



## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

[Docket No. 220105-0002]

RIN 0660-ZA33

#### Infrastructure Investment and Jobs Act Implementation

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice, Request for Comment.

**SUMMARY:** On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act of 2021 into law, also known (and referred to subsequently herein) as the Bipartisan Infrastructure Law (BIL), which includes a historic investment of \$65 billion to help close the digital divide and ensure that all Americans have access to reliable, affordable, high-speed broadband. The National Telecommunications and Information Administration (NTIA), is responsible for distributing more than \$48 billion in BIL broadband funding through several different programs. NTIA has established multiple avenues for the public to offer input to inform program design and implementation. This includes a series of public virtual listening sessions (see [ADDRESSES below](#)) as well as the opportunity for stakeholders across the nation to make their views known in response to this Notice and Request for Comment (Notice). NTIA welcomes input from all interested parties.

**DATES:** Submit written comments on or before 5 p.m. Eastern Standard Time on February 4, 2022.

**ADDRESSES:** All electronic public comments on this action, identified by Regs.gov docket number NTIA-2021-0002, may be submitted through the Federal e-Rulemaking Portal at <http://www.regulations.gov>. The docket established for this rulemaking can be found at [www.Regulations.gov](http://www.Regulations.gov), NTIA-2021-0002. Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. Responders should include a page number on each page of their submissions. Please do not include in your comments information of a confidential nature, such as

sensitive personal information or proprietary information. All comments received are a part of the public record and will generally be posted to Regulations.gov without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Information obtained as a result of this notice may be used by the federal government for program planning on a non-attribution basis.

In addition to inviting written submissions through this Notice, NTIA is hosting a series of public virtual listening sessions. More information about the listening sessions can be found at <https://www.ntia.doc.gov/federal-register-notice/2021/broadband-grant-programs-public-virtual-listening-sessions>.

**FOR FURTHER INFORMATION CONTACT:** Please direct questions regarding this Notice to [BroadbandForAll@ntia.gov](mailto:BroadbandForAll@ntia.gov), indicating “Notice and Request for Comment” in the subject line, or if by mail, addressed to National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2048. Please direct media inquiries to NTIA’s Office of Public Affairs, [press@ntia.gov](mailto:press@ntia.gov) or (202) 482-7002.

## **SUPPLEMENTAL INFORMATION**

### **I. BACKGROUND**

With the passage of the Bipartisan Infrastructure Law, Congress has taken a significant step forward in achieving the Biden-Harris Administration’s goal of ensuring all Americans have access to affordable, reliable, high-speed broadband. The Bipartisan Infrastructure Law sets forth a \$65 billion investment into broadband, more than \$48 billion of which will be administered by NTIA’s Office of Internet Connectivity and Growth.

This investment will leverage NTIA’s experience in promoting broadband infrastructure development and digital inclusion efforts through its BroadbandUSA initiative as well as other NTIA grant programs, including the Broadband Infrastructure Program, the Tribal Broadband Connectivity Program (TBCP), and the Connecting Minority Communities (CMC) Pilot Program. Additionally, this investment will enhance other established Federal broadband initiatives offered through the U.S.

Department of the Treasury, U.S. Department of Agriculture, and the Federal Communications Commission (FCC).

This Notice is part of NTIA's strategy to engage with partners and other stakeholders to help meet the President's goal to close the digital divide. This is a historic investment, and it requires not only a whole-of-government effort, but a whole-of-country effort. This Notice seeks public comment to bolster NTIA's work and to improve the number and quality of ideas under consideration as the agency develops Notices of Funding Opportunity (NOFOs) for each of the broadband grant programs to be implemented by NTIA pursuant to the Bipartisan Infrastructure Law.

## **II. OBJECTIVES OF THIS NOTICE**

This Notice offers an opportunity for all interested parties to provide vital input and recommendations for consideration in the development of broadband programs established by the Bipartisan Infrastructure Law for implementation by NTIA.

This Notice seeks comment on several Bipartisan Infrastructure Law grant programs to be administered by NTIA: The Broadband Equity, Access and Deployment (BEAD) program, the Middle-Mile Broadband Infrastructure Program, and the Digital Equity Planning Grant Program. NTIA intends to release a future request for comment on the State Digital Equity Capacity Grant Program and Digital Equity Competitive Grant Program. In addition, given the unique nature of the nation-to-nation relationship, NTIA will conduct a Tribal consultation to gather input on questions related to the additional funding appropriated for the Tribal Broadband Connectivity Program, an NTIA program previously implemented under the Consolidated Appropriations Act, 2021.

## **III. REQUEST FOR COMMENTS**

NTIA welcomes input on any matter that commenters believe is important to NTIA's Bipartisan Infrastructure Law implementation efforts. Commenters are invited to comment on the full range of issues presented by this Notice, and are encouraged to address any or all of the following questions, or to provide additional information relevant to implementation of the Bipartisan Infrastructure Law's broadband programs. In particular, we invite commenters who have applied to or had experience with

other federal or state broadband funding programs to offer suggestions for how to effectively implement these new funding programs, based on their experiences. When responding to one or more of the questions below, please note in the text of your response the number of the question to which you are responding. As part of their response, commenters are welcome to provide specific actionable proposals, rationales and relevant factual information.

NTIA seeks public comment on the following questions:

## **General questions**

### ***Bringing Reliable, Affordable, High-Speed Broadband to All Americans***

1. What are the most important steps NTIA can take to ensure that the Bipartisan Infrastructure Law's broadband programs meet their goals with respect to access, adoption, affordability, digital equity, and digital inclusion?
2. Obtaining stakeholder input is critical to the success of this effort. How best can NTIA ensure that all voices and perspectives are heard and brought to bear on questions relating to the Bipartisan Infrastructure Law's broadband programs? Are there steps NTIA can and should take beyond those described above?
3. Transparency and public accountability are critical to the success of the Bipartisan Infrastructure Law's broadband programs. What types of data should NTIA require funding recipients to collect and maintain to facilitate assessment of the Bipartisan Infrastructure Law programs' impact, evaluate targets, promote accountability, and/or coordinate with other federal and state programs? Are there existing data collection processes or templates that could be used as a model? How should this information be reported and analyzed, and what standards, if any, should NTIA, grant recipients, and/or sub-grantees apply in determining whether funds are being used lawfully and effectively?
4. NTIA has an interest in ensuring that the Bipartisan Infrastructure Law is implemented in a way that promotes the efficient use of federal funds. How should NTIA and grant recipients verify that funding is used in a way that complements other federal and state broadband programs?

## *Supporting States, Territories, and Sub-Grantees to Achieve the Goal*

5. In implementing the Bipartisan Infrastructure Law's programs, NTIA will offer technical assistance to states, localities, prospective sub-grantees, and other interested parties. What kinds of technical assistance would be most valuable? How might technical assistance evolve over the duration of the grant program implementation?
6. The Bipartisan Infrastructure Law requires states and territories to competitively select subgrantees to deploy broadband, carry out digital equity programs, and accomplish other tasks. How should NTIA assess a particular state or territory's subgrant award process? What criteria, if any, should NTIA apply to evaluate such processes? What process steps, if any, should NTIA require (e.g., Request for Proposal)? Are there specific types of competitive subgrant processes that should be presumed eligible (e.g., publicly released requests for proposals and reverse auctions)?
7. NTIA views the participation of a variety of provider types as important to achieving the overall goals of the Bipartisan Infrastructure Law broadband programs. How can NTIA ensure that all potential subrecipients, including small and medium providers, cooperatives, non-profits, municipalities, electric utilities, and larger for-profit companies alike have meaningful and robust opportunities to partner and compete for funding under the programs?
8. States and regions across the country face a variety of barriers to achieving the goal of universal, affordable, reliable, high-speed broadband and broadband needs, which vary from place to place. These challenges range from economic and financial circumstances to unique geographic conditions, topologies, or other challenges that will impact the likelihood of success of this program. In implementing the Bipartisan Infrastructure Law's broadband programs, how can NTIA best address such circumstances?
9. Several Bipartisan Infrastructure Law broadband programs provide that, absent a waiver, a grant or subgrant recipient must contribute its own funding, or funding obtained from a non-federal source, to "match" funding provided by the BIL program. Under what circumstances, if any,

should NTIA agree to waive these matching fund requirements, and what criteria should it assess (in accordance with any criteria established by the statute) when considering waiver requests?

***Ensuring the Future of America is Made in America by All of America's Workers***

10. The COVID-19 pandemic has disrupted global supply chains and impacted employment patterns. What is the likely impact of current workforce and supply chain constraints on the speed with which states, service providers, and others achieve the Bipartisan Infrastructure Law's network-deployment objectives? Are the areas unserved or underserved by broadband networks, which will see substantial new deployments under the Bipartisan Infrastructure Law's broadband provisions, likely to face particularly significant workforce or supply-chain constraints? What steps, if any, should NTIA take to mitigate the impact of workforce or supply-chain limitations?
11. One objective of the Bipartisan Infrastructure Law is to ensure American workers have access to high quality jobs, especially those who were impacted the most by the pandemic, including women and people of color. What federal policy tools can NTIA apply to help ensure that broadband funding is deployed in a way that maximizes the creation of good paying jobs and that women and people of color have full opportunity to secure those jobs.
12. What steps, if any, should NTIA take to ensure maximum use of American-made network components and that supply shortages are addressed in ways that create high quality jobs for all Americans? What impact, if any, will application of the "Buy American" requirements in the Bipartisan Infrastructure Law have on supply-chain and workforce challenges and on the speed with which the nation can reach the goal of 100% broadband connectivity?

**Broadband Equity, Access and Deployment (BEAD) Program**

The BEAD Program is a \$42.45 billion program for states, territories, the District of Columbia (D.C.), and Puerto Rico (P.R.) ("states and territories") to utilize for broadband deployment, mapping, equity and adoption projects. Each state, D.C., and P.R. will receive an initial allocation of \$100 million -- and \$100 million will be divided equally among the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. NTIA will distribute the remaining funding based on

a formula that considers the number of unserved and high-cost locations in the state, based on the updated broadband availability maps to be published by the FCC. The Bipartisan Infrastructure Law also provides NTIA with discretion to establish additional eligible uses for the funding.

BEAD program funding will be dispersed in three phases. The first phase allows states and territories to access up to \$5 million each to support planning efforts, including building capacity in state broadband offices and to fund outreach and coordination activities with local communities and stakeholders. The second phase requires states and territories to submit an initial broadband plan to NTIA. These plans must be informed by collaboration with local and regional entities and will lay out how each respective state and territory will use the BEAD funding and other funds to bring reliable, affordable, high-speed broadband to all residents. Once NTIA approves the initial plan, states and territories will be able to access additional funds from their BEAD allocation. States and territories will be able to access the remaining funds upon review and approval of a final plan by NTIA.

### ***Ensuring Publicly Funded Broadband Networks that Sustain and Scale***

13. NTIA is committed to ensuring that networks built using taxpayer funds are capable of meeting Americans' evolving digital needs, including broadband speeds and other essential network features. What guidance or requirements, if any, should NTIA consider with respect to network reliability and availability, cybersecurity, resiliency, latency, or other service quality features and metrics? What criteria should NTIA establish to assess grant recipients' plans to ensure that service providers maintain and/or exceed thresholds for reliability, quality of service, sustainability, upgradability and other required service characteristics?
14. NTIA is committed to ensuring that networks constructed using taxpayer funds are designed to provide robust and sustainable service at affordable prices over the long term. What criteria should NTIA require states to consider to ensure that projects will provide sustainable service, will best serve unserved and underserved communities, will provide accessible and affordable broadband in historically disconnected communities, and will benefit from ongoing investment from the network provider over time?

15. In its effort to ensure that BEAD-funded networks can scale to meet Americans’ evolving needs, and to ensure the public achieves the greatest benefit from the federal investment, NTIA seeks to understand reasonably foreseeable use cases for America’s broadband infrastructure over the next five, ten, and twenty years. What sort of speeds, throughput, latencies, or other metrics will be required to fully connect all Americans to meaningful use over the next five, ten, and twenty years? How can the BEAD program meet our nation’s broadband network connectivity needs in the future and what other benefits can Americans expect from this program and the networks it will help fund in other industries and across the economy? How can existing infrastructure be leveraged to facilitate and amplify these benefits? What are the best sources of evidence for these questions and for predicted future uses of broadband?

***Allocation and Use of BEAD Funds to Achieve Universal, Reliable, Affordable, High-Speed Broadband***

16. Broadband deployment projects can take months or years to complete. As a result, there are numerous areas where an entity has made commitments to deploy service – using its own funding, government funding, or a combination of the two – but in which service has not yet been deployed. How should NTIA treat prior buildout commitments that are not reflected in the updated FCC maps because the projects themselves are not yet complete? What risks should be mitigated in considering these areas as “served” in the goal to connect all Americans to reliable, affordable, high-speed broadband?

17. Ten percent of total BEAD funding is reserved for distribution based on how many unserved locations within a state or territory are also locations in which the cost to deploy service is higher than the nationwide average. The Bipartisan Infrastructure Law provides that, in calculating the cost of deployment, NTIA should consider factors such as the area’s remoteness, population density, topography, poverty rate, or “any other factor identified by the Assistant Secretary, in consultation with the [FCC], that contributes to the higher cost of deploying broadband service in



the area.” BIL § 60102(a)(2)(G). What additional factors, if any, should NTIA consider in determining what constitutes a “high-cost area”?

18. The Bipartisan Infrastructure Law provides that BEAD funding can be used in a variety of specific ways, including the provision of service to unserved and underserved areas, connection of community anchor institutions, data collection, installation of service within multi-family residential buildings, and broadband adoption programs. The law also permits the Assistant Secretary to designate other eligible uses that facilitate the program’s goals. What additional uses, if any, should NTIA deem eligible for BEAD funding?

***Establishing Strong Partnerships Between State, Local, and Tribal Governments***

19. Community engagement is critical to eliminating barriers to broadband access and adoption. NTIA views strong involvement between states and local communities as key to ensuring that the broadband needs of all unserved and underserved locations are accounted for in state plans submitted for funding. What requirements should NTIA establish for states/territories to ensure that local perspectives are critical factors in the design of state plans?
20. When formulating state broadband plans, what state agencies or stakeholder groups should be considered in the development of those plans?
21. How can NTIA ensure that states/territories consult with Tribal governments about how best to meet Tribal members’ needs when providing funding for broadband service to unserved and underserved locations on Tribal lands within state boundaries?

***Low-Cost Broadband Service Option and Other Ways to Address Affordability***

22. The Bipartisan Infrastructure Law requires that BEAD funding recipients offer at least one low-cost broadband option and directs NTIA to determine which subscribers are eligible for that low-cost option. BIL § 60102(h)(5)(A). How should NTIA define the term “eligible subscriber?” In other words, what factors should qualify an individual or household for a low-cost broadband option?

23. Under the Bipartisan Infrastructure Law, states and territories are charged with developing low-cost broadband service options in consultation with NTIA and broadband providers interested in receiving funding within the state. BIL § 60102(h)(5)(B). What factors should NTIA consider in guiding the states in design of these programs to achieve this goal? Should NTIA define a baseline standard for the “low-cost broadband service option” to encourage states/territories to adopt similar or identical definitions and to reduce the administrative costs associated with requiring providers to offer disparate plans in each state and territory? What are the benefits and risks, if any, of such an approach?
24. Affordability is a key objective of the Bipartisan Infrastructure Law’s broadband programs. What factors should be considered in the deployment of BEAD funds to help drive affordability beyond the low-cost option?

## **Implementation of the Digital Equity Act of 2021**

The Digital Equity Act dedicated \$2.75 billion to establish three grant programs that promote digital inclusion and equity to ensure that all individuals and communities have the skills, technology, and capacity needed to reap the full benefits of our digital economy. The goal of these programs is to promote the meaningful adoption and use of broadband services across targeted populations, including low-income households, aging populations, incarcerated individuals, veterans, individuals with disabilities, individuals with a language barrier, racial and ethnic minorities, and rural inhabitants.

As noted above, given the sequence of programs that NTIA is implementing, NTIA intends to release another request for comment (RFC) in the future to address the State Digital Equity Capacity Grant Program and Digital Equity Competitive Grant Programs. The questions below are specific to the Digital Equity Planning Grant Program.

### ***State Digital Equity Plans***

25. The Bipartisan Infrastructure Law includes historic investments in digital inclusion and digital equity, promising to bring all Americans the benefits of connectivity irrespective of age, income, race or ethnicity, sex, gender, disability status, veteran status, or any other characteristic. NTIA

seeks to ensure that states use Digital Equity Planning Grants to their best effect. What are the best practices NTIA should require of states in building Digital Equity Plans? What are the most effective digital equity and adoption interventions states should include in their digital equity plans and what evidence of outcomes exists for those solutions?

26. Some states and territories will benefit from technical assistance in preparing Digital Equity Plans. What types of technical assistance, support, data, or programmatic requirements should NTIA provide to states and territories to produce State Digital Equity Plans that fully address gaps in broadband adoption, promote digital skills, advance equitable access to education, healthcare and government services, and build information technology capacity to enable full participation in the economy for covered populations? What steps, if any, should NTIA take to monitor and assess these practices?
27. Equity is also a named goal of the BEAD program described above. How should NTIA ensure that State Digital Equity Plans and the plans created by states and territories for the BEAD program are complementary, sequenced and integrated appropriately to address the goal of universal broadband access and adoption?
28. How should NTIA ensure that State Digital Equity Plans impact and interact with the State's goals, plans and outcomes related to: (i) economic and workforce development; (ii) education; (iii) health; (iv) civic and social engagement; (v) climate and critical infrastructure resiliency; and (vi) delivery of other essential services, especially with respect to covered populations mentioned in Bipartisan Infrastructure Law § 60303(2)(C)?
29. The Bipartisan Infrastructure Law directs states and territories to include in their digital equity plans "measurable objectives for documenting and promoting: (i) the availability of, and affordability of access to, fixed and wireless broadband technology; (ii) the online accessibility and inclusivity of public resources and services; (iii) digital literacy; (iv) awareness of, and the use of, measures to secure the online privacy of, and cybersecurity with respect to, an individual; and (v) the availability and affordability of consumer devices and technical support for those

devices.” What best practices, if any, should states follow in developing such objectives? What steps, if any, should NTIA take to promote or require adoption of these best practices? What additional guidance and oversight about the content of the State Digital Equity Plans should NTIA provide?

### ***Digital Equity Coordination Requirements***

30. The Bipartisan Infrastructure Law requires state and territories to consult with historically marginalized and disadvantaged groups, including individuals who live in low-income households, aging individuals, incarcerated individuals (other than individuals who are incarcerated in a Federal correctional facility), veterans, individuals with disabilities, individuals with a language barrier (including individuals who are English learners and have low levels of literacy), individuals who are members of a racial or ethnic minority group, and individuals who primarily reside in a rural area. What steps should NTIA take to ensure that states consult with these groups as well as any other potential beneficiaries of digital inclusion and digital equity programs, when planning, developing, and implementing their State Digital Equity Plans? What steps, if any, should NTIA take to monitor and assess these practices?
31. The Bipartisan Infrastructure Law also requires states and territories to coordinate with local governments and other political subdivisions in developing State Digital Equity Plans. What steps should states take to fulfill this mandate? How should NTIA assess whether a state has engaged in adequate coordination with its political subdivisions?

### **Implementation of Middle Mile Broadband Infrastructure (MMBI) Grant Program**

This MMBI is a \$1 billion program for the construction, improvement, or acquisition of middle-mile infrastructure. The purpose of the grant program is to expand and extend middle-mile infrastructure to reduce the cost of connecting unserved and underserved areas to the internet backbone. Eligible applicants include states, political subdivisions of a State, tribal governments, technology companies, electric utilities, utility cooperatives, public utility districts, telecommunications companies,

telecommunications cooperatives, nonprofit foundations, nonprofit corporations, nonprofit institutions, nonprofit associations, regional planning councils, Native entities, or economic development authorities.

32. Middle-mile infrastructure is essential to American connectivity. Lack of affordable middle-mile access can have a substantial impact on the retail prices charged for broadband services. How should the Assistant Secretary ensure that middle-mile investments are appropriately targeted to areas where middle-mile service is non-existent or relatively expensive? To what extent should middle-mile grants be targeted to areas in which middle-mile facilities exist but cannot economically be utilized by providers that do not own them? Should NTIA target middle-mile funds to areas where interconnection and backhaul costs are impacted by a lack of competition or other high-cost factors?
33. The Bipartisan Infrastructure Law's provisions regarding the Middle Mile Broadband Infrastructure Grant Program set out a range of considerations governing NTIA's assessment of proposals seeking middle-mile funding, including improving affordability, redundancy and resiliency in existing markets, leveraging existing rights-of-way, assets, and infrastructure, and facilitating the development of carrier-neutral interconnection points. *See* BIL § 60401(e), (b)(2), (d)(2). How should NTIA implement these requirements, and the others listed in the legislation, in prioritizing middle-mile grant applications?
34. What requirements, if any, should NTIA impose on federally funded middle-mile projects with respect to the placement of splice points and access to those splice points? Should NTIA impose other requirements regarding the location or locations at which a middle-mile grantee must allow interconnection by other providers?
35. How can the Middle Mile Broadband Infrastructure program leverage existing middle-mile facilities, access to rights of way, poles, conduit, and other infrastructure and capabilities that are owned, operated, or maintained by traditional and non-traditional providers (public and investor-owned utilities, grid operators, co-ops, academic institutions, cloud service providers, and others) to accelerate the deployment of affordable, accessible, high-speed broadband service to all

Americans? What technical assistance or guidance should NTIA provide to encourage applications for this program? Are there examples of successful deployments and/or benefits provided by non-traditional providers to highlight?

36. As network demand grows, capacity needs in the middle mile and network core grow as well.

What scalability requirements, if any, should NTIA place on middle-mile grant recipients?

Dated: January 5, 2022.

Evelyn Remaley Hasch,

Acting Assistant Secretary for Communications and Information.

[FR Doc. 2022-00221 Filed: 1/7/2022 8:45 am; Publication Date: 1/10/2022]