

In the Matter of )  
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BEAD Uniform Guidance Request for ) NTIA-2023-0007-0001  
Comment )

**COMMENTS  
OF  
THE RURAL BROADBAND ASSOCIATIONS**

These comments are submitted by NTCA–The Rural Broadband Association, the Colorado Telecommunications Association, GBTA – Georgia’s Rural Telephone and Broadband Association, the Indiana Rural Broadband Association, the Iowa Communications Alliance, the Communications Coalition of Kansas, the Kentucky Rural Broadband Association, BroadbandMT, the Nebraska Telecommunications Association, NC Broadband Cooperative Coalition, Inc., the Oregon Telecommunications Association, the South Dakota Telecommunications Association, the Texas Telephone Association, the Washington Independent Telecommunications Association, and the Wisconsin State Telecommunications Association (collectively, “the Associations”) in response to the National Telecommunications and Information Administration (“NTIA”) request for comment on proposed exemptions from the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”). The Associations represent more than 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and hundreds of firms that support or are themselves engaged in the provision of such services.

The Associations are encouraged that NTIA is considering exemptions from the Uniform Guidance. Eliminating unnecessary regulatory hurdles will encourage internet service provider (“ISP”) participation in, and facilitate achieving the broadband deployment goals of, the Broadband Equity, Access and Deployment Program (“BEAD”). Although applying relevant subparts of the Uniform Guidance may encourage efficient use of public funds in certain grant programs, as NTIA recognizes, the BEAD program has differences that support differing treatment. The BEAD program, unlike prior programs that targeted funds to areas with specific characteristics or to classes of operators, offers fixed amount awards to Eligible Entities (i.e., States and Territories) who are required to ensure that qualifying broadband service is delivered to all unserved locations, and to the extent funds are available, to underserved locations within the state. Through competitive grant processes, the Eligible Entities will in turn apportion funds to subgrantees (e.g., subrecipients, carrying out a portion of a Federal award) who will commit to build broadband networks within certain time constraints for defined sums.

As NTIA states, “maximizing provider participation in the BEAD Program is key to ensuring its success.” The Associations’ member companies are small broadband providers with a proven track record of serving the most rural and difficult to serve areas of the country. While many stand ready and willing to meet the challenge of serving the unserved rural Americans, they are small businesses and may lack the personnel to comply with overly complex and burdensome regulatory and reporting requirements. Companies of all sizes must make their own cost-benefit analysis when determining whether to participate in funding programs. Complex rules that are unnecessary to further program goals, but create significant administrative burdens and costs, will tip the scales away from broad participation in the program and threaten to undermine its success.

The Treasury Department recently completed a similar analysis of the Uniform Guidance in the context of two programs with comparable structures and aims to BEAD – the Capital Projects Fund (“CPF”) and the State and Local Fiscal Relief Fund (“SLFRF”). The Treasury Department’s approach to applying the Uniform Guidance protects the government’s interest in preventing waste, fraud and abuse of public funds, while simultaneously lessening the burden to participants by addressing the requirements that do not logically fit in with the programs’ structures or goals. While NTIA’s considerations are consistent with Treasury’s and the proposals are fairly consistent, on occasion, the proposals diverge unnecessarily. The Associations support aligning NTIA’s rules for the BEAD program with the Treasury Department’s approach, consistently. Not only does the administration of the programs line up in such a way that supports a consistent approach, but having similar requirements across similar programs would help small companies adhere to the compliance demands with minimal additional support and curtail cost.

**A. Program Income and Profit**

The Associations support NTIA’s proposal to seek from the Office of Management and Budget (“OMB”) an exemption from the Uniform Guidance's requirements so that recipients and subrecipients may retain program income without restriction, including retaining program income for profit. The Uniform Guidance does not permit recipients and subrecipients to retain program income without restriction, but instead outlines limited permissible uses during the period of performance, stating that subrecipients “may not earn or keep any profit resulting from Federal financial assistance unless explicitly authorized by the terms and conditions of the award.”<sup>1</sup> As recognized by NTIA, incentives for broad participation are needed to address the

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<sup>1</sup> 2 CFR 200.400(g).

unique challenges for which the BEAD Program was created to solve. Application of the program income rules would prevent providers from earning a reasonable return on their investment and would discourage participation in BEAD. Further, the lack of a sustainable business case that generates a reasonable return on investment is a core problem the BEAD Program is designed to address. Application of the program income rules would exacerbate, rather than alleviate, the economic conditions that have stunted investment in these areas.

### **B. Fixed Amount Subawards and Cost Principles**

The Associations likewise agree that NTIA should follow Treasury’s lead in treating BEAD subgrants as fixed amount subawards. Fixed amount subawards are exempt from some of the administrative burden requirements of the Uniform Guidance and the Federal Government’s cost principles rules do not apply as compliance requirements. The Uniform Guidance defines fixed amount subawards as those in which a “pass-through entity provides a specific level of support without regard to actual costs incurred under the [subaward].”<sup>2</sup> The Uniform Guidance prohibits the use of fixed amount subawards in programs requiring mandatory cost sharing or match,<sup>3</sup> and limits pass-through entities from providing fixed amount subawards exceeding \$250,000.<sup>4</sup>

Although many subawards will have cost sharing or matching and may exceed the threshold amount by which the Uniform Guidance prohibits the use of fixed amount subawards, the competitive subrecipient selection process will result in fixed amount broadband infrastructure subawards that have measurable goals and objectives. Each awardee is tasked with

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<sup>2</sup> 2 CFR 200.1.

<sup>3</sup> 2 CFR 200.201(b)(2).

<sup>4</sup> See 2 CFR 200.333; see also 48 CFR part 2, subpart 2.1.

defining the parameters by which applications for funds will be judged and the process must be approved by NTIA. The BEAD program is structured in such a way to ensure that there are ample incentives and protections to not only set but meet goals and objectives. Similar to the Treasury Department's conclusion that pass-through entities may structure broadband infrastructure subawards as fixed amount subawards, BEAD subawards should be structured as fixed amount awards and the cost principle rules should not apply as compliance requirements.

NTIA asks whether to specify through guidance or a special award condition the form in which fixed amount subawards should be paid. The Uniform Guidance offers some ways in which subawards may be paid including; (1) in several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the award; (2) on a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; and (3) in one payment at award completion.<sup>5</sup> Given that the Uniform Guidance does not prescribe any specific payment system, Eligible Entities should have the flexibility to determine a consistent method that meets their needs. To the extent that NTIA believes it must specify the form in which awards are paid, it should look to other government program rules. Funds made available by USDA's RUS, for example, are drawn down once evidence has been produced showing that costs have been incurred for the intended purpose and that service has been made available to customers, rather than waiting for perhaps years to distribute any funding. Pre-application expenses are eligible for reimbursement prior to service being made available to customers. A similar approach for BEAD would provide consistency

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<sup>5</sup> 2 CFR 200.201(b)(1).

across funding programs and help minimize the administrative burden for companies that participate in multiple funding programs.

### **C. Procurement**

NTIA should direct Eligible Entities to provide subrecipients an exemption from the procurement requirements of the Uniform Guidance. While the objective of the procurement processes is to guard against waste, fraud, and abuse, strict application of the rules would result in inefficient deployment and undermine the goals of BEAD. The process for subrecipient selection is competitive and applicants have every incentive to keep costs low. The bid process itself aligns with the spirit of the Uniform Guidance's procurement rules. Application of the procurement process under the guidance would force companies to seek bids for projects post-award, rendering the initial bid meaningless – and exposing bids to the effects of inflation that would hinder performance (and thus deter participation in the first instance). Further, the procurement process would prohibit companies from using equipment they already have on the shelf to achieve ambitious deployment schedules and, given supply chain challenges, may lead to lengthy deployment delays. It therefore should not be left to the discretion of the Eligible Entity whether to require subrecipients to comply with the procurement processes, as proposed by NTIA. Such an approach may lead to a patchwork of requirements, not to mention the potential for confusion, delay and expense for ISPs serving territories in more than one state. An exemption declaration is appropriate in this circumstance.

NTIA proposes to issue a special award condition authorizing Eligible Entities to provide subrecipients an exemption from the procurement requirements, but also require Eligible Entities to obtain certifications from subrecipients that the subrecipient used competitive procurement processes in executing the BEAD project. This would be problematic for the reasons described

above and several others. Small ISPs have established relationships with consultants and vendors that may go back decades and, in many cases, will be integrating BEAD deployment with an existing network as a more efficient and cost-effective means of performance. Given the competitive nature of the subaward selections, it should be clear that every ISPs will have substantial incentives to keep project costs low. There is no concurrent benefit to working through the procurement process – it would only add cost and delay. NTIA should therefore issue a special award condition that exempts subrecipients from the procurement rules codified in 2 CFR 200.318-320 and 200.324-326, consistent with Treasury’s determination that “recipients are not required to apply the . . . procurement requirements of the Uniform Guidance to ISPs receiving such fixed amount subawards.”<sup>6</sup>

#### **D. Property Standards**

As NTIA considers modifications to the Uniform Guidance’s property standards, the Associations urge NTIA to consider the regulatory burden of its proposals and how certain rules and restrictions may discourage robust participation in the BEAD program.

The Associations support the NTIA proposal to assign a uniform period of time for all funded broadband infrastructure property to be held in trust for the beneficiaries of the BEAD program. This uniform approach, rather than issuing a schedule defining the Federal Interest Period for different categories of BEAD-funded personal property, is simpler and will be easier to administer.

Regarding equipment management requirements, the Associations urge NTIA to follow the lead of Treasury regarding use of real property and equipment, equipment management

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<sup>6</sup> SLFR and CPF Supplementary Broadband Guidance, p. 2 (Rel May 17, 2023) (“Treasury Guidance”).

requirements, equipment upgrades and network evolution, lien requirements, and audits. While the Uniform Guidance provides specific requirements for each of these, flexibility and acknowledgement of how the BEAD projects mesh with existing networks dictate a differing approach. For example, rather than follow the Uniform Guidance on the use restrictions for real property, which requires that the property and equipment used in the project to be used as long as needed, NTIA should align with Treasury which determined that the property must be used in the same manner as the subrecipient uses comparable real property equipment within their networks in the ordinary course of business.<sup>7</sup> This common-sense approach aligns with how the BEAD purchased real property will be used and integrated into existing networks.

**E. Conclusion**

The below listed Associations appreciate NTIA's willingness to consider exemptions to the Uniform Guidance and the opportunity to comment on the proposals. NTIA should follow the lead of Treasury and not unnecessarily diverge from the approach. Eliminating unnecessary regulatory hurdles and consistency across programs will encourage participation in, and facilitate achieving the broadband deployment goals of, the Broadband Equity, Access and Deployment Program.

Respectfully submitted,

NTCA – The Rural Broadband Association

Colorado Telecommunications Association

GBTA – Georgia's Rural Telephone and Broadband Association

Indiana Rural Broadband Association

Iowa Communications Alliance

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<sup>7</sup> Treasury Guidance, p. 3.



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Kentucky Rural Broadband Association  
BroadbandMT  
Nebraska Telecommunications Association  
NC Broadband Cooperative Coalition, Inc.  
Oregon Telecommunications Association  
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