

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 of funding to achieve high-speed broadband access 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 limited programmatic waiver related to the requirements set forth in section IV.B.9.b.15 of the BEAD Program Notice of Funding Opportunity (NOFO),² which requires the submission of Resolution(s) of Consent from the relevant Tribal Government(s) within an Eligible Entity's Final Proposal.³

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](#). (BEAD NOFO)

³ *Id.* at 48, § IV.B.9.b.15.

1. Background

In implementing the \$42.5 billion BEAD Program, authorized by IIJA, the BEAD NOFO sets out the form and content requirements for an Eligible Entity's Final Proposal submission,⁴ including the following requirement:

“To the extent that an Eligible Entity's Final Proposal includes plans to deploy broadband to Unserved Service Projects or Underserved Service Projects on Tribal Lands, the Eligible Entity must submit a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed.”⁵ (The “Tribal consent requirement”)

NTIA continues to recognize the sovereignty of Tribal Governments in connection to Unserved Service Projects and Underserved Service Projects on Tribal Lands.⁶ With this conditional limited waiver, NTIA continues to require a Resolution of Consent from each Tribal Government upon whose Tribal Lands the BEAD Program funds broadband infrastructure deployment.⁷ Given the accelerated deadlines adopted in the BEAD Restructuring Policy Notice, however, NTIA adopts the following conditional waiver of the deadline for submitting Tribal Resolutions of Consent at the time of Final Proposal submission.

The BEAD Restructuring Policy Notice requires Eligible Entities to submit a Final Proposal within 90 days of publication, i.e., by September 4, 2025.⁸ Moreover, the BEAD Restructuring Policy Notice requires Eligible Entities to conduct at least one additional subgrantee selection round for every BEAD-eligible location (the “Benefit of the Bargain Round”).⁹ Eligible Entities and prospective subgrantees are moving swiftly to meet the expedited timelines outlined in the BEAD Restructuring Policy Notice, including in the submission and review of applications to serve Unserved Service Projects and Underserved Service Projects on Tribal Lands.

The Tribal consent requirement may become an obstacle to meeting these new aggressive deadlines and could delay consideration and approval of an Eligible Entity's overall Final Proposal. The goal of the Tribal consent requirement was to ensure that Tribal Resolutions of Consent are obtained prior to the Eligible Entity entering into a subgrantee agreement with a provider using BEAD funds to deploy infrastructure on Tribal Lands. NTIA has identified 32 Eligible Entities where the Tribal consent requirement applies due to the existence of BEAD-eligible unserved or underserved locations on Tribal Lands. In meeting the expedited timelines of the BEAD Restructuring Policy Notice, NTIA recognizes that some Eligible Entities and prospective subgrantees may not be able to obtain the Resolutions of Consent necessary for deployment on Tribal Lands in time for submission with the Final Proposal.

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 conditional limited programmatic waiver of the deadline for the Final Proposal's Tribal consent requirement should be granted as described herein to allow for an Eligible Entity to submit a Resolution of Consent within six months of the approval of its BEAD Final Proposal.

⁴ BEAD NOFO at 47-9, § IV.B.9.b.

⁵ *See Id.* at p. 48.

⁶ *See id.* at 15-17, § I.C(y),(z),(cc),(ee); *see also* BEAD Program – Waiver of Subpoint (E) of the Definition of Tribal Lands (released March 7, 2024), available [here](#).

⁷ BEAD NOFO, §IV.B.9.b, p. 48. NTIA notes that the Tribal consent requirement is further clarified by Footnote 70 of the BEAD NOFO and in subsequent Eligible Entity guidance.

⁸ BEAD Restructuring Policy Notice (released June 6, 2025), available [here](#).

⁹ *Id.* at 10.

2. Conditional Limited Programmatic Waiver

NTIA's conditional limited programmatic waiver of the Final Proposal's Tribal consent requirement deadline applies only to Resolutions of Consent from Tribal Governments (herein to include equivalents per Footnote 70 of the BEAD NOFO and other relevant Eligible Entity guidance clarifying the application of Footnote 70) that are not obtained by the time of the Eligible Entity's Final Proposal submission, as set forth by the BEAD Restructuring Policy Notice and as altered by NTIA. The Eligible Entity is required to submit in their Final Proposal all Resolutions of Consent from Tribal Governments that have been obtained by the time of its Final Proposal submission.

This conditional limited programmatic waiver does not amend the requirement for an Eligible Entity to submit a Resolution of Consent from each Tribal Government upon whose Tribal Lands the BEAD Program funds broadband infrastructure deployment. If an Eligible Entity does not submit in its Final Proposal all required Resolutions of Consent from Tribal Governments, it shall submit all remaining required documentation demonstrating Tribal consent within six months of the approval of its BEAD Final Proposal.

A Special Award Condition (SAC) will be placed on the funds for projects in which a necessary Resolution of Consent was not submitted, to be applied until the Tribal consent requirement is met. If supporting documentation for any locations on Tribal Lands lacking the requisite Resolution of Consent is not properly submitted to NTIA within the six-month period following approval of the Final Proposal, the SAC on the project funds for these locations will not be lifted.

An Eligible Entity's failure to satisfy this waiver's condition of providing the requisite Resolutions of Consent in accordance with the requirements set forth in the BEAD NOFO within that six-month window would render the Eligible Entity noncompliant with BEAD NOFO requirements and could subject the Eligible Entity to appropriate enforcement action and/or require the Eligible Entity to identify an alternative project that has obtained the required Resolution of Consent for the specified locations.