

Proposed BEAD Challenge Process Guidance

The Broadband Equity, Access, and Deployment (BEAD) Program, established by the Infrastructure Investment and Jobs Act (IIJA), provides \$42.45 billion of funding to states, territories and the District of Columbia (“Eligible Entities”) for broadband planning, deployment, mapping, equity, and adoption activities. The National Telecommunications and Information Administration (NTIA), as the agency responsible for administering the BEAD program, issued a Notice of Funding Opportunity describing the program’s requirements, including the requirement that each Eligible Entity submit an Initial Proposal describing, among other things, a BEAD “challenge process” under which a unit of local government, nonprofit organization, or broadband service provider may challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution is eligible for BEAD funds, including whether a particular location is unserved or underserved.

In response to inquiries from Eligible Entities and other stakeholders, NTIA is proposing to issue:

- A BEAD Challenge Process Policy Notice to provide Eligible Entities with additional guidance on how to design and conduct their BEAD challenge process; and
- A BEAD Model Challenge Process to provide Eligible Entities.

NTIA seeks comment from the public on this proposed guidance. If you wish to provide comment to NTIA, please submit to **BEAD@NTIA.gov** by **midnight EDT on May 5, 2023**.

Please note that these are draft documents. Eligible Entities may not rely on NTIA guidance until it is finalized.

INTERNET FOR ALL

BEAD Model Challenge Process



U.S. Department of Commerce
National Telecommunications and Information Administration

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Introduction

Purpose

The NTIA BEAD Model Challenge Process is intended to serve as an example of how an Eligible Entity may choose to meet all requirements from Volume 1 of the Initial Proposal.¹ This document includes the following requirements outlined in the BEAD NOFO:²

- Identify existing efforts funded by the federal government or an Eligible Entity within the jurisdiction of the Eligible Entity to deploy broadband and close the digital divide, including in Tribal Lands (Initial Proposal Requirement 3).
- Identify each unserved location and underserved location within the Eligible Entity (i.e., under the jurisdiction of the Eligible Entity, including unserved and underserved locations in applicable Tribal Lands), using the most recently published National Broadband Map³ as of the date of submission of the Initial Proposal, and identify the date of publication of the National Broadband Map used for such identification (Initial Proposal Requirement 5).
- Describe how the Eligible Entity applied the statutory definition of the term “community anchor institution,” identified all eligible CAIs in its jurisdiction, identified all eligible CAIs in applicable Tribal Lands, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; which institutions, if any, it considered but declined to classify as CAIs; and, if the Eligible Entity proposes service to one or more CAIs in a category not explicitly cited as a type of CAI in Section 60102(a)(2)(E) of the Infrastructure Act, the basis on which the Eligible Entity determined that such category of CAI facilitates greater use of broadband service by vulnerable populations (Initial Proposal Requirement 6).
- Include a detailed plan as to how the Eligible Entity will conduct a challenge process as described in Section IV.B.6 (Initial Proposal Requirement 7).

How to Use the NTIA BEAD Model Challenge Process

This document outlines the BEAD Model Challenge Process, which Eligible Entities can choose to adopt in its entirety for Requirement 7 of the Initial Proposal. In submitting Volume 1 of the Initial Proposal, Eligible Entities must indicate whether or not they plan to adhere to the BEAD Model Challenge Process. To do so, the Eligible Entity must copy and paste the Model text into the appropriate response textbox. Some questions will require additional information (indicated in blue text throughout the document) from Eligible Entities, even if adopting the NTIA BEAD Model Challenge Process. Eligible Entities may also choose to adopt the optional modules outlined in the document if they choose to accept speed tests (question 1.4.6), conduct an area

¹ This guidance document is intended to help BEAD Eligible Entities better understand the BEAD Program requirements set forth in the Infrastructure Act, the BEAD Notice of Funding Opportunity (NOFO), and the BEAD Challenge Process Policy Notice. This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific requirements set forth in the NOFO. In all cases, statutory and regulatory mandates, and the requirements set forth in the NOFO, shall prevail over any inconsistencies contained in this document.

² See BEAD NOFO at 31, Section IV.B.5.b

³ The National Broadband Map, referred to as the Broadband DATA Map in the BEAD NOFO, is the fixed broadband availability map created by the Federal Communications Commission under Section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. § 642(c)(1)).

challenge (question 1.4.6), or make modifications to reflect data not present in the National Broadband Map (question 1.4.2).

Additionally, this document includes example responses for Initial Proposal Requirement 6 and attachment templates for Initial Proposal Requirements 3 and 5. Eligible Entities may choose to adopt the example responses for Requirement 6 in full or in part and will be required to provide additional information unique to each state or territory (indicated in blue text throughout the document). All attachment templates for Requirements 3 and 5 indicate the required format for data submitted as part of Volume 1 of the Initial Proposal.

Eligible Entities should refer to NTIA's forthcoming guidance on the Initial Proposal for additional guidance on the requirements associated with Volume 2 of the Initial Proposal as well as the Initial Proposal Funding Package.

Note: The section on identifying community anchor institutions (CAIs) is written in the past tense since the Eligible Entity will, to their best ability, identify CAIs before the challenge process and the submission of Volume 1.

Note: The term "broadband office" refers to the state or territory broadband office.

1 Volume I (Requirements 3, 5 – 7)

1.1 Existing Broadband Funding (Requirement 3)

- 1.1.1 Submit a CSV file identifying sources of funding, a brief description of the broadband deployment and other broadband-related activities, the total funding, the funding amount expended, and the remaining funding amount available. Eligible Entities may copy directly from their Five-Year Action Plans.

Eligible Entities should use the example attachment (.csv file) to guide the format of the file submitted for 1.1.1.

[Example Attachment: broadband_funding_sources]

1.2 Unserved and Underserved Locations (Requirement 5)

- 1.2.1 Attach two CSV files with the location IDs of all unserved and underserved locations, respectively, including unserved and underserved locations in applicable Tribal Lands.

Example Response:

Eligible Entities should use the example attachment to guide the format of the CSV file submitted for 1.2.1.

[Example Attachment 1: see BEAD Initial Proposal_Volume1_Underserved]

[Example Attachment 2: see BEAD Initial Proposal_Volume1_Unserved]

- 1.2.2 Identify the publication date of the National Broadband Map that was used to identify the unserved and underserved locations.

Example Response:

Eligible Entities must select the publication date of the National Broadband Map version used to identify the unserved and underserved locations. Note that only the first edition of each month can be selected, and the publication date of the National Broadband Map cannot predate the submission of the Initial Proposal by more than 59 days, a timeframe designed to allow Eligible Entities sufficient time to identify eligible locations from the National Broadband Map and submit the Initial Proposal.

[Insert Publication Date]

1.3 Community Anchor Institutions (Requirement 6)

- 1.3.1 Describe how the statutory definition of “community anchor institution” (e.g., schools, libraries, health clinics) was applied, how eligible CAIs were identified, and how network connectivity needs were assessed, including the types of CAIs that the Eligible Entity intends to serve.

Example Response:

The following response is an example response for the Eligible Entity to indicate how it identified and assessed the needs of eligible community anchor institutions. Some questions will require additional information (indicated in blue text) from Eligible Entities.

Based on the statutory definition of “community anchor institution” as defined in 47 USC 1702 (a)(2)(E), the broadband office applied the definition of “community anchor institution” to mean a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization (including any public housing agency, HUD-assisted housing organization, or Tribal 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, the incarcerated, and aged individuals. [\[An Eligible Entity may further expound on the definition above according to its own interpretation of the statutory definition of Community Anchor Institution\]](#)

Based on the statutory definition above, the following criteria were used to determine the inclusion or exclusion of community support organizations not specifically listed in 47 USC 1702(a)(2)(E):

1. Whether the community support organization facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

The following definitions and sources were used to identify the types of community anchor institutions:

- **Schools:** K-12 schools include all K-12 schools participating in the FCC E-Rate program or that have an NCES (National Center for Education Statistics) ID in the categories “public schools” or “private schools”.
- **Libraries:** Including all libraries participating in the FCC E-Rate program as well as all member libraries, and their branches, of the American Library Association (ALA).
- **Local, state, federal or tribal government buildings:** Federal government buildings were identified by consulting the GSA “Inventory of GSA Owned and Leased Properties.”⁴ State or tribal government buildings were identified by consulting state, territorial or tribal records. Local governments were asked to identify local government buildings.

⁴ [Inventory of GSA Owned and Leased Properties | GSA](#)

- **Health clinic, health center, hospital, or other medical providers:** The list of health clinics, health centers, hospitals and other medical providers includes all institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier.
- **Public safety entity:** The list includes entities such as fire houses, emergency medical service stations, police stations, and public safety answering points (PSAP), based on records maintained by the Eligible Entity and units of local government. The list of public safety answering points (PSAPs) includes all PSAPs in the FCC PSAP registry [[911 Master PSAP Registry | Federal Communications Commission \(fcc.gov\)](#)].
- **Institutions of higher education:** Institutions of higher education include all institutions that have an NCES ID in the category “college”, including junior colleges, community colleges, minority serving institutions, historically black colleges and universities, other universities, or other educational institutions.
- **Public housing organizations:** Public housing organizations were identified by contacting the Public Housing Agencies (PHAs) for the state or territory enumerated by the U.S. Department of Housing and Urban Development.⁵ The nonprofit organizations Public and Affordable Housing Research Corporation (PAHRC) and National Low-Income Housing Coalition maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).
- **Community support organizations:** The Eligible Entity included any organizations that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. The Eligible Entity included senior centers and job training centers in this category. The Department of Labor maintains a database of “American Job Training” training centers, established as part of the Workforce Investment Act, and reauthorized in the Workforce Innovation and Opportunities Act of 2014. The database can be accessed at the American Job Center Finder⁶. The National Council on Aging (NCOA) helped identify senior centers⁷.
- [\[An Eligible Entity may choose to include additional types and categories of institutions as CAIs. An Eligible Entity must identify any sources of identification for types or categories of institutions it chooses to include as CAIs.\]](#)

In each case, the Eligible Entity also drew on state, territorial, tribal, county/parish and municipal resources to identify additional eligible community anchor institutions that were not contained in the data sources listed above. In addition, the Eligible Entity used the Initial Proposal public comment process to ensure that all relevant institutions meeting the CAI criteria are included. [\[An Eligible Entity must include details on each source used to identify CAIs.\]](#)

[\[An Eligible Entity must only include this paragraph in its response if it chooses to exclude types or categories of CAIs proposed during public comment.\]](#) Despite public comments that advocated for the inclusion of [\[insert categories of institutions\]](#) to be classified as community anchor institutions, the broadband office decided that these proposed categories of institutions do not match the definition for community anchor

⁵ [PHA Contact Information - HUD | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)

⁶ <https://www.careeronestop.org/localhelp/americanjobcenters/find-american-job-centers.aspx>

⁷ National Institute of Senior Centers

institutions, and thus will not include these categories. [\[Provide justification for declining to categorize the proposed category of institution\(s\) as community anchor institutions\].](#)

Example: The broadband office evaluated whether houses of worship should be included as a category of community anchor institutions but declined to do so. The broadband office decided that churches, as part of their mission, do not involve activities that facilitate greater use of broadband service by vulnerable populations. Thus, while these are important institutions for our communities, they do not qualify under the existing definition of community anchor institutions.

To assess the network connectivity needs of the types of eligible community anchor institutions listed above, the broadband office:

- **Engaged government agencies.** The broadband office reached out to all [\[state or territory\]](#) agencies to understand what records they have available regarding relevant community anchor institutions 1 Gbps broadband service availability. [\[The Eligible Entity must further elaborate on the agencies it contacted.\]](#) Ultimately, the broadband office coordinated with the Department of Education to determine which schools and libraries do not currently have access to 1 Gbps symmetrical broadband service or the minimum recommended by the State Educational Technology Directors Association (SETDA) in their Broadband Imperative III document: For districts with 1,000 or fewer students, 2.8 Mbps per user (student, teachers and educational staff); for districts with between 1,000 and 10,000 students; for larger districts, 2 Mbps per user. Additionally, the broadband office cross-referenced the Eligible Entity's Department of Health and Department of Human Services' records to determine which community anchor institutions (e.g., state-run health clinics) lack 1 Gbps symmetrical broadband service. Further, the broadband office reached out to all primary and secondary Public Safety Answering Points (PSAP) based on the FCC 911 Master PSAP Registry to obtain 1 Gbps broadband service availability data. Lastly, the broadband office also reached out to the relevant office leading the goods and services procurement efforts to obtain availability and network connectivity needs based on existing records of procured broadband service for [\[state or territory\]](#)-affiliated community anchor institutions.
- **Engaged relevant umbrella organizations and nonprofits.** The broadband office engaged with umbrella and nonprofit organizations that work with community anchor institutions to coordinate and obtain 1 Gbps broadband service availability data. Specifically, the broadband office requested information related to availability needs from the member organizations across all geographic regions. [\[The Eligible Entity must further elaborate on the organizations it contacted and the information requested.\]](#)

Using the responses received, the broadband office then compiled the list of those CAIs that do not have adequate broadband service, attached in question 1.3.2.

- 1.3.2 Submit the CSV file (named cai.csv) that lists eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service, to the best of the Eligible Entity's knowledge.

Example Response:

Eligible Entities should use the example attachment to guide the format of the CSV file submitted for 1.3.2.

[Example Attachment: see BEAD Initial Proposal_Volume1_CAI]

1.4 Challenge Process (Requirement 7)

NTIA BEAD Model Challenge Process Adoption

- 1.4.1 Select if the Eligible Entity plans to adopt the NTIA BEAD Model Challenge Process for Requirement 7.

NTIA BEAD Model Challenge Process Answer:

Eligible Entities must indicate their plan to adopt the NTIA BEAD Model Challenge Process answer in question 1.4.1 by selecting “Yes.”

Yes

No

Modifications to Reflect Data Not Present in the National Broadband Map

- 1.4.2 If applicable, describe any modifications to classification of broadband serviceable locations in the Eligible Entity’s jurisdiction as “served,” “underserved,” or “unserved,” and provide justification for each modification.

NTIA BEAD Model Challenge Process Answer:

The following response is a model response for the proposed modifications to the set of locations on the National Broadband Map identified as eligible for BEAD funding and subject to the challenge process and the associated justifications for each modification. If the Eligible Entity plans to adopt the NTIA BEAD Model Challenge Process, it must copy and paste at least one of the Model modules outlined below into the appropriate response textbox.

[Optional Module 1: No Modifications]

The Eligible Entity will not make additional modifications.

[Optional Module 2: DSL Modifications]

The broadband office 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.

[Optional Module 3: Speed Test Modifications]

The broadband office will treat as “underserved” locations that the National Broadband Map shows to be “served” if rigorous speed test methodologies (i.e., methodologies aligned to the BEAD Model Challenge Process Speed Test Module) demonstrate that the “served” locations actually receive service that is materially below 100 Mbps downstream and 20 Mbps upstream. This modification will better reflect the locations eligible for BEAD funding because it will consider the actual speeds of locations.

Deduplication of Funding

- 1.4.3 Select if the Eligible Entity plans to use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

NTIA BEAD Model Challenge Process Answer:

The BEAD Eligible Entity Planning Toolkit is a collection of NTIA-developed technology tools that, among other things, overlay multiple data sources to capture federal, state, and local enforceable commitments. Eligible Entities adopting the Model must indicate their plan to use the BEAD Eligible Entity Planning Toolkit by selecting “Yes.”

- Yes
 No

- 1.4.4 Describe the process that will be used to identify and remove locations subject to enforceable commitments.

NTIA BEAD Model Challenge Process Answer:

The following response is a model response for the process used to identify and remove locations subject to enforceable commitments. If the Eligible Entity plans to adopt the NTIA BEAD Model Challenge Process, it must copy and paste the Model text into the appropriate response textbox. Some questions will require additional information (indicated in NTIA BEAD Model Challenge Process in blue text) from Eligible Entities, even if it adopts the NTIA BEAD Model Challenge Process.

The broadband office will enumerate locations subject to enforceable commitments by using the BEAD Eligible Entity Planning Toolkit, and consult at least the following data sets:

1. The Broadband Funding Map published by the FCC pursuant to IJA § 60105.⁸
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.
3. [State or territory] and local data collections of existing enforceable commitments.

The broadband office will make a best effort to create a list of BSLs subject to enforceable commitments based on state/territory or local grants or loans. If necessary, the broadband office will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. The broadband office will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.⁹

The broadband office 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. In situations in which the [state or

⁸ The broadband funding map published by FCC pursuant to IJA § 60105 is referred to as the “FCC Broadband Funding Map.”

⁹ Guidance on the required format for the locations funded by state or territorial and local programs will be specified at a later date, in coordination with FCC.

[territory](#)] or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, the broadband office will reach out to the provider to verify the deployment speeds of the binding commitment. The broadband office will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

The broadband office drew on these provider agreements, along with its existing database on state and local broadband funding programs' binding agreements, to determine the set of [\[state or territorial\]](#) and local enforceable commitments.

- 1.4.5 List the federal, state, or territorial, and local programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding.

Example Response:

If adopting the NTIA BEAD Model Challenge Process, Eligible Entities must list any state or territorial and local programs that will be used to identify existing enforceable commitments. Eligible Entities should use the example attachment to guide the format of the CSV file submitted for 1.4.5.

[Example Attachment: see [deduplication_programs](#)]

Challenge Process Design

1.4.6 Describe the plan to conduct an evidence-based, fair, transparent, and expeditious challenge process.

NTIA BEAD Model Challenge Process Answer:

The following response is a model response for the plan to conduct an evidence-based, fair, transparent, and expeditious challenge process. If the Eligible Entity plans to adopt the NTIA BEAD Model Challenge Process, it must copy and paste the Model text into the appropriate response textbox. Eligible Entities are required to provide additional information (indicated in blue text), even if adopting the NTIA BEAD Model Challenge Process.

Based on the NTIA BEAD Challenge Process Policy Notice, as well as the broadband office understanding of the goals of the BEAD program, the proposal represents a transparent, fair, expeditious and evidence-based challenge process.

Permissible Challenges

The broadband office will only allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by the Eligible Entity,
- Community anchor institution BEAD eligibility determinations,
- BEAD eligibility determinations for existing broadband serviceable locations (BSLs),
- Enforceable commitments, or
- Planned service.

Permissible Challengers

During the BEAD Challenge Process, the broadband office will only allow challenges from nonprofit organizations, units of local and tribal governments, and broadband service providers.

Challenge Process Overview

The challenge process conducted by the broadband office will include four phases, spanning 75 days¹⁰:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, the broadband office will publish the set of 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). [\[Insert Tentative Dates\]](#)

¹⁰ The NTIA BEAD Challenge Process Policy Notice allows up to 90 days. Broadband offices may modify the model challenge process to span up to 90 days, as long as the timeframes for each phase meet the requirements outlined in the NTIA BEAD Challenge Process Policy Notice.

2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through the broadband office 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 will enter the "challenged" state.
 - a. **Minimum Level of Evidence 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 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, the broadband office 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:** Challengers will have 30 calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. [\[Insert Tentative Dates\]](#)
3. **Rebuttal Phase:** Only the challenged service provider may rebut the reclassification of a location or area with evidence, causing the location or locations to enter the "disputed" state. If a challenge that meets the minimum level of evidence is not rebutted, the challenge is substantiated. A provider may also agree with the challenge and thus transition the location to the "sustained" state.
 - a. **Timeline:** Providers will have 15 business days from notification of a challenge to provide rebuttal information to the broadband office. [\[Insert Tentative Dates\]](#)
4. **Final Determination Phase:** During the Final Determination phase, the broadband office will make the final determination of the classification of the location, either declaring the challenge "sustained" or "rejected."
 - a. **Timeline:** Following intake of challenge rebuttals, the broadband office will make a final challenge determination within 30 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. [\[Insert Tentative Dates\]](#)

Evidence & Review Approach

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, the broadband office will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. The broadband office will document the standards of review to be applied in a Standard Operating Procedure and will require reviewers to document their justification for each determination. The broadband office plans to ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges

submitted. The broadband office will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
A	Availability	The broadband service identified is not offered at the location, including a unit of a multiple dwelling unit (MDU).	<ul style="list-style-type: none"> • Screenshot of provider webpage. • A service request was refused within the last 180 days (e.g., an email or letter from provider). • Lack of suitable infrastructure (e.g., no fiber on pole). • 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.¹¹ • 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. 	<ul style="list-style-type: none"> • Provider shows that the location subscribes or has subscribed within 12 months, e.g., with a copy of a customer bill. • 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.
S	Speed	The actual speed of the fastest available service tier falls below the unserved or underserved thresholds.	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 management system. ¹²

¹¹ 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.”

¹² 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*, 34 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

L	Latency	The round-trip latency of the broadband service exceeds 100 ms.	Speed test by subscriber, showing the excessive latency.	Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system. ¹³
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. ¹⁴	<ul style="list-style-type: none"> • Screenshot of provider webpage. • Service description provided to consumer. 	Provider has terms of service showing that it does not impose a data cap.
T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential gateway that demonstrates the service is delivered via a specific technology.	Provider has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service.
B	Business service only	The location is residential, but the service offered is marketed or available only to businesses.	Screenshot of provider webpage.	Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.
E	Enforceable Commitment	The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.	Enforceable commitment by service provider (e.g., authorization letter). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue (see Section 6.2 above).	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).

¹³ *Ibid.*

¹⁴ For example, this excludes business-oriented plans not commonly sold to residential locations. An unreasonable capacity allowance is defined as a data cap that falls below the capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022).

P	Planned service	The challenger has knowledge that broadband will be deployed at this location by June 30, 2024, without an enforceable commitment or a provider is building out broadband offering performance beyond the requirements of an enforceable commitment.	<ul style="list-style-type: none"> • Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained. • Contracts or a similar binding agreement between the Eligible Entity 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>i.e.</i>, a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024. 	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or that the planned deployment does not meet the required technology or performance requirements.
N	Not part of enforceable commitment.	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.)	Declaration by service provider subject to the enforceable commitment.	
C	Location is a CAI	The location should be classified as a CAI.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity. ¹⁵	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.

¹⁵ 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 the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.

R	Location is not a CAI	The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	Evidence that the location does not fall within the definitions of CAIs set by the Eligible Entity or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by the Eligible Entity or is still operational.
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[Optional Area Challenge Module] Area and MDU Challenge

[If Choosing to Include Area Challenges]

For challenge types A, S, L, D, and T, Eligible Entities may add area and MDU challenges. 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 above.

An area challenge is triggered if 6 or more broadband serviceable locations using a particular technology and a single provider within a census block group are challenged.

An MDU challenge requires challenges by at least 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 HFC infrastructure or customer subscribers. For fixed wireless service, the challenge system will offer representative random, sample of the area in contention, but no fewer than [10], where the provider has to demonstrate service availability and speed (e.g., with a mobile test unit).¹⁶

[Optional Speed Test Module] Speed Test Requirements

[If Choosing to Accept Speed Tests]

The SBO will accept speed tests as evidence for substantiating challenges and rebuttals. Each speed test consists of three measurements, taken on different days.

Speed tests can take four forms:

¹⁶ A mobile test unit is 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.

1. A reading of the physical line speed provided by the residential gateway, (i.e., DSL modem, cable modem (for HFC), ONT (for FTTH), 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 [\[commonly used speed test application | a speed test application approved by the Eligible Entity | speed test application from the list of applications approved by NTIA | a peer-reviewed speed test developed by a research group.\]](#)

Each speed test measurement must include:

- The time and date the speed test was conducted.
- 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:

- The name and street address of the customer conducting the speed test.
- A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's last invoice).
- An agreement, using an online form provided by the Eligible Entity, that grants access to these information elements to the Eligible Entity, 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).

Only speed tests conducted between the hours of 7 pm and 11 pm local time will be considered. Each location must conduct three speed tests on three different days; the days do not have to be adjacent. The median of the three 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 a broadband service provider.

Generally, only speed tests by subscribers who subscribe to the fastest available reliable broadband service, based on the FCC National Broadband Map data, will be considered a valid challenge. For example, if a location is served by 100 Mbps 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 rule¹⁷, 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 upload speed of 16 Mbps to be meet the 100/20 Mbps speed tier.

Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, the broadband office 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 documentation will be posted publicly for at least a week prior to opening the challenge submission window. The broadband office also plans to actively inform all units of local government of its challenge process and set up regular touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and Internet service providers. Relevant stakeholders can sign up on the broadband office website [\[insert URL, if the website exists\]](#) for challenge process updates and newsletters. They can engage with the broadband office by a designated email address ([\[insert email if known\]](#)).

Beyond actively engaging relevant stakeholders, the broadband office 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, including whether a provider submitted a rebuttal.

The broadband office 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, the broadband office 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.

The broadband office will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law. 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 state open records laws or is protected under applicable state privacy laws, that

¹⁷ 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.

information should be identified as privileged or confidential. Otherwise, the responses will be made publicly available.

[Eligible Entity must supplement the BEAD Model Challenge Process answer with how it plans to adhere to any relevant state or territory laws and regulations pertaining to the protection of PII.]

- 1.4.7 If the Eligible Entity is not using the NTIA BEAD Model Challenge Process, outline the proposed sources and requirements that will be considered acceptable evidence.

NTIA BEAD Model Challenge Process Answer:

N/A