

ALERT

NTIA Restructures BEAD Program with Major Broadband Funding Changes

June 11, 2025

***UPDATE (7/8/2025):** NTIA has acknowledged that as of July 8, all states and territories have submitted their revised Initial Proposals to NTIA. Those proposals must still be evaluated and approved by NTIA.

On Friday, June 6, the National Telecommunications and Information Administration (NTIA) released a highly anticipated Policy Notice (Notice) making significant changes to the NTIA's rules implementing the Broadband Equity and Deployment (BEAD) program. According to the press release accompanying the Notice, the changes are intended to eliminate technology-specific preferences, minimize regulatory burdens, and deliver broadband connectivity throughout the country "at a fraction of the cost of the original program."

Most significantly, the Notice (1) modifies BEAD program requirements in the 2022 Notice of Funding Opportunity (2022 NOFO) that prioritized funding for end-to-end fiber infrastructure projects in favor of a "technology neutral" approach that allows all qualified technologies to compete for "Priority" status and funding based primarily on cost; (2) rescinds all preliminary and provisional subaward selections for existing projects and requires Eligible Entities to hold at least one additional subgrantee selection round; (3) requires Eligible Entities to update and confirm BEAD-eligible location lists; and (4) eliminates a host of non-statutory requirements deemed to be "unnecessary regulatory burdens" that were required by the 2022 NOFO. We discuss these and other key changes under the Trump Administration's newly minted "Benefit of the Bargain" BEAD Program below.

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The Notice Removes Fiber Preference and Instead Adopts a “Technology Neutral” Approach.

Finding that the prioritization of funding for end-to-end fiber projects in the subgrantee selection process reduced competition and “relegated other capable technologies, including terrestrial wireless and low Earth orbit (LEO) satellite services, to a third-tier status,” the Notice eliminates fiber preferences from the 2022 NOFO and allows Eligible Entities to select subgrantees using all qualifying technologies.

Further, the Notice modifies the definition of “Priority Broadband Project” contained in the 2022 NOFO and replaces it with statutory language mandating that such projects meet certain minimum technological and performance metrics:

“Priority Broadband Project—The term ‘Priority Broadband Project’ means a project that provides broadband service at speeds of no less than 100 megabits per second for downloads and 20 megabits per second for uploads, has a latency less than or equal to 100 milliseconds, and can easily scale speeds over time to meet the evolving connectivity needs of households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services.”

Thus, any technology that meets the requisite speed and latency metrics and other requirements can be selected as a Priority Broadband Project, although NTIA reserves the right to reverse an Eligible Entity’s determination of whether a proposed project qualifies as a Priority Broadband Project, if that determination was “unreasonable.”

Other measures adopted to promote technology neutrality in BEAD funding grants include:

- Allowing non-priority projects that meet statutory and NOFO requirements to be selected when no proposal meets the “Priority Broadband Project” definition.
- Eliminating the requirement that Eligible Entities establish an “Extremely High Cost Per Location Threshold” as a cutoff point for when a nonqualifying project may be deployed but requiring rejection of any Priority Broadband Project proposal if the cost of the project is “excessive.”
- Eliminating the prior three-tiered, technology-centric scoring rubric for evaluating competing applications in favor of a framework that prioritizes price as the “Primary Criteria” (“the lowest [overall] cost based on minimal BEAD Program outlay”) over technology. Other changes to the scoring rubric include: (1) application of Secondary Criteria (deployment speed, network speed and other technical capabilities, and provisional subgrantee status) only when a competing application is within 15% of the lowest-cost proposal received on a per-location basis; and (2) elimination of additional prioritization factors addressing topics such as workforce development and job quality, open access/net neutrality, and local and tribal government coordination.

The Notice Rescinds Prior Awards to Subgrantees and Requires at Least One Additional “Benefit of the Bargain Round”

Although three states have completed the steps needed to receive BEAD funding and received “Final Approval” under the 2022 NOFO to proceed with their projects, those approvals have been rescinded under the Notice, and those Eligible Entities will not be able to secure funding and commence buildout until at least one additional round for subgrantee selection is conducted for every BEAD-eligible location. This provision has already proven to be one of the more controversial measures adopted in the Notice, with Sen. Jacky Rosen (D-NV) and Rep. Frank Pallone (D-NJ) quickly issuing statements decrying the recission of Final Approvals for further delaying the issuance of BEAD funding, although Senate Commerce Committee Chairman Ted Cruz (R-TX) praised the Notice for “strip[ping] out time-consuming and unnecessary Biden-era central planning mandates” and “refocusing BEAD on its core objective.”

To comply with the Notice’s requirements to conduct a new “Benefit of the Bargain Round,” Eligible Entities must:

- Submit a request to modify Initial Proposals within 30 calendar days (**by July 6, 2025**);
- Conduct at least one additional round to allow subgrantees to apply for BEAD funding for each BEAD-eligible location, including reopening any prequalification process to all interested applicants; and
- Submit a Final Proposal “that reflects the results of the Benefit of the Bargain Round” within 90 days, which NTIA commits to reviewing within 90 days of submission. This deadline replaces the deadline extensions previously granted by NTIA.

Finally, costs incurred to implement Initial Proposals, and those associated with any “non-statutory regulatory” burdens identified in the Notice, are subject to disallowance.

The Notice Requires Eligible Entities to Review and Update Eligible BEAD Location Lists.

Although the Notice expressly declines to require Eligible Entities to repeat the challenge process to allow demonstrations that a location deemed to be BEAD-eligible is already served, it does direct Eligible Entities to “ensure that the lists of BEAD eligible locations are accurate and [] prevent overbuilding of privately funded and Federal, state, or locally funded locations by BEAD.” To comply with this requirement, Eligible Entities must account for locations that “do not require BEAD funding” using the reason code process described in the Final Proposal Guidance and modify BEAD-eligible location lists to include areas no longer served due to default or change in service area on a federal enforcement commitment.

Further, to account for broadband serviceable locations (BSLs) with access to existing unlicensed fixed wireless (ULFW) networks, the Notice establishes a seven-day notice and response process whereby a provider may challenge the BEAD funding eligibility of a location served by an existing ULFW service to confirm BEAD funding eligibility.

The Notice Removes Other Requirements Deemed to be “Significant Regulatory Burdens”

The Notice identifies and eliminates a wide range of non-statutory requirements contained in the 2022 NOFO that it finds “made the BEAD Program more complex and expensive, stifled competition, and led to reduced participation levels.” They include certain requirements related to labor, employment and workforce development; climate change; open access; local coordination and stakeholder engagement; justification for selecting traditional over non-traditional providers; middle class affordability plans; and low-cost service options.

The Notice Makes Other Notable Changes to the BEAD Program.

In addition to the major changes described above, the Notice also implements the following changes to the BEAD Program:

- Rescinds approval of all non-deployment activities and eliminates reimbursement for any new such costs.
- Streamlines National Environmental Policy Act (NEPA) approvals by requiring Eligible Entities to use the Environmental Screening and Permitting Tracking Tool (ESAPTT) within the NTIA Grants Portal.
- Rescinds now-obsolete Policy Notices regarding “Alternative Technologies” and BEAD subgrantee selection released in 2024, available [here](#) and [here](#).

NTIA’s Notice makes wide-ranging changes the BEAD Program that will require Eligible Entities and subgrantee applicants to review and revise their applications to ensure compliance with these updated requirements. Wiley’s experienced team of attorneys is continuing to track these fast-moving changes to the BEAD Program. For more information on the NTIA’s Notice or assistance complying with changing BEAD requirements, please contact one of the authors listed on this alert.