

# Compare Results

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## Content

**87** Replacements

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## Styling and Annotations

**0** Styling

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**INITIAL PROPOSAL VOLUME 1**  
**(REQUIREMENTS 3, 5 - 7)**  
**BEAD PROGRAM**

**STATE OF OREGON**  
**OREGON BROADBAND OFFICE**  
**BUSINESS OREGON**

December 13, 2023

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## 1. Introduction

The State of Oregon via the Oregon Broadband Office (OBO) submits to NTIA this first volume of the BEAD Initial Proposal. In alignment with NTIA's BEAD challenge guidance, this document seeks to propose how OBO will meet all requirements of Volume I of the Initial Proposal.

This document represents one of four separate reports that OBO is preparing for NTIA in compliance with the BEAD Notice of Funding Opportunity (NOFO). The other documents include Oregon's Five-Year Action Plan (submitted August 28, 2023), Initial Proposal Volume II, and Final Proposal.

This document includes the following requirements outlined in the BEAD NOFO:

1. Identifying existing efforts funded by the federal government or the State of Oregon within the jurisdiction of the State of Oregon to deploy broadband and close the digital divide (Initial Proposal Requirement 3).
2. Identifying each unserved location and underserved location within Oregon, using the most recently published National Broadband Map as of the date of submission of the Initial Proposal, and identifies the date of publication of the National Broadband Map used for such identification (Initial Proposal Requirement 5).
3. Describing how OBO has applied the statutory definition of the term "community anchor institution" (CAI), identified all eligible CAIs in Oregon, and assessed the needs of eligible CAIs, including what types of CAIs it intends to serve; and which institutions, if any, it considered but declined to classify as CAIs. If OBO 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 OBO determined that such category of CAI facilitates greater use of broadband service by vulnerable populations (Initial Proposal Requirement 6).
4. Proposing a detailed plan as to how OBO will conduct a challenge process consistent with the draft challenge process guidance released by NTIA on June 28, 2023 (Initial Proposal Requirement 7).

OBO intends to run its challenge process after (1) NTIA approves this first volume of the Initial Proposal, and (2) OBO submits the second volume of its Initial Proposal, addressing all remaining requirements of the Initial Proposal as described in NTIA's BEAD Notice of Funding Opportunity. This will enable OBO to maintain the timeline required by NTIA for the BEAD program.

## **2. Existing broadband funding (Requirement 3)**

This first volume of the State of Oregon BEAD Initial Proposal includes, consistent with NTIA requirements, descriptions of existing funding for broadband in Oregon.

Attached as Appendix 1 is a table that identifies:

1. Sources of funding
2. A brief description of the broadband deployment and other broadband-related activities
3. Total funding
4. Funding amount expended
5. Remaining funding amount available

### **3. Unserved and underserved locations (Requirement 5)**

This first volume of the State of Oregon BEAD Initial Proposal includes, consistent with NTIA requirements, a list of all unserved and underserved locations in Oregon.

#### **3.1 Location IDs of all unserved and underserved locations**

Attached as Appendices 2 and 3 are two CSV files with the location IDs of all identified unserved and underserved locations, respectively.

#### **3.2 Publication date of the National Broadband Map used to identify unserved and underserved locations**

The unserved and underserved locations identified in this document and its attachments are based on the August 2023 publication date of the National Broadband Map. Consistent with NTIA guidance, Oregon's actual Challenge Process will use the December 12, 2023 publication of the National Broadband Map (or whichever version is most current as of the time of initiation of the Challenge Process).



## 4. Community anchor institutions (Requirement 6)

This first volume of the State of Oregon BEAD Initial Proposal includes, consistent with NTIA requirements, a definition of “community anchor institution,” a list of community anchor institutions, and an analysis of their connectivity needs.

### 4.1 Definition of “community anchor institution”

Based on the statutory definition of “community anchor institution” as defined in 47 USC 1702 (a)(2)(E), OBO defines “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 and HUD-assisted housing organization), or community support organization that facilitates greater public use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

Given Oregon’s unique heritage, OBO notes that its definition of “community anchor institution” also includes all facilities OBO defines above owned or operated by Oregon’s federally recognized tribes.

Based on OBO’s 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): Whether the community support organization facilitates greater public 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 community anchor institutions:

1. **Schools:** This category includes all K-12 schools participating in the FCC E-Rate program or that have a National Center for Education Statistics (NCES) ID in the categories “public schools” or “private schools.”
2. **Libraries:** The list of libraries includes all those participating in the FCC E-Rate program as well as all member libraries, and their branches, of the American Library Association (ALA).

3. **Health clinic, health center, hospital, or other medical providers:** The list of health clinics, health centers, and hospitals includes all institutions that have a Centers for Medicare and Medicaid Services (CMS) identifier.
4. **Public safety entity:** The list of public safety entities includes fire houses, emergency medical service stations, and police stations, based on records maintained by the State of Oregon, units of local government, and tribal nations. Included in the list of public safety entities is also the list of public safety answering points (PSAP) in the FCC PSAP registry.
5. **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, tribal colleges and universities, other universities, and other educational institutions.
6. **Public housing organizations:** Public housing organizations were identified by contacting the Public Housing Agencies (PHAs) for Oregon enumerated by the U.S. Department of Housing and Urban Development, as well as by contacting nonprofit organizations Public and Affordable Housing Research Corporation (PAHRC) and National Low-Income Housing Coalition, which maintain a database of nationwide public housing units at the National Housing Preservation Database (NHPD).
7. **Community support organizations:** The list includes organizations identified by the OBO, in the context of its multi-year broadband engagement work, that facilitate greater public use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals. These include community support organizations such as cultural centers that support vulnerable populations. Cultural centers facilitate broadband use for vulnerable populations through WiFi and encourage the use of technology and digital skills to share information about culture and history. All cultural centers identified are considered to be a part of the CAI definition. Cultural centers were identified through agency related data. 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 Finder.<sup>1</sup> The National Council on Aging (NCOA) helped identify senior centers.<sup>2</sup>

8. **Other sources of data:** OBO also drew on state, tribal, county, and municipal resources (agency data, as example) to identify additional eligible community anchor institutions that were not contained in the data sources listed above. These institutions include trade schools, incarceration facilities, and tribal anchor institutions such as libraries and community centers. Each of these institutions includes a digital skills component – either via direct programming by the agency itself or the use of the facility by partner organizations to provide such training. All such facilities identified within the State are included in the definition, as provided by agency related data sources. In addition, OBO **will use** the Initial Proposal Volume 1 public comment process to ensure that all relevant institutions meeting the CAI criteria are included.

Despite public comments that advocated for the inclusion of performing arts centers and nonprofit museums to be classified as community anchor institutions, these were determined to not comply with NTIA's definition of CAI's as centers that facilitated internet access. One commenter suggested cultural centers be included as part of the definition of CAI's, of which, this category was already listed.

#### 4.2 Connectivity needs of defined CAIs

To assess the network connectivity needs of the types of eligible community anchor institutions listed above, OBO undertook the following activities:

1. **Engaged government agencies.** OBO communicated with relevant state agencies to understand what records they have available regarding relevant community anchor institutions 1 Gbps broadband service availability. Specifically, OBO contacted the following agencies:
  - a. **Oregon Department of Education:** OBO coordinated with the Oregon Department of Education to determine which schools and libraries do

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<sup>1</sup> <https://www.careeronestop.org/localhelp/americanjobcenters/find-american-job-centers.aspx>

<sup>2</sup> National Institute of Senior Centers

not currently have access to 1 Gbps symmetrical broadband service. OBO has determined that these CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO.

- b. **Oregon Health Authority:** OBO communicated with the Oregon Health Authority to determine which public health facilities lack 1 Gbps symmetrical broadband service. OBO has determined that only some of these CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO and *preliminarily presumes as unserved* any CAI in this category that is in a census block that is 50 percent or more unserved on the Oregon state broadband map.
  - c. **State Library of Oregon:** OBO coordinated with the State Library of Oregon to determine which libraries lack 1 Gbps symmetrical broadband service. OBO has determined that only some of these CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO and *preliminarily presumes as unserved* any CAI in this category that is located in a census block that is 50 percent or more unserved on the Oregon state broadband map.
  - d. **Public safety agencies:** OBO communicated with the Oregon Department of Administrative Services Information Technology (DASIT), the Oregon State Police, and the Oregon Department of Public Safety Standards and Training to obtain 1 Gbps broadband service availability data. OBO has determined that these CAIs (except those as identified in Appendix 4) have the requisite symmetrical broadband speeds as identified by the BEAD NOFO.
  - e. **Tribal nations:** OBO engaged with representatives of all nine of Oregon's federally recognized tribal nations to coordinate and obtain 1 Gbps broadband service availability data. OBO has determined that only some of the tribal CAIs have the requisite symmetrical broadband speeds as identified by the BEAD NOFO and *preliminarily presumes as unserved* any CAI in this category that is located in a census block that is 50 percent or more unserved on the Oregon state broadband map.
2. **Engaged relevant umbrella organizations and nonprofits.** OBO engaged with umbrella (as example member organizations) and nonprofit

organizations that work with community anchor institutions to coordinate and obtain 1 Gbps broadband service availability data. Specifically, OBO requested information related to availability needs from the member organizations across all geographic regions, including the following organizations: Oregon State Library, Councils of Governments, Broadband Action Teams, Economic Development Associations, Oregon Telecommunications Association, League of Oregon Cities, Association of Oregon Counties, and the Oregon Department of Education.

3. **List of CAIs that do not have adequate broadband service.** Using the responses received, OBO compiled the list of those CAIs that do not have adequate broadband service. Attached as Appendix 4 is a CSV file with the relevant list of eligible community anchor institutions that require qualifying broadband service and do not currently have access to such service, to the best of OBO's knowledge.

## 5. Challenge process (Requirement 7)

This first volume of the State of Oregon BEAD Initial Proposal includes, consistent with NTIA requirements, a detailed and rigorous proposed challenge process for development of the map under which BEAD grants will be evaluated and awarded by OBO. The proposed challenge process, including all required elements, is described in detail below.

### Adoption of NTIA Challenge Model

No

Yes

OBO plans to adopt the NTIA BEAD Model Challenge Process to satisfy Requirement 7 and to ensure that the state has a fair process following federal guidelines. Oregon's process will not include additional modifications beyond those specified by NTIA. Oregon will also adopt the BEAD Eligible Entity Planning Toolkit.<sup>3</sup>

### 5.1 Modifications to reflect data not present in the National Broadband Map: Types of modifications

OBO proposes the following modification to the National Broadband Map as a basis for the Oregon BEAD Challenge Process and OBO's BEAD grantmaking.

#### Speed test modification

OBO 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. As described below, such speed tests can be rebutted by the provider during the rebuttal period.

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<sup>3</sup> See [https://www.internetforall.gov/sites/default/files/2023-04/BEAD\\_Model\\_Challenge\\_Process\\_-\\_Public\\_Comment\\_Draft\\_04.24.2023.pdf](https://www.internetforall.gov/sites/default/files/2023-04/BEAD_Model_Challenge_Process_-_Public_Comment_Draft_04.24.2023.pdf).

## 5.2 Deduplication of funding: Use of BEAD Planning Toolkit for identifying enforceable commitments

Yes

No

OBO will use the BEAD Eligible Entity Planning Toolkit to identify existing federal enforceable commitments.

## 5.3 Process description

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 IIJA § 60105.<sup>4</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. Oregon 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.<sup>5</sup>

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 Oregon or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, the

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<sup>4</sup> The broadband funding map published by FCC pursuant to IIJA § 60105 is referred to as the “FCC Broadband Funding Map.”

<sup>5</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.

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 and local enforceable commitments.

OBO plans to deduplicate any funding from programs that will take effect after the challenge process begins but before the grant program is run, potentially including but not limited to CPF funding, as well as RDOF or USDA grants. OBO will monitor these and other programs in the state, both before and after the challenge process begins, to ensure the deduplication of all funding before the grant program is run.

#### **5.4 List of programs analyzed**

Attached as Appendix 5 is a file with the relevant list of the federal and state programs that will be analyzed to remove enforceable commitments from the set of locations eligible for BEAD funding.

#### **5.5 Challenge process design: Process description**

This OBO plan is largely based on the NTIA BEAD Challenge Process Policy Notice and OBO's understanding of the goals of the BEAD program. The full process is designed to ensure a transparent, fair, expeditious, and evidence-based challenge process.

#### **Permissible challenges**

OBO will **only** allow challenges on the following grounds:

- The identification of eligible community anchor institutions, as defined by OBO in the Initial Proposal Volume 1
- Community anchor institution BEAD eligibility determinations
- BEAD eligibility determinations for existing BSLs included in the FCC's National Broadband Map
- Enforceable commitments



- Planned service

### Permissible challengers

During the BEAD Challenge Process, OBO will allow challenges from nonprofit organizations, units of local governments, tribal nations, and broadband service providers. OBO will take reasonable measures to inform via email all of the previously listed organizations and agencies about the Challenge Process, utilizing its extensive and existing database with contact information. OBO will post information publicly through its website and social media and hold regular office hours with potential challengers.

### Challenge process overview

The challenge process conducted by OBO will include four phases, potentially spanning up to 14 weeks, per the schedule of the NTIA model challenge process:

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, OBO 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). OBO will also publish locations considered served, as they can be challenged. OBO tentatively plans to publish the locations in January 2024, consistent with NTIA approval of the process.
2. **Challenge Phase:** During the Challenge Phase, challengers may submit the challenge through OBO's challenge portal. All challenges will be made 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. OBO maintains an extensive provider contact list which it will utilize as one strategy of informing about the challenge. At this time, the location will enter the "challenged" state.
  - a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify the following:
    - i. That the address provided in the challenge can be found in the Fabric and is a BSL.

- ii. That the challenged service is listed in the National Broadband Map and meets the definition of reliable broadband service.
    - iii. That the email address from which the challenge was sent is verifiable and reachable by sending a confirmation message to the listed contact email.
    - iv. For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR).
  - b. OBO will 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.
  - c. **Timeline:** Challengers will have 30 calendar days to submit a challenge from the time the initial lists of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. OBO plans to begin the Challenge phase in February 2024.
- 3. **Rebuttal Phase:** For challenges related to location eligibility, only the challenged service provider may rebut the reclassification of a location or area with evidence. If a provider is claiming gigabit service availability for a CAI or a unit of local government disputes the CAI status of a location, the CAI may rebut. All types of challengers may rebut planned service (P) and enforceable commitment (E) challenges. Providers must regularly check the challenge portal notification method for notifications of submitted challenges.
  - a. **Provider Options:** Challenged service providers will have the following options for action at this time.
    - i. **Rebut:** Rebuttals must be provided with evidence, at which time the challenged location or locations will enter the “disputed” state.

- ii. **Leave Unrebutted:** If a challenge that meets the minimum level of evidence is not rebutted, the challenge will be considered conceded and sustained. This will result in transition of the challenged location(s) to the “sustained” state.
    - iii. **Concede the Challenge:** In the event the challenged service provider signals agreement with the challenge, the challenge will be considered conceded and sustained. This will result in transition of the challenged location(s) to the “sustained” state.
  - b. **Timeline:** Providers will have 30 calendar days from notification of a challenge to provide rebuttal information to OBO. OBO expects this phase to begin in February and run through March 2024.
4. **Final Determination Phase:** During the Final Determination phase, OBO will make the final determination of the classification of the location(s) that remain in the disputed state, either declaring the challenge “sustained” or “rejected.”
  - a. **Timeline:** OBO will make a final challenge determination within 60 calendar days of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. OBO expects this phase to begin in April 2024.

### Evidence and review approach

To ensure that each challenge is reviewed and adjudicated in a way that is fair to all participants and relevant stakeholders, OBO will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. Unless otherwise noted, “days” refers to calendar days.

OBO will:

- Document the standards of review to be applied in a Standard Operating Procedure.

- Require reviewers to document their justification for each determination.
- Ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted.
- Require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations.

Table of challenge types, evidence examples, and permissible rebuttals

Code	Challenge type	Description	Specific examples of required evidence	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"> <li>• Screenshot of provider webpage.</li> <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>6</sup></li> <li>• A letter or email dated within the last 365 days</li> </ul>	<ul style="list-style-type: none"> <li>• Provider shows that the location subscribes or has subscribed within the past 12 months, e.g., with a copy of a customer bill.</li> <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>6</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.”

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
			<p>indicating that a provider requested more than the standard installation fee to connect this location or that a provider quoted an amount in excess of the provider’s standard installation charge in order to connect service at the location.</p>	
S	Speed	The actual speed of the service tier falls below the unserved or	Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests.	Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system. <sup>8</sup>

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<sup>8</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.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
		underserved thresholds. <sup>7</sup>		
L	Latency	The round-trip latency of the broadband service exceeds 100 ms. <sup>9</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>10</sup>
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity	<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>7</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. 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>9</sup> Performance Measures Order, including provisions for providers in non-contiguous areas (§21).

<sup>10</sup> *Ibid.*

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
		allowance (“data cap”) on the consumer. <sup>11</sup>		
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 its 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	Screenshot of provider webpage.	Provider has documentation that the service listed in the BDC is available at the location and is marketed to consumers.

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<sup>11</sup> 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). 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.



Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
		available only to businesses.		
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.	Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
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"> <li>• Construction contracts or similar evidence of on-going deployment, along with evidence that all necessary permits have been applied for or obtained.</li> <li>• Contracts or a similar binding agreement between the state or SBO and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (i.e., a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024.</li> </ul>	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.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
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 out in section 1.3. <sup>12</sup>	Evidence that the location does not fall within the definitions of CAIs set out in section 1.3 or is no longer in operation.
R	Location is	The location is	Evidence that the location	Evidence that the location

<sup>12</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 OBO may rely on other reliable evidence that is verifiable by a third party.

Code	Challenge type	Description	Specific examples of required evidence	Permissible rebuttals
	not a CAI	currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	does not fall within the definitions of CAIs set out in section 4.1 or is no longer in operation.	falls within the definitions of CAIs set out in section 4.1 or is still operational.

### Area challenges

OBO will administer area 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 must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all (served) locations within the area. The provider can use any of the permissible rebuttals listed above.

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

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


Area challenges must be rebutted **in whole or by location** with evidence that service is available for all BSLs 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 must be rebutted with representative, random, samples of the area in contention, but no fewer than 10 data points in which the provider demonstrates service availability and speed (e.g., with a mobile test unit).<sup>13</sup>

### Speed test requirements

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

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<sup>13</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), 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 speedtest.net or other Ookla-powered front ends or M-Lab's speed test services

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 to which the customer subscribes (e.g., a copy of the customer's last invoice)
- An agreement, using an online form provided by OBO, that grants access to these information elements to OBO, 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 to which they subscribe. Because speed tests can only be used to change the status of locations from “served” to “underserved,” only speed tests of subscribers that subscribe to tiers at 100/20 Mbps and above are considered. 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. 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>14</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

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<sup>14</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.

the hours of 7 p.m. and 11 p.m. 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, OBO 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 notification of the challenge process and its deadlines will be actively extended to units of local and Tribal government, relevant nonprofit organizations, and broadband providers through OBO's extensive list of stakeholders developed through its BEAD outreach programs. OBO will also reach out directly to representative associations requesting they share information about the process, as well. This documentation will be posted publicly for at least a week prior to opening the challenge submission window. OBO 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 OBO's website at [https://www.oregon.gov/biz/programs/Oregon\\_Broadband\\_Office/Pages/default.aspx](https://www.oregon.gov/biz/programs/Oregon_Broadband_Office/Pages/default.aspx) for challenge process updates and newsletters. They can engage with OBO through a designated email address: [broadband.oregon@biz.oregon.gov](mailto:broadband.oregon@biz.oregon.gov). Providers will be notified of challenges through [broadband.oregon@biz.oregon.gov](mailto:broadband.oregon@biz.oregon.gov).

Beyond actively engaging relevant stakeholders, OBO 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)



- A summary of the challenge, including whether a provider submitted a rebuttal

After resolving all challenges and at least 60 days before allocating grant funds for network deployment, OBO will provide public notice on its website of the final classification of each unserved location, underserved location, or Eligible Community Anchor Institution within OBO's jurisdiction.

OBO will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses, and customer IP addresses. In so doing, OBO will uphold the Oregon Consumer Information Protection Act, which protects PII. To ensure all PII is protected, OBO will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website, and all handling of PII will follow standard best-practice protocols for storing, encrypting, and protecting PII, including masking data and controlling access to data. Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly.

Proprietary and confidential information submitted by an existing internet service provider will be treated consistently with applicable state and federal law. If responses 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.

## 6. Public comment process

This section describes the public comment period conducted for the Initial Proposal Volume I and provides a high-level summary of the comments received as well as how they were addressed by OBO.

A public meeting was held in advance of the public comment period on October 17, 2023 to review the Initial Proposal.

OBO made Volume I available for public comment for a period of 30 days ending on October 20, 2023, to gather feedback from stakeholders and promote transparency in the development of the Proposal. OBO conducted a separate comment period for the Initial Proposal Volume II, which is described in that volume, following the same process.

A draft of Volume I was posted publicly on OBO's website with a description of its role in the BEAD program and an invitation to submit comments on the content through an online portal. This inbox was monitored by OBO for the duration of the comment period.

To encourage broad awareness, participation, and feedback during the public comment period, OBO conducted outreach and engagement activities to solicit participation by a diverse range of stakeholders, with a particular focus on tribal governments, local community organizations, unions and worker organizations, and other underrepresented groups. OBO also worked with the [Oregon Broadband Advisory Council](#) to provide information about Volume I through an open meeting on September 11, 2023. In addition, OBO held office hours with groups of community partners and ISPs to provide a more informal opportunity for question and answer about the Challenge Process in Volume I. OBO invited NTIA to participate in these sessions, as well.

OBO received comments from a variety of stakeholders within Oregon, including providers, trade associations, higher education institutions, nonprofits and municipalities.

At a high level, these comments addressed the inclusion of additional locations to be submitted as Community Anchor Institutions. In response, OBO included emergency response locations that would have a need to facilitate the use of internet service. Some commenters suggested changes that, while they have merit, cannot be incorporated into this Initial Proposal because the suggestions run contrary to NTIA's guidance, interfere with the NTIA Model Challenge Process,

or were already incorporated in other ways into the Initial Proposal. Others noted that the NTIA has released updated guidance as OBO was preparing the draft Initial Proposal for public comment and requested that the Initial Proposal be revised to reflect that guidance. EducationSuperHighway asked for a change from NTIA's model Challenge Process with respect to the MDU Challenge Module. After further consideration, OBO will continue utilizing the NTIA model language. One commenter offered suggestions related to workforce readiness, which OBO will further review as part of the Initial Proposal Volume II submission.

OBO carefully considered the feedback it received from a variety of stakeholders to inform this Proposal. The comments received, as well as the state's responses to those comments, are documented in the Local Coordination Tracker Tool, which is attached to the Initial Proposal Volume II as Appendix A.

OBO will continue to take this input into account as it implements the Challenge Process and develops the Final Proposal and will conduct ongoing communications to inform and engage the public through this process.

## Appendix 1: Descriptions of existing funding for broadband in Oregon

Source	Purpose	Total	Expended	Available
American Rescue Plan Act	Planning and deployment for broadband infrastructure	\$157,295,418	\$79,208	\$157,216,210

## **Appendix 2: Location IDs of all unserved locations**

This appendix is presented as a separate file.

### **Appendix 3: Location IDs of all underserved locations**

This appendix is presented as a separate file.

**Appendix 4: List of eligible CAIs that do not currently have qualifying broadband service (1/1 Gbps)**

This appendix is presented as a separate file.

## Appendix 5: List of federal and state programs analyzed to remove enforceable commitments from the locations eligible for BEAD funding

Program name
FCC Rural Digital Opportunity Fund (RDOF)
NTIA Tribal Broadband Connectivity Program (TBCP)
FCC Connect America Fund Phase II (CAF-II)
United States Department of Agriculture (USDA) ReConnect
USDA Community Connect
Treasury Capital Projects Fund
NTIA Middle Mile Program
FCC Enhanced Alternative Connect America Cost Model (E-ACAM)