

**GENERAL TERMS AND CONDITIONS**  
**for the**  
**NTIA BROADBAND EQUITY, ACCESS & DEPLOYMENT PROGRAM (BEAD)**  
**PROGRAM FUNDS**

**April 2024**

## Table of Contents

1. Award Compliance Requirements, Prioritization and Terminology .....	4
2. Management Conference .....	4
3. Grantee, Subgrantee, and Contractor Compliance with Applicable Requirements.....	4
4. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms .....	4
5. Prevention of Waste, Fraud, and Abuse.....	4
6. Protection of Whistleblowers.....	5
7. Signage and Public Acknowledgements.....	5
8. Eminent Domain.....	6
9. Construction Contract Security Bond.....	6
10. Inspection and Testing of Materials.....	6
11. Energy Efficiency .....	7
12. Requirements During Construction .....	7
13. Environmental and Historic Preservation (EHP) Review.....	7
14. Tribal Employment Rights Ordinances .....	11
15. Scheduling Inspection for Final Acceptance .....	11
16. Domestic Preference for Procurements (Build America, Buy America).....	11
17. Prohibition on Use for Covered Communications Equipment or Services .....	11
18. Challenge Process .....	11
19. Subgrantee Selection Process .....	12
20. Order of Award Priority.....	12
21. Consider All Provider Types .....	12
22. Prohibition on the Supplantation of Funds .....	12
23. Ensure Subgrantee Accountability.....	12
24. Local Coordination .....	13
25. Fair Labor and Highly Skilled Workforce .....	13
26. Civil Rights and Nondiscrimination Law Compliance.....	13
27. Climate Resilience .....	14
28. Network Capabilities .....	14

29. Deployment Deadlines and Benchmarks .....	14
30. Conduit Access Points .....	14
31. Affordability and Low-Cost Plans .....	14
32. Consumer Protections .....	15
33. Access to Service .....	15
34. Public Notice.....	15
35. Interconnection Requirements and Wholesale Access .....	15
36. Cybersecurity and Supply Chain Risk Management .....	16
37. Prohibition on Profit and Fees .....	16
38. Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining.....	17
39. Grantee Integrity and Performance Matters.....	17
40. Audit Requirements .....	17
41. Federal Funding Accountability and Transparency Act of 2006.....	17
42. Protected and Proprietary Information.....	17
43. Subgrantee Reporting.....	18
44. Programmatic Waiver of the Letter of Credit.....	18
45. Tribal Consent to Deploy on Tribal Land.....	18
46. Broadband Infrastructure Projects and the Major Purpose Test .....	18
47. Encumbrances .....	19
48. Recordation of the Federal Interest in BEAD-Funded Property.....	19
49. Federal Interest Period .....	21
50. Program Income.....	21
51. Uniform Guidance Exceptions, Adjustments, and Clarifications Applicable to Fixed Amount Subgrants For Which the Major Purpose of the Subgrant is a Broadband Infrastructure Project(s).....	21

## **1. Award Compliance Requirements, Prioritization and Terminology**

Grantees must comply with all requirements contained in 47 U.S.C. § 1702, the BEAD NOFO, the Department of Commerce Standard Terms and Conditions, the General Terms and Conditions for the BEAD Program, and the Specific Award Conditions applicable to each individual award. In any case where language among two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner which emphasizes consistency and harmonization across all relevant authorities. Where harmonization is impossible, Grantees should prioritize following the language contained in these authorities in the following order (from highest to lowest priority): 47 U.S.C. § 1702; the award's Specific Award Conditions; the General Terms and Conditions for the BEAD Program; the BEAD NOFO; the Department of Commerce Standard Terms and Conditions.

The definitions in the BEAD NOFO shall apply to capitalized terms not otherwise defined herein. Additionally, as used herein, the terms "Grantee" and "Subgrantee" refer to the recipient or subrecipient of a grant as appropriate and as aligned with the Uniform Guidance (*i.e.*, 2 CFR Part 200) and the BEAD NOFO. The Grantee assumes ultimate responsibility for compliance with the requirements of this award.

## **2. Management Conference**

After the award start date or the inclusion of an amendment for additional funds, NTIA may contact the Grantee to arrange a management conference. The purpose of the management conference is to explain to the Grantee its responsibilities for administration of the award, including its responsibilities with respect to the Terms and Conditions of the award and applicable Federal requirements.

## **3. Grantee, Subgrantee, and Contractor Compliance with Applicable Requirements**

The Grantee shall comply, and must require each Subgrantee or contractor, including lower tier Subgrantees or subcontractors, to comply with all applicable Federal, state, and local laws and regulations, and all applicable terms and conditions of this award. The Grantee and its Subgrantees are responsible for ensuring that all contracts, including those necessary for design and construction of facilities, are implemented in compliance with the Terms and Conditions of this Award. *See also* NOFO Section IX.G.4.

## **4. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms**

The Grantee and its Subgrantees must take all necessary affirmative steps (as described in 2 CFR 200.321 and NOFO Section VII.D.7) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

## **5. Prevention of Waste, Fraud, and Abuse**

Consistent with the principles in 2 CFR part 200, at any time(s) during the grant period of performance, NTIA may direct a member or members of the Grantee's key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing the Grantee's finances and overseeing any contractors, sub-contractors or Subgrantees (for financial matters and/or general oversight related to the grant). NTIA will provide instructions on when and how to take

such training(s), and costs incurred by a Grantee relative to the training (*e.g.*, staff time) are eligible for reimbursement pursuant to the NTIA award.

Further, Grantees must monitor award activities for common fraud schemes, including but not limited to:

- false claims for materials and labor;
- bribes related to the acquisition of materials and labor;
- product substitution;
- mismarking or mislabeling on products and materials; and
- time and materials overcharging.

Should a Grantee detect any fraud schemes or any other suspicious activity, the Grantee must contact its assigned NTIA Federal Program Officer and the Department of Commerce, Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

Additionally, in accordance with 2 CFR 200.113, an applicant or Grantee must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Grantees are required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (*See also* 2 CFR Part 180, 31 USC 3321, and 41 USC 2313.)

## **6. Protection of Whistleblowers**

The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award. Section F.05 of these Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 USC 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a Grantee, Subgrantee, contractor, subcontractor or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subgrant, or a contract under a Federal award or subgrant, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subgrant or contract under a Federal award or subgrant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subgrant, or contract under a Federal award or subgrant

Grantees and contractors under Federal awards and subgrants must inform their employees in writing of the rights and remedies provided under 41 USC 4712, in the predominant native language of the workforce.

A person that believes they have been the subject of retaliation for protected whistleblowing can contact the Department of Commerce, Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Hotline.aspx>, or the U.S. Office of Special Counsel, toll free at 1-800-872-9855.

## **7. Signage and Public Acknowledgements**

The Grantee is encouraged to post signage and to include public acknowledgements in published and other collateral materials (*e.g.* press releases, marketing materials, webpages, plaques) satisfactory to

NTIA and NIST that identifies grant funded activities and indicates that those activities are “funded by the Infrastructure Investment and Jobs Act.” The Grantee employing signage is encouraged to use the Official Investing in America emblem in accordance with the guidelines and design specifications found in the Building A Better America Brand Guide found here: <https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>. Costs associated with signage and public acknowledgements must be reasonable and limited. Signs or public acknowledgements should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or Grantee burden. The Grantee should use best effort to use recycled or recovered materials when procuring signs.

## **8. Eminent Domain**

In accordance with Executive Order 13406, “*Protecting the Property Rights of the American People*” (June 28, 2006), the Grantee agrees:

- Not to use any power of eminent domain available to the Grantee (including the commencement of eminent domain proceedings) for use in connection with the grant for the purpose of advancing the economic interests of private parties;
- Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the grant for the purpose of advancing the economic interests of private parties; and
- Any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Grantee or any other entity that has the power of eminent domain, in connection with the grant requires prior written consent from NTIA. Any use of eminent domain without prior written consent of NTIA constitutes an unauthorized activity and/or use of funds under the award, and subjects the Grantee to appropriate enforcement action by the Grants Officer, including but not limited to the disallowance of award costs and the termination of an award.

## **9. Construction Contract Security Bond**

Pursuant to 2 CFR 200.326, for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$250,000), the Grantee may submit its bonding policy and requirements to the Grants Officer for a determination of whether the Federal interest is adequately protected. If such a determination has not been made, the minimum bonding requirements of 2 CFR 200.326 (Bonding requirements) shall apply. Separately, the Grantee may elect to place additional bonding requirements on its Subgrantees consistent with the programmatic letter of credit waiver discussed in Term 44 below.

## **10. Inspection and Testing of Materials**

The Grantee or Subgrantee, as applicable, shall ensure that all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. The Grantee or Subgrantee shall ensure that documentation of same is cataloged and retained.

## **11. Energy Efficiency**

The Grantee shall apply, where feasible, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.

## **12. Requirements During Construction**

During construction, the Grantee or Subgrantee, as applicable, is responsible for:

- Ensuring that it meets all deadlines in approved plans and specifications;
- Monitoring the progress of grant funded activities;
- Reporting progress;
- Providing for required construction permits and adequate construction inspection;
- Promptly paying costs incurred for grant funded activities;
- Monitoring contractors' compliance with Federal, State, and local requirements; and
- Constructing and maintaining in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.

## **13. Environmental and Historic Preservation (EHP) Review**

The Grantee must comply with the requirements of all applicable Federal, state, and local environmental laws, regulations, and standards and must ensure that Subgrantees comply with all such requirements as well.

### **A. EHP Pre-Implementation and Funding Conditions**

The Grantee must not initiate or allow a Subgrantee to initiate any grant funded implementation activities—except for the limited permissible activities identified in Section 13.E below—and must not disburse any BEAD funds to a Subgrantee prior to the following:

- The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA), and issuance by NTIA and the Grantee, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
- The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101, *et seq.*) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office (SHPO), and Federally recognized Native American tribes;
- The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. 1251, *et seq.*), as applicable; and
- Demonstration of compliance with all other applicable Federal, state, and local environmental laws and regulations.

## **B. Grantee Compliance with NEPA as Joint Lead Agency**

NEPA Compliance: To ensure the timely completion of environmental review for all BEAD-funded activities subject to NEPA review, the Grantee must:

- Serve as a “joint lead agency” in its capacity as the State (or Territory) agency administering the BEAD program in accordance with 42 U.S.C. 4336a(a)(1)(B) and carry out the duties described in 42 U.S.C. 4336a(a)(2);
- Complete an evaluation of the sufficiency, applicability and accuracy of the analysis in the relevant First Responder Network Authority (FirstNet) Regional Programmatic Environmental Impact Statement (PEIS) chapter as it applies to anticipated implementation activities for the Grantee’s State or Territory;
- Include in all awards to Subgrantees conditions stating that:
  1. the Subgrantee will not commence implementation and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified in Section 13.E below;
  2. the Subgrantee must timely prepare any required NEPA documents and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. 4336a(g); and
  3. the Subgrantee must provide a milestone schedule identifying specific deadlines and describing how the Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).
- For grant funded activities carried out by Subgrantees, certify the sufficiency of all Subgrantee NEPA documentation, either by preparing such documentation or by supervising Subgrantees’ preparation of draft documents, independently reviewing those drafts, and verifying that draft documents meet the requirements of NEPA prior to transmittal to NTIA;
- For grant funded activities carried out by the Grantee, complete all analyses required to prepare all NEPA documentation, draft all NEPA documents, and ensure that such documents meet the requirements of NEPA prior to transmittal to NTIA; and
- Submit all NEPA documentation—including any supporting environmental documentation required or requested by NTIA—to NTIA for review.

## **C. Grantee Compliance with NHPA Section 106**

NHPA Compliance: To ensure the timely completion of historic preservation review for all BEAD-funded activities, the Grantee must:

- At the earliest possible time, provide the NTIA-assigned Environmental Program Officer



sufficient information to initiate Tribal notification via the FCC's Tower Construction Notification System (TCNS) when required for grant funded activities;

- Provide notified Tribes with information regarding grant funded activities via their preferred communication means, as identified in TCNS;
- Apply the Advisory on Historic Preservation (AHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities or any other applicable program comment or program alternative developed to address the Section 106 review of communications facilities;
- Adhere to, and ensure that all Subgrantees adhere to, the provisions of the NTIA memorandum to SHPOs, Tribal Historic Preservation Officers (THPOs), and Internet for All (IFA) grant recipients authorizing IFA grant recipients to initiate Section 106 consultation for NTIA funded projects;
- Notify NTIA of any Tribal request for government-to-government consultation or any identification that a grant funded activity may impact a historic property or a property of religious or cultural significance to a Tribe; and
- Provide all consulting parties with the statutorily required time to respond to its determination of a grant funded activity's effect on historic properties.

#### **D. NTIA EHP Guidance**

Further Guidance: NTIA will issue further implementation guidance regarding the Grantee's and Subgrantee's responsibilities under this Section. That guidance will include instructions on the following topics, among others:

- How the Grantee should evaluate the sufficiency, applicability and accuracy of the relevant FirstNet PEIS section;
- How the Grantee should evaluate what level of environmental review is appropriate and determine what type of NEPA document is required for a grant funded activity to proceed;
- NTIA's criteria for determining whether each type of NEPA document meets the requirements of NEPA;
- How the Grantee and/or Subgrantee should format NEPA documents;
- How the Grantee should submit NEPA documents and any other required environmental documentation to NTIA;
- How the Grantee will work with cooperating agencies;
- How to develop an appropriate milestone schedule and NEPA timeline for meeting NEPA's timing requirements; and
- NTIA's process for notifying the Grantee that a NEPA document meets the requirements of NEPA.

#### **E. Limited Permissible Pre-Implementation Activities**

The Grantee must ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of all EHP requirements as outlined in this Section. The Grantee must comply with all conditions placed on the grant funded activities as the result of NEPA or NHPA consultation or processes

under other applicable laws—*e.g.*, mitigation requirements, best management practices, or other measures necessary to reduce environmental impacts—and ensure that Subgrantees comply with such conditions as well. The Grantee must also provide any information requested by NTIA to ensure both initial and ongoing compliance with all requirements described above.

The Grantee may undertake or allow limited permissible activities under NEPA to proceed using award funds prior to the completion of the EHP review process, including the following:

- Pre-construction planning, including collecting information necessary to complete environmental reviews;
- Applications for environmental permits;
- Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- Administrative costs;
- Pre-award application costs;
- Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
- Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements).

Grantees or Subgrantees that undertake unauthorized project activities in contravention of this Section proceed at their own risk and may face de-obligation of funding.

The Grantee shall notify NTIA within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, THPO, or other consulting party or the USFWS or NMFS; or notices of noncompliance received from consulting authorities or regulatory agencies.

Any change to the approved scope of grant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable requirements.

Archaeological Resources: Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Grantees must notify NTIA of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Grantees should have an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, the Grantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of NTIA.

#### **14. Tribal Employment Rights Ordinances**

NTIA recognizes Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards and NTIA requires their incorporation when applicable into BEAD Program subgrants to Native American/Alaska Native/Native Hawaiian entities. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for proper and efficient performance and administration” of an award, as provided under 2 CFR 200.403.

#### **15. Scheduling Inspection for Final Acceptance**

The Grantee will schedule a final inspection for each broadband infrastructure project and other construction activities when all construction has been completed, the architect/engineer has conducted its own final inspection, and any deficiencies have been corrected. Representatives of the Grantee, the architect/engineer, and the Subgrantee and/or contractor(s) will attend the Grantee’s final inspection for each project. NTIA must be given reasonable advance notice of each final inspection so that a representative of NTIA may participate.

#### **16. Domestic Preference for Procurements (Build America, Buy America)**

Congress passed the Build America, Buy America Act (BABA) on November 15, 2021 as part of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, 70901-70927. BABA established domestic content procurement preference requirements for Federal financial assistance projects for infrastructure, including the BEAD Program, consistent with Section 70912(2) of the Infrastructure Act. The Grantee shall comply with BABA consistent with applicable legal authorities, such as the Infrastructure Act, Executive Order 14005, 2 CFR Part 184, OMB Memo M-24-02, and any applicable waivers issued by the Department of Commerce. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

#### **17. Prohibition on Use for Covered Communications Equipment or Services**

A Grantee or Subgrantee (including contractors and subcontractors of Subgrantees) may not use BEAD grant funds (including non-Federal cost share) to purchase or support any communications equipment or service covered by either the Secure and Trusted Communications Networks Act of 2019 (47 USC 1608) or 2 CFR 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment).

#### **18. Challenge Process**

Consistent with 47 U.S.C. § 1702(h)(2), a Grantee shall conduct the challenge process, as described in the approved Initial Proposal, subject to any amendments agreed upon by NTIA and the Grantee, before allocating grant funds received from BEAD for the deployment of broadband networks to Subgrantees. After resolving each challenge and at least 60 days before allocating grant funds for network deployment, a Grantee must provide public notice of the final classification of each unserved location, underserved location, or eligible community anchor institution within the jurisdiction of the Grantee. A Grantee 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 a Grantee with respect to the eligibility of a particular location or community anchor institution. *See also* NOFO IV.B.6.

## **19. Subgrantee Selection Process**

Consistent with 47 U.S.C. § 1702(e)(3)(A)(i)(IV), a Grantee must establish fair, open, and competitive processes for selecting Subgrantees. A Grantee must make its Subgrantee selection process as described in the approved Initial Proposal, subject to any amendments agreed upon by NTIA and the Grantee. *See* NOFO Section IV.B.7 for full requirements.

## **20. Order of Award Priority**

Consistent with 47 U.S.C. § 1702(h)(1)(A)(i), Grantees shall award funding for broadband infrastructure projects in a manner that: (I) prioritizes unserved service projects; (II) after certifying to the Assistant Secretary that the Grantee will ensure coverage of broadband service to all unserved locations within the jurisdiction of the Grantee, prioritizes underserved service projects; and (III) after prioritizing underserved service projects, provides funding to connect eligible community anchor institutions. *See also* NOFO Section IV.B.7.a.ii.5.

## **21. Consider All Provider Types**

Consistent with 47 U.S.C. § 1702(h)(1)(A)(iii), a Grantee 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 broadband network deployment grant funds. In determining whether to approve a Grantee’s Final Proposal, NTIA will consider whether the Grantee 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. NTIA further strongly encourages Grantees to waive all such laws predating the enactment of the Infrastructure Act that 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. If a Grantee does not waive such laws, the Grantee must disclose in its Final Proposal each unsuccessful application affected by such laws and describe how those laws impacted the decision to deny the application. *See* NOFO Section IV.C.1.a.

## **22. Prohibition on the Supplantation of Funds**

Consistent with 47 U.S.C. § 1702(l), grant funds awarded to the Grantee under this program shall be used to supplement, and not supplant, the amounts of Federal or non-Federal funds that the Grantee would otherwise make available for the purposes for which the grant funds may be used. *See also* NOFO V.H.2.

## **23. Ensure Subgrantee Accountability**

Consistent with 47 U.S.C. § 1702(e)(4)(A)(i)(III), in addition to demonstrating how it expects to satisfy the Subgrantee monitoring and management requirements identified in 2 C.F.R. Part 200 Subpart D, each Grantee must include sufficient accountability procedures within its program to ensure Subgrantee compliance with all applicable Program requirements. The Grantee 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. The Grantee must, at a minimum, employ

the following practices: (1) distribution of funding to Subgrantees for, at a minimum, all broadband infrastructure projects on a reimbursable basis (which would allow the Grantee 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 Grantee and any Subgrantee; (3) timely Subgrantee reporting mandates; and (4) robust Subgrantee monitoring practices. NTIA will pursue clawback of funds directly from Grantee that fail to ensure Subgrantee accountability to the fullest extent of the law. *See also* NOFO IV.C.1.b.

#### **24. Local Coordination**

Consistent with 47 U.S.C. § 1702(e)(3)(A)(ii), the Grantee 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. The Grantee 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. The Grantee 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. The Grantee 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. *See also* NOFO IV.C.1.c., including for additional detail on local coordination as it relates to i) geographic coverage; ii) diverse stakeholder groups; iii) awareness, outreach, and participation mechanisms; iv) transparency; v) underrepresented engagement; vi) equitable and nondiscriminatory distribution of funds; v) fair labor practices and highly skilled workforce; vi) advancing equitable workforce development and job quality objectives; and vii) other considerations.

#### **25. Fair Labor and Highly Skilled Workforce**

Consistent with 47 U.S.C. § 1702(h)(1)(A)(iv)(IV), Grantees must give priority to broadband infrastructure projects based on (among other things) a demonstrated record of and plans to be in compliance with Federal labor and employment laws. Grantees are required to give preferential weight to projects based on the strength of the showing in their application on this factor. *See also* NOFO IV.C.1.e.

#### **26. Civil Rights and Nondiscrimination Law Compliance**

Consistent with 47 U.S.C. § 1702(g)(2)(C), the Grantee must distribute funds in an equitable and nondiscriminatory manner. *See also* NOFO IV.C.1.d.

Consistent with 47 U.S.C. § 1702(g)(2)(C)(ii), prior to distributing any BEAD funding to a Subgrantee, a Grantee must require the Subgrantee to agree, by contract or other binding commitment, to abide by the non-discrimination requirements set forth in the legal authorities listed in the NOFO, to the extent applicable, and to acknowledge that failure to do so may result in cancellation of any subgrant and/or recoupment of funds already disbursed. *See also* NOFO IV.C.1.g.

## **27. Climate Resilience**

In establishing their Initial Proposals and Final Proposals, Grantees must demonstrate that they have sufficiently accounted for current and future weather- and climate-related risks to new broadband infrastructure projects. Grantees should make use of available tools and resources, like those available from the National Oceanic and Atmospheric Administration (NOAA) and other Federal agencies, as well as Grantee-level resources and centers of expertise, in drawing up their Initial and Final Proposals pursuant to the BEAD Program. *See also* NOFO IV.C.1.h.

## **28. Network Capabilities**

Pursuant to 47 U.S.C. § 1702(g)(1)(A), which directs the Assistant Secretary to establish quality-of-service standards to which each Subgrantee must comply, each Grantee shall ensure that every Funded Network meets the criteria related to speed and latency and network outages outline in the NOFO IV.C.2.a. The Grantee 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.

## **29. Deployment Deadlines and Benchmarks**

Pursuant to 47 U.S.C. § 1702(h)(4)(C), the Grantee 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. The Grantee 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. The Grantee may, following consultation with the NTIA and with the approval of the Assistant Secretary, extend the deadlines under this subparagraph if the Grantee reasonably determines that (i) the Subgrantee has a specific plan for use of the grant funds, with broadband infrastructure 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. *See* NOFO IV.C.2.b.i.

## **30. Conduit Access Points**

Pursuant to 47 U.S.C. § 1702(h)(4)(D), 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, the Grantee 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. *See* NOFO IV.C.2.b.ii.

## **31. Affordability and Low-Cost Plans**

Pursuant to 47 U.S.C. § 1702(h)(4)(B), each Subgrantee receiving BEAD funding to deploy network infrastructure must offer at least one low-cost broadband service option. Pursuant to Section 1702(h)(5)(C), NTIA or the Grantee may take corrective action, including recoupment of funds from the

Subgrantee, for noncompliance with the statutory low-cost plan requirement. The Grantee will include in its Initial and Final Proposals a description of its low-cost plan requirements and middle-class affordability plan to ensure that all consumers have access to affordable high-speed internet. The Grantee will be required to ensure that services offered over Funded Networks allow subscribers in the service area to utilize the Affordable Connectivity Program, or any successor program, and that Subgrantees continue to offer the low-cost broadband service option to eligible subscribers, during the Federal Interest Period. *See* NOFO IV.C.2.c.i.

### **32. Consumer Protections**

The Grantee 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. Providers may apply otherwise-applicable acceptable use policies to Funded Networks. Subgrantees shall certify through the semiannual reporting requirements described in the NOFO.VII.E that the plans offered over Funded Networks do not contain data usage caps for subscribers. *See* NOFO IV.C.2.c.ii.

### **33. Access to Service**

Pursuant to 47 U.S.C. § 1702(g)(2)(C)(ii), 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. *See* NOFO IV.C.2.c.iii.

### **34. Public Notice**

Pursuant to 47 U.S.C. § 1702(h)(4)(G), the Grantee 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, including information about low-cost broadband service options for eligible subscribers. The Grantee 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 the locations to which broadband service has been provided and share the public notice with the Grantee that awarded the subgrant. The Grantee 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. *See* NOFO IV.C.2.c.iv.

### **35. Interconnection Requirements and Wholesale Access**

Consistent with 47 U.S.C. § 1702(h)(4)(E), the Grantee 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). The Grantee 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 Grantee 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. The Grantee may pursue either remedial action so long as such action results in continued retail service to end users in the grant area. *See* NOFO IV.C.2.c.v.

### **36. Cybersecurity and Supply Chain Risk Management**

Pursuant to 47 U.S.C. § 1702(g)(1)(B), a Subgrantee, in carrying out activities using amounts received from a Grantee, 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 Federal Communications Commission. Prior to allocating any funds to a Subgrantee, the Grantee shall, at a minimum, require a prospective Subgrantee to attest that:

- The prospective Subgrantee has a cybersecurity risk management plan (the plan) in place that is either:
  - operational, if the prospective Subgrantee is providing service prior to the award of the grant; or
  - ready to be operationalized upon providing service, if the prospective Subgrantee is not yet providing service prior to the grant award;
- The plan reflects the latest version of the 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;
- The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- The plan will be submitted to the Grantee prior to the allocation of funds. If the Subgrantee makes any substantive changes to the plan, a new version will be submitted to the Grantee within 30 days. The Grantee 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, the Grantee shall, at a minimum, require a prospective Subgrantee to attest that:

- The prospective Subgrantee has a SCRM plan in place that is either:
  - operational, if the prospective Subgrantee is already providing service at the time of the grant; or
  - ready to be operationalized, if the prospective Subgrantee is not yet providing service at the time of grant award;
- 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;
- The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- The plan will be submitted to the Grantee prior to the allocation of funds. If the Subgrantee makes any substantive changes to the plan, a new version will be submitted to the Grantee within 30 days. The Grantee must provide a Subgrantee's plan to NTIA upon NTIA's request.

The Grantee 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. *See* NOFO IV.C.2.c.vi.

### **37. Prohibition on Profit and Fees**

A profit, fee, or other incremental charge above actual cost incurred by a Grantee or Subgrantee is not an allowable cost under this Program. *See* NOFO V.H.2.b.



### **38. Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining**

A Grantee or a Subgrantee may not use grant funds, whether directly or indirectly, to support or oppose collective bargaining. *See* NOFO V.H.2.c.

### **39. Grantee Integrity and Performance Matters**

In accordance with Section 872 of Public Law 110-417, as amended, *see* 41 USC 2313, if the total value of a Grantee'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, then the Grantee shall be subject to the requirements specified in Appendix XII to 2 CFR Part 200, 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 Grantee. *See also* NOFO VII.F.

### **40. Audit Requirements**

2 CFR Part 200, Subpart F, adopted by the Department of Commerce through 2 CFR 1327.101, requires any non-Federal entity that expends Federal awards of \$750,000 or more in the Grantee'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 CFR 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 grant or subgrant in accordance with Generally Accepted Government Auditing Standards; or (ii) a program-specific audit for each grant or subgrant in accordance with the requirements contained in 2 CFR § 200.507. Grantees 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. *See also* NOFO V.G.

### **41. Federal Funding Accountability and Transparency Act of 2006**

In accordance with 2 CFR Part 170, the Grantees 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 Grantees are responsible for reporting subgrants of \$30,000 or more. In addition, Grantees 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. *See also* NOFO VII.H.

### **42. Protected and Proprietary Information**

The Grantee 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 CFR 200.303(e), Grantees 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. *See also* NOFO IX.B.

#### **43. Subgrantee Reporting**

Pursuant to 47 U.S.C. § 1702(j)(2)(A), the Subgrantee shall submit to the Grantee a report, at least semiannually, for the duration of the subgrant to track the effectiveness of the use of funds provided. Subgrantees must certify that the information in the report is accurate. Each report shall describe each type of broadband infrastructure project and/or other eligible activities carried out using the subgrant and the duration of the subgrant. Grantees 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. *See also* NOFO VII.E.2.

#### **44. Programmatic Waiver of the Letter of Credit**

Per NOFO Section IV.D.2.a.ii, the Grantee shall establish a model letter of credit (LOC) substantially similar to the model letter of credit established by the Federal Communications Commission in connection with the Rural Digital Opportunity Fund (RDOF). The LOC requirement is waived to the extent described in the Letter of Credit Notice of Programmatic Waiver, [BEAD Letter of Credit Waiver Notice \(ntia.gov\)](#).

#### **45. Tribal Consent to Deploy on Tribal Land**

Consistent with NOFO section IV.B.7.a.ii.10 and IV.B.9.b.15, the Grantee may not issue a subgrant to deploy broadband to Unserved Service Projects or Underserved Service Projects that include any locations on Tribal Lands without receiving a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed.

#### **46. Broadband Infrastructure Projects and the Major Purpose Test**

As used in this document, broadband infrastructure “project” carries the same meaning as the term project is used in Section IV.B.7.a.ii. of the NOFO. For the sake of clarity, broadband infrastructure projects include:

- last-mile broadband deployment projects, as that term is used in Section IV.B.7.a.ii. of the NOFO, with the exception that projects for which the major purpose is training or workforce development are not considered broadband infrastructure projects for the purposes of the exceptions addressed in Term 51 below;
- projects to deploy Middle Mile Infrastructure, as that term is defined in Section I.A.(o) of the NOFO; and
- projects to deploy internet and Wi-Fi infrastructure within a multi-family residential building.

The “major purpose” of a subgrant is a broadband infrastructure project(s) if more than 50% of the estimated total costs (e.g., labor, permitting expenses, equipment, etc.) under the subgrant are necessitated by the broadband infrastructure project(s) activities of the subgrant. Grantees are responsible for initially determining whether the major purpose of a subgrant is a broadband infrastructure project. Grantees shall identify in their Final Proposals those subgrants whose “major purpose” is a broadband infrastructure project and keep NTIA apprised of any changes to such determinations. NTIA retains the authority to review subgrant agreements and revise determinations regarding the major purpose of a subgrant.

#### **47. Encumbrances**

Subject to the exception below, Grantees and Subgrantees must not encumber property without prior disclosure to and approval from NTIA and NIST. Grantees and Subgrantees may not enter into any encumbrances that interfere with the construction, intended use, operation, or maintenance of grant funded property during Federal Interest Period set forth in Term 48.

The following exception applies to subgrants whose major purpose is a broadband infrastructure project. Subgrantees may encumber real property and equipment acquired or improved under such subgrants only after provision of notice to NTIA and to the Grants Officer, and subject to a requirement that the DOC receives either a first priority security interest (preferred) or a shared first priority security interest in the real property and equipment such that, if the real property and equipment were foreclosed upon and liquidated, the DOC would be entitled to receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC's percentage of contribution to the project costs. For example, if the DOC had contributed 50% of the project costs, the DOC would receive, on a pari-passu basis, 50% of the current fair market value of the property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

#### **48. Recordation of the Federal Interest in BEAD-Funded Property**

- A. Useful Life and Compliance with 2 CFR 200.311, 200.313. For the purposes of this award, the useful life of the real property or equipment acquired or improved using BEAD funds shall coincide with the Federal Interest Period as defined in Term 49 below. During the useful life of the BEAD-funded property, the Grantee must adhere to the requirements contained in the terms and conditions of the award, including adherence to the use, management, and disposition requirements set forth in 2 CFR 200.311 or 200.313, as applicable. NTIA will provide additional information concerning the review and approval process for transactions involving BEAD-funded real property and equipment in subsequent guidance.
- B. To document the Federal interest in BEAD-funded real property, the Grantee or Subgrantee must prepare and properly record a "Covenant of Purpose, Use and Ownership" (Covenant). The Covenant differs from a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest to NTIA. Rather, pursuant to the Covenant, the Grantee or Subgrantee acknowledges that it holds title to the BEAD-funded property in trust for the public purposes of the BEAD financial assistance award and agrees, among other commitments, that it will repay the Federal interest if it disposes of or alienates an interest in the BEAD-funded property, or uses it in a manner inconsistent with the public purposes of the BEAD award, during the useful life of the BEAD-funded property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the BEAD-funded property during its useful life and that NTIA retains an undivided equitable reversionary interest in the BEAD-funded property during the Federal Interest Period. NTIA will provide a suggested sample form to use for the Covenant to record notice of the Federal interest in real property.
- C. UCC-1 Filing & Attorney's Certification. Pursuant to 2 C.F.R. § 200.316, after acquiring all or any portion of the equipment under this award, the Grantee or Subgrantee shall properly file a UCC-1 with the appropriate State office where the equipment will be located in accordance with the State's Uniform Commercial Code (UCC). This security interest shall be executed in advance

of any sale or lease and not later than closeout of the grant or subgrant, as applicable. The UCC filing(s) must include the below or substantively similar language providing public notice of the Federal interest in the equipment acquired with BEAD funding. Also, a clear and accurate inventory of the subject equipment must be attached to and filed with the UCC-1.

The UCC filing must include the below or substantively similar language:

*The Equipment set forth at Attachment A hereto was acquired with funding under a financial assistance award (Award Number) issued by the National Institute of Standards and Technology, U.S. Department of Commerce. As such, the U.S. Department of Commerce retains an undivided equitable reversionary interest (Federal interest) in the Equipment for [insert number] years after the end of the year in which the award is closed out in accordance with 2 CFR 200.344.*

In addition, within 15 calendar days following the required UCC filing(s), the Grantee shall provide the Grants Officer with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with NTIA BEAD funding including all subgrants, along with a certification from legal counsel, licensed by the State within which the filings were made (Attorney's Certification), that the UCC filing was properly executed and filed in accordance with applicable state law. The Attorney's Certification must include the below or substantively similar language:

NIST Award Number: XX-XX-XXXX

*Pursuant to 28 USC 1746, I hereby certify as follows:*

*I am legal counsel at \_\_\_\_\_.*

*I am licensed to practice law in the State of \_\_\_\_\_ having been a license holder of said state and in good standing since \_\_\_\_\_.*

*Attached hereto is a certified copy of UCC-1 form(s) reflecting that this document was filed in the \_\_\_\_\_ on \_\_\_\_\_, 202x, bearing the following filing information [insert filing data, e.g., instrument number, etc.] and consists of \_\_\_\_ recorded pages as certified by the Secretary of State of \_\_\_\_\_.*

*I certify that this UCC-1 form(s) has/have been validly executed and properly recorded as noted above.*

*I certify under the penalty of perjury that the foregoing is true and correct.*

*Executed on this \_\_\_\_ day of \_\_\_\_\_.*

\_\_\_\_\_  
*(Attorney name and title)*  
*(Address and phone number)*

In addition, during the estimated useful life of the [type of equipment, e.g. robotic equipment], the Grantee or Subgrantee is hereby authorized and directed by the Grants Officer to timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth in this specific award condition. Copies of all filed UCC continuation statements, together with an Attorney's Certification, must be submitted to the Grants Officer within 15 calendar days following each such filing. The UCC filing(s) and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to NTIA and the National Institute of Standards and Technology (NIST) Grants Officer.

#### **49. Federal Interest Period**

- a. BEAD-Funded Broadband Infrastructure Projects: The Federal interest in all real property or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project will continue for ten years after the year in which that subgrant has been closed out in accordance with 2 CFR 200.344. For example, for all subgrants closed out in 2027, regardless of the month, the Federal interest will last until December 31, 2037. The Federal interest described herein applies to BEAD subgrants for which the major purpose of the subgrant, as defined in Term 46, is a broadband infrastructure project(s).
- b. The Grants Officer, in consultation with the Program Office, shall determine the Federal Interest Period for real property or equipment that will be acquired or improved using BEAD funds and not captured in provision (a) of this Term. NTIA will issue further implementation guidance regarding the Federal Interest Period for these BEAD assets.

#### **50. Program Income**

In the case of subgrants whose major purpose is a broadband infrastructure project, Subgrantees may retain program income without restriction, including retaining program income for profit. This exception does not alter the prohibition in Term 37 regarding a profit, fee, or other incremental charge above the actual cost incurred by the Subgrantee.

#### **51. Uniform Guidance Exceptions, Adjustments, and Clarifications Applicable to Fixed Amount Subgrants For Which the Major Purpose of the Subgrant is a Broadband Infrastructure Project(s)**

The following Uniform Guidance exceptions, adjustments, and clarifications apply to fixed amount subgrants for which the major purpose of the subgrant is a broadband infrastructure project. Throughout the below discussion on exceptions, adjustments, and clarifications, the phrase “fixed amount subgrant” is used as shorthand to refer to fixed amount subgrants as described in the preceding sentence.

##### **A. Exceptions to 2 CFR Part 200 Fixed Amount Subgrant Requirements (200.333—Fixed Amount Subgrants and 200.201(b)(2)—Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts)**

Pursuant to exceptions of 2 CFR 200.333 and 200.201(b)(2) approved by the Office of Management and Budget (“OMB”), and subject to the conditions identified below, Grantees may issue fixed amount subgrants without further NTIA approval, regardless of whether the value of the subgrant exceeds \$250,000, and notwithstanding whether the subgrant includes a non-Federal match from the Subgrantee that is being used to satisfy the Grantee’s statutory match requirement.

Grantees may elect to treat subgrants as fixed amount subgrants even if the Grantee requires Subgrantees to submit evidence of costs. Grantees thus may treat subgrants providing for a maximum payment amount that is based on a reasonable estimate of actual cost (*see* 2 CFR 200.201(b)(1)) as fixed amount subgrants, even if the subgrant agreement also provides that payments to the Subgrantee will be limited to actual costs after review of evidence of costs.

The authority to issue fixed amount subgrants pursuant to these exceptions is conditioned upon a requirement that the Grantee monitor the reasonableness of Subgrantee costs. Measures to validate that

fixed amount subgrants reasonably approximate the actual cost of broadband infrastructure projects would include, but are not limited to, requiring Subgrantees to periodically report their expenses using Generally Accepted Accounting Principles or other standard accounting practices, or monitoring the relative proportion of costs across key spending areas: professional services (e.g., engineering, environmental and historic preservation permitting, legal expenses, etc.); construction services (e.g., digging trenches, erecting towers, blowing fiber, constructing and improving buildings, etc.); outside plant, towers, and poles (e.g., fiber plan, conduit, towers, poles, emergency power generational equipment, etc.); network and access equipment (e.g., broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, etc.); operating equipment (e.g., office furniture and fixtures, work equipment and vehicles, etc.); customer premise equipment; contingency funds; and all other expenses. A Grantee's monitoring responsibility also means monitoring the non-Federal share/required by the subgrant agreement.

Grantees issuing fixed amount subgrants shall require the Subgrantee to use subgrant payments only for the reimbursement of the eligible costs in connection with the last-mile broadband deployment projects for which the payment is intended and, if applicable, the eligible costs for non-deployment uses for which the payment is intended. Ineligible uses of fixed amount subgrant payments include but are not limited to the following:

- i. Personal expenses of employees, executives, board members, and contractors, and family members thereof, or any other individuals affiliated with the Subgrantee, including but not limited to personal expenses for housing, such as rent or mortgages, vehicles for personal use and personal travel, including transportation, lodging and meals;
- ii. Gifts to employees; housing allowances or other forms of mortgage or rent assistance for employees except that a reasonable amount of assistance shall be allowed for work-related temporary or seasonal lodging; cafeterias and dining facilities; food and beverage except that a reasonable amount shall be allowed for work-related travel; entertainment;
- iii. Expenses associated with: tangible property not logically related or necessary to the broadband infrastructure project or authorized non-deployment use; corporate aircraft, watercraft, and other motor vehicles designed for off-road use except insofar as necessary or reasonable to access portions of the project area not readily accessible by motor vehicles travelling on roads; tangible property used for entertainment purposes; consumer electronics used for personal use; kitchen appliances except as part of work-related temporary or seasonal lodging assistance; artwork and other objects which possess aesthetic value;
- iv. Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships or conferences or community events not logically related or necessary for the intended use of the subgrant; nonproduct-related corporate image advertising; and
- v. Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

The remainder of 2 CFR 200.201 remains unchanged. Payments to Subgrantees under fixed amount subgrants shall be made on a reimbursement basis in accordance with terms of the subgrants. *See* NOFO Sec. IV.C.1.b. Pursuant to 2 CFR 200.201(b)(1), acceptable forms of payment include, but are not limited to: (a) partial payments of agreed amounts upon meeting milestones or other triggering events identified in the subgrant; (b) payments on a unit price basis, for a defined unit or units, at a defined price or prices identified in the subgrant; or (c) a single payment upon completion of the project.

Pursuant to 2 CFR 200.201(b)(3), the Subgrantee must certify in writing to the Grantee at the end of the Federal award that the broadband infrastructure project funded under the subgrant was completed. Accordingly, a Subgrantee receiving a fixed amount subgrant must certify to the Grantee that the broadband infrastructure project was placed into service, as defined in 47 USC 1702(h)(4)(C) for last-mile broadband deployment projects, or in the Subgrantee agreement for all other broadband infrastructure projects, by the end of the Grantee's period of performance.

The above notwithstanding, the BEAD Program prohibition on the Grantee or Subgrantees claiming profit or fees as allowable costs remains unchanged by this exemption. *See* NOFO Sec. V.H.2.b. Therefore, neither fees above the estimated actual cost that will be incurred by the Subgrantee nor profit shall be considered reasonable costs when determining the reasonable estimate of actual costs (*i.e.*, neither fees nor profits may be included in the estimate of actual costs).

Subgrantees of fixed amount subgrants pursuant to the above exceptions are not required to comply with the Cost Principles set forth in 2 CFR Subpart E. However, all fixed amount subgrants must be based on a reasonable estimate of actual cost. It is imperative that the Grantee establish effective means for determining the reasonable estimate of actual costs prior to the issuance of any fixed amount subgrant to ensure there is sufficient funding to cover the proposed activities, while minimizing to the greatest extent possible an unexpended balance at the conclusion of the subgrant.

#### **B. Adjustments to 2 CFR 200.318-320 and 200.324-326—Procurement Standards**

Subgrantees of fixed amount subgrants pursuant to the above exceptions are not required to comply with the Procurement Standards set forth in 2 CFR 200.318-320 and 200.324-326. All other Procurement Standards, *i.e.*, 2 CFR 200.317, 200.321-200.323, and 200.327, remain as requirements.

#### **C. Exceptions and Clarifications to 2 CFR 200.313—Equipment**

Title to equipment acquired or improved under the fixed amount subgrant vests in the Subgrantee upon acquisition, subject to the following conditions and clarifications that apply for the duration of the Federal Interest Period:

1. Subgrantees must follow their existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 CFR 200.313(d), pursuant to an exception from OMB. Subgrantees that do not have existing commercial practices for managing equipment in the normal course of business must comply with 2 CFR 200.313(d).
2. Subgrantees must comply with the use and equipment disposition requirements of 2 CFR 200.313(c)(4) and 313(e).
  - a. Subgrantees acquiring replacement equipment under 2 CFR 200.313(c)(4) may treat the equipment to be replaced as "trade-in" even if the Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, the Subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports to the DOC to ensure adequate tracking of the Federal percentage of participation in the cost of the grant funded activities. The Subgrantee will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.

- b. Subgrantees may sell, lease, or transfer equipment only after (a) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal interest in the subject equipment, and (b) obtaining consent to the sale or transfer from NTIA. NTIA will provide additional information concerning the review and approval process for transactions involving BEAD-funded equipment, as well as real property, in subsequent guidance.
- c. Subgrantees must notify the Grantee and NTIA upon the filing of a petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to the Subgrantee or any affiliate that would impact the Subgrantee's ability to perform in accordance with its subgrant.

**D. Exception to 2 CFR 200.314--Supplies**

Pursuant to an exception approved by OMB, the property standards set forth in 2 CFR 200.314 for supplies shall not apply to fixed amount subgrants.

**E. Exception to 2 CFR 200.315--Intangible Property**

Pursuant to an exception approved by OMB, the property standards set forth in 2 CFR 200.315 for intangible property shall not apply to fixed amount subgrants.

**F. Additional Discretionary Conditions**

The Grantee may impose additional conditions in their fixed amount subgrants at their discretion; however, a Grantee may not alter the exceptions, adjustments, and clarifications to the Uniform Guidance as provided to Subgrantees and described herein without written prior approval from the NIST Grants Officer. Requests for modifications to this section must be submitted to [ugam@nist.gov](mailto:ugam@nist.gov) and must contain sufficient detail about the specific modifications the Grantee is requesting and a thorough justification supporting the request. They may only be granted in extremely limited circumstances and only in cases wherein the modification will protect the integrity of the BEAD Program funding and that are in the best interests of the Program as a whole.