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ACLP - Overview of BEAD NOFO - June 2022

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A GUIDE TO FEDERAL BROADBAND FUNDING PROGRAMS

An Overview of NTIA's Notice of Funding Opportunity (NOFO) for the Broadband Equity, Access & Deployment (BEAD) Program

June 2022

On May 13, 2022, the National Telecommunications & Information Administration (NTIA) issued the long-awaited [Notice of Funding Opportunity](#) (NOFO) for the Broadband Equity, Access & Deployment (BEAD) Program that Congress charged it with administering in the Infrastructure Innovation & Jobs Act of 2021. The NOFO sets forth detailed criteria governing how BEAD funds are to be received and allocated by the states in support of broadband expansion to unserved and underserved areas.

A high-level overview of the NOFO is provided below and organized as follows:

- Part I: Key Dates and Action Items
- Part II: BEAD Parameters
- Part III: Select Grant Parameters
- Part IV: Other Criteria / Considerations

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PART I: KEY DATES & ACTION ITEMS

- A. Letter of Intent.** A state's letter signaling its intent to participate in BEAD is due to NTIA by **July 18, 2022**. Such letter must identify the state entity that will administer the grant program (NOFO p. 24), and the letter must be signed by the governor (p. 23). As of June 8, 2022, [34 states](#) had submitted LOIs
- B. Request for Planning Funds.** A state's request for up to \$5M for planning purposes is due to NTIA by **August 15, 2022**. The NOFO details a list of approved uses of the planning funds (p. 25). Additional uses must be approved by NTIA.

C. Five-year Action Plan. A 5-Year Action Plan is required of each entity that requests and receives planning funds. Such plan is **due to NTIA within 270 days of receipt of the planning funds**. Action Plans should incorporate the state’s Digital Equity Plan (p. 10) and must address a range of issues listed by NTIA (p. 26-28). Existing state plans issued within the last 12 months that meet these criteria may be submitted in lieu of developing a 5-year action plan from scratch (p. 28).

D. Notice of Available Funding Amounts. NTIA will notify each state of how much BEAD funding they will receive **on or after publication of the FCC’s DATA Maps**. The new data maps will be used as the sole basis for calculating these amounts.

The ACLP has estimated, based on currently available data, how much each state might receive via BEAD. Those estimates are available [here](#).

E. Initial Proposal. A state must submit an initial proposal to receive 20% of its total funding amount **within 180 days of receipt of the Notice of Available Funding Amounts** (p. 17, 30). The proposal is considered a “first draft” of the Final Proposal and must detail the competitive grant process the state will use to dole out funds (p. 30). All required aspects of the initial proposal are detailed on p. 30-33.

F. Stakeholder challenge Process. **Before a state can receive initial funds**, it must launch a challenge process, providing stakeholders with opportunities to challenge whether certain areas are truly unserved or underserved. Of note, the fact that a location may be unserved or underserved does not disqualify it from inclusion in a BEAD-funded project. Indeed, up to 20% of an unserved or underserved project area can be served or underserved (p. 16-17; fn. 47, p. 34). Once the challenge process is resolved, NTIA will review and approve Initial Proposals. Once Initial Proposals are approved, states may begin awarding grants

G. Final Proposal. A state must submit a final proposal to receive the remaining 80% of funds **within one year of NTIA’s approval of the Initial Proposal**. States must make their Final Proposal available for public comment

H. Broadband Deployments Funded by BEAD. Sub-grantees receiving BEAD funding for a broadband project must deploy the network and begin providing services to “each customer that desires broadband service within the project area **not later than four years** after the data on which the subgrantee receives” its grant from the state. (p. 18) Extensions of up to one year are possible.

PART II: KEY PARAMETERS OF BEAD

A. Prioritization of End-to-End Fiber Deployment. NTIA prioritizes fiber to the end user (p. 7; 15).

- B. Leftover Funding.** Once and assuming that unserved and underserved areas are addressed, states can utilize remaining funding to “pursue eligible access-, adoption-, and equity-related uses, as well as any other uses approved by [NTIA] that support [BEAD’s] goals” (p. 7). These uses are detailed on p. 39-40. These mostly revolve around demand-side activities (*e.g.*, digital literacy training; supplementing activities funded by federal digital equity grants, etc.). States may also use leftover funds for “direct subsidies” to offset the cost of broadband.
- C. Satellite is Ineligible.** This platform is ineligible for BEAD funding. The NOFO defines “reliable broadband service” as only “a fixed broadband service that is available with a high degree of certainty, both at present and for the foreseeable future.” This includes fiber, cable, DSL, and terrestrial fixed wireless that uses some amount of licensed spectrum (p. 15). Further, areas served exclusively by satellite or by services using entirely unlicensed spectrum will be considered “unserved” (p. 28).
- D. State’s Failure to Apply for Bead Funding.** If a state fails or refuses to apply for BEAD funds, then **subdivisions** within the state can submit an application for funding in the state’s place (p. 19).
- E. Matching Requirement Rules.** The NOFO sets the minimum matching requirement at 25%, except in high-cost areas. NTIA can waive the match on a case-by-case basis (p. 20). Funds from other Federal programs (*e.g.*, RDOF) may not be used for the match, but funds from ARPA, CARES, CAA, and other COVID-related stimulus bills can be used. However, NTIA encourages cities and states to use those funds for separate broadband projects and to leverage subgrantee match commitments as much as possible (p. 20, fn. 20).
- F. Laws Relating to Municipal Broadband.** States must detail the extent to which they will waive “all [state] laws...concerning broadband,” including those related to municipal broadband (*i.e.*, those that prohibit municipal broadband and otherwise impose requirements on municipalities as they pursue a government-owned broadband network). If the state does not intend to waive those laws, the state must “describe how [those laws] will be applied in connection with the competition for subgrants” (p. 32). In addition, states must detail in their Final Proposals “each unsuccessful application affected by such laws and describe how those laws impacted the decision to deny the application” (p. 51).

Ultimately, it appears that NTIA will take these laws into account when reviewing a state’s application. Moreover, it appears NTIA will give more (negative) weight to laws passed since enactment of the Infrastructure Act that seek to limit GONs and related broadband efforts by non-traditional providers when considering whether to approve a state’s application.

PART III: SELECT GRANT PARAMETERS

A. No Minimum Size. A BEAD-funded project *can be as small as a single unserved or underserved location* (p. 36).

B. Definitional Considerations re Unserved & Underserved. When identifying unserved and underserved areas, *States may not treat as unserved or underserved areas where broadband is or will be deployed using funds from certain other sources, including: state grants; a variety of USDA programs, including ReConnect; RDOF, 2009's ARRA grant program; ARPA's SLFRF and Capital Projects Fund; and any other "grant, loan, or loan guarantee provided by, or funded in whole or in part by, the federal government or a state government...for the provision of broadband service"* (p. 37).

C. Principles re Subgrantee Selection. NTIA details a range of principles that must be incorporated into a state's subgrantee selection process. These include:

1. Using BEAD funding to completely cover all remaining unserved areas and, insofar as funding is available, all underserved locations in the state as well (p. 41).
2. Priority broadband projects are those built with end-to-end fiber and shall be the default winner in most instances, especially when up against a non-fiber-based network in the grant review process (p. 42).
3. Additional top-tier review criteria include an applicant's commitment to affordably providing 1 Gbps/1Gbps service and to fair labor practices (p. 43).
4. Entities that can build out more quickly than the 4-year maximum timeframe are to be given priority (p. 43).
5. States may give priority to applicants seeking to build open access fiber networks (p. 44).

D. Allocations to States. A states may allocate BEAD funding to itself (p. 32).

PART IV: OTHER CRITERIA / CONSIDERATIONS

A. Local Coordination. The NOFO offers a detailed overview of its vision for how states must coordinate with local stakeholders during each phase of the BEAD program (p. 51-55). States are required to coordinate not only with political subdivisions, but also with local and community-based organizations (a listing of the kinds of organizations this contemplates is provided on p. 53-54), and unions and worker organizations.

B. Fair Labor & Workforce. The NOFO details information that states must require of grant applicants vis-à-vis fair labor and workforce standards (p. 56-60). Among other

things, NTIA appears to encourage states to require subgrantees to agree to “binding commitments to strong labor standards and protections for the project workforce,” including, among other things, using a “directly employed workforce, as opposed to a subcontracted workforce” (p. 57).

C. Climate Resilience. State applications must “demonstrate that they have sufficiently accounted for current and future weather- and climate-related risks to new infrastructure projects” (p. 62). This includes identifying potential risks and accounting for those risks in their plans for allocating funding (e.g., in detailing a preference for a certain technology or deployment technique in light of a particular weather or climate risk).

D. Subgrantee Qualifications. The NOFO details a range of criteria that states must use when vetting potential subgrantees. These revolve around ensuring that “prospective subgrantees have the *competence, managerial and financial* capacity to meet the commitments of the subgrant...as well as the *technical and operational* capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award” (p. 71).

E. Subgrantee Obligations. ISPs and other entities receiving BEAD funding must agree to a range of obligations. These include, among others:

1. Deploying networks capable of delivering at least 100/20 Mbps service
2. When laying fiber underground, making available conduit access points at regular intervals for interconnection by unaffiliated entities (p. 66)
3. Deploying excess conduit when possible (p. 66)
4. Making available affordable plans so that *all* consumers have access to an affordable connection. This includes not only low-cost plans for low-income households but additional offerings to middle-class households – e.g., by expanding the income eligibility for low-cost plans. Parameters of the low-cost plan are provided on p. 67-68.
5. Not imposing data caps or using “unjust or unreasonable network management techniques” (p. 68)
6. Developing and operationalizing cybersecurity plans (p. 70)

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Please do not hesitate to send questions, comments, and other feedback to ACLP@nyls.edu.