paragraph iii above, provided that the Administering Entity or Administering Organization may not use more than five (5) percent of the amount of the grant for this purpose.
- v. For administrative costs (exclusive of costs for program evaluation and updating the Digital Equity plan) incurred in carrying out the activities described above, provided that an Administering Entity or Administering Organization may not use more than three (3) percent of the amount of the grant for this purpose.

b. Focus of Programs and Permitted Activities

NTIA recognizes that Digital Equity Plans will contain a wide variety of potential programs, activities, and interventions, and encourages the development of new and innovative strategies to address the barriers to digital equity. These programs must focus on creating the necessary conditions to empower individuals and communities with the technological capacity to fully participate in society and the economy. In examining whether a proposed strategy or intervention furthers the goals of the State Digital Equity Capacity Grant Program and the State or Territory's Digital Equity Plan, grant recipients must consider the following criteria and focal points:

- i. **Focus on Covered Populations:** The project should align with the Digital Equity Plan's goals and objectives, and the priorities of the Covered Populations being served, including subgroups within each Covered Population. Priority should be given to projects with the greatest potential impact, such as targeting Covered Households (i.e., low-income individuals) within other Covered Populations.
- ii. **Long-lasting and Meaningful Change:** Digital Equity Plans are intended to address the systemic barriers and gaps to digital access. Projects/activities should reflect this goal and consider the sustainability of initiatives created through this funding.
- iii. **Measurable Implementation Strategies:** Proposed programs and activities should be based on objectives that are measurable, achievable, sustainable, timebound, and are designed to address identified disparities directly and logically.
- iv. **Stakeholder Engagement:** Stakeholders who are directly affected by the proposed strategies and interventions should be involved to encourage ongoing feedback regarding the effectiveness of the interventions and to seek input on potential solutions and improvements.

The following are examples of potential programs, activities, and interventions States and Territories may consider adopting consistent with the objectives identified for Digital Equity Plans in 47 U.S.C. §1723 (c)(1)(B) and with the purposes of the Digital Equity Act. This list is not considered exhaustive, and as noted above, States and Territories are encouraged to develop new and innovative strategies.

- **Digital Literacy and Skills Training:** Develop and implement digital literacy and skills programs that provide training and education to members of the Covered Populations on the use of digital tools, accessing online resources, and practicing safe and responsible online behavior, including programs that focus on youth training. The program may address issues such as online safety, prevention of online harassment and abuse (“cyberbullying”), privacy, and digital financial literacy, and may include the development of digital opportunity centers where individuals can access technology, receive training, and receive assistance with digital tasks.
- **E-Government and Civic Engagement:** Develop digital tools that enable online community engagement and empower individuals to participate in the democratic process, including digital tools that make it easier for individuals to register to vote and participate in civic activities. Develop online resources for legal assistance, government aid programs, and access to justice services for those in need. Enable access to social services, benefits, and government resources through digital platforms, simplifying processes and reducing barriers, including accessibility for people with disabilities.
- **Device Distribution Programs:** Provide devices such as laptops, smartphones, tablets, or other internet-enabled devices that are both practical and responsive to the digital inclusion needs of the Covered Populations, prioritizing individuals, or groups, with the greatest need. Eligibility criteria should be clearly defined and include appropriate safeguards, such as periodic financial audits and asset management systems. Digital literacy and skills training must be an integral part of any device distribution program to ensure that the beneficiaries receive training on how to use the devices effectively, access online resources, navigate digital platforms, use accessibility features, and employ best practices to protect their personal information and data.
- **Economic Development:** Support digital entrepreneurship, online job training, and remote work opportunities, fostering economic empowerment and reducing disparities. Create and/or promote programs and platforms that offer job training and remote work opportunities, helping members of the Covered Populations secure employment and gain economic self-sufficiency. Engage young people within the Covered Populations in digital economic activities that involve digital skills development that will lead to a constructive path to financial independence, a sense of purpose, and shared responsibility to positively contribute to their communities.
- **Online Access to Health and Mental Wellness Services:** Provide tools that directly help patients and end users within the Covered Populations to access healthcare services online, particularly in remote or underserved areas, to reduce health disparities. Expand mental

health crisis training to Covered Population youth through digital channels utilizing interactive and multimedia elements to make the online training more engaging and effective. Promote patient use and adoption of digital health records, access to medical and health services, and improved healthcare coordination. Such programs should focus on the Covered Populations and not health or wellness providers or institutions.

- **Online Accessibility**: Programs to ensure that websites and applications are designed with accessibility in mind, making them usable by individuals with disabilities. In addition, projects that provide improved digital access to emergency communications that enhance the ability of emergency response personnel to provide timely, effective, and life-saving interventions that can ensure the health and safety of individuals with disabilities, particularly those who are deaf, hard of hearing, blind, low vision, deafblind, deafdisabled or speech-disabled. To address concerns for individuals with a language barrier, ensure that online services are available in multiple languages, including culturally responsive American Sign Language, to enhance accessibility to education, employment, healthcare, housing, essential services, civic engagement, and critical life-saving interventions.
- **Access to Affordable Broadband Service**: Promotion of programs to provide low-cost services administered by the Federal Communications Commission, as well as any other relevant local, State, or federal programs, should take precedence. While an Eligible Entity may establish a new affordable access program, it must first conduct a thorough assessment and inventory of existing subsidy programs, grants, or other resources available, leverage those existing resources, and use them as the primary source of funding while using the funding from this Program as a last resort. Any affordable access program shall provide digital literacy and skills training to empower program participants on how to use digital resources effectively and may not exceed ten (10) percent of the total amount of the grant award.

The Assistant Secretary reserves the right not to award State Digital Capacity Grant Program funding with respect to projects or activities NTIA deems to be inconsistent with the Digital Equity Act or with the purposes of the Digital Equity Plan.

c. Prohibited Uses of State Digital Equity Capacity Grant Funds

i. Twenty (20) Percent Cap on Digital Equity Plan Updates

No more than twenty (20) percent of the amount of the grant may be used to update or maintain the Digital Equity Plan of the State or of the Territory (as applicable).

ii. Five (5) Percent Cap on the Evaluation of Program Efficacy

No more than five (5) percent of the amount of the grant may be used to evaluate the efficacy of the efforts funded by grants made to subgrantees to: (a) assist in the implementation of the Digital Equity Plan of the State or Territory; (b) pursue digital inclusion activities in the State or

Territory consistent with the Digital Equity Plan of the State or Territory; and (c) report to the State or Territory regarding the digital inclusion activities of the entity.

iii. Three (3) Percent Cap on Administrative Costs

No more than three (3) percent of the amount of the grant may be used for administrative costs (exclusive of costs for program evaluation and updating the Digital Equity plan) in carrying out allowable activities under this Program and described in a State Digital Equity Capacity Grant Program (“SDECGP”) award. For this purpose, the three (3) percent limitation on administrative expenses includes the combined total of indirect and direct administrative costs charged to an award. The applicant must clearly describe in the budget narrative how it applied or calculated the three (3) percent limitation on administrative costs.

iv. Ten (10) Percent Cap on Affordable Broadband Programs

No more than ten (10) percent of the amount of the grant may be used to fund subsidies for the provision of broadband services through affordable broadband programs.

v. Prohibition on Supplanting and on Certain Website Upgrades

Pursuant to 47 U.S.C. §1723(h), a grant or subgrant awarded under the State Digital Equity Capacity Grant Program shall supplement, not supplant, other federal or State funds that have been made available to carry out activities described at 47 U.S.C. §1723 and in this NOFO. Broadband Equity, Access, and Deployment Program funds, including funds used for non-deployment expenditures, are subject to separate financial assistance award terms and conditions and must not be supplanted by State Digital Equity Capacity Grant Program funding. In addition, grantees are prohibited from using Capacity Grant funds to conduct website upgrades or other accessibility projects that are otherwise required by law.

vi. Prohibition on Broadband Deployment Funding

In general, deployment of broadband infrastructure to connect broadband serviceable locations should be accomplished through other programs, including the Broadband Equity, Access, and Deployment program. However, to the extent that installation of broadband infrastructure is necessary to accomplish an eligible program, activity, or intervention (e.g., installing fixed equipment on a building as part of a strategy to promote access to affordable broadband service), additional information will be required to determine the potential for environmental impacts under the National Environmental Policy Act (42 U.S.C. §4321 *et seq.*) and potential impacts to historic properties under the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*). Additionally, any portion of a State Digital Equity Capacity Grant Program award that will be used for an “infrastructure project” (as defined in 2 C.F.R. 184.3) is subject to the Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52) and to the regulations promulgated thereunder at 2 C.F.R. part 184). *See* Section IV.D.4. of this NOFO for additional information concerning the Build America, Buy America requirements for this program. In accordance with section 60506 of the Infrastructure Act, the Federal Communications

Commission adopted rules to prevent digital discrimination of access on the basis of income level, race, ethnicity, color, religion, or national origin. 89 Fed. Reg. 4128 (Jan. 22, 2024); 47 U.S.C. 1754.

vii. Prohibition on Profit or Fees

A profit, fee, or other incremental charge above actual cost is not an allowable cost under this Program.

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

Grant funds awarded pursuant to this program may not be used, whether directly or indirectly as an offset for other funds, to support or oppose collective bargaining.

4. Subgrantee Selection Process

Each State or U.S. Territory applying for Capacity Grant funds must establish, through its Administering Entity or Administering Organization, a fair, transparent, equitable, and inclusive process, consistent with applicable State or Territory laws and administrative requirements, for selecting and conducting risk assessments (*see*, 2 C.F.R. §200.332(b)) of subgrantees if they intend to subgrant all or a portion of their award funds to other entities to implement digital equity projects. The applicant's selection processes must be made clear to potential subgrantees before subawards are made. NTIA strongly encourages States and Territories to take deliberate steps to ensure that subgrant opportunities are accessible to a diverse range of organizations, particularly those owned, led and/or managed by members of the Covered Populations.

5. Alternative Funding

Implementation of the State Digital Equity Plan need not be wholly funded by the State Digital Equity Capacity Grant Program. In many cases, State Digital Equity Plans are designed to leverage multiple funding sources and partnerships to achieve their objectives, including other federal grants (such as the Broadband Equity, Access, and Deployment Program), private sector partnerships, philanthropic organizations, and local government investments. To maintain financial transparency and ensure the effective use of funds, any State or Territory that plans to use multiple funding sources in the implementation of its Digital Equity Plan must submit with its application a description of all other funding sources the State or Territory intends to use, the amounts to be allocated, and the specific Digital Equity Plan elements to be funded using alternative sources. Please note that provision of this information to NTIA will not impact the amount of Capacity Grant Program funding allocated to a particular State or Territory, which is determined by formula for States. *See* Section II.A.4. of this NOFO for the funding allocations for States and Territories.

As part of the final award close out process, the State or Territory, through its Administering Entity or Administering Organization, must submit to NTIA a list of the alternative funding

sources used and the elements of the Digital Equity Plan implemented using alternative funds. If no other funds are used to implement the DE Plan a statement indicating that no other funds were used to implement the Digital Equity Plan will suffice.

6. Certifications Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the State Digital Equity Capacity Grant Program, the applicant is making the certifications outlined in Appendix B to this NOFO (*see* Line 21 on the SF-424, Application for Federal Assistance).

7. System for Award Management (SAM)

Pursuant to 2 C.F.R. Part 25, an applicant or recipient (as the case may be) is required to: (i) be registered in SAM before submitting its complete application packet; (ii) provide a valid unique entity identifier (UEI) 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. 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.

a. SAM Unique Entity Identifier

All applicants must supply a SAM Unique Entity Identifier (UEI) number. As of April 4, 2022, the U.S. government stopped using the Dun and Bradstreet (D&B) Data Universal Numbering System (D-U-N-S) nine-digit number as the unique identifier for entities throughout the federal awarding cycle, in [SAM.gov](https://sam.gov), Integrated Award Environment (IAE) systems, required forms, or in downstream government systems. Now, entities doing business with the federal government must use the Unique Entity ID created in [SAM.gov](https://sam.gov). Applicants who are new to [SAM.gov](https://sam.gov) may register their entity or receive a UEI by signing into [SAM.gov](https://sam.gov) and selecting “Get Started,” then “Register Entity.” If you are a sub-awardee who just needs a UEI for subaward reporting, choose “Get Unique Entity ID.”

For more information on the retirement of the DUNS, as well as the establishment of an entity’s UEI, please visit <https://www.sam.gov>.

b. SAM Registration

All applicants must register with SAM before submitting an application pursuant to this program. Additionally, the applicant must maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Applicants can register for the SAM at

<https://www.sam.gov/>. Entities without an active [SAM.gov](https://www.sam.gov/) registration and/or UEI at the time of application submission and award may be deemed ineligible for a grant award.

8. Submission Dates and Times

Applications for the State Digital Equity Capacity Grant Program must be complete and must adhere to the instructions provided in this NOFO and be submitted in the format required by the NTIA Grants Portal (www.grants.ntia.gov). For States, complete applications must be received by the NTIA application portal **no later than 11:59 p.m. Eastern Time (ET) on May 28, 2024**. For Territories, complete applications must be received by the NTIA application portal **no later than 11:59 p.m. Eastern Time (ET) on July 31, 2024**.

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](https://www.sam.gov/)) and (b) the free annual registration process in [SAM.gov](https://www.sam.gov/) generally takes between three (3) and five (5) business days but can take more than three (3) weeks.

NTIA expects to complete its review, select successful applicants, and begin award processing for States by **August 28, 2024**. NTIA may, subject to NIST Grants Office Approval, announce awards made under the State Digital Equity Capacity Grant Program on a rolling basis.

9. 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 applicants are required to submit a copy of their applications to their designated state Single Point of Contact (SPOC) offices.²¹

10. Material Representations and Public Disclosure

All forms and supporting documents submitted as part of the application packet will be treated as a material representation of fact upon which NTIA and NIST’s Grant Management Division will rely in awarding grants. Applicants acknowledge and understand that any false, fictitious, or fraudulent statements (or concealment or omission of a material fact) in the forms and supporting documents, including any required certifications or disclosures, submitted to NTIA may subject applicants to criminal prosecution (including under 18 U.S.C. § 1001 and/or 1621), and may subject applicants to civil and administrative penalties and other remedies. Applicants should be aware that NTIA, in coordination with the NIST Grants Officer, may make all or portions of their applications for grants under the State Digital Equity Capacity Grant Program publicly

²¹ The current Intergovernmental Review Listing (SPOC List) is accessible at: <https://www.whitehouse.gov/wp-content/uploads/2023/06/SPOC-list-as-of-2023.pdf>

available as required under applicable federal laws. *See* Section VI.B of this NOFO for additional information concerning the confidentiality of information contained in an application.

11. Other Submission Requirements

States and U.S. Territories must submit complete application packets electronically through the NTIA Grants Portal (<https://grants.ntia.gov>). Complete applications or portions thereof submitted by a State or U.S. Territory by postal mail, courier, email, facsimile, or other means will not be accepted.

a. Timely Receipt Requirements and Proof of Timely Submission

Online Submission. Proof of timely submission is automatically recorded by the NTIA Grants 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 Organizational 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.

b. Amendments

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

D. APPLICATION REVIEW INFORMATION

1. Overview

All States and Territories that meet the requirements set forth at 47 U.S.C. §1723(d) and in this NOFO, including but not limited to the application requirements set forth in Section II.C of this NOFO, will be eligible to receive an award in the amount calculated pursuant to Section II.A.4 of this NOFO. NTIA reserves the right at any time during the application review processes to negotiate with the applicant relative to specific modifications to the application.

2. Initial Eligibility and Administrative Review

NTIA's Program Office staff will conduct an initial eligibility and administrative screening of submitted applications to ensure that the applicant is eligible to receive funding under the program and has submitted a complete application. Applications not submitted by an Eligible State or by an eligible U.S. Territory will be eliminated from further review. NTIA may continue the 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. In such cases, NTIA may ask the applicant to provide any missing or incomplete materials during this initial review.

3. Merit Review

Once an application is deemed eligible and complete, NTIA's program office will initiate a merit review, to be conducted by at least one merit reviewer who is technically and professionally qualified to conduct the review. Merit reviewers may be federal employees or non-federal persons. As applicable, merit reviewers 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. The merit reviewer(s) will review the application to ensure conformity with the program objectives, eligible activities, and related costs/budget as provided in 47 U.S.C. §1723(d) and in this NOFO. The purpose of this review is to provide advice to the Selecting Official as to the technical soundness and merits of the application. During the merit review, NTIA may ask applicants to submit additional information to clarify or to further substantiate the representations made in their applications. In addition, if deficiencies are identified during the merit review, the applicant may be contacted by NTIA and asked to revise the application accordingly.

4. Award Process

The Assistant Secretary or his designee will recommend applications for funding based on the results of the review process in Section II.D of this NOFO. The final approval of applications and the issuance of awards pursuant to this NOFO will be made by the NIST Grants Officer, who serves as the Grants Officer for the State Digital Equity Capacity Grant Program. The award decisions of the NIST Grants Officer are final.

5. Federal Awarding Agency Review of Risk Posed by Applicant

After applications are proposed for funding, 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 (FAPIIS), which now resides in [SAM.gov](https://sam.gov) as the responsibility/qualifications (R/Q) reports. 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.

6. Anticipated Announcement and Award Dates

NTIA expects the earliest start date for awards under this NOFO to be **August 28, 2024**, and NTIA may issue State Digital Equity Capacity Grant Program awards on a rolling basis.

Entities must document and measure their implementation progress, and program completion, as the effectiveness of the funded projects in meeting the stated performance objectives. Entities must also protect personally identifiable information as required by 25 C.F.R. §200.10 and provide protection of human subjects as required by 45 C.F.R. Part 27.

Information collected must include the following data points:

a. Documentation of Program Activities

Recipients shall be required to provide information on the number and types of activities and interventions implemented, and to describe how the activities and interventions will impact the adoption and use of broadband, as well as the longer-term impacts on income, education, employment, housing, and health of the Covered Populations.

b. Performance Data

Recipients shall be required to provide performance data that shows the progress toward achieving program goals, such as the number of members of Covered Populations reached, and if the project involves multiple Covered Populations, the number, names, locations of the Covered Populations (state, county, city), miles traveled, and outputs obtained as a result of the interventions.

c. Participant Assessments & Feedback

Recipients shall be required to collect feedback from participants on their experiences and to measure changes in knowledge, skills, attitudes, or behaviors. These assessments and feedback should be used for continuous improvement to the implementation of the projects.

d. Program Evaluation

At the end of the period of performance, a Native Entity receiving funds under either a Digital Equity Capacity Grant or a Digital Equity Planning Grant must submit an assessment of the effectiveness of the programs along with the results, protocols, and instruments used to collect the above data to NTIA. All program evaluation materials must be submitted as soon as practicable and no later than the final award closeout and may be posted publicly on NTIA's website.

4. Award Amounts

As outlined in Section III.A.1 above, NTIA has reserved \$42,000,000 for awards to Native Entities under the State Digital Equity Capacity Grant Program ("Capacity Grants"). In addition, \$3,000,000 previously set aside for Native Entities under the State Digital Equity Planning Grant Program, as well as approximately \$300,000 of unclaimed funds under the Planning Grant Program, will be made available through this NOFO ("Planning Grants"). Because of the limited

amount of funds available, and the significant amount of Native Entity interest expressed through Letters of Intent submitted in response to the State Digital Equity Planning Grant NOFO, the Assistant Secretary has determined that the most effective means of distributing this amount will be through a competitive application review process as described in Section III.D. of this NOFO.

Because of the relatively small amount of funds available for Planning Grant activities in the previous issues of the Digital Equity Planning Grant, Planning Grant funds will not be made available on a standalone basis. Instead, Planning Grant funds will only be awarded in conjunction with a Capacity Grant application (see, for example, Section III.C.2.c.iii and Section III.C.2.c.iv of this NOFO for additional detail regarding specific application requirements for these funds). Accordingly, Native Entities may submit an application for both Planning Grant funds and Capacity Grant funds, or Capacity Grant funds only. Planning Grant activities and Capacity Grant activities may be conducted simultaneously. Native Entities are not required to seek Planning Grant funding, but to the extent Planning Grant funds are requested, the request is capped at seven and one-quarter (7.25) percent of the total funds requested. NTIA expects to make awards to Native Entities on a competitive basis and in accordance with the application review process and criteria discussed in Section III.D. of this NOFO.

NTIA expects to make individual awards for the Digital Equity Planning Program awards within a range of \$500,000 to \$2,000,000. This range is not a fixed minimum or maximum, but Native Entities requesting funding outside of this range must provide a reasonable explanation for the variation in project size. Applications for funding must include the total amount of funding being requested and must account for all activities that will utilize the requested funding.

5. Types of Funding Instrument

The funding instrument for awards made to Native Entities pursuant to this NOFO will be a grant; however, NTIA and the NIST Grants Officer reserve the right to enter into cooperative agreements or contracts with such entities in accordance with 47 U.S.C. 172 of the Digital Equity Act.

B. ELIGIBILITY INFORMATION

1. Eligible Applicants

Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (collectively, “Native Entities”) are eligible to enter into grants with NTIA to carry out activities contemplated in this Program. To demonstrate eligibility, applicants must obtain a Tribal Government Resolution or equivalent formal authorization from the governing body of the Native Entity providing express

²⁵ To ensure the more limited Planning Grant Program funds are equitably distributed, NTIA is releasing these funds on a proportional basis.

authorities to apply for (1) Digital Equity Capacity Grant funds and Digital Equity Planning Grant funds and Digital Equity Capacity Grant funds on behalf of the Native Entity. A Native Entity may apply as part of a consortium but may only make a single application as outlined below. If applying as a consortium, the lead applicant must submit a Memorandum of Understanding with each Native Entity participating in the consortium demonstrating approval of the proposed projects and clearly articulating the consortium's benefits and responsibilities of each member.

Indian Tribes, Alaska Native Villages, and Native Hawaiian Organizations that appear on one of the following lists prior to the release of the application window, or that meet the criteria set forth below, satisfy the definition of Native Entity for purposes of this NOFO:

- U.S. Department of the Interior, Bureau of Indian Affairs, Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 88 Fed. Reg. 2112 (Jan. 12, 2023), available at: <https://www.federalregister.gov/documents/2023/01/12/2023-00504/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of-indian-affairs>;
- Alaska Department of Natural Resources, Division of Mining, Land and Water, Index of Regional Native Villages, available at: <https://www.adnr.state.ak.us/mlw/paad/17b-easements/>;
- U.S. Department of the Interior, Office of Native Hawaiian Affairs, Native Hawaiian Organization Notification List, available at: <https://www.doi.gov/hawaiian/nhol>;
- U.S. Department of the Interior, Office of Native Hawaiian Relations, Precedent & Beneficiary Associations List, available at: <https://doi.gov/hawaiian/precedent-beneficiary-associations>; and
- The Department of Hawaiian Home Lands.

A Native Entity on one of the lists identified above may appoint a non-profit corporation authorized by the governing body of the Native Entity to administer Digital Equity Capacity Grant Program funds and Digital Equity Planning Grant Program funds on behalf of the eligible Native Entity. If a Native Entity intends to utilize an authorized non-profit organization for this purpose, the Native Entity should identify the organization in its application and discuss the role and activities of such organization.

a. Single Application

Given the high demand for funding under this Program, NTIA will allow only one application from each Native Entity. Each Native Entity must coordinate internally (which includes all departments, subsidiaries, etc.) in submitting its single application. A Native Entity's single application must include the total amount of funding being requested and must account for all Capacity Grant and Planning Grant Programs that will utilize the requested funding. Applicants

that submit an individual application cannot also be part of a consortium application. Additionally, a Native Entity may only participate in one consortium. If NTIA determines that a Native Entity is participating in multiple applications, this may significantly impact NTIA's review of all applications and may result in NTIA removing that entity from consideration for funding in both its individual application and any consortium application in which they are a party.

b. Eligibility of Consortium Application

NTIA encourages coordination and collaboration in addressing digital equity through the submission of an application on behalf of a consortium of multiple Native Entities (each of which must be eligible) in the same effective date. Applicants are not permitted to submit both an individual application and a consortium application. In addition, Native Entities that choose to apply as a consortium application may only be part of one consortium application.

c. Authorization by Governing Authority

Each Native Entity applying for Digital Equity Grant Program funds, whether as an individual application or as a consortium, is required to submit documentation demonstrating it is authorized by the governing authority of the Native Entity to apply for Planning and/or Capital funds.

Documentation demonstrating authorization to apply on behalf of a Native Entity should be in the form of a Tribal Resolution of Consent for Indian Tribes and for Alaska Native Villages, or, for other Native Entities, an equivalent formal authorization from the governing authority of the Native Entity. In the case of consortium applications, each member of the consortium application is required to submit documentation of an appropriate authorization from the applicable governing authority. Consortium applications submitted without authorizations from each Native Entity named in the application will be considered incomplete.

Additionally, if applying as a consortium, the lead applicant must submit an MOU with each Native Entity participating in the consortium demonstrating approval of the proposed projects and clearly articulating the specific benefits and responsibilities of each member. This MOU must include a commitment from the lead applicant to stay in regular communication with each member of the consortium regarding the status of awards and the progress of the proposed projects described.

NTIA will consider application(s) submitted without the appropriate authorizations and agreements as incomplete and may remove them from consideration for funding.

2. Cost Sharing or Matching

The Digital Equity Act authorizing the establishment of this Program does not contain a statutory non-federal cost sharing or matching funds requirement. Accordingly, NTIA will not require an

Eligible Native Entity applying for a financial assistance award under this Program to provide a non-federal contribution and will not give additional consideration during the evaluation process for applications proposing non-federal cost share.

C. APPLICATION AND SUBMISSION INFORMATION

1. Address and Application Package

Applications for Native Entities are available at the NTIA Grants Portal at <https://grants.ntia.gov/> and at www.broadbandusa.ntia.gov. Applications may be requested by email at digitalequity@ntia.gov or by postal mail addressed to:

Angela Thi Bennett
Director of Digital Equity
Office of Internet Connectivity and Growth
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Applicants should follow the instructions set forth below and are encouraged to submit their applications early.

NTIA recommends applicants participate in application technical assistance webinars and review program application guidance that will be posted on NTIA's BroadbandUSA website <http://www.broadbandusa.ntia.gov>. Applicants are also urged to contact the application assistance team well in advance of the deadline to address any technical issues. Failure to properly apply for funds under the Capacity Grant Program by the deadlines established in this NOFO may result in losing this grant opportunity.

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.

2. Content and Form of Applications

Applications for the State Digital Equity Capacity Grant Program must be complete, must adhere to the instructions provided in this NOFO, and must be submitted in the format required by the NTIA Grants Portal (<https://grants.ntia.gov>) and/or the required application templates. While Native Entities are highly encouraged to submit their applications through the NTIA Grants Portal, applications may be received through alternative means as specified below. Native Entities will be able to apply for both Planning Grant funds and Capacity Grant funds or apply for Capacity Grant funds alone. Digital Equity Planning Grant funds will not be made available on a standalone basis.

Native Entities applying for a State Digital Equity Capacity Grant (including Planning Grant funds) must submit an application that includes the following information:

- a. Documentation from the governing body of the Native Entity demonstrating the authority to make a commitment on behalf of the Native Entity, or each member entity in the case of a consortium.
- b. The lead applicant for a consortium application must submit a letter of support from each Native Entity participating in the consortium and a Memorandum of Understanding with each Native Entity demonstrating approval of the proposed project, clearly articulating the specific benefits and responsibilities of each member.
- c. A Project Narrative. The Project Narrative must address both requests for Digital Equity Planning Grants (as applicable) and Digital Equity Capacity Grants and provide an overall implementation strategy. The Project Narrative must show how the proposed projects will serve the Covered Populations, be relevant to the program description, statutory purposes set forth in 47 U.S.C. § 1723(d), and the evaluation criteria set forth in this NOFO. This section should include the following:
 - i. An Executive Summary of the proposed project (approximately 500 words), including a statement of whether Digital Equity Planning Grants are being requested. Please note that if the 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 information and outreach purposes. Applicants are advised not to include information that concerns business trade secrets or other confidential information or financial information as part of the Executive Summary. Also 15 U.S.C. § 4.9(b) concerning the designation of business information as confidential.
 - ii. To the greatest extent possible, data demonstrating the needs and barriers faced by the Native Entity's Covered Populations, including but not limited to:
 - 1) The poverty rate of the Native Entity (*i.e.*, the percentage of members of the Native Entity's population that live in Covered Households as defined at 47 U.S.C. §1721(7)).
 - 2) The number of Covered Populations to be served and the number of individuals within each Covered Population.
 - 3) The number of individuals in the Covered Populations lacking access to a computer, tablet, smartphone, or other device that enables Internet access.
 - 4) The number of individuals within the Covered Populations not using or not subscribing to the Internet.
 - 5) Other data that demonstrates need.

iii. **Digital Equity Planning Grant Funds:** If the Native Entity seeks Digital Equity Planning Grant funds, a description of the specific planning activities the Native Entity intends to undertake and the manner in which these activities will be consistent with 47 U.S.C. §1723(c), including a description of the outputs of those activities, a timeline for completing those activities, and a strategy to share the results of its planning. For example, a Digital Equity Plan, with its results for the community and the broader public, a Digital Equity Plan may include:

- 1) A vision statement;
- 2) Outreach and engagement with the Covered Populations for the purpose of identifying barriers to digital equity and conducting a needs assessment;
- 3) Identification of the barriers to digital equity faced by the members of the Covered Populations;
- 4) Measurable objectives that address barriers to digital equity; and
- 5) Implementation strategies for the measurable objectives identified above.

Funding requested for these activities may not exceed seven and one-quarter (7.25) percent of the total amount of funding being requested (i.e., total of both Digital Equity Planning Grant and Digital Equity Capacity Grant funds). Importantly, Digital Equity Planning Grant funding is requested separately from Digital Equity Capacity Grant funding.

iv. **Digital Equity Capacity Grant Funds:** A description of the grant projects anticipated to be funded by the State Digital Equity Capacity Grant Program, and the number of Covered Populations the proposed projects will serve and how they are consistent with the goals of digital equity and digital inclusion described in 47 U.S.C. §1723(d), and to the extent applying for Planning Grant Program funds, a description of how the Capacity Grant Program funds will be used to implement projects consistent with the Digital Equity Plan. A description of how the proposed grant projects will address identified barriers to digital equity, the measurable objectives that will be used to assess progress towards overcoming these barriers, and how the proposed grant projects will promote, among the Covered Populations, the following:

- 1) The availability of, and affordability of access to, fixed and wireless broadband technology;
- 2) The online accessibility and inclusivity of public resources and services;
- 3) Digital literacy;
- 4) Awareness of, and the use of, measures to secure the online privacy of, and cybersecurity with respect to, an individual; and

- 5) The availability and affordability of consumer devices and technical support for these devices.
- v. If the amount of the requested funding is less than \$500,000 or more than \$2,000,000, provide a reasonable explanation for the variance in project size.
 - vi. If a Native Entity intends to utilize an authorized non-profit organization to administer Tribal Digital Equity Capacity Grant Program funds or State Digital Equity Planning Grant funds, request the organization and discuss the activities of such organization.
 - vii. A description of the implementation team and its experience with the programmatic/technical aspects of the project; the Native Entity's organizational capacity to implement projects and meet key milestones, and a description of its proposed approach for working with other entities in implementation.
 - viii. Resumes of Key Personnel: One resume of each of key personnel who will carry out and be responsible for the project (including subrecipients).
 - ix. A description of the subrecipients or sub-contractors to be followed, as applicable.
 - x. A description of the proposed outcomes and anticipated impact on digital equity and inclusion, including the benefits to the intended beneficiaries, and a plan to sustain project benefits by:
 - 1) Ensuring and maintaining transparency with key stakeholders, including representatives of the Covered Populations, and
 - 2) Ensuring the long-term impact on digital equity within the Native Entity and its collateral benefits.
 - xi. A project plan describing all major project activities and timelines, including key milestones and when each major project activity will start and end.
 - xii. A short description of (1) the applicant's status/role in the Tribal Broadband Connectivity Program (TBCP), and the type of award received, or state if the applicant has not received a TBCP grant award or if an application for award is pending review by NTIA; (2) any other sources of federal funding awarded to the applicant to support digital equity and inclusion activities such as, broadband adoption and use, device programs, digital literacy and skills training, and internet subscription or device subsidy programs; (3) any funds received by the applicant as a sub-recipient to a State Digital Equity Planning Grant; and (4) any funds received from private philanthropic organizations for comparable activities.

- d. A certification that the Planning Grant (as applicable) and Capacity Grant will be used for a purpose that is consistent with the purposes and requirements of 47 U.S.C. 1723 and this NOFO and that, if the Native Entity seeks both Planning and Capacity Grant funds, funds will be budgeted and tracked separately.
- e. A certification that Capacity Grant and Planning Grant funds will be used to supplement, not supplant, other federal or State funds that have been made available to carry out digital equity and digital inclusion activities.
- f. The assurances required under 47 U.S.C. §1723 (see appendix C of this NOFO).
- g. **A Consolidated Budget Form.** The information in the Consolidated Budget Form must support the dollar amounts identified on the SF-424 and demonstrate that the project or activity meets the eligible use requirements of the Digital Equity Act and this NOFO. The Consolidated Budget Form must include a narrative and a detailed budget spreadsheet. The budget narrative must explain the necessity and basis for all costs, clearly correspond to the items included in the detailed budget spreadsheet and reflect only allowable costs consistent with the project scope. Allowable costs are determined in accordance with the cost principles set forth in 2 C.F.R. Part 200, including Subpart 200.400 regulations and in 48 C.F.R. Part 31 for commercial organizations, and in 47 U.S.C. 1723(d). The detailed spreadsheet must reflect the categories that appear on the SF-424A and include itemized calculations for each category under those categories. **As applicable, the applicant must also separately identify and separately track the budgeted costs of the Digital Equity Planning Grant Program and the Digital Equity Capacity Grant.** The budget must account for the Native Entity's efforts to update or to maintain the Digital Equity Plan, capped at 20% of the grant amount, administrative costs, capped at 3% of the grant amount, and program evaluation costs capped at 5% of the grant amount (*See*, Section III.C.4 for restrictions on administrative and evaluation costs). If indirect costs are included in the proposed budget, the applicant must provide a copy of the approved negotiated indirect cost rate agreement if this rate was negotiated with a cognizant federal agency or otherwise document those indirect costs consistent with 2 C.F.R. 200.414.
- h. The following standard federal financial assistance forms and documentation:
- Standard Form 424: Application for Federal Assistance
 - CD-511 Certification Regarding Lobbying
 - Standard Form LLL, Disclosure of Lobbying Activities (if applicable); and
 - Negotiated Indirect Cost Rate Agreement (as applicable)

3. Funding Restrictions

Permissible Uses of State Digital Equity Capacity Grant Funds and State Digital Equity Planning Grant Funds

Applicants must submit proposals which are consistent with the purposes and priorities set forth in 47 U.S.C. 1723(c) (for Planning Grants) and 1723(d) (for Capacity Grants) and this NOFO, including the achievement of digital equity, support of digital inclusion activities, and the adoption of broadband by underserved Populations of Native Entities. The activities include:

- i. To the extent that a Native Entity has requested State Digital Equity Planning Grant funds (not to exceed seven and one-half percent (7.25) percent of total funds requested), the development of the elements of the Digital Equity Plan of the Native Entity that identifies the barriers to digital equity facing underserved Populations of the Native Entity and measurable objectives for addressing such barriers, including:
 - 1) The availability of, and affordability of, fixed and wireless broadband technology;
 - 2) The online accessibility and availability of resources and services;
 - 3) Digital literacy;
 - 4) Awareness of, and training in, measures to secure data and privacy of, and cybersecurity with respect to, an individual; and
 - 5) The availability and affordability of consumer devices and support for those devices;
- ii. To support digital inclusion activities of the Native Entity.
- iii. To make subgrants to any of the eligible entities identified at 47 U.S.C. § 1702(b) that are located in Native Entity's jurisdiction to: (a) assist in the implementation of the Digital Equity Plan and/or digital equity programs and activities identified above; (b) pursue digital inclusion activities consistent with the Digital Equity Plan and/or digital equity programs and activities identified above; and (c) report to the Native Entity regarding the digital inclusion activities of the entity.

Before the Native Entity may award a subgrant under this paragraph, the Native Entity must require that the entity to which a subgrant is to be awarded certify that:

- 1) The entity shall carry out the activities required under items (a), (b), and (c) of this subsection iii;
- 2) The receipt of the subgrant shall not result in unjust enrichment of the entity; and
- 3) The entity shall cooperate with any evaluation of the program as it relates to a grant awarded to the entity and that is carried out by or for the Native Entity, the Assistant Secretary, or another federal official.

- iv. To evaluate the efficacy of the efforts funded by either Capacity Grants or Planning Grants made to subgrantees, provided that the Native Entity may not use more than five (5) percent of the amount of the grant for this purpose.²⁶
- v. For administrative costs incurred in carrying out the activities described above provided that the Native Entity may not use more than three (3) percent of the amount of the grant for this purpose.²⁷
- vi. The other purposes identified in Section II.C.3 (Native Entity Eligible Uses) above.

b. Prohibited Uses of Digital Equity Planning Grant Funds

i. Twenty (20) Percent Cap on Digital Equity Plan Updates

No more than twenty (20) percent of the amount of the grant may be used to update or maintain the Digital Equity Plan of the State or of the Native Entity (as applicable).

ii. Five (5) Percent Cap on Evaluation of Program Efficacy

No more than five (5) percent of the amount of the grant may be used to evaluate the efficacy of the efforts funded by grant to subgrantees to: (a) pursue the implementation of the Digital Equity Plan of the Native Entity; (b) pursue digital inclusion activities in the Native Entity's jurisdiction; or (c) provide support to the Native Entity regarding digital inclusion activities of the entity.

iii. Three (3) Percent Cap on Administrative Costs

No more than three (3) percent of the amount of the grant may be used for administrative costs (excluding costs for program evaluation and updating the Digital Equity plan) in carrying out allowable activities under this Program and described in an SDECGP award. For this purpose, the three (3) percent limitation on administrative expenses includes the combined total of indirect and direct administrative costs charged to an award. The applicant must clearly describe in the budget narrative how it applied or calculated the three (3) percent limitation on administrative costs.

iv. Ten (10) Percent Cap on Affordable Broadband Programs

²⁶ 47 U.S.C. §1723(d)(3)(D)(iv)

²⁷ 47 U.S.C. §1723(d)(3)(D)(v)

No more than 10 percent of the amount of the grant may be used to fund subgrants for the provision of services through affordable broadband programs.

v. Prohibition on Supplanting and on Certain Website Expenses

Pursuant to 47 U.S.C. 1754, a grant or subgrant awarded under the Digital Equity Capacity Grant Program may supplement, not supplant, other federal funds that have been made available to carry out activities described in 47 U.S.C. 1754 and in this NOFO. Funds from the Tribal Broadband Connectivity Program are subject to separate financial assistance award terms and conditions and must not be used by State Digital Equity Capacity Grant Program funding. No grantee is prohibited from using Capacity Grant funds to conduct website upgrades or other projects that are otherwise required by law.

c. Prohibition on Broadband Infrastructure Funding

In general, deployment of broadband infrastructure to broadband serviceable locations should be accomplished through programs, including the Broadband Equity, Access, and Deployment Program and the Tribal Broadband Connectivity Program. However, to the extent that installation of broadband infrastructure is necessary to accomplish an eligible program, activity, or intervention (including fixed equipment on a building as part of a strategy to promote access to affordable broadband service), additional information may be required to determine the potential environmental impacts under the National Environmental Policy Act (42 U.S.C. §432) and potential impacts to historic properties under the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*). Additionally, any portion of a Digital Equity Capacity Grant Program award that will be used for an “infrastructure project” as defined in 2 C.F.R. 184.3) is subject to the Build America, Buy America Act (Public Law 117-58, §§ 70901-52) and to the regulations promulgated thereunder at 2 C.F.R. part 184). *See* Section IV.D.4 of this NOFO for additional information concerning the Build America, Buy America requirements for this Program. In accordance with section 60506 of the Infrastructure Act, the Federal Communications Commission adopted rules to prevent digital discrimination of access on the basis of income level, race, ethnicity, color, religion, or national origin.²⁸

d. Prohibition on Profit or Fees

A profit, fee, or other incremental charge above actual cost is not an allowable cost under this Program.

²⁸ 89 Fed. Reg. 4128 (Jan. 22, 2024); 47 U.S.C. 1754.

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

Grant funds available pursuant to this Program may not be used, whether directly or indirectly as an offset for other purposes, to support or oppose collective bargaining.

4. Certification Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the State Digital Equity Capacity Grant Program, the applicant certifies that it is not debarred or suspended as outlined in Appendix B to this NOFO (see Line 21 on the SF-424 Application for Federal Assistance).

5. System for Award Management

Pursuant to 2 C.F.R. Part 25, an applicant (as the case may be) is required to: (i) be registered in SAM before submitting its application packet; (ii) provide a valid unique entity identifier (UEI) in its application; and (iii) maintain an active SAM registration with current information at all times during which it has a federal award or an application or plan under consideration by a federal awarding agency. Applicants are otherwise excepted from these requirements pursuant to 2 C.F.R. 101.110. NTIA will not make a federal award to an applicant until the applicant has completed 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 will determine that the applicant is not eligible to receive a federal award.

Unique Entity Identifier

All applicants must supply a SAM Unique Entity Identifier (UEI) number. As of January 4, 2022, the U.S. government stopped using the Dun and Bradstreet (D&B) Data Universal Numbering System (D-U-N-S) nine-digit number as the unique identifier for entities throughout the federal awarding cycle, in [SAM.gov](https://sam.gov), Integrated Award Environment (IAE) systems, required forms, or in downstream government systems. Now, entities doing business with the federal government must use the Unique Entity ID created in [SAM.gov](https://sam.gov). Applicants who are new to [SAM.gov](https://sam.gov) may register their entity or receive a UEI by signing into [SAM.gov](https://sam.gov) and selecting “Get Started,” then “Register Entity.” If you are a sub-awardee who just needs a UEI for subaward reporting, choose “Get Unique Entity ID.”

For more information on the retirement of the DUNS, as well as the establishment of an entity’s UEI, please visit [http://www.sam.gov](https://www.sam.gov).

b. SAM Registration

All applicants must register with SAM before submitting an application pursuant to this program. Additionally, the applicant must maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Applicants can register for the SAM at

<https://www.sam.gov/>. Entities without an active [SAM.gov](https://www.sam.gov/) registration and/or ID at the time of application submission and award may be deemed ineligible for a grant award.

6. Submission Dates and Times

Applications for the State Digital Equity Capacity Grant Program must be complete and must adhere to the instructions provided in this NOFO and be submitted in the format required by the NTIA Grants Portal (<https://www.grants.ntia.gov/>). Applications from interested entities must be received through the NTIA application portal by email **no later than 5 p.m. Eastern Time (ET) on February 7, 2025**, or, if submitted by mail or courier, must be received (for postal mail) or show clear evidence of mailing (for courier submissions) **no later than 11:59 p.m. Eastern Time (ET) on February 7, 2025**.

When developing the submission timeline, applicants should keep in mind that: (a) all applicants are required to have current registration in the electronic System for Award Management ([SAM.gov](https://www.sam.gov/)) and (b) the funding review process in [SAM.gov](https://www.sam.gov/) generally takes between three (3) and five (5) business days, but can take more than three weeks.

7. Material Representation and Public Disclosure

All forms and supporting documents submitted as part of the application packet will be treated as a material representation upon which NTIA and NIST's Management Division will rely in awarding grants. Applicants acknowledge and understand that false, fictitious, or fraudulent statements, concealment or omission of a material fact) in forms and supporting documents, including any required certifications or disclosures, submitted may subject applicants to prosecution (including under 18 U.S.C. § 1001 and/or other laws) and may subject applicants to civil and administrative penalties and other remedies. Applicants should be aware that NTIA, in coordination with the NIST Grants Officer, may make all or portions of their applications for grants under the State Digital Equity Planning Grant Program and State Digital Equity Capacity Grant Program publicly available as required under applicable federal laws. *See* Section VIII.A of this NOFO for additional information concerning the confidentiality of information contained in an application.

8. Other Submission Requirements

Applications must be submitted (1) electronically through the NTIA Grants Portal (www.grants.ntia.gov) portal, (2) by email (digitalequity@ntia.gov), or (3) by mail or courier to:

Angela Thi Bennett
Director of Digital Equity
Office of Internet Connectivity and Growth
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Timely Receipt Requirements and Proof of Timely Submission

Online Submission: Proof of timely submission is automatically recorded by the NTIA Grants Portal. An electronic date/time stamp is generated within the system when an application is successfully submitted to the NTIA application portal. The applicant must be an authorized Organizational Representative (AOR) role who submitted the application and will receive an email acknowledgement of receipt from the NTIA application portal upon 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.

b. Amendments

Any amendments to this NOFO or additional guidance will be announced on NTIA.gov and <https://BroadbandUSA.NTIA.gov>.

D. APPLICATION REVIEW PROCESS

Capacity Grant and Planning Grant applications will be accepted from Native Entities on a competitive basis using the following stages of review and will be ranked for funding as described in Section III.D.3.a below:

1. Initial Eligibility and Administrative Review

NTIA will conduct an initial review of submitted applications to ensure they contain all the information and documentation required under Section III.C “Application Submission Information” of this NOFO and that this information was submitted in a timely manner as required under Section III.C.8. of this NOFO. Any entity that does not meet the definition of Indian Tribe, Alaska Native entity, or Native Hawaiian organization or does not have authorization to submit an application from the governing body described in Section III.B.1.c of this NOFO may be eliminated from review. During this review stage, NTIA also reserves the right to remove applications from consideration if submitted materials are incomplete or untimely. NTIA may continue the review process for an application that is timely submitted by an eligible Native Entity, but that is missing certain information or documentation required by this NOFO. In such cases, NTIA may ask the applicant to provide any missing or incomplete materials during this initial review. NTIA reserves the right at any time during the application review processes to negotiate with the applicant relative to specific modifications to the application.

2. Merit Review

Applications satisfying the Initial Administrative and Eligibility Review will move to Merit Review. Applications will be reviewed by at least two merit reviewers, which may be federal personnel or non-federal personnel, who have demonstrated expertise in the programmatic aspects of digital equity and inclusion. As applicable, merit reviewers 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. In accordance

with the following criteria, the Merit Reviewers will review applications for Capacity Grants (including Planning Grant funds) to ensure conformity with the program of eligible activities and estimated costs/budget. The evaluation criteria that will be used by the Merit Reviewers to review and analyze applications for Capacity Grant funds are grouped into four categories as shown below. Reviewers will evaluate applications according to these evaluation criteria and independently score each application based on a scale of 0-100 points.

Based on an average of the reviewers' scores, applications will be assigned a rating of Qualified for Programmatic Review, Conditionally Qualified for Programmatic Review, or Unqualified for Funding in accordance with the following scale:

Qualified for Programmatic Review – (90-100 points)

Conditionally Qualified for Programmatic Review – (65-89 points)

Unqualified for Funding – (0-64 points)

Evaluation Criteria for Programmatic Review:

a. Project Need and Benefits (40 points)

Reviewers will assess the demonstrated need for the project considering information such as, but not limited to, the number of different identified Covered Populations to be served, the number of individuals within the Covered Populations to be served, and any available data regarding poverty rates of the Covered Populations. The number of individuals within the Covered Populations not using or subscribing to Internet, the number of individuals within the Covered Populations lacking access to a computer, smartphone, or other device that enables Internet access, or other evidence of need. The Reviewers will consider the direct and indirect expected benefits of the project to the Covered Populations.

b. Strength of Applicant's Organizational Capability. (25 points)

Reviewers will consider the direct and indirect expected benefits of the project to the Covered Populations. Reviewers will assess the strength of the applicant's organizational capability and its ability to satisfy the requirements and goals of the Capacity and Planning Grant Programs. Reviewers will consider the programmatic/technical experience of the implementation team, the organizational capacity to implement the proposed project(s), and the roles and contributions of each partner entity, including the representation of each partner in the decision-making process. Reviewers will assess the strength of the applicant's subrecipient and subcontractor strategy (as applicable).

c. Strength of Project Implementation Plan and Budget (25 points)

Reviewers will assess the overall soundness of the proposed project(s) plan and milestones and whether the proposed activities will support the goals of digital equity and

inclusion outlined in the Digital Equity Act and this NOFO. Reviewers will assess whether the application materials provide sufficient detail regarding the proposed project and activities to demonstrate they are achievable, are consistent with the agency's programmatic activities, whether the applicant has established realistic measurable objectives, and whether the requested funds, implementation milestones, and timeline are sufficient to complete the tasks described in the project narrative, including the feasibility and appropriateness of the proposed project. Reviewers will assess the extent to which the applicant demonstrates its ability to implement and sustain digital equity efforts throughout the award period of performance.

d. Project Results and Evaluation (10 points)

Reviewers will assess whether the project has a strategy for measuring the near term and long-term impact on digital equity for the Native Entity and its collateral benefits. Reviewers will assess whether the applicant demonstrates a commitment to continuous improvement based on evaluation, including obtaining input from its intended project beneficiaries.

3. Programmatic Review

Applications which pass through Administrative and Merit Review and score at least 65 points during the Merit Review will be considered under the Programmatic Review process. In prioritizing the programmatic review of applications, NTIA will generally not move to applications in the prioritization grouping unless: (i) all applications in the prior prioritization group were reviewed by NTIA, and either (ii)(a) the applications being recommended for funding does not utilize the entirety of the set aside funding available for Native Entities; or (ii)(b) the evaluation of other applications is warranted to ensure funding diversity, ensure consistency in the size of the funding amounts awarded, and/or to ensure funding reaches those Native Entities with the highest rates of poverty.

a. Prioritization

Applications will be prioritized for Programmatic Review as follows:

- i. First, NTIA will review any application that received an average score of 90 or higher during the Merit Review that is from a Native Entity or Native Entities that did not receive funding from NTIA's Tribal Broadband Connectivity Program for Sustainable Broadband Adoption and Use activities (including equitable distribution funding used for these purposes), and whose application proposes programs that address three or more of the Covered Populations as defined in Section I.C. of this NOFO. For a consortium to qualify for this prioritization, no member of the consortium may have received such Tribal Broadband Connectivity Program funding.

- ii. Second, NTIA will review applications receiving an average score of 90 or higher during the Merit Review that address three or more of the Covered Populations as defined in Section I.C. of this NOFO.
- iii. NTIA will review any other application receiving an average score of 80 or higher during the Merit Review.
- iv. Applications receiving scores between 65 and 89 may be entered into Programmatic Review after review of the prior applications in the event that (a) the Merit Review results in fewer proposals that do not utilize the entire set aside funds for Native Entities, or (b) evaluation of other applications is delayed or omitted at a later stage in the process to ensure greater diversity in the size of the funding amounts awarded. During this stage of the review, applications with scores between 80 and 89 that applicants have demonstrated that three or more of the Covered Populations defined in Section I.C. of this NOFO) will be served. Review will be given to those applications with scores between 80 and 89 and which have demonstrated that those projects serving three or more Covered Populations, followed by applications with scores of 70 to 79 and 65-69 under the rubric.

b. Programmatic Review Process

NTIA will assess applications that reach Programmatic Review (subject to the prioritization process outlined below) to consider the extent to which those applications meet the criteria listed below and will assign weighted scores to reflect each application's likelihood of meeting those goals. Initially, based on the seven factors listed below, each application's Merit Review score will be multiplied by an additional .1 for each of the seven factors met. So, for example, projects that do not meet any of the criteria listed below would be multiplied by 1.0, while projects that meet all seven criteria would be multiplied by 1.7.

- i. The proposed project will create a sustainable long-term impact on digital equity and inclusion.
- ii. The proposed project serves five or more Covered Populations.
- iii. The applicant has demonstrated that more than sixty-five (65) percent of the members of the Native Entity's population live in Covered Households.
- iv. The applicant has demonstrated a lack of alternative resources to address issues of digital equity and inclusion.
- v. The applicant has established a plan for ongoing collaboration with key stakeholders, including representatives of the Covered Populations.

The project has realistic timelines and assumptions which indicate that implementation can be accomplished during the period of proposed funding.

The applicant demonstrates a commitment and plan for the successful completion of the project by obtaining input from the community and project stakeholders.

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

During Programmatic Review, NTIA may request that applicants submit additional information, as appropriate, to clarify or to further substantiate representations made in their applications. Applicants will have ten (10) calendar days to submit information responsive to the feedback provided by NTIA, unless this time period is extended by NTIA. NTIA Program Staff will review the supplemental information along with all information submitted with the application, to confirm eligibility and evaluate applications with respect to requirements and priorities of the Digital Equity Campaign Program. Applicants who submit supporting documents that are not complete, accurate, and verifiable, or who do not adequately substantiate the representations in their applications, may be denied at this point in the review process.

Upon completion of Programmatic Review for each priority grouping listed above in Section D.2, NTIA Program Staff will summarize their analysis and score each application, and will provide a ranked list of proposed projects, based on project's weighted score, to the Associate Administrator for the Office of Internet Connectivity and Growth (OICG Associate Administrator).

4. OICG Associate Administrator Review

Following the conclusion of the Programmatic Review, the OICG Associate Administrator will review the ranked list of applications developed during the Programmatic Review process and will recommend a final list of ranked applications to the NTIA Assistant Secretary, who is the Selecting Official for this program. The OICG Associate Administrator's recommendations to the Selecting Official may differ from the ranked list of applications developed during the Programmatic Review based on consideration of the following selection factors: (a) geographic diversity, (b) diversity in the size of the funding amounts of the proposed awards, (c) consideration for consortia applications, and (d) to ensure funding reaches those Native Entities with the highest rates of poverty. Based on these selection factors, the OICG Associate Administrator may recommend lower ranked applications within a particular priority grouping to the Selecting Official, as warranted, and will appropriately document the basis of this recommendation.

Final Project Selection

After completing the review described above, the OICG Associate Administrator shall provide a ranked list of recommended awards to the NTIA Assistant Secretary for final review. As the Selecting Official, the NTIA Assistant Secretary retains discretion to select and recommend an application from the list above that was not recommended by the OICG Associate Administrator based on the selection criteria list above in Section III.D.4. The NTIA Assistant Secretary also retains discretion not to recommend an award for funding that was recommended by the OICG Associate Administrator and to appropriately document the basis of this decision.

The NTIA Assistant Secretary will select the applications recommended for funding, along with the bases for the selection decision. The National Institute of Standards and Technology (NIST) Grants Officer, who serves as the Grants Officer for the Capacity Grant Program. The final approval of selected applications and issuance of awards will be made by the NIST Grants Officer. The award decisions of the NIST Grants Officer are final.

Awards are expected to be made on a rolling basis, subject to the availability of funds. Unsuccessful applicants will be notified in writing.

6. Federal Agency Review of Risk Posed by Applicant

After applications are proposed for funding by the Selecting Official, the NIST Grants Management Division (GMD) will perform pre-award risk assessment in accordance with 2 C.F.R. § 201.15, which may include a review of the financial stability of the applicant, the quality of the applicant's management systems, the history of performance and findings from prior awards 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), which is now located in [SAM.gov](https://sam.gov) as the responsibility/qualifications (R/Q) reports. 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.

7. Anticipated Announcement and Award Dates

NTIA expects to begin making awards under this NOFO in Summer 2025, NTIA may issue awards made under the State Digital Equity Capacity Grant Program on a rolling basis.

IV. FEDERAL AWARD ADMINISTRATION INFORMATION

A. Federal Award Notices

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 and returning 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 and is subject to the limitations contained in 47 U.S.C. §1723(d)(3)(B), the terms and conditions of the award, available funding, and this NOFO.

B. Notification to Unsuccessful Applicants

Unsuccessful applicants will be notified in writing by email (or, in the case of entities that submitted material via mail or courier, in a similar fashion) and will have the opportunity to receive a debriefing. Applicants must make a request within ten (10) business days of the email or written notification to receive a debrief from NTIA. NTIA will then work with the unsuccessful applicant to arrange a date and time for the debrief.

C. Retention of Unsuccessful Applications

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

D. Administrative and National Policy Requirements

Recipients of funding pursuant to this program must 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 V.B of this NOFO, Federal Awarding Agency Contacts, Grant management inquiries, 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 V.B of this NOFO, Federal Awarding Agency Contacts, Grant management inquiries, for more information.

4. Build America, Buy America Act Domestic Content Preference Requirements

Pursuant to the Build America, Buy America Act (BABA) (Pub. L. No. 117-58, §§ 70901-52) and regulations promulgated thereunder at 2 C.F.R. part 184, recipients of an award of federal financial assistance from the Department of Commerce are hereby notified that none of the funds provided under such award may be used for an “infrastructure project” (as defined in 2 C.F.R. 184.3) unless:

- a. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. all manufactured products used in the project are produced in the United States—this means 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 fifty-five (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; and
- c. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

To help federal agencies and recipients meet BABA requirements, the Hollings Manufacturing Extension Partnership (MEP) National Network™ of the National Institute for Standards and Technology (NIST) provides a service to connect stakeholders, including recipients, to U.S.

manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering requesting a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is available at: <https://www.nist.gov/mep/supplier-scouting>.

Waivers

When necessary, recipients may apply for, and the Department may grant, a waiver from these requirements. The Department will provide the recipient with information on the process for requesting a waiver from these requirements. When the Department has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the Department determines that:

- i. applying the domestic content procurement preference would be inconsistent with the public interest;
- ii. the 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
- iii. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than twenty-five (25) percent.

A request to waive the application of the domestic content procurement preference must be in writing. NTIA will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than fifteen (15) calendar days and must be reviewed by the Made in America Office of the Office of Management and Budget (OMB).

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.commerce.gov/oam/build-america-buy-america>.

5. Domestic Preference for Procurements

Pursuant to 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, a non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section must be included in all subawards, including all contracts and purchase orders for work or products pursuant to this program.

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

Pursuant to 2 C.F.R. § 200.321, a non-federal entity must take all necessary affirmative steps (as described in 2 C.F.R. § 200.321) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

7. Cybersecurity Best Practices

Recipients and subrecipients must ensure that the planning, design, and project oversight phases of the programs and activities funded through the Digital Equity Capacity Grant Program are consistent with current industry best practices for cybersecurity, such as the NIST Cybersecurity Framework²⁹ and Cybersecurity and Infrastructure Security Agency (CISA) Cybersecurity Performance Goals (CPGs).³⁰ These performance goals provide a baseline set of cybersecurity practices that are broadly applicable, with known risk-reduction value. NTIA reserves the right to review a recipient's cybersecurity framework and recipients must review the cybersecurity framework of its subrecipients.

E. Reporting

Recipients 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 in which recipients will be required to report information in support of federal agency obligations under the ACCESS BROADBAND Act, 47 U.S.C. § 1307, and Section 60105 of the Infrastructure Act.

1. Infrastructure Act Reporting Requirements (Annual Report)

As set forth in 47 U.S.C. §1723(g)(1), any entity to which a grant, including a subgrant, is awarded under this program shall be required to publicly report, for each year during the period of performance of a program grant, in a format to be specified by the Assistant Secretary, on:

- a. The use of that grant by the entity;
- b. The progress of the entity toward fulfilling the objectives for which the grant was awarded; and

²⁹ NIST Cybersecurity Framework, <https://www.nist.gov/cyberframework/framework>.

³⁰ Cybersecurity & Infrastructure Security Agency, Cross-Sector Cybersecurity Performance Goals, <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals>.

- c. The implementation of the State Digital Equity Plan of the State.

The Assistant Secretary may establish additional reporting and information requirements for any recipient of a grant as necessary to fulfil the requirements of the Digital Equity Act.

2. Other Reporting Requirements

The following reporting requirements described in Section A.01, Reporting Requirements, of the Department of Commerce Financial Assistance Standard Terms and Conditions (12 November 2020), apply to awards in this program:

a. Financial Reports

Each award recipient will be required to submit an SF-425, Federal Financial Report on a semiannual basis for the periods ending March 31 and September 30 of each year. Reports will be due within thirty (30) days after the end of the reporting period to the NTIA Federal Program Officer, Grants Officer, and Grants Specialist named in the award documents. If awarded, further instructions on where and how to submit reports will be provided via a specific award condition. A final financial report is due within one hundred twenty (120) days after the end of the project period.

b. Performance (Technical) Report

Each award recipient will be required to submit a technical progress report to the NTIA Federal Program Officer, Grants Officer, and Grants Specialist named in the award documents on a semiannual basis for the periods ending March 31 and September 30 of each year. If awarded, further instructions on where and how to submit reports will be provided via a specific award condition. Reports will be due within thirty (30) days after the end of the reporting period. Technical progress reports shall contain information as prescribed in 2 C.F.R. § 200.329 and Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01. Capacity Grant Program reporting elements may include, but are not limited to: Status of achieving project implementation milestones and measurable objectives, and alignment to expenditures, project outputs, e.g., number of devices provided/subsidized, number of digital literacy/training programs developed and number of training hours provided, number of Internet subscriptions provided/subsidized, project output beneficiaries, including number of beneficiaries across the Covered Populations, number of jobs created for project implementation, results from program evaluation activities (when applicable), progress on implementation of the State Digital Equity Plan using funds other than from the State Digital Equity Capacity Grant Program (as applicable).

c. Human Subjects Research

All State Digital Equity Capacity Grant Program recipients must comply with Department of Commerce regulations relating to the protection of human subjects for all research conducted or supported pursuant to a NTIA grant award (per 15 C.F.R. Part 27). Recipients must review

forthcoming guidance for human subjects research protection and make an independent assessment of their planned activities and act in accordance with Human Subjects Research protection requirements and report any new research activities or updates to planned activities on an ongoing basis.

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 200,³¹ 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

The federal financial assistance regulations in 2 C.F.R. Part 200, Subpart F require 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.*, for-profit subrecipients) 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. *See* Section D.01.c. of the Department of Commerce Financial Assistance Standard Terms and Conditions. Applicants are reminded that NTIA, the NIST Grants Office, the Department of Commerce Office of Inspector General, or another authorized federal agency may conduct an audit of an award at any time.

H. Federal Funding Accountability and Transparency Act of 2006

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

³¹ *See* 2 C.F.R. Part 200, Appendix XII, available at <http://go.usa.gov/cTBwC>.

they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.³²

I. Public Database

Pursuant to 47 U.S.C. §1723(g)(1)(C) of the Digital Equity Act, NTIA will create and maintain a fully searchable database, which shall be accessible on the internet at no cost to the public, that contains, at a minimum: (i) the application of each State that has applied for a grant under this program; (ii) the status of each application described in clause (i); (iii) each report submitted by an entity pursuant to §1723(g)(1)(A) of the Digital Equity Act; (iv) a record of public comments made regarding the State Digital Equity Plan of a State, as well as any written responses to or actions taken as a result of those comments; and (v) any other information that is sufficient to allow the public to understand and monitor grants awarded under this program.

In accordance with federal policy, any publications and their supporting data resulting from federally funded research should be made publicly accessible without an embargo on their free and public release, no later than December 31, 2025. <https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>.

³² See OMB, Requirements for Federal Funding Accountability and Transparency Act Implementation, Interim final guidance to agencies with opportunity to comment, 75 FR 55663 (Sept. 14, 2010), *available at* <http://go.usa.gov/hKnQ>.

V. FEDERAL AWARDING AGENCY CONTACTS

A. Please direct programmatic inquiries to:

Angela Thi Bennett
Director of Digital Equity
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: digitalequity@ntia.gov

B. Please direct grant management inquiries to:

Darren Olson
NIST Grants Officer
Grants Management Division
National Institute of Standards and Technology
325 Broadway
Boulder, CO 80305
Phone: (720) 693-0465
Email: darren.olson@nist.gov

C. Please direct media inquiries to:

Charles Meisch
Director of Public Affairs
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

VI. OTHER INFORMATION

A. Transparency

The Infrastructure Act contains robust reporting requirements for grant recipients, 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 State Digital Equity Capacity Grant 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 Propriety Information

Recipients of State Digital Equity Capacity Grants acknowledge and understand that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance, and other reports submitted by either entity, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs and for statistical purposes. For this purpose, information and data may be accessed, reviewed, and evaluated by Department of Commerce employees, other federal employees, federal agents and contractors, and/or by non-federal personnel, all of whom enter into appropriate confidentiality and nondisclosure agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, recipients 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), program participants 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. *See* 15 C.F.R. § 4.9(b). Based on these markings, the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law. As discussed above, 47 U.S.C. 1723(g)(1)(C) requires that NTIA create and maintain a fully searchable public database that includes the application of each State that has applied for a grant under this program, among other information.

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. States, U.S. territories (other than Puerto Rico), Indian Tribes, Alaska Native entities, and Native Hawaiian organizations that are interested in participating in this program should be familiar with the regulations governing Protected Critical Infrastructure Information (6 C.F.R. Part 29) and Sensitive Security Information (49 C.F.R. Part 1520), as these designations may provide additional protection to certain classes of homeland security information.

In addition to the public disclosure requirements of this program, each State, U.S. territory, Indian Tribe, Alaska Native entity, or Native Hawaiian organization interested in participating in this program is encouraged to consult its own laws and regulations regarding the release of information, which should be considered when reporting sensitive matters in the grant application. The applicant may consult with NTIA regarding concerns or questions about the release of information or how omitting sensitive information could impact NTIA's assessment of the application.

C. Funding Availability and Limitation of Liability

Funding for the State Digital Equity Capacity Grant Program described 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 obligate NTIA, NIST or the Department of Commerce to award any specific project or to obligate any available funds. NTIA will recommend for funding only projects that are deemed likely to achieve the State Digital Equity Capacity Grant Program's goals and for which funds are available.

D. Third Party Beneficiaries

The State Digital Equity Capacity Grant 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 at the discretion of the Assistant Secretary, NTIA, upon its own initiative or when requested, may waive the provisions in this NOFO. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the 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 State Digital Equity Capacity Grant Program, NTIA will use the State Digital Equity Capacity Grant Program forms in the Application for Broadband Grant Programs information collection (0660-0046) and Standard Forms 424 (Application for Federal Assistance), 424A (Budget Information for Non-Construction Programs), 425 (Federal Financial Report), and SF-LLL (Disclosure for Lobbying Activities) under the respective control numbers 4040-0004, 4040-0006, 4040-0014, and 4040-0013.

G. Transparency, Accountability, and Oversight Required

1. Generally

NTIA and all State Digital Equity Capacity Grant Program recipients have a critical role to play in ensuring that the State Digital Equity Capacity Grant Program is implemented in a manner that ensures transparency, accountability, and oversight sufficient to, among other things:

- a. Minimize the opportunity for waste, fraud, and abuse;
- b. Ensure that recipients of grants under the Program use grant funds to further the overall purpose of the Program in compliance with the requirements of 47 U.S.C. §1723 of the Digital Equity Act, this NOFO, 2 C.F.R. Part 200, the terms and conditions of an award, and other applicable law; and
- c. Allow the public to understand and monitor grants awarded under the Program.

To that end, NTIA shall, as appropriate:

- d. Conduct such audits of award recipients (States, U.S. Territories, Native Entities), and Administering Entities as are necessary and appropriate;
- e. Develop monitoring plans, subject to the approval of the Assistant Secretary, which may include site visits or desk reviews, technical assistance, and random sampling of compliance requirements; and
- f. Impose special conditions on grant awards designed to mitigate the risk of nonperformance where appropriate.

Each State, U.S. Territory, Indian Tribe, Alaska Native entity, Native Hawaiian organization, and/or Administering Entity or Administering Organization shall, as appropriate:

- g. Comply with the reporting requirements set forth in Section IV.E of this NOFO;

- h. Conduct audits of sub-recipients and award management as necessary and appropriate. States shall report the full results of any audits they conduct to the appropriate Federal Program Officer and NIST Grants Officer;
- i. Comply with the obligations set forth in 47 U.S.C. §1723(d) of the Digital Equity Act, this NOFO, 2 C.F.R. Part 200, the terms and conditions of an award, and other applicable laws; and
- j. Establish and widely publicize telephone numbers and email addresses for the State, U.S. territory or possession, Indian Tribe, Alaska Native entity, Native Hawaiian organization, and/or Administering Entity or Administering Organization's Office of Inspector General (or comparable entity) for the purpose of reporting waste, fraud or abuse, in the Program. States, U.S. possessions and territories, Indian Tribes, Alaska Native entities, Native Hawaiian organizations, and their administering entities shall produce copies of materials used for such purpose upon request of the Federal Program Officer or the Grants 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 through 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, as well as applicants applying to this funding opportunity, shall timely disclose, in writing, to the OIG and awarding agency, whenever, in connection with the award, performance, or closeout of this grant or subaward thereunder, the recipient has credible evidence that a principal, employee, agent, or subrecipient has committed:

- i. A violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
- ii. A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733); or
- iii. A violation of the Federal Antitrust Laws found in Title 15 of the United States Code.

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> to submit a complaint or call toll-free at 800-424-5197. The OIG will accept complaints via U.S. mail at the following address:

U.S. Department of Commerce
Office of Inspector General
1401 Constitution Avenue
Washington, D.C. 20230.

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>.

H. Unauthorized Use of Funds

In the event of non-compliance with 47 U.S.C. § 1723, this NOFO, 2 C.F.R. Part 200, the terms and conditions of an award, or other applicable law, NTIA and the NIST Grants Officer shall take appropriate enforcement action against a State, U.S. Territory, Indian Tribe, Alaska Native entity, or Native Hawaiian organization and, as necessary, against an Administering Entity or Administering Organization, as authorized in 2 C.F.R. §§ 200.339 - 200.343.

Appendix A: State Funding Formula

NTIA and the U.S. Census Bureau have collaborated to create the Digital Equity Act Population Viewer, which contains the inputs used in the funding formula for each State, as well as links to the original data sources where applicable. The Census Bureau has also documented the methodology it has used to calculate the total number of persons in each State who are members of Covered Populations. The Digital Equity Act Population Viewer can be accessed at <https://www.census.gov/data/data-tools/digital-equity-act-population.html>.

1. NTIA will calculate the total amount available for awards to eligible States by subtracting set-asides for administrative costs, U.S. territories and possessions, and Tribal organizations from the total appropriation. Of the \$840 million appropriated for capacity grants, \$760,800,000 is available to eligible States after subtracting set-asides and administrative costs. This amount will be referred to as the “Gross Funding”.
2. NTIA will then multiply the Gross Funding amount determined in step 1 by 0.5 percent. This amount will be referred to as the “Minimum Award.”³³
3. Using the amount calculated in step 1, NTIA will allocate fifty (50) percent of the Gross Funding (calculated in step 1) based on each eligible State’s population in proportion to the total population of all eligible States. For example, if “State X” contains one (1) percent of the total population of all eligible States, it would receive one (1) percent of the amount allocated during this step.³⁴ To determine the population of each eligible State, NTIA will use the most recent American Community Survey (ACS) single-year estimates released by the Census Bureau at the time of NOFO publication (excluding any estimates designated as experimental). For grants made available through this NOFO, NTIA will use estimates from the 2022 ACS.³⁵
4. NTIA then will allocate twenty-five (25) percent of the Gross Funding determined in step 1 based on each eligible State’s proportion of the total number of individuals who fall within “Covered Populations” in all eligible States (as defined in Section I.C of this NOFO). Using ACS data from the same year used in step 2, as well as any auxiliary data sources it may deem necessary, the Census Bureau will create and publish estimates of the number of people in each State who are members of one or more of the groups constituting Covered Populations. The Census Bureau will employ its internal data to estimate membership of all

³³ 47 U.S.C. §1723(d)(3)(A)(ii).

³⁴ If the total Gross Funding equaled \$56,000,000, then \$28,000,000 (half of \$56,000,000) would be allocated under this step, leaving State X with \$280,000 (one (1) percent of \$28,000,000) under this step.

³⁵ Population estimates calculated by the U.S. Census Bureau using ACS data can be found in Table B01003 and can be broken out by state using the Census Bureau’s data tool, available at <https://data.census.gov>.

Covered Populations without double-counting individuals who are members of multiple Covered Population categories. NTIA will use the totals for each eligible State in determining the appropriate allocation.³⁶ Thus, for example, if the Census Bureau determines that there are 100 million individuals throughout all eligible States that fall within one or more Covered Population groups, and that State X is home to five million of those persons, State X would, in this step, be allocated five (5) percent of twenty-five (25).³⁷

5. NTIA will allocate the final twenty-five (25) percent of the Gross Funding by using four different indicators of the relative lack of broadband availability and adoption in each eligible State. These indicators are all collected from the three data sources required by statute, including the Commission’s Section 706(b) report, the ACS, and the NTIA Internet Use Survey. At this time, the Assistant Secretary has not designated any additional data sources for use in this portion of the funding formula. This portion of the funds will be allocated as follows:
 - a. Five (5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who reside in a location where fixed broadband service that meets the Commission’s standard for advanced telecommunications capability is unavailable. For example, an eligible State in which ten (10) percent of the population lacks availability of fixed broadband meeting the Commission standard will receive an allocation that is twice as large as that for an eligible State where five (5) percent of the population lacks broadband availability. Both the definition of “advanced telecommunications capability” and the estimate to be used for each eligible State will be based on the most recent report the Commission has published pursuant to Section 706(b) of the Telecommunications Act of 1996 as of the date of NOFO publication. For grants made available through this NOFO, NTIA will use the Section 706 Report released on March 18, 2024.³⁸
 - b. Another five (5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who live in households that lack any type of computing device and/or a subscription

³⁶ The estimates of Covered Populations created by the Census Bureau are available at <https://www.census.gov/programs-surveys/community-resilience-estimates/partnerships/ntia.html>.

³⁷ If the total Gross Funding equaled \$56,000,000, then \$14,000,000 (twenty-five (25) percent of \$56,000,000) would be allocated under this step, leaving State X with \$700,000 (five (5) percent of \$14,000,000) under this step.

³⁸ See <https://www.fcc.gov/document/fcc-increases-broadband-speed-benchmark-0>. The Commission lists the percentage of persons in each state who live where fixed broadband is available that meets the advanced telecommunications capability standard in Appendix B-1 of its Report (in the column entitled “Fixed 100/20 Mbps Including Fixed Wireless”). To derive the percentage of persons in each state who lack fixed broadband availability, NTIA subtracts the Commission’s estimate from 100.

to an internet access service other than dial-up service. NTIA will implement this factor using the most recent ACS single-year estimates released by the Census Bureau at the time of NOFO publication (excluding any estimates designated as experimental). For grants made available through this NOFO, NTIA will use estimates from the 2022 ACS.³⁹

- c. Seven and one-half (7.5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who do not use the internet from any location. For this factor, NTIA will use data from the most recent edition of the NTIA Internet Use Survey to have publicly released results at the time of NOFO publication. As a supplement to the Census Bureau's Current Population Survey, the NTIA Internet Use Survey does not include Puerto Rico residents in its sample. Therefore, NTIA is required to use the median value for this factor among all other eligible States for Puerto Rico if it is an eligible State. For grants made available through this NOFO, NTIA will use results from the 2021 NTIA Internet Use Survey.⁴⁰
- d. The final seven and one-half (7.5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who do not use at least one of the following types of devices: (1) a desktop computer; (2) a laptop computer; or (3) a tablet computer. NTIA will use data from the same edition of the NTIA Internet Use Survey as factor (c) as the data

³⁹ The estimates used here are published in Table S2802 and may be broken out by state using the Census Bureau's data tool, available at <https://data.census.gov>. Specifically, NTIA will use the estimates under the subheading "Percent Broadband Internet Subscription," within the heading "With a Computer," and will subtract the estimate from 100 to get the percent of people in households in each state that lack either a computer or a broadband internet subscription in the household. Note that the Census Bureau defines "broadband" for the purposes of this table as including any type of internet access service other than dialup.

⁴⁰ In the NTIA Internet Use Survey, interviewers ask whether each member of the household age three or older uses the internet from a variety of locations (including a final question about any other location not previously covered). Individuals not reported as using the internet from any location are considered not to be internet users. NTIA reports the proportion of individuals who use the internet from any location in its Data Explorer tool, which includes the ability to break out data by state, at <https://www.ntia.gov/data/explorer>. NTIA will subtract the estimate for each state from 100 to derive the percent of people that do not use the internet.

source for this factor and will similarly substitute the median value among all other eligible States for Puerto Rico.⁴¹

6. NTIA will compare the allocation for each State resulting from the allocation formula described in steps 3 through 5 above with the Minimum Award amount. If the allocation for one or more States is lower than the Minimum Award amount, NTIA will increase the allocations for those States to the Minimum Award amount and decrease the allocations to the remaining states on a proportionate basis.

⁴¹ The NTIA Internet Use Survey includes a series of questions about the use of different types of computing devices by individual members of each household, including desktops, laptops, tablets, and several other device types. NTIA reports the proportion of individuals who use at least one of the three types of devices listed above in its Data Explorer tool, at <https://www.ntia.gov/data/explorer>. NTIA will subtract the estimate for each state from 100 to derive the percent of people that do not use any of the three device types.

Appendix B: Certifications Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the State Digital Equity Capacity Grant Program, the applicant is making the certifications set forth below (*see* Line 21 on the SF-424, Application for Federal Assistance).

Instructions for Primary Tier Participant Certification

- i. 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 1326.⁴²
- ii. 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.
- iii. 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.
- iv. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- v. 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.
- vi. 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

⁴² In the context of the State Digital Equity Capacity Grant Program, the primary tier participant would be the State, U.S. Territory, or Native Entity receiving a Capacity Grant from NTIA.

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.

- vii. 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.
- viii. 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 (SAM) Exclusions website (<https://www.sam.gov/>).
- ix. 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.
- x. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate the transaction for cause or default.

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

- i. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals or associated entities:
 - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency;

- 2) 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;
 - 3) 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 i(2) of this certification; and
 - 4) 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.
- ii. 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.

Instructions for Lower Tier Participant Certification (applies to subrecipients)

- i. 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 1326.⁴³
- ii. 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.
- iii. 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.

⁴³ In the context of the State Digital Equity Capacity Grant Program, lower-tier participants would be the entities that receive subgrants from, enter into contracts with, or otherwise receive program funding from the State, U.S. Territory, Native Entity that has received a Capacity Grant from NTIA.

- iv. 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.
- v. 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.
- vi. 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.
- vii. 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>).
- viii. 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.
- ix. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -
Lower Tier Covered Transactions**

- i. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals or associated entities is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency.
- ii. 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.

Appendix C: Assurances Required by 47 U.S.C. §1723(e)

47 U.S.C. §1723(e) provides as follows:

(e) ASSURANCES. When applying for a grant under this section, a State shall include in the application for that grant assurances that—

(1) if an entity described in section 60305(b) is awarded grant funds under this section (referred to in this subsection as a “covered recipient”), provide that --

(A) the covered recipient shall use the grant funds in accordance with any applicable statute, regulation, and application procedure;

(B) the administering entity for that State shall adopt and use proper methods of administering any grant that the covered recipient is awarded, including by--

(i) enforcing any obligation imposed under law on any agency, institution, organization, or other entity that is responsible for carrying out the program to which the grant relates;

(ii) correcting any deficiency in the operation of a program to which the grant relates, as identified through an audit or another monitoring or evaluation procedure; and

(iii) adopting written procedures for the receipt and resolution of complaints alleging a violation of law with respect to a program to which the grant relates; and

(C) the administering entity for that State shall cooperate in carrying out any evaluation--

(i) of any program that relates to a grant awarded to the covered recipient; and

(ii) that is carried out by or for the Assistant Secretary or another federal official;

(2) the administering entity for that State shall—

(A) use fiscal control and fund accounting procedures that ensure the proper disbursement of, and accounting for, any federal funds that the State is awarded under this section;

(B) submit to the Assistant Secretary any reports that may be necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under this section;

(C) maintain any records and provide any information to the Assistant Secretary, including those records, that the Assistant Secretary determines is necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under this section; and

(D) with respect to any significant proposed change or amendment to the State Digital Equity Plan for the State, make the change or amendment available for public comment in accordance with subsection (c)(2); and

(3) the State, before submitting to the Assistant Secretary the State Digital Equity Plan of the State, has complied with the requirements of subsection (c)(2).

Signature of Authorized Representative

Date

NOTICE OF FUNDING OPPORTUNITY

BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM

EXECUTIVE SUMMARY

A. Federal Agency Name

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

B. Funding Opportunity Title

Broadband Equity, Access, and Deployment Program

C. Announcement Type

Initial

D. Funding Opportunity Number

NTIA-BEAD-2022

E. Assistance Listing (CFDA Number)

11.035

F. Key Dates

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

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

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

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

G. Application Submission Address

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

H. Funding Opportunity Description

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

I. Funding Instrument

Grant.

J. Eligibility

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

K. Anticipated Amounts

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

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

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

L. Cost Sharing/Matching

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

FULL ANNOUNCEMENT TEXT

Table of Contents

I. Program Description	5
A. NOFO Structure	5
B. Overview	6
C. Definitions	11

II. Federal Award Information	17
A. Funding Availability	17
B. Period of Performance	17
C. Award Amount	18
D. Treatment of Unallocated and Unused Funds	19
E. Type of Funding Instrument	19
III. Eligibility Information	19
A. Eligible Applicants	19
B. Cost Sharing or Matching	20
IV. Program Structure, Sequencing and Requirements	22
A. Program Structure	22
B. Program Sequencing	23
C. Program Requirements	50
D. Subgrantee Qualifications	71
V. Application and Submission Information	76
A. Single Application	76
B. Address to Request Application Package	76
C. Content and Form of Applications	76
D. Certifications Regarding Debarment and Suspension	76
E. Unique Entity Identifier and System for Award Management	80
F. Submission Dates and Times	81
G. Intergovernmental Review	81
H. Funding Restrictions	81
I. Material Representations and Public Disclosure of Applications	83
J. Other Submission Requirements	83
VI. Application Review Information	83
A. Review Process for the BEAD Program	84
B. Federal Awarding Agency Review of Risk Posed by Applicants	84
C. Anticipated Announcement and Award Dates	85
VII. Federal Award Administration Information	85
A. Federal Award Notices	85
B. Notification to Unsuccessful Applications	85
C. Retention of Unsuccessful Applications	85
D. Administrative and National Policy Requirements	86
E. Reporting	89
F. Recipient Integrity and Performance Matters	92
G. Audit Requirements	93
H. Federal Funding Accountability and Transparency Act of 2006	93

VIII. Federal Awarding Agency Contact(s)	93
IX. Other Information	94
A. Transparency	94
B. Protected and Proprietary Information	94
C. Funding Availability and Limitation of Liability	95
D. Third Party Beneficiaries	95
E. Waiver Authority	96
F. Paperwork Reduction Act and Administrative Procedures Act	96
G. Transparency, Accountability, And Oversight Required	96
H. Unauthorized Use of Funds	98

I. Program Description

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

A. NOFO Structure

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

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

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

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

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

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

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

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

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

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

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

B. Overview

1. Background

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

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

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

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

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

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

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

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

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

2. Process Overview

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

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

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

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

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

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

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

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

C. Definitions

The following definitions are applicable to the BEAD Program:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(y) Tribal Lands— The term “Tribal Lands” means (A) any land located within the boundaries of— (i) an Indian reservation, pueblo, or 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Federal Award Information

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

A. Funding Availability

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

B. Period of Performance

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

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

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

¹⁸ *See id.*

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

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

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

1. Extensions

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

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

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

2. Petition for Extension

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

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

C. Award Amount

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

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

D. Treatment of Unallocated and Unused Funds

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

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

E. Type of Funding Instrument

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

III. Eligibility Information

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

A. Eligible Applicants

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

B. Cost Sharing or Matching

1. Match Generally

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

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

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

2. Preference for Maximum Subgrantee Contribution and Minimal BEAD Subsidy

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

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

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

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

3. Matches from Other Federal Programs and Entities

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

4. In-Kind Matches

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

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

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

²² See *supra* Section IV.B.7.

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

5. Match Waivers

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

IV. Program Structure, Sequencing and Requirements

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

A. Program Structure

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

²³ See *id.* and 2 C.F.R. § 200.306.

²⁴ See 2 C.F.R. § 200.306.

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

B. Program Sequencing

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

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

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

1. Letter of Intent

a. Timing

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

b. Letter of Intent Form and Content

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

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

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

2. Request for Initial Planning Funds

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

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

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

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

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

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

3. Five-Year Action Plan

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

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

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

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

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

a. Five-Year Action Plan Timing

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

b. Five-Year Action Plan Form and Content

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Program Fund Allocation and Notice of Available Amounts

a. Criteria for Reliable Broadband Service

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

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

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

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

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

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

b. Form and Content of Notice of Available Amounts

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

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

c. Funding Allocation Process

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

i. Minimum Initial Allocation

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

ii. High-Cost Allocation

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

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

iii. Remaining Funds Allocation

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

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

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

5. Initial Proposal

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

a. Initial Proposal Timing

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

b. Form and Content of Initial Proposal

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

The Initial Proposal must, at a minimum:

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

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

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

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

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

4. Certify that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, unions and worker organizations, and other groups, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, describe the coordination conducted, summarize the impact such coordination had on the content of the Initial Proposal, detail ongoing coordination efforts, and set forth the plan for how the Eligible Entity will fulfill the coordination requirements associated with its Final Proposal.

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

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

7. Include a detailed plan to conduct a challenge process as described in Section IV.B.6.

8. Include a detailed plan to competitively award subgrants consistent with Section IV.B.7.a of this NOFO with regard to both last-mile broadband deployment projects and other eligible activities. With respect to last-mile broadband deployment projects, the plan must explain how the Eligible Entity will ensure timely deployment of broadband and minimize the BEAD subsidy required to serve consumers consistent with Section IV.B.7 and the other priorities set out in this NOFO. The Initial Proposal must include identification of, or a detailed process for identifying, an Extremely High Cost Per Location Threshold to be utilized during the subgrantee selection process described in Section IV.B.7 of this NOFO. Each Eligible Entity must establish its Extremely High Cost Per Location Threshold in a manner that maximizes use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.7.b of this NOFO. NTIA expects Eligible Entities to set the Extremely High Cost Per Location Threshold as high as possible to help ensure that end-to-end fiber projects are deployed wherever feasible.

9. With respect to non-deployment eligible activities, explain any preferences the Eligible Entity will employ in selecting the type of initiatives it intends to support using BEAD Program funds, the means by which subgrantees for these eligible activities will be selected, how the Eligible Entity expects the initiatives it pursues to address the needs of the Eligible Entity’s residents, the ways in which engagement with localities and stakeholders will inform

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Review process

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

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

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

⁴⁵ As determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)).

⁴⁶ Requests for approval of uses not listed here should be made in writing to the Assistant Secretary and submitted through the appropriate Federal Program Officer. Eligible Entities should make such requests on a timely basis to facilitate resolution prior to the point at which the Eligible Entity seeks to make the expenditure or expenditures at issue.

Initial Proposals after the Initial Proposal has been submitted. In reviewing the Initial Proposal, the Assistant Secretary shall determine whether the use of funds proposed in the Initial Proposal:

1. Complies with Section 60102(f) of the Infrastructure Act;
2. Is in the public interest; and
3. Effectuates the purposes of the Infrastructure Act.

d. Actions upon completion of review

i. Approval

If the Assistant Secretary determines that the Initial Proposal meets the standards set forth in Section IV.B.5.c, the Assistant Secretary shall approve the Initial Proposal, inform the Eligible Entity, and make available to the Eligible Entity 20 percent of its Total Allocation; or a higher percentage at the sole discretion of the Assistant Secretary, for uses as described in Section IV.B.8 of this NOFO.

ii. Disapproval

If the Initial Proposal is incomplete, or the Assistant Secretary determines that the use of funds proposed in the Initial Proposal does not meet the standards set forth in Section IV.B.5.c, the Assistant Secretary shall notify the Eligible Entity of deficiencies in the proposal, provide the Eligible Entity with an opportunity to resubmit the Initial Proposal, and establish a deadline for resubmission. If an Eligible Entity fails to resubmit an Initial Proposal that remedies the deficiencies identified by the Assistant Secretary by the applicable deadline, the Eligible Entity will be treated as an application failure pursuant to Section IV.B.10. NTIA will provide technical assistance to Eligible Entities in the revision process with the goal of ensuring an approved Initial Proposal for each participating Eligible Entity.

6. Challenge Process

Each Eligible Entity shall develop and describe in the Initial Proposal, a transparent, evidence-based, fair, and expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution within the jurisdiction of the Eligible Entity is eligible for grant funds. Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved as those terms are defined in the Infrastructure Act and Section I.C of this NOFO.⁴⁷ Eligible Entities should update the data provided in their Initial Proposal to reflect the most recently published version of the Broadband DATA Maps available as of the initiation of the challenge process.

⁴⁷ The fact that a location is served does not preclude its inclusion in an Unserved Service Project or an Underserved Service Project, as these terms contemplate that such projects may include served and (in the case of Unserved Service Projects) underserved locations. For example, a particular Unserved Service Project containing 10 total locations may have 8 unserved locations and 2 that are served.

The Assistant Secretary may modify the challenge process proposed by the Eligible Entity as necessary and shall inform the Eligible Entity of any modifications required. Once an Eligible Entity makes any required modifications, the Assistant Secretary shall approve the challenge process, either in conjunction with, or prior to, approval of the Eligible Entity's Initial Proposal. The Eligible Entity shall conduct the approved challenge process before allocating grant funds received from BEAD for the deployment of broadband networks to subgrantees.⁴⁸

After resolving each challenge and at least 60 days before allocating grant funds for network deployment, an Eligible Entity must provide public notice of the final classification of each unserved location, underserved location, or Eligible Community Anchor Institution within the jurisdiction of the Eligible Entity. An Eligible Entity must also notify NTIA of any modifications to the Initial Proposal that are necessitated by successful challenges to its initial determinations. Pursuant to the discretionary authority granted to the Assistant Secretary in the Infrastructure Act, NTIA may reverse the determination of an Eligible Entity with respect to the eligibility of a particular location or community anchor institution.

7. Subgrantee Selection Process

Each Eligible Entity must establish fair, open, and competitive processes for selecting subgrantees.⁴⁹ The selection of subgrantees is a critically important process that will determine which providers will bring service to all Americans, and in many cases, which entities will stand up and operate training programs and take other actions aimed at closing the digital divide.⁵⁰ Eligible Entities' selection processes must be made clear to potential subgrantees and must be described in the Eligible Entity's Initial Proposal and Final Proposal. NTIA recognizes that there may be a variety of competitive processes Eligible Entities might use to select subgrantees and does not mandate any specific approach. Each Eligible Entity is encouraged to invite participation in the process by a broad cross-section of potential subgrantees, including minority-owned business and other socially or economically disadvantaged individual-owned businesses. NTIA will provide further guidance and technical assistance on approaches to subgrantee selection.

a. General Principles Governing Subgrantee Selection

i. Protecting the Integrity of the Selection Process

In establishing a fair, open, equitable, and competitive selection process, each Eligible Entity must ensure that adequate safeguards are in place to protect the integrity of the competition, including safeguards against collusion, bias, conflicts of interest, arbitrary decisions, and other factors that could undermine confidence in the process.

⁴⁸ Eligible Entities may, but are not required to, update their post-challenge data to reflect updates to the Broadband DATA Maps that occur after conclusion of the challenge process.

⁴⁹ Subgrantees must meet the minimum qualifications set forth in Section IV.D of this NOFO.

⁵⁰ Eligible Entities must subgrant funds in connection with broadband deployment projects and may also subgrant funds for non-deployment activities. As a recipient, however, an Eligible Entity may also decide to carry out non-deployment activities themselves.

ii. Last-Mile Broadband Deployment Projects

When selecting subgrantees to provide broadband service to Unserved Service Projects, Underserved Service Projects, and Eligible Community Anchor Institutions (“last-mile broadband deployment projects”), each Eligible Entity must apply a process that abides by the following principles:

1. An “Unserved Service Project” or “Underserved Service Project” can be as small as a single unserved or underserved location, respectively. This principle will help ensure that isolated unserved and underserved locations that cannot be aggregated in groups that are 80 percent or more unserved or underserved are addressed by the BEAD Program.
2. An “Unserved Service Project” or “Underserved Service Project” may include Middle Mile Infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing service to an unserved location, underserved location, or eligible CAI.⁵¹
3. In identifying an Unserved Service Project or Underserved Service Project, an Eligible Entity may not treat as “unserved” or “underserved” any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband as of the date that the challenge process described in Section IV.B.6 of this NOFO is concluded.⁵² The

⁵¹ See Infrastructure Act § 60102(h)(4)(E).

⁵² An enforceable commitment for the deployment of qualifying broadband to a location exists when the commitment to deploy qualifying broadband service to that location was made as a condition of:

- Any grant, loan, or loan guarantee provided by an Eligible Entity to the provider of broadband service;
- Any grant, loan, or loan guarantee provided by the Secretary of Agriculture under:
 - Title VI of the Rural Electrification Act of 1936 (7 U.S.C. § 950bb *et seq.*), including: any program to provide grants, loans, or loan guarantees under Sections 601 through 603 of that Act (7 U.S.C. § 950bb *et seq.*); and the Community Connect Grant Program established under Section 604 of that Act (7 U.S.C. § 950bb–3); or
 - The broadband loan and grant pilot program known as the “Rural eConnectivity Pilot Program” or the “ReConnect Notice of Funding Opportunity Program” authorized under Section 779 of division A of the Consolidated Appropriations Act, 2018 (Public Law 115–141; 132 Stat. 348);
- Any high-cost universal service support provided under Section 254 of the Communications Act of 1934 (47 U.S.C. § 254), except that in the case of the Rural Digital Opportunity Fund, a location will be considered to have an enforceable commitment for qualifying broadband only (a) after the Federal Communications Commission has announced in a Public Notice that RDOF support for that location is ready-to-authorize or is authorized, and (b) the provider does not rely on satellite technologies to deliver service;
- Any grant provided under Section 6001 of the American Recovery and Reinvestment Act of 2009 (47 U.S.C. § 1305);
- Amounts made available for the Education Stabilization Fund established under the heading “DEPARTMENT OF EDUCATION” in title VIII of division B of the CARES Act (Public Law 116–136; 134 Stat. 564), and funded under the CARES Act, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act), and the American Rescue Plan Act (ARP Act);

Assistant Secretary may waive such treatment of locations or areas with prior enforceable commitments at the request of the Eligible Entity in cases where the Eligible Entity can demonstrate to the satisfaction of the Assistant Secretary that such treatment of such locations or areas is necessary to achieve the goals of the program, including where purported commitments do not have the appropriate documentation with respect to Tribal lands consistent with requirements set out above.⁵³ For the purposes of the subgrantee selection process, “qualifying broadband” to a location that is not a CAI is Reliable Broadband Service with (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds; “qualifying broadband” to a CAI is Reliable Broadband Service with (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.

4. An Eligible Entity must establish a competitive process designed to maximize the public benefits achieved through the subgrant process by increasing subgrantee-provided match and reducing costs to consumers. The type of competitive process selected is at the discretion of the Eligible Entity, subject to the Assistant Secretary’s approval in reviewing the Eligible Entity’s Initial Proposal and to the criteria and other requirements set forth in this NOFO.

5. The Eligible Entity may seek proposals to serve unserved locations, underserved locations, and CAIs collectively or separately, so long as the Eligible Entity awards funding in a manner that prioritizes Unserved Service Projects and once it certifies that it will ensure coverage of all unserved locations within the Eligible Entity, prioritizes Underserved Service Projects.

6. The Eligible Entity may not exclude, as a class, cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility as a subgrantee.

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- Amounts made available for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) established under the American Rescue Plan Act of 2021 (Public Law 117–2; 135 Stat. 4) (ARPA);
 - Amounts made available for the Capital Projects Fund established by Section 604 of the Social Security Act, as added by Section 9901 of ARPA; or
 - Any other grant, loan, or loan guarantee provided by, or funded in whole or in part by, the federal government or a State or Territorial government for the provision of broadband service.

Eligible Entities may fund Unserved Service Projects and Underserved Service Projects that include locations in an area that has an enforceable commitment for the deployment of qualifying broadband to less than 100 percent of the locations in that area. *See, e.g.*, 47 C.F.R. § 54.308(a). Eligible Entities must, however, seek to identify as part of the challenge process described in Section IV.B.6 of this NOFO those unserved locations and underserved that will not be served by qualifying broadband service as a result of such enforceable commitment, and use that information in determining whether to treat each location as unserved or underserved within the relevant area.

Further, for unserved locations and underserved on Tribal Lands, a commitment that otherwise meets the criteria set forth above shall not constitute an enforceable commitment for the deployment of qualifying broadband unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.

⁵³ *See supra* note 52.

7. The Eligible Entity may solicit proposals from prospective subgrantees at the geographic level of its choosing—for example, on a per-location basis, per-census block basis, per-town, per-county or another geographic unit. An Eligible Entity may alternatively solicit proposals for project areas it defines or ask prospective subgrantees to define their own proposed project areas. If the Eligible Entity allows prospective subgrantees to define proposed project areas, it must develop a mechanism for de-conflicting overlapping proposals (for example, by de-scoping some locations from a provider’s proposed project area) to allow for like-to-like comparison of competing proposals. Whatever process is selected, the Eligible Entity must ensure it has a plan for serving all unserved and (where it has sufficient funding) underserved locations.

8. Each Eligible Entity must require that each proposal from a prospective subgrantee identify, for each location to be served in the proposal, the amount of BEAD funding the prospective subgrantee is seeking to serve that location.

9. If, after soliciting proposals, the Eligible Entity has received no proposals to serve a location or group of locations that are unserved, underserved, or a combination unserved and underserved, the Eligible Entity may engage with existing providers and/or other prospective subgrantees to find providers willing to expand their existing or proposed service areas. An Eligible Entity may consider inducements such as use of state funding toward the match requirement set forth in Section III.B or benefits during the grant selection process (*e.g.*, points or credits). The Eligible Entity shall, in this circumstance, work to ensure that its approach is as transparent as possible. For the avoidance of doubt, this provider-specific outreach is only appropriate after the Eligible Entity has solicited proposals and failed to obtain one or more proposals to serve the location or locations at issue.

10. As discussed further in Section IV.B.9.b, if an Eligible Entity’s Final Proposal includes plans to deploy broadband to Unserved Service Projects or Underserved Service Projects that include any locations on Tribal Lands, the Eligible Entity must submit proof of the Tribal Government’s consent to such deployment.

11. Notwithstanding any of the above:

- An Eligible Entity may decline to select a proposal that requires a BEAD subsidy that exceeds the Extremely High Cost Per Location Threshold for any location to be served in the proposal if use of an alternative Reliable Broadband Service technology meeting the BEAD Program’s technical requirements would be less expensive. Subject to the overarching requirement to run a fair, open, and competitive process, the Eligible Entity has discretion to design a selection process that allows it to engage with a prospective subgrantee to revise the proposal to ensure that no location requires a subsidy that exceeds the Extremely High Cost Per Location Threshold.
- If no Reliable Broadband Service technology meeting the BEAD Program’s technical requirements would be deployable for a subsidy of less than the Extremely High Cost Per Location Threshold at a given location, an Eligible Entity is authorized to select a proposal involving a less costly technology for that location, even if that technology does *not* meet the definition of Reliable Broadband Service but otherwise satisfies the Program’s technical requirements.

In this instance, Eligible Entities are directed to seek out the most robust, affordable, and scalable technologies achievable under the circumstances particular to that location.

Eligible uses of funding in connection with last-mile broadband deployment projects include the following:⁵⁴

1. Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings.
2. Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements.
3. Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building.
4. Engineering design, permitting, and work related to environmental, historical and cultural reviews.
5. Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts).
6. Network software upgrades, including, but not limited to, cybersecurity solutions.
7. Training for cybersecurity professionals who will be working on BEAD-funded networks.
8. Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training for broadband-related occupations to support deployment, maintenance, and upgrades.

iii. Non-Deployment Uses

As detailed above, an Eligible Entity that can demonstrate it has a plan for bringing affordable, high-speed broadband service to all unserved and underserved locations within its jurisdiction may also allocate funding to non-deployment activities. Such eligible non-deployment uses include, but are not limited to, the following:

1. User training with respect to cybersecurity, privacy, and other digital safety matters.
2. Remote learning or telehealth services/facilities.
3. Digital literacy/upskilling (from beginner-level to advanced).
4. Computer science, coding and cybersecurity education programs.
5. Implementation of Eligible Entity digital equity plans (to supplement, but not to duplicate or supplant, Planning Grant funds received by the Eligible Entity in connection with the Digital Equity Act of 2021).⁵⁵

⁵⁴ These also are the uses to which an Eligible Entity must in the first instance devote funding in the initial 20 percent funding distribution, pursuant to Section IV.B.7 of this NOFO.

⁵⁵ Note that an Eligible Entity that wishes to obtain a Digital Equity Capacity Grant under the Digital Equity Act of 2021 must first apply for and receive a Digital Equity Planning Grant in order to do so. The application for BEAD funding will not be considered an application for a grant under the Digital Equity Act of 2021. Use of BEAD funds for digital equity purposes will not alone render the Eligible Entity

6. Broadband sign-up assistance and programs that provide technology support.
7. Multi-lingual outreach to support adoption and digital literacy.
8. Prisoner education to promote pre-release digital literacy, job skills, online job-acquisition skills, *etc.*
9. Digital navigators.⁵⁶
10. Direct subsidies for use toward broadband subscription, where the Eligible Entity shows the subsidies will improve affordability for the end user population (and to supplement, but not to duplicate or supplant, the subsidies provided by the Affordable Connectivity Program).
11. Costs associated with stakeholder engagement, including travel, capacity-building, or contract support.
12. Other allowable costs necessary to carrying out programmatic activities of an award, not to include ineligible costs described below in Section V.H.2 of this NOFO.

When selecting subgrantees for non-deployment uses of BEAD funds, an Eligible Entity must adhere to the Infrastructure Act's requirement that subgrants be awarded "competitively."⁵⁷ NTIA recognizes that the breadth of potential non-deployment eligible activities could necessitate a broad range of subgrantee selection processes, even within a single Eligible Entity, and that such processes might even require the Eligible Entity to compare and choose among very different proposals (*e.g.*, whether to allocate funds to an affordability program, a cybersecurity training program, or a digital literacy drive).⁵⁸ Accordingly, NTIA does not prescribe any specific framework. NTIA reminds Eligible Entities that federal grant regulations "flow through" to subrecipients (*i.e.*, subgrantees), and that subrecipients are responsible for adherence to applicable Federal program requirements specified in the Federal award.⁵⁹ As with deployment projects, NTIA encourages Eligible Entities to promote participation by minority-owned businesses and other socially or economically disadvantaged individual-owned businesses.

b. Prioritization and Scoring in Selection of Last-Mile Broadband Deployment Projects

An Eligible Entity may choose its own means of competitively selecting subgrantees for last-mile broadband deployment projects, subject to approval by the Assistant Secretary (during review of the Eligible Entity's Initial Proposal). Each Eligible Entity's subgrantee selection process must, however, incorporate the following principles to satisfy the Infrastructure Act's mandates and the BEAD Program's goals.

eligible for a Digital Equity Planning Grant.

⁵⁶ "Digital Navigators are individuals who address the whole digital inclusion process — home connectivity, devices, and digital skills — with community members through repeated interactions." National Digital Inclusion Alliance, *The Digital Navigator Model: Adding Digital Equity to Our Social Safety Net*, available at <https://www.digitalinclusion.org/digital-navigator-model/>.

⁵⁷ See Infrastructure Act § 60102(f).

⁵⁸ An Eligible Entity could also run multiple competitions for different categories of activities.

⁵⁹ See, *e.g.*, 2 C.F.R. §§ 200.101(b)(2); 200.331.

1. ***Complete Coverage of Unserved Locations and Underserved Locations, Followed by Prioritization of Eligible CAIs.*** The Eligible Entity, in awarding subgrants for the deployment of a broadband network, shall award funding in a manner that ensures the deployment of service to all unserved locations within the Eligible Entity's jurisdiction. If the Eligible Entity has sufficient funds to ensure deployment of service to all underserved locations within its jurisdiction, it must ensure such deployment as well. If the Eligible Entity lacks sufficient funds to ensure deployment of service to all underserved locations, it must commit the remainder of its BEAD funds to ensure deployment to underserved locations. Eligible Entities must submit Initial Proposals and Final Proposals that will result in coverage for all unserved locations, and (to the extent funds are available) all underserved locations. The Assistant Secretary will only approve an Initial Proposal or Final Proposal that includes a plan to ensure deployment of broadband to all unserved and underserved locations within the State or Territory or that provides a strong showing that the Eligible Entity is financially incapable of ensuring universal coverage of all unserved and underserved locations. To the extent that an Eligible Entity demonstrates that there are insufficient funds available to fund deployment to all unserved, underserved, or eligible CAI locations, the Eligible Entity must prioritize projects within each of those categories based on a strong preference for projects in high poverty areas or persistent poverty counties.⁶⁰

In ensuring deployment of service to all unserved and underserved locations within its jurisdiction, the Eligible Entity may opt to fund deployment of Wi-Fi infrastructure to multi-family buildings that lack high-speed broadband access in their entirety or contain units that lack such access. Such an Eligible Entity must give priority to residential buildings that (1) have a substantial share of unserved households or (2) are in locations in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved⁶¹ is higher than the national percentage of such individuals.⁶²

NTIA strongly urges Eligible Entities that are able to fund deployment to all unserved and underserved locations to allocate remaining funds to eligible CAIs, and to move to alternative eligible uses only if they are able to fund deployments to all unserved locations, underserved locations, and eligible CAIs. An Eligible Entity that proposes to use BEAD funds to pursue objectives in lieu of the deployment of service to eligible CAIs must provide a strong rationale for doing so in its Initial Proposal.

The requirement that an Eligible Entity have a plan to ensure deployment to all unserved and underserved locations before contemplating non-deployment uses of funds does not

⁶⁰ For the purposes of this requirement, high poverty areas are areas in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) is higher than the national percentage of such individuals. Persistent poverty counties are counties that have had poverty rates of 20 percent or greater for at least 30 years as calculated by the Economic Research Service in the Department of Agriculture.

⁶¹ For this purpose, the applicable poverty line for a family of the relevant size is to be determined consistent with section 673(2) of the Community Services Block Grant Act, 42 U.S.C. § 9902(2).

⁶² See Infrastructure Act § 60102(g)(1)(D).

impose any temporal requirement as to the order in which BEAD-funded initiatives are undertaken or completed. NTIA recognizes that broadband deployment projects often take months or years to complete, whereas certain other eligible uses of BEAD funds can be implemented more quickly. Thus, if an Eligible Entity has a plan to deploy service to all unserved and underserved locations within its jurisdiction, it may pursue non-deployment initiatives using BEAD funds before or while deployment projects are underway. For example, while an Eligible Entity is only permitted to pursue a device-subsidy program using BEAD funds if it has a plan to deploy service to all unserved and underserved locations within its jurisdiction, an Eligible Entity proposing such a program is both permitted and encouraged to implement it as soon as is feasible once its Initial Proposal has been approved.

2. ***Selection Among Competing Proposals for the Same Location or Locations.*** An Eligible Entity's process in selecting subgrantees for last-mile broadband deployment projects must first assess which locations or sets of locations under consideration are subject to one or more proposals that (1) constitute Priority Broadband Projects and (2) satisfy all other requirements set out in this NOFO with respect to subgrantees. In the event there is just one proposed Priority Broadband Project in a location or set of locations, and that proposal does not exceed the Eligible Entity's Extremely High Cost Per Location Threshold, that proposal is the default winner, unless the Eligible Entity requests, and the Assistant Secretary grants, a waiver allowing the Eligible Entity to select an alternative project.⁶³ To the extent there are multiple proposals in a location or set of locations that (1) constitute Priority Broadband Projects and (2) satisfy all other requirements with respect to subgrantees, the Eligible Entity shall use its approved competitive process to select a project subject to the selection criteria set forth below.

i. Selection Among Priority Broadband Projects

Definition. The Infrastructure Act provides that a "priority broadband project" is one designed to (1) "provide broadband service that meets speed, latency, reliability, consistency in quality of service, and related criteria as the Assistant Secretary shall determine" and (2) "ensure that the network built by the project can easily scale speeds over time to ... meet the evolving connectivity needs of households and businesses" and "support the deployment of 5G, successor wireless technologies, and other advanced services."⁶⁴ NTIA has determined that "Priority Broadband Projects" are those that use end-to-end fiber-optic architecture. Only end-to-end fiber will "ensure that the network built by the project can easily scale speeds over time to ... meet the evolving connectivity needs of households and businesses" and "support the deployment of 5G, successor wireless technologies, and other advanced services."⁶⁵ End-to-end fiber networks can be updated by replacing equipment attached to the ends of the fiber-optic facilities, allowing for quick and relatively inexpensive network scaling as compared to other technologies. Moreover, new fiber deployments will facilitate the deployment and growth of 5G and other advanced wireless services, which rely extensively on fiber for essential backhaul.

⁶³ The Eligible Entity need not seek a waiver before rejecting a project whose costs, on average or for a given location, exceed the Eligible Entity's Extremely High Cost Per Location Threshold.

⁶⁴ Infrastructure Act § 60102(a)(1)(I).

⁶⁵ *Id.*

Primary Criteria. In deciding among competing Priority Broadband Projects covering the same location or locations, Eligible Entities must give the greatest weight (*e.g.*, substantial points or credits) to the following criteria:⁶⁶

- **Minimal BEAD Program Outlay.** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the prospective subgrantee's proposed match (which must, absent a waiver, cover no less than 25 percent of the project cost), with the specific points or credits awarded increasing as the BEAD outlay decreases. In comparing the project's BEAD outlay and the prospective subgrantee's match commitments, Eligible Entities should consider the cost to the Program per location while accounting for any factors in network design that might make a project more expensive, but also more scalable or resilient.
- **Affordability.** The prospective subgrantee's commitment to provide the most affordable total price to the customer for 1 Gbps/1 Gbps service in the project area.
- **Fair Labor Practices.** Eligible Entities must give priority to projects based on a prospective subgrantee's demonstrated record of and plans to be in compliance with Federal labor and employment laws. New entrants without a record of labor and employment law compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects. This prioritization requirement is described in further detail in Section IV.C.1.e of this NOFO.

Secondary Criterion. Eligible Entities must also give weight (*e.g.*, some number of points or quantity of credits less than the amount given to the criteria above) to the following criterion:

- **Speed to Deployment.** All subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband services within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity. Eligible Entities must give secondary criterion prioritization weight to the prospective subgrantee's binding commitment to provide service by an earlier date certain, subject to contractual penalties to the Eligible Entity, with greater benefits awarded to applicants promising an earlier service provision date.⁶⁷

⁶⁶ The primary criteria must collectively account for no less than three-quarters of the total benefits available across all the criteria the Eligible Entity employs in choosing between or among competing proposals.

⁶⁷ Nothing herein supersedes the requirement that, barring an extension granted by the Assistant Secretary, any subgrantee that receives BEAD Program funds for network deployment must deploy the

Additional Prioritization Factors. Eligible Entities may develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the primary criteria and the approval of the Assistant Secretary in the Initial and Final Proposal process. In particular, NTIA encourages Eligible Entities to incorporate the following as selection criteria:

- ***Equitable Workforce Development and Job Quality.*** NTIA encourages Eligible Entities to adopt selection criteria relating to the subgrantee's enforceable commitments with respect to advancing equitable workforce development and job quality objectives, *see* Section IV.C.1.f of this NOFO.
- ***Open Access.*** NTIA encourages Eligible Entities to adopt selection criteria promoting subgrantees' provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.
- ***Local and Tribal Coordination.*** NTIA encourages Eligible Entities to adopt selection criteria reflecting a prospective subgrantee's support from the local and/or Tribal Government with oversight over the location or locations to be served.

ii. Selection Among Other Last-Mile Broadband Deployment Projects

With respect to locations or sets of locations for which the Eligible Entity did not receive a proposal to deploy a Priority Broadband Project, the Eligible Entity shall first identify any locations with only one proposal that satisfies all other requirements with respect to subgrantees. In those locations or sets of locations, the entity submitting the sole proposal is the default winner, unless the Eligible Entity requests, and the Assistant Secretary grants, a waiver allowing the Eligible Entity to seek other potential subgrantees. To the extent there are multiple proposals seeking to serve a location or area that satisfy all other requirements with respect to subgrantees, the Eligible Entity shall undertake its competitive process to choose between or among those proposals.

Primary Criteria. In deciding among competing projects that are not Priority Broadband Projects covering the same locations or area, Eligible Entities must give the greatest weight (*e.g.*, substantial points or credits) to the following criteria:⁶⁸

- ***Minimal BEAD Program Outlay.*** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the prospective subgrantee's proposed match (which must, absent a waiver, cover no

planned broadband network and begin providing services to each customer that desires broadband service within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.

⁶⁸ The primary criteria must collectively account for no less than three-quarters of the total benefits available across all the criteria the Eligible Entity employs in choosing between or among competing proposals.

less than 25 percent of the project cost), with the specific benefits awarded increasing as the BEAD outlay decreases. In comparing the project's BEAD outlay and the prospective subgrantee's match commitments, Eligible Entities should consider the cost to the Program per location while accounting for any factors in network design that might make a project more expensive, but also more scalable or resilient.

- ***Affordability.*** The prospective subgrantee's commitment to provide the most affordable total price to the customer for 100/20 Mbps service in the proposed service area.
- ***Fair Labor Practices.*** Eligible Entities must give priority to projects based on a prospective subgrantee's demonstrated record of and plans to be in compliance with Federal labor and employment laws. New entrants without a record of labor and employment law compliance must be permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects. This prioritization requirement is described in further detail in Section IV.C.1.e of this NOFO.

Secondary Criteria. Eligible Entities must also give weight (*e.g.*, some number of points or credits less than the amount given to the criteria above) to the following criteria:

- ***Speed to Deployment.*** The prospective subgrantee's binding commitment to provision service by a date certain, subject to contractual penalties to the Eligible Entity, with greater benefits awarded to prospective subgrantees promising an earlier service provision date.
- ***Speed of Network and Other Technical Capabilities.*** Eligible Entities must weigh the speeds, latency, and other technical capabilities of the technologies proposed by prospective subgrantees seeking to deploy projects that are not Priority Broadband Projects. Applications proposing to use technologies that exhibit greater ease of scalability with lower future investment (as defined by the Eligible Entity) and whose capital assets have longer useable lives should be afforded additional weight over those proposing technologies with higher costs to upgrade and shorter capital asset cycles.

Additional Prioritization Factors. Eligible Entities may develop additional secondary criteria to be given weights that align with Eligible Entity and local priorities, subject to the requirement to give the greatest weight to the primary criteria and the approval of the Assistant Secretary in the Initial and Final Proposal process. In particular, NTIA encourages Eligible Entities to incorporate the following as selection criteria:

- ***Equitable Workforce Development and Job Quality.*** NTIA encourages Eligible Entities to adopt selection criteria relating to the subgrantee's enforceable commitments with respect to advancing equitable workforce development and job quality objectives, *see* Section IV.C.1.f of this NOFO.

- ***Open Access.*** NTIA encourages Eligible Entities to adopt selection criteria promoting subgrantees' provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.
- ***Local and Tribal Coordination.*** NTIA encourages Eligible Entities to adopt selection criteria reflecting a prospective subgrantee's support from the local and/or Tribal Government with oversight over the location or locations to be served.

8. 20 Percent Funding Release and Eligible Uses

If the Assistant Secretary determines that the Initial Proposal meets the standards set forth in Section IV.B.5.c, the Assistant Secretary shall make available to the Eligible Entity 20 percent of the grant funds that were allocated to the Eligible Entity, or a higher percentage at the sole discretion of the Assistant Secretary, for uses as described in Section IV.B.3 of this NOFO.

Upon completion of the challenge process described in Section IV.B.6 and the subgrantee selection process described in Section IV.B.7, an Eligible Entity may use the funds made available under this Section to fully fund deployment projects that:

1. Consist of at least 80 percent unserved locations; and
2. Are in a location in which the percentage of individuals with a household income at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2)) that is higher than the national percentage of such individuals.

An Eligible Entity may use the funds made available under this Section of the NOFO for other eligible uses described under Section IV.B.7 of this NOFO (*i.e.*, for uses other than deployment of last-mile broadband infrastructure to unserved and underserved locations or eligible CAIs) only if the Eligible Entity is able to demonstrate to the satisfaction of the Assistant Secretary that the Eligible Entity has a plan to meet the unserved and underserved location broadband deployment commitments set forth in the Eligible Entity's Final Proposal, in which case the Assistant Secretary may waive, in whole or in part, limitations on the use of this funding round.⁶⁹ Additional information on how to request the use of funds for other purposes and the associated documentation required to demonstrate such plan will be provided at a later date.

9. Final Proposal

a. Timing

To receive the remaining grant funds that were allocated to the Eligible Entity, an Eligible Entity shall submit a Final Proposal no later than twelve (12) months after the date upon which the Assistant Secretary approves the Eligible Entity's Initial Proposal. If an Eligible Entity fails to

⁶⁹ As described above, moreover, the Eligible Entity need not wait for its last-mile deployment projects to be completed before it can pursue its approved non-deployment uses. Rather, it is both permitted and encouraged to undertake those non-deployment activities as soon as is feasible.

submit a Final Proposal by this deadline, this will be treated as the Eligible Entity's application failure pursuant to Section IV.B.10. The Assistant Secretary reserves the right to extend this deadline; however, the Assistant Secretary will not grant a waiver of the Final Proposal deadlines except in extraordinary circumstances.

b. Form and Content of Final Proposal

NTIA will provide Eligible Entities an online template for submission of the Final Proposal. An Eligible Entity may submit only one final proposal.

The Final Proposal must include, at a minimum:

1. A detailed plan that specifies the outcome of the Eligible Entity's subgrantee selection process and how the Eligible Entity will:
 - a. allocate grant funds to subgrantees for the deployment of broadband networks to unserved locations, underserved locations, and (if applicable) CAIs in accordance with the prioritization framework described in Section IV.B.7.b of this NOFO; and
 - b. align the grant funds allocated to the Eligible Entity under the BEAD Program, where practicable, with the use of other funds for broadband that the Eligible Entity receives from the federal government, an Eligible Entity, or any other source.
3. A timeline for implementation of the detailed plan and completion of each project and other eligible activity to be funded;
4. Processes for oversight and accountability to ensure the proper use of the grant funds allocated to the Eligible Entity under the BEAD Program consistent with Section IX.G of this NOFO;
5. Certification that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, and unions and worker organizations, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, a description of the coordination conducted, and a summary of the impact such coordination had on the content of the Final Proposal;
6. Description of the results of the challenge process conducted by the Eligible Entity under Section IV.B.6;
7. Certification that the Eligible Entity will provide service to all unserved and underserved locations, if the Eligible Entity is seeking to use BEAD funding for deployment to CAIs or for other eligible activities;
8. A detailed description of all planned uses of BEAD funding that are not last-mile broadband deployment projects, including the nature of each funded initiative, how those uses are consistent with Section IV.B.7.a.iii of this NOFO, how the Eligible Entity expects the initiative to address the needs of the Eligible Entity's residents, the ways in which engagement with localities and stakeholders informed the selection of such eligible activities, and any efforts the Eligible Entity undertook to determine whether other uses of the funds might have been more effective in achieving the BEAD Program's equity, access, and deployment goals;

9. The means by which subgrantees for non-deployment eligible activities were selected, if the Eligible Entity pursued those initiatives via subgrant, or, alternatively, how the Eligible Entity determined that it should undertake the initiative itself;
10. A description of efforts undertaken by the Eligible Entity to ensure the participation of non-traditional broadband providers (such as municipalities or political subdivisions, cooperatives, non-profits, Tribal Governments, and utilities), including an explanation for awards to traditional broadband providers when one or more non-traditional providers submitted competing proposals to serve an area consistent with the requirements of Section IV.C.1.a;
11. Implementation status of plans described in the Initial Proposal related to:
 - a. Steps that the Eligible Entity has taken or intends to take to promote streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements;
 - b. Labor and workforce activities, including how the Eligible Entity implemented and applied the labor-related subgrantee selection criterion required herein;
 - c. Utilization of minority businesses, women-owned business enterprises, and labor surplus area firms;
 - d. Low-cost plan requirements; and
 - e. Climate change and resilience;
12. Information regarding specific commitments made by provisionally selected subgrantees to warrant a project's treatment as a Priority Broadband Project;
13. Information regarding specific commitments made by provisionally selected subgrantees to warrant benefits in the Eligible Entity's subgrantee selection process (*e.g.*, the primary and secondary criteria);
14. Environmental documentation associated with any construction and/or ground-disturbing activities and a description of how the Eligible Entity will comply with applicable environmental and national historical preservation requirements.
15. To the extent an Eligible Entity's Final Proposal includes plans to deploy broadband to Unserved Service Projects or Underserved Service Projects on Tribal Lands, the Eligible Entity must submit a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed⁷⁰.

⁷⁰ In the case of consortiums, a Tribal resolution is required from each Tribal Government on whose Tribal Lands the infrastructure will be deployed. For projects deploying to locations on Tribal Lands in Hawaii, consent must be obtained from the Department of Hawaiian Home Lands. For projects deploying to locations in Alaska, with the exception of deployments on the Metlakatla Reservation, an Eligible Entity must gain the consent (by Tribal resolution) of 51 percent or more of the federally recognized tribal governments in the Alaska Native Region in which the infrastructure will be deployed. Consent from the Metlakatla Reservation will not be required for deployments in the Southeast Alaska Region Village. Conversely, deployments within the Metlakatla Reservation will require only the consent (via Tribal resolution) of the Metlakatla Reservation's Tribal Government. If a Tribal Government is not meeting due to COVID-19 restrictions or will not meet between release of this NOFO and submission of the Eligible Entity's Initial Proposal, NTIA will allow the submission of a Letter of Consent from the Governing Body of the Tribe with the Eligible Entity's Final Proposal.

16. A description of (1) each unsuccessful application that was affected by laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act, that the Eligible Entity did not waive for purposes of BEAD Program project selection and that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer; and (2) how those laws impacted the decision to deny each such application.

Additional requirements for the Final Proposal may be provided to Eligible Entities when the approval of the Initial Proposal is granted.

c. Review process

After receipt of a Final Proposal, the Assistant Secretary shall acknowledge receipt and begin the review process in the order in which Final Proposals are received. Upon determination that the Final Proposal is complete, the Assistant Secretary shall determine whether the use of funds proposed in the Final Proposal:

1. Complies with Section 60102(f) of the Infrastructure Act;
2. Is in the public interest; and
3. Effectuates the purposes of the Infrastructure Act.

The Assistant Secretary may request and accept corrections to the Final Proposal of an Eligible Entity after the Final Proposal has been submitted.

d. Actions Upon Completion of Review

i. Approval

If the Assistant Secretary determines that the Final Proposal meets the standards set forth in Section IV.B.9.c, the Assistant Secretary shall approve the Final Proposal, so inform the Eligible Entity, and make available to the Eligible Entity the remaining Program funds identified in the Eligible Entity's Notice of Available Amounts to be used to implement the Eligible Entity's Final Proposal.

ii. Disapproval

If the Final Proposal is incomplete, or the Assistant Secretary determines that the use of funds proposed in the Final Proposal does not meet the standards set forth in Section IV.B.9.c, the Assistant Secretary will notify the Eligible Entity of the deficiencies in the proposal, provide the Eligible Entity with an opportunity to resubmit the Final Proposal, and establish a deadline for resubmission. If an Eligible Entity fails to resubmit its Final Proposal remedying the deficiencies identified by the Assistant Secretary or otherwise does not satisfy the standards set forth in Section IV.B.9.c by the applicable deadline, the Eligible Entity's application may be treated as an application failure pursuant to Section IV.B.10.

10. Application Failures

If an Eligible Entity fails to submit a covered application (*i.e.*, a Letter of Intent, Initial Proposal, or Final Proposal) by the applicable deadline (and following any relevant opportunity to cure deficiencies), NTIA will issue a public notice inviting a political subdivision or consortium of political subdivisions of the Eligible Entity (a “Substitute Entity”) to submit the applicable type of covered application in place of the Eligible Entity. In the case where an Eligible Entity has missed a deadline opening the process to a Substitute Entity, NTIA will publish a public notice to facilitate meaningful participation of political subdivisions.

In the case of a Substitute Entity that submits a covered application:

1. The Assistant Secretary shall, if necessary, establish revised deadlines for the Substitute Entity to meet the requirements of this NOFO; and
2. Any reference in this NOFO to an Eligible Entity in a geographic sense shall be deemed to refer to the Eligible Entity in whose place the Substitute Entity submitted the covered application.

If no Substitute Entity applies or if the Substitute Entity fails to meet a submission deadline without the grant of extension, an Eligible Entity’s Program funds may be reallocated pursuant to Section II.D above.

C. Program Requirements

As set forth in the Infrastructure Act and outlined in greater detail below, the programmatic requirements applicable to Eligible Entities and subgrantees are as follows:

1. Eligible Entity Obligations
 - a. Consider All Provider Types
 - b. Ensure Subgrantee Accountability
 - c. Local Coordination
 - d. Equitable and Nondiscriminatory Distribution of Funds
 - e. Fair Labor Practices and Highly Skilled Workforce
 - g. Civil Rights and Nondiscrimination Law Compliance
 - h. Climate Resilience
2. Subgrantee Obligations
 - a. Network Capabilities
 - b. Deployment Requirements
 - c. Service Obligations

1. Eligible Entity Obligations

a. Consider All Provider Types

Competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service. As required by the Infrastructure Act, in awarding subgrants for the deployment of a broadband network using grant funds, Eligible Entities may

not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments (“potential providers”) from eligibility for grant funds. In determining whether to approve an Eligible Entity’s Initial or Final Proposal, NTIA will consider whether the Eligible Entity has, after the enactment of the Infrastructure Act, adopted new laws, regulations, policies, procedures or any other form of rule or restriction that, in the determination of NTIA, seeks to exclude or has the effect of excluding any potential providers from eligibility for its subgrant competition. This could include new laws that have the effect of excluding providers from offering broadband service or rendering them incapable of effectively competing for subgrants.

Some laws of Eligible Entities concerning broadband, utility services, or similar subjects that *predate* the enactment of the Infrastructure Act may either preclude certain public sector providers from participation in the subgrant competition or may impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer. NTIA strongly encourages Eligible Entities to waive all such laws for purposes of the Program. If an Eligible Entity does not do so, the Eligible Entity must identify all such laws in its Initial Proposal and describe how the laws will be applied in connection with the competition for subgrants. Such Eligible Entity must, in its Final Proposal, disclose each unsuccessful application affected by such laws and describe how those laws impacted the decision to deny the application.

b. Ensure Subgrantee Accountability

In addition to demonstrating how it expects to satisfy the subrecipient monitoring and management requirements identified in 2 C.F.R. Part 200 Subpart D, each Eligible Entity must include sufficient accountability procedures within its program to ensure subgrantee compliance with all applicable Program requirements. Each Eligible Entity must, at a minimum, include in any subgrant agreement reasonable provisions allowing for recovery of funds in the event of a subgrantee’s noncompliance with the BEAD Program’s requirements, including but not limited to failure to deploy network infrastructure in accordance with mandated deadlines. Each Eligible Entity must, at a minimum, employ the following practices: (1) distribution of funding to subgrantees for, at a minimum, all deployment projects on a reimbursable basis (which would allow the Eligible Entity to withhold funds if the subgrantee fails to take the actions the funds are meant to subsidize); (2) the inclusion of clawback provisions (*i.e.*, provisions allowing recoupment of funds previously disbursed) in agreements between the Eligible Entity and any subgrantee; (3) timely subgrantee reporting mandates; and (4) robust subgrantee monitoring practices. NTIA will review proposed subgrant processes during the Initial Proposal and Final Proposal review phases and will reject Proposals that fail to provide sufficient recourse against subgrantees that do not fulfill their legal and contractual responsibilities. NTIA likewise will pursue clawback of funds directly from Eligible Entities that fail to ensure subgrantee accountability to the fullest extent of the law.

c. Local Coordination

Each Eligible Entity must develop a comprehensive local coordination approach that will begin in the development of the Five-Year Action Plan and continue at each stage of the BEAD

Program through the awarding of all subgrant funding. Local and Tribal coordination and stakeholder engagement is critical to the BEAD Program's success, to eliminating barriers to broadband access and adoption, and to rapidly and economically building out new broadband networks. NTIA views strong involvement between Eligible Entities and local and Tribal communities as key to ensuring that the broadband needs of all unserved and underserved locations and underrepresented communities are accounted for in Initial and Final Plans. Local coordination promotes alignment of priorities between Eligible Entity and local and Tribal officials and helps ensure visibility of local needs and preferences. Robust engagement efforts increase initial adoption rates once the broadband is deployed in an area and stimulate awareness about the programs that can support the local community.

Accordingly, each Eligible Entity is required to coordinate with political subdivisions, Tribal Governments, local and community-based organizations, and unions and worker organizations within its territory to ensure full representation and inclusion of unserved, underserved, and underrepresented communities throughout the planning and deployment processes. Each Eligible Entity must document its local coordination and outreach activities by providing a detailed description of their efforts to engage local governments, community groups, union and worker organizations, Tribal Governments, and underrepresented populations in its Five-Year Action Plan, Initial Proposal, and Final Proposal, relative to each stage in the BEAD Program process. Each Eligible Entity is strongly encouraged to integrate its local coordination efforts with any outreach and coordination efforts it is required to undertake pursuant to the Digital Equity Act. *See* Section V of this NOFO for additional information concerning application materials.

In evaluating whether local coordination and outreach efforts meet the programmatic requirements, the Assistant Secretary will assess whether plans and activities undertaken ensure: (1) full geographic coverage of the Eligible Entity; (2) meaningful engagement and outreach to diverse stakeholder groups, labor organizations, and community organizations, including to promote the recruitment of women and other historically marginalized populations for workforce development opportunities and jobs related to BEAD-funded eligible activities; (3) utilization of multiple awareness and participation mechanisms and different methods to convey information and outreach; (4) transparency of processes, to include the documentation and publication of results and outcomes of such coordination and outreach efforts, including additions or changes to the Eligible Entity's Initial Proposal and/or Final Proposal; and (5) outreach to and direct engagement of unserved and underserved communities to include historically underrepresented and marginalized groups and/or communities. These requirements are designed to allow Eligible Entities to tailor the program for the unique environments within its boundaries. In evaluating the sufficiency of local coordination efforts, the Assistant Secretary will consider quantitative measures as well as the quality of the engagements.

The requirements of this section are critical to ensuring that Eligible Entities are coordinating with all communities, including their marginalized and underrepresented populations. Broadband availability, or lack thereof, is not new to localities and in many instances, they have undertaken data collection, planning and outreach and engagement efforts to identify the specific and unique needs of their communities. Bringing these stakeholders to the table will not only result in Eligible Entities developing and implementing a successful broadband plan that carries out the intent of the Infrastructure Act, but fosters buy-in from the people the plan and these programs

are meant to serve. It also builds stronger relationships between Eligible Entities and localities and creates opportunities for them to further coordinate with each other. Eligible Entities should track all engagement efforts they conduct and provide a synopsis of the needs identified and if they were addressed (or not) in the appropriate portions of their Initial Proposals, Final Proposals, and reporting to NTIA.

i. Geographic Coverage

Each Eligible Entity must demonstrate that its engagement with its political subdivisions and applicable Tribal Governments include sufficient geographic granularity to demonstrate full participation within the Eligible Entity. Engagement must include Tribal, rural, suburban, and urban areas to the extent applicable in the Eligible Entity and must address diverse stakeholder groups. Each political subdivision and federally recognized Tribe must be given an opportunity to submit its own plan⁷¹ to the Eligible Entity for consideration in the development of the Eligible Entity's Proposals. Likewise, each political subdivision and federally recognized Tribe must be given an opportunity to comment on the Proposals of the Eligible Entity before submission to the Assistant Secretary. The Eligible Entity must detail how it addressed each submitted plan in each relevant Proposal.

ii. Diverse stakeholder groups

Throughout its local coordination and outreach activities, each Eligible Entity must ensure that a diverse set of stakeholders is involved in development of its Five-Year Action Plan, Initial Proposal, and Final Proposal. To the extent the Eligible Entity encompasses sovereign Tribal or Native entities, the Eligible Entity must ensure that such entities are involved in development of the Eligible Entity's plans, including, but not limited to a formal Tribal consultation process with the Eligible Entity. In addition, Eligible Entities must coordinate with local stakeholders—such as entities that carry out workforce development programs and labor unions—to provide a written explanation of their approach to ensuring a reliable supply of skilled workers, eliciting feedback on plans for creating good-paying jobs, and to recruiting and hiring women and other historically marginalized groups for the job opportunities created through the BEAD program. Other examples of stakeholder groups for consideration include but are not limited to the following:

- State and Territorial agencies, including departments and offices charged with overseeing transportation, economic development, community development, education, information technology, health and human services, labor, agriculture, and natural resources; County and municipal governments and regional associations of governments;
- Tribal Governments, Alaska Native entities, and Native Hawaiian organizations;
- Community anchor institutions;
- Nonprofit and community-based organizations;
- Civil rights organizations;
- Labor organizations and unions;

⁷¹ Plans in this context refer to formal, local broadband plans addressing deployment, equity, or other issues relevant to the BEAD program goals.

- Entities that carry out workforce development programs, including labor-management partnership training programs (like Registered Apprenticeship programs and pre-apprenticeships tied to Registered Apprenticeships);
- Higher education institutions, including community colleges, Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), and Minority-Serving Institutions (MSIs);
- Local educational agencies;
- Eligible Entity agencies that are responsible for administering or supervising adult education and literacy activities in the Eligible Entity;
- Public housing authorities or owners/operators of HUD-assisted housing in the Eligible Entity;
- Organizations that represent:
 - Individuals with disabilities, including organizations that represent children with disabilities;
 - Individuals who are 60 years of age or older;
 - Individuals with language barriers, including English learners and individuals with low levels of literacy;
 - People of color;
 - LGBTQI+ people;
 - Immigrants;
 - Veterans; and
 - Individuals in that Eligible Entity who are incarcerated;
- Economic development organizations, local businesses/chambers of commerce, including small and disadvantaged businesses and chambers of commerce (*e.g.*, chambers of commerce serving underrepresented groups);
- Internet Service Providers (ISPs) of all types;
- Public Utility Commissions (PUCs) and equivalents;
- Consumer advocates and advocacy groups;
- Faith-based organizations;
- Neighborhood associations; and
- Other organizations that serve as representatives of underrepresented communities.

iii. Awareness, Outreach and Participation Mechanisms

Successful coordination requires multiple mechanisms to ensure broad awareness and participation. Each Eligible Entity must design and implement efforts that promote inclusivity. This should be accomplished through facilitating broad outreach efforts that promote engagement in different ways to ensure that all unserved, underserved and underrepresented communities are included. Examples of such methods include but are not limited to:

1. Listening sessions, or public meetings (in-person within the community and virtual);
2. Eligible Entity websites and/or email address to submit comments directly;
3. Informational materials such as fact sheets, brochures, Frequently Asked Questions, and newsletters;
4. Social media (blogs, Twitter, Facebook, Instagram, *etc.*);

5. Email notifications and use of traditional mail;
6. Utilization of community anchor institutions to help promote and distribute information);
and
7. Local Advertisements and Public Service Announcements.

iv. Transparency

In conducting local coordination and outreach activities, Eligible Entities must establish, document, and adhere to clear procedures to ensure transparency. This includes publicly posting the Proposals prior to submission to NTIA as well as plans or comments submitted by local political subdivisions or Tribal Governments and explanations of how local recommendations were addressed. Examples of ways to promote and document transparency include but are not limited to publicly available information and easily navigable websites with up-to-date information, periodic reporting/reports to local and community stakeholders, and involvement of diverse stakeholders in the planning, implementation and execution of coordination and outreach efforts and activities, and in-person meetings and mailings.

v. Underrepresented Engagement

Specific engagement efforts must be targeted at underrepresented communities within the Eligible Entity. Underrepresented communities have historically faced barriers in participating in federal programs and therefore Eligible Entities must identify these communities and determine specific outreach and engagement strategies tailored to their needs, including providing outreach in the languages used in the communities these eligible activities serve. Examples of activities that might be used to reach unserved, underserved, and underrepresented communities include but are not limited to:

1. The creation of an Eligible Entity-wide task force or advisory board with representatives from underrepresented communities;
2. Frequent engagement with State, Territorial, county, Tribal, and municipal associations that may have a greater reach to these communities through their local elected official members;
3. Engagement with other Eligible Entity departments or agencies that regularly serve these communities and can help identify and engage with them, such as Eligible Entity departments of education, health and human services, workforce development, and/or public health;
4. Utilization of the mechanisms listed in Section IV.C.1.c.iii that demonstrates a targeted focus on the above identified communities; and
5. Investment in surveys, data collection, and mapping initiatives to better understand gaps in connectivity and needs.

Each Eligible Entity should combine multiple strategies to develop a comprehensive approach that ensures equitable and broad participation from all stakeholders. Each Eligible Entity also must document, publish and integrate its local coordination activities with the outreach and coordination efforts it will undertake pursuant to the Digital Equity Act. It is strongly

recommended that Eligible Entities conduct BEAD and Digital Equity Act program local coordination efforts in tandem as one cohesive effort.

d. Equitable and Nondiscriminatory Distribution of Funds

Consistent with Section 60102(g)(2)(C) of the Infrastructure Act, Eligible Entities must distribute funds in an equitable and nondiscriminatory manner and ensure, through stipulations in any subgrantee contracts, that each subgrantee uses the funds in an equitable and nondiscriminatory manner.

e. Fair Labor Practices and Highly Skilled Workforce

As set forth above in Section IV.B.7, Eligible Entities must give priority to projects based on (among other things) a demonstrated record of and plans to be in compliance with federal labor and employment laws. Eligible Entities are required to give preferential weight to projects based on the strength of the showing in their application on this factor. Doing so will help ensure that projects are carried out in accordance with the law, assist Eligible Entities in ensuring that a prospective subgrantee is capable of carrying out activities funded by a subgrant in a competent manner in compliance with all applicable federal, state, and local laws, and promote the effective and efficient completion of high-quality broadband infrastructure projects by ensuring a reliable supply of skilled workers and minimizing disruptive and costly delays.

Evaluation of a prospective subgrantee's demonstrated record of and plans to be in compliance with federal labor and employment laws requires focus on several components. First, Eligible Entities must obtain and evaluate information on the prospective subgrantee's record of compliance with federal labor and employment laws, as well as the records of any other entities that will participate in the project, including contractors and subcontractors. This information must include, at a minimum, information on these entities' compliance with federal labor and employment laws on broadband deployment projects in the last three years. For example, the Eligible Entity should collect data on a prospective subgrantee's historical use of contracting and subcontracting arrangements, including staffing plans, and at least one example of each contractor and subcontractor's past performance in the context of a similar project. Eligible Entities will be required to describe in their Initial and Final Proposals what specific information they will require prospective subgrantees to provide in their applications and how they will weight that information in their competitive selection process. This should include, but not be limited to, (1) a certification from an Officer/Director-level employee (or equivalent) of the prospective subgrantee evidencing consistent past compliance with federal labor and employment laws by the subgrantee, as well as all contractors and subcontractors, and (2) written confirmation that the prospective subgrantee discloses any instances in which it or its contractors or subcontractors have been found to have violated laws such as the Occupational Safety and Health Act, the Fair Labor Standards Act, or any other applicable labor and employment laws for the preceding three years.

Second, Eligible Entities must require submission of, and evaluate, the prospective subgrantee's plans for ensuring compliance with Federal labor and employment laws. These plans must address, at a minimum, how the prospective subgrantee will ensure compliance in its own labor and employment practices, as well as that of its contractors and subcontractors, including (1)

information on applicable wage scales and wage and overtime payment practices for each class of employees expected to be involved directly in the physical construction of the broadband network and (2) how the subgrantee will ensure the implementation of workplace safety committees that are authorized to raise health and safety concerns in connection with the delivery of deployment projects. Eligible Entities will be required to describe in their Initial and Final Proposals what specific information they will require prospective subgrantees to provide in their applications and how they will weight that information in their competitive selection processes.

An effective plan for compliance with federal labor and employment laws can include a subgrantee's binding commitment to strong labor standards and protections for the project workforce (including contractors and subcontractors), which include:

- Using a directly employed workforce, as opposed to a subcontracted workforce;
- Paying prevailing wages and benefits to workers, including compliance with Davis-Bacon and Service Contract Act requirements, where applicable, and collecting the required certified payrolls;
- Using project labor agreements (*i.e.*, pre-hire collective bargaining agreements between unions and contractors that govern terms and conditions of employment for all workers on a construction project);
- Use of local hire provisions;
- Commitments to union neutrality;
- Use of labor peace agreements;⁷²
- Use of an appropriately skilled workforce, *e.g.*, through Registered Apprenticeships or other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded);
- Use of an appropriately credentialed workforce (*i.e.*, satisfying requirements for appropriate and relevant pre-existing occupational training, certification, and licensure); and
- Taking steps to prevent the misclassification of workers.

If an Eligible Entity includes any of these as mandatory requirements for all subgrantees (including contractors and subcontractors), it should describe these requirements in detail its Initial and Final Proposal and explain how it will incorporate them as binding legal commitments in the subgrants it makes. An Eligible Entity taking this approach can reduce the showing that prospective subgrantees need to make in their applications regarding their plans to comply with federal labor and employment laws.

⁷² Ability to require labor peace agreements:

- By a governmental entity: Where a governmental entity receives NTIA grant funds, whether directly as an Eligible Entity or as a subgrantee, and the governmental entity uses those funds for the construction of facilities over which it will maintain a proprietary interest (*e.g.*, governmental ownership of the network), it is authorized and encouraged to require labor peace agreements, unless prohibited by state or local law.
- By a non-governmental subgrantee: Subgrantees that are non-governmental entities, and construct broadband facilities over which no governmental entity maintains a proprietary interest, are authorized and encouraged to require labor peace agreements, unless prohibited by state or local law.

To ensure that subgrantees have the technical and operational capacity to carry out the subgrant, prospective subgrantees must have a plan for ensuring that the project workforce will be an appropriately skilled and credentialed workforce (including by the subgrantee and each of its contractors and subcontractors). For purposes of this section, the “project workforce” includes those employees of the subgrantee, its contractors, or subcontractors directly engaged in the physical construction of the broadband network. The plan for a highly skilled workforce should include the following information:

- The ways in which the subgrantee will ensure the use of an appropriately skilled workforce, *e.g.*, through Registered Apprenticeships or other joint labor-management training programs that serve all workers;
- The steps that will be taken to ensure that all members of the project workforce will have appropriate credentials, *e.g.*, appropriate and relevant pre-existing occupational training, certification, and licensure;
- Whether the workforce is unionized;
- Whether the workforce will be directly employed or whether work will be performed by a subcontracted workforce; and
- The entities that the proposed subgrantee plans to contract and subcontract with in carrying out the proposed work.

If the project workforce or any subgrantee’s, contractor’s, or subcontractor’s workforce is not unionized, the subgrantee must also provide with respect to the non-union workforce:

- The job titles and size of the workforce (FTE positions, including for contractors and subcontractors) required to carry out the proposed work over the course of the project and the entity that will employ each portion of the workforce;
- For each job title required to carry out the proposed work (including contractors and subcontractors), a description of:
 - safety training, certification, and/or licensure requirements (*e.g.*, OSHA 10, OSHA 30, confined space, traffic control, or other training as relevant depending on title and work), including whether there is a robust in-house training program with established requirements tied to certifications, titles; and
 - information on the professional certifications and/or in-house training in place to ensure that deployment is done at a high standard.

f. Advancing Equitable Workforce Development and Job Quality Objectives

A skilled workforce is critical to meeting infrastructure buildout timelines under the Infrastructure Act and connecting households across the country to reliable, affordable, high-speed broadband. A highly skilled workforce will also allow for the safe deployment of sustainable networks. To meet the workforce needs of this program, Eligible Entities and their subgrantees should make appropriate investments to develop a skilled, diverse workforce for the jobs that the subgrantees need to fill.⁷³

⁷³ Workforce development programs that provide high-skilled workers that support BEAD-funded projects are an eligible use of grant funds. *See* Section V.K for eligible uses.

i. Requirements. Eligible Entities are required to include in their Initial and Final Proposals:

1. A description of how the Eligible Entity will ensure that subgrantees support the development and use of a highly skilled workforce capable of carrying out work in a manner that is safe and effective.
2. A description of how the Eligible Entity will develop and promote sector-based partnerships among employers, education and training providers, the public workforce system, unions and worker organizations, and community-based organizations that provide relevant training (including through Registered Apprenticeships and pre-apprenticeships that are integrated with Registered Apprenticeships, or other quality work-based learning programs) and provide wrap-around services to support workers to access and complete training (such as child care, transportation, mentorship, *etc.*), to attract, train, retain, or transition to meet local workforce needs and increase high-quality job opportunities.⁷⁴
3. A description of how the Eligible Entity will plan to create equitable on-ramps into broadband-related jobs (*e.g.*, how entities plan to engage or partner with stakeholders like State, Territorial, and local workforce boards, training partners, labor and community organizations); maintain job quality for new and incumbent workers engaged in the sector; and continually engage with labor organizations and community-based organizations to maintain worker voice throughout the planning and implementation process;
4. A description of how the Eligible Entity will ensure that the job opportunities created by the BEAD Program and other broadband funding programs are available to a diverse pool of workers, including by engaging in targeted outreach, and seek subgrantees with effective plans for outreach, to populations that have traditionally been underrepresented in broadband and information technology jobs, including but not limited to women and people of color. Eligible Entities should be prepared to report on the demographics of each subgrantee workforce that is engaged on a project or other eligible activity utilizing BEAD grant funding (this will be aggregate workforce data only, not personally identifiable information), and should expect that this data will be made public.

ii. Other Considerations. NTIA encourages Eligible Entities to consider workforce development goals when selecting subgrantees. This could include setting requirements applicable to all subgrantees or establishing scoring factors. Eligible Entities can accomplish this in various ways, including the following:

1. Ensuring that subgrantees require their contractors and subcontractors to provide Registered Apprenticeships and pre-apprenticeships tied to a Registered Apprenticeship, joint labor management partnerships, and other high-quality, on-the-job training opportunities, which may include minimum requirements of contractor or subcontractor job hours to be performed by apprentices; and ensuring that such programs lead to

⁷⁴ For additional information on sector-based partnerships, Eligible Entities should review the Economic Development Administration's Good Jobs Challenge NOFO, EDA-HDQ-ARPGJ-2021-2006964, available at <https://www.grants.gov/web/grants/view-opportunity.html?oppID=334720>.

employment with wages at rates not less than the rates prevailing on projects and other eligible activities of a similar character in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

2. Ensuring that subgrantees offer “quality” jobs.⁷⁵ For example, an Eligible Entity should consider scoring applicants based in part on the extent to which they will deliver on the quality jobs standard.
3. Ensuring that subgrantees prioritize hiring local workers and have robust and specific plans to recruit historically underrepresented populations facing labor market barriers and ensure that they have reasonable access to the job opportunities created by subgrantees. Such populations may include communities of color, women, and other groups (such as persons with disabilities, LGBTQI+ people, disconnected youth, individuals in recovery, individuals with past criminal records, including justice-impacted and reentry participants, serving trainees participating in the SNAP, TANF, and WIC, and veterans and military spouses).

g. Civil Rights and Nondiscrimination Law Compliance

No person in the United States may, on the ground of actual or perceived race, color, national origin, sex, gender identity, sexual orientation, age, disability, or handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving federal financial assistance. Prior to distributing any BEAD funding to a subgrantee, an Eligible Entity must require the subgrantee to agree, by contract or other binding commitment, to abide by the non-discrimination requirements set forth in the following legal authorities, to the extent applicable, and to acknowledge that failure to do so may result in cancellation of any award and/or recoupment of funds already disbursed:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and the Department of Commerce’s implementing regulations, published at 15 C.F.R. Part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by Eligible Entity and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

⁷⁵ A “quality job” is defined as a job that (1) exceeds the local prevailing wage for an industry in the region, includes basic benefits (*e.g.*, paid leave, health insurance, retirement/savings plan), and/or is unionized, and (2) helps the employee develop the skills and experiences necessary to advance along a career path. *See* Economic Development Administration, ARPA Good Jobs Challenge NOFO, EDA-HDQ-ARPGJ-2021-2006964, at n. 1, available at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=334720>.

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce implementing regulations published at 15 C.F.R. Part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;

6. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, which provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. Note in this regard that Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities;" and

7. Any other applicable non-discrimination law(s). Application requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

In addition, each Eligible Entity must demonstrate in its Initial Proposal and Final Proposal that its selection of subgrantees will account for and satisfy the following authorities:

1. Parts II and III of Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319), which requires that federally assisted construction contracts incorporate and fulfill the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).⁷⁶

2. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (65 Fed. Reg. 50121), which requires federal agencies to examine the services that they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. Note that the Department of Commerce issued policy guidance on March 24, 2003 (68 Fed. Reg. 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-federal entities provide meaningful access to their LEP applicants and beneficiaries.

3. Executive Order 13798, Promoting Free Speech and Religious Liberty, and Office of Management and Budget, M-20-09—Guidance Regarding Federal Grants and Executive

⁷⁶ Among other things, entities undertaking either wholly or partially federally funded construction projects may not "discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin," and must "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin." Executive Order 11246 § 202.

Order 13798 (January 16, 2020), which provide that States or other public grantees may not condition sub-awards of federal grant money in a manner that would disadvantage grant applicants based on their religious character.

h. Climate Resilience

In establishing their Initial Proposals and Final Proposals, Eligible Entities must demonstrate that they have sufficiently accounted for current and future weather- and climate-related risks to new infrastructure projects. At present, weather- and climate-related risks to broadband networks include wildfires, extreme heat and cold, inland and coastal flooding, and the extreme winds produced by weather events such as tornadoes, hurricanes, and other weather events. Because retrofitted and new infrastructure for broadband might be expected to have a lifetime of 20 years or more, Eligible Entities must account not only for current risks but also for how the frequency, severity, and nature of these extreme events may plausibly evolve as our climate continues to change over the coming decades. Future projected climate change is expected to continue to result in higher seasonal temperatures and an increased likelihood of extreme heat events, higher risk of wildfires, more intense rainfall events, sea level rise and coastal inundation, permafrost thaw in Alaska, and the potential for stronger hurricanes when they do form, and other climate change related impacts.⁷⁷

Communities that lack broadband are also often the most vulnerable to extreme weather and climate events. This combination often results in a lack of crucial communications infrastructure to respond during these emergencies. Building climate-resilient broadband infrastructure for such communities provides emergency response preparedness and thus greater climate resilience for the community itself.

In light of the above, Eligible Entities should make use of available tools and resources from the National Oceanic and Atmospheric Administration (NOAA) and other federal agencies, as well as Eligible Entity-level resources and centers of expertise, in drawing up their Proposals pursuant to the BEAD Program. Each Eligible Entity must explain in its Initial and Final Proposal how it has utilized these tools and resources to account for, mitigate, and where possible, avoid the known and identifiable risks of current and future projected weather and climate conditions. Eligible Entities also should explain how they addressed these risks through measures such as (but not necessarily limited to) choice of a technology platform suitable to the climate risks of the region, reliance on alternative siting of facilities (*e.g.*, underground construction where appropriate), retrofitting or hardening of existing assets that are critical to BEAD-funded offerings, additional onsite and in-home power resources, use of established plans and processes to deal with extreme weather related risks, the speed of restoration of service in the case of an outage, and use of network and facility redundancies to safeguard against threats to infrastructure. In particular, in its Initial Proposal and Final Proposal, each Eligible Entity should, at a minimum, clearly do each of the following:

⁷⁷ For example, in accordance with Section 2(a)(1) of Executive Order 11988, as amended by Executive Order 13690, before taking an action, the applicant, in coordination with NTIA, must determine whether a proposed action will occur in a floodplain.

1. Identify the geographic areas that should be subject to an initial hazard screening for current and future weather- and climate-related risks and the time scales for performing such screenings;
2. Identify which weather and climate hazards may be most important to account for and respond to in these areas and over the relevant time horizons, utilizing the tools and resources recommended below or other resources available to the Eligible Entity;
3. Characterize any weather and climate risks to new infrastructure deployed using BEAD Program funds for the 20 years following deployment;
4. Identify how the proposed plan will avoid and/or mitigate the weather and climate risks identified; and
5. Detail the Eligible Entity's plans for periodically repeating this process over the life of the Program to ensure that evolving risks are understood, characterized and addressed, and that the most up-to-date tools and information resources are utilized.

For flooding hazards, the Eligible Entity should take into account the Federal Flood Risk Management Standard and Implementing Guidelines established through in Executive Order 14030, *Climate-Related Financial Risk* (86 FR 27967) and Executive Order 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input* (80 FR 6425). The Executive Orders and Guidelines can be found at <https://www.fema.gov/floodplain-management/intergovernmental/federal-flood-risk-management-standard>.

In implementing the above requirements, Eligible Entities should make use of the user-friendly resources and tools provided below. The information contained within these tools and resources should be carefully reviewed to understand key characteristics of the information and data provided (e.g., geographic scale of the information, timeframe of the information, levels of confidence in the information).

1. For broad, coarse-level screening of current and projected future weather- and climate-related risks for the region and Eligible Entity, review and cite the regional chapters found in the 2018 National Climate Assessment (<https://nca2018.globalchange.gov/>).
2. For more Eligible Entity-specific information on current and projected climate conditions and risks, refer to NOAA's 2022 state climate summaries (<https://statesummaries.ncics.org/>).
3. In assessing current weather-related risks for specific regions, Eligible Entities can use NOAA's disaster and risk mapping tool (<https://www.ncdc.noaa.gov/billions/mapping>), and NOAA's storms event database (<https://www.ncdc.noaa.gov/stormevents/>).
4. The NOAA tools Climate Explorer and Digital Coast (updated with recently-published regional sea level rise scenarios) allow users to look up historic and future projected environmental variables (e.g., changes in temperature thresholds, sea level rise) for their region.
5. FEMA's National Risk Index (<https://hazards.fema.gov/nri/learn-more>) provides a composite risk index for all regions across the United States, incorporating a range of natural

hazards (most of which, but not all, are weather- and climate-related). FEMA's flood risk maps (<https://msc.fema.gov/portal/home>) for current conditions and for specific locations.

6. Eligible Entities are also encouraged to consult their FEMA-approved Hazard Mitigation Plans to help identify key risks and hazards.

To understand and access climate and weather information, Eligible Entities are encouraged to work with NOAA and its partners at the State and regional levels (National Weather Service Weather Forecast Offices (<https://www.weather.gov/srh/nwsoffices>), Regional Climate Centers (<https://www.ncei.noaa.gov/regional/regional-climate-centers>), Regional Climate Services Directors (<https://www.ncei.noaa.gov/regional/regional-climate-services-directors>), academic and other partners under NOAA's RISA program (<https://cpo.noaa.gov/Meet-the-Divisions/Climate-and-Societal-Interactions/RISA/RISA-Teams>), State climatologists (https://stateclimate.org/state_programs/), and any other relevant centers of expertise at the Eligible Entity and local level.

2. Obligations for Subgrantees Deploying Network Projects

a. Network Capabilities

Eligible Entities shall ensure that any subgrant agreement for a Funded Network permits the subgrantee to use the subgrant to deploy broadband infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing broadband service to an unserved location, underserved location, or Eligible Community Anchor Institution.

Pursuant to Section 60102(g)(1)(A) of the Infrastructure Act, which directs the Assistant Secretary to establish quality-of-service standards to which each subgrantee must comply, each Eligible Entity shall ensure that every Funded Network meets the following criteria:

i. Speed and Latency

To ensure that Funded Networks meet current and future use cases and to promote consistency across federal agencies, NTIA adopts the compliance standards and testing protocols for speed and latency established and used by the Commission in multiple contexts, including the Connect America Fund and the Rural Digital Opportunity Fund.⁷⁸ In order to demonstrate continued compliance with these standards, subgrantees must perform speed and latency tests from the customer premises of an active subscriber to a remote test server at an end-point consistent with the requirements for a Commission-designated IXP.⁷⁹

Subject to the exceptions identified in Section IV.B.7.a, Funded Networks shall deliver Reliable Broadband Service with speeds of not less than 100 Mbps for downloads and 20 Mbps for

⁷⁸ See, e.g., *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (*Performance Measures Order*); *Connect America Fund*, Order on Reconsideration, WC Docket No. 10-90, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*).

⁷⁹ See *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10114-16, paras. 17-19.

uploads.⁸⁰ In addition, 95 percent of latency measurements during testing windows must fall at or below 100 milliseconds round-trip time.⁸¹ This approach ensures a connection that supports reasonably foreseeable real-time applications. In the limited circumstance where even a fiber deployment cannot achieve this latency threshold (for example in a remote territory), NTIA may expand the latency threshold for specific Funded Networks at the request of an Eligible Entity.

Funded Network connections to Eligible Community Anchor Institutions shall be capable of delivering service at speeds not less than 1 Gigabit per second for downloads and 1 Gigabit per second for uploads.⁸² Eligible Entities shall ensure that such connections can be used to provide business data services.⁸³

ii. Network Outages

Each Funded Network's outages should not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence. Each Eligible Entity should ensure a prospective network is designed to meet this requirement and should develop metrics for measuring outages to be utilized in connection with this requirement once the network is operational.

b. Deployment Requirements

i. Deployment Deadlines and Benchmarks

Eligible Entities shall ensure that each subgrantee deploys its Funded Networks and begins providing broadband service to each customer that desires broadband service not later than four years after the date on which the subgrantee receives the subgrant for the applicable network.⁸⁴ Eligible Entities shall establish interim buildout milestones, enforceable as conditions of the subgrant, sufficient to ensure that subgrantees are making reasonable progress toward meeting the four-year deployment deadline. Eligible Entities may, following consultation with the NTIA and with the approval of the Assistant Secretary, extend the deadlines under this subparagraph if the Eligible Entity reasonably determines that (i) the subgrantee has a specific plan for use of the grant funds, with project completion expected by a specific date not more than one year after the four-year deadline; (ii) the construction project is underway; or (iii) extenuating circumstances require an extension of time to allow the project to be completed.

⁸⁰ 80 percent of a provider's download and upload measurements must be at or above 80 percent of the required speed (*i.e.*, an 80/80 standard). *See Performance Measures Order*, 34 FCC Rcd at 6528, para. 51.

⁸¹ *See id.*, 34 FCC Rcd at 6527-28, para. 50.

⁸² These requirements are consistent with § 60401(e)(3)(C) of the Infrastructure Act.

⁸³ The term "business data service" refers to the dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections. *See Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 *et al.*, Report and Order, 32 FCC Rcd 3459, 3463 para. 6 (2017).

⁸⁴ As detailed below, each subgrantee that uses BEAD Funding to undertake a broadband infrastructure deployment project has a continuing obligation to provide access to broadband service to each customer served by the project that desires such service on terms and conditions that are reasonable and non-discriminatory. *See* Section IV.C.2.c.iii of this NOFO.

ii. Conduit Access Points

Any Funded Network deployment project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities. Where a project proposes to lay conduit, Eligible Entities shall require prospective subgrantees to propose to deploy a reasonable amount of excess conduit capacity and to propose a conduit access point interval as part of the grant application process and shall consider the adequacy of the prospective subgrantee's proposed excess conduit capacity and access points when evaluating the application.

c. Service Obligations

i. Affordability and Low-Cost Plans

The Infrastructure Act's BEAD provisions are premised on Congress's determination that "[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States," and that "[t]he persistent 'digital divide' in the United States is a barrier to" the nation's "economic competitiveness [and the] equitable distribution of essential public services, including health care and education."⁸⁵ Accordingly, each Eligible Entity must include in its Initial and Final Proposals a middle-class affordability plan to ensure that *all* consumers have access to *affordable* high-speed internet. We expect that Eligible Entities will adopt diverse strategies to achieve this objective. For example, some Eligible Entities might require providers receiving BEAD funds to offer low-cost, high-speed plans to all middle-class households using the BEAD-funded network. Others might provide consumer subsidies to defray subscription costs for households not eligible for the Affordable Connectivity Benefit or other federal subsidies. Others may use their regulatory authority to promote structural competition. Some might assign especially high weights to selection criteria relating to affordability and/or open access in selecting BEAD subgrantees.⁸⁶ And others might employ a combination of these methods, or other methods not mentioned here. Ultimately, however, each Eligible Entity must submit a plan to ensure that high-quality broadband services are available to all middle-class families in the BEAD-funded network's service area at reasonable prices. Eligible Entities will be required to ensure that services offered over Funded Networks allow subscribers in the service area to utilize the ACP.

In addition, the Infrastructure Act requires that each subgrantee receiving BEAD funding to deploy network infrastructure offer at least one low-cost broadband service option. Each Eligible Entity must consult with the Assistant Secretary and prospective subgrantees regarding a proposed definition of the term "low-cost broadband service option." Each Eligible Entity shall thereafter submit a proposed definition to the Assistant Secretary for approval in its Final Proposal. The Infrastructure Act directs the Assistant Secretary to define the subscribers eligible for such low-cost plans.

Eligible Entities must propose low-cost broadband service option parameters that best serve the needs of residents within their jurisdictions. Low-cost broadband service options must remain

⁸⁵ Infrastructure Act § 60101.

⁸⁶ *See supra* Section IV.B.7.

available for the useful life of the network assets. In crafting proposals, NTIA emphasizes that access to *affordable* broadband is among the Infrastructure Act’s objectives. In determining whether to approve an Eligible Entity’s proposed definition of “low-cost broadband service option,” the Assistant Secretary will consider, among other factors, (1) whether prospective subgrantees will be required to participate in the Affordable Connectivity Program, any successor program, and/or any other household broadband subsidy programs; (2) the expected cost (both monthly and non-recurring charges) to an Eligible Subscriber for a typical broadband internet access service plan after the application of any subsidies; and (3) the performance characteristics of the proposed options, including download and upload speeds, latency, data caps, and reliability commitments.

A definition of low-cost broadband service option should address, at a minimum: (1) all recurring charges to the subscriber, as well as any non-recurring costs or fees to the subscriber (*e.g.*, service initiation costs); (2) the plan’s basic service characteristics (download and upload speeds, latency, any limits on usage or availability, and any material network management practices, (3) whether a subscriber may use any Affordable Connectivity Benefit subsidy toward the plan’s rate; and (4) any provisions regarding the subscriber’s ability to upgrade to any new low-cost service plans offering more advantageous technical specifications. For example, a definition of low-cost broadband service option could be as follows:

1. The proposed service option:

- a. Costs \$30 per month or less, inclusive of all taxes, fees, and charges if the subscriber does not reside on Tribal Lands, or \$75 per month or less, inclusive of all taxes, fees, and charges if the subscriber resides on Tribal Lands, with no additional non-recurring costs or fees to the consumer;
- b. Allows the end user to apply the Affordable Connectivity Benefit subsidy to the service price;
- c. Provides the greater of (a) typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps, or the fastest speeds the infrastructure is capable of if less than 100 Mbps/20 Mbps or (b) the performance benchmark for fixed terrestrial broadband service established by the Federal Communications Commission pursuant to Section 706(b) of the Communications Act of 1934, as amended;⁸⁷
- d. Provides typical latency measurements of no more than 100 milliseconds; and
- e. Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere;
- f. In the event the provider later offers a low-cost plan with higher speeds downstream and/or upstream, permits Eligible Subscribers that are subscribed to a

⁸⁷ 47 U.S.C. § 1302(b). The current performance benchmark for fixed terrestrial broadband service is 25 Mbps for downloads and 3 Mbps for uploads. *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report, GN Docket No. 20-269, 36 FCC Rcd 836, 841 para. 12 (2021).

low-cost broadband service option to upgrade to the new low-cost offering at no cost;⁸⁸

2. Subgrantees are required to participate in the Affordable Connectivity Program or any successor program, and Eligible Subscribers that are eligible for a broadband service subsidy can apply the subsidy to the proposed service option.

NTIA recognizes, however, that different Eligible Entities face different circumstances. NTIA will review and consider any definition proposed by an Eligible Entity in accordance with the terms of the BEAD statute. In all cases, an Eligible Entity must explain in its Initial and Final Proposal why the selected definition best effectuates the purposes of the program. NTIA may provide additional guidance to Eligible Entities on the development of the low-cost broadband service option definition.

ii. Consumer Protections

Each Eligible Entity shall ensure that each prospective subgrantee does not impose data usage caps on any plans offered over a Funded Network or impose unjust or unreasonable network management practices.⁸⁹ Subgrantees shall certify through the semiannual reporting requirements described in Section VII.E of this NOFO that the plans offered over Funded Networks do not contain data usage caps for subscribers.

iii. Access to Service

Operators of Funded Networks shall provide access to broadband service to each customer served by the project that desires broadband service on terms and conditions that are reasonable and non-discriminatory.

iv. Public Notice

Eligible Entities shall require subgrantees to carry out public awareness campaigns in their service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers. Awareness campaigns must include information about low-cost service plans and any federal subsidies for low-income households such as the Lifeline Program, the Affordable Connectivity Program, and any successor programs. Further, awareness campaigns must be conducted in an equitable and nondiscriminatory manner. Subgrantees must utilize a variety of communications media (*e.g.*, online, print, radio) and provide information in languages other than English when warranted based on the demographics of the community.

Eligible Entities shall require that once a Funded Network has been deployed, each subgrantee shall provide public notice, online and through other means, of that fact to individuals residing in

⁸⁸ By way of example, if a customer is subscribed to a low-cost broadband service option that provides service at 100/20 Mbps and the customer's service provider offers a new low-cost broadband service option at 200/20 Mbps after the FCC issues a new report pursuant to section 706(a) of the Communications Act of 1934, as amended, the customer would be allowed to upgrade to the 200/20 Mbps offering at no charge.

⁸⁹ Providers may apply otherwise-applicable acceptable use policies to BEAD-funded networks.

the locations to which broadband service has been provided and share the public notice with the Eligible Entity that awarded the subgrant. Each Eligible Entity shall require each prospective subgrantee seeking to deploy or upgrade network facilities to explain in its application how it intends to notify relevant populations of the new or newly upgraded offerings available in each area. Such proposals shall be designed in a manner that reflects any unique needs of the specific demographics of the area at issue (including, for example, languages prominently spoken in the area and the best means of ensuring that the population is likely to encounter the subgrantee's public notice).

v. Interconnection Requirements and Wholesale Access

Any subgrantee receiving funds to deploy Middle Mile Infrastructure under this Program in connection with service to an Unserved Service Project or an Underserved Service Project shall permit other broadband service providers to interconnect with its funded Middle Mile Infrastructure network facilities on a just, reasonable, and nondiscriminatory basis. An Eligible Entity awarding funds for construction of Middle Mile Infrastructure shall require the subgrantee, via contract or other binding mandate, to allow such interconnection at any technically feasible point on the Middle Mile Infrastructure network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of the subgrantee's Middle Mile Infrastructure to a requesting party's facilities for the exchange of traffic. In addition, subgrantees shall connect to the public internet directly or indirectly and provide requesting parties with an ability to connect to the internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory. Each Eligible Entity shall require each subgrantee that obtains funding for the deployment or upgrade of Middle Mile Infrastructure to negotiate in good faith with any requesting party (including public, Tribal, private, non-profit, or other parties) making a bona fide request for interconnection. Subgrantees shall report through the subgrantee reporting process established in Section VII.E.2 of this NOFO any interconnection requests made to the subgrantee during that year and the status of those requests. In selecting subgrantees for last-mile deployments to Unserved Service Projects and Underserved Service Projects, NTIA encourages Eligible Entities to give preference to prospective subgrantees who commit to offering wholesale broadband services at rates and terms that are reasonable and nondiscriminatory.

Eligible Entities shall require that if a subgrantee, at any time, is no longer able to provide broadband service to the end user locations covered by the subgrant at any time on a retail basis remedial action be taken to ensure continuity of service. In consultation with NTIA, the Eligible Entity shall require the subgrantee to sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program.⁹⁰ The Eligible Entity may pursue either remedial action so long as such action results in continued retail service to end users in the grant area.

⁹⁰ If the subgrantee is no longer viable as a going concern, or if it is unable to provide sustained service over the network at issue, the Eligible Entity should work with the subgrantee and NTIA to assist in sale of the assets to a new owner that can assume the original subgrantee's service and programmatic responsibilities.

vi. Cybersecurity and Supply Chain Risk Management

The Infrastructure Act directs the Assistant Secretary to specify prudent cybersecurity and supply-chain risk management practices for subgrantees deploying or upgrading broadband networks using BEAD funds. NTIA recognizes the importance of (a) protecting American communications networks and those who use them from domestic and international threat actors, and (b) promoting the natural evolution of cybersecurity and supply-chain risk management practices in a manner that allows flexibility in addressing evolving threats. To that end, we impose baseline requirements herein, though an Eligible Entity may propose additional measures it believes necessary to safeguard networks and users falling within its jurisdiction for consideration by the Assistant Secretary.

With respect to cybersecurity, prior to allocating any funds to a subgrantee, an Eligible Entity shall, at a minimum, require a prospective subgrantee to attest that:

1. The prospective subgrantee has a cybersecurity risk management plan (the plan) in place that is either:
 - a. operational, if the prospective subgrantee is providing service prior to the award of the grant; or
 - b. ready to be operationalized upon providing service, if the prospective subgrantee is not yet providing service prior to the grant award;
2. The plan reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
3. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
4. The plan will be submitted to the Eligible Entity prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the Eligible Entity within 30 days. The Eligible Entity must provide a subgrantee's plan to NTIA upon NTIA's request.

With respect to supply chain risk management (SCRM), prior to allocating any funds to a subgrantee, an Eligible Entity shall, at a minimum, require a prospective subgrantee to attest that:

1. The prospective subgrantee has a SCRM plan in place that is either:
 - a. operational, if the prospective subgrantee is already providing service at the time of the grant; or
 - b. ready to be operationalized, if the prospective subgrantee is not yet providing service at the time of grant award;
2. The plan is based upon the key practices discussed in the NIST publication NISTIR 8276, *Key Practices in Cyber Supply Chain Risk Management: Observations from Industry* and related SCRM guidance from NIST, including NIST 800-161, *Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations* and specifies the supply chain risk management controls being implemented;

3. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
4. The plan will be submitted to the Eligible Entity prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the Eligible Entity within 30 days. The Eligible Entity must provide a subgrantee's plan to NTIA upon NTIA's request

An Eligible Entity also must ensure that, to the extent a BEAD subgrantee relies in whole or in part on network facilities owned or operated by a third party (*e.g.*, purchases wholesale carriage on such facilities), obtain the above attestations from its network provider with respect to both cybersecurity and supply chain risk management practices.

D. Subgrantee Qualifications

Eligible Entities shall ensure that any prospective subgrantee is capable of carrying out activities funded by the subgrant in a competent manner and in compliance with all applicable federal, State, Territorial, and local laws. Eligible Entities also shall ensure that prospective subgrantees have the *competence*, *managerial* and *financial* capacity to meet the commitments of the subgrant and any requirements of the Program, as well as the *technical* and *operational* capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award.

Specific showings that Eligible Entities must require from prospective subgrantees seeking to deploy network facilities using BEAD funds are further detailed in Section IV.D.2. NTIA acknowledges that prospective subgrantees may be able to, or required, to demonstrate their capabilities in a variety of manners. A newly established special purpose vehicle established by a consortium of entities may point to the capabilities and experience of those entities in support of its application. A prospective subgrantee that has significant experience deploying broadband networks but no experience operating them may be able to demonstrate operational capability by entering a binding contract with another entity with such experience. The types of evidence available to municipal entities seeking to demonstrate financial capability may well differ from the kinds of evidence expected of commercial enterprises; Eligible Entities should accommodate these differences in establishing their requirements. The Assistant Secretary invites Eligible Entities to propose alternatives to the specific showings set forth herein if they are necessary and sufficient to ensure that the Program's objectives are met.

1. General Qualifications

Prior to entering into any subgrantee agreement, each Eligible Entity shall ensure that any prospective subgrantee:

1. Is capable of carrying out activities funded by the subgrant in a competent manner in compliance with all applicable federal, Eligible Entity, and local laws;
2. Has the financial and managerial capacity to meet the commitments of the subgrantee under the subgrant, the requirements of the Program and such other requirements as have been prescribed by the Assistant Secretary or the Eligible Entity; and

3. Has the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award.

Eligible Entities shall, *at a minimum*, take the steps detailed below to evaluate the ability of a prospective subgrantee to meet the requirements set forth above prior to entering into any subgrant agreement.

2. Specific Qualifications for Subgrantees Deploying Network Facilities

a. Financial Capability

With the exception of the certifications required under Section IV.D.2.a.i below, Eligible Entities may, with the permission of the Assistant Secretary, allow prospective subgrantees that have the ability to issue public bonds (*e.g.*, municipalities) to provide comparable evidence in support of their financial capabilities. NTIA will provide additional guidance regarding acceptable comparable evidence after publication of this NOFO.

i. Certifications

Prospective subgrantees must certify that they are financially qualified to meet the obligations associated with a Project, that they will have available funds for all project costs that exceed the amount of the grant, and that they will comply with all Program requirements, including service milestones. To the extent the Eligible Entity disburses funding to subgrantees only upon completion of the associated tasks (a practice that NTIA encourages Eligible Entities to adopt, as described in Section IV.C.1.b of this NOFO), each prospective subgrantee must also certify that it has and will continue to have sufficient financial resources to cover its eligible costs for the Project until such time as the Eligible Entity authorizes additional disbursements.

ii. Letter of Credit

Each Eligible Entity shall establish a model letter of credit substantially similar to the model letter of credit established by the Commission in connection with the Rural Digital Opportunity Fund (RDOF).⁹¹

During the application process, prospective subgrantees shall be required to submit a letter from a bank that meets eligibility requirements consistent with those set forth in 47 C.F.R.

§ 54.804(c)(2) committing to issue an irrevocable standby letter of credit, in the required form, to the prospective subgrantee. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Eligible Entity's model letter of credit.

Prior to entering into any subgrantee agreement, each prospective subgrantee shall obtain an irrevocable standby letter of credit, which shall be acceptable in all respects to the Eligible Entity

⁹¹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 773-77, Appx. C.

and in a value of no less than 25 percent of the subaward amount.⁹² Eligible Entities may adopt rules under which a subgrantee may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a lesser amount than originally required by the Eligible Entity upon verification that the subgrantee has met optional or required service milestones.⁹³ In no event, however, shall the letter of credit have a value of less than 25 percent of the subaward amount.

A prospective subgrantee shall provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code.

iii. Audited Financial Statements

Each prospective subgrantee shall submit to the Eligible Entity from which it seeks funding financial statements from the prior fiscal year that are audited by an independent certified public accountant. If the potential subgrantee has not been audited during the ordinary course of business, in lieu of submitting audited financial statements, it must submit unaudited financial statements from the prior fiscal year and certify that it will provide financial statements from the prior fiscal year that are audited by an independent certified public accountant by a deadline specified by the Eligible Entity.

An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee’s financial capability with respect to the proposed project.

iv. Sustainability / Pro Forma Analyses of Proposed Project

The Eligible Entity shall require prospective subgrantees to submit business plans and related analyses that substantiate the sustainability of the proposed project. This can be provided in the form of pro forma statements or analyses, inclusive of cash flow and balance sheet projections and should include at least three years of operating cost and cash flow projections post targeted completion of project.

b. Managerial Capability

Prospective subgrantees shall submit to the Eligible Entity resumes for all key management personnel and any necessary organizational chart(s) detailing all parent, subsidiaries, and affiliates. Each prospective subgrantee must also provide a narrative describing the prospective subgrantee’s readiness to manage a broadband services network. This narrative should describe the experience and qualifications of key management for undertaking this project, its experience

⁹² At this step, the subgrantee must obtain an actual letter of credit, in contrast to bank’s commitment to issue the letter of credit, which is what is required during the application process.

⁹³ See, e.g., 47 C.F.R. § 54.804(c)(1).

undertaking projects of similar size and scope, recent and upcoming organizational changes including mergers and acquisitions, and relevant organizational policies. An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee's managerial capability with respect to the proposed project.

Eligible Entities may require a prospective subgrantee to agree to special grant conditions relating to maintaining the validity of representations a prospective subgrantee has made regarding its organizational structure and key personnel.

c. Technical Capability

Each prospective subgrantee seeking funding to deploy or upgrade a broadband network must certify that it is technically qualified to complete and operate the Project and that it is capable of carrying out the funded activities in a competent manner, including that it will use an appropriately skilled and credentialed workforce (*see* Section IV.C.1.e of this NOFO).

Prospective subgrantees must submit a network design, diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity receives the subgrant, all certified by a professional engineer, stating that the proposed network can deliver broadband service that meets the requisite performance requirements to all locations served by the Project. An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the materials submitted to it demonstrate the prospective subgrantee's technical capability with respect to the proposed project.

d. Compliance With Laws

Each prospective subgrantee must demonstrate that it is capable of carrying out funded activities in a competent manner in compliance with all applicable Federal, State, Territorial, and local laws. To ensure that a subgrantee complies with occupational safety and health requirements, subgrantees must permit workers to create worker-led health and safety committees that management will meet with upon reasonable request.

e. Operational Capability

Prospective subgrantees must certify that they possess the operational capability to qualify to complete and operate the Project. A prospective subgrantee that has provided a voice, broadband, and/or electric transmission or distribution service for at least the two (2) consecutive years prior to the date of its application submission or that it is a wholly owned subsidiary of such an entity, must submit a certification that attests to these facts and specifies the number of years the prospective subgrantee or its parent company has been operating.

If the prospective subgrantee has provided a voice and/or broadband service it must certify that it has timely filed Commission Form 477s and the Broadband DATA Act submission, if applicable, as required during this time period, and otherwise has complied with the Commission's rules and regulations. Alternatively, a prospective subgrantee should explain any

pending or completed enforcement action, civil litigation, or other matter in which it failed to comply or was alleged to have failed to comply with Commission rules or regulations.

If the prospective subgrantee has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.⁹⁴

For a new entrant to the broadband market, a prospective subgrantee must provide evidence sufficient to demonstrate that the newly formed entity has obtained, through internal or external resources, sufficient operational capabilities. Such evidence may include resumes from key personnel, project descriptions and narratives from contractors, subcontractors, or other partners with relevant operational experience, or other comparable evidence.

An Eligible Entity shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted to it demonstrate the prospective subgrantee's operational capability with respect to the proposed project.

f. Ownership

Eligible Entities shall require each prospective subgrantee to provide ownership information consistent with the requirements set forth in 47 C.F.R. § 1.2112(a)(1)-(7).

g. Other Public Funding

Eligible Entities shall require each prospective subgrantee to disclose, for itself and for its affiliates,⁹⁵ any application the subgrantee or its affiliates have submitted or plan to submit, and every broadband deployment project that the subgrantee or its affiliates are undertaking or have committed to undertake at the time of the application using public funds, including but not limited to funds provided under: the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281), the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan of 2021 (Public Law 117-2; 135 Stat. 4), any federal Universal Service Fund high-cost program (e.g., RDOF, CAF), or any Eligible Entity or local universal service or broadband deployment funding program. At a minimum, the Eligible Entity shall require the disclosure, for each broadband deployment project, of: (a) the speed and latency of the broadband service to be provided (as measured and/or reported under the applicable rules), (b) the geographic area to be

⁹⁴ Acceptable submissions for this purpose will be the Rural Utilities Service (RUS) Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; or the CoBank Form 7; or the functional replacement of one of these reports. *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 719, n. 202.

⁹⁵ The term "affiliate" shall be defined consistent with 47 U.S.C. § 153(2) ("The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.").

covered, (c) the number of unserved and underserved locations committed to serve (or, if the commitment is to serve a percentage of locations within the specified geographic area, the relevant percentage),⁹⁶ (d) the amount of public funding to be used, (e) the cost of service to the consumer, and (f) the matching commitment, if any, provided by the subgrantee or its affiliates.

V. Application and Submission Information

This Section sets out information regarding how Eligible Entities may apply for and use BEAD Program funding, including a link to the online application portal, formatting instructions, certification requirements, submission timelines, and eligible uses for funding. It also provides information regarding certifications that prospective subgrantees must make in order to be eligible for subgrants.

A. Single Application

The governor (or equivalent official) of an Eligible Entity that wishes to be awarded a grant under the BEAD Program shall select an administering entity for that Eligible Entity, which shall serve as the recipient of, and administering agent for, any BEAD Program grant awarded to the Eligible Entity under this Section. An Eligible Entity may submit only one LOI, request for Initial Planning Funds, one Initial Proposal, and one Final Proposal, subject to the revision provisions described in Sections IV.B.5.d.ii and IV.B.9.d.ii.

B. Address to Request Application Package

Application forms and instructions are available at <https://grants.ntia.gov/>. Applications will be accepted until the deadline and will be processed as received. Application packages, or portions thereof, submitted by email, paper, or facsimile will not be accepted.

With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, NTIA is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Act of 1998.

C. Content and Form of Applications

See Section IV.B .

D. Certifications Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the BEAD Program, the Eligible Entity is making the following certifications (*see* Line 21 on Form SF-424, Application for Federal Assistance):

⁹⁶ *See, e.g.*, 47 C.F.R. § 54.802.

1. Instructions for Primary Tier Participant Certification:

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 C.F.R. Parts 180, 1200 and 1326.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 C.F.R. Parts 180, 1200 and 1326. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 C.F.R. Parts 180, 1200 and 1326.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each

participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate the transaction for cause or default.

2. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Tier Covered Transactions:

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency;
 - i. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, Eligible Entity, or local) transaction or contract under a public transaction; violation of federal or Eligible Entity antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - ii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, Eligible Entity or local) with commission of any of the offenses enumerated in paragraph 1.a.i of this certification; and
 - iii. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, Eligible Entity, or local) terminated for cause or default.
2. Where the prospective primary tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Lower Tier Participant Certification (applies to subgrantees):

1. By submitting this proposal and accepting federal funding, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 C.F.R. Parts 180, 1200 and 1326.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 C.F.R. Parts 180, 1200 and 1326. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 C.F.R. Parts 180 and 1200.
 - a. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov>).
 - b. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - c. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the

federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

E. Unique Entity Identifier and System for Award Management

Pursuant to 2 C.F.R. Part 25, an applicant or recipient (as the case may be) is required to: (i) be registered in the System for Award Management (SAM) before submitting its complete application packet; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency, unless otherwise excepted from these requirements pursuant to 2 C.F.R. § 25.110. NTIA will not make a federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time that NTIA is ready to make a federal award pursuant to this NOFO, NTIA may determine that the applicant is not qualified to receive a federal award.

1. Unique Entity Identifier

The U.S. government will use the unique entity identifier (UEI), found in an entity's SAM.gov registration, for federal awards management, including but not limited to, contracts, grants, and cooperative agreements. The UEI is the primary key to identify an entity throughout the federal awarding lifecycle and in SAM gov. Each Eligible Entity must obtain a UEI.

Each subrecipient must obtain a UEI and provide it to the Eligible Entity. Subrecipients are not required to complete full SAM registration to obtain a UEI. 2 C.F.R. § 25.300.

The SAM-generated UEI (SAM) became the official identifier in April 2022.

For more information on the establishment of an entity's UEI, please visit <http://www.sam.gov>.

2. System for Award Management

Eligible Entities must register in the SAM before submitting any submissions through the application portal. Additionally, the Eligible Entity must maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Entities can register for the SAM at <https://www.sam.gov/>.

F. Submission Dates and Times

Completed letters of intent must be received by NTIA through the application portal no later than 11:59 p.m. Eastern Daylight Time (EDT) on **July 18, 2022**. Eligible Entities that wish to request Initial Planning Funds must submit their requests and required documentation by 11:59 p.m. Eastern Daylight Time (EDT) August 15, 2021. Eligible Entities that receive Initial Planning Funds must submit their Five-Year Action Plans to NTIA within 270 days of their receipt of Initial Planning Funds.

Eligible Entities will be notified of future submission deadlines after the Commission's Broadband DATA Maps are released and the Initial Proposal and Final Proposal process begins. Initial Proposals will be due to NTIA no later than 180 days after issuance of their Notice of Available Amounts.

Submissions submitted by postal mail, courier, email, facsimile, or other means aside from those detailed herein will not be accepted. All application forms and documents must be included with an applicant's complete application packet submission via NTIA's application portal.

When developing the submission timeline, each eligible applicant should keep in mind that: (1) all applicants are required to have current registrations in the electronic System for Award Management (SAM.gov) and the free annual registration process in SAM.gov generally takes between three (3) and five (5) business days but can take more than three weeks. Please note that a federal assistance award cannot be issued if the designated recipient's registration in SAM.gov is not current at the time of the award.

G. Intergovernmental Review

Applications from an Eligible Entity or a political subdivision of the Eligible Entity under this Program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," which requires intergovernmental consultation with State, Territorial, and local officials. All applicants are required to submit a copy of their applications to their designated Single Point of Contact (SPOC) offices.⁹⁷

H. Funding Restrictions

1. Eligible Uses of BEAD Program Funds

Grant recipients may only use federal award funds and any non-federal cost share committed to an award to pay for allowable costs under the BEAD Program. Allowable costs are determined in accordance with the cost principles identified in 2 C.F.R. Part 200, including Subpart E of such regulations for States and non-profit organizations, and in 48 C.F.R. Part 31 for commercial organizations,⁹⁸ as well as in the grant program's authorizing legislation. In addition, costs must

⁹⁷ See 7 C.F.R. Part 3015, Subpart V.

⁹⁸ The government has established a set of principles for determining eligible or allowable costs. Allowable costs are determined in accordance with the cost principles applicable to the entity incurring the costs. For example, the allowability of costs incurred by State, Territorial, local or Federally

be reasonable, necessary, allocable, and allowable for the proposed project or other eligible activity and conform to generally accepted accounting principles. Funds committed to an award may only be used to cover allowable costs incurred during the period of performance, except for reasonable pre-award expenses as described above, and for allowable closeout costs incurred during the grant closeout process.

2. Ineligible Costs

Ineligible costs include those costs that are unallowable under the applicable federal cost principles. Please note that costs ineligible for the BEAD Program may not be paid for with matching funds committed to an award. If an Eligible Entity is found to have used grant or matching funds on a prohibited cost, the Assistant Secretary may take remedial action, including but not limited to deobligation or clawback of funding.

In addition, grant funds awarded to an Eligible Entity under this program shall be used to supplement, and not supplant, the amounts that the Eligible Entity would otherwise make available for the purposes for which the grant funds may be used.

The following costs are specifically identified as prohibited under the BEAD Program:

a. Prohibition On Use of Grant Funds for Covered Communications Equipment or Services under the Secure and Trusted Communications Networks Act

An Eligible Entity or subgrantee (including contractors and subcontractors of subgrantees) may not use grant funds received under the BEAD Program to purchase or support any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608)).

b. Prohibition on Profit and Fees

A profit, fee, or other incremental charge above actual cost incurred by an Eligible Entity or subgrantee is not an allowable cost under this Program.

c. Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining

An Eligible Entity or a subgrantee may not use grant funds, whether directly or indirectly, to support or oppose collective bargaining.

Recognized Indian Tribal Governments is determined in accordance with the provisions of 2 C.F.R. Part 200, Subpart E and the allowability of costs for commercial organizations is determined in accordance with the provisions of 48 C.F.R. Part 31, unless the Grants Officer decides in writing to apply the cost principles in 2 C.F.R. Part 200, Subpart E, to commercial organizations pursuant to 2 C.F.R. § 200.101(a)(2).

3. Administrative Expenses

An Eligible Entity may not use more than two percent of the grant amounts received under the BEAD Program for expenses relating (directly or indirectly) to administration of the grant under Section 60102(d)(2)(B) of the Infrastructure Act. NTIA will release further guidance on what expenses qualify as “expenses relating (directly or indirectly) to administration of the grant” subject to the statutory two percent limitation on these expenses.

I. Material Representations and Public Disclosure of Applications

All forms and supporting documents submitted as part of the Letter of Intent, Initial Proposal, and Final Proposal will be treated as material representations of fact upon which NTIA will rely in awarding grants. Applicants should acknowledge that NTIA may make all or portions of their applications for grants under the BEAD Program publicly available consistent with applicable federal law. See Section IX.B of this NOFO for additional information concerning the confidentiality of information contained in an application.

J. Other Submission Requirements

Complete applications for the BEAD Program must be electronically submitted through grants.ntia.gov. Late or incomplete applications and applications submitted by mail, courier, or by facsimile will not be accepted.

1. How to Register to Apply and Submit an Application

Applicants should carefully follow specific instructions on the application site at <https://grants.ntia.gov/>.

2. Timely Receipt Requirements and Proof of Timely Submission

Applicants should carefully follow specific instructions on the application site at <https://grants.ntia.gov/> to successfully submit an application or other required materials. Applicants, specifically the Authorized Organization Representative submitting the application and materials, will receive a time and date stamped email from the NTIA Grants Portal confirming the submission and receipt of the application or other required documents, *e.g.*, Letter of Intent, Initial Proposal, Final Proposal.

3. Amendments

Any amendments to this NOFO or additional Program guidance will be announced on NTIA.gov and BroadbandUSA.NTIA.gov.

VI. Application Review Information

This Section briefly describes the review process that NTIA will undertake in assessing submissions by Eligible Entities in connection with the BEAD Program.

A. Review Process for the BEAD Program

Letters of Intent, Initial Planning Funds requests, Initial Proposals, and Final Proposals will be evaluated by the Assistant Secretary to determine compliance with all necessary requirements outlined in the Infrastructure Act, this NOFO, and additional regulations and/or guidance that may be issued by NTIA.

After receipt of a completed Initial Proposal, the Assistant Secretary shall determine whether the use of funds proposed in the Initial Proposal complies with applicable Program guidelines, is in the public interest, and effectuates the purposes of the Infrastructure Act. Based on that assessment, the Assistant Secretary will approve or disapprove the Initial Proposal. If the Initial Proposal is approved, the Assistant Secretary will make at least 20 percent of the total allocation available to the Eligible Entity. If the Initial Proposal is incomplete or is disapproved, the Assistant Secretary shall notify the Eligible Entity and provide the Eligible Entity with an opportunity to resubmit the Initial Proposal for consideration under the factors mentioned above.

After receipt of a completed Final Proposal, the Assistant Secretary shall determine whether the use of funds proposed in the Final Proposal complies with applicable Program guidelines, is in the public interest, and effectuates the purposes of the Infrastructure Act. Based on that assessment, the Assistant Secretary will approve or disapprove the Final Proposal. If the Final Proposal is approved, the Assistant Secretary will make the remainder of the grant funds allocated available to the Eligible Entity. If the Final Proposal is incomplete or is disapproved the Assistant Secretary shall notify the Eligible Entity and provide the Eligible Entity with an opportunity to resubmit the Final Proposal for consideration under the factors mentioned above. If an Eligible Entity fails to meet any applicable deadline and has not secured an extension from the Assistant Secretary before the applicable deadline, a political subdivision or consortium of political subdivisions of the Eligible Entity may submit the applicable type of covered application in place of the Eligible Entity.

Eligible Entities are encouraged to maintain an ongoing dialogue with NTIA throughout proposal development as a part of the technical assistance process. This partnership allows Eligible Entities to receive interim feedback and ensure alignment of Eligible Entity and federal priorities.

B. Federal Awarding Agency Review of Risk Posed by Applicants

After applications are proposed for funding by the Selecting Official for the BEAD Program (specifically, the Assistant Secretary or the Assistant Secretary's designee), the NIST Grants Management Division (GMD) will perform pre-award risk assessments in accordance with 2 C.F.R. § 200.206. Such assessments may include review of the financial stability of an applicant (*i.e.*, an Eligible Entity), the quality of the applicant's management systems, the history of performance, reports and findings from audits, and/or the applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-federal entities. In addition, prior to making an award where the total federal share is expected to exceed the simplified acquisition threshold (currently \$250,000), NIST GMD will review and consider the non-publicly available information about that applicant in the Federal Awardee Performance and Integrity Information System (FAPIIS). Upon completion of the pre-award risk assessment,

NIST GMD will determine whether the applicant is qualified to receive the award and, if so, whether appropriate specific award conditions that correspond to the degree of risk posed by the applicant should be applied to the award.

C. Anticipated Announcement and Award Dates

NTIA will review Letters of Intent, requests for Initial Planning Funds, Initial Proposals, and Final Proposals on a rolling basis. Additional timeline details will be provided to Eligible Entities once the Commission's Broadband DATA Maps have been released and allocations have been calculated.

VII. Federal Award Administration Information

This Section explains the process NTIA will employ to approve applications, notify successful and unsuccessful applicants of the process's results, and various legal obligations applicable to grant recipients (including, but not limited to, those relating to domestic procurement preferences ("Buy American" requirements) and contracting with small and minority businesses, women's business enterprises, and labor surplus area firms).

A. Federal Award Notices

The Assistant Secretary, or the Assistant Secretary's designee, will submit the applications recommended for funding, along with the bases for the recommendation, to the National Institute of Standards and Technology (NIST) Grants Officer, who serves as the Grants Officer for the BEAD program. The final approval of selected applications and the issuance of awards will be made by the NIST Grants Officer. The award decisions of the NIST Grants Officer are final.

An applicant will be notified in writing by the NIST Grants Officer if its application is selected for an award. If the application is selected for funding, the NIST Grants Officer will issue the grant award (Form CD-450), which is the authorizing financial assistance award document. By signing the Form CD-450, the recipient agrees to comply with all award provisions, terms, and conditions.

If an applicant is awarded funding, neither NTIA nor NIST is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment of an award to extend the period of performance is at the discretion of NTIA and the NIST Grants Officer.

B. Notification to Unsuccessful Applications.

As detailed in Section VI.A of this NOFO, Eligible Entities will be notified if either the Initial Proposal or Final Proposal is not approved by the Assistant Secretary and given a chance to resubmit the proposal.

C. Retention of Unsuccessful Applications.

Unsuccessful applications will be retained in accordance with NTIA recordkeeping requirements.

D. Administrative and National Policy Requirements

Grant recipients will comply with applicable statutes and regulations, including but not limited to:

1. Uniform Administrative Requirements, Cost Principles and Audit Requirements.

Through 2 C.F.R. § 1327.101, the Department of Commerce adopted Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200, which apply to awards in this Program. Refer to <http://go.usa.gov/SBYh> and <http://go.usa.gov/SBg4>.

2. Department of Commerce Financial Assistance Standard Terms and Conditions.

The Department of Commerce will apply to each award in this Program, the Financial Assistance Standard Terms and Conditions in effect on the date of award. The current version, dated November 12, 2020, is accessible at [Department of Commerce Financial Assistance Standard Terms and Conditions](#). Refer to Section VIII of this NOFO (Federal Awarding Agency Contact(s)) if you need more information.

3. Pre-Award Notification Requirements.

The Department of Commerce will apply the Pre-Award Notification Requirements for Grants and Cooperative Agreements dated December 30, 2014 (79 FR 78390), accessible at <http://go.usa.gov/hKkR>. Refer to Section VIII of this NOFO (Federal Awarding Agency Contact(s)) if you need more information.

4. Environmental and National Historical Preservation Requirements.

Awarding agencies are required to analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*) and the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*) for Eligible Entity proposals and awardee projects and other eligible activities seeking funding under the BEAD Program. Eligible Entities with projects or other eligible activities containing construction and/or ground-disturbing activities are required to submit all required environmental documentation to NTIA with their Final Proposals, which also must describe how they will comply with applicable environmental and national historical preservation requirements. It is the Eligible Entity's and subgrantee's responsibility to obtain all necessary federal, Eligible Entity, and local governmental permits and approvals necessary for the proposed work to be conducted. Projects and other eligible activities are expected to be designed so that they minimize the potential for adverse impacts on the environment. Eligible Entities also will be required to cooperate with NTIA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects or other eligible activities. The failure to do so may be grounds for not making an award. Proposals will be reviewed to ensure that they contain sufficient information to allow agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be

submitted to NTIA, along with the recommendation for funding of the selected projects or other eligible activities. If additional information is required after an application is accepted for funding, funds can be withheld by NTIA under a specific award condition requiring the awardee to submit additional environmental compliance information sufficient for the agency to make an assessment of any impacts that a project or other eligible activity may have on the environment.

5. Property Trust Relationship and Public Notice Filings for Grant-Acquired Property.

In accordance with 2 C.F.R. § 200.316, any real property, equipment, or intangible property acquired or improved with a federal award must be held in trust by the Eligible Entity or subgrantee as trustee for the beneficiaries of the project, other eligible activity, or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the federal government retains an undivided, equitable reversionary interest in the property (Federal Interest). In this connection, NTIA may require the non-federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a federal award and that use and disposition conditions apply to the property. Awards issued pursuant to this NOFO may contain specific award conditions pertaining to the use and disposition of grant-acquired property and to a requirement that the recipient or subgrantee file certain public notices (*e.g.*, UCC-1, Covenant of Purpose, Use and Ownership, *etc.*) with respect to grant-acquired property. NTIA will provide information regarding the useful life schedules associated with assets acquired with grant funds.

6. Domestic Preference for Procurements (Buy American).

The Infrastructure Act presents an important opportunity to ensure that American taxpayer dollars are spent procuring needed products and supplies from American workers and businesses, strengthening and growing U.S. domestic manufacturing capacity. Accordingly, all funds made available through the BEAD Program for broadband infrastructure must comply with the Build America, Buy America Act.⁹⁹ The Build America, Buy America Act requires that all of the iron, steel, manufactured products (including but not limited to fiber-optic communications facilities), and construction materials used in the project or other eligible activities are produced in the United States unless a waiver is granted. Under the Build America, Buy America Act and the Buy America Guidance issued by the Office of Management and Budget on April 18, 2022,¹⁰⁰ the Secretary of Commerce (Secretary) may waive the application of this preference when (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory

⁹⁹ Infrastructure Investment and Jobs Act of 2021, Division G, Public Law 117-58, 135 Stat. 429 (November 15, 2021).

¹⁰⁰ See Shalanda D. Young, Director, OMB, *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, M-22-11 (Apr. 18, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf> (Buy America Guidance).

quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project or other eligible activities by more than 25 percent. Consistent with the waiver principles detailed in Sec. 70921(b)(1) of the Build America, Buy America Act and the Buy America Guidance, the Secretary will seek to minimize waivers, and any waivers will be limited in duration and scope.

In determining whether a product is produced in America, subgrantees must comply with definitions included in Section 70912 of the Build America, Buy America Act, which provides that a manufactured product is considered produced in the United States if the manufactured product was manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

In addition to the provisions above, subgrantees may not use BEAD funding to purchase or support any covered communications equipment or service, as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608).

Additionally, the Infrastructure Act expressly prohibits subgrantees from using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China unless a waiver of this requirement is received from the Assistant Secretary. Waivers of the ban on Chinese-made fiber will be based on a demonstration from the Eligible Entity that application of this prohibition would unreasonably increase the cost of or delay the project or other eligible activities. Waiver applicants will need to provide concrete evidence of this circumstance and will be held to a high burden of proof. Waiver policy in this case will be guided by the same principles set out in Section 70921(b)(1) of the Build America, Buy America Act, meaning that the Assistant Secretary will be disposed against waivers. In addition, NTIA will consider any national security issues particular to Chinese-made fiber, and even where domestic production is not feasible, will be reluctant to waive the ban if another foreign supplier could meet the need at similar cost.

7. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Minority Businesses Enterprises (MBEs) and Women's Business Enterprises (WBEs) are major catalysts for economic growth and job creation. However, data shows that MBEs and WBEs historically face significant contracting disparities compared to other businesses. Pursuant to 2 C.F.R. § 200.321, Eligible Entities must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring subgrantees to take the affirmative steps listed above as it relates to its subcontractors.

Eligible Entities are strongly encouraged to establish MBE and WBE utilization plans consistent with their Initial and Final Proposals.

E. Reporting

Both Eligible Entities and subgrantees will be required to comply with reporting requirements. In addition to the reporting requirements found in 2 C.F.R. Part 200, NTIA will provide additional reporting instructions in connection with the requirements set forth in this Section, including details on the manner and format that Eligible Entities will be required to report information in support of federal agency obligations under the ACCESS BROADBAND Act, 47 USC § 1307, and Infrastructure Act § 60105.¹⁰¹

1. Reporting Requirements - Eligible Entities

Not later than 90 days after receiving any Program grant funds, for the sole purposes of providing transparency and providing information to inform future federal broadband planning, an Eligible Entity shall submit to the Assistant Secretary an **initial report** that (i) describes the planned and actual use of funds; (ii) describes the planned and actual subgrant process; (iii) identifies the establishment of appropriate mechanisms by the Eligible Entity to ensure that all subgrantees of the Eligible Entity comply with the eligible uses prescribed under the BEAD Program and (iv) includes any other information required by the Assistant Secretary.

Not later than 1 year after receiving grant funds under this Section, and semiannually thereafter until the funds have been expended, an Eligible Entity shall submit to the Assistant Secretary a **semiannual report**, with respect to the 6-month period immediately preceding the report date, that tracks the progress the Eligible Entity is making against its approved plans. Any such report should include, at a minimum, the following information: (i) a description of how the Eligible Entity expended the grant funds; (ii) a description of each service provided with the grant funds and the status of projects or other eligible activities supported by such funds; (iii) a description of the locations at which broadband service was made or will be made available using the grant funds, the locations at which broadband service was utilized, and the comparative demographics of those served; and (iv) a certification that the Eligible Entity complied with the requirements of this Section and with any additional reporting requirements prescribed by the Assistant

¹⁰¹ In addition to the requirements set forth herein, Eligible Entities and subgrantees must comply with the mandates set out in Section VI.F of this NOFO.

Secretary. The semiannual report must also include an SF-425 and a Federal Financial Report and must meet the requirements described in 2 C.F.R. §§ 200.328 and the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports. The semiannual report shall contain information as prescribed in 2 C.F.R. § 200.329.

Not later than one year after an Eligible Entity has expended all grant funds received under this Section, the Eligible Entity shall submit to the Assistant Secretary a final report that (i) describes how the Eligible Entity expended the funds; (ii) describes each service provided with the grant funds; (iii) describes the locations at which broadband service was made available using the grant funds, the locations at which broadband service was utilized, and the comparative demographics of those served; (iv) includes each report that the Eligible Entity received from a subgrantee under Section 60102(j) of the Infrastructure Act; and (v) certifies that the Eligible Entity complied with the requirements of this Section and with any additional reporting requirements prescribed by the Assistant Secretary.

As noted below, an Eligible Entity must also make every report submitted to it by a subgrantee available to NTIA upon request.

2. Reporting Requirements - Subgrantees

The recipient of a subgrant from an Eligible Entity under this Section shall submit to the Eligible Entity a regular reporting, at least semiannually, for the duration of the subgrant to track the effectiveness of the use of funds provided. Each report shall describe each type of project and/or other eligible activities carried out using the subgrant and the duration of the subgrant. Eligible Entities may add additional reporting requirements or increase the frequency of reporting with the approval of the Assistant Secretary and must make all subgrantee reports available to NTIA upon request. In the case of a broadband infrastructure project, the report must, at minimum:

1. Include a list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
2. Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);
3. Identify whether each address or location is residential, commercial, or a community anchor institution;
4. Describe the types of facilities that have been constructed and installed;
5. Describe the peak and off-peak actual speeds of the broadband service being offered;
6. Describe the maximum advertised speed of the broadband service being offered;
7. Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
8. List all interconnection agreements that were requested, and their current status;
9. Report the number and amount of contracts and subcontracts awarded by the subgrantee disaggregated by recipients of each such contract or subcontracts that are MBEs or WBEs;

10. Include any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;
11. Include an SF-425, Federal Financial Report and meet the requirements described in the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports;
12. For projects over \$5,000,000 (based on expected total cost):
 - a. A subgrantee may provide a certification that, for the relevant Project, all laborers and mechanics employed by contractors and subcontractors in the performance of such Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a Recipient must provide a project employment and local impact report detailing:
 - i. The number of contractors and sub-contractors working on the Project;
 - ii. The number of workers on the Project hired directly and hired through a third party;
 - iii. The wages and benefits of workers on the Project by classification; and
 - iv. Whether those wages are at rates less than those prevailing.¹⁰²
 - b. If a subgrantee has not provided a certification that a Project either will use a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)), then the subgrantee must provide a project workforce continuity plan, detailing:
 - i. Steps taken and to be taken to ensure the Project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the Project (as required in Section IV.C.1.e), including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor-management partnership training programs, and partnerships with entities like unions, community colleges, or community-based groups;

¹⁰² As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

- ii. Steps taken and to be taken to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Project;
- iii. Steps taken and to be taken to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (*e.g.*, OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;
- iv. The name of any subcontracted entity performing work on the Project, and the total number of workers employed by each such entity, disaggregated by job title; and
- v. Steps taken and to be taken to ensure that workers on the Project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market.

13. Comply with any other reasonable reporting requirements determined by the Eligible Entity to meet the reporting requirements established by the Assistant Secretary; and certify that the information in the report is accurate.

Subgrantees must maintain sufficient records to substantiate all information above upon request.

3. Provision of Information to Federal Communications Commission and United States Department of Agriculture.

The Assistant Secretary will provide the information collected under Section I.E.2 of this NOFO, and such other Program information as is necessary, to the Commission, the Department of Agriculture, the Department of the Treasury, and any other federal agency that funds broadband deployment, to be used, as applicable, in determining whether to award funds for the deployment of broadband under any program administered by those agencies.

F. Recipient Integrity and Performance Matters

In accordance with Section 872 of Public Law 110-417, as amended, *see* 41 U.S.C. § 2313, if the total value of a recipient's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of an award made under this NOFO, then the recipient shall be subject to the requirements specified in Appendix XII to 2 C.F.R. Part 200,¹⁰³ for maintaining the currency of information reported to SAM that is made available in the Federal Awardee Performance and Integrity Information System (FAPIIS) about certain civil, criminal, or administrative proceedings involving the recipient.

¹⁰³ *See* 2 C.F.R. Part 200, Appendix XII, available at <http://go.usa.gov/cTBwC>.

G. Audit Requirements

2 C.F.R. Part 200, Subpart F, adopted by the Department of Commerce through 2 C.F.R. § 1327.101 requires any non-federal entity that expends federal awards of \$750,000 or more in the recipient's fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Subpart. Additionally, unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (*e.g.*, commercial entities) that expend \$750,000 or more in grant funds during their fiscal year must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards; or (ii) a program-specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Eligible Entities and its subgrantees are reminded that NTIA, the Department of Commerce Office of Inspector General, or another authorized federal agency may conduct an audit of an award at any time.

H. Federal Funding Accountability and Transparency Act of 2006

In accordance with 2 C.F.R. Part 170, all recipients of a federal award made on or after October 1, 2010, are required to comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). In general, all recipients are responsible for reporting sub-awards of \$30,000 or more. In addition, recipients that meet certain criteria are responsible for reporting executive compensation. Applicants must ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.¹⁰⁴

VIII. Federal Awarding Agency Contact(s)

Please direct programmatic inquiries to:

Evan Feinman

Director of BEAD

Office of Internet Connectivity and Growth

National Telecommunications and Information Administration

U.S. Department of Commerce

1401 Constitution Avenue, NW

Washington, DC 20230

Phone: (202) 482-2048

Email: BEAD@ntia.gov

Please direct grant management inquiries to:

Scott McNichol

NIST Grants Officer

¹⁰⁴ See OMB, Requirements for Federal Funding Accountability and Transparency Act Implementation, Interim final guidance to agencies with opportunity to comment, 75 FR 55663 (Sept. 14, 2010), *available at* <http://go.usa.gov/hKnQ>.

Grants Management Division
National Institute of Standards and Technology
325 Broadway
Boulder, CO 80305
Phone: (301) 975-8449
Email: scott.mcnichol@nist.gov

Please direct media inquiries to:

Stephen F. Yusko
Public Affairs Specialist
Office of Public Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4897
Washington, DC 20230
Phone: (202) 482-7002
Email: press@ntia.doc.gov

IX. Other Information

This Section details information regarding topics including audit and reporting requirements, mandatory transparency, accountability, and oversight measures, and consequences associated with the unauthorized use of BEAD Program funds.

A. Transparency

The Infrastructure Act contains robust reporting requirements for Eligible Entities and subgrantees, and requires NTIA, the Commission, and other agencies to coordinate to make information regarding federal broadband funding, low-cost plans, and other aspects of the BEAD Program readily available to and understandable by the public. NTIA will fulfill its obligations to the fullest extent possible. Recipients of U.S. Department of Commerce and NTIA grants also should be cognizant of the access to records requirements set forth at 2 C.F.R. § 200.337.

B. Protected and Proprietary Information

Eligible Entities and subgrantees acknowledge and understand that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance, and other reports submitted by either entity, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs and for statistical purposes. For this purpose, information and data may be accessed, reviewed, and evaluated by Department of Commerce employees, other federal employees, federal agents and contractors, and/or by non-federal personnel, all of whom enter into appropriate confidentiality and nondisclosure agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, Eligible Entities and subgrantees are expected to support Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and

by cooperation with the Department of Commerce and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), Eligible Entities and subgrantees are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.

NTIA will protect confidential and proprietary information from public disclosure consistent with applicable law, including the Trade Secrets Act, as amended (18 U.S.C. 1905) and the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*). In the event that a submission contains information or data deemed to be confidential commercial information or that otherwise should not be publicly disclosed, that information should be identified, bracketed, and marked as Privileged, Confidential, Commercial or Financial Information. Based on these markings, the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law.

Additionally, some of the information submitted in the course of applying for funding under this Program, or provided in the course of its grant management activities, may be considered law enforcement sensitive or otherwise important to national security interests. This may include threat, risk, and needs assessment information, and discussions of demographics, transportation, public works, and industrial and public health infrastructures. In the event that a submission contains such information or data, that information should be identified, bracketed, and marked appropriately. Based on these markings, the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law. The Eligible Entity and subgrantee should be familiar with the regulations governing Protected Critical Infrastructure Information (6 C.F.R. Part 29) and Sensitive Security Information (49 C.F.R. Part 1520), as these designations may provide additional protection to certain classes of homeland security information.

In addition to the public disclosure requirements of this program, the Eligible Entity is encouraged to consult its own laws and regulations regarding the release of information, which should be considered when reporting sensitive matters in the grant application. The Eligible Entity may consult with NTIA regarding concerns or questions about the release of information or how omitting sensitive information could impact NTIA's assessment of the Eligible Entity's application.

C. Funding Availability and Limitation of Liability

Funding for the Program is contingent upon the continued availability of appropriations. Publication of this NOFO does not oblige NTIA, NIST or the Department of Commerce to award any specific project or other eligible activity or to obligate any available funds. NTIA will recommend for funding only projects and other eligible activities that are deemed likely to achieve the BEAD Program goals and for which funds are available.

D. Third Party Beneficiaries

The BEAD Program is not intended to and does not create any rights enforceable by third party beneficiaries.

E. Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this NOFO. However, at the discretion of the Assistant Secretary, NTIA, upon its own initiative or when requested, may waive the provisions in this NOFO. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the circumstances for the request.

F. Paperwork Reduction Act and Administrative Procedures Act

Section 60102(o) specifically exempts the BEAD Program from the requirements of the Paperwork Reduction Act (44 U.S.C. § 3506) and the Administrative Procedures Act.

G. Transparency, Accountability, And Oversight Required

1. Generally

NTIA, Eligible Entities, and subgrantees each have a critical role to play in ensuring that the BEAD Program is implemented in a manner that ensures transparency, accountability, and oversight sufficient to, among other things:

1. Minimize the opportunity for waste, fraud, and abuse;
2. Ensure that recipients of grants under the Program use grant funds to further the overall purpose of the Program in compliance with the requirements of the Infrastructure Act, this NOFO, 2 C.F.R. Part 200, the terms and conditions of the award, and other applicable law; and
3. Allow the public to understand and monitor grants and subgrants awarded under the Program.

To that end, NTIA and Eligible Entities shall:

1. Conduct such audits of grantees and subgrantees as are necessary and appropriate, including audit requirements described in Section VII.G. Eligible Entities shall report the full results of any audits they conduct to the appropriate Federal Program Officer.
2. Develop monitoring plans, subject to the approval of the Assistant Secretary, which may include site visits or desk reviews, technical assistance, and random sampling of compliance requirements.
3. Impose specific conditions on grant awards designed to mitigate the risk of nonperformance where appropriate.

Each Eligible Entity and/or subgrantee shall, as appropriate:

1. Comply with the reporting requirements set forth in Section I.E of this NOFO.

2. Comply with the obligations set forth in 2 C.F.R. Part 200 and the Department of Commerce Financial Assistance Standard Terms and Conditions.
3. Establish and widely publicize telephone numbers and email addresses for the Eligible Entity's Office of Inspector General (or comparable entity) or subgrantees' internal ethics office (or comparable entity) for the purpose of reporting waste, fraud or abuse in the Program. Eligible Entities and subgrantees shall produce copies of materials used for such purpose upon request of the Federal Program Officer.

2. U.S. Department of Commerce Office of Inspector General

The U.S. Department of Commerce Office of Inspector General (OIG) seeks to improve the efficiency and effectiveness of the Department's programs, including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department activities, including grants, cooperative agreements, loans, and contracts.

a. Disclosures

Recipients of financial assistance originating from the U.S. Department of Commerce, including NTIA, shall timely disclose, in writing, to the OIG and awarding agency, whenever, in connection with the award, performance, or closeout of this grant or sub-award thereunder, the recipient has credible evidence that a principal, employee, agent, or sub-recipient has committed:

1. A violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
2. A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

b. Reporting

The OIG maintains a hotline to receive allegations of fraud, waste, or abuse. To report such allegations, please visit <https://www.oig.doc.gov/Pages/Hotline.aspx>. Upon request, the OIG will take appropriate measures to protect the identity of any individual who reports misconduct, as authorized by the Inspector General Act of 1978, as amended. Reports to the OIG may also be made anonymously.

3. Whistleblower Protection

Recipients, sub-recipients, and employees working on this grant award will be subject to the whistleblower rights and remedies established under 41 U.S.C. § 4712.

An employee of a recipient or sub-recipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of: gross mismanagement of a federal contract or award; a gross waste of federal funds; an abuse of authority (*i.e.*, an arbitrary and capricious exercise of authority that is inconsistent with the mission of NTIA or the U.S. Department of Commerce or the successful

performance of a contract or grant awarded by NTIA or the Department) relating to a federal contract or award; a substantial and specific danger to public health or safety; or a violation of a law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The recipient or sub-recipient shall inform its employees and contractors, in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described above and at <https://www.oig.doc.gov/Pages/Whistleblower-Protection-Program.aspx>.

4. Enforcement

NTIA shall take enforcement action against Eligible Entities and, if necessary, subgrantees, and Eligible Entities shall take enforcement action against subgrantees, as necessary and appropriate:

1. A subgrantee that fails to comply with any requirement under Section 60102 of the Infrastructure Act or this NOFO shall be required to return up to the entire amount of the subgrant to the Eligible Entity, at the discretion of the Eligible Entity or the Assistant Secretary.
2. If a subgrantee fails to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act, the Assistant Secretary may take corrective action, including recoupment of funds from the subgrantee.
3. NTIA and Eligible Entities may also enforce applicable rules and laws by imposing penalties for nonperformance, failure to meet statutory obligations, or wasteful, fraudulent, or abusive expenditure of grant funds. Such penalties include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation/clawback of funds, and debarment of organizations and/or personnel.

H. Unauthorized Use of Funds.

To the extent that the Assistant Secretary or the Inspector General of the Commerce Department determines that an Eligible Entity or subgrantee has expended grant funds received under the BEAD Program in violation of the requirements set forth in Section 60102 of the Infrastructure Act, 2 C.F.R. Part 200, the terms and conditions of the award, or other applicable law, the Assistant Secretary shall, if appropriate, recover the amount of funds that were so expended.

NOTICE OF FUNDING OPPORTUNITY
STATE DIGITAL EQUITY CAPACITY GRANT PROGRAM
EXECUTIVE SUMMARY

A. Federal Awarding Agency Name

National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

B. Funding Opportunity Title

State Digital Equity Capacity Grant Program

C. Announcement Type

Initial

D. Funding Opportunity Number

NTIA-SDECGP-2024

E. Assistance Listing (CFDA Number)

11.032

F. Key Dates

Complete applications from States (including the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico) must be received through the NTIA Grants Portal (<https://grants.ntia.gov>) no later than 11:59 p.m. Eastern Time (ET) on **May 28, 2024**. Application materials are available at <https://broadbandusa.ntia.doc.gov>.

Complete applications from U.S. Territories (other than the Commonwealth of Puerto Rico) must be received through the NTIA Grants Portal (<https://grants.ntia.gov>) no later than 11:59 p.m. Eastern Time (ET) on **July 31, 2024**.

The application window for Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (“Native Entities”) will open **September 25, 2024**, and close on **February 7, 2025**. All Native Entity applications must be received through the NTIA Grants Portal (<https://grants.ntia.gov>), by email (digitalequity@ntia.gov), or by mail or courier no later than 11:59 p.m. Eastern Time (ET) on **February 7, 2025**.

NTIA expects to begin issuing awards to Eligible States pursuant to this Notice of Funding Opportunity (“NOFO”) no later than August 28, 2024. NTIA expects to make additional awards on a rolling basis.

G. Application Submission Address

For States and U.S. Territories, complete application packets, including the Digital Equity Plan of the State or Territory, must be submitted electronically through the NTIA Grants Portal (<https://grants.ntia.gov>). Applications or portions thereof submitted by a State or Territory through postal mail, courier, email, facsimile, or other means will not be accepted.

For Native Entities, complete applications must be submitted (1) electronically through the NTIA Grants Portal (<https://grants.ntia.gov>), (2) by email (digitalequity@ntia.gov), or (3) by mail or courier.

See Section II.C of this NOFO for detailed information concerning application submission requirements for States and U.S. Territories. *See* Section III.C of this NOFO for detailed information concerning application submission requirements for Native Entities.

H. Funding Opportunity Description

This Notice of Funding Opportunity (“NOFO”) solicits applications for the State Digital Equity Capacity Grant Program (“Capacity Grant Program” or “Program”), the second of three digital equity programs authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title III, Public Law 117-58, 135 Stat. 429, 1209 (November 15, 2021) (“Infrastructure Act” or “IIJA”) also known as the (“Digital Equity Act” or “DE Act”). The Digital Equity Act appropriated \$2.75 billion to be awarded by the Assistant Secretary of Commerce for Communications and Information (“Assistant Secretary”) to promote digital inclusion activities and achieve digital equity.

The Digital Equity Act consists of three funding programs: (1) the \$60 million State Digital Equity Planning Grant Program; (2) the \$1.44 billion State Digital Equity Capacity Grant Program; and (3) the \$1.25 billion Competitive Grant Program. NTIA released the Notice of Funding Opportunity for the State Digital Equity Planning Grant Program (“Planning Grant Program”) on May 13, 2022, making funds available to States and Territories to develop State Digital Equity Plans (“Digital Equity Plans”). The Capacity Grant Program will provide funds to States and U.S. Territories to implement the State Digital Equity Plans developed pursuant to the State Digital Equity Planning Grant Program. The Digital Equity Plans identify the barriers to achieving digital equity faced by certain populations defined by the statute (i.e. “Covered Populations”), and include measurable objectives to promote: (1) the availability and affordability of access to broadband technology; (2) online accessibility and inclusivity of public resources and services; (3) digital literacy; (4) awareness of online privacy and cybersecurity; and (5) the availability and affordability of consumer devices and technical support for those devices.

In addition, this NOFO establishes a competitive process to make both State Digital Equity Planning Grant Program funds and State Digital Equity Capacity Grant Program funds available to Native Entities to carry out digital equity and inclusion activities consistent with the Digital Equity Act. These proposed projects must include measurable objectives and evaluation criteria as part of their program design and will likewise address barriers to digital equity and promote the availability and affordability of access to broadband technology, online accessibility and inclusivity of public resources and services, digital literacy, awareness of online privacy and cybersecurity, and the availability and affordability of consumer devices and technical support for those devices.

Because funding for States and U.S. Territories is based on a statutory allocation formula and funding for Native Entities will be determined through a separate competitive process, this NOFO is divided into sections to help clarify specific requirements applicable to different entities applying for funding. The procedures through which States and U.S. Territories can seek funding are outlined in Section II. Procedures for Native Entities to obtain funding are addressed in Section III. The remaining sections are common to both types of entities.

Recognizing that achieving digital equity for all people, including Indigenous peoples of the United States and Territories, is a matter of social and economic justice, this NOFO seeks to enable any entity that is awarded a grant under this Program to better understand, measure, and address systemic barriers to digital equity and, in collaboration with the communities most impacted, co-create the conditions necessary for long-lasting and meaningful change to ensure a sustainable future. Focusing investments on creating these conditions for change will allow entities awarded a grant under this Program to address the causes of socioeconomic disparities and will result in improved outcomes in health, education, economic stability, and quality of life among the Covered Populations.

I. Funding Instrument

Grant

J. Eligibility

Each State that has completed a Digital Equity Plan that meets the requirements of 47 U.S.C. §1723(c) is eligible to apply for grants under the Capacity Grant Program to implement its Digital Equity Plan and to carry out digital inclusion activities. In addition, U.S. Territories that submit a Digital Equity Plan consistent with the obligations of their State Digital Equity Planning Grant award are eligible to apply for grants under the Capacity Grant Program to implement its Digital Equity Plan and to carry out digital inclusion activities. Finally, Native Entities, or a consortium of Native Entities, with the necessary authorizations described in Section III.B.1 of this NOFO, are eligible to apply for both Capacity Grant and Planning Grant funding to promote the objectives of digital equity and inclusion. *See* Section II.B.1 of this NOFO for the eligibility requirements of States and Territories. *See* Section III.B.1 for the eligibility requirements of Native Entities.

K. Anticipated Amounts

Grant awards to Eligible States will be based upon the statutory formula established in the Digital Equity Act and will depend on the number and characteristics of the States that apply. Grant awards to the U.S. Territories will be made as an equal distribution of the territorial set aside provided for in 47 U.S.C. §1723(i)(3). Grant awards to Native Entities will be awarded on a competitive basis under the criteria outlined in Section III of this NOFO and will depend upon the number of applicants and the size of the proposals submitted.

Congress has appropriated \$840,000,000 for grants under the State Digital Equity Capacity Grant Program through fiscal year 2024 (\$240,000,000 for fiscal year 2022, \$300,000,000 for fiscal year 2023, and \$300,000,000 for fiscal year 2024). As statutorily required, no less than one (1) percent of the total amount of funding will be made available to Territories (\$8,400,000) and no less than five (5) percent of the total amount of funding will be made available to Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (\$42,000,000). Congress also authorizes the Assistant Secretary to set aside, from amounts made available each fiscal year, funds for salaries and expenses, administration, and oversight, \$1,000,000 of which must be transferred to the Office of Inspector General of the Department of Commerce for oversight. After eliminating administrative costs and transfers, and set asides for U.S. Territories and Native Entities, \$760,800,000 is being made available to Eligible States for federal financial assistance under the Capacity Grant Program.

In addition, \$3,000,000 that was set aside for Native Entities under the State Digital Equity Planning Grant Program, but which could not be released due to oversubscription, as well as approximately \$300,000 of unclaimed State Digital Equity Planning Grant Program funds will now be made available to Native Entities through this NOFO. In total, NTIA expects to make approximately \$45,300,000 available for Digital Equity Planning and Capacity Grants to Native Entities.¹ NTIA expects to make individual Digital Equity Capacity Grant Program awards to Native Entities within a range of \$500,000 to \$2,000,000. This funding range is not a required minimum or maximum, but Native Entities requesting funding for projects outside of this range must provide a reasonable explanation for the variance in their project size. Native Entities may also be included in State Digital Equity Plans.²

Future NOFOs are expected to make up to an additional \$300,000,000 available for implementation of Digital Equity Plans and digital inclusion activities in each of fiscal years 2025 and 2026.

¹ This amount is in addition to the approximately \$3 billion previously made available through the Tribal Broadband Connectivity Programs which included funds for broadband use and adoption to address the digital divide on Tribal Lands. See, [Tribal Broadband Connectivity Program Notice of Funding Opportunity](#).

² See, e.g., 47 U.S.C. §1723(c)(1)(D)(iv).

L. Cost Sharing/Matching

The Capacity Grant Program does not require cost sharing or matching, and NTIA will not give additional consideration during the evaluation process for applications proposing a non-federal cost-sharing contribution.

M. Notice of Funding Opportunity Summary

The following table provides a summary of key provisions within Sections II and III of this NOFO.

	States & U.S. Territories (Section II)	Native Entities (Section III)
Program Name	State Digital Equity Capacity Grant Program	State Digital Equity Capacity Grant Program
Eligible Entities	States (including D.C. and Puerto Rico) & U.S. Territories	Indian Tribes, Alaska Native entities, & Native Hawaiian organizations
Program Purpose	Implement Digital Equity Plans and carry out digital inclusion activities	Conduct digital equity planning and carry out digital equity and inclusion activities consistent with the Digital Equity Act
Amount of Total Funding Available	<ul style="list-style-type: none">• \$760,800,000 available for States (including D.C. and Puerto Rico)• \$8,400,000 available for U.S. Territories	<p>\$45,300,000, <i>of which</i></p> <ul style="list-style-type: none">• \$3,300,000 is from the State Digital Equity Planning Grant Program and is for digital equity planning purposes, and• \$42,000,000 is from the State Digital Equity Capacity Grant Program and is for digital equity and inclusion activities
Allocation Approach	Formula	Competitive

Expected Award Size Per Entity	<ul style="list-style-type: none"> • For States (including D.C. and Puerto Rico), see “Tentative State Award Allocation” table (Sec. II.A.4.b) • For U.S. Territories, \$2,100,000 	<p>\$500,000 - \$2,000,000</p> <p>While Native Entities are not required to seek Planning Grant funding, any Planning Grant funding requests must be capped at seven and one-quarter (7.25) percent of the total funds requested.</p>
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FULL ANNOUNCEMENT TEXT

Table of Contents

I	PROGRAM DESCRIPTION.....	12
A.	Overview of the State Digital Equity Capacity Grant Program.....	12
B.	Connections to the Broadband Equity, Access, and Deployment (BEAD) Program	15
C.	Definitions.....	15
II.	STATES AND U.S. TERRITORIES - APPLICATION REQUIREMENTS AND AWARD INFORMATION	20
A.	FEDERAL AWARD INFORMATION	20
1.	Funding Availability	20
2.	Period of Performance.....	21
3.	Performance Measurement and Evaluation.....	21
4.	Award Amounts	22
5.	Type of Funding Instrument.....	26
B.	ELIGIBILITY INFORMATION	26
1.	Eligible Applicants.....	26
2.	Cost Sharing or Matching	26
C.	APPLICATION AND SUBMISSION INFORMATION	27
1.	Address to Request Application Package.....	27
2.	Content and Form of Applications.....	27
3.	Funding Restrictions	32
4.	Subgrantee Selection Process.....	37
5.	Alternative Funding.....	37

6. Certifications Regarding Debarment and Suspension.....	38
7. System Award Management (SAM).....	38
8. Submission Dates and Times	39
9. Intergovernmental Review	39
10. Material Representations and Public Disclosure.....	39
11. Other Submission Requirements	40
D. APPLICATION REVIEW INFORMATION.....	40
1. Overview	40
2. Initial Eligibility and Administrative Review	40
3. Merit Review.....	41
4. Award Process.....	41
5. Federal Awarding Agency Review of Risk Posed by Applicant	41
6. Anticipated Announcement and Award Dates.....	41
III. NATIVE ENTITIES – APPLICATION REQUIREMENTS AND AWARD INFORMATION.....	42
A. FEDERAL AWARD INFORMATION	42
1. Funding Availability	42
2. Period of Performance.....	42
3. Performance Measurement and Evaluation.....	42
4. Award Amounts	43
5. Type of Funding Instrument.....	44
B. ELIGIBILITY INFORMATION	44
1. Eligible Applicants.....	44
2. Cost Sharing or Matching	46

C. APPLICATION AND SUBMISSION INFORMATION	47
1. Address to Request Application Package.....	47
2. Content and Form of Applications.....	47
3. Funding Restrictions	52
4. Certification Regarding Debarment and Suspension	55
5. System Award Management (SAM).....	55
6. Submission Dates and Times	56
7. Material Representations and Public Disclosure.....	56
8. Other Submission Requirements.....	56
D. APPLICATION REVIEW INFORMATION	57
1. Initial Eligibility and Administrative Review	57
2. Merit Review.....	57
3. Programmatic Review.....	59
4. OICG Associate Administrator Review.....	61
5. Final Project Selection	62
6. Federal Awarding Agency Review of Risk Posed by Applicant	62
7. Anticipated Announcement and Award Dates.....	62
IV. FEDERAL AWARD ADMINISTRATION.....	63
A. Federal Award Notices	63
B. Notification to Unsuccessful Applicants	63
C. Retention of Unsuccessful Applications.....	63
D. Administrative and National Policy Requirements.....	63
1. Uniform Administrative Requirements, Cost Principles and Audit Requirements	63
2. Department of Commerce Financial Assistance Standard Terms and Conditions	63

3.	Pre-Award Notification Requirements.....	64
4.	Build America, Buy America Act Domestic Content Preference Requirements.....	64
5.	Domestic Preference for Procurements.....	65
6.	Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms	66
7.	Cybersecurity Best Practices.....	66
E.	Reporting.....	66
1.	Infrastructure Act Reporting Requirements (Annual Report).....	66
2.	Other Reporting Requirements.....	67
F.	Recipient Integrity and Performance Matters.....	68
G.	Audit Requirements	68
H.	Federal Funding Accountability and Transparency Act of 2006.....	68
I.	Public Database.....	69
V.	FEDERAL AWARDING AGENCY CONTACTS.....	70
VI.	OTHER INFORMATION	71
A.	Transparency.....	71
B.	Protected and Propriety Information.....	71
C.	Funding Availability and Limitation of Liability	72
D.	Third Party Beneficiaries	72
E.	Waiver Authority	72
F.	Paperwork Reduction Act.....	73
G.	Transparency, Accountability, and Oversight Required.....	73
1.	Generally.....	73
2.	U.S. Department of Commerce Office of Inspector General (OIG)	74

3. Whistleblower Protection.....	75
H. Unauthorized Use of Funds	75

I. PROGRAM DESCRIPTION

NTIA issues this Notice of Funding Opportunity (“NOFO”) to describe the requirements under which it will award grants for the State Digital Equity Capacity Grant Program (“Capacity Grant Program” or “Program”), authorized by § 60304(d) of the Infrastructure Investment and Jobs Act of 2021, Division F, Title III, Public Law 117-58, 135 Stat. 429, 1209 (November 15, 2021) (“Infrastructure Act” or “IIJA”), also known as the Digital Equity Act of 2021 (“Digital Equity Act” or “DE Act”).³ The Capacity Grant Program provides funding for the implementation of Digital Equity Plans created pursuant to 47 U.S.C. §1723(c), including the promotion of digital inclusion activities.

A. Overview of the State Digital Equity Capacity Grant Program

Broadband connections and digital literacy are increasingly critical to individual participation in the society, economy, and civic institutions of the United States.⁴ Broadband connections expand access to health care and essential services, education, and jobs. High-speed Internet access is not a luxury, but a necessity, for all people of the United States, regardless of their age, race, or income, irrespective of where they live, what languages they speak, what resources they have at their disposal, their disability status, and what specific challenges they may face in their daily lives.

Unfortunately, not all Americans have been afforded access to broadband services on an equal basis. Many Americans live in locations where no service is available, the speed or quality of the service is unreliable, and/or the offering available is unaffordable. Even where broadband service is available, many on the wrong side of the digital divide lack the equipment, digital skills training, financial assistance, and other resources necessary to realize the Internet’s full potential. Digital exclusion carries a high societal and economic cost. Lack of accessible broadband services, digital skills, and equipment materially harms the opportunity of an individual to achieve economic success, educational advancement, positive health outcomes, social inclusion, and civic engagement. The Digital Equity Act identifies those groups most vulnerable to this digital exclusion and creates a program to address their needs (the “Covered Populations”).⁵ The DE Act recognizes that individuals that live in households near the poverty

³ 47 U.S.C. §1701 *et seq.*

⁴ 47 U.S.C. §1722.

⁵ 47 U.S.C. §1721(8). The “Covered Populations” are: (a) individuals who live in covered households (defined as households with income of not more than 150% of the poverty level); (b) aging individuals; (c) incarcerated individuals (as defined by the State or Territory), other than individuals who are incarcerated in a Federal correctional facility; (d) veterans; (e) individuals with disabilities; (f) individuals with a language barrier, including individuals who are English learners and have low levels of literacy; (g) individuals who are members of a racial or ethnic minority group; and (h) individuals who primarily reside in a rural area.

level, aging individuals, incarcerated individuals, veterans, individuals with disabilities, individuals with a language barrier, members of racial or ethnic minority groups, and individuals living in rural areas all face barriers to digital inclusion that warrant additional efforts to ensure digital equity is achieved.

Achieving digital equity will strengthen the American economy. When members of the Covered Populations are excluded from the digital economy, they lose job opportunities and access to educational resources and workforce development opportunities. As the job market becomes increasingly digital, those without digital skills and access will face increasing challenges in securing well-paying employment. This lack of digital literacy can also reduce digital entrepreneurship and cost the United States significant opportunities for new business development and economic activity. Digital exclusion can also prevent individuals from accessing financial services, managing their finances efficiently, and building wealth – exacerbating existing wealth and income gaps. On an international scale, digital exclusion can reduce America’s competitiveness in the global economy.

Achieving digital equity will likewise improve personal welfare and promote civic engagement among the Covered Populations. Lack of access to telehealth services, which rely on digital technologies and have become vital in providing healthcare access, is leading to health disparities and increased healthcare costs, particularly in rural areas. The inability of members of the Covered Populations to access online services also undermines the ability of the government to provide more efficient services and share critical information and proceedings with the public. Expanding digital equity will enable members of the Covered Populations to access information and government services online and empower these individuals to engage in civic activities, such as voting, advocacy, and community involvement, contributing to a more participatory democracy.

Recognizing the devastating impact of digital exclusion, President Biden made a commitment that every household in America will have access to affordable, reliable, high-speed Internet, and the resources necessary to realize the Internet’s full potential. Passed on a bipartisan basis in both chambers of Congress, the Digital Equity Act of 2021 provides \$2.75 billion to address digital inclusion and advance digital equity. The law charges NTIA – the President’s principal advisor on telecommunications and information policy matters, housed within the United States Department of Commerce (DOC) – with administering these programs.

The Digital Equity Act creates a carefully structured process to address the core concerns of digital equity and digital inclusion for the members of the Covered Populations. The first step was the creation of detailed Digital Equity Plans. NTIA launched the State Digital Equity Planning Grant Program (“Planning Grant Program”) on May 13, 2022, awarding \$53.7 million to 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and four U.S. Territories, to develop Digital Equity Plans which identify the barriers to digital adoption for each of the eight Covered Populations identified in the statute. With this funding, all fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands have for the first time developed Digital Equity Plans designed to identify the barriers to digital equity faced

by the Covered Populations, establish measurable objectives for documenting and promoting the availability and affordability of access to fixed and wireless broadband services, online accessibility and inclusivity of public resources and services, digital literacy and skills, awareness of cybersecurity and protection of online privacy, and the availability of affordable consumer devices.

This Notice of Funding Opportunity will make funds available to begin implementation of these State⁶ and U.S. Territory⁷ Digital Equity Plans and will, in addition, empower Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (“Native Entities”) to address digital equity and inclusion consistent with the purposes of the Digital Equity Act.

States and U.S. Territories will receive funding to adopt sustainable, long-term programs that address digital equity through defined projects and activities, consistent with their Digital Equity Plans, that will have a measurable impact on the availability, affordability, and adoption of broadband technology, the accessibility and inclusivity of public resources, digital literacy and skills, awareness of the importance of cybersecurity, online privacy, and the availability and affordability of consumer devices. Native Entities will be able to undertake both planning and implementation projects to further digital equity through a competitive grant program with performance goals similar in scope to those outlined for States and Territories, including availability, affordability, and adoption of broadband technology, the accessibility and inclusivity of public resources, digital literacy and skills, cybersecurity, online privacy, and the availability and affordability of consumer devices.

As result of these programs, the DE Act will ensure that all Americans are able to benefit from the IIJA investment in broadband infrastructure. The success of the States and Territories in meeting these goals will be tracked through the reporting requirements on the applicable performance metrics outlined in Section II.A.3 below. The success of the Native Entities in meeting these goals will be tracked through the reporting requirements on the applicable performance metrics outlined in Section III.A.3 below. Recognizing that it is essential to ensure that Digital Equity Plans remain relevant, effective, and aligned with the changing community needs and advancements in technology, this Program will also allow States and Territories to utilize up to twenty (20) percent of their funds to update and maintain their Digital Equity Plans during the period of performance of a Capacity Grant Program award.

Digital equity is a multi-faceted issue that requires a “whole of government” approach to ensure that the various federal agencies are working together to create a more inclusive and equitable landscape for all Americans. This allows for the development of holistic solutions that address

⁶ As defined by the Digital Equity Act, and as used in this NOFO, the term “State” means any State of the United States; the District of Columbia; and the Commonwealth of Puerto Rico. 47 U.S.C. §1721(21).

⁷ The Digital Equity Act establishes a set aside for the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State (“U.S. Territory(ies)” or “Territory(ies)”). 47 U.S.C. §1723(i).

the root causes of digital disparities, such as lack of Internet access, digital skills, and affordability. Recognizing that one program alone cannot address the challenges to digital equity and inclusion that face the United States, the Digital Equity Act directs NTIA to engage in a cross-government consultation process to ensure that the Program complements and enhances, and does not conflict with, other federal broadband initiatives and programs. NTIA has launched a robust interagency coordination effort, receiving input from nine (9) agencies and the Federal Communications Commission, documenting the programs available to serve members of the Covered Populations, and discussing means by which these programs can be integrated into the Digital Equity Plans of States and Territories. NTIA will use this information to enhance the value of the Capacity Grant Program and ensure the United States derives the maximum benefit from this investment in digital equity.

This NOFO is divided into sections to help clarify specific requirements applicable to different entities applying for funding. The procedures through which States and U.S. Territories can seek funding are outlined in Section II. Procedures for Native Entities to obtain funding are addressed in Section III. The remaining sections are common to both types of entities.

B. Connections to the Broadband Equity, Access, and Deployment (BEAD) Program

The Digital Equity Act of 2021 is closely tied to the broader infrastructure deployment goals of the Broadband Equity, Access, and Deployment (BEAD) Program. The BEAD Program is an historic \$42.5 billion investment in grants to States and U.S. Territories for broadband planning, deployment, mapping, equity, adoption, and meaningful use projects. The BEAD Program includes a requirement that recipients submit a Five-Year Action Plan and an Initial Proposal, each of which must include descriptions of the recipient's plans to advance digital equity and inclusion.

Collaboration and coordination between the implementation of a State or Territory's Digital Equity Plan and the State or Territory's Five-Year Action Plan under BEAD are essential to maximize the impact of both initiatives, thereby ensuring that the resources devoted to each program are working in a complementary and non-duplicative manner. As noted in the DE Planning Grant NOFO, States and Territories should at a minimum establish formal and direct communications and collaboration pathways between the teams that remain in place throughout the entire implementation process. This will be particularly important to reduce the burden and confusion on community stakeholders when fulfilling the local coordination, outreach, and stakeholder engagement requirements of both programs. Similarly, Native Entities should ensure their projects are coordinated with other broadband projects, such as those funded by the Tribal Broadband Connectivity Program ("TBCP").

C. Definitions

(1) Assistant Secretary: The term "Assistant Secretary" means the Assistant Secretary of Commerce for Communications and Information or the individual who holds any successor position.

(2) Administering Entity: The term “Administering Entity” refers to the entity selected by the governor (or equivalent official) of each State to administer the State Digital Equity Planning and Capacity Grant Programs. The entity selected for the purposes of the Planning Grant Program must also administer the State Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to undertake all the responsibilities described below.

The administering entity shall—

1. Serve as the recipient of, and administering agent for, any grant awarded to a State under this Program;
2. Develop, implement, oversee, and, as applicable, update the State Digital Equity Plan for the State;
3. Make subgrants to any entity described in 47 U.S.C. §1723(c)(1)(D) of the Infrastructure Act that is located in the State in support of:
 - a. The State Digital Equity Plan for the State; and
 - b. Digital inclusion activities in the State generally; and
4. Serve as—
 - a. An advocate for digital equity policy and digital inclusion activities; and
 - b. A repository of best practice materials regarding the policies and activities described in clause (a).

An Administering Entity must have demonstrated a capacity to administer the Program on a statewide level, and may be any of the following:

1. The State, a political subdivision, agency, or instrumentality of the State, an Indian Tribe located in the State, an Alaska Native entity located in the State, or a Native Hawaiian organization located in the State;
2. A foundation, corporation, institution, association, or coalition that is—
 - a. A not-for-profit entity;
 - b. Providing services in the State; and
 - c. Not a school;
3. A community anchor institution, other than a school, that is located in the State;
4. A local educational agency that is located in the State;
5. An entity located in the State that carries out a workforce development program;
6. An agency of the State that is responsible for administering or supervising adult education and literacy activities in the State;
7. A public or multi-family housing authority that is located in the State; or
8. A partnership between any of the previously listed entities.

(3) Administering Organization: The term “Administering Organization” means the organization selected by the governor (or equivalent official) of a U.S. Territory to administer a State Digital Equity Capacity Grant Program award. The organization selected by the U.S. Territory for the purposes of the State Digital Equity Planning Grant Program must also administer the State Digital Equity Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to serve in this role.

(4) Aging Individual: The term “aging individual” means an individual who is 60 years of age or older.

(5) Alaska Native Entity: The term “Alaska Native entity” will refer to a tribally controlled entity in Alaska whose purpose or mission is to represent or advance the interests of one or more native Alaskan communities. This will include, but will not be limited to, subsidiary organizations of an Indian Tribe; entities that receive federal funding due to their status as an Indian or Native organization; and the Alaska Native Regional Nonprofit Organizations created to administer social, educational, and health services for Alaska Native people in their region.

(6) Commission: The term “Commission” refers to the Federal Communications Commission.

(7) Community Anchor Institution: The term “community anchor institution” means a public school, a public or multi-family housing authority, a library, a medical or healthcare provider, a community college or other institution of higher education, a State or Territory library agency, and any other nonprofit or governmental community support organization.

(8) Covered Household: The term “covered household” means a household, the income of which for the most recently completed year is not more than 150 percent of an amount equal to the poverty level, as determined by using criteria of poverty established by the Bureau of the Census.

(9) Covered Populations: The term “Covered Populations” means:

1. Individuals who live in covered households;
2. Aging individuals;
3. Incarcerated individuals (as defined by the State or Territory), other than individuals who are incarcerated in a federal correctional facility;
4. Veterans;
5. Individuals with disabilities;
6. Individuals with a language barrier, including individuals who—
 - a. Are English learners; and
 - b. Have low levels of literacy;
7. Individuals who are members of a racial or ethnic minority group; and
8. Individuals who primarily reside in a rural area.

(10) Digital Equity: The term “digital equity” means the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.

(11) Digital Inclusion: The term “digital inclusion” –

1. Means the activities that are necessary to ensure that all individuals in the United States have access to, and the use of, affordable information and communication technologies, such as—

- a. Reliable fixed and wireless broadband internet service;
- b. Internet-enabled devices that meet the needs of the user; and
- c. Applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration; and

2. Includes—

- a. Obtaining access to digital literacy training;
- b. The provision of quality technical support; and
- c. Obtaining basic awareness of measures to ensure online privacy and cybersecurity.

(12) Digital Literacy: The term “digital literacy” means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

(13) Disability: The term “disability” means, with respect to an individual—

1. A physical or mental impairment that substantially limits one or more major life activities of such individual;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

(14) Eligible State: The term “Eligible State” means a State with respect to which the Assistant Secretary has approved an application submitted to the Assistant Secretary under this NOFO, including a State Digital Equity Plan developed by the State under 47 U.S.C. §1723(c).

(15) Indian Tribe: The term “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community (i.e., Tribal Organizations), including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 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.

(16) Native Hawaiian Organization (NHO): An organization that is registered with the U.S. Department of the Interior’s Office of Native Hawaiian Relations and Hawaiian Homes

Commission Act Beneficiary Associations and Homestead Associations, as defined under 43 C.F.R. §§ 47.10 and 48.6, or is the Department of Hawaiian Home Lands.

(17) Native Entity: As used in this NOFO, the term “Native Entity” refers to Indian Tribes, Alaska Native entities, and Native Hawaiian organizations as referenced in 47 U.S.C. 1723(i)(2) and that meet the eligibility criteria outlined in Section III.B.1 of this NOFO.

(18) Rural Area: The term “rural area” means any area other than –

1. A city or town that has a population of greater than 50,000 inhabitants;
2. Any urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants; and
3. In the case of a grant or direct loan, a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.

(19) State: The term “State” means:

1. any State of the United States;
2. the District of Columbia; and
3. the Commonwealth of Puerto Rico.

(20) Tribal Organization: The term “Tribal Organization” means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(21) U.S. Territory: The term “U.S. Territory,” “U.S. Territories” or “Territory(ies)” means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State.

(22) Veteran: The term “veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.

II. STATES AND U.S. TERRITORIES - APPLICATION REQUIREMENTS AND AWARD INFORMATION

This Section provides detailed information for States and U.S. Territories regarding federal award information, eligibility, the application and submission process for the Capacity Grant Program, and the review criteria to be used for these awards. Information for Native Entities regarding these subjects can be found in Section III of this NOFO.

A. FEDERAL AWARD INFORMATION

1. Funding Availability

To fund grants under the State Digital Equity Capacity Grant Program, Congress appropriated \$840,000,000 for fiscal years 2022 through 2024 (\$240,000,000 for fiscal year 2022, \$300,000,000 for fiscal year 2023, and \$300,000,000 for fiscal year 2024).⁸

47 U.S.C. §1723(i)(3) requires NTIA to set aside not less than one (1) percent of the total funds appropriated for each fiscal year “to award grants to, or enter into contracts or cooperative agreements with, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State.” Accordingly, NTIA has set aside \$8,400,000 for grants to the U.S. Territories to satisfy the Territorial set aside requirement of fiscal years 2022 through 2024.

47 U.S.C. §1723(i)(2) requires NTIA to set aside not less than five (5) percent of the total funds appropriated for each fiscal year “to award grants to, or enter into contracts or cooperative agreements with, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations.” Accordingly, NTIA has set aside \$42,000,000 for grants to Native Entities to satisfy the Native Entity set aside requirement for the fiscal years 2022 through 2024.⁹ As discussed in Section III.A.1, an additional \$3,000,000 will be made available to Native Entities under the Digital Equity Planning Grant Program, as well as approximately \$300,000 in unclaimed funds from the Planning Grant Program, for a total funding opportunity of approximately \$45,300,000 under this NOFO.

⁸ Because both 47 U.S.C. §1721(14)(B) and 47 U.S.C. §1723(d)(2)(B) require the completion of a State Digital Equity Plan before an Eligible State may apply for a State Digital Equity Capacity Grant, the State Digital Equity Capacity Grant Program could not be made available in 2022 and 2023.

⁹ In 2022, Congress appropriated \$60,000,000 for the State Digital Equity Planning Grant Program and \$240 million for the State Digital Equity Capacity Grant Program. The Digital Equity Planning Grant NOFO applied the required set aside of 1% for U.S. Territories and 5% for Native Entities to the \$60,000,000 Planning Grant appropriation for 2022. Through this NOFO, NTIA now sets aside the same percentages for the remaining \$240,000,000 appropriated in 2022, thus satisfying the requirement of 47 U.S.C. §1723(i) that NTIA set aside funds from the total amounts made available in a fiscal year.

Congress has also permitted the Assistant Secretary to set aside from amounts appropriated for each fiscal year, funds for salaries and expenses, administration, and oversight, \$1,000,000 of which must be transferred to the Office of Inspector General of the Department of Commerce for each fiscal year. NTIA has set aside \$28,800,000 for administrative and transfer costs of the State Digital Equity Capacity Program.

After accounting for administrative expenses, including transfers to the Department of Commerce Office of Inspector General, set asides for U.S. Territories, and set asides for Native Entities, NTIA will make available \$760,800,000 for States to be allocated as required by 47 U.S.C. §1723(d)(3)(A)(i) and Section II.A.4 of this NOFO. Subject to the availability of funding, future NOFOs are expected to make up to an additional \$300,000,000 available for implementation of Digital Equity Plans and digital inclusion activities in each of fiscal years 2025 and 2026.

2. Period of Performance

As established in 47 U.S.C. §1723(d)(3)(B), Eligible States “shall expend the grant funds during the 5-year period beginning on the date on which the Eligible State is awarded grant funds.”¹⁰ Under the terms of this NOFO, U.S. Territories will likewise be required to expend the grant funds during the 5-year period beginning on the date on which the entity is awarded grant funds.¹¹

3. Performance Measurement and Evaluation

Capacity Grant recipients and subrecipients are required to incorporate program measurement and evaluation activities as a part of their program design and implementation. These activities must include documentation of the State or Territory’s Digital Equity Plan implementation efforts and the progress made toward meeting the measurable objectives identified in those Digital Equity Plans, including the success of specific funded projects in meeting the performance objectives of the Program. States and Territories must protect personally identifiable information as required by 2 C.F.R. §200.303(e) and provide protection of human subjects as required by 15 C.F.R. Part 27.

Information collected must include the following data points:

- a. Number of Covered Population(s) served;
- b. Number of people served within each Covered Population;
- c. Total number of people served;

¹⁰ The five-year period begins on the first day of the period of performance identified in the grant agreement.

¹¹ Id.

- d. Number of programs implemented by type;
- e. Anecdotal/personal testimony demonstrating the positive impact of the Program;
- f. Quantifiable evidence of progress toward the measurable objectives identified in the Digital Equity Plan;
- g. Impact on the State or Territory's goals regarding:
 - i. Economic and workforce development outcomes;
 - ii. Educational outcomes;
 - iii. Health outcomes;
 - iv. Civic and social engagement; and
 - v. Delivery of essential services.

At the end of the period of performance, a State or Territory receiving funds under the Capacity Grant Program must submit an assessment of the effectiveness of the programs along with the results, protocols, and instruments used to collect the above data to NTIA. All program evaluation materials must be submitted in accordance with the terms and conditions of the subject grant award and no later than the final award closeout and may be posted publicly on NTIA's website.

4. Award Amounts

Funding amounts for Eligible States will be determined pursuant to the statutory formula set forth at 47 U.S.C. §1723(d)(3)(A)(i) and this NOFO. U.S. Territories will receive equal shares of the Capacity Grant Program funding set aside for U.S. Territories consistent with 47 U.S.C. §1723(i)(3).

a. Statutory Award Formula for States

Pursuant to §1723(d)(3)(A)(i) of the Digital Equity Act, the amount awarded to each Eligible State in a given fiscal year will be calculated by applying a formula in which:

- i. fifty (50) percent of the total grant amount is based on the population of the Eligible State in proportion to the total population of all Eligible States;
- ii. twenty-five (25) percent of the total grant amount is based on the number of individuals in the Eligible State who are members of the Covered Populations, in proportion to the total number of individuals in all Eligible States who are members of the Covered Populations; and
- iii. twenty-five (25) percent of the total grant amount is based on the comparative lack of availability and adoption of broadband in the Eligible State relative to all Eligible States, as determined by data collected from the annual inquiry of the Federal Communications Commission pursuant to Section 706(b) of the

Telecommunications Act of 1996,¹² the American Community Survey, NTIA Internet Use Survey, and any other source that the Assistant Secretary, after appropriate notice and opportunity for public comment, determines to be appropriate.

In the event that certain data on broadband availability or adoption are unavailable for the Commonwealth of Puerto Rico during a given fiscal year, the Assistant Secretary shall use the median value among all Eligible States for each affected factor in the formula and assign it to Puerto Rico for the purposes of making the calculations for that fiscal year.¹³

The capacity grant amount awarded to any Eligible State in a given fiscal year must not be less than one-half (0.5) percent of the total amount made available to award Capacity Grants to Eligible States during that fiscal year.¹⁴ Additionally, if there are amounts remaining available to NTIA after awarding the Digital Equity Capacity Grants to States in a given fiscal year, NTIA shall distribute those amounts to Eligible States to which NTIA has awarded Digital Equity Capacity Grants in accordance with the formula described at 47 U.S.C. §1723(d)(3)(A)(i). If additional Digital Equity Capacity Grant funds remain unclaimed following this distribution (for example, if one or more States decline the extra funds), the Assistant Secretary will add the remaining balance to the funds set aside for U.S. Territories and/or Native Entities.

After reviewing applications and determining which States are eligible to receive Capacity Grants, NTIA will apply the funding formula as detailed in Appendix A. NTIA and the U.S. Census Bureau have collaborated to create the “Digital Equity Act Population Viewer,” which shows Covered Population totals calculated by the Census Bureau for each state, alongside the other factors used as inputs into the funding formula. The Digital Equity Act Population Viewer can be accessed at <https://www.census.gov/data/data-tools/digital-equity-act-population.html>.

¹² 47 U.S.C. §1302(b).

¹³ 47 U.S.C. §1723(d)(3)(A)(iv).

¹⁴ 47 U.S.C. §1723(d)(3)(A)(ii).

b. Tentative State Award Allocation Amount

Tentative award allocation amounts per State, assuming that each State seeks and receives Digital Equity Capacity Grant funds, are as follows:

State	Amount	State	Amount
Alabama	\$13,702,566.00	Montana	\$6,938,534.64
Alaska	\$5,631,769.64	Nebraska	\$6,500,627.76
Arizona	\$16,170,760.44	Nevada	\$9,200,546.13
Arkansas	\$10,161,429.01	New Hampshire	\$4,942,018.62
California	\$70,226,453.82	New Jersey	\$18,094,857.62
Colorado	\$12,368,261.03	New Mexico	\$8,673,975.84
Connecticut	\$9,183,114.07	New York	\$36,984,641.81
Delaware	\$4,816,482.10	North Carolina	\$22,456,097.01
District of Columbia	\$3,804,000.00	North Dakota	\$4,549,772.25
Florida	\$41,748,794.74	Ohio	\$23,291,991.74
Georgia	\$22,455,639.68	Oklahoma	\$11,233,311.64
Hawaii	\$6,017,160.03	Oregon	\$9,947,586.17
Idaho	\$6,305,226.45	Pennsylvania	\$25,508,473.61
Illinois	\$23,732,912.78	Puerto Rico	\$9,807,187.39
Indiana	\$15,096,770.19	Rhode Island	\$4,540,059.53
Iowa	\$8,442,129.37	South Carolina	\$12,846,583.30
Kansas	\$8,229,246.17	South Dakota	\$5,010,234.08
Kentucky	\$12,123,531.39	Tennessee	\$15,814,288.00
Louisiana	\$12,727,887.98	Texas	\$55,641,147.86
Maine	\$5,784,349.60	Utah	\$7,795,149.91
Maryland	\$13,427,134.17	Vermont	\$5,299,150.18
Massachusetts	\$14,133,924.00	Virginia	\$18,330,732.47
Michigan	\$20,585,775.60	Washington	\$15,983,291.58
Minnesota	\$12,033,288.01	West Virginia	\$9,011,588.00
Mississippi	\$10,752,090.73	Wisconsin	\$13,248,029.83
Missouri	\$14,237,940.09	Wyoming	\$5,251,485.99

NTIA emphasizes that these allocations are tentative, and that a State's final allocation could be higher or lower than the amount listed here, depending on factors including the number of States that elect to participate in the program and the results of any challenges to this allocation.

c. Allocation Challenge Process for State Awards

As provided in the Digital Equity Act,¹⁵ a State may challenge the amount allocated to it as determined by the funding formula outlined in this NOFO. Any State that wishes to challenge the tentative award amount listed above shall submit a letter to the Assistant Secretary, through the NTIA programmatic contact listed in Section V of this NOFO, signed by the governor or equivalent official, within fourteen (14) calendar days of the publication of this NOFO. The letter shall describe, in as much detail as practicable, the error or other defect that the State believes to have occurred in NTIA's application of the formula or statutory requirements. The Assistant Secretary will determine the validity of the challenge and respond to the State in writing within twenty-one (21) calendar days of the end of this fourteen (14) day period. If the Assistant Secretary determines that a recalculation of formula amounts is appropriate, the Assistant Secretary will promptly notify the other States of this occurrence and of the results of any amendment to award amounts for all States. Additionally, a State receiving a Capacity Grant Award may challenge the amount allocated to it as determined by the funding formula after receiving its award in accord with this subsection, although NTIA strongly encourages States that wish to challenge funding allocations to do so within fourteen (14) calendar days of publication of this NOFO.

d. Awards to U.S. Territories and Possessions

47 U.S.C. §1723(i)(3) requires the Assistant Secretary to reserve not less than one (1) percent of the total funds appropriated in a given fiscal year to carry out the Program to award grants to, or enter into contracts or cooperative agreements with, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States that is not a State, to enable those entities to carry out the activities described in the statute.¹⁶ Consistent with the Digital Equity Act, NTIA has reserved one (1) percent of the funds made available for fiscal years 2022, 2023, and 2024¹⁷ (\$8,400,000) for this purpose. Further, the Assistant Secretary tentatively allocates \$2,100,000 to each of: (a) the United States Virgin Islands, (b) Guam, (c) American Samoa, and (d) the Commonwealth of the Northern Mariana Islands, for the purpose of implementing the Digital Equity Plans each U.S. Territory has developed pursuant to 47 U.S.C. §1723(c). This tentative funding amount may be modified if one of the named U.S. Territories does not apply, applies but fails to receive a grant under this Program, or is awarded a grant for an amount less than the tentative allocation identified in this NOFO.

¹⁵ See, 47 U.S.C. §1723(d)(3)(C).

¹⁶ See, 47 U.S.C. §1723(i)(3).

¹⁷ Due to the sequencing of the State Digital Equity Planning and Capacity Grant Programs mandated by the IIJA and the statute's annual release of funds, funding from fiscal years 2022 and 2023 are being included in this NOFO along with fiscal year 2024 Digital Equity Capacity funding.

5. Type of Funding Instrument

The funding instrument for awards made to States pursuant to this NOFO will be a grant. NTIA also expects to award grants to U.S. Territories, although NTIA and the NIST Grants Officer¹⁸ reserve the right to issue cooperative agreements or contracts to such entities in accordance with 47 U.S.C. §1723(i)(3).

B. ELIGIBILITY INFORMATION

1. Eligible Applicants

Each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, that has completed a Digital Equity Plan that meets the requirements of 47 U.S.C. §1723(c) is eligible to apply for grants under this program. The governor or equivalent official of each State that wishes to be awarded a grant must designate an Administering Entity for that State to receive and administer the grant.¹⁹ The Administering Entity selected for the purposes of the Planning Grant Program must also administer the State's Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to serve as the Administering Entity for both programs. *See* Section I.C.2 of this NOFO for the definition of "Administering Entity," including the list of entities eligible to serve as Administering Entities and the roles and responsibilities of an Administering Entity.

U.S. Territories that submit a Digital Equity Plan consistent with the obligations of their State Digital Equity Planning Grant award are eligible to apply for grants under this program. The Administering Organization selected by the U.S. Territory for the purposes of the State Digital Equity Planning Grant Program must also administer the State Digital Equity Capacity Grant Program, unless the governor (or equivalent official) selects a new entity to serve in this role.

2. Cost Sharing or Matching

The Digital Equity Act authorizing the establishment of this program does not contain a statutory non-federal cost sharing or matching funds requirement. Accordingly, NTIA will not require a State or U.S. Territory applying for a financial assistance award under this program to provide a non-federal cost contribution and will not give additional consideration during the evaluation process for applications proposing a non-federal cost-sharing arrangement.

¹⁸ The National Institute of Standards and Technology ("NIST") has been delegated the authority to act as the Grants Officer for the Department of Commerce and provides the business management and administrative platforms necessary to manage the Digital Equity Act grants on behalf of NTIA.

¹⁹See, 47 U.S.C. §1723(b).

C. APPLICATION AND SUBMISSION INFORMATION

1. Address to Request Application Package

Application forms and instructions are available on the NTIA Grants Portal at <https://grants.ntia.gov> and on its BroadbandUSA website <https://broadbandusa.ntia.gov>. Applicants should follow instructions set forth below and are encouraged to submit their applications early.

NTIA recommends that applicants participate in application technical assistance webinars and review the program and application guidance that will be posted on NTIA's BroadbandUSA website <https://broadbandusa.ntia.gov>. Applications 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.

2. Content and Form of Applications

State and U.S. Territory applications for Capacity Grants under the State Digital Equity Capacity Grant Program must be complete, must adhere to the instructions provided in this NOFO, and must be submitted in the format requested in the NTIA Grants Portal (<https://grants.ntia.gov>).

Any State or Territory applying for a State Digital Equity Capacity Grant must submit an application that includes the following information:

- a. A description of the entity selected to serve as the Administering Entity for the State (*see* definitions set forth in Section I.C of this NOFO) or in the case of a U.S. Territory, the Administering Organization.
- b. A Digital Equity Plan for the State meeting the requirements of 47 U.S.C. §1723(c) or the Digital Equity Plan for the Territory meeting the requirements of the Digital Equity Planning Grant award of the Territory.
- c. A certification that the State or Territory, acting through the Administering Entity for the State or through the Administering Organization for the Territory, shall not later than five (5) years after the date on which the Assistant Secretary awards the Capacity Grant to the State or Territory:
 - i. Implement the Digital Equity Plan of the State or Territory; and
 - ii. Make subgrants in a manner that is consistent with the aims of the Digital Equity Plan.

- d. The assurances required under 47 U.S.C. §1723(e) and set forth in Appendix C to this NOFO.
- e. Project Narrative. The Project Narrative should provide an overall implementation strategy that is consistent with the Digital Equity Plan and that promotes the purposes of the Digital Equity Act and this NOFO. The Project Narrative must describe the details of each specific project and activity to be funded by the State Digital Equity Capacity Grant Program that has been identified at the time of application submission (*see* Section II.C.3 of this NOFO for examples of permissible projects and activities). If at the time of application, a State or Territory has not yet identified all of the projects to be used for Digital Equity Plan implementation, or is unable to provide all of the project details listed below, this information must be submitted to NTIA via the NTIA Grants Portal as soon as practicable, but **no later than nine (9) months from the award start date**, unless extended in writing by the Grants Officer, and will be subject to review and written approval by the Grants Officer before a State may draw down funds to implement the project(s) at issue. The Project Narrative must include:
 - i. An Executive Summary of the overall implementation strategy and the project(s) to be funded (approximately 500 words). Please note, 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* 15 C.F.R. §4.9(b) concerning the designation of business information by the applicant.
 - ii. Identification of the elements of the Digital Equity Plan to be implemented in this initial allocation of Capacity Grant Program funding, whether specific elements of the plan or specific Covered Populations are being prioritized, and the rationale for prioritizing those elements or Covered Populations consistent with the needs assessment within the Digital Equity Plan.
 - iii. For each of the specific implementation projects or activities to be funded by the State Digital Equity Capacity Grant Program, include:²⁰
 - 1) A brief summary of the specific activity or set of activities the project intends to complete or implement;
 - 2) The barrier(s) to digital equity the project will address;

²⁰ If the information requested below is not available at the time the application is submitted, it must be submitted to NTIA via the NTIA Grants Portal within nine (9) months of award date.

- 3) The measurable objectives to be pursued and the data to be collected to demonstrate success in meeting these objectives including quantitative baseline data;
 - 4) The Covered Populations to be served and the estimated number of individuals within those Covered Populations to be served;
 - 5) The specific geographies to be served (if not State-or Territory-wide);
 - 6) Whether the State or Territory acting through its Administering Entity or Administering Organization (as applicable) will implement the activity directly or subgrant funds to implement the activity;
 - 7) If the State or Territory will subgrant the funds, the entity implementing the proposed project (if known at the time of application) including a description of its capacity to manage the project;
 - 8) How the proposed project or activity will be evaluated to determine successful implementation of the Digital Equity Plan of the State or Territory, including specific references to the Digital Equity Plan and quantitative baseline data; and
 - 9) Estimates of the anticipated outputs of each activity or project. (For example, the number of hours of training to be provided, the curricula to be developed, or the number of certifications to be awarded).
- iv. Confirmation that the State or Territory will not use more than twenty (20) percent of the award amount to update its Digital Equity Plan, the activities it intends to conduct to update the Plan, and a timeline for updates, including publication for public comment;
 - v. A description of the ongoing collaboration efforts the State or Territory will conduct with key stakeholders in the State or Territory as listed at 47 U.S.C. §1723(c)(1)(D);
 - vi. To the extent the applicant intends to use subgrantees to implement grant projects and activities, a description of the process by which subgrantees will be selected and the safeguards in place to ensure the selection process fosters a sense of fairness and accountability by being open, transparent, equitable, and inclusive;
 - vii. A description of the overall plan to evaluate how the proposed projects and activities will achieve the goals of the Digital Equity Plan;
 - viii. A description of how the project's success will be measured across the digital equity outcomes identified at 47 U.S.C. §1723(c)(1)(C):
 - 1) economic and workforce development,
 - 2) education,

- 3) health,
 - 4) civic and social engagement,
 - 5) delivery of other essential services, and
 - 6) any other digital equity outcomes specified in the Digital Equity Plan.
- ix. A description of how the benefits delivered to the Covered Populations will be measured to the extent not addressed above, and a description of any other proposed research activities, as applicable.
 - x. A Project Plan including:
 - 1) A description of all major project activities and timelines, including key milestones and when each major project activity will start and end; and
 - 2) A description of how progress on measurable objectives will be tracked and recorded alongside key milestones.
 - xi. A description of the safeguards the applicant will put in place to prevent waste, fraud, and abuse in the implementation of the program.
- f. A detailed description of how the State or Territory's implementation of the Digital Equity Plan, through Digital Equity Capacity Grant Program funding, will benefit each of the Covered Populations located within that State or Territory.
 - g. A certification that the Capacity Grant funds will be used to supplement, not supplant, other federal or State funds that have been made available to carry out the activities in the Digital Equity Plan and this NOFO.
 - h. A description of all other funding sources (including funding applied for) the State or Territory intends to use to implement its Digital Equity Plan, the amount allocated, and the specific Digital Equity Plan elements they will fund. Applicants should include in this funding description other federal programs, State or local government programs, and any private for-profit or not-for-profit funding. This description should include an explanation as to how this alternative funding is being used in a way that does not supplant, conflict with, or duplicate the activities for which the Capacity Grant Funds will be used.
 - i. A Consolidated Budget Form: All budget information in the Consolidated Budget Form must support the dollar amounts identified in the SF-424 and demonstrate that the project or activity meets the eligible use requirements in the Digital Equity Act and this NOFO. The Consolidated Budget Form consists of a budget narrative and a detailed budget spreadsheet. The budget narrative must explain the necessity and basis for all costs, clearly correspond to the information included in the detailed budget spreadsheet and reflect only allowable costs that are consistent with the project scope. Allowable costs are determined in accordance with the cost principles identified in 2 C.F.R. Part 200,

including Subpart E of such regulations and in 48 C.F.R. Part 31 for commercial organizations, as well as the Digital Equity Act. The detailed budget spreadsheet must reflect the cost categories that appear on the SF-424 and include itemized calculations for each cost placed under those categories.

The budget should account for the State or Territory's administrative costs, capped at three (3) percent of the grant amount, program evaluation costs, capped at five (5) percent of the grant amount, and Digital Equity Plan updates and maintenance, capped at twenty (20) percent of the grant amount (*see* Section II.C.3. below regarding limitations on plan updates and maintenance, program evaluation and administrative costs). For this purpose, the three (3) percent limitation on administrative costs includes the combined total of indirect and direct administrative costs charged to an award. **The applicant must clearly describe in the budget narrative how it applied or calculated the three (3) percent limitation on administrative costs.** If indirect costs are included in the proposed budget, the applicant must provide a copy of the approved negotiated indirect cost rate agreement if this rate was negotiated with a cognizant federal agency or otherwise document those indirect costs consistent with 2 C.F.R. 200.414.

- j. The following standard federal financial assistance forms and documentation:
 - i. Standard Form 424: Application for Federal Assistance;
 - ii. CD-511 Certification Regarding Lobbying;
 - iii. Standard Form LLL, Disclosure of Lobbying Activities (if applicable); and
 - iv. Negotiated Indirect Cost Rate Agreement (as applicable).

States and Territories that comply with the application requirements and that are deemed eligible to receive Capacity Grant funds will be informed of their final award amounts once NTIA reviews applications and makes determinations with respect to any challenges. If a final award amount differs from the tentative amount listed in this NOFO, NTIA may amend the award amount for the affected State or Territory. Applicants should bear in mind that the funding allocations listed in Section II.A.4.b of this NOFO could change based on the number of applicants that apply for funding or challenges to funding allocations, and that changes to the funding allocations could occur prior to or after an award has been made, depending upon when the initial application is submitted, reviewed, and when the revised formula allocations are determined by NTIA. If the allocation amount for an award changes from the tentative amounts listed in Section II.A.4.b of this NOFO, NTIA will provide instructions to the applicant regarding the revised application materials that must be submitted for review and the associated award process for their application.

3. Funding Restrictions

a. Allowable Uses of State Digital Equity Capacity Grant Funds

Grant recipients may only use federal award funds to pay for allowable costs under the Digital Equity Capacity Grant 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 and 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. Grant funds may be used to cover only eligible costs incurred by the recipient during the period of performance, and for allowable costs incurred by the recipient during the grant closeout process.

Applicants must comply with the requirements of 47 U.S.C. §1723(d)(3)(D) of the Digital Equity Act and this NOFO. An Eligible State or Territory to which a State Digital Equity Capacity Grant is awarded must, through its designated Administering Entity or Administering Organization (as applicable), use the grant funds **only** for the following purposes:

- i. To update or maintain the State Digital Equity Plan of the State or Territory, provided, however, that the awardee may not use more than twenty (20) percent of the amount of the grant for this purpose.
- ii. To implement the State Digital Equity Plan of the State or Territory.
- iii. To make subgrants to any of the eligible entities identified at 47 U.S.C. §1724(b) that are located in the State or Territory to: (a) assist in the implementation of the Digital Equity Plan of the State or Territory; (b) pursue digital inclusion activities in the State or Territory consistent with the Digital Equity Plan of the State or Territory; and (c) report to the State or Territory regarding the digital inclusion activities of the entity.

Before an Administering Entity or Administering Organization may award a subgrant, the Administering Entity or Administering Organization must require that the entity to which a subgrant is to be awarded certify that:

- 1) The entity shall carry out the activities required under items (a), (b), and (c) of this subsection;
- 2) The receipt of the subgrant shall not result in unjust enrichment of the entity; and
- 3) The entity shall cooperate with any evaluation of the program as it relates to a grant awarded to the entity and that is carried out by or for the Administering Entity or Administering Organization, the Assistant Secretary, or another federal official.

Failure to comply with these certification requirements will result in appropriate enforcement action in accordance with 2 CFR 200.339, up to and including termination under a Capacity Grant Program award.

- iv. To evaluate the efficacy of the efforts funded by grants made to subgrantees under paragraph iii above, provided that the Administering Entity or Administering Organization may not use more than five (5) percent of the amount of the grant for this purpose.
- v. For administrative costs (exclusive of costs for program evaluation and updating the Digital Equity plan) incurred in carrying out the activities described above, provided that an Administering Entity or Administering Organization may not use more than three (3) percent of the amount of the grant for this purpose.

b. Focus of Programs and Permitted Activities

NTIA recognizes that Digital Equity Plans will contain a wide variety of potential programs, activities, and interventions, and encourages the development of new and innovative strategies to address the barriers to digital equity. These programs must focus on creating the necessary conditions to empower individuals and communities with the technological capacity to fully participate in society and the economy. In examining whether a proposed strategy or intervention furthers the goals of the State Digital Equity Capacity Grant Program and the State or Territory's Digital Equity Plan, grant recipients must consider the following criteria and focal points:

- i. **Focus on Covered Populations:** The project should align with the Digital Equity Plan's goals and objectives, and the priorities of the Covered Populations being served, including subgroups within each Covered Population. Priority should be given to projects with the greatest potential impact, such as targeting Covered Households (i.e., low-income individuals) within other Covered Populations.
- ii. **Long-lasting and Meaningful Change:** Digital Equity Plans are intended to address the systemic barriers and gaps to digital access. Projects/activities should reflect this goal and consider the sustainability of initiatives created through this funding.
- iii. **Measurable Implementation Strategies:** Proposed programs and activities should be based on objectives that are measurable, achievable, sustainable, timebound, and are designed to address identified disparities directly and logically.
- iv. **Stakeholder Engagement:** Stakeholders who are directly affected by the proposed strategies and interventions should be involved to encourage ongoing feedback regarding the effectiveness of the interventions and to seek input on potential solutions and improvements.

The following are examples of potential programs, activities, and interventions States and Territories may consider adopting consistent with the objectives identified for Digital Equity Plans in 47 U.S.C. §1723 (c)(1)(B) and with the purposes of the Digital Equity Act. This list is not considered exhaustive, and as noted above, States and Territories are encouraged to develop new and innovative strategies.

- **Digital Literacy and Skills Training:** Develop and implement digital literacy and skills programs that provide training and education to members of the Covered Populations on the use of digital tools, accessing online resources, and practicing safe and responsible online behavior, including programs that focus on youth training. The program may address issues such as online safety, prevention of online harassment and abuse (“cyberbullying”), privacy, and digital financial literacy, and may include the development of digital opportunity centers where individuals can access technology, receive training, and receive assistance with digital tasks.
- **E-Government and Civic Engagement:** Develop digital tools that enable online community engagement and empower individuals to participate in the democratic process, including digital tools that make it easier for individuals to register to vote and participate in civic activities. Develop online resources for legal assistance, government aid programs, and access to justice services for those in need. Enable access to social services, benefits, and government resources through digital platforms, simplifying processes and reducing barriers, including accessibility for people with disabilities.
- **Device Distribution Programs:** Provide devices such as laptops, smartphones, tablets, or other internet-enabled devices that are both practical and responsive to the digital inclusion needs of the Covered Populations, prioritizing individuals, or groups, with the greatest need. Eligibility criteria should be clearly defined and include appropriate safeguards, such as periodic financial audits and asset management systems. Digital literacy and skills training must be an integral part of any device distribution program to ensure that the beneficiaries receive training on how to use the devices effectively, access online resources, navigate digital platforms, use accessibility features, and employ best practices to protect their personal information and data.
- **Economic Development:** Support digital entrepreneurship, online job training, and remote work opportunities, fostering economic empowerment and reducing disparities. Create and/or promote programs and platforms that offer job training and remote work opportunities, helping members of the Covered Populations secure employment and gain economic self-sufficiency. Engage young people within the Covered Populations in digital economic activities that involve digital skills development that will lead to a constructive path to financial independence, a sense of purpose, and shared responsibility to positively contribute to their communities.
- **Online Access to Health and Mental Wellness Services:** Provide tools that directly help patients and end users within the Covered Populations to access healthcare services online, particularly in remote or underserved areas, to reduce health disparities. Expand mental

health crisis training to Covered Population youth through digital channels utilizing interactive and multimedia elements to make the online training more engaging and effective. Promote patient use and adoption of digital health records, access to medical and health services, and improved healthcare coordination. Such programs should focus on the Covered Populations and not health or wellness providers or institutions.

- **Online Accessibility**: Programs to ensure that websites and applications are designed with accessibility in mind, making them usable by individuals with disabilities. In addition, projects that provide improved digital access to emergency communications that enhance the ability of emergency response personnel to provide timely, effective, and life-saving interventions that can ensure the health and safety of individuals with disabilities, particularly those who are deaf, hard of hearing, blind, low vision, deafblind, deafdisabled or speech-disabled. To address concerns for individuals with a language barrier, ensure that online services are available in multiple languages, including culturally responsive American Sign Language, to enhance accessibility to education, employment, healthcare, housing, essential services, civic engagement, and critical life-saving interventions.
- **Access to Affordable Broadband Service**: Promotion of programs to provide low-cost services administered by the Federal Communications Commission, as well as any other relevant local, State, or federal programs, should take precedence. While an Eligible Entity may establish a new affordable access program, it must first conduct a thorough assessment and inventory of existing subsidy programs, grants, or other resources available, leverage those existing resources, and use them as the primary source of funding while using the funding from this Program as a last resort. Any affordable access program shall provide digital literacy and skills training to empower program participants on how to use digital resources effectively and may not exceed ten (10) percent of the total amount of the grant award.

The Assistant Secretary reserves the right not to award State Digital Capacity Grant Program funding with respect to projects or activities NTIA deems to be inconsistent with the Digital Equity Act or with the purposes of the Digital Equity Plan.

c. Prohibited Uses of State Digital Equity Capacity Grant Funds

i. Twenty (20) Percent Cap on Digital Equity Plan Updates

No more than twenty (20) percent of the amount of the grant may be used to update or maintain the Digital Equity Plan of the State or of the Territory (as applicable).

ii. Five (5) Percent Cap on the Evaluation of Program Efficacy

No more than five (5) percent of the amount of the grant may be used to evaluate the efficacy of the efforts funded by grants made to subgrantees to: (a) assist in the implementation of the Digital Equity Plan of the State or Territory; (b) pursue digital inclusion activities in the State or

Territory consistent with the Digital Equity Plan of the State or Territory; and (c) report to the State or Territory regarding the digital inclusion activities of the entity.

iii. Three (3) Percent Cap on Administrative Costs

No more than three (3) percent of the amount of the grant may be used for administrative costs (exclusive of costs for program evaluation and updating the Digital Equity plan) in carrying out allowable activities under this Program and described in a State Digital Equity Capacity Grant Program (“SDECGP”) award. For this purpose, the three (3) percent limitation on administrative expenses includes the combined total of indirect and direct administrative costs charged to an award. The applicant must clearly describe in the budget narrative how it applied or calculated the three (3) percent limitation on administrative costs.

iv. Ten (10) Percent Cap on Affordable Broadband Programs

No more than ten (10) percent of the amount of the grant may be used to fund subsidies for the provision of broadband services through affordable broadband programs.

v. Prohibition on Supplanting and on Certain Website Upgrades

Pursuant to 47 U.S.C. §1723(h), a grant or subgrant awarded under the State Digital Equity Capacity Grant Program shall supplement, not supplant, other federal or State funds that have been made available to carry out activities described at 47 U.S.C. §1723 and in this NOFO. Broadband Equity, Access, and Deployment Program funds, including funds used for non-deployment expenditures, are subject to separate financial assistance award terms and conditions and must not be supplanted by State Digital Equity Capacity Grant Program funding. In addition, grantees are prohibited from using Capacity Grant funds to conduct website upgrades or other accessibility projects that are otherwise required by law.

vi. Prohibition on Broadband Deployment Funding

In general, deployment of broadband infrastructure to connect broadband serviceable locations should be accomplished through other programs, including the Broadband Equity, Access, and Deployment program. However, to the extent that installation of broadband infrastructure is necessary to accomplish an eligible program, activity, or intervention (e.g., installing fixed equipment on a building as part of a strategy to promote access to affordable broadband service), additional information will be required to determine the potential for environmental impacts under the National Environmental Policy Act (42 U.S.C. §4321 *et seq.*) and potential impacts to historic properties under the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*). Additionally, any portion of a State Digital Equity Capacity Grant Program award that will be used for an “infrastructure project” (as defined in 2 C.F.R. 184.3) is subject to the Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52) and to the regulations promulgated thereunder at 2 C.F.R. part 184). See Section IV.D.4. of this NOFO for additional information concerning the Build America, Buy America requirements for this program. In accordance with section 60506 of the Infrastructure Act, the Federal Communications

Commission adopted rules to prevent digital discrimination of access on the basis of income level, race, ethnicity, color, religion, or national origin. 89 Fed. Reg. 4128 (Jan. 22, 2024); 47 U.S.C. 1754.

vii. Prohibition on Profit or Fees

A profit, fee, or other incremental charge above actual cost is not an allowable cost under this Program.

viii. Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining

Grant funds awarded pursuant to this program may not be used, whether directly or indirectly as an offset for other funds, to support or oppose collective bargaining.

4. Subgrantee Selection Process

Each State or U.S. Territory applying for Capacity Grant funds must establish, through its Administering Entity or Administering Organization, a fair, transparent, equitable, and inclusive process, consistent with applicable State or Territory laws and administrative requirements, for selecting and conducting risk assessments (*see*, 2 C.F.R. §200.332(b)) of subgrantees if they intend to subgrant all or a portion of their award funds to other entities to implement digital equity projects. The applicant's selection processes must be made clear to potential subgrantees before subawards are made. NTIA strongly encourages States and Territories to take deliberate steps to ensure that subgrant opportunities are accessible to a diverse range of organizations, particularly those owned, led and/or managed by members of the Covered Populations.

5. Alternative Funding

Implementation of the State Digital Equity Plan need not be wholly funded by the State Digital Equity Capacity Grant Program. In many cases, State Digital Equity Plans are designed to leverage multiple funding sources and partnerships to achieve their objectives, including other federal grants (such as the Broadband Equity, Access, and Deployment Program), private sector partnerships, philanthropic organizations, and local government investments. To maintain financial transparency and ensure the effective use of funds, any State or Territory that plans to use multiple funding sources in the implementation of its Digital Equity Plan must submit with its application a description of all other funding sources the State or Territory intends to use, the amounts to be allocated, and the specific Digital Equity Plan elements to be funded using alternative sources. Please note that provision of this information to NTIA will not impact the amount of Capacity Grant Program funding allocated to a particular State or Territory, which is determined by formula for States. *See* Section II.A.4. of this NOFO for the funding allocations for States and Territories.

As part of the final award close out process, the State or Territory, through its Administering Entity or Administering Organization, must submit to NTIA a list of the alternative funding

sources used and the elements of the Digital Equity Plan implemented using alternative funds. If no other funds are used to implement the DE Plan a statement indicating that no other funds were used to implement the Digital Equity Plan will suffice.

6. Certifications Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the State Digital Equity Capacity Grant Program, the applicant is making the certifications outlined in Appendix B to this NOFO (*see* Line 21 on the SF-424, Application for Federal Assistance).

7. System for Award Management (SAM)

Pursuant to 2 C.F.R. Part 25, an applicant or recipient (as the case may be) is required to: (i) be registered in SAM before submitting its complete application packet; (ii) provide a valid unique entity identifier (UEI) 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. 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.

a. SAM Unique Entity Identifier

All applicants must supply a SAM Unique Entity Identifier (UEI) number. As of April 4, 2022, the U.S. government stopped using the Dun and Bradstreet (D&B) Data Universal Numbering System (D-U-N-S) nine-digit number as the unique identifier for entities throughout the federal awarding cycle, in [SAM.gov](https://sam.gov), Integrated Award Environment (IAE) systems, required forms, or in downstream government systems. Now, entities doing business with the federal government must use the Unique Entity ID created in [SAM.gov](https://sam.gov). Applicants who are new to [SAM.gov](https://sam.gov) may register their entity or receive a UEI by signing into [SAM.gov](https://sam.gov) and selecting “Get Started,” then “Register Entity.” If you are a sub-awardee who just needs a UEI for subaward reporting, choose “Get Unique Entity ID.”

For more information on the retirement of the DUNS, as well as the establishment of an entity’s UEI, please visit <https://www.sam.gov>.

b. SAM Registration

All applicants must register with SAM before submitting an application pursuant to this program. Additionally, the applicant must maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Applicants can register for the SAM at

<https://www.sam.gov/>. Entities without an active [SAM.gov](https://www.sam.gov/) registration and/or UEI at the time of application submission and award may be deemed ineligible for a grant award.

8. Submission Dates and Times

Applications for the State Digital Equity Capacity Grant Program must be complete and must adhere to the instructions provided in this NOFO and be submitted in the format required by the NTIA Grants Portal (www.grants.ntia.gov). For States, complete applications must be received by the NTIA application portal **no later than 11:59 p.m. Eastern Time (ET) on May 28, 2024**. For Territories, complete applications must be received by the NTIA application portal **no later than 11:59 p.m. Eastern Time (ET) on July 31, 2024**.

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](https://www.sam.gov/)) and (b) the free annual registration process in [SAM.gov](https://www.sam.gov/) generally takes between three (3) and five (5) business days but can take more than three (3) weeks.

NTIA expects to complete its review, select successful applicants, and begin award processing for States by **August 28, 2024**. NTIA may, subject to NIST Grants Office Approval, announce awards made under the State Digital Equity Capacity Grant Program on a rolling basis.

9. 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 applicants are required to submit a copy of their applications to their designated state Single Point of Contact (SPOC) offices.²¹

10. Material Representations and Public Disclosure

All forms and supporting documents submitted as part of the application packet will be treated as a material representation of fact upon which NTIA and NIST’s Grant Management Division will rely in awarding grants. Applicants acknowledge and understand that any false, fictitious, or fraudulent statements (or concealment or omission of a material fact) in the forms and supporting documents, including any required certifications or disclosures, submitted to NTIA may subject applicants to criminal prosecution (including under 18 U.S.C. § 1001 and/or 1621), and may subject applicants to civil and administrative penalties and other remedies. Applicants should be aware that NTIA, in coordination with the NIST Grants Officer, may make all or portions of their applications for grants under the State Digital Equity Capacity Grant Program publicly

²¹ The current Intergovernmental Review Listing (SPOC List) is accessible at: <https://www.whitehouse.gov/wp-content/uploads/2023/06/SPOC-list-as-of-2023.pdf>

available as required under applicable federal laws. *See* Section VI.B of this NOFO for additional information concerning the confidentiality of information contained in an application.

11. Other Submission Requirements

States and U.S. Territories must submit complete application packets electronically through the NTIA Grants Portal (<https://grants.ntia.gov>). Complete applications or portions thereof submitted by a State or U.S. Territory by postal mail, courier, email, facsimile, or other means will not be accepted.

a. Timely Receipt Requirements and Proof of Timely Submission

Online Submission. Proof of timely submission is automatically recorded by the NTIA Grants 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 Organizational 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.

b. Amendments

Any amendments to this NOFO or additional program guidance will be announced on [NTIA.gov](https://www.ntia.gov), [Internetforall.gov](https://www.internetforall.gov), and [BroadbandUSA.NTIA.gov](https://www.broadbandusa.ntia.gov).

D. APPLICATION REVIEW INFORMATION

1. Overview

All States and Territories that meet the requirements set forth at 47 U.S.C. §1723(d) and in this NOFO, including but not limited to the application requirements set forth in Section II.C of this NOFO, will be eligible to receive an award in the amount calculated pursuant to Section II.A.4 of this NOFO. NTIA reserves the right at any time during the application review processes to negotiate with the applicant relative to specific modifications to the application.

2. Initial Eligibility and Administrative Review

NTIA's Program Office staff will conduct an initial eligibility and administrative screening of submitted applications to ensure that the applicant is eligible to receive funding under the program and has submitted a complete application. Applications not submitted by an Eligible State or by an eligible U.S. Territory will be eliminated from further review. NTIA may continue the 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. In such cases, NTIA may ask the applicant to provide any missing or incomplete materials during this initial review.

3. Merit Review

Once an application is deemed eligible and complete, NTIA's program office will initiate a merit review, to be conducted by at least one merit reviewer who is technically and professionally qualified to conduct the review. Merit reviewers may be federal employees or non-federal persons. As applicable, merit reviewers 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. The merit reviewer(s) will review the application to ensure conformity with the program objectives, eligible activities, and related costs/budget as provided in 47 U.S.C. §1723(d) and in this NOFO. The purpose of this review is to provide advice to the Selecting Official as to the technical soundness and merits of the application. During the merit review, NTIA may ask applicants to submit additional information to clarify or to further substantiate the representations made in their applications. In addition, if deficiencies are identified during the merit review, the applicant may be contacted by NTIA and asked to revise the application accordingly.

4. Award Process

The Assistant Secretary or his designee will recommend applications for funding based on the results of the review process in Section II.D of this NOFO. The final approval of applications and the issuance of awards pursuant to this NOFO will be made by the NIST Grants Officer, who serves as the Grants Officer for the State Digital Equity Capacity Grant Program. The award decisions of the NIST Grants Officer are final.

5. Federal Awarding Agency Review of Risk Posed by Applicant

After applications are proposed for funding, 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 (FAPIIS), which now resides in [SAM.gov](https://sam.gov) as the responsibility/qualifications (R/Q) reports. 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.

6. Anticipated Announcement and Award Dates

NTIA expects the earliest start date for awards under this NOFO to be **August 28, 2024**, and NTIA may issue State Digital Equity Capacity Grant Program awards on a rolling basis.

III. NATIVE ENTITIES – APPLICATION REQUIREMENTS AND INFORMATION

This Section provides information for Native Entities regarding the competitive process for obtaining Digital Equity Capacity Grants, including award eligibility, the application and submission process, and review criteria. Information for States and U.S. Territories regarding Digital Equity Capacity Grant funding is found in Section II above.

A. FEDERAL AWARD INFORMATION

1. Funding Availability

47 U.S.C. §1723(i)(2) requires NTIA to set aside not less than five (5) percent of the total funds appropriated for the State Digital Equity Capacity Grant Program each fiscal year “to award grants to, or enter into contracts or cooperative agreements with, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations.” Congress appropriated \$840,000,000 for grants under the Capacity Grant Program in each fiscal year from 2022 to 2024 (\$840,000,000 for fiscal year 2022, \$300,000,000 for fiscal year 2023, and \$300,000,000 for fiscal year 2024).²² Accordingly, NTIA has set aside \$42,000,000 to Native Entities to satisfy the five percent set aside requirement for fiscal years 2022 through 2024. In addition, \$42,000,000 from the State Digital Equity Planning Grant Program will be made available to Native Entities for digital equity planning purposes. There was approximately \$300,000 of unclaimed funds available pursuant to the State Digital Equity Planning Grant NOFO.²³ In total, NTIA expects approximately \$45,300,000 to be available for Digital Equity Planning and Capacity Grants to Native Entities.

2. Period of Performance

Native Entities shall expend the grant funds during the 5-year period beginning on the date on which the Native Entity is awarded grant funds.²⁴

3. Performance Measurement and Evaluation

Recipients and sub-recipients are required to establish measurable objectives for documenting and promoting the goals of the Digital Equity Act as part of their program designs. Native

²² Because both 47 U.S.C. §1721(14)(B) and 47 U.S.C. §1723(d)(2)(B) require the completion of a State Digital Equity Plan before an Eligible State may apply for a State Digital Equity Capacity Grant, the State Digital Equity Capacity Grant Program could not be made available in 2022 and 2023.

²³ SDEPG NOFO, Section II.C.1, ft. n. 7, available at: <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/DE%20PLANNING%20GRANT%20NOFO.pdf>

²⁴ The five-year period begins on the first day of the period of performance identified in the grant agreement.

Entities must document and measure their implementation progress, and program completion, as well as the effectiveness of the funded projects in meeting the stated performance objectives. Entities must also protect personally identifiable information as required by 25 C.F.R. §200.10 and provide protection of human subjects as required by 45 C.F.R. Part 27.

Information collected must include the following data points:

a. Documentation of Program Activities

Recipients shall be required to provide information on the number and types of activities and interventions implemented, and to describe how the activities and interventions will impact the adoption and use of broadband, as well as the longer-term impacts on income, education, employment, housing, and health of the Covered Populations.

b. Performance Data

Recipients shall be required to provide performance data that shows the progress toward achieving program goals, such as the number of members of Covered Populations reached, and if the project involves multiple Covered Populations, the number, names, and locations of the Covered Populations (e.g., county, city), miles traveled, and outputs obtained as a result of the interventions.

c. Participant Assessments & Feedback

Recipients shall be required to collect feedback from participants on their experiences and to measure changes in knowledge, skills, attitudes, or behaviors. These assessments and feedback should be used for continuous improvement to the implementation of the projects.

d. Program Evaluation

At the end of the period of performance, a Native Entity receiving funds under either a Digital Equity Capacity Grant or a Digital Equity Planning Grant must submit an assessment of the effectiveness of the programs along with the results, protocols, and instruments used to collect the above data to NTIA. All program evaluation materials must be submitted as soon as practicable and no later than the final award closeout and may be posted publicly on NTIA's website.

4. Award Amounts

As outlined in Section III.A.1 above, NTIA has reserved \$42,000,000 for awards to Native Entities under the State Digital Equity Capacity Grant Program ("Capacity Grants"). In addition, \$3,000,000 previously set aside for Native Entities under the State Digital Equity Planning Grant Program, as well as approximately \$300,000 of unclaimed funds under the Planning Grant Program, will be made available through this NOFO ("Planning Grants"). Because of the limited

amount of funds available, and the significant amount of Native Entity interest expressed through Letters of Intent submitted in response to the State Digital Equity Planning Grant NOFO, the Assistant Secretary has determined that the most effective means of distributing this amount will be through a competitive application review process as described in Section III.D. of this NOFO.

Because of the relatively small amount of funds available for Planning Grant activities in the previous issues of the NOFO, Planning Grant funds will not be made available on a standalone basis. Instead, Planning Grant funds will only be awarded in conjunction with a Capacity Grant application (see, for example, Section III.C.2.c.iii and Section III.C.2.c.iv of this NOFO for additional detail regarding specific application requirements for these funds). Accordingly, Native Entities may submit an application for both Planning Grant funds and Capacity Grant funds, or Capacity Grant funds only. Planning Grant activities and Capacity Grant activities may be conducted simultaneously. Native Entities are not required to seek Planning Grant funding, but to the extent Planning Grant funds are requested, the request is capped at seven and one-quarter (7.25) percent of the total funds requested. NTIA expects to make awards to Native Entities on a competitive basis and in accordance with the application review process and criteria discussed in Section III.D. of this NOFO.

NTIA expects to make individual awards for the Planning Grant Program awards within a range of \$500,000 to \$2,000,000. This range is not a fixed minimum or maximum, but Native Entities requesting funding outside of this range must provide a reasonable explanation for the variation in project size. Applications for funding must include the total amount of funding being requested and must account for all activities that will utilize the requested funding.

5. Types of Funding Instrument

The funding instrument for awards made to Native Entities pursuant to this NOFO will be a grant; however, NTIA and the NIST Grants Officer reserve the right to enter into cooperative agreements or contracts with such entities in accordance with 47 U.S.C. 172 of the Digital Equity Act.

B. ELIGIBILITY INFORMATION

1. Eligible Applicants

Indian Tribes, Alaska Native entities, and Native Hawaiian organizations (collectively, “Native Entities”) are eligible to enter into grants with NTIA to carry out activities contemplated in this Program. To demonstrate eligibility, applicants must obtain a Tribal Government Resolution or equivalent formal authorization from the governing body of the Native Entity providing express

²⁵ To ensure the more limited Planning Grant Program funds are equitably distributed, NTIA is releasing these funds on a proportional basis.

authorities to apply for (1) Digital Equity Capacity Grant funds and Digital Equity Planning Grant funds and Digital Equity Capacity Grant funds on behalf of the Native Entity. A Native Entity may apply as part of a consortium but may only make a single application as outlined below. If applying as a consortium, the lead applicant must submit a Memorandum of Understanding with each Native Entity participating in the consortium demonstrating approval of the proposed projects and clearly articulating the consortium's benefits and responsibilities of each member.

Indian Tribes, Alaska Native Villages, and Native Hawaiian Organizations that appear on one of the following lists prior to the release of the application window, or that meet the criteria set forth below, satisfy the definition of Native Entity for purposes of this NOFO:

- U.S. Department of the Interior, Bureau of Indian Affairs, Indian Entities Recognized by and Eligible to Receive Service from the United States Bureau of Indian Affairs, 88 Fed. Reg. 2112 (Jan. 12, 2023), available at: <https://www.federalregister.gov/documents/2023/01/12/2023-00504/indian-entities-recognized-by-and-eligible-to-receive-service-from-the-united-states-bureau-of-indian-affairs>;
- Alaska Department of Natural Resources, Division of Mining, Land and Water, Index of Regional Native Villages, available at: <https://www.adnr.state.ak.us/mlw/paad/17b-easements/>;
- U.S. Department of the Interior, Office of Native Hawaiian Affairs, Native Hawaiian Organization Notification List, available at: <https://www.doi.gov/hawaiian/nhol>;
- U.S. Department of the Interior, Office of Native Hawaiian Relations, Precedent & Beneficiary Associations List, available at: <https://doi.gov/hawaiian/precedent-beneficiary-associations>; and
- The Department of Hawaiian Home Lands.

A Native Entity on one of the lists identified above may appoint a non-profit corporation authorized by the governing body of the Native Entity to administer Digital Equity Capacity Grant Program funds and Digital Equity Planning Grant Program funds on behalf of the eligible Native Entity. If a Native Entity intends to utilize an authorized non-profit organization for this purpose, the Native Entity should identify the organization in its application and discuss the role and activities of such organization.

a. Single Application

Given the high demand for funding under this Program, NTIA will allow only one application from each Native Entity. Each Native Entity must coordinate internally (which includes all departments, subsidiaries, etc.) in submitting its single application. A Native Entity's single application must include the total amount of funding being requested and must account for all Capacity Grant and Planning Grant Programs that will utilize the requested funding. Applicants

that submit an individual application cannot also be part of a consortium application. Additionally, a Native Entity may only participate in one consortium. If NTIA determines that a Native Entity is participating in multiple applications, this may significantly impact NTIA's review of all applications and may result in NTIA removing that entity from consideration for funding in both its individual application and any consortium application of which they are a party.

b. Eligibility of Consortium Application

NTIA encourages coordination and collaboration in addressing digital equity through the submission of an application on behalf of a consortium of multiple Native Entities (each of which must be eligible) in the same effective date. Applicants are not permitted to submit both an individual application and a consortium application. In addition, Native Entities that choose to apply as a consortium application may only be part of one consortium application.

c. Authorization by Governing Authority

Each Native Entity applying for Digital Equity Grant Program funds, whether as an individual application or as a consortium, is required to submit documentation demonstrating it is authorized by the governing authority of the Native Entity to apply for Planning and/or Capital funds.

Documentation demonstrating authorization to apply on behalf of a Native Entity should be in the form of a Tribal Resolution of Consent for Indian Tribes and for Alaska Native Villages, or, for other Native Entities, an equivalent formal authorization from the governing authority of the Native Entity. In the case of consortium applications, each member of the consortium application is required to submit documentation of an appropriate authorization from the applicable governing authority. Consortium applications submitted without authorizations from each Native Entity named in the application will be considered incomplete.

Additionally, if applying as a consortium, the lead applicant must submit an MOU with each Native Entity participating in the consortium demonstrating approval of the proposed projects and clearly articulating the specific benefits and responsibilities of each member. This MOU must include a commitment from the lead applicant to stay in regular communication with each member of the consortium regarding the status of awards and the progress of the proposed projects described.

NTIA will consider application(s) submitted without the appropriate authorizations and agreements as incomplete and may remove them from consideration for funding.

2. Cost Sharing or Matching

The Digital Equity Act authorizing the establishment of this Program does not contain a statutory non-federal cost sharing or matching funds requirement. Accordingly, NTIA will not require an

Eligible Native Entity applying for a financial assistance award under this Program to provide a non-federal contribution and will not give additional consideration during the evaluation process for applications proposing non-federal cost share.

C. APPLICATION AND SUBMISSION INFORMATION

1. Address and Application Package

Applications for Native Entities are available at the NTIA Grants Portal at <https://grants.ntia.gov/> and at www.broadbandusa.ntia.gov. Applications may be requested by email at digitalequity@ntia.gov or by postal mail addressed to:

Angela Thi Bennett
Director of Digital Equity
Office of Internet Connectivity and Growth
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Applicants should follow the instructions set forth below and are encouraged to submit their applications early.

NTIA recommends that applicants participate in application technical assistance webinars and review program application guidance that will be posted on NTIA's BroadbandUSA website <http://www.broadbandusa.ntia.gov>. Applicants are also urged to contact the application assistance team well in advance of the deadline to address any technical issues. Failure to properly apply for funds under the Capacity Grant Program by the deadlines established in this NOFO may result in losing this grant opportunity.

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.

2. Content and Form of Applications

Applications for the State Digital Equity Capacity Grant Program must be complete, must adhere to the instructions provided in this NOFO, and must be submitted in the format required by the NTIA Grants Portal (<https://grants.ntia.gov/>) and/or the required application templates. While Native Entities are highly encouraged to submit their applications through the NTIA Grants Portal, applications may be received through alternative means as specified below. Native Entities will be able to apply for both Planning Grant funds and Capacity Grant funds or apply for Capacity Grant funds alone. Digital Equity Planning Grant funds will not be made available on a standalone basis.

Native Entities applying for a State Digital Equity Capacity Grant (including Planning Grant funds) must submit an application that includes the following information:

- a. Documentation from the governing body of the Native Entity demonstrating the authority to make a commitment on behalf of the Native Entity, or each member entity in the case of a consortium.
- b. The lead applicant for a consortium application must submit a letter of support from each Native Entity participating in the consortium and a Memorandum of Understanding with each Native Entity demonstrating approval of the proposed project, clearly articulating the specific benefits and responsibilities of each member.
- c. A Project Narrative. The Project Narrative must address both requests for Digital Equity Planning Grants (as applicable) and Digital Equity Capacity Grants and provide an overall implementation strategy. The Project Narrative must show how the proposed projects will serve the Covered Populations, be relevant to the program description, statutory purposes set forth in 47 U.S.C. § 1723(d), and the evaluation criteria set forth in this NOFO. This section should include the following:
 - i. An Executive Summary of the proposed project (approximately 500 words), including a statement of whether Digital Equity Planning Grants are being requested. Please note that if the 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 information and outreach purposes. Applicants are advised not to include information that concerns business trade secrets or other confidential information or financial information as part of the Executive Summary. Also 15 U.S.C. § 4.9(b) concerning the designation of business information as confidential.
 - ii. To the greatest extent possible, data demonstrating the needs and barriers faced by the Native Entity's Covered Populations, including but not limited to:
 - 1) The poverty rate of the Native Entity (*i.e.*, the percentage of members of the Native Entity's population that live in Covered Households as defined at 47 U.S.C. §1721(7)).
 - 2) The number of Covered Populations to be served and the number of individuals within each Covered Population.
 - 3) The number of individuals in the Covered Populations lacking access to a computer, tablet, smartphone, or other device that enables Internet access.
 - 4) The number of individuals within the Covered Populations not using or not subscribing to the Internet.
 - 5) Other data that demonstrates need.

iii. **Digital Equity Planning Grant Funds:** If the Native Entity seeks Digital Equity Planning Grant funds, a description of the specific planning activities the Native Entity intends to undertake and the manner in which these activities will be consistent with 47 U.S.C. §1723(c), including a description of the outputs of those activities, a timeline for completing those activities, and a strategy to share the results of its planning. For example, a Digital Equity Plan, with its results for the community and the broader public, a Digital Equity Plan may include:

- 1) A vision statement;
- 2) Outreach and engagement with the Covered Populations for the purpose of identifying barriers to digital equity and conducting a needs assessment;
- 3) Identification of the barriers to digital equity faced by the members of the Covered Populations;
- 4) Measurable objectives that address barriers to digital equity; and
- 5) Implementation strategies for the measurable objectives identified above.

Funding requested for these activities may not exceed seven and one-quarter (7.25) percent of the total amount of funding being requested (i.e., total of both Digital Equity Planning Grant and Digital Equity Capacity Grant funds). Importantly, Digital Equity Planning Grant funding is requested separately from Digital Equity Capacity Grant funding.

iv. **Digital Equity Capacity Grant Funds:** A description of the grant projects anticipated to be funded by the State Digital Equity Capacity Grant Program, and the number of Covered Populations the proposed projects will serve and how they are consistent with the goals of digital equity and digital inclusion described in 47 U.S.C. §1723(d), and to the extent applying for Planning Grant Program funds, a description of how the Capacity Grant Program funds will be used to implement projects consistent with the Digital Equity Plan. A description of how the proposed grant projects will address identified barriers to digital equity, the measurable objectives that will be used to assess progress towards overcoming these barriers, and how the proposed grant projects will promote, among the Covered Populations, the following:

- 1) The availability of, and affordability of access to, fixed and wireless broadband technology;
- 2) The online accessibility and inclusivity of public resources and services;
- 3) Digital literacy;
- 4) Awareness of, and the use of, measures to secure the online privacy of, and cybersecurity with respect to, an individual; and

- 5) The availability and affordability of consumer devices and technical support for these devices.
- v. If the amount of the requested funding is less than \$500,000 or more than \$2,000,000, provide a reasonable explanation for the variance in project size.
 - vi. If a Native Entity intends to utilize an authorized non-profit organization to administer Tribal Digital Equity Capacity Grant Program funds or Tribal Digital Equity Planning Grant funds, request the organization and discuss the activities of such organization.
 - vii. A description of the implementation team and its experience with the programmatic/technical aspects of the project; the Native Entity's organizational capacity to implement projects and meet key milestones, and a description of its proposed approach for working with other entities in implementation.
 - viii. Resumes of Key Personnel: One resume of each of key personnel who will carry out and be responsible for the project (including subrecipients).
 - ix. A description of the subrecipients or sub-contractors to be followed, as applicable.
 - x. A description of the proposed outcomes and anticipated impact on digital equity and inclusion, including the benefits to the intended beneficiaries, and a plan to sustain project benefits by:
 - 1) Ensuring and maintaining transparency with key stakeholders, including representatives of the Covered Populations, and
 - 2) Ensuring the long-term impact on digital equity within the Native Entity and its collateral benefits.
 - xi. A project plan describing all major project activities and timelines, including key milestones and when each major project activity will start and end.
 - xii. A short description of (1) the applicant's status/role in the Tribal Broadband Connectivity Program (TBCP), and the type of award received, or state if the applicant has not received a TBCP grant award or if an application for award is pending review by NTIA; (2) any other sources of federal funding awarded to the applicant to support digital equity and inclusion activities such as, broadband adoption and use, device programs, digital literacy and skills training, and internet subscription or device subsidy programs; (3) any funds received by the applicant as a sub-recipient to a State Digital Equity Planning Grant; and (4) any funds received from private philanthropic organizations for comparable activities.

- d. A certification that the Planning Grant (as applicable) and Capacity Grant will be used for a purpose that is consistent with the purposes and requirements of 47 U.S.C. 1723 and this NOFO and that, if the Native Entity seeks both Planning and Capacity Grant funds, funds will be budgeted and tracked separately.
- e. A certification that Capacity Grant and Planning Grant funds will be used to supplement, not supplant, other federal or State funds that have been made available to carry out digital equity and digital inclusion activities.
- f. The assurances required under 47 U.S.C. §1723 (see appendix C of this NOFO).
- g. **A Consolidated Budget Form.** The information in the Consolidated Budget Form must support the dollar amounts identified on the SF-424 and demonstrate that the project or activity meets the eligible use requirements of the Digital Equity Act and this NOFO. The Consolidated Budget Form must include a narrative and a detailed budget spreadsheet. The budget narrative must explain the necessity and basis for all costs, clearly correspond to the items included in the detailed budget spreadsheet and reflect only allowable costs consistent with the project scope. Allowable costs are determined in accordance with the cost principles set forth in 2 C.F.R. Part 200, including Subpart 200.400 regulations and in 48 C.F.R. Part 31 for commercial organizations, and in 47 U.S.C. 1723(d). The detailed spreadsheet must reflect the categories that appear on the SF-424A and include itemized calculations for each category under those categories. **As applicable, the applicant must also separately identify and separately track the budgeted costs of the Digital Equity Planning Grant Program and the Digital Equity Capacity Grant.** The budget must account for the Native Entity's efforts to update or to maintain the Digital Equity Plan, capped at 20% of the grant amount, administrative costs, capped at 3% of the grant amount, and program evaluation costs capped at 5% of the grant amount (*See*, Section III.C.4 for restrictions on administrative and evaluation costs). If indirect costs are included in the proposed budget, the applicant must provide a copy of the approved negotiated indirect cost rate agreement if this rate was negotiated with a cognizant federal agency or otherwise document those indirect costs consistent with 2 C.F.R. 200.414.
- h. The following standard federal financial assistance forms and documentation:
- Standard Form 424: Application for Federal Assistance
 - CD-511 Certification Regarding Lobbying
 - Standard Form LLL, Disclosure of Lobbying Activities (if applicable); and
 - Negotiated Indirect Cost Rate Agreement (as applicable)

3. Funding Restrictions

Permissible Uses of State Digital Equity Capacity Grant Funds and State Digital Equity Planning Grant Funds

Applicants must submit proposals which are consistent with the purposes and priorities set forth in 47 U.S.C. 1723(c) (for Planning Grants) and 1723(d) (for Capacity Grants) and this NOFO, including the achievement of digital equity, support of digital inclusion activities, and the adoption of broadband by underserved Populations of Native Entities. The activities include:

- i. To the extent that a Native Entity has requested State Digital Equity Planning Grant funds (not to exceed seven and one-half percent (7.25) percent of total funds requested), the development of the elements of the Digital Equity Plan of the Native Entity that identifies the barriers to digital equity facing underserved Populations of the Native Entity and measurable objectives for addressing such barriers, including:
 - 1) The availability of, and affordability of, fixed and wireless broadband technology;
 - 2) The online accessibility and availability of resources and services;
 - 3) Digital literacy;
 - 4) Awareness of, and training in, measures to secure digital privacy of, and cybersecurity with respect to, an individual; and
 - 5) The availability and affordability of consumer devices and support for those devices;
- ii. To support digital inclusion activities of the Native Entity.
- iii. To make subgrants to any of the eligible entities identified at 47 U.S.C. § 1701(b) that are located in Native Entity's jurisdiction to: (a) assist in the implementation of the Digital Equity Plan and/or digital equity programs and activities identified above; (b) pursue digital inclusion activities consistent with the Digital Equity Plan and/or digital equity programs and activities identified above; and (c) report to the Native Entity regarding the digital inclusion activities of the entity.

Before the Native Entity may award a subgrant under this paragraph, the Native Entity must require that the entity to which a subgrant is to be awarded certify that:

- 1) The entity shall carry out the activities required under items (a), (b), and (c) of this subsection iii;
- 2) The receipt of the subgrant shall not result in unjust enrichment of the entity; and
- 3) The entity shall cooperate with any evaluation of the program as it relates to a grant awarded to the entity and that is carried out by or for the Native Entity, the Assistant Secretary, or another federal official.

- iv. To evaluate the efficacy of the efforts funded by either Capacity Grants or Planning Grants made to subgrantees, provided that the Native Entity may not use more than five (5) percent of the amount of the grant for this purpose.²⁶
- v. For administrative costs incurred in carrying out the activities described above provided that the Native Entity may not use more than three (3) percent of the amount of the grant for this purpose.²⁷
- vi. The other purposes identified in Section II.C.3 (Native Entity Eligible Uses) above.

b. Prohibited Uses of Digital Equity Planning Grant Funds

i. Twenty (20) Percent Cap on Digital Equity Plan Updates

No more than twenty (20) percent of the amount of the grant may be used to update or maintain the Digital Equity Plan of the State or of the Native Entity (as applicable).

ii. Five (5) Percent Cap on Evaluation of Program Efficacy

No more than five (5) percent of the amount of the grant may be used to evaluate the efficacy of the efforts funded by grant to subgrantees to: (a) pursue the implementation of the Digital Equity Plan of the Native Entity; (b) pursue digital inclusion activities in the Native Entity's jurisdiction; or (c) provide support to the Native Entity regarding digital inclusion activities of the entity.

iii. Three (3) Percent Cap on Administrative Costs

No more than three (3) percent of the amount of the grant may be used for administrative costs (excluding costs for program evaluation and updating the Digital Equity plan) in carrying out allowable activities under this Program and described in an SDECGP award. For this purpose, the three (3) percent limitation on administrative expenses includes the combined total of indirect and direct administrative costs charged to an award. The applicant must clearly describe in the budget narrative how it applied or calculated the three (3) percent limitation on administrative costs.

iv. Ten (10) Percent Cap on Affordable Broadband Programs

²⁶ 47 U.S.C. §1723(d)(3)(D)(iv)

²⁷ 47 U.S.C. §1723(d)(3)(D)(v)

No more than 10 percent of the amount of the grant may be used to fund subgrants for the provision of services through affordable broadband programs.

v. Prohibition on Supplanting and on Certain Website Expenses

Pursuant to 47 U.S.C. 1754, a grant or subgrant awarded under the Digital Equity Capacity Grant Program may supplement, not supplant, other federal funds that have been made available to carry out activities described in 47 U.S.C. 1754 and in this NOFO. Funds from the Tribal Broadband Connectivity Program are subject to separate financial assistance award terms and conditions and must not be used by State Digital Equity Capacity Grant Program funding. No grantee is prohibited from using Capacity Grant funds to conduct website upgrades or other projects that are otherwise required by law.

c. Prohibition on Broadband Infrastructure Funding

In general, deployment of broadband infrastructure to broadband serviceable locations should be accomplished through programs, including the Broadband Equity, Access, and Deployment Program and the Tribal Broadband Connectivity Program. However, to the extent that installation of broadband infrastructure is necessary to accomplish an eligible program, activity, or intervention (including fixed equipment on a building as part of a strategy to promote access to affordable broadband service), additional information may be required to determine the potential environmental impacts under the National Environmental Policy Act (42 U.S.C. §432) and potential impacts to historic properties under the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*). Additionally, any portion of a Digital Equity Capacity Grant Program award that will be used for an “infrastructure project” as defined in 2 C.F.R. 184.3) is subject to the Build America, Buy America Act (Public Law 117-58, §§ 70901-52) and to the regulations promulgated thereunder at 2 C.F.R. part 184). *See* Section IV.D.4 of this NOFO for additional information concerning the Build America, Buy America requirements for this Program. In accordance with section 60506 of the Infrastructure Act, the Federal Communications Commission adopted rules to prevent digital discrimination of access on the basis of income level, race, ethnicity, color, religion, or national origin.²⁸

d. Prohibition on Profit or Fees

A profit, fee, or other incremental charge above actual cost is not an allowable cost under this Program.

²⁸ 89 Fed. Reg. 4128 (Jan. 22, 2024); 47 U.S.C. 1754.

Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining

Grant funds available pursuant to this Program may not be used, whether directly or indirectly as an offset for other purposes, to support or oppose collective bargaining.

4. Certification Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the State Digital Equity Capacity Grant Program, the applicant is making the certification outlined in Appendix B to this NOFO (see Line 21 on the SF-424 Application for Federal Assistance).

5. System for Award Management

Pursuant to 2 C.F.R. Part 25, an applicant (as the case may be) is required to: (i) be registered in SAM before submitting its application packet; (ii) provide a valid unique entity identifier (UEI) in its application; and (iii) maintain an active SAM registration with current information at all times during which it has a federal award or an application or plan under consideration by a federal awarding agency. Applicants are otherwise excepted from these requirements pursuant to 2 C.F.R. 101.110. NTIA will not make a federal award to an applicant until the applicant has completed 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 will determine that the applicant is not eligible to receive a federal award.

Unique Entity Identifier

All applicants must supply a SAM Unique Entity Identifier (UEI) number. As of January 4, 2022, the U.S. government stopped using the Dun and Bradstreet (D&B) Data Universal Numbering System (D-U-N-S) nine-digit number as the unique identifier for entities throughout the federal awarding cycle, in [SAM.gov](https://sam.gov), Integrated Award Environment (IAE) systems, required forms, or in downstream government systems. Now, entities doing business with the federal government must use the Unique Entity ID created in [SAM.gov](https://sam.gov). Applicants who are new to [SAM.gov](https://sam.gov) may register their entity or receive a UEI by signing into [SAM.gov](https://sam.gov) and selecting “Get Started,” then “Register Entity.” If you are a sub-awardee who just needs a UEI for subaward reporting, choose “Get Unique Entity ID.”

For more information on the retirement of the DUNS, as well as the establishment of an entity’s UEI, please visit [http://www.sam.gov](https://www.sam.gov).

b. SAM Registration

All applicants must register with SAM before submitting an application pursuant to this program. Additionally, the applicant must maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Applicants can register for the SAM at

<https://www.sam.gov/>. Entities without an active [SAM.gov](https://www.sam.gov/) registration and/or ID at the time of application submission and award may be deemed ineligible for a grant award.

6. Submission Dates and Times

Applications for the State Digital Equity Capacity Grant Program must be complete and must adhere to the instructions provided in this NOFO and be submitted in the format required by the NTIA Grants Portal (<https://www.grants.ntia.gov/>). Applications from all entities must be received through the NTIA application portal by email **no later than 5 p.m. Eastern Time (ET) on February 7, 2025**, or, if submitted by mail or courier, must be received (for postal mail) or show clear evidence of mailing (for courier submissions) **no later than 11:59 p.m. Eastern Time (ET) on February 7, 2025**.

When developing the submission timeline, applicants should keep in mind that: (a) all applicants are required to have current registration in the electronic System for Award Management ([SAM.gov](https://www.sam.gov/)) and (b) the funding review process in [SAM.gov](https://www.sam.gov/) generally takes between three (3) and five (5) business days, but can take more than three weeks.

7. Material Representation and Public Disclosure

All forms and supporting documents submitted as part of the application packet will be treated as a material representation upon which NTIA and NIST's Management Division will rely in awarding grants. Applicants acknowledge and understand that false, fictitious, or fraudulent statements, concealment or omission of a material fact) in forms and supporting documents, including any required certifications or disclosures, submitted may subject applicants to prosecution (including under 18 U.S.C. § 1001 and/or other laws) and may subject applicants to civil and administrative penalties and other remedies. Applicants should be aware that NTIA, in coordination with the NIST Grants Officer, may make all or portions of their applications for grants under the State Digital Equity Planning Grant Program and State Digital Equity Capacity Grant Program publicly available as required under applicable federal laws. *See* Section VIII.A of this NOFO for additional information concerning the confidentiality of information contained in an application.

8. Other Submission Requirements

Applications must be submitted (1) electronically through the NTIA Grants Portal (www.grants.ntia.gov) portal, (2) by email (digitalequity@ntia.gov), or (3) by mail or courier to:

Angela Thi Bennett
Director of Digital Equity
Office of Internet Connectivity and Growth
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Timely Receipt Requirements and Proof of Timely Submission

Online Submission: Proof of timely submission is automatically recorded by the NTIA Grants Portal. An electronic date/time stamp is generated within the system when an application is successfully submitted to the NTIA application portal. The applicant must be an authorized Organizational Representative (AOR) role who submitted the application and will receive an email acknowledgement of receipt from the NTIA application portal upon 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.

b. Amendments

Any amendments to this NOFO or additional guidance will be announced on NTIA.gov and <https://BroadbandUSA.NTIA.gov>.

D. APPLICATION REVIEW PROCESS

Capacity Grant and Planning Grant applications will be accepted from Native Entities on a competitive basis using the following stages of review and will be considered for funding as described in Section III.D.3.a below:

1. Initial Eligibility and Administrative Review

NTIA will conduct an initial review of submitted applications to ensure they contain all the information and documentation required under Section III.C “Application Submission Information” of this NOFO and that this information was submitted in a timely manner as required under Section III.C.8. of this NOFO. Any entity that does not meet the definition of Indian Tribe, Alaska Native entity, or Native Hawaiian organization or does not have authorization to submit an application from the governing body described in Section III.B.1.c of this NOFO may be eliminated from review. During this review stage, NTIA also reserves the right to remove applications from consideration if submitted materials are incomplete or untimely. NTIA may continue the review process for an application that is timely submitted by an eligible Native Entity, but that is missing certain information or documentation required by this NOFO. In such cases, NTIA may ask the applicant to provide any missing or incomplete materials during this initial review. NTIA reserves the right at any time during the application review processes to negotiate with the applicant relative to specific modifications to the application.

2. Merit Review

Applications satisfying the Initial Administrative and Eligibility Review will move to Merit Review. Applications will be reviewed by at least two merit reviewers, which may be federal personnel or non-federal personnel, who have demonstrated expertise in the programmatic aspects of digital equity and inclusion. As applicable, merit reviewers 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. In accordance

with the following criteria, the Merit Reviewers will review applications for Capacity Grants (including Planning Grant funds) to ensure conformity with the program of eligible activities and estimated costs/budget. The evaluation criteria that will be used by the Merit Reviewers to review and analyze applications for Capacity Grant funds are grouped into four categories as shown below. Reviewers will evaluate applications according to these evaluation criteria and independently score each application based on a scale of 0-100 points.

Based on an average of the reviewers' scores, applications will be assigned a rating of Qualified for Programmatic Review, Conditionally Qualified for Programmatic Review, or Unqualified for Funding in accordance with the following scale:

Qualified for Programmatic Review – (90-100 points)

Conditionally Qualified for Programmatic Review – (65-89 points)

Unqualified for Funding – (0-64 points)

Evaluation Criteria for Programmatic Review:

a. Project Need and Benefits (40 points)

Reviewers will assess the demonstrated need for the project considering information such as, but not limited to, the number of different identified Covered Populations to be served, the number of individuals within the Covered Populations to be served, and any available data regarding poverty rates of the Covered Populations. The number of individuals within the Covered Populations not using or subscribing to Internet, the number of individuals within the Covered Populations lacking access to a computer, smartphone, or other device that enables Internet access, or other evidence of need. The Reviewers will consider the direct and indirect expected benefits of the project to the Covered Populations.

b. Strength of Applicant's Organizational Capability. (25 points)

Reviewers will consider the direct and indirect expected benefits of the project to the Covered Populations. Reviewers will assess the strength of the applicant's organizational capability and its ability to satisfy the requirements and goals of the Capacity and Planning Grant Programs. Reviewers will consider the programmatic/technical experience of the implementation team, the organizational capacity to implement the proposed project(s), and the roles and contributions of each partner entity, including the representation of each partner in the decision-making process. Reviewers will assess the strength of the applicant's subrecipient and subcontractor strategy (as applicable).

c. Strength of Project Implementation Plan and Budget (25 points)

Reviewers will assess the overall soundness of the proposed project(s) plan and milestones and whether the proposed activities will support the goals of digital equity and

inclusion outlined in the Digital Equity Act and this NOFO. Reviewers will assess whether the application materials provide sufficient detail regarding the proposed project and activities to demonstrate they are achievable, are consistent with the applicant's programmatic activities, whether the applicant has established realistic measurable objectives, and whether the requested funds, implementation milestones, and timeline are sufficient to complete the tasks described in the project narrative, including the feasibility and appropriateness of the proposed project. Reviewers will assess the extent to which the applicant demonstrates its ability to implement and sustain digital equity efforts throughout the award period of performance.

d. Project Results and Evaluation (10 points)

Reviewers will assess whether the project includes a strategy for measuring the near term and long-term impact on digital equity for the Native Entity and its collateral benefits. Reviewers will assess whether the applicant demonstrates a commitment to continuous improvement based on evaluation, including obtaining input from its intended project beneficiaries.

3. Programmatic Review

Applications which pass through Administrative and Merit Review and score at least 65 points during the Merit Review will be considered under the Programmatic Review process. In prioritizing the programmatic review of applications, NTIA will generally not move to applications in the prioritization grouping unless: (i) all applications in the prior prioritization group were reviewed by NTIA, and either (ii)(a) the applications being recommended for funding does not utilize the entirety of the set aside funding available for Native Entities; or (ii)(b) the evaluation of other applications is warranted to ensure funding diversity, ensure consistency in the size of the funding amounts awarded, and/or to ensure funding reaches those Native Entities with the highest rates of poverty.

a. Prioritization

Applications will be prioritized for Programmatic Review as follows:

- i. First, NTIA will review any application that received an average score of 90 or higher during the Merit Review that is from a Native Entity or Native Entities that did not receive funding from NTIA's Tribal Broadband Connectivity Program for Sustainable Broadband Adoption and Use activities (including equitable distribution funding used for these purposes), and whose application proposes programs that address three or more of the Covered Populations as defined in Section I.C. of this NOFO. For a consortium to qualify for this prioritization, no member of the consortium may have received such Tribal Broadband Connectivity Program funding.

- ii. Second, NTIA will review applications receiving an average score of 90 or higher during the Merit Review that address three or more of the Covered Populations as defined in Section I.C. of this NOFO.
- iii. NTIA will review any other application receiving an average score of 80 or higher during the Merit Review.
- iv. Applications receiving scores between 65 and 89 may be entered into Programmatic Review after review of the prior applications in the event that (a) the Merit Review results in fewer proposals that do not utilize the entire set aside funds for Native Entities, or (b) evaluation of other applications is delayed or omitted at a later stage in the process to ensure greater diversity in the size of the funding amounts awarded. During this stage of the review, applications with scores between 80 and 89 that applicants have demonstrated that three or more of the Covered Populations defined in Section I.C. of this NOFO) will be served. Review will be given to those applications with scores between 80 and 89 and which have demonstrated that those projects serving three or more Covered Populations, followed by applications with scores of 70 to 79 and 65-69 under the rubric.

b. Programmatic Review Process

NTIA will assess applications that reach Programmatic Review (subject to the prioritization process outlined below) consider the extent to which those applications meet the criteria listed below and will assign weighted scores to reflect each application's likelihood of meeting those goals. Initially, based on the seven factors listed below, each application's Merit Review score will be multiplied by an additional .1 for each of the seven factors met. So, for example, projects that do not meet any of the criteria listed below would be multiplied by 1.0, while projects that meet all seven criteria would be multiplied by 1.7.

- i. The proposed project will create a sustainable long-term impact on digital equity and inclusion.
- ii. The proposed project serves five or more Covered Populations.
- iii. The applicant has demonstrated that more than sixty-five (65) percent of the members of the Native Entity's population live in Covered Households.
- iv. The applicant has demonstrated a lack of alternative resources to address issues of digital equity and inclusion.
- v. The applicant has established a plan for ongoing collaboration with key stakeholders, including representatives of the Covered Populations.

The project has realistic timelines and assumptions which indicate that the project implementation can be accomplished during the period of proposed funding.

The applicant demonstrates a commitment and plan for the successful implementation of the project by obtaining input from the community and project stakeholders.

With respect to each item, the applicant should specify how it believes its project meets and provide evidence that supports its position with respect to each criterion in the project narrative. Programmatic review will consider the evidence presented on its own merit and will not seek out or consider material excluded in the application except insofar as they request additional information to clarify or further substantiate representations made in an application.

During Programmatic Review, NTIA may request that applicants submit additional information, as appropriate, to clarify or to further substantiate representations made in their applications. Applicants will have ten (10) calendar days to submit information responsive to the feedback provided by NTIA, unless this time period is extended by NTIA. NTIA Program Staff will review the supplemental information along with all information submitted with the application, to confirm eligibility and evaluate applications with respect to requirements and priorities of the Digital Equity Campaign Program. Applicants whose supporting documents are not complete, accurate, and submitted or who do not adequately substantiate the representations in their applications, may be denied at this point in the review process.

Upon completion of Programmatic Review for each priority grouping listed above in Section D.2, NTIA Program Staff will summarize their analysis and score each application, and will provide a ranked list of proposed projects, based on project's weighted score, to the Associate Administrator for the Office of Internet Connectivity and Growth (OICG Associate Administrator).

4. OICG Associate Administrator Review

Following the conclusion of the Programmatic Review, the OICG Associate Administrator will review the ranked list of applications developed during the Programmatic Review process and will recommend a final list of ranked applications to the NTIA Assistant Secretary, who is the Selecting Official for this program. The OICG Associate Administrator's recommendations to the Selecting Official may differ from the ranked list of applications developed during the Programmatic Review based on consideration of the following selection factors: (a) geographic diversity, (b) diversity in the size of the funding amounts of the proposed awards, (c) consideration for consortia applications, and (d) to ensure funding reaches those Native Entities with the highest rates of poverty. Based on these selection factors, the OICG Associate Administrator may recommend lower ranked applications within a particular priority grouping to the Selecting Official, as warranted, and will appropriately document the basis of this recommendation.

Final Project Selection

After completing the review described above, the OICG Associate Administrator shall provide a ranked list of recommended awards to the NTIA Assistant Secretary for final review. As the Selecting Official, the NTIA Assistant Secretary retains discretion to select and recommend an application that was not recommended by the OICG Associate Administrator based on the selection criteria list above in Section III.D.4. However, the NTIA Assistant Secretary also retains discretion not to recommend an award for funding that was recommended by the OICG Associate Administrator and to appropriately document the basis of this decision.

The NTIA Assistant Secretary will select the applications recommended for funding, along with the bases for the selection decision. The National Institute of Standards and Technology (NIST) Grants Officer, who serves as the Selecting Official for the Capacity Grant Program. The final approval of selected applications and issuance of awards will be made by the NIST Grants Officer. The award decisions by the NIST Grants Officer are final.

Awards are expected to be made on a rolling basis, subject to the availability of funds. Unsuccessful applicants will be notified in writing.

6. Federal Agency Review of Risk Posed by Applicant

After applications are proposed for funding by the Selecting Official, the NIST Grants Management Division (GMD) will perform pre-award risk assessment in accordance with 2 C.F.R. § 201.10, which may include a review of the financial stability of the applicant, the quality of the applicant's management systems, the history of performance and findings from prior awards 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), which is now located in [SAM.gov](https://sam.gov) as the responsibility/qualifications (R/Q) reports. 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.

7. Anticipated Announcement and Award Dates

NTIA expects to begin making awards under this NOFO in Summer 2025, NTIA may issue awards made under the State Digital Equity Capacity Grant Program on a rolling basis.

IV. FEDERAL AWARD ADMINISTRATION INFORMATION

A. Federal Award Notices

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 and returning 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 and is subject to the limitations contained in 47 U.S.C. §1723(d)(3)(B), the terms and conditions of the award, available funding, and this NOFO.

B. Notification to Unsuccessful Applicants

Unsuccessful applicants will be notified in writing by email (or, in the case of entities that submitted material via mail or courier, in a similar fashion) and will have the opportunity to receive a debriefing. Applicants must make a request within ten (10) business days of the email or written notification to receive a debrief from NTIA. NTIA will then work with the unsuccessful applicant to arrange a date and time for the debrief.

C. Retention of Unsuccessful Applications

Unsuccessful applications will be retained in accordance with NTIA recordkeeping requirements.

D. Administrative and National Policy Requirements

Recipients of funding pursuant to this program must 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 V.B of this NOFO, Federal Awarding Agency Contacts, Grant management inquiries, 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 V.B of this NOFO, Federal Awarding Agency Contacts, Grant management inquiries, for more information.

4. Build America, Buy America Act Domestic Content Preference Requirements

Pursuant to the Build America, Buy America Act (BABA) (Pub. L. No. 117-58, §§ 70901-52) and regulations promulgated thereunder at 2 C.F.R. part 184, recipients of an award of federal financial assistance from the Department of Commerce are hereby notified that none of the funds provided under such award may be used for an “infrastructure project” (as defined in 2 C.F.R. 184.3) unless:

- a. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. all manufactured products used in the project are produced in the United States—this means 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 fifty-five (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; and
- c. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

To help federal agencies and recipients meet BABA requirements, the Hollings Manufacturing Extension Partnership (MEP) National Network™ of the National Institute for Standards and Technology (NIST) provides a service to connect stakeholders, including recipients, to U.S.

manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering requesting a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is available at: <https://www.nist.gov/mep/supplier-scouting>.

Waivers

When necessary, recipients may apply for, and the Department may grant, a waiver from these requirements. The Department will provide the recipient with information on the process for requesting a waiver from these requirements. When the Department has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the Department determines that:

- i. applying the domestic content procurement preference would be inconsistent with the public interest;
- ii. the 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
- iii. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than twenty-five (25) percent.

A request to waive the application of the domestic content procurement preference must be in writing. NTIA will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than fifteen (15) calendar days and must be reviewed by the Made in America Office of the Office of Management and Budget (OMB).

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.commerce.gov/oam/build-america-buy-america>.

5. Domestic Preference for Procurements

Pursuant to 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, a non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section must be included in all subawards, including all contracts and purchase orders for work or products pursuant to this program.

6. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Pursuant to 2 C.F.R. § 200.321, a non-federal entity must take all necessary affirmative steps (as described in 2 C.F.R. § 200.321) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

7. Cybersecurity Best Practices

Recipients and subrecipients must ensure that the planning, design, and project oversight phases of the programs and activities funded through the Digital Equity Capacity Grant Program are consistent with current industry best practices for cybersecurity, such as the NIST Cybersecurity Framework²⁹ and Cybersecurity and Infrastructure Security Agency (CISA) Cybersecurity Performance Goals (CPGs).³⁰ These performance goals provide a baseline set of cybersecurity practices that are broadly applicable, with known risk-reduction value. NTIA reserves the right to review a recipient's cybersecurity framework and recipients must review the cybersecurity framework of its subrecipients.

E. Reporting

Recipients 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 in which recipients will be required to report information in support of federal agency obligations under the ACCESS BROADBAND Act, 47 U.S.C. § 1307, and Section 60105 of the Infrastructure Act.

1. Infrastructure Act Reporting Requirements (Annual Report)

As set forth in 47 U.S.C. §1723(g)(1), any entity to which a grant, including a subgrant, is awarded under this program shall be required to publicly report, for each year during the period of performance of a program grant, in a format to be specified by the Assistant Secretary, on:

- a. The use of that grant by the entity;
- b. The progress of the entity toward fulfilling the objectives for which the grant was awarded; and

²⁹ NIST Cybersecurity Framework, <https://www.nist.gov/cyberframework/framework>.

³⁰ Cybersecurity & Infrastructure Security Agency, Cross-Sector Cybersecurity Performance Goals, <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals>.

- c. The implementation of the State Digital Equity Plan of the State.

The Assistant Secretary may establish additional reporting and information requirements for any recipient of a grant as necessary to fulfil the requirements of the Digital Equity Act.

2. Other Reporting Requirements

The following reporting requirements described in Section A.01, Reporting Requirements, of the Department of Commerce Financial Assistance Standard Terms and Conditions (12 November 2020), apply to awards in this program:

a. Financial Reports

Each award recipient will be required to submit an SF-425, Federal Financial Report on a semiannual basis for the periods ending March 31 and September 30 of each year. Reports will be due within thirty (30) days after the end of the reporting period to the NTIA Federal Program Officer, Grants Officer, and Grants Specialist named in the award documents. If awarded, further instructions on where and how to submit reports will be provided via a specific award condition. A final financial report is due within one hundred twenty (120) days after the end of the project period.

b. Performance (Technical) Report

Each award recipient will be required to submit a technical progress report to the NTIA Federal Program Officer, Grants Officer, and Grants Specialist named in the award documents on a semiannual basis for the periods ending March 31 and September 30 of each year. If awarded, further instructions on where and how to submit reports will be provided via a specific award condition. Reports will be due within thirty (30) days after the end of the reporting period. Technical progress reports shall contain information as prescribed in 2 C.F.R. § 200.329 and Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01. Capacity Grant Program reporting elements may include, but are not limited to: Status of achieving project implementation milestones and measurable objectives, and alignment to expenditures, project outputs, e.g., number of devices provided/subsidized, number of digital literacy/training programs developed and number of training hours provided, number of Internet subscriptions provided/subsidized, project output beneficiaries, including number of beneficiaries across the Covered Populations, number of jobs created for project implementation, results from program evaluation activities (when applicable), progress on implementation of the State Digital Equity Plan using funds other than from the State Digital Equity Capacity Grant Program (as applicable).

c. Human Subjects Research

All State Digital Equity Capacity Grant Program recipients must comply with Department of Commerce regulations relating to the protection of human subjects for all research conducted or supported pursuant to a NTIA grant award (per 15 C.F.R. Part 27). Recipients must review

forthcoming guidance for human subjects research protection and make an independent assessment of their planned activities and act in accordance with Human Subjects Research protection requirements and report any new research activities or updates to planned activities on an ongoing basis.

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 200,³¹ 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

The federal financial assistance regulations in 2 C.F.R. Part 200, Subpart F require 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.*, for-profit subrecipients) 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. *See* Section D.01.c. of the Department of Commerce Financial Assistance Standard Terms and Conditions. Applicants are reminded that NTIA, the NIST Grants Office, the Department of Commerce Office of Inspector General, or another authorized federal agency may conduct an audit of an award at any time.

H. Federal Funding Accountability and Transparency Act of 2006

In accordance with 2 C.F.R. Part 170, all recipients of a federal award made on or after October 1, 2010, are required to comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). In general, all recipients are responsible for reporting sub-awards of \$30,000 or more. In addition, recipients that meet certain criteria are responsible for reporting executive compensation. Applicants must ensure

³¹ *See* 2 C.F.R. Part 200, Appendix XII, available at <http://go.usa.gov/cTBwC>.

they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.³²

I. Public Database

Pursuant to 47 U.S.C. §1723(g)(1)(C) of the Digital Equity Act, NTIA will create and maintain a fully searchable database, which shall be accessible on the internet at no cost to the public, that contains, at a minimum: (i) the application of each State that has applied for a grant under this program; (ii) the status of each application described in clause (i); (iii) each report submitted by an entity pursuant to §1723(g)(1)(A) of the Digital Equity Act; (iv) a record of public comments made regarding the State Digital Equity Plan of a State, as well as any written responses to or actions taken as a result of those comments; and (v) any other information that is sufficient to allow the public to understand and monitor grants awarded under this program.

In accordance with federal policy, any publications and their supporting data resulting from federally funded research should be made publicly accessible without an embargo on their free and public release, no later than December 31, 2025. <https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>.

³² See OMB, Requirements for Federal Funding Accountability and Transparency Act Implementation, Interim final guidance to agencies with opportunity to comment, 75 FR 55663 (Sept. 14, 2010), *available at* <http://go.usa.gov/hKnQ>.

V. FEDERAL AWARDING AGENCY CONTACTS

A. Please direct programmatic inquiries to:

Angela Thi Bennett
Director of Digital Equity
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: digitalequity@ntia.gov

B. Please direct grant management inquiries to:

Darren Olson
NIST Grants Officer
Grants Management Division
National Institute of Standards and Technology
325 Broadway
Boulder, CO 80305
Phone: (720) 693-0465
Email: darren.olson@nist.gov

C. Please direct media inquiries to:

Charles Meisch
Director of Public Affairs
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

VI. OTHER INFORMATION

A. Transparency

The Infrastructure Act contains robust reporting requirements for grant recipients, 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 State Digital Equity Capacity Grant 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 Propriety Information

Recipients of State Digital Equity Capacity Grants acknowledge and understand that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance, and other reports submitted by either entity, may be used by the Department of Commerce in conducting reviews and evaluations of its financial assistance programs and for statistical purposes. For this purpose, information and data may be accessed, reviewed, and evaluated by Department of Commerce employees, other federal employees, federal agents and contractors, and/or by non-federal personnel, all of whom enter into appropriate confidentiality and nondisclosure agreements covering the use of such information. As may be provided in the terms and conditions of a specific financial assistance award, recipients 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), program participants 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. *See* 15 C.F.R. § 4.9(b). Based on these markings, the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law. As discussed above, 47 U.S.C. 1723(g)(1)(C) requires that NTIA create and maintain a fully searchable public database that includes the application of each State that has applied for a grant under this program, among other information.

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. States, U.S. territories (other than Puerto Rico), Indian Tribes, Alaska Native entities, and Native Hawaiian organizations that are interested in participating in this program should be familiar with the regulations governing Protected Critical Infrastructure Information (6 C.F.R. Part 29) and Sensitive Security Information (49 C.F.R. Part 1520), as these designations may provide additional protection to certain classes of homeland security information.

In addition to the public disclosure requirements of this program, each State, U.S. territory, Indian Tribe, Alaska Native entity, or Native Hawaiian organization interested in participating in this program is encouraged to consult its own laws and regulations regarding the release of information, which should be considered when reporting sensitive matters in the grant application. The applicant may consult with NTIA regarding concerns or questions about the release of information or how omitting sensitive information could impact NTIA's assessment of the application.

C. Funding Availability and Limitation of Liability

Funding for the State Digital Equity Capacity Grant Program described 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 obligate NTIA, NIST or the Department of Commerce to award any specific project or to obligate any available funds. NTIA will recommend for funding only projects that are deemed likely to achieve the State Digital Equity Capacity Grant Program's goals and for which funds are available.

D. Third Party Beneficiaries

The State Digital Equity Capacity Grant 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 at the discretion of the Assistant Secretary, NTIA, upon its own initiative or when requested, may waive the provisions in this NOFO. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the 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 State Digital Equity Capacity Grant Program, NTIA will use the State Digital Equity Capacity Grant Program forms in the Application for Broadband Grant Programs information collection (0660-0046) and Standard Forms 424 (Application for Federal Assistance), 424A (Budget Information for Non-Construction Programs), 425 (Federal Financial Report), and SF-LLL (Disclosure for Lobbying Activities) under the respective control numbers 4040-0004, 4040-0006, 4040-0014, and 4040-0013.

G. Transparency, Accountability, and Oversight Required

1. Generally

NTIA and all State Digital Equity Capacity Grant Program recipients have a critical role to play in ensuring that the State Digital Equity Capacity Grant Program is implemented in a manner that ensures transparency, accountability, and oversight sufficient to, among other things:

- a. Minimize the opportunity for waste, fraud, and abuse;
- b. Ensure that recipients of grants under the Program use grant funds to further the overall purpose of the Program in compliance with the requirements of 47 U.S.C. §1723 of the Digital Equity Act, this NOFO, 2 C.F.R. Part 200, the terms and conditions of an award, and other applicable law; and
- c. Allow the public to understand and monitor grants awarded under the Program.

To that end, NTIA shall, as appropriate:

- d. Conduct such audits of award recipients (States, U.S. Territories, Native Entities), and Administering Entities as are necessary and appropriate;
- e. Develop monitoring plans, subject to the approval of the Assistant Secretary, which may include site visits or desk reviews, technical assistance, and random sampling of compliance requirements; and
- f. Impose special conditions on grant awards designed to mitigate the risk of nonperformance where appropriate.

Each State, U.S. Territory, Indian Tribe, Alaska Native entity, Native Hawaiian organization, and/or Administering Entity or Administering Organization shall, as appropriate:

- g. Comply with the reporting requirements set forth in Section IV.E of this NOFO;

- h. Conduct audits of sub-recipients and award management as necessary and appropriate. States shall report the full results of any audits they conduct to the appropriate Federal Program Officer and NIST Grants Officer;
- i. Comply with the obligations set forth in 47 U.S.C. §1723(d) of the Digital Equity Act, this NOFO, 2 C.F.R. Part 200, the terms and conditions of an award, and other applicable laws; and
- j. Establish and widely publicize telephone numbers and email addresses for the State, U.S. territory or possession, Indian Tribe, Alaska Native entity, Native Hawaiian organization, and/or Administering Entity or Administering Organization's Office of Inspector General (or comparable entity) for the purpose of reporting waste, fraud or abuse, in the Program. States, U.S. possessions and territories, Indian Tribes, Alaska Native entities, Native Hawaiian organizations, and their administering entities shall produce copies of materials used for such purpose upon request of the Federal Program Officer or the Grants 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 through 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, as well as applicants applying to this funding opportunity, shall timely disclose, in writing, to the OIG and awarding agency, whenever, in connection with the award, performance, or closeout of this grant or subaward thereunder, the recipient has credible evidence that a principal, employee, agent, or subrecipient has committed:

- i. A violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
- ii. A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733); or
- iii. A violation of the Federal Antitrust Laws found in Title 15 of the United States Code.

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> to submit a complaint or call toll-free at 800-424-5197. The OIG will accept complaints via U.S. mail at the following address:

U.S. Department of Commerce
Office of Inspector General
1401 Constitution Avenue
Washington, D.C. 20230.

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>.

H. Unauthorized Use of Funds

In the event of non-compliance with 47 U.S.C. § 1723, this NOFO, 2 C.F.R. Part 200, the terms and conditions of an award, or other applicable law, NTIA and the NIST Grants Officer shall take appropriate enforcement action against a State, U.S. Territory, Indian Tribe, Alaska Native entity, or Native Hawaiian organization and, as necessary, against an Administering Entity or Administering Organization, as authorized in 2 C.F.R. §§ 200.339 - 200.343.

Appendix A: State Funding Formula

NTIA and the U.S. Census Bureau have collaborated to create the Digital Equity Act Population Viewer, which contains the inputs used in the funding formula for each State, as well as links to the original data sources where applicable. The Census Bureau has also documented the methodology it has used to calculate the total number of persons in each State who are members of Covered Populations. The Digital Equity Act Population Viewer can be accessed at <https://www.census.gov/data/data-tools/digital-equity-act-population.html>.

1. NTIA will calculate the total amount available for awards to eligible States by subtracting set-asides for administrative costs, U.S. territories and possessions, and Tribal organizations from the total appropriation. Of the \$840 million appropriated for capacity grants, \$760,800,000 is available to eligible States after subtracting set-asides and administrative costs. This amount will be referred to as the “Gross Funding”.
2. NTIA will then multiply the Gross Funding amount determined in step 1 by 0.5 percent. This amount will be referred to as the “Minimum Award.”³³
3. Using the amount calculated in step 1, NTIA will allocate fifty (50) percent of the Gross Funding (calculated in step 1) based on each eligible State’s population in proportion to the total population of all eligible States. For example, if “State X” contains one (1) percent of the total population of all eligible States, it would receive one (1) percent of the amount allocated during this step.³⁴ To determine the population of each eligible State, NTIA will use the most recent American Community Survey (ACS) single-year estimates released by the Census Bureau at the time of NOFO publication (excluding any estimates designated as experimental). For grants made available through this NOFO, NTIA will use estimates from the 2022 ACS.³⁵
4. NTIA then will allocate twenty-five (25) percent of the Gross Funding determined in step 1 based on each eligible State’s proportion of the total number of individuals who fall within “Covered Populations” in all eligible States (as defined in Section I.C of this NOFO). Using ACS data from the same year used in step 2, as well as any auxiliary data sources it may deem necessary, the Census Bureau will create and publish estimates of the number of people in each State who are members of one or more of the groups constituting Covered Populations. The Census Bureau will employ its internal data to estimate membership of all

³³ 47 U.S.C. §1723(d)(3)(A)(ii).

³⁴ If the total Gross Funding equaled \$56,000,000, then \$28,000,000 (half of \$56,000,000) would be allocated under this step, leaving State X with \$280,000 (one (1) percent of \$28,000,000) under this step.

³⁵ Population estimates calculated by the U.S. Census Bureau using ACS data can be found in Table B01003 and can be broken out by state using the Census Bureau’s data tool, available at <https://data.census.gov>.

Covered Populations without double-counting individuals who are members of multiple Covered Population categories. NTIA will use the totals for each eligible State in determining the appropriate allocation.³⁶ Thus, for example, if the Census Bureau determines that there are 100 million individuals throughout all eligible States that fall within one or more Covered Population groups, and that State X is home to five million of those persons, State X would, in this step, be allocated five (5) percent of twenty-five (25).³⁷

5. NTIA will allocate the final twenty-five (25) percent of the Gross Funding by using four different indicators of the relative lack of broadband availability and adoption in each eligible State. These indicators are all collected from the three data sources required by statute, including the Commission’s Section 706(b) report, the ACS, and the NTIA Internet Use Survey. At this time, the Assistant Secretary has not designated any additional data sources for use in this portion of the funding formula. This portion of the funds will be allocated as follows:
 - a. Five (5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who reside in a location where fixed broadband service that meets the Commission’s standard for advanced telecommunications capability is unavailable. For example, an eligible State in which ten (10) percent of the population lacks availability of fixed broadband meeting the Commission standard will receive an allocation that is twice as large as that for an eligible State where five (5) percent of the population lacks broadband availability. Both the definition of “advanced telecommunications capability” and the estimate to be used for each eligible State will be based on the most recent report the Commission has published pursuant to Section 706(b) of the Telecommunications Act of 1996 as of the date of NOFO publication. For grants made available through this NOFO, NTIA will use the Section 706 Report released on March 18, 2024.³⁸
 - b. Another five (5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who live in households that lack any type of computing device and/or a subscription

³⁶ The estimates of Covered Populations created by the Census Bureau are available at <https://www.census.gov/programs-surveys/community-resilience-estimates/partnerships/ntia.html>.

³⁷ If the total Gross Funding equaled \$56,000,000, then \$14,000,000 (twenty-five (25) percent of \$56,000,000) would be allocated under this step, leaving State X with \$700,000 (five (5) percent of \$14,000,000) under this step.

³⁸ See <https://www.fcc.gov/document/fcc-increases-broadband-speed-benchmark-0>. The Commission lists the percentage of persons in each state who live where fixed broadband is available that meets the advanced telecommunications capability standard in Appendix B-1 of its Report (in the column entitled “Fixed 100/20 Mbps Including Fixed Wireless”). To derive the percentage of persons in each state who lack fixed broadband availability, NTIA subtracts the Commission’s estimate from 100.

to an internet access service other than dial-up service. NTIA will implement this factor using the most recent ACS single-year estimates released by the Census Bureau at the time of NOFO publication (excluding any estimates designated as experimental). For grants made available through this NOFO, NTIA will use estimates from the 2022 ACS.³⁹

- c. Seven and one-half (7.5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who do not use the internet from any location. For this factor, NTIA will use data from the most recent edition of the NTIA Internet Use Survey to have publicly released results at the time of NOFO publication. As a supplement to the Census Bureau's Current Population Survey, the NTIA Internet Use Survey does not include Puerto Rico residents in its sample. Therefore, NTIA is required to use the median value for this factor among all other eligible States for Puerto Rico if it is an eligible State. For grants made available through this NOFO, NTIA will use results from the 2021 NTIA Internet Use Survey.⁴⁰
- d. The final seven and one-half (7.5) percent of the total Gross Funding will be allocated based on the proportion of individuals in each eligible State, relative to all other eligible States, who do not use at least one of the following types of devices: (1) a desktop computer; (2) a laptop computer; or (3) a tablet computer. NTIA will use data from the same edition of the NTIA Internet Use Survey as factor (c) as the data

³⁹ The estimates used here are published in Table S2802 and may be broken out by state using the Census Bureau's data tool, available at <https://data.census.gov>. Specifically, NTIA will use the estimates under the subheading "Percent Broadband Internet Subscription," within the heading "With a Computer," and will subtract the estimate from 100 to get the percent of people in households in each state that lack either a computer or a broadband internet subscription in the household. Note that the Census Bureau defines "broadband" for the purposes of this table as including any type of internet access service other than dialup.

⁴⁰ In the NTIA Internet Use Survey, interviewers ask whether each member of the household age three or older uses the internet from a variety of locations (including a final question about any other location not previously covered). Individuals not reported as using the internet from any location are considered not to be internet users. NTIA reports the proportion of individuals who use the internet from any location in its Data Explorer tool, which includes the ability to break out data by state, at <https://www.ntia.gov/data/explorer>. NTIA will subtract the estimate for each state from 100 to derive the percent of people that do not use the internet.

source for this factor and will similarly substitute the median value among all other eligible States for Puerto Rico.⁴¹

6. NTIA will compare the allocation for each State resulting from the allocation formula described in steps 3 through 5 above with the Minimum Award amount. If the allocation for one or more States is lower than the Minimum Award amount, NTIA will increase the allocations for those States to the Minimum Award amount and decrease the allocations to the remaining states on a proportionate basis.

⁴¹ The NTIA Internet Use Survey includes a series of questions about the use of different types of computing devices by individual members of each household, including desktops, laptops, tablets, and several other device types. NTIA reports the proportion of individuals who use at least one of the three types of devices listed above in its Data Explorer tool, at <https://www.ntia.gov/data/explorer>. NTIA will subtract the estimate for each state from 100 to derive the percent of people that do not use any of the three device types.

Appendix B: Certifications Regarding Debarment and Suspension

By signing and submitting an application for funding pursuant to the State Digital Equity Capacity Grant Program, the applicant is making the certifications set forth below (*see* Line 21 on the SF-424, Application for Federal Assistance).

Instructions for Primary Tier Participant Certification

- i. 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 1326.⁴²
- ii. 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.
- iii. 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.
- iv. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- v. 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.
- vi. 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

⁴² In the context of the State Digital Equity Capacity Grant Program, the primary tier participant would be the State, U.S. Territory, or Native Entity receiving a Capacity Grant from NTIA.

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.

- vii. 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.
- viii. 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 (SAM) Exclusions website (<https://www.sam.gov/>).
- ix. 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.
- x. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Tier Covered Transactions

- i. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals or associated entities:
 - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency;

- 2) 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;
 - 3) 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 i(2) of this certification; and
 - 4) 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.
- ii. 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.

Instructions for Lower Tier Participant Certification (applies to subrecipients)

- i. 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 1326.⁴³
- ii. 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.
- iii. 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.

⁴³ In the context of the State Digital Equity Capacity Grant Program, lower-tier participants would be the entities that receive subgrants from, enter into contracts with, or otherwise receive program funding from the State, U.S. Territory, Native Entity that has received a Capacity Grant from NTIA.

- iv. 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.
- v. 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.
- vi. 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.
- vii. 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>).
- viii. 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.
- ix. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -
Lower Tier Covered Transactions**

- i. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals or associated entities is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency.
- ii. 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.

Appendix C: Assurances Required by 47 U.S.C. §1723(e)

47 U.S.C. §1723(e) provides as follows:

(e) ASSURANCES. When applying for a grant under this section, a State shall include in the application for that grant assurances that—

(1) if an entity described in section 60305(b) is awarded grant funds under this section (referred to in this subsection as a “covered recipient”), provide that --

(A) the covered recipient shall use the grant funds in accordance with any applicable statute, regulation, and application procedure;

(B) the administering entity for that State shall adopt and use proper methods of administering any grant that the covered recipient is awarded, including by--

(i) enforcing any obligation imposed under law on any agency, institution, organization, or other entity that is responsible for carrying out the program to which the grant relates;

(ii) correcting any deficiency in the operation of a program to which the grant relates, as identified through an audit or another monitoring or evaluation procedure; and

(iii) adopting written procedures for the receipt and resolution of complaints alleging a violation of law with respect to a program to which the grant relates; and

(C) the administering entity for that State shall cooperate in carrying out any evaluation--

(i) of any program that relates to a grant awarded to the covered recipient; and

(ii) that is carried out by or for the Assistant Secretary or another federal official;

(2) the administering entity for that State shall—

(A) use fiscal control and fund accounting procedures that ensure the proper disbursement of, and accounting for, any federal funds that the State is awarded under this section;

(B) submit to the Assistant Secretary any reports that may be necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under this section;

(C) maintain any records and provide any information to the Assistant Secretary, including those records, that the Assistant Secretary determines is necessary to enable the Assistant Secretary to perform the duties of the Assistant Secretary under this section; and

(D) with respect to any significant proposed change or amendment to the State Digital Equity Plan for the State, make the change or amendment available for public comment in accordance with subsection (c)(2); and

(3) the State, before submitting to the Assistant Secretary the State Digital Equity Plan of the State, has complied with the requirements of subsection (c)(2).

Signature of Authorized Representative

Date



Steve Cox
Chief Broadband Officer
Indiana Broadband Office
100 N. Senate Ave, Rm N1049
Indianapolis, IN 46204

Courtney Dozier
Acting Director
Broadband Equity, Access, and Deployment Program
National Telecommunications and Information Administration

Re: June 6, 2025 BEAD Restructuring Policy Notice

Dear Mrs. Dozier,

The Indiana Broadband Office submits this letter to request an Initial Proposal (IP) correction pursuant to the June 06, 2025, BEAD Restructuring Policy Notice. This letter requests incorporation of the terms of the Notice into our IP. The Indiana Broadband Office confirms that it must modify its previously-approved subgrantee selection process to conform to the terms of the Notice. It will also take all other actions needed to conform the implementation of its BEAD award to the requirements contained in the Notice. The Indiana Broadband Office will not submit a budget modification to accompany this IP correction request.

Sincerely,

/s/ Steve Cox

Steve Cox

June 25, 2025

This content is from the eCFR and is authoritative but unofficial.

Title 2 — Federal Financial Assistance

Subtitle A — Office of Management and Budget Guidance for Federal Financial Assistance

Chapter II — Office of Management and Budget Guidance

Part 200 — Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Subpart D — Post Federal Award Requirements

Procurement Standards

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

Source: 89 FR 30136, Apr. 22, 2024, unless otherwise noted.

§ 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.

- (a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.
- (b) Such consideration means:
 - (1) These business types are included on solicitation lists;
 - (2) These business types are solicited whenever they are deemed eligible as potential sources;
 - (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
 - (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
 - (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring a contractor under a Federal award to apply this section to subcontracts.

Northwest Indiana Regional Development Authority (RDA)

This section outlines the RDA's internal review of DEI position, departments, activities, procedures, and programs as required by Executive Order 25-14.

DEI Department

The RDA did not have a department dedicated to DEI initiatives.

DEI Staff Positions

The RDA did not employ any staff dedicated to DEI initiatives.

Mission Statement or Value Statement

The RDA did not have any DEI principles in its Mission Statement or Values Statement. However, Indiana statute (IC 36-7.5-2-8(b)) requires that the RDA establish goals of 15% participation by minority business enterprises and goals of 5% participation of women's business enterprises on RDA projects. The goals must be consistent with delivering the project on time and within budget and, in so far as possible, using Indiana businesses for employees, goods, and services. The RDA does monitor projects for compliance to these goals.

Programs Administered to the Public

- The RDA administered its programs consistent with IC 36-7.5-2-8(b).

Training/Instruction Administered to the Employees

- The RDA did not administer any DEI programming, training, or instruction to its employees.

Job Applicant Requirements

- The RDA has no requirement on job applicants concerning DEI.