

DEPARTMENT OF COMMERCE

National Telecommunications and Information

Administration Notice of Programmatic Waiver

ACTION: Notice

SUMMARY:

The Infrastructure Investment and Jobs Act (IIJA)¹ includes funding for robust investment in American infrastructure projects. IIJA includes the Broadband Equity, Access, and Deployment (BEAD) Program, which provides \$42.45 billion to increase high-speed Internet coverage throughout the United States. The National Telecommunications and Information Administration (NTIA), as the agency responsible for administering the BEAD program, provides herein notice of a conditional programmatic waiver of certain requirements set forth in section IV.D.2.a.ii of the BEAD Program Notice of Funding Opportunity (NOFO)² related to the application of Weiss ratings to determine the acceptability of United States banks and credit unions to issue a letter of credit.

¹ Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (Nov. 15, 2021), codified at 47 U.S.C. §1701, *et seq.*

² BEAD Notice of Funding Opportunity (released May 13, 2022), available [here](#).

1. Background

The BEAD NOFO requires Eligible Entities to establish a model letter of credit substantially similar to the model letter of credit established by the Federal Communications Commission (FCC) in connection with the Rural Digital Opportunity Fund.³ During each Eligible Entity's application process for subgrantees seeking to deploy network facilities, each applicant must submit a letter from a bank meeting eligibility requirements consistent with those set forth in 47 C.F.R. § 54.804(c)(2) committing to issue an irrevocable standby letter of credit, in the required form, to the prospective subgrantee.⁴

Prior to entering into any subgrantee agreement, subgrantees must provide the Eligible Entity an irrevocable standby letter of credit in the required form, acceptable in all respects to the Eligible Entity, in a value of no less than 25 percent of the subaward amount.⁵ In addition, a subgrantee must provide the Eligible Entity an opinion letter from legal counsel stating that in a proceeding under the Bankruptcy Code the bankruptcy court would not treat the letter of credit as property of the winning subgrantee's bankruptcy estate.⁶ NTIA subsequently issued a programmatic waiver modifying these requirements to, among other things, allow the use of United States credit unions with a credit union safety rating issued by Weiss of B- or better.⁷

On December 11, 2024, the FCC adopted a Report and Order modifying 47 C.F.R. §54.804(c)(2) to eliminate Weiss ratings as the standard for United States banks to be considered acceptable for issuing letters of credit.⁸ This requirement was replaced with the requirement that the issuing bank be "well capitalized":

That is well capitalized, as defined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, The Federal Reserve, and the Office of the Comptroller of the Currency.⁹

This rule change will become effective August 24, 2025. Because NTIA has incorporated this rule into the BEAD Notice of Funding Opportunity (NOFO), the modified rule will likewise go into effect for the BEAD program effective August 24, 2025. Additionally, NTIA will allow financial institutions rated BBB- or higher by a Nationally Recognized Statistical Rating Organization (NRSRO), as recognized by the Securities and Exchange Commission (SEC), to be considered acceptable for issuing letters of credit in the BEAD program.

The Assistant Secretary of Commerce for Communications and Information has determined that, for good cause shown, and in the best interest of the Federal Government, a further conditional programmatic waiver of the letter of credit obligation should be granted as described herein to eliminate the application of Weiss ratings to credit unions and allow for the inclusion of qualifying NRSRO rated financial institutions.

³ *Rural Digital Opportunity Fund; Connect America Fund*, Report and Order, 35 FCC Rcd 686, 773-33, Appx. C (2020).

⁴ BEAD NOFO at 72, § IV.D.2.a.ii.

⁵ *Id.* at 72-73.

⁶ *Id.*

⁷ BEAD Letter of Credit Waiver, available [here](#).

⁸ Report and Order, *In the Matter of Connect America Fund*, WC Docket No. 10-90, FCC 24-127, (December 11, 2024).

⁹ *Id.* at 15.

2. Conditional Programmatic Waiver

2.1 Weiss Ratings for U.S. Banks

The BEAD NOFO incorporates by reference 47 C.F.R. §54.804(c)(2) into the letter of credit requirements imposed on subgrantees. Consistent with the FCC’s modification of that rule, NTIA no longer requires subgrantees to obtain the letter of credit from a United States bank with a Weiss Credit rating of B- or better. This requirement is replaced with the requirement that the bank be “well capitalized” as determined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency.

2.2 Subgrantee Option to Use Credit Unions¹⁰

Consistent with the modification adopted above and to maintain uniformity across the BEAD Program, NTIA finds that it is in the best interest of the federal government to amend NTIA’s previous programmatic waiver related to the use of credit unions to eliminate the use of Weiss ratings for determining credit union eligibility. The requirement that credit unions have a safety rating issued by Weiss of B- or better is eliminated. Subgrantees must only demonstrate that the United States credit union is insured by the National Credit Union Administration.¹¹

2.3 Subgrantee Option to Use Qualifying NRSRO Rated Banks

In addition to the two modifications adopted above and to provide additional flexibility to subgrantees in the BEAD program, NTIA finds it is in the best interest of the federal government to allow for the inclusion of banks rated BBB- or higher by Nationally Recognized Statistical Rating Organizations (NRSROs), as recognized by the Securities and Exchange Commission (SEC). Banks rated BBB- or higher by an NRSRO may be utilized by subgrantees to receive an irrevocable standby letter of credit as defined by NTIA and the BEAD program.

¹⁰ This updated criteria for credit unions is consistent with the FCC’s *Letters of Credit for Recipients of High-Cost Competitive Bidding Support* Report and Order, FCC 24-127 rule change, December 2024.

¹¹ NCUA is the “independent federal agency that insures deposits at federally insured credit unions, protects the members who own credit unions, and charters and regulates federal credit unions.” <https://ncua.gov/about>. The National Credit Union Administration is to credit unions as the Federal Deposit Insurance Company is to banks.