# Tribal Government Participation in the BEAD Challenge Process

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

*April 2024*

# Challenge Process Participation by Tribal Governments

**INTERNET FOR ALL**

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## Importance of Participating in your Eligible Entity's BEAD Challenge Process

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### WHY SHOULD TRIBAL GOVERNMENTS PARTICIPATE IN THE BEAD STATE CHALLENGE PROCESS?

The goal of the BEAD Program is to deploy broadband to unserved and underserved locations. To help achieve this goal, the Infrastructure Act requires each state and territory (Eligible Entities) to conduct a challenge process to determine the locations and Community Anchor Institutions eligible for BEAD funding. **All Tribal Entities are eligible to participate in BEAD challenge processes and are strongly encouraged to do so.**

**Tribal governments may benefit from participating in BEAD challenge processes in a variety of ways. For instance, Tribal governments can challenge the classification of a location based on the level of service currently available, and they may challenge an Eligible Entity's identification of Community Anchor Institutions on Tribal lands.** You can learn more about submitting and rebutting challenges in the BEAD Challenge Process Policy Notice (specifically Section 7) but note that each Eligible Entity will have its own, unique BEAD Challenge Process that may be different from other states/territories.

**Tribal governments can also challenge the status of "enforceable commitments" on their lands. This documents explains the potential benefits of challenging enforceable commitments on Tribal lands.**

### WHAT IS AN ENFORCEABLE COMMITMENT (EC)?

The BEAD NOFO states that Eligible Entities may not treat as unserved or underserved any location that is already subject to an "enforceable commitment" to deploy qualifying broadband as of the date that the challenge process is concluded. (*BEAD NOFO Section IV.B.7.a.ii*). In other words, locations subject to enforceable commitments are not eligible for funding. **Eligible Entities are required to identify enforceable commitments as part of their challenge process and deem the locations in the project area "served" and ineligible for BEAD funding.**

With the exception of Tribal lands, the BEAD Program defines "enforceable commitment" as public funding commitments for the provision of qualifying broadband service. (*BEAD NOFO Section IV.B.7.ii*).

However, **on Tribal lands**, a public funding commitment that otherwise meets the above criteria constitutes an **enforceable commitment *only* if accompanied by a legally binding agreement**, which includes a **Tribal Government Resolution**, between the relevant Tribal Government and the provider receiving the public funding (*BEAD NOFO Section IV.B.7.ii*).

**Tribal governments should thus challenge enforceable commitments that do not meet this criteria if they want the relevant locations on their lands to be eligible for BEAD funding.**

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## KEY TAKEAWAYS

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### TRIBAL GOVERNMENTS SHOULD PARTICIPATE IN BEAD CHALLENGE PROCESSES TO ENSURE ACCURATE ELIGIBILTY FOR LANDS

✓ **Locations subject to an enforceable commitment to deploy broadband that meets the BEAD technical requirements are deemed "served"** and ineligible for BEAD. (*BEAD NOFO Sec IV.B.7.ii*)  With the exception of Tribal lands, the BEAD Program defines "enforceable commitment" as a public funding commitment for the provision of qualifying broadband service.

✓ For Tribal lands, such a funding commitment is **an enforceable commitment only if it includes a legally binding agreement, including a Tribal Government Resolution, between the relevant Tribal government and the service provider that will deploy qualifying broadband as a result of that commitment.**

✓ If a Tribal land is marked as "served" due to an enforceable commitment, but the Tribal Government is aware that this commitment does not include a legally binding agreement or a Tribal Government Resolution, then **the Tribal Government should submit a challenge if it wants that location to be deemed unserved and eligible for BEAD funding.**

✓ If Tribal Governments do not challenge the enforceable commitments on their land, **then locations may be marked as "served" (and ineligible for BEAD) even though the commitment does not include a legally binding agreement or Tribal Government Resolution.**

> (!) **The Tribal Government should thus challenge any enforceable commitment designations on their lands that do not meet the criteria outlined above if the government wants those locations to be deemed eligible for BEAD funding.**

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# Appendix: *Challenge Process Participation by Tribal Governments*

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## How to Get Involved in the BEAD Challenge Process

### WHERE CAN WE FIND ADDITIONAL INFORMATION AND RESOURCES ON THE BEAD CHALLENGE PROCESS?

Tribal government can find information about their Eligible Entity's BEAD Challenge Process on their **Eligible Entity/State Broadband Office's website. To find your Eligible Entity's website and point(s) of contact, utilize the 'States' page on the BroadbandUSA website**. More information can be found on the Internet for All website or the BroadbandUSA's Technical Assistance Hub.

On the websites, you will find documents such as the BEAD Challenge Process Policy Notice, which specifies who is eligible to challenge, types of challenge, and the correct procedure to apply for a challenge with your Eligible Entity. Additionally, you will find a webinar that provides an introduction and overview of the BEAD Challenge Process. *More resources that can assist Tribal governments are below:*

- BEAD NOFO
- BEAD FAQs
- BEAD Model Challenge Speed Test Checklist

- FCC Mapping Overview and Guide
- Reliable Broadband Services and Alternative Technologies

### WHO CAN WE CONTACT FOR MORE INFORMATION?

**Reach out to your NTIA Federal Program Officer (FPO)**

Each BEAD Eligible Entity is assigned an FPO to help resolve questions and comments. If your Tribe has questions, comments, or concerns related to getting involved in the BEAD Challenge Process, enforceable commitments, Tribal Government Resolutions, or any other related questions, **please contact the FPO assigned to the Eligible Entity where you are located**. To learn who your assigned FPO is, contact your State Broadband Office or use the following link.

**Reach out to your State or Territory Broadband Office (SBO/TBO)**

Your **State or Territory Broadband Office can assist you** with getting involved in their BEAD Challenge Process. SBO/TBO contact information can be found **here**.

### Additional Resources

Reference the BEAD NOFO and the BroadbandUSA Technical Assistance Hub for additional context.