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Broadband Equity, Access, and Deployment (BEAD) Program: Issues and Congressional Considerations

Congress appropriated \$42.45 billion to the National Telecommunications and Information Administration (NTIA) to administer the Broadband Equity, Access, and Deployment (BEAD) Program established under the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58), which became law in November 2021. The BEAD Program is the single largest federal broadband investment to date.

Congress directed NTIA in the IIJA to make grants to 56 states and territories (hereinafter “states”) “to bridge the digital divide” by facilitating “access to affordable, reliable, high-speed internet” throughout the United States, particularly in “communities of color, lower-income areas, and rural areas.” NTIA anticipates issuing notices to each state of the estimated BEAD amount available to it by June 30, 2023, followed by approximately four years of grant disbursement and program implementation.

After notices are issued, states have 180 days to submit an initial proposal to NTIA requesting a disbursement of at least 20% of its estimated amount. As mandated by the IIJA, the state also needs to resolve all challenges to its determination of funding eligibility of locations within its jurisdiction before it can allocate grant funds for broadband deployment projects. According to NTIA’s timeline, the first batch of grant funds from states to supported projects and activities could occur by 2024.

Due to the size of the program, Congress may consider oversight of NTIA’s implementation of the BEAD program and its progress toward achieving the stated goal of addressing the digital divide. This In Focus discusses three issues for potential congressional consideration: (1) determining unserved locations for BEAD funding allocations, (2) connectivity technologies eligible for BEAD funding, and (3) BEAD’s relationship to other federal broadband programs.

Determining Unserved Locations

The IIJA directs NTIA to calculate a state’s share of BEAD funding using the state’s share of unserved locations nationally—those locations without access to reliable broadband service with a speed of at least 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads and a low latency (lag). The law further directs NTIA to determine the number of unserved locations using the Federal Communications Commission’s (FCC’s) National Broadband Map. The FCC released a preproduction version of the map in November 2022, pursuant to the Broadband DATA Act (P.L. 116-130), using broadband availability data reported by internet service providers (ISPs). Some stakeholders, including Members of Congress and state governments, were concerned that incomplete and

inaccurate map data may lead to inaccurate funding allocations.

The Broadband DATA Act and IIJA require the FCC to allow stakeholders to challenge the National Broadband Map’s accuracy (e.g., missing locations, over- or understated broadband availability) on a rolling basis and update the map to reflect resolved challenges. The FCC released the May 2023 version that reflects broadband availability data as of December 31, 2022 (as reported by ISPs on March 1, 2023), with 75% of challenges to the previous version for over four million locations resolved.

NTIA anticipates using the May 2023 map, which identifies roughly 8.3 million unserved locations nationwide, as the basis to announce state BEAD allocations by June 30, 2023. Some Members of Congress have urged NTIA to wait to determine allocations until the FCC resolves the remaining challenges. They noted that some states were unable to challenge the map accuracy in time for the last iteration.

NTIA has argued, on its website, that only an extremely large change in the number of unserved locations within a state relative to the national total would have a significant impact on BEAD funding allocations, something it deems unlikely. NTIA has noted that in addition to the challenge process for the FCC map, the IIJA requires each state to develop its own challenge process before it can distribute BEAD funding, providing another opportunity for stakeholders’ challenges. In April 2023 proposed guidance, NTIA indicated that, with its approval, states may modify the set of locations eligible for BEAD funding based on data gathered and verified through the state challenge process, in which local stakeholders can challenge whether a particular location within a state is eligible for a BEAD sub-grant, including whether the location is truly unserved.

Connectivity Technologies Eligible for BEAD Funding

The IIJA requires a funded BEAD project to deploy broadband service that provides: (1) at least 100 Mbps download and 20 Mbps upload speeds (100/20 Mbps), (2) latency sufficiently low for real-time, interactive applications, and (3) network reliability of no more than 48 hours of outage time over any 365-day period.

In its Notice of Funding Opportunity (NOFO) issued in May 2022, NTIA indicated that an eligible deployment project shall provide a location with *qualifying* broadband service—reliable broadband service of at least 100/20 Mbps speed and up to 100 milliseconds latency. NTIA defines *reliable broadband service* as being provided by the following technologies: fiber-optic, cable modem, hybrid

fiber-coaxial, digital subscriber line, terrestrial fixed wireless utilizing licensed or a hybrid of licensed and unlicensed spectrum. When selecting awardees among competing eligible deployment proposals, NTIA directs states to consider *priority broadband projects* first—those that provide service via end-to-end fiber-optic technology.

If a fiber project’s projected cost is *extremely high* (a threshold established by each state), the state may fund deployment projects using an alternative technology that supports *reliable* broadband service. If no less costly solution is available, NTIA allows states to select a project using the best available technology for the location served by the project, as long as that technology is otherwise able to provide a *qualifying* service.

Some Members of Congress have stated that Congress intended the BEAD program to be technology-neutral by not specifying the type of connectivity technology in the IIJA, and thus expressed concern that NTIA’s rules prioritizing fiber may exclude some adequate technologies from BEAD eligibility and may unnecessarily increase deployment costs. Other Members agree with NTIA’s assertion that fiber provides a high-quality, scalable, and long-term solution for expanding broadband access.

Avoiding the Double Dip

In addition to the BEAD Program, the FCC, the U.S. Department of Agriculture (USDA), and the Department of the Treasury administer large broadband deployment programs. To put BEAD funding in perspective, its one-time appropriation of \$42.45 billion for FY2022 is approximately equal to the total disbursement from the FCC’s Universal Service Fund (USF) for its High Cost Program for the previous nine years (\$41.75 billion in 2013–2021). According to a May 2022 Government Accountability Office (GAO) report, there are more than 100 broadband funding programs across 15 federal agencies, with BEAD the newest and largest one. Prior to the establishment of the BEAD Program, federal agencies spent \$44 billion for broadband-related programs from FY2015 to FY2020.

Given the magnitude, complexity, variety, and scope of these programs, collecting, sharing, and tracking data among agencies to avoid funding duplication has been challenging. Some Members have called for a review of the overlapping and fragmented federal efforts to fund broadband deployment, particularly with regard to BEAD and other newly created broadband programs.

To avoid BEAD funding duplication, NTIA directs each state not to treat any location as unserved that already received other federal, state, or local broadband deployment funding, even if broadband service has not commenced. The IIJA requires all agencies that support broadband deployment (except the FCC’s USF programs) to provide data to NTIA, so it can adequately track construction of broadband infrastructure using federal funds.

Considerations for Congress

After NTIA allocates state funding, each state is responsible for developing a five-year action plan and a competitive process to award funds, following the law and with NTIA’s approval. Approving and overseeing 56 unique BEAD programs in states and eligible territories, while ensuring the effectiveness of allotted funding and compliance with all statutory requirements, may prove an administrative challenge for NTIA.

Congress has various options if it chooses to monitor or take other action on the progress of NTIA, the FCC, state broadband offices, local communities, and other stakeholders toward meeting the objectives of the BEAD program. Such options could include:

- Requesting regular updates from NTIA and other related agencies through continuing oversight efforts, such as hearings and reports, to ensure adequate distribution of BEAD funding and that all locations qualifying for BEAD funding are identified and serviced;
- Asking NTIA to review its prioritization of end-to-end fiber technology in light of potential evidence of deployment delays or higher-than-expected proposal costs; and
- Amending provisions in the IIJA to provide states with additional mechanisms to challenge NTIA’s determination of BEAD allocations, clarify congressional intent on technology neutrality and other matters, and establish more specific reporting, evaluating, and tracking requirements, to ensure that NTIA effectively and efficiently carries out its mission.

Any legislation addressing BEAD implementation and oversight could be included in an NTIA reauthorization act. NTIA was last authorized in FY1993. Information and communication technologies and the telecommunications sector have changed tremendously in the last three decades, the agency’s responsibilities and roles have evolved, and its budget has increased substantially. Congress may seek to modernize the agency and reposition its policy priorities—for example, updating NTIA’s original authority of coordinating “federal telecommunications assistance to [s]tate and local governments” to reflect the agency’s expanding role of administering and coordinating federal broadband investments through the BEAD and other programs.

For more information, see CRS Report R47075, *The National Telecommunications and Information Administration (NTIA): Current Roles and Programs*; and CRS In Focus IF12298, *FCC’s National Broadband Map: Implications for the Broadband Equity, Access, and Deployment (BEAD) Program*.

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