

# California's BEAD Program: Other BEAD Requirements (Compliance Overview)

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California Public  
Utilities Commission

# Welcome

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# Agenda

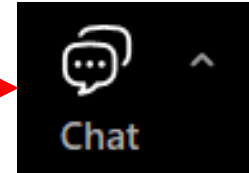
1. Build America, Buy America (BABA)
2. Low-cost and middle class affordable service offerings
3. Minimum threshold of high-need areas
4. Environmental and Historic Preservation (EHP)
5. Labor reporting requirements
6. Tribal consent
7. Other reporting requirements
8. Next steps



# Housekeeping

Tips for getting the most out of this webinar

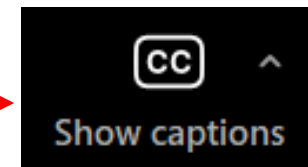
**Chat:** Keep an eye on the chat because we will use it to share useful links



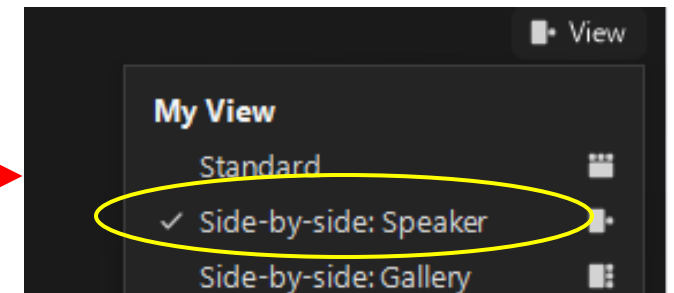
**Q&A:** Type your questions in the Q&A



**Closed Captions:** English closed captions are available. Select "Show captions" on your toolbar. (Click the small arrow on the 'Show captions' button for more settings or to see a full transcript)



**Select Side-by-Side: Speaker Mode** for the best viewing experience when slides are shared.



# Build America, Buy America

# What is Build America, Buy America?

Build America, Buy America (BABA) is a **domestic procurement preference for materials for infrastructure projects**, included in the Infrastructure Investment and Jobs Act (IIJA) that established the BEAD Program. In summary:

- It requires federally funded infrastructure projects to use products that have been manufactured and produced in the U.S., including construction materials, iron, steel, manufactured products, and electronics.
- All BEAD-funded projects must comply with BABA.
- Federal agencies can issue waivers for parts of BABA depending on the program.

# NTIA's BABA limited waiver

NTIA released a **limited waiver for parts of BABA** for the BEAD Program, but it retained many of the requirements for domestically made materials. It contains the following:

- The waiver exempts the following components from the domestic production requirement. These components **can** be made overseas:
  - **Non-optic-glass inputs**
  - **Fiber optic connectors**
  - **Some electronics** including “routers, switches, optical amplifiers, and power systems”.
  - **Passive optical equipment**
  - **Semiconductors**
- Other materials, including construction materials, other components of fiber optic cable, and other electronics, must be produced in the U.S.

Manufacturers will self-certify whether they comply with BABA and provide subgrantees with a letter certifying compliance with domestic production.

In addition, subgrantees are prohibited from using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China (unless a waiver is issued by NTIA).

# Applicant and subgrantee requirements for BABA

BABA compliance will entail the following:

- In the BEAD application, certify that the applicant will comply with BABA.
- Once awarded, consult with manufacturers to see if they are BABA self-certified before purchasing materials restricted by BABA.
- During project, report on aspects of project procurement and materials for BABA purposes:
  - Provide the CPUC with the manufacturer's BABA certification letter for equipment that requires domestic production.
  - Report certain information to the CPUC on international sourcing of waived electronics.



# Low-cost and middle class affordable service offerings

# Low-cost service offering

The CPUC will require all applicants to offer a **low-cost broadband service option** for the life of the infrastructure that meets, at a minimum, the following criteria:

- Costs **\$30 per month or less** (\$75 per month or less on Tribal lands), inclusive of all government taxes and fees. The cost may be updated but may not exceed the CPI-U 12-month percentage point change for “All Items” and customers must be informed no later than 30 days before a price increase.
- Available to households with **income equal to or below 200 percent** of the federal poverty line and/or that meet **eligibility requirements of the Affordable Connectivity Program**.
- Meets **performance requirements** as established by the BEAD Program, with download speeds of at least **100 Mbps** and upload speeds of at least **20 Mbps**.
- Delivers typical latency of no more than **100 milliseconds**.
- Is **not subject to data caps, surcharges, or usage-based throttling**, and is subject only to the same acceptable use policies to which subscribers of all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere.
- **Allows subscribers to upgrade at no cost** in the event the provider later offers a low-cost plan with higher speeds (downstream or upstream).
- **Does not charge a fee for installation or setup.**
- **Provides a free modem or router.**
- **Does not require a minimum term of service.**

# Modification to low-cost service option (if applicable and approved)

The CPUC will consider a **modification to the low-cost service option** with the following requirements:

- A monthly cost between **\$30 and \$50** may be allowed **based on the following evidence** supporting the applicant's proposed cost:
  - **Per-subscriber costs** in an area indicating that the CPUC's target cost (\$30 or less) would be financially unsustainable; and/or
  - The impact of the target cost (\$30 or less) on **average revenue per user (ARPU)** and **total project revenue** would be financially unsustainable given **actual or projected subscriber adoption and subscription patterns**.
- The proposed cost **must not exceed \$50** (and the new modified price level will remain for the lifetime of the asset).
- The applicant proposing a modification to the low-cost plan will be **required to participate in any successor program to the ACP** at the state or federal level. If there is no successor program, the applicant must agree to participate in other programs such as Lifeline, California LifeLine, or similar low-income programs.

# Middle class affordable service offering (MCASO)

Applicants must establish a middle class affordable service option (MCASO) plan that **is available to all end-users** and meets, at a minimum, the following criteria:

- Costs **\$84 per month or less**, including all taxes, fees, and charges billed to the customer or subscribers, and justification for the price. The cost may be updated but may not exceed the CPI-U 12-month percentage point change for “All Items” and customers must be informed no later than 30 days before a price increase.
- Is **available to all end-users**, including middle-income customers.
- Provides consistent and reliable download speeds of **at least 100 Mbps** and typical upload speeds of **at least 20 Mbps**.
- Provides typical latency measurements of no more than **100 milliseconds**.
- Is **not subject to data caps, surcharges, or usage-based throttling** and is 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.

# Modification to MCASO (if applicable and approved)

**Applicants requesting a waiver** from specific elements of the MCASO shall be required to include as part of the waiver request the following information:

- The **proposed price to be charged** to customers for a plan meeting the technical requirements of the MCASO and justification of why this proposed price will ensure affordability for middle class customers.
- The **length of time** for which the MCASO will be available.
- An explanation of **why it would be infeasible** for the prospective subgrantee to meet the MCASO requirement and why this would imperil core objectives of the BEAD program.
- Supporting documentation, such as **business plans or a pro forma**.

**The proposed price justification** shall consider:

- The **median income for counties** included in the proposed service area.
- What **share of monthly income is accounted for** by the proposed price for households at the top (double the Area Median Income) and bottom (two-thirds of Area Median Income) of the middle-class range.
- An explanation of how the proposed price **will ensure that high-quality broadband services are available** to all middle-class families in the BEAD-funded network's service area at a reasonable price.

# Outreach to relevant populations



Each applicant must “explain in its application how it intends to notify relevant populations of the **new or newly upgraded offerings** available in each area.”

The outreach and notification plan must be “designed in a manner that reflects **any unique needs of the specific demographics** of the area at issue (including, for example, languages prominently spoken in the area and the best means of ensuring that the population is likely to encounter the subgrantee’s public notice).”

# Minimum threshold of high-need areas

# Requirement to include high-need areas



The state of California wants to encourage applicants to include areas with **significant socioeconomic or geographic barriers to internet access**.

As such, the applicants' design of project areas will be **required to include a minimum threshold of high-need PAUs**, as determined by the CPUC using a designation of high-need PAUs (PAUs within a Disadvantaged Community or Low-Income Area).

Applicants *may* be able to receive **a waiver** of this requirement only in specific circumstances.

The specific minimum threshold and the waiver process will be detailed in future webinars.



# Definitions of high-need areas

## Disadvantaged Community

1. Census tracts receiving the highest 25 percent of overall scores in CalEnviroScreen 4.0.<sup>1</sup>
2. Census tracts lacking overall scores in CalEnviroScreen 4.0 due to data gaps but receiving the highest 5 percent of CalEnviroScreen 4.0 cumulative pollution burden scores.
3. Census tracts identified in the 2017 DAC designation as disadvantaged, regardless of their scores in CalEnviroScreen 4.0.
4. Lands under the control of federally recognized Tribes.

## Low-income Area

For these purposes, a low-income community is a census tract where aggregated household incomes are less than 80 percent of area or state median income (whichever of the two aggregated household incomes data points is higher).

<sup>1</sup>CalEnviroScreen provides a Census tract-level weighted score of environmental, health, and socioeconomic information that helps identify California communities that are most affected by many sources of pollution, and where people are often especially vulnerable to pollution's effects. Note: Tract-level CES 4.0 data can be directly downloaded from the California Office of Environmental Health Hazard Assessment (OEHHA) at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

# Environmental and Historic Preservation (EHP)

# NEPA overview



The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) established requirements for **environmental and historic review and protection**:

- NEPA and NHPA require federal agencies to “stop, look, and listen” before making decisions that impact historic properties and the human environment.
- NEPA and NHPA review, including consultation with regulatory agencies, generally must be completed before an awarded project can begin any construction.

# NEPA review



NEPA serves as an umbrella law providing a framework within which all other environmental, historic, and cultural resources laws can be evaluated. All federal projects (i.e., projects that use federal funds, require federal permits or approvals, or occur on federal lands) are subject to NEPA. A NEPA review:

- Provides an analysis of the **effects of a proposed action** (e.g., a BEAD project) to determine whether it has the potential to impact the environment.
- Entails **early consideration of the environmental effect** of the proposed action.
- Should be completed **as early as possible** in the planning process.

# Levels of NEPA review

	Overview	Timeline*
<b>Categorical Exclusion (CATEX)</b>	CATEXs are issued by NTIA for defined actions that the agency has determined <b>do not individually or cumulatively have a significant effect on the environment</b> . An analysis of the environmental considerations of the proposed actions must be completed to determine whether a CATEX can apply.	Grant recipient will develop project description and supporting documentation, including engaging in consultation, which will undergo environmental analysis. Typically, <b>3-6 months</b> to develop and deliver to NTIA. Upon receipt of a complete package and the conclusion of any consultation, NTIA estimates <b>30-45 days</b> to evaluate and issue a CATEX, if applicable.
<b>Environmental Assessment (EA)</b>	An EA will be prepared when the <b>significance of the project's environmental impact is not clearly established</b> . Should environmental analysis find a project to have no significant impacts on the quality of the environment, a Finding of No Significant Impact (FONSI) is issued. If environmental analysis finds that actions could have significant impact, an EIS would be required.	Grant recipient will develop EA in coordination with NTIA, approximately <b>6-12 months</b> to develop and deliver EA to NTIA. NTIA will review the draft and final documents for technical and legal sufficiency, publish the final document for public comment, and develop a FONSI.
<b>Environmental Impact Statement (EIS)</b>	An EIS will be prepared for projects when the <b>action will likely have a significant effect on the environment</b> . This is the most comprehensive form of NEPA analysis. The final decision is documented in a Record of Decision (ROD), which codifies the final decision made, whether to approve the project or not, and the basis for that decision.	Grant recipient will develop EIS in coordination with NTIA, extensive public involvement requirements apply, approximately <b>12-24 months</b> to develop and deliver EIS to NTIA. NTIA will review for technical and legal sufficiency, publish draft and final documents for public comment, and develop a ROD once the final EIS public comment period concludes.

\*These timelines do not take into account any other outstanding agency approvals. A project is not considered cleared for NEPA until NTIA issues a decision document (FONSI or ROD).

# NEPA Categorical Exclusions in BEAD

Categorical exclusions (CE) are categories of actions predetermined by a lead federal agency to have minimal environmental impact **under normal circumstances**.

CEs streamline the NEPA review process and **cover most types of broadband infrastructure deployment**.

Awarded subgrantees will provide detailed project descriptions and additional information such as location maps, species lists, depths of excavation, and more, to **assess if CEs apply** to the proposed project.

If the CEs apply and there are no extraordinary circumstances, the **project would be excluded** from further NEPA review and likely to move to deployment much more quickly.

If a project cannot be Categorical Excluded from NEPA, a more detailed environmental document, such as an EA or EIS, will be needed to properly assess the potential effects of the project on the environment.

# NHPA Section 106

All projects must also undergo review under **NHPA Section 106**:

- This review entails evaluating whether a proposed project could impact **historic and/or cultural properties or historically and/or culturally sensitive areas**.
- The review may require **consultations with State Historical Preservation Offices (SHPO), Tribal Historical Preservation Offices (THPO) and/or Native American Tribes**.
- While application of CEs to a project are helpful for SHPOs and THPOs to assess potential adverse impacts, they do not exempt projects from such evaluations.

# Section 106 streamlined review

## Three key questions for each project:

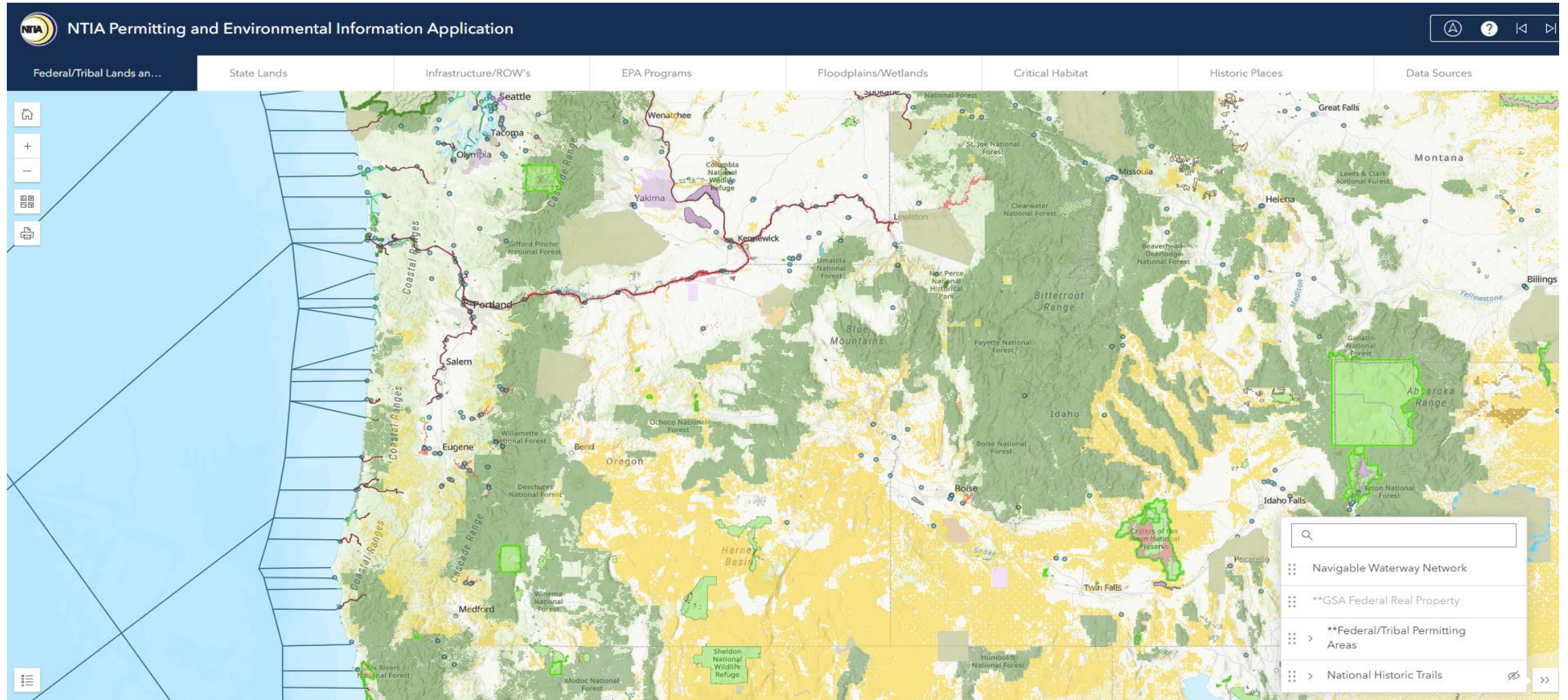
- 1 Has the Area of Potential Effects (APE) been previously surveyed?
- 2 Are there known historic properties or sites in the APE, including lands associated with federally recognized tribes?
- 3 What is the construction methodology? Are Native soils present in the APE or are they previously disturbed, to an extent and depth similar to the selected construction method, that indicates that the probability of finding intact historic artifacts is low?

## Review considerations:

- 1 If the APE has been studied, no historic sites and tribal lands are impacted, and construction method aligns with prior disturbance in the APE, the Program Comment may expedite review.
- 2 GIS analysis of known resource sites, tribal lands, historic districts, and historic properties is needed to identify potential sensitive sites.



# NTIA's permitting resource



# EHP-associated application requirements

Applicants will certify that they have **no history of failure to comply** with EHP requirements and that they **intend to comply** with EHP requirements and laws. In the application:

- If an applicant cannot certify a history of compliance, it will provide **a detailed narrative and documentation** regarding its histories of challenges or noncompliance.
- Proposed **timelines must account for the time required to obtain necessary permits** and secure CEQA approvals.<sup>1</sup>
- The applicant must submit a narrative description of processes in place to conduct funded activities in compliance with federal and CA laws. The narrative must demonstrate that the applicant **understands California's CEQA requirements and will engage in compliance activities upon selection**, including contacting CPUC staff to review CEQA obligations and obtain a CEQA questionnaire.

<sup>1</sup> The CEQA process is a separate process with its own requirements, not covered in this webinar. Information about CEQA processes for the BEAD Program will be shared later.

# Requirements after subgrantee selection

The subgrantee will collaborate and consult with the CPUC and EHP entities and provide **additional project information** as required by NTIA. Subgrantee participation will likely be needed in EHP processes post-selection.

The CPUC can help a subgrantee determine whether it **qualifies for a categorical exclusion to NEPA** as established by NTIA.

The subgrantee must obtain all necessary **federal, state, and local governmental permits and approvals** necessary for the proposed work to be conducted.

# Requirements during deployment

**BEAD Program subgrantees must:**

1

Comply with federal and state EHP laws and requirements.

2

Comply with EHP measures in the subgrant agreement.

# Labor reporting requirements

# Labor reporting requirements

Subgrantees will be required to provide in **regular reports** the following information:

1

Whether the **workforce will be directly employed** or whether work will be performed by a subcontracted workforce.

2

The entities that the subgrantee plans **to subcontract with** in carrying out the proposed work, if any.

3

The **job titles and size** of the workforce.

4

A description of **wages, benefits, and applicable wage scales**, including overtime rates and how wages are calculated.

5

Any in-house **training** program.

# Labor requirements and alternatives

Subgrantees must provide:

- Certification of compliance by subgrantees with Davis-Bacon prevailing wages, as well as compliance with relevant aspects of California Labor Code § 1770 et seq., “Prevailing wage determination,” except as noted for projects occurring on Tribal lands. See the Davis-Bacon Act and [California’s Department of Industrial Relations](#).
- Certification that a project will use a unionized project workforce or includes a project labor agreement,<sup>1</sup> including subgrantee, contractor, and subcontractor, as applicable.
  - **Alternative:** If such certification is not provided, the subgrantee must provide a project workforce continuity plan (see slides 32-33).

<sup>1</sup> Meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)).

# Project workforce continuity plan requirements



As an alternative to the unionized workforce or project labor agreement certification, subgrantees can provide a plan with the following:

- The steps taken to ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the project, including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor-management partnership training programs, and partnerships with entities like unions, community colleges, or community-based groups.
- The steps taken and to be taken to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project.



# Project workforce continuity plan requirements (continued)



- The steps taken and to be taken to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution.
- The name of any subcontracted entity performing work on the project, and the total number of workers employed by each such entity, disaggregated by job title.
- The steps taken and to be taken to ensure that workers on the project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market.

# Tribal consent

# Tribal consent

The CPUC does not intend to award any funds for deployment on Tribal lands without **a written formal Resolution of Consent or other formal form of consent consistent with the applicable Tribe's governing structure from the applicable Tribal government.**

The process will entail the following:

- In limited circumstances, the CPUC may consider and score an application for deployment on Tribal lands where no Resolution of Consent has yet been provided if **substantial evidence of meaningful and sustained consultation with the Tribal government** is provided, but a formal Resolution of Consent must be submitted to the CPUC before funds may be formally committed.
- For any applications that include projects on Tribal lands, the above referenced documents will be **a required element of the review to be determined to be a presumptive awardee**. If a presumptive awardee cannot provide documentation of support and approval from Tribal authorities, the CPUC will use the Negotiation Phase to engage with other applicants and/or to meet with Tribal authorities to understand their preferences.

# Other reporting requirements

# Post-award subgrantee reporting requirements

*Cadence and use of reporting requirements:*

1

**Subgrantees will be required to submit reports** to the CPUC, at least semiannually, for the duration of the subgrant to track the effectiveness of the use of funds provided.

2

The CPUC may add additional reporting requirements or increase the frequency of reporting (with approval of the Assistant Secretary). The CPUC must make reports available to NTIA upon request.

# Summary of post-award subgrantee reporting

Reporting Category	Example Data
Project descriptions and location information	Project summary, types and location of BSLs
Facilities and service delivered	Completed facilities, network reliability, interconnection agreements status , performance test results
Service offering and subscriber information	Offered plans, activated subscribers
Data mapping and financial reporting	GIS data, SF-425, Federal Financial Report
Contracts and jobs	Number, value of subcontracts and if Minority or Women owned, jobs created/retained
Build America, Buy America (BABA)	Electronics purchased from international manufacturers with BEAD BABA Waiver, BABA requirement certification letters

# Post-award subgrantee reporting requirements

## *Project descriptions and location information*

- Description of each type of project and/or other eligible activities carried out using the subgrant and the duration of the subgrant.
- A list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project.
- Identification of new locations served within each project area at the relevant reporting intervals, and service taken (if applicable), including location and BSL data.
- Identification of whether each address or location is residential, commercial, or a community anchor institution.

# Post-award subgrantee reporting requirements

## *Facilities and service delivered*

- Description of the types of facilities that have been constructed and installed.
- Total aerial and buried miles of fiber built, leased, or upgraded.
- Total number of towers built, leased, or upgraded.
- Total number of signs posted for each project with photo or link.
- Network reliability.
- List of all interconnection agreements that were requested, and their current state.
- Description of the peak and off-peak actual speeds of the broadband service being offered.



# Post-award subgrantee reporting requirements

## *Service offering and subscriber information*

- Description of the maximum advertised speed of the broadband service being offered.
- Description of the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered.
- Broadband awareness campaigns.
- Total subscribers for BEAD-funded BSLs.
- Low-cost subscribers for BEAD-funded BSLs.

# Post-award subgrantee reporting requirements

## *Data mapping and financial reporting*

- Any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects.
- Inclusion of an SF-425, Federal Financial Report and meeting the requirements described in the Department of Commerce Financial Assistance Standard Terms and Conditions, Section A.01 for Financial Reports.
- Funds expended.
- Compliance with any other reasonable reporting requirements determined by the Eligible Entity to meet the reporting requirements established by the Assistant Secretary, and certification that the information in the report is accurate.

# Post-award subgrantee reporting requirements

## *Contracts and jobs*

- The number and value of contracts and subcontracts awarded by the Subgrantee disaggregated by recipients of those contracts or subcontracts that are Minority Business Enterprises (MBE) or Women's Business Enterprises (WBE).
- Jobs created (for subgrantee and any contractors or subcontractors).
- Jobs retained (for subgrantee and any contractors or subcontractors).

# Post-award subgrantee reporting requirements

*Build America, Buy America (BABA)*

- Electronics purchased from international manufacturers that were waived under BEAD BABA Waiver.
- BABA requirement certification letters from manufacturers (for subgrantee and any contractors or subcontractors).

# Next steps

# Upcoming webinars

Webinars are open to all who wish to attend.

Registration links will be posted on the [BEAD events page](#).

Date/Time	Topic
<b>Week of February 3-7</b>	No webinars or office hours
<b>February dates to be announced</b>	Continuation of webinars and office hours

# Questions?

Please contact us at:

**[BEADgrant@cpuc.ca.gov](mailto:BEADgrant@cpuc.ca.gov)**

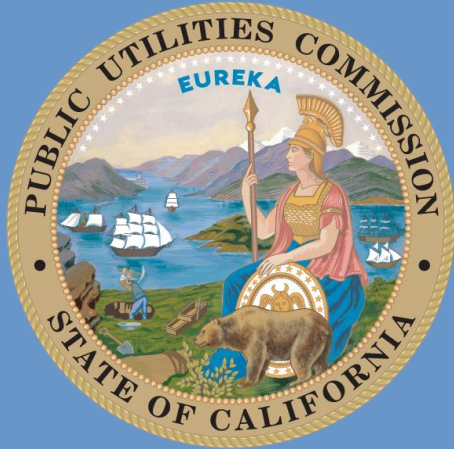


For more information visit:

[California Broadband Equity, Access, and Deployment \(BEAD\) Program](#)







# California Public Utilities Commission