

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

Updated November 2025

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1. REVISED--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 General Terms and Conditions (dated September 22, 2025), 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 Restructuring Policy Notice (June 2025); the BEAD NOFO; the Department of Commerce General Terms and Conditions (dated September 22, 2025).

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 updated Uniform Guidance (dated October 1, 2024) 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. 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.)

5. Protection of Whistleblowers

The Department of Commerce Financial Assistance General Terms and Conditions (dated September 22, 2025) 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.

6. REVISED -- Signage and Public Acknowledgements

On February 18, 2025, Controller Alert CA-23-6 entitled Enhancing Transparency Through Use of the Investing in America Emblem on Signs (UPDATED) was rescinded pursuant to Controller Alert 25-01 entitled Recission of Prior Controller Alerts. Existing signs may remain on site. To the extent these signs remain, they should be maintained in good condition throughout the construction period, or until additional instructions are provided.

7. 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.

8. Construction Contract Security Bond

Pursuant to 2 CFR 200.326, for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$350,000), 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 42 below. Subgrantees of fixed amount subgrants made under the authority of Term 52 below are not required to comply with 2 CFR 200.326.

9. 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.

10. 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.

11. 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.

12. 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.

13. REVISED--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. Per the BEAD Restructuring Policy Notice, Grantees must use the Environmental Screening and Permitting Tracking tool (ESAPTT) within the NTIA Grants Portal (NGP) to perform environmental screening and obtain NTIA NEPA approvals.

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), consistent with NTIA’s Smart Start NEPA guidance for BEAD, including the responsibility to obtain specialized environmental and historic preservation (EHP) expertise by hiring, contracting, or otherwise retaining staff with relevant NEPA qualifications and experience to support the Grantee in the joint lead agency role;¹
- 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;
- Submit all NEPA documentation—including any supporting environmental documentation required or requested by NTIA—to NTIA through ESAPTT for review and approval.

¹ NTIA, *Smart Start: How to Plan and Prepare for National Environmental Policy Act (NEPA) Compliance for BEAD* (Apr. 2024), https://broadbandusa.ntia.doc.gov/sites/default/files/2024-04/Smart_Start_NEPA_Compliance_for_BEAD_04_16_2024.pdf.

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:

- Provide notified Tribes with information regarding grant-funded activities via their preferred communication means, as identified to NTIA if applicable;
- Complete Section 106 review of grant-funded activities, applying the Advisory on Historic Preservation (AHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities, Program Comment for Federal Communications Projects, and any other applicable program comment or program alternative, or following the AHP rules at 36 CFR 800 Subpart B;
- Adhere to, and ensure that all Subgrantees adhere to, the provisions of the NTIA memorandum to SHPOs, Tribal Historic Preservation Officers (THPOs), and grant recipients authorizing 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 an 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. Grantee Permitting Obligations

Under the Infrastructure, Investment, and Jobs Act (IIJA), NTIA is permitted to issue any “regulations or other guidance, forms, instructions, and publications” necessary to ensure that BEAD projects are carried out in a “timely and effective manner.”² NTIA has determined that state and local permitting processes may significantly impair the ability of broadband providers to deploy networks in a timely and effective manner. In fact, in March of 2025, prior to the release of NTIA’s Restructuring Policy Notice, the Department of Commerce Office of Inspector General released a report noting that state and local permitting “delays affect timely execution and increase deployment costs [of broadband projects], which could impact broadband officials’ and industry stakeholders’ ability to successfully deploy broadband as required by IIJA.”³ State broadband offices agree.⁴ Moreover, the requirements below align with the Federal Communications Commission’s (FCC) recent effort to “facilitate the pole attachment process to promote, fast, efficient, and ubiquitous deployment of broadband facilities.”⁵

² 47 U.S.C. § 1702(i).

³ See [FINAL REPORT NO. OIG-25-014-I MARCH 20, 2025](#) on challenges affecting broadband deployment, page 5.

⁴ Varn, J., *States Work to Address Barriers to Broadband Expansion*, The Pew Charitable Trusts (Apr. 3, 2024) <https://www.pew.org/en/research-and-analysis/articles/2024/04/03/states-work-to-address-barriers-to-broadband-expansion> (“One issue, however, was mentioned in virtually every [state five-year action] plan, the perennial asterisk on every infrastructure project’s timeline: cumbersome permitting processes.”).

⁵ FCC Fact Sheet, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration*, WC Docket No. 17-84 (July 3, 2025), available at <https://docs.fcc.gov/public/attachments/DOC-412690A1.pdf>.

To help ensure that Grantee's BEAD projects are carried out in a timely and effective manner, NTIA requires Grantee to take the following actions to streamline permitting processes:

1. Consistent with any relevant legal requirements and authorities, Grantee will establish procedures to ensure that broadband-related permit applications are promptly accepted, and requests are approved or denied within 90 days, including by:
 - a. Assisting state and local authorities in establishing a single, dedicated point of contact, which has knowledge of the application and review processes, for broadband-related permits.
 - b. Providing technical assistance to permitting agencies to ensure sufficient capacity (e.g., Master Agreement and Consultant Reimbursement Agreement templates, surge support for permit processing, etc.)
 - c. Providing deference to the construction techniques chosen by BEAD Subgrantees (without seeking to influence those decisions), absent any identified safety concerns.
 - d. Maximizing streamlined processing through permitting by rule; batch processing of substantially similar permit requests; and waiving or expediting duplicative or burdensome broadband permitting requirements where possible.
 - e. Following FCC rules regarding timelines, rates, terms, and conditions for access to municipally owned poles and conduit for broadband projects—including provisions in the FCC's rules providing for “one-touch make-ready” and “self-help”—and requiring BEAD Subgrantees that own poles (including cooperatives) to comply with FCC rules across their footprint.
2. Grantee will seek to minimize state and local permitting-related costs for broadband deployments and ensure (1) permitting fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly situated competitors in similar situations.
3. Grantee will establish Permitting Roundtables⁶ and/or working groups of relevant federal, state, local, and tribal authorities and representatives of impacted industries—including utility pole owners, railroads, communications providers, and BEAD subgrantees—that will:
 - a. Meet regularly to identify and facilitate resolution of any delays or disputes related to deploying BEAD-funded facilities.
 - b. Collect complaints (and supporting information) from Subgrantees that are not timely resolved through this process and escalate such complaints through the appropriate Permitting Roundtable or working group.
4. Grantee will track, publicly post, and submit to NTIA, as part of its Semi-Annual Report, information on subgrantee compliance with the NEPA milestone schedules⁷ and data regarding unresolved complaints from Subgrantees, including: (1) issues escalated through the Permitting Roundtable or working group; (2) delays in broadband-related projects that Subgrantees attribute to a state or local prohibition on using its preferred construction techniques; and (3) delays in broadband related projects

⁶ See NTIA's *Permitting Roundtables Implementation Guide*.

⁷ See [BEAD General Terms and Conditions](#) Section 13.B.

that Subgrantees attribute to state and/or local authorities failing to follow FCC rules regarding pole attachment timelines, rates, terms, and conditions for access to municipally owned poles and conduit for broadband projects.⁸

Grantee shall include the language above outlining its commitments to streamline permitting into all agreements between Grantee and its Subgrantees.

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

⁸ Such reports will be shared with the FCC and Congress to determine whether additional funding rescission, enforcement, legislation to modify 47 U.S.C. § 224 to remove the exemption for poles and conduits owned by municipalities and electric cooperatives, and/or other actions are warranted.

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. Construction activities may not resume in the area without the prior written approval of NTIA.

14. 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.

15. Domestic Preference for Procurements (Build America, Buy America)

The Build America, Buy America Act (BABA) was enacted 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 the requirements laid out in the final version of the BEAD BABA waiver. All waivers applicable to BEAD, an FAQ, and a BEAD BABA Self Certification list are 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>.

16. 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).

17. 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.

18. Subgrantee Selection Process

Consistent with 47 U.S.C. § 1702(e)(3)(A)(i)(IV) and the BEAD Restructuring Policy Notice (June 2025), a Grantee must establish fair, open, and competitive processes for selecting Subgrantees.

19. 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.

20. 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.

21. 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.

22. 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 CFR 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.

23. REVISED—Local Coordination

Consistent with 47 U.S.C. § 1702(e)(3)(A)(ii), Each Grantee developed a comprehensive local coordination approach to ensure local coordination was captured within each EE’s five year action plan. With the publication of the Bead restructuring policy notice, the Grantee may no longer engage in the activities listed in the Local Coordination and Public Notice sections of the NOFO (section IV.C.1.c and IV.C.2.c.iv). All Grantees shall satisfy the statutory requirement to adopt local coordination requirements by certifying that it observed the Final Proposal public comment requirements and received plans submitted by political subdivisions up until submission of the Final Proposal to NTIA.

24. Fair Labor and Highly Skilled Workforce

Consistent with 47 U.S.C. § 1702(h)(1)(A)(iv)(IV), Grantees shall satisfy the statutory requirement to “give priority to projects based on...[a] demonstrated record of and plans to be in compliance with Federal labor and employment laws” by requiring a subgrant applicant to certify compliance with such laws to the Grantee.

25. 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.

Consistent with 47 U.S.C. § 1702(g)(2)(C)(ii), through a stipulation in the contract with a Subgrantee for the use of BEAD funds, the Grantee must ensure that each Subgrantee uses the funds in an equitable and nondiscriminatory manner.

26. Network Resilience

The Grantee shall ensure that Subgrantees satisfy the statutory requirement to incorporate best practices defined by NTIA for ensuring reliability and resilience of broadband infrastructure by establishing risk management plans that account for technology infrastructure reliability and resilience, including from natural disasters (e.g., wildfires, flooding, tornadoes, hurricanes, etc.), as applicable, as well as cybersecurity best practices.

27. 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. and in [the Performance Measures for BEAD Last Mile Networks Policy Notice](#) (and any future amendments).

28. 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.*

29. Plans

Pursuant to 47 U.S.C. § 1702(h)(4)(B), the Grantee must ensure that 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. To comply with the low cost plan statutory requirement, all Subgrantees must propose a Low Cost Service Option in their applications for project areas. The low cost service option must offer speeds of at least 100/20 Mbps and latency performance of no more than 100 milliseconds. Applicants that already offer a low-cost plan that meets these service requirements may satisfy the low cost service option requirement by proposing, in their application, to offer their existing low-cost plan to eligible subscribers.

30. Reserved

31. 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.

32. 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.*

33. Deployment and Provision of Service Requirements

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.

Consistent with 47 U.S.C. § 1702(h)(4)(E) and 47 U.S.C. § 1702(h)(4)(H), the Grantee awarding funds for construction of Middle Mile Infrastructure shall require the Subgrantee, via contract or other binding mandate, 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. 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, if the Subgrantee is no longer able to provide broadband service to the locations covered by the subgrant at any time, the Grantee shall consult with NTIA and shall sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to other broadband service providers or public sector entities.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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 \$1,000,000 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.

Subrecipients that are not subject to Subpart F of 2 CFR Part 200 (e.g., commercial entities) that expend \$1,000,000 or more in grant funds during their fiscal year must submit to the Grantees 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. Subgrantees may batch their audit submission to the Grantee when allowable and/or required by the Grantee. Grantees and its Subgrantees are reminded that NTIA, the Department of Commerce Office of Inspector General, or another authorized Federal agency may request audit documents or conduct an audit of an award at any time.

39. 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.

40. REVISED--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.

41. 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.

42. 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 Waivers published at broadbandusa.gov

43. 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.

44. Termination

This award may be terminated in part or its entirety for those reasons stated in 2 CFR § 200.340(a). This includes termination “[b]y the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.”

45. 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 NOFO Section I.C.(t). For the sake of clarity, broadband infrastructure projects include:

- last-mile broadband deployment projects, as that term is used in NOFO Section IV.B.7.a.ii, 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 50 below;
- projects to deploy Middle Mile Infrastructure, as that term is defined in NOFO Section I.A.(o); 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. For the purposes of the BEAD program, LEO Capacity Subgrants shall be considered projects whose major purpose is broadband infrastructure.

46. 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.

47. REVISED--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 (inclusive of both Federal funds and non-Federal matching funds) shall coincide with the Federal Interest Period as defined in Term 48 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 CFR § 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.

48. REVISED--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. This Federal interest shall apply regardless of whether the asset is acquired or improved with Federal funds or non-Federal matching funds. 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 45, 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 (inclusive of both Federal funds and non-Federal matching 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.
- c. Per the BEAD Restructuring Policy Notice, NTIA will not take a Federal interest in equipment or property acquired or improved with a LEO Capacity Subgrant. Additionally, the consumer and taxpayer protections set forth in the NOFO apply to the recipients of such subgrants for the duration of the LEO Capacity Subgrant ten-year Federal interest period.

49. 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 35 regarding a profit, fee, or other incremental charge above the actual cost incurred by the Subgrantee.

50. NEW-- Ensuring Timely and Effective Deployment of BEAD Projects

Under the Infrastructure, Investment, and Jobs Act (IIJA), NTIA is permitted to issue any “regulations or other guidance, forms, instructions, and publications” necessary to ensure that Broadband Equity Access and Deployment (BEAD) projects are carried out in a “timely and effective manner.”⁹ NTIA has determined certain state laws and regulations that specifically target broadband internet service—such as rate regulation and net neutrality laws¹⁰—undermine the financial viability of BEAD projects, particularly high-cost projects and those in high-cost areas. These laws and regulations deter investment¹¹ and increase operating costs,¹² thereby impeding the ability of BEAD Subgrantees to deploy broadband in a timely and effective manner.¹³

Moreover, NTIA has determined that states may not apply such laws to any Subgrantee anywhere it provides service in the state (i.e., neither BEAD-funded nor non-BEAD locations). Applying such laws at non-BEAD locations could raise compliance costs and threaten the overall financial viability of the Subgrantee, increasing the risk of default for the Subgrantee at BEAD locations and jeopardizing the success of the entire BEAD program. Furthermore, the increased compliance costs of a dual regulatory system could lead Subgrantees to offset such costs by raising rates across their entire service area, including for consumers served by BEAD projects.

In addition, because IIJA prohibits NTIA from regulating broadband service rates,¹⁴ NTIA has further determined that permitting states to do that which the agency itself is expressly prohibited from doing would contradict Congressional intent and impair the success of the BEAD program.

Consistent with these determinations, and to ensure that the Grantee’s¹⁵ BEAD projects are carried out in a timely and effective manner, the Grantee shall commit that it will not enforce any law, regulation, order, contracting requirement, or other enforceable obligation that directly or indirectly regulates the rates, terms, and conditions of broadband internet service, whether on a retail, wholesale, or network basis, or imposes net neutrality rules, open access, or other utility-style rules on broadband internet

⁹ 47 U.S.C. § 1702(i).

¹⁰ A “net neutrality rule” is any law, regulation, order, contracting requirement, or other enforceable obligation by the state that prohibits broadband internet service providers from, among other things, blocking content, throttling speeds, imposing data caps, engaging in paid prioritization, or that imposes a general conduct or similar standard upon broadband internet service providers.

¹¹ See Ford, G., *Internet regulation and investment in the U.S. telecommunications industry*, Applied Economics, 1–8 (2024), <https://doi.org/10.1080/00036846.2024.2439584>.

¹² See Fullenbaum, R. & Richards, T., *The Impact of Regulatory Growth on Operating Costs*, Mercatus Working Paper Series (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3697453.

¹³ See Briglauer, W., et al., *Net neutrality and high-speed broadband networks: evidence from OECD countries* European Journal of Law and Economics, Vol. 55, pp. 533, 535 (“We find empirical evidence that net neutrality regulations exert a significant and strong negative impact on fiber investments” and “our main result indicates that net neutrality regulations seriously impact the deployment of general-purpose broadband infrastructures which generate considerable externalities across a wide range of sectors of the economy.”).

¹⁴ 47 U.S.C. § 1702(h)(5)(D) (“Nothing in this subchapter may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service.”).

¹⁵ A “Grantee” is an “Eligible Entity” as defined by 47 U.S.C. § 1702(a)(2)(F).

service, against a Subgrantee or its affiliates anywhere it provides service within the State (*i.e.*, both BEAD and non-BEAD locations), while that Subgrantee has any subgrant that is still within its period of performance, extended period of performance, or federal interest period.

The Grantee shall include the following language reflecting the commitments above in each subgrant agreement so that any Subgrantee may assert its contractual rights should the Grantee attempt to enforce any such requirement:

The Grantee, and any agency, instrumentality, or subdivision thereof, agrees not to enforce any law, regulation, executive order, contracting requirement, or other enforceable obligation that directly or indirectly regulates in any way the rates, terms, and conditions of broadband internet service, whether on a retail, wholesale, or network basis, or imposes net neutrality rules, open access, or other utility-style rules on broadband internet service, against the Subgrantee or its affiliates anywhere it provides service within the Grantee's jurisdiction, while that Subgrantee has any subgrant that is still within its period of performance, extended period of performance, or federal interest period. For purposes of this provision, a "net neutrality rule" is any law, order, contracting requirement, or other enforceable obligation by the Grantee that prohibits internet service providers from, among other things, blocking content, throttling speeds, imposing data caps, or engaging in paid prioritization, or that imposes a general conduct or similar standard upon internet service providers.

51. NEW-- Protecting the BEAD Program from Defaults

By law, BEAD Grantees are required to ensure that all Subgrantees have "the financial and managerial capacity to meet": (1) "the commitments of the subgrantee under the subgrant"; (2) "the requirements of the Program"; and (3) "such requirements as may be further prescribed by the Assistant Secretary."¹⁶ Grantees are further required to: (1) "distribute the funds in an equitable and nondiscriminatory manner"; and (2) "ensure, through a stipulation in any contract with a subgrantee for the use of such funds, that each subgrantee uses the funds in an equitable and nondiscriminatory manner."¹⁷

As such, NTIA has determined that agreements between Grantees and Subgrantees should adequately and accurately reflect the economic risk of providing broadband service to the project area(s), as well as specific Broadband Serviceable Location(s) (BSL(s)). Furthermore, NTIA has determined that a Subgrantee relying on the speculative prospect of future Federal funding is at increased risk of defaulting on its obligations and that the distribution of funds to such a Subgrantee would be inequitable.

Therefore, to ensure Subgrantees have the requisite financial and managerial capacity and funds are distributed in an equitable manner, NTIA requires that contracts between Grantees and Subgrantees appropriately account for the economic risk associated with the particular project area(s) and BSL(s) and are not premised on the receipt of additional or future Federal funding.

To comply with this requirement, Grantees shall incorporate the following certification into all subgrant agreements:

1. *[Subgrantee] and any of its affiliates will not require or accept any additional Federal funds to*

¹⁶ 47 U.S.C. § 1702(g)(2)(A)(ii).

¹⁷ 47 U.S.C. § 1702(g)(2)(C)(i), (ii).

support a BEAD project¹⁸ during the BEAD subgrant agreement’s period of performance, extended period of performance, or federal interest period; and

2. *[Subgrantee] and any of its affiliates will not require or accept any additional Federal broadband service subsidies¹⁹ for the project(s) and/or Broadband Serviceable Location(s) (BSL(s)) to be served by the subgrant during the BEAD subgrant agreement’s period of performance, extended period of performance, or federal interest period, other than any such subsidies that were committed prior to the BEAD subgrant agreement. (This includes, but is not limited to, new operating expenses for any BEAD project(s) or BSL(s)).*

I certify that the foregoing is true and correct.

Executed on this _____ day of _____.

[Name and title of official authorized to execute BEAD subgrant agreement]

[Address and phone number]

Grantees shall incorporate this certification by reference in all subgrant agreements.

Grantees shall require each Subgrantee to submit such signed certification before releasing any BEAD funds to the Subgrantee. The Grantee shall collect such certifications from each Subgrantee and shall submit each Subgrantee’s signed certification to NTIA within thirty (30) days of receipt. Grantees shall submit these certifications (either individually or in batches) to their Federal Program Officers via email.

Grantees are hereby notified that NTIA may publicly publish these signed certifications; accordingly, Grantees must inform all Subgrantees that their certifications may be published publicly.

NTIA finds that prohibiting the consideration of additional or future Federal funds (i.e. duplicative funds) to support a Subgrantee’s BEAD project(s) or BSL(s) in the evaluation of a Subgrantee’s financial and managerial capacity and requiring the Subgrantee certification above is also consistent with NTIA’s, the Grantee’s, and the Subgrantee’s responsibilities to avoid waste, fraud, and abuse in the Program.²⁰ It is also consistent with the Notice of Funding Opportunity’s prohibition on treating any location subject to an enforceable Federal, state, or local commitment to deploy qualifying broadband service as “unserved” or “underserved.”²¹

52. 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)

¹⁸ 47 U.S.C. § 1702(a)(2)(K) (defining the term “project” as “an undertaking by a subgrantee under this section to construct and deploy infrastructure for the provision of broadband service”).

¹⁹ For purposes of this prohibition, a “Federal broadband subsidy” is defined as any Federal funds made available to subsidize the provision of broadband service. For example, Federal broadband service subsidies include, but are not limited to, any of the Universal Service Fund (USF) support mechanisms.

²⁰ See BEAD NOFO at 96-98.

²¹ See BEAD NOFO at 36, n. 52.

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:

- a. 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).
- b. Subgrantees must comply with the use and equipment disposition requirements of 2 CFR 200.313(c)(4) and 313(e).
 - i. 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.
 - ii. 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.
 - iii. 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 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.