

West Virginia BEAD Program Procedures

Benefit of the Bargain Round

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State of West Virginia

West Virginia Department of Commerce

Division of Economic Development

Office of Broadband



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Introduction

In 2021, Congress passed the Infrastructure Investment and Jobs Act (IIJA),¹ which launched the Broadband, Equity, Access and Deployment (BEAD) program. Through the BEAD program, the National Telecommunications and Information Administration (NTIA) is providing the State of West Virginia (the State) \$1.21 billion to provide high-speed broadband access to its residents. The West Virginia Department of Commerce, Division of Economic Development, Office of Broadband (collectively, “WVDED”) is tasked with deploying local and federal broadband funds, including those provided through the BEAD program.

West Virginia’s BEAD Program

Following approval of West Virginia’s challenge process and Initial Proposal by NTIA, WVDED held the Pre-Application Phase to determine applicant eligibility in spring 2024. WVDED then released the original BEAD Deployment Program Procedures and held the Full Application Phase in fall 2024, followed by an Extension Application Phase in December 2024. WVDED published Alternative Technologies guidance in December 2024 and solicited responses from interested Alternative Technology providers in January 2025.

Restructuring Program Update

The NTIA released the BEAD Restructuring Policy Notice (“Policy Notice”) on June 6, 2025, creating a new 90-day clock, ending September 3, 2025, for all states to submit their BEAD Final Proposals. The Notice has revised several elements of the BEAD Program, including:²

- a) Reduction in subgrantee regulatory requirements
- b) Technology-neutral approach for meeting program service standards
- c) Additional “Benefit of the Bargain Round” prioritizing low-cost projects

Eliminated or Reduced Requirements

The Notice reduces certain requirements previously established by the original BEAD Notice of Funding Opportunity (NOFO), and other prior NTIA guidance.³ This includes requirements related to:

- a) Fair labor practices
- b) Equitable workforce development
- c) Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms
- d) Climate resiliency
- e) Open access/net neutrality
- f) Local coordination and stakeholder engagement
- g) Non-traditional broadband service providers

¹ [“Public Law 117 - 58 - Infrastructure Investment and Jobs Act,”](#) November 14, 2021.

² [NTIA BEAD Restructuring Policy Notice](#), June 6, 2025.

³ *“Elimination of Regulatory Burdens,”* [NTIA BEAD Restructuring Policy Notice](#), pg. 3.

- h) Middle class affordability
- i) Explicit rates for a Low-Cost Service Option

The Notice has also provided an alternative framework for low Earth orbit (LEO) satellite applicants to apply for LEO Capacity Grants, identified where applicable throughout this document.⁴

Benefit of the Bargain Round

In compliance with the terms of NTIA's Policy Notice, WVDED is opening a Benefit of the Bargain Round to maximize cost efficiency. This includes revising the list of eligible Broadband Serviceable Locations (BSLs), revising existing project costs in alignment with reduced program requirements, and receiving new proposals from interested applicants.

This document replaces prior WVDED Program Procedures and Alternative Technology Guidance for the BEAD Program in West Virginia.⁵ Applications submitted under these prior Program Procedures will remain valid but will now be evaluated and prioritized consistent with the Policy Notice and implemented by these new Program Procedures. Prior applicants may revise prior applications, and new and existing applicants may propose new projects.⁶ As the Policy Notice also rescinded NTIA's prior Guidance on Alternative Technologies⁷ and made substantial changes to how the program evaluates Alternative Guidance, WVDED's previously-released BEAD Alternative Technology Guidance and Notice is similarly replaced by these Program Procedures.⁸

This program is consistent with NTIA guidelines and aligns with material presented in West Virginia's corrected Initial Proposal. The outcomes of this subgrantee selection process will be presented in West Virginia's Final Proposal.

⁴ "Appendix B: Low Earth Orbit Capacity Subgrants," [NTIA BEAD Restructuring Policy Notice](#), pg. 19.

⁵ This document replaces [WV BEAD Deployment Program Procedures](#) (updated November 2024) and [WV BEAD Extension Program Procedures](#) (September 2024).

⁶ Throughout the document, entities applying to the Program are referred to as "**applicants**" or "**subgrantees**" depending on which stage of the process is being discussed—with the latter reserved for references to post-award processes or requirements. Generally, references to the "**pre-application**" or "**full application**" relate to the specific stages or phases of the application process, defined in section 1.5, whereas references to the or an "**application**" on its own relates to the whole application (i.e., the combined pre-application and full application) or an application as a general concept, depending on the context.

⁷ [NTIA BEAD Alternative Technology Policy Notice](#), December 2024.

⁸ [WV BEAD Alternative Technologies Guidance](#), January 2025.

1. Program Overview

1.1 Source of Funds and Allocation

WVDED intends to support this program using funds allocated to the State of West Virginia through the BEAD program authorized by IIJA. Actual funds awarded will vary depending on the volume of applications received, the need of proposed projects for grant support, and the requirements of NTIA, U.S. Department of Commerce. WVDED reserves the right to reevaluate the Program outcomes and reallocate funds to other announced grant programs or create new programs. WVDED reserves the right to reject any or all applications made to the Program. Projects that WVDED selects for provisional award through the Program will be included in WVDED's Final Proposal to NTIA for its review and approval.

1.2 Eligible Entities

Applicants must have a current statement of existence from the West Virginia Secretary of State and a Letter of Good Standing from the West Virginia Tax division. Applicants must have no prior default or significant violations under any federal, state, or local broadband expansion funding program, and no suspension or debarment as a vendor by the State of West Virginia or any Federal agency within three years prior to filing an application with WVDED for Program funding. Projects proposed by eligible applicants are subject to review and possible approval, denial, or modification under the Review Guidelines. Eligible entity types include cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments.

1.3 Eligible Networks

Funded projects must deliver broadband with speeds of not less than 100 Mbps for downloads and 20 Mbps for uploads in accordance with the FCC's 80/80 metric.⁹ That is, if WVDED or any other entity assigned by WVDED tests the end user speeds of these plans, the requirements will only be met if 80% of tests meet or exceed 80% of the required speeds and 95% of latency measurements must be at or below 100 milliseconds round trip. Funded Network connections to eligible Community Anchor Institutions (CAIs) 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.

1.4 Target Regions, Areas, and Locations

The unserved and underserved locations (including eligible CAI locations) are referred to as "**Target Locations**" for the remainder of this document. WVDED has created a set of "**Target Areas**," which are

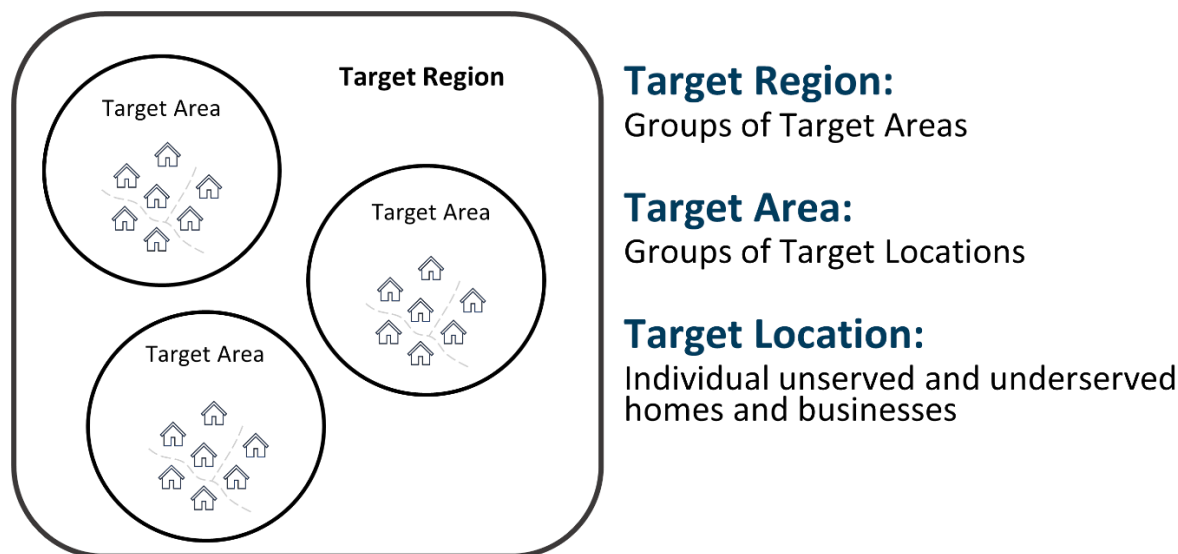
⁹ "[Measuring Fixed Broadband – Twelfth Report](#)," FCC, January 6, 2023.

pre-defined groupings of Target Locations. Nearby Target Areas are further grouped into “**Target Regions**.”

In the Benefit of the Bargain Round, as in prior application phases of the program, applicants will use the Target Areas to form their Proposed Projects according to the procedures discussed in Section 4.1.

Figure 1 illustrates the nesting nature of Target Locations, Target Areas, and Target Regions. As noted above, West Virginia will have many Target Regions. The house icons represent Target Locations.

Figure 1: Summary of Target Locations, Target Areas, and Target Regions



Prior to the opening of the period for new and revised applications, WVDED will publish an updated list and map of Target Locations designated as unserved, underserved, and served.

1.4.1 Modifications to Target Locations Eligible

WVDED has modified the list of Target Locations eligible for funding under the program in prior Phases. The Policy Notice required WVDED to remove the following from eligibility:¹⁰

- a) Locations that have been removed from the latest version of the FCC Fabric
- b) Locations already served by an enforceable commitment
- c) Locations already served by non-subsidized service
- d) Locations considered “community support organizations”¹¹

To comply with the terms of the Policy Notice and confirm existing service, WVDED issued the BEAD Served Location Evidence Request Notice on June 18, 2025.¹² Providers could respond and provide claims and evidence for locations served by their own networks and for service availability to locations as of December 31, 2024. WVDED solicited input from ISPs who have previously participated in the program or

¹⁰ “Optimizing BEAD Locations,” [NTIA BEAD Restructuring Policy Notice](#), pg. 13.

¹¹ In compliance with the [Notice](#) (“Optimizing BEAD Locations,” pg. 14), WVDED has revised its list of eligible Community Anchor Institutions to include only those within the statutory definition as established by IIJA. WVDED has removed the subcategory of “community support organizations” from the list of eligible CAIs.

¹² [BEAD Served Location Evidence Request Notice](#), June 18, 2025.

who stated an intent to participate in the future about any additional locations known to them that may not be “broadband serviceable locations” or may otherwise not be locations requiring mass-market broadband because of the nature of the use of those sites.¹³ It also removed from the Target Locations list those locations that have benefitted from new enforceable commitments to bring broadband service using non-BEAD funds.

WVDED extended a similar request specifically to providers of unlicensed terrestrial fixed wireless (ULFW), as required by the Notice.¹⁴ On June 13, 2025, WVDED issued the ULFW Evidence Request Notice to solicit evidence from ULFW providers on existing service.¹⁵ Interested ULFW providers provided a notice of intent and had seven calendar days to provide evidence.

1.4.2 Target Regions and Target Areas

While removing Target Locations no longer eligible, WVDED intends to preserve the remainder of Target Regions used previously in the Program, as modified in the Extension Phase. This will facilitate submission of proposals that achieve the program’s objective to serve all unserved and underserved locations, and eligible CAIs.

WVDED intends to simplify Target Areas to the extent possible while preserving the ability of previously proposed projects to maintain their proposed project area footprint. This will also encourage new applications that can be evaluated in direct comparison to each other and prior proposals.

Consistent with direction in the Policy Notice, WVDED has extended an opportunity to both prior and new applicants to identify areas within these Target Areas that may be especially costly for them to serve. In an information request, WVDED requested providers who have previously participated in the program or who stated an intent to participate in the future propose locations they consider excessively high-cost or locations that would otherwise make the project economically unviable for the technology being used.¹⁶ WVDED has evaluated these locations, and new Target Areas will be created as needed to facilitate alternative proposals for these locations. Such alternative proposals will be necessary if these locations are excluded from other projects, so WVDED can meet its mandate to identify projects for all Target Locations.

1.5 Program Phases

WVDED held the Pre-Application, Full Application, and Extension Phases in 2024 to collect applicant information and review proposed projects. For the Benefit of the Bargain Round, WVDED will collect applicant information from any new potential applicants and receive new or updated project proposals in a single application phase. Applicants who previously submitted information in an earlier Phase that is still

¹³ NTIA has provided reason codes and evidence types for non-service, including if a location has been demolished, is not habitable, is a support structure to a nearby building, mobile, or a land formation. Examples of locations that would not need mass-market broadband service include enterprise locations, CAIs, and government property. Providers are required to submit evidence to substantiate these claims.

¹⁴ “Optimizing BEAD Locations,” [NTIA BEAD Restructuring Policy Notice](#), pg. 13.

¹⁵ [ULFW Evidence Request Notice](#), June 13, 2025.

¹⁶ [BEAD Intent to Participate Notice](#), June 13, 2025.

valid are not required to re-submit but may have the option to update certain information about proposed projects previously submitted.

All materials provided by applicants must be submitted through an application portal provided by WVDED. Materials provided by any other manner may not be considered for review.

1. **Applicant Information.** Applicants must submit information previously collected in the Pre-application Phase, which provides information to filter out unqualified applicants, as well as develop a clear idea of the capital that the companies have available. This information applies to all applications. More details on the applicant information to be collected can be found in Section **Error! Reference source not found.** Applicants that have not previously submitted a pre-application must submit this information during the Benefit of the Bargain Round.
2. **Project Proposals.** An updated list of Target Areas and Regions will be published, containing Target Locations (i.e., locations that are eligible for BEAD funding and defined in Section 1.4), which have been grouped into Target Areas and Regions. Applicants may propose projects for the Target Areas according to the rules set out in Section 4.1. Applicants that have previously submitted proposed projects in a prior application may submit revised projects and grant costs during this phase.

1.6 Application Deadlines

West Virginia's Benefit of the Bargain Round will open for new or updated applications on July 10, 2025. Responses must be submitted through WVDED's Application Portal by 11:59 PM EDT on July 20, 2025. A Final Proposal to the NTIA based on provisionally selected subgrantees will be available for public comment in August 2025.

Applicants will find a link to the Application Portal and materials required for applications on broadband.wv.gov. Applicants are encouraged to monitor this site for updates to the program.

2. Primary Program Requirements

2.1 Construction Timeline

Applicants must deploy the planned broadband network and begin providing service to each customer that desires broadband service within the project area not later than four years after the date on which the Applicant receives an award from WVDED. This includes the completion of construction, operationalization, testing, and troubleshooting. Awards to selected projects will be made after NTIA's approval of West Virginia's Final Proposal for the BEAD program. WVDED may extend the deadline above in limited circumstances after consultation and approval by NTIA.

2.2 Grants Reimbursement

WVDED will award subgrants that are either "Standard Broadband Service Grants" or "LEO Capacity Grants." Standard Broadband Service Grants will operate as a reimbursement program based on eligible expenditures made. Projects receiving funding may be reimbursed for eligible expenses up to a maximum project cost identified in the award.

BEAD subgrants awarded to low Earth orbit (LEO) providers will be considered "LEO Capacity Grants" in compliance with the Policy Notice. Pursuant to a LEO Capacity Subgrant as defined by the Notice, WVDED will reserve sufficient capacity from the LEO provider to deliver broadband service that meets requirements with the conditions set forth in the Notice.¹⁷

WVDED will provide grant payments under LEO Capacity Grants on a milestone basis, according to the following schedule:

- a. 10% of the total amount of the subgrant upon 10% of the locations subscribing to the subgrantee's qualifying broadband service
- b. 20% of the total amount of the subgrant upon 20% of the locations subscribing to the subgrantee's qualifying broadband service
- c. 30% of the total amount of the subgrant upon 30% of the locations subscribing to the subgrantee's qualifying broadband service
- d. 40% of the total amount of the subgrant upon 40% of the locations subscribing to the subgrantee's qualifying broadband service
- e. 50% of the total amount of the subgrant upon 50% of the locations subscribing to the subgrantee's qualifying broadband service

Upon achieving all of these milestones, WVDED will provide the subgrantee the remaining 50% of the total amount of the subgrant in equal quarterly installments over the remaining period of performance, contingent on continued performance on the grant.

¹⁷ "Appendix B: Low Earth Orbit Capacity Subgrants," [NTIA BEAD Restructuring Policy Notice](#), pg. 19.

2.3 Match Requirement

The match requirement is in most cases at least 25% of the total cost for each Proposed Project, the Minimum Required Match. WVDED will reduce the Minimum Required Match that is proportionate to the number of Target Locations that fall within High-Cost areas, as defined in Section 60102(a)(2)(G) of the Infrastructure Investment and Jobs Act of 2021.¹⁸ To do this, WVDED will first determine what percentage of the total number of Target Locations in a Proposed Project are High-Cost Locations. WVDED will then reduce the applicant's proposed total Project cost by this percentage (solely for the match calculation) and will require the 25% match on this resulting amount. This method is in line with NTIA's allowance for waiving match in "certain circumstances described herein (including projects in designated 'high-cost areas' ...)"¹⁹

To illustrate this more thoroughly, consider a Proposed Project with the following specifications:

- Target Locations: **1,000**
- Total proposed cost to deploy services to the Target Locations: **\$10,000,000**
- Number of High-Cost Locations in the Project: **100**

The 100 High-Cost Locations account for 10% of the total 1,000 Target Locations in the Proposed Project. As such, WVDED would require match on 10% less of the proposed total cost from the applicant of \$10,000,000, equating to \$9,000,000. The minimum match required of the applicant is therefore \$2,250,000:

$$\$9,000,000 \times 25\% = \$2,250,000$$

As another example, consider a Proposed Project with the following specifications:

- Target Locations: **1,000**
- Total proposed cost to deploy services to the Target Locations: **\$11,000,000**
- Number of High-Cost Locations in the Project: **200**

The 200 High-Cost Locations account for 20% of the total 1,000 Target Locations in the Proposed Project. As such, WVDED would require match on 20% less of the proposed total cost from the applicant of \$11,000,000, equating to \$8,800,000. The minimum match required of the applicant is therefore \$2,200,000:

$$\$8,800,000 \times 25\% = \$2,200,000$$

WVDED may consider match waivers to reduce the Minimum Required Match, where waivers result in a lower cost to the Program. In special circumstances, NTIA may recommend a partial or full match waiver where it serves the public interest and the purposes of the BEAD program. As such, to award BEAD projects, WVDED may review applications that do not meet the match requirement. However, potential applicants should be aware that NTIA, at its sole discretion, may choose to deny a full or partial waiver of

¹⁸ Areas designated as "high-cost areas" by NTIA as defined by IJA may differ from locations identified as "excessively high-cost" by applicants. WVDED will only adjust the Minimum Required Match for NTIA high-cost areas. Locations identified as high-cost by applicants are subject to the provisions above on potential match waivers.

¹⁹ [BEAD Notice of Funding Opportunity](#), pg. 20.

the match requirement during submission of the Final Proposal, in which case the application must be revised or another project must be selected for the project area.

Match must be spent on eligible expenditures. Applicants must commit to matching funds at time of application; no contingent matching sources are allowed. WVDED will not permit in-kind match generally but will permit it for utility partners in limited circumstances, such as a “donated” indefeasible rights of use (IRUs).

For LEO Capacity Grants, applicants must estimate the value of the proposed reservation of capacity, and detail the cost of the user equipment and installation. Absent an NTIA waiver, WVDED will cap provisional LEO Capacity Grant awards at these amounts, less the Minimum Required Match for the project area awarded.

2.4 Eligible Expenses

Eligible expenses and cost monitoring is defined below for both Standard Broadband Service Grants and LEO Capacity Grants.

2.4.1 Expenses in Standard Broadband Service Grants

Costs in standard broadband service grants must be directly related to the upfront investment associated with installing and/or upgrading existing broadband facilities on the Proposed Project on a one-time, capital improvement basis. Eligible project activities and costs include:

- a) Network and access equipment costs;
- b) Outside plant costs;
- c) Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments;
- d) Equipment shelter, tower, land, site preparation, and site restoration costs; Note: Capital expenditures for general purpose equipment, special purpose equipment, and improvements to land, buildings, or equipment which materially increase their value are unallowable except with the prior written approval by WVDED. These must be included as a separate line item in approved project budgets.²⁰
- e) Customer premises equipment: Funding only covers up to the network demarcation point (e.g., NID or ONT or functional equivalent);
- f) Professional services: Includes engineering and project management costs involved in designing and constructing the Proposed Project;
- g) Other upfront costs: Includes any other upfront costs not covered in other categories, such as permits, required licenses, sales tax applicable to new equipment purchases, temporary warehousing expenses required exclusively for materials and equipment to be installed as part of the funded project and miscellaneous minor material; and

²⁰ Further regulations regarding the acquisition, disposition, and overall accounting for property and equipment are delineated in 2 CFR § 200.439.

- h) Long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service on the Proposed Project.²¹
- i) Internal labor costs incurred as part of eligible project activities are only reimbursable up to the proportion of employees' time spent exclusively on project activities during the period for which reimbursement is sought. When seeking reimbursement, applicants must submit such costs as line-items and provide supporting documentation for the expense. Supporting documentation shall include time spent by each employee on project activities, total time spent by each employee during the period for which reimbursement is sought, and an hourly cost that may include employee salary, itemized payroll taxes and benefits. Indirect costs are not reimbursable.

Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed. Costs ineligible for the Program may not be paid for with matching funds committed to an award.²²

Ineligible costs include:

- a) Internal administrative activities;
- b) Fundraising activities;
- c) Computers or office equipment;
- d) Vehicles or construction tools, including but not limited to cable trailers, fiber fusion splicers, fiber mechanical splicing devices, fiber splicing trailers, OTDRs, speed testing devices, hand tools (hammers, shovels, hoes, rakes, wrenches), pole climbing equipment, construction devices (Lashers, rollers, winches, chain hoists, beackets, lay-up sticks, measuring wheels, measuring sticks, traffic cones, construction traffic control signage), and cable reel stands;
- e) Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point,
- f) Operating expenses, including monthly accounting and legal services;
- g) Software and IP Addresses;
- h) Expenses incurred prior to the start date of the period of performance or any existing inventory purchased prior to the program launch date;
- i) Short-term operating leases;
- j) Payment of interest or principal on outstanding debt instruments, or other debt service costs;
- k) Fees or issuance costs associated with the issuance of new debt;
- l) 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; or
- m) To support or oppose collective bargaining, whether directly or indirectly;
- n) To purchase or support any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Network Act of 2019)²³;
- o) To purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China unless a waiver is received from the Assistant Secretary.²⁴

²¹ [BEAD Notice of Funding Opportunity](#), pg. 14.

²² [BEAD Notice of Funding Opportunity](#), pg. 82.

²³ See 47 U.S.C. § 1608 and [FCC Covered List](#).

²⁴ [BEAD Notice of Funding Opportunity](#), pg. 88.

- p) Profits, fees, or other incremental charges above actual cost incurred by the Applicant.

Projects must primarily serve Target Locations. Facilities that are needed to deliver last-mile broadband service to Target Locations and incidentally cover non-Target Locations are reimbursable, but expenditures solely to benefit non-Target Locations are not reimbursable. Customer drops, installations, and equipment at non-Target Locations are not eligible for reimbursement.

2.4.2 Expenses in LEO Capacity Grants

Costs in LEO Capacity Grants include the cost of reserved capacity on the network for a ten-year period of performance, beginning on the date upon which the subgrantee certifies to WVDED that broadband is available to every location covered by the project. Recipients of LEO Capacity Grants must continue to offer access to broadband service to each Target Location served by the project throughout the period of performance. In other words, if a customer receiving service at a Target Location moves, the LEO service provider must continue to offer service to the Target Location, but not necessarily the previous subscriber, under the terms of the subgrant if subsequent occupants request service.

For reimbursements, as above, costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed.

Subgrantees awarded LEO Capacity Grants must provide all necessary consumer premises equipment (CPE) at no cost as part of the standard installation for each new subscriber at the BEAD-funded location throughout the period of performance. If the same subscriber requests additional CPE after installation, the LEO Capacity subgrantee may charge customary rates unless the request is made due to equipment malfunction or damage caused by a weather event. The LEO Capacity Subgrantee obligation is limited to no more than three CPE during the period of performance.²⁵

2.5 Proposed Service Performance Required

Subgrantees shall be responsible for ensuring that a connection meeting the project's proposed performance can be established at each awarded Target Location requesting service. In the event that service to an awarded Target Location is impossible due to a physical obstruction, the subgrantee must arrange at its expense for delivery of broadband service via a different technology that meets BEAD minimum performance standards and is comparable in cost to the consumer to its own service. Reimbursement for such alternative service using grant funding may only be sought via a budget amendment, may not exceed the awarded grant amount, is at WVDED's discretion, and may require NTIA approval.

2.6 Technical and Operational Capability

Applicants must certify and demonstrate that they are technically and managerially qualified to complete and operate any potential project.

²⁵ "Appendix B: Low Earth Orbit Capacity Subgrants," [NTIA BEAD Restructuring Policy Notice](#), pg. 21.

2.7 Financial Capacity and Sustainability

Applicants must demonstrate the level of financial capacity that they have to support potentially awarded projects in West Virginia and must demonstrate that projects that they may be awarded will be financially sustainable.

2.8 Letter of Credit or Performance Bond

Applicants must obtain and submit either a letter of credit or performance bond. The letter of credit or performance bond must meet the requirements of the BEAD program as NTIA set forth in the BEAD Program of Notice of Funding Opportunity,²⁶ and its subsequent conditional programmatic waiver of these requirements, as implemented by WVDED.²⁷

Subgrantees awarded a LEO Capacity Grant may reduce the Letter of Credit or performance bond by 50% at the point of certification that service is available to each location in the project area. The Letter of Credit can be reduced by an additional 25% of the original amount after the subscription rate reaches at least 25% of all locations in the project area and may be closed out once the subscription rate reaches 50%.²⁸

2.8.1 Letter of Credit

Applicants choosing to use a letter of credit must obtain and submit a letter from an eligible bank or credit union, as defined in this section, committing to issue an irrevocable standby letter of credit in the required form to the applicant. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the model letter established by WVDED. To this end, WVDED will provide applicants with a model letter of credit.

An entity that is acceptable for the letter of credit is:

- 1) Any United States bank
 - a) That is insured by the Federal Deposit Insurance Corporation, and
 - b) That has a bank safety rating issued by Weiss of B- or better; or
- 2) Any United States credit union
 - a) That is insured by the National Credit Union Administration, and
 - b) That has a credit union safety rating issued by Weiss of B- or better; or
- 3) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on the basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or
- 4) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the

²⁶ "Letter of Credit," [BEAD NOFO](#), pg. 72.

²⁷ [BEAD Letter of Credit Notice](#), 2023.

²⁸ "Appendix B: Low Earth Orbit Capacity Subgrants," [NTIA BEAD Restructuring Policy Notice](#), pg. 20-21.

calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB– or better (or an equivalent rating from another nationally recognized credit rating agency); or

- 5) Any non-United States bank:
- a) That is among the 100 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);
 - b) Has a branch office:
 - i) Located in the District of Columbia; or
 - ii) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;
 - c) Has a long-term unsecured credit rating issued by a widely recognized credit rating agency that is equivalent to a BBB– or better rating by Standard & Poor's; and
 - d) Issues the letter of credit payable in United States dollars.

Prior to entering into any subgrantee agreement, each applicant using a letter of credit that has been provisionally awarded shall obtain an irrevocable standby letter of credit that meets the requirements established in the model letter of credit and documentation and in a value of no less than 10% of the subaward amount. At this step, the provisional subgrantee must obtain an actual letter of credit as opposed to the entity's commitment to issue the letter of credit, which is what is required during the full application process. The provisional subgrantee must commit to maintain the letter of credit in the amount of 10% of the subaward until it has demonstrated to satisfaction of WVDED that it has completed the buildout of 100% of locations to be served by the project or until the period of performance of the subaward has ended, whichever occurs first.

The applicant will also be required to provide, with its letter of credit, an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), the bankruptcy court will not treat the letter of credit or proceeds of the letter of credit as property of the subgrantee's bankruptcy estate under Section 541 of the Bankruptcy Code.

2.8.2 Performance Bond

Applicants choosing to use a performance bond must submit a letter from a company holding a certificate of authority as an acceptable surety on federal bonds as identified in the U.S. Department of Treasury Circular 570 committing to issue a performance bond to the prospective subgrantee.³ The letter shall at a minimum provide the dollar amount of the performance bond.

Prior to entering into any subgrantee agreement, each provisionally awarded subgrantee using a performance bond shall obtain a performance bond that meets these requirements, is satisfactory in all respects to WVDED, and in a value of no less than 10% of the subaward amount. At this step, the provisional subgrantee must obtain an actual performance bond as opposed to the company's commitment to issue the performance bond, which is what is required during the application process. The provisional subgrantee must commit to maintain the performance bond in the amount of 10% of the subaward until it has demonstrated to satisfaction of WVDED that it has completed the buildout of 100%

of locations to be served by the project or until the period of performance of the subaward has ended, whichever occurs first.

Where a subgrantee chooses to exercise the option to obtain a performance bond, the requirement that the subgrantee “provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code” is waived.

2.9 Low-Cost Service Option

IJA requires BEAD subgrantees to “offer not less than 1 low-cost broadband service option for eligible subscribers.”²⁹ The low-cost broadband service option must offer speeds of at least 100/20 Mbps and latency performance of no more than 100 milliseconds. Applicants that already offer a low-cost plan that meets these service requirements may satisfy the low-cost service option requirement by proposing to offer their existing low-cost plan to eligible subscribers.

2.10 Compliance with Industry-Standard Practices

Applicants must commit to deploy proposed networks using required or generally-accepted industry standards applicable to the type of network the applicant is proposing.

2.11 Additional Conduit Access

Any awarded Project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities.

2.12 Compliance with Other Federal, State, and Local Laws

Applicants must certify that they will comply with all applicable federal, state, and local laws and regulations. These include, **but are not limited to**:

- Build America, Buy America Act (BABA)
- Secure and Trusted Communications Networks Act
- Clean Air Act
- Federal Water Pollution Control Act

²⁹ “Low-Cost Service Option,” [NTIA BEAD Restructuring Policy Notice](#), pg. 7. As redefined by the Policy Notice, the term “Eligible Subscriber” means any household seeking to subscribe to broadband internet access service that is eligible for the FCC’s Lifeline program. Lifeline eligibility criteria are defined in 47 CFR §54.409.

- West Virginia Division of Highways (DOH) General Guidelines for Fiber Optic Permitting in the ROW
- Dig Once Policy – Underground installations in the WV DOH right of way are subject to the State Dig Once Policy (W. Va. Code § 17-2E-5) unless they qualify for an exception in that policy.
- WV State Historic Preservation (SHPO) consultation requirements (to determine National Historic Preservation Act (NHPA) Section 106 applicability)

Furthermore, applicants must certify that they agree to refrain from undertaking any construction activities until the applicant or its contractors/subcontractors have submitted all applicable permits and clearances to WVDED. For instance, before WVDED provides a subgrantee with the notice to proceed with construction, discussed in Section 8, the subgrantee must submit and receive approval from WVDED on all permits and clearances required for construction.

The following subsections detail some of these laws and regulations as they relate to the Program, including steps beyond certification that applicants must take to demonstrate compliance as a part of their applications to WVDED. Note that the information in this section should not be considered exhaustive, and it is the responsibility of applicants to ensure full compliance with all laws and regulations.

2.12.1 Build America, Buy America Act

Applicants and their contractors and subcontractors must certify that they will comply with BABA and will be required to provide further information supporting these compliance plans. Applicants, if awarded projects, must comply with all of the provisions of BABA or request a waiver from NTIA. Some of the most vital provisions of BABA include:

- **Iron and Steel Products:** That all iron and steel products utilized by the applicant or any contractors and subcontractors in its Proposed Project have undergone all manufacturing processes, from the initial melting state through the application of coatings, in the U.S. unless a waiver is granted.
- **Manufactured Products:** That all manufactured products, including fiber optic cables used in its BEAD funded project such products were (a) manufactured in the U.S. and that the manufactured products contain U.S. components comprising greater than 55% of the total cost of all components of the manufactured product.
- **Construction Materials:** For construction materials, the applicant and its contractors must certify that construction materials including but not limited to non-ferrous metals; plastic and polymer-based products (including polymers used in fiber optic cables); glass (including optic glass); lumber; and drywall used by the applicant, and any contractors and subcontractors have undergone all manufacturing processes domestically.
- **Regarding Waiver:** While the applicant and all contractors and subcontractors of the applicant may waive the 55% cost requirement for all electronics equipment used in fiber optic technologies, (as finalized by NTIA and the Department of Commerce in February 2024)³⁰, the applicant will be required to certify that it and any contractors or subcontractors understand and

³⁰ See the [Limited General Applicability BABA Waiver](#) for BEAD.

will comply with the BABA 55% cost requirement for the following equipment used in fiber optic networks:

- Optical Line Terminals (OLTs) and Remote Optical Line Terminals (rOLTs)
- OLT Line Cards
- Optic Pluggables
- Routers
- Switches
- Optical Amplifiers
- Power Systems
- Optical Network Terminals/Units (ONT/Us) and Optical Network Units

Compliance with BABA

Applicants must comply and ensure compliance by contractors and subcontractors. Each shall consult the NTIA published list of manufacturers of products that have certified compliance with the BABA requirements and shall consult the BEAD BABA self-certification list available at https://www.commerce.gov/sites/default/files/2024-07/BABA_Self_Certification_List.PDF as well as the NTIA's *BABA Compliance and Self Certification page* (https://broadbandusa.ntia.doc.gov/technical-assistance/BABA_Compliance_and_Self_Certification).

If awarded, the Subgrantee will be required to ensure that it and any of its contractors and subcontractors demonstrate compliance with BABA before that product is installed or used in its Project. As part of this compliance, manufacturers of such products shall provide to the Subgrantee a BABA certification letter for equipment that requires domestic production under BABA under the BEAD waiver. The Subgrantee will be required to maintain this certification letter in the event of an audit. In addition to the above requirements, the Subgrantee will be required to report certain information on finished waived electronics used in its BEAD Project. As part of these requirements, the Subgrantee will compile and share with WVDED a reporting tracker on the finished waived electronics used in its BEAD Project. Further for compliance with BABA, awarded Subgrantees will be required to consult the NTIA's *BABA Reporting Compliance and Documentation Requirements and Procedures* (https://broadbandusa.ntia.doc.gov/sites/default/files/2024-07/BABA_Compliance.pdf) in concert with WVDED published compliance materials regarding BABA, and shall comply with such requirements as well as ensure compliance by its contractors and subcontractors. Each will be required to maintain inventory records of all Project equipment as may be procured with BEAD funds.

2.12.2 Secure and Trusted Communications Networks Act

Applicants are prohibited from obligating or expending loan or grant funds to procure or obtain, extend a contract to procure or obtain, or enter into a contract to procure or obtain equipment, services, or systems that use "covered telecommunications equipment" produced by:³¹

- Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

³¹ See the [BEAD NOFO](#) (pg. 88), 47 U.S.C. § 1608, and the [FCC Covered List](#).

- Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment;
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the FBI, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a foreign country.

For the full list of “covered equipment or services” published by the FCC, Applicants should consult the published list available at <https://www.fcc.gov/supplychain/coveredlist>.

2.12.3 National Environmental Policy Act and Environmental and National Historic Preservation Act

The National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) require that NTIA analyze the potential environmental impacts of projects funded under the BEAD Program. NEPA analysis will be required for every project funded through the BEAD Program and **must be completed** before any construction activity on an awarded project can begin. An expanded fact sheet on NEPA and NHPA can be found [here](#).³²

Applicants must certify that they will comply with NEPA and NHPA and provide any required materials as a part of the application process. WVDED will use the Environmental Screening and Permitting Tracking Tool (ESAPTT) within the NTIA Grants Portal to advance environmental review and permit tracking for awarded projects. Preliminary awardees will be required to provide all information necessary for WVDED to complete ESAPTT, including:

- Responses to Categorical Exclusion and Extraordinary Circumstances questionnaires; documentation of any state or federal threatened and endangered species surveys, wetlands determinations, or cultural resource reports; and other relevant agency consultations.
- Detailed information on **how** each Proposed Project will be implemented. As an example, this may include details on ground disturbance area and depth and installation of features such as concrete pads, equipment sheds, or emergency generators with specified fuel storage capacity.
- Maps and photos, including ground-level and aerial photographs, with project boundaries, sites, routes, and activities clearly marked.
- **Georeferenced files** (.SHP, KML/KMZ, or .GDB) showing planned routes/sites, disturbances, Area of Potential Effect, rights of way, access roads, staging areas, and bridge or railroad crossings

Projects and other eligible activities are expected to be designed so that they minimize the potential for adverse impacts on the environment. WVDED will cooperate with NTIA in identifying feasible measures

³² [“Environmental & Historical Preservation Fact Sheet,”](#) NTIA, December 2022.

to reduce or avoid any identified adverse environmental impacts of proposed projects or other eligible activities. The failure to do so may be grounds for not making an award.³³

WVDED will serve as joint lead agency for NEPA reviews by identifying applicable categorical exclusions and enabling paperless transmission of environmental documents and generation of draft and final NEPA documents. NTIA will generate ESAPTT project records from BEAD subgrant award data, which must identify any awards containing multiple NEPA project areas.³⁴

2.12.4 Labor Standards and Protection

Applicants must demonstrate record of and plans to be in compliance with Federal labor and employment laws through certification to WVDED in application materials.

2.13 Compliance with Grant Distribution Agreement and Cooperation with Subgrantee Obligations

Subgrantees must enter into a Grant Distribution Agreement (GDA) with WVDED. Additionally, subgrantees must comply with reporting requirements and post-award monitoring to maintain continued eligibility for disbursement of grant funds. See Section 8 for more details.

³³ “Environmental and National Historical Preservation Requirements,” [BEAD NOFO](#), pg. 86.

³⁴ “Permitting,” [NTIA BEAD Restructuring Policy Notice](#), pg. 15.

3. Required Applicant Information

Applicants may provide certain required information that applies to all their proposed projects. Applicants may submit this information a single time for all applications submitted. Applicants that have previously completed the Pre-application Phase have met this requirement. Applicants that have not previously submitted a pre-application may submit those materials during the Benefit of the Bargain Round.

Table 1 summarizes the categories of information.

Table 1: Summary of Pre-Application Requirements

Category
Company and Contact Information
Eligibility Check
Match Capacity Check
Letter Committing to Letter Credit or Performance Bond
Risk Rating
Certification of Compliance with Relevant Laws and Regulations

3.1 Company and Contact Information

Applicants must provide a complete set of relevant company information and any accompanying materials and information to demonstrate the accuracy of that information. This includes, at a minimum:

- Legal company name and any relevant doing business as (DBA) names;
- Federal Employer Identification Numbers (FEIN);
- Address of the company headquarters and other key locations;
- Company ownership information;
- Type of business entity (e.g., corporation, partnership, LLC);
- Company history and brief overview;
- Certificate of good standing in West Virginia;
- Letter of Good Standing from the West Virginia Tax Division;
- The contact information of the authorized individual submitting the pre-application on behalf of the applicant, including name, position/title, phone number, and email address; and
- Unique Entity Identifier (UEI) and System for Award Management (Sam.gov).

Note that each applicant must obtain a UEI and provide it to WVDED, but applicants are not required to complete the full SAM registration to obtain a UEI.³⁵

Applicants must also provide company ownership information consistent with 47 C.F.R. § 1.2112(a)(1)-(7).

³⁵ See 2 CFR § 25.300. For more information on the establishment of a UEI, please visit [SAM.gov](https://sam.gov).

3.2 Financial History and Audited Statements

Each applicant must submit financial statements from the prior fiscal year that are audited by an independent certified public accountant. If the applicant has not been audited during the ordinary course of business, in lieu of submitting audited financial statements, it must submit unaudited financial statements from the prior fiscal year and certify that it will provide financial statements from the prior fiscal year that are audited by an independent certified public accountant prior to execution of a subgrant agreement, if awarded. WVDED may allow market entrants that have not operated for a full fiscal year to submit other financial records that demonstrate their financial capability and sustainability.

LEO providers are encouraged to submit audited financial statements to NTIA demonstrating their financial capacity to undertake the commitments of a subgrantee in all areas in which the provider seeks to serve. NTIA, in turn, will work with the provider to develop a financial certification letter documenting the financial capability of the provider. WVDED will accept this financial certification letter as part of the qualification process.³⁶

3.3 Technical and Operational Experience

Applicants must certify and demonstrate that they are technically qualified to complete and operate any potential project. Applicants provide resumes for all key management personnel and any necessary organizational charts detailing all parent, subsidiary, and affiliate entities.

To demonstrate this, applicants must provide a narrative description and supporting materials demonstrating experience carrying out projects of a manner and size comparable to the largest project for which the applicant anticipates applying. These should include, if possible, a history of participation and successful completion of grant programs, whether federal, state, or local. Supporting material must include, but is not limited to:

- Evidence that the project was carried out successfully and is being operated in accordance with the terms of the build;
- Information on the project cost and scale

Applicants must attest to and prove that they have provided the following for at least two consecutive years prior to the pre-application date or that it is a wholly owned subsidiary of such an entity:

- Voice service,
- Broadband service, and/or
- Electric transmission or distribution service.

If the applicant has provided voice and/or broadband service, it must certify that it has timely filed Commission Form 477s and the Broadband DATA Act submission. If the applicant has not, it should provide any explanations for pending, missing, or otherwise improperly submitted Forms. Applicants that have operated only an electric transmission or distribution system must submit qualified operating or

³⁶ “Appendix B: Low Earth Orbit Capacity Subgrants,” [NTIA BEAD Restructuring Policy Notice](#), pg. 21.

financial reports that they have filed with relevant financial institutions for the relevant period along with certification that the submission is a true and accurate copy of the reports.

3.4 Financial Capacity

In addition to the financial audit and letter of credit or performance bond required as a part of the Eligibility Check discussed in Section 2.8, applicants must provide the maximum amount of non-grant funds that they expect to have available to support awarded projects in West Virginia, explain the source of these funds, and certify that this is accurate to the best of their knowledge. WVDED will compare this figure to the letter of credit or performance bond also required of applicants and discussed in Section 2.8. Should WVDED determine that there are significant differences between the guaranteed minimum amount listed in the letter and the estimated amount provided by the applicant at this stage, it may jeopardize the applicant's ability to win projects. Applicants will also be required to disclose information on any applications that they or their affiliates have submitted or plan to submit for other network deployment projects supported by public funds.

For LEO Capacity Grants, WVDED will accept from providers a financial certification letter developed with NTIA to document the financial capability of the provider.³⁷

³⁷ "Appendix B: Low Earth Orbit Capacity Subgrants," [NTIA BEAD Restructuring Policy Notice](#), pg. 21.

4. Proposing New Projects

Applicants may elect to propose new projects during the Benefit of the Bargain Round. Both applicants which previously proposed projects and those which did not may choose to submit new proposals.

WVDED will review new proposed projects from applicants who previously participated in the Full Application or Extension Phases, as well as new entrants. Applicants must detail the specific projects that they are proposing for grant funding in the specific areas that they seek funding.

For information on how to revise previously submitted projects, see Section 5.

4.1 Creating Projects

4.1.1 Use of Target Areas and Target Regions

WVDED will publish an updated map and list of Target Areas and Target Regions at broadband.wv.gov for the Benefit of the Bargain Round. Applicants will use the Target Areas to create “**Proposed Projects**” for which they will provide service. Applicants must use Target Areas as the building blocks to define where Proposed Projects would provide service to Target Locations. A Target Area is the smallest geographic unit that an applicant may use to define a Proposed Project. For any applicants that have participated in previous application rounds, note that certain Target Areas may have been rescoped or added for the Benefit of the Bargain Round.

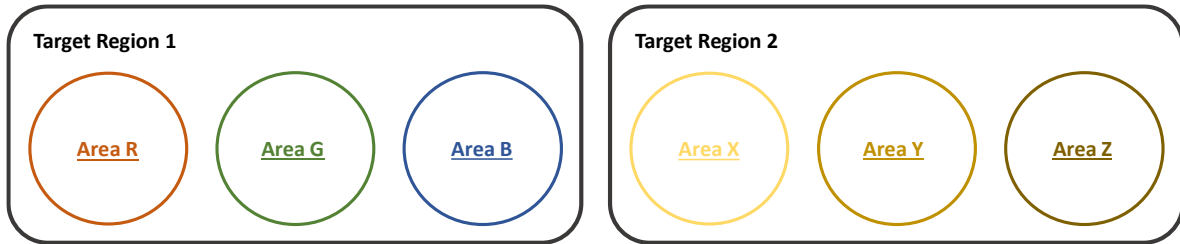
Applicants must follow three rules when creating Proposed Projects from Target Areas that are listed and illustrated below. Applicants may submit more than one set of Proposed Projects, each of which must be self-contained and follow the three rules independently of the other sets.

1. Dependent Projects are not allowed.
2. Proposed Projects may not contain more than one Target Region.
3. Target Areas containing only CAI Target Locations must not be in a Proposed Project with any Target Areas containing unserved or underserved Target Locations. Target Areas that contain a mix of CAI and non-CAI Target Locations may be in a Proposed Project with other Target Areas containing unserved or underserved Target Locations.

4.1.2 Examples of Valid Proposed Projects

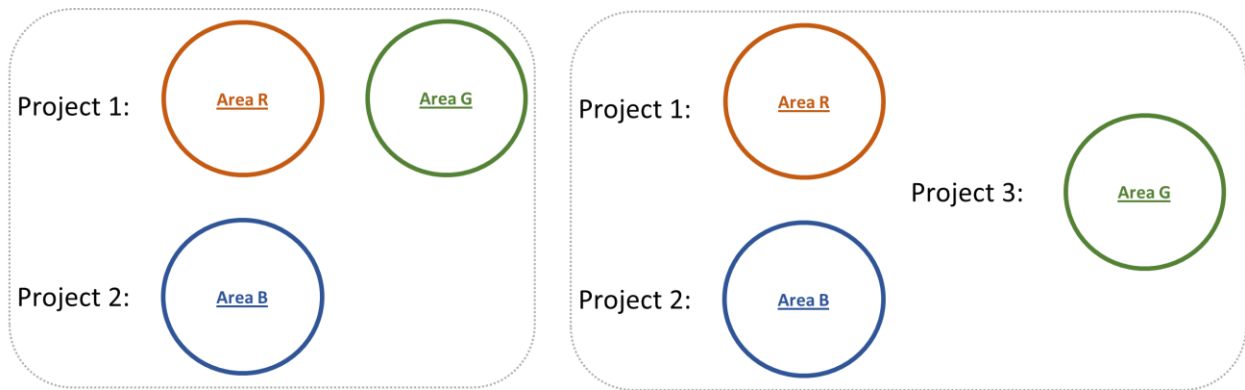
For the following demonstration of the Proposed Project creation process and above rules, consider the following two Target Regions, illustrated in Figure 2. The first comprises three Target Areas: Area R, Area G, and Area B. The second comprises Area X, Area Y, and Area Z.

Figure 2: Example Target Regions and Target Areas



Applicants may group Target Areas within a single Region together into Proposed Projects in any way they see fit, provided they comply with the rules. **In each of the illustrated examples throughout the remainder of this section, the gray-dashed boxes represent sets of projects.**

Figure 3: Examples of Valid Proposed Project Sets for Target Region 1 if Only Area B Contained Solely CAIs



4.1.3 Examples of Invalid Proposed Projects

Figure 4 demonstrates a failure to comply with the rule which states that dependent Projects are not permitted.

Figure 4: Example of Failure to Comply with Rule #1

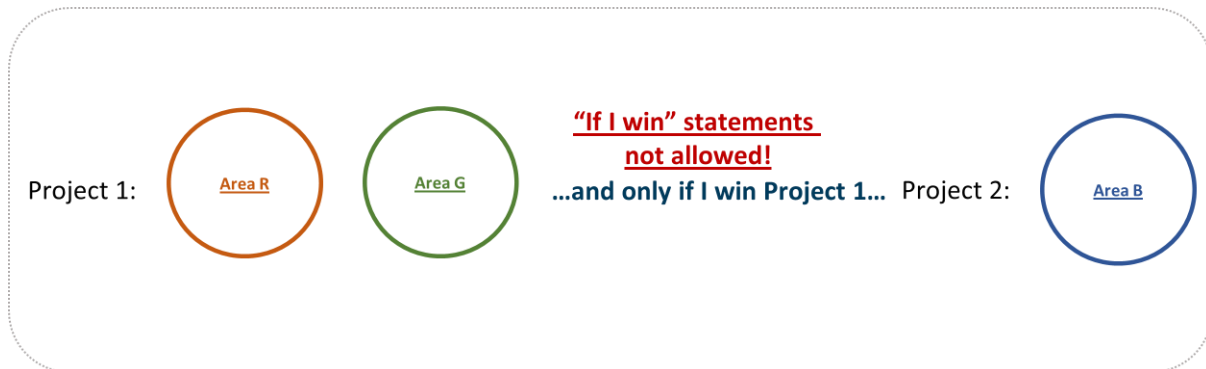
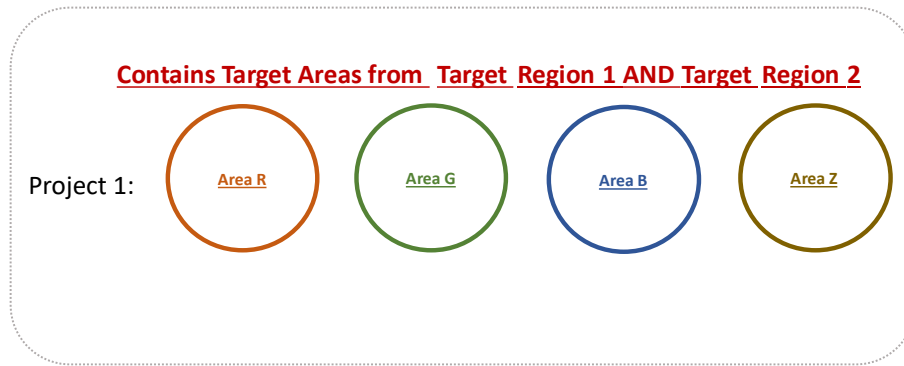


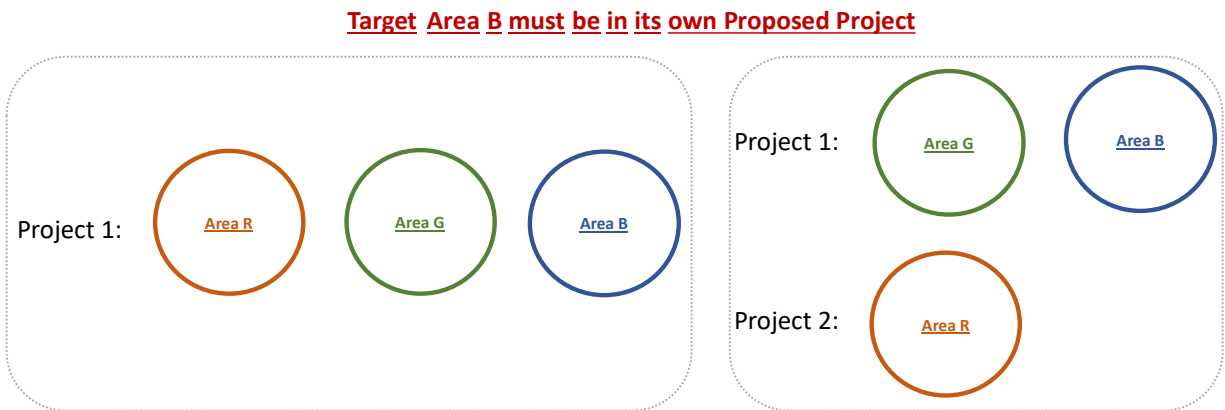
Figure 5 provides an example of failure to comply with the second rule, as Proposed Projects may not contain Target Areas from more than one Target Region.

Figure 5: Example of Failure to Comply with Rule #2



Lastly, if Area B were to once again be assumed to be the only Target Area comprised solely of CAIs in Target Region 1, then the Proposed Project sets in Figure 6 would not be permitted because they mix a CAI-only Target Area with Target Areas that do not contain only CAIs.

Figure 6: Example of Failure to Comply with Rule #3



4.1.4 Target Areas Containing Excessively High Cost or Economically Unviable Locations

WVDED has created Target Areas to contain Target Locations that one or more service providers have identified as “excessively high cost” or “economically unviable”. (See Section 1.4.2, “Target Regions, Areas, and Locations”.) Target Locations so identified remain Target Locations and the Target Areas containing them remain within their respective Target Regions. As such, applicants may apply for them as part of a project within a single Target Region.

In addition, an applicant may submit a single application containing multiple Target Areas containing these Target Locations identified as “excessively high cost” or “economically unviable” that are in different Target Regions. This is the only type of application that may contain Target Areas from more than one Target Region. Such an application may only contain Target Areas of this type. Furthermore, the applicant must be willing to accept award of each Target Area in this type of proposal regardless of whether or not other Target Areas in the proposal are funded.

4.2 Application Information

Applicants must submit accompanying information to support their Proposed Projects. If an applicant has submitted proposed projects in the Full Application or Extension Phases, note that requested application information has changed, in compliance with the Policy Notice.³⁸

4.2.1 High-Level Designs and Technical Capabilities

Applicants, except for providers applying for LEO Capacity Grants, must submit high-level designs that connect all Target Locations within the Proposed Project. LEO Capacity Grant applicants must, however, demonstrate that they can serve all of the Target Locations in their proposed projects.

Applicants may include non-Target Locations or routes that fall outside the Target Areas included in the Proposed Project in their designs and Project grant costs if the non-Target Locations or routes outside the Target Areas are clearly required to connect the Target Locations to a new or existing network. Project grant costs must be eligible expenses and required to connect project Target Locations. Applicants may also include routes or non-Target Locations that are not expressly required to connect the Target Locations in a given Target Area, but the associated costs may not be included in project grant costs and should be categorized as “other costs” in the budget detailed in Section 4.2.2.

In addition to the high-level designs, applicants must provide information on the speed of the network and other technical capabilities in the manner prescribed by WVDED in the application portal and any workbooks. This includes, at a minimum:

- Broadband service technology used, such as end-to-end fiber, Coax/Cable, licensed fixed wireless, etc.;
- Expected speed and latency of the network at interconnection points; and
- Information on network topology.

All information and materials must be certified by a professional engineer, stating that the proposed network can deliver broadband service that meets the requisite performance requirements to all locations served by the Project.

4.2.2 Proposed Project Budget

Applicants must submit Proposed Project budgets using the form provided by WVDED.

As a part of the proposed budget, applicants are permitted to include a contingency budget for up to 12% of the proposed grant amount. If including a contingency budget, applicants must provide an explanation of factors that make the Proposed Project more likely than not to use a contingency budget.

Proposed Project Grant Request, Proposed Match and Other Funding Sources

Within each Project budget, applicants must provide the:

³⁸ [NTIA BEAD Restructuring Policy Notice](#), June 6, 2025.

- Project grant cost, i.e., the amount of funding requested from the State;
- Proposed funds match amount, i.e., the amount of funding that the applicant will provide as a match, including a detailed source of the match.

Applicants may propose Projects that, in the aggregate, exceed their demonstrated Relative Capacity and Financial Capacity, discussed in Section 3.3 and 3.4. However, applicants will not be eligible for award of Projects in excess of these Capacity limits. This process is further detailed in Section 6.

4.2.3 Projects with Mixed Unserved and Underserved Target Locations

If a Proposed Project contains more than 80% unserved locations, then the applicant should only submit one budget and set of high-level designs per application. However, if the Project contains any other mix of unserved and underserved locations, the applicant may submit two sets of application materials: one for all locations and an alternative one for solely the unserved locations. Although the second set is optional, applicants who do not submit this alternative budget may forgo the opportunity for the reduced project to be funded, if the program budget is insufficient to fund a project to all underserved locations.

4.2.4 Project Timeline

For Standard Broadband Service Grants, applicants must provide a construction and deployment timeline, including milestones for implementation and a capital investment schedule, and certify that they will meet them. Milestones must include, at a minimum:

- Detailed network design creation;
- Environmental and regulatory reviews;
- Construction in all its phases;
- Service provision and;
- Project completion.

Construction must be able to be completed and ready to serve all customers within four years from award. WVDED may extend this deadline in limited circumstances only after consultation with and approval by NTIA. Per NTIA's Conditional Limited Programmatic Waiver and Clarification of Professional Engineer Certification, the requirement that an applicant submit a "capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity receives the subgrant" that is "certified by a professional engineer" is waived.³⁹ However, a professional engineer is still required to certify the remaining elements of the PE Certification Requirement.

LEO Capacity subgrantees must begin providing broadband service not later than four years from the date of the subgrant and must continue to offer access to broadband service for a ten-year period of performance.

³⁹ ["Conditional Limited Programmatic Waiver and Clarification of Professional Engineer Certification,"](#) NTIA, March 7, 2024.

5. Previously Submitted Projects

Applications for deployment subgrants received by WVDED in prior Phases of the BEAD subgrantee selection process remain under consideration during the Benefit of the Bargain Round. Applicants who previously proposed projects in the Full Application or Extension Phases may revise those existing applications to accommodate updated Target Locations lists and program changes from NTIA's Policy Notice. In these cases, the applicant may update its prior proposal and does not need to resubmit a new application.

Updating proposals is not required, but all proposals will now be considered according to the procedures detailed in Section 6.2. If selected, subgrantees will not be permitted to recover costs that were budgeted to comply with the regulatory burdens eliminated in the Policy Notice.⁴⁰ Even if a prior applicant chooses not to update its proposal, WVDED may nevertheless require prior applicants to submit certain supplemental project information required of WVDED by NTIA for the Final Proposal, if applicants did not previously provide such required information.

If, during the Full Application's review and remediation process, an applicant revised original application costs or Areas through rescoping or deduplication efforts, WVDED will identify for the applicant which base version to revise.

5.1 Revising Target Locations

Applicants are required to remove Target Locations from proposed projects that have been removed from the updated Target Locations list provided by WVDED. (See Section 1.4.1, "Modifications to Target Locations Eligible" for more detail.) Applicants may consider the updated Target Areas to revise project costs. WVDED will evaluate the projects of applicants who chose not to update their proposed project costs at a higher cost per Target Location reflecting the Target Locations that are no longer eligible.

5.2 Excessively High Cost or Not Economically Viable Locations

WVDED will identify for prior applicants the new Target Areas created to capture Target Locations they may have identified as excessively high cost or economically unviable. (See Section 1.4.2, "Target Regions, Areas, and Locations.") Prior applicants may provide an updated project cost for their prior proposed project that excludes these Target Areas, in addition to an updated project cost that includes these Target Areas. WVDED requires that prior applicants provide updated costs for such projects both with and without these Target Areas because:

- This will show the extent of the cost savings that can be achieved by excluding these Target Areas from the proposed project, and

⁴⁰ "Technology Neutrality," [NTIA BEAD Restructuring Policy Notice](#), pg. 11.

- The ability of WVDED to award a project without the excluded Target Areas is contingent on its ability to identify a suitable alternative project to serve those Target Areas.

5.3 Application Information

Applicants who have previously submitted High-Level Designs, Project Timeline, and narratives on compliance for the project being revised are not required to update those materials during the Benefit of the Bargain Round. Applicants may notify WVDED of significant changes since original submission in an additional attachment to the application portal.

5.3.1 Proposed Project Budget

Applicants updating the Proposed Project budget must use the form provided by WVDED. Revised project costs should account for the modified Target Area, as well as any reductions in cost based on the eliminated or reduced requirements detailed in NTIA's Policy Notice.⁴¹

⁴¹ "Elimination of Regulatory Burdens," [NTIA BEAD Restructuring Policy Notice](#), pg. 3-8.

6. Application Review and Award

6.1 Department Information Requests

During review, WVDED (including through its contracted technical reviewers) may request clarification from applicants regarding information submitted, additional supporting documentation, or opportunities to cure minor deficiencies related to eligibility criteria or factors affecting an application's status. WVDED may also make requests for clarification or additional supporting documentation.

WVDED may initiate a request via an e-mail message to the primary contact listed in the application. Requests will include a deadline to respond to the request, which will typically be one business day. Responses to requests will become part of the application.

WVDED may review submitted applications based solely on information submitted by the applicants by the application deadline, without making additional requests. If made, requests will be to further WVDED's interests in considering a broad range of applications and bringing improved broadband to as many West Virginia Target Locations as possible in a technically sound and cost-effective manner.

Given the short timeframes for the Benefit of the Bargain Round, applicants should not rely on an opportunity to supplement or clarify information after the application deadline and should take care to include all information requested by the application in a clear and understandable manner.

6.2 Project Ranking

Provisional awards will be made from among Proposed Projects and applicants meeting program eligibility requirements ("Eligible Projects"). WVDED seeks to make a provisional award in all Target Areas with an Eligible Project, subject to the limitation of the overall program budget.

Since every proposed project will be contained within a single Target Region, WVDED will seek to select a set of projects covering all Target Areas within each Target Region. This will allow it to meet the BEAD requirement, not modified by the Policy Notice, to seek to identify projects covering all of its Target Locations.⁴²

6.2.1 Priority Broadband Projects

As required by IIJA, WVDED will prioritize funding for "Priority Broadband Projects." In the Policy Notice, a "Priority Broadband Project" is defined as:

"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

⁴² [BEAD: Frequently Asked Questions and Answers Volume 9](#), pg. 13.

households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services.”⁴³

In the Policy Notice, a “Non-Priority Broadband Project” is defined as:

“A proposal [that] would offer service at or above 100/20 Mbps and latency less than or equal to 100 milliseconds, but could not necessarily meet the statutory scalability requirements in 47 U.S.C. §1702(a)(2)(I)(ii).”⁴⁴

The Policy Notice explains: “If an Eligible Entity determines that selecting a Priority Broadband Project would incur excessive costs, it shall select a lower cost non-Priority Broadband Project.”⁴⁵ WVDED will identify all possible combinations of non-overlapping Eligible Projects that completely cover all Target Areas in a Target Region. A “combination” will in some cases consist of a single Eligible Project covering the entire Target Region, or it may consist of multiple smaller Eligible Projects, each covering different parts of the same Target Region. WVDED will prioritize those combinations of Eligible Projects within Target Regions that serve all, or the greatest number of Target Locations in the Target Region with Priority Broadband Projects. However, if selecting a set of Eligible Projects with all or a higher portion of Priority Broadband Projects would incur excessive costs and one or more lower-cost combination(s) of Eligible Projects is available that covers all Target Locations in the Target Region, WVDED will set aside the combination with excessive costs.⁴⁶

If there remain multiple combinations of Eligible Projects in a Target Region with the same or substantially similar levels of service from Priority Broadband Projects, those will compete based on scoring.

6.2.2 General Project Area

The Policy Notice directs Eligible Entities to score competing applications “covering the same general project areas” first using a primary criterion, Minimal BEAD Program Outlay, and then three secondary criteria.⁴⁷ WVDED has created Target Regions which allow well-defined combinations of Eligible Projects in the same general project areas, facilitating identification of “competing” applications. Therefore, it will evaluate these primary and secondary of scoring criteria as applied to non-overlapping combinations of projects in the same Target Region.

6.2.3 Minimal BEAD Program Outlay

The Policy Notice directs, “The Eligible Entity must select the combination of project proposals with the lowest overall cost to the Program. This may involve selecting a proposal that is not the lowest-cost option for a given set of BSLs but is part of the combination of selected projects with the lowest overall cost to

⁴³ “Technology Neutrality,” [NTIA BEAD Restructuring Policy Notice](#), pg. 9.

⁴⁴ “Technology Neutrality,” [NTIA BEAD Restructuring Policy Notice](#), pg. 9.

⁴⁵ “Scoring Rubrics,” [NTIA BEAD Restructuring Policy Notice](#), pg. 11.

⁴⁶ This does not necessarily mean that all *projects* in a combination will be set aside. A project could be both part of one combination of projects with excessive costs, and part of another combination of projects that does not. This could happen, for example, because of a different project with an especially high-cost project that is present in the first combination but not in the other combination.

⁴⁷ “Scoring Rubrics,” [NTIA BEAD Restructuring Policy Notice](#), pgs. 12-13.

the Program.”⁴⁸ WVDED will meet this directive by selecting the competing combination of projects covering each Target Region with the lowest overall grant cost (i.e., the total project cost minus the applicant’s proposed match) for the entire Target Region. This will also result in the lowest cost to the program per Target Location in the Target Region. An exception will apply when one or more combinations are within 15% of the cost of the lowest-cost combination. In these cases, selection will be made using secondary criteria.

6.2.4 Secondary Criteria

If another combination is within 15% of the lowest cost outcome for the Target Region, WVDED will evaluate the proposed projects in the combination against the following three criteria, using a 100-point scale as indicated below.

Speed to Deployment		
Category: Secondary	Priority: 10	Non-Priority: 10
<p>To qualify for any points in this section, applicants must commit to providing WVDED its final network design(s) within six months of award.</p> <p>In addition to the above requirement, WVDED shall award points to Projects that have a credible plan to deployment for the timeframes listed in the below schedule.</p> <p>Timeline for Deployment (less than or equal to):</p> <ul style="list-style-type: none"> • 18 months – 10 points • 24 months – 7 points • 36 months – 5 points <p>Note that WVDED will exclude periods of expected delay, as defined by WVDED, such as those related to pole attachment approvals, design approval, federal environmental clearances, and other tasks at WVDED’s discretion.</p>		

Speed of Network & Other Technical Capabilities		
Category: Secondary	Priority: 45	Non-Priority: 45
WVDED will award 45 points to projects able to provide speeds of 1 Gbps / 1 Gbps to all proposed Target Locations, regardless of technology.		

Potential Subgrantees		
Category: Secondary	Priority: 45	Non-Priority: 45
WVDED will award 45 points to projects who previously submitted a proposal to the program in 2024 and would have been selected as the provisional subgrantee for the Target Area under the Program Procedures in force at the time.		

⁴⁸ “Scoring Rubrics,” [NTIA BEAD Restructuring Policy Notice](#), pg. 12.

6.3 Provisional Award Process

After scoring applicable proposals, WVDED will begin the provisional award process. WVDED will seek to provisionally award the best-ranked combination of Eligible Projects in each Target Region. However, the ability to do this in every Target Region may be limited by the Capacity of applicants and the overall Program Budget.

6.3.1 Capacity

Capacity is a ceiling on the amount of awarded Projects an applicant may receive. Proposed Projects that, if awarded, would cause an applicant to exceed its Capacity will be treated as ineligible. Each applicant will have a Financial Capacity and a Relative Capacity. An applicant exceeds its Capacity if it exceeds either its Financial Capacity or its Relative Capacity.

Financial Capacity is a limit per applicant based on that applicant's demonstrated ability to provide both matching funds and a letter of credit or performance bond. For example, an applicant able to demonstrate that it can provide a letter of credit or performance bond to support \$50 million in grant funds and \$30 million in matching funds would not have the Financial Capacity to receive awarded Projects beyond these thresholds.

Relative Capacity has two parts:

- Part one: a limit on the total cost of Projects awarded to the applicant.
- Part two: a limit on the percentage of total grant funds that the applicant may receive, relative to the total grant funds to be awarded in the program. This represents the degree to which the success of the program would be concentrated on a single subgrantee.

WVDED will establish part one and part two of Relative Capacity for each applicant based on the applicant's risk and demonstrated ability to develop and operate networks at scale. WVDED will consider the applicant's demonstrated managerial and operational experience, demonstrated ability to scale, the scale of existing awarded Projects, its demonstration of financial sustainability, and its demonstrated track record of compliance and performance on previously awarded projects—whether through federal, state, or other programs.

WVDED may establish up to three levels of Relative Capacity for each applicant: Level One representing the lowest level of risk, and Levels Two and Three representing higher levels of relative risk. Depending on the applications received, WVDED may elect to not make awards to any applicant that exceeds Level One of Relative Capacity if WVDED can do so while reaching all unserved and underserved locations at a reasonable cost within the program budget. If necessary to reach all Target Locations, WVDED may also consider making awards to applicants at either Level Two or Level Three of Relative Capacity.

6.3.2 Program Budget

Provisional awards that exceed the total program budget will not be made. If the expected costs exceed the Budget WVDED will take these additional steps as necessary to meet the Budget in the following order:

- Eliminating provisionally awarded Projects that would only serve CAI Target Locations, starting with those having the highest grant cost per Target Location.
- Requesting that applicants modify their provisionally awarded Projects to remove CAIs if it appears that removal of the CAIs would materially change the grant cost of the provisionally awarded Project.
- Eliminating provisionally awarded Projects that would only serve underserved Target Locations, starting with those having the highest grant cost per Target Location.
- Substituting the alternative Projects that remove underserved locations from provisionally awarded Projects with a mixture of unserved and underserved locations and less than 80% unserved locations.
- Eliminating provisionally awarded Projects that would only serve 80% or more unserved Target Locations, starting with those having the highest grant cost per Target Location.

6.4 Provisional Subgrantee Letters of Credit or Performance Bond

As noted in Section 2.8, prior to entering into any subgrantee agreement, each applicant that has been provisionally awarded shall obtain an irrevocable standby letter of credit or performance bond that meets the requirements established in the model letter of credit and documentation and in a value of no less than 10% of the subaward amount. At this step, the provisional subgrantee must obtain an actual letter of credit or performance bond as opposed to the bank's, credit union's, or eligible bond issuer's commitment to issue the letter of credit or performance bond that is required during the application process.

The provisional subgrantee will also be required to provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), the bankruptcy court will not treat the letter of credit or proceeds of the letter of credit as property of the subgrantee's bankruptcy estate under Section 541 of the Bankruptcy Code.

6.5 NTIA Approval of West Virginia BEAD Final Proposal

Awards are subject to NTIA's approval of West Virginia's BEAD Final Proposal. WVDED will submit its Final Proposal after completion of application review and Project selection.

7. Grant Distribution Agreement and Standard Terms

Provisional subgrantees will be required to enter into a Grant Distribution Agreement (GDA) with WVDED. Additional terms may be required by NTIA/Department of Commerce. Subgrantees may use grant funds for eligible expenses prior to using all matching funds, and these will be reimbursed on a pro rata basis up to the maximum amount of the grant. All projects will include a retainer equal to 10% of awarded funds withheld until project completion and until all close-out documents and reporting are submitted and approved. For LEO Capacity Grants, the retainer shall be equal to the last quarterly payment in the schedule, which may be more or less than 10% of the grant. To the extent necessary, the Program reserves the right to create additional requirements that provisional subgrantees must fulfill prior to disbursement of funds.

8. Subgrantee Obligations and Post Award Monitoring

Subgrantees of grant funds must comply with post-award monitoring and reporting requirements to maintain continued eligibility for disbursement of grant funds. Subgrantees are responsible for active technical, financial, and project management of awarded projects through their own staff and or by hiring and managing well-qualified contractors. Subgrantees should also expect to cooperate with technical and financial monitoring and review provided by WVDED contractors and staff.

8.1 Pro Forma and Business Plan

WVDED will solicit information on financial sustainability from applicants during the application process. This can be a business plan or related analysis demonstrating that the project will be sustainable for the applicant to operate over at least 3 years, when considering its operating cost and cash flow projections.

If selected for provisional award, WVDED may require subgrantees executing a large new commitment relative to their pre-award size to confirm the ongoing sustainability of the proposed project in greater detail prior to disbursement of funds. WVDED may require these provisional subgrantees to provide a complete a pro forma cash flow analysis for a 10-year period based on the provisionally awarded Proposed Projects. WVDED may also require provisional subgrantees to submit a more detailed business plan for the provisionally awarded Projects that includes a plan for marketing and customer acquisition and standing up any new or additional required operational capabilities in the prospectively awarded Projects.

8.2 Notice to Proceed with Exempt Activities (NTPE)

Prior to a subgrantee making any eligible expenditures, a written NTPE from WVDED will be required, which includes pre-implementation and design activities. As part of this process, subgrantees must provide WVDED, as part of their Grant Disbursement Agreement, required documentation including but not limited to debarment review forms, project bank accounts, environmental compliance requirements, and audit compliance plans. Once the NTPE is issued, subgrantees may then begin pre-construction activities, which involves expenditures on “soft cost” items such as engineering functions, permit applications/right-of-way practices, and associated logistical efforts.

8.3 Initial Budget and Budget Amendments

Prior to disbursement of funds, a provisional subgrantee must submit an Initial Budget, consistent with its approved application, to WVDED. The Initial Budget will be stated using cost categories of eligible expenses for reimbursement or milestone payments on the grant.

Upon full execution of a subgrantee's grant agreement with WVDED, the Initial Budget representing the approved Project(s) will be used for monitoring project fund expenditures.

Any changes to this Budget, including expense category shifts, will require submission of a proposed budget amendment. Upon approval by WVDED, this will serve as the new budget baseline. The ability to make budget amendments is subject to WVDED approval and guidance and/or approval from NTIA.

8.4 Engineered Design and Notice to Proceed with Construction (NTPC) Requirements

Following the issuance by WVDED of an NTPE, but prior to requesting the NTPC, subgrantees must submit an engineered design to WVDED. Included in this NTPC process, WVDED requires subgrantees to provide copies of any DOH permits, any other applicable permits, clearances, applicable Dig Once Notifications, pole attachment agreements, and applicable bonds as well. Should a subgrantee's project occur on private property or property outside of the ROW, WVDED requires the subgrantee to provide evidence of any required easements or clearances as well. For projects requiring underlying municipal, county, or State, or Federal agency approvals, WVDED requires subgrantees to submit evidence of such documentation.

Furthermore, WVDED shall provide subgrantees with specific Engineered Design Requirements detailing guidelines for the designs required to be submitted. Included in this process, and in order to request an NTPC from WVDED, subgrantees must provide a Network Design Certification form, a Design Project Checklist, and a Detailed Design Checklist. WVDED requires designs to be prepared under the review of a Professional Engineer (PE), or an engineer with substantial demonstrated experience provided NTIA does not issue guidance contrary to this. WVDED requires credentials to be submitted as part of this.

8.5 Invoice Submittals

Subgrantees must adhere to the following guidelines with regard to invoice submittals:

1. Subgrantees must provide proof of payment to vendors and lien waivers prior to submitting invoices;
2. Subgrantees must submit invoices in a sequential order corresponding to the subgrantee's matching funds report or grant disbursement form; and
3. In cases where an invoice is not 100% used in a single matching funds report or grant disbursement, subgrantees must include a clear running total marked up on the invoice.

Milestone payments for LEO Capacity Grants will not require invoice submittals but will require proof that the subgrantee has met the subscription milestone claimed in the request for disbursement.

8.6 Grant Disbursement Requests

WVDED requires from subgrantees submission of proof of expenditures on eligible costs for review prior to reimbursement and also requires lien waivers for each invoice greater than or equal to \$2,500.

Generally, in order to be eligible for grant disbursements, subgrantees:

1. must comply with post-award monitoring and reporting requirements;
2. are responsible for active technical, financial, and project management of the awarded project;
3. must cooperate with technical and financial monitoring and review;
4. shall submit engineered designs to WVDED prior to reimbursement; and
5. shall submit proof of expenditures on eligible costs for review prior to reimbursement.

8.7 Compliance Reporting

Subgrantees must submit to WVDED a regular report, 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.

WVDED 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. The report must, at minimum:

1. 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;
2. Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);
3. Identify whether each address or location is residential, commercial, or a community anchor institution;
4. Describe the types of facilities that have been constructed and installed;
5. Describe the peak and off-peak actual speeds of the broadband service being offered;
6. Describe the maximum advertised speed of the broadband service being offered;
7. Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
8. List all interconnection agreements that were requested, and their current status;
9. 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; and
10. 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.

Subgrantees must provide regular reports to ensure that both they and WVDED and meet all reporting requirements as prescribed in NTIA/Commerce BEAD program guidelines. WVDED shall build reporting forms conforming to BEAD program requirements and provide compliance guidance to subgrantees regarding requirements and methods of submittal to WVDED.

8.8 Ready to Serve Review/Field Review

WVDED generally conducts “ready-to-serve” review(s) for each project that include field reviews of facilities constructed or deployed with grant funding. The field review will compare the submitted project

design documentation with the network equipment and facilities built with project funds. The technical reviewer for each project will conduct 1-2 field reviews per project, reviewing a portion of the constructed facilities. The number of field reviews will depend on the stage of completion for the projects. Generally, projects will be reviewed once at the midpoint, and again once construction is complete. To the extent that a project shows substantial deficiencies or discrepancies, additional reviews may be required by the WVDED.

Based on submitted network designs and bills of material (BoM), the field review will include a high-level verification that the design of the plant and the actual construction of the network are in compliance with the requirements of the grant. The review will visually verify that each targeted address designated in the grant is serviceable or can be serviceable within ten business days of an order being placed.

If an inconsistency is discovered between the review findings and the grantee's prior representations and/or the approved grant proposal, the grantee will be asked to provide an explanation for the discrepancy to be included in a written summary of findings.

The summary report will be provided to the subgrantee and the subgrantee will have an opportunity to respond to any findings, provide an explanation for any deficiencies noted, and provide a plan for addressing noted deficiencies. The response to the summary of findings must be received by WVDED within one week of the grantee receiving the written summary of findings. Subgrantees shall then have a prescribed period of time to cure based on the findings and at the direction of WVDED.

Field Reviews will be tailored to the distinct characteristics of the technologies used in the projects awarded. WVDED will request supporting materials that will inform the field review that will also vary depending on the technology employed by the project. This may include, but is not necessarily limited to the following elements:

- Subgrantees using fiber optic technology in the project either exclusively or as part of a mix of technologies, must retain and submit to WVDED optical time domain reflectometer (OTDR) and, if capable, intelligent optical link mapper (IOLM) fiber traces. To be considered acceptable for WVDED approval, these tests must be, at a minimum, passing.
- Subgrantees using terrestrial fixed wireless technology, either exclusively or as part of a mix of technologies, must produce and submit to WVDED Point to Multipoint RF Engineering Report derived from the network design tool and a propagation map illustrating expected coverage and performance, with key technical inputs and based on the final locations in the network as constructed.
- Subgrantees using HFC technology in the project either exclusively or as part of a mix of technologies, must retain and submit to WVDED a coax cable SWEEP report for the constructed network.
- Subgrantees using LEO satellite technology in the project either exclusively or as part of a mix of technologies, must retain and submit to WVDED proof of service at connected locations, network performance at connected locations, and any locations at which a subscriber attempted to initiate service but at which service was discontinued within 90 days. WVDED may require field reviews at up to each payment milestone for LEO Capacity Grants.

WVDED may provide additional guidelines for submitting these items.

8.9 Speed Testing

WVDED generally shall require of subgrantees compliance with the standards and testing protocols for speed and latency established by the FCC in prior grant programs, requiring of subgrantees that such testing be performed from the customer premises of an active subscriber to a remote test server at an end-point consistent with the requirements for a Commission-designated Internet Exchange Point (IXP).⁴⁹

8.10 Closeout

WVDED requires subgrantees to submit a closeout package with required documentation for review and approval of the final payment of the grant amount retained by WVDED. Closeout shall be completed when the subgrantee:

- Has submitted its final quarterly project and expenditure report to WVDED;
- WVDED has determined that all monitoring findings have been formally addressed and are resolved.
- WVDED has received a completed, final project review and determined that any findings have been resolved.
- In accordance with closeout procedures for federal awards (2 CFR 200.344), within 90 days of the end of the period of performance, the grantee will provide to WVDED any outstanding financial, performance, or other required reports.
- The subgrantee must liquidate all financial obligations incurred under the award and refund any balances of unobligated cash paid in advance or paid to the subgrantee that is not authorized in writing to be retained for use in other projects.

In addition, the closeout package will contain the Network Performance Report, the Final Field Review Report, the Final Budget Reconciliation, the required Engineering documents from the Network Performance Report, and the Final Grant Disbursement Request for the retainer. Once all required closeout materials have been submitted by the subgrantee, WVDED will review the submitted documentation and communicate any curing items to be addressed within a prescribed time period. Once all curing has been completed, WVDED will sign and return the Network Performance Report. This will become part of the Final Closeout package.

Project closeout shall not affect:

- The right of WVDED to disallow costs and recover funds based on a later audit or other review;
- The obligation of the subgrantee to return any funds due because of later refunds, corrections, or other transactions; or
- The subgrantee's obligations regarding audits, property management and disposition (if applicable), and record retention.

⁴⁹ [BEAD NOFO](#), pgs. 64-65.

8.11 Clawback/Recoupment of Funds

In general, WVDED shall have provisions in its grant agreement with subgrantees stating that WVDED may deduct amounts or withhold payments invoiced by the subgrantee if the subgrantee fails to comply with any requirements of the grant agreement. Further, WVDED will have provisions stating that funds withheld due to unsatisfactory project performance or failure to comply with the terms and conditions of the grant agreement may be restored upon the subgrantee's satisfactory remedy of the condition that caused the withholding. Lastly, in general WVDED shall retain 10% of any grant award until project completion, including approval of all closeout documents and reporting requirements.

WVDED will also reserve the right to disallow costs and recover funds disbursed on the basis of audit or review, even following closeout of the Grant Agreement with subgrantees. WVDED will specify that failure to substantially meet performance measures may result in suspension of reimbursement payment, termination of the Grant Agreement with WVDED, and/or prohibit the subgrantee from being eligible to submit an application for future allocations until such time as the failures are resolved. WVDED shall provide notice and an opportunity for subgrantees to cure any failures or deficiencies within 30 days or such other reasonable time as may be specified in the notice. If the subgrantee should fail to cure during the designated period, WVDED shall have the discretion to take one or more actions, such as:

1. requiring additional project monitoring to ensure compliance with the subgrantee's project plan;
2. requiring the subgrantee to obtain technical or management assistance in order to ensure compliance with the project plan;
3. reducing the program funds to be disbursed under the Grant Agreement in an amount not to exceed the difference between the full amount of the subgrantee award and the total amount for which the subgrantee has submitted a reimbursement request that is consistent with the progress made in complying with the project plan as of the date of the expiration of the cure period.

With regard to recapture provisions in the subgrantee agreement with WVDED, WVDED shall reserve the right to recapture funds remaining due to cost underruns.

8.12 Timely Subgrantee Reporting Mandates

As an exhibit to its grant agreement with subgrantees, WVDED will require a form that complies with the BEAD NOFO's regular financial and performance reporting requirements for subgrantees.⁵⁰ WVDED will specify in its grant agreement and compliance guidance materials that subgrantees submit the information in this form on at least a semi-annual basis or greater frequency to WVDED for the duration of the subgrant.

In addition to the periodic reporting requirements communicated to subgrantees, WVDED shall also convey any record retention requirements and shall build into its grant agreements with subgrantees the requirement that subgrantees provide any necessary information to WVDED as may be requested to fulfill any additional annual performance reporting requirements as well.

⁵⁰ [BEAD NOFO](#), pgs. 90-92.

8.13 Record Retention

Regarding record retention requirements, WVDED will prescribe that subgrantees retain financial records, supporting documents, and any other records pertinent to the grant agreement for a period of five years from the date of submission of the final expenditure report or payment of final invoice.

As part of the subgrantee's participation in the program, it will allow WVDED, along with the NTIA/Commerce, Inspector General, Comptroller General, State Auditors, program auditors, and other duly authorized representatives, the right of timely and unrestricted access to books, documents, papers, or other records as well as reasonable access to past and present personnel for purposes of audits, examinations, and other grant program monitoring activities.

Regarding closeout, WVDED may condition closeout of the subgrantee award on receipt of the subgrantee's final semi-annual report, confirmation that all monitoring and audit findings have been formally addressed and resolved, and receipt of a final project audit or review. WVDED requires subgrantees to provide any outstanding financial, performance, or other required reports within 90 days after the end date of the period of performance.

8.14 Audits/Monitoring

Regarding audits and monitoring, WVDED will require subgrantees to agree as a condition of the award and as part of subgrantees' grant agreement with WVDED that subgrantees will cooperate with both WVDED and NTIA/Department of Commerce with respect to any audit of WVDED's programs or the award. Additionally, WVDED will require subgrantees to review, understand, and comply with the West Virginia State Accountability requirements of the West Virginia Code Section 12-4-14, as applicable.

8.15 Risk Management Plan

8.15.1 Natural Disasters

To satisfy the statutory requirement to incorporate best practices defined by NTIA for ensuring reliability and resilience of broadband infrastructure, subgrantees must establish risk management plans that account for technology infrastructure reliability and resilience.⁵¹ This includes plans for natural disasters (e.g. wildfires, flooding, tornadoes, hurricanes, etc.), as applicable.

8.15.2 Cybersecurity

Prior to allocating any grant funds to subgrantees, the WVDED will require a subgrantee to attest that:

1. The subgrantee has a cybersecurity risk management plan (referenced as "the plan" for the duration of this subsection) in place that is either:
 - a. operational, if the subgrantee is providing service prior to the award of the grant; or

⁵¹ "Elimination of Regulatory Burdens," [NTIA BEAD Restructuring Policy Notice](#), pg. 5.

- b. ready to be operationalized upon providing service, if the subgrantee is not yet providing service prior to the grant award;
- 2. The plan reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
- 3. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- 4. The plan will be submitted to the Eligible Entity prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the Eligible Entity within 30 days.

8.15.3 Supply Chain Risk Management (SCRM)

Prior to allocating any grant funds to subgrantees, the WVDED will require each prospective subgrantee to attest that:

- 1. The prospective subgrantee has a SCRM plan (referenced as “the plan” for the duration of this subsection) in place that is either:
 - a. operational, if the prospective subgrantee is already providing service at the time of the grant; or
 - b. ready to be operationalized, if the prospective subgrantee is not yet providing service at the time of grant award;
- 2. The plan is based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;
- 3. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- 4. The plan will be submitted to the WVDED prior to the allocation of funds. If the subgrantee makes any substantive changes to the plan, a new version will be submitted to the WVDED within 30 days. The WVDED is required to provide a subgrantee’s plan to NTIA upon NTIA’s request.

To the extent a subgrantee relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), such subgrantee will be required to obtain the above attestations from its network provider with respect to cybersecurity practices and supply chain risk management practices.

8.16 Compliance with Federal Funds Obligations

In general, recipients and subrecipients of federal funds must comply with IIJA/BEAD funding recipient obligations, in addition to reporting obligations. Subgrantees should expect to comply with requirements of other applicable federal statutes, regulations, and executive orders applicable to recipients of federal funds. Applicants should consider how and whether certain aspects of these requirements may apply.

Subgrantees will be subject to audit or review by the NTIA, the Department of Commerce Office of Inspector General, or another authorized federal agency at any time.

Subgrantees will comply with the reporting requirements above as set forth in the BEAD NOFO as well as comply with obligations as set forth in 2 CFR Part 200 and the Department of Commerce Financial Assistance Standard Terms and Conditions.

Regarding the 2 CFR Part 200 Uniform Guidance, there may be different requirements for Internet Service Provider (ISP) subgrantees under fixed amount awards versus non-ISP subgrantees concerning property acquired with federal awards, treatment of program income, procurement, and other items pending further guidance by the NTIA. NTIA has advised Eligible Entities such as WVDED to proceed as though the exceptions to those requirements will apply to subgrantees. As such, WVDED intends to avail subgrantees of the 2 CFR Part 200 exceptions and adjustments that NTIA has proposed to apply in the BEAD program.⁵² These requirements will be outlined in compliance guidance that will be communicated through the WVDED website and grant agreement materials. As part of the transparency and accountability requirements of the Program, subgrantees will also establish and widely publicize telephone numbers and email addresses for the subgrantees' internal ethics office (or comparable entity) for the purpose of reporting waste, fraud, or abuse in the Program.

Subgrantees are encouraged to report any instances of fraud, waste, or abuse to the U.S. Department of Commerce Office of Inspector General (OIG).⁵³

WVDED and subgrantees alike will be subject to the whistleblower rights and remedies established under 41 USC § 4712, wherein subgrantee employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information the employee reasonably believes to be evidence of gross mismanagement, waste, abuses of authority and dangers to public safety, violations of law, rule, or regulations related to a federal contract or grant. Applicants will be required to inform employees and contractors in writing of these whistleblower rights.⁵⁴

This is not a comprehensive list of federal funding obligations. Subgrantee obligations are more fully described in WVDED's *Guide to Reporting and Compliance Obligations for West Virginia BEAD Broadband Investment Plan Subrecipients*.⁵⁵ Applicants should review this *Guide* as well as the applicable guidance provided and requirements as identified by the NTIA and the Department of Commerce.

8.17 Cooperation with State Broadband Mapping

In accordance with W.Va. Code §31G-1A-3, subgrantees must agree to provide information about broadband availability, pricing, and speeds in response to data collection requests from the State Broadband Office on an annual basis. Information must be reported statewide at the address level for all broadband networks operated by the subgrantee. WVDED intends to coordinate information requested with required reporting under the Federal Communications Commission's Broadband Data Collection initiative to minimize reporting burdens.⁵⁶

⁵² "[Tailoring the Application of the Uniform Guidance to the BEAD Program; Request for Comments](#)," Department of Commerce, July 5, 2023.

⁵³ See the [OIG Reporting Hotline](#).

⁵⁴ See also the [Whistleblower Protection Program](#).

⁵⁵ This document will be made available at <https://broadband.wv.gov>.

⁵⁶ See the FCC's Broadband Data Collection and [National Broadband Map](#).