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GAO Opinion Complicates NTIA's BEAD 'Benefit of the Bargain' Rule – Implications for Broadband Investments

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Executive Summary

On December 16, 2025, the US Government Accountability Office (GAO) issued a legal opinion finding that the National Telecommunications and Information Administration's (NTIA) June 6, 2025, BEAD Restructuring Policy Notice (policy notice) – guidance that overhauled the $42.5 billion Broadband Equity, Access, and Deployment (BEAD) program – is a "rule" subject to the Congressional Review Act (CRA). Under the CRA, no rule can take effect until it is submitted to Congress and the Comptroller General (the director of GAO). GAO concluded NTIA failed to follow this procedure, meaning the "Benefit of the Bargain" reforms announced in June cannot legally take effect until Congress is formally notified and given a chance to review.

While curing the procedural defect identified by the GAO in its legal opinion should be easy but time consuming, i.e., submitting to Congress for approval of the Benefit of the Bargain reforms to BEAD and allowing potentially 60 legislative days to pass, this development injects new uncertainty into broadband infrastructure investments tied to BEAD funding. The policy notice forced states to redo their grant awards in an extra round of bidding, sometimes yielding new winners, lower project costs and substantial unspent funds. GAO's finding raises a question: What is the legal status of those revised BEAD awards if the rule authorizing the changes was not yet effective?

For investors financing fiber builds, internet service providers (ISPs) or lending against BEAD-backed projects, there is a risk of legal challenges by providers that lost funding awards in the mandatory rebid round, potential reversals of current awards if courts or Congress intervene, and delays in project timelines and fund disbursements while this procedural glitch is resolved. The exposure is not uniform across the country. States that had to unwind preliminary awards and conduct Benefit of the Bargain rebids – notably, Louisiana, Nevada and Delaware – face the highest uncertainty, as aggrieved bidders in those states have clear grounds to contest the outcomes. By contrast, states that had not yet made awards when the policy was issued simply incorporated the new rules from the start; their awards, having no displaced winners, are on firmer ground and carry minimal litigation risk.

This alert provides an overview of GAO's finding and CRA requirements, then analyzes the investor-facing risks to current BEAD-funded projects, from the legal validity of awards and potential provider lawsuits to timeline slippage and funding drawdown risks, with particular focus on the most exposed jurisdictions – i.e., Louisiana, Nevada and Delaware. It also examines how this procedural misstep intersects with the recent artificial intelligence (AI) executive order (EO) conditioning BEAD nondeployment funds on state AI laws, compounding the risk of federal funding disruptions. Cooley attorneys can provide practical guidance for infrastructure investors and lenders, including steps to diligence current awards, structure deals and contracts for protection, and proactively mitigate these emerging risks.

Key takeaway: Investors in broadband infrastructure should not assume BEAD grants are a settled matter – the program's hastily implemented rule changes face procedural and legal headwinds. Until NTIA cures the CRA submission gap and any related disputes subside, deal teams must bake in extra safeguards. This means verifying the solidity of awarded funds, preparing for possible delays or reversals, and contractually protecting investments against regulatory uncertainty. With prudent diligence and structuring, investors can continue to capitalize on BEAD opportunities while insulating themselves from the current legal uncertainties.

GAO opinion overview – CRA compliance and the BEAD policy notice

GAO's December 16, 2025, opinion finds that in the policy notice – often referred to as the "Benefit of the Bargain" rule by NTIA – the agency unilaterally modified key requirements of the original May 2022 BEAD Notice of Funding Opportunity (NOFO). The policy notice eliminated or relaxed several prior rules, fundamentally changing the program's fiber-only deployment preferences, wholesale network access mandates, and low-cost service plan requirements, and imposing new procedures – most notably, a requirement that each state rescind any preliminary subgrantee awards and hold an additional, technology-neutral bidding round to maximize cost efficiency. In GAO's view, these were not minor tweaks but substantive changes to the rights and obligations of nonagency parties, i.e., states and grant applicants under the BEAD program – the hallmark of a "rule" under the Administrative Procedure Act (APA) and CRA.

Crucially, when an agency promulgates a rule, the agency must submit it to both houses of Congress and to GAO before the rule can take effect. This CRA reporting mechanism gives Congress an opportunity to review and, if desired, pass a joint resolution of disapproval to invalidate the rule. Until the rule is reported and the review period lapses, an agency action that meets the CRA definition of a rule may not take effect. GAO concluded that NTIA's policy notice is precisely such a rule, and because NTIA did not submit it, the policy notice is not legally effective. In simple terms, NTIA jumped ahead with implementing new BEAD requirements without clearing the required congressional notification hurdle.

Under the CRA, NTIA should belatedly submit the June 6 rule to Congress. We anticipate NTIA will do so promptly (likely early 2026) to cure the defect. Submission will trigger a review period during which Congress can pass a joint resolution of disapproval to block the rule. Importantly, such a resolution would require either the president's signature or a veto-proof majority in Congress – a high bar. A CRA disapproval is unlikely, given that this BEAD policy originated from the Trump administration and aligns with its priorities. And even in the unlikely event a joint resolution passes Congress, President Donald Trump could veto it. Absent disapproval, the rule would become effective after the statutory waiting period that is 60 legislative days after submission for major rules. Practically, that points to the reforms being validated and in force by spring 2026.

Until that process plays out, the BEAD program is continuing to move forward – but there is the possibility (however remote) of Congress or the courts intervening. In the next section, we examine how this uncertainty translates into investor risk.

State exposure analysis – Benefit of the Bargain awards at risk?

From an investor's perspective, the critical question is whether BEAD grant awards made under the unsubmitted rule are secure. The answer likely depends on the state and circumstances in which those awards were made. We categorize the risk into two tiers: states that had to redo awards under the June policy (high risk of challenge) and states that had not awarded funds by June and simply followed the new rules from scratch (lower risk).

Louisiana

Louisiana offers a telling case study. It was among the furthest along under the original BEAD rules, to the point of being the first state to win NTIA approval for its final proposal under the new regime in late 2025. When the policy notice came out, Louisiana's broadband office already had a preliminary roster of subgrantees and an allocation plan near $1.36 billion – i.e., its full BEAD allotment – approved by the prior NTIA leadership. The policy notice required Louisiana to start over. The state complied and reopened its grant process, this time welcoming satellite and wireless bids alongside fiber. The outcome was a drastically slimmed-down deployment budget – $498 million to connect roughly 124,000 locations – with the remaining $860+ million freed for nondeployment uses or potential return to federal control.

However, those savings came partly by displacing earlier fiber winners. For example, some rural parishes that were slated for fiber may now get low-earth orbit satellite service at a fraction of the cost. If any provider initially selected under the old process lost out in the new round, that provider has a motive to challenge the legitimacy of the change. A court fight could seek to nullify the new awards or obtain injunctive relief, freezing Louisiana's ability to sign grant agreements with the new winners until the rule is properly in effect. Louisiana's risk profile is heightened because it was a high-profile early adopter of the reforms, and a litigant might view it as a favorable forum to test the issue. That said, Louisiana's broadband office and current awardees can counterargue that they simply followed NTIA's directives in good faith. Any significant disruption to Louisiana's program would likely

require a federal court to invalidate NTIA's notice retroactively – an aggressive step, but not impossible if a judge finds the rulemaking lapse prejudiced bidders.

Nevada

Nevada likewise moved fast on BEAD planning and even made initial awards before the policy notice hit. In fact, Nevada officials announced in June that any awards already made under BEAD would be "rescinded and rebid" pursuant to the new NTIA guidance. Under the Benefit of the Bargain round, Nevada reportedly received bids that covered 100% of the state's eligible locations at lower cost than the earlier fiber-centric plans, a pivot that implies some original awardees were replaced by lower-cost competitors.

As a result, Nevada is squarely in the litigation danger zone. A wireless or satellite provider that benefited from the new round is unlikely to sue as they want the new awards to stand, but a displaced fiber ISP or consortium could pursue legal action. They might argue that NTIA lacked authority to force Nevada's do-over at the time it occurred, rendering the state's nullification of the original awards arbitrary or unlawful. If such a challenge were filed, it could cast a long shadow. Investors backing Nevada's newly selected projects would face uncertainty about whether those projects can proceed or whether a court could reinstate the prior awards or require compensation for the previous winners. Notably, Nevada's broadband office, by swiftly acquiescing to NTIA's rules in June, likely insulated itself from any funding retaliation by NTIA – the state is not at risk of losing funds for noncompliance. The risk is entirely that an external party (e.g., an ISP consortium or even state officials from the prior administration) challenges the validity of the changes.

Delaware

Delaware is an example of a state with a small BEAD allocation (just more than $100 million) and relatively few unserved locations, which nonetheless saw a big shift in approach under the new rule. Delaware had planned to fiber-connect most remaining unserved homes, likely via local telephone companies or rural fiber providers, under the original rules. After the policy notice, Delaware's draft final proposal in August 2025 revealed it would use only about $13.4 million for network builds, covering roughly 4,700 locations, with 80% fiber and 20% cable (hybrid fiber-coaxial) – essentially letting two incumbent providers, i.e., Verizon and Comcast, take on the work at their own matching expense. This left nearly $94 million unallocated for other purposes.

In effect, Delaware determined that its incumbents could fill the gaps much more cheaply than anticipated, obviating most of the federal funds for deployment. The litigation risk in Delaware is somewhat lower than in Louisiana or Nevada only because the dollar values are smaller: A disappointed bidder in Delaware lost out on a piece of $13 million spread over two providers versus tens or hundreds of millions in larger states. Moreover, Delaware's outcome still funded two major providers, which likely encompassed most viable projects.

Nonetheless, from an investor standpoint, any project in Delaware that is moving forward with BEAD funding should be verified for finality – i.e., to ensure no pending appeals or political pushback. Delaware's situation also raises a broader point: States that ended up not using a large portion of their BEAD funds for deployment may become targets of federal reprogramming as seen with the AI EO, addressed below. Investors should be aware that "leftover" funds add another dimension of risk, either the state might voluntarily return funds or federal policy might repurpose them, leaving planned non-network initiatives unfunded.

Other states

Outside of the highlighted three, several states likewise had to implement the Benefit of the Bargain rebid, but with potentially less contention. For instance, Virginia had begun its award process earlier in 2025 and was specifically cautioned by at least one major bidder to expand satellite's role, which it did in the revised plan. Colorado dramatically shifted its technology mix in the new round going from ~70% fiber in initial plans to ~50% satellite in the final plan as satellite providers undercut fiber on price. These shifts indicate that incumbent telecom and fiber companies in multiple states lost ground to new entrants because of the rule change. While we focus on Louisiana, Nevada and Delaware as examples since NTIA rescinded their plan approvals, any state where the final awards differ significantly from the pre-June expectations could face protest. The risk is most acute where an aggrieved party can show they had a clear entitlement or legitimate expectation under the old system. However, because in most states BEAD awards were not finalized before June (only preliminary selections or initial NTIA approvals of plans), states may argue that no provider ever had a legally vested right to the funds. This could make lawsuits harder to win – but it will not stop legal complaints from being filed or at least threatened in negotiations.

Bottom line: Investors should regard current BEAD awards in states that underwent major reshuffling as provisional. So long as the CRA reporting failure is unrectified, there is a legal argument that the awards are not on firm legal footing. Conversely, states that had not made any subgrantee selections by June 2025 present far less risk. Those states simply crafted their final proposals using NTIA's new guidelines from the outset. Since no prior awards were undone, there is no obvious party with standing to sue. All competitors got to compete under the same new rules. The only conceivable challenge in such states would be a general attack on NTIA's authority, but that likely would need to come from a state government itself or an industry association, rather than an individual spurned bidder.

Intersection with the AI executive order – Heightened funding risks

In an overlapping regulatory development, Trump's EO on AI issued on December 11, 2025, introduced new conditions on BEAD nondeployment funding that could compound investors' concerns. The EO directs the Department of Commerce to identify "onerous" state AI laws and, within 90 days, publish a policy notice making states with such laws ineligible for certain federal funds – notably, their BEAD "nondeployment" funds. BEAD nondeployment funds refer to the portion of each state's allocation that is not needed for network construction and can be used for other projects (like digital literacy, device programs, workforce training, etc.). Thanks to the Benefit of the Bargain reforms, many states now have very large nondeployment pools, because their efficient broadband awards left a surplus. The AI EO essentially threatens to withhold those surplus funds if a state's AI regulations conflict with the administration's preferred policies.

For example, Colorado is explicitly called out in the EO and had planned to invest roughly $406 million of BEAD money into non-network initiatives, like broadband workforce development, after funding all its builds. Under the EO, Colorado could lose access to that $406 million unless it rolls back its stringent AI law, since the federal government views Colorado's law as burdensome on AI innovation. Similar scenarios could play out in California, New York and other states with aggressive tech regulations. To the extent these funds could be used to develop workforce or advance digital literacy, the lack of funding could impact network builds and subscription rates, albeit indirectly.

From an investor viewpoint, this AI-driven funding risk intersects with the CRA issue in a couple of ways. First, it underscores that NTIA is layering new conditions on BEAD funds outside of the original statute, raising the overall risk profile of the program. A challenger to NTIA's AI conditions might bolster their case by pointing to the GAO opinion, i.e., arguing that NTIA's procedural missteps – failure to submit the BEAD rule and potential failure to follow the APA in conditioning funds on AI policy – show a pattern of overreach. In other words, the CRA finding strengthens the narrative that NTIA is making funding decisions in an unlawful or at least irregular manner, which could resonate in court or political forums.

Second, the AI EO means that even once the CRA issue is resolved, some BEAD funds could be tied up for unrelated reasons. An investor might navigate the CRA uncertainty only to find that a project's adoption/digital equity grant component is frozen because the state is in a showdown with Washington over AI rules. This is especially pertinent for investors in states like California or New York. While those states didn't have to radically redo awards, they were slower to allocate and simply proceeded under the new rules, and they now face a different cloud: the prospect of BEAD funds being dangled to coerce state policy changes. If anything, the combination of the CRA delay and the AI EO condition creates a one-two punch of uncertainty around BEAD. Until NTIA formally submits the rule, it might hesitate to enforce the AI-related funding cutoff since the vehicle to do so could itself be considered a "rule" requiring CRA submission. This could delay resolution of the AI conflicts, prolonging uncertainty for non-network projects funded by BEAD.

Third, the EO also signals a broader policy to review other federal grant programs and make such programs contingent upon state compliance with the Trump administration's AI policy that could affect future NTIA grants, US Department of Agriculture rural broadband loans, Federal Communications Commission rural programs, etc.

In summary, the procedural misstep (CRA) and the policy maneuver (AI EO) both inject risk that federally funded broadband initiatives could be stalled or altered. Investors should recognize that these are separate issues – one about the legality of NTIA's process and the other about conditions on use of funds – but they both speak to a broader theme: heightened federal scrutiny and strings attached to BEAD money beyond what was envisioned in 2021's Infrastructure Investment and Jobs Act (IIJA). This calls for a vigilant and adaptive approach when investing in projects dependent on this federal funding.

Outlook – Likely resolution in 2026 (and less likely scenarios)

Despite the current turbulence, the most probable outcome is that NTIA's BEAD restructuring rule will ultimately stand, with a modest delay. We anticipate NTIA will formally transmit the policy notice to Congress and the GAO in early 2026, bringing itself into compliance with the CRA. Once submitted, the CRA's clock starts. Even if some in Congress oppose the policy, a CRA disapproval resolution is unlikely to succeed. It would need to pass both the House and Senate and overcome a virtually certain presidential veto, given the Trump administration's clear support for these BEAD reforms. Historically, CRA disapprovals have been rare and typically occur when Congress and the White House align against a recently finalized rule – not when the rule is a signature initiative of the current administration.

Assuming no disapproval, the Benefit of the Bargain rule would likely become effective by spring 2026 (the timing depends on whether it's classified as a "major" rule, which, given the $42 billion program impact, it probably will be, triggering a 60 legislative-day delay after submission). For investors, that means the legal cloud over the awards should lift at that point. BEAD projects can proceed with greater confidence, and the risk of award reversal should greatly diminish since the rule's validity will be settled.

What if things go off script?

The less likely scenarios to consider include:

Congressional intervention

If, contrary to expectations, a disapproval resolution gained traction, e.g., if a coalition of legislators objected to how the BEAD changes were handled, it would introduce the gravest outcome – nullifying the June 6 rule. In that case, NTIA's reforms would be void, and the program would ostensibly revert to the original NOFO rules. In practical terms, this could force states to once again redo awards to comply with the older criteria reinstating fiber priorities, etc. That would be extremely disruptive and likely extend timelines by another year or more. However, given the political landscape, we view this as a remote possibility. Still, investors should be aware that if disapproval did occur, current awards would face a reset, almost certainly resulting in litigation and scrambling to reconcile funds already committed under the short-lived rule.

NTIA chooses APA rulemaking

NTIA could respond to GAO by converting the policy into a formal rule via the APA's notice-and-comment process. This would involve publishing a proposed rule in the Federal Register, taking public comments and then issuing a final rule. Such a process would likely push any finalization of the BEAD rules well into late 2026 or beyond, effectively pausing parts of the program. This runs counter to NTIA's imperative to expedite broadband deployment. Unless compelled by a court, NTIA is unlikely to voluntarily undertake a lengthy rulemaking now, especially when CRA submission alone will legalize the current policy. We view APA rulemaking as a fallback only if lawsuits start succeeding on the theory that the policy was a substantive rule that required notice-and-comment under the APA (a separate legal argument from CRA). In that event, NTIA might settle or moot litigation by committing to formal rulemaking. Investors should keep an ear out for any such signals but, again, this is not the expected path.

Litigation outcomes

It is possible that even after the rule is submitted (or simultaneously, if someone doesn't want to wait), an injured bidder files an APA lawsuit alleging that NTIA's implementation of the BEAD changes was "arbitrary and capricious" or exceeded the agency's statutory authority. Such a suit could seek to invalidate the policy notice on substantive grounds, e.g., claiming NTIA lacked authority to mandate a rebid or failed to provide a rational explanation for the sudden policy shift. The existence of GAO's determination might be cited in such a case to highlight procedural irregularity, though courts technically cannot enforce the CRA's requirements. The outcome of any APA litigation is uncertain – the courts could defer to NTIA's broad grant-making discretion under IIJA, or they could fault NTIA for not using a more transparent process. From an investor's standpoint, the key is that **any such lawsuit could slow down fund disbursement** in the interim, even if it doesn't ultimately win. Thus far, no such suit has been reported, but the window is open. Keep in mind that if NTIA cures the CRA issue and

Congress doesn't object, it strengthens NTIA's hand in court because then the rule has congressional implied blessing. This is another reason we expect NTIA to go the submission route quickly.

In sum, the most likely scenario is a procedural course correction (CRA submission) that leaves the substance of the BEAD reforms intact, effective in 2026. Investors should plan for that outcome but remain nimble in the interim. The coming months may bring headlines as Congress formally reviews the rule and as stakeholders position themselves (some lobbying for tweaks, others possibly suing or appealing to state authorities). By late 2026, we anticipate the BEAD program will be on a steadier footing, with the Benefit of the Bargain principles formally embedded. Until then, caution is warranted.

Investor-specific diligence guidance

The evolving situation calls for a proactive strategy on the part of broadband infrastructure investors, fiber operators and lenders. Key goals should be to diligence the solidity of any BEAD funding streams underpinning investments, structure deals to withstand potential funding hiccups and include contractual safeguards that allocate risk if the unexpected happens. Cooley attorneys can advise on practical steps and considerations to help manage the broader regulatory risks.

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