



Montana Broadband Advisory Commission Meeting

August 8, 2023

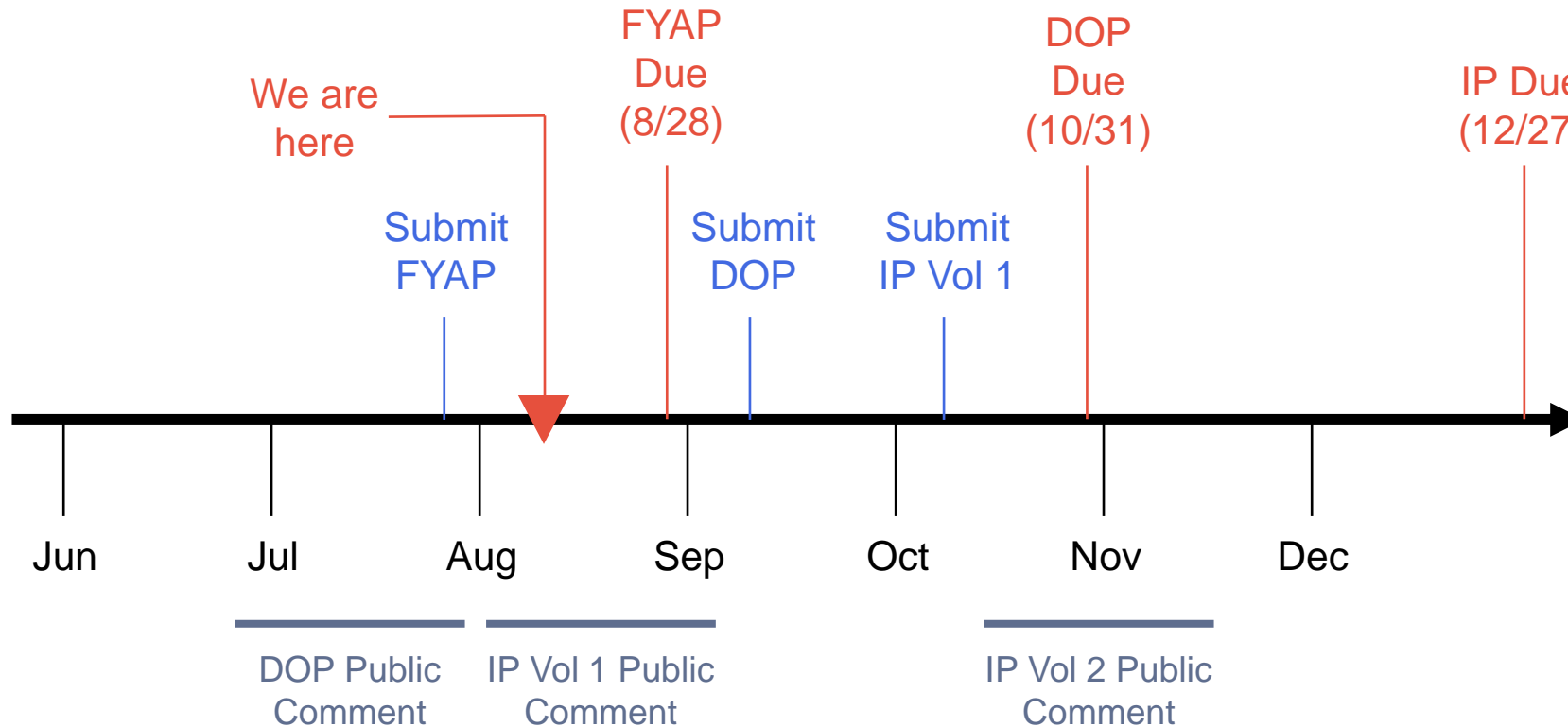
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Overall timeline and high-level summary of proposed commission meeting agendas

As of 25 July 2023

Timeline of key milestones for BEAD & DO



Focus for today

Planned Future Commission Meeting Topics

August 8th

- IP V1 Design decisions
- IP V1 Public comment period
- IP V2 Overview
- IP V2 Key design choices

September 6th

- IP V2 (EHCT, Subgrantee process)

October 11th

- IP V2 (Workforce, Affordability)
- IP V2 public comment period

November 7th

- IP V2 approval

December 6th

- Finalize any pending items for IP or DOP



Agenda for August Commission Meeting

As of 25 July 2023

Agenda Item	Facilitator	Time
Open Meeting <ul style="list-style-type: none"> a. Call to order and notice of audio / video recording b. Roll call and proxies 	Commission Chair	10 minutes
IIJA: Initial Proposal Volume 1 Approach <ul style="list-style-type: none"> a. Design decisions b. Public comment period 	Adam Carpenter, Chief Data Officer	90 minutes
IIJA: Initial Proposal Volume 2 Guidance <ul style="list-style-type: none"> a. Summary of NTIA Guidance / Requirements b. Key design choices 	Misty Ann Giles, Director of DOA	90 minutes
Public Comment	Commission Chair	90 minutes
Next Steps / Timelines	Misty Ann Giles, Director of DOA	20 minutes



Agenda

Challenge process overview

Challenge process design decisions

Initial proposal V2



The Initial Proposal includes 20 requirements

As of 25 July 2023

Initial Proposal Volume 1 (Challenge Process)	BEAD NOFO Requirement
1.1 Federal funding	3
1.2 Eligible broadband serviceable locations	5
1.3 Community anchor institutions	6
1.4 Challenge process	7
1.5 Volume I public comment	N/A

Source: BEAD Initial Proposal Guidelines

DOCUMENT INTENDED TO PROVIDE INSIGHT BASED ON CURRENTLY AVAILABLE INFORMATION FOR CONSIDERATION AND NOT PRESCRIBE SPECIFIC ACTION

IP guidance element Details follow

Initial Proposal Volume 2 (Grant Program)	BEAD NOFO Requirement
2.1 Objectives	1
2.2 Existing efforts	2
2.3 Stakeholder engagement	4
2.4 Subgrantee process	8
2.5 Non-deployment subgrantee process	9
2.6 Direct implementation	10
2.7 Labor standards	11
2.8 Workforce	12
2.9 Minority- and women-owned businesses	13
2.10 Cost and barriers reduction	14
2.11 Climate Assessment	15
2.12 Low-cost plan	16
2.13 Middle class affordability	20
2.14 Use of 20% of funding	17
2.15 Existing laws and requirements	18
2.16 Certification	19
2.17 VII public comment	N/A



Recall: Overview of the MT-run BEAD challenge process

As of 25 July 2023

What is it?

The BEAD NOFO requires Eligible Entities (e.g., MT), to run a challenge process to refine the national broadband map's service availability before conducting a subgrantee process.

Through the state challenge process, a unit of local government, nonprofit organization, or broadband service provider may challenge whether a particular location or community anchor institution is eligible for BEAD funds (i.e., unserved or underserved).



Why is it important?

The challenge process will facilitate:

- Identifying more accurately which locations in MT are currently unserved or underserved
- Identifying which CAIs currently do not have access to Gigabit service
- Achieving the goals of the state of MT to increase connectivity and bridge the digital divide
- Achieving the goals of the BEAD program in reaching all unserved (and potentially underserved) locations, in addition to CAIs (if funding allows)



The MBO has made 7 key preliminary design decisions for the state-run challenge process

As of 25 July 2023

Decision	NTIA #	Preliminary MBO decision
1 Determine whether to add / remove CAI types from NTIA's standard definition	1.3.1	MBO to determine additional CAI sub-types (e.g., ranger stations, post offices); MBO will not remove any CAI types
2 Develop approach to locate CAIs	1.3.1	Identify and review federal data sets; Determine and use the highest speed available from closest BSL as proxy for each non-BSL CAI; Verify findings with relevant state agencies/nonprofits
3 Determine whether each CAI has access to 1 Gbps service	1.3.1	
4 Decide whether to adopt NTIA's model challenge process	1.4.1	Yes, adopt NTIA's model challenge process
a. If yes, decide whether or not to adopt modifications	1.4.1	
b. If no, decide structure of alternative challenge process	1.4.7	
5 Determine timeline for challenge process	1.4.1	Challenge: 30 calendar days; Rebuttal: 30 calendar days; Final determination: 60 calendar days
6 Modification 1: Determine whether to reclassify locations from served to underserved if:	1.4.2	Yes, adopt modification
a. Served by DSL		
b. Demonstrated to receive slower speed via rigorous speed tests (e.g., a municipality-conducted high-quality speed test)		
7 Modification 2: Determine whether to add new methods to evaluate challenges to the state map that:	1.4.6	Yes, adopt modification
a. Move the burden of proof to the provider		
b. Rely on speed test data		

Source: [BEAD Model Challenge Process](#). NTIA Internet for All.

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Decision 1: MBO plans to add, but not remove, CAI types from NTIA's standard definition

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■ Baseline CAI types ■ Potential CAI sub-type additions

NTIA Vol 1 Guidance

Define eligible CAI types by:

- Maintaining the **6 baseline CAI types**¹ per NTIA's model challenge process
- Adding types (e.g., places of worship, fairgrounds)
- Excluding types (e.g., schools)

Explain why it proposes to exclude types of CAIs proposed by public comment, if applicable



BEAD CAI definition¹

The term “community anchor institution” (CAI) means an entity such as a

- School (e.g., K-12, higher ed)
- Library
- Health provider
- Public safety entity
- Public housing organization, or
- Community support organization that facilitates greater use of broadband service by vulnerable populations²

CAI sub-type addition(s) proposed by MBO

- Ranger stations
- Courthouses
- Post offices
- Community centers

¹ SB531 defines CAIs as, “an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, or community support organization.”; ² Vulnerable populations include, but are not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals; Note: Identification does not guarantee funding for CAIs. Per BEAD guidelines, MT will first ensure coverage of all unserved locations, then underserved locations before upgrading service to CAIs; Source: BEAD NOFO



Decisions 2-3: MBO has determined an initial approach to identify CAIs and determine their service availability

As of 25 July 2023

■ Details follow
 ○ ✓ Complete
 ○ ✓ In progress

Requirement	NTIA Vol 1 Guidance	Approach	Status
Identify CAI location data	Eligible entities should use multiple federal data sources (e.g., K-12 schools with a National Center for Education Statistics ID, 911 Master public safety answering point registry) ¹	<ol style="list-style-type: none"> 1. Identify and review federal datasets, which are available from Homeland Infrastructure Foundation-level Data (HIFLD) and the FCC 911 Master PSAP Registry to retrieve CAI location data 2. Determine and use the highest speed available from the closest Broadband Serviceable Location (BSL) as the potential available speed for each CAI that is not a BSL 3. Share findings with relevant state agencies and other organizations to review and make changes to CAI locations and service availability 	○ ✓
Determine CAI broadband availability	Reach out to state agencies and nonprofits for availability data (e.g., health, education, public safety, procurement)		○ ✓

1. Additional CAIs can be added during the Challenge Process; Source: NTIA BEAD Model Challenge Process



Decisions 2-3: ~2.2K CAIs identified; ~65% may not have access to Gigabit symmetrical service

As of 25 July 2023

■ To be identified via additional data sets and outreach

CAI type	Total identified	CAIs with <1 GB symmetrical ²
Schools	1,014	598 (59%)
Libraries	135	64 (47%)
Health	164	70 (43%)

CAI type	Total identified	CAIs with <1 GB symmetrical
Public safety	930	716 (77%)
Public housing	0	N/A
Community support organizations	0	N/A

Total identified CAIs	2,243	CAIs with <1 GB symmetrical service	1,448 (64.6%)
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Data source: HIFLD and PSAP databases

Speed estimation approach: Mass-market broadband speed within .5 miles of the CAI: Identified the BSL with the fastest available download and upload speeds across technologies (Fiber, Cable, DSL, and Licensed Fixed Wireless) within .5 miles of the CAI.

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Decisions 2-3: The MBO plans to contact these agencies and other organizations to verify preliminary CAI location and speed data

As of 25 July 2023

CAI sub-type addition

CAI type ¹	CAI sub-type	Entities to verify locations and speed
Health		<ul style="list-style-type: none"> Department of Public Health and Human Services, Montana Hospital Association
Libraries		<ul style="list-style-type: none"> Jennie Stapp, Montana State Librarian, Montana State Library
Public housing		<ul style="list-style-type: none"> Montana Department of Commerce Board of Housing, county Public Housing agencies
Schools	K-12	<ul style="list-style-type: none"> Office of Public Instruction; Madalyn Quinlan, Chair of Montana Board of Public Education
	Colleges and Universities	<ul style="list-style-type: none"> Office of the Commissioner of Higher Education
Public safety	Fire stations	<ul style="list-style-type: none"> The Montana Department of Natural Resources and Conservation
	Law enforcement	<ul style="list-style-type: none"> Montana Highway Patrol; Montana Sheriffs and Peace Officers Association, Montana Board of Crime Control; Montana Department of Justice
	Ranger stations	<ul style="list-style-type: none"> The Montana Department of Natural Resources and Conservation
	Courthouses	<ul style="list-style-type: none"> Montana Judicial Branch
	Post offices	<ul style="list-style-type: none"> United States Postal Service
	Community support organizations	Job training centers
	Senior centers	<ul style="list-style-type: none"> Department of Public Health and Human Services State Unit on Aging
	Community centers	<ul style="list-style-type: none"> Department of Public Health and Human Services
	Local advocacy organizations	<ul style="list-style-type: none"> Montana League of Cities and Towns, Montana Association of Counties, Montana Chamber of Commerce



Decision 4: MBO intends to use NTIA's model challenge process

As of 25 July 2023

Details follow

	NOFO requirements	Model challenge process that meets NOFO requirements
What is the challenge process?	The challenge process is intended to be transparent, evidence based, fair, and expeditious	<p>Should last from 90 to 120 days</p> <p>Includes 4 stages: Public information, challenge, rebuttal, final determination</p> <p>Requires written justification of decisions</p> <p>Allows 11 types of challenges, with permissible evidence for challenges and rebuttals</p> <p>Specific modifications are available at the state's discretion</p>
Who can challenge?	<p>Broadband providers</p> <p>Local and tribal governments</p> <p>Nonprofits</p>	No additional detail; same as NOFO
What can be challenged?	That a particular location or CAI is underserved or unserved	<p>Planned service by a provider</p> <p>Location or CAI is unserved or underserved</p> <p>The identification of a CAI</p> <p>Enforceable commitments (federal, state)</p>



Decision 5: The challenge process will tentatively last 120 days¹

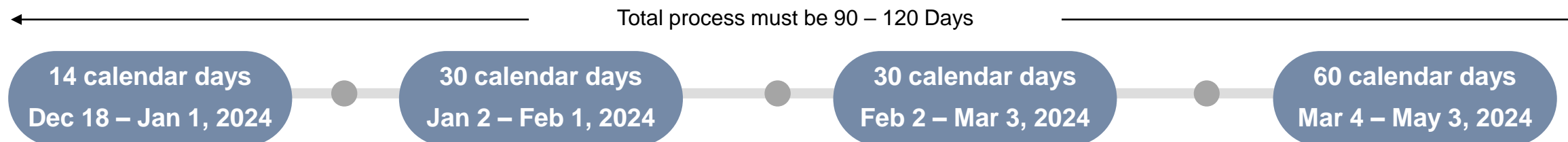
As of 25 July 2023

Pre-launch

Challenge process

Rebuttal process

Final Determination



- Eligible locations posted before challenge process opens
- Phases, timelines and instructions at least 1 week before challenge process begins

- Model process = 30 days
- 4 categories of eligibility challenges: identification / eligibility of CAI, eligibility determinations for BSLs, enforceable commitments, planned service
- Challenges submitted through “Broadband Office Challenge Portal”, which notifies challenged provider automatically

- Model process = 30 days from challenge notification (**rolling**)
- Only the challenged provider may rebut the challenge
- If a challenge meets the minimum level of evidence, and the provider does not rebut, it is substantiated

- Model process = 30 days from rebuttal receipt by MBO (**rolling**)
- Trained reviewers use a Standard Operating Procedure (SOP) and justify each decision
- Before final determination, publish all challenges and rebuttals; ensure no PII

1. Calendar days

Source: NTIA BEAD Model Challenge Policy



Decision 6: MBO intends to modify its baseline map based on DSL designations

As of 25 July 2023

Map modification	Description
DSL	<p>MBO may choose to designate any location using DSL technology as underserved instead of served</p> <p>This would “facilitate the phase-out of legacy copper facilities and ensure the delivery of ‘future-proof’ broadband service”</p>
Speed tests	<p>MBO may choose to designate additional locations as underserved instead of served, where rigorous speed test methodologies were employed to verify speeds</p>

Potential implications

- Current estimates indicate adopting the DSL modification could result in ~20 locations changing status from “served” to “underserved”
- Adopting the speed test modification could be done for a subset of locations where rigorous data is available
- Providers could submit challenges to these designations during the challenge process to move the locations back to served status



Decision 7: MBO plans to incorporate both of the optional methods to evaluate challenge types

As of 25 July 2023

Challenge type	Description
Area and MDU	<p>This would reverse the burden of proof for availability, speed, latency, data caps, and technology if a defined number of challenges have been submitted for a single provider and technology</p> <ul style="list-style-type: none"> • Area challenge = 6 or more BSLs in a census block group • MDU challenge = at least 3 units or 10% of the unit count
Speed tests	<p>Accepts speed tests as evidence for challenges and rebuttals, and requires:</p> <ul style="list-style-type: none"> • 3 speed tests, performed on a computer within immediate proximity of the residential gateway, using a commonly used speed test application, taken on different days • Allows for multiple methods • Name and street address of customer, certification of subscribed speed tier, agreement to use these data elements by MBO

Potential implications

- Area / MDU and speed test evaluations create additional challenge types, which could be helpful if MBO believes that un / underserved locations are undercounted
- Area / MDU evaluations may decrease workload during MBO's final determination because multiple challenges can be bundled into a single challenge



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2.17 VII public comment	N/A

Overview: Deployment projects subgrantee selection process & scoring approach



■ Focus for today ■ Basic eligibility requirements

As of 25 July 2023

Element	Overview	Response type	Effort
2.4.1	Subgrantee award process	Text box	High
2.4.2	Prioritization and scoring process	Text box	High
2.4.2.1	Scoring rubric	Required Attachment	High
2.4.3	Unserved location prioritization	Text box	Low
2.4.4	Prioritization of non-deployment projects ahead of CAIs	Text box	Low
2.4.5	EHP and BABA compliance	Text box	Low
2.4.6	Project area definition process	Text box	High
2.4.7	"No response" scenario for a project area	Text box	High
2.4.8	Tribal Government consent	Text box	Low
2.4.9	Extremely High Cost Per Location Threshold identification	Text box	High
2.4.10	Extremely High Cost Per Location Threshold in the subgrantee selection process	Text box	High
2.4.11	Subgrantee minimum qualifications: Financial capability	Text box	Low
2.4.11.1	Application materials related to the BEAD subgrantee selection process	Optional Attachment	Low
2.4.12	Subgrantee minimum qualifications: Managerial capability	Text box	Low
2.4.13	Subgrantee minimum qualifications: Technical capability	Text box	Low
2.4.14	Subgrantee minimum qualifications: Compliance with applicable laws	Text box	Low
2.4.15	Subgrantee minimum qualifications: Operational capability	Text box	Low
2.4.16	Subgrantee minimum qualifications: Ownership information	Text box	Low
2.4.17	Subgrantee minimum qualifications: Public funding information	Text box	Low



2.4 Deployment subgrantee selection: Priority¹ deployment projects (1/2)

As of 25 July 2023

Collectively worth at least 75% Collectively worth no more than 25%

Primary criteria (required)

Minimal BEAD program outlay

- Total BEAD funding to complete the project, including projected cost and proposed match (no less than 25% of the project cost, absent a waiver)
- Points awarded must increase as BEAD outlay decreases
- Consider cost per location while accounting for network design factors that could make a project more expensive, but also more scalable or resilient

Affordability

- Commitment to provide the most affordable total price to the customer for **1/1 Gbps**

Fair labor practices

- Demonstrated record of and plan to comply with federal labor and employment laws, or specific, forward-looking commitments to strong labor and employment standards for new entrants

Secondary criterion (required)

Speed to deployment

- Subgrantees must deploy the planned broadband network and begin providing services to each customer that desires broadband services within the project area within 4 years after receiving the subgrant

Additional prioritization factors (optional)

Equitable workforce development and job quality

- Consider the subgrantee's enforceable commitments with respect to advancing equitable workforce development and job quality objectives

Open access

- Promote subgrantees' provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.

Local and tribal coordination

- Reflect subgrantees; support from the local and/or Tribal Government with oversight over the served location(s)

Additional criteria that align with the Eligible Entity and local priorities may be developed

1. The term "Priority Broadband Project" means a project that will provision service via end-to-end fiber-optic facilities to each end user premises. BEAD NOFO, p. 14.; Source: BEAD Initial Proposal Guidance



2.4 Deployment subgrantee selection: Non-priority deployment projects (2/2)

As of 25 July 2023

Collectively worth at least 75% Collectively worth no more than 25%

Primary criteria (required)

Minimal BEAD program outlay

- Total BEAD funding to complete the project, including projected cost and proposed match (no less than 25% of the project cost, absent a waiver)
- Points awarded must increase as BEAD outlay decreases
- Consider cost per location while accounting for network design factors that could make a project more expensive, but also more scalable or resilient

Affordability

- Commitment to provide the most affordable total price to the customer for **100/20 Mbps**

Fair labor practices

- Demonstrated record of and plan to comply with federal labor and employment laws, or specific, forward-looking commitments to strong labor and employment standards for new entrants

Secondary criteria (required)

Speed to deployment

- Subgrantees must deploy the planned broadband network and begin providing services to each customer that desires broadband services within the project area within 4 years after receiving the subgrant

Speed of network and other technical capabilities

- Weigh the speeds, latency, and other technical capabilities of the proposed technologies
- Additional weight should be awarded to subgrantees that propose the use of technologies that are easier to scale, require lower future investment, and whose capital assets have longer useful lives

Additional prioritization factors (optional)

Equitable workforce development and job quality

- Consider the subgrantee's enforceable commitments with respect to advancing equitable workforce development and job quality objectives

Open access

- Promote subgrantees' provision of open access wholesale last-mile broadband service for the life of the subsidized networks, on fair, equal, and neutral terms to all potential retail providers.

Local and tribal coordination

- Reflect subgrantees; support from the local and/or Tribal Government with oversight over the served location(s)

Additional criteria that align with the Eligible Entity and local priorities may be developed



2.4 Deployment subgrantee selection: SB531 guidance

As of 25 July 2023

Required by NTIA

The scoring system must give the highest weight or priority to the following specific criteria provided by NTIA and the State of Montana:

SB531 Section	Overview
Section 6 (4) (a)	Whether the proposed project area serves unserved or underserved areas, with unserved areas receiving greater weight
Section 6 (4) (b)	The number of households, businesses, farms, ranches, and community anchor institutions served
Section 6 (4) (c)	Whether the proposed project qualifies as an extremely high cost per location threshold as defined by the department and approved by the national telecommunications and information administration or is a high-cost area as defined by the NTIA
Section 6 (4) (d)	The length of time the provider has been providing broadband service in the state
Section 6 (4) (e)	The extent to which government funding support is necessary to deploy broadband service infrastructure in the proposed project area
Section 6 (4) (f)	The service speed thresholds proposed in the proposal and the scalability of the broadband service proposed to be deployed with higher speed thresholds receiving greater weight
Section 6 (4) (g)	The provider's ability to leverage its own nearby or adjacent broadband service infrastructure to facilitate the cost-effective deployment of broadband service infrastructure in the proposed project area
Section 6 (4) (h)	The estimated time in which the provider proposes to complete the proposed project
Section 6 (4) (i)	Any other factors the department, as recommended by the commission, determines to be reasonable and appropriate, consistent with the IIJA, Public Law 3 117-58, and the NTIA
Section 6 (4) (j)	Broadband service providers who have broadband service infrastructure already deployed in the project area
Section 6 (5)	High-cost areas must be considered for services to the extent terrestrial service is economically viable
Section 6 (6)	The department shall set a reasonable timeframe to complete projects selected for funding approval. The department may, in consultation with the provider, set reasonable milestones regarding this completion. The department shall create procedures including penalties associated with any failure to comply with the provisions of the awarded contract without reasonable cause



2.4 Illustrative deployment subgrantee scoring: Priority¹ deployment projects (1/2)

ILLUSTRATIVE

As of 25 July 2023

■ Required by SB531 ■ Required by NTIA

Primary criteria (must ≥ 75 points)	Maximum score
■ Per location/per project BEAD grant request	45
■ Lowest price 1/1 Gbps service commitment	15
■ Compliance with federal fair labor laws	15
Secondary criteria	
■ Time to deployment	1
Additional prioritization factors	
■ Number of locations served	3
■ Project exceeds the Extremely High Cost Per Location Threshold or is a high-cost area	3
■ Length of time provider has provided broadband service in the state	3
■ Service speed thresholds and scalability of service	3
■ Providers ability to leverage its own nearby or adjacent broadband service infrastructure	3
■ Any other factors determined to be reasonable and appropriate	3
■ Broadband service providers who have existing infrastructure in the project area	3
■ High-cost areas considered to the extent terrestrial service is economically viable	3
Total score	100

What can't change

- The primary and secondary criteria elements
- The 75-point minimum point allocation for the primary criteria

What can change

- The number of points allocated to each of the three primary criteria (as long as the total ≥ 75 points)
- The number of points allocated to the secondary criteria
- The elements included in the additional prioritization factors
- The number of points allocated to the additional prioritization factors

1. The term "Priority Broadband Project" means a project that will provision service via end-to-end fiber-optic facilities to each end user premises. BEAD NOFO, p. 14.; Source: BEAD Initial Proposal Guidance



2.4 Illustrative deployment subgrantee scoring: Non-priority deployment projects (2/2)

ILLUSTRATIVE

As of 25 July 2023

■ Required by SB531 ■ Required by NTIA

Primary criteria (must ≥ 75 points)	Maximum score
■ Per location/per project BEAD grant request	45
■ Lowest price 100/20 Mbps service commitment	15
■ Compliance with federal fair labor laws	15
Secondary criteria	
■ Time to deployment	1
■ Technology assessment ¹	2
Additional prioritization factors	
■ Number of locations served	3
■ Project exceeds the Extremely High Cost Per Location Threshold or is a high-cost area	3
■ Length of time provider has provided broadband service in the state	3
■ Service speed thresholds and scalability of service	3
■ Providers ability to leverage its own nearby or adjacent broadband service infrastructure	3
■ Any other factors determined to be reasonable and appropriate	3
■ Broadband service providers who have existing infrastructure in the project area	2
■ High-cost areas considered to the extent terrestrial service is economically viable	2
Total score	100

What can't change

- The primary and secondary criteria elements
- The 75-point minimum point allocation for the primary criteria

What can change

- The number of points allocated to each of the three primary criteria (as long as the total ≥ 75 points)
- The number of points allocated to the secondary criteria
- The elements included in the additional prioritization factors
- The number of points allocated to the additional prioritization factors

1. If there are no fiber-to-the-home bids, but there are competing bids with other technology, an additional secondary criterion to evaluate the technology must be added.
Source: BEAD Initial Proposal Guidance



2.4

Extremely High Cost Per Location Threshold

As of 25 July 2023

The Extremely High Cost Per Location Threshold² is a BEAD subsidy cost per location above which a state may decline to select a proposal if use of an alternative technology meeting the BEAD Program's technical requirements would be less expensive

The Extremely High Cost Per Location Threshold:

Must maximize use of the best available technology while meeting the BEAD NOFO prioritization and scoring requirements

- Should be set as high as possible to ensure that end-to-end fiber projects are deployed where feasible
- May be set lower to ensure universal coverage in states with tighter budgets

NTIA guidance notes that the State:

- May decline to fund projects that exceed the Extremely High Cost Per Location Threshold, and instead fund a different Reliable Broadband Technology¹ that can be provided at a lower cost or a technology that does not meet the definition of reliable but will provide minimum speeds of 100/20 Mbps and latency ≥ 100 milliseconds at a lower cost.
- Must utilize the threshold in its subgrantee selection process
- Must describe its process for
 - Declining proposals that exceed the threshold³
 - Engaging subgrantees to revise their proposals, ensuring that no location above the threshold requires a subsidy, and
 - Selecting proposals that use less costly technology but may not meet the definition of Reliable Broadband

1. Reliable Broadband Service refers to broadband service that the National Broadband Map shows is accessible to a location via: fiber-optic technology, cable modem/hybrid fiber-coaxial technology, DSL technology; or terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

2. The State should indicate which data set it intends to use to establish the threshold: NTIA's data set (a planning tool will be released Summer 2023) or an alternative data set

3. Applies to situations where an alternative technology that meets the BEAD program's technical requirements for Reliable Broadband Service is less expensive

Source: BEAD Initial Proposal Guidance



2.4 The following subgrantee process requirements could be challenging for Montana

As of 25 July 2023

Requirement

Subgrantee scoring criteria (2.4.2)

- The scoring criteria is very prescriptive, particularly in terms of the weight assigned to the mandatory criteria.
- The approach leaves little room to incorporate state priorities and local dynamics.

Letter of credit (2.4.11)

- IP Guidance requires the state to detail how it “plans to establish a model letter of credit substantially similar to the model letter of credit established by the FCC in connection with the Rural Digital Opportunity Fund (RDOF).”
- States are unable to ask for a waiver or use an alternative mechanism.
- The requirement may be particularly burdensome for smaller providers.

Potential next steps

- Share feedback with NTIA during current comment period
- Explore alternate communication methods with the federal government



2.4 Project area definition

As of 25 July 2023

There are 3 approaches for defining project areas

- 1 Eligible entity defines the project areas
- 2 Eligible entity asks prospective subgrantees to define proposed project areas
- 3 Eligible entity takes a hybrid approach, defining some areas and allowing providers to define other areas

If approach 2 or 3 is used, the State must detail its mechanism for de-conflicting overlapping proposals to allow for like-to-like comparisons of competing proposals

Project areas may be defined at any geographic level, and multiple levels may be used

- Per project
- Per location
- Per census block
- Per CBG
- Per town
- Per county
- Or a single unserved or underserved location
- And may use more than one type of geographic level



2.12 Low-cost plan details and purpose (1/2)





As of 25 July 2023

Issue	IP Guidance
Low-cost plan purpose	<ul style="list-style-type: none"> The purpose is to “ensure that all residents ... will have access to affordable broadband service options.”
NTIA example low-cost plan	<ul style="list-style-type: none"> “The Eligible Entity is strongly encouraged to adopt the example low-cost broadband service option.”
ACP participation	<ul style="list-style-type: none"> “Eligible Entities must ensure that services offered over BEAD Funded Networks allow subscribers in the service area to use the FCC’s ACP.” States are required to “certify that all subgrantees will be required to participate in the ACP or any successor programs,” and indicates a preference—but not a requirement—for low-cost plans that allow the application of the ACP subsidy.



2.12 Low-cost plan elements and example (2/2)

As of 25 July 2023

Element	Definition	NOFO example
 Cost	<ul style="list-style-type: none"> All recurring and non-recurring charges 	<ul style="list-style-type: none"> \$30/month for those who do not reside on Tribal Lands \$75/month for those who do reside on Tribal Lands
 Basic service characteristics	<ul style="list-style-type: none"> Download and upload speeds Latency Any limits on usage or availability, such as data caps Any material network management practices, and reliability 	<ul style="list-style-type: none"> Provides the greater of: <ul style="list-style-type: none"> 100/20 Mbps, or the fastest speeds the infrastructure is capable of if <100/20 Mbps, or The performance benchmark for fixed terrestrial broadband service established by the Federal Communications Commission pursuant to Section 706(b) of the Communications Act of 1934, as amended Provides typical latency measurements of no more than 100 milliseconds Is not subject to data caps, surcharges, or usage-based throttling; and is subject to the same acceptable use policies offered to the subgrantee's other home subscribers
 Affordable connectivity benefits application	<ul style="list-style-type: none"> Description of whether a subscriber can use the Affordable Connectivity Benefit subsidy toward the plan's rate 	<ul style="list-style-type: none"> ACP subsidy can be provided to the service price Subgrantees are required to participate in the ACP or any successor program, and eligible subscribers can apply the subsidy to the proposed service option
 Available technical upgrades	<ul style="list-style-type: none"> Description of whether there are any provisions regarding the subscriber's ability to upgrade to any new low-cost service plans offering more advantageous technical specifications 	<ul style="list-style-type: none"> If the provider later offers a low-cost plan with higher speeds, existing low-cost subscribers must be permitted to upgrade to the new low-cost plan at no cost



2.13 Middle class affordability plans

As of 25 July 2023

Initial Proposal and BEAD NOFO instructions

- Describe a middle-class affordability plan that details **how high-quality broadband services will be made available to all middle-class families** in the BEAD-funded network's service area **at reasonable prices**
- The NOFO notes that **some states might assign especially high weights to selection criteria** relating to affordability and/or open access in selecting BEAD subgrantees
- Eligible Entities will be required to ensure that services offered over Funded Networks allow subscribers in the service area to **utilize the ACP**

Example plan elements

- Require providers to offer low-cost, high-speed plans to all middle-class households
- Providing consumer subsidies if surplus funds are available
- Using regulatory authority to promote structural competition (e.g., eliminating barriers to entry, opening access to multi-dwelling units, or promoting alternative technologies)
- Promoting consumer pricing benchmarks and / or establishing a system of continued monitoring and public reporting to allow customers to determine whether rates are reasonable



2.14 Use of 20% of funding (1/2)

As of 25 July 2023

The Eligible Entity must choose one of three options:

Funding request	Details	In its response, the State must provide
1 No funding requested	Choose not to request funding during the Initial Proposal round, and instead defer all funding until after the Final Proposal approval	Its rationale for not requesting funds
2 ≤ 20% of funding allocation	Request ≤ 20% of funding allocation during the Initial Proposal round, and defer the request for the remaining allocation until after the Final Proposal approval	The amount of funding requested, the intended use of the funds, and how the proposed use of funds achieves the objective of serving all un- and underserved locations
3 > 20% of funding allocation	Request > 20% of funding allocation during the Initial Proposal round, which must be accompanied by a rationale for the request States that request < 100% of their allocation will defer the request for their remaining allocation until after the Final Proposal approval	The amount of funding requested, the intended use of the funds, and how the proposed use of funds achieves the objective of serving all un- and underserved locations, and the rationale for requesting more than 20% of the funding allocation



2.14 Use of 20% of funding (2/2)

As of 25 July 2023

If a state requests any portion of its funding allocation during the Initial Proposal phase, the funds can be used for the following:

Type of use ¹	Details
Administrative costs	Expenses that support day-to-day operations, not directly tied to a specific programmatic purpose or activity.
Programmatic costs	<p>Costs directly tied to the delivery of a particular project, service, or activity undertaken by a grantee to achieve an outcome intended by the funding program</p> <ul style="list-style-type: none"> Funding for the challenge and subgrantee selection processes may include personnel costs (e.g., a digital equity specialist); contractor(s); technology costs (e.g., website services); and costs related to communications or awareness to carry out these processes Funding for deployment or non-deployment projects may include any of the eligible costs outlined in Section IV.B.7.a.ii and in line with Section IV.B.8 of the BEAD NOFO.
Combination of administrative and programmatic costs	Costs related to a combination of administrative and programmatic costs, detailed above

1. Approved funding for administrative or programmatic costs may be expended prior to the completion of the challenge and subgrantee selection processes.

2. As determined under Section 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2))

Source: BEAD Initial Proposal Guidance

Deployment project use

If funds requested during the Initial Proposal phase will be used for deployment projects, the State must certify that it will only use funds before the Final Proposal funding allocation to fully fund deployment projects that:

- Consist of $\geq 80\%$ unserved locations, **and**
- Are in a location in which the percentage of individuals with a household income at or below 150 percent of the poverty line applicable to a family of the size involved² that is higher than the national percentage of such individuals.



Appendix A: Initial proposal requirements

As of 25 July 2023



Initial proposal requirements (1/2)

As of 25 July 2023

● Satisfied by FYAP

■ Part of Volume 1: Challenge Process

Requirement

- 1 **Objectives:** Outline long-term objectives for deploying broadband, closing the digital divide, addressing access, affordability, equity, and adoption issues, and enhancing economic growth and job creation
- 2 **Existing Efforts:** Identify, and outline steps to support, local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide and describe coordination with local and Tribal Governments, along with local, Tribal, and regional broadband planning processes
- 3 **Federal Funding:** Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands
- 4 **Stakeholder Engagement:** Certify that the Eligible Entity has conducted coordination, including with Tribal Governments, local community organizations, unions and worker organizations, and other groups, consistent with the requirements set forth in Section IV.C.1.c of this NOFO, describe the coordination conducted, summarize the impact such coordination had on the content of the Initial Proposal, detail ongoing coordination efforts, and set forth the plan for how the Eligible Entity will fulfill the coordination requirements associated with its Final Proposal.
- 5 **Eligible BSLs:** Identify each unserved location and underserved location under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands, using the most recently published Broadband DATA Maps as of the date of submission of the Initial Proposal, and identify the date of publication of the Broadband DATA Maps used for such identification.
- 6 **CAIs:** Describe how the Eligible Entity applied the statutory definition of the term “community anchor institution,” identified all eligible CAIs in its jurisdiction, identified all eligible CAIs in applicable Tribal Lands, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations.
- 7 **Challenge Process:** Include a detailed plan to conduct a challenge process as described in Section IV.B.6.
- 8 **Subgrantee Process:** Include a detailed plan to competitively award subgrants consistent with Section IV.B.7.a of this NOFO with regard to both last-mile broadband deployment projects and other eligible activities. With respect to last-mile broadband deployment projects, the plan must explain how the Eligible Entity will ensure timely deployment of broadband and minimize the BEAD subsidy required to serve consumers consistent with Section IV.B.7 and the other priorities set out in this NOFO. The Initial Proposal must include identification of, or a detailed process for identifying, an Extremely High Cost Per Location Threshold to be utilized during the subgrantee selection process described in Section IV.B.7 of this NOFO.
- 9 **Non-deployment:** With respect to non-deployment eligible activities, explain any preferences the Eligible Entity will employ in selecting the type of initiatives it intends to support using BEAD Program funds, the means by which subgrantees for these eligible activities will be selected, how the Eligible Entity expects the initiatives it pursues to address the needs of the Eligible Entity’s residents, the ways in which engagement with localities and stakeholders will inform the selection of eligible activities, and any efforts the Eligible Entity will undertake to determine whether other uses of the funds might be more effective in achieving the BEAD Program’s equity, access, and deployment goals.



Initial proposal requirements (2/2)

As of 25 July 2023

Requirement

-
- 10 **Direct Implementation:** Describe any initiatives the Eligible Entity proposes to implement as the recipient without making a subgrant, and why it proposes that approach.
-
- 11 **Labor Standards:** Detail how the Eligible Entity will ensure that subgrantees, contractors, and subcontractors use strong labor standards and protections, such as those listed in Section IV.C.1.e, and how the Eligible Entity will implement and apply the labor-related subgrantee selection criteria described below in Section IV.C.1.e of this NOFO.
-
- 12 **Workforce:** Detail how the Eligible Entity will ensure an available, diverse, and highly skilled workforce consistent with Section IV.C.1.e of this NOFO.
-
- 13 **Minority Businesses:** Describe the process, strategy, and data tracking method(s) that the Eligible Entity will implement to ensure that minority businesses, women-owned business enterprises, and labor surplus area firms are recruited, used, and retained when possible.
-
- 14 **Regulatory:** Identify steps that the Eligible Entity will take to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements
-
- 15 **Climate Assessment:** Provide an assessment of climate threats within the Eligible Entity and proposed mitigation methods consistent with the requirements of Section IV.C.1.h of this NOFO.
-
- 16 **Low-cost Plan:** Describe the low-cost plan(s) that must be offered by subgrantees consistent with the requirements of Section IV.C.2.c.i of this NOFO.
-
- 17 **Use of 20% of Funding:** Describe the intended use of the 20 percent of total funding allocation that is made available upon approval of the Initial Proposal consistent with Section IV.B.8 of this NOFO.
-
- 18 **Local Laws:** Disclose (1) whether the Eligible Entity will waive all laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act, that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer; and (2) if it will not waive all such laws for BEAD Program project selection purposes, identify those that it will not waive and describe how they will be applied in connection with the competition for subgrants.
-
- 19 **Certification:** Certify the intent of the Eligible Entity to comply with all applicable requirements of the Program, including the reporting requirements, and describe subgrantee accountability procedures.
-
- 20 **Middle-class affordability:** Include a middle-class affordability plan to ensure that all consumers have access to affordable high-speed Internet.
 a. The Middle-Class Affordability Plan is not aligned to a specific Initial Proposal Requirement as outlined in Section IV.B.5. However, it is required as part of Initial Proposal submissions.



Appendix B: Challenge process evidence

As of 25 July 2023



Examples of Acceptable Evidence for BEAD Challenges and Rebuttals (1/3)

As of 25 July 2023

Note: Below are examples of acceptable evidence for BEAD challenges and rebuttals per the NTIA Policy Note. Eligible Entities may accept a wide range of data sources (subject to NTIA approval), as long as any data source is documented and verifiable by a Third Party

Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
A	Availability	The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).	<ul style="list-style-type: none"> • Screenshot of provider webpage. • A service request was refused within the last 180 days (e.g., an email or letter from provider). • Lack of suitable infrastructure (e.g., no fiber on pole). • A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request.¹ • A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a Provider quoted an amount in excess of the provider's standard installation charge in order to connect service at the location 	<ul style="list-style-type: none"> • Provider shows that the location subscribes or has subscribed within 12 months, e.g., with a copy of a customer bill. • The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.
S	Speed	The actual speed of the fastest available service tier falls below the unserved or underserved thresholds.	<ul style="list-style-type: none"> • Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests 	<ul style="list-style-type: none"> • Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system.²
L	Latency	The round-trip latency of the broadband service exceeds 100 ms.	<ul style="list-style-type: none"> • Speed test by subscriber, showing the excessive latency 	<ul style="list-style-type: none"> • Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system.³

1. A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as "[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider."

2. As described in the NOFO, provider's countervailing speed test should show that 80 percent of a provider's download and upload measurements are at or above 80 percent of the required speed. See Performance Measures Order, 34 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.,

3. Ibid.



Examples of Acceptable Evidence for BEAD Challenges and Rebuttals (2/3)

As of 25 July 2023

Note: Below are examples of acceptable evidence for BEAD challenges and rebuttals per the NTIA Policy Note. Eligible Entities may accept a wide range of data sources (subject to NTIA approval), as long as any data source is documented and verifiable by a Third Party

Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. ¹	<ul style="list-style-type: none"> • Screenshot of provider webpage. • Service description provided to consumer. 	Provider has terms of service showing that it does not impose a data cap.
T	Technology	The technology indicated for this location is incorrect.	<ul style="list-style-type: none"> • Manufacturer and model number of residential gateway that demonstrates the service is delivered via a specific technology. 	Provider has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service.
B	Business service only	The location is residential, but the service offered is marketed or available only to businesses.	<ul style="list-style-type: none"> • Screenshot of provider webpage. 	Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.
E	Enforceable Commitment	The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.	<ul style="list-style-type: none"> • Enforceable commitment by service provider (e.g., authorization letter). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue (see Section 6.2 above). 	Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern).

1. For example, this excludes business-oriented plans not commonly sold to residential locations. An unreasonable capacity allowance is defined as a data cap that falls below the capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022).



Examples of Acceptable Evidence for BEAD Challenges and Rebuttals (3/3)

As of 25 July 2023

Note: Below are examples of acceptable evidence for BEAD challenges and rebuttals per the NTIA Policy Note. Eligible Entities may accept a wide range of data sources (subject to NTIA approval), as long as any data source is documented and verifiable by a Third Party

Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
P	Planned service	The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an enforceable commitment or a provider is building out broadband offering performance beyond the requirements of an enforceable commitment.	<ul style="list-style-type: none"> Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained. Contracts or a similar binding agreement between the Eligible Entity and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (i.e., a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024. 	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or that the planned deployment does not meet the required technology or performance requirements.
N	Not part of enforceable commitment.	This location is in an area that is subject to an enforceable commitment to less than 100% of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.)	<ul style="list-style-type: none"> Declaration by service provider subject to the enforceable commitment. 	N/A
C	Location is a CAI	The location should be classified as a CAI.	<ul style="list-style-type: none"> Evidence that the location falls within the definitions of CAIs set by the Eligible Entity.¹ 	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.
R	Location is not a CAI	The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	<ul style="list-style-type: none"> Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation. 	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational.

1. For example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.