Broadband Infrastructure and Section 106 Review

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Jaime Loichinger, Director

- November 2, 2023

@USACHP

ACHP's Role and Section 106 Oversight

The Council:

- 24 statutorily designated members
- Recommendations regarding historic preservation to the President, Congress, and heads of other federal agencies on topics such as:
  - Climate change
  - Affordable housing
  - Indigenous issues
- Member of the Federal Permitting Improvement Steering Council (FPISC)

Staff:

- Oversees Section 106 implementing regulations (36 CFR Part 800)
- Assists agencies in developing compliance strategies
- Provides in-person & virtual training
  - www.achp.gov/training
  - Section 106 courses; webinars; e-learning portal; and more!

Program Alternatives and Broadband

- What is a **Programmatic Agreement**?
  - Implements a program
  - Can authorize applicants to conduct certain steps of the consultation process
  - Can tailor Section 106 reviews to agency-specific circumstances
- What is a **Program Comment**?
  - Allows ACHP to comments on a program or class of undertakings in lieu of case-by-case basis
  - Useful for programs that generate a large number of similar undertakings and/or effects

- https://www.achp.gov/program_alternatives

- www.achp.gov/broadband_and_106

- https://www.achp.gov/indian-tribes-and-native-hawaiians/tribal-coordination-consultation-infrastructure-projects

FCC National Programmatic Agreement for Telecommunications Projects

- Executed in 2004

- Applies to construction of towers & antenna structures

- Addressed 16,868 undertakings in 2022 (does include collocations)

- What is **tailored**?
  - Consultation
  - Identification of Effort
  - Assessment of Effects

Nationwide Programmatic Agreement for Collocation of Wireless Antennas

- Executed in 2001

- Applies to collocation of equipment

- Intended to promote the use of collocation rather than construction of new towers

- 2020 amendment: corrected unintentional inconsistencies between the NPAs

Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification

- Eliminates duplicative Section 106 reviews when agencies assist a telecommunications project subject to Section 106 review by the Federal Communications Commission

- Approved in 2009

- Amended in 2015 and 2020:
  - Additional federal agencies added
  - Duration extended to September 30, 2025

Program Comment for Communications Projects on Federal Lands and Property

- Approved in 2017

- Developed to expedite reviews and implement efficiencies for the deployment of broadband infrastructure on federal lands and properties

- Incorporates select provisions of the two FCC NPAs and creates a standard APE and identification effort for various communications projects

- ACHP is considering an amendment to expand the PC's scope beyond federal lands and properties

- FAQs: https://www.achp.gov/digital-library-section-106-landing/frequently-asked-questions-program-comment-federal-lands

ACHP Staff Observations

- ACHP *may* participate when one or more Appendix A criteria are met
  - *Substantial impacts on important historic properties*
  - *Important Qs of policy/interpretation*
  - *Potential for procedural problems*
  - *Issues of concern to Indian Tribes or Native Hawaiian Organizations*
- ~90% of FCC's Adverse Effect (AE) notifications → Non-Participation
  - Most common AE = **visual impacts**
  - Increasingly heavy involvement via "**technical assistance plus**" when Appendix A criteria are met

- What Consulting Parties (CPs) find challenging:
  - Initiating consultation
  - Federal agency involvement
  - Exploring alternatives vs mitigation
- What CPs appreciate:
  - Thorough, reasoned responses from the agency
  - **Consistency of process,** and *not* predictability of result

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Overview of NTIA's
Internet For All Grant Programs

FCC Environmental Compliance Workshop

November 2, 2023

NTIA's Internet for All Broadband Grants

National Telecommunications and Information Administration

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Providing Affordable and Reliable Internet For All

INTERNET FOR ALL

The Internet For All programs administered by NTIA will provide more than $48 billion for infrastructure deployment, skills training, and access to technologies for communities across the United States.

NTIA administers six broadband grant programs to provide **affordable & reliable high-speed Internet access for all**.

The Internet For All programs represent **a historic investment** in connecting all Americans **through infrastructure deployment** for high-speed Internet.

Additionally, the grant programs provide resources for historically underserved communities to **advance digital equity** and **bridge the digital divide**.

NTIA's GRANT PROGRAMS

Broadband Equity, Access, and Deployment Program (BEAD)
Eligible Entities: States and Territories   **Amount: $42.5 B**
Funds planning and execution of competitive broadband subgrants to deploy infrastructure and promote accessibility and equity

Middle Mile Deployment Grant Program
Eligible Entities: Internet Service Providers   **Amount: $1 B**
Encourage expansion and extension of middle mile infrastructure and promote resiliency

Tribal Broadband Connectivity Program (TBCP)
Eligible Entities: Tribal Entities   **Amount: $3 B**
Expand access to high-speed internet access and adoption on tribal lands

Broadband Infrastructure Program (BIP)
Eligible Entities: Covered Partnerships (State & ISP)   **Amount: $288 M**
Funds broadband infrastructure deployment in unserved areas, especially rural areas

Digital Equity Act Programs
Eligible Entities: States and Territories   **Amount: $2.75 B**
Promote achievement of digital equity, support digital inclusion activities, and broadband adoption

Connecting Minority Communities (CMC) Pilot Program
Eligible Entities: Community Anchor Institutions   **Amount: $268 M**
Support purchase of broadband service, equipment and devices, and hiring/training of IT personnel at community anchor institutions (CAIs)

Includes infrastructure deployment

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BEAD Program Overview

Funding pool
$42.45B

A program to get all Americans online by funding partnerships between states or territories, communities, and stakeholders to build infrastructure where we need it and increase adoption of high-speed Internet.
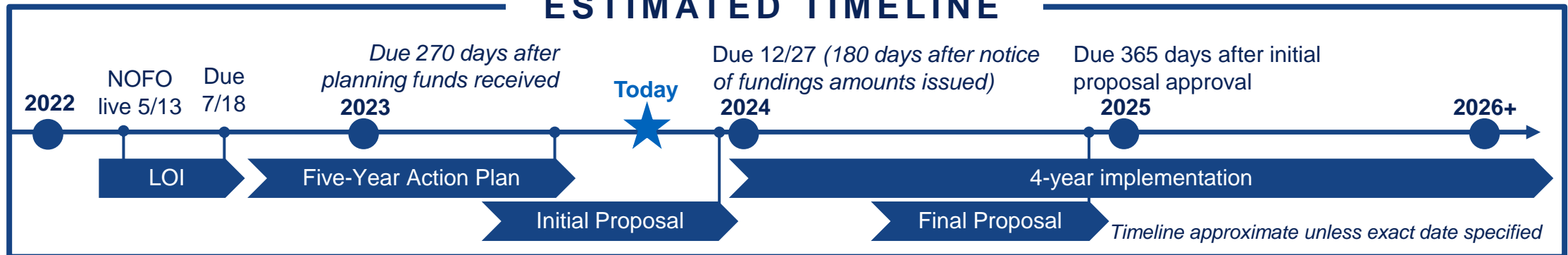
PROGRAM HIGHLIGHTS

Entities eligible to apply for this program include:

- All 50 States
- The District of Columbia and Puerto Rico
- Other Territories: U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands

Example eligible uses of funds include:

- ☆ Planning for deployment of Internet
- ☆ Deploying or upgrading Internet
- ☆ Installing Internet in multi-tenant buildings
- ☆ Implementing adoption and digital equity programs
- ☆ Workforce and job training

ESTIMATED TIMELINE

2022

NOFO live 5/13

Due 7/18

Due 270 days after planning funds received
2023

Today

Due 12/27 *(180 days after notice of fundings amounts issued)*
2024

Due 365 days after initial proposal approval
2025

2026+

LOI

Five-Year Action Plan

Initial Proposal

Final Proposal

4-year implementation

Timeline approximate unless exact date specified
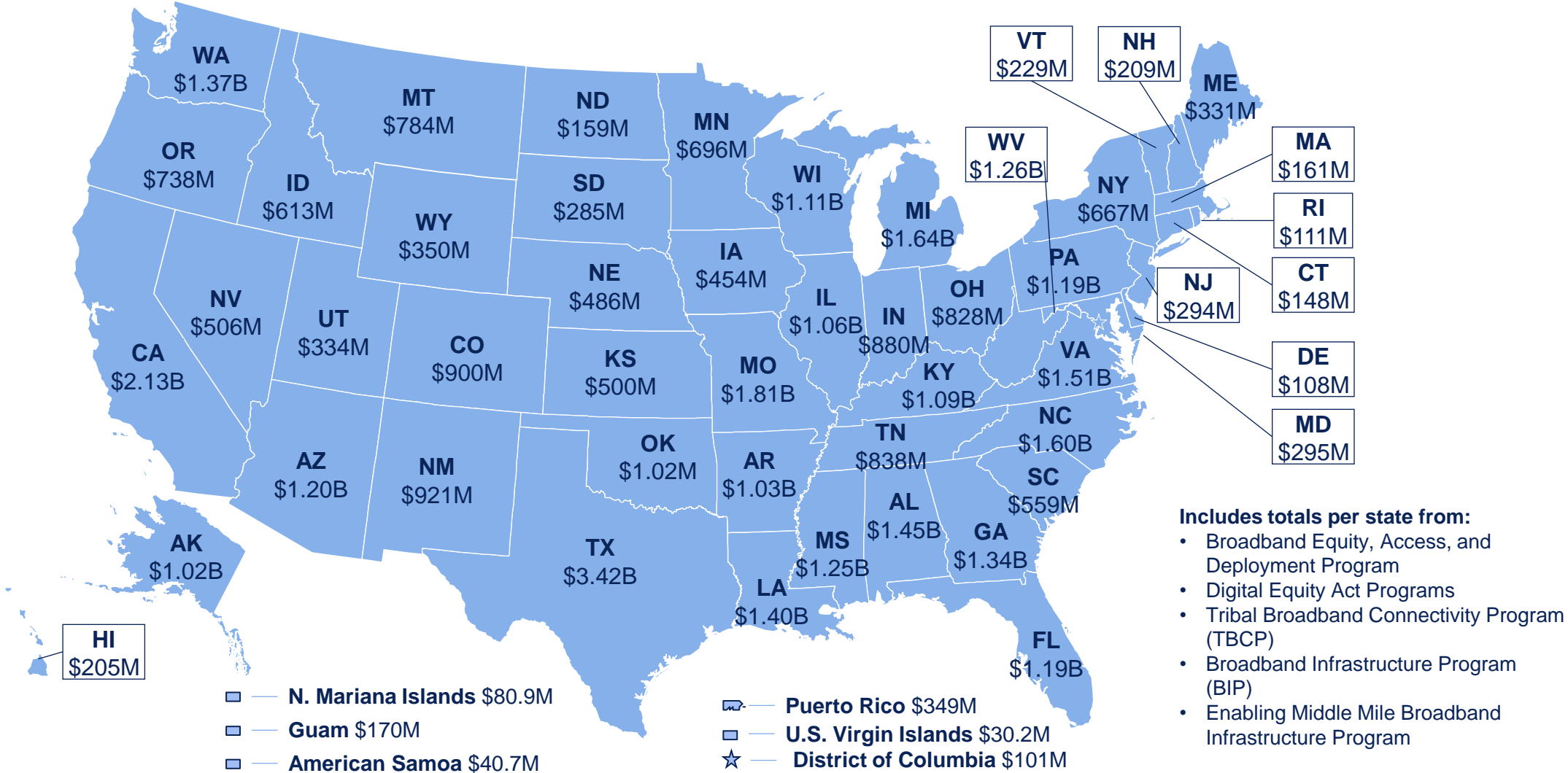
Internet For All | Program Status

NTIA's Internet For All programs currently range from planning stages to open application periods and some awarded grants.

| Program	Funding Source	Status
Broadband Equity, Access, and Deployment (BEAD) Program	Bipartisan Infrastructure Law	Planning Grant Awarded, Accepting Initial Proposals
Broadband Infrastructure Program	Consolidated Appropriations Act, 2021	Awards Funded
Connecting Minority Communities Pilot Program	Consolidated Appropriations Act, 2021	Awards Funded
Digital Equity (DE) Act Programs	Digital Equity Act	Planning Application Submitted for State DE Planning Grant Program; Additional Awards Forthcoming
Enabling Middle Mile Broadband Infrastructure Program	Bipartisan Infrastructure Law	Awards Funded
Tribal Broadband Connectivity Program	Bipartisan Infrastructure Law & Consolidated Appropriations Act, 2021	Awards Funded for Round 1; Accepting Applications for Round 2

Internet For All | NTIA Funding by State/Territory

INTERNET FOR ALL

State	Funding
WA	$1.37B
OR	$738M
MT	$784M
ND	$159M
MN	$696M
ID	$613M
SD	$285M
WI	$1.11B
MI	$1.64B
WY	$350M
NV	$506M
UT	$334M
NE	$486M
IA	$454M
CA	$2.13B
CO	$900M
KS	$500M
IL	$1.06B
IN	$880M
OH	$828M
PA	$1.19B
NY	$667M
VT	$229M
NH	$209M
ME	$331M
WV	$1.26B
MA	$161M
RI	$111M
CT	$148M
NJ	$294M
DE	$108M
MD	$295M
AZ	$1.20B
NM	$921M
MO	$1.81B
OK	$1.02M
AR	$1.03B
KY	$1.09B
VA	$1.51B
NC	$1.60B
TN	$838M
SC	$559M
AL	$1.45B
GA	$1.34B
MS	$1.25B
TX	$3.42B
LA	$1.40B
FL	$1.19B
AK	$1.02B
HI	$205M

Includes totals per state from:

- Broadband Equity, Access, and Deployment Program
- Digital Equity Act Programs
- Tribal Broadband Connectivity Program (TBCP)
- Broadband Infrastructure Program (BIP)
- Enabling Middle Mile Broadband Infrastructure Program

- N. Mariana Islands $80.9M
- Guam $170M
- American Samoa $40.7M
- Puerto Rico $349M
- U.S. Virgin Islands $30.2M
- ☆ District of Columbia $101M

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Conceptual Timeline for Broadband Permit Applications

The highest volume of permitting activity is anticipated for projects funded by the BEAD Program. BEAD projects are expected to begin execution in 2024, with permitting activity expected to reach its peak in 2026-2027.
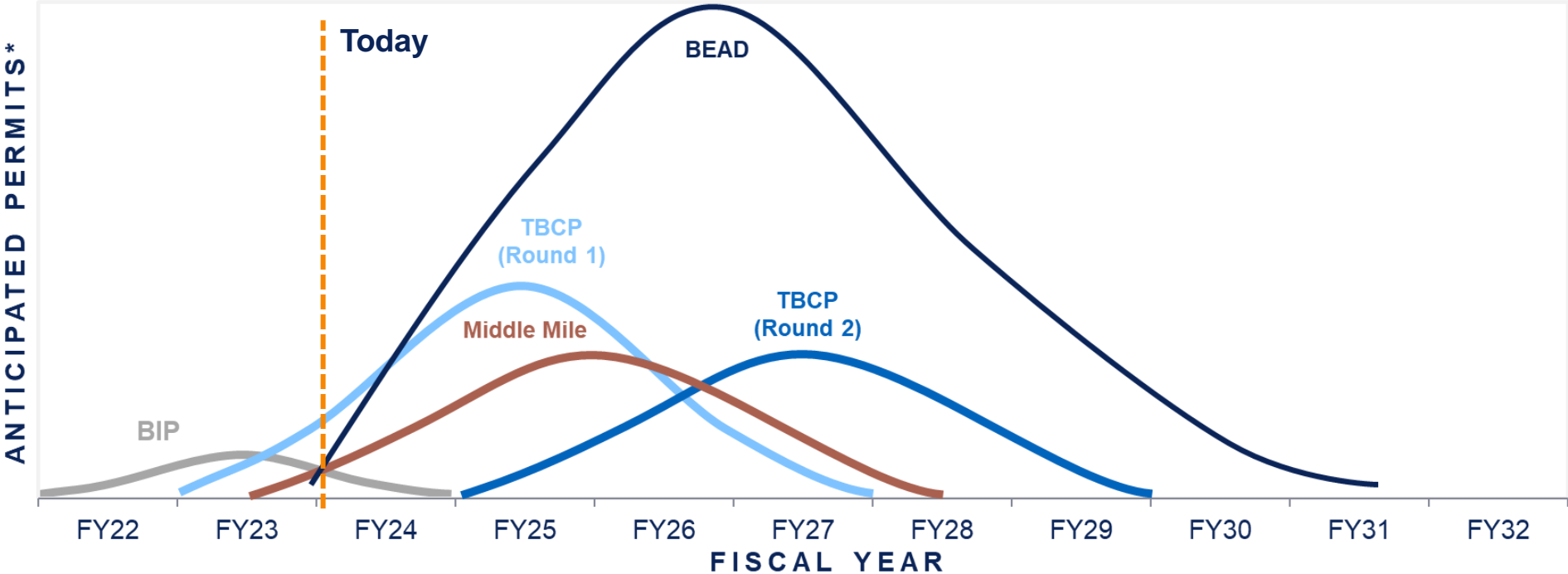
Permitting requests and processes across infrastructure programs, including broadband, will have compounding effects on federal resource management agencies requiring greater resources to meet permitting needs.

Note: This timeline is conceptual in nature and not intended to depict accurate permitting magnitude.

Interagency Broadband Permitting Coordination Strategy

INTERNET FOR ALL

NTIA has established collaborative working relationships with NEPA and permitting teams across the government in anticipation of influxes in permitting activity from the Internet For All programs.

PERMITTING INITIATIVES

- Interagency Agreements: E.g., a Memorandum of Understanding (MOU) with the Bureau of Indian Affairs to define NEPA roles and responsibilities
- Interagency Regional Permitting Meetings
- Work with Advisory Council on Historic Preservation on broadband program alternatives
- New Categorical Exclusions for NEPA
- National Broadband Availability Map (NBAM) Tools
  - Agency Heat Map Reports
  - Permitting and Environmental Templates
- Collaboration with FHWA to address broadband permitting in transportation rights of way

GOALS

- Provide grant recipients with information and technical assistance necessary to succeed
- Prepare state, federal, and local agencies for the surge in broadband permit applications
- Identify and address potential issues early
- Foster collaboration and ongoing communication
- Resolve project-specific problems at the earliest time and the lowest level possible

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Environmental and Historic Preservation Coordination

Environmental and historic preservation issues are addressed throughout the grant lifecycle.

Pre-Award	Specific Award Conditions (SAC)	Post-Award
Project applications are reviewed to determine the expected level of NEPA analysis that will be required and whether it constitutes an undertaking under NHPA. For the BEAD program, this will take place at the subgrant level. Some proposed projects may be able to receive clearance during pre-award review, but most will complete NEPA/NHPA requirements post-award. NTIA encourages grantees to reach out to federal land- and resource-managing agencies in **early project planning** to understand potential limitations for crossing or locating on federal lands.	For those projects that cannot receive a pre-award clearance, a Specific Award Condition will be applied to the award that allows the disbursement of funds to complete planning and analysis, including NEPA/NHPA analysis, upon award. The remainder of funds are withheld until compliance requirements are met.	NTIA will work with grantees to provide support in meeting their compliance requirements. Support activities will range from detailing additional information needed to determine the level of analysis required to providing guidance and templates that will facilitate Section 106 consultation and EA/EIS development, as needed. *It is strongly recommended that grantees and subgrantees engage a qualified consulting firm if an EA/EIS is required.*

Environmental Review and Permitting Synchronization

NTIA will invite other federal agencies to be Cooperating Agencies under NEPA with the intent to reduce or eliminate any duplicative reviews that could result from these multiple independent responsibilities.

- Multiple agencies can have NEPA obligations for a single project because the issuance of a federal authorization triggers NEPA for the permitting/authorizing agency, just as the expenditure of federal funds in the form of grant dollars triggers NEPA for NTIA.

- Certain federal agencies have statutory authority over certain resources that are protected by federal laws, such as the Endangered Species Act; those agencies must be involved in any project with the potential to affect those resources.

- Careful project planning, synchronized environmental review and permitting, and an awareness of processes, sequencing, and timelines required for each agency are essential to effective and realistic project planning.

Early coordination is critical to successful project planning and execution.

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Section 106 Compliance Tools for Broadband in ROWs

- NTIA Section 106 Tribal Outreach via the Tower Construction Notification System (TCNS)

- Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification

- Program Comment for Communications Projects on Federal Lands and Property

- 36 CFR 800 Subpart B Section 106 Review Process

- FHWA State Programmatic Agreements

NEPA and Permitting Technical Assistance

NTIA provides TA materials on Permitting at *https://broadbandusa.ntia.doc.gov/assistance/permitting*

What is Permitting?
BEAD Permitting Resources
An introduction to permitting as it relates to broadband projects including the types of permits a deployment may require, the process for securing an easement or right of way access, and steps to obtaining permission to access federal/state/local land.

Permitting Best Practices: Case Studies
BEAD Permitting Resources
An overview of best practices related to permitting, examples that other state and local entities have implemented to streamline permitting, and red flags to avoid when doing permitting.

Permitting Needs Assessment
BEAD Permitting Resources
A checklist for four major permitting categories including ROW, Pole Attachments, Conduit Access, and Environment Planning/Historic Preservation that Eligible Entities can use to ensure they are ready to begin the permitting process..

Environmental & Historic Preservation Checklist for BEAD
BEAD Permitting Resources
A checklist to support Eligible Entities' Five-Year Action Plans regarding the Environmental & Historic Preservation (EHP) requirements associated with the BEAD program.

Environmental & Historic Preservation Factsheet
BEAD Permitting Resources
A fact sheet to support Eligible Entities in navigating the NEPA analysis process as required for every project funded through the BEAD program including a description of the levels and timeline of NEPA review and EHP requirements.
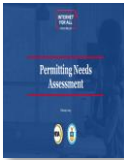
NEPA Review: Categorical Exclusions
BEAD Permitting Resources
Guidance on NEPA analysis as it relates to categorical exclusions (CATEXs) including the definition, the CATEX review process, CATEX qualifications, and a link to the DOC CATEX list.

NEPA Review: Environmental Assessments
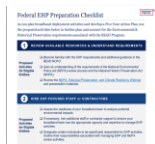*BEAD Permitting Resources*
Guidance on NEPA analysis as it relates to environmental assessments including the definition, preparation steps, best practices, and the review process.

WEBINAR: Permitting 101
BroadbandUSA Events
This webinar will provide a wide overview on permitting as it relates to broadband infrastructure programs. Topics covered will include: State, Local, and Private Permitting, Pole Attachments, One-Touch Make-Ready (OTMR), Conduit Access/Dig Once Policies, NEPA/EHP, and BEAD NOFO Requirements.

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