

Commonwealth Connect

Broadband Equity, Access and Deployment Program

Initial Proposal Volume 2



commonwealth
connect

Overview

The Office of Broadband has published the following sections of the Initial Proposal, as required under the Broadband Equity, Access, and Deployment Program (BEAD). These sections serve as Volume 2 of the Initial Proposal.

This document reflects the version as re-submitted to the National Telecommunications and Information Association (NTIA) for consideration after the public comment period and feedback from NTIA's initial curing edits, as well as second round of curing edits, were considered and incorporated. This document does not reflect the final version, which may include additional edits as requested by NTIA to be in compliance with the BEAD Program. For more information about how the Initial Proposal, as well as other documents under the BEAD program align with closing the digital divide, we recommend reviewing the resources at [Virginia Telecommunication Initiative \(VATI\) | DHCD](#)

The section numbers below correspond with the according sections guides and templates published for submission by NTIA and corresponds with Notice of Funding Sections 1, 2, 4, and 8-19

COVER PAGE PHOTO CREDIT: Kendall Warner, *The News & Advance*

Pictured here is a telecommunications lineman employed by S&N Communications, Inc. who is lashing fiber as a part of a broadband deployment project in Amherst County. As in many rural locations in Virginia, this area is not accessible by bucket truck and the lineman must climb poles – one by one - in order to complete this step of construction. After climbing the pole, he uses a hand rope to hoist up the 50+ pound lasher and pulls it across the length of the span to attach the fiber to metal strand. This project was funded using CARES funds in 2020 and is a part of Firefly Fiber Broadband's larger broadband expansion effort in partnership with Central Virginia localities. In total, Firefly's build across 13 counties will provide broadband access to over 40,000 previously unserved homes, businesses, and community anchor institutions. The estimated \$310,000,000 project cost is supported by private sector funding, as well as local, state, and federal funds.

2.1.1 Text Box: Outline the long-term objectives for deploying broadband; closing the digital divide; addressing access, affordability, equity, and adoption issues; and enhancing economic growth and job creation. Eligible Entities may directly copy objectives included in their Five- Year Action Plans.

Governor Youngkin’s vision of affordable, reliable, high-speed internet access, universally across the Commonwealth of Virginia is paramount to full participation in the 21st century and ensuring Virginia is the best place to live, work, and raise a family. The Commonwealth’s work over the past several years is leading to the connection of hundreds of thousands of households, has supported projects that cut the digital divide by more than half, established a nationally recognized state broadband program, and set Virginia on a path to be one of the first large states in the country to achieve universal broadband.

To achieve this goal, the Commonwealth’s broadband infrastructure must extend to all Virginians to whom it can practically be extended. Additionally, it will require policy structures and models of service delivery to support affordable access to the internet for those who cannot afford it via that infrastructure.

Building upon this investment in infrastructure, the Commonwealth must also now begin to address the other components of the digital divide – those of affordability and adoption of high-speed internet access. Together, affordable broadband and full broadband adoption will make Virginia a state of digital opportunity – one whose residents have affordable, reliable, and high-speed internet access, and the skills necessary to use it to its full potential. The wide-ranging benefits of connectivity, including smart farming, building a business online, and telehealth, will keep Virginia competitive in a fast-changing, connected world.

- Goal: Invest BEAD funding to achieve functionally universal broadband access, by the end of 2024 to all unserved and underserved locations in the Commonwealth that lack a funded solution for broadband access.
 - Objective: Continue to work with local government and broadband providers to plan shovel-ready, universal broadband projects ready for funding
 - Objective: Remove the barrier of special construction costs for broadband access to locations through a line extension program.
- Goal: Complete construction of BEAD funded projects by 2027 & 2028.
 - Objective: Support development of broadband and other industry -related workforce to meet the ongoing construction and long-term operation and maintenance needs of broadband networks and associated infrastructure.
- Goal: To the extent funding is available, promote federal resources for broadband affordability by increasing ACP utilization by more than 5% through existing and future efforts.
 - Objective: Fully utilize the Affordable Connectivity Program to lower the cost of broadband services for those that need it most.
- Goal: To the extent funding is available, conduct state-wide needs assessments and develop programs to reach full broadband adoption.
 - Objective: Development and implement programs that support smart farming, building and operating business online, and telehealth, among others

- Objective: Support sustainable, long-term programs to provide devices, including computers and tablets, to those in need
- Objective: Develop and promote digital literacy and navigator programs in partnership with multiple institutions across the Commonwealth

2.2.1 Text Box: Identify and outline steps that the Eligible Entity will take to support local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide. In the description, include how the Eligible Entity will coordinate its own planning efforts with the broadband planning processes of local and Tribal Governments, and other local, Tribal, and regional entities. Eligible Entities may directly copy descriptions in their Five-Year Action Plans.

The Commonwealth of Virginia, over the past five years, has developed a robust group of stakeholders for the goal of supporting universal access to broadband and associated broadband deployment programs. This group of stakeholders, the Commonwealth Connect Coalition, has been instrumental in supporting these efforts and will continue to be engaged to achieve the goals of universal broadband access under the BEAD program. These ongoing efforts are described in detail in section 2.3.1 of this document.

2.3.1 Text Box: Describe the coordination conducted, summarize the impact such impact has on the content of the Initial Proposal, and detail ongoing coordination efforts. Set forth the plan for how the Eligible Entity will fulfil the coordination associated with its Final Proposal.

Meaningful stakeholder engagement is critical to the success of any state broadband office. Fortunately, the Department of Housing and Community Development's Office of Broadband has long conducted robust stakeholder engagement through the Virginia Telecommunication Initiative (VATI) and other programs. The Office leveraged existing relationships while bringing new partners to the table for the purposes of coordinating local involvement in the BEAD program. In May the Office hosted three listening sessions to seek input from stakeholders on the development of the Five-Year Plan and Initial Proposal. The Office hosted one listening session each for local governments, broadband providers and industry representatives, and local organizations, non-profits, and community organizations. During these input sessions, the Office of Broadband provided an update of broadband progress in the Commonwealth and discussed the opportunities, as well as high-level plans under BEAD. In June, the Office of Broadband hosted an input session to solicit feedback on Volume 1 of Virginia's Initial Proposal under the BEAD program.

In May, the Office of Broadband hosted Tribal Governments for a formal Tribal Consultation in Richmond, VA. At this consultation, Office of Broadband staff delivered a presentation on the BEAD program and its role in finalizing the deployment of broadband infrastructure across Virginia, as well as on the Digital Equity Act and Virginia's activities to develop the Virginia Digital Opportunity Plan.. Following this presentation, Tribal Leaders were consulted on the needs of their communities, related to deployment and non-deployment. Office of Broadband staff, including the Office's Director Dr. Tamarah Holmes, discussed the successes and challenges of the VATI program, and the remaining needs in Tribal communities that the Office can address with BEAD funds.

The Office's local coordination strategy has been in keeping with the local coordination criteria identified in the BEAD notice of Funding Opportunity. Full geographic coverage was prioritized in the structure of the listening sessions hosted by the Office of Broadband. Local governments from across the Commonwealth were present in the local government listening session, representing urban, suburban, and rural areas of Virginia. Commonwealth and federally recognized Tribal Governments from across Virginia attended the Office's Tribal Government Consultation. Broadband providers and local organizations attended separate listening sessions that brought together Virginians from all corners of the Commonwealth. Additionally, workforce development organizations, such as the Virginia Community College System, have been engaged through presentations and workshops to workforce development advisory committees, including the infrastructure workforce advisory committee. The Office of Broadband continues to serve as a technical resource in the development of these programs to meet the workforce needs of broadband network construction and maintenance. To date, no locality or Tribal Government has submitted a local broadband plan to the Office of Broadband for consideration in the development of BEAD proposals. The Office of Broadband will offer every locality and federally recognized Tribal Government in Virginia the opportunity to develop a broadband affordability and adoption plan using BEAD planning funds. These plans will inform the development of Virginia's BEAD Final Proposal.

The Office ensured diverse stakeholders had the opportunity to be at the table for consideration of the Office's plans under the BEAD program, as well as to provide input on Volume 1 of the Initial Proposal. The primary stakeholders that are non-traditional for the Office of Broadband's infrastructure deployment programs are non-profit organizations, community action agencies, and other local or community-based organizations. For example, the Office of Broadband engaged the Virginia Community Action Partnership (VACAP), a membership association representing more than thirty community action agencies, in discussions on the BEAD program. Primarily due to stakeholder engagement done under the Office's Digital Equity Planning Grant and existing relationships, the Office of Broadband has developed a growing coalition of community-serving organizations. Ensuring these organizations were involved in the BEAD program development was a priority. These organizations were invited to attend the Initial Proposal Volume 1 and Volume 2 input sessions and provide feedback on the draft proposals. Additionally, the Office designated a specific listening session to inform these organizations of the Office's plans under the BEAD program and solicit feedback on how deployment, and potential non-deployment, programs can be most effective for community-serving organizations.

The Office of Broadband is utilizing an array of communications methods to ensure widespread awareness of activities under the BEAD program, and to ensure that the Office's work under BEAD adheres to the highest standards of transparency. As previously discussed, the Office hosted three listening sessions, a formal Tribal Consultation, and an input session. Additionally, the Office is consistently communicating updates to stakeholders via email, and by posting all information, including contact information, documents, recordings of listening sessions and input sessions and slides presented to our agency website at dhcd.virginia.gov/VATI. The Office of Broadband's website is translatable to a wide variety of languages and is regularly updated as information changes. Contact information is clearly presented, and inboxes regularly monitored. DHCD's and the Office of Broadband contact lists are regularly utilized to distribute information on upcoming listening sessions, input sessions, and program updates. The Office used all mediums of communication discussed above to communicate all opportunities for input, including the announcement of a period for public comment on Initial Proposal Volume 1.

The bulk of the Office's engagement with unserved, underserved, and underrepresented

communities is occurring in the development of the Virginia Digital Opportunity Plan under Virginia's Digital Equity Planning Grant. The Office is working with Community Action Agencies (CAAs) to develop regional plans that address the digital divide and propose solutions that can be addressed with Virginia's Capacity Grant allocation and potential BEAD non-deployment funds. Virginia's Community Action Agencies have a long history of working directly in their communities, which closely align with the populations identified as 'covered' by NTIA in the Digital Equity Planning Grant NOFO. The Office of Broadband identified lead CAAs for nine regions to conduct grassroots engagement, including the facilitation of community input sessions and focus groups with community members, to solicit input on how the digital divide affects them personally, their family or household, and the community at large. CAAs are hosting these discussions and distributing the Virginia Digital Opportunity Survey in their communities. As of August 1st, nearly 25% of respondents to the Digital Opportunity Survey have identified as low-income, 13.5% of respondents have identified as individuals with disabilities, and more than 20% have identified as members of a racial or ethnic minority. The Office's primary efforts to involve unserved, underserved, and underrepresented communities in the BEAD planning process specifically have been through engagement with representative groups that work directly with low-income populations, members of racial and ethnic minorities, those with disabilities, and other traditionally underrepresented groups. Specifically, the Office of Broadband engaged with these groups in a formal setting in the listening sessions for local governments, and community-serving organizations, as well as the formal Tribal Government Consultation. These groups are well-positioned to represent the needs of unserved, underserved, and underrepresented communities.

The coordination described above informed the development of both volumes of the Office of Broadband's Initial Proposal, as well as the Five-Year Plan. Aside from items required specifically as identified in the BEAD Notice of Funding Opportunity, each element of this proposal that the Office had flexibility to structure is meant to balance the interests of our invaluable community of stakeholders. Each requirement enumerated in this proposal is the product of a process of robust stakeholder engagement and iterative development to ensure that the interests, concerns, constraints, and priorities of local governments, broadband providers, non-profits and community organizations, and Tribal Governments are accounted for to the greatest extent possible while meeting the requirements established by Congress and NTIA.

An example of a product of this process are the scoring criteria that the Office of Broadband will use to evaluate deployment proposals. It is the belief of the Office of Broadband that these scoring criteria, described in section 2.4.2 of this proposal, accurately reflect the input the Office of Broadband staff received in dialogue with stakeholders about what should be prioritized within the confines of what the Office has control over versus what is prescribed in the Notice of Funding Opportunity. As a specific example, the Office identified local coordination with local government and Tribal Governments as a critical priority for stakeholders and incorporated this sentiment into the scoring criteria.

2.3.2 Text Box: Describe the formal tribal consultation process conducted with federally recognized Tribes, to the extent that the Eligible Entity encompasses federally recognized Tribes. If the Eligible Entity does not encompass federally recognized Tribes, note "Not applicable."

The Office of Broadband followed agency protocol and NTIA practice identified in the State Broadband Office Tribal Engagement guide in organizing its formal consultation with Tribal

Governments related to the BEAD and Digital Equity Act programs. The agency invited every federally recognized and Commonwealth-recognized Tribe to a formal Tribal Government consultation held on May 16th, 2023, via a Dear Tribal Leader letter sent by Governor Youngkin's Office and signed by the Governor. The following language was sent in a Dear Tribal Leader Letter to designated Tribal contacts on April 21st, 2023:

“Dear Honorable Chief;

On behalf of the Commonwealth of Virginia, I am announcing a Tribal Consultation on the forthcoming broadband funding that will be allocated to the Commonwealth of Virginia through the Broadband Equity, Access, and Deployment (BEAD) Program, as well as programs under the Digital Equity Act by the Infrastructure Investment and Jobs Act (IIJA).

The Department of Housing and Community Development (DHCD) has been designated as the lead agency on broadband and is actively developing both Virginia's 5-Year Plan, the Initial Proposal required under the BEAD program, and the Commonwealth Digital Opportunity Plan under the federal Digital Equity Act program. Many Tribal Governments have not only been key stakeholders in the development of the Virginia Telecommunication Initiative (VATI) but have also been partners in the planning and implementation of broadband expansion projects funded through VATI. As we work towards closing the digital divide by providing affordable, reliable, high-speed internet universally across the Commonwealth, it is our belief that to have continued success in our efforts that Federal and State Tribal Governments must be at the table during planning and implementation of BEAD and Digital Equity programs.

My administration, through DHCD, is committed to holding this consultation to ensure that Tribal Governments provide input in the development of these plans and future broadband programs. This letter serves as an invitation for you and/or a representative from your Tribal Government to join and participate in discussions. The goal for this consultation is to receive input from Tribal Governments on how they would like to engage in Virginia's broadband activities under both BEAD and Digital Equity Act programs.”

At this consultation, tribal government representatives reiterated the need for high-speed internet access, but also communicated adoption-oriented needs of tribal members, including technology literacy programs for seniors, telehealth opportunities, connected agriculture, and general opportunities for young people online. These conversations have been reflected in the development of BEAD planning documents and will also be critical in the final development of the Commonwealth's Digital Opportunity Plan under the State Digital Equity Act Planning Grant Program.

A copy of the Dear Tribal Leader Letter sent by the Governor inviting Tribal representatives to attend the Office of Broadband's BEAD and Digital Equity Act listening session is attached as an appendix to this Proposal, as is a participation list for the event. Additionally, the attendees of the Tribal Government consultation, as well as their Tribe of origin, are included in the attached Local Coordination Tracker Tool. [An agenda and attendee list of this hybrid in-person/virtual meeting is included in the attachments to this document.](#)

2.4.1 Text Box: Describe a detailed plan to competitively award subgrants to last-mile broadband deployment projects through a fair, open, and competitive process.

The subgrantee selection process for BEAD will begin following approval of Volume 2 of Virginia's Initial Proposal by NTIA or following the completion of the BEAD challenge process

and publishing of a finalized list of unserved and underserved locations, and unserved community anchor institutions, whichever is later. At this point, the Office of Broadband will begin accepting letters of intent over a 60-calendar day period to outline plans to provide last-mile services, including middle-mile networks, equipment, or other investments required to deliver last-mile service to eligible areas across of the Commonwealth.

This letter of intent must include high level information about the applicant and a general statement of qualification for expanding broadband infrastructure to unserved and underserved locations, as well as unserved community anchor institutions under the Broadband Equity, Access, and Deployment Program. This letter of intent shall not exceed two pages in length and should be submitted to the Office of Broadband via email at broadband@dhcd.virginia.gov. The Office of Broadband will notify stakeholders of the opening of this letter of intent period through communication via existing email networks and databases and post this opportunity publicly on the Office of Broadband's website. If stakeholders do not currently receive communications from the Department of Housing and Community Development's Office of Broadband regarding funding programs and guidelines, stakeholders should contact broadband@dhcd.virginia.gov to be added to this database.

Prospective subgrantees must submit this letter of intent to be eligible to apply in the BEAD subgrantee selection process for broadband deployment. This letter of intent will be publicly posted within 10 calendar days of the deadline on the Virginia Telecommunication Initiative webpage. As an attachment to this letter of intent, prospective subgrantees must include a list of counties and cities that the prospective subgrantee may expand broadband access in under the BEAD program. As with any information required to be submitted by applicants under BEAD, prospective subgrantees may request¹ this list of counties and cities be exempt from the Freedom of Information Act. Eligible subgrantees will not be required to submit an application in all counties and cities listed in this letter of intent process; however, applications may not be submitted in counties or cities not listed on a provider's letter of intent.²

Application areas will be defined as Zip Code Tabulation Areas (ZCTA). In the event a ZCTA spans multiple Counties or Cities, the ZCTA will be divided into multiple application areas by County and City boundaries. These application borders and associated application area numbers will be published prior to the start of the letter of intent window, along with the publication of a finalized list of unserved and underserved locations, and community anchor institutions.

Applicants must propose to serve at least 95% of unserved and underserved locations, as well as unserved community anchor institutions in each application area. Please see the scoring criteria outlined under this Initial Proposal for incentivizing 100% of such locations be included in applications. Figures at or above 94.5% will not be rounded up to 95%.

¹ All entities requesting Freedom of Information (FOIA) exemption for information pertaining to the BEAD subgrantee selection process shall submit the request for exemption in writing detailing the documentation to broadband@dhcd.virginia.gov. Only materials submitted to DHCD directly are subject to consideration for a FOIA exemption. Pursuant to 2.2-3705.6-3, the Department of Housing and Community Development (DHCD) will make a written determination within ten (10) days of the request as to whether FOIA exemption will be afforded as well as the nature and scope of the protection. Upon receipt of the written determination from DHCD documents must be submitted to broadband@dhcd.virginia.gov. All exempted information will be securely maintained and accessed by Office of Broadband staff only. Materials, if requested by NTIA during the Final Proposal Process, may be shared with NTIA regardless of the exemption provided.

² Prospective subgrantees that identify they may serve all Virginia Counties and Cities will be required to submit additional detail in this process.

90 calendar days following the letter of intent submission deadline, applicants must submit full applications. The Office of Broadband will invite applications through the Centralized Application Management System (CAMS). Prior to and throughout this application period, the Office of Broadband will issue clarifying guidance based on guidance outlined in this Initial Proposal to streamline project development and clarify requirements for applicants.

Within 10 business days following this submission deadline, the Office of Broadband will post all applications and submitted materials for each application on the Virginia Telecommunication Initiative webpage.

If Virginia Telecommunication Initiative awards of state general funds are announced prior to the Commonwealth of Virginia recommending awards to NTIA under the BEAD program, applicants will be notified by the Office of Broadband have at least 14 calendar days to resubmit their proposals with these VATI award areas removed. The same calendar day extension will be applied if other federal programs, including, but not limited to Enhanced ACAM and United States Department of Agriculture broadband deployment funding, are accepted or announced during this 90-day application window in the Commonwealth of Virginia.

Following the submission of full applications, the Office of Broadband will begin evaluation of all proposals submitted. Following approval of projects by the Youngkin Administration and required federal parties, awards will be announced. Stakeholders may be apprised of anticipated evaluation and announcement timelines as this process takes place.

Following the announcement of these awards, the Office of Broadband will engage with nearby awardees, incumbent service providers, and other applicants to seek broadband access solutions for the up to 5% of unserved and underserved locations, as well as unserved Community Anchor Institution that may remain after a project is awarded.

The Office of Broadband will notify applicants and other interested stakeholders of the stages of the process outlined above by publishing timelines on the Virginia Telecommunication Initiative Website, as well as communicating to stakeholders through existing channels.

The Office of Broadband will work to streamline the application process for applicants under the BEAD program. Each applicant applying under BEAD will be required to complete an application narrative to satisfy the requirements outlined in this document, as well as the BEAD Notice of Funding Opportunity. These narrative-heavy components of applications will suffice for all application areas across the Commonwealth, unless the applicant wishes to change their narrative responses for different regions of Virginia. This process avoids requiring applicants to complete application narratives for each unit of geography in their proposal. Along with this narrative component of the application, applicants must submit items specific to each application area, including cost estimates, network designs and diagrams, built-out timelines, and local coordination outcomes. Prior to the start of the 90-day application window, the Office of Broadband will provide a submission template to streamline and coordinate this process, where applicants will outline the requested dollar amount to serve unserved locations, underserved locations, and unserved Community Anchor Institutions in that application area, as well as the matching funds slated to be contributed to the build and other application area specific information.

The Office of Broadband, in this document, has established a fair, open, equitable, and competitive subgrantee selection process and has ensured that adequate safeguards are in place to protect the integrity of the competition, including safeguards against collusion, bias, conflicts of interest, arbitrary decisions, and other factors that could undermine confidence in the process

outlined above. Specifically, this is addressed through the opportunity that list of counties and cities in which a prospective subgrantee is interested in applying will not be publicly posted and can be held exempt from Freedom of Information Act requirements.

Additionally, addressing this requirement broadly, the Commonwealth of Virginia has robust and varied resources to address matters related to fraud, waste, and abuse; internal controls; risk management; financial accounting and controls; and conflict of interests.

2.4.2 Text Box: Describe how the prioritization and scoring process will be conducted and is consistent with the BEAD NOFO requirements on pages 42 – 46.

The Office of Broadband adopts the scoring criteria and weight of each respective criteria below for the purposes of evaluating proposal of Priority Broadband Projects under the BEAD program, meaning projects that will provision service via end-to-end fiber-optic facilities to each end-user premises. These criteria abide by the guidelines set forth for project scoring in the Notice of Funding Opportunity. Evaluation criteria are outlined below each scoring category.

Minimal BEAD Program Outlay – 45%

- **Description:** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the applicant's proposed match (which must, absent a waiver, cover no less than 25 percent of the project cost).
- **Scoring:** The most cost-efficient proposal, evaluated based on the total funding requested to provide broadband access to a defined application area divided by the number of locations proposed to be served in that application area (BEAD funding requested per location), will receive full credit under this section. Less cost-efficient proposals will receive a percentage of points available, reflective to the most efficient application received for that application area. [See below more information on this scoring methodology.](#)

[—If there are three priority applications in one ZCTA, and the BEAD funding requested per location for each application are \\$3,500, \\$3,900, and \\$5,500. The \\$3,500 application will receive the maximum credit under this section of 45 points. The \\$3,900 application, because it is 11.4% less cost efficient than the most efficient application, will receive 40.38 points. \$\(45 / \(\\$3,900 / \\$3,500\)\)\$. The \\$5,500 application, because it is 57.1% less efficient than the most efficient application, will receive 28.6 points. \$\(45 / \(\\$5,500 / \\$3,500\)\)\$. If this process results in a negative score in this category, the application will receive a score of zero.](#)

Affordability – 20%

- **Description:** The applicant's commitment to provide the most affordable total price to the customer for 1 Gbps/1 Gbps (Gigabit symmetrical) service in the project area
- **Scoring:** The Office of Broadband will adopt the rate for the highest speed threshold plan listed by the FCC in the Commission's Urban Rate Survey. If the service package

cost of gigabit symmetrical service is at or below the Urban Rate Survey value³, inclusive of all taxes, fees, and charges billed to the customer, the applicant will receive full credit under this section. More expensive packages receive a percentage of points reflective of their percent distance from the value of the Urban Rate Survey per month, inclusive of all taxes, fees, and charges billed to the customer. The service option that the applicant submits to the Office of Broadband for scoring purposes must remain available for the useful life of the network assets. [See below more information on this scoring methodology.](#)

[For example, if the Urban Rate Survey value for a 1,000/500 Mbps Package for a Unlimited Data Plan is \\$140, then all applicants offering a gigabit symmetrical plan at or below this amount will receive 20 points under this section. If an applicant proposes a \\$150 priced package for gigabit symmetrical services, because that is 7.1% more expensive than the Urban Rate Survey value of \\$140, the applicant will receive 18.7 points \(20/\(\\$150/\\$140\)\).](#)

- The price identified, as well as the speed offerings, for this service option will be a contractual requirement of awardees for the useful life of the network assets, which is defined by the Commonwealth of Virginia as 8 years for the purpose of this section. This price shall be indexed to Consumer Price Index, as outlined by the U.S. Bureau of Labor Statistics.

Fair Labor Practices – 10.2%

- **Description:** Applicants must narratively demonstrate a record of and plans to be in compliance with Federal labor and employment laws. Applicants without a record of labor and employment law compliance are permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects.
- **Scoring:** The Office of Broadband will evaluate and score narrative responses under this category. Applicants which provide the information outlined above and certify they will comply with the existing labor requirements outlined in the BEAD Notice of Funding Opportunity will receive full credit in this section. Applications which only certify they will comply with the existing labor requirements outlined in the BEAD Notice of Funding Opportunity, and do not provide the information outlined above, will receive half credit in this section. Applications that provide no response will receive no credit in this section.

Speed to Deployment – 5%

- **Description:** All subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband services within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.
- **Scoring:** The Office of Broadband will provide full credit under this section if a prospective subgrantee demonstrates broadband access will be provided to all locations in the project area within 3 years of award announcement. As justification, prospective

³ The Urban Rate Survey's maximum speed offering listed is 1,000 Mbps Download and 500 Mbps Upload, the rate of which will be used as the rate for this analysis.

subgrantees must submit additional information and justification of this 3-year timeline, including efforts to mitigate delays, shortages, and constraints in supply chains, workforce development, federal requirements imposed by the BEAD program, and permitting associated with broadband network construction.

Universality of Applications– 9.9%

- **Description:** This Initial Proposal outlines project areas as boundaries of Zip Code Tabulation Areas (ZCTA), which are then further divided by County and City Boundaries if a ZCTA spans multiple Counties and Cities. This document also outlines that, for an application to be considered, at least 95% of locations in each application area must be included in an application. This scoring criteria is included to incentivize applicants to include 100% of unserved and underserved locations, as well as unserved Community Anchor Institutions in an application area.
- **Scoring:** The Office of Broadband has established the rubric described below to score applications under this criteria. The following scores will be assigned by percentage of locations proposed to be served. (95% to 96% - 0 points, 96% to 97% - 2 points, 97% to 98% - 4 points, 98% to 99% - 6 points, 99% to 99.5% - 8 points, 99.5% to 100% - 9.9 points)

Local and Tribal Coordination – Letter of Support – 9.9%

- **Description:** Broadband deployment programs in the Commonwealth of Virginia have long placed authority at the local government level to determine the preferred broadband provider partner of the locality to fill gaps in broadband access. While the BEAD program requires the Office of Broadband to invite proposals directly from broadband providers, this scoring criteria is designed to provide an opportunity for counties and cities to weigh in on the preferred partner of the locality to address the remaining gaps without broadband access. Also see section 2.4.8 for coordination requirements with Tribal Governments.
- **Scoring:** Applicants which have received a letter of support from County Boards of Supervisors or City Councils and Tribal Nations (if applicable) will receive full credit under this section. Local and tribal governments may support one or multiple applicants.

In the event an application area was not proposed to be served through an application with a Priority Broadband Project, the Office of Broadband adopts the scoring criteria and weight of each respective criteria below for the purposes of evaluating proposals of Other Last-Mile Broadband Deployment Projects under the BEAD program. These criteria abide by the guidelines set forth for project scoring in the Notice of Funding Opportunity. Evaluation criteria are outlined below each scoring category.

Minimal BEAD Program Outlay – 45%

- **Description:** The total BEAD funding that will be required to complete the project, accounting for both total projected cost and the applicant's proposed match (which must, absent a waiver, cover no less than 25 percent of the project cost).
- **Scoring:** The most cost-efficient proposal, evaluated based on the total funding requested to provide broadband access to a defined application area divided by the number of locations proposed to be served in that application area (BEAD funding requested per location), will receive full credit under this section. Less cost-efficient

proposals will receive a percentage of points available, reflective to the most efficient application received for that application area. [See below more information on this scoring methodology.](#)

[If there are three non-priority applications in one ZCTA, and the BEAD funding requested per location for each application are \\$3,500, \\$3,900, and \\$5,500. The \\$3,500 application will receive the maximum credit under this section of 45 points. The \\$3,900 application, because it is 11.4% less cost efficient than the most efficient application, will receive 40.38 points. \$\(45/\(\\$3,900/\\$3,500\)\)\$. The \\$5,500 application, because it is 57.1% less efficient than the most efficient application, will receive 28.6 points. \$\(45/\(\\$5,500/\\$3,500\)\)\$. If this process results in a negative score in this category, the application will receive a score of zero.](#)

Affordability – 20%

- Description: The applicant's commitment to provide the most affordable total price to the customer for a 100 Megabit per second download and 20 Megabit per second upload service (100/20) in the project area.
- Scoring: The Office of Broadband will adopt the rate for the highest speed threshold plan listed by the FCC in the Commission's Urban Rate Survey. If the service package cost of 100/20 service is at or below the Urban Rate Survey value, inclusive of all taxes, fees, and charges billed to the customer, the applicant will receive full credit under this section. More expensive packages receive a percentage of points reflective of their percent distance from the value of the Urban Rate Survey per month, inclusive of all taxes, fees, and charges billed to the customer. The service option that the applicant submits to the Office of Broadband for scoring purposes must remain available for the useful life of the network assets. [See below more information on this scoring methodology.](#)

[For example, if the Urban Rate Survey value for a 100/20 Mbps Package for a Unlimited Data Plan is \\$140, then all applicants offering a 100/20 plan at or below this amount will receive 20 points under this section. If an applicant proposes a \\$150 priced package for 100/20 services, because that is 7.1% more expensive than the Urban Rate Survey value of \\$140, the applicant will receive 18.7 points \$\(20/\(\\$150/\\$140\)\)\$.](#)

- The price identified, as well as the speed offerings, for this service option will be a contractual requirement of awardees for the useful life of the network assets, which is defined by the Commonwealth of Virginia as 8 years for the purpose of this section. This price shall be indexed to Consumer Price Index, as outlined by the U.S. Bureau of Labor Statistics.

Fair Labor Practices – 10.2%

- Description: Applicants must narratively demonstrate a record of and plans to be in compliance with Federal labor and employment laws. Subgrantees without a record of labor and employment law compliance are permitted to mitigate this fact by making specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects.
- Scoring: The Office of Broadband will evaluate and score narrative responses under this

category. Applicants which provide the information outlined above and certify they will comply with the existing labor requirements outlined in the BEAD Notice of Funding Opportunity will receive full credit in this section. Applications which only certify they will comply with the existing labor requirements outlined in the BEAD Notice of Funding Opportunity, and do not provide the information outlined above, will receive half credit in this section. Applications that provide no response will receive no credit in this section.

Speed to Deployment – 2.5%

- **Description:** All subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband services within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.
- **Scoring:** The Office of Broadband will provide full credit under this section if a prospective subgrantee demonstrates broadband access will be provided to all locations in the project area within 3 years of award announcement. As justification, prospective subgrantees must submit additional information and justification of this 3-year timeline, including efforts to mitigate delays, shortages, and constraints in supply chains, workforce development, federal requirements imposed by the BEAD program, and permitting associated with broadband network construction.

Speed of Network and Other Technical Capabilities – 2.5%

- **Description:** The Office of Broadband will weigh the speeds, latency, and other technical capabilities of the technologies proposed by applicants seeking to deploy projects that are not Priority Broadband Projects. Applications proposing to use technologies that exhibit greater ease of scalability with lower future investment and whose capital assets have longer useable lives will be afforded additional weight over those proposing technologies with higher costs to upgrade and shorter capital asset cycles.
- **Scoring:** The Office of Broadband will evaluate and score narrative responses under this category based on the rubric outlined herein. Maximum latency may not exceed 100 milliseconds. (300 Mbps Download/150 Mbps Upload = 1 point, 400 Mbps Download/200 Mbps Upload = 2 points, 1000 Mbps Download/500 Mbps Upload = 2.5 points). Applicants must demonstrate that the proposed network design has the ability deliver the above performance levels to all eligible locations within an application, including reasonable assessment of how the proposed network can add incremental capacity in a cost-effective manner as new customers are added.

Universality of Applications – 9.9%

- **Description:** This Initial Proposal outlines project areas as boundaries of Zip Code Tabulation Areas (ZCTA), which are then further divided by County and City Boundaries if a ZCTA spans multiple Counties and Cities. This document also outlines that, for an application to be considered, at least 95% of locations in each application area must be included in an application. This scoring criteria is included to incentivize applicants to include 100% of unserved and underserved locations, as well as unserved Community Anchor Institutions in an application area.
- **Scoring:** The Office of Broadband has established the rubric described below to score

applications under this criteria. The following scores will be assigned by percentage of locations proposed to be served. (95% to 96% - 0 points, 96% to 97% - 2 points, 97% to 98% - 4 points, 98% to 99% - 6 points, 99% to 99.5% - 8 points, 99.5% to 100% - 9.9 points)

Local and Tribal Coordination – Letter of Support – 9.9%

- Description: Broadband deployment programs in the Commonwealth of Virginia have long placed authority at the local government level to determine the preferred broadband provider partner of the locality to fill gaps in broadband access. While the BEAD program requires the Office of Broadband to invite proposals directly from broadband providers, this scoring criteria is designed to provide an opportunity for counties and cities to weigh in on the preferred partner of the locality to address the remaining gaps without broadband access. Also see section 2.4.8 for coordination requirements with Tribal Governments.
- Scoring: Applicants which have received a letter of support from County Boards of Supervisors or City Councils and Tribal Nations (if applicable) will receive full credit under this section. Local and tribal governments may support one or multiple applicants.

2.4.3 Text Box: Describe how the proposed subgrantee selection process will prioritize Unserved Service Projects in a manner that ensures complete coverage of all unserved locations prior to prioritizing Underserved Service Projects followed by prioritization of eligible CAIs.

Based on cost projections developed and outlined in Virginia’s 5-Year Plan, it is firmly expected that funding available under the BEAD program will address all unserved, underserved, and community anchor institutions that lack broadband access as defined by the BEAD program. A definitive number of total investments required to reach universal broadband access in the Commonwealth will be finalized when BEAD applications have been submitted by applicants after the challenge and application process.

If funding availability is in question to cover the remaining gaps in broadband access, the Office of Broadband will request applicants provide rescoped project areas/locations to reach only those locations which are unserved, underserved, or Community Anchor Institutions as defined by the BEAD program, with respect to funding availability. If this request is made, applicants will have 30 calendar days to submit updated project details the Office of Broadband. If funding is only available for one of the investment priority areas, the Office of Broadband will prioritize projects by investment area. For example, unserved locations would receive first priority, followed by underserved locations, and then Community Anchor Institutions lacking gigabit service.

2.4.4 Text Box: If proposing to use BEAD funds to prioritize non-deployment projects prior to, or in lieu of the deployment of services to eligible CAIs, provide a strong rationale for doing so. If not applicable to plans, note “Not applicable.”

Not applicable

2.4.5 Text Box: The proposed subgrantee selection process is expected to demonstrate to subgrantees how to comply with all applicable Environmental and Historic Preservation (EHP) and Build America, Buy America Act (BABA) requirements for their respective project or projects. Describe how the Eligible

Entity will communicate EHP and BABA requirements to prospective subgrantees, and how EHP and BABA requirements will be incorporated into the subgrantee selection process.

The Office of Broadband will place emphasis on ensuring that taxpayer dollars are spent procuring needed products and supplies from American workers and businesses, thereby strengthening and growing U.S. domestic manufacturing capacity. The Office of Broadband will communicate requirements stipulated in the Build America, Buy America Act (BABA) to all applicants prior to the selection process. Key points highlighted by the Office of Broadband will be:

- Requirement that all iron, steel, manufactured products (including but not limited to fiber-optic communications facilities), and construction materials used in the project or other eligible activities are produced in the United States unless a waiver is granted.
- In determining whether a product is produced in America, subrecipients must comply with definitions included in Section 70912 of the Build America, Buy America Act, which provides that a manufactured product is considered produced in the United States if the manufactured product was manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- In addition to the provisions above, subgrantees may not use BEAD funding to purchase or support any covered communications equipment or service, as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608).
- The Infrastructure Act expressly prohibits subgrantees from using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China unless a waiver of this requirement is received from the Assistant Secretary.

The Office of Broadband will incorporate the requirements of the Build America, Buy America Act into the subgrantee selection process by conducting regulations information webinars, posting a list of regulations on the VATI [website](#), and including the requirements in grant applications/instructions as well as grant agreement terms/conditions and subgrantee grant monitoring program requirements.

Any application that does not show intent to abide by BABA or explicitly violates the requirements will not be considered to receive BEAD funding.

Finally, the Office of Broadband acknowledges that, at the time of drafting this Initial Proposal, NTIA is considering amendments to existing BABA guidance. To account for this uncertainty, the Office of Broadband will adopt the final guidance as published by NTIA.

The Office of Broadband will adhere to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.) and National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) requirements to analyze the potential environmental impacts of awardee projects and other eligible activities that are seeking to utilize BEAD funding. Communication between the Office of Broadband and applicants prior to and throughout the selection process will ensure entities seeking to capitalize on BEAD funding comply with NEPA and NHPA. The below points

will be specifically highlighted:

- Projects or other eligible activities containing construction and/or ground-disturbing activities are required to submit all required environmental documentation to NTIA with their Final Proposals, which also must describe how they will comply with applicable environmental and national historical preservation requirements.
- It is the Office of Broadband's and subgrantee's responsibility to obtain all necessary federal, Eligible Entity, and local governmental permits and approvals necessary for the proposed work to be conducted.
- Projects and other eligible activities are expected to be designed so that they minimize the potential for adverse impacts on the environment.

The Office of Broadband will incorporate the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.) and National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) into the subgrantee selection process by conducting regulations information webinars, posting a list of regulations on the VATI [website](#), and including the requirements in grant applications/instructions as well as contract negotiation records, grant agreement terms/conditions and subrecipient grant monitoring program requirements.

Projects that fail to comply with EHP regulations will not be considered to receive BEAD funding.

2.4.6. Text Box: Describe how the Eligible Entity will define project areas from which they will solicit proposals from prospective subgrantees. If prospective subgrantees will be given the option to define alternative proposed project areas, describe the mechanism for de-conflicting overlapping proposals to allow for like-to-like comparisons of competing proposals.

Application areas will be defined as Zip Code Tabulation Areas (ZCTA). In the event a ZCTA spans multiple Counties or Cities, the ZCTA will be divided into multiple application areas by County and City boundaries. These application borders and associated application area numbers will be published prior to the start of the letter of intent window, along with the publication of a finalized list of unserved and underserved locations, and community anchor institutions. [This pre-defined geography allows the Office of Broadband to compare 'apples-to-apples,' with each applicant required to consider the same geographic area in the application process.](#)

Applicants must propose to serve at least 95% of unserved and underserved locations, as well as unserved community anchor institutions in each application area. Please see the scoring criteria outlined under this Initial Proposal for incentivizing 100% of such locations be included in applications. Figures at or above 94.5% will not be rounded up to 95%.

[Applicants may submit both bundled and reserve proposals for ZCTAs. Applicants may elect to bundle ZCTAs and provide application information assuming that all of the ZCTAs in the bundle would be awarded to the applicant. This bundled approach allows applicants to submit their best proposal across multiple ZCTAs by allowing applicants to consider required costs across multiple ZCTA's. For example, the cost of middle mile infrastructure required to reach a ZCTA can be factored in across multiple ZCTAs, rather than factoring in the middle mile cost to each ZCTA if bid on individually. Bundled ZCTAs may not include more than 1 county or city.](#)

[If a bundled application is submitted, application information required for scoring must still be](#)

provided for each individual ZCTA. If the bundled application is the high scorer in every ZCTA in the bundle, then the applicant will be awarded all ZCTAs in the bundle. The Office of Broadband will not accept or consider awarding half ZCTAs in a bundle to an applicant. This bundled model is either 'all or nothing'.

In addition to submitting a bundled application for a collection of ZCTAs, applicants may submit reserve application information for scoring in the event that their bundled application is not the high scorer in every ZCTA in the bundled application.

UNAPPROVED

2.4.7. Text Box: If no proposals to serve a location or group of locations that are unserved, underserved, or a combination of both are received, describe how the Eligible Entity will engage with prospective subgrantees in subsequent funding rounds to find providers willing to expand their existing or proposed service areas or other actions that the Eligible Entity will take to ensure universal coverage.

Although unlikely, the Office of Broadband will be aware if no application (Priority or Non-Fiber) to serve a Zip Code Tabulation Area (ZCTAs) was received at the close of the application period. Upon finalization of award recommendations to NTIA, the Office of Broadband will also be aware of locations not included in expansion projects in each ZCTA (i.e. the up to 5% of locations not elected to be served by the awarded applicant).

After these no-bid areas are determined, these locations will be published. The Office of Broadband will publish these locations solicit proposals from broadband providers. After a 30 day application window, under which providers describe their aptitude to provide broadband access to a location or subset of specific locations and requested funding necessary to reach these locations. Priority proposals will first be considered and may first request a waiver from the 25% matching funds requirement to provide broadband access to the location. The priority applicant may also request a waiver to the then-set Extremely High-Cost Threshold to extend service to the location. If a priority proposal is not identified under this methodology, the Office of Broadband will consider non-fiber applications received, with the same inducements of waiving the 25% matching fund requirement, and the Extremely High-Cost Threshold.

2.4.8. Text Box: Describe how the Eligible Entity intends to submit proof of Tribal Governments' consent to deployment if planned projects include any locations on Tribal Lands.

The Office of Broadband will submit to NTIA a Resolution of Consent or other formal demonstration of consent from each Tribal Government's Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed. The Office of Broadband will require that the resolution of consent, or any substitute document used at request of the Tribal Government, be submitted by the applicant at the time of application along with other relevant documents demonstrating that holistic local coordination occurred.

2.4.9. Text Box: Identify or outline a detailed process for identifying an Extremely High Cost Per Location Threshold to be utilized during the subgrantee selection process. The explanation must include a description of any cost models used and the parameters of those cost models, including whether they consider only capital expenditures or include the operational costs for the lifespan of the network.

This threshold will be informed by 7 years of application data under Virginia Telecommunication Initiative, the Commonwealth's primary program to extend broadband access to unserved areas, as well as evaluation of proposals submitted under the

BEAD program. Additionally, programmatic data from the Line Extension Customer Assistance Program, which is designed to cover the costs of extending broadband infrastructure to homes beyond a service provider's standard connection drop length, will be utilized to formulate the EHCT. Given the Office of Broadband's success in refining displayed coverage on the Federal Communication Commission's National Broadband Map for the purposes of BEAD eligibility, especially with respect to broadband providers service connection drop length, the Office of Broadband expects a significant percentage of BEAD-eligible locations to require line extensions to become serviceable, raising the costs to provide broadband access to that location. Please see the middle-class affordability section under this document for additional requirements of line extensions and special construction costs.

This threshold will be set in a way which allows as many end-to-end fiber projects to be deployed as possible, which is a goal of the BEAD program. This threshold will accommodate well designed applications for state funding in former years that were not funded because of higher costs to build the networks, rendering them uncompetitive for available funding. This approach also accommodates the necessity for construction of line extensions, which has been identified as a significant barrier to connectivity. This threshold may enable the use of alternative technology types, where fiber is cost prohibitive. Ultimately, the Office of Broadband will work backward from the goal of universal coverage to ensure that the EHCT is set in a way that maximizes priority project deployment, balanced against practical costs to serve these hard to reach areas in the review and scoring of submitted applications.

2.4.10. Text Box: Outline a plan for how the Extremely High Cost Per Location Threshold will be utilized in the subgrantee selection process to maximize the use of the best available technology while ensuring that the program can meet the prioritization and scoring requirements set forth in Section IV.B.6.b of the BEAD NOFO. The response must describe:

- **The process for declining a subgrantee proposal that exceeds the threshold where an alternative technology is less expensive.**
- **The plan for engaging subgrantees to revise their proposals and ensure locations do not require a subsidy.**
- **The process for selecting a proposal that involves a less costly technology and may not meet the definition of Reliable Broadband.**

If a priority applicant's proposal to serve an area exceeds the EHCT, calculated by average funding requested per location, the Office of Broadband will first consider if anomalies exist in the geography and other conditions of that area that justify a higher deployment cost threshold of priority projects. Following this evaluation, if no waiver to the EHCT is granted, and no waiver to the matching requirement of 25% is requested and granted, the Office of Broadband then evaluate non-priority applications received for that area. If no non-priority applications were received for that area, the Office of Broadband will engage with applicants which submitted proposals and determine if the costs outlined over EHCT are appropriate and warrant an award over this threshold.

The Office of Broadband will only entertain non-priority broadband projects that may not meet the definition of reliable broadband if all priority broadband projects exceed the EHCT and the other conditions outlined above are not met by priority applicants.

2.4.11. Text Box: Describe how the Eligible Entity will ensure prospective subgrantees deploying network facilities meet the minimum qualifications for financial capability as outlined on pages 72-73 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- **Detail how the Eligible Entity will require prospective subgrantees to certify that they are qualified to meet the obligations associated with a Project, that prospective subgrantees will have available funds for all project costs that exceed the amount of the grant, and that prospective subgrantees will comply with all Program requirements, including service milestones. To the extent the Eligible Entity disburses funding to subgrantees only upon completion of the associated tasks, the Eligible Entity will require each prospective subgrantee to certify that it has and will continue to have sufficient financial resources to cover its eligible costs for the Project until such time as the Eligible Entity authorizes additional disbursements.**
- **Detail how the Eligible Entity plans to establish a model letter of credit substantially similar to the model letter of credit established by the FCC in connection with the Rural Digital Opportunity Fund (RDOF).**
- **Detail how the Eligible Entity will require prospective subgrantees to submit audited financial statements.**
- **Detail how the Eligible Entity will require prospective subgrantees to submit business plans and related analyses that substantiate the sustainability of the proposed project.**

The Office of Broadband is committed to comprehensive vetting of applicants throughout the selection process to ensure that the applicants seeking to deploy network facilities meet the qualifications for financial capability as defined in the BEAD NOFO.

The Office of Broadband will require applicants to certify that they are qualified to meet the obligations associated with a Project, that the applicants will have available funds for all project costs that exceed the amount of the grant, and that the applicants will comply with all Program requirements, including service milestones. To the extent that the Office of Broadband disburses funding to subgrantees only upon completion of the contractually established milestones, it will be required that each applicant certifies that it has and will continue to have sufficient financial resources to cover its eligible costs for the Project until such time as The Office of Broadband authorizes additional disbursements.

[The Office of Broadband will adopt NTIA's Letter of Credit Waiver, as published on November 1, 2023. In the BEAD subgrantee application process, applicants will be required to demonstrate their preferred model of creditworthiness that is in compliance with the guidelines outlined in NTIA's November 1st waiver.](#)

~~The Office of Broadband, through the input of its external stakeholders, will consider adoption of the policies and waivers outlined in NTIA's BEAD Letter of Credit Waiver, which were published on November 1, 2023. The Office of Broadband previously submitted a waiver request to gain flexibility in NTIA's previous Letter of Credit requirements under BEAD. This previous waiver request may be withdrawn pending the outcome of this stakeholder input of NTIA's waiver of NOFO guidance for the Letter of Credit requirement, which was published on~~

November 1st. With curing comments due to NTIA on November 6th, Office of Broadband stakeholders have not had sufficient time to evaluate NTIA's waiver. This waiver is available at broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD-Letter-of-Credit-Waiver. The Office of Broadband will consider full adoption of this waiver in light of stakeholder feedback to NTIA's published waiver. The Commonwealth of Virginia's current waiver request to previous NTIA guidance includes the information outlined below.

Similar to the model letter of credit established with the Rural Digital Opportunity Fund (RDOF), the Office of Broadband will require applicants to submit a letter from an eligible bank (see 47 C.F.R. § 54.804(e)(2)) in which the bank commits to issuing an irrevocable standby letter of credit to the applicant. The letter must include the dollar amount of the letter of credit and the issuing bank's agreement to adhere to BEAD's model letter of credit terms and conditions. Before executing any subgrantee agreements, each applicant must obtain an irrevocable standby letter of credit, which the Office of Broadband deems acceptable, and amounts to no less than 25% of the subaward amount. An opinion letter from legal counsel must be included with the letter of credit 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.

The Office of Broadband proposes to offer the following staged approach that balances appropriate risk management with this letter of credit requirement. This proposal offers various financial risk management practices across 4 tiers. The definitions below correspond with appropriate actions as outlined in the table below.

A. Audited financial statements. All applicants must submit two years of audited financial statements. Subsidiaries may provide financial statements at the parent level.

B. Asset Report. All applicants must provide evidence that they are registered to do business in the state, provide a state issued certificate of good standing, and list in their application the value of their existing assets in the state as reported by them for tax purposes in their most recent filings.

C. Bank Reference Letter. All applicants must provide a bank reference letter which includes length of banking relationship, line of credit or credit facility limits, if applicable, and an indication of their record of meeting commitments on time. The line of credit/credit facility should exceed the size of the grant.

D. Comfort Letter. When applicant is wholly/majority owned subsidiary the parent or managing affiliate must provide a "comfort letter." A comfort letter is not a guarantee of any kind but acknowledges that the parent/affiliate is aware of the grant application and regularly monitors the subsidiary.

E. Binding Parent Guarantee. The parent company of a wholly/majority owned subsidiary may provide a binding guarantee if the size of the grant being sought by the subsidiary does not exceed 25% of the parent company revenues or seek to provide service to locations representing more than 25% of their current locations passed.

Under this option, applicants must submit items A-C, and all subsidiaries must submit section D.

Level 1: No LOC Required	Applicant must meet the following with
--------------------------	--

	<p>respect to a, b, and c.</p> <p>a. Most recent audit is clean with no material findings.</p> <p>b. Assets in the state are greater than the value of grant requested.</p> <p>c. Bank reference letter demonstrates applicant has funds under their line of credit or credit facility sufficient to cover 50% of project cost.</p>
Level 2: No LOC Required; must provide item E — Binding Guarantee	If applicant cannot meet one of a, b, or c, but can provide: d. Line of Credit or credit facility at least equal to grant.
Level 3: LOC of 10% of grant amount required; retired with deployment	If applicant cannot meet one of a, b, or c, and cannot provide d.
Level 4: LOC of 25% of grant amount required; retired with deployment	If applicant cannot meet two or more of a, b, or c, and cannot provide d.

The Office of Broadband will require Prospective subgrantees comply with the Department of Housing and Community Development’s audit policy, which is in compliance with state and federal regulations and located at <https://www.dhcd.virginia.gov/sites/default/files/Docx/audit-policy/dhcd-audit-policy.pdf>

The Office of Broadband will require applicants to submit business plans and related analyses that substantiate the sustainability of the proposed project. This can be provided in the form of pro forma statements or analyses, inclusive of cash flow and balance sheet projections and should include at least three years of operating cost and cash flow projections post targeted completion of project.

The Office of Broadband will ensure applicants are aware of these regulations prior to and throughout the selection process by conducting regulations information webinars, posting a list of regulations on the VATI [website](#), and including the requirements in grant applications/instructions as well as contract negotiations records, grant agreement terms/conditions and subrecipient grant monitoring program requirements.

Applications that fail to meet the minimum qualifications for financial capability by not submitting the information as outlined on pages 72-73 of the BEAD NOFO will not be considered to receive BEAD funding.

2.4.12 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for managerial capability as outlined on pages 73 – 74 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- Detail how the Eligible Entity will require prospective subgrantees to submit resumes for key management personnel.

- **Detail how it will require prospective subgrantees to provide a narrative describing their readiness to manage their proposed project and ongoing services provided.**

The Office of Broadband will ensure that all applicants seeking to deploy network facilities comply with the managerial capability requirements outlined in the BEAD NOFO.

The Office of Broadband will require applicants to submit resumes for all key management personnel and any necessary project organizational chart(s) and corporate relationships detailing all parents, subsidiaries, and affiliates.

Each applicant must also provide a narrative describing the applicant's readiness to manage a broadband services network. The narrative should describe the experience and qualifications of key management for undertaking this project, its experience undertaking projects of similar size and scope, recent and upcoming organizational changes including mergers and acquisitions, and relevant organizational policies. The Office of Broadband shall not approve any grant for the deployment or upgrading of network facilities unless it determines that the documents submitted demonstrate the applicant's managerial capability with respect to the proposed project.

The Office of Broadband will ensure applicants are aware of these regulations prior to and throughout the selection process by conducting regulations information webinars, posting a list of regulations on the VATI [website](#), and including the requirements in grant applications/instructions as well as grant agreement terms/conditions and subrecipient grant monitoring program requirements.

Applications that fail to meet the minimum qualifications for managerial capability as outlined on pages 73-74 of the BEAD NOFO will not be considered to receive BEAD funding through VATI.

2.4.13 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for technical capability as outlined on page 74 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- **Detail how the Eligible Entity will require prospective subgrantees to certify that they are technically qualified to complete and operate the Project and that they are capable of carrying out the funded activities in a competent manner, including that they will use an appropriately skilled and credentialed workforce.**
- **Detail how the Eligible Entity will require prospective subgrantees to submit a network design, diagram, project costs, build-out timeline and milestones for project implementation, and 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, all 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.**

The Office of Broadband is committed to ensuring that applicants seeking to deploy network facilities are thoroughly vetted and meet the minimum qualifications for technical capabilities as outlined in the BEAD NOFO.

Applicants must submit certification to the Office of Broadband that they are technically qualified to complete and operate the Project and that they are capable of carrying out the funded activities in a competent manner, including that it will use an appropriately skilled and credentialed workforce (see Section IV.C.1.e of the BEAD NOFO).

The Office of Broadband will require all applicants to submit a network design, diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity is under contract, all 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. The Office of Broadband will not approve any grant for the deployment or upgrading of network facilities unless it determines that the materials submitted demonstrate the applicant's technical capability with respect to the proposed project. The Office of Broadband may, at its discretion, request additional information from applications which have not fully fulfilled contractual obligations as co-applicants of Virginia Telecommunication Initiative projects to demonstrate additional components of technical capabilities. The Office of Broadband, in its sole discretion, may decline a proposal following such analysis if another priority application exists within the same application area.

The Office of Broadband will ensure applicants are aware of these requirements prior to and throughout the selection process by conducting informational webinars, posting a list of requirements on the VATI website, and including the requirements in grant applications/instructions as well as contract negotiation records, grant agreement terms/conditions and subrecipient grant monitoring program requirements. Applications that fail to meet the minimum qualifications for technical capability by not submitting the information as outlined on page 74 of the BEAD NOFO will not be considered to receive BEAD funding through VATI.

2.4.14 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for compliance with applicable laws as outlined on page 74 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- **Detail how the Eligible Entity will require prospective subgrantees to demonstrate that they are capable of carrying out funded activities in a competent manner in compliance with all applicable federal, state, territorial, and local laws.**
- **Detail how the Eligible Entity will require prospective subgrantees to permit workers to create worker-led health and safety committees that management will meet with upon reasonable request.**

The Office of Broadband is committed to ensuring that applicants seeking to deploy network facilities are thoroughly vetted and meet the minimum qualifications regarding compliance with applicable laws as outlined in the BEAD NOFO.

The Office of Broadband will require applicants to demonstrate that they can carry out funded activities in a competent manner in compliance with all applicable Federal, Commonwealth of Virginia, Territorial, and local laws. Applicants must submit a narrative that demonstrates this objective for the Office of Broadband to place on record.

To ensure that an applicant complies with occupational safety and health requirements, the Office of Broadband will require applicants permit workers to create worker-led health and safety committees that management will meet with upon reasonable request.

The Office of Broadband will ensure applicants are aware of these requirements prior to and throughout the selection process by conducting informational webinars, posting a list of requirements on the VATI [website](#), and including the requirements in grant applications/instructions as well as contract negotiation records, grant agreement terms/conditions, and subrecipient grant monitoring program requirements.

The Office of Broadband will also make readily available resources for applicants to leverage, such as Virginia Department of Health's [website](#), which includes guides to creating and administering health and safety committees.

Applications that fail to meet the minimum qualifications for compliance with applicable laws as outlined on page 74 of the BEAD NOFO will not be considered to receive BEAD funding through VATI.

Finally, in relation to this section, as well as all others, the Office of Broadband acknowledges that, at the time of drafting this Initial Proposal, NTIA is considering input on any exemptions from the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards that might help facilitate the implementation of the Broadband Equity, Access and Deployment (BEAD) Program. To account for this uncertainty, the Office of Broadband will adopt the final guidance as published by NTIA.

2.4.15 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for operational capability as outlined on pages 74 – 75 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- **Detail how the Eligible Entity will require prospective subgrantees to certify that they possess the operational capability to qualify to complete and operate the Project.**
- **Detail how the Eligible Entity will require prospective subgrantees to submit a certification that have provided a voice, broadband, and/or electric transmission or distribution service for at least two (2) consecutive years prior to the date of its application submission or that it is a wholly owned subsidiary of such an entity, attests to and specify the number of years the prospective subgrantee or its parent company has been operating.**
- **Detail how the Eligible Entity will require prospective subgrantees that have provided a voice and/or broadband service, to certify that it has timely filed Commission Form 477s and the Broadband DATA Act submission, if applicable, as required during this time period, and otherwise has complied with the Commission's rules and regulations.**

- **Detail how the Eligible Entity will require prospective subgrantees that have operated only an electric transmission or distribution service, to submit qualified operating or financial reports, that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.**
- **In reference to new entrants to the broadband market, detail how the Eligible Entity will require prospective subgrantees to provide evidence sufficient to demonstrate that the newly formed entity has obtained, through internal or external resources, sufficient operational capabilities.**

The Office of Broadband is committed to ensuring that applicants seeking to deploy network facilities are thoroughly vetted and meet the minimum qualifications for operational capability as outlined in the BEAD NOFO. The Office of Broadband will require applicants to certify that they possess the operational capability to qualify to complete and operate the Project. Examples of such certification requirements are provided below:

An applicant that has provided a voice, broadband, and/or electric transmission or distribution service for at least the two (2) consecutive years prior to the date of its application submission or that it is a wholly owned subsidiary of such an entity, must submit a certification that attests to these facts and specifies the number of years the applicant or its parent company has been operating.

If the applicant has provided a voice and/or broadband service it must certify that it has timely filed Commission Form 477s and the Broadband DATA Act submission, if applicable, as required during this time period, and otherwise has complied with the Commission's rules and regulations. Alternatively, an applicant should explain any Notice of Funding Opportunity – 75 pending or completed enforcement action, civil litigation, or other matter in which it failed to comply or was alleged to have failed to comply with Commission rules or regulations.

If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

For a new entrant to the broadband market, an applicant must provide evidence sufficient to demonstrate that the newly formed entity has obtained, through internal or external resources, sufficient operational capabilities. Such evidence may include resumes from key personnel, project descriptions and narratives from contractors, subcontractors, or other partners with relevant operational experience, or other comparable evidence.

The Office of Broadband will ensure applicants are aware of these requirements prior to and throughout the selection process by conducting requirement informational webinars, posting a list of regulations on the VATI [website](#), and including the requirements in grant applications/instructions as well as grant agreement terms/conditions and subrecipient grant monitoring program requirements.

Applications that fail to meet the minimum qualifications for compliance with applicable laws as outlined on pages 74 - 75 of the BEAD NOFO will not be considered to receive BEAD funding.

2.4.16 Text Box: Describe how the Eligible Entity will ensure that any prospective subgrantee deploying network facilities meets the minimum qualifications for providing information on ownership as outlined on page 75 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- **Detail how the Eligible Entity will require prospective subgrantees to provide ownership information consistent with the requirements set forth in 47 C.F.R. § 1.2112(a)(1)-(7).**

The Office of Broadband is committed to ensuring that applicants seeking to deploy network facilities are thoroughly vetted and meet the minimum qualifications for providing information on ownership as outlined in the BEAD NOFO.

The Office of Broadband will require each applicant to provide ownership information consistent with the requirements set forth in 47 C.F.R. § 1.2112(a)(1)-(7).

The Code of Federal Regulations regarding ownership information requires the following:

- (1) List the real party or parties in interest in the applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;
- (2) List the name, address, and citizenship of any party holding 10 percent or more of stock in the applicant, whether voting or nonvoting, common or preferred, including the specific amount of the interest or percentage held;
- (3) List, in the case of a limited partnership, the name, address and citizenship of each limited partner whose interest in the applicant is 10 percent or greater (as calculated according to the percentage of equity paid in or the percentage of distribution of profits and losses);
- (4) List, in the case of a general partnership, the name, address and citizenship of each partner, and the share or interest participation in the partnership;
- (5) List, in the case of a limited liability company, the name, address, and citizenship of each of its members whose interest in the applicant is 10 percent or greater;
- (6) List all parties holding indirect ownership interests in the applicant as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated and reported as if it were a 100 percent interest; and
- (7) List any FCC-regulated entity or applicant for an FCC license, in which the applicant or any of the parties identified in paragraphs (a)(1) through (a)(5) of this section, owns 10 percent or more of stock, whether voting or nonvoting, common or preferred. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant (e.g., Company A owns 10 percent of Company B (the applicant) and 10 percent of Company C, then Companies A and C must be listed on Company B's application, where C is an FCC licensee and/or license applicant). (b) Designated entity status. In addition to the information required under paragraph (a) of this section, each applicant claiming eligibility for small business provisions, or a rural service provider bidding credit shall disclose the following: (1) On its application to participate in competitive bidding (i.e., short-form application (see 47 CFR 1.2105)):

(i) List the names, addresses, and citizenship of all officers, directors, affiliates, and other controlling interests of the applicant, as described in § 1.2110, and, if a consortium of small businesses or consortium of very small businesses, the members of the conglomerate organization;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;

(iii) List all parties with which the applicant has entered into agreements or arrangements for the use of any of the spectrum capacity of any of the applicant's spectrum; (iv) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: The applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium;

(v) If claiming eligibility for a rural service provider bidding credit, provide all information to demonstrate that the applicant meets the criteria for such credit as set forth in § 1.2110(f)(4);

and (vi) If applying as a consortium of designated entities, provide the information in paragraphs (b)(1)(i) through (v) of this section separately for each member of the consortium.

Applications that fail to meet the minimum qualifications for providing ownership information as outlined on page 75 of the BEAD NOFO will not be considered to receive BEAD funding through VATI.

2.4.13 Text Box: Describe how the Eligible Entity will ensure any prospective subgrantee deploying network facilities meets the minimum qualifications for providing information on other public funding as outlined on pages 75 – 76 of the BEAD NOFO. If the Eligible Entity opts to provide application materials related to the BEAD subgrantee selection process, the Eligible Entity may reference those to outline alignment with requirements for this section. The response must:

- **Detail how it will require prospective subgrantees to disclose for itself and for its affiliates, any application the subgrantee or its affiliates have submitted or plan to submit, and every broadband deployment project that the subgrantee or its affiliates are undertaking or have committed to undertake at the time of the application using public funds.**
- **At a minimum, the Eligible Entity shall require the disclosure, for each broadband deployment project, of: (a) the speed and latency of the broadband service to be provided (as measured and/or reported under the applicable rules), (b) the geographic area to be covered, (c) the number of unserved and underserved locations committed to serve (or, if the commitment is to serve a percentage of locations within the specified geographic area, the relevant percentage), (d) the amount of public funding to be used, (e) the cost of service to the consumer, and (f) the matching commitment, if any, provided by the subgrantee or its affiliates.**

The Office of Broadband is committed to ensuring that applicants seeking to deploy network facilities are thoroughly vetted and meet the minimum qualifications for providing information on other public funding as outlined in the BEAD NOFO.

The Office of Broadband will require each applicant to disclose, for itself and for its affiliates any application the applicant or its affiliates have submitted or plan to submit, and every broadband deployment project that the applicant or its affiliates are undertaking or have committed to undertake at the time of the application using public funds, including but not limited to funds provided under: the Families First Coronavirus Response Act (Public Law 116- 127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281), the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan of 2021 (Public Law 117-2; 135 Stat. 4), any federal Universal Service Fund high-cost program (e.g., RDOF, CAF), or any Eligible Entity or local universal service or broadband deployment funding program.

The Office of Broadband will require the disclosure, for each broadband deployment project, of: (a) the speed and latency of the broadband service to be provided (as measured and/or reported under the applicable rules), (b) the geographic area to be covered, (c) the number of unserved and underserved locations committed to serve (or, if the commitment is to serve a percentage of locations within the specified geographic area, the relevant percentage), (d) the amount of public funding to be used, (e) the cost of service to the consumer, and (f) the matching commitment, if any, provided by the applicant or its affiliates.

The Office of Broadband will ensure applicants are aware of these requirements prior to and throughout the selection process by conducting informational webinars, posting a list of requirements on the VATI website, and including the requirements in grant applications/instructions as well as contract negotiation record grant agreement terms/conditions and subrecipient grant monitoring program requirements.

Applications that fail to meet the minimum qualifications for providing information on other public funding as outlined on pages 75-76 of the BEAD NOFO will not be considered to receive BEAD funding through VATI.

2.5.1 Text Box: Describe a fair, open, and competitive subgrantee selection process for eligible non-deployment activities. Responses must include the objective means, or process by which objective means will be developed, for selecting subgrantees for eligible non-deployment activities. If the Eligible Entity does not intend to subgrant for non-deployment activities, indicate such.

The Office of Broadband's priority is to utilize Virginia's BEAD allocation to extend broadband infrastructure to every unserved location, underserved location, and Community Anchor Institutions without gigabit symmetrical connectivity in the Commonwealth of Virginia. Following this, any potential remaining funds may be used to fund non-deployment programs related to addressing the digital divide beyond access in Virginia. The Office of Broadband has three programmatic efforts that will be leveraged to identify non-deployment areas of need, and design solutions to address them via BEAD-funded non-deployment the Office of Broadband - administered programs and subgrant programs.

The Office of Broadband is sub-awarding Digital Equity Act Planning Grant funds to Community Action Agencies (CAAs) in 9 regions across the Commonwealth to develop regional digital opportunity plans to inform the Virginia plan. These CAAs will assess the digital divide in their communities and develop an implementation strategy to meet the identified need through affordability and adoption programs. This regional planning process will involve communities in the design of potential non-deployment programs.

In another program, the Office of Broadband is sub-awarding Digital Equity Act Planning Grant funds to organizations currently engaged in digital opportunity work to write case studies on

digital opportunity-related pilot projects for inclusion in the Commonwealth plan. This program will identify successful projects related to addressing the digital divide beyond access in Virginia that can be replicated or supported by a BEAD non-deployment program.

The Office of Broadband's Virginia Digital Opportunity Survey has been published and distributed across the Commonwealth with assistance from Community Action Agencies, localities, elected officials, and the Office of Broadband's stakeholders and partners. Data from the Digital Opportunity Survey will assist the Office of Broadband in identifying how the digital divide beyond access to broadband affects Virginians. Using this data, in concert with the outcomes of the agency's Digital Equity Planning Grant subgrant programs, the Office of Broadband will identify broad, data-supported areas to address with BEAD non-deployment funds.

Finally, the Office of Broadband is utilizing BEAD planning funds to provide localities and tribal governments in Virginia the opportunity to conduct broadband affordability and adoption planning processes. Every locality and tribal government in the Commonwealth will have the opportunity to conduct needs assessments, identify priorities, and develop plans along with fundable proposals to address and promote digital opportunity in their jurisdictions. This activity is consistent with the non-deployment eligible uses outlined in Section IV.B.7.a.iii of the BEAD NOFO. The outcome of this planning grant program will be that local and tribal governments, as well as community organizations will be better enabled to address digital opportunity needs in their communities with defined plans and greater capacity. These planning grant applications will be approved on a rolling basis.

In line with the BEAD Notice of Funding Opportunity, the Office of Broadband will consider supporting non-deployment activities related to the following:

- User training with respect to cybersecurity, privacy, and other digital safety matters.
- Remote learning or telehealth services/facilities.
- Digital literacy/upskilling (from beginner-level to advanced).
- Computer science, coding and cybersecurity education programs.
- Implementation of Eligible Entity digital equity plans (to supplement, but not to duplicate or supplant, Planning Grant funds received by the Eligible Entity in connection with the Digital Equity Act of 2021).
- Broadband sign-up assistance and programs that provide technology support.
- Multi-lingual outreach to support adoption and digital literacy.
- Prisoner education to promote pre-release digital literacy, job skills, online job acquisition skills, etc.
- Digital navigators.
- Costs associated with stakeholder engagement, including travel, capacity-building, or contract support.
- Other allowable costs necessary to carrying out programmatic activities of an award, not to include ineligible costs described in Section V.H.2 of the NOFO.
- Activities related to the incorporation of "smart" technologies and capabilities into farming practices.
- Broadband adoption initiatives or programs.
- Other activities related to non-deployment.

The Office of Broadband will ensure that in all subgrantee selection processes for potential

BEAD non-deployment programs, applications for funds will go through a competitive process, and awards will be made in accordance with the results of that process. The Commonwealth of Virginia has robust and varied resources to address matters related to fraud, waste, and abuse; internal controls; risk management; financial accounting and controls; and conflict of interests. Additionally, all relevant federal grant requirements and all relevant BEAD-specific program requirements will apply to potential subrecipients in any BEAD non-deployment programs that the Office of Broadband operates.

The Office of Broadband will ensure that nondeployment subgrantee programs are conducted via a fair, open, equitable, and competitive subgrantee selection process and that adequate safeguards are in place to protect the integrity of the competition, including safeguards against collusion, bias, conflicts of interest, arbitrary decisions, and other factors that could undermine confidence in the process.

The Office of Broadband plans to invite applications for non-deployment funds in late Summer/Early Fall 2024, after the total demand for deployment funding is determined. Stakeholders will be notified of this process beginning through existing Office of Broadband communications channels. Tentatively, this process will begin on September 1, 2024, with the RFP open for, at a minimum, 45 day window to accept proposals. Proposals may be submitted through an established grants portal by the Office of Broadband. While this submission window may be limited to 45 days, the Office of Broadband will provide technical assistance to prospective applicants for these funds throughout 2024.

At this time, the Office of Broadband will publish an RFP-style application process for non-deployment funding that effectuates the goals of the Virginia Digital Opportunity Plan. While this plan has not yet been published for public comment, the currently drafted key priorities of this plan include:

1. Return on Investment for the Commonwealth and its Residents: The initiative must have a generational impact on residents of the Commonwealth and address the digital divide in a sustainable manner. Sustainable program models are paramount to addressing broadband affordability and adoption in the long term beyond federal funding availability.
2. Addresses Identified Component of the Digital Divide: The initiative should address a component of the digital divide beyond access to broadband infrastructure that is supported by data from the Virginia Digital Opportunity Survey and consistent with the findings of the Virginia Digital Opportunity Plan and/or locality and Tribal digital opportunity plans.
3. Innovative Solutions: The initiative should address an aspect of the digital divide without a current solution or supplements an existing solution in an innovative manner.
4. Capacity and Experience: Organizations in the prospective pool of applicants must generally have the experience and organizational capacity necessary to administer a potentially significant program.

The proposed implementation strategy of this Plan includes four categories of support form an implementation strategy that holistically addresses the digital barriers identified in the planning process.

- Systemic solutions are needed to address barriers that are experienced by all Virginians, such as a lack of awareness of digital opportunity resources and unequal access to devices and affordable service options.
- The planning process revealed covered populations with specific needs that require tailored solutions, such as for incarcerated individuals and individuals with disabilities.

- A key takeaway from the assessment process has been the need for capacity building programs that support organizations doing diverse digital opportunity work at a more granular scale than is possible with statewide or regional subgrant programs.
- Large scale non-deployment broadband initiatives are needed to support Virginia industries as they transition to the digital era by incorporating broadband into traditionally manual/non-digitized practices.

2.5.2 Text Box: Describe the Eligible Entity’s plan for the following:

- **How the Eligible Entity will employ preferences in selecting the type of non-deployment initiatives it intends to support using BEAD Program funds;**
- **How the non-deployment initiatives will address the needs of residents within the jurisdiction;**
- **The ways in which engagement with localities and stakeholders will inform the selection of eligible non-deployment activities;**
- **How the Eligible Entity will determine whether other uses of the funds might be more effective in achieving the BEAD Program’s equity, access, and deployment goals.**

The Office of Broadband will prioritize the following considerations in the selection of non-deployment initiatives using funds from Virginia’s BEAD allocation:

- Return on investment for the Commonwealth and its residents: the initiative will have a generational impact on residents of the Commonwealth and will address the digital divide in a sustainable manner.
- Addresses identified component of the digital divide: the non-deployment initiative addresses a component of the digital divide beyond access to broadband infrastructure that is supported by data from the Virginia Digital Opportunity Survey and consistent with the findings of the Virginia Digital Opportunity Plan and/or locality and Tribal Broadband Affordability and Adoption plans.
- Innovative solutions: the non-deployment initiative addresses an aspect of the digital divide without a current solution or supplements an existing solution in an innovative manner.
- Capacity and experience: organizations in the prospective pool of applicants generally have the experience and organizational capacity necessary to administer a potentially significant program.

The Office of Broadband is currently developing the Virginia Digital Opportunity Plan, the primary deliverable of Virginia’s Digital Equity Act Planning Grant. The plan will synthesize the results of the Commonwealth’s extensive stakeholder engagement and research on the digital divide into an implementation strategy to address identified gaps with funding for digital opportunity and non-deployment programs. The plan will also provide key results from the Virginia Digital Opportunity Survey, a statewide data gathering effort to study the needs of Virginia residents related to the digital divide, which will inform the recommended approach to closing the digital divide in Virginia.

The Office of Broadband and its partners engaged with countless local governments, non-profits, community organizations, and residents across the Commonwealth to ensure a wide array of input was included in the Digital Opportunity planning process. These efforts will continue as the Office works to develop non-deployment programs under BEAD and to conduct outreach for the Digital Opportunity Plan. The Office will rely on input from stakeholders and partners to determine how best to use remaining BEAD funds to effectuate the goals of the BEAD program.

2.5.3 Text Box: Describe the Eligible Entity’s plan to ensure coverage to all unserved and underserved locations prior to allocating funding to non-deployment activities.

The Office of Broadband’s priority for BEAD funding is to reach the unserved and underserved areas without a funded solution for broadband access and has developed cost projections to reach the remaining unserved and underserved locations without a funded solution for broadband access. In addition to these cost projections, the Office of Broadband is sequencing the BEAD program to ensure that enough funding availability exists to address gaps in infrastructure, as well as gaps in infrastructure to Community Anchor Institutions, prior to allocating funding for other eligible uses. In other terms, subawards for non-deployment will not be finalized until after subawards for deployment projects have been complete.

This approach would ensure the shared priority that deployment uses of BEAD funds are prioritized ahead of non-deployment uses. The approach also grants the Office of Broadband additional time to make thoughtful, transformational non-deployment investments through a subgrantee selection process based on the outcomes, findings, and recommendations of Virginia’s Digital Opportunity Plan, which is developed under the State Digital Equity Act Planning Grant Program.

2.5.4 Text Box: Describe how the Eligible Entity will ensure prospective subgrantees meet the general qualifications outlined on pages 71 – 72 of the NOFO.

~~Prior to entering into any subgrantee agreement, in the pre-contract period, the Office of Broadband will ensure that any applicant. This will be conducted by another review of documents submitted under the application window, as well as the completion of a supplemental questionnaire.~~

The application process for these non-deployment funds will require information not only be submitted about the proposed project and activities, but also of the applicant’s capacity, including question topics relating to:

- Is subgrantee capable of carrying out activities funded by the subgrant in a competent manner in compliance with all applicable federal, Commonwealth of Virginia, and local laws?;
 - Compliance with all applicable laws, at all levels, will be determined through a certification and attestation statement.
- Does the subgrantee have the financial and managerial capacity to meet the commitments of the subgrantee under the subgrant, the requirements of the Program and such other

requirements as have been prescribed by the Assistant Secretary or the Office of Broadband?;

- Financial capacity will be determined through certification and a review of audited financial statements and/or sustainability/business plans.
- Managerial capacity will be determined through reviewing resumes of key individuals and narrative describing experience and readiness to carry out the project.
- And, Does the subgrantee have the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award?.
 - Technical capability will be determined through reviewing the project plan and certification the applicant is technically qualified to complete the project.
 - Operational capability will be determined through attestations to operational experience.

2.6.1 Text Box: Describe any initiatives the Eligible Entity proposes to implement as the recipient without making a subgrant, and why it proposes that approach.

The Office of Broadband does not currently plan to undertake any initiatives without making a subgrant, except for the workforce development funding request outlined in this document.

Under this funding request, the Office of Broadband proposes \$10 million in funding for workforce development to support broadband network expansion. Under the BEAD planning grant funding, the Office of Broadband underwent a statewide analysis of broadband workforce development programs. This statewide analysis, performed by a 3rd party, also included recommendations and action items to support this critical effort. Because of this existing research, and the demand for workforce development activities prior to funding broadband deployment projects under BEAD, the Office of Broadband proposes to award this \$10 million to workforce development organizations and organizations supporting broadband deployment efforts to advance workforce development for broadband network construction. Provided below is a summary of this statewide analysis, as well as recommendations and action items to be funded under this workforce development initiative.

To produce enough workers to not only address immediate needs, but also sustain a long-term pipeline to support the broadband industry into the future, it is imperative that the Commonwealth proactively begin building a vibrant, comprehensive “statewide broadband workforce ecosystem” to engage in career-connected programming to increase the number of potential applicants/trainees entering the “top of the workforce funnel”. This can only be accomplished by aggressively building commonwealth-wide awareness of potential careers, enhancing recruitment efforts, and injecting new, creative models and programs into the market - including those designed to engage underserved populations.

To achieve this goal, Virginia must think creatively and engage outside of traditional silos to raise awareness, identify and entice qualified applicants, foster strategic alliances, and drive collaborations capable of delivering timely and tailored training programs precisely where they are needed most. Most importantly, this ecosystem must play an active role in bridging the gap

between the trained workforce and the companies eagerly seeking to hire them into jobs and careers that promote economic security and mobility.

The ultimate impact and success of this endeavor hinges on the Commonwealth's ability to act expeditiously. Unfortunately, key success attributes in this pursuit (immediate action, nimble, creative, collaborative and "outside the box") do not readily align with processes for traditional educational and workforce program initiation, development, and deployment. Competition for workers nationally is heating up and relying on slower, more traditional channels simply isn't an option.

To successfully position the Commonwealth for leadership in the broadband workforce arena, the Commonwealth of Virginia will undertake the following activities with these \$10 million in requested funds.

- Partner with industry-centric organizations with shared goals and vision to scale capabilities to accommodate targeted broadband offerings and drive near-term outcomes including the development of internships and apprenticeships for both broadband network construction careers, as well as other careers involved in supporting broadband network construction.
- Engage VA811 to pilot technology (equipment and process) upgrades (images and/or augmented/virtual reality) to drive efficiency and the quality of locates long-term.
- Identify and support upcoming camps/programs/bootcamps/hiring fairs designed to promote broadband and related careers.
- Conduct a pilot with industry providers, recruiting firms, and training providers to test the ability of the system to "scale" to reduce current hiring backlog(s).

Partners to implement these goals will be analyzed for their capacity and anticipated efficacy in implementing such programs. Provided the urgent need to support workforce development, these partners will be identified through a state standard procurement process. Partners identified will be high-capacity organizations in the public and private sectors to quickly address gaps in an adequate workforce for broadband. The Office of Broadband will follow the Virginia Public Procurement Act for the proposes of procuring these partners to address broadband workforce development.

2.7.1 Text Box: Describe the specific information that prospective subgrantees will be required to provide in their applications and how the Eligible Entity will weigh that information in its competitive subgrantee selection processes. Information from prospective subgrantees must demonstrate the following and must include information about contractors and subcontractors:

- **Prospective subgrantees' record of past compliance with federal labor and employment laws, which:**
 - **Must address information on these entities' compliance with federal labor and employment laws on broadband deployment projects in the last three years;**
 - **Should include a certification from an Officer/Director-level employee (or equivalent) of the prospective subgrantee evidencing consistent past compliance with federal labor and employment laws**

- by the subgrantee, as well as all contractors and subcontractors; and
 - **Should include written confirmation that the prospective subgrantee discloses any instances in which it or its contractors or subcontractors have been found to have violated laws such as the Occupational Safety and Health Act, the Fair Labor Standards Act, or any other applicable labor and employment laws for the preceding three years.**
- **Prospective subgrantees' plans for ensuring compliance with federal labor and employment laws, which must address the following:**
 - **How the prospective subgrantee will ensure compliance in its own labor and employment practices, as well as that of its contractors and subcontractors, including:**
 - **Information on applicable wage scales and wage and overtime payment practices for each class of employees expected to be involved directly in the physical construction of the broadband network; and**
 - **How the subgrantee will ensure the implementation of workplace safety committees that are authorized to raise health and safety concerns in connection with the delivery of deployment projects.**

The Office of Broadband will require applicants to submit the following information during the application period of the competitive subgrantee selection process.

- Applicants' record of past compliance with federal labor and employment laws, which:
 - Must address information on these entities' compliance with federal labor and employment laws on broadband deployment projects in the last three years;
 - Should include a certification from an Officer/Director-level employee (or equivalent) of the applicant evidencing consistent past compliance with federal labor and employment laws by the applicant, as well as all contractors and subcontractors; and
 - Should include written confirmation that the applicant discloses any instances in which it or its contractors or subcontractors have been found to have violated laws such as the Occupational Safety and Health Act, the Fair Labor Standards Act, or any other applicable labor and employment laws for the preceding three years.
- Applicants' plans for ensuring compliance with federal labor and employment laws, which must address the following:
 - How the applicant will ensure compliance in its own labor and employment practices, as well as that of its contractors and subcontractors, including:
 - Information on applicable wage scales and wage and overtime payment practices for each class of employees expected to be involved directly in the physical construction of the broadband network; and
 - How the applicant will ensure the implementation of workplace safety

committees that are authorized to raise health and safety concerns in connection with the delivery of deployment projects.

During the competitive subgrantee selection process, the Office of Broadband will make the determination that information submitted suffices for the purposes of the federal BEAD requirements on the basis of completeness, unless otherwise noted in this document. Provided this requirement is met, applicants will receive full scoring credit under the Fair Labor Practices scoring criteria.

2.7.2 Text Box: Describe in detail whether the Eligible Entity will make mandatory for all subgrantees (including contractors and subcontractors) any of the following and, if required, how it will incorporate them into binding legal commitments in the subgrants it makes:

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

~~As the~~The Commonwealth Virginia is a right-to-work state.~~;~~ ~~T~~he Office of Broadband ~~does will~~ not ~~plan to~~ incorporate any of the following items into legally binding commitments for subgrantees (including contractors and subcontractors). The only requirements of subgrantees under this section will be outside of what is what is explicitly and minimally required in the BEAD NOFO.

The examples below outline completely optional requirements of BEAD subgrantees in the Commonwealth of Virginia.:

- Using a directly employed workforce, as opposed to a subcontracted workforce;
- Paying prevailing wages and benefits to workers, including compliance with Davis-Bacon

and Service Contract Act requirements, where applicable, and collecting the required certified payrolls;

- Using project labor agreements (i.e., pre-hire collective bargaining agreements between unions and contractors that govern terms and conditions of employment for all workers on a construction project);
- Use of local hire provisions;
- Commitments to union neutrality;
- Use of labor peace agreements;
- Use of an appropriately skilled workforce (e.g., through Registered Apprenticeships or other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded);
- Use of an appropriately credentialed workforce (i.e., satisfying requirements for appropriate and relevant pre-existing occupational training, certification, and licensure); and
- Taking steps to prevent the misclassification of workers.

[The Commonwealth of Virginia does not elect to adopt any additional labor requirements under the BEAD program. In the event that a subrecipient of BEAD funding is found to not be in compliance with state and federal labor laws, the Office of Broadband will require that subrecipient to submit a corrective action plan to correct these practices not in compliance with applicable laws.](#)

2.8.1 Text Box: Describe how the Eligible Entity and their subgrantees will advance equitable workforce development and job quality objectives to develop a skilled, diverse workforce. At a minimum, this response should clearly provide each of the following, as outlined on page 59 of the BEAD NOFO:

- **A description of how the Eligible Entity will ensure that subgrantees support the development and use of a highly skilled workforce capable of carrying out work in a manner that is safe and effective;**
- **A description of how the Eligible Entity will develop and promote sector-based partnerships among employers, education and training providers, the public workforce system, unions and worker organizations, and community-based organizations that provide relevant training and wrap-around services to support workers to access and complete training (e.g., child care, transportation, mentorship), to attract, train, retain, or transition to meet local workforce needs and increase high-quality job opportunities;**
- **A description of how the Eligible Entity will plan to create equitable on-ramps into broadband-related jobs, maintain job quality for new and incumbent workers engaged in the sector; and continually engage with labor organizations and community-based organizations to maintain worker voice throughout the planning and implementation process; and**

- **A description of how the Eligible Entity will ensure that the job opportunities created by the BEAD Program and other broadband funding programs are available to a diverse pool of workers.**

To lay the groundwork to advance equitable workforce development and job quality objectives to develop a skilled, diverse workforce under the BEAD program, and to support existing broadband infrastructure deployments, the Office of Broadband developed a report on Virginia's broadband workforce utilizing BEAD planning funds. The report drafting process included industry partners, workforce development organizations, and other employers that support broadband deployment. This analysis, as well as one-on-one and group discussions – more than 25 in total - yielded the following recommendations.

To produce enough workers to not only address immediate needs, but also sustain a long-term pipeline to support the industry into the future, it is imperative that the Commonwealth proactively begin building a vibrant, comprehensive “statewide broadband workforce ecosystem” to engage in career-connected programming to increase the number of potential applicants/trainees entering the “top of the workforce funnel”. This can only be accomplished by aggressively building commonwealth-wide awareness of potential careers, enhancing recruitment efforts, and injecting new, creative models and programs into the market - including those designed to engage underserved populations.

To achieve this goal, Virginia must think creatively and engage outside of traditional silos to raise awareness, identify and entice qualified applicants, foster strategic alliances, and drive collaborations capable of delivering timely and tailored training programs precisely where they are needed most. Most importantly, this ecosystem must play an active role in bridging the gap between the trained workforce and the companies eagerly seeking to hire them into jobs and careers that promote economic security and mobility.

Moreover, the urgency demands that Virginia take proactive measures to engage historically underserved populations (as defined by the National Telecommunications and Information Administration (NTIA)). Inclusion, diversity, and equal access must be guiding principles as Virginia seeks to engage individuals from these communities and ensure they have the training and recruitment opportunities necessary to become vital participants in this broadband workforce revolution.

The ultimate impact and success of this endeavor hinges on the Commonwealth's ability to act expeditiously.

Fortunately, the Office of Broadband is already progressing on these recommendations. The Office has a growing partnership with the Virginia Community College System (VCCS). The Office of Broadband recently supported the VCCS' application to the Department of Labor's Building Pathways to Infrastructure Jobs Grant. The application sought to expand existing VCCS broadband infrastructure programs to a total of seven community colleges across the Commonwealth. The locations were selected in consultation with industry leaders to ensure a pipeline of trained workers in proximity to upcoming broadband infrastructure projects. VCCS has a historic commitment to expanding educational opportunities to all populations with focus on Special Populations as defined by Perkins V, Legislation to Strengthen Career and Technical

Education for the 21st Century, comprising individuals with disabilities, from economically disadvantaged families, English learners, homeless individuals, youth in or from the foster care system, youth with a parent who is a member of the armed forces, and migrant students. Other populations of focus include students from rural areas, first-generation, Veterans, and others who are traditionally underrepresented in well-paying technology/broadband careers. Each participating college has a focus and plan to direct outreach efforts to Special Populations in their locale.

Under the slated program, VCCS projects serving 3,000 students over the initial five-year period, with 93% of students completing training and 77% obtaining at least one credential. 600 unemployed and underemployed participants are projected to complete education/job training program activities and enter unsubsidized employment, 20% of whom are low-income

Ultimately, a skilled, diverse workforce is critical to meeting infrastructure buildout timelines under the Infrastructure Act and connecting households across the country to reliable, affordable, high-speed broadband. A highly skilled workforce will also allow for the safe deployment of sustainable networks. To meet the workforce needs of this program, the Office of Broadband and their subgrantees will make appropriate investments to develop a skilled, diverse workforce for the jobs that the subgrantees need to fill.

The Office of Broadband will work with the newly established Virginia Department of Workforce Development and Advancement (DWDA) to accomplish these objectives. DWDA was recently established to streamline and strengthen workforce development programs in Virginia and, in partnership with the Office of Broadband, is well positioned to develop and promote sector-based partnerships that provide relevant training and wrap-around services to support workers to access and complete training, to attract, train, retain, or transition to meet local workforce needs and increase high-quality job opportunities. The transformation of Virginia's workforce development system will align these opportunities and services, while allowing the Commonwealth to:

- Deliver programs more efficiently and increase workforce participation, fostering greater business investment, and, ultimately, a stronger economy for all Virginians;
- Provide data-driven insights that will improve the delivery of skill-building and workforce preparedness services through leveraging innovative data analysis;
- Create a comprehensive strategy, balanced with regional flexibility, ensuring programs and services remain consistent with the needs of regions across Virginia;
- Develop programs that better align with the needs of businesses and scale programs that work; and
- Create a set of measures and metrics focused on jobs filled and people retained in the workforce, with greater accountability of the results.

To ensure an available, diverse, and highly skilled workforce is utilized, the Office of Broadband will require all applicants (including contractors and subcontractors) submit the credentials of the staff expected to perform the activities funded by a subgrant or provide plans to acquire and utilize an appropriately credentialed and skilled workforce. The submission of such credentials will be evaluated based on completeness of submission. The plan for a highly skilled workforce should include the following information:

- The ways in which the applicant will ensure the use of an appropriately skilled

workforce, e.g., through Registered Apprenticeships or other joint labor-management training programs that serve all workers;

- Virginia has a registered apprenticeship program that the applicant could choose to utilize in combination with submitting appropriate licenses/certifications/credentials of those who are not through the apprenticeship program but will be assisting in the activities funded by the subgrant.
- The steps that will be taken to ensure that all members of the project workforce will have appropriate credentials, e.g., appropriate and relevant pre-existing occupational training, certification, and licensure;
 - As a part of the applicant's submission, the Office of Broadband will require all certifications, licenses, and any other relevant credentials be submitted for the members outlined within the staffing plan. The submission of such credentials will be evaluated based on completeness of submission. Furthermore, prior to any employment additions or changes to the project, the Office of Broadband will ensure the same requirements are followed and the appropriate credentials be submitted before being allowed to perform BEAD related activities.
- Whether the workforce is unionized;
- Whether the workforce will be directly employed or whether work will be performed by a subcontracted workforce;
- The entities that the applicant plans to contract and subcontract with in carrying out the proposed work.

Additionally, the Office of Broadband, in partnership with workforce development organizations, will develop and promote sector-based partnerships among employers, education and training providers, the public workforce system, unions and worker organizations, and community-based organizations that provide relevant training, etc. to attract and train, retain, or transition to meet local workforce needs and increase high-quality job opportunities. The Office of Broadband will accomplish this via the Virginia Department of Labor and Industry (DOLI) registered apprenticeships.

The Commonwealth of Virginia will also plan to create equitable on-ramps into broadband-related jobs in an effort to maintain job quality for new and incumbent workers engaged in the sector and continually engage with labor organizations and community-based organizations to maintain worker voice throughout the planning and implementation process. This objective will be accomplished by aligning workforce development programs under the new statewide workforce development agency, which combines the currently separate workforce development components of multiple state agencies. This alignment, through aligning and efficiency directing workforce services, will create equitable on ramps in the Commonwealth to the broadband workforce.

To ensure job opportunities created by the BEAD program and other broadband funding programs are available to a diverse pool of workers, the Office of Broadband will require applicants to submit in their application, plans for targeted outreach to populations that have traditionally been underrepresented in broadband and information technology jobs, including but not limited to women and people of color. The Office of Broadband will also require applicants to consider providing wrap-around services for their workforce, including services and support

systems that promote access and stronger alignment of workforce, education, vocational rehabilitation, and other human services systems. Applicants must include in their application their analysis of providing such services and plans to provide well-rounded support to their broadband workforce. Responses will be evaluated for completeness of submission. The Office of Broadband will also conduct its own coordination efforts amongst Tribal Governments, local community organizations, and unions and worker organizations to make certain that a diverse set of stakeholders are involved and aware of the opportunities created by the BEAD program.

2.8.2 Text Box: Describe the information that will be required of prospective subgrantees to demonstrate a plan for ensuring that the project workforce will be an appropriately skilled and credentialed workforce. These plans should include the following:

- **The ways in which the prospective subgrantee will ensure the use of an appropriately skilled workforce, e.g., through Registered Apprenticeships or other joint labor- management training programs that serve all workers;**
- **The steps that will be taken to ensure that all members of the project workforce will have appropriate credentials, e.g., appropriate and relevant pre-existing occupational training, certification, and licensure;**
- **Whether the workforce is unionized;**
- **Whether the workforce will be directly employed or whether work will be performed by a subcontracted workforce; and**
- **The entities that the proposed subgrantee plans to contract and subcontract with in carrying out the proposed work.**

If the project workforce or any subgrantee's, contractor's, or subcontractor's workforce is not unionized, the subgrantee must also provide with respect to the non-union workforce:

- **The job titles and size of the workforce (FTE positions, including for contractors and subcontractors) required to carry out the proposed work over the course of the project and the entity that will employ each portion of the workforce;**
- **For each job title required to carry out the proposed work (including contractors and subcontractors), a description of:**
 - **Safety training, certification, and/or licensure requirements (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training as relevant depending on title and work), including whether there is a robust in-house training program with established requirements tied to certifications, titles; and**
 - **Information on the professional certifications and/or in-house training in place to ensure that deployment is done at a high standard.**

The Office of Broadband is committed to ensuring that applicants utilize an appropriately skilled and credentialed workforce. The Office of Broadband will require the following information from applicants in the application process, which will be evaluated for completeness:

- The ways in which the prospective subgrantee will ensure the use of an appropriately skilled workforce, e.g., through Registered Apprenticeships or other joint labor-management training programs that serve all workers;
- The steps that will be taken to ensure that all members of the project workforce will have appropriate credentials, e.g., appropriate and relevant pre-existing occupational training, certification, and licensure;
- Whether the workforce is unionized;
- Whether the workforce will be directly employed or whether work will be performed by a subcontracted workforce; and
- The entities that the proposed subgrantee plans to contract and subcontract with in carrying out the proposed work.

For workforces that are not unionized, the Office of Broadband will require the following information from applicants:

- The job titles and size of the workforce (FTE positions, including for contractors and subcontractors) required to carry out the proposed work over the course of the project and the entity that will employ each portion of the workforce;
- For each job title required to carry out the proposed work (including contractors and subcontractors), a description of:
 - Safety training, certification, and/or licensure requirements (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training as relevant depending on title and work), including whether there is a robust in-house training program with established requirements tied to certifications, titles; and
 - Information on the professional certifications and/or in-house training in place to ensure that deployment is done at a high standard.

The Office of Broadband will ensure applicants are aware of these regulations prior to and throughout the selection process by conducting regulations information webinars, posting a list of regulations on the [VATI website](#), and including the requirements in grant applications/instructions as well as grant agreement terms/conditions and subrecipient grant monitoring program requirements.

Applications that fail to submit this information and thereby meet the minimum qualifications for ensuring a skilled, diverse, and credentialed workforce will not be considered to receive BEAD funding.

2.9.1 Text Box: Describe the process, strategy, and the data tracking method(s) the Eligible Entity will implement to ensure that minority businesses, women-owned business enterprises (WBEs), and labor surplus area firms are recruited, used, and retained when possible.

Historically, Minority Business Enterprises and Women’s Business Enterprises have encountered disparities in contracting when compared to other entities despite their experience, qualifications, and impact in communities. As major drivers of both economic and employment growth, it’s essential that the Office of Broadband makes concerted efforts to engage with underrepresented enterprises when possible. By adhering to Federal guidelines such as [2 C.F.R. § 200.321](#), the Office of Broadband, in partnership with other state and local entities, such sa

the Virginia Department of Small Business and Supplier Diversity, will create an environment within their broadband deployment initiative that allows minority-owned businesses, women-owned businesses, and labor surplus area firms to have equality in seeking contracted work while also acting in accordance with State regulations such as the Prevailing Wage Statute.

The Office of Broadband is committed to ensuring that minority businesses, women-owned business enterprises (WBEs), and labor surplus area firms are recruited, used, and retained when possible.

Pursuant to 2 C.F.R. § 200.321, the Office of Broadband will implement the following affirmative steps to ensure Minority Business Enterprises, Women's Business Enterprises, and labor surplus area firms are included in the contract process:

- Place qualified small and minority businesses and women's business enterprises on solicitation lists at the Virginia Department of Small Business and Supplier Diversity's Business Directory
- Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
- Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce
- Require subgrantees to take the affirmative steps listed above as it relates to its subcontractors.

In addition to the measures that ensure MBEs, WBEs, and LSAs have a level playing field in applying for contract awards the Office of Broadband will also develop a system to track key metrics on the inclusion of underrepresented enterprises throughout the process, including recruitment, utilization, and retainment.

The Office of Broadband will ensure applicants are aware of these expectations prior to and throughout the selection process by conducting information webinars, posting a list of regulations and expectations on the VATI website, and including the requirements in grant applications/instructions as well as grant agreement terms/conditions and subrecipient grant monitoring program requirements.

2.9.2 Check Box: Certify that the Eligible Entity will take all necessary affirmative steps to ensure minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including the following outlined on pages 88 – 89 of the BEAD NOFO:

- **Placing qualified small and minority businesses and women's business enterprises on solicitation lists;**
- **Assuring that small and minority businesses, and women's business**

enterprises are solicited whenever they are potential sources;

- **Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;**
- **Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;**
- **Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and**
- **Requiring subgrantees to take the affirmative steps listed above as it relates to subcontractors.**

The Office of Broadband hereby certifies that it will take all necessary affirmative steps to ensure minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including the following outlined on pages 88 – 89 of the BEAD NOFO:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring subgrantees to take the affirmative steps listed above as it relates to subcontractors.

2.10.1 Text Box: Identify steps that the Eligible Entity will take to reduce costs and barriers to deployment. Responses may include but not be limited to the following:

- **Promoting the use of existing infrastructure;**
- **Promoting and adopting dig-once policies;**
- **Streamlining permitting processes;**
- **Streamlining cost-effective access to poles, conduits, easements; and**
- **Streamlining rights of way, including the imposition of reasonable access requirements.**

The Commonwealth of Virginia is committed to improving broadband access and connectivity in the most efficient, cost-effective manner. Over the past several years, Virginia has been looking for creative solutions to many of the obstacles that broadband expansion may carry. Since then, Virginia broadband officials have taken action and enabled other stakeholders to set themselves up for success.

- Promoting the use of existing infrastructure;

Delivering a robust and cost-effective solution for broadband access in unserved and underserved areas must incorporate leveraging existing infrastructure. Virginia is fortunate to have a robust middle-mile broadband network, in part through the work by groups such as the Mid-Atlantic Broadband Communities Corporation. By requiring applicants to prioritize cost efficiency of their networks, leveraging existing infrastructure will continue to be paramount to delivering broadband expansion. The Commonwealth of Virginia also has adopted legislation to leverage the infrastructure of investor-owned utilities for broadband expansion. Legislation passed in 2021 by the Virginia General Assembly to leverage Virginia's grid modernization to bridge the digital divide. The law allows Virginia's investor-owned utilities - Appalachian Power and Dominion Energy - to partner with localities and broadband providers to leverage utility-owned fiber for unserved areas of the state. This program has reduced the cost for rural broadband deployment significantly. Now any broadband provider from anywhere in the world can partner with a utility "middle-mile" network and build networks in areas currently lacking access to high-speed broadband.

- Promoting and adopting dig-once policies;

The Commonwealth of Virginia does not have a dig-once law; however other efforts are underway to promote coordination and work to remove the duplication of efforts of utilities and other infrastructure co-locating in the right-of-way. For example, broadband providers are required to coordinate with the Virginia Department of Transportation to place telecommunications infrastructure within the public right of way. These efforts may lead to coordinated and streamlined deployment, across multiple sectors requiring right-of-way-based infrastructure. The Virginia Department of Transportation recently hired a Broadband Infrastructure Coordinator to aide in the coordination of these efforts.

- Streamlining permitting processes;

The Office of Broadband will continue to work with its local, state and federal government partners to streamline the permitting process of broadband projects. The Office of Broadband has worked with the National Park Service to cross over natural assets like the Blue Ridge Parkway and looks forward to making these efforts successful in the future to reach universal connectivity. Additionally, the Office of Broadband has assisted broadband providers in navigating the environmental requirements of American Rescue Plan Act funding for broadband projects, which are slated to be scaled up under BEAD. The Virginia Department of Housing and Community Development, which houses the Office of Broadband, also has experience in navigating historical review requirements, as well as ensuring compliance with other requirements of federal funding and these best practices will be shared with broadband providers for the successful implementation of BEAD.

- Streamlining cost-effective access to poles, conduits, easements; and

The Office of Broadband continues to share best practices seen from existing broadband deployment projects across the Commonwealth. For example, a local electric cooperative may provide a 'lay-down' yard for telecommunications supplies to be readily available during deployment. A broadband provider may pre-order poles, and potentially other electric supplies, and sell them at cost during the

pole permitting and upgrading process. Additionally, incumbent and new utility pole owners have been rallied to increase production capacity to avoid shortages during broadband expansion.

- Streamlining rights of way, including the imposition of reasonable access requirements.

The Virginia Department of Transportation (VDOT) is an active partner in the installation of broadband facilities in the state right-of-way. Potential providers must operate under a land use permit, and these are obtained through local VDOT land use offices. On December 3, 2021, FHWA published a new Broadband Infrastructure Deployment rule. § 645.307(a) adds four new requirements to Section 607 of the MOBILE NOW Act. Under the new rules, VDOT must: (1) Identify a broadband utility coordinator who is responsible for facilitating the infrastructure ROW efforts within the State. (2) Establish a registration process for broadband infrastructure entities who may be interested in installing facilities in conjunction with roadway projects. (3) Notify broadband infrastructure companies identified under (2), on an annual basis, of the State Transportation Improvement Program (STIP) and provide other notifications as necessary (4) Coordinate these initiatives with other statewide telecommunication and broadband plans, state and local transportation plans and land use plans. VDOT continues to effectively implement these requirements and the Office of Broadband continues to work with VDOT to coordinate efforts across VDOT land use offices their regions.

2.11.1 Text Box: Describe the Eligible Entity’s assessment of climate threats and proposed mitigation methods. If an Eligible Entity chooses to reference reports conducted within the past five years to meet this requirement, it may attach this report and must provide a crosswalk narrative, with reference to page numbers, to demonstrate that the report meets the five requirements below. If the report does not specifically address broadband infrastructure, provide additional narrative to address how the report relates to broadband infrastructure. At a minimum, this response must clearly do each of the following, as outlined on pages 62 – 63 of the BEAD NOFO:

- **Identify the geographic areas that should be subject to an initial hazard screening for current and projected future weather and climate-related risks and the time scales for performing such screenings;**
- **Characterize which projected weather and climate hazards may be most important to account for and respond to in these areas and over the relevant time horizons;**
- **Characterize any weather and climate risks to new infrastructure deployed using BEAD Program funds for the 20 years following deployment;**
- **Identify how the proposed plan will avoid and/or mitigate weather and climate risks identified; and**
- **Describe plans for periodically repeating this process over the life of the Program to ensure that evolving risks are understood, characterized, and addressed, and that the most up-to-date tools and information resources are utilized.**

Severe weather events pose a significant threat to the environment, human health, and the economy, and are projected to increase in occurrence and severity in the future. The BEAD Program is aimed at supporting Eligible Entities in addressing these risks and minimizing their impacts. This proposal outlines a plan for addressing climate threats within the Eligible Entity

and proposed mitigation methods while performing BEAD-funded activities.

The Office of Broadband has utilized the resources and tools defined by NTIA within the Notice of Funding Opportunity to identify the geographic areas that should be subject to an initial hazard screening for current and future weather-related risks. Whole regions of the commonwealth are vulnerable to our identified climate risks, though with flooding and sea level rise, Virginia's tidal localities in particular are vulnerable:

- | | | |
|----------------------|-----------------|------------------|
| -Accomack | -Isle of Wight | -Portsmouth |
| -Alexandria | -James City | -Prince George |
| -Arlington | -King George | -Prince William |
| -Caroline | -King William | -Richmond (co.) |
| -Charles City County | -Lancaster | -Richmond (city) |
| -Chesterfield | -Mathews | -Spotsylvania |
| -Essex | -Middlesex | -Stafford |
| -Fairfax | -New Kent | -Suffolk |
| -Fredericksburg | -Newport News | -Surry |
| -Gloucester | -Norfolk | -Virginia Beach |
| -Hampton | -Northampton | -Westmoreland |
| -Hanover | -Northumberland | -York |
| -Henrico | -Poquoson | |

Utilizing the tools and resources recommended by NTIA, the Office of Broadband has identified the following weather and climate hazards as the most pertinent and critical to account for.

- a) **Flood:** Sea level rise will impact nearly 40 localities in Virginia that border the ocean, bay, or a tidal river. The Chesapeake Bay region specifically is experiencing some of the fastest sea level rise in the world, with parts of Norfolk already flooding during king tides. Optimistic estimates by NOAA seen in the Coastal Flood Exposure Mapper give the region until 2060 before sea level rises two feet, with most scenarios placing that amount of rise on an even shorter timeframe.
- b) **Extreme Heat:** Extreme heat from the warming climate will impact the entire commonwealth but especially lower-lying localities east of the Blue Ridge. Per the Climate Explorer, they will experience an almost tenfold increase in days with maximum temperatures exceeding 95 degrees by the mid-2050s. This is even under a lower-emissions scenario. Infrastructure will need to be able to stand up to extended periods of extreme heat.
- c) **High Winds:** Higher winds, especially those from severe weather, are expected to become more commonplace. Climate change is leading to an increase in severe weather and high-wind events. While these storms traditionally most impact the Piedmont and Coastal Plains, they can strike any part of the commonwealth and infrastructure needs to be prepared accordingly.
- d) **Severe Winter Weather:** Severe winter weather is also expected to intensify. Higher temperatures lead to more moisture in the air, which creates stronger snowstorms. While the frequency of regular snowfall will decrease, the storms that do hit will be more intense than before. This effect will be felt statewide. More winter weather can be expected in localities with higher elevations west of the Blue Ridge, but winter storms that do impact the Piedmont and Coastal Plain can impact a larger population that is traditionally less prepared for such storms.

Through research conducted using the resources and tools recommended by NTIA, the Office of Broadband believes the weather and climate risks mentioned above (flood, heat, high wind, severe winter weather) all present risks to new infrastructure deployed using BEAD program funds. Soil erosion from flooding and damage from high winds or severe winter weather are all possible given the climate projections over the next 20 years. For the Office of Broadband's response to the identified climate risks, please see above.

For the identified weather and climate hazards, the Office of Broadband may require that subgrantees in weather-vulnerable geographic areas of Virginia implement some or all of the following mitigation measures.

- Incorporating climate resilience into infrastructure design
- Developing emergency response plans and communication strategies to ensure timely and effective response to extreme weather events.

Additional mitigation measures not listed may be required by the Office of Broadband.

On an annual basis, unless otherwise spurred by a severe weather event, the Office of Broadband will periodically repeat the screening process over the life of the Program to ensure that evolving risks are understood, characterized, and addressed. The most up-to-date tools and information resources will be utilized to ensure that the plan remains effective in addressing climate threats. The Office of Broadband may update program materials including

but not limited to programmatic guidelines and applications.

This proposal outlines a plan for addressing threats of severe weather events within Virginia and proposed mitigation methods. By identifying vulnerable areas, hazards, and risks, and implementing mitigation measures, the Office of Broadband can minimize the impacts of weather risks on infrastructure, human health, and the economy. Periodic repetition of the screening process and updates to the plan will ensure that Office of Broadband is prepared to address evolving severe weather events.

2.12.1 Text Box: Describe the low-cost broadband service option(s) that must be offered by subgrantees as selected by the Eligible Entity, including why the outlined option(s) best services the needs of residents within the Eligible Entity’s jurisdiction. At a minimum, this response must include a definition of low-cost broadband service option that clearly addresses the following, as outlined on page 67 of the BEAD NOFO:

- **All recurring charges to the subscriber, as well as any non-recurring costs or fees to the subscriber (e.g., service initiation costs);**
- **The plan’s basic service characteristics (download and upload speeds, latency, any limits on usage or availability, and any material network management practices);**
- **Whether a subscriber may use any Affordable Connectivity Benefit subsidy toward the plan’s rate; and**
- **Any provisions regarding the subscriber’s ability to upgrade to any new low-cost service plans offering more advantageous technical specifications.**

As required in the BEAD Notice of Funding Opportunity, subgrantees receiving BEAD funds to deploy broadband infrastructure are required to offer a “low-cost broadband service option” that is available to customers for the useful life of the network assets. The Office of Broadband defines a low-cost service option as the following:

- The applicant offers a service option that meets, at a minimum, the following criteria:
 - The service option is set at a price that is affordable to the eligible population, defined as those eligible for the Affordable Connectivity Program or its successor.
 - The applicant shall submit justification on why such option is affordable to the eligible population.
 - The price identified, as well as the provisions identified below, for this service option will be a contractual requirement of awardees for the useful life of the network assets, which is defined as 8 years for the purpose of this section. This price shall be indexed to Consumer Price Index, as outlined by the U.S. Bureau of Labor Statistics.
 - Allows the end user to apply the Affordable Connectivity Program benefit subsidy to the service price and makes a demonstrable effort to inform prospective customers of these programs and the steps necessary to enroll and apply the benefit to the service plan.
 - Consistently and reliably provides download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps.
 - Provides typical latency measurements of no more than 100 milliseconds.

- Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere.
- In the event the applicant later offers a low-cost plan with higher speeds downstream and/or upstream, permits Eligible Subscribers that are subscribed to a low-cost broadband service option to upgrade to the new low-cost offering at little to no cost.
- The applicant is required to participate in the Affordable Connectivity Program, and encouraged to ensure that prospective customers are aware of their participation in the ACP. The applicant is encouraged to participate in any successor broadband subsidy programs should funding for the Affordable Connectivity Program be depleted and the Program not renewed.
- The low-cost broadband service option must be made available to those who qualify for the FCC's Affordable Connectivity Program. Eligibility criteria for the Affordable Connectivity Program are located at <https://www.affordableconnectivity.gov/do-i-qualify/>. Subgrantees may not impose additional eligibility restrictions beyond those applicable to the Affordable Connectivity Program. In the event that funding for the Affordable Connectivity Program is not replenished and the National Verifier is no longer available, the Office of Broadband will defer to NTIA clarification on how low-cost service option eligibility verification should occur.
- The Office of Broadband requires the low-cost broadband service option made available to all eligible prospective customers across the subgrantee's service territory, including locations within the awarded project areas under the BEAD program.

[The Commonwealth of Virginia is confident this approach, especially the requirement that the price of the low-cost service option offered inside and outside a subgrantees BEAD funded network be the same, best effectuates the purposes of the BEAD Program first and foremost by ensuring that the low-cost service option, combined with ACP participation – the two statutorily prescribed affordability measures in the IIJA – will enable affordable broadband service to be offered to Eligible Subscribers. Secondly, the speed, service, and upgradability elements will ensure that Eligible Subscribers receive high-quality low-cost broadband service over the Funded Network.](#)

The Office of Broadband proposes this definition for a required low-cost service option after serious consideration of how to best effectuate the affordability aims of both the BEAD program and the Infrastructure Investment and Jobs Act. The Office's priority in establishing affordability requirements for the BEAD program is to increase awareness of and enrollment in available broadband subsidy programs while maintaining flexibility given the diversity in size, territory, and service offerings of applicants.

[The remaining text in this field includes language from a recent letter from the Virginia Office of Broadband justifying this approach to NTIA in response to the second round of curing comments regarding the Commonwealth of Virginia's BEAD Volume 2:](#)

[NTIA recently provided a second set of feedback and curing comments to the Commonwealth of](#)

Virginia's Volume 2 of its BEAD Initial Proposal (Volume 2), which include further commentary on the Commonwealth's proposed model of incorporating the Low-Cost Service Option under the BEAD program. This feedback is provided below.

2.12.1a As a response to the letter to the Assistant Secretary: The Assistant Secretary must be able to determine the impact to a customer at the Initial Proposal stage – it isn't enough to know as of the Final Proposal. Thus the low-cost option must be established in the Initial proposal as an exact price or formula.

This feedback requests that Virginia include one of two things in its required definition of its low-cost option in its Volume 2:

1. An exact price for what will be the only acceptable low-cost option for BEAD-funded broadband service regardless of provider or location in Virginia, or
2. A formula which one could apply and thereby derive an exact price for what will be the only acceptable low-cost option for BEAD-funded broadband service regardless of provider or location in Virginia.

Thus, this feedback requests that Virginia require broadband providers to offer a rate for the low-cost option at a pre-set or pre-determinable price certain as a condition to receipt of any BEAD funding. This would have the effect of attempting to regulate the rate of BEAD-funded low-cost broadband service.

Virginia's Concerns

Virginia has two main concerns regarding what the latest feedback is requesting. Its first concern is regarding federal preemption. Its second concern arises from the language contained in the Infrastructure Investment and Jobs Act, Public Law 117-58 (Bipartisan Infrastructure Law) and the BEAD Notice of Funding Opportunity, NTIA-BEAD-2022 (NOFO).

It appears that states are preempted by federal law from regulating the rates of broadband services generally. See, e.g., *N.Y. State Telecomms. Ass'n, Inc. v. James*, 544 F. Supp. 3d 269 (E.D.N.Y. 2021) (preempting state law that would have required ISPs to offer low-income customers specific levels of broadband service at specific prices); *CTIA–Wireless Ass'n v. Echols*, 2013 WL 6633177, at *2 (N.D. Ga. Dec. 17, 2013) (preempting regulation requiring a minimum service rate of \$5.00/month under Section 332 of the Communications Act); *City of Dubuque v. Grp. W Cable, Inc.*, 1987 WL 11826, at *6 (N.D. Iowa Feb. 25, 1987) (preempting ordinance specifying rates that may be charged for second cable outlets and remote controls).

Additionally, we have reviewed both the Bipartisan Infrastructure Law and the BEAD NOFO. The requirement described in NTIA's latest feedback does not appear in either of them.

The Bipartisan Infrastructure Law does not take a specific approach to defining what a low-cost option would look like. Instead, it takes a general approach that leaves much up to the states. It provides that states are to develop their own definition of the "low-cost broadband service option." See 47 U.S.C. § 1702(h)(5)(A)(ii). However, it does not require a fixed price or a formula. Conditions on federal funding must be clear and specific. See *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17, 101 S. Ct. 1531, 67 L. Ed. 2d 694 (1981) ("if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously").

Additionally, Virginia is in the initial proposal phase now. Nothing in the statutory language defining the initial proposal refers to affordability or an exact price or formula for defining the low-cost option. See 47 U.S.C. § 1702(e)(3). Instead, states are to submit their definition of the “low-cost broadband service option” in their “final proposal.” See 47 U.S.C. § 1702(h)(5)(B)(i). Under the Bipartisan Infrastructure Law, Virginia is not yet required to submit its definition.

Further, and pertinent to this issue, The Bipartisan Infrastructure Law provides:

Nothing in this subchapter may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service.

See 47 U.S.C. § 1702(h)(5)(D).

Virginia is concerned that it is being asked by the funding agency, NTIA, to take an action that NTIA is expressly prohibited from taking. See, e.g., GAO, Principles of Federal Appropriations Law, 4th ed., 2016 rev., Chapter 2, page 33 (“... administrative discretion may not transcend the statutes, nor be exercised in conflict with law, nor for the accomplishment of purposes unauthorized by the appropriation . . .”) (citations omitted); *Lincoln v. Vigil*, 508 U.S. 182, 193, 113 S.Ct. 2024, 124 L.Ed.2d 101 (1993) (“Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes.”); and *In re Aiken County*, 725 F.3d 255, 260 (D.C. Cir. 2013) (“... federal agencies may not ignore statutory mandates or prohibitions merely because of policy disagreement with Congress.”)

Virginia’s Solution

The Commonwealth of Virginia shares Congress’ and NTIA’s goal of affordable broadband. Virginia’s proposed low-cost methodology provides for robust affordability that is consistent with both the Bipartisan Infrastructure Law and the BEAD NOFO. Virginia’s Volume 2 requires that, at the time of application, the applicant provides the price for their low-cost service option, as well as demonstrate how their established low-cost broadband service option is affordable. Applicants are required to provide their market analysis, which demonstrates why the set price for their low-cost service option is affordable. As required by NTIA, all recommended projects will be submitted to NTIA for final approval, thereby providing the Assistant Secretary the expected cost to the Eligible Subscriber as required prior to approval of the Final Proposal. In addition to meeting the requirements of the Bipartisan Infrastructure Law, Virginia’s Volume 2 goes further and adds safeguard by requiring the low-cost broadband service option be made available to all eligible prospective customers across the subgrantee’s service territory, including locations within the awarded project areas under the BEAD program.

Objectively, this approach ties the low-cost broadband service option to market conditions across a subgrantee’s entire service territory. As is the goal of NTIA through curing guidance, this approach prohibits inappropriately set low-cost broadband rates by tying the established rates to market analysis inside the BEAD application area, as well as what the applicant offers across their entire network to the eligible population. A similar approach has produced positive outcomes under Virginia’s last-mile broadband deployment grant programs.

Accordingly, we respectfully request that NTIA accept Virginia's proposed definition of its low-cost option as submitted and approve Virginia's Volumes 1 and 2. Virginia looks forward to continuing to work collaboratively with NTIA to achieve affordable, reliable, high speed broadband access universally across the Commonwealth.

The Commonwealth of Virginia, accompanying these curing edits, will submit a letter to Assistant Secretary Alan Davidson justifying this current approach as compliant with BEAD guidance. Provided below is this justification of the current approach to the Low-Cost Plan requirement of BEAD.

The Commonwealth of Virginia establishes NTIA's stated requirement of "a mechanism that would tie cost to an objective benchmark" and meets the statutory requirement⁴ that low-cost broadband service option be provided to the Assistant Secretary before submission of the Final Proposal. In addition to meeting this requirement, Virginia's Volume 2 goes further than NTIA's proposed service option outlined in the BEAD Notice of Funding Opportunity (NOFO) to provide safeguards against high-cost broadband services for eligible populations. Similar approaches in Virginia's broadband deployment grant programs have produced positive outcomes for network affordability in previously unserved areas.

Virginia's Volume 2 requires that, at the time of application, the applicant provides the price for their low-cost service option, as well as demonstrate how their established low-cost broadband service option is affordable. Applicants are required to provide their market analysis, which demonstrates why the set price for their low-cost service option is affordable. As required by NTIA, all recommended projects will be submitted to NTIA for final approval, thereby providing the Assistant Secretary the expected cost to the Eligible Subscriber as required prior to approval of the Final Proposal. In addition to incorporating requirements of NTIA's NOFO, Virginia's Volume 2 goes beyond this proposed service option by requiring the low-cost broadband service option be made available to all eligible prospective customers across the subgrantee's service territory, including locations within the awarded project areas under the BEAD program.

Objectively, this approach ties the low-cost broadband service option to market conditions across a subgrantee's entire service territory. As is the goal of NTIA through curing guidance, this approach prohibits inappropriately set low-cost broadband rates by tying the established rates to market analysis inside the BEAD application area, as well as what the applicant offers across their entire network to the eligible population. A similar approach has produced positive outcomes under Virginia's last-mile broadband deployment grant programs.

The Commonwealth of Virginia's chief broadband deployment program—the Virginia Telecommunication Initiative (VATI)—has invested \$935 million in state and federal funding to extend broadband access to over 388,000 previously unserved homes, businesses, and community anchor institutions across 80 counties and cities. In the largest funding announcement to date, the Commonwealth deployed \$722 million in state and federal funding under the American Rescue Plan Act of 2021, which included over

⁴ Excerpt from Public Law 117-56: An eligible entity shall submit to the Assistant Secretary for approval, in the final proposal of the eligible entity submitted under subsection (c)(4), a proposed definition of "low-cost broadband service option" that shall apply to subgrantees of the eligible entity for purposes of the requirement under paragraph (4)(B) of this subsection.

~~280,000 locations across 36 different projects. The average price of the lowest cost monthly plan offered to all subscribers across these projects is \$57.73. This figure is before plans offered by some providers for eligible low-income households are taken into account. Under VATI, applicants are required to take a similar approach to the BEAD Volume 2 proposal by establishing their low-cost service options consistent with market analysis in the application area, and current packages offered across their network.~~

2.12.2 Checkbox: Certify that all subgrantees will be required to participate in the Affordable Connectivity Program or any successor program.

Yes, the Office of Broadband will require all subgrantees to participate in the Affordable Connectivity Program or any successor program.

2.13.1 Text Box: Describe a middle-class affordability plan that details how high-quality broadband services will be made available to all middle-class families in the BEAD-funded network's service area at reasonable prices. This response must clearly provide a reasonable explanation of how high-quality broadband services will be made available to all middle-class families in the BEAD-funded network's service area at reasonable prices.

The affordability of broadband services from BEAD-funded networks for middle-class households is a priority for the Office of Broadband. The affordability of internet service plans for middle class households is addressed by the following program elements:

BEAD Proposal Scoring Criteria

The Office's primary means of ensuring affordability is the weight of affordability in the scoring criteria established in this proposal. Affordability will comprise 20% of the scoring criteria the Office will use to evaluate proposals to serve a location under the BEAD program. Under the scoring criterion, the lowest total cost service package of gigabit symmetrical service will receive full credit. More expensive packages receive a percentage of points reflective of their percent distance from the lowest cost package.

Low-Cost Service Option

Providers participating in the BEAD program are required to offer to eligible customers the Low-Cost Service Option defined in this Proposal. Broadband service providers are encouraged to ensure that broadband services offered to prospective customers in the BEAD-awarded area are affordable and reasonably accessible to middle class households.

Consideration of Special Construction Costs

For a subset of Virginians, broadband connections are not attainable because their home exceeds an internet service provider's standard connection drop length from a roadway or easement containing telecommunications infrastructure. The cost incurred by home owners to extend broadband infrastructure to these locations, referred to as special construction costs, range from a few hundred to a few thousand dollars, depending on the distance and cost to connect the location. To account for this affordability barrier to connect to broadband networks, awardees will be prohibited from charging special construction charges for a minimum of

twelve months after broadband service is made available to a BEAD-funded location. Awardees will not be permitted to charge any fees to subscribers for these line extensions, except for the regular connection fees associated with any connection made on the network.

2.14.1 Text Box: Describe the Eligible Entity's planned use of any funds being requested, which must address the following:

- **If the Eligible Entity does not wish to request funds during the Initial Proposal round, it must indicate no funding requested and provide the rationale for not requesting funds.**
- **If the Eligible Entity is requesting less than or equal to 20 percent of funding allocation during the Initial Proposal round, it must detail the amount of funding requested for use upon approval of the Initial Proposal, the intended use of funds, and how the proposed use of funds achieves the statutory objective of serving all unserved and underserved locations.**
- **If the Eligible Entity is requesting more than 20 percent (up to 100 percent) of funding allocation during the Initial Proposal round, it must detail the amount of funding requested for use upon approval of the Initial Proposal, the intended use of funds, how the proposed use of funds achieves the statutory objective of serving all unserved and underserved locations and provide rationale for requesting funds greater than 20 percent of the funding allocation.**

The Office of Broadband is requesting 100% of funding be made available to the Commonwealth of Virginia under the BEAD allocation. The Office of Broadband and its industry, state and local government, and community partners stand ready to implement BEAD funding and deliver access to this vital infrastructure to unserved and underserved communities in the Commonwealth. Virginia's internet service providers and local governments, equipped with the experience of navigating state and federal funding programs, are prepared with the technical expertise to begin expanding broadband networks to the remaining unserved and underserved with BEAD funding on an expedited schedule – ahead of the BEAD Program's timeline of Final Proposal approval.

Additional funding is expected to be available after funding is obligated to extend broadband networks to all unserved and underserved locations, as well as unserved Community Anchor Institutions. To implement these Non-Deployment Programs as defined in the BEAD NOFO, the Office of Broadband is undergoing an extensive internal and external capacity-building exercise through the State Digital Equity Planning Grant Program by identifying need areas in broadband affordability and adoption and developing stakeholder networks and programs to address these gaps in digital opportunity.

This staged approach – that of delivering funding to all locations without qualifying broadband access prior to funding other programs to address digital opportunity – achieves the statutory objective of prioritizing these areas.

2.14.3 Check Box: Certify that the Eligible Entity will adhere to BEAD Program requirements regarding Initial Proposal funds usage. If the Eligible Entity is not requesting funds in the Initial Proposal round and will not submit the

Initial Funding Request, note “Not applicable.”

The Office of Broadband will adhere to BEAD Program requirements regarding Initial Proposal funds usage.

2.15.1 Text Box

- **Disclose whether the Eligible Entity will waive all laws of the Eligible Entity concerning broadband, utility services, or similar subjects, whether they predate or postdate enactment of the Infrastructure Act that either (a) preclude certain public sector providers from participation in the subgrant competition or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer.**
- **If the Eligible Entity will not waive all such laws for BEAD Program project selection purposes, identify those that it will not waive (using the Excel attachment) and their date of enactment and describe how they will be applied in connection with the competition for subgrants. If there are no applicable laws, note such.**

To the knowledge of the Office of Broadband, the Commonwealth of Virginia has no such laws that (a) preclude certain public sector providers from participation in the subgrant competition for BEAD funding or (b) impose specific requirements on public sector entities, such as limitations on the sources of financing, the required imputation of costs not actually incurred by the public sector entity, or restrictions on the service a public sector entity can offer.

2.16.1 Check Box: Certify the Eligible Entity’s intent to comply with all applicable requirements of the BEAD Program, including the reporting requirements.

Yes, the Office of Broadband will comply with all applicable requirements and reporting requirements of the BEAD Program.

2.16.2 Text Box: Describe subgrantee accountability procedures, including how the Eligible Entity will, at a minimum, employ the following practices outlined on page 51 of the BEAD NOFO:

- **Distribution of funding to subgrantees for, at a minimum, all deployment projects on a reimbursable basis (which would allow the Eligible Entity to withhold funds if the subgrantee fails to take the actions the funds are meant to subsidize);**
- **The inclusion of clawback provisions (i.e., provisions allowing recoupment of funds previously disbursed) in agreements between the Eligible Entity and any subgrantee;**
- **Timely subgrantee reporting mandates; and**
- **Robust subgrantee monitoring practices.**

Grant funds will be available to subgrantees after the effective date of the contract and can be requested by submitting a remittance request. Remittance requests must be submitted for reimbursable expenses.. Subgrantees will submit remittance requests and match documentation. The last 10% of the grant award (not 10% from every granted remittance request) shall be retained until all contract obligations have been met. The subgrantee must

complete and submit a Cost Performance Index (CPI) form with every remittance. The Office of Broadband reserves the right to deny any remittance requests or request further explanation from projects with a CPI value of less than .9. Alternatively, the Office of Broadband will consider subgrantee requests receive remittances of BEAD funding based on performance of contract milestones.

If before the Contract Period Performance Date, which is the contract period of performance end date may vary by project, but cannot exceed the allowed project timeline of 4 years as outlined in the NOFO, the subgrantee does not meet at least ninety (90) percent of each of the key deliverables, the Office of Broadband shall promptly notify the subgrantee and may require the submission of a Corrective Action Plan. The Office of Broadband reserves the right to recoup funds from the subgrantee. Such repayment shall be due from the subgrantee within thirty (30) days of the notice to recoup funds. If any repayment due is not made by the subgrantee when due, the Office of Broadband may determine that further collection action is required and may refer the matter to the Office of the Attorney General (the "OAG") for collection.

The subgrantee will be required to submit various reports, both routine and upon request. These reports will help the Office of Broadband monitor the project's progress and to identify when technical assistance might be needed.

Progress reports will be required at designated times and are intended to provide necessary information regarding the progress, obligations, and expenditures that have occurred to date. Their main purpose is to ensure that the subgrantee as well as the Office of Broadband are aware of the programmatic and financial status of the project and that sufficient financial resources are on hand to complete the project's activities.

Progress reports include:

- Broadband Monthly Report
 - A monthly report summarizing the status of the project will be required to be submitted every 30 days.
- Closeout Report
 - Once construction is complete the subgrantee will be required to submit the closeout report which will confirm that all contractual obligations have been met.
- Post Conditional Closeout Reports
 - These reports will be required at both the 6 month and 12-month post-closeout marks. These reports will require number of subscribers and speed tests.

If a subgrantee fails to meet a reporting deadline they will be flagged as out of compliance and, until corrected, no remittance requests or any other requests will be approved.

In addition to progress reports, the Office of Broadband will monitor projects through the use of compliance reviews. These reviews will ensure the project complies with applicable state and federal guidance and regulations.

Compliance reviews include:

- Site Visits
 - The Office of Broadband will conduct site visits every other quarter with the purpose of verifying and documenting project construction and progression.

- Desk Reviews
 - The Office of Broadband will conduct a desk review of the project on alternating quarters as the site visit.
- Internal Compliance Reviews
 - This review will help to ensure that the subgrantee is compliant with 2 CFR 200 regulations as well as maintaining internal control, practicing acceptable financial management procedures, and that the project management plan in current.
- Final Financial Review
- Upon project closeout, the Office of Broadband will conduct a Final Financial Review (FFR) of the project to ensure that the project's finances are in order.

2.16.3 Check Box: Certify that the Eligible Entity will account for and satisfy authorities relating to civil rights and nondiscrimination in the selection of subgrantees.

The Office of Broadband will account for and satisfy authorities relating to civil rights and nondiscrimination in the selection of subgrantees.

2.16.4 Check Box: Certify that the Eligible Entity will ensure subgrantee compliance with the cybersecurity and supply chain risk management requirements on pages 70 - 71 of the BEAD NOFO to require prospective subgrantees to attest that:

Cybersecurity

- **The prospective subgrantee has a cybersecurity risk management plan (the plan) in place that is either: (a) operational, if the prospective subgrantee is providing service prior to the award of the grant; or (b) ready to be operationalized upon providing service, if the prospective subgrantee is not yet providing service prior to the grant award;**
- **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;**
- **The plan will be reevaluated and updated on a periodic basis and as events warrant; and**
- **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.**

Supply Chain Risk Management (SCRM)

- **The prospective subgrantee has a SCRM plan 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;

- **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;**
- **The plan will be reevaluated and updated on a periodic basis and as events warrant; and**

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. The Eligible Entity must provide a subgrantee's plan to NTIA upon NTIA's request.

The Office of Broadband hereby certifies that it will take all necessary affirmative steps to ensure compliance with the cybersecurity and supply chain risk management requirements on pages 70 - 71 of the BEAD NOFO to require applicants to attest that:

Cybersecurity

- The applicant has a cybersecurity risk management plan (the plan) in place that is either: (a) operational, if the applicant is providing service prior to the award of the grant; or (b) ready to be operationalized upon providing service, if the applicant is not yet providing service prior to the grant award;
- 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;
- The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- 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.

Supply Chain Risk Management (SCRM)

- The applicant has a SCRM plan in place that is either: (a) operational, if the applicant is already providing service at the time of the grant; or (b) ready to be operationalized, if the applicant is not yet providing service at the time of grant award;
- 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;
- The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- 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. The Eligible Entity must provide a subgrantee's plan to NTIA upon NTIA's request.

UNAPPROVED