



U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION

Senator Maria Cantwell, Ranking Member

IMPACTS OF SECTION 0012 AI MORATORIUM PROVISIONS ON BEAD FUNDING AND STATE CONSUMER PROTECTION LAWS

Section 0012 of the revised Commerce reconciliation title uses \$500 million in new funding, just 1.2% of BEAD's \$42.45 billion, to force all states receiving BEAD funds to surrender their authority to regulate AI and automated decision-making systems for 10 years.

Key Mechanism: Retroactive Conditioning of All BEAD Funds

Section 0012(a)(4) amends the current BEAD requirements to allow NTIA to deobligate all of the \$42.45 billion already obligated BEAD funding to states and when NTIA reobligates the funding, the new AI Moratorium and Master Service Agreement conditions would attach. Chair Cruz claims the conditions would apply only to the \$500M in new appropriations.

Wrong. The text includes a built in backdoor to apply new AI requirements to the entire \$42.45 billion program, not just the new \$500 million.

How it Works:

States have already received initial BEAD allocations and all 50 have approved plans. The provision's language—blocking obligations under “this section”—refers to the entire BEAD statute (47 U.S.C. 1702), not just the new appropriation. This means states cannot access their obligated broadband funds without certifying they won't enforce AI laws.

- Creates new requirements that states must certify compliance with 10-year AI moratorium to receive BEAD money, including already-allocated funds awaiting distribution to subgrantees.
- Creates new compliance trap:
 - States cannot obligate any funds to subgrantees (ISPs, contractors) without compliance with new AI moratorium. While money has been obligated to states, NO MONEY has been obligated to subgrantees. All broadband buildouts could be frozen until states abandon enforcement of AI laws.
 - Gives the NTIA new power to claw back, “deobligate,” funds from states that are not in compliance with the AI moratorium.
 - Requires that states which receive funding after the date of enactment leave their consumers unprotected from AI harms.
- Expands BEAD's scope beyond broadband to include AI models, systems, and automated decision systems.

More specifically:

1. **Section (p) - Funding Freeze:** This provision blocks ALL future BEAD obligations—freezing the entire \$42.45 billion program. NTIA has already obligated funding to states per the BEAD allocations. However, the new language prohibits obligating any funds to subgrantees (broadband providers) for any project until the states certify compliance with the AI moratorium (q) and master services agreements (r).
2. **Section (q) - 10-Year AI Moratorium:** The moratorium, now rebranded as a “Temporary Pause,” prohibits states from enforcing any AI or Automated Decision-Making regulation for 10 years.
3. **Section (a)(5) - Mandatory Certification:** The provision forces all states to certify compliance with the moratorium even if they do not accept any of the additional \$500 million in funding.

Case Example: Utah

Scenario: Utah received \$317 million in BEAD allocation that NTIA obligated to the state. Utah has already passed AI laws that require businesses to disclose when consumers are interacting with generative AI systems and establishes liability for use of AI systems that violate consumer protection laws when not properly disclosed.

Here are the facts for Utah:

1. **Section (a)(5)** requires Utah to certify compliance with subsections (q) and (r) - even though Utah isn't seeking new funds. This imposes new requirements on all current BEAD participants, not just those seeking new funds.
2. **Section (p)** prohibits Utah from obligating any funds for expenditure to subgrantees (broadband providers) for any project until it certifies compliance with the AI Moratorium. Since Utah hasn't yet obligated its \$317 million to subgrantees, that money is frozen.
 - a. **Note:** Even though some may argue that because the \$317 million has been obligated to Utah before the date of enactment, the AI Moratorium would be optional, that fails to account for the fact that the restrictions apply to “amounts . . . obligated for expenditures of . . . any other subgrantee.” Because funds have not yet been obligated to subgrantees in any states, all \$42.45 billion in the BEAD Program is at risk of being tied to the AI Moratorium.
3. **Section (a)(4)** gives NTIA new authority to deobligate Utah's funding for failure to comply with (q) AI Moratorium and (r) Master Services Agreements.
4. **Section (a)(4)** then allows NTIA to then reobligate Utah's \$317 million - but with the AI Moratorium (q) and Master Service Agreement (r) conditions attached.
5. If NTIA chooses not to re-obligate funding to Utah or if Utah decides not to accept the new conditions, the \$317 million in deobligated money can only go to states that have certified they will pause AI regulations for 10 years.
6. Under current law, the NTIA Assistant Secretary has authority to redistribute unspent BEAD funds to other states.

10-Year State Ban on AI Regulations and Laws Has Dangerously Broad Scope

The moratorium prohibits states from enforcing any law that “limits, restricts, or otherwise regulates” AI models, systems, or automated decision systems in interstate commerce. The overly broad “Automated Decision System” definition extends beyond AI to include statistical modeling and data analytics, potentially blocking state oversight of insurance algorithms, autonomous vehicle systems, and utility rate models.