



Hugh McDonald  
SECRETARY OF COMMERCE  
Clint O'Neal  
EXECUTIVE DIRECTOR,  
ARKANSAS ECONOMIC  
DEVELOPMENT COMMISSION

November 9, 2023

Mrs. Marty Garrity  
Director  
Arkansas Bureau of Legislative Research  
State Capitol, Rm. 315  
Little Rock, AR 72201

Re: Proposed Arkansas BEAD Program Emergency Rule

Dear Mrs. Garrity,

Enclosed is a proposed emergency rule with necessary attachments for the Arkansas BEAD Program. The effect of the emergency rule would allow the Arkansas Economic Development Commission (AEDC) and the Arkansas State Broadband Office to implement the federal Broadband, Equity, Access, and Deployment (BEAD) program for the construction of broadband networks, establishment of affordable high-speed internet access, and creation of training programs to equip users with digital skills. AEDC and the Arkansas State Broadband Office respectfully request that this proposed rule be considered for approval under emergency rule procedure.

The AEDC and the Arkansas State Broadband Office have determined that an emergency rule is necessary to disburse federal funds for the deployment of broadband infrastructure to underserved and unserved areas of Arkansas and to meet federal deadlines. Broadband is a critical tool for Arkansans to access telemedicine, distance learning, and telework. Following the Administrative Procedures Act rulemaking process would delay assistance to these communities and result in further health and economic hardship in unserved and underserved areas. AEDC will subsequently promulgate a permanent rule under the provisions of the Administrative Procedures Act.

Thank you for considering this proposed emergency rule.

Respectfully,

A handwritten signature in blue ink that reads "Allison Plowman Hatfield".

Allison Plowman Hatfield  
Chief of Staff, Department of Commerce  
General Counsel, Arkansas Economic Development Commission

Attachments

cc: Jill Thayer  
Rebecca Miller-Rice

## Arkansas BEAD Program Emergency Rule

### EXECUTIVE SUMMARY

#### **PURPOSE AND EMERGENCY NEED**

The Arkansas Economic Development Commission (AEDC) and the Arkansas State Broadband Office (ARConnect) are seeking promulgation of a proposed emergency administrative rule guiding the next phase of broadband development in the state through the Arkansas Broadband, Equity, Access, and Deployment (BEAD) Program. The purpose of the rule is to establish a new structure by which ARConnect will administer the BEAD program. This emergency rule aligns the Arkansas BEAD program with the requirements of the federal Broadband Equity, Access, and Deployment (BEAD) Program and guidance from the U.S. Department of Commerce's National Telecommunications and Information Administration. The BEAD program and its requirements are wholly different from prior broadband grant funding programs administered by ARConnect, including the Coronavirus Aid, Relief, and Economic Security Act (CARES) and the American Rescue Plan Act of 2021 (ARPA). This rule is being promulgated as an emergency rule due to the constrained timelines presented by the federal BEAD program.

#### **KEY POINTS**

The Arkansas BEAD Program Emergency Rule contains the following key points:

- A mapping challenge process will be established that will allow for units of local government, nonprofit organizations, and internet service providers to challenge which locations and areas in the state should be eligible to receive BEAD funding through the ARC grant program.
- A more formal and structured application process, including:
  - Early Communication
  - Pre-bidding preparation and support
  - Bidding
  - Adjudication
  - Expansion to 100% coverage
  - Final awards
- A new grant application scoring system will be implemented, including point awards for the minimization of BEAD program outlay; affordability; fair labor practices; speed to deployment; speed, latency, and other technical capabilities; workforce support; scale of geographic coverage; inclusion of zero-bid census block groups (CBGs); local coordination; and weather resilient broadband infrastructure.
- The grant application process will incorporate multiple rounds of competitive bidding.
- Applicants will be able to design project footprints, using state-defined project area components.
- Minimum required applicant qualifications will include financial capabilities, managerial capabilities, technical capabilities, operational capabilities, and compliance with applicable law, among other requirements.

#### **EFFECTIVE DATE**

The proposed effective date is January 1, 2024.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT \_\_\_\_\_  
 BOARD/COMMISSION \_\_\_\_\_  
 BOARD/COMMISSION DIRECTOR \_\_\_\_\_  
 CONTACT PERSON \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 PHONE NO. \_\_\_\_\_ EMAIL \_\_\_\_\_  
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING \_\_\_\_\_  
 \_\_\_\_\_  
 PRESENTER EMAIL(S) \_\_\_\_\_

**INSTRUCTIONS**

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, [miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov), for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, [garritym@blr.arkansas.gov](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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1. What is the official title of this rule?  
\_\_\_\_\_
2. What is the subject of the proposed rule? \_\_\_\_\_
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes      No

*If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).*

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes      No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? upon filing of the final rule with Sec of State

On what date does the emergency rule expire? 120 days after filing of the final emergency rule

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

The Broadband Office received an exemption from Gov. Sanders to repeal two existing rules to promulgate this emergency rule.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?  
Yes      No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

*Please be sure to advise Bureau Staff if this information changes for any reason.*

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. \_\_\_\_\_

15. What is the proposed effective date for this rule? \_\_\_\_\_

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

We do not anticipate this to be controversial, but the agency anticipates significant stakeholder engagement with the proposed emergency rule.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY.**

**DEPARTMENT** \_\_\_\_\_  
**BOARD/COMMISSION** \_\_\_\_\_  
**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_  
**TELEPHONE NO.** \_\_\_\_\_ **EMAIL** \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

**TITLE OF THIS RULE** \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes                      No
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes                      No
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes                      No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency’s statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
  - (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_



7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes      No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Arkansas BEAD Program  
Emergency Rule

SECTION 1. BACKGROUND

The Arkansas Economic Development Commission (AEDC) and the Arkansas State Broadband Office (ARConnect) issue this Rule to implement the Broadband, Equity, Access, and Deployment (BEAD) program. The BEAD program allocates state grants for the construction of broadband networks, establishment of affordable high-speed internet access, and creation of training programs to equip users with digital skills. This Rule details the process for challenging the Broadband Funding Map published by the Federal Communications Commission (FCC) identifying locations that are eligible for BEAD funding and establishes the eligibility requirements for receiving BEAD funding.

SECTION 2. AUTHORITY

This Rule is authorized to be issued by the Executive Director of the AEDC under Ark. Code Ann. § 15-4-209(b)(5), which provides that AEDC may promulgate rules necessary to implement the programs and services offered by AEDC. Pursuant to Ark. Code Ann. § 15-4-209(a)(1), AEDC is authorized to administer grants to assist with economic development in the State. AEDC is therefore authorized to administer the BEAD program and further authorized to issue administrative rules under Ark. Code Ann. § 15-4-209(b)(5).

SECTION 3. DEFINITIONS

- (1) “25/3 Mbps” means an internet speed of 25 megabits per second for downloading content, and 3 megabits per second for uploading content.
- (2) “100/20 Mbps” means an internet speed of 100 megabits per second for downloading content, and 20 megabits per second for uploading content.
- (3) “Affordable Connectivity Program” means an FCC benefit program that provides a discount of up to \$30 per month for internet access for households below a certain income threshold, or \$75 per month for areas which qualify as high-cost according to the FCC.
- (4) “Area” means a Census Block Group (CBG) as that term is used by the United States Census Bureau.
- (5) “Area or MDU challenge” means a single challenge lodged by two or more permissible challengers, rather than those challengers each filing their own challenge.

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- (6) “BEAD” means the Broadband Equity, Access, and Deployment Program established by the Infrastructure Investment and Jobs Act of 2021.
- (7) “Broadband Serviceable Location” or “BSL” means a business or residential location at which mass-market fixed broadband Internet access service is, or can be, installed.
- (8) “Buy It Now Threshold” means the threshold above which competitive tranche-1 bids will be granted provisional awards.
- (9) “Community Anchor Institution” or “CAI” means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, and aged individuals.
- (10) “Competitive bid” means an applicant’s bid for a project area that overlaps with a bid from a different applicant.
- (11) “Conduit” means a protective tube or trough through which fiber is run.
- (12) “Data cap” means an internet service provider-imposed limit on the amount of data that a consumer can use over a certain time period.
- (13) “Deployment” means the build-out of broadband infrastructure to unserved and underserved locations.
- (14) “Digital Skills and Opportunity Plan” means Arkansas’ document outlining the State’s vision for digital opportunity in the context of its overarching strategy and goals.
- (15) “Download speed” means the rate that digital data is transferred from the Internet to a computer.
- (16) “Digital Subscriber Line” or “DSL” means a networking technology that provides broadband over conventional telephone lines.
- (17) “Enforceable commitment” means a National Telecommunications and Information Administration (NTIA) classification for locations that are receiving broadband infrastructure buildouts from federal or state programs

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- excluding BEAD. Such locations are considered served by these programs and are therefore ineligible for BEAD funding.
- (18) “Extremely High Cost Per Location Threshold” means the point at which fiber deployment is no longer cost effective and alternate technologies are considered.
- (19) “High-cost area” means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in underserved areas
- (20) “Infrastructure Investment and Jobs Act” or “IIJA” means the federal law passed in 2021 that established the BEAD program.
- (21) “Latency” means the time it takes to send data and receive a response.
- (22) “Low-cost plan” means a reduced cost internet service plan for areas below a certain income threshold.
- (23) “Mbps” means megabits per second.
- (24) “Minimum application score threshold” means a threshold below which ARConnect will consider other coverage options for an area that does not receive any bids scoring above the threshold.
- (25) “Mobile test unit” means a testing apparatus that can be easily moved, which simulates the equipment and installation (antenna, antenna mast, subscriber equipment, etc.) that would be used in a typical deployment of fixed wireless access service by the provider.
- (26) “Multiple dwelling unit” or “MDU” means residential duplexes, triplexes, fourplexes, apartment buildings, condominiums, mobile home parks, trailer courts, or similar types of multi-unit arrangements on one parcel of land often served by one internet service provider.
- (27) “National Broadband Map” means the map provided by the FCC that provides information about the internet services available to individual locations across the country, along with new maps of mobile coverage, as reported by ISPs in the FCC’s ongoing broadband data collection;
- (28) “National Telecommunications and Information Administration” or “NTIA” means the division of the United State Department of Commerce that is responsible for overseeing the BEAD program.

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- (29) “Non-deployment projects” means projects that boost technological capacity, educational resources, and digital skills and opportunity for the adoption of broadband.
- (30) “Project area” means the set of one or more areas that will be serviced as part of a bid.
- (31) “Reference subsidy” means a target BEAD subsidy for each area that ARConnect will establish to guide applicants’ bids.
- (32) “Right-of-way” means a legal right, established by a grant from a landowner or long usage, to pass along a specific route through property belonging to another.
- (33) “Served” means receiving an internet speed greater than or equal to 100/20 Mbps.
- (34) “Severe convective storm” means a local storm associated with thunder, lightning, heavy rain, hail, strong winds, or sudden temperature changes; capable of producing a tornado, hail greater than or equal to one (1) inch in diameter, and/or winds greater than fifty-eight (58) miles per hour.
- (35) “Speed test” means a measurement of speed between a device and a test server using a device’s internet connection.
- (36) “Standard operating procedure” means a specific process for challenge evaluators to follow when reviewing challenge applications.
- (37) “Subgrantee” means an internet service provider (ISP) that has been awarded a portion of Arkansas’ federal BEAD grant to build broadband infrastructure for a given area of the state. For non-deployment projects, a subgrantee may be a non-profit organization, unit of local government, business, or other entity awarded a portion of BEAD funding to implement non-deployment initiatives.
- (38) “Underserved” means receiving an internet speed less than 100/20 Mbps but greater than or equal to 25/3 Mbps.
- (39) “Unserved” means receiving an internet speed less than 25/3 Mbps.
- (40) “Upload speed” means the rate that data is transferred from a computer to the Internet.

## SECTION 4. CHALLENGE PROCESS

### 4.1. DSL Modifications

ARConnect will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is “served”) delivered via DSL as “underserved.” This modification will better reflect the locations eligible for BEAD funding because it will facilitate the phase-out of legacy copper facilities and ensure the delivery of “future-proof” broadband service.

### 4.2. Enforceable Commitments

ARConnect will enumerate locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit, and consult several data sets, including, but not limited to:

1. The Broadband Funding Map published by the FCC pursuant to IIJA § 60105;<sup>1</sup>
2. Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury; and
3. State and local data collections of existing enforceable commitments.

ARConnect will create a list of BSLs subject to enforceable commitments based on state/territory and local grants or loans. If necessary, ARConnect will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. ARConnect will submit this list to NTIA in the format specified by the FCC Broadband Funding Map.

ARConnect will review its repository of existing state and local broadband grant programs to validate the upload and download speeds of existing binding agreements to deploy broadband infrastructure. Where state or local programs did not specify broadband speeds, or when there is reason to believe provider deployed higher broadband speeds than required, ARConnect will verify the deployment speeds of the binding commitment with the provider. ARConnect will document this process by requiring providers to sign a binding agreement certifying the actual broadband speeds deployed.

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<sup>1</sup> The broadband funding map published by FCC pursuant to IIJA § 60105 is referred to as the “FCC Broadband Funding Map.”

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ARConnect drew on these provider agreements, along with its existing database on state and local broadband funding programs' binding agreements, to determine the set of state and local enforceable commitments.

### **4.3. Permissible Challengers**

During the BEAD Challenge Process, ARConnect will only allow challenges from nonprofit organizations, units of local government, and internet service providers, as recognized by the State of Arkansas.

### **4.4 Permissible Challenges**

ARConnect will only allow challenges on the following grounds:

1. The identification of eligible Community Anchor Institutions, as defined by ARConnect;
2. Community Anchor Institution BEAD eligibility determinations;
3. BEAD eligibility determinations for existing Broadband Serviceable Locations ;
4. Enforceable Commitments; or
5. Planned service.

### **4.5. Challenge Process Overview**

The challenge process conducted by ARConnect will include four phases, spanning approximately 90 days:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, ARConnect will publish the locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of the NTIA BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process). ARConnect will also publish a list of ineligible locations, as they may be challenged.
2. **Challenge Phase:** During the Challenge Phase, a permissive challenger will submit the challenge through ARConnect challenge portal. This challenge will be visible to the service provider whose service availability and performance is being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response. After this stage, the location be considered challenged.

- a. Minimum Level of Information Sufficient to Establish a Challenge: The challenge portal will verify that the address provided can be found in the Fabric and is a BSL. The challenge portal will confirm that the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service. The challenge portal will confirm that the email address is reachable by sending a confirmation message to the listed contact email. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, ARConnect will manually verify that the evidence submitted falls within the categories stated in the NTIA BEAD Challenge Process Policy Notice and the document is unredacted and dated.
  - b. Timeline: Following the publication of eligible locations, the challenge phase will commence on a set date determined by ARConnect. Permissible challengers will have 30 calendar days to submit a challenge from the time the initial list of eligible and ineligible locations is posted.
3. Rebuttal Phase: Only a challenged service provider may rebut the reclassification of a location or area, causing the challenge to be designated as “disputed.” If a challenge that meets the minimum level of evidence is not rebutted, the challenge is sustained. A provider may also agree with the challenge and resulting in the challenge being sustained. Providers must regularly check the challenge portal notification method for notifications of submitted challenges.
  - a. Timeline: Providers will have 30 calendar days from the end of the challenge phase to provide rebuttal information to ARConnect.
4. Final Determination Phase: During the Final Determination phase, ARConnect will make the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected.”
  - a. Timeline: ARConnect will make all final challenge determinations within 30 calendar days of the onset of the final determination period.

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#### 4.6. Evidence and Review Approach

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, ARConnect will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. ARConnect will provide justification for all challenge determinations and all challenges will be reviewed uniformly. ARConnect will also require that all



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reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

<u>Code</u>	<u>Challenge Type</u>	<u>Description</u>	<u>Specific Examples</u>	<u>Permissible rebuttals</u>
A	Availability	The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).	<p>Screenshot of provider webpage.</p> <p>A service request was refused within the last 180 days (e.g., an email or letter from provider).</p> <p>Lack of suitable infrastructure (e.g., no fiber on pole).</p> <p>A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request.<sup>2</sup></p> <p>A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a Provider quoted an amount in excess of the provider’s standard installation charge in order to connect service at the location.</p>	<p>Provider shows that the location subscribes or has subscribed within the last 12 months, e.g., with a copy of a customer bill.</p> <p>If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.</p> <p>The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.</p>
S	Speed	The actual speed of the service tier falls below the unserved or	Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests.	Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network

<sup>2</sup> A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as “[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider.”

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<u>Code</u>	<u>Challenge Type</u>	<u>Description</u>	<u>Specific Examples</u>	<u>Permissible rebuttals</u>
		<u>underserved thresholds.</u> <sup>3</sup>		<u>management system.</u> <sup>4</sup>
<u>L</u>	<u>Latency</u>	<u>The round-trip latency of the broadband service exceeds 100 ms.</u> <sup>5</sup>	<u>Speed test by subscriber, showing the excessive latency.</u>	<u>Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system or the CAF performance measurements.</u> <sup>6</sup>
<u>D</u>	<u>Data cap</u>	<u>The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer.</u> <sup>7</sup>	<u>Screenshot of provider webpage. Service description provided to consumer.</u>	<u>Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.</u>

<sup>3</sup> The challenge portal must gather information on the subscription tier of the household submitting the challenge. Only locations with a subscribed-to service of 100/20 Mbps or above can challenge locations as underserved, while only locations with a service of 25/3 Mbps or above can challenge locations as unserved. Speed challenges that do not change the status of a location do not need to be considered. For example, a challenge that shows that a location only receives 250 Mbps download speed even though the household has subscribed to gigabit service can be disregarded since it will not change the status of the location to unserved or underserved.

<sup>4</sup> As described in the NOFO, a provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed. See Performance Measures Order, 33 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

<sup>5</sup> Performance Measures Order, including provisions for providers in non-contiguous areas (§21).

<sup>6</sup> Ibid

<sup>7</sup> An unreasonable capacity allowance is defined as a data cap that falls below the monthly capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC

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<u>Code</u>	<u>Challenge Type</u>	<u>Description</u>	<u>Specific Examples</u>	<u>Permissible rebuttals</u>
<u>T</u>	<u>Technology</u>	<u>The technology indicated for this location is incorrect.</u>	<u>Manufacturer and model number of residential gateway (CPE) that demonstrates the service is delivered via a specific technology.</u>	<u>Provider has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service.</u>
<u>B</u>	<u>Business service only</u>	<u>The location is residential, but the service offered is marketed or available only to businesses.</u>	<u>Screenshot of provider webpage.</u>	<u>Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.</u>
<u>E</u>	<u>Enforceable commitment</u>	<u>The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.</u>	<u>Enforceable commitment by service provider (e.g., authorization letter).</u>	<u>Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern).</u>
<u>P</u>	<u>Planned service</u>	<u>The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an</u>	<u>Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained.</u>	<u>Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or</u>

Public Notice DA 22-1338, December 16, 2022). Alternative plans without unreasonable data caps cannot be business-oriented plans not commonly sold to residential locations. A successful challenge may not change the status of the location to unserved or underserved if the same provider offers a service plan without an unreasonable capacity allowance or if another provider offers reliable broadband service at that location.

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<u>Code</u>	<u>Challenge Type</u>	<u>Description</u>	<u>Specific Examples</u>	<u>Permissible rebuttals</u>
		<u>enforceable commitment or a provider is building out broadband offering performance beyond the requirements of an enforceable commitment.</u>	<u>Contracts or a similar binding agreement between ARConnect and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (i.e., a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024.</u>	<u>that the planned deployment does not meet the required technology or performance requirements.</u>
<u>N</u>	<u>Not part of enforceable commitment</u>	<u>This location is in an area that is subject to an enforceable commitment to less than 100% of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.)</u>	<u>Declaration by service provider subject to the enforceable commitment.</u>	
<u>C</u>	<u>Location is a CAI</u>	<u>The location should be classified as a CAI.</u>	<u>Evidence that the location falls within the definitions of CAIs set by ARConnect.<sup>8</sup></u>	<u>Evidence that the location does not fall within the definitions of CAIs set by ARConnect or is no longer in operation.</u>

<sup>8</sup> For example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but ARConnect may rely on other reliable evidence that is verifiable by a third party.

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<u>Code</u>	<u>Challenge Type</u>	<u>Description</u>	<u>Specific Examples</u>	<u>Permissible rebuttals</u>
<u>R</u>	<u>Location is not a CAI</u>	<u>The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.</u>	<u>Evidence that the location does not fall within the definitions of CAIs set by ARConnect or is no longer in operation.</u>	<u>Evidence that the location falls within the definitions of CAIs set by ARConnect or is still operational.</u>

### **4.7. Area and MDU Challenge**

ARConnect will administer area and multiple dwelling unit (“MDU”) challenges for challenge types A, S, L, D, and T.

An area challenge reverses the burden of proof for availability, speed, latency, data caps and technology if a defined number of challenges for a particular category, across all challengers, have been submitted for a provider. Thus, the provider receiving an area challenge or MDU must demonstrate that they are indeed meeting the availability, speed, latency, data cap, and technology requirement, respectively, for all (served) locations within the area or all units within an MDU. The provider can use any of the permissible rebuttals listed in the table above.

An area challenge is triggered if six (6) or more Broadband Serviceable Locations within a single census block group using a particular technology and a single provider within a census block group submit the same type of challenge.

An MDU challenge requires challenges by at least three (3) units or 10% of the unit count listed in the Fabric within the same broadband serviceable location, whichever is larger.

Each type of challenge and each technology and provider is considered separately, i.e., an availability challenge (A) does not count towards reaching the area threshold for a speed (S) challenge. If a provider offers multiple technologies, such as DSL and fiber, each is treated separately since they are likely to have different availability and performance.

Area challenges for availability need to be rebutted with evidence that service is available for all BSL within the census block group, e.g., by network diagrams that show fiber or hybrid fiber-coaxial (HFC) infrastructure or customer subscribers. For fixed wireless service, the challenge system will randomly sample at least ten (10) broadband

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serviceable locations from the area in contention where the provider must demonstrate service availability and speed (e.g., with a mobile test unit).

### **4.8. Speed Test Requirements**

ARConnect will accept speed tests as evidence for substantiating challenges and rebuttals. Each speed test consists of three measurements, taken on different days. Speed tests cannot predate the beginning of the challenge period by more than 60 days.

Speed tests can take four forms:

1. A reading of the physical line speed provided by the residential gateway, (i.e., DSL modem, cable modem (for HFC), optical network terminal (for fiber-to-the-home), or fixed wireless subscriber module.
2. A reading of the speed test available from within the residential gateway web interface.
3. A reading of the speed test found on the service provider's web page.
4. A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway, using a speed test application from the list of NTIA-approved speed test applications.<sup>9</sup>

Each speed test measurement must include:

1. The time and date the speed test was conducted.
2. The provider-assigned internet protocol (IP) address, either version 4 or version 6, identifying the residential gateway conducting the test.

Each group of three speed tests must include:

1. The name and street address of the customer conducting the speed test.
2. A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's last invoice).

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<sup>9</sup> The NTIA has approved the following speed test applications: [speedtest.net](https://speedtest.net/); <https://speed.measurementlab.net/#/>; <https://speed.cloudflare.com/>; <https://fast.com/>; or any ARConnect sponsored or operated speed test sites (including commercial aggregators such as <https://ready.net/>).

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3. An agreement, using an online form provided by ARConnect, that grants access to these information elements to ARConnect, any contractors supporting the challenge process, and the service provider.

The IP address and the subscriber's name, and street address are considered personally identifiable information (PII) and thus are not disclosed to the public (e.g., as part of a challenge dashboard or open data portal).

Each location must conduct three speed tests on three different days; the days do not have to be adjacent. The median of the three (3) tests (i.e., the second highest (or lowest) speed) is used to trigger a speed-based (S) challenge, for either upload or download. For example, if a location claims a broadband speed of 100 Mbps/25 Mbps and the three speed tests result in download speed measurements of 105, 102 and 98 Mbps, and three upload speed measurements of 18, 26, and 17 Mbps, the speed tests qualify the location for a challenge, since the measured upload speed marks the location as underserved.

Speed tests may be conducted by subscribers, but speed test challenges must be gathered and submitted by units of local government, nonprofit organizations, or an internet service provider.

Subscribers submitting a speed test must indicate the speed tier they are subscribing to. If the household subscribes to a speed tier of between 25/3 Mbps and 100/20 Mbps and the speed test results in a speed below 25/3 Mbps, this broadband service will not be considered to determine the status of the location. If the household subscribes to a speed tier of 100/20 Mbps or higher and the speed test yields a speed below 100/20 Mbps, this service offering will not count towards the location being considered served or underserved. However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change. For example, if a location is served by 100 Mbps licensed fixed wireless and 500 Mbps fiber, conducting a speed test on the fixed wireless network that shows an effective speed of 70 Mbps does not change the status of the location from served to underserved.

A service provider may rebut an area speed test challenge by providing speed tests, in the manner described above, for at least 10% of the customers in the challenged area. The customers must be randomly selected. Providers must apply the 80/80 rule<sup>10</sup>, i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold. For example, 80% of these locations must have a download speed of at least 20 Mbps (that is, 80% of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an

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<sup>10</sup> The 80/80 threshold is drawn from the requirements in the CAF-II and RDOF measurements. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

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upload speed of 16 Mbps to be meet the 100/20 Mbps speed tier. Only speed tests conducted by the provider between the hours of 7 pm and 11 pm local time will be considered as evidence for a challenge rebuttal.

### 4.9. Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, ARConnect will, upon approval from NTIA, publicly post an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge. This will include a form for all providers in the state to submit an email at which they would like to be contacted for challenge notifications. This documentation will be posted publicly for at least a week prior to opening the challenge submission window. Relevant stakeholders can sign up on ARConnect's website [broadband.arkansas.gov](http://broadband.arkansas.gov) for challenge process updates and newsletters, as well as to view an FAQ page listed under "FAQ." If a question is unanswered by the FAQ page, ARConnect can be reached by emailing [broadband.challenges@arkansas.gov](mailto:broadband.challenges@arkansas.gov).

Beyond actively engaging relevant stakeholders, ARConnect will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

- the provider, nonprofit, or unit of local government that submitted the challenge;
- the census block group containing the challenged broadband serviceable location;
- the provider being challenged;
- the type of challenge (e.g., availability or speed); and
- a summary of the challenge (building off a summary submitted by the challenger), including whether a provider submitted a rebuttal (building off a summary submitted by the provider).

ARConnect will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses and customer IP addresses. To ensure all PII is protected, ARConnect will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website. Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly.

ARConnect will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law. Broadband service providers will also be required to submit a redacted version of



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any documents containing proprietary and confidential information. If any of these responses do contain information or data that the submitter deems to be confidential commercial information that should be exempt from disclosure under the Arkansas Freedom of Information Act or is protected under applicable state privacy laws, that information should be identified as privileged or confidential. Otherwise, the responses will be made publicly available.

### **SECTION 5. QUALIFICATIONS FOR RECEIVING BEAD FUNDING**

#### **5.1. Detailed plan for last-mile projects**

ARConnect has designed a thoughtful and comprehensive process based on its experience with prior State and federal funding opportunities. ARConnect's BEAD deployment subgrantee award process will include six stages of activities:

- 1. Early Communication**
- 2. Pre-bidding Preparation and Support**
- 3. Bidding**
- 4. Adjudication**
- 5. Expansion to 100% Coverage**
- 6. Final Awards**

##### **5.1.1. Early Communication**

ARConnect will begin outreach and communication with potential applicants following submission of the Initial Proposal Volume II to NTIA. Initial communication will aim to foster a broad set of potential applicants, but will not include detailed requirements, timelines, or rules until the approval of the Initial Proposal Volume II. Once the Initial Proposal Volume II is approved, ARConnect will release detailed materials reflecting the input from NTIA. This material will include:

1. A clear awards process timeline;
2. Basic requirements for applicant eligibility;
3. A high-level overview of the information to be submitted both in the prequalification application and for bids;
4. Virtual panels to ensure applicants understand the basic requirements, including relevant legal guidelines such as compliance with the Build America, Buy America Act (BABA) and the Environmental and Historic Preservation Act (EHP);
5. Following NTIA approval of the Initial Proposal, an Applicant Primer including detailed rules for bidding, such as the application, scoring rubric, adjudication process, and use of the Extremely High Cost per Location Threshold (EHCPLT);
6. Following closing of the Challenge Process and finalization of eligible BSLs and CAIs, a set of data necessary for applicants to produce successful bids, such as lists and maps

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of BSLs and CAIs, a reference subsidy for each Census Block Group (CBG), and a list of relevant local government organizations recommended for bidders to coordinate with during their preparation.

This early communication is intended to allow potential applicants to begin preparing any internal resources needed for participation in bidding and to support the maximum number of successful bids across the State. ARConnect will utilize email, website and social media, the State procurement system, virtual meetings, and in-person meetings to distribute information in early communication.

### **5.1.2. Pre-bidding Preparation and Support**

The purpose of pre-bidding activities is to provide technical support for applicants as they prepare their bids and to front-load any administrative tasks to reduce the burden on both ARConnect and applicants during the bidding and adjudication. Technical support for applicants will make use of a “round zero” dry-run period of the bidding process. During this period, applicants will be encouraged to submit dummy bids to ensure they understand the mechanics of the application. In parallel, ARConnect will complete a test run of the adjudication process. This round zero will enable two key preparation objectives: First, it will allow ARConnect to provide technical assistance for any applicants that have challenges with submitting satisfactory bids. Second, it will provide an opportunity for ARConnect to revise and publish the bidding rules should any logistical issues be identified during the round-zero bidding.

In addition to the round-zero bidding, applicants will be required to submit prequalification applications to confirm the following:

1. They meet basic financial, managerial, technical, operational, and other regulatory and disclosure requirements, as described in Section 5.10.1 through 5.10.7 of this document and required by the BEAD guidelines;
2. Certification of applicants’ history and planned continuance of compliance with relevant labor laws and disclosure of past violations, as described in Section 8 of this document and required by the BEAD guidelines;
3. Certification of applicants’ willingness to abide by certain BEAD requirements, such as support for BABA and EHP requirements and anti-collusion and conflict-of-interest provisions, as described in Section 5.6 of this document and pursuant to the Arkansas state policy on anti-collusion, including acknowledgement of the following:
  - a. By submission of a bid or proposal, the subgrantees represent and warrant that the prices in the bid or proposal have been arrived at independently, without any collusion with another competing prospective contractor.
  - b. Collusion violates the Arkansas Procurement Law. Not only can it lead to suspension or debarment, it can be referred to the Attorney General’s office for investigation and appropriate legal action.

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Arkansas state policy on Anti-Collusion<sup>11</sup>:

- a) As used in this section, “collusion” means cooperation in the restraint of free and open competition in a public procurement, including without limitation:
  - 1) Price fixing;
  - 2) Bid rigging;
  - 3) Customer or market allocation;
  - 4) Misrepresenting the independence of the relationship between colluding parties;  
and
  - 5) Exerting improper influence on public officials to obtain advantage in a public procurement, including without limitation:
    - i) Offering bribes or kickbacks;
    - ii) Extortion; and
    - iii) Fraudulent misrepresentation.
- b) When for any reason collusion is suspected among any bidders or offerors, a written notice of the relevant facts shall be transmitted to the Attorney General.
  - 1) All documents involved in a procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be destroyed.
  - 2) All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt of the request.
- c) Collusion is cause for:
  - 1) Debarment from consideration for award of a contract under § 19-11-245; and  
Suspension from consideration for award of a contract if there is probable cause for suspecting collusion as determined by the Attorney General or the State Procurement Director.

### **5.1.3. Bidding**

Applicants will use CBGs as the basic geographic unit to define their project areas. Bids may include one or more CBGs but may not bisect or only partially cover any CBG. Additional information about the definition of project areas is covered in Section 2.4.6 of this document. The Applicant Primer, provided during the early communication stage, will prepare applicants for the use of CBGs as basic units, including publishing a list of reference subsidies for each CBG. Bids will be solicited over two tranches. Both priority (fiber) and non-priority (non-fiber) projects will be accepted in both tranches. Proposed fiber projects will be prioritized in alignment with the BEAD NOFO’s requirement to prioritize fiber service wherever possible, and non-fiber projects will be considered in the scenarios detailed under Expansion below.

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<sup>11</sup> State of Arkansas (2020); *Arkansas Procurement Law § 19-11-240*. See [here](#).

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The first tranche of bids will be analyzed to identify:

- Bids without competition that meet a minimum point threshold
- Bids in competitive project areas with sufficiently high scores to qualify as “Buy It Now” bids
- Competitive project areas requiring adjudication
- Zero-bid areas requiring additional solicitation

The minimum point threshold will be based on an absolute minimum score (for example, a specific percentage or more of available points). Bids without competition<sup>12</sup> that are above this threshold will be provisionally granted and their covered project areas will not be carried into the second tranche of bidding. Applicants with bids without competition above the minimum point threshold will be notified of their bids being awarded, subject to final determination of the state’s subsidy liability and a final, discretionary review of applicants’ total set of awards for feasibility. The minimum point threshold will be announced in the Applicant Primer, following approval of Initial Proposal Volume II.

Buy It Now Bids will be defined as competitive bids that score a set number of points above the next-highest scoring bid of the same or higher technology class (fiber or non-fiber). Buy It Now bids must also submit subsidy requests that are below the reference subsidy for their covered CBGs. However, a non-priority bid significantly higher than the next-highest priority bid would not be considered a Buy It Now bid. Buy It Now bids will be provisionally awarded and their covered project areas will not be carried into the second tranche of bidding. Applicants with Buy It Now bids will be notified of their bids being awarded subject to final determination of the State’s subsidy liability and a final, discretionary review of applicants’ total set of awards for feasibility. The Buy It Now relative point thresholds will be announced in the Applicant Primer, following approval of Initial Proposal Volume II.

Both competitive project areas and zero-bid areas will be eligible for tranche 2 bids, however the two types of areas will be treated differently.

Competitive project areas will include the entire area of all bids that have any overlap, regardless of whether all or only part of the bids overlap. Applicants who submit tranche-1 bids in competitive areas will be allowed to submit modified bids for tranche 2. Modifications will only be allowed to the requested subsidy and the scope of CBGs included in the bid. Specifically, applicants will only be allowed to decrease their requested per-location subsidy for CBGs in the tranche-1 bid and to increase the number of CBGs in their bids. For newly added CBGs, applicants will not be held to the tranche-

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<sup>12</sup> Bids without competition are defined as bids with project areas that do not overlap with the project areas of any bids from other applicants.

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1 per-location subsidy. This will allow bidders to formulate more competitive bids in an accelerated timeline between tranche 1 and tranche 2.

Zero-bid areas will include areas that received no bids, as well as areas where the sole bid fell below the minimum point threshold. Applicants will also be allowed to add zero-bid areas to competitive bids for additional points. ARConnect will also consider increasing the reference subsidy available for zero-bid areas to encourage bidding for these areas. These two mechanisms are aimed at reducing the number of zero-bid areas remaining after tranche-2 bids are received.

### **5.1.4. Adjudication**

ARConnect will follow all Arkansas' state policies and guidelines for document retention and subgrantee selection throughout the determination process. While bids will be kept confidential during bidding to preserve the competitiveness of the awards process, all deconflicting decisions and relevant inputs will be retained and made available for public review following the announcement of final awards.

Deconflicting of overlapping bids in both tranche 1 and tranche 2 will follow a standard scoring rubric, as described in Section 5.4.1 of this document. However, tranche-1 scoring will only be used to identify best-offer bids and to ensure that bids without competition are above the minimum point threshold. Tranche-2 scoring will be completed to deconflict all remaining overlapping priority bids and determine the preliminary award winner, pending application of the EHCPLT, ARConnect review of the final set of awards for each applicant, and NTIA approval of ARConnect's Final Proposal.

Losers of this adjudication who submitted bids above the minimum point threshold may in some cases still be eligible for parts of their proposed project areas that did not overlap with any other bids. If this is the case, they will be invited to accept prorated subsidies for these non-competitive areas. If applicants determine that their reduced project area requires a different subsidy level, they will be allowed to propose a new total project cost and requested subsidy. They will also be permitted to propose modified project areas (for example, designating specific CBGs that they will still support). However, if applicants modify their bids, ARConnect reserves the right to solicit additional bids for the CBGs in question. Any project areas abandoned by applicants and with no other eligible bids will be treated as zero-bid CBGs.

### **5.1.5. Expansion to 100% Coverage**

While ARConnect firmly believes that BEAD funding will be sufficient to provide fiber or alternate broadband service to all eligible locations, it has prepared for the

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possibility that some CBGs may not receive reasonable bids in the two tranches of open bidding. ARConnect will guarantee 100% coverage through three primary activities:

- Calculation and Application of the EHCPLT to ensure BEAD funds are sufficient to deploy broadband to all unserved and underserved locations and that all per-location subsidy amounts are reasonable
- Proactive solicitation of bids for zero-bid CBGs and CBGs abandoned by applicants following adjudication
- Low-Earth Orbit Satellite Internet Service for locations where it is determined that no priority or non-priority deployment is feasible

Details on the Calculation and Application of the EHCPLT are provided in Sections 5.9.1 and 5.9.2. ARConnect will calculate the EHCPLT after all tranche-1 and tranche-2 bids have been received and adjudicated, based on the anticipated total BEAD subsidy required to reach 100% coverage and based on any per-location subsidy costs that are unreasonably high, per the discretion of ARConnect. Following submission of all tranche-2 bids, ARConnect will identify preliminary award recipients that meet any one the following conditions:

1. Priority bids that do not overlap with any other bid
2. Priority bids that receive the highest score for competitive areas
3. Non-priority bids that do not overlap with any other bid
4. Non-priority bids that receive the highest score for competitive areas and do not overlap with priority bids

Once these preliminary award recipients are identified, the total BEAD subsidy required to reach 100% coverage will be estimated using three inputs:

1. The range of subsidy requirements for primary winners
2. The number of locations in zero-bid areas
3. A reasonable buffer to account for the uncertainty inherent in inducing coverage of zero-bid areas

If needed, the EHCPLT will then be defined as the threshold that ensures that this estimated subsidy is less than the available BEAD funding. At this point, ARConnect's selection process will no longer rely on the rubric, but will instead analyze all available bids, both below and above the EHCPLT, to identify a set of awards that will maximize the number of eligible unserved and underserved locations receiving reliable broadband internet within the allocated BEAD funding. This process will follow an optimization algorithm that will weigh unserved locations higher than underserved locations.

Proactive solicitation of applications for zero-bid CBGs will involve introduction of new incentives, primarily through increasing the reference subsidy, direct outreach to

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nearby applicants, and, if needed, direct discussion of required subsidy levels to make projects financially viable. As zero-bid and abandoned CBGs are identified, the state will announce their status. Applicants with bids in competitive areas will then be permitted to add the zero-bid areas to their bids in order to receive additional points. Additionally, ARConnect will consider increasing the reference subsidy for any zero-bid CBGs, if it is determined that the long-term economics of the CBG do not support build-out of broadband at the initial reference subsidy. The state will also reach out to encourage additional bids by any applicants submitting bids to areas adjacent to zero-bid areas as well as any applicants with known infrastructure in zero-bid CBGs or adjacent CBGs. If needed, the state will directly engage with service providers to negotiate the subsidy needed to provide coverage.

Low-Earth Orbit Satellite Internet Service will only be considered for CBGs where no priority or non-priority bids solicited are above the minimum point threshold, as a final measure to ensure internet is deployed to 100% of eligible unserved or underserved locations and CAIs.

### **5.1.6. Awards**

Once 100% coverage has been reached, ARConnect will make the determination of provisional awards, subject to NTIA signing off on the Final Proposal. As a final step in determining award winners, ARConnect will review the total awards to each applicant in the context of the prequalification information received. This review will be done at the discretion of ARConnect to ensure that applicants have the means to successfully deploy all contracted projects within the proposed timelines. Should it be determined that an applicant is eligible for awards that may be beyond what is reasonable for their existing capabilities, ARConnect will engage with the provisional award winner to discuss options. If no viable option can be agreed on, ARConnect will consider alternate overlapping bids or satellite internet service for portions of the applicant's awards.

## **5.2. Ensuring a Fair, Open, and Competitive Process**

### **5.2.1. Fairness**

The fairness of the award process relies on there being no collusion between potential recipients, no bias from the State or in the award criteria, no conflicts of interest in the selection process, and no arbitrary decisions. ARConnect will put the following considerations and guidelines in place to safeguard the fairness of the selection process:

1. ARConnect will require all applicants to certify that they will abide by all applicable federal and State anti-collusion laws.
2. Applicants will certify their commitment to abide by non-disclosure rules modeled on the FCC's prohibited communications rules for auctions. This includes prohibition

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against applicants making general public comments, such as declaring their intention to participate in bidding for BEAD funding, as well as specific comments, such as an applicant's proposed project areas and desired subsidy.

3. Failure of applicants to comply with these rules can result in their disqualification from any remaining rounds.
4. ARConnect will keep all applicant material, including the names of applying entities, confidential until the submission of the Final Proposal and announcement of the full set of preliminary awards.
5. ARConnect has designed the subgrantee selection process to prevent systematic bias and to reduce opportunities for arbitrary or subjective decisions. Specifically, the criteria and bidding process is designed to be comprehensive and provide guidance on closely competitive bids, with a clear process defined from beginning to end. Criteria are designed to be fair and neutral and to be determined using measurable and objective metrics.
6. Finally, the subgrantee selection process will follow all relevant state policies to avoid the creation of conflicts of interests. ARConnect reserves the right to take any appropriate action based on the disclosure of potential conflicts of interest, such as disqualification of an applicant for a specific project area or designation of an applicant as ineligible to receive any BEAD funding. Specifically, applicants intending to bid for more than \$25,000 in awards will be required to make disclosures required by Arkansas Executive Order 98-04,<sup>13</sup> as described below.

Disclosure required by Arkansas Executive Order 98-04: Any contract or amendment to a contract executed by an agency which exceeds \$25,000 shall require the vendor to disclose information as required under the terms of Executive Order 98-04 and the regulations pursuant thereto. The vendor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form shall be used for this purpose. Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements. The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation, or policy promulgated by the Department of Finance and Administration pursuant to this order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the agency under the provisions of existing law.

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<sup>13</sup> State of Arkansas Department of Finance and Administration (2005). *Rule implementing governor's Executive Order 98-04, Act 34 of 1999 and Act 2262 of 2005.* <https://www.dfa.arkansas.gov/images/uploads/internalAuditOffice/EO98-04Rules.pdf>.



### 5.2.2. Openness

ARConnect remains dedicated to ensuring the subgrantee selection is open to the widest breadth and variety of potential applicants. To this end, ARConnect will put the following considerations and guidelines in place to safeguard the fairness of the selection process:

1. Share basic information about the subgrantee selection timeline as soon as reasonably possible following submission of the Initial Proposal.
2. Conduct outreach to a broad range of potential applicants to ensure awareness, both through independent outreach and through the Arkansas County Broadband Committees that ARConnect helped establish.
3. Publish an Applicant Primer, including a detailed explanation of the rules and scoring rubric as well as details on the required disclosures and certifications for applicants to establish eligibility, as elements of the Initial Proposal are finalized.
4. In the Applicant Primer, include various data sets that applicants will need to prepare their bids, including unserved and underserved locations and CAIs by CBG and a list of government entities for local coordination.
5. Provide technical support for all applicants throughout the preparation and bidding process.

### 5.2.3. Competitiveness

The subgrantee selection process has been designed to maintain a fair playing field and solicit a competitive set of applications. ARConnect has introduced several measures toward this end, including:

1. Using competitively neutral criteria in the scoring rubric (covered in Section 5.4.1), as required by the BEAD guidelines.
2. Allowing applicants to define project areas using CBGs as a basic area unit in order to allow both large and small service providers to participate while encouraging the broadest feasible coverage of BSLs (covered in Section 5.7).
3. Using a second tranche of bids to encourage competition for economically valuable CBGs.
4. Requiring all applicants to certify their commitment to abide by non-disclosure rules modeled on the FCC's prohibited communications rules for auctions. This includes prohibition against applicants making general public comments, such as declaring their intention to participate in bidding for BEAD funding, as well as specific comments, such as an applicant's proposed project areas and desired subsidy.
5. Keeping all submitted application details confidential until the announcement of awards.

### 5.3. Subgrantee Accountability

ARConnect understands the subgrantee accountability procedures required by BEAD and is committed to following them to ensure a responsible use of BEAD funds. Per the BEAD NOFO and guidelines, funds will be provided to subgrantees on a reimbursable basis once subgrantees have submitted required evidence of deployment activity. Subgrantees' progress on deployment activities will be monitored through periodic site visits by ARConnect or its contractors.

ARConnect will require timely subgrantee reporting which includes the following, as required by the BEAD NOFO:

- Labor and material costs reporting for reimbursement.<sup>14</sup>
- Quarterly progress reports including construction updates, any changes to subcontractor statuses, certification of adherence to required operational practices, location details (e.g., locations to be served, classification of locations, any new locations), and service speeds.
- Annual financial and managerial reports, including financial statements and narrative description of deployment and workforce development activities.

Finally, awarded contracts will include claw-back provisions that will go into effect in case of events including but not limited to the following:

- Subgrantees are delayed without cause or cease to provide services per grant provisions beyond their committed deployment timeline.<sup>15</sup>
- ARConnect identifies any incorrect documentation, such as overbilling of labor or material costs.
- ARConnect identifies any material breaches of contract such as failure to deliver contracted workforce development activities.
- ARConnect identifies serious violations of other provisions, such as environmental protections, safe workplace practices, or fair labor practices.

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<sup>14</sup> Note that ARConnect may consider revisions to grant format and terms should NTIA release updated uniform guidance.

<sup>15</sup> ARConnect (2020). ARC Broadband Grant Program Main Rules Section 8.5.C. <https://broadband.arkansas.gov/wp-content/uploads/2020/04/Arkansas-Rural-Connect-Rule--Clean.pdf>.

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## 5.4. Application Scoring

### 5.4.1. Scoring Rubric

<u>Primary criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>
<u>1.1. Minimization of BEAD program outlay</u>	<u>40</u>	<u>The score will be assessed based on how high or low an applicant’s requested subsidy is relative to ARConnect’s reference subsidy for the CBGs within the applicant’s project area. Reference subsidies will be calculated on a per-location basis for each CBG and will be based on commonly accepted industry models. Reference subsidies will be announced publicly prior to the bidding process. Scores will be based on a linear scale, with zero points being granted for bids that are 100% higher than the reference subsidy and 40 points being granted for bids that request no BEAD subsidy. For example, an applicant who applies for a project with a per-location BEAD subsidy match that is exactly the same amount as the reference subsidy would receive 20 points, while an applicant who applies for a subsidy worth 120% of the per-location reference subsidy would receive 16 points.</u>
<u>1.2. Affordability</u>	<u>25</u>	<u>Applicants will commit to a baseline price for the highest tier of service that they support, as disclosed in their deployment bid. The score will be assessed based on how high or low their commitments are relative to the below reference prices for five tiers of service<sup>16</sup>: <u>1/1 Gbps: \$85 per month</u> <u>500/300 Mbps: \$70 per month</u> <u>400/200 Mbps: \$60 per month</u> <u>300/100 Mbps: \$50 per month</u> <u>200/50 Mbps: \$40 per month</u> <u>If an applicant plans to support a plan between two of the tiers, their price will be assessed against a linear interpolation of the download speed between</u></u>

<sup>16</sup> The price for a 1 Gbps plan is guided by applying 2% of household income to internet service, based on U.S. Census Bureau data on Arkansas median income; the step-down of prices for lower-tier service follows prevailing relative prices in Little Rock, as of September 2023.

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<u>Primary criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>
		<p>the two nearest reference prices. For example, if an applicant plans to support a 750/500 Mbps plan, their price would be assessed against a reference price of \$77.50 per month.</p> <p>Scores will be based on a linear scale, with applicants committing to plans that are, on average, 50% higher than the reference price receiving zero points and applicants committing to plans 50% lower than the reference price receiving 25 points.</p> <p>For example, an applicant that commits to plans exactly at the recommended reference price would receive 12.5 points, while an applicant who commits to plans priced at 120% of the reference price would receive 10 points.</p>
<u>1.3. Fair labor practices</u>	<u>10</u>	<p>Applicants will receive 10 points for demonstrated compliance with federal labor laws over the last three years, as described in Section 8 of this document.</p> <p>Applicants without three years of operational experience can receive 10 points by signing a certification of future compliance.</p>

<u>Secondary criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>
<u>2.1. Speed to deployment</u>	<u>3</u>	<p>Applicants will provide their planned deployment timeline as part of their bid. Timelines should span no more than 48 months from the date of the applicant receiving notice of their final award. Any timeline that is shorter than 24 months will receive 3 additional points on the scoring rubric. Applicants will certify their planned deployment timeline and acknowledge potential financial penalties if their projects extend beyond planned timeline without a formal extension having been submitted to and approved by ARConnect.</p>
<u>2.2. Speed, latency, and other technical capabilities</u>	<u>2</u>	<p>Applicants will provide technical specifications for all planned technologies. Any bid to deploy XGS-PON fiber technology will receive the full 2 points. Bids to deploy non-XGS-PON fiber will receive 1.5 points. Bids to deploy non-fiber technology will receive points as follows:</p>

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<u>Secondary criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>
		<p><u>1000/500 Mbps: 1 point</u>  <u>400/200 Mbps: 0.5 points</u></p> <p><u>Technology with more than 100 milliseconds of latency will be awarded zero points.</u></p> <p><u>Applications must also include a reasonable explanation of how they will add incremental capacity as new customers are added. ARConnect retains the right to review and request modifications to these plans prior to awarding points for this criterion.</u></p>

<u>Additional criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>
<p><u>3.1. Workforce support</u></p>	<p><u>5</u></p>	<p><u>5 points will be granted to applicants that provide plans to commit to additional workforce support, as described in Section 9, during their prequalification application. An optional question regarding workforce support plans will be included in the prequalification application; responses should describe the set of measures that applicants will take to foster and recruit a qualified workforce for their projects. ARConnect reserves the right to review workforce support plans for feasibility and send comments back to applicants for revisions, should the workforce support plans prove insufficient.</u></p> <p><u>Applicants can receive points for any combination of the below measures, which together present a comprehensive plan for meeting their workforce needs:</u></p> <ul style="list-style-type: none"> <li data-bbox="722 1606 1404 1753">• <u>Collaboration with apprenticeship programs offering support services such as project management resources, computing services, and back-end administration</u></li> <li data-bbox="722 1764 1421 1879">• <u>Commitment to hiring a local workforce, with particular focus on rural and high-poverty areas</u></li> </ul>

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<u>Additional criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>
		<ul style="list-style-type: none"> <li>• <u>Financial support from sub-grantee for statewide centers providing wraparound services, including childcare, transportation, and mentorship for employees on BEAD-related projects</u></li> <li>• <u>Provision of training programs for software, radio frequency, and field engineers through scholarships and student stipends at community colleges</u></li> <li>• <u>Implementation of in-house training and certification programs covering areas such as fiber optics, cybersecurity, and other telecommunications and broadband digital skills</u></li> <li>• <u>Facilitation of guaranteed letters of commitment with state technical colleges, demonstrating good-faith efforts through letters of intent to hire Arkansan graduates.</u></li> <li>• <u>Proposals to identify new sources of workforce, such as recent graduates and ex-convict populations.</u></li> </ul>
<u>3.2 Scale of geographic coverage</u>	<u>5</u>	<p><u>Applicants will score additional points, up to a maximum of 5 points, for proposing project areas that cover a larger number of locations (BSLs and CAIs) within a given county. Applicants will indicate which counties are included in their bids. ARConnect will identify the county with the largest number of locations served by the applicant’s bid or identify any county within a bid where 100% of eligible locations are served by the bid. Any applicant serving 100% of locations within any county in their bid will receive 5 points. Any applicants serving less than 100% of locations in their covered counties will be awarded points as follows:</u></p>

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<u>Additional criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>												
		<p><u>Points available for the number of locations served by the proposed bid<sup>17</sup></u></p> <table border="1" data-bbox="680 359 1421 772"> <thead> <tr> <th data-bbox="680 359 1279 457"><u>No. of locations within a county with the most coverage</u></th> <th data-bbox="1279 359 1421 457"><u>Points</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="680 457 1279 520">3,000</td> <td data-bbox="1279 457 1421 520">5</td> </tr> <tr> <td data-bbox="680 520 1279 583">2,000</td> <td data-bbox="1279 520 1421 583">4</td> </tr> <tr> <td data-bbox="680 583 1279 646">1,500</td> <td data-bbox="1279 583 1421 646">3</td> </tr> <tr> <td data-bbox="680 646 1279 709">1,000</td> <td data-bbox="1279 646 1421 709">2</td> </tr> <tr> <td data-bbox="680 709 1279 772">500</td> <td data-bbox="1279 709 1421 772">1</td> </tr> </tbody> </table>	<u>No. of locations within a county with the most coverage</u>	<u>Points</u>	3,000	5	2,000	4	1,500	3	1,000	2	500	1
<u>No. of locations within a county with the most coverage</u>	<u>Points</u>													
3,000	5													
2,000	4													
1,500	3													
1,000	2													
500	1													
<u>3.3. Inclusion of zero-bid CBGs</u>	<u>5</u>	<u>Applicants will receive points based on the number of zero-bid CBGs they include in their tranche 2 bid. Each zero-bid CBG will be worth one-half point.</u>												
<u>3.4. Local coordination</u>	<u>2.5</u>	<p><u>Applicants are encouraged to solicit letters of support from a list of local government officials. Eligible local government officials could include the following individuals:</u></p> <ul style="list-style-type: none"> <li>• <u>State: State Representative; State Senator</u></li> <li>• <u>County: County Judge; Justice of the Peace</u></li> <li>• <u>Municipality: Mayor; Member of City Council</u></li> <li>• <u>School District: Member of the School Board</u></li> </ul> <p><u>Applicants will receive an additional half point, up to a maximum of 2.5 points, for each letter of support filed. The list of local government officials will be published by ARConnect following approval of this Initial Proposal by NTIA.</u></p> <p><u>Local government officials are permitted to write letters of support for one or more applicants but may only write one letter of support per applicant.</u></p>												
<u>3.5. Weather-resilient</u>	<u>2.5</u>	<u>Applicants will receive up to 2.5 points for deployment plans that include recommended weather resiliency measures, including 1 point for</u>												

<sup>17</sup> The rubric of points for the number of locations is based on BEAD-eligible locations in Arkansas counties and may change subject to changes in eligibility according to NTIA guidelines and the ARConnect challenge process.

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<u>Additional criteria</u>	<u>Maximum points available</u>	<u>Determination process</u>
<u>broadband infrastructure</u>		<u>achieving 85% or higher as share of fiber that is buried (vs aerial), 1 point for a weather mitigation plan (including network redundancy planning), and 0.5 points for committing to attend municipality emergency management meetings on an ongoing basis to coordinate timely restoration of service in the case of outages. See Section 2.11.1 for additional information on weather resiliency.</u>

### **5.4.2. Guidelines for Application of Scoring Rubric**

Scoring will take place following the close of tranche 1 as well as the close of tranche 2. As described in Section 5.1, tranche-1 and tranche-2 bids will follow the same scoring criteria, with the exception of criterion 3.3 (inclusion of zero-bid areas), which is only applicable to tranche-2 bids. The scoring criteria are designed to allow comparison of bids with dissimilar project areas as well as different technologies.

Tranche-1 and tranche-2 bids will follow the same scoring criteria, as described above.

In tranche 1, bids will be scored to identify Buy It Now bids and bids without competition that do not meet the minimum point threshold. Buy It Now bids are competitive bids that score significantly higher than the next-highest bid and also request less than the reference subsidy for their covered CBGs. The relative point threshold for Buy It Now bids will be announced in the Applicant Primer.

The minimum point threshold will be applied to bids without competition. If a CBG does not receive any bids above the minimum point threshold, it will be treated as a zero-bid area for tranche-2 scoring. The minimum point threshold will be announced in the Applicant Primer.

Following receipt of all tranche-2 bids, the rubric will be used to identify preliminary winners between overlapping bids. Priority bids will only be compared to other priority bids. Overlapping non-priority bids will only be deconflicted using the scoring rubric in cases where they do not overlap with any priority bids. The results of this determination will be used as input to calculate the EHCPLT.

### **5.5. Prioritization of Unserved and Underserved Locations**

Based on preliminary cost modeling, ARConnect believes that the State's allocated BEAD funding will be sufficient to deploy reliable broadband infrastructure to all



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unserved and underserved locations as well as eligible CAIs, including high levels of priority infrastructure deployment. ARConnect's subgrantee selection plan includes two measures to ensure there is sufficient funding to ensure coverage to all unserved and underserved locations.

First, use of the EHCPLT will allow ARConnect to maximize coverage within budget among bids received in tranches 1 and 2. The EHCPLT will be calculated to ensure there are sufficient funds left to support coverage of qualified service to all unserved and underserved locations included within any remaining no-bid areas.

Second, if there are CBGs that do not receive bids in tranches 1 and 2, ARConnect will consider using low-Earth-orbit satellites to provide coverage. When considering which locations to serve with low-Earth-orbit satellites, ARConnect will first subsidize coverage for unserved locations, followed by underserved locations, and finally any CAIs. The process of applying the EHCPLT and determining locations for satellite coverage is further explained in Sections 5.9.1 and 5.9.2.

### **5.6. Build America, Buy America ("BABA") Act and Environmental and Historic Preservation Requirements**

#### **5.6.1. BABA Act Requirements**

Per BEAD guidelines, to ensure the maximum amount of US taxpayer dollars are spent procuring supplies from US businesses:

- Production of all iron, steel, manufactured products (such as fiber-optic communications material), and construction materials used in deployment or non-deployment activities should be United States based (e.g., produced in America), unless a waiver is granted.
- Produced in America products are defined as products that are manufactured in the United States, where the cost of all product components that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of the product's components, as per Section 70912 of BABA (unless another standard exists for determining whether the product has been established according to applicable laws or regulations).
- It is explicitly prohibited to use BEAD funding to purchase any covered communication equipment or services, as per the Secure and Trusted Communications Networks Act of 2019 (46 U.S.C. § 1608) and as published by the FCC.<sup>18</sup>

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<sup>18</sup> FCC (2022). *List of Equipment and Services Covered By Section 2 of The Secure Networks Act*. <https://www.fcc.gov/supplychain/coveredlist>.

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- IIJA specifically prohibits the use of BEAD funding to purchase or support fiber-optic cable and optical transmission equipment that is manufactured in the People’s Republic of China, unless the subgrantee receives a waiver from the Assistant Secretary of Commerce for Communications and Information.

As part of the prequalification application, applicants will provide detailed plans outlining their approach to remaining compliant with BABA requirements and certifying their understanding of and commitment to BABA requirements.

### **5.6.2. Environmental and Historic Preservation Requirements**

An applicant will only be permitted to bid for deployment funding once ARConnect has determined that the applicant has:

- Certified that it will secure all necessary federal, state, and local government permits and approvals required for the proposed work and a timeline of all project areas for which the applicant is the final award recipient;
- Certified that it will design and deploy all projects in such a way as to minimize the potential of adverse environmental impact; and
- Certified that it adhere to any agreed-upon resolutions to mitigate the effects of proposed projects on historic properties, should a National Historic Preservation Act (NHPA) Section 106 review be triggered by their proposed project.<sup>19</sup>

### **5.6.3. Enforcement and Monitoring**

Any applicant that does not provide compliant project plans and/or does not certify their enforceable commitment to these and all other BABA and EHP requirements in their prequalification application will be barred from submitting bids until and unless they amend their application.

As a part of ongoing subgrantee monitoring, ARConnect will monitor compliance with these requirements. Any award recipient with a documented violation of BABA or EHP requirements will be considered for penalties or, in extreme cases, partial or comprehensive termination of ongoing awards.

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<sup>19</sup> Advisory Council on Historic Preservation (2023). *An Introduction to Section 106*. <https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106>.

### 5.7. Project Area Definition

ISPs will define their desired project area using CBGs as the basic geographic unit. This means that if an applicant is bidding to provide broadband to any locations within a CBG, its bid must account for supporting service to all other BEAD-eligible locations within that same CBG. Bids may include multiple CBGs or a single CBG but may not bisect any CBG.

A data pack to support applicants as they consider CBGs for their bids will be included in the Applicant Primer. The data pack will include information on unserved and underserved locations and eligible CAIs, the reference subsidy for each CBG, any relevant weather risks, and a list of eligible local government and community organizations with which subgrantees are encouraged to interface.

Tranche-1 bids will be composed of any collection of contiguous CBGs. Following the resolution of scoring of tranche-1 bids, ARConnect will announce areas eligible for tranche-2 bids. Tranche-2 bids will take two forms:

1. Tranche-1 bids modified to improve their score.
2. Net-new bids for CBGs that received zero bids in tranche 1.

Applicants can only modify their tranche-1 bids by reducing the requested per-location subsidy and adding additional CBGs. Additional zero-bid CBGs added to tranche-1 bids in tranche 2 do not need to be contiguous.

Bids with overlapping project areas will be deconflicted using the scoring rubric, which has been designed to allow like-for-like comparison of bids with disparate project areas.

### 5.8. Approach to Universal Coverage

If there are CBGs with no bids following the close of tranche 2, ARConnect will directly engage with all nearby providers currently offering at least qualified broadband service in the area, any applicant that has placed bids adjacent to the zero-bid CBGs, as well as service providers who received past funding for areas adjacent to the zero-bid CBGs. Additional potential service providers will be identified using the FCC's National Broadband Map and data from prior funding rounds administered by ARConnect.

If there are remaining zero-bid areas following direct solicitation, ARConnect will engage with providers of low-Earth-orbit satellite internet service that are able to support at least 100/20 Mbps service to secure access for remaining unserved locations.

## 5.9. Extremely High Cost Per Location Threshold (EHCPLT)

### 5.9.1. Process for Identifying the EHCPLT

ARConnect will calculate the EHCPLT after all tranche-1 and tranche-2 bids have been received and scored. ARConnect will not rely on its own capital-expenditure or operating-expenditure cost models to calculate the EHCPLT. Rather, the EHCPLT will only be applied as a guardrail to ensure that funding is available to support deployment to 100% of eligible locations.

ARConnect will use three inputs to calculate its potential subsidy requirement:

1. The range of subsidy requirements for preliminary tranche-1 and tranche-2 awards.
2. The number of BEAD-eligible locations in zero-bid areas.
3. A reasonable buffer to account for the uncertainty inherent in soliciting coverage for zero-bid areas.

These inputs will support ARConnect in setting the EHCPLT at a level that guarantees 100% coverage with its available BEAD funding.

### 5.9.2. Application of the EHCPLT

Should it be determined that Arkansas requires an EHCPLT to reach 100% coverage, as described in Section 5.9.1, ARConnect will no longer rely on the scoring rubric to select award winners for remaining areas.

It is important to note that priority and non-priority bids from tranches 1 and 2 already identified as eligible for awards and below the EHCPLT will not be affected by the process described below.

All other bids will be analyzed to identify the set of awards that cover the largest number of unserved and underserved locations while not exceeding the available BEAD funding. This process will follow an optimization algorithm that will weigh unserved locations higher than underserved locations.

Finally, ARConnect may also consider deploying a less costly technology that may not meet BEAD requirements for reliable broadband service (while otherwise satisfying the program's technical requirements), because no technology meeting the reliable broadband service requirements can be deployed for less than the EHCPLT at a given location. Specifically, low-Earth-orbit satellite internet service will be considered for CBGs where no priority or non-priority bids solicited are below the EHCPLT. This will

only be done as a final measure to ensure internet is deployed to 100% of eligible unserved or underserved locations, as per BEAD requirements.

### **5.10. Deployment Subgrantee Qualifications**

ARConnect will establish the eligibility of subgrantees through a prequalification application, submitted by all applicants prior to bidding. No applicant with an outstanding or insufficient prequalification application will be allowed to participate in bidding or receive BEAD funding. The information requested in Sections 5.10.1 through 5.10.7 will primarily be solicited as part of this prequalification application. Additionally, applicants will be required to submit the following information:

- Anti-collusion and anti-conflict-of-interest certifications.
- BABA and EHP plans and certifications.
- Workforce plans and certifications.
- Low-cost plan certification.
- Weather resiliency plans and certifications.

#### **5.10.1. Minimum Qualifications for Financial Capabilities**

Applications that do not meet the minimum qualifications or financial capabilities, as outlined on pages 72-73 of the BEAD Notice of Funding Opportunity (NOFO) and described below in items A through D, will not be eligible for BEAD funding through ARConnect.

##### **A. Required Qualifications for Financial Obligations**

As part of the application process for ARConnect, applicants must certify that they can fulfill the obligations associated with each project on which they intend to bid, that they have sufficient funds to cover all project costs beyond the grant amount, and that they will comply with all program requirements, including service milestones. Additionally, since ARConnect will disburse funding upon completion of associated tasks, applicants must certify that they have and will continue to have enough financial resources to cover eligible project costs until ARConnect authorizes additional disbursements.

##### **B. Model Letter of Credit**

Applicants are required to submit a letter from an eligible bank (see the Code of Federal Regulations Title 47 § 54.804(c)(2)), in which the bank commits to issuing an irrevocable standby letter of credit to the prospective subgrantee. The letter must include the dollar amount of the letter of credit and the issuing bank's agreement to adhere to ARConnect's model letter of credit terms and conditions. Before executing any

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subgrantee agreements, all prospective subgrantees must obtain an irrevocable standby letter of credit that ARConnect deems acceptable and that amounts to no less than 25% of the subaward amount. An opinion letter from the subgrantee's legal counsel must be included with the letter of credit, stating that in a proceeding under Title 11 of the United States Code (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, subject only to customary assumptions, limitations, and qualifications. Applicants will be asked to submit updated letters of credit as part of regular reporting of demonstrated milestones. Letters of credit may be revised throughout the process to twenty-five (25) percent of the remaining subaward amount, as milestones are accomplished and grant payments are remitted.

### C. Conditional Programmatic Waiver

The letter of credit requirement described in section 5.10.1.B. above shall be waived to the extent to and as described below:

#### 1. Subgrantee Option to Use Credit Unions

That portion of the letter of credit requirement that requires the use of a bank that meets the eligibility requirements of 47 C.F.R. § 54.804(c)(2) is waived where the subgrantee otherwise meets the letter of credit using any United States credit union that

- a. Is insured by the National Credit Union Administration; and
- b. Has a credit union safety rating issued by Weiss of B- or better.

#### 2. Subgrantee Use of Performance Bonds

The letter of credit requirement is waived where:

- a. Applicants are required to submit a letter from a company holding a certificate of authority as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570 committing to issue a performance bond to the applicant. The letter shall at a minimum provide the dollar amount of the performance bond.
- b. Prior to entering into any grant agreement, each applicant obtains a performance bond, acceptable in all respects to ARConnect and in a value of no less than one hundred (100) percent of the subaward amount.

Where a subgrantee chooses to exercise the option to obtain a performance bond under this waiver, the requirement that the subgrantee provide with its letter of credit an opinion letter as described in section 5.10.1.B. above is waived.

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### 3. Reduction of Letter of Credit/Performance Bonds Upon Completion of Milestones

The requirement that in no event the letter of credit have a value of less than twenty-five (25) percent of the subaward is waived, conditioned upon the requirement that the subgrantee obtain a new letter of credit in a reduced amount upon achievement of specific deployment milestones.

Where a subgrantee chooses to utilize a performance bond in lieu of a letter of credit, the performance bond may be reduced by a commensurate amount as the subgrantee meets the same deployment milestones.

### 4. Subgrantee Option for Alternative Initial Letter of Credit or Performance Bond Percentage

The requirement that the initial letter of credit be for twenty-five (25) percent of the subaward amount, or in the case where a subgrantee chooses to utilize a performance bond valued at no less than one hundred (100) percent of the subaward amount, is waived where:

- a. ARConnect issues funding on a reimbursable basis;
- b. Reimbursement is for periods of no more than six (6) months; and
- c. The subgrantee commits to maintain a letter of credit or performance bond in the amount of ten (10) percent of the subaward until it has demonstrated to the satisfaction of ARConnect that it has completed the buildout of one hundred (100) percent of locations to be served by the project or until the period of performance of the subaward has ended, whichever occurs first.

Should NTIA authorize alternative forms of financial guarantees to satisfy this requirement, ARConnect will consider revising its prequalification rules to match the latest guidance.

#### D. Audited Financial Statements

Applicants are required to provide financial statements from the previous fiscal year that have been audited by an independent certified public accountant. If the applicant has not been audited as part of its regular business operations, it may submit unaudited financial statements from the previous fiscal year instead, but must also certify that it will provide audited financial statements from the same period. It is important to note that ARConnect will only approve grants for network facility deployment or

upgrades if the submitted documents demonstrate the applicant’s financial capabilities for the proposed project.

E. Business Plans and Related Analyses

To be considered by ARConnect for BEAD funding, applicants must submit business plans and related analyses that demonstrate the sustainability of their proposed project. This can be in the form of pro forma statements or analyses, which should include cash-flow, operating cost, and balance-sheet projections for at least three years following the targeted completion of the project.

**5.10.2. Minimum Qualifications for Managerial Capabilities**

Applications that do not meet the minimum qualifications for managerial capabilities, as outlined on pages 73–74 of the BEAD NOFO and described below in items A and B, will not be eligible for BEAD funding through ARConnect.

A. Key Managerial Personnel

To apply for BEAD funding through ARConnect, applicants must provide resumes for all key management personnel. At a minimum, this should include resumes for all C-suite officers and at least one senior leader who will be accountable for the success of the BEAD-funded deployment in Arkansas.

B. Readiness to Manage Proposed Project and Ongoing Services Provided

To apply for BEAD funding through ARConnect, applicants must submit organizational charts and a narrative explanation of their managerial capabilities as they relate to BEAD-related broadband deployment in Arkansas. This narrative should include, at a minimum, the experience and qualifications of key management personnel who will be responsible for the project, the subgrantee’s experience with projects of similar size and scope, any recent or upcoming organizational changes such as mergers or acquisitions, and any relevant organizational policies.

**5.10.3. Minimum Qualifications for Technical Capabilities**

Applications that do not meet the minimum qualifications for technical capabilities, as outlined on page 74 of the BEAD NOFO and described below in items A and B, will not be eligible for BEAD funding through ARConnect.



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### A. Certification of Technical Qualifications

Prospective applicants must provide ARConnect with a certification confirming their technical expertise in executing and overseeing deployment projects, as well as their ability to proficiently conduct the funded activities, including the use of a well-qualified and credentialed workforce, in accordance with the guidelines specified in Section IV.C.1.e of the BEAD NOFO. The certification to be submitted by applicants must include, but is not limited to, the following:

1. Proof of current licensing from relevant regulatory bodies permitting operations in Arkansas.
2. Confirmation of current Arkansas licensing for any engineers responsible for certifying design, diagrams, project costs, and more.
3. Demonstration of prior experience in designing and successfully delivering projects of similar size, duration, and complexity.

### B. Project Implementation Requirements

Prospective applicants must demonstrate their capacity to execute the funded activities competently with a suitably skilled and credentialed workforce, in accordance with the specifications detailed in Section IV.C.1.e of the BEAD NOFO. The documentation to be provided by prospective applicants must include, but is not limited to, the following:

1. A comprehensive project plan description that explicitly outlines the various stages of the capital investment schedule, encompassing planning, design, implementation, and operation. The project plan should include details such as network design, diagrams, projected costs, four-year timelines, and evidence of adherence to the stipulated timeline as mandated by the BEAD NOFO Section C.2.b.i.
2. A certification affirming that the proposed network has the ability to deliver broadband service meeting the prescribed performance criteria to all the locations covered by the project.

#### **5.10.4. Minimum Qualifications for Compliance with Applicable Laws**

Applications that do not meet the minimum qualifications for legal and regulatory capabilities, as outlined on page 74 of the BEAD NOFO and described below, will not be eligible for BEAD funding through ARConnect.

Applicants are required to provide a comprehensive history detailing compliance with all pertinent federal, state, and local laws for previous broadband projects funded by federal and state programs.

### 5.10.5. Minimum Qualification for Operational Capabilities

Applications that do not meet the minimum qualifications for operational capabilities, as outlined on pages 74–75 of the BEAD NOFO and described below in items A through E, will not be eligible for BEAD funding through ARConnect.

#### A. Certification of Operational Capability

Applicants are required to provide the following operational details:

1. The number of years that the prospective applicant has been providing internet service.
2. The current number of subscribers, including households, businesses, and CAIs.
3. A record of federally or state-funded deployment projects, along with their funding sources and completion or non-completion timelines.
4. Any penalties incurred by the prospective applicant, its subsidiaries, affiliates, or holding companies related to deployment projects.
5. The number of instances where the prospective applicant has been involved as a defendant in federal or state criminal proceedings or civil litigation.
6. All known complaints filed against the applicant to the Arkansas Department of Inspector General, Arkansas Office of the Attorney General, Arkansas Public Service Commission, Arkansas Department of Commerce, Arkansas State Broadband Office, or any other Arkansas state agency.

#### B. Certification of Providing Voice, Broadband, and/or Electric Transmission or Distribution Services for Two Years Prior to Application

An applicant must provide certification that it has offered voice, broadband, and/or electric transmission or distribution services for a continuous period of at least two years before the date of application submission, or that it is a wholly owned subsidiary of such an entity. The certification should specify the number of years that the applicant or its parent company has been in operation.

#### C. Compliance with FCC Rules and Regulations for Voice/Broadband Applicants

An applicant that has offered voice and/or broadband services must certify its timely submission of FCC Form 477s and, if applicable, a Broadband Deployment Accuracy and Technological Availability Act submission, as required during this period, in compliance with the FCC's rules and regulations. Alternatively, if there is a pending or completed enforcement action, civil litigation, or any other matter related to non-compliance or alleged non-compliance with page 75 of the BEAD NOFO, the prospective applicant should provide an explanation.

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### D. Required Operating or Financial Reports for Electric Transmission or Distribution-Only Applicants

If an applicant has exclusively operated an electric transmission or distribution service, it is required to submit qualified operating or financial reports that have been filed with the relevant financial institution during the specified time period. Additionally, a certification confirming the accuracy and authenticity of these submissions in comparison to the reports provided to the relevant financial institution must be included.

### E. Sufficient Operational Capabilities for New Entrants to the Broadband Market

If the applicant is a new entrant to the broadband market, it is required to present sufficient evidence demonstrating that the newly established entity has acquired adequate operational capabilities, either through internal development or external resources. Such evidence may encompass resumes of key personnel, project descriptions, and narratives from contractors, subcontractors, or other collaborative partners with relevant operational experience, or equivalent documentation.

### 5.10.6. Minimum Qualifications for Providing Information on Ownership

Applications that do not meet the minimum qualifications for disclosure of ownership, as outlined on page 75 of the BEAD NOFO and described below, will not be eligible for BEAD funding through ARConnect.

In accordance with the Code of Federal Regulations Title 47 Section 1.2112(a)(1)-(7), applicants are required to:

1. Identify the actual individuals or entities with a vested interest in the prospective applicant or application, including full disclosure of the identity and affiliations of those parties directly or indirectly possessing ownership and/or control over the prospective applicant.
2. Specify the name, address, and citizenship of any party holding 10% or more of the prospective applicant's stock, regardless of voting rights or preferred status, along with the exact percentage of the interest held.
3. For limited partnerships, provide the name, address, and citizenship of each limited partner with an interest of 10% or greater in the prospective applicant, calculated based on equity contributions or profit/loss distributions.
4. In the case of a general partnership, disclose the name, address, and participation percentage of each partner in the partnership.
5. For limited liability companies, present the name, address, and citizenship of each member holding an interest of 10% or greater in the prospective applicant.

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6. List all parties holding indirect ownership interests in the prospective applicant, as determined through the cumulative multiplication of ownership percentages across vertical ownership chains. These parties should represent 10% or more of the prospective applicant, with exceptions made for ownership exceeding 50% or indicating actual control, which should be treated as 100% interest.
7. Identify any FCC-regulated entity or prospective applicant for an FCC license in which the prospective applicant or any parties mentioned in paragraphs (a)(1) through (a)(5) have a 10% or greater ownership stake, whether voting or non-voting, common or preferred. This listing should include a description of each entity's principal business and its relationship to the prospective subgrantee (for example, Company A owns 10% of Company B, the prospective subgrantee, and 10% of Company C, an FCC licensee or license prospective subgrantee).
8. In addition to the aforementioned requirements, each prospective applicant claiming eligibility for small business provisions or a rural-service-provider bidding credit should disclose the following:
  - a. On its short-form application for competitive bidding (see the Code of Federal Regulations Title 47 § 1.2105):
    - i. Enumerate the names, addresses, and citizenship of all officers, directors, affiliates, and other controlling interests of the prospective applicant, as detailed in § 1.2110. If the applicant is a consortium of small businesses, also list the members of the conglomerate organization.
    - ii. Catalog any FCC-regulated entity or prospective applicant for an FCC license in which any controlling interest of the prospective applicant owns 10% or more of any class of stock, warrants, options, or debt securities, along with a description of each entity's principal business and its relationship to the prospective subgrantee.
    - iii. Detail all agreements or arrangements entered into for the utilization of the spectrum capacity of the prospective subgrantee's spectrum.
    - iv. Provide separate and aggregate gross revenue figures, as per § 1.2110, for the prospective subgrantee, its affiliates, its controlling interests, affiliates of its controlling interests, and the members within a consortium of small businesses, if applicable.
    - v. For those claiming eligibility for a rural service provider bidding credit, furnish all pertinent information substantiating compliance with the criteria outlined in § 1.2110(f)(4).
    - vi. For consortiums of designated entities, provide the information specified in paragraphs (b)(1)(i) through (v) individually for each consortium member.
  - b. As an attachment to its application for a license, authorization, assignment, or control transfer:
    - i. Compile a list of the names, addresses, and citizenship of all officers, directors, and other controlling interests of the prospective subgrantee, as outlined in § 1.2110.

- ii. Document any FCC-regulated entity or prospective subgrantee for an FCC license in which any controlling interest of the prospective subgrantee possesses a 10% or greater stake in any class of stock, warrants, options, or debt securities, including a description of each entity's principal business and its relationship to the prospective subgrantee.
- iii. Summarize all agreements or instruments that substantiate the prospective subgrantee's eligibility as a small business under designated entity provisions. This should encompass articles of incorporation, partnership agreements, shareholder agreements, trust agreements, management agreements, franchise agreements, spectrum leasing arrangements, and any other pertinent agreements - oral or written.
- iv. Summarize any investor protection agreements, encompassing rights of first refusal, supermajority clauses, options, veto rights, employee hiring and firing rights, and board of directors or management committee appointment rights.
- v. Provide separate and aggregate gross revenue figures, computed in accordance with § 1.2110, for the prospective applicant, its affiliates, its controlling interests, affiliates of its controlling interests, and, if applicable, the members within a consortium of small businesses.
- vi. Summarize all documentation required to establish eligibility for a rural telephone cooperative exemption pursuant to § 1.2110(b)(4)(iii)(A).
- vii. List and summarize any agreements in which the prospective applicant has entered into arrangements for the use of any of the spectrum capacity of the license under application.
- viii. For those claiming eligibility for a rural service provider bidding credit, provide all necessary information to demonstrate alignment with the criteria outlined in § 1.2110(f)(4).

#### **5.10.7. Minimum Qualifications for Providing Information on Other Public Funding**

Applications that do not meet the minimum disclosures of other sources of public funding, as outlined on pages 75-76 of the BEAD NOFO and described below in items A and B, will not be eligible for BEAD funding through ARConnect.

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### A. Disclosure of Other Applications and Broadband Deployment Projects Using Public Funds

Applicants are required to disclose the following:

1. Any application that the prospective applicant or its affiliates have submitted or plan to submit for broadband deployment.
2. Every broadband deployment project that the prospective applicant or its affiliates are currently undertaking or have committed to undertake using public funds at the time of the application. These public funds include, but are not limited to, funds provided under:
  - a. Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178);
  - b. Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136; 134 Stat. 281);
  - c. Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182);
  - d. American Rescue Plan Act, 2021 (Public Law 117-2; 135 Stat. 4);
  - e. Universal Service high-cost program (including Rural Digital Opportunity Fund, Connect America Fund, and Enhanced Alternative Connect America Cost Model); and
  - f. Any ARConnect (state funds) or locally-administered universal service or broadband deployment funding program.

### B. Disclosure of Operational Details for Each Broadband Deployment Project

Applicants are required to provide the following operational details for each broadband deployment project:

1. The speed and latency of the broadband service to be provided;
2. The geographic area intended to be covered by the project;
3. The number of unserved and underserved locations committed to being served;
  - a. If the commitment is to serve a percentage of locations within the specified geographic area, the relevant percentage should be provided;
4. The amount of public funding allocated for the project;
5. The cost of service to the consumer; and
6. Any matching commitment, if applicable, provided by the prospective applicant or its affiliates.

## SECTION 6. LABOR STANDARDS AND PROTECTIONS

Applicants are required to demonstrate past compliance with federal labor and employment laws in the context of deployment and operation of existing broadband services over the past three years. New broadband service providers without compliance records will be permitted to submit forward-looking commitments to strong labor and employment standards and protections with respect to any BEAD-funded projects.

Applicants, as well as their contractors and subcontractors, will be required to ensure future compliance with federal labor and employment laws by submitting a narrative explanation stating that they will remain compliant in their own labor and employment practices.

At a minimum, applicants must provide ARConnect with information demonstrating both past compliance and commitments to future compliance with federal labor and employment laws including the following:

- The prospective applicant's historical compliance record with federal labor and employment laws over the past three years, as well as the compliance records of any other entities participating in the project, including contractors and subcontractors; for example, this could include the provision of copies of previous contractual language by the applicant, contractors, and subcontractors as illustrative evidence.
- Certification from an officer or director-level employee (or an equivalent position) as evidence to support their consistent past compliance.
- Any instances of labor and employment law violations, such as those related to the Occupational Safety and Health Act, Fair Labor Standards Act, or any other applicable laws within the past three years for both the prospective applicant and any contractors and subcontractors.
- Information regarding wage scales and wage payment practices, including overtime payments, applicable for each category of employees directly involved in the physical construction of the broadband network, as required by NTIA.
- Information outlining how the prospective applicant intends to establish workplace safety committees with the authority to raise health and safety concerns in the context of deployment projects.

ARConnect will evaluate the applicant's history of adherence to federal labor and employment laws and assign priority to evidence of the applicant's commitment to fair labor practices. Any applicant certifying and demonstrating full compliance with all applicable fair labor and employment laws, boasting an exemplary record of consistency with no violations within the last three years, will receive a maximum score for the corresponding components of the scoring rubric.

## SECTION 7. WORKFORCE READINESS

Applicants must explain their commitment to develop and use a highly skilled workforce by crafting workforce plans that guarantee the presence of appropriately skilled and certified workers. At a minimum, workforce development plans should explain the prospective applicant's approach to creating quality job opportunities with equal access for all Arkansans. These plans may include various elements, such as:

1. Forming industry partnerships with community colleges offering broadband-related courses, including via good faith agreements or letters of intent to train and hire recent Arkansan graduates as full-time employees.
2. Supporting the appropriate credentialing of workers who possess preexisting occupational training, certification, and licensure.
3. Creating quality jobs that offer benefit packages while fostering employee development and career advancement.
4. Establishing registered apprenticeships or similar joint workforce/management training programs that cater to the needs of all workers.

Applicants are required to provide documentation addressing the following:

1. The ways in which the prospective subgrantee will ensure the use of an appropriately skilled workforce, for example, through commitments to recruit new Arkansan graduates.
2. The steps that will be taken to ensure that all members of the project workforce will have appropriate credentials, for example, appropriate and relevant preexisting occupational training, certification, and licensure.
3. Whether the workforce is unionized.
4. Whether the workforce will be directly employed or whether work will be performed by a subcontracted workforce.
5. A list of entities that the proposed subgrantee plans to contract and subcontract with in carrying out the proposed work.

If the project workforce or any applicant, contractor, or subcontractor workforce is not unionized, applicants are also required to provide the following for the non-union workforce:

1. The job titles and size of the workforce full-time equivalent 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.
2. For each job title required to carry out the proposed work (including contractors and subcontractors), a description of:



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- a. Safety training, certification, and/or licensure requirements (for example, Occupational Safety and Health Administration 10 and 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 or titles.
- b. Information on the professional certifications and/or in-house training in place to ensure that deployment is done at a high standard.

### **SECTION 8. LOW-COST BROADBAND SERVICE OPTION**

As required by NTIA, ARConnect will ask all applicants to offer a service option that meets, at a minimum, the requirements below. Component 1 (cost) will follow NTIA's guidance on adoption of a formulaic approach; all other components adopt NTIA's model low-cost plan.

#### **8.1. Cost**

As of 2023, Arkansas' low-cost plan price will be determined by the following formula:

$$\text{State monthly max. LCP price} = \frac{\text{upper limit of state bottom quintile household income} * 2\%}{12}$$

The above formula stipulates that the annual cost of the state's low-cost plan should not exceed 2% of the state's bottom-quintile household income (the upper limit). This value is then divided by 12 to determine the monthly price for the state's low-cost plan.

The term "bottom quintile" refers to the upper limit of the lowest one-fifth of household incomes within a county, as provided by CACS data. The 2% threshold references established research on internet pricing<sup>20</sup>, which suggests that it is reasonable for households to allocate this share of their income toward internet expenses.

In accordance with the BEAD NOFO requirements subgrantees are asked to offer this low-cost plan - inclusive of all taxes, fees, and charges billed to the customer, including upfront and ongoing fees. As bottom-quintile household income data is

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<sup>20</sup>Internal Revenue Service. (2020). *Publication 529 (12/2020), miscellaneous deductions*. <https://www.irs.gov/publications/p529>.

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refreshed by the CACS<sup>21</sup>, providers may petition ARConnect for a low-cost plan price increase, referring to the formula outlined above and most recent CACS data at time of publication.<sup>22</sup> ARConnect will grant petitions to increase LCP prices based on the latest Census Bureau and IRS data.

### **8.2. Basic Service Characteristics**

The broadband service applicants' offer for their low-cost plans must have the following characteristics:

1. Consistently and reliably providing download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps.
2. Providing typical latency measurements of no more than 100 milliseconds.
3. Not being subject to data caps, surcharges, or usage-based throttling, and being 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.

### **8.3. Affordable Connectivity Benefits Application**

Low-cost plans must allow the end user to apply the Affordable Connectivity Program and Lifeline program benefit subsidies to the service price. Providers must make a demonstrable effort to inform prospective customers of these programs and the steps necessary to enroll and apply the benefit to the service plan.

### **8.4. Available Technical Upgrades**

In the event the applicant later offers a low-cost plan with higher speeds downstream and/or upstream, the applicant must permit 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 BEAD NOFO requires subgrantees receiving BEAD funds to deploy broadband infrastructure to offer a low-cost broadband service option that is available to qualified customers within the project area for the useful life of the network assets. Qualified customers are those who qualify for the FCC's Affordable Connectivity Program. Eligibility criteria for the Affordable Connectivity Program are located at

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<sup>21</sup> Census American Community Survey data is gathered every year, but publicly available data lags one to two years behind as the Census aggregates, analyzes, and publishes data online.

<sup>22</sup> The most recent CACS data at time of publication may be accessed here: <https://data.census.gov/table?q=B19080:+HOUSEHOLD+INCOME+QUINTILE+UPPER+LIMITS&g=040XX00US05&tid=ACSDT1Y2022.B19080>

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<https://www.affordableconnectivity.gov/do-iqualify/>. Subgrantees may not impose additional eligibility restrictions beyond those applicable to the Affordable Connectivity Program.

### **SECTION 9. CERTIFICATION OF COMPLIANCE WITH BEAD REQUIREMENTS**

#### **9.1. Applicant Certifications**

As part of the application process for ARConnect, applicants must certify that they can fulfill the obligations associated with each project on which they intend to bid, that they have sufficient funds to cover all project costs beyond the grant amount, and that they will comply with all program requirements, including service milestones. Additionally, since ARConnect will disburse funding upon completion of associated tasks, applicants must certify that they have and will continue to have enough financial resources to cover eligible project costs until ARConnect authorizes additional disbursements.

#### **9.2. Claw-back Provision**

Award contracts will include claw-back provisions that will go into effect in case of events including but not limited to the following:

1. Subgrantees are delayed without cause beyond their committed deployment timeline.
2. ARConnect identifies any incorrect documentation, such as overbilling for labor or material costs.
3. ARConnect identifies any material breaches of contract, such as failure to deliver contracted workforce development activities.
4. ARConnect identifies serious violations of provisions certified by applicants in their prequalification applications.

#### **9.3. Subgrantee Reporting Mandates**

In accordance with the BEAD NOFO and guidelines, funds will be provided to subgrantees on a reimbursable basis once prospective applicants submit required evidence of deployment activity. Subgrantees' progress on deployment activities will be periodically monitored through regular site visits by ARConnect or its contractors.

### **SECTION 10. EFFECTIVE DATE; COORDINATION WITH OTHER BROADBAND RULES**

This Emergency Rule is effective January 1, 2024. This Emergency Rule is applicable only to funding allocated under and projects undertaken pursuant to the BEAD program. In the event of any conflict between the terms of this Emergency Rule

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and the Arkansas Rural Connect Broadband Grant Program Rule, or any other state broadband rule, with respect to the BEAD program, the terms of this Emergency Rule shall control.

DRAFT



STATE OF ARKANSAS  
BUREAU OF  
LEGISLATIVE RESEARCH

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## Memorandum

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**TO:** Members, ALC – Executive Subcommittee

**CC:** Marty Garrity, Director, Bureau of Legislative Research;  
Rebecca Miller-Rice, Administrator, Administrative Rules Review Section,  
Legal Services Division

**FROM:** Jason Kearney, Legislative Attorney, Administrative Rules Review Section,  
Legal Services Division

**DATE:** November 13, 2023

**SUBJECT:** Legal Authorization for the Emergency Promulgation of Arkansas Economic  
Development Commission’s Proposed Arkansas BEAD Program Emergency  
Rule

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The Arkansas Department of Commerce’s Arkansas Economic Development Commission seeks legislative review and approval of the emergency promulgation of its Arkansas BEAD Program Emergency Rule, the purpose of which is to establish a new structure by which ARConnect will administer the Arkansas Broadband, Equity, Access, and Deployment (BEAD) Program. Pursuant to Arkansas Code Annotated § 15-4-209(a)(1), in accordance with state and federal law, the Arkansas Economic Development Commission shall administer grants, loans, cooperative agreements, tax credits, guaranties, and other incentives, memoranda of understanding, and conveyances to assist with economic development in the state. Further, pursuant to Ark. Code Ann. § 15-4-209(b)(5), the commission may promulgate rules necessary to implement the programs and services offered by the commission.