Tricky Topics to Watch Out for in the Initial Proposal

September 2023

Disclaimer

This document is intended solely to assist recipients in better understanding the BEAD program and the requirements set forth in the Notice of Funding Opportunity (NOFO) for this program. This document does not and is 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 inconsistencies contained in this document.

Introduction to Initial Proposal (IP) Tricky Topics

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Throughout the Initial Proposal, there are many requirements and terms that can be confusing and difficult to understand.

TRICKY TOPICS THAT WILL BE ADDRESSED INCLUDE:

- Primary vs. Secondary Subgrantee Selection Scoring
- Scoring Criteria vs. Gating Criteria
- Extremely High Cost Per Location Threshold vs. High-Cost Areas

- Challenge Process Portal and NTIA's Role
- Definition of Community Anchor Institutions (CAIs)
- Speed Test Data and Pre-Challenge Modifications – *how evaluated*

- Initial Proposal Funding Request (IPFR)
- Low-Cost Broadband Service Option vs. Middle-Class Affordability Plan
- Eligible Entity Planning Toolkit Purpose and Uses

- Use of Funds Prior to Final Proposal Approval
- BEAD Challenge Process vs. the FCC Challenge Process

Subgrantee Selection

Subgrantee Selection Scoring

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See below for information on the tricky topic.

🏆 **Primary vs. Secondary
Subgrantee Selection Scoring**

Primary Scoring

According to the *Initial Proposal Guidance* *(p.40)*, when deciding among competing projects for serving the same location or locations, Eligible Entities must give the **greatest weight** to the following primary scoring criteria: 1) **minimal BEAD program outlay** (i.e., total BEAD funding that will be required to complete the project), 2) **affordability** (i.e., most affordable total price for the customer), and 3) **fair labor practices** (i.e., demonstrated record of and plans to be in compliance with federal labor and employment laws).

Note that primary criteria must collectively account for **no less than three-quarters (75%) of the total benefits available** across all the criteria the Eligible Entity employs in choosing between or among competing proposals *(BEAD NOFO p.43-44, Footnote 68).*

Secondary Scoring

According to the *Initial Proposal Guidance* *(p.42)*, Eligible Entities must also give weight (e.g., some number of points or quantity of credits less than the amount given to the primary criteria) to the following secondary scoring criteria: 1) **speed to deployment** (i.e., providing service on an earlier date), 2) (*note that #2 is for non-priority projects only*) **speed of network and other technical capabilities** (i.e., speeds, latency, and other technical capabilities), and 3) **additional prioritization criteria** at the discretion of the Eligible Entity (e.g., equitable workforce development and job quality, open access, local and tribal coordination). **Secondary criteria combined can account for no more than 25% of total scoring.**

Note that a single secondary scoring criteria **cannot weigh more than a primary criteria**.

Subgrantee Selection Scoring vs. Gating Criteria

See below for information on the tricky topic.

🚧 **Scoring Criteria vs. Gating Criteria**

Gating Criteria

Gating criteria is evaluation criteria that is required of each applicant and/or project to be eligible for funding. These criteria are **requirements** and if these criteria are not met, the applicant/project in question will not receive funding no matter how the application would have scored.

Scoring Criteria

Scoring criteria is evaluation criteria that **assigns values/points to projects for meeting certain criteria** to choose among competing projects. Scoring criteria are **not necessarily requirements**; an applicant is not required to complete any of the scoring criteria to receive funding. However, these criteria allot points to projects to help the EE determine which project to select for funding.

Key Distinction

Gating criteria help determine which potential subgrantees are *eligible,* whereas **scoring criteria help decide between eligible potential subgrantees.**

Challenge Process

Challenge Process Portal

The BEAD Challenge Process requires Eligible Entities to design and implement their own Challenge Process portal to intake and process challenges and rebuttals.

Challenge Process Portal and NTIA's Role

Eligible Entity's Responsibility to Create the Portal

According to the *BEAD Challenge Process Policy Notice* *(p.13)*, NTIA is **not responsible** for creating an Eligible Entity's BEAD Challenge Process Portal. It is the **responsibility of the Eligible Entity** to create one or to find a third-party who can create one.

NTIA posted guidance (BEAD Eligible Entity Challenge Process Portal Considerations) on BroadbandUSA on the functionalities the BEAD Challenge Process Portal should have.

Portal Required by the BEAD Challenge Process Policy Notice and Model

The *BEAD Challenge Process Policy Notice* *(p.13)* states that "A representative of one of the permissible challengers submits a challenge to the Eligible Entity, using an online portal **maintained by the Eligible Entity**…"

Additionally, the *BEAD Model Challenge Process* *(p.12)* states that challengers will submit their challenges through the **broadband office challenge portal**.

Community Anchor Institutions (CAIs)

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See below for information on the tricky topic.

Definition of Community Anchor Institutions (CAIs)

Important Steps of Defining CAIs

According to the *Initial Proposal Guidance* *(p.14)*, Eligible Entities must 1) provide a description of how they applied the statutory definition of the term CAI, 2) identify which categories of institutions it considered but declined to classify as CAIs, 3) provide a reasonable justification for declining to define the previously mentioned categories of institutions as CAIs, and 4) provide a reasonable basis on why they identified categories of CAIs that were not specifically listed in the BEAD NOFO.

Statutory List of CAIs and Adding Categories of CAIs

The *BEAD NOFO* *(p.11)* defines a CAI 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."

A "community support organization that facilitates greater use of broadband service by vulnerable populations" is the standard that EEs must meet if they want to use BEAD to serve categories of CAIs not explicitly cited as a type of CAI in the NOFO. If an Eligible Entity identifies additional categories of CAIs eligible for BEAD funding, the EE must provide a thorough description of the **basis on which the EE determined that such category of CAI *facilitates greater use of broadband service by vulnerable populations*.** EEs should use this same framework for justifying exclusion of categories of CAIs proposed during stakeholder coordination or public comment.

Speed Test Data

See below for information on the tricky topic.

Speed Test Data and Pre-Challenge
Modifications – *how evaluated*

Defining Speed Test Pre-Challenge Modifications

According to the *BEAD Challenge Process Policy Notice* *(p.16)*, Eligible Entities may use speed tests to justify pre-challenge modifications. Using this module, the Eligible Entity will treat as "underserved" locations that the National Broadband Map shows to be "served" if **rigorous speed test methodologies** (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module) **demonstrate that the "served" locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream.** EEs must specifically explain how the speed test methodologies used to make pre-challenge modifications align to the Model's Speed Test Module, or they must be sure to articulate their other methodologically rigorous approach. They must include a detailed explanation that includes sources of data, age of data, how the data was correlated to the BSLs and specific providers, etc. EEs need to explain exactly what they are doing, not just restate the requirement, to have a sufficient submission to NTIA.

Acceptable Evidence

According to the *BEAD Challenge Process Policy Notice* *(p.16)*, if accepting speed tests for challenges and rebuttals during the BEAD challenge process, Eligible Entities **must either follow the NTIA Model Challenge Process Speed Test Module or describe**, as part of Volume 1, **how the Eligible Entity will ensure that the speed test data has been gathered in a scientifically rigorous and reliable manner**, including the **allowable speed test modalities** (e.g., permissible software or web pages; any restrictions on the time-of-day speed tests can be gathered) and the **required number of speed tests** and their **geographic distribution** that constitute sufficient evidence for a challenge or rebuttal. A robust IP submission that modifies the Module should provide additional details beyond what the Model includes, as a modification in one place may necessitate a greater explanation in another. The Model answers will all be accepted assuming that there are zero deviations from that Model that could possibly impact or generate questions about that part. If there are any deviations, additional details are needed.

Challenge Processes

See below for information on the tricky topic.

BEAD Challenge Process vs. the FCC Challenge Process

FCC Challenge Process

The Federal Communications Commission (FCC) continues to update broadband coverage maps on an ongoing basis (Broadband DATA Maps) using data collected from ISPs. The FCC accepts challenges on a continuous basis to both the Broadband Serviceable Location Fabric and the broadband availability data. NTIA used the FCC's Broadband DATA Maps to **determine the BEAD funding allocation for each state and territory**. Future FCC challenges, however, will not affect BEAD allocations. Eligible challengers for the FCC Challenge Process include: industries; state, local and Tribal government entities; and consumers.

BEAD Challenge Process

Eligible Entities must develop a challenge process for stakeholders to challenge whether a Broadband Serviceable Location (BSL) is served, unserved, or underserved and the location and BEAD-eligibility of CAIs. **The BEAD Challenge Process does not affect BEAD allocations**. The timelines for the BEAD Challenge Process will be determined by each Eligible Entity but must comply with NTIA requirements. Eligible challengers for the BEAD Challenge Process are units of local and Tribal government; nonprofit organizations; and broadband service providers.

Key Distinction

The FCC Challenge Process refined the FCC map that NTIA used to determine BEAD allocations, whereas **EEs begin with the most recent FCC map** before running the BEAD Challenge Process to **identify BEAD-eligible CAIs and determine the BEAD eligibility of the BSLs** on the FCC map.

Initial Proposal Funding Request (IPFR)

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Initial Proposal Funding Request (IPFR)

Description of IPFR

Under the statute, **once NTIA approves the Initial Proposal, NTIA will make available (i.e., obligate) not less than 20% of a state or territories' funding**.

In order to unlock the funding, states and territories **must submit an Initial Proposal Funding Request** along with their Initial Proposal. This is the step in the process that requires a budget and description of the use of the funds in order to obligate BEAD funds.

In spending BEAD funding once it is obligated, states and territories must always comply with all statutory and NOFO requirements.

With the IPFR, Eligible Entities can request up to 100% of their allocation but need to provide an additional explanation for amounts requested above 20% (e.g., greater allocation is needed to provide budget certainty for states and participating subgrantees, or to satisfy State anti-deficiency clause requirements).

While states can request up to 100% their allocation, the **statute and the BEAD NOFO place limits on the use of funds** prior to approval of the Final Proposal. NTIA will attach Specific Award Conditions consistent with the statute and the BEAD NOFO to such funding that must be met before funds can be drawn down.

Initial Proposal Funding Request (IPFR)

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Initial Proposal Funding Request (IPFR)

Helpful Definitions

Administrative Costs Definition: *Administrative costs are those expenses incurred by the grant recipients or subrecipients in support of the day-to-day operations*

Programmatic Costs Definition: *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.*

Uses of IPFR Funds

IPFR funding can be used for 5 types of activities under both administrative and programmatic costs.

- **Administrative Costs subject to the 2% Cap |** *Expenses relating (directly or indirectly) to administration of the grant under Section 60102(d)(2)(B) of the Infrastructure Act*

- **Administrative Costs not subject to the 2% Cap |** *Funds to be used for administrative purposes, other than the administration of the grant*

- **Deployment Activities |** *Examples: broadband deployment, including construction and acquisition of infrastructure, workforce preparation/training*

- **Non-Deployment Activities |** *Examples: initiatives that support BEAD Program goals including training, digital literacy, etc.*

- **Activities Required as part of the Initial Proposal** | *Examples: Subgrantee Selection Process and Challenge Process Execution*

Use of Funds Prior to Final Proposal Approval

See below for information on the tricky topic.

Use of Funds Prior to Final Proposal Approval

Initial Funding Availability

Per the *BEAD NOFO (p.46),* "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…"

Note that Requirement 17 of the Initial Proposal is to 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 the BEAD NOFO.

Remember that Eligible Entities should **first** use the funds on the Challenge Process and Subgrantee Selection Process execution **holistically**, rather than breaking up their state/territory into these high poverty/high unserved areas.

Eligible Uses of the 20% Funding Release

Per the *BEAD NOFO (p.46)*, an Eligible Entity may use the funds made available 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**

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Use of Funds Prior to Final Proposal Approval

Additional Uses of Funding

Per the _BEAD NOFO_ *(p.46),* An Eligible Entity may use these funds for **other eligible uses described** under Section IV.B.7 of the BEAD 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

Note that the Eligible Entity **does not need to 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.

Subgrantee Selection and the BEAD Challenge Process

Note that the _BEAD NOFO_ (*p.46*) states "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."

If these funds are used for **deployment projects**, those projects **remain subject to a competitive subgrantee selection process.**

Eligible Entity Planning Toolkit

Eligible Entity Planning Toolkit

See below for information on the tricky topic.

Eligible Entity Planning Toolkit Purpose and Uses

Use of the Toolkit for Deduplication

Use of the Eligible Entity Planning Toolkit is **not required**.

However, Eligible Entities are **encouraged to use it as a part of their process**. If the Eligible Entity does not intend to use the BEAD Eligible Entity Planning Toolkit, they must provide additional assurances to NTIA, along with reasoning for the tool/method they plan to use instead. There is no guarantee that this will be approved by NTIA, which is why NTIA strongly suggests using the tool provided.

Note that Eligible Entities that use the BEAD Model Challenge Process are required to use the Deduplication Tool from the Planning Toolkit.

High-Cost Areas

High-Cost Areas

See below for information on the tricky topic.

Extremely High Cost per Location Threshold vs. High-Cost Areas

Extremely High Cost Per Location Threshold (EHCLT) Definition

Per the _BEAD NOFO_ *(p.13),* "Extremely High-Cost Per Location Threshold" refers to a per-location cost **beyond which an Eligible Entity is no longer required to prioritize a Priority Broadband Project** and may even select projects employing technologies that are not Reliable Broadband Service but meet BEAD's technical requirements and would be less expensive. **Each Eligible Entity will set its own Extremely High-Cost Per Location Threshold. The threshold amount does not have to be already established and identified in the Initial Proposal; including a detailed process for identifying the EHCLT in the Initial Proposal is sufficient.**

High-Cost Area Definition

Per the _BEAD NOFO_ *(p.13),* the term "high-cost area" means an **unserved area (area in which at least 80% of BSLs are unserved) 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 FCC), incorporating factors that include: 1) the remote location of the area, 2) the lack of population density of the area, 3) the unique topography of the area, 4) a high rate of poverty in the area, or 5) any other factor identified by the Assistant Secretary, in consultation with the FCC, that contributes to the higher cost of deploying broadband service in the area. **High-Cost Areas are defined by NTIA**, not the Eligible Entity.

The 25% BEAD match is not required for projects that will serve a high-cost area per the _BEAD NOFO_ *(p.20).*

Affordability

Affordability Plans

See below for information on the tricky topic.

**Low-Cost Broadband Service Option
vs. Middle-Class Affordability Plan**

Low-Cost Broadband Service Option

The *Initial Proposal Guidance* (p.79) states that the EE must define a Low-Cost Broadband Service Option to **ensure that all [eligible] residents within its jurisdiction will have access to affordable broadband service options**. It is a **required service offering by BEAD ISP subgrantees to users of the BEAD-funded network**. Consumers eligible for the FCC's Affordable Connectivity Program (ACP) benefit will be eligible for the BEAD Low-Cost Service Option and must be permitted to apply the ACP benefit to help pay for the service.

Middle-Class Affordability Plan

The *Initial Proposal Guidance* (p.82) states that the purpose of the Middle-Class Affordability Plan is to ensure that the Eligible Entity will **adopt diverse strategies** to meet the BEAD Program's goal of ensuring every resident (including middle-class residents) has access to a reliable, affordable, high-speed broadband connection. The key differences between this and the Low-Cost Broadband Service Option is that the middle-class plan is *not* a mandated ISP service offering with defining eligible criteria; it is a **strategy designed and implemented by the Eligible Entity**.

Key Distinction

The Low-Cost Service Option must be **available to those who qualify for ACP and are using BEAD-funded infrastructure**, and it is an **offering by the ISP**. The Middle-Class Affordability Plan is **applicable to all middle-class internet users in the State/Territory**, and it is a **strategy adopted by the Eligible Entity.**

THANK YOU