



In particular, NCTA respectfully urges Treasury to revise its Broadband Infrastructure Program Plan template (“Template”)<sup>4</sup> or otherwise amend the Forms to require applicants in their requests for funding to (1) clearly identify the entire service area of a proposed project; (2) represent the extent to which the project will deploy broadband infrastructure to unserved and underserved areas; and (3) explicitly indicate whether the project overbuilds areas with existing 100/20 Mbps broadband service or there is an “existing enforceable federal or state funding commitment” by another provider for such service. Treasury should also make the Forms submitted by Fund applicants, including the Template, publicly available to ensure program transparency. These changes will help to better fulfill Congress’s express intention that the Fund be used “to carry out *critical* capital projects *directly enabling* work, education, and health monitoring.”<sup>5</sup>

## DISCUSSION

### I. Project Proposals Should Clearly Identify the Project Service Area.

The proposed Template does not require applicants to submit information that clearly identifies *where* they propose to invest in critical broadband infrastructure using Capital Project Funds. Applicants should be required to provide this information, and it should be made publicly available. Applicants could identify the proposed service area by submitting a detailed map in an easily readable format, such as shapefiles that can be viewed using standard geographic information system software. Requiring applicants to clearly identify the proposed service area for each project will ensure that Treasury and the public clearly understand the scope of the project,

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<sup>4</sup> U.S. Dep’t of Treasury, *Broadband Infrastructure Program Plan Template*, <https://sforce.co/34TAO9M>.

<sup>5</sup> ARPA sec. 9901, § 604(a), 135 Stat. at 233 (emphasis added).

facilitating review of a proposal. It is commonplace for agencies administering other federal broadband funding programs to collect and publish this information.<sup>6</sup>

## **II. Project Proposals Should Include Information Demonstrating How Many Unserved and Underserved Households Will Gain Access to Broadband.**

Despite substantial investments in broadband capital by the private sector, including NCTA members, and long-standing federal and state broadband deployment funding programs, there remain millions of Americans who live in areas without access to critical broadband infrastructure. Prioritizing support for these unserved and underserved areas has become a key priority of the Administration and Congress across multiple agencies and various funding programs.<sup>7</sup> NCTA shares the goal of extending broadband to these communities where investments in broadband

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<sup>6</sup> See, e.g., NTIA, *Broadband Infrastructure Program, Notice of Funding Opportunity* at 13 (May 19, 2021), <https://bit.ly/3hc9ZjM> (“NTIA BIP NOFO”) (requiring applicants to submit “[a] description of the area to be served by the covered broadband project...including a list of census blocks to be served”); NTIA, *Tribal Broadband Connectivity Program, Notice of Funding Opportunity* at 20 (June 3, 2021), <https://bit.ly/3pgaz4t> (“NTIA Tribal NOFO”) (requiring applicants to submit “[a] description of the area to be served by the project”); Rural Utilities Service, USDA, *Rural eConnectivity Program, Application Guide for Fiscal Year 2022 (Version 2)* at 103-08 (Jan. 25, 2022), <https://bit.ly/3pdyLo9> (“ReConnect Application Guide”) (describing the steps applicants must take to “input information related to [proposed funded service areas]” using a mapping tool created by the agency).

<sup>7</sup> See, e.g., White House, *Press Briefing by Principal Deputy Press Secretary Karine Jean-Pierre and Commerce Secretary Gina Raimondo* (Nov. 9, 2021), <https://bit.ly/3BsnWDF> (“[T]he whole name of the game here is to focus on the underserved and the unserved and on affordability. We have to make sure that we don’t spend this money overbuilding . . . which means we’ll have to work very closely with the FCC and using their maps to make sure that we focus the money where broadband doesn’t exist now.”); Alan B. Davidson Senate Commerce Committee Questions For the Record Response to Sen. Blunt, Question 1, <https://bit.ly/3JDBLSG> (“As good stewards of taxpayer funds, we must work to ensure that federal broadband monies are spent efficiently. With respect to overbuilding, the [Bipartisan Infrastructure Law] offers a framework to address this question. If confirmed, I am committed to following the directives laid out in the [Bipartisan Infrastructure Law] to serve unserved areas first, and then underserved areas.”). Likewise, as part of the Consolidated Appropriations Act of 2021 (“CAA”), Congress directed “any agency that offers a Federal broadband support program” to “coordinate with” a newly-formed Office of Internet Connectivity and Growth in the National Telecommunications and Information Administration to ensure “the largest number of unserved locations in the United States...have access to high-speed broadband.” Consolidated Appropriations Act, 2021, Pub. L. No. 116-270, div. FF, tit. IX, § 903 (2020); *id.* § 903(f)(2)(A). The Infrastructure Investment and Jobs Act contains similar federal coordination requirements that build on this directive in the CAA. Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. F, tit. I, § 60102(j)(1)(D)-(E), 135 Stat. 429, 1182 (2021).

capital projects will enable them, for the first time, to access broadband connectivity that is needed to work, learn, and obtain health monitoring services remotely.

To ensure that the Capital Projects Funds are being used to support this goal, Treasury should require applicants to include information regarding the extent to which a proposed project will extend broadband service to unserved and underserved locations. Such a requirement would align with broadband funding programs administered by other federal agencies,<sup>8</sup> as Congress directed.<sup>9</sup>

### **III. Project Proposals Should Explicitly Indicate Whether the Project Would Overbuild Areas Where Broadband Service Already Exists or Will Soon Be Deployed.**

Finally, to ensure that Funds are only used for “critical” projects that will “directly enabl[e] work, education, and health monitoring,”<sup>10</sup> it is imperative that Treasury and the public understand the extent to which proposed projects overlap areas that are already served with high-speed broadband or where there are “existing enforceable federal or state funding commitments” at speeds of at least 100/20 Mbps.<sup>11</sup>

Information regarding the extent that a project covers served areas will enable Treasury and the public to identify projects that purport to serve “complementary purposes” in served

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<sup>8</sup> See, e.g., NTIA BIP NOFO at 13 (requiring applicants to list “the percentage of the total unserved...population to be served by the project, and the number of unserved households, businesses, and community anchor institutions”); NTIA Tribal NOFO at 20 (requiring applicants to list “the number of unserved...households, businesses or community anchor institutions that the project has the potential to serve”); ReConnect Application Guide at 105 (requiring that, for proposed funded service areas, applicants must “indicate the percentage of households without sufficient broadband access”).

<sup>9</sup> Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. F, tit. I, § 60102(m), 135 Stat. 429, 1204 (2021) (expressing the sense of Congress that “Federal agencies responsible for supporting broadband deployment...to the extent possible, should align the goals, application and reporting processes, and project requirements with respect to broadband deployment supported by those agencies”).

<sup>10</sup> ARPA sec. 9901, § 604(a), 135 Stat. at 233 (emphasis added).

<sup>11</sup> U.S. Dep’t of the Treasury, *Guidance for the Coronavirus Capital Projects Fund* (Sept. 2021), <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf>, at 4 (“*Capital Projects Fund Guidance*”).

areas.<sup>12</sup> Other federal broadband programs require applicants to indicate if or the extent to which any overbuilding would occur.<sup>13</sup>

While the current version of the Template requests information on how a proposed project is designed so that it does not duplicate investments from enforceable federal or state funding commitments to deploy high speed broadband,<sup>14</sup> it does not expressly request information regarding whether a proposed project would overbuild *existing* infrastructure. Treasury should revise the Template to request such essential information.

With respect to project proposals for served areas, the justification that applicants must submit<sup>15</sup> should be sufficiently detailed to permit Treasury and the public to assess the justification and basis for the “additional public benefit” claimed. Proposals without such support should be rejected. Approvals of such projects should be the exception rather than the rule, to avoid depleting the funds for projects to bring broadband to areas that lack it.<sup>16</sup>

## CONCLUSION

NCTA strongly supports Treasury’s efforts to deploy the Capital Projects Fund as part of the broader government initiative to bring broadband to all Americans. NCTA’s proposed

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<sup>12</sup> *Id.* at 5.

<sup>13</sup> *See, e.g.*, NTIA Tribal NOFO at 21-22 (allowing applicants either to include a certification from a Tribal Government that the proposed project area is unserved or use non-tribal coverage/speed data set to demonstrate that the area is unserved); ReConnect Application Guide at 105 (explaining that an error in the application process will occur “if the households without sufficient access to broadband...does not cover at least 90 percent of the [proposed funded service area]”); *cf.* NTIA BIP NOFO at 42-43 (explaining the process by which an existing service provider may challenge a grant application that proposes to overbuild in a served area, since this program requires that grants may only be used to deploy broadband infrastructure to households that lack access to broadband service of 25/3 Mbps or where no broadband provider has been selected to receive, or is otherwise receiving, federal or state funding subject to enforceable build out commitments to deploy service to the area).

<sup>14</sup> *See* Template at 2.

<sup>15</sup> *See* Capital Projects Fund Guidance at 5.

<sup>16</sup> In general, such projects should take a back seat to projects designed to extend service to unserved and underserved areas.

revisions to the Forms, including the proposed Broadband Infrastructure Program Plan Template, will assist in that effort by bringing improved transparency and rigor to the application process. The enhanced accountability will benefit Treasury and the public by ensuring that this funding is made available to the greatest effect.

Respectfully submitted,

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