

BEAD Letter of Credit/Performance Bond

Georgia Technology Authority Methodology

May 21, 2025

Purpose and Background

- The BEAD NOFO (Notice of Funding Opportunity) originally required subgrantees to secure an **irrevocable standby letter of credit (LOC)** for **at least 25 %** of the subaward amount and to satisfy certain bank eligibility requirements.
- Also, the LOC requirement was tied to a legal opinion from counsel that, under bankruptcy proceedings, the LOC or its proceeds would *not* be treated as part of the subgrantee's bankruptcy estate.
- Because these requirements posed barriers, especially for smaller or nontraditional providers, the NTIA adopted a *conditional programmatic waiver* to introduce flexibility.
- The following slides outline the initial waiver, followed by the additional flexibilities afforded under the update in July of 2025

Requirement (Waiver October 2023)*

Aspect	Original Requirement	Waiver / Adjustment
Alternative to LOC	Only LOC was accepted	Subgrantees may use a performance bond (from a qualified surety) in lieu of LOC.
Issuer eligibility	LOC had to be from a U.S. bank meeting certain criteria (Weiss rating, etc.)	LOCs may now be issued by U.S. credit unions (insured by NCUA) with a Weiss safety rating of B- or better.
Performance bond amount	—	The performance bond must be acceptable to the Eligible Entity and have a value of 100 % of the subaward (i.e., full amount) when used in lieu of a LOC.
Bankruptcy opinion letter	Required with LOC that the LOC would not be treated as property of the estate under bankruptcy law	If a performance bond alternative is used, the requirement for the legal counsel’s bankruptcy opinion letter is waived.
Reduction over time / milestone steps	LOC must remain at least 25% of subaward at all times	The waiver allows gradual reductions in the LOC or performance bond as project deployment milestones are achieved, per the terms the Eligible Entity establishes.
State / Eligible Entity flexibility	States must enforce uniform LOC requirements per NOFO	The waiver gives Eligible Entities (states, territories, etc.) the discretion to adopt milestone-based reductions, choose percentages, etc., within the waiver structure.

* NTIA released an update in 2025 related to Issuer eligibility which is addressed in later slides.

Waiver

The LOC Requirement is waived only to the extent to and as described below:

2.1 Subgrantee Option to Use Credit Unions

That portion of the LOC Requirement that requires the use of a bank that meets the eligibility requirements of 47 C.F.R. § 54.804(c)(2) is waived where the subgrantee otherwise meets the LOC Requirement using:

Any United States credit union that:

(a) is insured by the National Credit Union Administration;⁶

and

(b) has a credit union safety rating issued by Weiss of B- or better.⁷

2.2 Subgrantee Option to Use Performance Bonds

That the LOC Requirement is waived where:

(a) During the application process, prospective subgrantees are required to submit a letter from a company holding a certificate of authority as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570 committing to issue a performance bond to the prospective subgrantee.⁸ The letter shall at a minimum provide the dollar amount of the performance bond.

(b) Prior to entering into any subgrantee agreement, each prospective subgrantee obtains a performance bond, acceptable in all respects to the Eligible Entity and in a value of no less than 100 percent of the subaward amount.⁹

Where a subgrantee chooses to exercise the option to obtain a performance bond under this waiver, the requirement that the subgrantee “provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code” is waived.

Waiver

2.3 Reduction of LOC/Performance Bonds Upon Completion of Milestones

The requirement that “In no event, however, shall the letter of credit have a value of less than 25 percent of the subaward amount” is waived, conditioned on the requirement that the subgrantee obtain a new a letter of credit in a reduced amount upon achievement of specific deployment milestones that are publicly specified by the Eligible Entity and applicable to all subgrantees subject to the LOC Requirement. Where a subgrantee chooses to utilize a performance bond in lieu of a letter of credit under section 2.2 above, Eligible Entities shall also have the option to reduce the amount of the performance bond by a commensurate amount as subgrantees meet the same service milestones.

By way of example, an Eligible Entity could specify that a subgrantee may obtain a new letter of credit or renew its existing letter of credit to reduce its value in accordance with the following limitations:

- Upon demonstrating to the satisfaction of the Eligible Entity that it has completed the buildout of 40 percent of locations to be served by the project, a subgrantee may obtain a new letter of credit or renew its existing letter of credit so that it is valued at no less than 20 percent of the award amount.
- Upon demonstrating to the satisfaction of the Eligible Entity that it has completed the buildout of 60 percent of locations to be served by the project, a subgrantee may obtain a new letter of credit or renew its existing letter of credit so that it is valued at no less than 15 percent of the award amount.
- Upon demonstrating to the satisfaction of the Eligible Entity that it has completed the buildout of 80 percent of locations to be served by the project, a subgrantee may obtain a new letter of credit or renew its existing letter of credit so that it is valued at no less than 10 percent of the award amount.
- Upon demonstrating to the satisfaction of the Eligible Entity that it has completed the buildout of 100 percent of locations to be served by the project, a subgrantee may terminate its letter of credit under the terms set forth therein.

Waiver

2.4 Subgrantee Option for Alternative Initial LOC or Performance Bond Percentage

The requirement that the initial letter of credit be for 25% of the subaward amount, or in the case where a subgrantee chooses to utilize a performance bond consistent with section 2.2 above, allow the initial amount of the performance bond to be lower than 100% of the subaward amount, where:

- (a) The Eligible Entity issues funding on a reimbursable basis consistent with Section IV.C.1.b of the NOFO;
- (b) Reimbursement is for periods of no more than six months; and
- (c) The subgrantee commits to maintain a letter of credit or performance bond in the amount of 10% of the subaward until it has demonstrated to satisfaction of the Eligible Entity that it has completed the buildout of 100 percent of locations to be served by the project or until the period of performance of the subaward has ended, whichever occurs first.¹⁰

¹⁰ For the sake of clarity, the option to reduce the amount of the performance bond by a commensurate amount as subgrantees meet the same service milestones described in section 2.3 may not be applied to a letter of credit or performance bond obtained under this section 2.4

Waiver Update July 2025

Context / Background

Under the BEAD program, subgrantees had to submit an irrevocable standby letter of credit (LOC) equal to at least 25% of the subaward amount, from a bank that met certain rating / eligibility criteria. Previously, NTIA had granted a waiver allowing U.S. credit unions (with a Weiss safety rating of B– or better) to issue LOCs. In December 2024, the FCC changed its rule (47 C.F.R. § 54.804(c)(2)) eliminating the Weiss-rating requirement for banks and instead requiring that they be “well capitalized” under federal bank regulatory definitions. That FCC change becomes effective August 24, 2025.

The document describes a **conditional programmatic waiver** that does the following:

Elimination of Weiss rating requirement for banks

The BEAD NOFO’s prior incorporation of the Weiss-rating requirement is removed. Now, the issuing bank must simply be “well capitalized” per federal banking regulations (FDIC, Fed, OCC). This aligns with the FCC’s regulatory change taking effect August 24, 2025. **Credit Union (CU) LOCs no longer require a Weiss safety rating**

- The prior waiver that allowed credit unions with a Weiss rating of B– or above is updated: that Weiss rating requirement is eliminated.
- Now credit unions must show only that they are insured under the NCUA (National Credit Union Administration)

Inclusion of banks rated by NRSROs

NTIA will now allow financial institutions rated **BBB- or higher** by a **Nationally Recognized Statistical Rating Organization (NRSRO)** (as recognized by the SEC) to issue the LOC under the BEAD program. This adds additional flexibility in which banks can be used by subgrantees.

Waiver Update July 2025

The document found at [waiverupdate.com](#) describes a **conditional programmatic waiver** that does the following*:

2.1 Weiss Ratings for U.S. Banks

The BEAD NOFO incorporates by reference 47 C.F.R. §54.804(c)(2) into the letter of credit requirements imposed on subgrantees. Consistent with the FCC’s modification of that rule, NTIA no longer requires subgrantees to obtain the letter of credit from a United States bank with a Weiss Credit rating of B- or better. This requirement is replaced with the requirement that the bank be “well capitalized” as determined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency.

2.2 Subgrantee Option to Use Credit Unions

Consistent with the modification adopted above and to maintain uniformity across the BEAD Program, NTIA finds that it is in the best interest of the federal government to amend NTIA’s previous programmatic waiver related to the use of credit unions to eliminate the use of Weiss ratings for determining credit union eligibility. The requirement that credit unions have a safety rating issued by Weiss of B- or better is eliminated. Subgrantees must only demonstrate that the United States credit union is insured by the National Credit Union Administration. 11

2.3 Subgrantee Option to Use Qualifying NRSRO Rated Banks

In addition to the two modifications adopted above and to provide additional flexibility to subgrantees in the BEAD program, NTIA finds it is in the best interest of the federal government to allow for the inclusion of banks rated BBB- or higher by Nationally Recognized Statistical Rating Organizations (NRSROs), as recognized by the Securities and Exchange Commission (SEC). Banks rated BBB- or higher by an NRSRO may be utilized by subgrantees to receive an irrevocable standby letter of credit as defined by NTIA and the BEAD program

*More information can be found here: [BEAD Letter of Credit Waiver Update, July 2025 | BroadbandUSA](#)



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