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WHITEPAPER

NEPA AND SECTION 106 COMPLIANCE FOR BEAD

AND OTHER FEDERALLY SUBSIDIZED BROADBAND PROGRAMS

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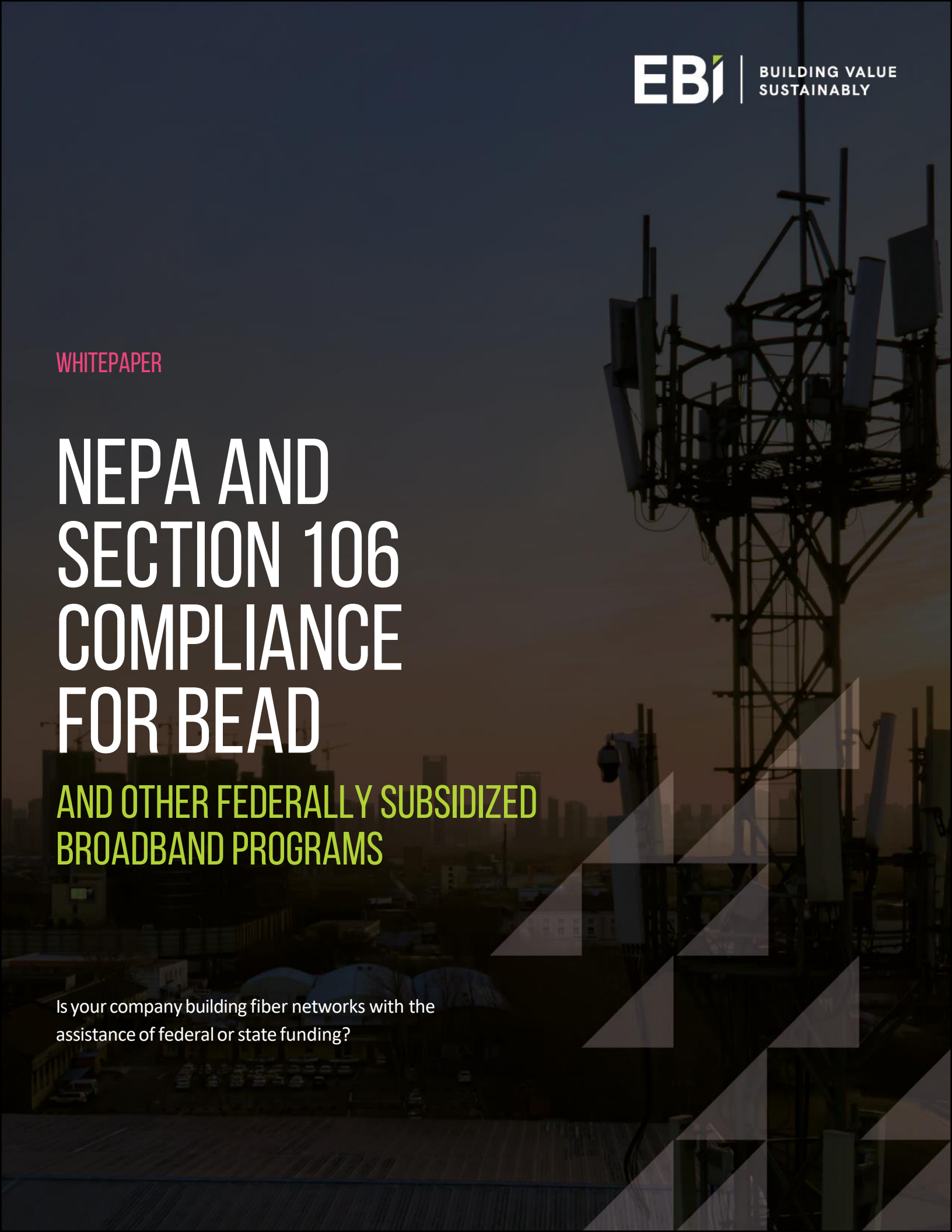

NEPA AND SECTION 106 COMPLIANCE FOR BEAD AND OTHER FEDERALLY SUBSIDIZED BROADBAND PROGRAMS

Is your company building fiber networks with the assistance of federal or state funding? Most state and federal broadband grants are accompanied by requirements for assessing the environmental and cultural resource impacts associated with a project.

EBI's team has expertise in ensuring compliance for several federally funded broadband programs including:

- U.S. Treasury Capital Projects Fund (CPF)
- U.S. Treasury State and Local Fiscal Recovery Funds (SLFRF)
- NTIA BEAD
- NTIA Middle Mile
- NTIA Tribal Broadband Connectivity Program

Each program listed above requires that funded projects undergo certain levels of environmental and cultural review prior to construction.

REQUIREMENTS FOR U.S. TREASURY ARPA CPF AND SLFRF FUNDED PROJECTS:

- Subgrantees must conduct a review of 21 compliance areas prior to project construction (https://home.treasury.gov/system/files/136/CPF- Environmental-Questionnaire.pdf).
- These environmental reviews do not have to be submitted to Treasury for approval but are required to be maintained in project files. https://home.treasury.gov/system/files/136/Coronavirus-Capital-Projects-Fund-FAQs_FINAL.pdf, Section 4.13.
- Certain states may have their own environmental and cultural resource review requirements in addition to the federal requirements. Though reviews for ARPA CPF and SLFRF funded projects do not have to be submitted to Treasury for approval, if the project is in a state that has adopted their own Environmental Policy Act, the state may require that you perform an environmental review that must then be approved by the state. NEPA | National Environmental Policy Act - States and Local Jurisdictions with NEPA-like Environmental Planning Requirements (doe.gov)

REQUIREMENTS FOR U.S. DEPARTMENT OF COMMERCE NTIA BEAD FUNDED PROJECTS:

State Broadband Agency Procedural Requirements for NEPA

- NTIA has communicated to the state broadband offices that they will be responsible for ensuring subgrantees comply with NEPA, Section 106, and any state environmental requirements.
- State broadband offices will need to hire qualified personnel to perform the review and approval of NEPA analyses and cultural resource reviews submitted by subgrantees. They will also be responsible for ensuring that subgrantees coordinate with other state and federal agencies as dictated by project impacts. The state broadband offices have the option to staff these personnel internally or to source these services from qualified environmental vendors.
- The NTIA advises that Section 106 cultural resource evaluations performed by subgrantees should be performed by Secretary of the Interior qualified cultural resource consultants with state-specific Section 106 experience. https://files.hudexchange. info/resources/documents/hp-fact-sheet-secretary-%20interior-professional-qualification-standards.pdf. States may also have additional credential requirements for performing NEPA and Section 106 evaluations.
- The NTIA will accept subgrantee NEPA and Section 106 evaluations for review once the state broadband offices have reviewed and approved them.

Subgrantee NEPA Compliance Requirements

The NTIA has created NEPA categorical exclusions (CEs) for BEAD funded projects that all states will be required to apply to

projects. These CEs are designed to streamline the NEPA review process and decrease project delays. The NTIA believes most projects will qualify for a CE; however, the subgrantee must first prove that the project meets the criteria for a CE. It is important to note that a CE is not an exemption of NEPA review but rather is one type of NEPA review.

CEs are categories of actions that NTIA has found, based on experience with similar actions, do not individually or cumulatively have significant environmental impacts and normally do not require any further NEPA review. NTIA actions, including granting permits, licenses, or financial assistance to Applicants, that fit the description of CEs, and where no extraordinary circumstances are present, are categorically excluded from further environmental review. If an extraordinary circumstance is present, NTIA nevertheless may categorically exclude the proposed action if it determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects. NTIA may apply a CE to a proposed action in accordance with the following requirements.

- NTIA shall not be required to, but may at its discretion, document its determination that a CE applies to a proposed action.
- Documentation prepared by an Applicant to demonstrate that an action qualifies for a CE shall be provided for NTIA's independent review and evaluation.
- Any action that normally would be classified as a CE but would involve any of the extraordinary circumstances identified below shall require NTIA, in cooperation with the Applicant, to conduct and document the appropriate environmental analysis to determine if the action warrants a CE, or if the preparation of an EA or EIS is required.
- NTIA has identified the extraordinary circumstances that, if present, may result in a potentially significant environmental effect. These extraordinary circumstances are provided in the following section.
- The list of approved NTIA CEs is subject to continual review and can be modified by amending/revising this policy in consultation with CEQ.
- The use of a CE does not relieve NTIA or an Applicant of obligations to comply with other statutes or required consultations, such as under the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) or the National Historic Preservation Act of 1966 (16 U.S.C. §§ 470 et seq.)

Extraordinary Circumstances Review

To qualify for a CE and avoid conducting a more in-depth Environmental Assessment (EA) or Environmental Impact Study (EIS) each subgrantee must review their project to ensure there are no extraordinary circumstances.

Extraordinary circumstances that must be reviewed that may preclude the use of a CE include:

1. Proposed action occurs within an environmentally sensitive or unique* geographic area of notable recreational, ecological, scientific, cultural, scenic, or aesthetic importance.
2. Proposed action may adversely impact species listed or proposed to be listed as Endangered or Threatened Species or have adverse effects on designated Critical Habitat for these species.
3. Proposed action may adversely impact protected migratory birds or their habitats.
4. Proposed action may adversely affect historic, archeological, or cultural sites, including Native American Traditional Cultural Properties, properties listed or eligible for listing on the National Register of Historic Places.
5. Proposed action that restricts access to and ceremonial use of Indian sacred sites by Indian practitioners or adversely affects the physical integrity of such religious sacred sites.
6. Proposed action occurring in floodplains or involving significant changes to or effects on waterbodies, wetlands, floodplains, water quality, sole source aquifers, public water supply systems, or state, local, or tribal water quality standards established under the Clean Water Act or the Safe Drinking Water Act.
7. Proposed action may have a disproportionate and adverse human health or environmental effect on low-income populations, minority populations, or other communities with environmental justice concerns, as defined in EO 14096.
8. Proposed action involving construction impacts on or near an active, inactive, or abandoned contaminated or hazardous waste

site, or involving non-permitted generation, transportation, treatment, storage, or disposal of substances hazardous to human health or the environment, unless NTIA determines the action is consistent with an approved remediation plan for the site.

11. Proposed action would involve human exposure to ionizing or non-ionizing radiation or use of any radiation in excess of the Federal Communications Commission's established Maximum Permissible Exposure limits for human exposure to Radiofrequency Electromagnetic Energy fields.
12. Proposed action is controversial because of the introduction or employment of unproven technology, highly scientifically uncertain or unique environmental effects, substantial disagreement over the possible size, nature, or effect on the environment, or likelihood of degrading already existing poor environmental conditions.
13. Proposed action may violate a Federal, Tribal, state, or local law, regulation, policy, or requirement imposed for the protection of the environment.
14. Proposed size or scope of action is greater than is normal for an action of its type.
15. Proposed action may cause other significant effects on human health or the environment that have not been otherwise addressed.

*"Environmentally sensitive or unique" resources and areas may include: federal lands; areas having special designation or recognition such as prime or unique or agricultural lands; designated wilderness or wilderness study areas; wild and scenic rivers; coastal zones; National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

WHY COMPLY:

- Generally, state broadband agencies will not approve the release of funds to awardees without submittal and approval of the required environmental and cultural resource evaluations.
- For BEAD projects, in addition to state approval, the NTIA must also approve NEPA evaluations submitted for projects before funds are released.
- Not properly performing required environmental and cultural resource evaluations can result in forfeiture of grants/ funds, cause ineligibility for future grants/funds, and/or subject the subgrantee to fines and enforcement actions.

EBI'S EXPERTS CAN SUPPORT YOUR SUBSIDIZED BROADBAND PROJECTS:

EBI is your single-source provider of subsidized broadband project compliance services. We simplify the process, achieve compliance, and ensure on-time project completion.