

## **BIP/BTOP Frequently Asked Questions**

**Questions added July 30 appear with an asterisk (\*).  
Questions added or changed July 31 appear with two  
asterisks (\*\*).**

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## I. Applying for Funds

### A. Application Process and Procedure

#### 1. Will those who apply early have any advantage over those who apply later within the application window?

No. All eligible applications will be reviewed based on objective selection criteria, and there is no additional consideration for applications based on how early within the application window they are received.

#### \*2. Will RUS or NTIA staff discuss my proposed project with me before I apply?

RUS and NTIA staff cannot pre-screen or offer any specific consultations on funding applications. These are competitive grant and loan processes. We must remain objective and not show favoritism to any applicant at any point in the process. Questions of general applicability will be answered in these FAQs.

### B. Multiple Rounds of Funding

#### 1. Please explain the three anticipated rounds of funding.

The current *Notice of Funds Availability* (NOFA) announces the first round of broadband funding under the Recovery Act. RUS will award up to \$2.4 billion in grants and loans in the first round of funding. NTIA will award up to \$1.6 billion in grants in the first round of funding. RUS and NTIA currently plan two more funding rounds (one to commence at the end of 2009 and the other to commence in spring 2010), with all awards to be made by September 30, 2010, as required by the Recovery Act. (See NOFA sections I and IV.)

#### 2. Is August 14, 2009 the application deadline for all three rounds of funding?

No. Only applications for the first round of funding have a deadline of no later than 5 p.m. ET on August 14, 2009. These deadlines are the same for BIP and all three BTOP programs. (See NOFA section VI.F.) The application deadline for the second and third rounds of funding will be announced in subsequent NOFAs.

#### 3. Is an entity whose application is denied in the first funding round eligible to reapply for funding in a subsequent round?

If an application is not successful in the first round, the applicant may resubmit the proposal for the next round of funding. Applicants should be aware that NTIA and RUS intend to learn from

the first funding round. As a result, the agencies may issue subsequent NOFAs that contain different programmatic information from the July 2009 NOFA to better achieve the agencies' goals and to adjust the process based on the applications received. In this situation, applicants resubmitting applications may need to adjust their applications before resubmitting them.

BIP and BTOP applicants will be notified in writing of the reason for the rejection. (See NOFA section II.B.3.) As a result, applicants resubmitting their applications in later rounds will have an opportunity to address the deficiencies identified in the first round.

**4. May an applicant who receives an award in the first round submit an application in a subsequent round of funding?**

Yes, provided that the subsequent application does not duplicate the project RUS or NTIA already has funded.

**5. If the NTIA receives an unexpectedly large number of meritorious Broadband Infrastructure, Public Computer Center, or Sustainable Broadband Adoption applications, can NTIA draw-on the “national reserve” that is set aside by the NOFA and make additional awards?**

Yes. If NTIA receives a large number of high-quality proposals that exceed the funding limits established for each project category, then NTIA may use funds from the \$200 million national reserve set aside in the NOFA to fund projects in any of the three categories. NTIA also retains the discretion to divert funds from one project category to another. (See NOFA section IV.B.3-4.) Based on the Recovery Act requirements, over the course of the three rounds of funding, NTIA must award at least \$200 million to public computer center grants and at least \$250 million to sustainable broadband adoption grants. Nothing in the statute prohibits NTIA from devoting additional funds to these projects.

## **C. BIP and BTOP**

**1. If I am interested in BTOP funding for a “rural” infrastructure project, am I required to apply to BIP?**

If at least 75 percent of your proposed funded service area qualifies as a rural area as defined in the NOFA, you must answer all of the questions on the application that are required for BIP, and RUS will consider your application under BIP. In addition, you must also answer all of the BTOP-specific questions on the Broadband Infrastructure application. (See NOFA section VI.C.1.a.) Separate budgets and financial statements are required for BIP and BTOP applications to reflect the different sources of funds.

RUS and NTIA will simultaneously review Broadband Infrastructure applications submitted to both agencies, but NTIA will not make awards with respect to any such application until RUS has decided not to fund it. To expedite the grant review process, NTIA will concurrently review joint BIP/BTOP applications using its own objective evaluation criteria and in accordance with BTOP procedures outlined in the NOFA. However, in this funding round, NTIA may make

awards with respect to those rural Broadband Infrastructure applications NTIA determines to be meritorious after RUS has reviewed the application and decided not to fund it.

RUS and NTIA have adopted these application procedures to leverage the available funding and to reflect the fact that Congress, in the Recovery Act, intended that RUS focus its activities on rural areas and mandated that NTIA funding could not be applied in the same project areas funded by RUS under the Recovery Act. (See NOFA section VI.C.1.a.)

**\*\*2. May an area funded by BTOP overlap an area served by a provider that is receiving support under title II of the Rural Electrification Act of 1936, but not under BIP?**

Yes. However, in the selection process, NTIA will consider the extent to which funding is redundant or “conflicts with the initiatives of other federal agencies, including Department of Agriculture loan and grant programs for broadband services.” (See NOFA section III.B.3.)

#### **D. Number of Applications**

**1. Is there a limit to the number of applications one entity can submit during the application window?**

No.

**2. Please clarify when single vs. multiple applications are appropriate.**

**(a) Must an applicant submit separately for Broadband Infrastructure, Public Computer Center, and Sustainable Broadband Adoption projects or include all three in one application?**

An applicant with projects in multiple funding categories (Broadband Infrastructure, Public Computer Center, and Sustainable Broadband Adoption) must submit separate applications. (See NOFA section VI.D.) However, applicants should reference the other relevant applications in Question 3 of each application and discuss synergies between projects in the appropriate sections of each application. NTIA will give additional consideration to projects that convincingly address multiple project categories and BTOP statutory purposes. (See NOFA section VII.A.2.b).

**(b) Must an applicant submit separately for Middle Mile and Last Mile Infrastructure Projects or include both in one application?**

Both may be included in the same application, but an applicant should follow this guidance in determining how to characterize its application:

Last mile services are characterized by the provision of service directly to end-user premises or end users—these services bridge the “last mile” between a service distribution point and end users. This typically may take the form of residential or commercial broadband service. Broadband Infrastructure projects that do not predominantly provide service directly to end users are considered middle mile projects. Some examples of middle mile services include interoffice transport, backhaul, Internet connectivity, and special access. Because RUS and NTIA recognize

that applicants may need to build middle mile infrastructure as part of a last mile deployment, these categorizations are not expected to be exclusive, and applicants are asked to choose which of the service types, last mile or middle mile, their project will predominantly provide.

For example, where an applicant proposes to deploy backhaul for the express purpose of supporting a last mile deployment that is part of the same proposal, the applicant should characterize the project as predominantly a last mile project. If, by contrast, the last mile facilities deployed in the project are just one of many last mile networks that the backhaul facilities are expected to serve, the project would likely be better characterized as a middle mile project. BTOP-only applicants proposing substantial last mile and middle mile components who are unable to designate their proposal as predominantly last mile or middle mile are advised to file separate applications for the last mile and middle mile components and to discuss the relationship between components in the applications. BIP applicants proposing substantial last mile and middle mile components **must** select the last mile **or** middle mile funding category.

**(c) Where service areas are not contiguous, does an applicant have to submit separate applications?**

No, one application may contain multiple proposed funded service areas. Each proposed funded service area, however, must independently satisfy the eligibility requirements and be composed of contiguous census blocks. For BIP and BTOP, this means that each proposed funded service area must qualify as unserved or underserved.

**\*\*3. If NTIA decides to reject an application, will NTIA automatically reject the applications for other project categories that the applicant has designated as related in Question 3 of the application?**

No. Applications that convincingly demonstrate synergy between multiple project categories (*e.g.*, Broadband Infrastructure, Public Computer Centers, or Sustainable Broadband Adoption) will receive additional consideration. For example, a Sustainable Broadband Adoption application might be related to a Broadband Infrastructure application to the extent that the former provides solutions to enhance subscribership. However, if NTIA finds that only one of several related applications proposes a project that is highly responsive to the criteria, NTIA may choose to fund only the highly meritorious application.

**\*\*4. If one applicant submits Broadband Infrastructure applications with different proposed funded service areas and designates in Question 3 that the applications are related, will all of the applications be selected or rejected together?**

No. RUS and NTIA will consider each application on its own merits.

**\*\*5. Will one application that includes multiple partners' projects be accepted or rejected as a whole, or will RUS and NTIA consider awarding partial grants?**

As a general matter, RUS and NTIA intend to select or reject each application in its entirety. NTIA reserves the right to discuss with the applicant specific modifications to the application to

resolve any differences that may exist between the applicant's original request and what NTIA is willing to fund. (See NOFA section II.B.3.)

## **E. Specific Application Requirements**

### **1. When an application is submitted by multiple entities, should it be filed with a single DUNS number or a new shared DUNS number?**

The application must include the DUNS number associated with the lead applicant. The DUNS numbers for other entities or a new shared DUNS number are not required for the application process. If the application receives an award, to the extent that subrecipient reporting is required, entities that will perform subrecipient reporting will need to supply DUNS numbers at that time.

### **\*\*2. Engineering Certification Requirements**

#### **(a) What are the engineering certification requirements for BIP Broadband Infrastructure applications?**

Only projects that RUS determines to be technically feasible will be eligible for an award. At a minimum, applicants for BIP Broadband Infrastructure projects who are requesting funds over \$1 million must submit a system design and project timeline, certified by a professional engineer (external or in-house) who is registered in each state where the project is located. The application will include a certification form for the professional engineer and the applicant's authorized representative to sign, stating that the proposed broadband system will work as described, can deliver the proposed services outlined in the application, can meet the proposed build-out timeframe based on the resources designated in the application, will be substantially complete in two years, and will be fully complete within three years.

#### **(b) What are the engineering certification requirements for BTOP Broadband Infrastructure and Public Computer Center applications?**

Only projects that NTIA determines to be technically feasible will be eligible for an award. At a minimum, applicants for BTOP Broadband Infrastructure projects who are requesting funds over \$1 million must submit a system design and project timeline, certified by a professional engineer (external or in-house). For BTOP, the professional engineer may be registered in any state. The application will include a certification form for the professional engineer and the applicant's authorized representative to sign, stating that the proposed broadband system will work as described, can deliver the proposed services outlined in the application, can meet the proposed build-out timeframe based on the resources designated in the application, will be substantially complete in two years, and will be fully complete within three years.

Applicants for Public Computer Center projects that involve a broadband wide area network (WAN) or local area network (LAN) build-out or other significant engineering activities may (but are not required to) submit a certification from a professional engineer to demonstrate that their proposed project is technically feasible.

NTIA expects the registered Professional Engineer to follow the applicable code of professional ethics to certify only projects that he or she is fully capable of evaluating.

[Modified from FAQ posted July 23, 2009.]

**\*3. What is the Funding Opportunity Number for each program?**

The Funding Opportunity Number for BIP is the Regulatory Identification Number associated with BIP in the *Notice of Funds Availability* (NOFA): 0572–ZA01. The Funding Opportunity Number for BTOP is the Regulatory Identification Number associated with BTOP in the NOFA: 0660–ZA28.

**\*4. What is the CFDA Number and Title for each program?**

The Catalog of Federal Domestic Assistance (CFDA) number for BIP grants, loans, and loan/grant combinations is 10.787. The CFDA title for BIP is “Broadband Initiatives Program.”

The CFDA number for BTOP grants is 11.557. The CFDA title for BTOP is “Recovery Act - Broadband Technology Opportunities Program (BTOP).”

If you are submitting a paper application to BIP and BTOP, please enter both CFDA numbers in response to Question 1-C.iv and both CFDA titles in response to Question 1-C.v.

**\*\*5. Who should complete Form CD-346?**

It is not necessary to submit Form CD-346 with any BIP or BTOP application. This form was included inadvertently in the PDF copies of the applications for BTOP Public Computer Center and Sustainable Broadband Adoption categories. The electronic application system will not require applicants to complete Form CD-346.

**\*\*6. Must BTOP applicants submit Form CD-511 and Form CD-512? These forms appear to contain the same information.**

Each BTOP applicant must submit the Form CD-511 “Certification Regarding Lobbying.” The Form CD-512 “Certification Regarding Lobbying - Lower Tier Covered Transactions” must be completed by applicants for subgrants, contracts, and subcontracts exceeding \$100,000 when they have been awarded by the BTOP grant recipient. The CD-512 must be submitted to the BTOP grantee and maintained in the BTOP grantee’s files.

**\*\*7. Does the required Network Design and Implementation Plan Certification require an engineer to guarantee that the proposed project actually “will be substantially complete in two years, and complete within three years”?**

No. RUS and NTIA clarify that the phrase “will be substantially complete in two years, and complete within three years” means that it is feasible under reasonably anticipated circumstances for the project to be substantially complete in two years and complete within three years after the date of the award.

## F. Information Technology

### 1. Will the electronic application allow you to save your application, stop, and come back to it?

Yes, an applicant can edit and save an application as many times as necessary until you submit the application. After the application has been submitted, the electronic system will not allow further revisions.

### 2. Will the Help Desk address electronic filing questions?

Yes. For assistance, an applicant should call 1-888-861-5509 or email [helpdesk@broadbandusa.gov](mailto:helpdesk@broadbandusa.gov).

### \*\*3. Should applicants register or submit applications through [www.grants.gov](http://www.grants.gov)?

No. The electronic intake system for BIP and BTOP applications is available at <http://www.broadbandusa.gov>.

### \*\*4. When will the list of BTOP applications be posted on the Internet, and what information will be included?

Pursuant to the BTOP statutory requirements in section 6001(i)(5) of the Recovery Act, NTIA will make available only high-level general information about each application that has been submitted by the application deadline. This posting will occur after the application submission deadline date.

## II. Infrastructure Issues

### A. Service Area

#### 1. Does an applicant have to show that each individual census block within its proposed funded service area is unserved or underserved?

No. It is not necessary to show that each individual census block is unserved or underserved. The proposed funded service area, which consists of one or more contiguous census blocks, must, as a whole, meet the definition of unserved or underserved for BTOP. (See NOFA sections III and VI.C.1.c.) For BIP, at least 75 percent of the proposed funded service area must qualify as an unserved or underserved rural area. (See NOFA section V.C.3.) Applicants must explain the methodology for determining that the proposed funded service area as a whole meets the eligibility criteria.

The examples below may help to clarify the requirements:

(a) **Prong #1 of definition of “underserved area” (50% of households with access):**

Assume that three contiguous census blocks (Blocks A-C) each contain 100 households, and that only 20 households in Block A have access to facilities-based, terrestrial broadband service, 40 households in Block B have access, and 60 households in Block C

have access. If each census block is presented as a separate proposed funded service area, Blocks A and B will qualify as underserved on the basis that in each block fewer than 50 percent of households have access to facilities-based, terrestrial broadband. Block C will not qualify as underserved on that basis. If, however, the three blocks are combined into a single proposed funded service area, only 120 out of 300 households will have access to facilities-based, terrestrial broadband, meaning that the service area as a whole (including Block C) will qualify as underserved on the basis of fewer than 50 percent of households having access to facilities-based, terrestrial broadband service.

**(b) Prong #3 of definition of “underserved area” (subscriber rate of 40% or less):**

Assume that two other contiguous census blocks (Blocks D and E) each contain 100 households and that 20 households in Block D subscribe to broadband service, and 50 households in Block E subscribe to broadband service. If each census block is presented as a separate proposed funded service area, Block D will qualify as underserved on the basis of a rate of broadband subscribership that is 40 percent or less. Block E will not qualify as underserved on that basis. If, however, the two blocks are combined into a single proposed funded service area, only 70 out of 200 households (*i.e.*, 35 percent) subscribe to broadband service, meaning that the service area as a whole will qualify as underserved on the basis of a rate of broadband subscribership that is 40 percent or less.

**2. How can an applicant determine which areas are unserved or underserved?**

The exact methodology is up to the applicant, but the result should be to demonstrate that the proposed funded service area is eligible based on the appropriate definition. Applicants should aim to utilize state broadband mapping data if such data exists. Otherwise, a customer or market survey, statistical sampling, or other valid methodology will be necessary. Census block maps can be found at

[http://www.census.gov/geo/www/maps/descriptwindows/census\\_blockmaps.htm](http://www.census.gov/geo/www/maps/descriptwindows/census_blockmaps.htm).

**3. If RUS or NTIA discovers that a few census blocks within a large service area are not unserved or underserved, will the agency reject the application in its entirety?**

The determination of whether an area is unserved or underserved applies to an entire service area, not to specific census blocks within the service area. RUS and NTIA will post a Public Notice of the proposed funded service areas of each Broadband Infrastructure application for a 30-day period. If the information submitted by an existing service provider demonstrates that the applicant’s proposed funded service area is not unserved, both RUS and NTIA reserve the right to reclassify the application and consider the proposed area as underserved if the application meets the criteria in the underserved definition. If the information submitted by an existing service provider establishes that the applicant’s proposed funded service area is not underserved, both RUS and NTIA may reject the application. (See NOFA section VII.B.)

**4. Are any areas of the country, tribal lands, or territories *de facto* unserved or underserved?**

No such *de facto* areas have been identified in the NOFA.

**\*5. Wireless providers are concerned that their projects will be ineligible for BTOP funding because their service areas will include areas that do not qualify for BTOP funding. What should such providers do when applying for BTOP funds?**

An applicant is not required to include its entire service area (*i.e.*, the service area physically reached by infrastructure) in its proposed funded service area (*i.e.*, the service area funded by BIP or BTOP). For BTOP, only the proposed funded service area must meet the definition of unserved or underserved. For BIP, 75 percent of the proposed funded service area must be rural and also meet the definition of unserved or underserved. RUS and NTIA will consider only the benefits provided to the proposed funded service area, and BTOP reviewers will count only the households passed (homes to which a provider makes service available) that are within the proposed funded service area when evaluating the cost-effectiveness of the proposal. BIP and BTOP will fund only the costs attributable to the provision of service within the proposed funded service area.

**\*6. If an existing satellite service provider (but no other provider) advertises broadband transmission speeds of at least 3 mbps downstream within a proposed funded service area, will the area meet factor #2 (*i.e.*, no fixed or mobile broadband service provider advertises broadband transmission speeds of at least 3 mbps) in the definition of “underserved area”?**

Yes, the proposed funded service area would qualify as underserved according to factor #2 in the definition of “underserved area.” As a general matter, satellite service will not be counted for purposes of meeting the definition of “unserved area” or “underserved area.” Because the general reach of satellite service can extend to the entire country, it is excluded as a factor in these definitions to avoid an interpretation that no area in the United States would be considered unserved or underserved. Such an interpretation would render the term meaningless. (See NOFA Policy Justification Appendix.)

**\*7. For purposes of factor #3 in the definition of “underserved area” (*i.e.*, rate of broadband subscribership of 40 percent of households or less), are subscriptions to satellite service at greater than the minimum broadband transmission speed counted towards broadband subscribership?**

No. As noted above, satellite service will not be counted for purposes of meeting the definition of “unserved area” or “underserved area.”

**\*8. Does advertising of broadband service count as availability for the geographic area in which the advertisement is run?**

Applicants first should note that a service provider’s advertisement over a large area does not necessarily mean that it offers service throughout that entire area. The boundaries of the

advertising market may not align precisely with the boundaries of the provider's service area. The applicant should attempt to determine whether the provider actually offers service within the applicant's proposed funded service area.

**\*9. In determining whether an area is unserved or underserved, will RUS and NTIA consider the advertised speed provided by existing services or the actual speed provided by those services?**

The advertised speeds of existing services are used to determine whether an area is unserved or underserved. (See NOFA section III.)

**\*10. If a project qualifies for a BIP loan/grant combination, may an applicant request only the grant portion if they are willing to commit equity for what would be the loan portion?**

Yes, an applicant may substitute equity for the loan portion of the project and still get the grant funding. The applicant should keep in mind that the extent of grant funding will still be considered in the scoring process. (See NOFA section VII.A.1.e.)

## **B. Middle Mile**

**\*1. For the purposes of determining eligibility of a middle mile project and evaluating Project Benefits for a middle mile project, please define interconnection point.**

For these purposes, an interconnection point is any location where last mile providers, community anchor institutions, or other networks can physically interconnect with the project, either to exchange traffic or to deliver traffic across the project's network to the Internet backbone. The awardee is responsible for defining interconnection points to its projects.

**\*2. For a middle mile project that terminates in a last mile unserved or underserved area as required, but flows through a served area, is the whole middle mile infrastructure eligible for funding or only the portion that flows through unserved/underserved areas?**

Only one point of interconnection is required to be in an unserved or underserved area for the purposes of eligibility. (See NOFA section III.) However, when evaluating an application for funding, RUS and NTIA will consider the proportion of the network's end-points, points of interconnection, and projected end users that are located in unserved or underserved areas. (See NOFA sections VII.A.1.b and VII.A.2.c.ii.)

### **III. Public Computer Centers and Sustainable Adoption**

#### **A. Both Funding Categories**

##### **1. Are applications for Public Computer Center and Sustainable Broadband Adoption projects that are based in rural areas reviewed by RUS before they are reviewed by NTIA?**

No. Only NTIA will review applications for Public Computer Center and Sustainable Broadband Adoption projects. Applications for these project categories may only be submitted to BTOP. (See NOFA sections II.B.1 and VI.C.2-3)

##### **2. Are there any geographic restrictions on the areas served by Public Computer Center and Sustainable Broadband Adoption projects?**

No. Public Computer Center and Sustainable Broadband Adoption applicants do not need to demonstrate that their projects are located within unserved or underserved areas. Rather, they must show that they serve vulnerable population groups where broadband technology has traditionally been underutilized. (See NOFA sections II.B.1 and VI.C.2-3.)

##### **\*\*3. Who owns copyrightable material funded by a BTOP grant?**

The grantee may copyright any copyrightable work that was developed, or for which ownership was purchased, using grant dollars. The Department of Commerce reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. (See 15 C.F.R. sections 14.36 and 24.34.)

#### **B. Public Computer Centers**

##### **1. Do the network nondiscrimination and interconnection requirements apply to public computer center projects?**

No. The interconnection and non-discrimination obligations apply to Broadband Infrastructure projects only. (See NOFA section V.C.2.c.)

##### **2. Are public housing agencies eligible to apply for public computer center funds?**

Yes. As government entities, public housing agencies are eligible for public computer center funds. (See NOFA section V.B.1.) A public computer center may be located in, or associated with, public and Indian housing. If the public computer center serves only the residents of the public housing project (rather than the general public), the applicant should explain this limitation in its application and demonstrate how the public computer center is targeted to a specific vulnerable population, such as low-income users, the elderly and people with disabilities. (See NOFA sections III and VII.A.2.c.iii.)

##### **\*3. Can I apply for Public Computer Center funds to establish a new public computer center?**

Yes. Projects must create or expand a public computer center meeting a specific public need for broadband service, including but not limited to education, employment, economic development,

and enhanced service for health-care delivery, children, and vulnerable populations. (See NOFA section VI.C.2.)

**\*4. Can I apply for Public Computer Center funds to upgrade the computers in an existing public computer center?**

Yes. Also, please see the discussion in Question IV.B.2 regarding construction of new facilities for public computer centers.

**\*\*5. Is a public computer center buildout characterized as a Public Computer Center project or a Broadband Infrastructure project?**

In the Public Computer Center submission, applicants may propose local area network (LAN) or small wide-area network design (WAN) within their facilities. For example, if an operator of a

public computer center wants to add new workstations and connect them with routers and Internet cables inside the facility, or even expand the building itself to add public computer center capacity, that is a Public Computer Center project. However, applicants proposing any infrastructure projects external to the facilities will need to apply for a Broadband Infrastructure grant. For example, if a library system wants to deploy broadband infrastructure to connect multiple public computer centers, then the project is a Broadband Infrastructure project. If the buildout includes both Public Computer Center and Broadband Infrastructure components, the applicant will need to file an application for each type of project.

**\*\*6. May a Public Computer Center apply filtering software to prevent users from accessing unsafe or obscene content? Is such filtering required?**

NTIA does not require or prohibit the use of filtering software at a public computer center. BTOP funding does not affect the obligations under the Children’s Internet Protection Act that apply to schools and libraries receiving Universal Service support or Library Services and Technology Act funds. (See 47 U.S.C. section 254(h); 20 U.S.C. section 9134(f)).

## **C. Sustainable Broadband Adoption**

**1. Please describe the “sustainability” evaluation factor for Sustainable Broadband Adoption grants. Do these projects need to be on-going after the period of performance for the award?**

Applicants for Sustainable Broadband Adoption grants must explain how the expected increases in broadband adoption rates will be sustained without ongoing federal grant assistance after the funding period and grant program has concluded. The description should include an explanation for why the applicant believes increases in subscriber rates will be sustainable over time. Applicants also should demonstrate how any costs associated with training and/or other recurring

expenses will be covered after the grant expires. NTIA expects projects funded by Sustainable Broadband Adoption grants to continue after the period of performance for the award. (See NOFA section VII.A.2.e and Grant Guidelines for the Recovery Act Broadband Technology Opportunities Program.)

## **IV. Eligibility and Matching**

### **A. Eligible Entities**

#### **1. Are municipal governments eligible to apply for BIP and BTOP funds?**

Yes. (See NOFA section V.B.1.)

#### **2. Are public universities eligible to apply for BIP and BTOP funds?**

Yes. (See NOFA section V.B.1.)

#### **3. Are independent school districts eligible for BIP and BTOP funds?**

Yes. (See NOFA section V.B.)

#### **\*4. Must a for-profit corporation be a socially and economically disadvantaged small business concern (SDB) to be eligible to apply for funding?**

No. (See NOFA section V.B.) All types of for-profit corporations are eligible to apply for funding. Applications in which the applicant is an SDB are given additional consideration under both programs. (See NOFA sections VII.A.1.d and VII.A.2.b.) Applications that have established agreements to partner with or contract with SDBs are also given additional consideration under BTOP. (See NOFA sections VII.A.2.b and VII.A.2.d.)

#### **\*5. Are publicly traded corporations eligible for BIP and BTOP funds?**

Yes. (See NOFA section V.B.2.)

### **B. Eligible Costs**

#### **1. To what extent can award funds be used to pay for expenditures prior to the award, including the costs of preparing the application?**

RUS and/or NTIA will fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses may be reimbursed if they are incurred after July 9, 2009, the publication date of the NOFA, and prior to the date on which the application is submitted to RUS and/or NTIA. These pre-application expenses can include the cost of an engineer's review of an infrastructure project's network diagram as well as other documented costs associated with the preparation of the application. (See NOFA section V.D.2.a.)

#### **2. Is the construction or acquisition of new facilities for Public Computer Center applications an eligible cost?**

Yes. Applicants must explain, however, why the proposed cost is reasonable, and why it is necessary for the applicant to construct or acquire a new facility in order to expand computer center capacity, including documenting the likely demand for computer services at the proposed facility.

### **3. Are contingency fees reimbursable pre-application expenses?**

An awardee may not use BIP or BTOP funds to pay contingency fees. Costs based solely on a contingent fee basis are not authorized under the applicable OMB Cost Circulars. In particular, both OMB Circular A-87 and OMB Circular A-122 provide that costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill are allowable when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. Thus, if an applicant enters into such an arrangement with a consulting firm, it will be required to pay the fee using funds not included in the award.

### **\*4. Are BIP and BTOP grants taxable? If so, can a grantee use grant funds to pay the taxes?**

Applicants who are not exempt from taxation should consult with their tax advisors regarding the potential tax consequences of BIP and BTOP grants. For an example of the analysis that the Internal Revenue Service may apply to BIP and BTOP grants, please see <http://www.irs.gov/pub/irs-drop/n-03-18.pdf>. Federal taxes are not an eligible cost under federal grant programs such as BIP and BTOP.

### **\*5. Is the cost of hiring, training, and employing staff to implement a Public Computer Center or Sustainable Broadband Adoption project an eligible cost?**

Yes. The costs of hiring employees and paying salaries are eligible costs for Public Computer Center and Sustainable Adoption projects if the employees' job functions are directly related to one or more of the activities listed as eligible costs for Public Computer Center or Sustainable Broadband Adoption projects in sections V.D.3.b-c of the NOFA (*e.g.*, developing and providing training, education, support and awareness programs, or web-based resources). To the extent these are not startup costs but are continuing operating expenses, applicants must demonstrate how these costs will be covered once the grant ends.

### **\*6. If a Broadband Infrastructure project includes both activated and "dark" fiber (for later expansion purposes), will all of the fiber be eligible for funding or only that which provides service from the outset?**

Consistent with the Recovery Act, RUS and NTIA intend to encourage cost-effective deployment of broadband infrastructure to unserved and underserved areas. As a result, all of the fiber will be considered an eligible cost, as long as it is not excessive additional capacity when compared to the facilities that are directly required to provide the broadband service.

**\*\*7. Are tower leases and indefeasible right of use (IRU) agreements considered capital leases, and thus allowable expenses under BIP and BTOP, or are they considered operating leases, and thus not allowable expenses?**

As stated in section V.D.1 of the NOFA, the cost of leasing facilities required to provide broadband service is an allowable expense if such lease qualifies as a capital lease under Generally Accepted Accounting Principles (GAAP). The applicant is responsible for ensuring compliance with GAAP. If there is doubt regarding the classification of a particular lease under GAAP, RUS and NTIA expect the applicant to provide an explanation justifying the classification of its leasing arrangement as a capital lease.

Under GAAP, a lease is a capital lease from the perspective of the lessee if the lease meets any of the four criteria set forth in paragraph 840-10-25-1 of the Accounting Standards Codification of the Financial Accounting Standards Board (FASB Codification). (See FASB Codification, section 840-20, “Capital Lease”.)

**\*\*8. Is labor ever an eligible cost for Broadband Infrastructure projects?**

Yes. Labor is an eligible cost for Broadband Infrastructure projects to the extent that it is directly related to the construction or improvement of facilities required to provide broadband service. (See NOFA section V.D.2.a.) More specifically, labor costs associated with activities related to the construction, deployment, or installation of facilities required to provide broadband service are eligible costs. Labor is not an eligible cost for Broadband Infrastructure projects to the extent that it is an operating expense directed to the maintenance of the organization or the facilities. (See NOFA section V.D.2.b.)

**\*\*9. Are indirect costs eligible expenses?**

NTIA has the discretion to consider indirect costs as eligible expenses under BTOP. For Broadband Infrastructure projects, reasonable indirect costs associated with the construction, deployment or installation of facilities and equipment used to provide broadband service as detailed in section V.D.2.a of the NOFA will be considered allowable provided they are included as a line item in the applicant’s budget and the applicant has established an approved indirect cost rate. The process for establishing an indirect cost rate with the Department of Commerce is described in a document entitled “General Indirect Cost Rate Program Guidelines for Grantee Organizations” and can be found on the Department of Commerce website:

<http://oam.ocs.doc.gov/docs/DOC%20IDC%20Ext%20Policy.v6.doc>. For Public Computer Center and Sustainable Broadband Adoption projects, reasonable indirect costs associated with eligible project activities as detailed in section V.D.3 of the NOFA will be considered allowable costs provided they are included as a line item in the applicant’s budget and the applicant has established an approved indirect cost rate. Applicants that do not have an approved indirect cost rate will have 90 days from the award start date to apply to have a rate established.

For BIP, indirect costs are generally an ineligible cost.

**\*\*10. Is the cost of installing a cable modem, antenna, or other terminating/interconnection device at a customer's home or business an eligible cost for a Broadband Infrastructure project?**

Yes. During the funding period, the purchase of customer premises equipment used to provide broadband service (*e.g.*, cable modems) is an eligible cost for the purposes of Broadband Infrastructure projects. (See NOFA section V.D.2.a.) The cost of labor to install customer premises equipment also is an eligible cost because it is directly related to the construction or improvement of facilities required to provide broadband service. (See NOFA section V.D.2.a.)

**\*\*11. Are VoIP soft switches eligible for BTOP funding?**

To the extent that a soft switch is used exclusively to provide VoIP or telecommunications services, even if such services are offered over a broadband service, such equipment is not eligible. (See NOFA section V.D.2.a.)

**\*\*12. Are the costs of the audits required by BIP and BTOP eligible costs?**

Under BTOP, the costs to audit the grants awarded to state and local governments, educational institutions and non-profit organizations are typically allowable as indirect costs under the Single Audit Act, as implemented by OMB Circular A-133. NTIA may also allow for-profit organizations to recover the costs of audits as direct costs.

Under BIP, the cost of an audit is an operating expense and therefore is an ineligible cost.

**\*\*13. Are vehicles eligible costs for Public Computer Center and Sustainable Broadband Adoption projects?**

Vehicles may be considered eligible costs for Public Computer Center and Sustainable Broadband Adoption projects if the proposed vehicle directly furthers a purpose listed in section V.D.3 of the NOFA (*e.g.*, providing training, education, support, and awareness programs; or facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled).

### **C. BTOP Matching Funds**

**1. Are monies from a state (or other non-federal) grant awarded to provide telecommunications services, purchase equipment, and provide training eligible as matching funds? If so, will they be considered in-kind contributions or a cash match?**

Yes. To the extent that the use of the funds is for an eligible purpose under BTOP and assuming such use is permitted under the terms of the other grant program, such funds will be considered a cash match. Matching funds are encouraged but not required under BIP.

**\*2. Does an applicant have to satisfy the matching requirement during the first year of the funded project or can the cash and in-kind contributions be made over the life of the project?**

BTOP grantees are not required to spend all of the 20 percent non-federal matching funds before spending grant funds. However, the non-federal share of the project budget, whether cash or in-kind, must be expended at least proportionally to the Federal share expended.

**\*3. Can matching funds be spent prior to the time of the award?**

Reasonable pre-application expenses in an amount not exceeding five percent of the award may be counted toward an applicant's 20 percent match for BTOP. Other expenditures prior to the award are not eligible costs and therefore cannot be counted as matching funds. However, please see the discussion below regarding previously purchased equipment.

**\*4. Can previously purchased equipment be used as an in-kind match?**

An in-kind contribution of previously purchased equipment could be a part of a grantee's cost share if the equipment is appropriately dedicated to the BTOP-funded project. An in-kind contribution of equipment is added to the project at the time it is dedicated to the project, NOT at the time it is purchased. Consequently, if the grantee dedicates previously purchased equipment to the project at the time of the award, the expenditure will be deemed to take place at the time of the award. Based on the particular circumstances, the value of the match should be estimated by calculating a use allowance, depreciation, or current fair market value.

**\*5. Must an applicant have the 20 percent matching funds on hand at the time of the application?**

The Recovery Act requires a BTOP applicant to demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the matching requirement. As a result, while an applicant is not required to have all matching funds on hand at the time it submits the application, it must convincingly demonstrate that it will be able to supply the proposed matching funds if it receives a grant. While, in some cases, a document such as a letter of commitment may be sufficient evidence of an applicant's capability to supply the necessary funds, if the source of funds identified appears to be speculative, NTIA will reject the application. In any event, to the extent that NTIA selects an application for an award, the applicant must, at the time the award is made, have the matching funds available and ready to expend at least in proportion to the Federal share.

**\*6. Can an applicant use funds it has applied for (but has not yet been granted) to demonstrate that it can meet BTOP's 20 percent match requirement?**

No. In the absence of a waiver based upon the applicant's demonstration of financial need, an applicant must demonstrate its capacity to provide matching funds of at least 20 percent toward the eligible project cost. (See NOFA section V.C.4.b.) Because an application for other funding

provides no guarantee that the applicant will actually receive those funds, this other potential funding cannot be used to meet the 20 percent matching requirement.

**\*7. If a vendor offers an applicant a discount, can the applicant include that discount toward the 20 percent matching funds requirement?**

No. The amount of the discount cannot be applied to the required 20 percent match. Instead, it represents a reduction in the overall cost of the project.

**\*8. Where can I obtain further information about the requirements that apply to matching funds?**

For further information regarding matching requirements as applied to State, local, and Indian tribal governments, please see 15 C.F.R. section 24.24 at [http://edocket.access.gpo.gov/cfr\\_2008/janqtr/pdf/15cfr24.24.pdf](http://edocket.access.gpo.gov/cfr_2008/janqtr/pdf/15cfr24.24.pdf) . For further information regarding matching requirements as applied to other organizations, please see 15 C.F.R. section 14.23 at [http://edocket.access.gpo.gov/cfr\\_2008/janqtr/pdf/15cfr14.23.pdf](http://edocket.access.gpo.gov/cfr_2008/janqtr/pdf/15cfr14.23.pdf).

**\*\*9. When can federal funds be counted as matching funds?**

Generally, federal funds may not be used as matching funds except as provided by federal statute. (See NOFA section V.C.4.b; 15 C.F.R. sections 14.23(a)(5) and 24.24(b)(1).) For example, 40 U.S.C. section 14321(a)(4) authorizes the use of grant funds from the Appalachian Regional Commission (ARC) as matching funds if the ARC decides such use is appropriate. Similarly, 25 U.S.C. section 450h(c) provides that funds granted by the Interior Department and the U.S. Department of Health and Human Services (HHS) to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act can be used to meet the matching funds requirement of other federal grant programs which contribute to the purposes for which the grants were awarded by the Department of the Interior and HHS.

**\*\*10. Can funds from the federal Universal Service Fund (e.g., e-Rate funds and Rural Health Care funds) be used to meet BTOP's 20 percent matching requirement?**

No. Federal universal service support payments made pursuant to section 254 of the Communications Act, as amended, are considered federal funds and have not been authorized for use as matching funds for BTOP. In general, federal funds may not be used to match other federal grant funds except as provided by federal statute. (See NOFA section V.C.4.b; 15 C.F.R. sections 14.23(a)(5) and 24.24(b)(1).)

**\*\*11. Can volunteer services be counted as an in-kind match?**

Yes. Unpaid volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of the grant-funded project. Rates for volunteer services shall be consistent with those paid for similar work in the awardee's organization. If the required skills are not found in the awardee's organization, rates shall be consistent with those paid for similar

work in the labor market in which the awardee competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation. (See 15 C.F.R. sections 14.23(d) and 24.24(c)(1).)

**\*\*12. Can an applicant use loan proceeds to meet the BTOP 20 percent matching funds requirement?**

Yes, with the exception of BIP or other Federal loan funds that are not expressly authorized by federal statute for use as matching funds. The applicant should demonstrate in its sustainability analysis how it will repay the loan.

**\*\*13. Can an applicant use program income to repay a loan that was used to meet the BTOP 20 percent matching funds requirement?**

Program income may be used to meet the matching requirement only when authorized by NTIA. (See 15 C.F.R. sections 14.24(b)(2) and 24.25(g).)

## **D. Eligible Projects**

**1. Can I apply for a Broadband Infrastructure project that will provide high capacity bandwidth to community anchor institutions? Are the participating institutions required to be in unserved or underserved areas?**

Community anchor institution (which include schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education) projects are eligible. For example, one such project may be proposing to create a regional fiber ring to connect schools, hospitals, or other community anchor institutions. Projects of this nature should be characterized as middle mile projects as they create a point-to-point network connecting a relatively small number of facilities. This would be in contrast to a last mile project which, because of the last mile coverage obligation, must provide broadband access to all end users – including all community anchor institutions, businesses, and households in the proposed funded service area. (See NOFA section V.C.2.d.)

To be eligible for BIP or BTOP funding, all middle mile projects (including middle mile community anchor institution projects) must have at least one point of interconnection located in an unserved or underserved area. (See NOFA sections III (defining “underserved area”), V.C.3, and VI.C.1.c.) For BTOP evaluation purposes, the degree to which middle mile projects serve unserved and underserved areas is assessed during scoring and evaluation, with additional consideration provided to projects that have more interconnection points in unserved and underserved areas. (See NOFA section VII.A.2.c.ii.) However, it is possible that the majority of a middle mile project will be located in areas that are not unserved or underserved. To maximize BTOP’s impact and in consideration of its funding constraints, NTIA has opted to focus on areas

that have no broadband or inadequate broadband rather than supporting projects located in areas with more substantial broadband coverage.

**2. As an applicant for a middle mile community anchor institution project, how do I answer Question 14 of the infrastructure application? What is a “last mile service area”?**

The information collected in Question 14 is used to measure the scope and impact of the proposed middle mile project. For each individual middle mile network span, the applicant must provide (among other things): the name of the span; a list of the census blocks through which the span will pass; information on each “last mile service area” for that span; and whether (for BTOP) each proposed funded service area or (for BIP) each census-designated community or “other area” located in the last mile service area is unserved or underserved as defined in the NOFA. The “last mile service areas” refer to the areas in which end users will benefit from the middle mile network, either through last mile service providers or through community anchor institutions that are directly connected to the network.

Note that there is no coverage obligation for middle mile projects—the last mile coverage obligation applies only to last mile applications. (See NOFA section V.C.2.d.) By listing the last mile service areas that a middle mile project will serve, a middle mile applicant does not incur an obligation to provide broadband service to all end users throughout those areas. Rather, this is an estimate by the applicant of the reach of its middle mile network—whether that occurs via last mile service providers or through services provided directly to community anchor institutions. While these are projections, they should be more than mere speculation. In Question 18, applicants are required to explain the bases for these projections (*e.g.*, a commitment from a service provider or community anchor institution in that area or a market study finding that the lack of middle mile capacity is the barrier to last mile broadband service in the area and that last mile broadband service would become commercially viable if the proposed middle mile project is built).

**3. As an applicant for a middle mile community anchor institution project, how do I answer Question 18 of the infrastructure application? Is my project required to provide broadband service to the surrounding area?**

Question 18 presents middle mile applicants an opportunity to explain how their project will deliver benefits to the area impacted by the project. (See NOFA sections VII.A.1.b-c and VII.A.2.c.ii.) These benefits may come in the form of consumer or business broadband service delivered via last mile service providers or through services delivered by community anchor institutions or some combination of the two. Hospitals, universities, public safety entities, or other community anchor institutions should explain in their response to Question 18 how the proposed project will enhance their capabilities and describe the benefits that the project will deliver to the public and the communities that the project will impact (with attention, if applicable, to how these benefits fit the particular needs of the community). These applicants should also estimate how many end users will be provided access at and through the community anchor institutions.

There is no requirement to provide broadband service to all end users throughout the project area. But applicants for middle mile community anchor institution projects should note that their projects, like all other Broadband Infrastructure projects, will be subject to nondiscrimination and interconnection obligations. (See NOFA section V.C.2.c.) For example, all Broadband Infrastructure projects must connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network.

#### **4. Will any funding be made available to commercialize emerging broadband technologies?**

Consistent with the goals of the Recovery Act, BIP and BTOP intend to focus on providing immediate access to broadband service. BIP and BTOP Broadband Infrastructure projects must intend to provide broadband service to unserved and underserved areas. (See NOFA sections V.C.3, and VI.C.1.c) In addition, project milestones and benefits must be achievable within the timeframe described in the proposal. BIP and BTOP funds are not available for general research.

#### **\*\*5. Is a public safety network eligible for funding under BTOP?**

Yes. If the predominant purpose of the project is to deploy broadband infrastructure to connect the Public Safety Answering Point (PSAP) to public safety entities (*e.g.*, police stations, fire stations, or emergency centers), such a project would likely be characterized as a Middle Mile Broadband Infrastructure project, even if the project includes some funding for end-user devices. Middle Mile projects must have at least one interconnection point in an unserved or underserved area. For further information, please see Questions IV.D.1-3 above regarding community anchor institution Middle Mile projects.

If the predominant purpose of the project is to serve end users or end-user devices such as first-responder radios, then the project is a Last Mile Broadband Infrastructure project, and the proposed funded service area must qualify as unserved or underserved. An applicant proposing such a network also would be required to comply with the last mile coverage obligation described in section V.C.2.d of the NOFA, which requires applicants to provide service to the entire territory of each census block of the proposed funded service area, including households and businesses.

Last Mile and Middle Mile projects also must comply with the nondiscrimination and network interconnection obligations applicable to all Broadband Infrastructure projects. (See NOFA section V.C.2.c.) Therefore, a project that only connects public safety entities to PSAPs or public safety users, with no connection to the public Internet will not be eligible for funding.

#### **\*\*6. When an applicant for BTOP funding proposes broadband facilities to serve low income multi-tenant buildings, does a neighboring single family home in the same census block have to be served?**

Yes. If this project involves construction of broadband infrastructure and has the predominant purpose to provide broadband service to end users or end-user devices, then it will be considered a Last Mile project. An applicant for a last mile project must specify a proposed funded service

area that is composed of at least one census block, and the proposed infrastructure is required to provide broadband access to all end users – including all community anchor institutions, businesses, and households in the proposed funded service area. (See NOFA sections III and V.C.2.d.) Therefore, neighboring single family homes within the same census block must be served by the proposed infrastructure.

## **E. Partnering**

### **1. Can organizations apply jointly for a single award?**

Yes, organizations can file jointly for funding. BIP and BTOP encourage collaboration among partners who may bring a variety of strengths and expertise to a project. However, one entity must be selected as the lead applicant. That entity will enter into the grant, loan, or loan/grant agreement with RUS or NTIA and will assume operational and financial responsibility should an award be made (i.e., an Authorized Organizational Contact (AOC) as designated by the Central Contractor Registration (CCR) process). Applications that involve multiple organizations should identify key partnerships in the Executive Summary, Organizational Readiness, Organizational Chart, and Government and Other Key Partnerships questions on the application. Applicants should also demonstrate how these groups will work together and illustrate how the project will be financially and technologically feasible.

### **2. When multiple organizations are involved in a project, does it matter which organization is the lead applicant?**

The lead applicant must be able to enter into a Loan or Grant Agreement with RUS or NTIA and be willing to assume financial and operational responsibility for the project. Lead applicants should have experience implementing projects of similar size and scope.

### **3. How would an entity interested in partnering with socially and economically disadvantaged businesses go about identifying these businesses in their community?**

The Central Contractor Registration (CCR) website ([www.ccr.gov](http://www.ccr.gov)) includes a link to Dynamic Small Business Search, a function that enables applicants interested in working with socially and economically disadvantaged businesses to search for potential partners by ZIP Code, North American Industry Classification System (NAICS) code and keywords.

### **\*\*4. Under BTOP, may an applicant partner with subgrantees or contractors?**

Yes. Grantees (also known as recipients) may work with subgrantees (also known as subrecipients) and contractors to assist them in completing their projects.

For further background information see <http://www.ogc.doc.gov/ogc/fl/fald/itl/voL-13.doc>; see also <http://broadbandusa.sc.egov.usda.gov/presentations/Compliance.pdf>.

## **F. Buy American**

### **\*1. Are PCs and LCD monitors covered under the limited Buy American waivers for broadband equipment?**

Yes, assuming they are eligible costs under BIP or BTOP. Specifically, if PCs and LCDs or other end-user equipment are used as part of (or in conjunction with) the awardee's provision of broadband service, then this equipment is covered by the Secretary of Agriculture's June 26, 2009 waiver with respect to BIP and Secretary of Commerce's June 19, 2009 waiver with respect to BTOP. If this equipment is used to expand public computer capacity or promote sustainable adoption of broadband services, then it is covered by the Secretary of Commerce's June 19, 2009 waiver with respect to BTOP.

**\*\*2. Does NTIA or the Department of Commerce maintain a list of equipment acceptable for use in NTIA-funded projects?**

No.

**\*\*3. Does RUS maintain a list of equipment acceptable for use in RUS-funded projects?**

Yes. RUS maintains an accepted list of materials available at "[RUS LIST OF MATERIALS Acceptable for Use on Systems of USDA Rural Development Telecommunications Borrowers - IP 344-2](#)". Applicants applying under the BIP are not required to purchase materials shown on this list; however, RUS strongly recommends that applicants utilize this list.

## **G. Davis-Bacon Wage Requirements**

**\*\*1. What resource should be used to determine the proper "prevailing wage" figures for a given area in order to comply with the Davis-Bacon Wage Requirements for contractors and subcontractors?**

As stated in section 1606 of the Recovery Act: "Wage Rate Requirements," notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

## **V. Review and Award Process**

### **A. States**

**1. Which state entity will be asked to prioritize BTOP applications?**

BTOP will send a list of applications that have advanced to the step two review stage to the Governor's office of each State, U.S. territory, and possession, and to the Mayor's Office of the District of Columbia.

**\*2. Is there a conflict of interest when a state that has submitted applications for BTOP funds is asked to prioritize all of the applications for projects in the state? How will you protect against such a conflict?**

State input is one of a number of factors that the NTIA will consider when selecting applications for awards. (See NOFA section II.B.3.) States will not have the ability to veto any particular project.

**\*3. Will NTIA provide a grant in each state during the initial funding round?**

Not necessarily. Section 6001(h)(1) of the Recovery Act requires that NTIA, to the extent practical, award not less than one grant in each state. This provision applies cumulatively across all rounds of BTOP funding and does not require NTIA to award a grant in each state in each round of funding. (See NOFA section IV.B.1.)

**\*4. Will NTIA attempt to award at least one grant in each territory and possession of the United States and in the District of Columbia?**

Yes. Over the course of all three rounds of funding, to the extent practical, NTIA will endeavor to fund at least one project located in each state, territory, and possession of the United States and in the District of Columbia. (See NOFA section IV.B.1.)

**\*5. If a project is located in two states, will both states be invited to provide input to NTIA?**

Yes.

**\*6. What role, if any, will tribal governments have in the review process?**

To the extent NTIA receives more than one application from the same tribal area, NTIA will consult with the tribal government from that area.

## **B. Evaluation**

**\*1. Will NTIA utilize a self-scoring worksheet for BTOP?**

No. NTIA will not utilize a self-scoring worksheet because BTOP is taking a different approach from BIP with respect to evaluation of proposals. Rather than delineating a specific point structure within each major category of criteria, NTIA will ask reviewers to provide a single score for each category (Project Purpose, Project Benefits, Project Viability, and Project Budget and Sustainability). By adopting this approach, NTIA intends to retain the flexibility to consider a wide variety of projects.

## **C. Project Viability and Timeline**

**\*1. Must an applicant obtain zoning approval for its proposed project before submitting an application?**

An applicant is not required to obtain zoning approval before submitting an application or before receiving an award. When evaluating Project Viability, however, reviewers will consider the

uncertainty and potential delay inherent in a project that has not yet received zoning approval. (See NOFA sections VII.A.1.d and VII.A.2.d.)

**\*\*2. In section VII.A.2.d of the NOFA regarding BTOP’s evaluation of Project Viability, what does “developments that will be feasible in other situations” mean?**

The phrase “developments that will be feasible in other situations” refers to creative or innovative solutions that would be broadly applicable to other projects. NTIA hopes that projects funded under BTOP will serve as models for future investments. (See NOFA section II.B.2.)

**\*\*3. To what extent is it necessary for an applicant to complete its procurement process before submitting an application?**

NTIA and RUS recognize that procurement requirements may prevent an applicant from establishing contracting relationships within the time available for preparation and submission of an application. Applicants facing such restrictions should describe how they will recruit and select contractors so that the project will be completed in an appropriate timeframe for the size and scope of the project. (See NOFA section VII.A.2.d.)

## **D. Independent Expert Review Process**

**\*1. How can I apply to become a BTOP reviewer?**

Please see the Call for Reviewers posted at [www.broadbandusa.gov](http://www.broadbandusa.gov). Please note that NTIA will only select reviewers who have demonstrated significant expertise in their fields and who agree to abide by strict conflict of interest and confidentiality policies.

**\*2. Is it common for independent experts to participate in the review of grant applications? Why?**

Yes, it is common for federal agencies to use independent expert reviewers as part of a grant review process. Independent analysis can strengthen the process by incorporating the experience and up-to-date knowledge of experts across the nation. This practice is especially valuable when grant applications of a scientific or technical nature are reviewed, due to the specialized expertise needed to carefully evaluate them. In addition, subjecting each grant application to review by multiple independent experts makes the selection process more rigorous and helps ensure that the projects with the most merit are funded.

**\*3. Will the independent expert reviewers decide which BTOP grant applications to fund?**

No. NTIA will ultimately decide which grant applications to fund. As detailed in the NOFA, panels of independent experts will conduct an initial merit review of BTOP grant applications, which will be augmented by NTIA staff review.

**\*4. What are the conflict of interest policies for the independent experts who serve as BTOP reviewers?**

Reviewers must agree not to share any nonpublic information learned during the course of their review about BTOP or BTOP applications with any third party or to discuss the contents of any BTOP application outside the Department of Commerce during or after the review process. Reviewers also must agree to retain no copies of documents or parts of documents relative to this review, including notes or other documents that they create.

Reviewers must agree not to use any information learned during the review process for personal or private gain and must agree not to provide advice on or to participate in the preparation of any BTOP grant application for any party, including any existing or future employer, or on a consultancy basis.

Reviewers must certify that they (and certain associated parties) do not have a financial or other conflict of interest and that their particular circumstances are not likely to raise the appearance of a conflict of interest, impropriety, or the appearance of impairment of objectivity with respect to any BTOP application they are asked to review or on which they are asked to comment. A financial conflict of interest may arise from employment, stock ownership, a creditor or debtor relationship, or prospective employment with an applicant. An appearance of impairment of objectivity could result from an organizational conflict of interest where, because of other activities or relationships with other persons or entities, the reviewer is unable or potentially unable to render impartial assistance or advice to NTIA. It could also result from a non-financial gain to the reviewer or other persons or entities, such as benefit to reputation or prestige in a professional field.

Participation as a reviewer shall not preclude the reviewer's employer from applying for BTOP funds. A reviewer may not review any BTOP application filed for a project in a State in which his or her employer has applied for a BTOP grant. Moreover, if the reviewer's employer is a broadband service provider, the reviewer may not serve as a reviewer on any BTOP application filed by an entity located within a State in which his or her employer is located or does business whether or not the reviewer's employer has filed a BTOP application.

If a reviewer discovers that he or she might have a conflict of interest, might present a conflict of interest, or might have an appearance of impairment of objectivity with any application within the competition, the reviewer must immediately inform the appropriate BTOP official and refrain from further work as a reviewer until authorized to continue.

For further information, please see the Reviewer Conflict of Interest and Confidentiality Certification posted here:

<http://broadbandusa.sc.egov.usda.gov/files/Revised%20BTOP%20Reviewers%20Confidentiality%20and%20Conflict%20of%20Interest%20Agreement.pdf>.

**\*5. Must expert reviewers be from the state where the project is located or demonstrate knowledge of broadband conditions in that state?**

Not necessarily. Reviewers will be selected on the basis of their expertise, and all applications will be evaluated on the basis of the information provided in the application.

**\*6. Will the names of BTOP expert reviewers be published?**

No. Like most other grant programs, BTOP does not plan to publish a list of grant reviewers because we want to preserve the integrity of the process and not put reviewers in a position where they are contacted by third parties seeking to influence the selection process or gain non-public information.

**\*7. How will BTOP reviewers evaluate portions of the application that are outside their primary areas of expertise? For example, how will an engineer review business-related sections of the application? How can a finance expert competently review a proposed technological solution?**

While all reviewers may not have the same level of expertise on all aspects of an application, each panel will be comprised so that each application can be fully evaluated.

## **VI. Award Terms and Conditions**

### **A. Non-discrimination and Interconnection**

**1. Do the nondiscrimination and interconnection requirements apply to the portions of the applicant's network that are not funded by BIP or BTOP?**

No.

**2. Is last mile infrastructure subject to the same nondiscrimination and interconnection obligations as middle mile infrastructure?**

Yes. The same nondiscrimination and network interconnection obligations apply to both Last Mile and Middle Mile projects. (See NOFA section V.C.2.c.)

For BTOP only, Broadband Infrastructure applications will be evaluated on the applicant's commitment to exceeding the minimum requirements. Section VII.A.2.c of the NOFA ("Project Benefits") explains how Last Mile and Middle Mile applicants may exceed the minimum requirements, based on the different technical characteristics of the two types of projects.

**\*3. Does title or ownership of the equipment used for the project impact the application of the network nondiscrimination and interconnection obligations?**

The nondiscrimination and interconnection obligations apply to the awardee and any partner, subcontractor or vendor involved in a Broadband Infrastructure project. They are not based on the ownership of the equipment. If the awardee does not own the equipment, the awardee must have in place safeguards with the equipment owner and the network operator to ensure that the network nondiscrimination and interconnection obligations are met. (See NOFA section V.C.2.c.)

**\*\*4. Are the BIP and BTOP interconnection requirements compatible with a telemedicine project that is subject to the confidentiality requirements of the Health Insurance Portability and Accountability Act of 1996?**

Confidentiality requirements should not preclude compliance with the interconnection requirements of BIP and BTOP. If a hospital sends encrypted data across the public Internet, opening access to local interconnection does not make the data any less confidential than the inherent intermingling of traffic on the Internet backbone. A hospital also may send its confidential data across a virtual private network, so long as the infrastructure also provides public Internet connectivity. The necessity for such services was a reason why RUS and NTIA expressly allowed private managed services as part of a funded project. (See NOFA section V.C.2.c.)

**B. Sale/Lease/Ownership of Facilities**

**\*1. Who owns the equipment and facilities acquired with BTOP grant funds? Does the federal government retain an interest?**

The grantee owns the equipment and facilities acquired with Federal funds, subject to a Federal interest in the property as described below. (See NOFA section V.E.)

Title to equipment and real property acquired or improved with BTOP grant funds vests in the grantee at the time of acquisition subject to the condition that the grantee shall use the property for the authorized purpose of the project as long as it is needed for that purpose. If the grantee is not a state or local government, then real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the grantee as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

A recipient of NTIA funds must execute a security interest or other statement of the Federal Interest in real property acquired or improved with Federal funds. The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from the Department of Commerce.

**\*2. Are there any restrictions on the sale or lease of the federally-funded facilities under BTOP?**

Yes. As set forth in the NOFA, the sale or lease of any portion of the award-funded broadband facilities during their life is prohibited. The NOFA, however, establishes a three-prong exception to this general prohibition. NTIA may approve a sale or lease if (a) it is for adequate consideration; (b) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project (*e.g.*, the network non-discrimination and interconnection obligations); and (c) either the sale or lease is set forth in the original application and part of the applicant's funding proposal, or NTIA waives the restriction no sooner than 10 years after the grant award. Awardees are required to notify the agency in the event of a proposed transfer of award-funded facilities.

Moreover, the restriction on leasing the facilities does not prohibit a broadband infrastructure awardee from leasing its facilities to another service provider for the provision of broadband services. (See NOFA sections V.E and IX.C.2.) These restrictions also apply to any contractor or subcontractor that may own the facilities. (See NOFA section IX.C.1.)

If an applicant foresees the possibility of a sale or lease prior to the 10-year time period, the applicant should explain this possibility in its application. As evidenced by BTOP's sustainability criteria, projects that guarantee service to a community for the foreseeable future provide greater value and, thus, will be more competitive. (See NOFA section VII.A.2.e.) Because the terms of the award continue to apply to the facilities, there may be instances in which an applicant can demonstrate that a sale or lease of the property would be in the best interest of those that are served by the project. NTIA cautions applicants to avoid unjust enrichment that may result from a quick resale of a project funded by BTOP grants.

The Department of Commerce also imposes restrictions on the disposition of property acquired or improved with BTOP funds. Some of these restrictions are discussed below.

Under Department of Commerce regulations, when real property is no longer needed for its authorized purposes, the grantee must request disposition instructions from the Department of Commerce. The Department of Commerce may allow the grantee to retain title after paying compensation for that percentage of the current fair market value of the property attributable to the federal participation in the project; instruct the grantee to sell the property and pay compensation for the federal participation in the project; or transfer title to the property to the federal government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

Under Department of Commerce regulations, when equipment with a value greater than \$5,000 is no longer needed for its authorized purposes, the grantee may retain the equipment for other uses after paying compensation for the percentage of the current fair market value of the equipment attributable to federal participation in the cost of the original project or program. If the grantee does not wish to retain the equipment, the Department of Commerce may provide disposition instructions.

For further information, please see 15 C.F.R. parts 14.32-34 and 24.31-32 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/15cfrv1\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/15cfrv1_08.html).

**\*\*3. Do the restrictions on the sale or lease of award-funded facilities restrict a sale or transfer of ownership in the awardee itself? For example, if the awardee is a subsidiary, can the awardee's parent company sell the awardee?**

The restrictions on sale or lease are applicable to the awardee. Thus, the award terms do not restrict a transfer of control of the awardee (*e.g.*, via sale of the awardee's stock), provided that title to the property does not change. Further, NTIA will examine each application to determine if the applicant's corporate structure has been established so as to enable a prompt transfer of

control of the BTOP-funded assets in a manner that would be inconsistent with the concerns about unjust enrichment referenced above in Question VI.B.2. Thus, if an applicant is established as a wholly-owned subsidiary of an entity otherwise eligible under section V.B of the NOFA, such that the value of the BTOP-funded assets would constitute the majority of the applicant's total asset value, such circumstances would call into question the applicant's intentions with respect to the sustainability of the project, absent some countervailing explanation by the applicant. In any event, after a transfer of control of the awardee, the awardee remains subject to the terms and conditions of the grant or loan. (See NOFA sections V.C.2.c and IX.C.1.)

**\*\*4. May an awardee lease surplus capacity on its network for wireless backhaul?**

Yes, to the extent that the awardee is leasing this capacity to another service provider, and a purpose of the lease is the provision of broadband services. (See NOFA section IX.C.2.)

### **C. Compliance/Award Terms**

**\*\*1. How long is a grantee obligated to add program income to the funds committed to the project?**

For purposes of BIP and BTOP, any program income generated by a grant-funded project during the grant period shall be retained by the grantee and shall be added to the funds committed to the project by RUS or NTIA and the recipient. The grantee should use program income to further eligible project objectives, including reinvestment in project facilities. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award during the funding period. (See NOFA section V.E.) The funding period is the period of performance of the grant, *i.e.*, the time between the award date and the end date authorized by the Department of Agriculture or the Department of Commerce to fully complete the project.

**\*\*2. Will BTOP-specific reporting requirements be consolidated with OMB Recovery Act reporting?**

No. Applicants must submit general Recovery Act reports at [www.FederalReporting.gov](http://www.FederalReporting.gov). NTIA will develop a separate system for BTOP-specific reporting requirements.

**\*\*3. Where can I find additional details concerning the compliance requirements that will apply to awardees?**

Please see the applicable OMB Circulars pertaining to Administrative Regulations, Cost Principles, and Audit Requirements ([http://www.whitehouse.gov/omb/grants\\_circulars/](http://www.whitehouse.gov/omb/grants_circulars/)), and the OMB Guidance pertaining to Recovery Act Reporting Requirements ([http://www.whitehouse.gov/omb/recovery\\_default/](http://www.whitehouse.gov/omb/recovery_default/)).