U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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# Decision

**Matter of:** U.S. Department of Commerce, National Telecommunications and Information Administration—Applicability of the Congressional Review Act to Broadband Equity, Access, and Deployment Program Restructuring Policy Notice

**File:** B-337604

**Date:** December 16, 2025

## DIGEST

On June 6, 2025, the U.S. Department of Commerce, National Telecommunications and Information Administration published a notice entitled, *Broadband Equity, Access, and Deployment (BEAD) Program: BEAD Restructuring Policy Notice* (Policy Notice). The Policy Notice modifies and replaces certain requirements outlined in the May 12, 2022, Notice of Funding Opportunity for the BEAD Program—a grant program to provide high-speed broadband access throughout the United States and several territories.

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as the Comptroller General. CRA adopts the definition of "rule" under the Administrative Procedure Act (APA) but excludes certain categories of rules from coverage. We conclude that the Policy Notice meets the APA definition of a rule, and no CRA exception applies. Therefore, the Policy Notice is a rule subject to CRA's submission requirements.

## DECISION

On June 6, 2025, the U.S. Department of Commerce (Commerce), National Telecommunications and Information Administration (NTIA) published a notice entitled, *Broadband Equity, Access, and Deployment (BEAD) Program: BEAD Restructuring Policy Notice* (Policy Notice).[1] The Policy Notice modifies and

[1] The Policy Notice is available at https://broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD_Restructuring_Policy_Notice (last visited Dec. 10, 2025).

replaces certain requirements outlined in the May 12, 2022, Notice of Funding Opportunity (NOFO) for the BEAD Program—a grant program to provide high-speed broadband access throughout the United States and several territories.[2] We received a request for a decision as to whether the Policy Notice is a rule for purposes of the Congressional Review Act (CRA).[3] As discussed below, we conclude that the Policy Notice is a rule subject to CRA's submission requirements.

Our practice when rendering decisions is to contact the relevant agencies to obtain factual information and their legal views on the subject of the request.[4] Accordingly, we reached out to Commerce on June 30, 2025.[5] Although Commerce did not provide a substantive response with its legal views, we determined we have sufficient information to issue a decision on this matter.

BACKGROUND

Broadband Equity, Access, and Deployment (BEAD) Program

The Infrastructure, Investment, and Jobs Act (IIJA) established the BEAD Program,[6] and appropriated $42.45 billion for it.[7] The BEAD Program is a grant program administered by NTIA that funds high-speed broadband access initiatives, with particular focus on unserved and underserved locations.[8] Funds for the BEAD

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[2] NTIA, Notice of Funding Opportunity, *Broadband Equity, Access, and Development Program* (BEAD NOFO), *available at* https://broadbandusa.ntia.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (last visited Dec. 10, 2025).

[3] Letter from Senator Michael Bennet to Comptroller General (June 10, 2025).

[4] GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), *available at* https://www.gao.gov/products/gao-24-107329.

[5] Letter from Assistant General Counsel for Appropriations Law, GAO, to Acting General Counsel, Commerce (June 30, 2025). We subsequently provided Commerce with additional opportunities to provide its views, but did not receive a response.

[6] Pub. L. No. 117-58, div. F, title I, § 60101, 135 Stat. 429, 1182 (Nov. 15, 2021); 47 U.S.C. §§ 1701–1702.

[7] Pub. L. No. 117-58, 135 Stat. at 1353.

[8] *See id.* § 60102(b)–(c); Policy Notice, at 1.

Program are allocated by formulas in IIJA to Eligible Entities,[9] which include all 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands.[10] In advance of funds being distributed to Eligible Entities, the Assistant Secretary of Commerce for Communications and Information (Assistant Secretary) must approve each Eligible Entity's letter of intent, initial proposal, or final proposal.[11]

IIJA required the Assistant Secretary to issue a NOFO for the BEAD Program within 180 days of IIJA's enactment.[12] NTIA published the BEAD NOFO on May 12, 2022.[13] The BEAD NOFO explains the BEAD Program structure; provides information on amounts made available to Eligible Entities under the program; describes the grant application and review process; and outlines the eligibility requirements for the program.[14] The BEAD NOFO also imposes several obligations on Eligible Entities and subgrantees, such as coordinating with political subdivisions and Tribal governments; targeting engagement efforts at underrepresented communities; giving priority to projects based in part on a demonstrated record of and plans to be in compliance with federal labor and employment laws; and demonstrating that the Eligible Entities have sufficiently accounted for current and future weather- and climate-related risks to new infrastructure projects.[15] Finally, the BEAD NOFO clarifies some technical aspects of the BEAD Program. For example, IIJA instructs that when awarding subgrants using BEAD Program funds, Eligible Entities shall prioritize funding for deployment of infrastructure for "priority broadband projects,"[16] which the BEAD NOFO subsequently defines as "those that use end-to-end fiber-optic architecture," rather than other technologies.[17]

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[9] Pub. L. No. 117-58, § 60102(c).

[10] *Id.* § 60102(a)(2)(F), 60102(a)(2)(M); 47 U.S.C. § 942.

[11] Pub. L. No. 117-58, § 60102(c)(4). The Assistant Secretary of Commerce for Communications and Information leads NTIA. 47 U.S.C. § 902(a)(2).

[12] Pub. L. No. 117-58, § 60102(e)(1)(A).

[13] BEAD NOFO.

[14] *Id*. at 19–85.

[15] *Id.* at 50–63.

[16] Pub. L. No. 117-58, § 60102(h)(1)(A)(ii).

[17] BEAD NOFO, at 42.

BEAD Restructuring Policy Notice

On June 6, 2025, NTIA published a Policy Notice that "modifies and replaces certain requirements outlined in the BEAD [NOFO]."[18] The Policy Notice states that it "eliminates burdensome and non-statutory requirements contained in the NOFO published on May 12, 2022" and prohibits Eligible Entities "from imposing any of the obligations removed by this Policy Notice on subgrantees as part of the BEAD Program."[19] According to the Policy Notice, "Each Eligible Entity must comply with this Policy Notice to gain approval of its Final Proposal from the Assistant Secretary."[20] The Policy Notice also rescinded two previously issued Policy Notices for the BEAD Program.[21]

The Policy Notice removed several requirements imposed on Eligible Entities and subgrantees in the BEAD NOFO, such as requirements related to labor, employment, and workforce development; climate change; open access and net neutrality; local coordination and stakeholder engagement; and low-cost service options.[22] The Policy Notice also amended some of the technological requirements of the BEAD Program. For example, the Policy Notice "eliminates the 'Fiber Preference' section of the BEAD NOFO and permits Eligible Entities to select from all qualifying technologies," rather than limiting priority broadband projects to those using end-to-end fiber.[23]

Furthermore, the Policy Notice requires Eligible Entities to conduct an additional subgrantee selection round, which requires Eligible Entities to rescind all provisional subaward selections.[24] The Policy Notice also revises the scoring rubric that Eligible Entities are to use to evaluate subgrantee applications, placing particular emphasis "on minimizing the cost of deployment under the BEAD Program."[25] Finally, the Policy Notice identifies other changes to the administration of the BEAD Program, including changes related to optimizing program locations, funding for allowable

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[18] Policy Notice, at 1 (emphasis omitted).

[19] *Id.* at 3–4.

[20] *Id.* at 1.

[21] *Id.* at 15.

[22] *See id.* at 3–8.

[23] *Id.* at 8 (internal citation omitted).

[24] *Id.* at 8–10.

[25] *Id.* at 11.

non-deployment purposes, and expedited permitting under the National Environmental Policy Act, 42 U.S.C. §§ 4321–4347.[26]

The Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and to the Comptroller General for review before a rule can take effect.[27] The report must contain a copy of the rule, "a concise general statement relating to the rule," and the rule's proposed effective date.[28] CRA allows Congress to review and disapprove of federal agency rules for a period of 60 days using special procedures.[29] If a resolution of disapproval is enacted, then the new rule has no force or effect.[30]

CRA adopts the definition of rule under the Administrative Procedure Act (APA), 5 U.S.C. § 551(4), which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[31] However, CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.[32]

NTIA did not submit a CRA report to Congress or the Comptroller General on the BEAD Policy Notice.

DISCUSSION

At issue here is whether the Policy Notice meets CRA's definition of a rule, which adopts APA's definition of a rule, with three exceptions. As explained below, we

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[26] *Id.* at 13–15.

[27] 5 U.S.C. § 801(a)(1)(A).

[28] *Id.*

[29] *See id.* § 802.

[30] *Id.* § 801(b)(1).

[31] *Id.* § 804(3).

[32] *Id.*

conclude that it does. In addition, we conclude that the Policy Notice does not fall within any CRA exceptions. Therefore, the Policy Notice is a rule subject to CRA's submission requirements.

The Policy Notice is a Rule Under APA

Applying APA's definition of "rule," the Policy Notice meets all of the required elements. First, the Policy Notice is an agency statement because it was issued by NTIA, a federal agency.[33]

Second, the Policy Notice is of future effect. An agency action of future effect is one "concerned with policy considerations for the future rather than the evaluation of past or present conduct."[34] The Policy Notice concerns the administration of the BEAD Program going forward and outlines changes that Eligible Entities and subgrantees will be required to make to their applications for the program.[35] Therefore, the Policy Notice has future effect.

Third, the Policy Notice implements, interprets, and prescribes law or policy. An agency action implements, interprets, or prescribes law or policy when the action creates new regulations, changes regulatory requirements or official policy, or when it alters how the agency will exercise its discretion, among other things.[36] The Policy Notice here implements the requirements of the BEAD Program outlined in IIJA by describing how NTIA will administer the program going forward and outlining the criteria Eligible Entities and subgrantees seeking funding under the program must meet.[37] Furthermore, the Policy Notice prescribes policy by imposing new requirements on Eligible Entities.[38] For example, it states that Eligible Entities "*shall* eliminate the following non-statutory requirements from BEAD application scoring, subgrantee agreements, and subgrantee reporting requirements[,]" and that "Eligible

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[33] *See* 47 U.S.C. § 902(a)(1) (establishing NTIA as an administration within the Department of Commerce).

[34] B-316048, Apr. 17, 2008.

[35] The Policy Notice also notes that "[a]s of the date of this Policy Notice, any new costs incurred by an Eligible Entity to implement its Initial Proposal must comply with the terms of the [Policy] Notice." Policy Notice, at 16.

[36] B-337392, Aug. 12, 2025.

[37] Policy Notice, at 3–8.

[38] *See* B-336512, Aug. 29, 2024 (concluding that an agency action that goes beyond merely providing information or making suggestions and instead deploys prescriptive language satisfies this element of the definition).

Entities are hereby *prohibited* from imposing any of the obligations removed by this Policy Notice on subgrantees as part of the BEAD Program."[39] In addition, the Policy Notice alters the requirements for the prioritization of projects under the program by providing a new definition of a "priority broadband project" to include technologies other than end-to-end fiber,[40] which similarly implements and prescribes law or policy.

Our conclusion here is consistent with our previous decisions finding that agency actions implement, interpret, or prescribe law or policy when they define procedures by which potential recipients may apply for grant programs, and describe the process by which the agency will evaluate those applications.[41] For example, in B-335488, Oct. 18, 2023, we considered whether a U.S. Department of Transportation (DOT) NOFO, which "outlined the precise eligibility and selection criteria for each program, as well as the types of projects eligible to receive DOT funding under each one" and changed the criteria used to evaluate applicants and make award decisions from a previous NOFO—including how certain criteria were rated—was a rule subject to CRA.[42] We concluded that the DOT NOFO for three IIJA grant programs implemented or prescribed law or policy and described agency procedures, as it described the process by which eligible entities may apply for three grant programs and defined how DOT would evaluate these applications, among other things.[43] Similarly here, the Policy Notice alters the criteria used to evaluate applications under the program and changes program requirements, as established by the BEAD NOFO. As a result, the Policy Notice also satisfies this element of the APA definition.

CRA Exceptions

We must next determine whether any of CRA's three exceptions apply. CRA provides for three types of rules that are not subject to its requirements: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.[44]

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[39] Policy Notice, at 4 (emphasis added).

[40] *Id.* at 9.

[41] B-335488, Oct. 18, 2023; *see also* B-335175, May 6, 2024; B-334146, June 5, 2023.

[42] B-335488, Oct. 18, 2023.

[43] *Id.*

[44] 5 U.S.C. § 804(3).

(1) Rule of Particular Applicability

The Policy Notice is a rule of general applicability, rather than particular applicability. Rules of particular applicability are rules addressed to specific, identified persons or entities and determine actions that person or entity may or may not take, considering facts and circumstances specific to those persons or entities.[45] Here, the Policy Notice does not apply to a particular entity. Instead, the Policy Notice applies to all Eligible Entities under the BEAD Program—all 50 states, the District of Columbia, and several territories—and notes that "*[e]ach* Eligible Entity must comply with this Policy Notice to gain approval of its Final Proposal from the Assistant Secretary."[46] Therefore, the Policy Notice is a rule of general applicability, rather than particular applicability.

(2) Rule of Agency Management or Personnel

The Policy Notice is not a rule of agency management or personnel. We have previously held that rules that fall into this category relate to purely internal matters.[47] Because the Policy Notice is concerned with the administration of the BEAD Program, rather than management of NTIA or its personnel, it does not meet the second exception.

(3) Rule of Agency Organization, Procedure, or Practice with No Substantial Effect on Non-Agency Parties

Lastly, the Policy Notice is not a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. We have previously explained that this exception was modeled on the APA exception to notice-and-comment rulemaking requirements for "rules of agency organization, procedure, or practice."[48] The purpose of the APA exception is to ensure "that agencies retain latitude in organizing their internal operations," so long as such rules do not have a substantial impact on non-agency parties.[49] Following this interpretation in the CRA context, we have only applied CRA's third exception to

[45] B-334995, July 6, 2023.

[46] Policy Notice, at 1 (emphasis added).

[47] *See, e.g.,* B-335142, May 1, 2024; B-334411, June 5, 2023.

[48] 5 U.S.C. § 553(b)(A); *see* B-329926, Sept. 10, 2018.

[49] *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980).

rules that primarily focus on the internal operations of an agency.[50] For instance, in B-329926, Sept. 10, 2018, we found that updates to a Social Security Administration (SSA) hearings manual governing SSA adjudicators' use of information from the internet qualified as a rule of agency organization, procedure, or practice. There, the manual outlined procedures for SSA employees to follow in processing and adjudicating benefits claims. Because the manual was directed to and binding only on SSA officials without imposing new burdens on claimants, we concluded that the manual met the third exception.[51]

However, rules that are directed at and primarily concerned with the behavior of non-agency parties are not rules of agency organization, procedure, or practice.[52] Here, the Policy Statement is primarily concerned with the behavior of Eligible Entities and subgrantees, rather than with the internal operations of NTIA itself. The Policy Notice prescribes actions program participants should and should not take in carrying out the BEAD Program. Therefore, it is not a rule of agency organization, procedure, or practice.

Moreover, the Policy Notice cannot fall under this exception because it also substantially affects the rights or obligations of non-agency parties. In the federal funding context, we have previously determined that rules amending or clarifying the requirements of existing financial assistance programs for non-agency parties substantially affect those parties' rights or obligations.[53] Where a rule modifies an existing financial assistance program through actions such as defining eligibility requirements and selection criteria, it has a substantial effect on non-agency parties who participate in the program.[54] Here, the Policy Notice modifies and clarifies how NTIA will administer the BEAD Program. Among other things, the Policy Notice eliminates certain requirements previously imposed on Eligible Entities and subgrantees through the BEAD NOFO; alters the criteria by which NTIA will evaluate applications; requires Eligible Entities to conduct an additional round of subgrantee selection after rescinding all preliminary and provisional subaward selections; and modifies the agency's interpretation of statutory terms, such as "priority broadband project." By changing the manner in which the BEAD Program is administered, these actions substantially affect the rights or obligations of non-agency parties

[50] *See, e.g.,* B-329916, May 17, 2018.

[51] B-329926, Sept. 10, 2018.

[52] B-337059, May 28, 2025.

[53] B-335488, Oct. 18, 2023; *see also* B-334146, June 5, 2023; B-333732, July 28, 2022.

[54] B-335488, Oct. 18, 2023.

participating in the BEAD Program. Therefore, the Policy Notice cannot fall into CRA's third exception.

CONCLUSION

The Policy Notice is a rule for purposes of CRA because it meets the definition of a rule under APA and no CRA exception applies. Therefore, the Policy Notice is subject to CRA's requirement that it be submitted to Congress and the Comptroller General before it can take effect.

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