

Broadband Equity, Access, and Deployment (BEAD) Program Clawback Procedure

Arizona Commerce Authority

Draft for Public Comment

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Table of Contents

Introduction and Background Information	3
Introduction	3
Effective Date	3
Definitions	3
Clawback Procedure	5
Applicability	5
Conditions for Clawback	5
Notification and Remediation Process	6
Overcompensation	6
Ineligible or Withdrawn Subgrantees	6
Non-compliance with Repayment Terms	6
Final Resolution	7
NTIA Involvement	7
ACA Support	7
Appendix: Sample Notification of Recoupment	8

Introduction and Background Information

Introduction

“Clawback” provisions to recover (or “recoup”) previously disbursed grant funds are a requirement under the under the National Telecommunications and Information Administration’s (NTIA) Broadband Equity, Access, and Deployment (BEAD) program for Eligible Entities. This Procedure discusses the “clawback” (or recovery) process for recovery of disbursed BEAD funds from subgrantees based on the provisions of the Arizona Commerce Authority (ACA) BEAD subgrant agreement and the BEAD Program requirements.

The ACAs’ State Broadband Office seeks to uphold accountability and prevent fraud, waste, or abuse. Additional information on procedures for safeguarding against and handling instances of potential fraud, waste, and abuse is detailed in the ACA BEAD Program Fraud, Waste, and Abuse Policy.

Effective Date

This Procedure becomes effective on Month, XX, 202X and shall remain in force until otherwise amended or revoked. The Procedure may be amended as necessary to enhance clarity, effectiveness, and alignment with federal and state regulations.

Definitions

Abuse

Abuse is defined as excessive or improper use of services, or actions that are inconsistent with acceptable business practices. Abuse can occur in financial or non-financial settings.

Arizona Commerce Authority (ACA)

The Arizona Commerce Authority (ACA) is the state's leading economic development organization, responsible for promoting economic growth and development in Arizona. It facilitates broadband initiatives through the State Broadband Office to enhance connectivity and access across the state.

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

The BEAD program is a federal initiative aimed at promoting broadband access and affordability across the United States. Established as part of the Infrastructure Investment and Jobs Act (IIJA), signed into law in November 2021, the BEAD program provides \$42.5 billion to expand high-speed internet access in unserved and underserved areas, providing new federal funding for broadband planning, deployment, mapping, and adoption activities.

BEAD Subgrantee

Any entity (e.g., individual, consultant, firm, internet service provider, non-profit, community anchor institution, firm, state or local government agency or authority) that is selected by the ACA to receive grant funding and administer a BEAD project and which has been determined to be a subgrantee and not a vendor/contractor under the 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

Clawback

The process of recoupment by the ACA and/or NTIA reclaiming funds from a subgrantee due to instances of non-compliance with a subgrant agreement, the BEAD program requirements, or fraud, waste, or abuse.

Fraud

Fraud is deliberate and intentional deception to secure an unfair gain, including disregard of legal or performance requirements. This could involve obtaining a monetary, contractual, or other advantage that is unlawful. Fraud includes making false representations, false statements, or concealing information.

Non-compliance

Failure to adhere to the terms and conditions set forth in a BEAD subgrant agreement and the related program requirements.

Waste

The thoughtless or careless expenditure, mismanagement, misuse, or abuse of resources in the BEAD program. Waste can include incurring unreasonable or unnecessary costs, failure to comply with applicable laws, rules, and regulations, inefficient or ineffective practices, systems, or controls, or the overutilization of services.

Clawback Procedure

Applicability

This Procedure expands upon the “clawback” provisions in Section XIV.B.4 of the ACA BEAD subgrant agreement, offering additional detail and rationale for the implementation of clawback measures. This Procedure applies to all subgrantees that receive funding under the ACA’s BEAD program, including local governments, non-profit organizations, private companies, and any other subgrantees. It encompasses all types of financial assistance provided through the program.

Clawbacks

The ACA’s right to reclaim grant funds under the subgrant agreement includes, but is not limited to, the following circumstances:

- Fraud, intentional misrepresentation, or disregard of program requirements by the subgrantee, such as falsifying progress reports, fabricating financial statements, or misrepresenting eligibility criteria;
- Failure to comply with the terms and conditions of the subgrant agreement, including reporting requirements, cost principles under the Uniform Guidance, or project milestones;
- Failure to meet audit requirements or adequately address findings from audits conducted pursuant to the Uniform Guidance, or any other applicable federal, state, or ACA requirements;
- Misuse of funds for purposes not approved under the Arizona BEAD program, such as using grant funds to purchase goods or services outside the scope of the subgrant agreement or diverting funds for personal expenses;
- Significant deviation from the approved project plan without prior authorization, such as altering project scope, location, or technology used without notifying and obtaining written approval from the ACA, as well as any proceeding with any change to an approved budget for grant funds or any modification that affects the cost or time of performance of the project without prior approval, including material changes related to contractual milestones or performance requirements;
- Non-performance resulting in failure to deliver project outcomes, such as not deploying network infrastructure outlined in the project plan or failing to achieve projected service coverage (e.g., number of broadband serviceable locations, speed, and latency requirements); and

- Violation of federal, state, or local laws during project implementation, such as breaching environmental regulations, or not adhering to labor laws or safety standards during construction.

Notification, Remediation, and Clawback Process

Upon identifying potential non-compliance during monitoring activities or otherwise, the ACA will notify the subgrantee in writing, outlining the specific issues and required corrective actions. The notification will require the subgrantee to take appropriate steps to address the identified issues. The subgrantee will have an opportunity, within a time period given by the ACA, to provide a written response, submit a corrective action plan, or discuss reasons why it believes the determination is incorrect.

ACA will review the supporting information provided, seek clarification if needed, and issue a final written determination. If non-compliance is confirmed by the ACA and the subgrantee's corrective action or explanation is not satisfactory to the ACA, the ACA will pursue any rights available under the subgrant agreement or BEAD program, including but not limited to clawback for recoupment of previously disbursed funds. When a subgrantee is subject to a "clawback," it will be notified in writing of the amount owed. If the ACA deems it appropriate, a subgrantee may propose a defined repayment schedule and terms.

Overcompensation

In cases where a subgrantee has completed construction and fully achieved the subgrant agreement milestones and BEAD program objectives, but received additional funding resulting in overcompensation, the ACA will identify instances of such overcompensation through reconciliation reviews, cross-referencing with other funding sources, and reviewing subgrant documentation. Where a subgrantee has received duplicative federal or state funding, the ACA will issue a written notification identifying the amount to be returned to the ACA.

Ineligible or Withdrawn Subgrantees

Subgrantees deemed ineligible for the BEAD program or that voluntarily withdraw from the program will receive formal notification of their funding status. This notification may include instructions for the return of any grant funds previously disbursed.

Non-compliance with Repayment Terms

If a subgrantee fails to comply with a repayment schedule, the ACA may initiate a structured process to manage the delinquency. The ACA will issue a written notice following a missed payment requiring the subgrantee to comply with its repayment obligations. If no response is received within fifteen (15) days, the ACA will make reasonable additional attempts to contact the subgrantee to seek compliance with repayment terms.

If the subgrantee remains unresponsive and fails to adhere to an agreed repayment schedule, the ACA may take such action as it deems appropriate, including but not limited to referring the matter to the Arizona Department of Revenue, Division of Revenue Collection Services. The Division may exercise all legally authorized methods to recover outstanding funds, including wage garnishment, tax refund offsets, and other applicable actions.

Final Resolution

Once a clawback has been fully repaid to ACA, the ACA will issue a written confirmation to the subgrantee, indicating that the account is closed.

Where there is adequate evidence of fraudulent conduct by a subgrantee, the ACA may issue a demand for immediate repayment of funds to the ACA as a lump-sum payment, unless otherwise ordered by a court of competent jurisdiction or pursuant to a separate written agreement with the ACA.

NTIA Involvement

NTIA retains a significant oversight role in maintaining BEAD program integrity. The ACA is committed to working closely with NTIA to identify and address potential compliance issues promptly. NTIA may pursue clawback of funds directly from the ACA attributable to a subgrantee's failure to comply with program requirements. To the extent the NTIA pursues clawback from the ACA, the subgrantee shall indemnify, defend and hold the ACA harmless for all amounts, including but not limited to any attorneys' fees or costs incurred related to an attempted clawback from NTIA, in an amount equal to the NTIA clawback plus any other damages ACA may incur. .

Subgrantees are encouraged to proactively engage with ACA to mitigate risks of non-compliance. By fostering open communication and adherence to guidelines, the BEAD program can prevent and eliminate the waste, fraud, and abuse that necessitate clawback actions, safeguarding both subgrantees' project viability and public investments.

ACA Support

The ACA is committed to supporting subgrantee management of projects and promoting compliance with BEAD program requirements. The ACA provides a range of resources to equip subgrantees with the knowledge and tools necessary for successful project execution. Guidance discussing compliance obligations, payment reimbursement processes, and reporting requirements are readily available and updated to reflect regulatory and program changes. In addition, ACA conducts training sessions and workshops to enhance subgrantee understanding of the requirements and processes associated with BEAD program funding. The ACA is dedicated to fostering a transparent, cooperative environment where subgrantees can effectively utilize program funds.

Appendix: Sample Notification of Recoupment

[Date]

[Subgrantee Name]

[Address]

[City, State, ZIP]

Subject: Notification of Recoupment of Funds

Dear [Subgrantee Name],

We are writing to inform you of a decision regarding the recoupment of funds related to your participation in the Arizona Broadband Equity, Access, and Deployment (BEAD) program. Following a thorough review, it has been determined that there has been [identify specific reason for recoupment, e.g., identify the non-compliance with program requirements, fraud, waste, or abuse]. This action is taken under the applicable sections of your subgrant agreement, including ACA remedies for non-performance and the applicable BEAD program regulations and requirements cited therein.

Accordingly, the State Broadband Office within the Arizona Commerce Authority (ACA), has initiated the process to recoup funds in the amount of [dollar value] from your organization.

Please review the attached documentation, which includes information regarding the basis of this determination and the relevant procedure references. You are required to remit the specified amount to the ACA no later than [deadline for payment], to ensure a resolution of this matter.

Should you have any questions or require clarification, please contact [contact name] at [contact phone number] or [email address].

Thank you for your attention to this matter and your continued cooperation.

Sincerely,

[Your Name]

[Your Title]

Arizona Commerce Authority

Attachment