

Morgan Lewis

# INFRASTRUCTURE INVESTMENT AND JOBS ACT OVERVIEW

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# INFRASTRUCTURE INVESTMENT AND JOBS ACT (Public Law No. 117-58)

- Total \$1 trillion in spending; \$550 billion in new spending over 5 years
- Broadband title: \$65 billion
- Passed in Senate on August 10, 2021
- Passed in House on November 5, 2021
- Signed into law on November 15, 2021
- Enactment forecast:
  - Budget reconciliation package - Q3 2022

# Historical Context

\$65 billion in funding is unprecedented level of funding for broadband deployment.

## CURRENT PROGRAMS:

### Federal Communications Commission

1. Connect America Fund Program
2. Schools and Libraries (E-Rate) Program
3. Rural Health Care Program
4. Lifeline Program
5. Rural Digital Opportunity Fund
6. 5G Fund for Rural America
7. Emergency Connectivity Fund
8. Affordable Connectivity Program\*
9. COVID-19 Telehealth Program

### Rural Utilities Service (USDA)

1. Rural Broadband Access Loan Program
2. Telecommunications Infrastructure Loans Program
3. Community Connect Grant Program
4. ReConnect Program\*
5. Distance Learning and Telemedicine (DLT) Grant Program

### National Telecommunications and Information Administration

1. Connecting Minority Communities
2. Broadband Infrastructure Program
3. Tribal Broadband Connectivity Grant Program\*

### Treasury Department

1. Coronavirus State and Local Fiscal Recovery Funds
2. Coronavirus Capital Projects Fund

\* These programs received further funding through the IIJA.

# Key Current Federal Broadband Programs

Program	Agency	Funds Allocated	Program Details	Eligible Recipients	Application Window
Schools and Libraries (“E-Rate”) Program	FCC	\$4.276 billion annual cap	Funds discounts for eligible services for schools and libraries. Generally, funding for two categories: (1) data transmission services and internet access; and (2) internal connections, managed internal broadband services, and basic maintenance of internal connections.	Direct funding to schools, school districts, and libraries  Sub-grant funds to private sector providers	FCC announces the application window each year, which typically opens in mid-January and closes at the end of March
Rural Health Care (“RHC”) Program - Healthcare Connect Fund Program	FCC	\$612 million annual cap	Supports high-capacity broadband connectivity to eligible health care providers. Eligible services include internet access, dark fiber, business data, traditional digital service line (DSL), and private carriage services.	Direct funding to qualified rural health care providers  Subgrants to private providers	Next funding window opened on December 1, 2021; most funding decisions are made by the following December
ReConnect Program	USDA	\$635 million (FY2021) & \$2 billion (IIJA)	Offers funding for broadband infrastructure to connect rural residents, businesses, farms, and educational and public safety facilities.	No restriction on type of recipients	Opened on November 24, 2021 and closed on March 9, 2022

# Key Current Federal Broadband Programs

Program	Agency	Funds Allocated	Program Details	Eligible Recipients	Application Window
Connecting Minority Communities (“CMC”)	NTIA	\$285 million (FY2021)	Provides grants to eligible Historically Black Colleges and Universities (“HBCUs”), Tribal Colleges and Universities (“TCUs”), and Minority-Serving Institutions (“MSIs”) in anchor communities for the purchase of broadband Internet access service or any eligible equipment, or to hire and train information technology personnel.	Direct funding to HBCUs, TCUs, and MSIs  Sub-grant funds to private sector providers	Application window for HBCUs, TCUs, and MSIs closed December 1, 2021
Tribal Broadband Connectivity Grant Program	NTIA	\$980 million (FY2021) & \$2 billion (IIJA)	Provides grants to expand access to and adoption of (a) broadband service on Tribal land; or (b) remote learning, telework, or telehealth resources.	Direct funding to Tribal entities  Sub-grant funds to private sector providers	Application window for Tribal entities closed September 1, 2021

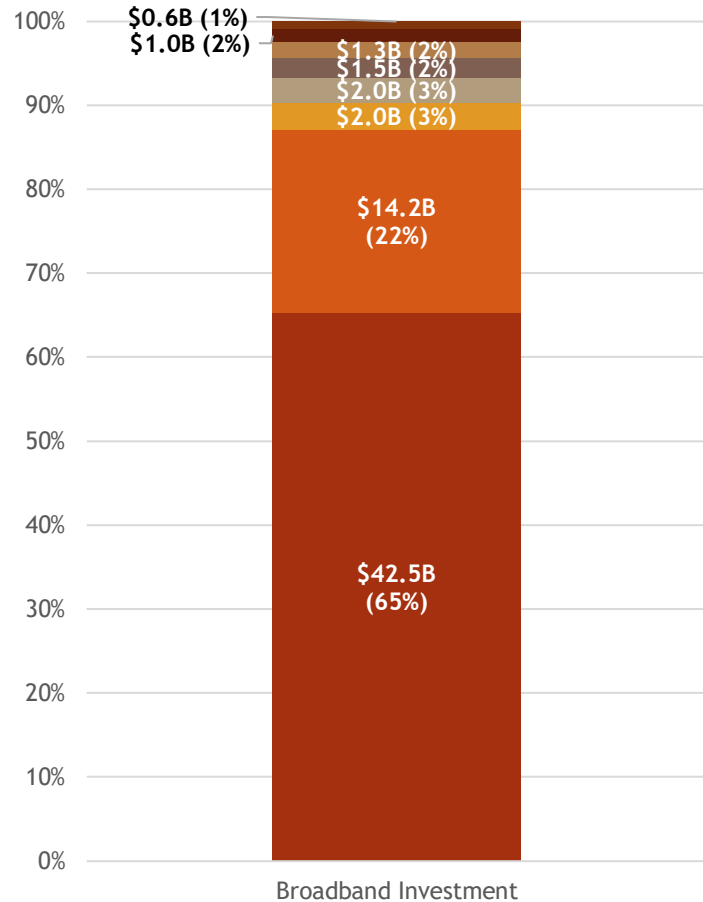
# American Rescue Plan Act (ARPA) – Treasury Department

Program	Funds Allocated	Program Details	Eligible Recipients	Application Window
State and Local Fiscal Recovery Funds	\$350 billion	<p>Program seeks to support urgent pandemic-response efforts, replace lost revenue for state and local governments, strengthen support for vital public services, and address public health and economic challenges.</p> <p>Allows recipients to use funds for broadband infrastructure, among other investments such as public health, replacement of public sector revenues, premium pay for essential workers, etc.</p> <p>Requires networks symmetrical speeds of 100 Mbps, unless exemption, then 100/20 Mbps but scalable to symmetrical 100 Mbps.</p>	<p>Grants awarded to states</p> <p>No restrictions on eligibility for subgrants</p>	<p>States received 50% of funds in mid-2021, will receive rest in mid-2022.</p> <p>States will administer own subgrant programs, but all funds must be expended by end of 2024.</p>
Coronavirus Capital Projects Fund	\$10 billion	<p>Program designed to allow recipients to invest in capital assets, including infrastructure, that meet communities' critical needs in the short- and long-term.</p> <p>Key priority of program is for broadband infrastructure and other digital connectivity technology projects.</p> <p>Requires networks symmetrical speeds of 100 Mbps, unless exemption, then 100/20 Mbps but scalable to symmetrical 100 Mbps.</p>	<p>Grants awarded to states</p> <p>No restrictions on eligibility for subgrants</p>	<p>Application window for states closed December 27, 2021; for Tribal governments, will close June 1, 2022.</p> <p>Sub-grantees may begin receiving funds in 2022 from state programs.</p>

# Broadband Title's Evolution

Initial Proposal	Current Broadband Title
<ul style="list-style-type: none"><li>• <u>\$100 billion</u> for broadband funding</li><li>• Provided for <u>overbuild</u></li><li>• Preference for <u>municipalities and local governments</u> for network deployment</li><li>• Speeds of <u>symmetrical 100 Mbps</u> (i.e., limited to fiber)</li><li>• <u>Net neutrality</u> provisions</li><li>• Disbursement of funds through <u>FCC</u></li><li>• <u>Rate regulation</u> provisions</li></ul>	<ul style="list-style-type: none"><li>• <u>\$65 billion</u> for broadband funding</li><li>• Discourages <u>overbuild</u> (strong prioritization of unserved and underserved areas)</li><li>• <u>Provider-neutral</u></li><li>• Speeds of <u>100/20 Mbps</u>, with waivers available depending on cost/time factors</li><li>• <u>No net neutrality</u> language</li><li>• Disbursement of vast majority of funds through <u>NTIA grant programs</u></li><li>• <u>No outright rate regulation</u> language</li></ul>

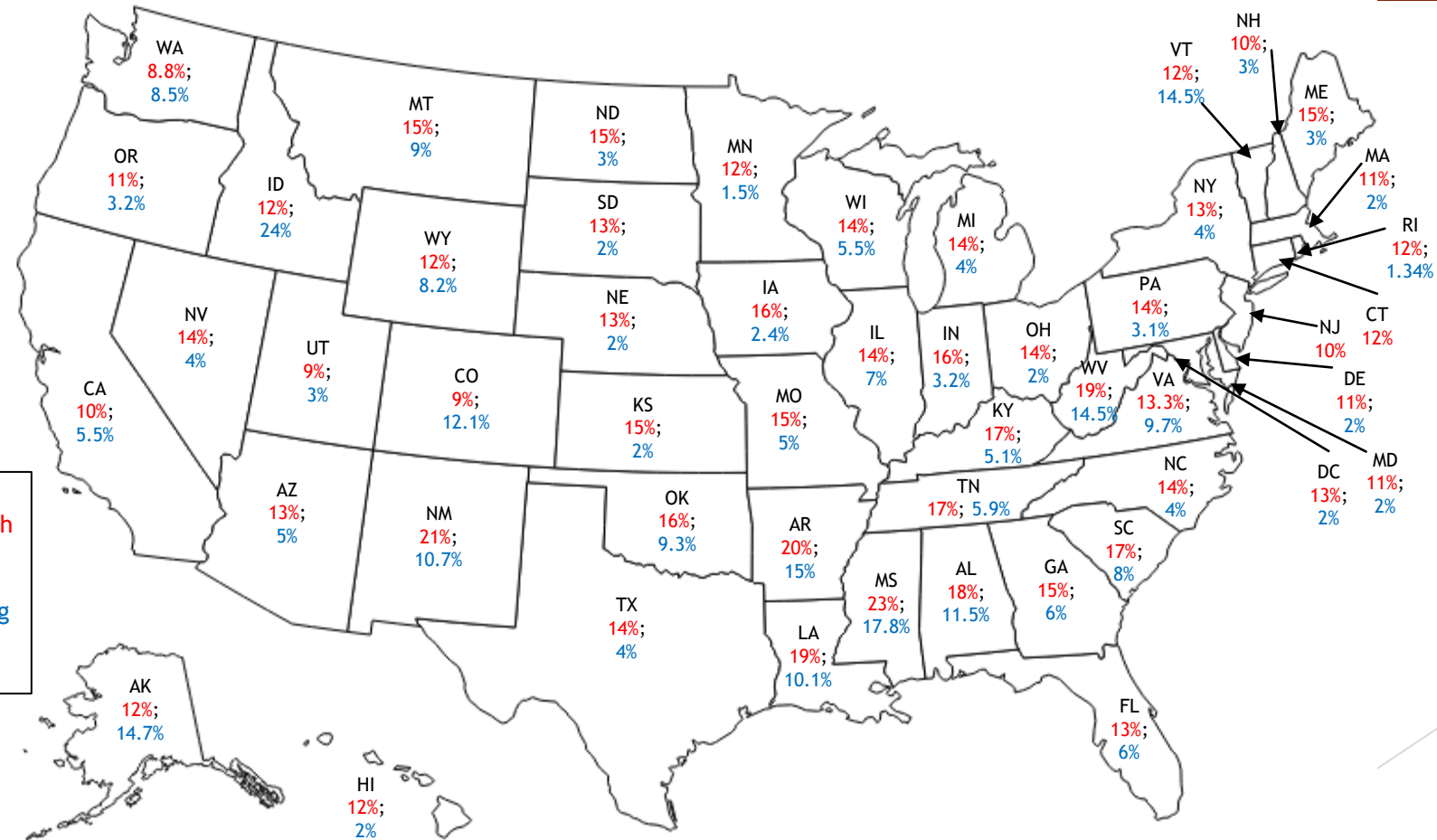
# Infrastructure Investment and Jobs Act: Broadband Overview



Allocation	Amount	Agency
Private activity broadband bonds	<i>\$0.6B allocated</i>	--
Enabling Middle Mile Broadband Infrastructure Program	<i>\$1.0B allocated</i>	NTIA
Digital Equity Competitive Grant Program	<i>\$1.25B allocated</i>	NTIA
State Digital Equity Capacity Grant Program	<i>\$1.5B allocated</i>	NTIA
ReConnect Program	<i>\$2.0B allocated</i>	USDA
Tribal Broadband Connectivity Program	<i>\$2.0B allocated</i>	NTIA
Affordable Connectivity Program	<i>\$14.2B allocated</i>	FCC
Broadband Equity, Access, and Deployment Program	<i>\$42.45B allocated</i>	NTIA



# The Digital Divide



**KEY:**  
Red - % of households with internet subscription

Blue - % of residents living in areas with broadband

# Broadband Equity, Access, and Deployment (BEAD) Program

Funds Allocated	Administering Agency	Eligible Recipients	Expected Timeline
\$42.45 billion	NTIA	Grants awarded to states  No restrictions on eligibility for subgrants	<ul style="list-style-type: none"><li>• NOFO within 180 days (mid-May 2022)</li><li>• Initial \$100 million to each state likely disbursed soon after final proposals submitted</li><li>• Remaining funds likely disbursed in late 2022/early 2023</li></ul>

- Project objective is to close the availability gap as “access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States”
- End-mile broadband infrastructure deployment
- Eligible uses of funds:
  - Deployment to unserved and underserved areas
  - Connecting community anchor institutions
  - Data collection, broadband mapping, and planning
  - Installation of broadband equipment or providing reduced-cost broadband to multi-family residential buildings
  - Broadband adoption programs

# Broadband Equity, Access, and Deployment (BEAD) Program

## Funds Disbursement

- States will receive funding from the NTIA, to disburse to subgrantees
- Amounts allocated to states, besides minimum \$100 million, will depend on (1) the number of unserved locations in each state and (2) the number of unserved locations in high-cost areas
- States will likely use existing state broadband programs or craft new programs under state broadband authorities or state Governor's Offices
- To receive funding, states will need to submit 5-year action plans and initial and final proposals, and may solicit or be receptive to industry feedback when drafting

# Broadband Equity, Access, and Deployment (BEAD) Program

## State Broadband Sub-Grant Programs - Milestones

- NTIA will issue Notice of Funding Opportunity (NOFO) by mid-May 2022, including application procedures and requirements for states
- States will need to enact state legislation to:
  - Establish or assign relevant authority to a new or existing state agency
  - Establish a new broadband grant program, if needed
  - Appropriate federal funds to the relevant state broadband grant program
- State agency administering broadband grant programs will initiate a rulemaking process that will establish processes and requirements, including for example:
  - Broadband speed requirements
  - Definition of low-cost broadband option
- Programs will accept grant proposals or applications to review and evaluate
- Subgrants are awarded

# Broadband Equity, Access, and Deployment (BEAD) Program

## Prioritization of Awards

- Funding to subgrantees will be prioritized in this order:
  - (1) Unserved service projects (i.e., projects where at least 80% of broadband-serviceable locations lack at least 25/3 Mbps speeds)
  - (2) Underserved service projects (i.e., projects where at least 80% of broadband-serviceable locations are not unserved and lack at least 100/20 Mbps speeds)
  - (3) Connecting eligible community anchor institutions without gigabit connections
- Other prioritization factors:
  - Deployment to persistent poverty or high-poverty areas
  - Speeds of proposed broadband service
  - Scalability of deployed network
  - Buildout expediency
  - Demonstrated record of and plans to be in compliance with federal labor and employment laws

# Broadband Equity, Access, and Deployment (BEAD) Program

## Subgrantee Obligations

- Deployed network service (1) must have speeds of at least 100/20 Mbps and (2) with network outages not exceeding, on average, 48 hours over any 365-day period
- Must offer at least 1 low-cost broadband service option, to be defined by states, and provide access to each customer within project area that desires service
- Must complete buildout and begin providing broadband service within 4 years; waiver to extend available
- For fiber projects, must include interspersed conduit access points at regular, short intervals
- May not use funds to purchase Chinese equipment or covered communications equipment/service (as defined in Secure and Trusted Communications Networks Act)
- Must conduct public awareness campaigns to increase broadband adoption
- Matching requirement of 25% of project costs from non-federal funds (with exceptions, per below)
  - BUT: No match requirement for high-cost areas and may be waived or reduced by NTIA upon request
  - May use funds provided under Families First Coronavirus Response Act, CARES Act, 2021 Consolidated Appropriations Act, American Rescue Plan Act

# Affordable Connectivity Program (formerly Emergency Broadband Benefit)

Funds Allocated	Administering Agency	Eligible Recipients	Expected Timeline
\$14.2 billion	FCC	Broadband providers designated as an ETC or approved by FCC to participate	<ul style="list-style-type: none"><li>• Transitioned from EBB to ACP on December 31, 2021</li><li>• For existing EBB consumers, will continue to receive \$50 subsidy during 60-day transition period</li></ul>

- Qualifying subsidy recipient expanded from low-income households making up to 135% above federal poverty line, to now 200% above line
- Participating providers must allow subsidy to apply to any service offering and notify customers renewing or subscribing about program and enrollment
- Subsidy amount reduced from \$50 to \$30

# Tribal Broadband Connectivity Program

Funds Allocated	Administering Agency	Eligible Recipients	Expected Timeline
\$2 billion	NTIA	Grants awarded to Tribal entities or partnerships between private ISPs and state entities; no restrictions on eligibility for subgrants	<ul style="list-style-type: none"><li>Funds available upon enactment</li></ul>

- Objective is to provide new funds and extend expenditure deadlines of existing program
- Funds may be used for deployment, affordability programs, distance learning, telehealth, digital inclusion and adoption efforts
- Technology-neutral for deployment
- Deployment projects prioritized based on household coverage, location, cost-effectiveness, network speeds
- Deployed networks must have speeds of at least 25/3 Mbps
- Recipients have 18 months to commit funds to projects and 4 years to fully expend grant funds
- Grantees may use 2.5% of project cost for related planning, feasibility and sustainability studies
- Unused funds will be preserved for other Tribal broadband projects instead of reverting back to Treasury



# ReConnect Program

Funds Allocated	Administering Agency	Eligible Recipients	Expected Timeline
\$2 billion*	USDA - RUS	Private ISPs, co-ops, Indian tribes, and state and local authorities	• Funds available upon enactment

- Grants and loans for broadband deployment in rural areas
- At least 50% of households within a proposed service area must lack broadband speeds of at least 25/3 Mbps
- \$200 million of funds reserved for projects where at least 90% of households lack service speeds of at least 25/3 Mbps
- Deployed network must “to the extent possible” have speeds of at least 100/20 Mbps
- Proposed service area must not have been previously funded by another RUS or federal program for broadband deployment

\*\$74 million of this \$2 billion will be set aside for broadband loans to be disbursed by RUS

# Digital Equity Act - State Planning & Capacity Grant Programs

Funds Allocated	Administering Agency	Eligible Recipients	Expected Timeline
\$1.5 billion	NTIA	State agencies, non-profits, community anchor institutions, local education agencies, entities that carry out workforce development program	<ul style="list-style-type: none"><li>• Planning grants awarded in first fiscal year after enactment, i.e., FY2023 or beginning October 2022</li></ul>

- Purpose of Digital Equity Act programs is to support the closure of the digital divide & promote equity and digital inclusion
- Target demographic includes households with income no more than 150% above the poverty level, senior citizens, incarcerated individuals, veterans, rural residents, racial or ethnic minorities, and individuals with disabilities or a language barrier
- \$60 million first granted for state to develop the State Digital Equity Plan
- 2 years after planning grants awarded, \$1.44 billion to be disbursed to implement Plans and other digital inclusion activities
- Technology-neutral basis, “to the extent practicable”

# Digital Equity Act - Competitive Grant Program

Funds Allocated	Administering Agency	Eligible Recipients	Expected Timeline
\$1.25 billion	NTIA	Any of entities listed in State Capacity Grant Program, plus partnerships between listed entities and entities determined to be in public interest	<ul style="list-style-type: none"><li>• Program to be established within 30 days after State Capacity Grant Program implementation grants begin being awarded</li></ul>

- Technology-neutral basis, “to the extent practicable”
- Grants may be used for digital inclusion and adoption activities
- Award evaluation factors include whether applicant plans to subcontract with certain small business concerns, comparative geographic diversity, and duplication

# Enabling Middle Mile Broadband Infrastructure Program

Funds Allocated	Administering Agency	Eligible Recipients	Expected Timeline
\$1 billion	NTIA	Private ISPs, non-profits, and state and local authorities	<ul style="list-style-type: none"><li>• NOFO within 180 days (mid-May 2022)</li><li>• Awards within 270 days of NOFO (February 8, 2023, at the latest)</li></ul>

- Program objective is to “encourage the expansion and extension of middle mile infrastructure to reduce the cost of connecting unserved and underserved areas... and to promote broadband connection resiliency”
- Targets unserved and underserved locations, and anchor institutions
- Technology-neutral - middle mile infrastructure defined as any broadband infrastructure, including fiber, towers, microwave links, undersea cables, carrier-neutral submarine cable landing stations, carrier-neutral internet exchange facilities, backhaul, etc.

# Enabling Middle Mile Broadband Infrastructure Program

## Prioritization of Awards

- Applications will be prioritized if 2 or more following conditions are met:
  - (1) Applicant adopts fiscally sustainable middle mile strategy
  - (2) Applicant commits to offering non-discriminatory interconnect to last-mile providers and any other “bona fide” requests
  - (3) Applicant identifies specific last-mile providers that have (a) expresses written interest in interconnecting and (b) demonstrates financial sustainability
  - (4) Applicant identifies supplemental investment or in-kind support that will accelerate buildout
  - (5) Applicant demonstrates deployed infrastructure will benefit national security interests
- Other prioritization factors:
  - Projects leveraging existing rights-of-way, assets, and infrastructure
  - Projects enabling connection of unserved anchor institutions
  - Projects facilitating development of carrier-neutral interconnection facilities
  - Projects improving redundancy and resiliency of existing middle mile infrastructure

# Enabling Middle Mile Broadband Infrastructure Program

## Applicant Obligations

- Applicant must commit to prioritize (1) connecting to last mile networks that will provide service to unserved areas, (2) connecting non-contiguous trust lands, or (3) offering of wholesale broadband service on carrier-neutral basis
- Buildout must be completed within 5 years; waiver to extend timeline by 1 year available
- Matching requirement of at least 30% of project costs
- Middle mile network must be capable of supporting retail broadband service
- For terrestrial or fixed wireless projects, applications must identify gaps in coverage using the most recent broadband mapping data available from FCC or state
- Additional obligations for fiber deployment projects:
  - Must ensure that network will be capable of connecting anchor institutions at speeds of > 1/1 Gbps
  - Must include direct interconnect facilities to facilitate service to nearby anchor institutions
  - Must agree to offer interconnection in perpetuity (where feasible without exceeding capacity limitations)
- Many of the above obligations may be waived or NTIA will have alternative requirements for middle mile grants to Tribal governments or deployment on Tribal land