



## Introduction

Throughout its stakeholder engagement process, the Wyoming Broadband Office (WBO) heard that for some businesses, the cost of obtaining a letter of credit could be significant on top of the 25 percent match already required by the Broadband, Equity, Access & Deployment Program (BEAD), which could inflate the overall cost of subgrantee applicants' project proposals. This was especially concerning given Wyoming's anticipated funding shortfall to deploy fiber to all unserved and underserved locations. As an alternative, the National Telecommunications and Information Administration (NTIA) has granted permission for subgrantee applicants to obtain a conditional programmatic waiver to waive the letter of credit requirement as described in Wyoming's Initial Proposal Volume II (IPvII).

This sample of letter of credit is based on the Federal Communications Commission (FCC) Rural Digital Opportunity Fund (RDOF) illustrative form of letter of credit mentioned in NTIA's Notice of Funding Opportunity (NOFO) and provided for in Wyoming's IPvII. Content in brackets is meant to be provided by the financial institution at the time of issuance.

See:

Wyoming IPvII: Available on the WBO website

NOFO: <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

FCC RDOF: <https://docs.fcc.gov/public/attachments/FCC-20-5A1.docx>, see Appendix C for sample FCC letter of credit



## Illustrative form of Letter of Credit

[Subject to Issuing Bank Requirements]

No. \_\_\_\_\_

[Name and Address of Issuing Bank]

[Date of Issuance]

[AMOUNT]

[EXPIRATION DATE]

### BENEFICIARY

Wyoming Business Council  
214 West 15th St.  
Cheyenne, WY 82002

### LETTER OF CREDIT PROVIDER

[Subgrantee Name]

[Address]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of [Subgrantee], in your favor, as required under the Broadband Equity, Access, and Deployment Program (BEAD) Notice of Funding Opportunity (NOFO), issued by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce (DOC) in May 2022, pursuant to the Internet Infrastructure and Jobs Act (IIJA) of November 15, 2021 as administered by the Wyoming Business Council (WBC) for Wyoming, our Irrevocable Standby Letter of Credit No. \_\_\_\_\_, in the amount of [State amount of Letter of Credit in words and figures NOTE: The amount of the Letter of Credit shall increase or decrease/additional letter(s) of credit shall be issued as additional funds are disbursed pursuant to the terms of the NTIA's BEAD Letter of Credit Waiver and any additional terms and conditions issued by the NTIA and WBC], expiring at the close of banking business at our office described in the following paragraph, on [the date which is \_\_\_ years from the date of issuance/ or the date which is one year from the date of issuance, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to NTIA by a nationally recognized overnight delivery service, with copies to the DOC and WBC, at least sixty days but not more than 90 days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by WBC (the "Expiration Date"). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the NOFO and IIJA.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated



the date of presentation or an earlier date, which presentation shall be made at our office located at [BANK ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than the first banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by check/wire transfer of Federal Reserve Bank of New York funds to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit, except as provided for by NTIA Guidance. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of WBC's certificate purportedly signed by two authorized representatives of WBC in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[NAME OF BANK]

[BANK SIGNATURE]



## Annex A: Form of Draft

To: [Issuing Bank]

DRAWN ON LETTER OF CREDIT No: \_\_\_\_\_

AT SIGHT

PAY TO THE ORDER OF WBC BY [CHECK/WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK]

FUNDS TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Account (\_\_\_\_\_)

AS [BEAD REPAYMENT]

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS

\$(AMOUNT IN NUMBERS)

Wyoming Business Council (WBC)

By: \_\_\_\_\_

Name:

Title:



## Annex B: Draw Certificate

The undersigned hereby certifies to [Name of Bank] (the “Bank”), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the “Letter of Credit”) issued by the Bank favor of the Wyoming Business Council (WBC); and (b) the Broadband Equity, Access, and Deployment Program (BEAD) Notice of Funding Opportunity (NOFO), issued by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce in May 2022, pursuant to the Internet Infrastructure and Jobs Act (IIJA) of November 15, 2021, pursuant to which [Name of Subgrantee] (the “LC Provider”) has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the NOFO), that:

[The Name of Subgrantee] has [describe the event that triggers the draw], and is evidenced by a letter signed by the [WBC Services Director] or [his/her] designee, dated \_\_\_\_, 20\_\_, a true copy of which is attached hereto.] Accordingly, a draw of the entire amount of the Letter of Credit No. \_\_\_\_\_ is authorized.]

OR

[WBC certifies that given notice of non-renewal of Letter of Credit No. \_\_\_\_\_ and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the Order, WBC is entitled to receive payment of \$ \_\_\_\_\_ representing the entire amount of Letter of Credit No. \_\_\_\_\_.]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Wyoming Business Council (WBC)

By: \_\_\_\_\_

Name:

Title:



## Annex C: Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Wyoming Business Council (WBC), and (b) Section of the Broadband Equity, Access, and Deployment Program (BEAD) Notice of Funding Opportunity (NOFO), issued by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce (DOC) in May 2022, pursuant to the Internet Infrastructure and Jobs Act (IIJA) of November 15, 2021 as administered by the Wyoming Business Council (WBC) for the State of Wyoming (all capitalized terms used herein but not defined herein having the meaning stated or described in the NOFO and IIJA), that:

- (1) [include one of the following clauses, as applicable]
  - (a) The NOFO has been fulfilled in accordance with the provisions thereof; or
  - (b) [LC Provider/Subgrantee] has provided a replacement letter of credit satisfactory to the NTIA.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Wyoming Business Council (WBC)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: