

## Introduction:

The Office of Broadband Connectivity (OBC) within the Board of Public Utilities (BPU) has been notified that it is eligible for a formula-based allocation of \$263,689,548.65 from the federal Broadband, Equity, Access, and Deployment (BEAD) program. BEAD was established through the Infrastructure Investment and Jobs Act (IIJA) and is administered by the National Telecommunications & Information Administration (NTIA). To receive its allocated BEAD funding, OBC is developing a required implementation plan in accordance with NTIA requirements for use of funds. BEAD requirements are publicly available through both NTIA's [Notice of Funding Opportunity](#) (NOFO) and its Initial Proposal policy and guidance, which can be found on the NTIA [Grants Portal](#).

BEAD requires states to first prioritize funding to unserved areas (those below 25/3 Mbps), followed by underserved areas (those below 100/20 Mbps). Once unserved locations are connected and then underserved locations are upgraded, if any BEAD funds remain, they can be used for other purposes, specifically upgrading Community Anchor Institutions such as schools or libraries to 1 GB symmetrical connections and supporting non-deployment activities (e.g., broadband adoption, digital skill support, device loans or discounts).

The BEAD implementation plan, referred to as the Initial Proposal, is due to NTIA by December 27, 2023. NTIA has split the BEAD IP requirements between two volumes:

- Volume 1 focuses on determining the locations that will be eligible for BEAD funding
- Volume 2 focuses on the associated subgrantee selection process.

The following document is a draft version of Initial Proposal Volume 1, which OBC is making available for public comment. NTIA provided a model challenge process and OBC has largely adopted the model. NTIA language is indicated in black throughout the document and OBC language is indicated in bolded blue (blue).

OBC requests commenters to use the following form to submit comments: <https://www.nj.gov/connect/>

# 1 Volume I (Requirements 3, 5 – 7)

---

## 1.1 Existing Broadband Funding (Requirement 3)

- 1.1.1 Submit the 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.

[Attachment: BEAD Initial Proposal\_Volume I\_Existing Broadband Funding Sources Template.xlsx]

## 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.

[Attachment 1: unserved.csv]

[Attachment 2: underserved.csv]

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

[September 26, 2023](#)

## 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.

Based on the statutory definition of “community anchor institution” as defined in 47 USC 1702 (a)(2)(E), OBC 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.

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 were further used to further define and 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).
- **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, [and emergency medical providers](#)
- **Public safety entity:** The list includes entities such as fire houses, police stations, and public safety answering points (PSAP), based on records maintained by the [State of New Jersey](#) and units of local government.
- **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.

**Community support organizations:** The [State of New Jersey is identifying](#) organizations that facilitate greater use of broadband service by vulnerable populations - including low-income individuals, unemployed individuals, and aged [individuals through its Digital Equity Plan asset inventory and the public comment process](#). The [State of New Jersey has identified](#) senior centers as a type of community support organization and may add additional types (e.g., reentry organizations). [OBC welcomes public comment from community organizations that support broadband access by vulnerable populations and do not have 1 gigabit broadband connections available for purchase today. Community support organizations may also provide information regarding the affordability of an existing gigabit service, which OBC may consider as it continues to identify barriers to broadband across the state. Please use the form available at XXX to provide this information.](#)

The [State of New Jersey](#) also drew on state and municipal resources to identify additional eligible community anchor institutions that were not contained in the data sources listed above. [These include:](#)

- **Libraries: New Jersey State Library**
  - [The State Library provided OBC with a list of all public libraries in New Jersey, and where data was available, provided current broadband connectivity data](#)
- **K-12 public and private schools :Department of Education (DOE)**
  - [OBC used the public data set made available by New Jersey DOE:   
https://homerom5.doe.state.nj.us/directory/](#)
- **Hospitals: New Jersey Hospital Association**

- OBC used the public data set made available by the Hospital Association: <https://www.njha.com/media/543112/nj-hospitals-by-county-map.pdf>
- Emergency Medical Services: Department of Health (DOH)
  - OBC used the public data set made available by the DOH: [https://www.nj.gov/health/ems/documents/reg-enforcement/nj\\_ems\\_agencies.pdf](https://www.nj.gov/health/ems/documents/reg-enforcement/nj_ems_agencies.pdf)
- Public Housing Organizations: Office of the State Comptroller
  - OBC used the public data set made available by the Office of the State Comptroller: <https://www.nj.gov/comptroller/news/docs/housingauthorities.pdf>
- Senior Centers: New Jersey Care Planning Council
  - OBC used the public data set made available by the Care Planning Council: [https://www.carenewjersey.org/list11\\_new\\_jersey\\_senior\\_centers.htm](https://www.carenewjersey.org/list11_new_jersey_senior_centers.htm)
- City Policy & County Sheriff's Departments, Bi-State Police Agencies, Humane Law Enforcement Agencies: New Jersey State Association of Chiefs of Police
  - OBC used the public data set made available by the Association of Chiefs of Police: <https://www.njsacop.org/content.asp?contentid=66>

Specifically for public health, urgent care and fire station datasets, the State of New Jersey also leveraged data provided by Homeland Infrastructure Foundation-Level Data (HIFLD) to supplement data it collected from other sources. HIFLD “provides National foundation-level geospatial data within the open public domain that can be useful to support community preparedness, resiliency, research, and more.” (See <https://hifld-geoplatform.opendata.arcgis.com/> for more information about HIFLD.)

- For public health institutions, OBC used the public data set made available by HIFLD: <https://hifld-geoplatform.opendata.arcgis.com/datasets/geoplatform::public-health-departments/about>
- For urgent care, OBC used the public data set made available by HIFLD: <https://hifld-geoplatform.opendata.arcgis.com/datasets/geoplatform::urgent-care-facilities/about>
- For fire stations, OBC used the public data set made available by HIFLD: <https://hifld-geoplatform.opendata.arcgis.com/datasets/geoplatform::fire-stations/about>

In addition, the State of New Jersey is using the Initial Proposal public comment process to facilitate inclusion of all relevant institutions that meet CAI criteria. During this period OBC will both conduct outreach through its extensive mailing list and hold at least one webinar to further identify potentially eligible CAIs. During the State of New Jersey’s challenge process, OBC will make a concerted outreach effort to facilitate robust participation from CAIs.

To assess the network connectivity needs of the types of eligible community anchor institutions listed above, OBC took the following actions:

- Engaged government agencies. OBC met with the State Library, which provided an existing list of public library outlets and conducted outreach to libraries to understand their current availability. OBC also received feedback from executive branch representatives across multiple areas (e.g., health, corrections, public safety). During the public comment period, OBC will continue reaching out to New Jersey agencies to understand what records they have available regarding relevant community anchor institutions’ 1 Gbps broadband service availability and

which CAIs facilitate broadband use by vulnerable populations (e.g., county boards of social services).

- **Engaged relevant umbrella organizations and nonprofits.** OBC identified lists of CAIs from public data sets made available by umbrella organizations (i.e., using the data from the New Jersey Hospital Association and the New Jersey Care Planning Council, OBC identified 144 hospitals and 26 senior centers, respectively) and engaged nonprofit organizations that work with community anchor institutions through OBC’s Digital Equity Working Group and Workforce Working Group. During the public comment period, OBC will request participation by these organizations in providing information related to availability needs from the member organizations across all geographic regions and identifying those Community Support Organizations that facilitate greater use of broadband service by vulnerable populations.
- **Estimated broadband availability.** OBC reviewed existing broadband connectivity for the nearest Broadband Serviceable Location (BSL) within 250 feet of each CAI as provided by on the latest FCC DATA Maps as of June 15, 2023, and last updated on September 26, 2023. The state estimated broadband availability for each CAI to be at the same level as this nearest BSL. Of note:
  - In the seven instances in which there was not a BSL within 250 feet, OBC assumed that the location did not have access to 1 GB symmetrical service.
  - The State of New Jersey is in the process of identifying current broadband availability and need at the school level. During the public comment period, the Department of Education will field a survey to collect this data. For this reason, OBC did not include schools in the “cai.csv” file of CAIs with access to less than 1 GB symmetrical service.
  - The State’s attachment, entitled “cai.csv”, includes CAIs that OBC estimates to not have access to 1 GB symmetrical connections.

Using the information it gathered from public datasets and state government leaders, OBC then compiled the list of those CAIs estimated to not have adequate broadband service (i.e., 1 GB symmetrical service), attached in question 1.3.2. As required OBC is including a list of CAIs that, to the best of its knowledge, are without access to 1 Gigabit symmetrical service as part of public comment (see attachment “cai.csv” under section 1.3.2).

Based on all the sources described above, OBC has identified an initial list 7,077 CAIs across all categories. Estimates indicate that nearly all CAIs for which OBC identified data could have access to broadband connections of 1 Gbps downstream, but between 43% and 70% of CAIs, depending on the type, may not have access to symmetrical gigabit connections. (Exhibit 1).

*Exhibit 1: Initial estimates of broadband availability by CAI type<sup>1</sup>*

---

<sup>1</sup>1. 7 CAIs are not located within 250 ft of a BSL. OBC estimates that the CAIs that are not within 250 ft of a BSL do not have gigabit service and they are included in the “Less than 1 Gbps/20 Mbps” column in the attachment, “cai.csv”.

## Initial estimates of broadband availability by CAI type

■ Indicates a subset of institutions likely qualify as a CAI that facilitates broadband access and could be eligible for prioritized connections

Category	# of CAIs	1 Gbps symmetrical	< 1 Gbps symmetrical				
			At least 1 Gbps / 20 Mbps	< 1 Gbps / 20 Mbps	At least 1 Gbps / 20 Mbps	< 1 Gbps / 20 Mbps	
<b>Schools</b>	<b>3,945</b>						
Public Schools	2,620	To be updated with additional data collected during public comment period					
■ Private Schools	1,325						
<b>Higher Education institutions</b>	<b>70</b>	<b>26</b>	<b>37%</b>	<b>37</b>	<b>53%</b>	<b>1</b>	<b>1%</b>
Public colleges or universities	15	7	54%	5	38%	1	8%
Private colleges or universities	16	8	57%	6	43%	0	0%
Community Colleges	39	11	30%	26	70%	0	0%
<b>Public libraries</b>	<b>367</b>	<b>160</b>	<b>44%</b>	<b>122</b>	<b>33%</b>	<b>83</b>	<b>23%</b>
<b>Health clinic, HC, hospital, or other MP</b>	<b>862</b>	<b>384</b>	<b>45%</b>	<b>421</b>	<b>49%</b>	<b>10</b>	<b>1%</b>
Public Health	108	60	56%	45	42%	3	3%
Urgent Care	89	50	56%	38	43%	1	1%
Hospitals	244	117	48%	126	52%	1	0%
EMS	421	157	37%	212	50%	5	1%
<b>Public Housing Organizations</b>	<b>124</b>	<b>53</b>	<b>43%</b>	<b>59</b>	<b>48%</b>	<b>2</b>	<b>2%</b>
<b>Community Support Organizations</b>	<b>26</b>	<b>10</b>	<b>38%</b>	<b>14</b>	<b>54%</b>	<b>0</b>	<b>0%</b>
Senior Centers	26	10	38%	14	54%	0	0%
<b>Public Safety Agencies</b>	<b>1683</b>	<b>689</b>	<b>41%</b>	<b>836</b>	<b>50%</b>	<b>48</b>	<b>3%</b>
Law Enforcement	406	160	39%	207	51%	6	1%
Fire Stations	1,277	529	41%	629	49%	42	3%

Published as part of CAI Vol 1 Public Comment (10/23/23)

If funding is available after serving all unserved and underserved locations, as required by BEAD, OBC intends to prioritize funding to connect CAIs that meet both of the following conditions:

1. Support broadband use by vulnerable populations, typically through providing device loans, computer access, or training; and
2. Lack 1 GB symmetrical connectivity.

OBC has identified the three CAI categories that fully meet the requirement to support broadband use by vulnerable populations:

1. Public Schools
2. Libraries
3. Public housing

OBC believes that select subcategories listed below, or individual CAIs within those subcategories, may also support broadband use by vulnerable populations:

1. Community support organizations
2. Health organizations (e.g., facilities with high Medicaid or uncompensated care patient mix)
3. Higher education (e.g., those with an especially high proportion of Pell Grant awardees)

2. OBC is currently identifying estimated broadband availability for 117 CAIs (exc. schools) out of the total of 7,077. These CAIs are included in the *cai.csv* attachment, but not in the speed estimations above.

3. As noted above, OBC plans to partner with the Department of Education to field an updated survey of school-level broadband connectivity and each school's assessment of whether that connection meets their needs.

4. Larger institutions (e.g., college campus, large school, hospital) could have dedicated circuits and associated broadband access that is higher than the surrounding mass-market service and so would not be included in the National Broadband Map. OBC plans to further refine the list during the public comment process if more data becomes available.



#### 4. Public safety organizations

OBC encourages stakeholders to provide information through the public comment process about CAI subcategories or individual CAIs that support broadband access by vulnerable populations and do not have 1 gigabit broadband connections available for purchase today. Please use the public comment response form to provide this information <https://www.nj.gov/connect/>

- 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.

[Attachment: cai.csv]

Descriptions for the columns in the cai.csv file can be found in [NTIA's Challenge Process Policy Notice](#), pages 22-24 (Guidance on Data Formats for CAIs). Note that for "Broadband Availability", NTIA requests the highest available broadband service speed in Mbps. As a result, some CAIs show "1000" (i.e., 1 Gbps). This means that OBC estimates they have access to 1 Gbps downstream, but that their upstream availability is < 1 Gbps.

#### 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.

- 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.

##### [Optional Module 2: DSL Modifications](#)

OBC 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 determination will affect 1,908 locations. These locations are now included in the attachment "underserved.csv."** 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.

## 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.

Yes

No

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

OBC 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 IJJA § 60105.<sup>2</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.
3. [State of New Jersey](#) and local data collections of existing enforceable commitments.

OBC 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, OBC will translate polygons or other geographic designations (e.g., a county or utility district) describing the area to a list of Fabric locations. OBC will submit this list, in the format specified by the FCC Broadband Funding Map, to NTIA.<sup>3</sup>

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

OBC 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 of New Jersey](#) 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.

[Attachment: BEAD Initial Proposal\_Volume I\_Deduplication of Funding Programs Template.xlsx]

## Challenge Process Design

---

<sup>2</sup> The broadband funding map published by FCC pursuant to IJJA § 60105 is referred to as the "FCC Broadband Funding Map."

<sup>3</sup> 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.



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

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

##### Permissible Challenges

OBC will only allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by the [State of New Jersey](#),
- 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, OBC 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 OBC will include four phases. [Phases two through four are planned to span 90 days \(if needed, OBC will use an additional 30 days, for a total duration of up to 120 days\)](#)<sup>4</sup>:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, OBC 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). The office will also publish locations considered served, as they may be challenged. [Locations eligible for BEAD funding will be tentatively published in March 2024, assuming OBC receives NTIA approval.](#)
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through OBC 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

---

<sup>4</sup> The NTIA BEAD Challenge Process Policy Notice allows *up to* 120 days. Broadband offices may modify the model challenge process to span up to 120 days, as long as the timeframes for each phase meet the requirements outlined in the NTIA BEAD Challenge Process Policy Notice.

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, OBC 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. **(Tentative date: April 1<sup>st</sup>, 2024 – May 1<sup>st</sup> 2024)**
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 sustained. A provider may also agree with the challenge and thus transition the location to the “sustained” state. Providers must regularly check the challenge portal notification method (e.g., email) for notifications of submitted challenges.
- a. **Timeline:** Providers will have 30 calendar days from notification of a challenge to provide rebuttal information to OBC **(Tentative date: May 1<sup>st</sup>, 2024 – June 1<sup>st</sup> 2024)**
4. **Final Determination Phase:** During the Final Determination phase, OBC 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, OBC plans to make a final challenge determination within 30 calendar days, and in no more than 60 days, of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. **(Tentative date: June 1<sup>st</sup>, 2024 – July 1<sup>st</sup> 2024, but OBC will reserve an additional 30 days if needed)**

**Evidence & Review Approach**

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, OBC will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. OBC 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. OBC plans to ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted. OBC will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

**OBC plans to onboard the necessary personnel and associated IT needs to successfully lead the challenge process by the end of Q1 2024.**

Code	Challenge Type	Description	Specific Examples	Permissible rebuttals
A	Availability	The broadband service identified is not offered	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> </ul>	<ul style="list-style-type: none"> <li>• Provider shows that the location</li> </ul>

		at the location, including a unit of a multiple dwelling unit (MDU).	<ul style="list-style-type: none"> <li>• A service request was refused within the last 180 days (e.g., an email or letter from provider).</li> <li>• Lack of suitable infrastructure (e.g., no fiber on pole).</li> <li>• 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>5</sup></li> <li>• 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</li> </ul>	<p>subscribes or has subscribed within the last 12 months, e.g., with a copy of a customer bill.</p> <ul style="list-style-type: none"> <li>• If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.</li> <li>• 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.</li> </ul>
--	--	--	---	--

<sup>5</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.”

			order to connect service at the location.	
S	Speed	The actual speed of the service tier falls below the unserved or underserved thresholds. <sup>6</sup>	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. <sup>7</sup>
L	Latency	The round-trip latency of the broadband service exceeds 100 ms <sup>8</sup> .	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 or the CAF performance measurements. <sup>9</sup>
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>10</sup>	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• Service description provided to consumer.</li> </ul>	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.

<sup>6</sup> The challenge portal has to 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>7</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>8</sup> *Performance Measures Order*, including provisions for providers in non-contiguous areas (§21).

<sup>9</sup> *Ibid.*

<sup>10</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 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.

T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential gateway (CPE) 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).
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	<ul style="list-style-type: none"> <li>Construction contracts or similar evidence of on-going deployment, along with evidence that</li> </ul>	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or

		broadband offering performance beyond the requirements of an enforceable commitment.	<p>all necessary permits have been applied for or obtained.</p> <ul style="list-style-type: none"> <li>• Contracts or a similar binding agreement between the state 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.</li> </ul>	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	Evidence that the location does not fall within the definitions of CAIs

			CAIs set by the state. <sup>11</sup>	set by the state or is no longer in operation.
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 state or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by the state or is still operational.

### [Optional Area Challenge Module] Area and MDU Challenge

OBC will administer area and 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 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).<sup>12</sup>

### [Optional Speed Test Module] Speed Test Requirements

OBC 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.

<sup>11</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 the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.

<sup>12</sup> 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.



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),
2. ONT (for FTTH), or fixed wireless subscriber module.
3. A reading of the speed test available from within the residential gateway web interface.
4. A reading of the speed test found on the service provider's web page.
5. 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 applications approved by NTIA](#).

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 [State of New Jersey](#), that grants access to these information elements to the [State of New Jersey](#), 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 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.

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>13</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 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.

## Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, OBC 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. OBC 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 OBC website, <https://www.nj.gov/connect/>, for **program updates, including** challenge process updates, and newsletters. **OBC will send out initial information about the challenge process to all stakeholders for which it already has addresses and will host at least one general webinar for all entities regardless of whether they can participate directly on the challenge process. Stakeholders will be able to engage with OBC via a designated email address ([broadband@bpu.nj.gov](mailto:broadband@bpu.nj.gov)). Providers will be notified of all challenges via an email from OBC. OBC will use its existing stakeholder list, bolstered by the Board of Public Utilities' existing contact lists for telecommunications and cable providers, to notify providers about the challenge process. OBC will also partner with local government and community organizations to ensure potential challengers are aware of the process and its timelines.**

Beyond actively engaging relevant stakeholders, OBC 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.

OBC 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, OBC 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.

---

<sup>13</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.

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

OBC plans to adhere to any relevant [New Jersey](#) laws and regulations pertaining to the protection of PII **in the following manner: OBC 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, OBC 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. OBC 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 information should be identified as privileged or confidential. In those instances, submitters should avail themselves of the processes identified in N.J.A.C. 14:1-12, et seq. Otherwise, the responses will be made publicly available.**

OBC will adhere to the New Jersey Personal Information and Privacy Protection Act (P.L. 2017, c.124) and related Rules, and the New Jersey Open Public Records Act, (PL 2001, c.404), in the collection, storage or dissemination of information related to the challenge process.

- 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.**

N/A