



STATE OF NEW MEXICO
OFFICE OF BROADBAND ACCESS & EXPANSION

Office of Broadband Access and Expansion
State of New Mexico

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Notice of Funding Opportunity (NOFO)
Broadband Equity, Access, and Deployment Program
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Questions: broadband@connect.nm.gov

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A. Program Overview

1. Summary

This Notice of Funding Opportunity (“NOFO”) formally establishes the funding availability for the New Mexico Broadband Equity, Access, and Deployment Program (BEAD). The NOFO sets forth the program purpose, eligibility factors (e.g., project types, technologies, locations and service areas, entities, etc.), allowable expenditures, performance requirements (e.g., network performance, service offerings, etc.), evaluation criteria, and post-award compliance requirements.

Summary	
Program Name	New Mexico Broadband Equity, Access, and Deployment Program (BEAD)
Administrators	<ul style="list-style-type: none"> • <u>National Telecommunications and Information Administration</u>: Serves as the federal administering agency. • <u>Office of Broadband Access and Expansion (OBAAE)</u>: Designated as the State’s Eligible Entity to run the subgrantee selection process
Available Funding	<ul style="list-style-type: none"> • <u>Funding Pool</u>: Approximately \$652.8 million
Authorizing Legislation	<ul style="list-style-type: none"> • <u>Infrastructure Investment and Jobs Act of 2021</u>: This federal legislation, also known as the Bipartisan Infrastructure Law, established the BEAD program to allocate federal grants to foster broadband deployment across unserved and underserved areas.
Program Goals	<ul style="list-style-type: none"> • <u>Overarching Goals</u>: 1) Connect 100 percent of unserved locations in New Mexico and as many underserved locations and eligible community institutions as remaining funds allow; 2) Prioritize fiber-optic networks but also consider other terrestrial-based reliable technologies (e.g., licensed fixed wireless) and hybrid approaches for locations deemed overly costly for fiber deployment)
Matching Share	<ul style="list-style-type: none"> • <u>Matching share requirement</u>: 25% minimum (Note: The scoring rubric awards additional points for contributing a greater than 27.5% match.) • <u>Contribution Type</u>: Matching funds may be provided in the form of either cash or in-kind contributions. • <u>Waivers</u>: A lower match percentage may be considered for project area units (PAUs) designated as high cost. Match waivers for other PAUs require justification regarding extenuating circumstances.
Eligible Project Areas	<ul style="list-style-type: none"> • <u>Project Area Units (PAUs)</u>: PAUs subdivide the state into collections of eligible broadband-serviceable locations (BSLs). These customized boundaries reflect several factors – e.g., administrative boundaries (including Tribal lands and school districts). <ul style="list-style-type: none"> ○ Note: The final map of Project Area Units is pending approval of the final list of eligible locations by NTIA and will be released at a later date.
Eligible Locations	<ul style="list-style-type: none"> • <u>Focus on Unserved Locations</u>: New Mexico BEAD program prioritizes connectivity to unserved residential and business locations, which have been identified through an exhaustive stakeholder input process.

	<ul style="list-style-type: none"> • <u>Underserved Locations and Eligible CAIs</u>: May only be considered in Round One for those locations which cannot be avoided and are therefore free of incremental deployment costs. Applicants earn additional points if the network design can enable the efficient future expansion to such locations. In Round Two, such locations adjacent to the awarded unserved locations (from Round One) can be considered if funding remains. • <u>Served Locations</u>: May only be included if they absolutely cannot be avoided in targeting the unserved locations (e.g., must be passed to reach eligible locations). • <u>Map of Eligible Locations</u>: https://connect.nm.gov/bead.html <ul style="list-style-type: none"> ○ Note: The final list of eligible locations is pending approval by NTIA and will be released at a later date.
<p>Eligible Network Types</p>	<ul style="list-style-type: none"> • <u>Last-Mile Networks</u>: Primary focus of BEAD is to connect unserved and underserved locations. • <u>Middle-Mile Networks</u>: Fiber and microwave networks providing backhaul to last-mile networks may be funded when necessary to provide the targeted solutions to end-users. This may include greenfield deployment or capital leases (e.g., IRUs).
<p>Eligible Technologies</p>	<ul style="list-style-type: none"> • <u>Priority Broadband Technology</u>: Fiber networks constitute a priority technology due to reliability, scalability, and long-term sustainability. The highest-scoring applicant that only includes fiber targeting all eligible unserved locations may be declared the provisional winner if the average cost per unit passed is below the EHCLPT. • <u>Reliable Broadband Service</u>: Includes: (i) fiber-optic technology; (ii) Cable Modem/ Hybrid fiber-coaxial technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum. These are the only technologies that will be considered for Round One. • <u>Alternative Technologies</u>: These may be considered in Round Two: unlicensed fixed wireless; non-terrestrial solutions (e.g., high altitude platform stations and satellite networks); emerging commercial technologies with a track record of meeting performance standards. These alternative technologies will only be considered in Round Two for those locations lacking a provisionally awarded bid. Details of Round Two will be published at a later date, pending further guidance from NTIA on Alternative Technologies.
<p>Eligible Expenses</p>	<ul style="list-style-type: none"> • <u>Type</u>: Permitting and regulatory reviews (e.g., rights of way, easement, environmental, historical and cultural assessment); network planning & design; infrastructure deployment; network facilities & equipment; customer premise equipment; fiber drops; long-term leases; grants administration and reporting during the project period • <u>Purchase Order Requirement</u>: Project expenditures are only allowable if they occur AFTER the date of signed Grant Award Agreement and completion of a Purchase Order. Pre-award expenses are not eligible (e.g., application preparation, professional engineering (PE) certification, market analysis, etc.)
<p>Eligible Applicants</p>	<ul style="list-style-type: none"> • <u>Prequalification Requirement</u>: Prospective applicants must have submitted a prequalification application that establish their qualifications and capabilities to plan, finance, deploy, and maintain broadband networks. OBAE considered seven key factors: financial, managerial, technical, and operational capabilities; ownership; public funding track-record; and compliance with applicable laws.

	<ul style="list-style-type: none"> ● <u>Entity Types</u>: Include cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, local governments, and federally recognized Tribal governments. (Collaborations among multiple eligible entities are eligible. One partner must be identified as the lead applicant, and that entity must be prequalified).
Project Periods	<ul style="list-style-type: none"> ● <u>Project Completion</u>: Awardees must deploy the planned broadband infrastructure and begin providing services to each customer that desires broadband service within the project area not later than four years after the date on which they receive the award from OBAE. ● <u>Federal Interest Period</u>: Commitments stated in the application must be honored for 10 years after the year in which the subgrant for a project has been closed out.
Scoring Framework	<ul style="list-style-type: none"> ● <u>Scoring criteria (in descending order of weight)</u>: Minimal BEAD program outlay (including proposed grant amount and match), affordability, fair labor practices, inclusion of high-cost areas, areas with low-income households, technical capabilities, community and partnership support, aggregation of PAUs, and speed to deployment.
Application Window	<ul style="list-style-type: none"> ● <u>Round One</u>: January 3, 2025, to February 17, 2025 (planned) ● <u>Round Two</u>: A subsequent round occurs for those PAUs and locations that do not have a provisional winner in Round One. Round Two is targeted for June 2025. Details of Round Two will be published at a later date pending further guidance from NTIA on Alternative Technologies.
Evaluation Process and Awardee Selection	<p>→ Involves the following stages:</p> <ul style="list-style-type: none"> ● <u>Scoring</u>: Applications are scored based on rubric stated in the IPV2 and further detailed in the Scoring Guide. ● <u>Technical Review</u>: Financial and technology components are reviewed to ensure the most cost-effective, commercially ready, and sustainable projects are funded. ● <u>Curing</u>: Involves a request for further information to ensure OBAE has the proper inputs and data to complete the evaluation. ● <u>Negotiations</u>: Reflects opportunity to discuss opportunities to enable OBAE meet its statutory-defined goal of reaching universal service through funding the most cost-effective, sustainable projects (e.g., expansion into locations with no bid; budgetary savings; higher match contribution). ● <u>Ranking</u>: OBAE will rank all the applicants for every PAU, taking into account: score; priority technology; commitment to comprehensive coverage (alternative percentage factor); and project economics compared to internal benchmarks on required subsidy. ● <u>Establishment of Eligible High Cost per Location Threshold</u>: OBAE will determine the EHCPLT, which is a BEAD subsidy cost per location above which OBAE may decline to select a proposal if use of an alternative technology meeting the BEAD Program’s technical requirements would be less expensive. ● <u>Deconfliction</u>: Applicants that have multiple PAUs in a single application, of which one or more are not selected for a provisional award due to a higher ranked applicant being selected, will be contacted to provide an updated application. ● <u>Provisional award</u>: OBAE will contact the most favorable-standing applicant to provide a provisional award. Final awards are dependent upon NTIA approval.

<p>Critical Planning Factors for Applicants</p>	<ul style="list-style-type: none"> ● <u>Technology Plan</u>: For Round One, applicants have to decide whether to pursue 1) a 100% fiber-optic solution (“priority broadband”), or 2) a solution using other reliable broadband technologies, which could include a hybrid fiber solution. ● <u>100% Coverage Bid or Alternative Percentage Bid</u>: Bids for 100% coverage of eligible locations in a PAU will be prioritized by OBAE. However, applicants may designate a lower percentage of locations being targeted and provide a compelling reason(s) for those avoided (e.g., extremely remote, outside service area). Please recognize that a higher alternative percentage supersedes a higher-scoring application within the pool of priority or non-priority applications. <ul style="list-style-type: none"> ○ Note: Applicants electing an alternative percentage must provide an estimate for 100% coverage of locations. ● <u>Multiple Applications</u>: Applicants bidding for multiple PAUs may file a single application for each PAU, or in the event of contiguity, a single application for all the PAUs. The scoring rubric awards additional points for aggregating contiguous PAUs. OBAE recommends separate applications for PAUs in different regions of the State. ● <u>Cost-Effective Budgets and Matching Contribution</u>: Applicants should develop the most cost-effective budgets and apply the highest matching contribution that the business case, along with financial resources, allows. This is because 25% of the total points awarded are based on how the proposed grant request compares to the internal benchmark price reflecting a reasonable subsidy required for any given PAU and 12.5% are based on the degree of matching contribution. Moreover, budget amounts and match contributions will be scrutinized for reasonableness. ● <u>Inclusion of Underserved and Eligible CAIs</u>: These can only be connected for no incremental cost to the BEAD project budget. Nevertheless, applicants can help achieve OBAE’s goal of universal service while enhancing the business case by designing a scalable network to connect these in the future and using private funds to connect these (and not the match). ● <u>Partnerships</u>: Applicants should consider partnering with other ISPs if they determine they cannot serve the entire PAU. This lowers the alternative percentage and may lead to a higher ranking. One partner must be identified as the lead applicant, and that entity must be prequalified.
<p>BEAD Website</p>	<p>https://connect.nm.gov/bead.html</p>
<p>Questions</p>	<p>Please submit questions to: broadband@connect.nm.gov</p>

2. Timeline

The following table lists the program's key stages and dates. These dates could change depending on external factors (e.g., the volume of applications, coordination with NTIA) and internal factors (e.g., resources, inter-government coordination, etc.)

Stage	Description	Target Dates
Pre-Application Activities		Year 2024
Applicant Prequalification	<ul style="list-style-type: none"> Prospective applicants must demonstrate managerial, financial, operational, and technical qualifications, as well as other administrative certifications and documentation. Note: There may be a future opportunity to prequalify for Round Two. 	September 16 – November 15
Critical Materials Released (NOFO, Application)	<ul style="list-style-type: none"> OBAE releases the State BEAD NOFO. 	November 15
BEAD Map of Eligible Locations and Project Area Units	<ul style="list-style-type: none"> OBAE will release the map of eligible locations and Project Area Units. 	Pending NTIA Approval
Round One		Year 2025 (planned)
Application Window	<ul style="list-style-type: none"> Applicants submit applications for their proposed projects through an online in-take system (Submittable). 	January 3 – February 17
Reviewing and Curing	<ul style="list-style-type: none"> OBAE scores Round One applications and engages in a technical and financial review. Applicants may be requested to provide additional information in order for OBAE to complete the evaluation process. 	February 24 – March 28
Negotiation	<ul style="list-style-type: none"> OBAE contacts the highest-ranking applicants to negotiate key matters (e.g., budget, match, excluded and adjacent locations, etc.) and extend coverage to additional eligible locations and PAUs. ** OBAE may extend negotiations for an additional 30 days. 	March 31 – May 16
Provisional Awards Announced	<ul style="list-style-type: none"> OBAE will announce provisionally awarded Round One projects and publish results for public comment. 	May 19 - June 19
Round Two		Year 2025
Updated Map of Eligible Locations	<ul style="list-style-type: none"> OBAE will publish a map of unserved locations lacking a bid or lacking a cost-effective bid. If sufficient funding remains, eligible underserved locations and CAIs will also be identified. 	TBD
Round Two: Application Window	<ul style="list-style-type: none"> OBAE will open Round Two for those PAUs and unserved locations that remain eligible (e.g., no bid, cost-ineffective bid). Round Two may include opportunity to fund eligible underserved locations and CAIs, if funds remain. 	TBD

Reviewing and Curing	<ul style="list-style-type: none"> • OBAE scores Round Two applications and engages in a technical and financial review. • Applicants are requested to provide additional information in order for OBAE to complete its review process. 	TBD
Negotiation	<ul style="list-style-type: none"> • OBAE contacts the highest-ranking applicants to negotiate key matters (e.g., budget, match, locations, etc.) and extend coverage to additional eligible locations and PAUs. ** OBAE may extend negotiations for an additional 30 days. 	TBD
Provisional Awards Announced	<ul style="list-style-type: none"> • OBAE will announce provisionally awarded Round Two projects and publish results for public feedback. 	TBD
Final Proposal		
Final Proposal	<ul style="list-style-type: none"> • OBAE submits its Final Report to NTIA, which discusses awarded projects, selection basis, and public comment summary. 	July 2025

3. Filing an Application and Program Support

The following table provides context on filing an application and obtaining support for your questions.

Stage	Description
Application Submission	<ul style="list-style-type: none"> • Applications can be submitted through the in-take portal. A link will be posted on the Connect New Mexico BEAD Landing Page.
Paper Version of Application	<ul style="list-style-type: none"> • OBAE will release a paper version of the application by December 2nd, 2024. The electronic intake system opens in early January. The paper version is for reference only. All official applications must be submitted in the portal.
Office Hours	<ul style="list-style-type: none"> • OBAE hosts weekly Office Hours for the BEAD Program. • These will occur every Wednesday through the end of the Application Submission phase.
Individual Meetings	<ul style="list-style-type: none"> • Applicants can schedule individual 30-minute meetings with program staff. Please email broadband@connect.nm.gov to request a meeting
Questions	<ul style="list-style-type: none"> • OBAE welcomes questions about the NOFO, application, scoring guide, and procedural and process issues. Please email your question to broadband@connect.nm.gov. Questions must be submitted no later than three days before the application due date.

B. Key Definitions and Acronyms

1. Definitions

Term	Definition
Geographic	
Project Area Unit	Reflects customized boundaries that involve collections of eligible broadband-serviceable locations (BSLs) defined using existing administrative boundaries (including Tribal lands and school districts), census blocks and tracts, and high-cost areas defined by NTIA. Applicants will submit proposals to serve the eligible BSLs in one or more PAUs. Enables OBAE to streamline the subgrantee selection process by enabling like-to-like comparisons of competing bids.
Location Types	
Business	Refers to those locations where lawful trade, investment, or other purpose or activity – whether conducted or undertaken for profit – takes place.
Community Anchor Institution	Refers to schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, public housing organization, and other community support organizations and agencies – especially those that may facilitate greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.
Household	Refers to a house, apartment, single room, or other group of rooms, if occupied or intended for occupancy as separate living quarters, and where the occupants do not live with any other persons in the structure and there is direct access from the outside or through a common hall
Services and Technology	
Alternative Technology	Refers to any technology that does not qualify as Reliable Broadband Service, including Unlicensed Fixed Wireless (ULFW) and low-Earth orbit satellite (LEO), that meets the BEAD Program’s minimum technical requirements of speeds not less than 100/20 Mbps (download/upload) and latency less than or equal to 100 milliseconds.
Broadband Service	The term “broadband” or “broadband service” has the meaning given the term “broadband internet access service” in Section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation, meaning it is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.
Priority Broadband Project	Means a project that will provision service via end-to-end fiber-optic facilities to EVERY end-user premise.
Open Access for Last-Mile	Refers to an arrangement in which the subgrantee offers nondiscriminatory access to and use of its network on a wholesale basis to other broadband service providers seeking to serve end-user locations, at just and reasonable wholesale rates for the network’s useful life. Rates should include a discount from the provider’s retail rates

	reflecting the costs that the subgrantee avoids by not providing retail service to the end user location (e.g., marketing, billing, and collection-related costs).
Reliable Broadband Service	Means a broadband service that involves either: (i) fiber-optic technology; (ii) cable modem / hybrid fiber-coaxial technology; or (iii) terrestrial fixed wireless technology using an entirely licensed spectrum or a hybrid of licensed and unlicensed spectrum.
Location Status	
Broadband Serviceable Location (BSL)	Means a business or residential location where fixed broadband Internet access service is, or can be, installed.
Eligible Community Anchor Institution	Refers to Community Anchor Institution that lacks access to gigabit-level broadband service.
Eligible Service Location (ESL)	Involves a household or business location that meets the definition of unserved or underserved.
Enforceable Commitments	Involves unserved and underserved locations for which government funding (federal, state, local) has already been granted to deploy a broadband network that will convert the status of these locations to “served.”
Served Location	Means a broadband-serviceable location that has access to a broadband connection that reliably offers at least 100 Mbps download and 20 Mbps upload (100/20 Mbps) through a reliable broadband service.
Underserved Location	Means a broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.
Unserved Location	Means a broadband-serviceable location that the Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 25 Mbps for downloads; and (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.
Connect New Mexico Map – BEAD	Refers to the interactive map that delineates the PAUs and all eligible locations.
Parties	
Eligible Entity	Refers to the State of New Mexico.
Recipient	Refers to the Office of Broadband Access and Expansion (OBAE).
Sub-Recipient	A party that is awarded a grant award from the BEAD program. Also referred to as the Awardee.
Awardee or Grantee	A party that is awarded a grant award from the BEAD program. Also referred to as the Sub-Recipient.
Economics	
High-Cost Area	“High-cost area” (HCA) is an unserved area which NTIA has determined that the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States – including: — (I) the remote location of the area; (II) the lack of population density of the area; (III) the unique topography of the area; (IV) a high rate of poverty in the area; or (V) any other factor identified by the Assistant Secretary, in consultation with the

	Commission, that contributes to the higher cost of deploying broadband service in the area. For purposes of defining “high-cost area,” the term “unserved area” means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.
Extremely High Cost Per Location Threshold (EHCPLT)	Involves a BEAD grant cost per location above which OBAE has the option to decline to select a proposal if using an alternative technology meeting the BEAD Program’s technical requirements would be less expensive. The EHCPLT will be determined during the subgrantee selection process.
Benchmark Price	Reflects the highest subsidy (or grant) that OBAE would allocate to make a business viable and sustainable for a PAU. This benchmark price will not be publicly disclosed. OBAE has worked with a contractor to develop this benchmark price for a fiber and fixed wireless network for every eligible unit, based on engineering and economic modeling. The benchmark pricing will provide a mechanism by which OBAE will be able to fairly score applications statewide based on the same formula, applied to local costs.
Network Element	
Last Mile Network	A network for which the predominant purpose is to provide broadband service to end-users (e.g., homes, businesses, community institutions).
Middle Mile Network	Middle-mile infrastructure serves to connect a last-mile network to the Internet backbone. It does not directly connect to the end-user location. The network aggregates large quantities of local traffic and transports it to an interexchange point. Such a point may include a carrier hotel. The services may include interoffice transport, carrier-neutral internet exchange facilities, transport connectivity to data centers, lit service transport, leased dark fiber, and other similar services.
Colocation Facility	Defined as a physical data center hosting facility that allows customers to deploy their own servers, networks and storage hardware powered by electricity and backup power
Financial Items	
Grant	The financial assistance award from the State of New Mexico to a sub-grantee which bears responsibility for achieving the purpose and activities authorized in this NOFO
Matching Share	Refers to the non-State monetary funds and in-kind contributions provided by a grantee and approved by OBAE.
In-kind Contributions	Refers to non-cash donations of property, goods or services that are necessary to the grant-assisted project and would otherwise incur expenditures.
Administrative Terms	
Award Agreement	A legal instrument of financial assistance between the Office of Broadband Access and Expansion (the awarding agency) and the Grantee that governs the terms and conditions of the award
Project	Means the scope, in the application, that involves the deployment infrastructure for the provision of broadband service. The scope may involve a single or multiple PAUs.
Project Period	The time between the date of the signed Award Agreement the project close-out
Closeout	The process by which the state awarding agency determines that all commitments made in the application have been fulfilled and all compliance requirements have been met.

Federal Interest Period	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 10 years after the year in which the subgrant for a project has been closed out in accordance with 2 CFR 200.344.
Prequalification	Prequalification enables prospective applicants to establish their qualifications and capabilities to plan, finance, deploy, and maintain broadband networks while driving commercial success and adhering to all legal and regulatory requirements.
Alternative Percentage	Refers to the coverage percentage below 100 percent of unserved locations within a Project Area Unit to which applicants can commit to deploy broadband. The applicant estimates that the other individual locations will be so costly to build with broadband infrastructure that including those locations as required deployment targets may make the entire areas non-viable for bids at a cost that fits into the finite BEAD budget and could reduce or eliminate the chance of any bids being received for that Project Area Unit.

2. Acronym Guide

Acronym	Explanation/Meaning
ACP	The FCC's Affordable Connectivity Program, which provides subsidies for low-income and Tribal households to access home broadband subscriptions and/or internet-enabled devices.
ARPA	The federal American Rescue Plan Act of 2021.
BABA	Build America Buy America Act
BEAD	NTIA's Broadband Equity, Access, and Deployment Program, which will provide \$42.45 billion nationally for broadband infrastructure planning and implementation.
BSL	A broadband serviceable location (BSL) is "a business or residential location in the United States at which mass-market fixed broadband Internet access service is, or can be, installed."
CAI	Community Anchor Institution, defined by NTIA in the BEAD NOFO "an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations."
DoIT	The New Mexico Department of Information Technology (DoIT).
EHCPLT	Extremely High Cost Per Location Threshold above which New Mexico may decline to select a fiber-based proposal if use of an alternative technology meeting the BEAD Program's technical requirements would be less expensive.
FCC	The Federal Communications Commission, administrator of the ACP and developer of the National Broadband Map.
FTTP	Fiber-to-the-premises.
ISP	Internet service provide
MBPS	Megabits per second
Federal NOFO	The Federal Notice of Funding Opportunity refers to NTIA's document regarding the guidelines for the BEAD Program.
State NOFO	The State Notice of Funding Opportunity refers to this very document. This will be called "NOFO."

OBAE	The New Mexico Office of Broadband Access and Expansion
PAU	Project Area Units, the geographic areas funded for broadband deployment.
RDOF	The Rural Digital Opportunity Fund Program, administered by the FCC.

C. Program Background

1. Overview

➤ Federal Legislation

The Broadband Equity, Access, and Deployment (BEAD) Program had been authorized by the Infrastructure Investment and Jobs Act of 2021, also known as the Bipartisan Infrastructure Law. It provides federal funding for grants for broadband planning, deployment, mapping, equity, and adoption activities.¹ The principal focus involves deploying broadband service to unserved and underserved locations. For last-mile infrastructure projects, the Program prioritizes fiber-based solutions.

➤ Funding Authorized to New Mexico

New Mexico received \$675.3 million.² Funding was distributed primarily based on the relative number of “unserved” locations in each State and Territory and included funding for initial planning and administrative costs. Approximately \$652.8 million will be available for deployment projects. This amount constitutes the single largest source of public funding for broadband deployment in the state’s history and will be a generational investment to finally enable universal broadband service for unserved residential and business locations.

➤ Administering Agencies

The law designated the National Telecommunications and Information Administration (NTIA) as the federal administering agency for the BEAD Program. As such, New Mexico must follow requirements set by IIJA and by NTIA in the development and administration of the BEAD Program.

The Office of Broadband Access and Expansion (OBAE) is the eligible entity for the State of New Mexico. OBAE is administratively attached to the New Mexico Department of Information Technology (NM DoIT). OBAE is the designated Eligible Entity to receive funds for the state. As such, OBAE is responsible for designing and launching the subgrantee selection process and managing the post-award process, which includes performance monitoring and reporting.

2. Federal Guidance

➤ Purpose of Funds

¹ See Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021)

² NTIA Press Release, <https://www.ntia.gov/press-release/2023/biden-harris-administration-announces-state-allocations-4245-billion-high-speed>

The program focuses on subsidizing the capital expenditures for network deployment to provide high-speed Internet to residents, businesses, and community institutions currently unserved or underserved. Recent analysis indicates the required subsidy support to deliver fiber-based broadband to all unserved and underserved locations far exceeds the publicly available funding from BEAD.

➤ **Targeted Locations and Prioritization**

BEAD's overarching goal is to reach 100 percent of unserved and underserved locations in New Mexico. BEAD prioritizes connectivity to the following rank order: unserved locations, underserved locations, eligible community anchor institutions (i.e., those lacking 1 Gbps service), and affordable housing. OBAE has determined there is insufficient funding to reach all priorities and therefore is focused on ensuring 100% connectivity for the unserved locations, before funding additional priorities.

➤ **Key Federal Requirements**

- Fiber as Priority Technology: The program prioritizes projects designed to provide fiber connectivity directly to the end user.
- Low-Cost Option: It also requires all projects to provide a low-cost option to eligible subscribers, requires all states to have plans to address middle-class affordability, and further prioritizes proposals that improve affordability to ensure that networks built using taxpayer dollars are accessible to all Americans.

3. Key Documents

- Federal Notice of Funding Opportunity: NTIA issued its NOFO in May 2022. The NOFO included a program description, federal award information, eligibility information, program structure, application information, review process, approval process, and compliance requirements.
- Five-Year Plan: Involves a holistic plan that covers: a) OBAE's vision and goals; b) situational assessment of broadband needs and gaps; c) key funding programs.
- Initial Proposal Volume One: Identifies several planning considerations that influence the design and scope of the BEAD program, including: a) efforts funded by the federal government and the State of New Mexico to deploy broadband and close the digital divide; b) identification of each unserved location and underserved location within New Mexico; c) definition of community anchor institution and identification of all eligible CAIs; d) detailed plan as to how OBAE will conduct a challenge process to identify all eligible locations.
- Initial Proposal Volume Two: Describes the competitive process that OBAE will use to select subgrantees to construct broadband projects. The document reflects a lengthy coordination process to collect and consider local public feedback and had been made available for public comment.
- Final Proposal: After selecting subgrantees, OBAE will submit to NTIA a Final Proposal describing its compliance with the Initial Proposal and the results of its processes. Before submission to NTIA, the Final Proposal must be made available for public comment.

D. Eligible Project Types

An eligible project should meet the following criteria for network type, technology and performance.

1. Focus on Last-Mile Networks

The overarching purpose of BEAD is to bring high-speed connectivity to unserved and underserved locations. Thus, the application must involve the deployment of a last-mile network using a technology that allows for Reliable Broadband Service. This includes technologies that involve either: (i) fiber-optic technology; (ii) cable modem / hybrid fiber-coaxial technology; or (iii) terrestrial fixed wireless technology using an entirely licensed spectrum or a hybrid of licensed and unlicensed spectrum.

2. Middle Mile Networks

An application may include middle mile infrastructure only if it is required to provide transport between the last-mile network, targeting unserved locations, and the regional Internet backbone. OBAE will require open access terms for any middle-mile network, unless that portion is funded by private investment. Publicly funded middle-mile networks best serve the public interest when other carriers can interconnect on fair and non-discriminatory terms and conditions. Such specific award conditions shall include the following:

- Interconnection: A middle-mile grantee must allow interconnection to grant-funded facilities at any technically feasible point along the network without exceeding current or reasonably anticipated capacity limitations. This obligation includes, at a minimum, the physical interconnection of the grantee's facilities to a requesting party's facilities for the exchange of traffic. In addition, the grantee must connect to the public Internet directly or indirectly and provide requesting parties with the ability to connect to the Internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory.
- Wholesale Broadband Service: A middle-mile grantee must offer wholesale broadband service at rates and terms that are reasonable and non-discriminatory.
- Negotiate in Good Faith: Middle-mile grantees shall negotiate, in good faith, with all requesting parties (i.e., public, private, non-profit, or other parties) making a bona fide request for interconnection or wholesale services.
- Mandatory Requirement for Dark Fiber Leasing: In exchange for the public funding, middle-mile grantees deploying fiber-based networks will be required to lease dark fiber to third parties (e.g., broadband service providers, government agencies, data centers, etc.). Dark fiber offers several advantages to operators and enterprise customers, including virtually unlimited capacity through a few fiber strands, complete control over network and maintenance windows, cost-effective scaling and bursting, enhanced security protections, and lower total cost of ownership over the long-term with lower monthly costs. The lease terms must be for an operating and capital lease. The latter usually involves an Indefeasible Right of Usage (IRU). The price of the IRU, and supporting services (e.g., maintenance) shall be reasonable and comparable to IRU pricing reflected in competitive, urban markets. Rates and terms for maintenance services for the dark fiber shall be reasonable and nondiscriminatory.

Note: The open-access network requirements do not apply to last-mile networks. However, additional scoring consideration is offered to last-mile projects with an open network program.

E. Eligible Technologies

1. Prioritization of Fiber Solutions

NTIA defines reliable broadband services involve either: (i) fiber-optic technology; (ii) cable modem / hybrid fiber-coaxial technology; or (iii) terrestrial fixed wireless technology using an entirely licensed spectrum or a hybrid of licensed and unlicensed spectrum.

Per federal guidance, OBAE will prioritize via end-to-end fiber-optic facilities for each end-user premises projects, which are considered “Priority Broadband Projects.” That federal preference is consistent with the State of New Mexico’s own policy to use public funds to build infrastructure that will meet the needs of the future wherever possible. Fiber networks constitute a priority technology due to reliability, scalability, and long-term sustainability.

An application that only includes fiber, and has the highest score, will be declared the provisional winner if the average cost per unit passed is below the EHCLPT. The rules provide that projects can only be funded with other Reliable Technologies, or a combination thereof, if the costs for fiber-to-the-premises exceed a cost threshold (known as the “Extremely High Cost Per Location Threshold”) that is calculated to enable all unserved locations to receive service with the available BEAD funding. Given these two considerations, OBAE plans to prioritize end-to-end fiber proposals, followed by proposals for other Reliable Broadband Service technologies, consistent with the BEAD NOFO.

2. Consideration of Other Reliable Solutions

The BEAD rules provide that projects can only be funded with alternative technologies if the costs for fiber-to-the-premises exceed a cost threshold (known as the “Extremely High Cost Per Location Threshold”) that is calculated to enable all unserved locations to receive service with the available BEAD funding. States may decline to fund fiber-to-the-premises only in the event that the costs exceed the Extremely High Cost Per Location Threshold and the alternative approach is approved by NTIA. Accordingly, OBAE will prioritize end-to-end fiber proposals, followed by proposals for other Reliable Broadband Service technologies, consistent with the BEAD NOFO.

3. Consideration of Non-Reliable Alternative Technologies

OBAE may make awards for non-Reliable Broadband Service technologies—such as unlicensed fixed wireless or LEO satellite service— under two general conditions. First, the cost per passing for fiber or other Reliable Broadband Service technologies exceeds the Extremely High Cost Per Location Threshold (EHCPLT). Second, where no proposals are received for fiber or alternative Reliable Broadband Service technologies. OBAE will accept applications for such locations in Round Two.

The EHCPLT involves a cost threshold that will be calculated during the application review stage. It is calculated to reflect a funding strategy by which all unserved locations can receive service with the available BEAD funding. If the total subsidy amount requested from all high-ranking fiber applications exceeds the available funding in Round One, OBAE will establish the EHCPLT so that more cost-effective solutions can target the most relatively expensive locations, thereby allowing funding for a fiber network for relatively less expensive locations.

4. Network Performance Requirements

The applicant’s network must also meet the following performance requirements.

Performance Standard	Detail
Speed to Residential and Business Locations	<ul style="list-style-type: none"> The network must be designed to deliver Reliable Broadband Service with speeds of not less than 100 Mbps for downloads and 20 Mbps for uploads.
Speed to CAIs	<ul style="list-style-type: none"> Funded Network connections to Eligible Community Anchor Institutions shall be capable of delivering service at speeds not less than 1 Gbps for downloads and 1 Gbps for uploads.
Latency	<ul style="list-style-type: none"> The network must support a performance standard for which 95 percent of latency measurements during testing windows must fall at or below 100 milliseconds round-trip time. This approach ensures a connection that supports reasonably foreseeable real-time applications. In the limited circumstance where even a fiber deployment cannot achieve this latency threshold (for example in a remote territory), NTIA may expand the latency threshold for specific Funded Networks at the request of an Eligible Entity.
Outages	<ul style="list-style-type: none"> Network must be designed with redundancy features so that outages do not exceed 48 hours during any calendar year.
Readiness	<ul style="list-style-type: none"> A last-mile network shall provide access to broadband service to each customer who requests service within ten business days.

F. Eligible Locations

1. New Mexico Broadband Map

Applicants should consult the New Mexico Broadband Map to identify eligible locations and eligible community institutions. This map includes data from the FCC National Broadband Map and service providers in the state. The map depicts household and business locations deemed unserved or underserved, and community institutions lacking Gbps speeds. The Map will be available on the [Connect NM Maps website](#). The OBAE GIS Team will provide further guidance regarding how the map can be used to estimate the number of eligible service locations.

2. Location Prioritization and Application Rounds

➤ Top Priority: Unserved Locations

The federal statutory BEAD requirement directs Recipients to prioritize funding in the following order: unserved locations, underserved locations, community anchor institutions, and affordable housing units. Internal analysis performed by OBAE indicates that the subsidy funding required for the deployment of fiber networks to unserved locations will likely consume most of the available funding. This assumes a reasonable match contribution by applicants that allows them to earn a rate of return commensurate with their cost of capital, after considering recurring revenue and operating expenses. This analysis also recognizes that licensed fixed wireless may be necessary in certain areas where the cost of fiber is prohibitively expensive or technically infeasible to deploy.

Therefore, in Round One, applicants will only be able to apply for funding to serve eligible unserved locations. Certain unserved locations may not be part of any applicant's targeted locations or may be very expensive and exceed the Eligible High Cost per Location Threshold. Therefore, OBAE reserves the opportunity in Round One to negotiate with the highest ranked applicants to identify opportunities to connect such locations through a cost-effective expansion. If they remain without a bid, such locations will move into Round Two and be eligible for an Alternative Technology.

If the funds are insufficient to deliver fiber to all unserved and underserved locations, applications to serve high-poverty and persistent poverty areas will be prioritized.

➤ Eligibility: MDUs

Multi-dwelling units (MDUs) are considered single broadband serviceable locations (BSLs), which may be classified as served, underserved, or unserved. To the extent that an MDU is classified as unserved, that MDU is eligible to be funded in Round One. An applicant may request funding to deploy Wi-Fi infrastructure to MDUs that lack high-speed broadband access in their entirety or contain units that lack such access. In accordance with the BEAD NOFO, OBAE will prioritize funding such deployment to residential buildings that (1) have a substantial share of unserved households or (2) are in locations in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved is higher than the national percentage of such individuals.

➤ Eligibility: Underserved Locations

As stated above, in Round One, applicants will only be able to apply for funding to serve eligible unserved locations. Underserved locations can only be included in an application if they cannot be avoided in the network design. For example, the fiber network would have to traverse past these underserved locations to reach the unserved locations. For fixed wireless, underserved locations will inevitably be part of the wireless coverage footprint, but the solution does not contain extra base stations or receivers to support such locations. In either case, for Round One, the applicant would certify that connecting these underserved locations does not involve incremental costs in the project budget. For example, fiber drops to these underserved locations are an ineligible expense in Round One. The pro forma financial projections must consider the revenue and operating expenses to serve these underserved locations.

If funds remain available after Round One and review of Round Two applications to connect remaining unserved locations, OBAE will directly negotiate with the highest ranked, provisionally awarded applicants to identify opportunities to connect eligible underserved locations through a cost-effective expansion of their network.

➤ **Eligibility: CAIs**

As stated above, in Round One, applicants will only be able to apply for funding to serve eligible unserved locations. Qualifying CAI locations can only be included in an application if they cannot be avoided in the network design. For example, the fiber network would have to traverse past these qualifying CAI locations to reach the unserved locations. For fixed wireless, qualifying CAI locations may inevitably be part of the wireless coverage footprint, but the solution does not contain extra base stations or receivers to support such locations. In either case, the applicant would certify that connecting these qualifying locations does not involve incremental costs in the project budget. For example, fiber drops to these CAI locations are an ineligible expense in Round One. The pro forma financial projections must consider the revenue and operating expenses to serve these CAIs.

If funds remain available after Round One and review of Round Two applications to connect remaining unserved and the underserved locations, OBAE may directly negotiate with the highest ranked, provisionally awarded applicants to identify opportunities to connect eligible CAI locations through a cost-effective expansion.

➤ **Eligibility: Served Locations**

Served locations do not qualify for BEAD funding. They may only be included under ONE condition, which is they cannot be avoided in the attempt to connect eligible locations (e.g., wireline network has to bypass such units in order to reach the unserved and underserved location; wireless network covers the served locations because the RF signal permeates to such locations). The applicant would certify that connecting these served locations does not involve incremental costs in the project budget relative to targeting other eligible locations. In addition, per the federal BEAD NOFO, they cannot constitute more than 20% of the locations for any application. The pro forma financial projections must consider the revenue and operating expenses to serve these locations. Pro forma projections are reviewed to determine the appropriate match amount.

OBAE will closely review funding requests for locations that are not unserved or underserved to ensure the efficient use of BEAD funds and reserves the right to reject funding requests for these locations and to request a revised application that does not include these served locations. Note: Applicants may certainly use their own private funding sources to connect such served locations if there is any question about unavailability or zero incremental cost.

G. Eligible Project Areas

1. Project Area Units

Applicants will select one or more project area units (PAUs) to bid upon in a particular application. PAUs are geographic polygons that encompass collections of eligible broadband-serviceable locations (BSLs). PAUs allow OBAE to streamline the subgrantee selection process by enabling like-to-like comparisons of competing bids, as opposed to applicants defining their own proposed project area (similar to the Connect New Mexico Fund and Connect New Mexico Pilot Program). These PAUs will be identified on the [Connect NM Maps website](#).

➤ PAU Overview

Important aspects of the PAU framework follow below.

- Number and Size of PAUs: Final PAU boundaries will be published upon NTIA approval of the final list of eligible locations for BEAD
- Locations with PAU: Each PAU contains eligible locations – unserved and underserved residential and business locations, and CAls lacking 1 Gbps.
- PAU Design: PAUs reflect customized boundaries that involve several considerations, including existing administrative boundaries (including Tribal lands and school districts), census blocks and tracts, and high-cost areas defined by NTIA.
- Public Input: OBAE received public comment on its proposed boundaries.
- Benchmark Price: OBAE will develop a benchmark price for every PAU. This reflects an estimated amount of a fair grant that will allow a broadband service provider to earn a reasonable rate of return for a greenfield network deployment – both fiber and fixed wireless. Each location within the PAU is then assigned that benchmark. Individual unit assignments will be required to score hybrid applications.
- Competition: OBAE expects multiple bids per PAU, which will help drive the most efficient grant request. In the absence of multiple bids, OBAE will compare the economics of any application with internal cost modeling data.
- Underserved Proximity: Locations of underserved locations and their proximity to unserved locations, increasing the likelihood that grant-funded deployment to unserved locations could result in awardees also serving underserved locations because of the efficiencies and business opportunities presented for the applicant
- Tribal Areas: OBAE assigned each Tribal entity its own PAU based on respect for tribal sovereignty and the related policy requirement that any application traversing tribal land must have tribal consent for that project to serve its territory.
- High-Cost Areas: OBAE assigned each High-Cost Area its own PAU to facilitate administration of the lack of a matching contribution requirement for these areas.

2. PAU Selection Guidelines

The following guidelines serve to assist applicants as they develop their applications and make several strategic choices.

- Multiple PAUs: Applicants may choose to include multiple PAUs to form an aggregate project area.
- Contiguity: PAUs included in an application are not required to be contiguous. However, additional points are awarded for contiguity.
- Single Application: OBAE encourages applicants to submit a separate application for non-contiguous PAUs that are spread across the state. Cherry-picking the highest-density PAUs will be a consideration factor when ranking applications, given OBAE's commitment to support broadband deployment in designated hard-to-serve areas and other lower density PAUs.
- Unserved vs. Underserved: For Round One, applicants will submit a bid for the eligible unserved locations for the PAU.

H. Eligible Entities

1. Prequalification Requirement

Prospective applicants must have submitted a prequalification application that established their qualifications and capabilities to plan, finance, deploy, and maintain broadband networks. OBAE considered seven key factors: capabilities across financial, managerial, technical, and operational; ownership; public funding track-record; compliance with law.

2. Eligible Entity Types

Eligible entities that can apply for grants from the BEAD Program include the following. They must be prequalified to participate.

- Government entities: Tribal governments; local units of government (e.g., municipalities, counties, and other political subdivisions); State and local agencies; public educational institutions
- Private entities: Entities engaged in deploying broadband infrastructure to provide service primarily for residential purposes. These broadband service providers may include for-profit entities, non-profit entities, cooperatives, mutual organizations, and utilities.
- Consortium: Collaborations among two or more of the eligible entities are eligible (Note: One partner must be identified as the Lead Applicant.)

I. Eligible Expenditures

BEAD grant recipients may only use federal award funds and any non-federal cost share committed to an award to pay for allowable costs under the BEAD program.³ Costs must be reasonable, necessary, allocable,

³ NTIA, BEAD NOFO, page 81-82.

and allowable for the proposed project and conform to generally accepted accounting principles.⁴ Funds committed to an award may only be used to cover allowable costs incurred during the period of performance and allowable closeout costs incurred during the grant closeout process.⁵ Such closeout costs must be included in the applicant's proposed project budget.

The program will apply NTIA's guidance on the implementation of exceptions, adjustments, and clarifications to certain provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified at 2 CFR Part 200, and the application of related provisions of the Uniform Guidance to the BEAD program.⁶ Details on eligible costs per the BEAD Program are included below.

1. Broadband Deployment Related Expenditures

Per the BEAD NOFO, eligible uses of funding in connection with last-mile broadband deployment projects include the following. These must all be included in the applicant's budget.

- Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings.
- Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including infeasible right-of-use (IRU) agreements.
- Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building.
- Engineering design, permitting, and work related to environmental, historical and cultural reviews.
- Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts).
- Network software upgrades, including, but not limited to, cybersecurity solutions.
- Training for cybersecurity professionals who will be working on BEAD-funded networks.
- Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training for broadband-related occupations to support deployment, maintenance, and upgrades.
- Drop and network equipment for unserved locations (in Round One) are eligible BEAD costs and should be built into grant proposals to avoid inflated subscriber prices. OBAE expects this risk to be somewhat mitigated by expanding competition in rural areas from 5G home internet and LEO satellite options.
 - Note: In Round Two, drop and network equipment will be an eligible cost for underserved locations, CAIs, and low-income MDUs if funds remain and OBAE works with Round One Awardees to expand connectivity to such locations.

⁴ NTIA, BEAD NOFO, page 81-82.

⁵ NTIA, BEAD NOFO, page 81.

⁶ For details, refer to NTIA, "[Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program.](#)"

- Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 120-day closeout period, as provided in 2 C.F.R. § 200.344 (Closeout).⁷

➤ Eligible costs as they pertain to served locations

Per the BEAD NOFO, up to 20 percent of the project may be composed of BSLs that are not unserved or underserved.⁸ An applicant who chooses to include such locations must only select locations within the Project Area Unit(s) that comprise their Project Area. The applicant must submit a list of all selected served locations as part of their application and must demonstrate how these locations absolutely cannot be avoided in the network design. Moreover, the applicant must certify there is no incremental cost in their project budget to cover these served locations. For example, fiber drop costs to served locations is an ineligible expense.

The State will closely review funding requests for such served locations to ensure the efficient use of BEAD funds and reserves the right to reject funding requests for these locations and to request a revised application that does not include these locations.

2. Ineligible Expenditures

➤ Ineligible Costs Designated by NTIA

Costs that are ineligible for the BEAD program may not be paid for with matching funds committed to an award. The following costs are specifically identified as prohibited under the BEAD program:

- Use of grant funds for covered communications equipment or services under the Secure and Trusted Communications Networks Act: A subgrantee (including their contractors and subcontractors) may not use grant funds received under the BEAD program to purchase or support any covered communications equipment or service, as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608).
- Profit and fees: A profit, fee, or other incremental charge above the actual cost incurred by a subgrantee is not an allowable cost under this Program.

⁷ Department of Commerce, "Standard Terms and Conditions," November 12, 2020, accessed July 25, 2024, https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%202012%20November%202020%20PDF_0.pdf.

⁸ NTIA, BEAD NOFO, page 14, states that a project "may constitute [...] a grouping of broadband-serviceable locations in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations or underserved locations."

- Use of grant funds to support or oppose collective bargaining: A subgrantee may not use grant funds – whether directly or indirectly – to support or oppose collective bargaining.⁹

➤ **Ineligible Costs Designated by OBAE**

OBAE designates the following expenditures as ineligible. Other potentially ineligible expenses will be listed on the program website.

- Expenditures incurred before the signed Grant Award Agreement and issuance of Purchase Order
- Acquisition of spectrum licenses
- Operations and maintenance costs (other than grant administration costs)
- Short-term operating leases
- Payment of interest or principal on outstanding debt instruments, or other debt service costs
- Fees or issuance costs associated with the issuance of new debt
- Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding
- Expenditures related to land buildings, structures, improvements, or equipment not directly used to support the deployment of a broadband network
- Pass-through expenditures with respect to subcontractors or other third parties operating on an Awardee’s behalf to the extent they are not the result of arm’s length transactions or are not reflective of fair market rates.

➤ **Duplication of Funding**

An unserved or underserved location may be in an area with existing enforceable federal or state funding commitments for broadband deployment. In such cases, funding from the BEAD Program cannot be applied for costs that will be reimbursed by the other federal or state funding stream(s). Funds must be used only for separate cost items. There must be additional public benefit and a justification for using additional public funding to deploy infrastructure in such overlapping areas. The awardee will be required to certify in the Award Agreement that the funds requested from the BEAD Program have not been and will not be reimbursed by any other state or federal funding programs.

J. Critical Planning Factors for Potential Applicants

Applicants have several critical strategic choices to make as they prepare to file a BEAD application that supports their objective of delivering broadband to eligible locations in their targeted communities. These include:

⁹ NTIA, BEAD NOFO, page 82.

1. Technology Plan

For Round One, applicants have to decide whether they pursue one of two general options for Round One: 1) 100% fiber-optic solution (“priority broadband”); 2) other Reliable Broadband Services, including hybrid fiber/licensed wireless.

Applicants should strongly consider a fiber-optic solution, or at least a hybrid solution with a heavy placement of fiber, for their proposal, for several reasons. First, NTIA rules for BEAD requires that the highest-scoring, fiber-based application, has to be awarded if that cost per passing falls below the EHCPLT. Second, as OBAE ranks alternative proposals for any particular PAU, a project that has a significant degree of fiber will receive additional consideration, along with other factors (e.g., total score, alternative percentage, etc.)

Applicants that aim to include many PAUs in a single applicant, with a combination of technologies, should consider filing a separate application for any PAU that is committed to 100% fiber, given that OBAE will prioritize the 100% fiber-based application, for the reasons noted.

2. 100% Coverage Bid or Alternative Percentage Bid

Applicants will ideally submit a bid to serve 100 percent of unserved locations in the Project Area Unit and to propose an associated cost and network design. This will help OBAE achieve its mission for universal service. Nevertheless, applicants may determine that they cannot serve every eligible unserved location for their Round One Application. This may be due to any number of barriers – e.g., high cost to service; limitation in having their network technology reach that location; regulatory barriers; etc.

Applicants may thus choose a percentage below 100 percent of unserved locations within a PAU to which applicants can commit to deploy broadband. This percentage is referred to as the Alternative Percentage. For applications covering more than one PAUs, this designation has to be done for every PAU. Applications to serve 100 percent of the unserved locations in the Project Area Unit will be prioritized over applications to serve an Alternative Percentage when comparing applications that propose the same technology (e.g., fiber, other reliable broadband services.) For PAUs lacking any 100% bid, the application with a higher Alternative Percentage receives a higher ranking than other Reliable Broadband Services. Thus, applicants who submit bids for multiple PAUs should have separate applications for the all-fiber PAUs versus other combinations of reliable broadband technologies.

Note: Please see the OBAE-produced video on alternative percentage: <https://connect.nm.gov/bead.html>

Applicants submitting an Alternative Percentage bid must designate the specific locations (and related percentage) being targeted and provide a compelling reason(s) for those avoided (e.g., extremely remote, outside service area). This reasoning must include the applicant’s best estimate of the total cost to serve 100 percent of the unserved locations in the Project Area Unit as a demonstration of the need to remove some locations. Applicants are advised that removal of locations based on factors other than high cost is greatly disfavored by OBAE and does not conform with federal BEAD guidelines, which aim to drive universal connectivity. Applications that are aggressive in this way may be disqualified, or, in the event that OBAE believes it warranted, the Project Area Unit may be put out for bid in a subsequent application round.

A commitment to connect all or most locations is a positive ranking factor. In the absence of a provisionally awarded application for 100 percent of the unserved locations, OBAE will evaluate the proposed pricing for the category of Alternative Percentages and will tentatively plan to provide awards to the highest-scoring application at the highest proposed Alternative Percentage that falls below the EHCPLT/budget. To facilitate comparisons, the coverage percentage will be rounded to the nearest integer.

3. Multiple Applications

Applicants bidding for multiple PAUs may file a single application for each PAU or, in the event of contiguity, a single application for all the PAUs. The scoring rubric awards additional points for aggregating contiguous PAUs. This amounts to 1.25% of the total points.

4. Requested Grant Amount and Match Contribution

Applicants consider many factors in the development of their budget, and how much of that budget should be funded by a match contribution versus a grant amount. OBAE encourages applicants to develop the most cost-effective budgets and apply the highest matching contribution that the business case, along with financial resources, allows. This is because 25% of the total points awarded are based on how the proposed grant request compares to the “Benchmark Price.”

Benchmark pricing reflects the highest subsidy (or grant) that OBAE would allocate to make a business viable and sustainable. The use of localized benchmarks fosters a fair process for a statewide grant program because the scores are based on the relationship of proposed costs to the customized local benchmark, which reflects local deployment conditions in which some locations are considerably more expensive to deploy than others. The benchmark basis allows applicants in higher-cost communities to fairly compete for limiting funding relative to those in lower-cost communities – rather than simply competing based on the lowest-cost locations in New Mexico. A higher or lower grant request relative to the Benchmark Price yields fewer or more points, respectively. Moreover, 12.5% of the total points awarded are based on the match contribution relative to the total budget.

➤ Benchmark Pricing Source

The Benchmark Price is developed for every PAU based on OBAE’s engineering and economic modeling. It reflects inputs developed over the course of 2023 based on local and regional data regarding capital costs, operating costs, and revenue opportunities in various parts of New Mexico. The benchmarks for grant awards are generated through a Python-based predictive grant funding analysis tool that leverages highly customized modules for fiber infrastructure design, RF coverage modeling, cost estimation, and financial modeling, powered by hyperscale cloud computers to generate outcomes for technology mix iterations and cost structures. The tool allows OBAE to develop an area-by-area benchmark to evaluate funding proposals and proposed match commitments. The benchmark price will not be released to applicants but will be kept confidential and used by OBAE only for the purpose of scoring.

5. Scaling Network to Connect Underserved Locations and CAIs

The statutory BEAD requirement designates unserved locations as the first priority, underserved locations as the second priority, community anchor institutions as the third priority, and affordable housing and other priorities following the first three. This prioritization is mandated by federal law.

New Mexico's internal modeling suggests that the funds available may provide for fiber-to-the-premise solutions to the majority of unserved locations with potentially limited funding for underserved locations, with the remainder served with alternative technologies. However, OBAE believes it is unlikely, given the insufficient funds allocated to New Mexico under the BEAD framework, that New Mexico will have additional funds for CAIs or non-deployment activities. Here are key consideration factors:

- Coverage Eligibility: Applicants may be able to pass with fiber, or cover with licensed fixed wireless, only those underserved locations and eligible CAIs that do not incur incremental cost to the project.
- Network Design Primed for Expansion: As discussed in the Scoring Guide, additional points are awarded to applications that demonstrate a cost-effective network design that can reduce costs for and accommodate future deployment to eligible locations of underserved, community anchor institutions and low-income multi-dwelling units. Applications must detail the specific approach to accommodate future network expansion, such as: the number of interconnection points per mile, location of interconnection points, open access policies to enable non-affiliated ISPs to purchase wholesale capacity for future expansion from the BEAD-funded network, and specific route placement to be near other eligible locations.

6. Partnerships

Applicants should consider partnering with other ISPs to ensure that all eligible locations within their PAU can be served. This lowers the alternative percentage and may lead to a higher ranking, as explained in the following section. When forming a partnership, one entity needs to be identified as the lead applicant, and that entity must be prequalified.

K. Subgrantee Selection Process

1. Prequalification Phase

The first step has already been initiated, which involves the prequalification of potential applicants. OBAE noted, per NTIA guidance, its plan to assess capabilities to plan, deploy, and sustain a broadband network while complying with regulatory and legal standards in advance of the Scoring Phase. This process allows applicants to respond to a detailed information request and resolve any open matters before shifting attention to developing a high-quality proposal to connect eligible locations. Moreover, OBAE’s attention will shift to the substantive review of proposals from only those applicants that can effectively plan, deploy, and sustain a broadband network.

2. Scoring Rubric

OBAE will review and evaluate the proposals based on the criteria discussed below, which can add up to a total score of 400. OBAE developed the following scoring methodology to meet NTIA’s requirements and the State’s goals. The rubric promotes a fair, clear, and non-arbitrary approach to evaluating applications. Details for how specific points are assigned are discussed in the IPVT and Scoring Guide.

OBAE’s proposed scoring rubric is consistent with NTIA’s rules, which specify three primary criteria that together must account for 75 percent of scoring, as well as secondary criteria that are based on New Mexico’s own public policy priorities.

The Scoring Rubric contains two different versions. The first table pertains to the Priority Broadband Project that involves a 100% fiber-optic network. The second pertains to Non-Priority Broadband Projects that involve Reliable Broadband Technologies other than fiber or a hybrid fiber/other Reliable Technology solution. The categories and points allotment are the same, but the inputs that determine the score will be different for a few of the categories.

Several components are formulaic – thereby void of any subjectivity and can be efficiently scored. The Technical Review and Community Partnership and Support sections reflect individual merits, the scores of which will be assigned by a team of at least two reviewers.

Table 1: Scoring Criteria for Priority Broadband Projects

Primary scoring criterion (all are mandatory under NTIA rules)	Points available
Total outlay of funds	150
Lowest price gigabit service commitment	100
Compliance with federal fair labor laws	50
Primary criteria subtotal	300
Secondary criteria	
High-cost areas	30
Low-income households	29
Technical review	20
Community and partnership support	15

Aggregation of PAUs	5
Speed to deployment (mandatory under NTIA rules)	1
Secondary criteria subtotal	100
Total	400

Table 2: Scoring Criteria for Non-Priority Broadband Deployment Projects

Primary scoring criterion (all are mandatory under NTIA rules)	Points available
Total outlay of funds	150
Lowest price 100/20 Mbps service commitment	100
Compliance with federal fair labor laws	50
Primary criteria subtotal	300
Secondary criteria	
High-cost areas	30
Low-income households	29
Technical review	20
Community and partnership support	15
Aggregation of PAUs	5
Speed to deployment (mandatory under NTIA rules)	1
Secondary criteria subtotal	100
Total	400

3. Process for Applicant Selection

The project review process involves a methodological framework that involves several stages defined below. The outcome will help New Mexico reach its goal of universal service through cost-effective, sustainable projects.

i. Application Scoring

Projects will be scored based on the scoring criteria listed in the Scoring Guide, which also reflects the parameters noted in OBAE's IPV2 filing with NTIA.

A team of subject matter experts will perform reviews matters experts in the broadband sector. Each application will have at least two reviewers. During the review process, the reviewers may discuss the application with each other but not their scores, which will be determined on an individual basis. Final scores may be adjusted based on changes made during Curing.

Note: Incomplete applications will not be scored.

ii. Technical Review

This stage involves the review of the financial and technology components to ensure that the most cost-effective, commercially ready, and sustainable projects are funded.

- Budget: The budgets will be reviewed for comprehensive, detail and reasonableness. The application offers a budget template that requests price and quantity for every cost component. Deviations from internal cost benchmarks will be scrutinized and inquired about during the curing process.
- Pro forma: The pro-formas financial projections will be reviewed for comprehensive and detailed, as well as reasonableness to ensure revenues are not underestimated and operating expenses are not overestimated.
 - Revenue assumptions are assessed, including: average revenue per unit, market penetration, and addressable market that includes all passed locations (unserved, underserved, and served).
 - Operating expenses will be compared to benchmark values.
- Match: The match will be evaluated to ensure it reflects the financial gap in the business case. The merits of the match waiver will be evaluated.
- Certifications: Professional Engineering (PE) certifications will be reviewed along with supporting data.

iii. Curing Process

The curing process involves the request for further information with regard to the following:

- Application data found to be missing, incomplete, redacted, unclear, or requiring clarification
- Lack of adherence to any programmatic requirement
- Shortcomings and issues found in the scoring and technical review stage
- Concerns identified in the prequalification process are raised with specific information requested – the absence of which may prevent further consideration for award
- Lack of convincing basis for avoiding locations that led to the Alternative Percentage
- Lack of convincing basis for seeking a match waiver
- Any new guidance from NTIA that requires OBAE to collect and/or analyze data from the applicants

Applicants will be provided a reasonable time to respond to a curing letter and will be able to meet with program staff to understand the specific information request. The lack of a timely and/or complete response may prevent OBAE from further considering their application for an award.

iv. Establishment of Eligible High Cost per Location Threshold (EHCPLT)

OBAE will rank all the applicants for every PAU, taking into account score, technology, commitment to comprehensive coverage, and project economics that are favorably compared to cost benchmarking and fair subsidy level.

OBAE will determine the EHCPLT, which reflects an amount to support a funding strategy by which all unserved locations can receive service with the available BEAD funding. If the total subsidy amount requested from all high-ranking fiber applications exceeds the available funding in Round One, OBAE will establish the EHCPLT so that more cost-effective solutions can target the most relatively expensive locations, thereby allowing funding for a fiber network for relatively lesser expensive locations.

OBAE will determine the Extremely High Cost Per Location Threshold (EHCPLT) once it has received all grant applications and will use it to allocate its BEAD funding based on the applications received efficiently. Based on both State and federal goals (and the federal requirement) to fund fiber-to-the-premises wherever possible, OBAE will prioritize an EHCPLT as high as possible to ensure greater fiber coverage.

OBAE will determine the EHCPLT through a process that will involve analysis of the full range of grant applications received. OBAE may also consult other data if necessary, including the Eligible Entity Planning Tool provided by NTIA; data developed by OBAE in the course of previous broadband grant programs; and OBAE's own cost model data, which is based on customized New Mexico cost considerations and a full business case analysis that considers capital costs, operating costs, and revenues over the appropriate time frame.

Based on all these inputs, OBAE will develop the EHCPLT to identify those fiber-to-the-premise locations deemed too costly to achieve the critical BEAD goal of achieving 100 percent broadband coverage with the funds provided in the BEAD allocation.

The IPV2 provided this detailed framework for determining and apply the EHCPLT.

Framework
<p>Given federal requirements to achieve 100 percent broadband coverage statewide, while maximizing fiber-to-the-premises, OBAE proposes the following approach to the EHCPLT and negotiation processes</p> <ul style="list-style-type: none"> • Step 1: OBAE will review applications to determine whether there exist sufficient funds to fund all the highest-scoring Priority Broadband applications for 100 percent coverage of all unserved locations in all Project Area Units. If this is the case, there will be no need for the EHCPLT. <ul style="list-style-type: none"> ○ Note: This may not include those locations OBAE and/or the applicants makes a convincing case that fiber is not practicable due to exorbitant costs or other barriers. • Step 2: If OBAE determines that there are insufficient funds, it will calculate the EHCPLT (most likely case). • Step 3: OBAE will then tentatively plan to provide awards to the highest-scoring 100 percent Priority Broadband (i.e., fiber) application for each PAU for which the average grant cost per location is below the EHCPLT/budget. (Note: This assumes that applicant was responsive to any curing requests.) <ul style="list-style-type: none"> ○ If there is only a single proposal under the EHCPLT/budget in the PAU, that proposal will be tentatively awarded. ○ If there are multiple proposals under the EHCPLT/budget, the highest scoring proposal will be tentatively awarded. ○ If two or more such proposals are tied in score, the proposal with the lowest BEAD request will be selected. ○ If there is a tie in amount request, OBAE will solicit a best and final offer proposal and the offer with the lowest BEAD request will be selected • Step 4: For those PAUs with Priority Broadband applications remaining (i.e., below 100% coverage), OBAE will evaluate the proposed pricing for the category of Alternative Percentages and will tentatively plan to provide awards to the highest-scoring application at the highest proposed Alternative Percentage that falls below the EHCPLT/budget. To facilitate comparisons, the coverage percentage will be rounded to the nearest integer. <ul style="list-style-type: none"> ○ Starting with the highest coverage percentage in a Project Area Unit, <ul style="list-style-type: none"> ▪ If there is only a single proposal under the EHCPLT/budget in the Project Area Unit, that proposal will be tentatively awarded. ▪ If there are multiple proposals under the EHCPLT/budget, the highest-scoring proposal will be tentatively awarded. ▪ If two or more such proposals are tied in score, the proposal with the lowest BEAD request will be selected. ▪ If there is a tie for the amount requested, OBAE will solicit a best and final offer proposal and the offer with the lowest BEAD request will be selected ○ If there are no proposals at this coverage percentage below the EHCPLT/budget, the next highest coverage percentage for which there are proposals in the Project Area Unit will be examined as above. • Step 5: For those PAUs that have no Priority Broadband Alternative Percentage proposals lower than the EHCPLT/budget <ul style="list-style-type: none"> ○ If Priority Broadband proposals were received for such a PAU, but exceeded the EHCPLT/budget., OBAE may then negotiate with the Priority Broadband bidders to reduce their average per location proposal below the EHCPLT/budget.

- The highest-scoring Priority Broadband applicant will be afforded the opportunity to revise its proposal.
- If the applicant is unable to sufficiently reduce its cost per location, OBAE will then negotiate the same with the other applicant(s) for that PAU, in order of highest-scoring application.
- Please note scores will be adjusted for those applicants that lower their budget and/or increase their match.
 - If no Priority Broadband proposals were received for such a PAU, OBAE will negotiate with nearby assignees and qualified incumbents to absorb as many eligible locations as possible with Priority Broadband at a BEAD request cost below the EHCPLT/budget.
- **Step 6:** For those PAUs for which it is not possible to secure through the process above awards for Priority Broadband technology, OBAE will then apply the same process to evaluate applications that propose an alternative, non-Priority Broadband technology that meets the BEAD Program’s requirements for Reliable Broadband Service.
- **Step 7:** If it is not possible, through the process above, to secure awards for alternative, non-Priority Broadband technology that meet the BEAD Program’s requirements for Reliable Broadband Service, OBAE will then apply the same process to evaluate applications for non-Priority Broadband technologies that do not meet the BEAD Program’s requirements for Reliable Broadband Service (while otherwise satisfying the Program’s technical requirements).
- **Step 8:** For all PAUs for which no satisfactory application can be funded, as well as for locations that are excluded from funding under the Alternative Percentages process, OBAE may undertake an additional grant round (i.e., Round Two) and seek alternative proposals or may otherwise seek alternative solutions for securing broadband to those areas and locations

v. Negotiations

The BEAD program breaks new ground in that no entity, state or federal, has ever been required to design a program that would address the needs of 100 percent of eligible locations. OBAE, therefore, reserves the opportunity to negotiate with applicants as needed to support this goal.

This Negotiation phase reflects the opportunity to discuss opportunities to help OBAE meet its goal of funding the most cost-effective, sustainable projects and ensuring universal service (e.g., expansion into locations with no bid, budgetary savings, higher match contribution).

OBAE may reach out to applicants to discuss opportunities that allow OBAE to reach its goal of universal service through cost-effective, sustainable projects. NTIA’s rules explicitly anticipate that states will need to negotiate with applicants for this purpose. The negotiation stage, therefore, focuses on the following:

- **Budgetary savings:** Applicants will be asked to lower their bid. Specific cost inefficiencies in the technical review will be shared.
- **Higher match contribution:** Applicants will be asked about providing a higher cash contribution. Specific findings from the business case review will be shared.
- **Reducing the alternative percentage:** Applicants will be asked to extend their network footprint to locations removed, especially where the technical review indicates the expansion into such areas would be cost-effective.

- Expansion into PAUs and specific unserved locations that received no bid: OBAE will discuss proposals with applicants adjacent to PAUs and locations without any bid. OBAE may negotiate with one or more entities at a time, both to mitigate the risks of the compressed timeline and to maximize the benefits of competition. Considerations in awarding an unbid PAU will be the same as a PAU that received a bid. Furthermore, OBAE reserves the flexibility to negotiate with one or more entities regarding potential pricing for given locations, seeking to maximize the reach and value of the BEAD funds to bring broadband to unserved locations throughout New Mexico.

vi. Deconfliction

OBAE expects overlap among applicants, in which either the PAU and/or locations within a PAU may be intersecting. OBAE

➤ Intra-PAU Deconfliction

An applicant that has multiple PAUs in a single application, of which one or more are not selected for a provisional award due to a higher-ranked applicant, will be contacted to provide an updated application. This will include updating the project BSLs, budget, matching contribution, network design, pro-formas and other inputs required for evaluation. The applicant can either submit an updated application or withdraw their entire application. OBAE certainly aims to work with the community of broadband service providers to remain in consideration for deconflicted PAUs.

➤ Intra-PAU Deconfliction

An applicant that has overlapping locations in a given PAU with another higher-scoring applicant, both of which elected alternative coverage percentages, will be asked to deconflict such overlapping locations and will be contacted to provide an updated application. This will also include updating the project BSLs, budget, matching contribution, network design, pro-formas and other inputs required for evaluation. The applicant can either submit an updated application or withdraw their entire application. OBAE certainly aims to work with the community of broadband service providers to remain in consideration for deconflicted locations.

vii. Provisional Award

Projects that receive favorable scores and clear the due diligence phase are then recommended for final consideration. OBAE will contact the most favorable-standing applicant to provide a provisional award. Those PAUs and locations provisionally awarded will come off the map for Round Two. Please note that final awards are dependent upon NTIA approval.

L. Round Two Overview

1. Purpose of Round Two

OBAE will have a Round Two to accommodate the following scenarios.

- PAUs lacking a bid: PAUs lacking a provisional award will be open for Round Two.
- Locations Lacking a Bid: Locations lacking a bid with an awarded PAU will be open for Round Two.
- Underserved Locations, Eligible CAIs and Low-Income Multi-Dwelling Units: OBAE will consider underserved locations, CAIs, and MDUs to the extent they can be cost-effectively connected by Round One awardees through the expansion of their funded provisionally awarded network. This also assumes funds will be left over after identifying a connectivity solution for all unserved locations.

2. Negotiated Expansion with Round One Awardees

OBAE reserves the opportunity to negotiate with applicants and/or undertake an additional application round with remaining BEAD funds for service to underserved CAIs and MDUs.

3. Eligible Technologies

Alternative Technologies will only be eligible to apply in Round Two. Additional details regarding Round Two will be released pending additional guidance from NTIA regarding Alternative Technologies.

M. Matching Share Requirement

1. Federal Directive

NTIA provided the following directive to the Recipients: “Eligible Entities should rigorously explore ways to cover a project’s cost with contributions outside of the BEAD program funding. Matching contributions, including in-kind contributions that lower project costs, demonstrate commitment to a particular project and minimize BEAD funding outlay, extend the reach of the BEAD program funding and help to ensure that every unserved location and underserved location in the United States has access to reliable, affordable, high-speed internet.”

2. Match Type

Per BEAD NOFO III.B.4, matching funds may be provided in the form of either cash or in-kind contributions, so long as such contributions are consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 C.F.R. Part 200. Matching funds must meet the requirements in 2 C.F.R. 200.306:

- Are verifiable from the non-federal entity’s records
- Are not included as contributions for any other federal award
- Are necessary and reasonable to accomplish project or program objectives
- Are allowable under subpart E of 2 C.F.R. 200.306
- Are not paid by the federal government under another federal award, except where the federal statute authorizing a program specifically provides that federal funds made available for such

program can be applied to matching or cost-sharing requirements of other federal programs (see “Matches from other federal programs and entities” below for details)

- Are provided for in the approved budget when required by the federal awarding agency
- Conform to other provisions of 2 C.F.R. 200.306, as applicable.

3. Minimum Requirement

Per NTIA guidance, the applicant must provide at least a 25 percent match that complements the funds received from the New Mexico BEAD Program.¹⁰ This match requirement policy helps maximize the total available grant funding for the state. The merit-review scoring process will consider additional points for those projects that exceed the 25 percent threshold. The match can include monetary and in-kind contributions. The match should reflect the business case gap.

4. Eligible Sources of In-Kind Match

An in-kind match is a non-cash donation of value. It may include property, goods, or services contributed by the applicant (or supporting stakeholders). An in-kind contribution must be an allowable and allocable project expense. In other words, these contributions must be a necessary part of the project and would otherwise be required for purchase if not contributed in the form of a donation. In-kind contributions must reflect market value. Examples of in-kind sources include:

- Equipment: Network equipment (switching, routing, transport, access); customer premises equipment (modems, routers)
- Outside plant: Donated fibers, cables, conduit; supporting infrastructure (e.g., cabinets vaults, patch panels, mounting hardware)
- Fee waivers or discounts for access: Waivers associated with free or discounted access to rights of way, pole attachments, conduits, easements, or other types of tangible or intangible property required to deploy the network
- Donated supplies: Supplies used in the construction or improvement of broadband facilities
- Donated land: Includes land with improvements, structures, buildings, and appurtenances (e.g., towers and poles)
- Donated capital leases: Includes leases of dark fiber (e.g., IRU)
- Volunteer services: Performed by professional and technical personnel, consultants, and other skilled and unskilled labor, including engineering design, project management, infrastructure deployment, and accounting and legal services that are a necessary part of the project.

OBAE notes that in-kind contributions of articles, materials, and supplies to a project are subject to the requirements of the Build America, Buy America (BABA) Act and the United States Department of Commerce’s “Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content

¹⁰ NTIA, BEAD NOFO, page 20.

Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program.”¹¹

5. Matching Share Documentation

Cash Match

Applicant must provide documentation to validate the availability of cash-based matching funds. Examples of appropriate documentation may include a letter of credit, a letter confirming funds from a bank, a board resolution committing funding, loan documentation, and a letter certifying available funds from a company executive. If the applicant has additional financial partners contributing to the matching funds, the application must also identify the financial partner(s) and document the amount and availability of each partner’s financial match.

In-Kind Match

Applicants will have to provide detailed documentation regarding the following: asset type; contributing donor; letter of intent for making the donation; detailed basis for valuation (e.g., market value would reflect specific examples of pricing in the market).

6. Waivers for Matching Share Reduction

NTIA also noted in its NOFO the following about match waivers: “In some cases, though, a match requirement could deter participation in the BEAD Program by small and non-traditional providers, in marginalized or low-income communities, or could threaten affordability (i.e., if an applicant seeks to offset the cost of a substantial match through higher end-user prices). In those cases, an Eligible Entity should consider ways to cover part or all of the provider’s match through Eligible Entity or other funds or seek a match waiver through the process explained below.”

NTIA requests entities like OBAE to then submit a waiver request that describes the special circumstances underlying the request and explain how a waiver would serve the public interest and advance the purposes of the BEAD Program.¹² OBAE will review the merits of any waiver request. Even in OBAE were to approve the request, the NTIA, at its sole discretion, may choose to deny a full or partial waiver of the match requirement, in which case the application must be revised.¹³

Process for Filing Waiver

The application will contain a form to be completed for a match waiver and provide details regarding the unique circumstances preventing a matching contribution of at least 25%. These special circumstances may

¹¹ For the full waiver, refer to Department of Commerce, Office of Acquisition Management, Build America Buy America, “National Telecommunications and Information Administration Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program,” accessed August 6, 2024, <https://www.commerce.gov/sites/default/files/2024-02/BABA%20Waiver%20Signed.pdf>.

¹² NTIA, BEAD NOFO, page 20.

¹³ NTIA, Broadband Equity, Access, and Deployment (BEAD) Program: Selecting the Most Robust, Affordable, Scalable Technology, https://broadbandusa.ntia.gov/sites/default/files/2024-06/BEAD_Selecting_Technology_Policy_Notice_0.pdf.

include, for example, a business case that does not earn the required rate of return, even with a 75% grant amount, due to the limited revenue opportunity (e.g., few customers, low average revenue per subscriber, etc.) or uniquely high-cost structure for capital or operating expenses. Alternatively, a socially disadvantaged group or community facing severe economic distress may cite specific challenges that limit its ability to contribute the 25% matching contribution.

OBAE will carefully review the evidence and data to determine if the waiver is justified based on the extenuating circumstances. If the matching share waiver fails to provide an evidence-based justification, the applicant may be asked to contribute the 25% matching share to receive an award.

7. Matches from Other Federal programs and Entities

Per BEAD NOFO III.B.3, except as expressly provided for in the Infrastructure Act, funds from other Federal programs (including funds from the Commission’s Universal Service Fund programs) may not be used as matching funds. The Infrastructure Act expressly provides that matching funds for the BEAD Program may come from a federal regional commission or authority and from funds that were provided to a subgrantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281); the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4), to the extent permitted by those laws. Loan funding issued through a federal agency, such as through the USDA ReConnect Program, may also be used as match funding. Subgrantees are encouraged to consider, and are expected to comply with, terms and conditions that may be associated with any other potential sources of matching funds and how those may impact the project overall.¹⁴ For example, an awardee that uses Coronavirus State and Local Fiscal Recovery Funds or Coronavirus Capital Projects Fund as the source of matching funds for the BEAD Program must comply with the requirements of both the BEAD Program and the relevant Treasury program.

N. Other Programmatic Requirements

1. Low-Cost Service Option

The State of New Mexico is committed to providing residents with the opportunity to receive low-cost broadband service while simultaneously recognizing that ISPs have a variety of different plans and may be unable to alter their pricing structure on a large scale. Based on previous experiences, it is highly unlikely that ISPs would implement different pricing structures for BEAD-funded areas only while maintaining other pricing in areas that are not BEAD-funded.

OBAE thus requires applicants to offer a \$50 monthly service offering for qualifying low-income households. This must be for a speed tier that is sufficient for a household with multiple users to simultaneously engage in telework and remote learning (e.g., 100/20 Mbps). This service option must meet, at a minimum, the following criteria:

- Will be available to all households that meet the eligibility requirements of the ACP program

¹⁴ NTIA, BEAD NOFO, page 21.

- Cost of \$50 per month or less (\$75 per month or less on Tribal lands), exclusive of all required federal, State, or county government taxes and fees, and inclusive of any optional, non-mandatory, and/or permissive fees
- Available to households with income equal to or below 200 percent of the federal poverty line
- Allows the end user to apply the ACP subsidy to the service price and encourages ISPs to ensure that prospective customers are aware of their participation in the ACP
- Meets performance requirements as established by the BEAD program, with download speeds of at least 100 Mbps and upload speeds of at least 20 Mbps
- Delivers typical latency of no more than 100 milliseconds
- Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere
- Allows subscribers to upgrade at no cost in the event the provider later offers a low-cost plan with higher speeds (downstream or upstream)

Subgrantees are required to participate in federal and state programs to promote affordability. Moreover, should the Affordable Connectivity Program restart, or if a successor program is created with different requirements than the Affordable Connectivity Program, subrecipients may follow the requirements of the successor program.

If the Affordable Connectivity Program does not restart, and a successor program is not established, OBAE's Low-Cost Broadband Service Option requirements will remain unchanged from the above, with the exception that the cost must be \$50 per month or less, including on Tribal lands, exclusive of all required federal, State, or county government taxes and fees, and inclusive of any optional, non-mandatory, and/or permissive fees.

2. Service Speeds (Gbps)

The State of New Mexico plans to manage middle-class affordability within the context of the BEAD program by addressing the following areas of risk.

- Providers refuse to provide service to expensive locations: OBAE will monitor and ensure that awardees make good on their BEAD service commitments, including not assessing additional fees beyond standard installation fees.
- Differential pricing between urban and new project areas: The gigabit best pricing policy mandated in the scoring matrix sets requirements around geographic non-discrimination.

As previously established, the State of New Mexico is committed to establishing policies that would ultimately lead to more widespread affordability among middle-income residents.

3. Tribal Consent

An applicant who proposes to provide service on Tribal lands, as identified in the Proposed Project Area, must obtain a Certification of Consent from the appropriate tribal office. This Tribal office should be the

assigned authority to make broadband-related decisions as designated by the Tribal Government (e.g., Tribal broadband, information technology, or regulatory office). The statement must be provided on Tribal

O. Post Award Requirements and Obligations

Awardees are subject to several post-award requirements. These will be included in a standard terms sheet which will be part of the Award Agreement. The OBAE will post this standards term sheet on the Connect New Mexico Fund website. Any material breach of these requirements may subject the grantee to the repayment provision.

1. Buildout Requirements

The federal BEAD rules require that applicants complete the deployment of their network and be able to provide commercial service within four years following the execution of a grant award agreement.

2. Period of Federal Interest

Grantees must provide all the services and pricing stated in the application for 10 years after the year in which the subgrant for a project has been closed out. This provision will be included in the Award Agreement.

3. Participation in Price Subsidy Programs

An applicant must provide a signed commitment to participate in active federal and state programs that provide low-income consumers with price subsidies for broadband service, such as the FCC's Affordable Connectivity Program (ACP), which is currently inactive.

4. Reporting Requirements

Recipients must submit, on a quarterly basis, a Periodic Performance Report (PPR) and Periodic Financial Report (PFR), to document the project advancement and expenditures. These reports must be submitted no later than 30 calendar days following the period covered by the report. Grantees are required within 45 calendar days following the end of the performance period to submit a final closeout report in the format required by the Grantor (See 2 CFR 200.344).

OBAE will release specific requirements, guidance, and other supporting materials (e.g., templates) to meet these requirements. These reports will be due during the project performance period. The project performance period involves the first quarter during which the Award Agreement is established and ends when the project is closed out. Please see section two of the Appendix. Further details on reporting will be provided on the program website.

5. Worker and Contractor Employment Guidelines

NTIA prescribes many guidelines and best practices to ensure compliance with federal labor and employment laws. NTIA notes that an effective plan for compliance with federal labor and employment

laws can include an applicant's commitment to strong labor standards and protections for the project workforce (including contractors and subcontractors), which may include additional elements such as:

- Using a directly employed workforce, as opposed to a subcontracted workforce;
- Paying prevailing wages and benefits to workers, including compliance with Davis- Bacon and Service Contract Act requirements, where applicable, and collecting the required certified payrolls;
- Using project labor agreements (i.e., pre-hire collective bargaining agreements between unions and contractors that govern terms and conditions of employment for all workers on a construction project);
- Use of local hire provisions;
- Commitments to union neutrality;
- Use of labor peace agreements;
- Use of an appropriately skilled workforce, e.g., through Registered Apprenticeships or other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded);
- Use of an appropriately credentialed workforce (i.e., satisfying requirements for appropriate and relevant pre-existing occupational training, certification, and licensure); and
- Taking steps to prevent the misclassification of workers.

Several aspects of these guidelines were also reviewed during the prequalification phase.

6. Competitive Procurement Requirements

Grantees must follow applicable federal and state laws and guidelines for procurement.

Grantees must ensure that purchases requiring competitive procurement reflect a process and practices that allow multiple vendors to participate. In such cases, applicants must document the following: the process used for vendor notification and requirements documentation (e.g., Request for Proposal); evaluation criteria (e.g., price, quality, availability, special support services, etc.); the ranking of responses.

Sole source contracts are allowed for extenuating circumstances (e.g., recently completed a competitive process; vendor offers a product or service not available by others; long-standing commercial relationship by which bringing aboard a new product may disrupt an existing network). The FAQ will provide further details on this topic. Grantees must refrain from choosing vendors debarred from conducting business with the federal government or the State of New Mexico.

7. Tax Obligations

Grant awards and contract payments to vendors may be subject to state or federal taxes. Applicants are encouraged to consult with a tax professional and account for potential tax obligations as part of the application submission.

8. Asset Ownership and Future Changes

The Award Agreement will contain compliance provisions for asset ownership, asset transfers, and control over assets in the case of project suspension, project defaults, and other events that impact project sustainability.

9. Clawback Provisions

OBAE will also work with its legal advisors to ensure its grant awards contain clawback provisions. In other words, if the subgrantee fails to meet its obligations under the award, including those provided in the application, OBAE can deny a reimbursement request, require partial or full forfeiture of BEAD funds, or issue financial penalties for fraud, misconduct, or non-performance. For its purposes, OBAE considers non-performance to include effective, timely broadband deployment, continuing to offer low-cost service options for the useful life of the assets, meeting reporting deadlines, providing accurate deployment data, and fulfilling all additional BEAD requirements such as broadband speeds.

10. Robust subgrantee monitoring

OBAE plans to adopt monitoring techniques that produce data about subgrantee performance and progress to assess individual and portfolio risks and inform the State's decisions about targeting technical assistance, corrective action or enforcement actions as needed. Such activities include:

- Desk reviews – periodic review of subgrantees' progress and financial reports designed to ensure that OBAE's own reports to NTIA contain timely information.
- Field engineering reviews or audits – engineering teams evaluate constructed segments and full projects against as-built reporting and application requirements.
- Site visits – periodic visits using a standardized agenda to capture first-hand observations of recipient performance along various dimensions, including subgrantee capacity, performance validation, safety practices, and employment practices.

In reviewing its portfolio, OBAE plans to establish and update monitoring levels for its projects based on factors including its performance reporting, desk reviews, and OBAE interactions.

11. Network Performance Testing Requirements Post-Commercial Service Launch

To ensure that OBAE-funded networks meet current and future use cases and to promote consistency across federal agencies, NTIA adopts the compliance standards and testing protocols for speed and latency established and used by the FCC in multiple contexts, including the Connect America Fund and the Rural Digital Opportunity Fund. To demonstrate continued compliance with these standards, subgrantees must perform speed and latency tests from the customer premises of an active subscriber to a remote test server at an end-point consistent with the requirements for a FCC-designated IXP.

Subject to the exceptions identified in Section IV.B.7.a, Funded Networks shall deliver Reliable Broadband Service with speeds of not less than 100 Mbps for downloads and 20 Mbps for uploads. In addition, 95 percent of latency measurements during testing windows must fall at or below 100 milliseconds round-trip time. This approach ensures a connection that supports reasonably foreseeable real-time applications. In

the limited circumstance where even a fiber deployment cannot achieve this latency threshold (for example in a remote territory), NTIA may expand the latency threshold for specific Funded Networks at the request of an Eligible Entity. Funded Network connections to Eligible Community Anchor Institutions shall be capable of delivering service at speeds not less than 1 Gigabit per second for downloads and 1 Gigabit per second for uploads. Eligible Entities shall ensure that such connections can be used to provide business data services.

12. Affirmative Steps to Support Designated Entities

OBAE will require an awardee to take affirmative steps as they relate to its subcontractors to support qualified Small Businesses, Minority Business Enterprises, and Women’s Business Enterprises on solicitation lists.

- Place qualified small and minority businesses and women’s business enterprises on solicitation lists
- Assure that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises
- Establish delivery schedules, where the requirements permit, which encourage participation by small and minority businesses, and women’s business enterprises
- Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce

13. Environmental and National Historical Preservation Requirements

The potential environmental impact of subgrantees’ BEAD-funded projects must be analyzed as required by, and to ensure compliance with, the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.) and the National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.). In particular:

- Projects containing construction and/or ground-disturbing activities are required to submit all required environmental documentation to the State prior to award, which also must describe how they will comply with applicable environmental and national historical preservation requirements.
- It is the subgrantees’ responsibility to obtain all necessary tribal, federal, state, and local governmental permits and approvals necessary for the proposed work to be conducted. Projects are expected to be designed to minimize any potential adverse impact on the environment.
- Subgrantees will also be required to cooperate with the NTIA in identifying feasible measures to reduce or avoid any identified adverse environmental impact of their proposed projects. Failure to do so may be grounds for withholding an award. Proposals will be reviewed to ensure they contain sufficient information to allow agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be submitted to the NTIA, along with a recommendation for funding the selected projects or other eligible activities.
- If additional information is required after an application is accepted for funding, funds can be withheld by the NTIA under a specific award condition requiring the awardee to submit additional environmental

compliance information sufficient for the agency to assess any impact that a project may have on the environment.

P. Administrative Guidelines

1. Payment Terms and Use of Fixed Amount Subawards

New Mexico intends to issue subgrants as fixed subawards, consistent with NTIA's BEAD guidance and its proposed modifications to 2 C.F.R. Part 200. Funds will be disbursed based on the milestones defined in the grant agreement and in compliance with the NTIA's guidance on the implementation of exceptions, adjustments, and clarifications to certain provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified at 2 CFR Part 200, and the application of related provisions of the Uniform Guidance to the BEAD Program. The application will also provide an opportunity to delineate project milestones and associated grant request and match contributions.

In accordance with the NTIA's "Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program," payments to subgrantees under fixed-amount subawards shall be made on a reimbursement basis in accordance with the terms of the grants. Pursuant to 2 CFR 200.201(b)(3), the subgrantees must certify in writing to the State at the end of the BEAD award that the broadband infrastructure project funded under the fixed-amount subaward was completed. Accordingly, a subgrantee receiving a fixed-amount subaward must certify to the State 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 grant agreement for all other broadband infrastructure projects – by the end of the State's period of performance.¹⁵

2. Requirements to Receive Payment

OBAAE staff will also validate whether the Lead Applicant has favorable standing in New Mexico and the federal government to receive state funds. Entities must be eligible to receive payment from the State of New Mexico Department of Finance and Administration (DFA). Entities must meet the following requirements stated in the table below.

¹⁵ NTIA, "[Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program.](#)"

Requirements to Receive Payment

- Updated W-9 Form
- Has a valid Federal Tax Identification Number (FEIN);
- Is not on the Federal Excluded Parties List;
- Is in Good Standing with the New Mexico Secretary of State, as applicable;
- Is not on the New Mexico Stop Payment list; and
- Automated email notification to the entity provides notice of “qualified” status or informs how to remediate a negative verification (e.g., not in good standing with the Secretary of State). A federal Debarred and Suspended status cannot be remediated.
- Pursuant to the policy of the New Mexico Office of the Comptroller, to receive grant funds from the State of New Mexico, a grantee must be considered a regarded entity by the IRS for federal income tax purposes. Disregarded entities will not be eligible to receive grant funds.

3. NTIA Letter of Credit Requirements

Prior to entering into any subgrantee agreement, subgrantees must provide the State with an irrevocable standby letter of credit in the required form, acceptable in all respects to the State, in a value of no less than 25 percent of the subaward amount.¹⁶ Alternatively, applicants may employ the BEAD Letter of Credit Waiver, which, among other things, allows subgrantees to maintain a letter of credit or performance bond in the amount of 10 percent of the subaward instead if reimbursements occur no less frequently than every six months.¹⁷ For subgrantees employing this waiver option, the grant agreement may allow for interim milestone reimbursements when necessary to ensure reimbursements occur no less than every six months to ensure compliance with the relevant requirement.

OBAE recognizes the unique sovereign status of New Mexico’s twenty-three Tribes and Pueblos. In addition to NTIA’s letter of credit guidance for subgrantees, OBAE will allow a letter of credit waiver from Tribal entities. The waiver will require self-certification by council resolution, and the waiver only applies to the letter of credit requirement. Other financials reviews must be completed during the prequalification and curing processes.

4. Award Agreement

Designated awardees must enter into an Award Agreement to receive grant funding. The Award Agreement serves to achieve the following objectives.

Award Agreement Objectives

- identify the grantor (sponsoring body) and the grantee;
- identify the funding source and award amount;
- specify the award deliverables, goals, standards and benchmarks with sufficient particularity to verify performance and to eliminate or minimize subjective assessments of performance;
- identify the administrative, financial, oversight and verification standards and processes applicable to the award;

¹⁶ *Id.* at 72-73.

¹⁷ For details, refer to NTIA, “[BEAD Letter of Credit Waiver](#).”

- specify tax reporting and payment obligations applicable to the award;
- specify record keeping and reporting requirements;
- specify the amount, form and timing of the grantee’s matching contribution, if any;
- specify limitations on assignment or transfer of award rights, obligations or deliverables;
- describe ownership rights to tangible or intangible property created by the grantee pursuant to the award, including any limitations on the right to voluntarily or involuntarily transfer any property created or purchased with award funds, and reversion rights and triggers, if any;
- identify by citation or codified nomenclature any and all laws, regulations, and published guidance that govern award administration or establish program compliance obligations;
- identify by citation or codified nomenclature the procurement laws, if any, that apply to contracting with award funds;
- specify contracting documentation requirements and processes, including any approval or authorization requirements, and any non-standard contracting limitations;
- consistent with the provisions of these rules, include terms governing default; remedies; termination criteria and processes; recoupment; cure processes and standards; choice of law; remedy limitations (if any); and rehabilitation rights and processes;
- include pertinent disclaimers and notices concerning compliance obligations, including tax payments, prevailing wage laws and preferences;
- identify key deadlines;
- specify end user or customer service terms or conditions applicable to the award, including price or discount agreements, service level commitments, co-share or cooperation requirements;
- incorporate the terms and conditions of the NOFO;
- incorporate all statements and representations in the application as actionable representations and warranties;
- include any other covenants or conditions required by the funding source or pertinent to the requirements of a particular program.
- specify a process for the grantee to request modifications or accommodations responsive to unexpected or changed circumstances during project performance

Q. Appendix

1. Reference Guide

Topic	Link
New Mexico BEAD Website	https://connect.nm.gov/bead.html
Initial Proposal Volume 1	https://connect.nm.gov/uploads/1/4/1/9/141989814/bead_nm_initial_proposal_v1_final_20240322_rev11_1.pdf
Initial Proposal Volume 2	https://connect.nm.gov/uploads/1/4/1/9/141989814/new_mexico_ipv2_-_final_-_20240727.pdf
New Mexico Broadband Maps	https://www.doit.nm.gov/programs/broadband/mapping/

Three Year Broadband Plan	https://connect.nm.gov/uploads/1/4/1/9/141989814/state_of_new_mexico_three-year_broadband_plan_version__2024_update_.pdf
Five Year Action Plan	https://connect.nm.gov/bead-plan.html

2. Reporting Requirements Required by NTIA

An awardee must submit to OBAE a regular reporting, at least semiannually, for the duration of the subgrant to track the effectiveness of the use of funds provided. Each report shall describe each type of project and/or other eligible activities carried out using the subgrant and the duration of the subgrant. Eligible Entities 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. In the case of a broadband infrastructure project, the report must, at minimum:

- Include a list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
- Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);
- Identify whether each address or location is residential, commercial, or a community anchor institution;
- Describe the types of facilities that have been constructed and installed;
- Describe the peak and off-peak actual speeds of the broadband service being offered;
- Describe the maximum advertised speed of the broadband service being offered;
- Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
- List all interconnection agreements that were requested, and their current status;
- Report the number and amount of contracts and subcontracts awarded by the subgrantee disaggregated by recipients of each such contract or subcontracts that are MBEs or WBEs;
- Include any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;
- Include an SF-425, Federal Financial Report and meet the requirements described in the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports;
- For projects over \$5,000,000 (based on expected total cost)
 - A subgrantee may provide a certification that, for the relevant Project, all laborers and mechanics employed by contractors and subcontractors in the performance of such Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed,

- or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a Recipient must provide a project employment and local impact report detailing:
- The number of contractors and sub-contractors working on the Project;
 - The number of workers on the Project hired directly and hired through a third party;
 - The wages and benefits of workers on the Project by classification; and
 - Whether those wages are at rates less than those prevailing.
- If a subgrantee has not provided a certification that a Project either will use a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)), then the subgrantee must provide a project workforce continuity plan, detailing:
 - Steps taken and to be taken to ensure the Project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the Project (as required in Section IV.C.1.e), including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor-management partnership training programs, and partnerships with entities like unions, community colleges, or community-based groups;
 - Steps taken and to be taken to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Project;
 - Steps taken and to be taken to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;
 - The name of any subcontracted entity performing work on the Project, and the total number of workers employed by each such entity, disaggregated by job title; and
 - Steps taken and to be taken to ensure that workers on the Project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market.
 - Comply with any other reasonable reporting requirements determined by the Eligible Entity to meet the reporting requirements established by the Assistant Secretary; and certify that the information in the report is accurate.

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