Policy on Subrecipient Non-Compliance, Notice of Default, and Default Proceedings

BEAD Program

Adopted by: Oklahoma Broadband Office

Effective Date: October 22, 2026

Next Review: October 22, 2027

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1. Purpose

This policy establishes the uniform standards and procedures the Oklahoma Broadband Office ("OBO") will follow in determining when to initiate a notice-of-default process against a Subrecipient of funds under the Broadband Equity, Access, and Deployment ("BEAD") Program, and in conducting the proceedings that follow. It is intended to ensure that OBO exercises its enforcement authority consistently, with adequate notice and an opportunity to cure, and in a manner that satisfies both the federal grant-administration requirements that govern the BEAD Program and the procedural requirements of the Oklahoma Administrative Procedures Act.

2. Authority

OBO administers BEAD funds as a pass-through entity under 2 C.F.R. § 200.331 (2 C.F.R. § 200.331) and the Infrastructure Investment and Jobs Act of 2021, through Broadband Equity, Access, and Deployment Program Funding and the BEAD Grant Agreement executed between the OBO and Subrecipients. This policy is adopted pursuant to:

- The Oklahoma Broadband Office's statutory authority to promulgate rules as necessary to implement the Oklahoma Broadband Expansion Act and for the governance and operation of OBO, and its authority over OBO's grant programs (Okla. Stat. Ann. tit. 74, § 9202 (West));
- OBO's obligations as a pass-through entity to monitor Subrecipients and to consider enforcement action against noncompliant Subrecipients under 2 C.F.R. § 200.332 (2 C.F.R. § 200.332);
- The remedies-for-non-compliance framework incorporated into each BEAD Grant Agreement (Article IV) (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 22) and 2 C.F.R. § 200.339 (2 C.F.R. § 200.339);
- The NTIA requirement that eligible entities detail in their subgrant agreements or grant conditions the corrective actions to be taken upon a finding of non-compliance with network-performance standards, and establish a remediation process to bring noncompliant subgrantees into compliance (Broadband Equity, Access, and Deployment (BEAD) Program: Performance Measures for BEAD

Last-Mile Networks at 10; Broadband Equity, Access, and Deployment (BEAD) Program: Performance Measures for BEAD Last-Mile Networks at 12); and

- The Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 et seq., which governs individual proceedings before state agencies (**Okla. Stat. Ann. tit. 75, § 250.1 (West)**).

OBO is an "agency" fully subject to Article II of the Administrative Procedures Act. The Act defines "agency" to include any statutorily created state office, board, authority, or instrumentality, excepting only the Legislature and the courts (**Okla. Stat. Ann. tit. 75, § 250.3 (West)**); OBO and the Broadband Governing Board are statutorily created (**Okla. Stat. Ann. tit. 74, § 9202 (West)**); and neither is among the agencies exempted from Article II (**Okla. Stat. Ann. tit. 75, § 250.4 (West)**). A proceeding to resolve whether a Subrecipient is in default is an "individual proceeding" — a formal process to resolve issues of law or fact between parties in the exercise of discretion of a judicial nature (**Okla. Stat. Ann. tit. 75, § 250.3 (West)**).

3. Scope and Relationship to the Grant Agreement

This policy applies to every BEAD Grant Agreement between OBO and a Subrecipient. It **supplements, and does not replace or limit,** the remedies and termination rights already set out in each Grant Agreement and in federal law. In particular:

- Nothing in this policy limits OBO's authority under Article IV of the Grant Agreement or 2 C.F.R. § 200.339 (**2 C.F.R. § 200.339**) to impose specific conditions, temporarily withhold payments, disallow costs, suspend or terminate the award, recommend suspension or debarment, withhold further funds, or pursue other legally available remedies (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 22; **2 C.F.R. § 200.339**).
- Nothing in this policy affects OBO's right to pursue **immediate termination** on grounds the Grant Agreement makes independently sufficient for immediate action — for example, a Subrecipient's non-compliance with federal or state permitting laws (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 21). The default process in Section 7 is the default path for the grounds identified in Section 5; it is not a prerequisite to remedies the Grant Agreement or federal law otherwise authorizes OBO to pursue without it.
- Where this policy and a Grant Agreement provision address the same subject, the policy is to be read consistently with the Grant Agreement's order of priority, which places 47 U.S.C. § 1702, the Specific Award Conditions, the General Terms and Conditions, the BEAD NOFO as amended by the Restructuring Policy Notice, and the Department of Commerce Standard Terms and Conditions above the Grant Agreement itself (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 5).

4. Definitions

Capitalized terms not defined here have the meanings given in the Grant Agreement.

- **"BSL"** means a Broadband Serviceable Location (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 16).

- **"Project Area"** means the geographic area covered by a Subrecipient's Project as described in its Application.
- **"Performance Milestone"** means any speed, latency, or availability standard applicable to a Funded Network, including the requirement that the network deliver at least 100 Mbps download / 20 Mbps upload (1 Gbps symmetrical for community anchor institutions), that 95% of latency measurements be at or below 100 milliseconds, that outages not exceed 48 hours over any 365-day period (99.45% availability), and that 80% of download and upload measurements be at or above 80% of the required speed (Broadband Equity, Access, and Deployment (BEAD) Program: Performance Measures for BEAD Last-Mile Networks at 9; Broadband Equity, Access, and Deployment (BEAD) Program: Performance Measures for BEAD Last-Mile Networks at 10; Broadband Equity, Access, and Deployment (BEAD) Program: Performance Measures for BEAD Last-Mile Networks at 3), together with any deployment benchmark in the Grant Agreement, including the obligation to begin providing service within four years of the subgrant (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 13).
- **"Reporting Requirement"** means any monthly, quarterly, semiannual, annual, performance-measurement, or final report, and any monitoring information, required under the Grant Agreement, Exhibit C, or applicable NTIA guidance (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 29; BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 30).
- **"Quarter"** means a calendar quarter for which a quarterly report is due 15 days after the quarter's end (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 29). **"Successive Quarters"** means two consecutive Quarters.
- **"Non-Compliance"** means a Subrecipient's failure to satisfy a Reporting Requirement, a Performance Milestone, or a deployment obligation, as further described in Section 5.
- **"Notice of Default"** means the written notice described in Section 7.2.
- **"Cure Documentation"** means the records and written explanation a Subrecipient submits under Section 7.3 to demonstrate that the Non-Compliance has been cured or is being remediated.
- **"Default"** means a determination, following the process in Section 7, that a Subrecipient has failed to cure the Non-Compliance identified in a Notice of Default.

5. Grounds for Initiating the Default Process

OBO may initiate the default process set out in Section 7 upon any of the following:

5.1 Reporting Non-Compliance. The Subrecipient fails to submit a required report in a timely and accurate manner, or fails to provide monitoring information requested by OBO, for **two Successive Quarters**. This includes failure to submit required performance-measurement results, which NTIA treats as independent non-compliance (Broadband Equity, Access, and Deployment (BEAD) Program: Performance Measures for BEAD Last-Mile Networks at 12), and failure to provide timely reporting or monitoring information, which the Grant Agreement identifies as a basis for recoupment (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 22).

5.2 Failure to Meet Performance Milestones. The Subrecipient fails to meet one or more Performance Milestones for **two Successive Quarters**. A provider is non-compliant with the network-performance standards if it fails any of the four thresholds — download, upload, latency, or availability — for any applicable speed tier and technology, or if it uses a non-compliant testing methodology or fails to meet transparency requirements (Broadband Equity, Access, and Deployment (BEAD) Program: Performance Measures for BEAD Last-Mile Networks at 12).

5.3 Insufficient Deployment (60% BSL Threshold). The Subrecipient has completed **60% or fewer** of the BSLs within a particular BEAD Project Area as of thirty-six months after the date of signature for the grant agreement, which is also the date of the commencement of the performance period for that Project Area. Because this ground reflects a point-in-time deployment shortfall rather than a recurring reporting or performance failure, it is an **independent ground** and does not require two Successive Quarters of Non-Compliance.

6. Monitoring and Determination of Non-Compliance

OBO's determination that grounds exist under Section 5 will be based on its ongoing monitoring of the Subrecipient, including review of financial and performance reports, performance-measurement submissions, random and anonymous speed tests, site visits, and audit findings (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 7; BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 8; 2 C.F.R. § 200.332). Before initiating the default process, OBO may, but is not required to, first impose specific conditions under 2 C.F.R. § 200.208 (2 C.F.R. § 200.208) — such as reimbursement-only payments, additional reporting, additional monitoring, or required technical assistance — after notifying the Subrecipient of the condition, the reason for it, the action needed to remove it, and the time allowed (2 C.F.R. § 200.208).

7. The Default Process

7.1 Initiation

Where OBO determines that one or more grounds under Section 5 exist, the OBO [Director or designee] may initiate the default process by issuing a Notice of Default.

7.2 Step One — Notice of Default

OBO will provide the Subrecipient with a written Notice of Default. Consistent with the Grant Agreement's requirement that OBO give written notice of a required remedy and the reasons for it (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 22), and with the federal requirement that a subrecipient be given an opportunity to object and to provide information challenging an enforcement action (2 C.F.R. § 200.342), the Notice of Default will state:

1. The ground(s) for default under Section 5 and the specific factual basis, including the reports, Performance Milestones, or Project Area and BSL counts at issue;

2. The legal authority for the action, including the relevant provisions of the Grant Agreement, 2 C.F.R. Part 200, and this policy;
3. That the Subrecipient has thirty (30) calendar days from the date of the Notice to submit Cure Documentation under Section 7.3;
4. The consequences of failing to cure, including that OBO may proceed to a default hearing and may pursue any remedy available under Article IV of the Grant Agreement and 2 C.F.R. § 200.339 (2 C.F.R. § 200.339), up to and including suspension or termination of the award and recoupment of funds (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 22; 2 C.F.R. § 200.339); and
5. The name and contact information for the OBO point of contact.

The Notice of Default will be delivered by a method that produces a record of delivery.

7.3 Step Two — Opportunity to Cure (One Month)

The Subrecipient will have **thirty (30) calendar days** from the date of the Notice of Default to provide OBO with Cure Documentation demonstrating that the Non-Compliance has been cured or setting out a corrective-action plan to resolve it. This opportunity to cure reflects the Grant Agreement's recognition that clawback and similar remedies follow only after the Subrecipient has had the opportunity to implement corrective measures (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 8), and the Subrecipient's existing duty to provide a corrective-action plan for significant developments that negatively affect the subaward (2 C.F.R. § 200.332).

7.4 Step Three — OBO Review (One Month)

OBO will have **thirty (30) calendar days** from its receipt of the Subrecipient's Cure Documentation to review the submission and determine whether the Non-Compliance has been cured. OBO will issue a written determination:

- **If OBO determines the Non-Compliance is cured,** OBO will notify the Subrecipient in writing and close the default process, without prejudice to OBO's right to initiate a new process for future Non-Compliance.
- **If OBO determines the Non-Compliance is not cured** — or if the Subrecipient fails to submit any Cure Documentation within the period in Section 7.3 — OBO will proceed to a default hearing under Section 7.5.

If the Subrecipient does not submit Cure Documentation, OBO may treat the matter as subject to informal disposition by default to the extent permitted by the Administrative Procedures Act (Okla. Stat. Ann. tit. 75, § 309 (West)).

7.5 Step Four — Default Hearing Under the Administrative Procedures Act

If the matter proceeds to a hearing, OBO will conduct a default hearing as an individual proceeding under Article II of the Oklahoma Administrative Procedures Act. The hearing will satisfy the following requirements:

(a) Notice of hearing. OBO will afford the Subrecipient an opportunity for hearing after reasonable notice. The notice of hearing will include a statement of the time, place, and nature of the hearing; the legal authority and jurisdiction under which it is held; a reference to the particular statutes and rules involved; and a short and plain statement of the matters asserted (Okla. Stat. Ann. tit. 75, § 309 (West)).

(b) Opportunity to be heard. The Subrecipient will be afforded the opportunity to respond and to present evidence and argument on all issues involved (Okla. Stat. Ann. tit. 75, § 309 (West)).

(c) Hearing officer. The Executive Director may designate a hearing examiner to conduct the hearing and render a proposed order, or may hear the matter itself.

(d) Record. OBO will maintain the record required for an individual proceeding, including all pleadings, motions and intermediate rulings, evidence received, matters officially noticed, offers of proof and objections, proposed findings and exceptions, and the presiding officer's decision or report. Oral proceedings will be electronically recorded and the recording maintained so as to protect the record through judicial review (Okla. Stat. Ann. tit. 75, § 309 (West)).

(e) Findings on the record. Any findings of fact will be based exclusively on the evidence received and on matters officially noticed in the hearing, unless the parties otherwise agree on the record (Okla. Stat. Ann. tit. 75, § 309 (West)).

(f) Proposed order. If the administrative head of the agency has not heard the case or read the record, OBO will not issue a final agency order adverse to the Subrecipient until a proposed order — accompanied by a statement of the reasons and of each issue of fact or law necessary to it — is served on the Subrecipient at least fifteen (15) days before the hearing or meeting at which the administrative head will decide, and the Subrecipient is afforded an opportunity to file exceptions and present briefs and oral argument. The parties may waive this procedure by written stipulation (Okla. Stat. Ann. tit. 75, § 311 (West)).

7.6 Step Five — Final Agency Order

A final agency order adverse to the Subrecipient will be in writing and will include separately stated findings of fact and conclusions of law, with a ruling on each proposed finding the Subrecipient submitted under applicable rules. The Subrecipient will be notified of the final agency order personally or by certified mail, return receipt requested (Okla. Stat. Ann. tit. 75, § 312 (West)).

Where the final order declares the Subrecipient in default and terminates the award in whole or in part, OBO will also comply with the federal notification-of-termination requirements, providing written notice stating the reasons for termination, the effective date, and the portion of the award terminated, and — for a termination based on the Subrecipient's material failure to comply — the SAM.gov reporting consequences and the Subrecipient's right to comment (2 C.F.R. § 200.340; 2 C.F.R. § 200.341).

7.7 Step Six — Rehearing and Judicial Review

The final agency order is subject to rehearing, reopening, or reconsideration by the administrative head on application by an aggrieved party filed within ten (10) days of entry of the order, on the grounds specified by statute; a timely application tolls the period for seeking judicial review (Okla. Stat. Ann. tit. 75, § 317 (West)). Any party aggrieved by the final agency order is entitled to judicial review by petition

filed in the appropriate district court within thirty (30) days after notice of the order; neither a motion for new trial nor a rehearing application is a prerequisite to review (Okla. Stat. Ann. tit. 75, § 318 (West)).

8. Remedies Upon Default

Upon a final agency order declaring a Subrecipient in default, OBO may pursue any one or more of the remedies available under Article IV of the Grant Agreement and 2 C.F.R. § 200.339 (2 C.F.R. § 200.339), including: temporarily withholding payments pending corrective action; disallowing costs associated with the non-compliance; suspending or terminating the award in whole or in part; recommending suspension or debarment proceedings under 2 C.F.R. Part 180; withholding further funds; and pursuing other legally available remedies (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 22; 2 C.F.R. § 200.339). OBO may also exercise its clawback and recoupment rights and draw on the Subrecipient's letter of credit or performance bond as provided in the Grant Agreement (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 19; BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 22).

Costs the Subrecipient incurs during a suspension or after termination are not allowable unless OBO expressly authorizes them in the notice or subsequently, except for obligations properly incurred before the effective date and not in anticipation of the suspension or termination (2 C.F.R. § 200.343). Upon termination in whole or part, OBO and the Subrecipient remain responsible for the closeout and post-closeout obligations under 2 C.F.R. §§ 200.344 and 200.345 (2 C.F.R. § 200.340).

9. Coordination With NTIA

OBO will coordinate with its NTIA Federal Program Officer with respect to any default and resulting termination, consistent with OBO's monitoring and accountability obligations (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 8), and will account for any BSLs that become eligible or newly unserved as a result of a default in the manner required by NTIA guidance (Broadband Equity, Access, and Deployment (BEAD) Program: BEAD Restructuring Policy Notice at 13; Broadband Equity, Access, and Deployment (BEAD) Program: BEAD Restructuring Policy Notice at 21).

10. Recordkeeping

OBO will maintain the complete record of each default proceeding. Records relating to the BEAD Program are open records under the Oklahoma Open Records Act, except for a broadband service provider's trade-secret information, and OBO will take reasonable measures to safeguard protected and confidential information (BEAD GRANT AGREEMENT (Broadband Equity, Access, and Deployment Program Funding) at 16).

11. Computation of Time; Construction

Unless otherwise stated, all periods in this policy are measured in calendar days. The thirty-day cure period (Section 7.3) and the thirty-day OBO review period (Section 7.4) together implement the one month to

cure and one month to review structure described in Section 1. If a deadline falls on a weekend or state holiday, it extends to the next business day.

12. Effective Date and Review

This policy is effective on the date adopted by the OBO and Oklahoma Broadband Office and applies to Non-Compliance identified on or after that date. OBO will review this policy periodically and update it as federal guidance, the Grant Agreement, or applicable law changes.

This policy states OBO's internal procedures and does not confer rights beyond those provided by the Grant Agreement, federal law, and the Oklahoma Administrative Procedures Act.