undersized red grouper that are harvested seaward of a line approximating the 35-fathom (64-meter) contour on 3 federally permitted commercial vessels with eastern Gulf reef fish bottom longline endorsement (project vessels). The EFP would allow the applicant to study an optimized retention management strategy that would require retention of all undersized red grouper harvested by bottom longline gear in Gulf Federal waters deeper than 35 fathoms (64 meters). The project would also examine the effectiveness of incentivizing bottom longline fisherman to target fishing areas where undersized red grouper discards are historically low.

Over 6 years of electronic monitoring (EM) data collected by the applicant indicates that in the primary red grouper commercial fishing areas of the eastern Gulf, 46.7 percent of red grouper harvested in waters less than 35 fathoms (64 meters) are undersized and discarded. Of those discarded undersized red grouper, an estimated 25 percent of those discarded red grouper die after release. For red grouper commercially harvested in water deeper than 35 fathoms (64 meters), 18.7 percent of the fish are undersized and discarded, of which 42.7 percent estimated to die. These derived discard mortality estimates are a minimum value for bottom longline gear given the increased biological stresses on discarded fish that can occur when using this gear type. In 2018, the Southeast Data Assessment and Review 61, used a discard mortality rate of 44.1 percent for red grouper harvested with bottom longline gear.

The optimized retention management strategy tested under the EFP would require retention of all undersized red grouper harvested deeper than 35 fathoms on the three project vessels during their normal fishing operations. The applicant chose the 35 fathom (64 meter) depth contour based on the EM discard data, which indicates that approximately 3,000 lb (1,361 kg), gutted weight, of undersized red grouper would be subjected to high post-release mortality (and thus lost to both the fishery and the population) and could be sustainably retained. Therefore, the undersized fish retention limit is expected to eliminate red grouper discards in water deeper than 35 fathoms (64 meters). The 35 fathom (64 meter) depth contour is also consistent with the Gulf reef fish bottom longline seasonal prohibition in 50 CFR 622.35(b)(1).

The EFP would be effective from January 1, 2024, through December 31, 2024, or until the project vessels have retained a combined 3,000 lb (1,361 kg), gutted weight, of undersized red grouper. The three project vessels would be equipped with EM systems, which use multiple cameras and sensors to record fishing activity, and would be required to have the EM systems on during all commercial fishing activities. In Gulf Federal waters, all commercial grouper harvest occurs within the individual fishing quota (IFQ) system where each participating commercial vessel may harvest up to their respective allocation, in pounds, of an IFQ species. The three project vessels are part of the IFQ system and will possess the necessary red grouper allocation to harvest the amount of fish requested under the EFP. The three vessels will not be changing their normal fishing activities or normal fishing locations for the project, and except for the limited retention of undersized red grouper, would comply with all other applicable Federal regulations.

Undersized red grouper that are harvested in waters seaward of the line approximating the 35 fathom (64 meter) depth contour will be fitted with unique tags supplied to each vessel for this project. The tag will facilitate dockside sorting where these tagged undersized red grouper will be weighed separately to ensure that the poundage from undersized red grouper counted towards the total allowable amount under the EFP. Undersized red grouper will be weighed and processed through the IFQ system and assigned their own separate category on the weigh-out ticket, to note any pricing differences from the rest of the IFQ catch. The tagged fish will be further utilized by Florida Fish and Wildlife Conservation Commission (FWC) dockside samplers who will obtain biological data (*e.g.,* length measurements, otoliths). The FWC will provide the otoliths with corresponding individual fish information to the NMFS laboratory in Panama City, Florida for aging analysis. Lastly, after the needed sampling, these fish will be sold by IFQ dealers and marketability of undersized red grouper would be assessed.

All trips made by the 3 project vessels will include 100 percent video review using established and approved protocols to verify fishing and project activity. The fish tags will serve to link each fish to a specific location of capture, documented through the EM systems and vessel monitoring system. Fish catch locations will be linked with associated metadata (*e.g.,* depth, bottom type), available in a database of environmental, bathymetric, and physical data.

NMFS finds the application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on the EFP, if granted, include but are not limited to, a prohibition on fishing within marine protected areas, marine sanctuaries, or special management zones without additional authorization.

A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the appropriate fishery management agencies of the affected states, the Gulf of Mexico Fishery Management Council, and the U.S. Coast Guard, and a determination that the activities to be taken under the EFP are consistent with all other applicable laws.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 2023.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–14186 Filed 7–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No.: 230622–0154]

Tailoring the Application of the Uniform Guidance to the BEAD Program; Request for Comments

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; request for comment.

SUMMARY: The Broadband Equity, Access and Deployment (BEAD) Program was established in November 2021 through the Infrastructure Investment and Jobs Act, also known (and referred to subsequently herein) as the Bipartisan Infrastructure Law. Under the BEAD Program, the National Telecommunications and Information Administration (NTIA) is responsible for administering $42.45 billion in grants to the States, Territories, and the District of Columbia (Eligible Entities) with the principal focus of ensuring that every American has access to affordable, reliable high-speed internet service. Various stakeholders have requested NTIA to consider exemptions of certain provisions of OMB's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) from application to grants and subgrants awarded under the BEAD Program. In this Notice, NTIA seeks public comment on the issues raised by stakeholders and other questions relating to the

relationship between the Uniform Guidance and the BEAD Program.

DATES: Submit written comments on or before 5 p.m. Eastern Standard Time on August 4, 2023.

ADDRESSES: You may submit public comments on this action, identified by *Regulations.gov* docket number NTIA–2023–0007, by any of the following means:

1. Using the Federal e-Rulemaking Portal at *http://www.regulations.gov* (our preferred method). The docket established for this opportunity to comment can be found at *www.Regulations.gov,* NTIA–2023–0007. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

2. Mailing a printed submission to National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4878, Washington, DC 20230, Attention: BEAD Uniform Guidance RFC.

Please submit your comments in only one of these ways to minimize the receipt of duplicate submissions.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Notice to Sean Conway at *sconway@ntia.gov,* indicating ''BEAD Uniform Guidance Request for Comment'' in the subject line, or if by mail, addressed to Sean Conway, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; or by telephone: (202) 482–1816. Please direct media inquiries to NTIA's Office of Public Affairs, *press@ntia.gov* or (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Management and Budget (OMB) released the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR part 200) (Uniform Guidance) on December 26, 2013, which consolidated eight existing Federal circulars into a single guidance document. The Uniform Guidance streamlined and eased administrative burdens across the Federal Government in the administration of Federal financial assistance programs, thus increasing the efficiency and effectiveness of Federal awards, while also strengthening oversight over Federal funds to prevent waste, fraud, and abuse. OMB may allow exceptions from the requirements of the Uniform Guidance, pursuant to 2 CFR 200.102.

The Uniform Guidance generally sets out requirements for Federal awards to ''non-federal entities.'' [1] While commercial entities do not fall within the definition of non-Federal entities, the Uniform Guidance provides that ''[f]ederal awarding agencies may apply subparts A through E'' of these rules to other types of entities, including ''for-profit entities.'' [2] Federal agencies administering Federal financial assistance programs may, and often have, adopted standard terms and conditions (ST&Cs) to implement the Uniform Guidance and provide additional guidance to subagencies and relevant stakeholders (*e.g.,* applicants). Federal agencies can, for example, expand application of the Uniform Guidance to include commercial entities through (a) the operation of an agency's Federal financial assistance ST&Cs and/or (b) the ''pass through'' provisions of the Uniform Guidance when a non-Federal entity issues a subaward to a commercial entity.[3]

The Department of Commerce (DOC) adopted the Uniform Guidance and gave it regulatory effect in December 2014.[4] The DOC has extended its application of the Uniform Guidance to commercial entities in its Financial Assistance Standard Terms and Conditions (DOC ST&Cs), which governs implementation of DOC financial assistance awards.[5] Thus, absent modification of the ST&Cs, the DOC ST&Cs require that DOC's Federal financial assistance programs apply the Uniform Guidance to both non-Federal entities and commercial entities.

In accordance with the DOC ST&Cs, NTIA has routinely applied the relevant subparts of the Uniform Guidance to non-Federal entities and commercial entities in its grant programs that fund last mile and middle mile broadband deployment, such as the Broadband Technologies Opportunities Program (BTOP), the Broadband Infrastructure Program, the Tribal Broadband Connectivity Program, and the Middle Mile Grants Program established by the Bipartisan Infrastructure Law. Such application of the Uniform Guidance occurred without significant opposition, or even significant discussion, from applicants or program participants or apparent material impact on the programs or the projects funded thereunder.

Consistent with this approach, the Notice of Funding Opportunity (NOFO) for the BEAD Program provides that the Uniform Guidance and DOC ST&Cs will apply to the BEAD Program.[6]

II. Request for Comment

Following publication of the NOFO, various stakeholders requested that NTIA clarify the extent to which the Uniform Guidance applies to grants and subgrants awarded under the BEAD Program, if at all, and identified provisions of the Uniform Guidance that they argue will deter the participation of internet service providers (ISPs) in the BEAD Program and/or increase the costs that subgrantees will incur—and the award amounts they will require—to participate in the program without concomitant benefit. These stakeholders also requested that NTIA address their concerns by waiving or otherwise modifying the application of the Uniform Guidance to the BEAD Program.

This Request for Comment affords all interested persons an opportunity to provide input on any exemptions from the Uniform Guidance that might help facilitate the implementation of the BEAD Program. Given the unprecedented amount of funding Congress made available through the BEAD Program and the scale, scope, and character of the deployment challenge the Program is designed to resolve, it is critically important that NTIA operate this program as effectively and efficiently as possible, while also ensuring a high level of accountability to prevent waste, fraud, and abuse. This approach will further the goal of ensuring all Americans have access to affordable, reliable, high-speed internet service.

The BEAD Program differs from prior Federal broadband funding programs administered by NTIA, the Federal Communications Commission (FCC), the United States Department of Agriculture, and other Federal entities in important ways. First, the BEAD

[1] 2 CFR 200.102(a)(1); *see also* 2 CFR 200.1 (defining ''Non-Federal entity'' to mean ''a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.'').

[2] 2 CFR 200.101(a)(2).

[3] 2 CFR 200.331.

[4] *See* 2 CFR 1327.101; Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 79 FR 75867.

[5] Department of Commerce, Financial Assistance ST&Cs, Preface (11/12/20) (''[U]nless otherwise provided by the terms and conditions of this DOC financial assistance award, subparts A through E of 2 CFR part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.'').

[6] NTIA, Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program (hereinafter ''NOFO'') at 86, section VII.D.1–2 (2022).

Program is the first broadband funding program to require that awardees ensure the delivery of qualifying broadband service to *all* unserved locations, and (to the extent funds are available) all underserved locations within their jurisdiction. Prior programs have targeted areas with specific demographic characteristics (*e.g.,* rural areas) or particular classes of network operators (*e.g.,* rate of return incumbent local exchange carriers), resulting in significant, but incomplete, improvements in availability. But Congress mandated that the BEAD Program ensure universal availability of high-speed internet access, including to those locations that have not been addressed by prior programs because they have proven to be the most difficult and expensive to serve. This unprecedented effort will require that each Eligible Entity maximize incentives for provider participation.

To meet this challenge, the BEAD Program will provide a historic level of grant funding, providing significant resources to every State, Territory, and the District of Columbia. Each of these Eligible Entities will be required to conduct a ''subgrantee selection process'' to identify subgrantees [7] that will build and operate networks to deliver qualifying broadband service to every unserved and underserved location in its jurisdiction. Subgrantees that receive awards from Eligible Entities to build broadband networks in many cases likely will retain ownership of those networks in perpetuity, subject to award conditions mandating that, for a designated period of time, the applicable program requirements are met and the public continues to benefit from this Federal investment.

The relevant provisions of the Bipartisan Infrastructure Law use the terms ''subgrantee'' and ''subgrant''—rather than ''subrecipient'' or ''subaward'' as used in the Uniform Guidance.[8] Faithfully implementing these statutory provisions, the NOFO uses this same terminology and explains that ''[a]s used herein, the terms 'subgrantee' and 'subgrant' herein are meant to have the same meaning, respectively, as the terms 'subrecipient' and 'subaward'.'' [9] While some have argued that Eligible Entities should be permitted to structure BEAD Program subgrants as ''contracts,'' NTIA continues to adhere to the interpretation that awards are made as ''subgrants'' to ''subgrantees,'' and that ''subgrantees'' are not performing BEAD Program projects as contractors to the Eligible Entity. They are, instead, subrecipients ''carrying out a portion of a Federal award.'' [10] This key statutory difference notwithstanding, NTIA below requests comment on proposals to modify the application of certain provisions of the Uniform Guidance consistent with the U.S. Department of the Treasury's (Treasury Department) Coronavirus State and Local Fiscal Recovery Funds and Capital Projects Fund Supplementary Broadband Guidance.[11]

NTIA Seeks Public Comment on the Following Areas Relating to the Relationship Between the Uniform Guidance and the BEAD Program (Inclusive of 15 Questions)

A. Program Income and ''Profit''

The Uniform Guidance defines program income as earned income ''that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance.'' [12] The Uniform Guidance, together with the DOC ST&Cs, does not permit recipients and subrecipients to retain program income without restriction, but instead prescribes three permissible uses during the period of performance: (1) to offset total allowable costs (*i.e.,* the deduction method), (2) to satisfy cost sharing or match requirements (*i.e.,* the cost sharing method), and (3) to add to the total allowable costs for a project (*i.e.,* the addition method).[13] Relatedly, the Uniform Guidance states that recipients and subrecipients ''may not earn or keep any profit resulting from Federal financial assistance unless explicitly authorized by the terms and conditions of the award.'' [14]

In the context of broadband projects in the Capital Projects Fund (CPF) and State and Local Fiscal Relief Fund (SLFRF) programs, the Treasury Department is allowing CPF and SLFRF subrecipients to retain program income for use without restriction, including keeping it as profit.

NTIA tentatively agrees with the Treasury Department's approach to program income. In creating the BEAD Program, Congress established competitive subrecipient selection processes as the principle means for disbursing BEAD subawards.[15] The NOFO includes a number of provisions aimed at implementing this statutory directive, and it recognizes that robust competition holds ''the potential to offer consumers more affordable, high-quality options for broadband service.'' [16] Further, the Biden-Harris Administration has made competition a priority across the economy, recognizing in the Executive Order on Promoting Competition in the American Economy that competition means ''better service[,] and lower prices'' for consumers.[17]

As discussed above, maximizing provider participation in the BEAD Program is a key to ensuring its success. Broad participation facilitates competition, and the opportunity for providers to retain program income to support their business case and to avoid the transaction costs of tracking income generated on Program-funded network assets separate from other operating income will help stimulate participation.

Internet service is provided by a multitude of types of entities, including cooperatives, nonprofit organizations, public-private partnerships, utilities, public utility districts, local governments, and, most commonly, private companies. While some of these

[7] Subgrantees may be traditional commercial broadband ISPs or ''non-traditional broadband providers,'' meaning ''an electric cooperative, nonprofit organization, public-private partnership, public or private utility, public utility district, Tribal entity, or local government (including any unit, subdivision, authority, or consortium of local governments) that provides or will provide broadband services.'' BEAD NOFO at 14, section I.C.(p).

[8] Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60104, Public Law 117–58, 135 Stat. (Nov. 15, 2021) (otherwise known as the Bipartisan Infrastructure Law).

[9] ''[A]pplicable regulations governing federal financial assistance generally use the term subrecipient' to refer to what the Infrastructure Act calls 'subgrantees' and the term 'subaward' to refer to what the Infrastructure Act calls 'subgrants',' and concluded that ''the terms subgrantee' and 'subgrant' herein are meant to have the same meaning, respectively, as the terms 'subrecipient' and 'subaward' in those regulations and other governing authorities.'' BEAD NOFO at n 15.

[10] 2 CFR 200.331(a).

[11] *See* SLFRF and CPF Supplementary Broadband Guidance, U.S. Department of the Treasury, May 17, 2023, *https://home.treasury.gov/system/files/136/SLFRF-and-CPF-Supplementary-Broadband-Guidance.pdf.* NTIA and the Treasury Department closely coordinated their respective approaches on this topic. While the proposals in this Notice are directionally aligned with the Treasury Department's final guidance, certain statutory and programmatic differences will likely warrant some variations in the application of the Uniform Guidance to the BEAD program, on the one hand, and the relevant Treasury Department programs, on the other hand.

[12] *See* 2 CFR 200.1.

[13] *See* 2 CFR 200.307(e); DOC ST&Cs at section B.05. The ''deduction'' method is the default rule when ''the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used.'' 2 CFR 200.307(e).

[14] 2 CFR 200.400(g).

[15] 47 U.S.C. 1702(e)(3)(A)(i)(IV).

[16] NOFO at 50, section IV.C.1.a.

[17] Executive Order on Promoting Competition in the American Economy, July 9, 2021, *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.*

provider types may not need to earn profit to justify infrastructure investment, a profit opportunity will improve the business case for all providers, and thereby create incentives for others to participate.

Moreover, as discussed above, incentives for broad participation are needed to address the unique challenges for which the BEAD Program was created to solve. Unserved and underserved areas present significant barriers for service, as evidenced by the lack of existing high-speed internet infrastructure even after decades of the Federal efforts to expand broadband deployment in these areas. Indeed, the lack of a sustainable business case—namely a business case that generates a reasonable return on investment—is a core problem the BEAD Program is designed to address. The program income rules will in many cases prevent providers from earning a reasonable return on investment during the period of performance, and would not address the economic conditions that have stunted investment in these areas.

The increased incentive for providers to participate in the BEAD Program and compete for grant funding may also help extend the benefits of the BEAD Program to more Americans. Competition for a given set of locations will reduce the level of grant funding required on a per location basis. Efficient funding levels will in turn create opportunities for Eligible Entities to ensure that broadband network facilities are deployed to all unserved and underserved locations within their jurisdiction, and potentially pursue eligible access-, adoption-, and equity-related uses.[18]

For these reasons, the program income provisions of the Uniform Guidance and DOC ST&Cs may be counterproductive in this specific context.

Question 1: The Uniform Guidance allows Federal awarding agencies to adjust requirements to a class of awards when approved by OMB.[19] Pursuant to this authority, NTIA proposes to seek from OMB an exemption from the Uniform Guidance's requirements for recipients and subrecipients to retain program income without restriction, including retaining program income for profit.[20] NTIA would also seek conforming changes to the award terms in light of Section B.05 of the DOC ST&Cs. NTIA seeks comment on this proposal.

In responding to Question 1, commenters should take into account NTIA's interpretation of Section V.H.2.b. of the NOFO.[21] Section V.H.2.b. states that a profit, fee, or other incremental charge above the actual cost incurred by a subrecipient is not an allowable cost.[22] This provision prohibits subrecipients from charging profit as an allowable cost under its grant. In other words, the subrecipient should not expect that the Federal Government will pay the subrecipient a profit from the grant amount for the subrecipient's performance. This NOFO language does *not* prohibit program income derived from the servicing and use of supported networks and connections (*e.g.,* wholesale revenues, end-user subscription revenues, etc.) for such subgrants. Program income is ordinarily encouraged in financial assistance awards, and the only difference presented by the proposal in Question 1 would be expanding the permissible use of program income. NTIA plans to otherwise apply the program income provisions of 2 CFR 200.307 and Section B.05 of the DOC ST&Cs.

B. Fixed Amount Subawards and Cost Principles

The Uniform Guidance defines fixed amount subawards as those in which a ''pass-through entity provides a specific level of support without regard to actual costs incurred under the [subaward].'' [23] This type of subaward reduces some of the administrative burden and record-keeping requirements for both subrecipients and the pass-through entities.[24] Section 200.201 of the Uniform Guidance permits pass-through entities to use fixed amount awards only if the project scope has measurable goals and objectives, and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost.[25] The Uniform Guidance prohibits the use of fixed amount subawards in programs requiring mandatory cost sharing or match,[26] and generally limits pass-through entities from providing fixed amount subawards exceeding the Simplified Acquisition Threshold, which is $250,000.[27]

The Federal Government's cost principle rules do not apply as compliance requirements to fixed amount subawards. Instead, the cost principles are used as a guide when budgeting for the work that will be performed. The Treasury Department is allowing CPF and SLFRF pass-through entities to structure broadband infrastructure subawards as fixed amount subawards. The cost principle rules thus will not apply as compliance requirements to subrecipients of those subawards.

NTIA tentatively agrees with the Treasury Department's approach in this area. Competitive subrecipient selection processes, as directed by Congress in the Bipartisan Infrastructure Law, are likely to result in fixed amount broadband infrastructure subawards that have measurable goals and objectives.[28] Moreover, the NOFO's implementing provisions requiring that such selection processes are fair and open will help deliver adequate cost data necessary to establish fixed amount subawards that are based on a reasonable estimate of actual costs.[29]

In addition, under the BEAD NOFO, the total amount of grant funding requested is among the criteria that Eligible Entities must give the greatest weight in deciding among competitive projects covering the same location or locations, which gives potential subgrantees significant financial incentive to estimate their costs conservatively.[30] We also note that NTIA is developing in coordination with the FCC a broadband deployment cost model to determine high-cost areas, a model that will provide agency staff an additional tool for evaluating whether a potential subgrantee's cost estimates are reasonable estimates of actual costs.

For the reasons above, we believe the structure of the BEAD program and certain program features justify treating BEAD subgrants as fixed amount subawards. We expect this classification will result in fewer administrative burdens on Eligible Entities and subgrantees which should result in the more efficient administration of the BEAD program and more efficient use of program funding.

At the same time, it is important to minimize the risk of waste, fraud, and abuse. We therefore propose requiring Eligible Entities as a condition of their BEAD grants to monitor the costs of their subrecipients using reasonable and appropriate accounting methodologies. An Eligible Entity, for example, could require subgrantees to periodically report their expenses for grant-funded

[18] *See* NOFO at 7, section I.B.1.

[19] *See* 2 CFR 200.102(c).

[20] 2 CFR 200.307(e); 2 CFR 200.400(g).

[21] *See* NOFO at 82, section V.H.2.b.

[22] *See id.*

[23] 2 CFR 200.1.

[24] *See id.*

[25] 2 CFR 200.201(b).

[26] 2 CFR 200.201(b)(2).

[27] *See* 2 CFR 200.333; *see also* 48 CFR part 2, subpart 2.1.

[28] *See* 47 U.S.C. 1702(f).

[29] *See* NOFO at 35, section IV.B.7.

[30] *See id.* at 43, section IV.B.7.b.2.i.

projects using the recipient's existing accounting methodology so long as it meets Generally Accepted Accounting Principles or other standard accounting practices.[31] By imposing measures to validate that fixed amount awards reasonably approximate the actual cost of broadband infrastructure deployment or other BEAD Program projects, we will minimize the risk of misuse of taxpayer resources.

Question 2: As further addressed below, NTIA proposes to seek from OMB the necessary exceptions to the Uniform Guidance rules to allow Eligible Entities to issue fixed amount BEAD Program subawards of any amount for broadband infrastructure projects. Is it reasonable to assume that the subgrantee selection process, as specified in the Bipartisan Infrastructure Law and BEAD NOFO, will ensure that each project has ''measurable goals and objectives'' and provide ''a reasonable estimate of actual cost''? [32]

Question 3: The Uniform Guidance prohibits the use of fixed amount awards or subawards in programs requiring mandatory cost sharing or match, as is the case in the BEAD Program.[33] NTIA thus proposes to seek from OMB an exemption for the class of subawards identified in sections 60102(f)(1), (2), and (4) of the Bipartisan Infrastructure Law from the prohibition on the use of fixed amount awards in programs requiring mandatory cost sharing or match.[34] As previously addressed, the Uniform Guidance allows Federal awarding agencies to adjust requirements to a class of awards when approved by OMB.[35] NTIA seeks comment on this proposal.

Question 4: The Uniform Guidance generally limits pass-through entities from providing fixed amount subawards exceeding the Simplified Acquisition Threshold, which is $250,000.[36] Many BEAD subgrants related to broadband deployment and connections will exceed $250,000. NTIA thus proposes to seek from OMB an exemption of the class of subawards identified in § 60102(f)(1), (2), and (4) of the Bipartisan Infrastructure Law from the rule limiting pass-through entities from providing subawards on fixed amounts exceeding the Simplified Acquisition Threshold.[37] NTIA seeks comment on this proposal.

Question 5: In the case of fixed amount subawards, the Uniform Guidance provides that payments are based on meeting specific requirements of the subaward. It further offers some ways in which the subaward may be paid.[38] Options include, but are not limited to, (1) in several partial payments, the amount of each agreed upon in advance, and the ''milestone'' or event triggering the payment also agreed upon in advance, and set forth in the award; (2) on a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; and (3) in one payment at award completion. NTIA seeks comment on whether to specify through guidance or a special award condition the form in which fixed amount subawards by Eligible Entities should be paid.

Question 6: While the Federal Government's cost principle rules do not apply as compliance requirements to fixed amount subawards, the Uniform Guidance requires fixed subaward amounts to be negotiated using the cost principles (or other pricing information) as a guide.[39] As discussed above, the BEAD Program's competitive subaward selection process must, by statute, be fair and open and will help deliver adequate cost data necessary to establish fixed amount subawards that are based on a reasonable estimate of actual costs. Is the information that Eligible Entities will obtain from the subgrantee selection process sufficient ''other pricing information?'' Are there circumstances under which NTIA should issue a special award condition instructing subrecipients of fixed amount subawards to use as a guide the cost principles that would otherwise apply, such as the Eligible Entity's extremely high cost per location threshold? [40]

Question 7: NTIA seeks comment on the nature and scope of any related adjustments to the requirements of the Uniform Guidance that may be required if broadband infrastructure subgrants are treated as fixed amount awards. For example, what additional steps, if any, should NTIA take to ensure that BEAD Program funds are used solely for the purposes intended? What additional steps, if any, should NTIA take to ensure that Eligible Entities are issuing awards at levels reasonably related to provider costs? What additional steps, if any, should NTIA take to ensure that other programmatic requirements (*e.g.,* that a subgrantee provide matching funds of not less than 25 percent of project costs) are met by Eligible Entities and subgrantees?

NTIA plans to otherwise apply the fixed amount award provisions of 2 CFR 200.201(b) and the cost principle provisions of 2 CFR part 200, subpart E to State, Territorial, local or federally-recognized Indian Tribal Governments and 48 CFR part 31 to commercial organizations.

C. Procurement

The Uniform Guidance generally imposes procurement rules on recipients and subrecipients that use federal assistance funds to obtain property or services.[41] The underlying objective of these rules is to ensure that procurement processes sufficiently guard against waste, fraud, and abuse.

The Treasury Department is allowing pass-through entities in the CPF and SLFRF programs to waive the procurement rules for subrecipients of fixed amount broadband infrastructure subawards. An awarding agency may provide less restrictive requirements when making fixed amount awards.[42] In determining whether the procurement rules of the Uniform Guidance should apply to BEAD Program subgrants, it is worth noting that many broadband providers already utilize competitive procurement processes that align with the spirit, if not the specific provisions, of the Uniform Guidance's procurement rules. The risk of waste, fraud, and abuse is further diminished by the congressional directive that Eligible Entities ''competitively award'' such subgrants.[43]

Question 8: If NTIA chooses to seek the exceptions necessary to allow Eligible Entities to issue fixed amount BEAD Program subawards, NTIA further proposes to issue a special award condition authorizing Eligible Entities to provide subrecipients an exception from the procurement requirements codified in 2 CFR 200.318–320 and 200.324–326 when using fixed amount subawards. The special award condition

[31] *See* Accounting Standards Codification, Financial Accounting Standards Board, *FASB.org*.

[32] *See* 2 CFR 200.201(b)(1).

[33] 2 CFR 200.201(b)(2).

[34] The class of subawards identified in sections 60102(f)(1), (2), and (4) of the Bipartisan Infrastructure Law is that which would be used for internet infrastructure projects. Consistent with the Treasury Department's approach to provide exceptions from the Uniform Guidance to internet infrastructure projects, NTIA is proposing to provide this exception to the class of subawards that would support internet infrastructure projects.

[35] *See* 2 CFR 200.102(c).

[36] *See* 2 CFR 200.333; *see also* 48 CFR part 2, subpart 2.1.

[37] 2 CFR 200.333.

[38] 2 CFR 200.201(b)(1).

[39] *See* 2 CFR 200.201(b).

[40] *See* NOFO at 13, section I.C.(k) (defining ''extremely high cost per location threshold''); *id.* at 81, section V.H.1 (applying the cost principles in 2 CFR part 200, including subpart E, to States and non-profit organizations, and the cost principles in 48 CFR part 31 to commercial organizations).

[41] *See* 2 CFR 200.318–327.

[42] *See* 2 CFR 200.102(c).

[43] *See* 47 U.S.C. 1702(f).

excepting procurement requirements also would require the Eligible Entity to obtain certifications from subrecipients that the subrecipient used competitive procurement processes in executing the project. NTIA seeks comment on this proposal.

NTIA plans to otherwise apply the procurement provisions of 2 CFR 200.318–327.

D. Property Standards

The Uniform Guidance's property standards, in conjunction with the DOC ST&Cs, provide NTIA with a framework for holding subrecipients accountable and ensuring that BEAD investments deliver for the American people.[44] This framework provides standards and procedures for ownership, title, use, management, and disposition of property acquired with DOC financial assistance. In applying this framework to BEAD-funded networks, NTIA's overarching goals are to ensure that BEAD subawards are used for their intended purposes; to prevent the unjust enrichment of subrecipients; and to minimize administrative burdens that could materially impact the incentives of traditional and non-traditional broadband providers to participate in the program.

1. Useful Life of BEAD-Funded Equipment

The Uniform Guidance requires real property and equipment acquired or improved with a subgrant to be held in trust for the beneficiaries of the BEAD Program.[45] The DOC ST&Cs further provide that this trust relationship exists throughout the duration of the property's estimated useful life (the Federal Interest Period).[46] Subrecipients must comply with all ownership, title, use, management, and disposition requirements as set forth in 2 CFR 200.310 through 200.316, as applicable, and in the terms and conditions of the Federal award throughout the Federal Interest Period.[47] The duration of Federal Interest Period is determined by the grants officer in consultation with the program office.[48]

Question 9: The Treasury Department is assigning one uniform period of time for all funded broadband infrastructure property in its SLFRF and CPF. NTIA proposes to take a similar approach in the BEAD program. Specifically, NTIA proposes a Federal Interest Period of 20 years, which is consistent with the expected useful life of fiber optic cable.[49] NTIA seeks comment on this proposal. Alternatively, NTIA seeks comment on whether to issue a schedule defining the Federal Interest Period as the useful life for different categories of BEAD-funded personal property. If commenters favor the development of such a schedule, what are the relevant categories, types, and estimated useful life of BEAD-funded equipment and property?

2. Use of Real Property and Equipment

The Uniform Guidance establishes use requirements on real property and equipment acquired under a Federal award or subaward during the Federal Interest Period. One such requirement is that the real property and equipment must be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award.[50] Another such requirement is for the recipient or subrecipient to make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program which it was originally acquired.[51] The Uniform Guidance also provides that equipment may be used in other activities supported by the Federal awarding agency.[52] The Treasury Department is applying a modified version of these use requirements to broadband infrastructure fixed amount subawards in its CPF and SLFRF programs.

Question 10: The Uniform Guidance allows Federal awarding agencies to apply less restrictive requirements when making fixed amount subawards.[53] Should NTIA employ this authority with respect to any of the previously described use requirements? If so, explain why.

NTIA plans to otherwise apply the real property and equipment use provisions of 2 CFR 200.311(b) and 2 CFR 200.313(c)(1)–(2).

3. Equipment Management Requirements

The Uniform Guidance provides specific procedures for managing equipment (including replacement equipment) acquired in whole or in part under a Federal award or subaward.[54] The Treasury Department guidance requires broadband infrastructure subrecipients in the SLFRF and CPF programs to comply with the requirements in section 200.313(d) of the Uniform Guidance, which may be satisfied by applying the ISP's commercial practices for meeting such requirements in the normal course of business (*e.g.,* commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable Federal interest.

Question 11: Do existing commercial practices for managing equipment deployed as part of a broadband network contemplate the same or similar activities as those identified in section 200.313(d) of the Uniform Guidance (*e.g.,* maintenance of property records, regular physical inventories, commercial inventory controls, maintenance procedures, and resale procedures)? NTIA recognizes that inventory controls indicating the applicable Federal interest are critical tools for guarding against waste, fraud, and abuse. Inventory Controls are also particularly important for tracking and, to the extent necessary, enforcing the Federal Government's reversionary interest in BEAD equipment. Would commercial inventory controls indicate the Federal interest in equipment? Commenters should provide detailed analyses comparing existing commercial practices to the requirements identified in section 200.313(d). If such commercial practices do contemplate the same or similar activities, should NTIA provide an exception to the equipment management requirements in section 200.313(d) for those broadband infrastructure subrecipients that certify that they use commercial practices for managing equipment deployed as part of a broadband network? Should any such exception be conditioned on the subrecipient's obligation to make the records available pursuant to those commercial practices available to the Eligible Entity and to NTIA for review on request?

NTIA plans to otherwise apply the equipment management provisions of 2 CFR 200.313(d).

[44] *See* 2 CFR 200.310–316; DOC ST&Cs at section C.02.

[45] *See* 2 CFR 200.316.

[46] *See* DOC ST&Cs at section C.02.

[47] *Id.*

[48] *Id.*

[49] ''Planning and Flexibility Are Key to Effectively Deploying Broadband Conduit through Federal Highway Projects,'' Government Accountability Office, at 4, June 27, 2012, *https://www.gao.gov/assets/gao-12-687r.pdf* (''Industry documentation estimates that the expected useful life of fiber cables is between 20 and 25 years and that the expected useful life of underground conduit is between 25 and 50 years.'').

[50] 2 CFR 200.311(b); 2 CFR 200.313(c)(1).

[51] 2 CFR 200.313(c)(2).

[52] 2 CFR 200.313(c)(1).

[53] *See* 2 CFR 200.102(c).

[54] *See* 2 CFR 200.313(d).

4. Equipment Upgrades and Network Evolution

The Uniform Guidance and DOC ST&Cs contain specific provisions regarding the replacement of equipment and the disposition of equipment no longer needed for the original project or program.[55] With respect to acquiring replacement equipment, the Uniform Guidance provides that subrecipients may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.[56] When equipment acquired under a Federal subaward is no longer needed for the original project, subrecipients must request disposition instructions from the Federal awarding agency.[57] The Treasury Department is allowing broadband infrastructure subrecipients in its SLFRF and CPF programs to dispose of equipment in the ordinary course of business when no longer needed to operate the network, subject to the conditions that the subrecipient provide notice to the Treasury Department, the same level of service provided by the network is maintained, there is no material interruption to service, and the upgraded property is subject to the same property requirements are the original property.

The equipment replacement and disposition requirements play an important role in safeguarding the Federal interest in real property acquired or improved under a Federal award. At the same time, requiring subrecipients of internet infrastructure subawards to sell older equipment in every instance of equipment upgrades, or obtain instructions for every instance of equipment disposition, may prove impractical given the scale and duration of the BEAD Program. Moreover, it may unintentionally chill efforts by BEAD subrecipients to upgrade and evolve networks during the Federal Interest Period.

Question 12. NTIA proposes to issue a special award condition providing subrecipients clarity as to the flexibilities that BEAD subrecipients have under the Uniform Guidance to upgrade and evolve BEAD-funded networks. Specifically, this special award condition would clarify that for purposes of the BEAD Program: ''Subrecipients acquiring replacement equipment under 2 CFR 200.313(c)(4) may treat the equipment to be replaced as 'trade-in' even if the subrecipient elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, the subrecipient will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports to the Department of Commerce to ensure adequate tracking of the Federal percentage of participation in the cost of the project. The subrecipient also is responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.'' NTIA seeks comment on this proposal.

NTIA plans to otherwise apply the equipment replacement and disposition provision of 2 CFR 200.313(c)(4) and 200.313(e).

5. Lien Requirements

The Uniform Guidance defers to the Federal awarding agency regarding whether to require the recording of liens or other notices of record on real property and equipment acquired or approved under a Federal subaward.[58] In turn, the DOC ST&Cs permit—but do not require—the imposition of a lien or other notice of record requirement on subrecipients. Notwithstanding the recording of a lien or other notice of record on property, the Federal Government retains beneficial title to the grant-funded equipment or property to ensure it is used for the intended public purposes.

The Treasury Department is requiring subrecipients to record liens only in those instances in which the subrecipient encumbers the project property. These liens must reflect the Treasury Department's shared first lien position in the project property such that, if the project property were foreclosed upon and liquidated, Treasury would receive the portion of the fair market value of the property that is equal to Treasury's percentage contribution to the project costs.

Question 13. NTIA proposes the same approach as the Treasury Department is requiring. Specifically, NTIA would require subrecipients to record such liens for any encumbered equipment and real property acquired or improved using the class of subgrants defined in section 60102(f)(1), (2), and (4) of the Bipartisan Infrastructure Law. NTIA would not otherwise require liens for equipment and real property acquired or improved using this same class of subgrants. NTIA seeks comment on this proposal.

E. Audits

While the NOFO establishes default audit requirements, it affords NTIA authority to prescribe different requirements for commercial entities via the terms and conditions of awards.[59] Rather than apply any specific audit requirements to subrecipients in its SLFRF and CPF programs, the Treasury Department is allowing pass-through entities to determine the form and frequency of commercial subrecipient audits, so long as such audits can be used by pass-through entities to satisfy the terms and conditions of their award. This approach is consistent with the construct of the BEAD Program, which vests significant decision-making authority in Eligible Entities.

Question 14. NTIA thus proposes to issue a special award condition vesting authority in Eligible Entities to determine the form and frequency of audits from commercial subrecipients. Under such an approach, each Eligible Entity can prescribe and enforce any such audit requirement it deems sufficient for its own compliance requirements as recipients of BEAD awards. NTIA seeks comment on this proposal.

NTIA plans to otherwise apply the audit requirements specified in section VII.G of the NOFO and 2 CFR part 200, subpart F.

F. Revision of Budget

The Uniform Guidance requires recipients to report, and request prior approvals from Federal awarding agencies for, budget and program plan revisions.[60] While such a requirement may help to reduce the risk of waste, fraud, and abuse in certain award constructs, it may not be as critical in the context of fixed-amount BEAD subawards.

Question 15. Assuming that NTIA permits Eligible Entities to proceed with fixed amount subaward frameworks, what flexibility, if any, should NTIA allow an Eligible Entity to provide to subrecipients of fixed-amount subawards with respect to budget revision? If NTIA does allow an Eligible Entity to provide flexibility with respect to budget revisions, how can NTIA and Eligible Entity ensure that subrecipients provide sufficient notice and seek approval where there is a significant change in project scope/objective or inability to complete project without additional Federal funds?

[55] *See* 2 CFR 200.313(c)(4), 200.313(e).

[56] 2 CFR 200.313(c)(4).

[57] 2 CFR 200.313(e).

[58] 2 CFR 200.316.

[59] *See* NOFO at 93, section VII.G.

[60] *See* 2 CFR 200.308(b).

NTIA plans to otherwise apply the budget revision provisions of 2 CFR 200.308(b).

Sean Conway,

Acting Deputy Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023–14114 Filed 7–3–23; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held July 18, 2023, from 3:00 p.m. to 5:00 p.m., Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at Wilkinson Barker Knauer, LLP, 1800 M St. NW, Suite 800N, Washington, DC 20036. The public may also access the meeting via audio teleconference (866–880–0098, participant code 48261650). Public comments may be emailed to *arichardson@ntia.gov* or mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Antonio Richardson, Designated Federal Officer, at (202) 482–4156 or *arichardson@ntia.gov;* and/or visit NTIA's website at *https://www.ntia.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *https://www.ntia.doc.gov/files/ntia/publications/csmac-charter-2021.pdf.*

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.gov/category/csmac.*

Matters to Be Considered: The planned meeting for Tuesday, July 18, 2023, will include updates on the progress CSMAC subcommittees are making in addressing topics they are addressing, specifically the Citizens Broadband Radio Service, 6G wireless systems, and Electromagnetic Compatibility (EMC) improvements. NTIA will post a detailed agenda on its website, *http://www.ntia.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.gov/category/csmac.*

Time and Date: The meeting will be held on July 18, 2023, from 3:00 p.m. to 5:00 p.m., Eastern Daylight Time (EDT). The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, *http://www.ntia.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at Wilkinson Barker Knauer, LLP, 1800 M St. NW, Suite 800N, Washington, DC 20036. The public may also access the meeting via audio teleconference (866–880–0098, participant code 48261650). Individuals requiring accommodations are asked to notify Mr. Richardson at (202) 482–4156 or *arichardson@ntia.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to join the teleconference and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of the meeting are strongly encouraged to submit their comments in Microsoft Word and/or PDF format via electronic mail to *arichardson@ntia.gov.* Comments may also be sent via postal mail to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in one or both of the file formats specified above. CDs should be labeled with the name and organizational affiliation of the filer. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee but may not be reviewed prior to the meeting. Additionally, please note that there may be a delay in the distribution of comments submitted via postal mail to Committee members.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's website at *http://www.ntia.gov/category/csmac.*

Sean Conway,

Acting Deputy Chief Counsel, National Telecommunications and Information Administration.

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DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0068]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Vocational Rehabilitation Financial Report (RSA–17)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 4, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ‘‘Department of Education’’ under ‘‘Currently Under Review,’’ then check the ‘‘Only Show ICR for Public Comment’’ checkbox. *Reginfo.gov*