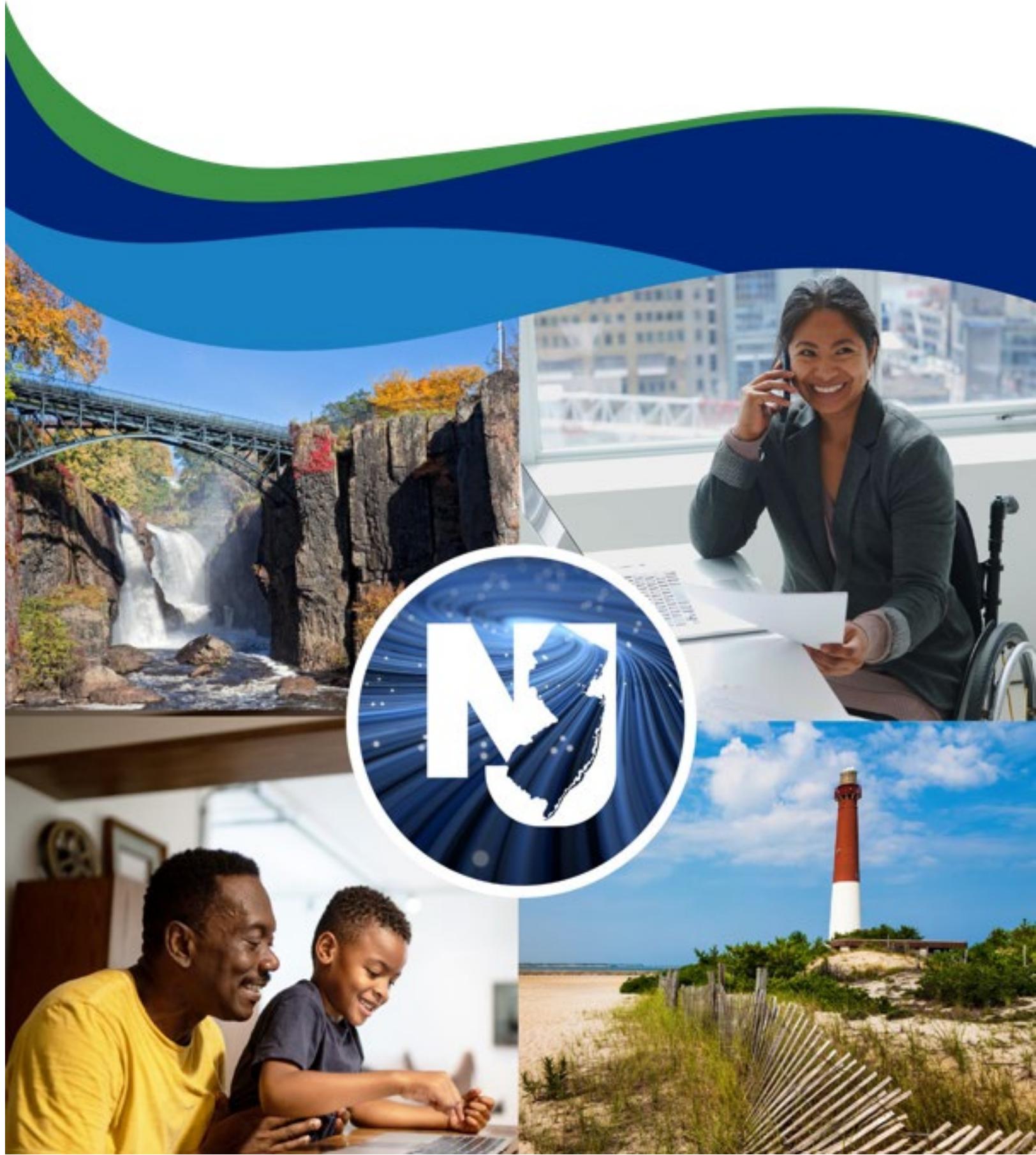


# Draft Initial Proposal Volume 1



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## Introduction:

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

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

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

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

The following document builds on the Public Comment version that OBC released on October 23, 2023 and reflects input from NTIA and public comment.

# 1 Volume I (Requirements 3, 5 – 7)

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## 1.1 Existing Broadband Funding (Requirement 3)

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

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

## 1.2 Unserved and Underserved Locations (Requirement 5)

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

[Attachment 1: unserved.csv]

[Attachment 2: underserved.csv]

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

[November 28, 2023](#)

## 1.3 Community Anchor Institutions (Requirement 6)

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

Based on the statutory definition of “community anchor institution” as defined in 47 USC 1702 (a)(2)(E), OBC applied the definition of “community anchor institution” to mean a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization (including any public housing agency, HUD-assisted housing organization, or Tribal housing organization) or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

[Based on the statutory definition above, and accounting for categories of CAIs facilitate greater use of broadband service by vulnerable populations, OBC identified public schools, libraries,](#)

community colleges and 4-year colleges and universities, public housing organizations, hospitals, and public health institutions as categories of CAIs for the purpose of the BEAD program. Additionally, it identified senior centers as a category of community support organization that typically facilitates greater use of broadband by a class of vulnerable population (i.e., “aging individuals”). During the public comment process, OBC received one request to include individual a community support organization. OBC has reviewed this request and included it in the attached cai.csv spreadsheet, including a justification for why it was approved. During New Jersey’s Challenge Process, all entities listed in 47 USC 1702 (a)(2)(E) will continue to have the opportunity to provide evidence supporting their inclusion as a CAI for the purposes of the BEAD program. In addition to Public Housing Authorities, which are already classified as CAIs, OBC encourages MDUs that facilitate greater use of broadband by a vulnerable population class to participate in the Challenge Process.

The *State of New Jersey* drew on multiple sources to identify the locations of Community Anchor Institutions:

- Libraries: New Jersey State Library
    - The State Library provided OBC with a list of all public libraries in New Jersey, using the following definition of a public library: a library that serves, free of charge, all residents of an area as established pursuant to chapter 33 or chapter 54 of Title 40 of the Revised Statutes, and receives financial support, in whole or in part, from public funds; or a library established pursuant to N.J.S.15A:1-1 et seq. and receiving public funds pursuant to R.S.40:54-35. Where data was available, the State Library provided current broadband connectivity data.
  - Colleges and Universities: NJEdge
    - NJEdge provided OBC with location and broadband connectivity information for colleges and universities.
  - Public schools: Department of Education (DOE)
    - The Department of Education requested data from all public schools in the state regarding current connectivity and provided this data to OBC.
  - Hospitals: New Jersey Hospital Association
    - OBC used the public data set made available by the Hospital Association: <https://www.njha.com/media/543112/nj-hospitals-by-county-map.pdf>
  - Public Housing Organizations: Office of the State Comptroller
    - OBC used the public data set made available by the Office of the State Comptroller: <https://www.nj.gov/comptroller/news/docs/housingauthorities.pdf>
    - Recognizing the importance of public housing authorities in providing broadband access to New Jersey’s vulnerable populations, OBC will also identify any public housing authority residential building as an unserved CAI (e.g., < 1 Gbps symmetrical service) if NTIA guidance determines that unserved BSLs, which are MDUs, do not require unit service delivery of 100/20 Mbps service to be considered “served.”
  - Senior Centers: New Jersey Care Planning Council
    - OBC used the public data set made available by the Care Planning Council: [https://www.carenewjersey.org/list11\\_new\\_jersey\\_senior\\_centers.htm](https://www.carenewjersey.org/list11_new_jersey_senior_centers.htm)
- Public health institutions: HIFLD.
- OBC used the public data set made available by HIFLD: <https://hifld->

[geoplatform.opendata.arcgis.com/](https://geoplatform.opendata.arcgis.com/). HIFLD “provides National foundation-level geospatial data within the open public domain that can be useful to support community preparedness, resiliency, research, and more.”

To assess the network connectivity needs of each type of CAI, OBC took the following actions:

- Engaged government agencies.
  - OBC coordinated with the State Library, which provided an existing list of public library outlets and conducted outreach to libraries to understand their current broadband availability.
  - OBC coordinated with the Department of Education, which released a data request to all public schools in the state, asking for current broadband connectivity data.
  - OBC coordinated with and received feedback from executive branch representatives across multiple areas.
- Engaged relevant umbrella organizations and nonprofits. OBC identified lists of CAIs from public data sets made available by umbrella organizations (i.e., using the data from the New Jersey Hospital Association and the New Jersey Care Planning Council), and engaged nonprofit organizations that work with community anchor institutions through OBC’s Digital Equity Working Group and Workforce Development Working Group. During the public comment period, OBC made requests during online and in-person meetings and outreach activities to community organizations and local governments encouraging stakeholders to provide additional CAI data.
-  Estimated broadband availability.
  - For libraries, OBC used the data provided by the State Library and supplemented it using the methodology below where library-provided data was unavailable.
  - For schools, OBC used the data provided by the DOE.
  - For institutions of higher education, OBC used the data provided by NJEdge.
  - For large hospitals, OBC assumed that the hospital was already subscribing to 1 Gbps symmetrical service. However, if 1 Gbps service is not available, hospitals should provide this evidence during the challenge process.
  - For public health institutions, public housing authorities, and senior centers, OBC reviewed existing broadband connectivity for the nearest Broadband Serviceable Location (BSL) within 250 feet of each CAI as provided by the latest FCC DATA Maps as of June 15, 2023, and last updated on November 28, 2023. The state estimated broadband availability for each CAI to be at the same level as this nearest BSL.

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

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

[Attachment: cai.csv]

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

## 1.4 Challenge Process (Requirement 7)

### NTIA BEAD Model Challenge Process Adoption

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

Yes

No

### Modifications to Reflect Data Not Present in the National Broadband Map

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

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

OBC will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is "served") delivered via DSL as "underserved." [This determination will affect 3 locations](#). This modification will better reflect the locations eligible for BEAD funding because it will facilitate the phase-out of legacy copper facilities and ensure the delivery of "future-proof" broadband service.

#### [Additional Modification](#)

Similar to other states, and in response to public comment, OBC will treat locations that the National Broadband Map shows to have available qualifying broadband service (i.e., a location that is "served") delivered via cellular fixed wireless as "underserved" in the list of locations made available for the Challenge Process. [This determination will affect 3,068 locations](#), which OBC believes are, as a category, inadequately served due to speed inconsistency related to data drop-offs and data throttling. If NTIA does not approve this additional modification, OBC is prepared to receive curing instructions to that effect.

#### [Additional Modification](#)

In response to public comment, OBC will treat locations that the National Broadband Map shows to be served as unserved or underserved if (1)(a) six or more broadband serviceable locations using a particular technology from the same provider within a census block group, or (b) 30 or more broadband serviceable locations using a particular technology from the same provider within a census tract and at least one within each census block group within that census tract were subject to successful availability challenges through the Federal Communications Commission's challenge process, and (2) the location would be unserved or underserved if not for the challenged service. [This](#)

determination will affect approximately 72,000 locations, which OBC believes are inadequately served as a result of a pattern of successful challenges during the FCC challenge process. If NTIA does not approve this additional modification, OBC is prepared to receive curing instructions to that effect.

#### Deduplication of Funding

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

Yes

No

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

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

1. The Broadband Funding Map published by the FCC pursuant to IIJA § 60105.
2. Data sets from state broadband deployment programs that rely on funds from the Capital Projects Fund and the State and Local Fiscal Recovery Funds administered by the U.S. Treasury.
3. [State of New Jersey](#) and local data collections of existing enforceable commitments.

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

OBC will review its repository of existing state and local broadband grant programs to validate the upload and download speeds of existing binding agreements to deploy broadband infrastructure. In situations in which [the State of New Jersey](#) or local program did not specify broadband speeds, or when there was reason to believe a provider deployed higher broadband speeds than required, OBC will reach out to the provider to verify the deployment speeds of the binding commitment. OBC will document this process by requiring providers to sign a binding agreement certifying the actual broadband deployment speeds deployed.

OBC drew on these provider agreements, along with its existing database on state and local broadband funding programs' binding agreements, to determine the set of [State of New Jersey](#) and local enforceable commitments.

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

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

## Challenge Process Design

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

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

### Permissible Challenges

OBC will only allow challenges on the following grounds:

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

### Permissible Challengers

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

### Challenge Process Overview

The challenge process conducted by OBC will include four phases. [Phases two through four are planned to span 90 calendar days \(if needed, OBC will use an additional 30 calendar days, for a total duration of up to 120 calendar days\):](#)

1. **Publication of Eligible Locations:** Prior to beginning the Challenge Phase, OBC will publish the set of locations eligible for BEAD funding, which consists of the locations resulting from the activities outlined in Sections 5 and 6 of the NTIA BEAD Challenge Process Policy Notice (e.g., administering the deduplication of funding process). The office will also publish locations considered served, as they may be challenged. [Locations eligible for BEAD funding will be tentatively published in March 2024, assuming OBC receives NTIA approval.](#)
2. **Challenge Phase:** During the Challenge Phase, the challenger will submit the challenge through OBC challenge portal. This challenge will be visible to the service provider whose service availability and performance is being contested. The portal will notify the provider of the challenge through an automated email, which will include related information about timing for the provider's response. After this stage, the location will enter the "challenged" state.
  - a. **Minimum Level of Evidence Sufficient to Establish a Challenge:** The challenge portal will verify that the address provided can be found in the Fabric and is a BSL. The challenge portal will confirm that the challenged service is listed in the

National Broadband Map and meets the definition of reliable broadband service. [The challenge will confirm that the email address is reachable by sending a confirmation message to the listed contact email.] For scanned images, the challenge portal will determine whether the quality is sufficient to enable optical character recognition (OCR). For availability challenges, OBC will manually verify that the evidence submitted falls within the categories stated in the NTIA BEAD Challenge Process Policy Notice and the document is unredacted and dated.

- b. Timeline: Challengers will have 30 calendar days to submit a challenge from the time the initial list of unserved and underserved locations, community anchor institutions, and existing enforceable commitments are posted. (Tentative date: April 1<sup>st</sup>, 2024 – May 1<sup>st</sup>, 2024)
3. Rebuttal Phase: 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 claims 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. If a challenge that meets the minimum level of evidence is not rebutted, the challenge is sustained. A provider may also agree with the challenge and thus transition the location to the “sustained” state. Providers must regularly check the challenge portal notification method (e.g., email) for notifications of submitted challenges.
    - a. Timeline: Providers will have 30 calendar days from notification of a challenge to provide rebuttal information to OBC (Tentative date: May 1<sup>st</sup>, 2024 – June 1<sup>st</sup>, 2024)
  4. Final Determination Phase: During the Final Determination phase, OBC will make the final determination of the classification of the location, either declaring the challenge “sustained” or “rejected.”
    - o Timeline: Following intake of challenge rebuttals, OBC plans to make a final challenge determination within 30 calendar days, and in no more than 60 calendar days, of the challenge rebuttal. Reviews will occur on a rolling basis, as challenges and rebuttals are received. (Tentative date: June 1<sup>st</sup>, 2024 – July 1<sup>st</sup>, 2024, but OBC will reserve an additional 30 calendar days if needed)

#### Evidence & Review Approach

To ensure that each challenge is reviewed and adjudicated based on fairness for all participants and relevant stakeholders, OBC will review all applicable challenge and rebuttal information in detail without bias, before deciding to sustain or reject a challenge. OBC will document the standards of review to be applied in a Standard Operating Procedure and will require reviewers to document their justification for each determination. OBC plans to ensure reviewers have sufficient training to apply the standards of review uniformly to all challenges submitted. OBC will also require that all reviewers submit affidavits to ensure that there is no conflict of interest in making challenge determinations. Unless otherwise noted, “days” refers to calendar days.

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

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

		<p>at the location, including a unit of a multiple dwelling unit (MDU).</p>	<ul style="list-style-type: none"> <li>• A service request was refused within the last 180 days (e.g., an email or letter from provider).</li> <li>• Lack of suitable infrastructure (e.g., no fiber on pole).</li> <li>• A letter or email dated within the last 365 days that a provider failed to schedule a service installation or offer an installation date within 10 business days of a request.<sup>5</sup></li> <li>• A letter or email dated within the last 365 days indicating that a provider requested more than the standard installation fee to connect this location or that a Provider quoted an amount in excess of the provider’s standard installation charge in</li> </ul>	<p>subscribes or has subscribed within the last 12 months, e.g., with a copy of a customer bill.</p> <ul style="list-style-type: none"> <li>• If the evidence was a screenshot and believed to be in error, a screenshot that shows service availability.</li> <li>• The provider submits evidence that service is now available as a standard installation, e.g., via a copy of an offer sent to the location.</li> </ul>
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<sup>5</sup> A standard broadband installation is defined in the Broadband DATA Act (47 U.S.C. § 641(14)) as “[t]he initiation by a provider of fixed broadband internet access service [within 10 business days of a request] in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider.”

			order to connect service at the location.	
S	Speed	The actual speed of the service tier falls below the unserved or underserved thresholds. <sup>6</sup>	Speed test by subscriber, showing the insufficient speed and meeting the requirements for speed tests.	Provider has countervailing speed test evidence showing sufficient speed, e.g., from their own network management system. <sup>7</sup>
L	Latency	The round-trip latency of the broadband service exceeds 100 ms <sup>8</sup> .	Speed test by subscriber, showing the excessive latency.	Provider has countervailing speed test evidence showing latency at or below 100 ms, e.g., from their own network management system or the CAF performance measurements. <sup>9</sup>
D	Data cap	The only service plans marketed to consumers impose an unreasonable capacity allowance (“data cap”) on the consumer. <sup>10</sup>	<ul style="list-style-type: none"> <li>• Screenshot of provider webpage.</li> <li>• Service description provided to consumer.</li> </ul>	Provider has terms of service showing that it does not impose an unreasonable data cap or offers another plan at the location without an unreasonable cap.

<sup>6</sup> The challenge portal has to gather information on the subscription tier of the household submitting the challenge. Only locations with a subscribed-to service of 100/20 Mbps or above can challenge locations as underserved. 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. D<sup>7</sup> As described in the NOFO, a provider’s countervailing speed test should show that 80 percent of a provider’s download and upload measurements are at or above 80 percent of the required speed. See *Performance Measures Order*, 33 FCC Rcd at 6528, para. 51. See BEAD NOFO at 65, n. 80, Section IV.C.2.a.

<sup>8</sup> *Performance Measures Order*, including provisions for providers in non-contiguous areas (§21).

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

<sup>10</sup>. An unreasonable capacity allowance is defined as a data cap that falls below the monthly capacity allowance of 600 GB listed in the FCC 2023 Urban Rate Survey (FCC Public Notice DA 22-1338, December 16, 2022). Alternative plans without unreasonable data caps cannot be business-oriented plans not commonly sold to residential locations. A successful challenge may not change the status of the location to unserved or underserved if the same provider offers a service plan without an unreasonable capacity allowance or if another provider offers reliable broadband service at that location.

T	Technology	The technology indicated for this location is incorrect.	Manufacturer and model number of residential gateway (CPE) that demonstrates the service is delivered via a specific technology.	Provider has countervailing evidence from their network management system showing an appropriate residential gateway that matches the provided service.
B	Business service only	The location is residential, but the service offered is marketed or available only to businesses.	Screenshot of provider webpage.	Provider documentation that the service listed in the BDC is available at the location and is marketed to consumers.
E	Enforceable Commitment	The challenger has knowledge that broadband will be deployed at this location by the date established in the deployment obligation.	Enforceable commitment by service provider (e.g., authorization letter). In the case of Tribal Lands, the challenger must submit the requisite legally binding agreement between the relevant Tribal Government and the service provider for the location(s) at issue (see Section 6.2 above).	Documentation that the provider has defaulted on the commitment or is otherwise unable to meet the commitment (e.g., is no longer a going concern).
P	Planned service	The challenger has knowledge that broadband will be deployed at this location, at the latest, six months from the start of the challenge process, without an enforceable commitment or a	<ul style="list-style-type: none"> <li>Construction contracts or similar evidence of on-going deployment, along with evidence that</li> </ul>	Documentation showing that the provider is no longer able to meet the commitment (e.g., is no longer a going concern) or

		provider is building out		
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		broadband offering performance beyond the requirements of an enforceable commitment.	<p>all necessary permits have been applied for or obtained.</p> <ul style="list-style-type: none"> <li>• Contracts or a similar binding agreement between the state and the provider committing that planned service will meet the BEAD definition and requirements of reliable and qualifying broadband even if not required by its funding source (<i>i.e.</i>, a separate federal grant program), including the expected date deployment will be completed, which must be on or before June 30, 2024.</li> </ul>	that the planned deployment does not meet the required technology or performance requirements.
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N	Not part of enforceable commitment.	This location is in an area that is subject to an enforceable commitment to less than 100% of locations and the location is not covered by that commitment. (See BEAD NOFO at 36, n. 52.)	Declaration by service provider subject to the enforceable commitment.	
C	Location is a CAI	The location should be classified as a CAI.	Evidence that the location falls within the definitions of	Evidence that the location does not fall within the definitions of CAIs
			CAIs set by the state. <sup>11</sup>	set by the state or is no longer in operation.
R	Location is not a CAI	The location is currently labeled as a CAI but is a residence, a non-CAI business, or is no longer in operation.	Evidence that the location does not fall within the definitions of CAIs set by the state or is no longer in operation.	Evidence that the location falls within the definitions of CAIs set by the state or is still operational.

[Optional Area Challenge Module] Area and MDU Challenge

OBC will administer area and MDU challenges for challenge types A, S, L, D, and T. An area challenge reverses the burden of proof for availability, speed, latency, data caps and technology if a defined number of challenges for a particular category, across all challengers, have been submitted for a provider. Thus, the provider receiving an area challenge or MDU must demonstrate that they are indeed meeting the availability, speed, latency, data cap and technology requirement, respectively, for all (served) locations within the area or all units within an MDU. The provider can use any of the permissible rebuttals listed above.

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

An MDU challenge requires challenges for one unit for MDUs having fewer than 15 units, for two units for MDUs of between 16 and 24 units, and at least three units for larger MDUs. Here, the MDU is defined as one broadband serviceable location listed in the Fabric. An MDU challenge counts towards an area challenge (i.e., six successful MDU challenges in a census block group may trigger an area challenge)."

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

Area challenges for availability need to be rebutted with evidence that service is available for all BSL within the census block group, e.g., by network diagrams that show fiber or HFC infrastructure or customer subscribers. For fixed wireless service, the challenge system will offer representative random, sample of the area in contention, but no fewer than [10], where the provider has to demonstrate service availability and speed (e.g., with a mobile test unit).<sup>12</sup>

#### [\[Optional Speed Test Module\]](#) Speed Test Requirements

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

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<sup>11</sup> For example, eligibility for FCC e-Rate or Rural Health Care program funding or registration with an appropriate regulatory agency may constitute such evidence, but the Eligible Entity may rely on other reliable evidence that is verifiable by a third party.

<sup>12</sup> A mobile test unit is a testing apparatus that can be easily moved, which simulates the equipment and installation (antenna, antenna mast, subscriber equipment, etc.) that would be used in a typical deployment of fixed wireless access service by the provider.

Speed tests can take four forms:

1. A reading of the physical line speed provided by the residential gateway, (i.e., DSL modem, cable modem (for HFC),
2. ONT (for FTTH), or fixed wireless subscriber module.
3. A reading of the speed test available from within the residential gateway web interface.
4. A reading of the speed test found on the service provider's web page.
5. A speed test performed on a laptop or desktop computer within immediate proximity of the residential gateway. NTIA has approved, and New Jersey will accept, speed tests from the following applications:
  - Ookla (<https://www.speedtest.net/>)
  - M-Lab (<https://speed.measurementlab.net/#/>)
  - Cloudflare (<https://speed.cloudflare.com/>)
  - Netflix (<https://fast.com/>)
  - Speed test sites operated or sponsored by the Eligible Entity (including commercial test aggregators)

New Jersey's list of acceptable speed tests will change to reflect any modifications NTIA makes to their list)

Each speed test measurement must include:

- The time and date the speed test was conducted.
- The provider-assigned internet protocol (IP) address, either version 4 or version 6, identifying the residential gateway conducting the test.

Each group of three speed tests must include:

- The name and street address of the customer conducting the speed test.
- A certification of the speed tier the customer subscribes to (e.g., a copy of the customer's last invoice).
- An agreement, using an online form provided by the [State of New Jersey](#), that grants access to these information elements to the [State of New Jersey](#), any contractors supporting the challenge process, and the service provider.

The IP address and the subscriber's name and street address are considered personally identifiable information (PII) and thus are not disclosed to the public (e.g., as part of a challenge dashboard or open data portal).

Each location must conduct three speed tests on three different days; the days do not have to be adjacent. The median of the three tests (i.e., the second highest (or lowest) speed) is used to trigger a speed-based (S) challenge, for either upload or download. For example, if a location claims a broadband speed of 100 Mbps/25 Mbps and the three speed tests result in download speed measurements of 105, 102 and 98 Mbps, and three upload speed measurements of 18, 26 and 17 Mbps, the speed tests qualify the location for a challenge, since the measured upload speed marks the location as underserved.

Speed tests may be conducted by subscribers, but speed test challenges must be gathered and submitted by units of local government, nonprofit organizations, or a broadband service provider.

Subscribers submitting a speed test must indicate the speed tier they are subscribing to. Since 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 or underserved. However, even if a particular service offering is not meeting the speed threshold, the eligibility status of the location may not change. For example, if a location is served by 100 Mbps licensed fixed wireless and 500 Mbps fiber, conducting a speed test on the fixed wireless network that shows an effective speed of 70 Mbps does not change the status of the location from served to underserved.

- A service provider may rebut an area speed test challenge by providing speed tests, in the manner described above, for at least 10% of the customers in the challenged area. The customers must be randomly selected. Providers must apply the 80/80 rule, i.e., 80% of these locations must experience a speed that equals or exceeds 80% of the speed threshold. For example, 80% of these locations must have a download speed of at least 20 Mbps (that is, 80% of 25 Mbps) and an upload speed of at least 2.4 Mbps to meet the 25/3 Mbps threshold and must have a download speed of at least 80 Mbps and an upload speed of 16 Mbps to be meet the 100/20 Mbps speed tier. Only speed tests conducted by the provider between the hours of 7 pm and 11 pm local time will be considered as evidence for a challenge rebuttal.

#### Transparency Plan

To ensure that the challenge process is transparent and open to public and stakeholder scrutiny, OBC will, upon approval from NTIA, publicly post an overview of the challenge process phases, challenge timelines, and instructions on how to submit and rebut a challenge. This documentation will be posted publicly for at least a week prior to opening the challenge submission window. OBC also plans to actively inform all units of local government of its challenge process and set up regular touchpoints to address any comments, questions, or concerns from local governments, nonprofit organizations, and Internet service providers. Relevant stakeholders can sign up on the OBC website, <https://www.nj.gov/connect/>, for [program updates](#), including challenge process updates, and newsletters. [OBC will send out initial information about the challenge process to all stakeholders for which it already has addresses and will host at least one general webinar for all entities – which entities will be notified of via email-regardless of whether they can participate directly on the challenge process. \(Note that OBC has collected email addresses through public meetings, community conversations and similar outreach activities\).](#)

[Stakeholders will be able to engage with OBC via a designated email address \(\[broadband@bpu.nj.gov\]\(mailto:broadband@bpu.nj.gov\)\).](#) Providers will be notified of all challenges via an email from OBC. OBC will use its existing stakeholder list, bolstered by the Board of Public Utilities' existing contact lists for telecommunications and cable providers, to notify providers about the challenge process. OBC will also partner with local government and community organizations to ensure potential challengers are aware of the process and its timelines.

Beyond actively engaging relevant stakeholders, OBC will also post all submitted challenges and rebuttals before final challenge determinations are made, including:

- the provider, nonprofit, or unit of local government that submitted the challenge,
- the census block group containing the challenged broadband serviceable location,
- the provider being challenged,

- the type of challenge (e.g., availability or speed), and
- a summary of the challenge, including whether a provider submitted a rebuttal.

OBC will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses and customer IP addresses. To ensure all PII is protected, OBC will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website. Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly.

OBC will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law. If any of these responses do contain information or data that the submitter deems to be confidential commercial information that should be exempt from disclosure under state open records laws or is protected under applicable state privacy laws, that information should be identified as privileged or confidential. Otherwise, the responses will be made publicly available.

OBC plans to adhere to any relevant [New Jersey](#) laws and regulations pertaining to the protection of PII in the following manner: OBC will not publicly post any personally identifiable information (PII) or proprietary information, including subscriber names, street addresses and customer IP addresses. To ensure all PII is protected, OBC will review the basis and summary of all challenges and rebuttals to ensure PII is removed prior to posting them on the website.

Additionally, guidance will be provided to all challengers as to which information they submit may be posted publicly. OBC will treat information submitted by an existing broadband service provider designated as proprietary and confidential consistent with applicable federal law. If any of these responses do contain information or data that the submitter deems to be confidential commercial information that should be exempt from disclosure under state open records laws or is protected under applicable state privacy laws, that information should be identified as privileged or confidential. In those instances, submitters should avail themselves of the processes identified in [N.J.A.C. 14:1-12, et seq.](#) Otherwise, the responses will be made publicly available.

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

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

N/A

## 1.5 Public Comment

- 1.5.1 Describe the public comment period and provide a high-level summary of the comments received during the Volume I public comment period and how they were addressed by the Eligible Entity. The response must demonstrate:
- a. The public comment period was no less than 30 days; and

- b. Outreach and engagement activities were conducted to encourage feedback during the public comment period.

OBC used the public comment period to solicit feedback from a diverse group of stakeholders over the course of 37 days. On October 23rd, OBC released a draft of IP Volume 1 for public comment. At the start of this public comment window, OBC emailed a comprehensive contact list of stakeholders gathered through public meetings, community conversations and similar outreach activities, asking for comments on IP Volume 1. OBC also met, either in person or virtually, with many of New Jersey's key stakeholders: on October 31st, OBC held a jobs panel on broadband workforce development; on November 8th, OBC reconvened the Digital Equity Working Group; also on November 8th, OBC hosted an Internet for All public outreach meeting with NTIA; on November 14th and 15th, OBC spoke with New Jersey's League of Municipalities; finally, on November 16th, OBC met with the Digital Inclusion Practitioners of New Jersey. At each of these events, OBC notified attendees that a draft of IP Volume 1 had been published online, and that OBC was seeking public comments. During this time, OBC also met with providers including Altice, Brightspeed, and Verizon. Additionally, OBC posted the public comment draft on both the New Jersey Board of Public Utilities website and the Internet for All website.

Understanding that filing comments in a regulatory docket could be challenging for commenters that have not previously done so, OBC also created a survey that stakeholders could use. OBC received comments about the definition of CAIs and the challenge process from providers, a cable association, as well as nonprofit organizations.

Comments addressed various aspects of New Jersey's BEAD program design:

Modifications to the list of eligible locations:

- Support for classifying locations served only by DSL as unserved, rather than underserved (EducationSuperHighway)
- Request for locations served only by cellular fixed wireless to be classified as underserved (NJCTA) or unserved (EducationSuperHighway)
- Request for the burden of proof of service be placed on providers for all locations in a given CBG or census tract where a minimum number of availability challenges were upheld during the FCC challenge process (EducationSuperHighway)

OBC added locations served only by cellular fixed wireless to its list of underserved locations to improve broadband access for these households. OBC declined to alter the status of locations served only by DSL from underserved to unserved, as OBC does not anticipate a substantive difference in deployment outcomes relating to this change. OBC did adopt the request to reverse the burden of proof of service in areas with a pattern of successful availability challenges during the FCC challenge process.

CAI definition:

- Request for the definition of public housing CAIs to be expanded (EducationSuperHighway)

OBC declined to incorporate this recommendation because multi-dwelling units are included as unserved and underserved BSLs. During the challenge process, any MDU that is able to show that it has less than 1 Gbps symmetrical service and facilitates the use of broadband for vulnerable populations can be determined to be an eligible CAI. This may be specifically important for locations that are not already designated un- or underserved and/or require inside wiring to create in-unit 100/20 Mbps availability.

Challenge process structure:

- Support for adding a 30-day window prior to the challenge process for providers to submit evidence of enforceable commitments (NJCTA)
- Request to add a post-application verification that locations are not served (NJCTA)

In order to maintain required program timelines, OBC did not implement these changes.

Planned service challenge deployment deadline:

- Request for the deadline to be extended and made flexible, rather than a set date of June 30, 2024 (Brightspeed)
- Request for the planned service challenge to be removed entirely (Verizon)

OBC adopted the request to extend the planned service deadline. It will do so by extending the deadline to six months after the opening of the challenge process in order to allow for flexibility, as well as to provide a fair window for the completion of projects. OBC retained the planned service challenge to reduce the likelihood that BEAD funds are used to overbuild locations in New Jersey.

Availability challenge, data cap challenge, MDU and area challenge, and speed test challenge:

- Request to limit permissible evidence of a lack of service to the past six months (NJCTA)
- Request to expand set of permissible evidence for challenger rebuttals (NJCTA)
- Request that successful data cap challenges reverse the burden of proof for service statewide (NJCTA)
- Request to remove the MDU and area challenge as well as the speed test challenge (NJCTA)

OBC left the evidentiary requirements for availability challenges unchanged, as the currently permissible evidence for rebuttals allow challengers multiple response options. OBC declined to implement a statewide data cap challenge, as this proposal could significantly delay the start of the deployment application process and OBC has a defined period of time in which to conduct the challenge and application process. OBC retained the optional MDU and area challenge, as well as speed test challenge, in order to offer stakeholders the opportunity to demonstrate a service insufficiency in their area.

OBC also received comments requesting CAIs to be added to OBC's dataset. Those are included in the cai.csv spreadsheet, with an accompanying note in the explanation column (column M). Per NTIA instructions, cai.csv only includes those CAIs that, to the best of its knowledge, OBC believes to have access to less than a 1 Gbps symmetrical connection. In response to comments from the New Jersey Community College Consortium for Workforce and Economic Development, which requested 28 community colleges to be added to the list of CAIs, OBC added 19 colleges into cai.csv. Using the methods described in section 1.3.1, OBC estimated that nine did not have 1 Gbps symmetrical connectivity. OBC received a request to add one community support organization, Puerto Rican Unity for Progress (PRUP), which it did because PRUP described how it facilitates computer and internet access within a broader set of community support services.

Finally, OBC reviewed multiple comments that asked general questions about the BEAD program or were not substantively related to IP Volume 1.