

1 **DEPARTMENT OF AGRICULTURE**

2 **Rural Utilities Service**

3 **Broadband Initiatives Program**

4 **RIN: 0572-ZA01**

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6 **DEPARTMENT OF COMMERCE**

7 **National Telecommunications and Information Administration**

8 **Broadband Technology Opportunities Program**

9

10 **RIN: 0660-ZA28**

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12 **AGENCIES:** Rural Utilities Service (RUS), Department of Agriculture, and National
13 Telecommunications and Information Administration (NTIA), Department of Commerce.

14 **ACTION:** Notice of Funds Availability (NOFA) and solicitation of applications.

15 **SUMMARY:** RUS and NTIA announce general policy and application procedures for
16 broadband initiatives established pursuant to the American Recovery and Reinvestment Act of
17 2009 (Recovery Act). RUS is establishing the Broadband Initiatives Program (BIP) which may
18 extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural
19 areas. NTIA is establishing the Broadband Technology Opportunities Program (BTOP) which
20 makes available grants for deploying broadband infrastructure in unserved and underserved areas
21 in the United States, enhancing broadband capacity at public computer centers, and promoting
22 sustainable broadband adoption projects. In facilitating the expansion of broadband
23 communications services and infrastructure, both programs will advance the objectives of the
24 Recovery Act to spur job creation and stimulate long-term economic growth and opportunity.

25 **DATES:** Applications will be accepted between July 14, 2009 at 8:00 a.m. Eastern Time (ET)
26 until August 14, 2009 at 5:00 p.m. ET.

27 **APPLICATION SUBMISSION:** The application packages for electronic and paper
28 submissions will be available at <http://www.broadbandusa.gov>.

29 Electronic submissions: Electronic submissions of applications will allow for the expeditious
30 review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all
31 applicants requesting more than \$1 million in assistance (in the form of grants, loans, or a
32 combination of grants and loans) must file their application electronically. Applicants whose
33 authorized representatives are individuals with disabilities, however, may submit a paper
34 application irrespective of the funding size of their request.¹ In addition, applicants who are
35 requesting less than \$1 million in assistance may forego the electronic filing requirement if filing
36 electronically would impose a hardship on the applicant. Electronic applications must be
37 submitted by 5:00 p.m. ET on August 14, 2009. The government electronic application system
38 will provide a date and time stamped confirmation number that will serve as proof of submission.

39 Paper submissions: Applicants requesting less than \$1 million in assistance (in the form of
40 grants, loans, or a combination of grants and loans) may file their applications in a paper format
41 if filing electronically would impose a hardship on the applicants. Applicants whose authorized
42 representatives are individuals with disabilities may file their applications in a paper format
43 irrespective of the funding size of their request. To the extent that applicants use electronic word
44 processing software to create paper submissions, they should include in their filing, to the extent
45 possible, an electronic copy of the paper application on an appropriate media such as a CD. This
46 will assist the agencies in processing paper applications. Paper submissions must be postmarked

1 ¹See Rehabilitation Act of 1973 § 508, 29 U.S.C. § 794d.

47 no later than August 14, 2009, or hand-delivered no later than 5:00 p.m. ET on August 14, 2009,
48 to the addresses listed in the Supplementary Information in this NOFA.

49 **CONTACT INFORMATION:** For general inquiries regarding BIP, contact David J. Villano,
50 Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department
51 of Agriculture (USDA), email: bip@wdc.usda.gov telephone: (202) 690-0525. For general
52 inquiries regarding BTOP, contact Anthony Wilhelm, Deputy Associate Administrator,
53 Infrastructure Division, Office of Telecommunications and Information Applications, National
54 Telecommunications and Information Administration, U.S. Department of Commerce (DOC),
55 email: btop@ntia.doc.gov, telephone: (202) 482-2048. For inquiries regarding BIP and BTOP
56 compliance requirements, including applicable federal rules and regulations protecting against
57 fraud, waste and abuse, contact bipcompliance@wdc.usda.gov for BIP and
58 btopcompliance@ntia.doc.gov for BTOP. You may obtain additional information regarding
59 applications for BIP via the Internet at <http://www.usda.gov/rus/telecom/> and for BTOP at
60 <http://www.ntia.doc.gov/broadbandgrants/>.

61 **AUTHORITY:** This notice is issued pursuant to the American Recovery and Reinvestment Act
62 of 2009, Pub. L. 111-5, 123 Stat. 115 (2009) and the Rural Electrification Act of 1936, 7 U.S.C.
63 § 901 *et seq.*

64 **SUPPLEMENTARY INFORMATION:**

65 Catalog of Federal Domestic Assistance (CFDA) Number: Broadband Initiatives Program (BIP)
66 – 10.787; Broadband Technology Opportunities Program (BTOP) – 11.557.

67 Additional Items in Supplementary Information

68 I. Overview: Describes the purposes of the Recovery Act, the broadband goals of the Recovery
69 Act, and the establishment of BIP and BTOP.

70 II. Funding Opportunity Description: Provides a more thorough description of BIP and BTOP.
71 III. Definitions: Sets forth the key statutory terms and other terms used in BIP and BTOP.
72 IV. Award Information: Describes funding availability, grant and loan terms, as applicable, and
73 other award information.
74 V. Eligibility Information for BIP and BTOP: Establishes eligibility criteria, eligibility factors,
75 eligible and ineligible costs, and other eligibility requirements.
76 VI. Application and Submission Information: Provides information regarding how to apply,
77 application materials, and the application process.
78 VII. Application Review Information: Establishes the evaluation criteria for application review.
79 VIII. Anticipated Announcement and Award Dates: Identifies the initial announcement date for
80 certain awards, and provides other information regarding BIP and BTOP.
81 IX. Award Administration Information: Provides award notice information, administrative and
82 national policy requirements, terms and conditions, and other reporting requirements for award
83 recipients.
84 X. Other Information: Sets forth guidance on funding, compliance with various laws,
85 confidentiality, discretionary awards, and authorized signatures.

86 **I. Overview**

87 On February 17, 2009, President Obama signed the American Recovery and
88 Reinvestment Act of 2009 (Recovery Act) into law.² The essential goal of the Recovery Act is to
89 provide a “direct fiscal boost to help lift our Nation from the greatest economic crisis in our
90 lifetimes and lay the foundation for future growth.”³ Accordingly, the Recovery Act identifies
91 five overall purposes: A. to preserve and create jobs and promote economic recovery; B. to

2 ² American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009).

3 ³ President Obama, Statement on Signing the American Recovery and Reinvestment Act of 2009 (Feb. 17, 2009).

92 assist those most impacted by the recession; C. to provide investments needed to increase
93 economic efficiency by spurring technological advances in science and health; D. to invest in
94 transportation, environmental protection, and other infrastructure that will provide long-term
95 economic benefits; and E. to stabilize state and local government budgets.⁴ The Recovery Act
96 further instructs the President and the heads of federal departments and agencies to manage and
97 expend Recovery Act funds to achieve these five purposes, “commencing expenditures and
98 activities as quickly as possible consistent with prudent management.”⁵

99 Consistent with the purposes described above, the Recovery Act provides RUS and NTIA
100 with \$7.2 billion to expand access to broadband services in the United States. In so doing, it
101 recognizes the growing importance of access to broadband services to economic development
102 and to the quality of life of all Americans. Specifically, the Recovery Act tasks RUS, NTIA, and
103 the Federal Communications Commission (FCC) with leading the federal government’s efforts
104 to begin the process of significantly expanding the reach and quality of broadband services.

105 RUS, NTIA, and the FCC have worked closely to leverage the authorities and resources
106 provided in the Recovery Act to develop a coordinated federal government approach to
107 addressing the challenge of rapidly expanding the access and quality of broadband services
108 across the country. Each agency brings unique skills and resources to this effort. RUS has been
109 the federal government leader in bringing telecommunications to rural America for decades.
110 NTIA has experience in awarding technology-related grants through the Technology
111 Opportunities Program and serves as the President’s principal advisor on telecommunications
112 and information policies.⁶ And NTIA and the FCC together are responsible for the development
113 of federal telecommunications policy.

4 ⁴ Recovery Act § 3(a), 123 Stat. at 115–16.

5 ⁵ See *id.* § 3(b), 123 Stat. at 116.

6 ⁶ See Technology Opportunities Program, <http://www.ntia.doc.gov/otiahome/top/index.html>; NTIA Organization Act of 1992, 47 U.S.C. § 901 *et seq.*

114 Additionally, to aid in achieving Recovery Act objectives, on March 10, 2009, RUS,
115 NTIA, and the FCC co-sponsored a public meeting to initiate public outreach about the current
116 availability of broadband service in the United States and ways in which the availability of
117 broadband services could be expanded.⁷ The March 10 meeting was followed by the release of a
118 Request for Information (RFI) and six days of additional public meetings and field hearings
119 during March.⁸ The meetings and hearings included nearly 120 panelists—including
120 representatives from consumer and public interest groups, state and local governments, tribal
121 governments, minority and vulnerable populations, industry, academia, and other institutions—
122 who provided comment on how to make RUS’s and NTIA’s broadband initiatives effective,
123 equitable, and efficient.⁹

124 In response to the RFI and the public meetings, RUS and NTIA received over 1,000
125 comments from institutions and individuals.¹⁰ RUS and NTIA received comments on multiple
126 issues surrounding BIP and BTOP, including how the terms “broadband,” “unserved area,” and
127 “underserved area” should be defined, resulting in the definitions and program requirements
128 announced in this NOFA. These comments played a crucial role in formulating the structure of
129 the RUS and NTIA broadband programs. For further discussion and explanation of the agencies’
130 reliance on the public comments in the policy decisions involved in BIP and BTOP, see the
131 attached Policy Justification found in the Appendix at the end of this NOFA.

132 RUS and NTIA Recovery Act programs implement new authorities. Specifically, the
133 Recovery Act expands RUS’s existing authority to make loans and provides new authority to
134 make grants to facilitate broadband deployment in rural areas. The Recovery Act appropriates

8 ⁷ See Joint Notice of Public Meeting, 74 Fed. Reg. 8914 (Feb. 27, 2009).

9 ⁸ See Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716 (Mar. 12, 2009).

10 ⁹ Agendas, transcripts, and presentations from each meeting are available on NTIA’s website at:

11 <http://www.ntia.doc.gov/broadbandgrants/meetings.html>.

12 ¹⁰ Comments may be viewed on NTIA’s website at: <http://www.ntia.doc.gov/broadbandgrants/comments>.

135 \$2.5 billion of budget authority for RUS to extend loans, loan/grant combinations, and grants to
136 projects where at least 75 percent of an RUS-funded area is in a rural area that lacks sufficient
137 access to high speed broadband service to facilitate rural economic development. RUS has
138 developed BIP to fund broadband infrastructure in qualifying areas.¹¹

139 The Recovery Act also appropriates \$4.7 billion to NTIA to provide grants for
140 broadband initiatives throughout the United States, including unserved and underserved areas.¹²
141 NTIA is tasked to spur job creation, stimulate long-term economic growth and opportunity, and
142 narrow gaps in broadband deployment and adoption. The NTIA program is titled BTOP.
143 Consistent with its appropriation, BTOP is divided into three categories of projects: Broadband
144 Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption.

145 Applications to fund broadband infrastructure projects in areas which are at least 75
146 percent rural are required to be submitted to RUS for consideration under BIP. If such applicants
147 intending to serve rural areas also choose to be considered for BTOP funding, then they must
148 complete the additional elements required of BTOP infrastructure applicants. NTIA may make
149 awards to such applications NTIA determines to be meritorious after RUS has reviewed the
150 application and determined not to fund it. All other applications for Broadband Infrastructure
151 projects, as well as applications for Public Computer Centers or Sustainable Broadband
152 Adoption projects, must be submitted to NTIA for consideration under BTOP.

153 The purpose of this NOFA is to describe the availability of the BIP and BTOP funds and
154 set forth the application requirements for those entities wishing to participate in one or more of
155 the Recovery Act's broadband programs. Applicants may submit projects that fit within one or

13 ¹¹ See Recovery Act div. A, tit. I, 123 Stat. at 118.

14 ¹² See *id.* div. A, tit. II, 123 Stat. at 128.

156 more categories. Each application will be compared against objective criteria to determine
157 whether an award is warranted.

158 In order to balance the burdens on applicants versus the needs of the agencies to
159 efficiently evaluate applications, RUS and NTIA have developed a two-step application process.
160 In step one, the goal is to create a pool of viable and potentially fundable applications. Step two
161 is to fully validate the submissions in step one and identify the most highly qualified applications
162 for funding.

163 Rapid disbursement of the funds available under this program is important because of the
164 short time frames imposed by the Recovery Act. Additionally, a commitment to transparency in
165 the award process and rigorous reporting requirements will help ensure accountability.

166 Approximately \$4 billion of program level funding has been allocated to this NOFA by
167 RUS and NTIA. The remaining funds will be made available under subsequent NOFAs. The
168 requirements for subsequent NOFAs may differ from this NOFA to better achieve the agencies'
169 priorities.

170 **II. Funding Opportunity Description**

171 **A. BIP**

172 **1. BIP Objectives**

173 The Recovery Act expands RUS's existing authority to make loans and provides new
174 authority to make grants for the purpose of facilitating broadband deployment in rural
175 communities. Specifically, the Recovery Act requires that 75 percent of a funded area be in a
176 rural area that lacks sufficient access to high speed broadband service to facilitate economic
177 development. Because of the short time frames imposed by the Recovery Act, the requirements
178 outlined in this NOFA will be used to govern program implementation.

179 Under BIP, RUS will award grants, loans, and loan/grant combinations for broadband
180 infrastructure. Grants under BIP are to be used to fund applications proposing to exclusively
181 serve remote, unserved, rural areas. BIP loan and loan/grant combination funds are to be used to
182 provide funding to applications proposing to serve non-remote and underserved rural areas.
183 Projects which include non-remote and remote areas will be funded by loans or loan/grant
184 combinations. The size of the grant portion of any loan/grant combination award is determined
185 by the applicant, but cannot exceed the amount of the loan portion of the award. RUS will favor
186 applications that propose a higher percentage of loan funds. Applicants may request 100 percent
187 loan funding. RUS will seek to make the extension of broadband infrastructure into difficult-to-
188 serve areas affordable—a key objective of BIP funding—through substantial grant funds and
189 attractive loan terms with reasonable security requirements.

190 The Recovery Act establishes the rapid disbursement of the funds as an important priority
191 for the BIP program. However, the program also must be administered judiciously to ensure
192 responsible use of public funds. To balance these two objectives, RUS will favor funding
193 projects that can commence construction promptly and demonstrate technical and financial
194 feasibility, organizational capacity, and compliance with other Administration priorities. A
195 commitment to transparency in the award process and rigorous reporting requirements will help
196 ensure accountability.

197 **2. BIP Priorities**

198 The Recovery Act requires that 75 percent of a BIP-funded area be in a rural area that
199 “lacks sufficient access to high speed broadband service to facilitate rural economic
200 development.”¹³ Additionally, the Recovery Act mandates that priority be given to projects
201 which: a. give end users a choice of providers; b. serve the highest proportion of rural

15 ¹³ *Id.* div. A, tit. I, 123 Stat. at 118.

202 residents that lack access to broadband service; c. are projects of current or former RUS
203 borrowers (Title II borrowers); and d. are fully funded and ready to start once Recovery Act
204 funding is received. BIP application scoring criteria awards projects that implement these
205 priorities.¹⁴

206 **3. BIP Application and Selection Process**

207 RUS has adopted a two-phase application process. Step one of the application process
208 requires the submission of the information described in section VI.D.1.a. This information will
209 be evaluated by RUS for completeness and eligibility. Ineligible and incomplete applications
210 will be rejected. Eligible applications will be evaluated and ranked based on the applicable
211 scoring criteria described in section VII. The highest scoring applications will be invited to
212 participate in step two of the application process by submitting the additional documentation
213 described in section VI.D.1.b. to further support the applicants' representations made in step one
214 of the application process. If the additional documentation does not adequately verify the first
215 submission, then the application will be rejected.

216 **B. BTOP**

217 **1. BTOP Objectives**

218 Section 6001 of the Recovery Act establishes a national broadband service development
219 and expansion program to promote five core purposes:

220 a. To provide access to broadband service to consumers residing in unserved areas of the
221 country;

222 b. To provide improved access to broadband service to consumers residing in
223 underserved areas of the country;

16 ¹⁴ *Id.* at 118–19.

- 224 c. To provide broadband access, education, awareness, training, equipment, and support
225 to community anchor institutions (*e.g.*, schools, libraries, medical facilities), or organizations and
226 agencies serving vulnerable populations (*e.g.*, low-income, unemployed, aged), or job-creating
227 strategic facilities located in state- or federally-designated economic development areas;
- 228 d. To improve access to, and use of, broadband service by public safety agencies; and
- 229 e. To stimulate the demand for broadband, economic growth, and job creation.¹⁵

230 The Recovery Act provides \$4.7 billion to NTIA for BTOP, to be awarded by September
231 30, 2010, which represents a significant investment to advance President Obama’s national
232 broadband strategy.¹⁶ Of this amount, at least \$200 million will be made available for
233 competitive grants for expanding public computer center capacity. In addition, at least \$250
234 million will be available for competitive grants for innovative programs to encourage sustainable
235 adoption of broadband services. Up to \$350 million is available from the Recovery Act to fund
236 the State Broadband Data and Development Grant Program authorized by the Broadband Data
237 Improvement Act¹⁷ and to support the development and maintenance of a nationwide broadband
238 map for use by policymakers and consumers. A forthcoming NOFA will outline policies and
239 procedures for the State Broadband Data and Development Grant Program.

240 BTOP funds are available through three categories of eligible projects: Broadband
241 Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption.¹⁸ The Broadband
242 Infrastructure category consists of two components—Last Mile and Middle Mile—and will fund
243 projects to deliver broadband access to unserved and underserved areas. The Public Computer
244 Center category will fund projects that expand public access to broadband service and enhance

17 ⁵¹⁵ See *id.* § 6001(b), 123 Stat. at 512–13.

18 ⁶¹⁶ See *id.* div. A, tit. II, 123 Stat. at 128.

19 ⁷¹⁷ Pub. L. 110-385, 122 Stat. 4096 (to be codified at 47 U.S.C. § 1301 *et seq.*).

20 ⁸¹⁸ See Recovery Act div. A, tit. II, 123 Stat. at 128.

245 broadband capacity at entities, such as community colleges and public libraries, that permit the
246 public to use these computing centers.¹⁹ The Sustainable Broadband Adoption category will
247 fund innovative projects that promote broadband demand, including projects focused on
248 providing broadband education, awareness, training, access, equipment or support, particularly
249 among vulnerable population groups where broadband technology has traditionally been
250 underutilized.²⁰

251 The Recovery Act also recognizes the valuable role that the states and territories can play
252 in implementing BTOP, and permits NTIA to consult with them in identifying unserved and
253 underserved areas within their borders and in allocating grant funds for projects in or affecting
254 their jurisdictions.²¹ Consistent with the Recovery Act, NTIA has consulted with the FCC on this
255 NOFA.

256 **2. BTOP Priorities**

257 All projects funded under BTOP must advance one or more of the five statutory purposes
258 outlined above. The program is designed to extend broadband access to unserved areas, improve
259 access to underserved areas, and expand broadband access to a wide range of institutions and
260 individuals, including vulnerable populations. It will seek to serve the highest priority needs for
261 federal investment—particularly projects that offer the potential for economic growth and job
262 creation, and provide benefits to education, health care, and public safety. The program will
263 support viable, sustainable, and scalable projects. NTIA will favor proposals that satisfy the
264 public-interest objectives specified in the statute and detailed in this NOFA. These projects can
265 serve as models for future investors once economic conditions improve.

21 ¹⁹ *Id.* div. A, tit. II & § 6001(b)(3), 123 Stat. at 128, 512–13.

22 ²⁰ *Id.* div. A, tit. II & § 6001(b)(5), 123 Stat. at 128, 513.

23 ²¹ *Id.* § 6001(c), 123 Stat. at 513.

266 NTIA expects to distribute grants across geographic areas addressing these various public
267 purposes. It will issue awards on a technologically neutral basis, and expects to support projects
268 employing a range of technologies (*e.g.*, fixed and mobile wireless, fiber, satellite). In making
269 these awards, NTIA will also take into consideration whether an applicant is a socially and
270 economically disadvantaged small business concern as defined under section 8(a) of the Small
271 Business Act (SBA) (15 U.S.C. § 637(a)(4)).²² Finally, it is also important to highlight the desire
272 of the Recovery Act to extend non-discrimination and network interconnection obligations on
273 awardees. In particular, the Recovery Act directs NTIA to impose contractual conditions on
274 BTOP grants that would, at a minimum, adhere to the principles contained in the FCC's
275 broadband policy statement.²³

276 **3. BTOP Application and Selection Process**

277 NTIA will employ a two-step application review process. First, however, NTIA will
278 conduct an initial screen of applications to determine whether an application meets the
279 mandatory threshold requirements, such as application completeness, set forth in section V.C. of
280 this NOFA. These are mandatory threshold requirements that qualify an application for further
281 review. Applicants that fail to meet any of the eligibility factors will be notified in writing of the
282 reason for the rejection. Subsequent to this initial screening, applications will proceed to the step
283 one review process. The applications will receive at least three independent reviews (by a three
284 member review panel) against the eligibility factors as well as against the evaluation criteria
285 provided in this NOFA. This review panel will be comprised of at least three peer/expert
286 reviewers who have demonstrated subject-matter expertise. No consensus advice will be given
287 by the reviewers. Each reviewer will independently score the application, and reviewer scores

24 ²²² *See id.* § 6001(h)(3), 123 Stat. at 514–15.

25 ³²³ *Id.* § 6001(j), 123 Stat. at 515.

288 will be averaged. Based on these scores, applications that are considered the most highly
289 qualified will advance to the step two, “due diligence,” review for further consideration. All
290 other applications will be rejected, and the applicants will be notified in writing of the reason for
291 the rejection.

292 In step two of the review process, the remaining applicants will be asked to submit
293 additional information, as appropriate, such as more detailed plans or supporting documents ²⁴ to
294 further substantiate the representations made in their application.

295 The supplemental information will be reviewed and analyzed by NTIA staff with the
296 support of external engineering, business, and subject-matter experts to evaluate the consistency
297 of the applications with the supporting documents and ensure applications merit awards.
298 Applicants whose supporting documents do not adequately substantiate the representations in
299 their application may be rejected, and the applicants will be notified in writing of the reason for
300 the rejection. Upon completion of its due diligence, NTIA program staff will complete its
301 analysis of each application by assigning a rating based on its consistency with the
302 representations made in the application. This rating will be based on a five-point scale (1-5),
303 with a five representing the highest consistency and conformity with the information already
304 provided, especially on technical and budget considerations.

305 All states will be provided an opportunity to make recommendations concerning the
306 allocation of funds for qualifying projects in or affecting the individual states during step two of
307 the BTOP application process, regardless of their participation in the State Broadband Data and
308 Development Grant Program. During step two of the BTOP application process, the Governor’s
309 office of each state will receive a list of the applications under consideration. States may provide
310 a list and prioritization of recommended projects, along with an explanation of why the selected

26 ⁴²⁴ See *infra* section VI.D.1.b. for more details regarding the required additional information.

311 proposals meet the greatest needs of the state. States are strongly encouraged to provide
312 mapping and planning data to support their recommendations. States participating in the State
313 Broadband Data and Development Grant Program may rely on their submission under that
314 program to fulfill this request. All states will have 20 calendar days from the date of notification
315 to submit to NTIA their recommendations.

316 Upon completion of the step two review, NTIA reserves the right to discuss with the
317 applicant specific modifications to the application to resolve any differences that may exist
318 between the applicant’s original request and what NTIA is willing to fund. Not all applicants
319 contacted will necessarily receive a BTOP award. The Director of BTOP (BTOP Director) will
320 then prepare and present a package of recommended grant awards to the Associate Administrator
321 for the Office of Telecommunications and Information Applications (OTIA Associate
322 Administrator) for review and approval. The BTOP Director’s recommendations and the OTIA
323 Associate Administrator’s review and approval will take into account the following selection
324 factors:

- 325 a. The Evaluation Criteria Review score of the peer/expert reviewers;
- 326 b. The Due Diligence Review rating of the federal reviewers and the analysis of NTIA
327 program staff;
- 328 c. Satisfaction of the program’s purpose and priorities as described in the section entitled
329 “Program Description” (*e.g.*, considering whether the applicant is a socially and economically
330 disadvantaged small business concern; ensuring that service for health care delivery, education,
331 and children is enhanced to the greatest population of users; improve access to and use by public
332 safety; ensuring that the greatest broadband speed is provided to the greatest population of users

333 as set forth in the Recovery Act; providing broadband access to consumers in unserved areas;
334 improving broadband service in underserved areas);

335 d. The geographic distribution of the proposed grant awards and diversity of populations
336 served (*e.g.*, ensuring that, to the extent practical, NTIA award not less than one grant in each
337 state as set forth in the Recovery Act);

338 e. The range of technologies and uses of the technologies employed by the proposed
339 grant awards;

340 f. Avoidance of redundancy, conflicts with the initiatives of other federal agencies,
341 including Department of Agriculture loan and grant programs for broadband services, and, to the
342 extent practical, avoidance of unjust enrichment;²⁵

343 g. The availability of funds; and

344 h. If applicable, the recommendations of states, including, but not limited to, such
345 recommendations as described in their application for the State Broadband Data and
346 Development Grant Program or as subsequently provided to NTIA either on its own or along
347 with the submission of state-level broadband maps.²⁶

348 Upon approval by the OTIA Associate Administrator, the BTOP Director's
349 recommendation will then be presented to the Selecting Official, the Assistant Secretary of
350 NTIA. The Assistant Secretary selects the applications for grant awards, taking into
351 consideration the BTOP Director's recommendations and the degree to which the application
352 package, taken as a whole, satisfies the selection factors described above and the program's

27 ²⁵ Recovery Act § 6001(h)(2)(D), 123 Stat. at 515.

28 ²⁶ Consistent with Recovery Act, the application for the State Broadband Data and Development Grant Program will
29 provide participating states the opportunity to identify unserved and underserved areas in their state. In their
30 Mapping Grant application, states may also make recommendations concerning the allocation of funds for projects
31 in or affecting the individual states at the time the state submits its Mapping Grant application.

32

353 stated purposes and priorities as set forth in section II.B of this NOFA. Awards will be made on a
354 rolling basis subject to the availability of funds.

355 **III. Definitions**

356 The terms and conditions provided in this NOFA are applicable to and for purposes of
357 this NOFA only. These terms, conditions, and definitions may change in subsequent NOFAs
358 issued regarding BIP and BTOP.

359 Administrator means the RUS Administrator, or the Administrator's designee.

360 Applicant means an entity requesting approval of an award under this NOFA.

361 Assistant Secretary means the Assistant Secretary for Communications and Information,
362 National Telecommunications and Information Administration, Department of Commerce, or the
363 Assistant Secretary's designee.

364 Award documents mean, collectively, grant agreement, loan documents and/or loan/grant
365 combination documents.

366 Award means a grant, loan, or loan/grant combination made under this NOFA by either
367 RUS or NTIA.

368 Awardee means a grantee, borrower, or borrower/grantee.

369 BIP means the Broadband Initiatives Program, administered by the RUS, under the
370 Recovery Act.

371 Borrower means the recipient of a RUS loan under this NOFA.

372 Borrower/grantee means the recipient of a RUS loan/grant combination under this
373 NOFA.

374 Broadband means providing two-way data transmission with advertised speeds of at least
375 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or

376 providing sufficient capacity in a middle mile project to support the provision of broadband
377 service to end users.

378 BTOP means the Broadband Technology Opportunities Program, administered by NTIA,
379 under the Recovery Act.

380 Build-out means the construction or improvement of facilities and equipment as specified
381 in the application.

382 Composite economic life means the weighted (by dollar amount of each class of facility
383 in the loan) average economic life of all classes of facilities financed by a BIP loan.

384 Community anchor institutions means schools, libraries, medical and healthcare
385 providers, public safety entities, community colleges and other institutions of higher education,
386 and other community support organizations and agencies that provide outreach, access,
387 equipment and support services to facilitate greater use of broadband service by vulnerable
388 populations, including low-income, unemployed, and the aged.

389 Critical community facilities means public facilities that provide community services
390 essential for supporting the safety, health, and well-being of residents, including, but not limited
391 to, emergency response and other public safety activities, hospitals and clinics, libraries and
392 schools.

393 Current ratio means the BIP applicant's current assets divided by the current liabilities;
394 all financial terms are defined by GAAP.

395 Economic life means the estimated useful service life of an asset as determined by RUS
396 in connection with awards made under BIP.

397 Forecast period means the time period used by RUS and NTIA to determine if an
398 application is financially feasible. Financial feasibility of an application is based on five-year
399 projections.

400 GAAP means generally accepted accounting principles.

401 Grant agreement means the agreement between RUS or NTIA and the grantee for grants
402 awarded under this NOFA, including any amendments thereto, available for review at
403 <http://www.broadbandusa.gov>.

404 Grant funds mean federal funds provided pursuant to a grant made under this NOFA.

405 Grantee means the recipient of a grant under this NOFA.

406 Last Mile project means any infrastructure project the predominant purpose of which is to
407 provide broadband service to end users or end-user devices (including households, businesses,
408 community anchor institutions, public safety entities, and critical community facilities).

409 Last Mile Non-Remote project means any broadband infrastructure project
410 (or group of projects) that is not exclusively a last mile remote area project, and that provides
411 broadband service to the end user or end-user devices in a service area eligible for BIP funding.

412 Last Mile Remote Area project means any broadband infrastructure project that provides
413 broadband service to the end user or to end-user devices only in a remote area(s) eligible for BIP
414 funding.

415 Loan means any loan made under this NOFA by RUS.

416 Loan contract means the loan agreement between RUS and the borrower, including all
417 amendments thereto, available for review at <http://www.broadbandusa.gov>.

418 Loan documents mean the loan contract, note(s), and security instrument between the
419 borrower and RUS and any associated documents pertaining to the loan.

420 Loan/grant means any loan/grant combination made under this NOFA by RUS.

421 Loan/grant contract means the loan/grant contract between RUS and the
422 borrower/grantee, including all amendments thereto available at <http://www.broadbandusa.gov>.

423 Loan/grant documents mean the loan/grant contract, note(s), and security instrument
424 between the borrower/grantee and RUS and any associated documents pertaining to the
425 loan/grant.

426 Middle Mile project means a broadband infrastructure project that does not
427 predominantly provide broadband service to end users or to end-user devices, and may include
428 interoffice transport, backhaul, Internet connectivity, or special access.

429 Pre-application expense means any reasonable expense incurred after the release of this
430 NOFA to prepare an application, including engineering costs and accountant/consultant fees.

431 Proposed funded service area means the area (either in all or part of an existing service
432 area or a new service area) where the applicant is requesting BIP or BTOP funds to provide
433 broadband service pursuant to this NOFA.

434 Public computer center means a place, including but not limited to community colleges,
435 libraries, schools, youth centers, employment service centers, Native American chapter houses,
436 community centers, senior centers, assistive technology centers for people with disabilities,
437 community health centers, and Neighborhood Network Centers in public housing developments,
438 that provide broadband access to the general public or a specific vulnerable population, such as
439 low-income, unemployed, aged, children, minorities and people with disabilities.

440 RE Act means the “Rural Electrification Act of 1936,” as amended (7 U.S.C. § 901 *et*
441 *seq.*).

442 Recovery Act means the American Recovery and Reinvestment Act of 2009, Pub. L. No.
443 111-5, 123 Stat. 115 (2009).

444 Remote area means an unserved, rural area 50 miles from the limits of a non-rural area.

445 Rural area means any area, as confirmed by the latest decennial census of the Bureau of
446 the Census, which is not located within: 1. a city, town, or incorporated area that has a
447 population of greater than 20,000 inhabitants; or 2. an urbanized area contiguous and adjacent to
448 a city or town that has a population of greater than 50,000 inhabitants. For purposes of the
449 definition of rural area, an urbanized area means a densely populated territory as defined in the
450 latest decennial census of the U.S. Census Bureau.

451 Security document means any mortgage, deed of trust, security agreement, financing
452 statement, or other document that RUS determines is necessary to perfect its interest in the
453 security for a loan or loan/grant.

454 Service area means the entire area within which a service provider either offers or intends
455 to offer broadband service and may include the proposed funded service area.

456 State means, for purposes of BTOP, a state or political subdivision thereof, the District of
457 Columbia, or a territory or possession of the United States.

458 TIER means times interest earned ratio. TIER is the ratio of a BIP applicant's net income
459 (after taxes) plus (adding back) interest expense, all divided by interest expense (existing and any
460 new interest expense including the interest expense associated with the proposed loan); all
461 financial terms are defined by GAAP.

462 Underserved area means a proposed funded service area, composed of one or more
463 contiguous census blocks²⁵ meeting certain criteria that measure the availability of broadband

33 ²⁵ Census blocks are the smallest geographic areas for which the U.S. Bureau of the Census collects and tabulates
34 decennial census data. Census blocks are formed by streets, roads, railroads, streams and other bodies of water,
35 other visible physical and cultural features, and the legal boundaries shown on Census Bureau maps. Census data at
36 this level serve as a valuable source for small-area geographic studies. See the Census Bureau's website at

464 service and the level of advertised broadband speeds. These criteria conform to the two distinct
465 components of the Broadband Infrastructure category of eligible projects—Last Mile and Middle
466 Mile. Specifically, a proposed funded service area may qualify as underserved for last mile
467 projects if at least one of the following factors is met, though the presumption will be that more
468 than one factor is present: 1. no more than 50 percent of the households in the proposed funded
469 service area have access to facilities-based, terrestrial broadband service at greater than the
470 minimum broadband transmission speed (set forth in the definition of broadband above); 2. no
471 fixed or mobile broadband service provider advertises broadband transmission speeds of at least
472 three megabits per second (“mbps”) downstream in the proposed funded service area; or 3. the
473 rate of broadband subscribership for the proposed funded service area is 40 percent of
474 households or less. A proposed funded service area may qualify as underserved for Middle Mile
475 projects if one interconnection point terminates in a proposed funded service area that qualifies
476 as unserved or underserved for Last Mile projects.

477 Unserved area means a proposed funded service area, composed of one or more
478 contiguous census blocks, where at least 90 percent of households in the proposed funded service
479 area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the
480 minimum broadband transmission speed (set forth in the definition of broadband above). A
481 household has access to broadband service if the household can readily subscribe to that service
482 upon request.

37 <http://www.census.gov> for more detailed information on its data gathering methodology.

483 **IV. Award Information**

484 **A. Available Funds for BIP**

485 **1. General**

486 Approximately, \$2,400,000,000 in program level funding has been set aside for funding
487 opportunities under this NOFA.

488 **2. Funding Limits**

489 Award amounts under this NOFA will be limited as follows:

490 **a. Last Mile Projects**

491 Up to \$1,200,000,000 is available for Last Mile projects. These projects may consist of
492 Remote Area projects or Non-Remote projects. Up to \$400,000,000 is available for grants for
493 Remote Area projects. Up to \$800,000,000 is available for loans or loan/grant combinations for
494 Non-Remote projects.

495 **b. Middle Mile Projects**

496 Up to \$800,000,000 is available for loans or loan/grant combinations for Middle Mile
497 projects.

498 **3. Repooling**

499 For categories that do not receive applications that request the full amount of allocated
500 funds, excess funds may be directed to another category at RUS's discretion. Additionally, if
501 RUS does not make awards in the full amount allocated to a category, RUS may, at its discretion,
502 direct such excess funds to another category.

503 **4. National Reserve**

504 Up to \$325,000,000 is available for a national reserve. These funds may be used to
505 augment the BIP funding categories established above, or remain unused for subsequent NOFAs.
506 In any event, all funds will be awarded no later than September 30, 2010.

507 **5. Unused Funds**

508 Funds made available but not used for this NOFA may be directed to subsequent NOFAs.

509 **6. Award Period**

510 All awards under BIP must be made no later than September 30, 2010. While the
511 completion time will vary depending on the complexity of the project, award recipients must
512 substantially complete projects supported by this program no later than two years, and projects
513 must be fully completed no later than three years, following the date of issuance of the award.

514 **7. Type of Funding Instrument**

515 The funding instruments for BIP will be a grant, loan, and loan/grant combination.

516 **B. Available Funds for BTOP**

517 **1. General**

518 Up to \$1,600,000,000 in budget authority has been set aside for funding opportunities
519 under this NOFA. Publication of this NOFA does not obligate NTIA to award any specific
520 project or obligate all or any parts of any available funds, although the Recovery Act indicates
521 that the Assistant Secretary shall award at least one grant in each state to the extent practical by
522 September 30, 2010.²⁵

523 **2. Funding Limits.**

524 Up to \$1.4 billion is available to be awarded under this NOFA and will be allocated in the
525 following categories:

38 ²⁵ Recovery Act § 6001(h)(1), 123 Stat. at 514.

- 526 a. Broadband Infrastructure projects will be awarded no greater than \$1.2 billion;
527 b. Public Computer Center projects will be awarded no greater than \$50 million; and
528 c. Sustainable Broadband Adoption projects will be awarded no more than \$150 million.

529 **3. Repooling**

530 Subject to the statutory thresholds set forth in the Recovery Act, NTIA retains the
531 discretion to divert funds from one category of projects to another.

532 **4. National Reserve**

533 Up to \$200 million is available for a national reserve. These funds may be used to
534 augment the BTOP funding categories established above, or remain unused for subsequent
535 NOFAs. In any event, all funds will be awarded no later than September 30, 2010.

536 **5. Unused Funds**

537 Funds not awarded under this NOFA may be used to fund subsequent NOFAs.

538 **6. Award Period**

539 All awards under BTOP must be made no later than September 30, 2010.²⁶ While the
540 completion time will vary depending on the complexity of the project, grant recipients must
541 substantially complete projects supported by this program no later than two years, and projects
542 must be fully completed no later than three years, following the date of issuance of the grant
543 award.²⁷

544 **7. Type of Funding Instrument**

545 The funding instrument for BTOP will be a grant.

39 ²⁶ *Id.* § 6001(d)(2), 123 Stat. at 513.

40 ²⁷ *Id.* § 6001(d)(3), 123 Stat. at 513.

546 **V. Eligibility Information for BIP and BTOP**

547 **A. In General**

548 Applicants must satisfy the following eligibility requirements to qualify for funding.

549 **B. Eligible Entities**

550 **1. Applicant Organization**

551 The following entities are eligible to apply for assistance:

552 a. States, local governments, or any agency, subdivision, instrumentality, or political

553 subdivision thereof;

554 b. The District of Columbia;

555 c. A territory or possession of the United States;

556 d. An Indian tribe (as defined in section 4 of the Indian Self-Determination and

557 Education Assistance Act (25 U.S.C. § 450b);

558 e. A native Hawaiian organization;

559 f. A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-

560 profit association;

561 g. Other non-profit entities;

562 h. For-profit corporations;

563 i. Limited liability companies; and

564 j. Cooperative or mutual organizations.

565 **2. BTOP Public Interest Finding**

566 Section 6001(e)(1)(C) of the Recovery Act authorizes the Assistant Secretary to find by

567 rule that it is in the public interest for any entity not otherwise encompassed by section 6001(e)

568 (1) to be eligible for a BTOP grant to the extent that such finding will promote the purposes of

569 BTOP in a technologically neutral manner. Through this NOFA, the Assistant Secretary has
570 found it to be in the public interest to permit for-profit corporations and non-profit entities (not
571 otherwise encompassed by section 6001(e)(1)(B)) that are willing to promote the goals of the
572 Recovery Act and comply with the statutory requirements of BTOP to be eligible for a grant.
573 By adopting this broad approach, the Assistant Secretary intends to invite a diverse group of
574 applicants to participate in BTOP and to expand broadband capabilities in a technologically
575 neutral manner.²⁵

576 **C. Application Eligibility Factors**

577 The following eligibility factors establish basic requirements that all applicants must
578 comply with in order to be eligible for an award. Applicants failing to comply with these
579 requirements will not have their applications considered. This section lists eligibility factors a)
580 shared by BIP and all three BTOP project categories; b) shared by BIP and BTOP Broadband
581 Infrastructure projects; c) that apply only to BIP projects; and d) that apply only to the three
582 BTOP project categories.

583 **1. Eligibility Factors Common to All BIP and BTOP Applicants**

584 **a. Fully Completed Application**

585 Applicants must submit a complete application and provide all supporting documentation
586 required for the application.

587 **b. Timely Completion**

588 A project is eligible only if the application demonstrates that the project can be
589 substantially completed within two years of the date of issuance of the grant, loan, or loan/grant
590 award and finished within three years of the date of the award. For BIP, a project is considered
591 “substantially complete” when an awardee has received 67 percent of its award funds. For

41 ²⁵ *Id.* § 6001(e)(1)(C), 123 Stat. at 513.

592 BTOP, a project is considered “substantially complete” when the awardee has met 67 percent of
593 the project milestones and received 67 percent of its award funds.

594 **2. Additional Factors Applicable to BIP and BTOP Broadband Infrastructure**

595 **Applicants**

596 **a. Broadband Service**

597 All Broadband Infrastructure applicants must propose to offer service meeting the
598 definition of Broadband as defined herein.

599 **b. Technical Feasibility**

600 Only projects that RUS and NTIA determine to be technically feasible will be eligible for
601 an award under this NOFA. At minimum, applicants will be required to submit a system design
602 and project timeline, certified by a professional engineer, for any project requesting funds over
603 \$1 million.

604 **c. Nondiscrimination and Interconnection**

605 All Broadband Infrastructure (both BIP and BTOP) applicants, must commit to the
606 following Nondiscrimination and Interconnection Obligations: i. adhere to the principles
607 contained in the FCC’s Internet Policy Statement (FCC 05-151, adopted August 5, 2005); ii. not
608 favor any lawful Internet applications and content over others; iii. display any network
609 management policies in a prominent location on the service provider's web page and provide
610 notice to customers of changes to these policies (awardees must describe any business practices
611 or technical mechanisms they employ, other than standard best efforts Internet delivery, to
612 allocate capacity; differentiate among applications, providers, or sources; limit usage; and
613 manage illegal or harmful content); iv. connect to the public Internet directly or indirectly, such
614 that the project is not an entirely private closed network; and v. offer interconnection, where

615 technically feasible without exceeding current or reasonably anticipated capacity limitations, on
616 reasonable rates and terms to be negotiated with requesting parties. This includes both the ability
617 to connect to the public Internet and physical interconnection for the exchange of traffic.
618 Applicants must disclose their proposed interconnection, nondiscrimination and network
619 management practices with the application.

620 All these requirements shall be subject to the needs of law enforcement and reasonable
621 network management. Thus, awardees may employ generally accepted technical measures to
622 provide acceptable service levels to all customers, such as caching and application-neutral
623 bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal
624 content, and other harmful activities. In addition to providing the required connection to the
625 Internet, awardees may offer managed services, such as telemedicine, public safety
626 communications, and distance learning, which use private network connections for enhanced
627 quality of service, rather than traversing the public Internet.

628 An awardee may satisfy the requirement for interconnection by negotiating in good faith
629 with all parties making a bona fide request. The awardee and requesting party may negotiate
630 terms such as business arrangements, capacity limits, financial terms, and technical conditions
631 for interconnection. If the awardee and requesting party cannot reach agreement, they may
632 voluntarily seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an
633 agreement cannot be reached within 90 days, the party requesting interconnection may notify
634 RUS or NTIA in writing of the failure to reach satisfactory terms with the awardee. The 90-day
635 limit is to encourage the parties to resolve differences through negotiation.

636 With respect to non-discrimination, those who believe an awardee has failed to meet the
637 non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in

638 the dispute. If the FCC chooses to take no action, those seeking recourse may notify RUS or
639 NTIA in writing about the alleged failure to adhere to commitments of the award.

640 Entities that successfully reach an agreement to interconnect with a system funded under
641 BIP may not use that interconnection agreement to provide services that duplicate services
642 provided by projects funded by outstanding telecommunications loans made under the RE Act.
643 Further, interconnection may not result in a BIP-funded facility being used for ineligible
644 purposes under the Recovery Act.

645 These conditions will apply for the life of the awardee’s facilities used in the project and
646 not to any existing network arrangements. The conditions apply to any contractors or
647 subcontractors of such awardees employed to deploy or operate the network facilities for the
648 infrastructure project. Recipients that fail to accept or comply with the terms listed above may
649 be considered in default or breach of their loan or grant agreements. RUS and NTIA may
650 exercise all available remedies to cure the default.

651 **d. Last Mile Coverage Obligation**

652 An applicant for a Last Mile Broadband Infrastructure project must identify the census
653 block(s) selected for the project and provide documentation supporting the applicant’s
654 determination that the proposed funded service area is either unserved or underserved. There is a
655 presumption that the applicant will provide service to the entire territory of each census block
656 included in the proposed funded service area, unless the applicant files a waiver and provides a
657 reasoned explanation as to why providing coverage for an entire census block is infeasible.
658 Applicants may be permitted to serve less than an entire census block under certain conditions.
659 For example, an applicant might request to be relieved of this requirement if the census block
660 exceeds 100 square miles or more or is larger than the applicant’s authorized operating territory,

661 e.g., it splits a rural incumbent local exchange carrier’s (ILEC’s) study area or exceeds the
662 boundaries of a wireless carrier’s licensed territory.

663 **3. Additional Factors for BIP**

664 **a. Eligible Service Area**

665 A project is eligible only if the applicant demonstrates that at least 75 percent of the
666 proposed funded service area qualifies as a rural area without sufficient access to broadband
667 service to facilitate rural economic development.²⁶ For the purposes of this NOFA, RUS has
668 determined that “without sufficient broadband access” shall mean without access to broadband,
669 as defined herein. Furthermore, RUS has determined that only rural areas which are unserved or
670 underserved, as defined herein, shall qualify as “areas without sufficient access to broadband
671 service.” Therefore, to qualify for BIP funding, projects must serve at least 75 percent unserved
672 or underserved rural areas.

673 **b. Overlapping Service Areas**

674 RUS will not fund more than one project to serve any given geographic area. If more
675 than one application would serve any overlapping geographic area, the application with the
676 highest score will be funded; other applications for the same area will be rejected in their entirety
677 unless RUS, in its discretion, determines that the extent of the overlap is *de minimis*.

678 **c. Fully Funded**

679 A project is eligible only if, after approval of the grant, loan, or loan/grant combination,
680 all project costs can be fully funded. To demonstrate this, applicants must include with the
681 application evidence of all funding, other than the RUS award, necessary to support the project,
682 such as bank account statements or firm letters of commitment from equity participants or other
683 lenders documenting the timely availability of funds.

42 ²⁶ See *id.* div. A, tit. I, 123 Stat. at 118.

684 **d. Financial Feasibility and Sustainability**

685 Only projects that RUS determines to be financially feasible and/or sustainable will be
686 eligible for an award under this NOFA.

687 *Loans:* A project funded by a loan or loan/grant combination is financially feasible when
688 the applicant is able to generate sufficient revenues to cover its expenses, has sufficient cash flow
689 to service its debts and obligations as they come due, and meet the minimum Times Interest
690 Earned Ratio (TIER) requirement of one by the end of the forecast period, as determined by
691 RUS.

692 *Grants:* A project funded by a grant is financially sustainable when the applicant is able
693 to generate a minimum current ratio of one by the end of the forecast period and can demonstrate
694 a positive cash balance for each year of the forecast period.

695 **4. Additional Factors for BTOP**

696 **a. Conformity with Statutory Purposes**

697 A project is eligible only if it advances at least one of the statutory purposes for BTOP.²⁷

698 **b. Cost Sharing/Matching**

699 Awardees under BTOP will be required to provide matching funds of at least 20 percent
700 toward the total eligible project cost. Applicants must document their capacity to provide
701 matching funds. NTIA will provide up to 80 percent of total eligible project costs, unless the
702 applicant petitions the Assistant Secretary for a waiver of the matching requirement and that
703 waiver is granted by the Assistant Secretary based on the applicant's demonstration of financial
704 need.²⁸ In requesting such a waiver, an applicant should fully explain and document its inability
705 to provide the required 20 percent share of the cost of its proposed project. An applicant should

43 ²⁷ See *id.* § 6001(b), 123 Stat. at 512–13.

44 ²⁸ See *id.* § 6001(f), 123 Stat. at 514.

706 submit complete financial documentation supporting its need for a waiver of the matching
707 requirement. These documents should include the applicant's assets, liabilities, operating
708 expenses and revenues from any existing operations, and any other documents that will
709 demonstrate financial need and sustainability, including such items as a denial of funding from a
710 public or private lending institution. The Assistant Secretary will evaluate the information
711 provided in support of the petition and may increase the federal share if financial need is
712 demonstrated.

713 Generally, federal funds may not be used as matching funds except as provided by
714 federal statute.²⁹ In-kind contributions, including third party in-kind contributions, are non-cash
715 donations to a project that may count toward satisfying the non-federal matching requirement of
716 a project's total budget. In-kind contributions must be allowable project expenses. Such
717 contributions may be accepted as part of an applicant's matching when such contributions meet
718 certain criteria.³⁰

719 Applications that propose to provide matching funds of greater than 20 percent and that
720 are all cash will be given additional favorable consideration in step one of the application review
721 process.

722 **c. Demonstration that Project Could not be Implemented But For Federal Grant**
723 **Assistance**

724 Grant applicants must provide documentation that the project would not have been
725 implemented during the grant period without federal grant assistance. This documentation may
726 consist of, but is not limited to, such items as a denial of funding from a public or private lending

45 ²⁹ See Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education,
46 Hospitals, Other Non-profit, and Commercial Organizations, 15 CFR § 14.23(a)(5); *see also* Uniform
47 Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 24 CFR §
48 24.24(b)(1).

49 ³⁰ See 15 CFR §§ 14.23(a), 24.24(a).

727 institution, denial of a funding request from RUS for a loan or loan/grant combination, a current
728 fiscal year budget that shows the lack of available revenue options for funding the project, or a
729 business case that demonstrates that the project would not be economically feasible without grant
730 financing.

731 **d. Reasonableness of Project Budget**

732 A project will only be eligible if it demonstrates that its budget is appropriate to the
733 proposed technical and programmatic solutions, its costs are reasonable and eligible consistent
734 with the principles outlined in section V.D below, and that the allocation of funds will be
735 sufficient to complete the tasks outlined in the project plan.

736 **D. Eligible Cost Purposes**

737 **1. General**

738 Award funds must be used only to pay for eligible costs. Eligible costs are consistent
739 with the cost principles identified in the applicable OMB circulars³⁷ and in the grant or the
740 loan/grant program's authorizing legislation. In addition, costs must be reasonable, allocable,
741 necessary to the project, and comply with the funding statute requirements. Any application that
742 proposes to use any portion of the award funds for any ineligible cost will be rejected.

50 ³⁷ For example there is a set of federal principles for determining eligible or allowable costs. Allowability of costs
51 will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus,
52 allowability of costs incurred by state, local or federally-recognized Indian tribal governments is determined in
53 accordance with the provisions of OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal
54 Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the
55 provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs
56 incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21,
57 "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in
58 accordance with the provisions of Appendix E of 45 CFR pt. 74, "Principles for Determining Costs Applicable to
59 Research and Development under Grants and Contracts with Hospitals." The allowability of costs incurred by
60 commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is
61 determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR pt. 31. See 15
62 CFR §§ 14.27, 24.22 (governing the Department of Commerce's implementation of OMB requirements).
63

743 **2. Eligible and Ineligible Costs for BIP and BTOP Infrastructure Projects**

744 **a. Eligible Infrastructure Award Expenses**

745 Award funds may be used to pay for the following expenses:

746 i. To fund the construction or improvement of all facilities required to provide broadband
747 service, and **for BIP only**, including facilities required for providing other services over the same
748 facilities;

749 ii. To fund the cost of leasing facilities required to provide broadband service if such
750 lease qualifies as a capital lease under GAAP. Award funds may be used to fund the cost of the
751 capital lease for no more than the first five years after the date of the first advance of award
752 funds;-

753 iii. To fund reasonable pre-application expenses in an amount not to exceed five percent
754 of the award. Pre-application expenses may be reimbursed if they are incurred after the
755 publication date of this NOFA and prior to the date on which the application is submitted to RUS
756 or NTIA; and

757 iv. **For BTOP only** undertaking such other projects and activities as the Assistant Sec-
758 retary finds to be consistent with the purposes for which the program is established.

759 **b. Ineligible Award Expenses**

760 Award funds may not be used for any of the following purposes:

761 i. To fund operating expenses of the project, including fixed and recurring costs of a
762 project;

763 ii. To fund costs incurred prior to the date on which the application is submitted, with the
764 exception of eligible pre-application expenses;

- 765 iii. To fund an acquisition, including the acquisition of the stock of an affiliate, or the
766 purchase or acquisition of any facilities or equipment of an affiliate;
- 767 iv. To fund the purchase or lease of any vehicle other than those used primarily in
768 construction or system improvements;
- 769 v. To fund broadband facilities leased under the terms of an operating lease;
- 770 vi. To fund merger or consolidation of entities; and
- 771 vii. To fund costs incurred in acquiring spectrum as part of an FCC auction or in a
772 secondary market acquisition

773 .

774 **3. Eligible and Ineligible Costs for Public Computer Centers and Sustainable**

775 **Broadband Adoption**

776 **a. General**

777 Grantees for BTOP funds under these two project categories are required to show how
778 such funding serves the stated purposes of: i. providing broadband education, awareness,
779 training, access, equipment, and support to community anchor institutions (*e.g.*, schools,
780 libraries, medical and healthcare providers, community colleges and other institutions of higher
781 education, and other community support organizations), or organizations and agencies serving
782 vulnerable populations (*e.g.*, low-income, unemployed, aged), or job-creating strategic facilities
783 located in state- or federally-designated economic development areas; ii. improving access to,
784 and use of, broadband service by public safety agencies; and iii. stimulating the demand for
785 broadband, economic growth, and job creation.

786 **b. Eligible Costs for Public Computer Centers**

787 Grantees may use BTOP funding under this project category to expand computer center
788 capacity by:

789 i. Acquiring broadband-related equipment, instrumentation, networking capability, hard-
790 ware and software, and digital network technology for broadband services;

791 ii. Developing and providing training, education, support and awareness programs or
792 web-based resources;

793 iii. Facilitating access to broadband services, including, but not limited to, making pub-
794 lic computer centers accessible to the disabled; and

795 iv. Undertaking such other projects and activities as the Assistant Secretary finds to be
796 consistent with the purposes for which the program is established.

797 **c. Eligible Costs for Sustainable Broadband Adoption**

798 Grantees may use BTOP funding under this project category to encourage sustainable
799 adoption of broadband services by:

800 i. Acquiring broadband-related equipment, hardware and software, and digital network
801 technology for broadband services;

802 ii. Developing and providing training, education, support and awareness programs or
803 web-based content;

804 iii. Conducting broadband-related public education, outreach, support and awareness
805 campaigns;

806 iv. Implementing innovative programs to facilitate greater access to broadband service,
807 devices, and equipment; and

808 v. Undertaking such other projects and activities as the Assistant Secretary finds to be
809 consistent with the purposes for which the program is established.

810 **d. Ineligible Costs for Public Computer Centers and Sustainable Broadband**

811 **Adoption**

812 BTOP grant funds may not be used to fund purchases that are not used predominantly for
813 the provision of broadband education, awareness, training, access, equipment and support.

814 **E. Use of Program Income**

815 Grantees are required to account for any program income directly generated by projects
816 financed in whole or in part with federal funds. Given the Recovery Act's objectives to spur job
817 creation and stimulate long-term economic growth and opportunity, projects funded by BIP and
818 BTOP grants are expected to convincingly demonstrate the ability to be sustained beyond the
819 funding period. While grant funds are intended to cover the capital costs of a project as part of
820 the Recovery Act's effort to stimulate the economy, grant recipients for all grant programs are
821 expected to present projects that will sustain long-term growth and viability.

822 For purposes of BIP and BTOP, any program income generated by a proposed project
823 during the grant period shall be retained by the grant recipient and shall be added to the funds
824 committed to the project by RUS or NTIA and the recipient. The grant recipient should use
825 program income to further eligible project objectives, including reinvestment in project facilities.
826 Program income means gross income earned by the recipient that is either directly generated by a
827 supported activity, or earned as a result of the award during the funding period. Grant recipients
828 shall have no obligation to the federal government regarding program income earned after the
829 end of the project period. However, the federal government retains an interest in property in the
830 event that it is sold, consistent with the guidance outlined in section IX of this NOFA.³⁸

64 ³⁸2 CFR § 215.24; 15 CFR §§ 14.24, 24.25.

831 **VI. Application and Submission Information**

832 **A. Request for Application Package**

833 Complete application packages, including required federal forms and instructions, will be
834 available at <http://www.broadbandusa.gov>. Additional information for BIP and BTOP can be
835 found in the Application Guidelines at <http://www.broadbandusa.gov>. This website will be
836 updated regularly.

837 **B. Registration**

838 **1. DUNS Number**

839 All applicants must supply a Dun and Bradstreet Data Universal Numbering System
840 (DUNS) number. Applicants can receive a DUNS number at no cost by calling the dedicated
841 toll-free DUNS number request line at 1-866-705-5711 or via the Internet at
842 <http://www.dunandbradstreet.com>.

843 **2. Central Contractor Registration (CCR)**

844 All applicants must provide a CCR (CAGE) number evidencing current registration in the
845 Central Contractor Registration (CCR) database. If the applicant does not have a current CCR
846 (CAGE) number, the applicant must register in the CCR system available at
847 <http://www.ccr.gov/StartRegistration.aspx>.

848 **C. Choosing the Proper Agency and Category for an Application**

849 **1. Broadband Infrastructure**

850 **a. Choosing BIP or BTOP Broadband Infrastructure**

851 i. Applications for Rural Areas. All applications to fund broadband infrastructure in
852 proposed funded service areas which are at least 75 percent rural are required to be submitted to
853 RUS for consideration under BIP. If such applicants also choose to be considered for BTOP

854 funding, they must complete the additional elements required of BTOP infrastructure applicants.
855 RUS will consider all applications for projects in proposed funded service areas which are at
856 least 75 percent rural in accordance with the BIP procedures outlined in this NOFA. If the
857 applicant also chooses to be considered under BTOP, NTIA will review these applications using
858 its own objective evaluation criteria and in accordance with BTOP procedures outlined in this
859 NOFA. NTIA may make awards with respect to such applications NTIA determines to be
860 meritorious after RUS has reviewed the application and determined not to fund it. RUS and
861 NTIA have adopted these application procedures to reflect the fact that Congress, in the
862 Recovery Act, intended that RUS focus its activities on rural areas and mandated that NTIA
863 funding could not be applied in the same area funded by RUS under the Recovery Act.

864 ii. Applications for All Other Areas. All applications to fund broadband infrastructure
865 projects in proposed funded service areas that are less than 75 percent rural must be submitted to
866 NTIA for consideration under BTOP. Submissions to BIP of such applications will be rejected.

867 **b. BIP Broadband Infrastructure Categories**

868 **i. Last Mile Remote Area**

869 Applications for Last Mile Remote Area projects must predominantly provide broadband
870 directly to the premise or to end users within completely remote areas, as defined herein. The
871 BIP Program will consider applications for grant funds up to 100 percent. For grants receiving
872 greater than 80 percent of eligible costs, the Administrator must determine that the awardee has a
873 specific financial need that justifies funding greater than 80 percent.

874 **ii. Last Mile Non-Remote Projects**

875 Applications for Last Mile Non-Remote Area projects must predominantly provide
876 broadband directly to the premise or to end users that are not exclusively within remote areas, as
877 defined herein. Last Mile Non-Remote Area projects may encompass both remote and non-

878 remote areas, and will be awarded scoring points for remote areas within the application. Only
879 those applications for loans or loan/grant combinations whose total proposed funded service area
880 contains 75 percent or more unserved or underserved rural areas, as defined herein, will be
881 considered for BIP funding.

882 **iii. Broadband Infrastructure Middle Mile Projects**

883 Applications for Middle Mile projects must connect at least two points without
884 predominantly providing broadband service to the premise or end users, and must be capable of
885 bringing broadband service to eligible service areas. The BIP program will consider only those
886 applications for loans and loan/grant combinations whose total proposed funded service area
887 benefits at least 75 percent or more unserved or underserved rural areas, as defined herein.

888 **c. BTOP Broadband Infrastructure Categories**

889 **i. Last Mile**

890 For the purposes of BTOP grant funds, applications for Last Mile projects must be for
891 unserved or underserved areas and have the predominant purpose to provide broadband service
892 to end users or end-user devices (including homes, businesses, schools, libraries, medical and
893 health care providers, community support organizations, public safety entities, vulnerable
894 populations and other institutions and individuals). Highly responsive Last Mile projects should
895 be technically feasible, sustainable and scalable, and address BTOP's priority needs, including
896 offering substantial economic, educational, health care, and public safety benefits relative to the
897 costs of providing service.

898 **iii. Middle Mile**

899 For the purposes of BTOP grant funds, applications for Middle Mile projects must be for
900 unserved or underserved areas and have a predominant purpose other than providing broadband
901 service to end users or to end-user devices and may include interoffice transport, backhaul,

902 Internet connectivity, or special access. Highly responsive Middle Mile projects should be
903 technically feasible, sustainable and scalable and offer substantial benefits to unserved and
904 underserved areas relative to the costs of providing service.

905 **2. BTOP – Public Computer Centers**

906 For the purposes of BTOP grant funds, applicants requesting a Public Computer Center
907 grant must have a project that provides broadband access to the general public or a specific
908 vulnerable population, such as low-income, unemployed, aged, children, minorities and people
909 with disabilities. Projects must create or expand a public computer center meeting a specific
910 public need for broadband service, including but not limited to education, employment,
911 economic development, and enhanced service for health-care delivery, children, and vulnerable
912 populations. As described below, NTIA will consider information related to the demographics,
913 size and scope of the populations to be served, as well as the capacity of the proposed centers.

914 **3. BTOP – Sustainable Broadband Adoption**

915 Applications for Sustainable Broadband Adoption projects should demonstrate a
916 sustainable increase in demand for and subscribership to broadband services. Projects should
917 meet a specific public need for broadband service, including, but not limited to, education,
918 employment, economic development, and enhanced service for health-care delivery, children,
919 and vulnerable populations. Projects should describe the barriers to adoption in a given area,
920 especially among vulnerable populations, and propose an innovative and persuasive solution to
921 encourage adoption. Applicants might show how variations on one or more proven demand
922 stimulation strategy—such as awareness-building, development of relevant content, and demand
923 aggregation—would promote sustainable adoption.

924 **D. Contents of the Application**

925 **1. BIP and BTOP Broadband Infrastructure Project Applications**

926 **a. Requirements for Step One of the Application Process**

927 A complete application will include the following:

928 i. The identity of the applicant and general applicant and project information including:

929 (1) A description of the project that will be made public consistent with the requirements
930 of the Recovery Act;

931 (2) The Congressional Districts affected by the project;

932 (3) The estimated dollar amount of the funding request;

933 ii. Verification that the application meets certain eligibility factors, including submission
934 of a complete application with all supplemental documentation, commitment to substantial
935 completion of the project within two years and project completion within three years of the
936 award date, demonstration that the project is technically feasible, that the applicant will provide
937 broadband service meeting the definition in this NOFA, that the applicant agrees to comply with
938 the nondiscrimination and interconnection obligations in this NOFA, and that the applicant
939 agrees to comply with the last mile coverage obligations in this NOFA; for BIP only, that at least
940 75% of the proposed funded service area is a rural area, that the project will be fully funded, and
941 that the project is financially feasible; and for BTOP only, demonstration that the project
942 advances at least one of BTOP's five statutory purposes, commitment to or a waiver for the cost
943 matching requirement, demonstration that a project could not be completed in the grant period
944 but for federal funding, and that the budget is reasonable and all costs are eligible;

945 iii. An executive summary of the project, including but not limited to the opportunity the
946 proposed system seeks to address; a description of the proposed funded service area; number of

947 households and businesses passed; number of community anchor institutions, public safety
948 entities and critical community organizations to be passed and/or involved in the project;
949 proposed service offerings; how non-discrimination and interconnection requirements will be
950 met; the type of broadband system to be deployed; qualifications of the applicant; overall
951 infrastructure cost of the broadband system; subscriber projections; and the number of jobs the
952 project is expected to create or save;

953 iv. A description of the proposed funded service area, including: (1) a map; (2) data
954 describing the geography and demographics of the proposed funded service area, including
955 information as to whether the proposed funded service area is unserved or underserved; (3)
956 names of the census designated communities and identification of areas not within a census
957 designated community within the proposed funded service area; (4) information as to whether
958 the communities and areas identified in clause (3) are rural or non-rural, remote and unserved,
959 underserved or served; (5) the methodology for making the above classifications; (6) whether
960 the applicant is seeking a waiver from providing less than 100% coverage of any Census block;
961 and; (7) for middle mile projects, identification of the last mile areas to be served;

962 v. A description of the proposed service offerings, and the associated pricing plan, that
963 the applicant proposes to offer, as well as the advertised prices of service offerings by
964 competitors in the same area; a description of the applicant's nondiscrimination, interconnection,
965 and network management plans; an explanation of why the proposed service offerings are
966 affordable; and for BTOP only, an estimate of the cost of the project per household;

967 vi. The technology type; a description of the system design used to deliver the broadband
968 service; a network diagram, which must be certified by a professional engineer if the funding

969 request exceeds \$1,000,000; whether the applicant is seeking a waiver of the Buy America
970 provision; and whether the project allows more than one provider to serve end users;

971 vii. A timeline including key milestones for implementation of the project, including a
972 construction schedule, certified by a professional engineer if the funding request exceeds
973 \$1,000,000, which identifies potential challenges and establishes the viability of the project
974 timeline and associated milestones for build-out to the census blocks, households, businesses,
975 community anchor institutions, and public safety entities identified in the proposal; a list of all
976 required licenses and regulatory approvals needed for the proposed project; and how much the
977 applicant will rely on contractors or vendors to deploy the network facilities;

978 viii. Resumes of key management personnel, a description of the organization's
979 readiness to manage a broadband services network, and an organizational chart showing any
980 parent organizations and/or subsidiaries and affiliates;

981 ix. A legal opinion (as set forth in the application) that: (1) addresses the applicant's
982 ability to enter into the award documents; (2) describes all pending litigation matters; and (3) for
983 loan and loan/grant combinations, addresses the applicant's ability to pledge security as required
984 by the award documents;

985 x. Partnerships with public, non-profit, and private sector groups and collaboration with
986 other state and federal development programs including other Recovery Act programs;

987 xi. An itemized budget of the infrastructure costs of the proposed project, including if
988 applicable, the ratio of loans to grants, and any other source of outside funding, especially any
989 other Recovery Act funds under other federal programs, and an explanation of the
990 reasonableness of the unit price and total number of units required for the project;

991 xii. Pro Forma financial analysis related to the sustainability of the project, including
992 subscriber estimates and proposed service offerings in addition to broadband Internet access;
993 annual financial projections including balance sheets, income statements, and cash flow
994 statements and supporting assumptions for a five-year forecast period as applicable; and a list of
995 committed sources of capital funding;

996 xiii. Historical financial statements, Certified Public Accountant (CPA) audits if
997 applicable, for the previous two calendar years;

998 xiv. Certifications required in the application;

999 xv. For BIP applicants only:

1000 (1) A self-scoring sheet, analyzing the objective scoring criteria set forth in this NOFA;
1001 (2) The pricing package being offered to critical community facilities, if any; and
1002 (3) Evidence that the applicant is a socially and economically disadvantaged small
1003 business concern (SDB) as defined under section 8(a) of the SBA.

1004 xvi. For BTOP applicants only:

1005 (1) A description of how the applicant will advance the objectives of the Recovery Act,
1006 as well as the specific objectives of BTOP, (a) to provide access to broadband service to
1007 consumers residing in unserved areas of the country; (b) to provide improved access to
1008 broadband service to consumers residing in underserved areas of the country; (c) to provide
1009 broadband access, education, awareness, training, equipment, and support to community anchor
1010 institutions (*e.g.*, schools, libraries, medical facilities), or organizations and agencies serving
1011 vulnerable populations (*e.g.*, low-income, unemployed, aged), or job-creating strategic facilities
1012 located in state- or federally-designated economic development areas; (d) to improve access to,

1013 and use of, broadband service by public safety agencies; and (e) to stimulate the demand for
1014 broadband, economic growth, and job creation;

1015 (2) A demonstration of need for grant funding, including documentation demonstrating
1016 that a project would be unfeasible but for federal assistance;-

1017 (3) A description of how the applicant will enhance services for health care delivery,
1018 education, and children to the greatest population of users in the area;

1019 (4) Additional verification related to the non-discrimination and interconnection
1020 obligations set forth in this NOFA;

1021 (5) The percentage of matching funds the applicant will contribute to the project, and its
1022 percentage of the total cost, as well as the specific amounts that are in cash or in-kind;

1023 (6) Whether the applicant receives any federal support for non-recurring costs in the
1024 proposed funded service area; and

1025 (7) To the extent applicable, evidence of collaboration with any socially and
1026 economically disadvantaged small business concern (SDB) as defined under section 8(a) of the
1027 SBA, that may include a sub-awardee, contractor, subcontractor, or vendor, and the source and
1028 amount of any federal or state funding, including Universal Service Fund funds, that applicant
1029 has received, or requested, for the activities or projects to which the application relates.

1030 **b. Verification Filing Requirements for Step Two of the Application Process**

1031 As discussed above, those applications that are considered to be most highly qualified
1032 (*i.e.*, receiving the highest scores), will advance to the second step of the review process.

1033 Specifically, in the “due diligence” phase, applicants will be asked to submit additional
1034 information, as appropriate, to further substantiate the representations made in their application.

1035 Although this “due diligence” phase applies to all three categories of projects —Broadband

1036 Infrastructure, Public Computer Center, and Sustainable Adoption —it is most applicable to
1037 Broadband Infrastructure Projects. This phase will be announced no earlier than September 14,
1038 2009. The following information must then be submitted to the agencies online at
1039 <http://www.broadbandusa.gov> by October 15, 2009, or, alternatively, 30 days after the applicant
1040 has received a request from RUS or NTIA to provide such information, whichever is later.

1041 i. A list of all its outstanding and contingent obligations, including copies of existing
1042 notes, loan and security agreements, and guarantees;

1043 ii. A detailed description of working capital requirements and the source of these funds;

1044 iii. A detailed description of the proposed technology that will be used to provide
1045 service at the proposed broadband speed. This description must clearly demonstrate that all
1046 households and businesses in the proposed funded service area will be offered service at the
1047 proposed broadband speed;

1048 iv. A detailed construction build-out schedule that includes a description of the
1049 necessary work force, a timeline demonstrating project completion within the required
1050 timeframe, a depreciation schedule for the proposed facilities;

1051 v. A completed Environmental Questionnaire, other documentation requests, and
1052 required environmental authorizations and permits, including those required by the National
1053 Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*) (NEPA), the National
1054 Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 *et seq.*) (NHPA), and the
1055 Endangered Species Act of 1973, as amended (16 U.S.C. § 1534 *et seq.*) (ESA) as applicable;

1056 vi. For purposes of the step two due diligence verification process, applicants will need
1057 to be prepared to provide any of the underlying documentation that is referenced in the
1058 application, as appropriate; and

1059 vii. **For BIP only**, a description of measurable service metrics and target service level
1060 objectives (SLOs) (*e.g.*, the speed with which new service will be established, service
1061 availability, and response time for reports of system failure at a residence) that will be provided
1062 to the customer, and a description of the approach and methodology for monitoring ongoing
1063 service delivery and service quality for the services being employed.

1064 **2. Public Computer Centers Applications**

1065 Applications for Public Computer Center projects must contain the following
1066 information:

- 1067 a. The identity of the applicant and general applicant and project information including:
- 1068 i. A descriptive title of the project that will be made public consistent with the
1069 requirements of the Recovery Act,
- 1070 ii. The Congressional Districts affected by the project,
- 1071 iii. The dollar amount of the funding request;
- 1072 b. Verification that the application meets certain eligibility factors, including submission
1073 of a complete application with all supplemental documentation, commitment to substantial
1074 completion of the project within two years and project completion within three years of the
1075 award date, demonstration that the project advances at least one of BTOP's five statutory
1076 purposes, commitment to or a waiver for the cost matching requirement, demonstration that a
1077 project could not be completed in the grant period but for federal funding, demonstration that the
1078 project is technically feasible, and that the budget is reasonable and all costs are eligible;
- 1079 c. An executive summary of the project, including the problem or need the project
1080 addresses and the approach to addressing the need; the area to be served, population and
1081 demographics of the target area, and estimated number of potential users of the public computer

1082 center(s); qualifications of the applicant; jobs to be created or saved; and overall cost of the
1083 project;

1084 d. A description of the project purpose, including the significance of the problem to be
1085 addressed and the degree to which the proposed solution effectively addresses the problem and
1086 could be replicated by other organizations; the degree to which the problem and proposed
1087 solution advance at least one of BTOP's five statutory purposes; and whether and how the
1088 project incorporates more than one BTOP program category or BTOP statutory purpose;

1089 e. A description of any collaboration with Recovery Act or other state or federal
1090 development programs that leverage the impact of the proposed project;

1091 f. A description of how the program would enhance service for health care delivery,
1092 education, or children;

1093 g. Evidence of collaboration with any SDB as defined by section 8(a) of the SBA, that
1094 may include a sub-awardee, contractor, subcontractor, or vendor;

1095 h. The capacity of the proposed public computer center(s) and areas and populations to
1096 be served, including whether the facility will be available to the general public or specific
1097 populations, whether the center(s) charges membership fees and if so how these charges are
1098 consistent with the public interest, any restrictions of the use of the center(s), how the center will
1099 be accessible to persons with disabilities, the locations and hours of the center(s), current and
1100 proposed number of broadband workstations, current and proposed speed of the center(s)
1101 broadband connection, the size and scope of the target population and the populations to be
1102 served by the center(s), the outreach strategy for the center(s), the equipment and software that
1103 will be provided, and the training and educational programs that will be offered;

- 1104 i. A summary as to the viability of the project, including the overall technology strategy
1105 to be deployed by the project; qualifications of the organization and management team, including
1106 a description of organizational readiness and an organizational chart; a list of community
1107 organizations, partners, vendors, or contributors of in-kind resources involved in the project and
1108 whether any of those involved entities are socially or economically disadvantaged partners; a
1109 project timeline that established key milestones for implementation of the project as well as
1110 potential challenges that could pose delays; a list of needed licensing and regulatory approvals;
1111 and a legal opinion addressing the applicant’s ability to enter into the award agreement;
- 1112 j. Proposed budget and sustainability information from the applicant including a
1113 narrative explaining the project budget, an explanation of why the proposed costs are reasonable,
1114 demonstration that the project could not have been undertaken during the grant period but for
1115 federal assistance, organization financial statements for the last two years, explanation of how a
1116 project will become self-sustaining, description of the planned matching funds for the project or
1117 a waiver, as applicable, whether the project is receiving or has applied for federal support for
1118 non-recurring costs, disclosure of other federal or state funding, and whether the applicant is
1119 seeking a waiver of the Buy American provision; and
- 1120 k. Completion of an environmental checklist and applicable certifications.

1121 **3. Sustainable Broadband Adoption Applications**

1122 Applications for Sustainable Broadband Adoption projects must contain the following
1123 information:

- 1124 a. The identity of the applicant and general applicant and project information including:
- 1125 i. A descriptive title of the project that will be made public consistent with the
1126 requirements of the Recovery Act,

- 1127 ii. The Congressional Districts affected by the project,
- 1128 iii. The dollar amount of the funding request;
- 1129 b. Verification that the application meets certain eligibility factors, including submission
- 1130 of a complete application with all supplemental documentation, commitment to substantial
- 1131 completion of the project within two years and project completion within three years of the
- 1132 award date, demonstration that the project advances at least one of BTOP’s five statutory
- 1133 purposes, commitment to or a waiver for the cost matching requirement, demonstration that a
- 1134 project could not be completed in the grant period but for federal funding, demonstration that the
- 1135 project is technically feasible, and that the budget is reasonable and all costs are eligible;
- 1136 c. An executive summary of the project, including the problem or need the project
- 1137 addresses and the approach to addressing the need, and how that approach is innovative; the area
- 1138 to be served, population and demographics of the target area, and estimated number of potential
- 1139 broadband subscribers the project will reach; qualifications of the applicant; jobs to be created or
- 1140 saved; and overall cost of the project;
- 1141 d. A description of the project purpose, including the significance of the problem to be
- 1142 addressed and the degree to which the proposed solution effectively addresses the problem and
- 1143 could be replicated by other organizations; the degree to which the problem and proposed
- 1144 solution advance at least one of BTOP’s five statutory purposes; and whether and how the
- 1145 project incorporates more than one BTOP program category or BTOP statutory purpose;
- 1146 e. A description of any collaboration with Recovery Act or other state or federal
- 1147 development programs that leverage the impact of the proposed project;_
- 1148 f. A description of how the program would enhance service for health care delivery,
- 1149 education, or children;

1150 g. Evidence of collaboration with any SDB as defined under section 8(a) of the SBA,
1151 that may include a sub-awardee, contractor, subcontractor, or vendor;

1152 h. A description of the project benefits, including how the approach to solve the
1153 identified problem is innovative; the number of new home, business, and institutional broadband
1154 subscribers expected to be generated; the populations to be served by the project; the total cost of
1155 the project per new subscriber; if proposing a training or educational program, how many people
1156 it will reach, the hours of training per person, the number of instructors to be employed, and
1157 planned equipment purchases and overall cost of these devices; if proposing an equipment
1158 purchase or loan program, the number of households, businesses, and institutions that will be
1159 provided equipment and the total cost to the customer; if proposing an awareness campaign, the
1160 number of people expected to be reached, the strategies to be used in the campaign, how impact
1161 of the campaign will be measured, and the organization's previous experience with this type of
1162 campaign;

1163 i. A summary as to the viability of the project, including an explanation of the innovative
1164 operational solution proposed, how it will create sustainable adoption in the target population,
1165 and how it could be feasible in other situations; qualifications of the organization and
1166 management team, including a description of organizational readiness and an organizational
1167 chart; a list of community organizations, partners, vendors, or contributors of in-kind resources
1168 involved in the project and whether any of those involved entities are socially or economically
1169 disadvantaged partners; a project timeline that established key milestones for implementation of
1170 the project as well as potential challenges that could pose delays; a list of needed licensing and
1171 regulatory approvals; and a legal opinion addressing the applicant's ability to enter into the
1172 award agreement;

1173 j. Proposed budget and sustainability information from the applicant including a
1174 narrative explaining the project budget, an explanation of why the proposed costs are reasonable,
1175 demonstration that the project could not have been undertaken during the grant period but for
1176 federal assistance, organization financial statements for the last two years, explanation of how
1177 the project will create sustainable increases in subscribership and how the project itself could be
1178 sustained beyond the grant period, description of the planned matching funds for the project or a
1179 waiver, as applicable, whether the project is receiving or has applied for federal support for non-
1180 recurring costs, disclosure of other federal or state funding, and whether the applicant is seeking
1181 a waiver of the Buy American provision; and

1182 k. Completion of an environmental checklist and applicable certifications.

1183 **E. Filing Instructions**

1184 **1. Electronic Applications**

1185 Electronic submissions of applications will allow for the expeditious review of an
1186 applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants
1187 requesting more than \$1 million in assistance (in the form of grants, loans, or a combination of
1188 grants and loans) must file their application electronically. Applicants whose authorized
1189 representatives are individuals with disabilities, however, may submit a paper application
1190 irrespective of the funding size of their request. In addition, applicants who are requesting less
1191 than \$1 million in assistance may forego the electronic filing requirement if filing electronically
1192 would impose a hardship on the applicant.

1193 **2. Paper Applications**

1194 **a. Format**

1195 Applicants requesting less than \$1 million in assistance (in the form of grants, loans, or a
1196 combination of grants and loans) may file their applications in a paper format if filing
1197 electronically would impose a hardship on the applicants. Applicants whose authorized
1198 representatives are individuals with disabilities may file their applications in a paper format
1199 irrespective of the funding size of their request. To the extent that applicants use electronic word
1200 processing software to create paper submissions, they should include in their filing, to the extent
1201 possible, an electronic copy of the paper application on an appropriate media such as a CD.

1202 The application package for paper submissions must be completed in black or blue ink,
1203 signed and mailed to the addresses provided in the Mailing Addresses section of this document
1204 (section E.2.d.). The application must be typed, single-sided, single-spaced, on 8 ½” x 11”
1205 paper, excluding diagrams and charts. Use a font of no less than 12 points with margins of no
1206 less than one inch. Reviewers will be instructed to ignore any portion of the application that
1207 extends beyond the prescribed page limits provided in the application.

1208 **b. Number of Copies**

1209 Applicants filing paper copies should submit one original and one copy of the application
1210 for efficient processing.

1211 **c. Proof of Mailing**

1212 Applications must include proof of mailing consisting of one of the following:

1213 i. A legibly dated U.S. Postal Service postmark. Please note that the U.S. Postal Service
1214 does not uniformly provide a dated postmark. Before relying on this method, applicants should
1215 check with their local post office.

1216 ii. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

1217 iii. A dated shipping label, invoice, or receipt from a commercial carrier.

1218 Neither of the following will be accepted as proof of mailing: a private metered
1219 postmark; nor a mail receipt that is not dated by the U.S. Postal Service.

1220 Applications with postmarked dates after August 14, 2009, will not be considered in the
1221 current grant round and will be returned to the applicant. Applications will NOT be accepted via
1222 facsimile machine transmission.

1223 **d. Mailing Addresses**

1224 Completed applications must be mailed, shipped, or sent overnight express to:

1225 **i. NTIA**

1226 Broadband Technology Opportunities Program
1227 National Telecommunications and Information Administration
1228 U.S. Department of Commerce
1229 1401 Constitution Avenue, NW
1230 HCHB, Room 4812
1231 Washington, DC 20230

1232
1233 or hand-delivered to:

1234 Broadband Technology Opportunities Program
1235 National Telecommunications and Information Administration
1236 U.S. Department of Commerce
1237 HCHB, Room 1874
1238 1401 Constitution Avenue, NW
1239 Washington, DC 20230

1240
1241 Room 1874 is located at entrance #10 on 15th Street NW, between Pennsylvania and
1242 Constitution Avenues.

1243 United States Postal Service Priority Mail, First Class Mail, and Parcel Post packages
1244 delivered to the Department of Commerce are irradiated. Irradiation could result in damage to
1245 the contents, or delay the delivery of an application to the BTOP Program Office. Thus,
1246 applicants are encouraged to consider the impact of these procedures in selecting their chosen
1247 method for application delivery.

1248 **ii. RUS**

1249 Broadband Initiatives Program
1250 Rural Utilities Service
1251 U.S. Department of Agriculture
1252 1400 Independence Avenue, SW, Stop 1599
1253 Washington, DC 20250

1254
1255 or hand-delivered to:

1256 Broadband Initiatives Program
1257 Rural Utilities Service
1258 U.S. Department of Agriculture
1259 1400 Independence Avenue, SW
1260 Room 2868
1261 Washington, DC 20250
1262

1263 **iii. Signatures**

1264 Applicants filing in a paper format must submit an original signed copy of their
1265 application and certifications. Applicants filing electronically may submit an electronic
1266 signature for their application by registering at <http://www.ccr.gov>.

1267 **F. Submission Dates and Times**

1268 Electronic applications must be submitted between July 14, 2009, at 8:00 a.m. ET and
1269 5:00 p.m. ET on August 14, 2009. The electronic application system at
1270 <http://www.broadbandusa.gov> will provide a date and time stamped confirmation number that
1271 will serve as proof of submission. Paper submissions must be postmarked no later than August
1272 14, 2009, or hand-delivered no later than 5:00 p.m. ET on August 14, 2009. Applications
1273 delivered by guaranteed carrier services will be considered postmarked on the date they are
1274 submitted to the carrier.

1275 No application will be accepted after the submission date unless: 1, there was a carrier
1276 error and the carrier accepted the application for delivery prior to the submission deadline; or 2.

1277 there were significant weather delays or natural disasters as declared by federal or state
1278 authorities and the applicant submits proper documentation explaining the delay.

1279 **G. Material Representations**

1280 The application, including certifications, and all forms submitted as part of the
1281 application will be treated as a material representation of fact upon which RUS and NTIA will
1282 rely in awarding grants.

1283 **H. Material Revisions**

1284 No material revision will be permitted for any application after the submission deadline,
1285 unless such revision is requested by RUS and NTIA. RUS and NTIA, however, may request
1286 clarifications or submissions for completeness that are non-material.

1287 **VII. Application Review Information**

1288 **A. Evaluation Criteria**

1289 The scoring criteria used to review and analyze BIP and BTOP applications are grouped
1290 into four categories: 1. Project Purpose; 2. Project Benefits; 3. Project Viability; and 4. Project
1291 Budget and Sustainability. Each application will be scored against the following objective
1292 criteria, and not against other applications. This section describes the evaluation criteria first for
1293 BIP Broadband Infrastructure projects, then for the three BTOP project categories.

1294 **1. BIP Broadband Infrastructure Projects**

1295 **a. General**

1296 In accordance with the Recovery Act, the priority for BIP is to provide and improve
1297 broadband service to the highest proportion of rural residents who do not have adequate access to
1298 broadband service for rural development, which RUS defines to mean rural residents who reside
1299 in unserved and underserved rural areas. Additionally, the Recovery Act mandates that priority

1300 be given to projects which: i. give end users a choice of providers; ii. serve the highest
1301 proportion of rural residents that lack access to broadband service; iii. are projects of current or
1302 former RUS borrowers (Title II borrowers); and iv. are fully funded and ready to start once
1303 Recovery Act funding is received. Lastly, coordination with other federal, state, and local
1304 programs, including Recovery Act programs, is highly encouraged as a way to more efficiently
1305 and effectively achieve program objectives.

1306 **b. Project Purpose (25 points)**

1307 i. Proportion of Rural Residents Served in Unserved Areas (5 points). Points will be
1308 awarded for serving rural residents located in unserved areas. For every 10,000 unserved
1309 households that will receive broadband service, one point will be awarded up to a maximum of
1310 five points.

1311 ii. Rural Area Targeting (5 points). Points will be awarded for exceeding the 75 percent
1312 rural area service requirement. For every five percent increase in the rural service area above the
1313 75 percent rural area service requirement, one point will be awarded up to a maximum of five
1314 points.

1315 iii. Remote Area Targeting (5 points). Up to five points will be awarded for proposed
1316 funded service areas that are at least 50 miles from a non-rural area. If at least one proposed
1317 funded service area is a minimum of 50 miles from a non-rural area, one point will be awarded.
1318 For each additional 50 miles that at least one proposed funded service area is located away from
1319 a non-rural area, one additional point will be awarded up to a total of five points.

1320 iv. Title II Borrowers (5 points). Five points will be awarded to applications which are
1321 submitted by entities which have borrowed under Title II of the RE Act.

1322 v. Recovery Act and other governmental collaboration (5 points). Points will be
1323 awarded for cooperation with other governmental development programs as well as coordination
1324 with Recovery Act construction projects. Examples include the Department of Energy's Smart
1325 Grid, Investment Program, the Department of Housing and Urban Development's Public Housing
1326 Capital Fund, the Department of Transportation's Capital Assistance for High Speed Rail
1327 Corridors and Intercity Passenger Service program, and other investments where collaboration
1328 would lead to greater project efficiencies. In each case, the applicant must convincingly
1329 demonstrate that these leveraging efforts are substantive and meaningful. One point will be
1330 awarded for each partnered governmental or Recovery Act program that has demonstrated such a
1331 partnership is substantive and meaningful up to a maximum of five points.

1332 **c. Project Benefits (25 points)**

1333 i. Performance of the offered service (10 points). **For Last Mile Projects:** For
1334 wireline projects that are constructed to deliver a minimum of 20 megabit per second service to
1335 the household (upstream plus downstream), ten points will be awarded. For wireless projects
1336 that are constructed to deliver a minimum of two megabits per second service to the end user
1337 (upstream plus downstream), ten points will be awarded. For projects that are a combination of
1338 wireline and wireless projects, both of the above standards must be met for the corresponding
1339 parts of the network in order to receive the ten points. **For Middle Mile Projects:** For middle
1340 mile projects that are constructed to deliver 100 megabits per second service to all end points in
1341 their network, ten points will be awarded.

1342 ii. Affordability of services offered (5 points). RUS will evaluate the level of support
1343 that is provided and award up to five points for applications that demonstrate that the proposed

1344 rates for the broadband service are affordable for the targeted audience. The stronger the level of
1345 support that is provided, the higher the number of points that will be awarded.

1346 iii. Choice of provider (5 points). Five points will be awarded to applications that
1347 propose to construct infrastructure and implement a business plan which would allow more than
1348 one provider to serve end users in the proposed funded service area.

1349 iv. Critical community facilities (5 points). For applications that are proposing to offer
1350 discounted rate packages at least 25 percent lower than the advertised rate packages to all critical
1351 community facilities in the proposed funded service area, five points will be awarded.

1352 **d. Project Viability (25 points)**

1353 i. Applicant's organizational capability (12 points). Up to twelve points will be awarded
1354 based on the strength of the project's management team. RUS will evaluate past performance
1355 and accomplishments and award points accordingly.

1356 ii. Community support (2 points). Up to two points will be awarded if letters of support
1357 are received from all communities in the proposed funded service area from the designated
1358 community leader.

1359 iii. Ability to promptly start project (10 points). Ten points will be awarded if the
1360 applicant can provide evidence that the following conditions have been satisfied:

1361 (1) All licenses, franchises and regulatory approvals required to operate the system and
1362 provide the proposed services have been received;

1363 (2) That the required contractors and vendors necessary to implement the project are
1364 prepared to enter into contracts as soon as funds are made available;

1365 (3) That all required equity contributions have been transferred into the applicant's
1366 accounts; and

1367 (4) That the project timeline and milestones are reasonable.

1368 iv. Disadvantaged small businesses (1 point). One point will be awarded to applicants
1369 that meet the definition of a socially and economically disadvantaged small business concern
1370 under section 8(a) of the SBA.

1371 **e. Project Budget and Sustainability (25 points)**

1372 i. Reasonableness of the budget (5 points). Up to five points will be awarded based on
1373 the clarity and reasonableness of the proposed budget.

1374 ii. Leverage of outside resources (10 points). Up to ten points will be awarded based on
1375 the amount of outside resources contributed to the total financing provided under BIP:

1376 (1) 10 points if this ratio is greater than 100%

1377 (2) 7 points if this ratio is between 100% and 75%

1378 (3) 5 points if this ratio is between 75% and 50%

1379 (4) 3 points if this ratio is between 50% and 25%

1380 (5) 1 points if this ratio is lower than 25%.

1381 iii. Extent of grant funding (10 points). Up to ten points will be awarded based on the
1382 amount of grants funds requested in relation to the amount of loan funds requested (grant
1383 funds/loan funds):

1384 (1) 0 points if grant funds are 100%

1385 (2) 1 points if this ratio is between 100% and 75%

1386 (3) 3 points if this ratio is between 75% and 50%

1387 (4) 5 points if this ratio is lower than 50%

1388 (5) 10 points if this ratio is zero.

1389 **2. BTOP Broadband Infrastructure, Public Computer Center, and Sustainable**
1390 **Broadband Adoption Projects**

1391 **a. General**

1392 The evaluation criteria for BTOP projects will be the same across the BTOP project
1393 categories except: i. under the Project Benefits section, different evaluation criteria and scoring
1394 methodologies are applied to each project category; ii. the Technical Feasibility criterion under
1395 the Project Viability heading is subdivided between Sustainable Broadband Adoption projects
1396 and all other BTOP project categories; and iii. the Sustainability criterion under the Budget and
1397 Sustainability heading is similarly subdivided between Sustainable Broadband Adoption projects
1398 and all other BTOP project categories. These variations are detailed in the descriptions of the
1399 evaluation criteria below.

1400 **b. Project Purpose (30 points)**

1401 i. Fit with statutory purposes. Applications will be evaluated with respect to each of
1402 BTOP's statutory purposes.³⁹ Reviewers will consider, relative to each purpose, whether the
1403 applicant is addressing a compelling problem of the sort that the statute is intended to resolve,
1404 whether the applicant has offered an effective solution to that problem, and whether the proposed
1405 solution is of broad significance and includes developments that can be replicated to improve
1406 future projects. Additional consideration will be given to projects located partially or wholly
1407 unserved or underserved areas of a state as described by the state submission in the State
1408 Broadband Data and Development Grant Program or as otherwise determined by NTIA.
1409 Additional consideration will also be given to applicants that address more than one statutory

65 ⁹³⁹ See Recovery Act § 6001(b), 123 Stat. at 512–13 (to provide broadband access to unserved areas; to provide
66 improved broadband access to underserved areas; to provide broadband access, education, and support to
67 community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating
68 strategic facilities located in state- or federally-designated economic development areas; to improve access to, and
69 use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth,
70 and job creation).

1410 purpose and project category (*e.g.*, Broadband Infrastructure, Public Computer Centers, or
1411 Sustainable Broadband Adoption) in a convincing manner.

1412 ii. Recovery Act and other governmental collaboration. Applicants will be evaluated on
1413 their collaboration with Recovery Act or other state or federal development programs that
1414 leverage the impact of the proposed project. Examples include the Department of Energy’s
1415 Smart Grid Investment Program, the Department of Housing and Urban Development’s Public
1416 Housing Capital Fund, the Department of Transportation’s Capital Assistance for High Speed
1417 Rail Corridors and Intercity Passenger Service program, and other investments where
1418 collaboration would lead to greater project efficiencies. In each case, the applicant must
1419 convincingly demonstrate that these leveraging efforts are substantive and meaningful.

1420 iii. Enhanced service for health care delivery, education, and children. Reviewers will
1421 assess the depth and breadth of the project's ability to enhance broadband service for health care
1422 delivery, education, and children as contemplated by the Recovery Act.⁴⁰ Projects would need to
1423 demonstrate that they go beyond providing access to broadband to include more robust
1424 educational, health care, or related broadband service delivery.

1425 iv. Socially and economically disadvantaged small businesses. Reviewers will grant
1426 consideration to applicants that certify they meet the statutory definition of a socially and
1427 economically disadvantaged small business concern, or that have established agreements in
1428 principle to contract with socially and economically disadvantaged businesses that meet that
1429 definition.

1430 **c. Project Benefits (25 points)**

1431 Reviewers will evaluate the various benefits that the proposed project will provide. This
1432 criterion will be focused primarily on measuring the benefits of the proposed project. Due to the

71 ⁴⁰ See *id.* § 6001(h)(2)(C), 123 Stat. at 515.

1433 broad scope of the three project categories and the expected diversity of proposed projects, the
1434 specific elements to be evaluated under this heading vary from one project category to another,
1435 as described below.

1436 **i. BTOP Broadband Infrastructure Last Mile Projects**

1437 (1) Cost-effectiveness. Applications will be scored on the project's cost-efficiency based
1438 on the ratio of the total cost of the project to households passed.

1439 (2) Performance of the offered service. Applications will be scored for the extent to
1440 which the advertised speed for the network's highest offered speed tier exceeds the minimum
1441 speed requirement for broadband service (768 kbps downstream and 200 kbps upstream).
1442 Networks will be graded on a sliding scale with higher end-user speeds receiving a higher score.
1443 Proposed networks with high latency will be viewed unfavorably. Applicants may gain
1444 additional consideration if the applicant can demonstrate a clear and affordable upgrade path for
1445 the network.

1446 (3) Affordability of services offered. Projects will be evaluated on the pricing of the
1447 services offered compared to existing broadband services in the proposed funded service area. If
1448 there are no existing broadband services in the proposed funded service area, projects will be
1449 evaluated on the ability of the applicant to convincingly demonstrate that their proposed pricing
1450 is appropriate for the service area.

1451 (4) Nondiscrimination, interconnection, and choice of provider. Applications will be
1452 scored on the extent to which the applicant commits to exceeding the minimum requirements for
1453 interconnection and nondiscrimination established in section V.C.2.b. of this NOFA. Additional
1454 consideration will be given for displaying the network's nondiscrimination and interconnection
1455 policies in a prominent location on the service provider's web page, and providing notice to
1456 customers of changes to these policies. Additional consideration will be given to applicants that

1457 commit to offering wholesale access to the project facilities at reasonable rates and terms.
1458 Additional consideration will also be given to applicants that commit to binding private
1459 arbitration of disputes concerning the awardees' interconnection obligations as explained above
1460 in section V.C.2.b of this NOFA. Reviewers will also consider whether the application proposes
1461 to construct infrastructure and implement a business plan which would allow more than one
1462 provider to serve end users in the proposed funded service area.

1463 **ii. BTOP Broadband Infrastructure Middle Mile Projects**

1464 For purposes of evaluating BTOP Middle Mile projects, applicants should define the area
1465 that will directly benefit from the project, including the community anchor institutions and end
1466 users that may received broadband service through the proposed middle mile network.

1467 (1) Impact on the area. Applications will be scored on how great an impact they would
1468 have on the area. Reviewers will consider the number of end-points and points of
1469 interconnection the network will offer and the proposed connections to last mile networks,
1470 community anchor institutions, or public safety entities, as well as the projected number of new
1471 end users served by those proposed connections.

1472 (2) Level of need in the area. Applications will be scored on the level of need for a
1473 middle mile network in the area. Reviewers will consider whether there are middle mile
1474 providers already present in all or part of the area, as well as the pricing and available capacity of
1475 those providers. Reviewers will also consider what proportion of the network's end-points,
1476 points of interconnection, and projected end users are located in unserved or underserved areas.
1477 In addition, reviewers will also consider applicants' explanation of why their proposed project is
1478 well-suited to address the needs of the area.

1479 (3) Network capacity. Applicants will be evaluated on the capacity of the network. The
1480 network should provide capacity sufficient to serve the anticipated last mile networks,
1481 community anchor institutions, and public safety entities, and the number of end users served by
1482 them, as projected by the applicant, taking into consideration the nature of the services that these
1483 institutions and end users are likely to seek to utilize the network for. Reviewers will give
1484 additional consideration to projects that will be scalable to meet the future needs of the area.

1485 (4) Affordability of services offered. Projects will be evaluated on the pricing of the
1486 services offered compared to existing broadband services in the proposed funded service area.
1487 If there are no existing broadband services in the proposed funded service area, projects will be
1488 evaluated on the ability of the applicant to convincingly demonstrate that their proposed pricing
1489 for middle mile services is appropriate for the proposed funded service area.

1490 (5) Nondiscrimination, interconnection, and choice of provider. Applications will be
1491 scored on the extent to which the applicant commits to exceeding the minimum requirements for
1492 interconnection and nondiscrimination established in section V.C.2.b. of this NOFA. Additional
1493 consideration will be given for displaying the network's nondiscrimination and interconnection
1494 policies in a prominent location on the service provider's web page, and providing notice to
1495 customers of changes to these policies. Additional consideration will be given to applicants that
1496 commit to offering wholesale access to network components and services such as wavelength or
1497 fibers at reasonable rates and terms. Additional consideration will also be given to applicants that
1498 commit to binding private arbitration of disputes concerning the awardees' interconnection
1499 obligations as explained above in section V.C.2.b of this NOFA. Reviewers will also consider
1500 whether the application proposes to construct infrastructure and implement a business plan which
1501 would allow more than one provider to serve end users in the proposed funded service area.

1502

1503 **iii. BTOP Public Computer Center Projects**

1504 (1) Availability to the public. Applications will be scored on the availability of the
1505 computer center to the public. Reviewers will consider the capacity of the computer center, its
1506 hours of availability, any membership or usage fees charged, restrictions on usage, the
1507 proportionality of the computer center’s capacity and hours of availability to the population the
1508 applicant proposes to serve, public outreach, and the computer center’s accessibility to persons
1509 with disabilities, accounting for both the physical accessibility of the facility and the accessibility
1510 of the computer equipment and software.

1511 (2) Training and educational programs offered. Applicants will be scored on the
1512 availability, accessibility, and quality of training and educational programs offered through the
1513 computer center. Reviewers will consider the degree to which the programs meet the relevant
1514 needs of the community.

1515 (3) Availability and qualifications of consulting and teaching staff. Applications will be
1516 evaluated on the strength of the consulting and teaching staff at the computer center. Reviewers
1517 will consider the qualifications and training required of such staff as well as whether the number
1518 of available staff is sufficient for the capacity of the computer center.

1519 **iv. BTOP Sustainable Broadband Adoption**

1520 (1) Number of new users. Applications will be scored on the number of new broadband
1521 subscribers and other regular users the project will generate. Reviewers will take into
1522 consideration both the overall number of new subscribers and users and the proportion that these
1523 new subscribers and users represent of the number of non-subscribers and non-users in the
1524 relevant area.

1525 (2) Cost per new user. Applications will be evaluated on the cost-effectiveness of the
1526 program. Reviewers will consider cost per projected new subscriber or other regular user, taking
1527 into account the applicant’s explanation of why the approach selected is a cost-effective
1528 approach given the particular circumstances of the project.

1529 (3) Innovation. Applications will be evaluated on the degree to which the project
1530 demonstrates replicable new ideas, approaches, and methods to encourage sustainable broadband
1531 adoption.

1532 **d. Project Viability (25 points)**

1533 i. The technical feasibility of the proposed project. **For BTOP Broadband**
1534 **Infrastructure and Public Computer Center projects:** applications will be scored on the
1535 comprehensiveness and appropriateness of the technical solution and the clarity, level of detail,
1536 and coherence of the system designs. In order to receive a full score, applicants must
1537 demonstrate that the project includes developments that will be feasible in other situations. **For**
1538 **Sustainable Broadband Adoption projects:** reviewers will assess the mechanics and
1539 operational details of the project. Applicants will be scored on the clarity and detail of their
1540 project plan, how convincing the rationale behind the plan is, and whether they can demonstrate
1541 that the plan includes innovative solutions that would be feasible in other situations.

1542 ii. Applicant’s organizational capability. Reviewers will assess whether the applicant
1543 has the organizational capability necessary to undertake and complete the project. Reviewers
1544 will consider the years of experience and expertise of the project management team, and the past
1545 track record of the organization with projects of a similar size and scope, as well as the
1546 organization’s capacity and readiness.

1547 iii. The level of community involvement in the project. Reviewers will evaluate
1548 linkages to unaffiliated organizations in the project area (from the public, non-profit, and private
1549 sectors), particularly community anchor institutions and public safety organizations, as an
1550 ongoing and integral part of the project planning and operation. In order to receive the full score
1551 for this criterion, at least one partner should meet the definition of a socially and economically
1552 disadvantaged small business concern under section 8(a) of the SBA—these partners must be
1553 distinct from any contractor or related entity specified for the purposes of the socially
1554 disadvantaged small businesses criterion in Project Purpose. Applicants should demonstrate that
1555 each linkage is substantial and meaningful.

1556 iv. Ability to promptly start project. Projects will be evaluated on whether they will be
1557 able to start promptly and be completed in an appropriate timeframe for the size and scope of the
1558 project. Reviewers will consider the planned start date of the project, the reasonableness of the
1559 project timeline and associated milestones, whether the applicant has secured all licenses,
1560 franchises, and regulatory approvals required to complete the project, and whether the required
1561 contractors and vendors necessary to implement the project are prepared to enter into contracts as
1562 soon as the funds are made available.

1563 **e. Project Budget and Sustainability (20 points)**

1564 i. Reasonableness of the budget. Reviewers will evaluate the reasonableness of the
1565 budget based on its clarity, level of detail, comprehensiveness, appropriateness to the proposed
1566 technical and programmatic solutions, the reasonableness of its costs, and whether the allocation
1567 of funds is sufficient to complete the tasks outlined in the project plan.

1568 ii. Sustainability of the project. **For BTOP Broadband Infrastructure and Public**
1569 **Computer Center projects:** Applicants must convincingly demonstrate the ability of the

1570 project to be sustained beyond the funding period. Reviewers will consider business plans,
1571 market projections, third-party funding commitments, and other data as may be appropriate to
1572 the nature of the applicant and the proposed project. **For Sustainable Broadband Adoption**
1573 **projects:** Reviewers will consider both whether the project will be sustained beyond the funding
1574 period and whether the increases in broadband adoption rates in the project area caused by the
1575 project will be sustained beyond the conclusion of the project.

1576 iii. Leverage of outside resources. The applicant must demonstrate the ability to provide,
1577 from non-federal sources, funds required to meet or exceed the 20 percent matching funds
1578 requirement unless a waiver of that requirement has been requested. Reviewers will give
1579 additional consideration to proposals that exceed the minimum matching requirement, provide
1580 cash matches, or receive matching funds from acceptable federal sources as described in section
1581 V.C.4.b of this NOFA. For purposes of this evaluation, applicants that have received a full or
1582 partial waiver of the cost-matching requirement will be treated as having provided a 20 percent
1583 non-cash match.

1584 **B. Notice of Proposed Funded Service Areas**

1585 RUS and NTIA will post a Public Notice of the proposed funded service areas of each
1586 Broadband Infrastructure application at <http://www.broadbandusa.gov> for a 30 day period. The
1587 Public Notice will provide existing service providers an opportunity to submit to the agencies
1588 information regarding their service offerings. If an existing service provider submits a response
1589 outside the timeframe specified in this NOFA, it will not be considered an existing service
1590 provider for determining whether the applicant's service area is eligible, but will still be
1591 considered with respect to the agencies' other applicable eligibility requirements. The

1592 information submitted by an existing service provider will be treated as proprietary and
1593 confidential to the extent permitted under applicable law.

1594 If the information submitted by an existing service provider demonstrates that the
1595 applicant's proposed funded service area is not unserved, both RUS and NTIA reserve the right
1596 to reclassify the application and consider the proposed area as underserved if the application
1597 meets the criteria in the underserved definition. If the information submitted by an existing
1598 service provider establishes that the applicant's proposed funded service area is not underserved,
1599 both RUS and NTIA may reject the application.-

1600 **VIII. Anticipated Announcement and Award Dates**

1601 **A. Announcement Date**

1602 RUS and NTIA intend to announce the awards starting on or about November 7, 2009.

1603 **B. RUS Loan and Grant Document Distribution Date**

1604 RUS intends to make grant, loan, and loan/grant combination documents available to
1605 successful applicants within 30 days of the award announcement. RUS expects compliance with
1606 all documentation requirements from successful applicants, and intends to schedule the closings
1607 within 60 days of award announcement.

1608 **C. BTOP Grants**

1609 NTIA intends to make award documents available to successful applicants within 30 days
1610 of the award announcement. NTIA expects compliance with all documentation requirements
1611 from successful applicants within 60 days of award announcement.

1612 **IX. Award Administration Information**

1613 **A. Award Notices**

1614 **1. BIP**

1615 Successful applicants will receive award documents from RUS following award
1616 notification. Applicants may view sample documents on BIP at <http://www.broadbandusa.gov>.

1617 **2. BTOP**

1618 Applicants will be notified in writing by the DOC's Grants Officer if their applications
1619 are selected for an award. If the application is selected for funding, the DOC's Grants Officer
1620 will issue the grant award (Form CD-450), which is the authorizing financial assistance award
1621 document. By signing the Form CD-450, the awardee agrees to comply with all award
1622 provisions. NTIA will provide the Form CD-450 by mail or overnight delivery to the
1623 appropriate business office of the recipient's organization. The awardee must sign and return the
1624 Form CD-450 without modification within 30 days of receipt.

1625 If an applicant is awarded funding, neither the DOC nor NTIA is under any obligation to
1626 provide any additional future funding in connection with that award or to make any future
1627 award(s). Amendment or renewal of an award to increase funding or to extend the period of
1628 performance is at the discretion of the DOC and of NTIA.

1629 **B. Administrative Requirements**

1630 **1. BIP**

1631 a. Pre-award conditions. No funds will be disbursed under this program until all other
1632 sources of funding have been obtained and any other pre-award conditions have been met.
1633 Failure to obtain one or more sources of funding committed to in the application or to fulfill any

1634 other pre-award condition within 30 days of award announcement will result in withdrawal of the
1635 award.

1636 b. Failure to Comply With Award Requirements. If an awardee fails to comply with the
1637 terms of the award as specified in the award documents, RUS may exercise rights and remedies.

1638 c. Advance Procedures. RUS loan and grant advances are made at the request of the
1639 awardee according to the procedures stipulated in the award documents. Loan/grant combination
1640 funds are advanced in proportion to the amount of the award made in the form of loans and
1641 grants. Remote areas project grant funds are advanced independent of the loan/grant
1642 combination funds.

1643 d. Contracting. Contracting is to be done at the awardee's discretion, using private
1644 contracts or RUS's form contracts, however equal employment opportunity, civil rights, etc.
1645 requirements must still be met.

1646 e. Accounting, Monitoring, and Reporting Requirements. Awardees must follow RUS's
1647 accounting, monitoring, and reporting requirements. These requirements, which are specified in
1648 the award documents, include, but are not limited to, the following:

1649 i. Awardees must adopt a GAAP system of accounts acceptable to RUS;

1650 ii. Awardees must submit annual audited financial statements along with a report on
1651 compliance and on internal control over financial reporting, and a management letter in
1652 accordance with the requirements of 7 CFR 1773. The CPA conducting the annual audit is
1653 selected by the awardee and must be approved by RUS as set forth in 7 CFR § 1773.4;

1654 iii. Awardees must submit to RUS the information as specified in section IX.D.2;

1655 iv. Awardees must comply with all reasonable RUS requests to support ongoing
1656 monitoring efforts. The awardee shall afford RUS, through its representatives and

1657 representatives of the USDA Office of Inspector General reasonable opportunity, at all times
1658 during business hours and upon prior notice, to have access to and the right to inspect the
1659 broadband system, and any other property encumbered by the mortgage or security agreement,
1660 and any or all books, records, accounts, invoices, contracts, leases, payrolls, timesheets,
1661 cancelled checks, statements, and other documents, electronic or paper of every kind belonging
1662 to or in the possession of the awardee or in any way pertaining to its property or business,
1663 including its subsidiaries, if any, and to make copies or extracts therefrom.

1664 f. Assistance Instruments.

1665 i. Terms and conditions of loan/grant combinations are set forth in the non-negotiable
1666 standard loan/grant contract, note, and/or mortgage found at <http://www.broadbandusa.gov>.

1667 ii. Terms and conditions of loans are set forth in the non-negotiable standard loan
1668 contract, note, and/or mortgage found at <http://www.broadbandusa.gov>.

1669 iii. Terms of the remote area end-user grant are set forth in a nonnegotiable grant
1670 agreement found at <http://www.broadbandusa.gov>.

1671 iv. Loan and grant documents appropriate to the project must be executed prior to any
1672 advance of funds.

1673 v. Sample loan documents and grant agreements can be found at

1674 <http://www.broadbandusa.gov>.

1675 g. Loan Terms and Conditions. For loan/grant combinations, applicants must indicate
1676 the amount of the award to be requested in the form of a loan, and the amount to be requested in
1677 the form of a grant. The grant component must not exceed the loan component. The scoring
1678 criteria reward those applicants that reduce the percentage of the funds requested in the form of a

1679 grant. Applicants may request a 100 percent loan. The following terms shall apply to the loans,
1680 as well as other terms that are specified in the loan documents:

1681 i. Interest rate. Loans shall bear interest at a rate equal to the cost of borrowing to the
1682 Department of Treasury for obligations of comparable maturity. The applicable interest rate will
1683 be set at the time of each advance.

1684 ii. Repayment period. Unless the applicant requests a shorter repayment period,
1685 broadband loans must be repaid with interest within a period that, rounded to the nearest whole
1686 year, is equal to the expected Composite Economic Life of the assets to be financed, as
1687 determined by RUS based upon acceptable depreciation rates.

1688 iii. Amortization period. Interest begins accruing on the date of each loan advance and
1689 interest payments are due monthly. Upon completion of the build-out, or a date certain that is
1690 determined at closing, whichever occurs first, monthly principal payments will be established in
1691 an amount that amortizes the outstanding balance over the remaining term of the loan.

1692 iv. Fidelity bonding. Applicants must agree to obtain a fidelity bond for 15 percent of
1693 the loan amount. The fidelity bond must be obtained as a condition of loan closing. RUS may
1694 reduce the percentage required if it determines that 15 percent is not commensurate with the risk
1695 involved.

1696 v. Security. The loan portion of the award must be adequately secured, as determined
1697 by RUS.

1698 (1) The loan and loan/grant combination must be secured by the assets purchased with
1699 the loan or loan/grant funds, as well as all other assets of the applicant and any other signer of the
1700 loan documents that are available to be pledged to RUS.

1701 (2) RUS must be given an exclusive first lien, in form and substance satisfactory to RUS,
1702 on all of the assets purchased with the loan or loan/grant funds. RUS may share its first lien
1703 position with one or more lenders on a *pari passu* basis if security arrangements are acceptable to
1704 RUS.

1705 (3) Unless otherwise approved by the RUS, all property purchased with award funds
1706 must be owned by the awardee.

1707 (4) In the case of awards that include financing of facilities that do not constitute self-
1708 contained operating systems, the applicant shall furnish assurance, satisfactory to RUS, that
1709 continuous and efficient service at the broadband funding speed will be rendered.

1710 **2. BTOP**

1711 Administrative and national policy requirements for BTOP grant funding, inter alia, are
1712 contained in the Pre-Award Notification Requirements for Grants and Cooperative Agreements
1713 (DOC Pre-Award Notification), published in the Federal Register on February 11, 2008 (73 Fed.
1714 Reg. 7696), as amended. All BTOP applicants are required to comply with all applicable
1715 provisions set forth in the DOC Pre-Award Notification.

1716 **C. Award Terms and Conditions**

1717 **1. Scope**

1718 Awardees, including all contractors and subcontractors, are required to comply with the
1719 obligations set forth in the Recovery Act and the requirements established herein. Any
1720 obligation that applies to the awardee shall extend for the life of the awarded-funded facilities.

1721 **2. Sale or Lease of Project Assets**

1722 The sale or lease of any portion of the award-funded broadband facilities during their life
1723 is prohibited, except as provided herein. The agencies may approve a sale or lease if it is a. for

1724 adequate consideration; b. the purchaser or lessee agrees to fulfill the terms and conditions
1725 relating to the project after such sale or lease and c. either i. the sale or lease is set forth in the
1726 original application and is part of the applicant’s proposal for funds; or ii. the agencies waive this
1727 provision for any sale or lease occurring after the tenth year from the date of issuance of the
1728 grant, loan or loan/grant award. Awardees are required to notify the agencies in the event of a
1729 proposed transfer of award-funded facilities. Nothing in this section is meant to limit Broadband
1730 Infrastructure awardees from leasing facilities to another service provider for the provision of
1731 broadband services.

1732 **3. For BTOP Only, Access to Records for Audits, Site Visits, Monitoring and Law**
1733 **Enforcement Purposes**

1734 The Inspector General of the DOC, or any of his or her duly authorized representatives,
1735 and NTIA representatives, or any of their duly authorized representatives, shall have access to
1736 and the right to inspect the broadband system and any other property funded by the grant, any
1737 and all books, records, accounts, invoices, contracts, leases, payrolls, time sheets, canceled
1738 checks, statements, and other documents, papers and records of the parties to a grant, including
1739 their subsidiaries, if any, whether written, printed, recorded, produced, or reproduced by any
1740 electronic, mechanical, magnetic or other process or medium, in order to make audits,
1741 inspections, site visits, excerpts, transcripts, copies, or other examinations as authorized by law.
1742 An audit of an award may be conducted at any time.⁴¹

1743 **4. Broadband Data Collection**

1744

72 ⁴¹ Note that section 1515 of the Recovery Act also authorizes the Inspector General to examine records and
73 interview officers and employees of the grantee and other entities regarding the award of funds. See Recovery Act
74 § 1515, 123 Stat. at 289.

1745 All BTOP Broadband Infrastructure awardees that offer Internet access service to the
1746 public for a fee must agree to participate in the State Broadband Data and Development Grant
1747 Program pursuant to the BDIA and section 6001(I) of the Recovery Act. With respect to BIP
1748 awardees, RUS will provide to NTIA data supplied by awardees to support the development of
1749 the broadband mapping project conducted pursuant to section 6001(I) of the Recovery Act. This
1750 data would include :

1751 a. The availability of broadband service within service area. For wireline based
1752 systems, the form of the broadband (e.g., DSL) and the advertised speeds up and down available
1753 within the service area and the number of residents, small businesses, large businesses, and
1754 public facilities. For wireless based systems, the advertised and typical speeds up and down
1755 within the wireless' license area, and the spectrum on which its provided.

1756 b. The residential average revenue per user.

1757 c. The first point of aggregation for last mile connection points (e.g., remote terminals or
1758 cable headends).

1759 d. Middle mile/backbone interconnection points.

1760 e. A list of anchor institutions to which service is provided.

1761 **5. Certifications**

1762 a. The applicant must certify that he or she is authorized to submit the application on
1763 behalf of the eligible entity(ies) listed on the application, that the applicant has examined the
1764 application, that all of the information in the application, including certifications and forms
1765 submitted, all of which are part of the application, are material representations of fact and true
1766 and correct to the best of his or her knowledge, that the entity(ies) that is requesting funding
1767 pursuant to the application and any subawardees will comply with the terms, conditions,

1768 purposes, and federal requirements of the program; that no kickbacks were paid to anyone; and
1769 that a false, fictitious, or fraudulent statements or claims on this application is grounds for denial
1770 or termination of an award, and/or possible punishment by a fine or imprisonment as provided in
1771 18 U.S.C. § 1001 and civil violations of the False Claims Act (31 U.S.C. § 3729 *et seq.*);

1772 b. The applicant certifies that the entity(ies) he or she represents have and will comply
1773 with all applicable Federal, state, and local laws, rules, regulations, ordinances, codes, orders,
1774 and programmatic rules and requirements relating to the project.⁴² The applicant acknowledges
1775 that failure to do so may result in rejection or deobligation of the award. The applicant
1776 acknowledges that failure to comply with all federal and program rules could result in civil or
1777 criminal prosecution by the appropriate law enforcement authorities;

1778 c. If requesting BTOP funding, the applicant certifies that the entity(ies) he or she
1779 represents has and will comply with all applicable administrative and federal statutory,
1780 regulatory, and policy requirements set forth in the DOC Pre-Award Notification; DOC
1781 Financial Assistance Standard Terms and Conditions (Mar. 8, 2009); DOC American Recovery
1782 and Reinvestment Act Award Terms (Apr. 9, 2009); and any Special Award Terms and
1783 Conditions that are included by the Grants Officer in the award.

1784 **D. Reporting Requirements**

1785 **1. General Recovery Act Requirements**

1786 **a. OMB Reporting Requirements Implementing the Recovery Act**

1787 Any grant, loan, or loan/grant combination awarded under this NOFA shall be subject to
1788 the applicable statutes and regulations regarding reporting on Recovery Act funds.²⁵ If Recovery

75 ²⁴² See Recovery Act § 6001(e)(4), 123 Stat. at 514.

76 ²⁵⁴³ See, e.g., 2 CFR pt. 176; OMB, Interim Final Guidance for Federal Financial Assistance, 74 Fed. Reg. 18449
77 (Apr. 23, 2009); Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and
78 Reinvestment Act of 2009 (OMB M-09-21 June 22, 2009).

79

1789 Act funds are combined with other funds to fund or complete projects and activities, Recovery
1790 Act funds must be accounted for separately from other funds and reported to RUS or NTIA or
1791 any federal web site established for Recovery Act reporting purposes. Moreover, recipients of
1792 funds under this NOFA must also comply with the accounting requirements as established or
1793 referred to in this NOFA.

1794 **b. Required Data Elements**

1795 The awardee and each contractor engaged by the awardee must submit the following
1796 information to the relevant agency:

1797 i. The total amount of Recovery Act funds received;

1798 ii. The amount of Recovery Act funds received that were expended or obligated to
1799 projects or activities;

1800 iii. A detailed list of all projects or activities for which Recovery Act funds were
1801 expended or obligated, including (1) the name of the project or activity; 2) a description of the
1802 project or activity; (3) an evaluation of the completion status of the project or activity; 4) an
1803 estimate of the number of jobs created and the number of jobs retained by the project or activity;
1804 and 5) for infrastructure investments made by state and local governments, the purpose, total
1805 cost, and rationale of the agency for funding the infrastructure investment with Recovery Act
1806 funds, and name of the person to contact at the agency if there are concerns with the
1807 infrastructure investment; and

1808 iv. Detailed information on any subcontracts or subgrants awarded by the awardee to
1809 include the data elements required to comply with the Federal Funding Accountability and
1810 Transparency Act of 2006 (Pub. L. 109-282, 120 Stat. 1186 (to be codified at 31 U.S.C. § 6101
1811 note), allowing aggregate reporting on awards below \$25,000 or to individuals.⁴⁴

80 ⁴⁴ Recovery Act § 1512(c), 123 Stat. at 287.

1812 Awardees that must report information according to paragraph (iv) above (re:
1813 subcontracts or subgrants) must register with the CCR database (<http://www.ccr.gov/>) or
1814 complete other registration requirements as determined by the Director of OMB.

1815 **c. Reporting Deadlines**

1816 Recovery Act reports are due to the agencies ten days after the quarter in which the award
1817 was issued ends and, unless otherwise noted, each quarter thereafter until a final report is made at
1818 the end of three years. The final report should summarize the awardee's quarterly filings and
1819 state whether the project's goals have been satisfied. Pursuant to OMB Guidelines, reports
1820 should be submitted electronically to <http://www.federalreporting.gov>. If the awardee fails to
1821 submit an acceptable quarterly report or audited financial statement within the timeframe
1822 designated in the grant or loan award, the agencies may suspend further payments until the
1823 awardee complies with the reporting requirements. Additional information regarding reporting
1824 requirements will be specified at the time the award is issued.

1825 **2. BIP-Specific Reporting Requirements**

1826 In addition to the general Recovery Act reporting requirements, BIP awardees shall also
1827 report on the information requested below.

1828 a. Awardees must submit to RUS 30 calendar days after the end of each calendar year
1829 quarter, balance sheets, income statements, statements of cash flow, rate package summaries, and
1830 the number of customers taking broadband service on a per community basis utilizing RUS's
1831 Broadband Collection and Analysis System (BCAS). BCAS is electronic reporting system that
1832 is accessed through the Internet.

1833 b. Annually on January 31, starting the first January 31 after completion of the project,
1834 awardees must submit to RUS, using the electronic reporting system provided by RUS:

- 1835 i. Number of households and businesses subscribing to broadband service;
1836 ii. Number of households and businesses subscribing to broadband service that receive
1837 improved access; and
1838 iii. Number of educational, library, health care, and public safety providers receiving
1839 either new or improved access to broadband service.
1840 c. Awardee shall specifically state in the applicable quarter when they have received 67
1841 percent of the award funds. Reaching this threshold will indicate that the awardee has
1842 substantially completed its project.

1843 **3. BTOP-Specific Reporting Requirements**

1844 In addition to the general Recovery Act reporting requirements, BTOP awardees must
1845 also report quarterly on the information requested below.⁴⁵ The information requested will vary
1846 depending on the type of project being funded.

1847 **a. All BTOP Awardees**

1848 All BTOP awardees must report on:

- 1849 i. Their progress in achieving the project goals, objectives, and milestones as set forth in
1850 its application;
1851 ii. Expenditure of grant funds and how much of the award remains;
1852 iii. How much non-federal investment is being added to complete the project;
1853 iv. Whether the awardee is on schedule to substantially complete its projects within two
1854 years of the award and complete its project within three years of the award;
1855 v. The number and type of entities (as set forth in section 6001(b)(3) and (4) of the
1856 Recovery Act) receiving new access to broadband services; and

81 ⁵⁴⁵ See *id.* § 6001(i)(2), 123 Stat. at 515.

1857 vi The number and type of entities (as set forth in section 6001(b)(3) and (4) of the
1858 Recovery Act) receiving improved access to broadband services.

1859 Awardees shall specifically state in the applicable quarter when they have met 67 percent
1860 of their milestones and received 67 percent of their award funds. Reaching these thresholds will
1861 indicate that the awardees have “substantially completed” their projects consistent with the
1862 Recovery Act.⁴⁶

1863 **b. BTOP Broadband Infrastructure Awardees**

1864 Awardees receiving Last Mile or Middle Mile Broadband Infrastructure grants must
1865 report, for each specific BTOP project, on the following:

- 1866 i. The terms of any interconnection agreements entered into during the reporting period;
- 1867 ii. Traffic exchange relationships (*e.g.*, peering) and terms;
- 1868 iii. Broadband equipment purchases;
- 1869 iv. Total and peak utilization of access links;
- 1870 v. Total and peak utilization on interconnection links to other networks;
- 1871 vi. Internet protocol address utilization and IPv6 implementation;
- 1872 vii. . Any changes or updates to their network management practices;
- 1873 viii. Average end-user and middle mile megabit per second increase;
- 1874 ix. Availability of their broadband offering (including the technology used, location of
1875 infrastructure, area served, and the number of households passed);
- 1876 x. The total number of households and businesses subscribing to broadband service;
- 1877 xi. The number of households and businesses subscribing to new broadband service;
- 1878 xii. The number of households and businesses subscribing to broadband service that
1879 receive improved access;

82 ⁶⁴⁶ *Id.* § 6001(d)(3), 123 Stat. at 513.

1880 xiii. Advertised and averaged broadband speeds; and

1881 xiv. The price of the broadband services.

1882 **c. Public Computer Center Awardees**

1883 Awardees receiving Public Computer Center grants must report on:

1884 i. The number of work stations available to the public;

1885 ii. The total hours of operation per week that the public computer center is open;

1886 iii. The speed of broadband to the public computer center;

1887 iv. The primary uses of the public computer center;

1888 v. The average number of users per day in the public computer center;

1889 vi. The total hours per week of training provided at the public computer center; and

1890 viii. the number and cost of any broadband equipment deployed.

1891 **d. Sustainable Broadband Adoption Awardees**

1892 Awardees receiving Sustainable Broadband Adoption grants must report on:

1893 i. The technology being fostered;

1894 ii. Efforts to aggregate demand for each location, including the role of the local
1895 community;

1896 iii. The increase in the number of households, businesses, and community anchor
1897 institutions subscribing to broadband service;

1898 iv. The number and type of awareness campaigns provided, including the total number
1899 individuals reached; and

1900 v. The number and cost of any broadband customer premises equipment or end-user
1901 devices deployed.

1902 **X. Other Information**

1903 **A. Funding Rounds**

1904 Both agencies envision this as the first of three funding rounds. Subsequent rounds will
1905 be developed in part based on each agency's experience with this NOFA. While the fundamental
1906 nature of subsequent NOFAs is expected to remain similar, some additional targeting is
1907 anticipated. Potential applicants are urged to begin planning now in anticipation of future
1908 funding availability.

1909 **B. Discretionary Awards**

1910 The government is not obligated to make any award as a result of this announcement, and
1911 will fund only projects that are deemed likely to achieve the program's goals and for which funds
1912 are available.

1913 **C. Third Party Beneficiaries**

1914 The BTOP is a discretionary grant program that is not intended to and does not create any
1915 rights enforceable by third party beneficiaries.

1916 **D. Limitation on Expenditures**

1917 The Recovery Act imposes an additional limitation on the use of funds expended or
1918 obligated from appropriations made pursuant to its provisions. Specifically, for purposes of this
1919 NOFA, none of the funds appropriated or otherwise made available under the Recovery Act may
1920 be used by any state or local government, or any private entity, for any casino or other gambling
1921 establishment, aquarium, zoo, golf course, or swimming pool.⁴⁷

1922 **E. Recovery Act Logo**

1923 All projects that are funded by the Recovery Act shall display signage that features the
1924 Primary Emblem throughout the construction phase. The signage should be displayed in a

83 ⁷⁴⁷ *Id.* § 1604, 123 Stat. at 303.

1925 prominent location on site. Some exclusions may apply. The Primary Emblem should not be
1926 displayed at a size less than six inches in diameter.

1927 **F. Environmental and National Historic Preservation Requirements**

1928 Awarding agencies are required to analyze the potential environmental impacts, as
1929 required by the NEPA and the NHPA for applicant projects or proposals seeking Recovery Act
1930 funding. All applicants are required to complete the Environmental Questionnaire under the
1931 description of program activities and to submit all other required environmental documentation
1932 during step two of the application process.

1933 It is the applicant's responsibility to obtain all necessary federal, state, and local
1934 governmental permits and approvals necessary for the proposed work to be conducted.
1935 Applicants are expected to design their projects so that they minimize the potential for adverse
1936 impacts to the environment. Applicants also will be required to cooperate with the granting
1937 agencies in identifying feasible measures to reduce or avoid any identified adverse
1938 environmental impacts of their proposed projects. The failure to do so may be grounds for not
1939 making an award.

1940 Applications will be reviewed to ensure that they contain sufficient information to allow
1941 agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be
1942 submitted to the agencies, along with the recommendation for funding of the selected
1943 applications. Applicants proposing activities that cannot be covered by existing environmental
1944 compliance procedures will be informed after the technical review stage whether NEPA
1945 compliance and other environmental requirements can otherwise be expeditiously met so that a
1946 project can proceed within the timeframes anticipated under the Recovery Act.

1947 If additional information is required after an application is accepted for funding, funds can
1948 be withheld by the agencies under a special award condition requiring the awardee to submit
1949 additional environmental compliance information sufficient for the agency to make an
1950 assessment of any impacts that a project may have on the environment.

1951 **G. Davis-Bacon Wage Requirements**

1952 Pursuant to section 1606 of the Recovery Act, any project using Recovery Act funds
1953 requires the payment of not less than the prevailing wages for “all laborers and mechanics
1954 employed by contractors and subcontractors on projects funded directly by or assisted in whole
1955 or in part by and through the Federal Government.”⁴⁸

1956 **H. Financial and Audit Requirements**

1957 To maximize the transparency and accountability of funds authorized under the Recovery
1958 Act, all applicants are required to comply with the applicable regulations set forth in OMB’s
1959 Interim Final Guidance for Federal Financial Assistance.⁴⁹

1960 Recipients that expend \$500,000 or more of federal funds during their fiscal year are
1961 required to submit an organization-wide financial and compliance audit report. The audit must
1962 be performed in accordance with the U.S. General Accountability Office, Government Auditing
1963 Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and OMB Circular A-133, Audits
1964 of States, Local Governments, and Non-Profit Organizations, located at
1965 <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. Awardees are responsible for
1966 ensuring that sub-recipient audit reports are received and for resolving any audit findings.

84 ⁸⁴⁸ *Id.* § 1606, 123 Stat. at 303.

85 ⁹⁴⁹ *See* OMB, Interim Final Guidance for Federal Financial Assistance, 74 Fed. Reg. 18449 (Apr. 23, 2009).

1967 **I. Deobligation**

1968 The RUS and NTIA reserve the right to deobligate awards to recipients under this NOFA
1969 that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, and
1970 award these funds competitively to new or existing applicants.

1971 **J. Confidentiality of Applicant Information.**

1972 Applicants are encouraged to identify and label any confidential and proprietary
1973 information contained in their applications. The agencies will protect confidential and
1974 proprietary information from public disclosure to the fullest extent authorized by applicable law,
1975 including the Freedom of Information Act, as amended (5 U.S.C. § 552), the Trade Secrets Act,
1976 as amended (18 U.S.C. § 1905), and the Economic Espionage Act of 1996 (18 U.S.C. § 1831 *et*
1977 *seq.*). Applicants should be aware, however, that the Recovery Act requires substantial
1978 transparency. For example, RUS and NTIA are required to make publicly available on the
1979 Internet a list of each entity that has applied for a grant, a description of each application, the
1980 status of each application, the name of each entity receiving funds, the purpose for which the
1981 entity is receiving the funds, each quarterly report, and other information.⁵⁰

1982 **K. Policy on Sectarian Activities**

1983 NTIA encourages applications from faith-based organizations. On December 22, 1995,
1984 NTIA issued a Notice in the Federal Register on its policy with regard to sectarian activities.
1985 Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an
1986 application will be eligible for a grant under this program where sectarian activities are only
1987 incidental or attenuated to the overall project purpose for which funding is requested. Applicants
1988 for whom this policy may be relevant can access it through the Federal Register at 60 Fed. Reg.
1989 66491 (Dec 22, 1995).

86 ⁵⁰ See Recovery Act § 6001(i)(5), 123 Stat. at 515.

1990 **L. Disposition of Unsuccessful Applications**

1991 Applications accepted for review for the Fiscal Year 2009 BIP and BTOP programs will
1992 be retained for two years, after which they will be destroyed.

1993 **M. State Certifications**

1994 With respect to funds made available under Recovery Act to state or local governments
1995 for infrastructure investments, the governor, mayor, or other chief executive, as appropriate,
1996 must certify that the infrastructure investment has received the full review and vetting required
1997 by law and that the chief executive accepts responsibility that the infrastructure investment is an
1998 appropriate use of taxpayer dollars. This certification must include a description of the
1999 investment, the estimated total cost, and the amount of funds to be used, and must be posted on
2000 the recipient’s website and linked to <http://www.recovery.gov>. A state or local agency may not
2001 receive infrastructure investment funding from funds made available under the Recovery Act
2002 unless this certification is made and posted.⁵¹

2003 **N. Waiver Authority**

2004 It is the general intent of NTIA not to waive any of the provisions set forth in this NOFA.
2005 However, under extraordinary circumstances and when it is in the best interest of the Federal
2006 government, NTIA, upon its own initiative or when requested, may waive the provisions in this
2007 NOFA. Waivers may only be granted for requirements that are discretionary and not mandated
2008 by statute or other applicable law. Any request for a waiver must set forth the extraordinary
2009 circumstances for the request and be included in the application or sent to the address provided in
2010 section VI.E.

87 ¹⁵¹ See *id.* §§ 1511, 1526, 123 Stat. at 287, 293.

2011 **O. Compliance with Applicable Laws**

2012 Any recipient of funds under this NOFA shall be required to comply with all applicable
2013 federal and state laws, including but not limited to: i. The nondiscrimination and equal
2014 employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended
2015 (42 U.S.C. § 2000e *et seq.*, 7 CFR pt. 15); ii. section 504 of the Rehabilitation Act (29 U.S.C. §
2016 794 *et seq.*; 7 CFR pt. 15b); iii. The Age Discrimination Act of 1975, as amended (42 U.S.C. §
2017 6101 *et seq.*; 45 CFR pt. 90); iv. Executive Order 11375, amending Executive Order 11246,
2018 Relating to Equal Employment Opportunity (3 CFR pt. 102). *See* 7 CFR pts. 15 and 15b and 45
2019 CFR pt. 90, RUS Bulletin 1790-1 (“Nondiscrimination among Beneficiaries of RUS Programs”),
2020 and RUS Bulletin 20-15:320-15 (“Equal Employment Opportunity in Construction Financed
2021 with RUS Loans”). The RUS Bulletins are available at <http://www.broadbandusa.gov>; v. The
2022 Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*); vi. The Uniform
2023 Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6); and vii. The
2024 Council on Environmental Quality Regulations for Implementing the Procedural Provisions of
2025 NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders
2026 found in 7 CFR1794. A more complete list of such requirements can be found in the applicable
2027 grant agreement or loan contract.

2028 **P. Communications Laws**

2029 Awardees, and in particular, Broadband Infrastructure awardees, will be required to
2030 comply with all applicable federal and state communications laws and regulation as applicable,
2031 including, for example, the Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*)
2032 the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996), and the

2033 Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*) (CALEA). For
2034 further information, see <http://www.fcc.gov>.

2035 **Q. Buy American Notice**

2036 **1. General Prohibition and Waiver**

2037 None of the funds appropriated or otherwise made available by the Recovery Act may be
2038 used for the construction, alteration, maintenance, or repair of a public building or public work
2039 (as such terms are defined in 2 CFR § 176.140) unless all of the iron, steel, and manufacturing
2040 goods used in the project are produced in the United States.⁵² On July 1, 2009, the Department
2041 of Agriculture and the Department of Commerce published notices in the Federal Register
2042 stating that the Secretary of Agriculture and Secretary of Commerce have separately reached
2043 conclusions that applying the Buy American provision for the use of certain broadband
2044 equipment in public BIP and BTOP projects would be inconsistent with the public interest.
2045 As explained below, to the extent that an applicant wishes to use broadband equipment or goods
2046 that are not covered by the Secretaries' waivers, it may seek an additional waiver on a case-by-
2047 case basis as part of its application for Recovery Act funds.

2048 **2. OMB Buy American Notice Requirement**

2049 Pursuant to OMB guidance on the Recovery Act,^{53 4} RUS and NTIA are required to
2050 provide the following notice:

2051 **§ 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods**
2052 **(covered under International Agreements)—Section 1605 of the American Recovery**
2053 **and Reinvestment Act of 2009.**

2054 When requesting applications or proposals for Recovery Act programs or activities that

88 ⁵² *Id.* § 1605, 123 Stat. at 303.

89 ⁴ See 2 CFR pt. 176.

2055 may involve construction, alteration, maintenance, or repair of a public building or public
2056 work, and involve iron, steel, and/or manufactured goods covered under international
2057 agreements, the agency shall use the notice described in the following paragraphs in the
2058 solicitation:

2059 (a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron,*
2060 *steel, and/or manufactured good, manufactured good, public building and public work,*
2061 *and steel, as used in this provision, are defined in 2 CFR 176.160(a).*

2062 (b) *Requests for determinations of inapplicability.* A prospective applicant requesting a
2063 determination regarding the inapplicability of section 1605 of the American Recovery
2064 and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request
2065 to the award official in time to allow a determination before submission of applications or
2066 proposals. The prospective applicant shall include the information and applicable
2067 supporting data required by 2 CFR 176.160 (c) and (d) in the request. If an applicant has
2068 not requested a determination regarding the inapplicability of section 1605 of the
2069 Recovery Act before submitting its application or proposal, or has not received a
2070 response to a previous request, the applicant shall include the information and supporting
2071 data in the application or proposal.

2072 (c) *Evaluation of project proposals.* If the Federal Government determines that an
2073 exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods
2074 applies, the Federal Government will evaluate a project requesting exception to the
2075 requirements of section 1605 of the Recovery Act by adding to the estimated total cost of
2076 the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are
2077 used based on unreasonable cost of comparable domestic iron, steel, or manufactured

2078 goods.

2079 (d) *Alternate project proposals.*

2080 (1) When a project proposal includes foreign iron, steel, and/or manufactured goods,
2081 other than designated country iron, steel, and/or manufactured goods, that are not listed
2082 by the Federal Government in this Buy American notice in the request for applications or
2083 proposals, the applicant may submit an alternate proposal based on use of equivalent
2084 domestic or designated country iron, steel, and/or manufactured goods.

2085 (2) If an alternate proposal is submitted, the applicant shall submit a separate cost
2086 comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for
2087 the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods
2088 for which the Federal Government has not yet determined an exception applies.

2089 (3) If the Federal Government determines that a particular exception requested in
2090 accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate
2091 only those proposals based on use of the equivalent domestic or designated country iron,
2092 steel, and/or manufactured goods, and the applicant shall be required to furnish such
2093 domestic or designated country items.

2094 **R. Executive Order 12866**

2095 This notice has been determined to be “economically significant” under Executive Order
2096 12866. The Recovery Act appropriates \$4.7 billion to NTIA for broadband grants and other
2097 purposes. The Recovery Act also appropriates \$2.5 billion to RUS for broadband grants and
2098 loans. Awards must be made no later than September 30, 2010. In accordance with Executive
2099 Order 12866, an economic analysis was completed outlining the costs and benefits of
2100 implementing each of these programs. The complete analyses are available from RUS and

2101 NTIA, respectively, upon request.

2102 **S. Executive Order 13132**

2103 It has been determined that this notice does not contain policies with federalism
2104 implications as that term is defined in Executive Order 13132.

2105 **T. Administrative Procedure Act Statement**

2106 This NOFA is being issued without advance rulemaking or public comment. The
2107 Administrative Procedure Act of 1946, as amended (5 U.S.C. § 553) (APA), has several
2108 exemptions to rulemaking requirements. Among them is an exemption for “good cause” found
2109 at 5 U.S.C. § 553(b)(B), which allows effective government action without rulemaking
2110 procedures where withholding the action would be “impracticable, unnecessary, or contrary to
2111 the public interest.”

2112 USDA and the DOC have determined, consistent with the APA that making these funds
2113 available under this NOFA for broadband development, as mandated by the Recovery Act, is in
2114 the public interest. Given the emergency nature of the Recovery Act and the extremely short
2115 time period within which all funds must be obligated, withholding this NOFA to provide for
2116 public notice and comment would unduly delay the provision of benefits associated with these
2117 broadband initiatives and be contrary to the public interest.

2118 For the same reasons, the agencies find good cause under 5 U.S.C. § 553(d)(3) to waive
2119 the 30-day delay in effectiveness for this action. Because notice and opportunity for comment
2120 are not required pursuant to 5 U.S.C. § 553(d)(3) or any other law, the analytical requirements of
2121 the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) are inapplicable.
2122 Therefore, a regulatory flexibility analysis is not required and has not been prepared.

2123 **U. Congressional Review Act**

2124 NTIA has submitted this NOFA to the Congress and the Government Accountability
2125 Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. § 801 *et seq.* It
2126 has been determined that this NOFA is a “major action” within the meaning of the Act because it
2127 will result in an annual effect on the economy of \$100,000,000 or more. This NOFA sets out the
2128 administrative procedures for making grants, loans, and loan/grant combinations totaling \$3
2129 billion to implement a nationwide broadband initiative to expand the reach and quality of
2130 broadband services in the United States.

2131 With funds made available through the Recovery Act, BIP will provide \$2.5 billion of
2132 budget authority for RUS to extend grants, loans, and loan/grant combinations to facilitate
2133 broadband deployment in rural areas. At the same time, BTOP will provide \$4.7 billion through
2134 NTIA to provide broadband grants throughout the United States for unserved and underserved
2135 communities, to increase public computer center capacity, and to encourage sustainable adoption
2136 of broadband services. The Recovery Act provides that BTOP awards must be made no later
2137 than September 30, 2010. Moreover, projects funded under these programs must be substantially
2138 completed no later than two years following the date of issuance of the award. A 60-day delay in
2139 implementing this NOFA would hamper RUS and NTIA’s missions to expeditiously provide
2140 assistance to eligible entities to begin and complete projects within the statutory requirements of
2141 the Recovery Act.

2142 Thus, RUS and NTIA find good cause under 5 U.S.C. § 808(2) that prior notice and
2143 public procedure are impracticable, unnecessary, and contrary to the public interest. To the
2144 extent that RUS and NTIA provided a 60-day delay in effectiveness pursuant to the
2145 Congressional Review Act, the agencies would not be able to execute the statutory duties

2146 required by the Recovery Act in a timely manner. This finding is consistent with the objectives
2147 of the Recovery Act, which specifically provides clear preferences for rapid agency action and
2148 quick-start activities designed to spur job creation and economic benefit. Accordingly, this
2149 NOFA shall take effect upon publication in the Federal Register.

2150 **V. Paperwork Reduction Act-**

2151 **1. Reporting and Registration Requirement under Section 1512 of the Recovery Act**

2152 a. This award requires the recipient to complete projects or activities which are funded
2153 under the Recovery Act and to report on use of Recovery Act funds provided through this award.
2154 Information from these reports will be made available to the public.

2155 b. The first report is due no later than ten calendar days after the initial calendar quarter
2156 in which the recipient receives the assistance award funded in whole or in part by the Recovery
2157 Act, or by October 10, 2009. Thereafter, reports shall be submitted no later than the tenth day
2158 after the end of each calendar quarter.

2159 c. Recipients and their first-tier recipients must maintain current registrations in the
2160 CCR (<http://www.ccr.gov>.) at all times during which they have active federal awards funded
2161 with Recovery Act funds. A DUNS number is one of the requirements for registration in the
2162 CCR.

2163 d. The recipient shall report the information described in section 1512(c) using the
2164 reporting instructions and data elements that will be provided online at
2165 <http://www.FederalReporting.gov>, unless the information is pre-populated.

2166 **2. Agencies' Additional Paperwork Reduction Act Analysis**

2167 Copies of all forms, regulations, and instructions referenced in this NOFA may be
2168 obtained from RUS or NTIA. Data furnished by the applicants will be used to determine

2169 eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide
2170 data could result in program benefits being withheld or denied.

2171 The collection of information is vital to RUS and NTIA to ensure compliance with the
2172 provisions of this Notice and to fulfill the requirements of the Recovery Act. In summary, the
2173 collection of information is necessary in order to implement this program.

2174 The following estimates are based on the average over the first three years the program is
2175 in place.

2176 BIP Infrastructure:

2177 Estimate of Burden: Public reporting burden for this collection of information is
2178 estimated to average 116 hours per response.

2179 Respondents: Business or other for profits; Not-for-profit institutions; and State, local,
2180 and Tribal.

2181 Estimated Number of Respondents: 500

2182 Estimated Number of Responses per Respondent: 3.28

2183 Estimated Number of Responses: 1,639

2184 Estimated Total Annual Burden (hours) on Respondents: 189,837

2185 BTOP Infrastructure:

2186 Estimate of Burden: Public reporting burden for this collection of information is
2187 estimated to average 117 hours per response.

2188 Respondents: 1,500

2189 Estimated Number of Respondents: 1,500

2190 Estimated Number of Responses per Respondent: 2.11

2191 Estimated Number of Responses: 3,164

2192 Estimated Total Annual Burden (hours) on Respondents: 371,187

2193 Public Computer Center

2194 Estimate of Burden: Public reporting burden for this collection of information is

2195 estimated to average 47.6 hours per response.

2196 Respondents: 2500

2197 Estimated Number of Respondents: 2500

2198 Estimated Number of Responses per Respondent: 1.1

2199 Estimated Number of Responses: 2750

2200 Estimated Total Annual Burden (hours) on Respondents: 130,750

2201 Sustainable Adoption

2202 Estimate of Burden: Public reporting burden for this collection of information is

2203 estimated to average 23.9 hours per response.

2204 Respondents: 2500

2205 Estimated Number of Respondents: 2500

2206 Estimated Number of Responses per Respondent: 1.1

2207 Estimated Number of Responses: 2750

2208 Estimated Total Annual Burden (hours) on Respondents: 65,750

2209 Copies of this information collection can be obtained from Michele Brooks, Rural

2210 Utilities Service, at (202) 690-1078 and Gwellnar Banks, DOC/OS, at (202) 482-3781.

2211 *Comments.* Comments are invited regarding: (a) whether the proposed collection of

2212 information is necessary for the proper performance of the functions of RUS or NTIA, including

2213 whether the information will have practical utility; (b) the accuracy of the agencies' estimate of

2214 the burden of the proposed collection of information including the validity of the methodology

2215 and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be
2216 collected; and (d) ways to minimize the burden of the collection of information on those who are
2217 to respond, including through the use of appropriate automated, electronic, mechanical, or other
2218 technological collection techniques or other forms of information technology. Comments for
2219 BIP may be sent to Michele Brooks, Rural Utilities Service, USDA, Rural Development, Stop
2220 1530, 1400 Independence Ave., SW, Washington, DC 20250-1530 and for BTOP to Gwellnar
2221 Banks, 1401 Constitution Avenue, N.W., Washington, D.C. 20230. All responses to this Notice
2222 will be summarized and included in the request for OMB approval. All comments will also
2223 become a matter of public record.

2224 The grant application forms for BTOP Infrastructure, Public Computer Centers, and
2225 Sustainable Broadband Adoption projects and the subsequent step two filing are being reviewed
2226 and will be approved by the Office of Management and Budget under the Paperwork Reduction
2227 Act of 1995. OMB control numbers will be assigned and published in separate Federal Register
2228 notices. Notwithstanding any other provision of law, no person is required to respond to, nor
2229 shall any person be subject to a penalty for failure to comply with a collection of information
2230 subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB
2231 Control Number.

2232 **W. Recovery Act**

2233 Additional information about the Recovery Act is available at <http://www.Recovery.gov>.

2234 **X. Authorized Signatories**

2235 Only authorized grant and loan officers can bind the Government to the expenditure of
2236 funds.

2237

2238 **Appendix to Notice of Funds Availability – Broadband Initiatives Program and**
2239 **Broadband Technology Opportunities Program**

2240 **Policy Justification**

2241
2242 **Definition of “Broadband”**

2243
2244 BTOP contains five core purposes, all of which relate to deployment of, access to, or
2245 support for “broadband service.”²⁵ The Recovery Act does not expressly define the term
2246 “broadband,” instead it tasks NTIA with defining what constitutes a “broadband service” eligible
2247 for BTOP support. The Recovery Act expands RUS’s existing authority to make loans and
2248 provides new authority to make grants to facilitate broadband deployment in rural areas. Thus,
2249 the term “broadband” figures prominently in both agencies’ statutory purposes and requires that
2250 RUS and NTIA agree to a common understanding of the term.

2251 Most commenters suggest a minimum transmission speed, ranging from 200 kilobits per
2252 second (kbps)²⁶ to over 100 megabits per second (mbps).²⁷ A substantial contingent encourage
2253 NTIA to adopt a minimum speed of 768 kbps downstream, equivalent to the “Tier 1” threshold
2254 in the current FCC broadband data collection process.²⁸ Many commenters encourage additional
2255 consideration for applicants promising speeds greater than the minimum.²⁹ Some commenters
2256 prefer that NTIA evaluate speed against the project’s overall benefits,³⁰ establish different speeds

90 ²⁵ See Recovery Act § 6001(b), 123 Stat. at 512.

91 ²⁶ See Harris Corp. at 8–9 (Apr. 13, 2009); Independent Telephone & Telecommunications Alliance (ITTA) at 4
92 (Apr. 13, 2009).

93 ²⁷ See Virginia Internet Service Providers Alliance at 5 (Apr. 10, 2009).

94 ²⁸ See, e.g., Farmers Mutual Telephone Company (Farmers Mutual) at 12 (Apr. 13, 2009); Motorola, Inc. at 9 (Apr.
95 13, 2009); Gardonville Cooperative Telephone Association (Gardonville Coop.) at 12 (Apr. 13, 2009); Northern
96 Valley Communications (Northern Valley) at 10 (Apr. 13, 2009); AT&T at 10–11 (Apr. 13, 2009); Progress &
97 Freedom Foundation at 5 (Apr. 10, 2009); Telecommunications Industry Association (TIA) at 13 (Apr. 10, 2009);
98 Free Press at 13 (Apr. 13, 2009) (proposing a reduction in points for “networks that are highly asymmetric”);
99 WildBlue Communications at 4–5 (Apr. 13, 2009); Harris Corp. at 8–9; Alcatel-Lucent Corp. (Alcatel-Lucent) at 27
100 (Apr. 13, 2009); Western Telecommunications Alliance at 4–5 (Apr. 10, 2009); Cricket Communications (Cricket)
101 at 8 (Apr. 13, 2009).

102 ²⁹ See, e.g., AT&T at 10–11.

103 ³⁰ See, e.g., Native American Telecom at 5 (Apr. 13, 2009); Alaska Communications Systems at 10 (Apr. 13, 2009).

2257 for rural and urban areas,³¹ or establish different speeds for different price points.³² Some
2258 wireless providers argue for different speed thresholds for wireless and fixed services.³³ Other
2259 commenters favor a definition of broadband based upon the applications that would be
2260 supported.³⁴ A number of commenters favor symmetrical speeds,³⁵ but many providers claim
2261 that asymmetrical technologies are often more cost effective and efficient.³⁶ Several commenters
2262 encourage NTIA to consider latency in addition to bandwidth when evaluating proposals.³⁷
2263 Several also encourage NTIA to consider not only current demand, but also the needs of future
2264 consumers.³⁸

2265 RUS and NTIA conclude that “broadband service” should be defined as the provision of
2266 two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps)
2267 downstream and 200 kbps upstream to end users, or providing sufficient capacity in a Middle
2268 Mile project to support the provision of broadband service to end users.

104 ³¹ See, e.g., Joe Cremin of Starwire Technologies in webform (Apr. 8, 2009).

105 ³² See, e.g., Rural Telecommunications Congress at 9 (Apr. 13, 2009).

106 ³³ See, e.g., Wireless Communications Association International, Inc. (WCA) at 3 (Apr. 9, 2009); Utopian Wireless
107 Corp. at 3 (Apr. 13, 2009); Alvarion, Inc. at 9 (Apr. 14, 2009).

108 ³⁴ See, e.g., Buck Graham of Occam Networks (Graham) in webform (recommending 5 Mbps bi-directional) (Mar.
109 18, 2009); EvenLink, LLC at 3 (Apr. 13, 2009) (advocating a standard of 5 mbps bi-directional, but suggesting a
110 lower-speed definition for rural areas); William Wells Jr. of True Broadband Networks (Wells) (Mar. 17, 2009)
111 (advocating a standard of 10 mbps bi-directional to “allow real-time bi-directional transmission of simultaneous
112 voice, video and data services”).

113 ³⁵ See, e.g., Link Shadley at 1 (Mar. 20, 2009); Stratum Broadband at 32 (Mar. 31, 2009); Univ. of Nebraska at 6
114 (Apr. 10, 2009); Graham at webform; Wells at webform; U.S. TelePacific *et al.* at 3–4, 6 (Apr. 13, 2009) (discussing
115 business users’ need for symmetrical speeds for video conferencing, multiline VOIP, web hosting, and large
116 email files).

117 ³⁶ See, e.g., ITTA at 35–36 (arguing that an asymmetrical threshold would be “consistent with the preferences
118 expressed by consumers and providers alike through their behavior in the market”); WCA at 12 (“requiring
119 symmetrical speeds for all product markets would disserve consumers and would not be technologically neutral”);
120 Starwire at webform; General Communication, Inc. (GCI) at 14–15 (Apr. 13, 2009); NetAccess System
121 Technologies (NetAccess) at 9 (Apr. 10, 2009).

122 ³⁷ See, e.g., Regulatory Commission of Alaska at 12 (Apr. 13, 2009); Michael Blair of Blair Technologies at
123 webform; Univ. of Nebraska at 2 (stating that grant selection “[c]riteria should include speed, price/Mbps, latency,
124 reliability, interoperability, coverage, sustainability, current capacity and growth capacity”); Libbey Scheible of
125 INOSS, Inc. (INOSS) at 6–7, 10 (suggesting a minimum latency of 20 milliseconds) (Apr. 10, 2009); ADTRAN at
126 Appendix 1 (Apr. 13, 2009).

127 ³⁸ See, e.g., Montana Independent Telecom Systems at 3 (referring to “the anticipated requirements for tomorrow’s
128 applications and consumers”) (Apr. 13, 2009); Fiber Tower Corp. at 11–12 (Apr. 13, 2009).

2269 RUS and NTIA favor this broadband speed threshold because it leverages the FCC’s
2270 expertise, utilizes an established standard, facilitates the use of many currently common
2271 broadband applications (*e.g.*, web browsing, VOIP, and one-way video), allows for consideration
2272 of cost-effective solutions for difficult-to-serve areas, and is the most technology-neutral option
2273 (because it encompasses all major wired and wireless technologies). For these same reasons,
2274 RUS and NTIA decline to impose a latency requirement or technology-specific definitions. RUS
2275 and NTIA intend to provide additional consideration to applications exceeding the minimum
2276 speed threshold or offering superior upgradeability. This approach offers the greatest flexibility
2277 for the agencies and simplicity for applicants, while still expressing a preference for higher-
2278 capacity projects. An area that has access to service at 768 kbps may still qualify as
2279 “underserved,” and an area that has only high-latency satellite service will still qualify as
2280 “unserved.”

2281 **Definition of “Unserved”**

2282

2283 One of the five core purposes of BTOP is “to provide access to broadband service to
2284 consumers residing in unserved areas of the United States.”³⁹ The Recovery Act does not
2285 expressly define the term “unserved,” instead it tasks NTIA with developing a definition that
2286 targets specific geographic areas and advances the program’s purposes. Grants under RUS’s
2287 Broadband Initiatives Program (BIP) are to be used to provide funds to applications proposing to
2288 exclusively serve remote, “unserved” rural areas.

129 ³⁹ Recovery Act § 6001(b)(1), 123 Stat. at 512.

2289 The majority of commenters favor defining “unserved area” as a whole area lacking
2290 access to a certain quality of Internet service,⁴⁰ or lacking access to technologies other than dial-
2291 up and satellite service.⁴¹ Some commenters, however, offer definitions based on a percentage of
2292 the population lacking such access.⁴² Some suggest that an area should be considered unserved if
2293 no mobile wireless broadband service is available.⁴³ Finally, still others encourage the adoption
2294 of a definition of “unserved area” that encompasses communities where broadband infrastructure
2295 is available, but where barriers such as affordability effectively prevent residents from receiving
2296 broadband service.⁴⁴

2297

2298 RUS and NTIA conclude that an appropriate definition of “unserved area” is a proposed
2299 funded service area (*i.e.*, one or more contiguous census blocks, as discussed below) where at
2300 least 90 percent of households lack access to facilities-based, terrestrial broadband service, either
2301 fixed or mobile, at the minimum broadband transmission speed of 768 kbps downstream and 200
2302 kbps upstream. A household has access to such broadband service if it can readily subscribe to
2303 that service upon request.

2304

130 ⁴⁰ *See, e.g.*, Farmers Mutual at 12 (less than 768 kbps bi-directional peak load); American Fiber Systems at 4 (Apr.
131 13, 2009) (10 mbps or less from 2 or fewer providers); ATSI Communications, Inc. at 11 (Apr. 13, 2009) (no
132 provider of duplex broadband at more than 256 kbps in either direction).

133 ⁴¹ *See, e.g.*, Alaska Federation of Natives at 8 (Apr. 13, 2009); Michigan Public Service Commission (Michigan
134 PSC) at 19 (Apr. 13, 2009); Communications Workers of America (CWA) at 21–22 (Apr. 13, 2009); Univ. of
135 Nebraska at 1; NetAccess at 9.

136 ⁴² *See, e.g.*, XO Communications, LLC and Nextlink Wireless, Inc. (XO and Nextlink) at 7 (Apr. 13, 2009) (90% of
137 consumers to be served lack access to a provider of Current Generation Broadband Transmission Service, to be
138 defined separately for wireline/fixed access and mobile wireless); Premium Choice Broadband at 3 (less than 25%
139 availability of 768 kbps); Fiber-to-the-Home Council (FTTH Council) at 9 (Apr. 13, 2009) (20% lack access to
140 broadband).

141 ⁴³ *See, e.g.*, WCA at 10.

142 ⁴⁴ *See, e.g.*, City and County of San Francisco (San Francisco) at 25 (Apr. 13, 2009) (“If broadband service is not
143 affordable, it effectively is not available.”); Institute for Local Self-Reliance at 8 (Apr. 13, 2009).

2305 Defining an unserved area by reference to the definition of broadband that RUS and
2306 NTIA adopt will ensure consistency between the needs in areas targeted for infrastructure
2307 funding and the improved access that will be provided by infrastructure projects that receive
2308 grants. RUS and NTIA believe that a definition requiring that 100 percent of households lack
2309 access to broadband service could prove overly restrictive and risk inadvertently excluding
2310 populations that should properly fall within the “unserved” definition. For example, an area
2311 should not be considered served merely because one or two households in that area have access
2312 to broadband service. Establishing a 90 percent threshold acknowledges that a *de minimis* level
2313 of broadband service may exist in portions of the area, while also seeking to minimize the risk of
2314 unintentionally excluding an entire area from funding under the BTOP program.

2315

2316 RUS and NTIA do not include existing satellite service in defining whether a given area
2317 is unserved, even though such service may meet the threshold speed level to qualify as
2318 broadband service under the definition adopted in this NOFA. Because the general reach of
2319 satellite service can extend to the entire country, it is excluded as a factor in the unserved
2320 definition to avoid a finding that no area in the United States would be considered unserved.
2321 Such a finding would render the term meaningless.

2322

2323 **Definition of “Underserved”**

2324

2325 Another of BTOP’s five core purposes is to “provide improved access to broadband
2326 service to consumers residing in underserved areas of the United States.”⁴⁵ The term
2327 “underserved” is not a common term in telecommunications, although it is commonly applied in

144 ⁴⁵ Recovery Act § 6001(b)(2), 123 Stat. at 512.

2328 other fields, such as healthcare, education, social services and retail, to denote populations
2329 lacking access to critical services. As with the “unserved” definition, the Recovery Act does not
2330 define “underserved,” instead it tasks NTIA with developing a definition that targets specific
2331 geographic areas and advances the program’s purposes. Under RUS’s BIP program, loan and
2332 loan/grant combination funds are to be used to provide funding to applications proposing to serve
2333 non-remote and “underserved” rural areas.

2334

2335 The majority of commenters favor definitions based on one or more of the following
2336 factors: availability of broadband service at a certain threshold speed,⁴⁶ affordability,⁴⁷ number
2337 of broadband service providers,⁴⁸ and subscribership or adoption rates.⁴⁹ Some commenters also
2338 suggest definitions that would include areas where major community institutions lack sufficient
2339 broadband access.⁵⁰ Several others also encourage the agencies to consider the particular needs

145 ⁴⁶ See, e.g., American Fiber Systems at 4 (defining “underserved area” as a “geographical area where 90% or less of
146 the population currently has access to a service at a speed less than 100 megabits from a single provider”);
147 Gardonville Coop. at 12 (defining “underserved area” as an area “currently only able to receive broadband service at
148 a speed of 768Kbps to less than 12Mbps, bi-directional, during peak – hour load”); WCA at 4 (suggesting that a
149 market is underserved if it “does not have access to mobile wireless broadband capable of delivering at least 3 mbps
150 downlink and 768 kbps uplink speeds”); Nebraska Rural Independent Companies at 9 (Apr. 13, 2009) (defining
151 “underserved area” as “any geographical area . . . where only broadband service with download speeds between
152 56Kbps and 768Kbps exist today”); National Cable & Telecommunications Association (NCTA) at 23 (Apr. 13,
153 2009) (“An ‘underserved area’ should be defined as an area where no households have access to at least one
154 provider of Internet access with current generation broadband transmission speeds, e.g., maximum transmission
155 speeds of at least 3 Mbps downstream and 768 kbps upstream. Satellite broadband service, which already is
156 available throughout most of the country, should not be considered in applying this definition.”).

157 ⁴⁷ See, e.g., National Association of Telecommunications Officers and Advisors (NATOA) at 34 (“Unaffordable
158 broadband services are unavailable.”); Cricket at 3 (“For millions of Americans . . . both wireline and wireless
159 service options may be available just outside their door, but they nevertheless remain hopelessly out of reach at
160 current prices or terms of service.”); Consortium for School Networking *et al.* at 6 (Apr. 13, 2009).

161 ⁴⁸ See, e.g., JAB Wireless, Inc. at 2 (Apr. 9, 2009) (“An underserved area should be defined as an area where a
162 resident does not have a choice of at least 2 broadband service providers providing minimum speeds of 3 Meg
163 down.”); segTEL at 7–8 (Apr. 13, 2009); U.S. Telepacific *et al.* at 5.

164 ⁴⁹ See, e.g., Wisconsin Department of Commerce at 2 (Apr. 8, 2009) (“An ‘underserved area’ should be defined as
165 an applicant area in which at least 50% of households do not subscribe to a cable or DSL broadband service
166 provider, regardless of whether or not broadband service is available, or an applicant area in which at least 50% of
167 households have access to no more than one broadband internet service provider.”); New Jersey Division of Rate
168 Counsel at 2 (Apr. 8, 2009); One Economy Corporation at 4 (Apr. 13, 2009); Association of Public Television
169 Stations at 9 (Apr. 13, 2009); San Francisco at 23–24.

170 ⁵⁰ See, e.g., FTTH Council at 11 (“Underserved area means . . . a geographic area described by Census Tracts where
171 more than 25% of the Community Anchor Institutions to be served by the project currently lack access to a provider

2340 of public safety.⁵¹ Many commenters propose multi-pronged definitions that include multiple
2341 ways an area could qualify as underserved⁵² while others argue that the agencies should adopt a
2342 presumption that certain types of areas are underserved.⁵³

2343

2344 Several commenters urge the adoption of a separate definition of “underserved” for
2345 broadband adoption programs, focusing on the characteristics of the population to be served
2346 rather than on the characteristics of a geographic area.⁵⁴ Many commenters draw attention to
2347 types of users they believe should be considered underserved.⁵⁵

2348

172 of Advanced Broadband Wireline Service); eCLIC, the Emergency Communications Leadership and Innovation
173 Center at 5 (Apr. 8, 2009) (“‘Underserved’ would be any area lacking a digital hub and/or broadband infrastructure
174 connecting LANs inside the rooms and grounds of schools, libraries, public safety and governmental institutions.”);
175 AT&T at 12.

176 ⁵¹ See, e.g., Intrado Inc. and Intrado Communications Inc. at 5–6; National Emergency Number Association at 17
177 (Apr. 13, 2009).

178 ⁵² See, e.g., XO and Nextlink at 8 (“Underserved Area means: (1) (i) a geographic area that is not an unserved area
179 where at least 90% of the customers to be served by the project lack access to more than one provider of Current
180 Generation Broadband Transmission Service (which is to be determined separately for wireline/fixed wireless or
181 mobile wireless providers) or (ii) a geographic area that is not an unserved area where at least 90% of the customers
182 to be served by the project lack access to a provider of Advanced Broadband Transmission Service (which is to be
183 determined separately for wireline/fixed wireless or mobile wireless providers); (2) a geographic area where at least
184 90% of the Community Anchor Institutions to be served by the project lack access to a provider of wireline/fixed
185 wireless Advanced Broadband Transmission Service; or (3) any census tract which is located in (i) an empowerment
186 zone or enterprise community designated under section 1391, (ii) the District of Columbia Enterprise Zone
187 established under section 1400, (iii) a renewal community designated under section 1400E, or (iv) a low-income
188 community designated under section 45D.”).

189 ⁵³ See, e.g., Matthew R. Rantanen, Director of Technology, Southern California Tribal Chairmen’s Association in
190 webform (Apr. 13, 2009) (tribal lands); Pulse Broadband LLC at 4–5 (Apr. 13, 2009) (rural areas); Broadpoint, Inc.
191 at 4 (Apr. 13, 2009) (the Gulf of Mexico).

192 ⁵⁴ See, e.g., ZeroDivide at 13 (Apr. 13, 2009) (citing “barriers to adoption including, race, ethnicity, language,
193 physical capacity, economic conditions, and geography” and “low-income population as determined by state or
194 federal guidelines, such as residents of low-income housing, area with a high rate of participation in free and
195 reduced price lunch/breakfast program”); Michigan PSC at 19. *But see, e.g.*, Free Press at 6 (“Using the income of
196 an area as the basis for an ‘underserved’ definition is common in markets such as health care but is perhaps less
197 fitting for infrastructure-based services such as broadband.”).

198 ⁵⁵ See, e.g., City of Milwaukee in web form (Apr. 13, 2009) (citing “computer literacy, internet literacy, ethnic and
199 language diversity”); Carl and Ruth Shapiro Family National Center for Accessible Media at WGBH (NCAM) and
200 Inclusive Technologies at 5–6 (Apr. 13, 2009) (“People with disabilities MUST be included in the definition of the
201 underserved and unserved population and inclusion of their needs should be explicitly stated in all RFPs issued by
202 NTIA.”); Covad Communications Co. at 4 (Apr. 10, 2009) (urging NTIA to deem all small businesses underserved);
203 NCTA at 23 (“[B]efore funding construction in underserved areas, NTIA and RUS should provide funding for
204 programs that assist underserved populations (low-income, seniors) to acquire and make use of broadband
205 service.”).

2349 RUS and NTIA conclude that the extent to which a proposed funded service area is
2350 underserved will be evaluated using several criteria that are grouped to reflect the two distinct
2351 components of the Broadband Infrastructure category of eligible projects—Last Mile and Middle
2352 Mile (as defined in this NOFA)—and take account of both advertised broadband speeds and
2353 availability of broadband service. Specifically, a proposed funded service area (*i.e.*, one or more
2354 contiguous census blocks) may qualify as underserved for Last Mile projects if at least one of
2355 the following factors is met, though the presumption will be that more than one factor is present:
2356 i) no more than 50 percent of the households in the proposed funded service area have access to
2357 facilities-based, terrestrial broadband service at greater than the minimum broadband
2358 transmission speed of 768 kbps downstream and 200 kbps upstream; ii) no fixed or mobile
2359 broadband service provider advertises broadband transmission speeds of at least three megabits
2360 per second (“mbps”) downstream in the proposed funded service area; or iii) the rate of
2361 broadband subscribership for the proposed funded service area is 40 percent of households or
2362 less. A proposed funded service area may qualify as underserved for Middle Mile projects if one
2363 interconnection point terminates in a proposed funded service area that qualifies as unserved or
2364 underserved for Last Mile projects.

2365 RUS and NTIA recognize that in some areas of the country, particularly in rural areas,
2366 many of the underserved criteria for Last Mile projects will apply. The underserved definition
2367 includes a broadband speed criterion to recognize that a proposed funded service area can have
2368 the minimum level of broadband service available (defined as 768 kbps downstream and 200
2369 kbps upstream), but still be considered “underserved.” NTIA and RUS do not want to exclude
2370 proposals to improve the broadband speeds available in a proposed funded service area simply
2371 because the threshold broadband speed is already available.

2372

2373 RUS and NTIA decline to define “underserved” according to particular pricing plans,
2374 median income, or demographic characteristics because the adopted definition uses the criteria of
2375 low levels of broadband subscribership as a proxy for these factors. Studies suggest a strong,
2376 direct correlation between income levels and broadband subscribership; thus, lower broadband
2377 subscribership rates will tend to reflect lower income households. Low broadband
2378 subscribership rates also tend to be seen among seniors, minorities, and other vulnerable or
2379 disadvantaged population groups.

2380

2381 NTIA will use the definition of “underserved” only for purposes of evaluating Broadband
2382 Infrastructure proposals under BTOP. For Public Computer Center and Sustainable Broadband
2383 Adoption proposals, NTIA will evaluate the characteristics of the population to be served, rather
2384 than the Internet services available, in the geographic areas where the programs are located.
2385 Service to vulnerable (rather than “underserved”) populations will be a critical factor in
2386 evaluating such proposals. NTIA, therefore, interprets comments advocating inclusion of certain
2387 categories of users as “underserved” for the purposes of such programs as arguments for
2388 recognition of these categories as “vulnerable populations.”²⁵

2389

2390 **Utilizing Census Blocks to Define Proposed Funded Service Areas**

2391

2392 The geographic area used to assess the degree of broadband coverage is a key element in
2393 defining the terms “unserved” and “underserved” found in the BTOP provisions discussed in the

206 ²⁵ See, e.g., Barling Bay, LLC and Caption Colorado at 13–14 (Apr. 13, 2009) (arguing for recognition of deaf and
207 hard of hearing students and rural students in poor school districts as unserved or underserved for purposes of
208 broadband adoption programs).

2394 preceding sections. Additionally, the Recovery Act allows RUS to fund a broadband project
2395 with Recovery Act funds only if “at least 75 percent of the area to be served [is] in a rural area
2396 without sufficient access to high speed broadband service to facilitate rural economic
2397 development, as determined by the Secretary of Agriculture.”²⁶ As a result, RUS must also
2398 define the relevant “area” to which it would apply the criteria for sufficiency of access to
2399 broadband service.

2400

2401 Most commenters suggest defining “area” according to government-recognized
2402 boundaries. For example, multiple commenters suggest the use of census tracts,²⁷ pointing out
2403 that the FCC already collects service data at the census tract level²⁸ and that census tracts are
2404 relatively small.²⁹ Rural Cellular Association also points out that government-defined
2405 boundaries are technologically neutral because they do not correspond to the existing service
2406 areas for any particular technology.³⁰ Multiple commenters also state a preference for census
2407 blocks, or the smallest geographic designation possible, so that proposals for service to all truly
2408 underserved geographic locations qualify for BTOP funding.³¹

2409

2410 In contrast, some commenters encourage the agencies to allow applicants to define their
2411 own service areas to be evaluated against the criteria established for “unserved” or

209 ²⁶ Recovery Act div. A, tit. I, 123 Stat. at 118.

210 ²⁷ See, e.g., FTTH Council at 10–11.

211 ²⁸ See, e.g., American Cable Association at 6 (Apr. 14, 2009); Rural Cellular Association at 42 (Apr. 13, 2009); XO
212 and Nextlink at 6, n. 14.

213 ²⁹ See, e.g., American Cable Association at 6; Rural Cellular Association at 42.

214 ³⁰ Rural Cellular Association at 42.

215 ³¹ See, e.g., Wireless Internet Service Providers Association (WISPA) at 8 (Apr. 10, 2009) (supporting census
216 blocks as the basic geographical unit and stating, “No ‘unserved’ or ‘underserved’ community should be disqualified
217 because it is too small.”); Frontier Communications at 12 (Apr. 13, 2009) (“An ‘area’ should be determined at as
218 small a geographic level as possible. Using entire census communities or census blocks will disadvantage many
219 unserved areas that are adjacent to served areas.”). See also Smith Bagley, Inc. at 3–4 (Apr. 13, 2009) (suggesting
220 that NTIA require applicants to submit a spreadsheet of census blocks with estimates of unserved and underserved
221 households and businesses).

2412 “underserved” areas.³² Many of these commenters express concern that requiring pre-defined
2413 geographic units to qualify as “unserved” or “underserved” areas will exclude regions within
2414 those geographic units that actually lack access to broadband service.³³

2415

2416 RUS and NTIA conclude that applicants should be allowed to define their own proposed
2417 funded service areas, which are composed of one or more contiguous census blocks. RUS and
2418 NTIA believe that employing census blocks, a standardized, technologically neutral geographic
2419 unit, will facilitate the comparison of data from applicants proposing to serve overlapping
2420 regions and will facilitate compliance with the statutory prohibition against providing BTOP and
2421 BIP funding for the same project in the same area.³⁴ RUS and NTIA have attempted to
2422 accommodate commenters’ concerns about the inadvertent exclusion of areas in need of
2423 broadband service by adopting a very granular definition of proposed funded service area and
2424 defining “unserved” and “underserved,” and “without sufficient access to high speed broadband
2425 service to facilitate rural economic development” in terms of the percentages of a proposed
2426 funded service area meeting the definitional criteria.

2427

2428 An applicant must identify the census block(s) selected for the project and provide
2429 documentation supporting the applicant’s determination that the proposed funded service area is
2430 either unserved or underserved. There is a presumption that the applicant will provide service to
2431 the entire territory of each census block included in the proposed funded service area, unless the
2432 applicant files a waiver and provides a reasoned explanation as to why providing coverage for

222 ³² See, e.g., ITTA at 2–3 (“Each applicant should be able to define its proposed service area, including aggregating
223 both adjacent and non-contiguous clusters of unserved homes.”); Embarq at 18 (Apr. 13, 2009); CWA at 22.

224 ³³ See, e.g., Windstream Communications, Inc., (Windstream) at 28 (Apr. 14, 2009) (“Pockets of unserved and
225 underserved customers are unlikely to fall neatly within existing, arbitrary geographic units, such as ZIP codes or
226 census blocks.”).

227 ³⁴ See Recovery Act div. A, tit. I, 123 Stat. at 119.

2433 the entire census block is infeasible. Applicants may be permitted to serve less than the entire
2434 census block under certain conditions. For example, an applicant might seek a waiver if the
2435 census block exceeds 100 square miles or more or is larger than the applicant's authorized
2436 operating territory, *e.g.*, it splits a rural incumbent local exchange carrier's (ILEC) study area or
2437 exceeds the boundaries of a wireless carrier's licensed territory.

2438

2439 **Interconnection and Non-Discrimination Requirements**

2440 The Recovery Act requires NTIA to establish "non-discrimination and network
2441 interconnection obligations that shall be contractual conditions of grants ... including, at a
2442 minimum, adherence to the principles contained in the [FCC's] broadband policy statement."³⁵
2443 The Recovery Act does not require RUS to impose these obligations on its grantees or
2444 borrowers.

2445 Major incumbent service providers, rural carriers, and their trade associations urge that
2446 the interconnection and non-discrimination obligations be limited to the FCC Internet Policy
2447 Statement.³⁶ These operators emphasize that imposing new requirements in the BTOP process
2448 would cause uncertainty and deter applicants from applying for grants. Major equipment
2449 manufacturers share this view.³⁷ Cellular operators and CTIA assert that wireless networks need
2450 the ability to prioritize traffic due to limited capacity.³⁸ Content owners argue that non-
2451 discrimination obligations should not preclude copyright enforcement.³⁹ On the other side,

228 ³⁵ Recovery Act § 6001(j), 123 Stat. at 512.

229 ³⁶ *See, e.g.*, Verizon at 13 (Apr. 13, 2009); AT&T at 14–16; OPASTCO at 11–12 (Apr. 13, 2009); National
230 Exchange Carrier Assoc. (NECA) at 6 (Apr. 13, 2009).

231 ³⁷ *See, e.g.*, Motorola at 13–15; Cisco at 9 (Apr. 13, 2009).

232 ³⁸ *See, e.g.*, CTIA at 8 (Apr. 13, 2009).

233 ³⁹ *See, e.g.*, MPAA, RIAA *et al.* at 3 (Apr. 13, 2009).

2452 public interest groups⁴⁰ and potential new entrants⁴¹ advocate additional obligations, generally
2453 some combination of interconnection language from Title II of the Communications Act and
2454 non-discrimination requirements precluding degradation or inferior treatment of applications,
2455 content, and services. Many states⁴² and most of the cities filing comments⁴³ urge the inclusion
2456 of some open access or non-discrimination obligations.

2457 RUS and NTIA require applicants to commit to five obligations. These requirements,
2458 discussed in more depth below, are subject to the needs of law enforcement and reasonable
2459 network management practices.

2460 *(1) Adhere to the principles contained in the FCC’s Broadband Policy Statement (FCC 05-151*
2461 *adopted Aug. 5, 2005).*

2462 This requirement is specified in the Recovery Act.⁴⁴

2463 *(2) Not favor any lawful Internet applications or content over others.*

2464 This requirement ensures neutral traffic routing. Without a non-discrimination condition,
2465 network operators could give preferential treatment to affiliated services, or charge some
2466 application and content providers for “fast lanes” that would put others at a competitive
2467 disadvantage. The standard used here is a more general version of the one the FCC imposed in
2468 the AT&T/BellSouth merger conditions, which specified no differential treatment of packets

234 ⁴⁰ See, e.g., Free Press at 18; Open Internet Coalition at 2 (Mar. 10, 2009); Center for Democracy & Technology at
235 3–5 (Apr. 13, 2009); EDUCAUSE at 4–5 (Apr. 13, 2009).

236 ⁴¹ See Clearwire Corp. at 14–15 (Apr. 10, 2009); Earthlink and NewEdge at 4–5 (Apr. 13, 2009).

237 ⁴² See, e.g., Michigan PSC at 8; State of Arizona at 11 (Apr. 13, 2009).

238 ⁴³ See, e.g., City of Palo Alto at 19–20 (Apr. 13, 2009).

239 ⁴⁴ Recovery Act § 6001(j), 123 Stat. at 515.

2469 based on source, destination, or ownership.⁴⁵ Awardees may employ generally-accepted
2470 technical measures to provide acceptable service levels to all customers, such as caching and
2471 application-neutral bandwidth allocation, as well as measures to address spam, denial of service
2472 attacks, illegal content, and other harmful activities. They also may comply with applicable
2473 statutes such as the Communications Assistance to Law Enforcement Act (CALEA).⁴⁶

2474 Furthermore, this requirement applies only to Internet applications and content, that is,
2475 those that traverse the public Internet. Awardees may offer managed services such as
2476 telemedicine, public safety communications, and distance learning, which use private
2477 connections or virtual private networks, rather than the public Internet. This approach ensures
2478 that awardees do not distort the Internet’s neutral environment for applications and content,
2479 while giving them the flexibility to design their networks in a technically efficient manner and
2480 the ability to provide services that may require enhanced quality of service or separate
2481 connections for privacy and security reasons.

2482 *(3) Display network management policies in a prominent location on the service provider’s web*
2483 *page and provide notice to customers of changes to these policies (awardees must describe any*
2484 *business practices or technical mechanisms they employ, other than standard best efforts*
2485 *Internet delivery, to allocate capacity; differentiate among applications, providers, or sources;*
2486 *limit usage; and manage or block access to illegal or harmful content).*

2487 This public notice requirement is intended to provide full disclosure of these network
2488 management practices to users and potential users to enable them to make informed decisions

240 ⁴⁵ See In the Matter of AT&T Inc. and BellSouth Corporation, WC Docket No. 06-74, *Memorandum Opinion and*
241 *Order*, FCC 06-189, App. F at 154 (Mar. 26, 2007), [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-189A1.pdf)
242 [189A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-189A1.pdf).

243 ⁴⁶ See 47 U.S.C. § 1001 *et seq.*

244

2489 regarding how their usage may be impacted by current policies and any modifications that are
2490 subsequently made.

2491 *(4) Connect to the public Internet directly or indirectly, such that the project is not an entirely*
2492 *private closed network.*

2493 An entirely private closed network would make the interconnection and non-
2494 discrimination obligations moot, since the project would not offer access to Internet applications
2495 and content.

2496 *(5) Offer interconnection, where technically-feasible, on reasonable rates and terms to be*
2497 *negotiated with requesting parties. This includes both the ability to connect to the public*
2498 *Internet and physical interconnection for the exchange of traffic.*

2499 The Recovery Act mandates conditions for “network interconnection,”⁴⁷ which the FCC
2500 Policy Statement and non-discrimination conditions alone do not address. Moreover, an
2501 interconnection condition promotes competition in end-user service provision, consistent with
2502 the Recovery Act’s directives. Specifically, the fourth prong of the FCC Policy Statement states
2503 that users are entitled to a choice of service providers.⁴⁸ The Recovery Act incorporates this
2504 element by reference, because it requires applicants to meet the Policy Statement’s principles as
2505 a minimum condition. The Recovery Act also requires RUS to give priority to projects offering
2506 a choice of end-user service providers,⁴⁹ which is only possible if funded projects offer
2507 interconnection. As a general policy matter, interconnection allows synergies where others can

245 ⁴⁷ Recovery Act § 6001(j), 123 Stat. at 512.

246 ⁴⁸ Internet Policy Statement, FCC 05-15, adopted Aug. 5, 2005.

247 ⁴⁹ Recovery Act div. A, tit. I, 123 Stat. at 118. This language does not appear in the BTOP section of the Recovery
248 Act, but is consistent with the network interconnection and non-discrimination obligations specified there.

2508 benefit from subsidized infrastructure. Wholesale service may also generate additional revenue
2509 for recipients, and increase capital efficiency by maximizing utilization of network capacity.
2510 Where not inconsistent with other Recovery Act goals, RUS and NTIA will seek the greatest
2511 possible expansion of broadband from its investment.

2512 An awardee may satisfy the requirement for interconnection by negotiating in good faith
2513 with all bona fide requesting parties that wish to connect to the public Internet using the
2514 awardee’s network or to exchange traffic. Interconnection must take place where technically
2515 feasible and without exceeding current or anticipated capacity limitations. The awardee and
2516 requesting party may negotiate terms such as business arrangements, capacity limits, financial
2517 terms, and technical conditions for interconnection. If the awardee and requesting party cannot
2518 reach agreement, they may voluntarily seek an interpretation by the FCC of any FCC rules
2519 implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting
2520 interconnection may notify RUS or NTIA in writing of the failure to reach satisfactory terms
2521 with the awardee. The 90-day limit is to encourage the parties to resolve differences through
2522 negotiation.

2523 This approach encourages interconnection without requiring micromanagement of private
2524 negotiations. Appropriate interconnection terms will vary depending on the type of project, the
2525 technologies involved, the type of provider requesting interconnection, and the dynamics of the
2526 local market. There is no need to enforce uniform terms or pricing standards, so long as parties
2527 negotiate in good faith to reach mutually-beneficial business agreements. A more formal
2528 interconnection regime would require enforcement resources beyond the scope of BTOP.

2529 Entities that successfully reach an agreement to interconnect with a system funded under
2530 BIP may not use that interconnection agreement to provide services that duplicate services
2531 provided by projects funded by outstanding telecommunications loans made under the Rural
2532 Electrification Act. Further, interconnection may not result in a BIP-funded facility being used
2533 for ineligible purposes under the Recovery Act. These limitations are needed to comply with
2534 pre-existing loan agreements and Recovery Act language for RUS, but do not apply to BTOP.

2535 With respect to non-discrimination, those who believe an awardee has failed to meet the
2536 non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in
2537 the dispute. If the FCC chooses to take no action, those seeking recourse may notify RUS and
2538 NTIA in writing about the alleged failure to adhere to commitments of the award.

2539 Overall, these five requirements ensure that public funds will support the public goal of
2540 open networks. The standards chosen echo established FCC rules, but avoid detailed regulation
2541 and allow for flexibility when network management requires differential treatment or exclusivity.
2542 The standards chosen are technologically neutral and appropriate for the widest possible range of
2543 applications, because the definition of reasonable network management may differ based on the
2544 network technology used and other dimensions of the project. Applicants are required to
2545 disclose interconnection, nondiscrimination, and network management plans with their
2546 applications, and provide regular network reporting, to facilitate compliance and better
2547 understanding of appropriate network management techniques. As noted above, applicants are
2548 required to provide clear and prominent public disclosure of network management policies to
2549 customers. Additional scoring points will be awarded for clear and prominent public disclosure
2550 of interconnection and nondiscrimination policies to customers.

2551 These conditions will apply for the life of the awardee’s facilities used in the project and
2552 not to any existing network arrangements. The conditions apply to any contractors or
2553 subcontractors of such awardees employed to deploy or operate the network facilities for the
2554 infrastructure project. To the extent that the FCC takes action in this area, such as by modifying
2555 its Internet Policy Statement or by adopting additional or different rules or policies, awardees
2556 will become subject to FCC rules and policies in lieu of the conditions set forth only to the extent
2557 that the FCC rules or policies effectively supersede the conditions set forth above. Recipients
2558 that fail to accept or comply with the terms listed above may be considered in default or breach
2559 of their loan or grant agreements. RUS and NTIA may exercise all available remedies to cure
2560 the default.

2561

2562 **Eligibility**

2563

2564 Section 6001(e)(1) of the Recovery Act expressly identifies the types of entities that are
2565 eligible for BTOP grants and authorizes the Assistant Secretary to find by rule that it may be in
2566 the public interest for any other entity, including a broadband service or infrastructure provider,
2567 to be eligible. Section 6001(e)(1)(C) also requires that “[i]n establishing such rule, the Assistant
2568 Secretary shall to the extent practicable promote the purposes of [BTOP] in a technologically
2569 neutral manner.” The Recovery Act does not explicitly identify the entities that are eligible for
2570 RUS broadband funding.

2571

2572 The comments of service providers of all types,⁵⁰ equipment suppliers,⁵¹ and various other
2573 entities⁵² state that private, for-profit companies should generally be eligible for BTOP funding.
2574 Some service providers propose automatic eligibility for service providers who already hold a
2575 license or franchise or who already provide broadband service.⁵³ Several non-profits,
2576 government entities, and small providers argue that no for-profit entity should be eligible without
2577 a public interest showing, either individualized⁵⁴ or based on its agreement to adhere to
2578 additional conditions,⁵⁵ or otherwise favor only limited for-profit eligibility.⁵⁶

2579

2580 Through this NOFA, the Assistant Secretary of Commerce for Communications and
2581 Information has found it to be in the public interest to permit for-profit corporations and non-
2582 profit entities (not otherwise encompassed by section 6001(e)(1)(A)) that are willing to promote
2583 the goals of the Recovery Act and comply with the statutory requirements of BTOP to be eligible
2584 for a grant. By adopting this broad approach, the Assistant Secretary intends to invite a diverse
2585 group of applicants to participate in BTOP, which reflects his desire to expand broadband
2586 capabilities in the United States in a technology-neutral manner. This approach is consistent
2587 with Congressional intent in this regard.⁵⁷ This finding is reasonable because of the positive
2588 impact that the inclusion of for-profit corporations will have on the administrative and

249 ⁵⁰ See, e.g., Qwest Communications (Qwest) at 9–13 (Apr. 13, 2009); NCTA at 6; Bresnan Communications *et al.*,
250 at 5 (Apr. 13, 2009).

251 ⁵¹ See, e.g., Alcatel-Lucent at 15.

252 ⁵² See, e.g., CWA at 6; EDUCAUSE at 4; Georgia Technology Authority at 4 (Apr. 13, 2009); State of Alabama at
253 7 (Apr. 13, 2009); State Wyoming at 2 (Apr. 10, 2009).

254 ⁵³ See, e.g., Windstream at 8–9; American Cable Association at 5–6.

255 ⁵⁴ See, e.g., Kentucky Municipal Utilities Association at 7–8 (Apr. 13, 2009); National Rural Electrical Cooperative
256 Association at 8–9 (Apr. 13, 2009); NATOA at 8–11.

257 ⁵⁵ See, e.g., The Benton Foundation at 14–19 (Mar. 20, 2009).

258 ⁵⁶ For example, several commenters proposed that private firms should receive grants only in areas where
259 government or non-profit entities do not apply. See, e.g., SEDA Council of Governments at 1 (Mar. 24, 2009);
260 NATOA at 9. Some small rural telephone companies favored limiting eligibility for large providers. See, e.g.
261 National Telecommunications Cooperative Association at 3–4 (Apr. 13, 2009).

262 ⁵⁷ See Conf. Rep. at 775 (stating that “as many entities as possible [should] be eligible to apply for a competitive
263 grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, private public partnerships,
264 and tower companies”).

2589 programmatic requirements of this program. Many for-profit corporations have expertise in
2590 deployment and sustainable operation of telecommunications facilities,⁵⁸ which may lead to the
2591 creation of more efficient and sophisticated broadband networks that consumers will be able to
2592 access in a shorter period of time. In some cases, for-profit corporations also may have the
2593 resources to deploy new infrastructure more quickly or efficiently than other types of entities.⁵⁹
2594 Moreover, for-profit corporations provide economic growth and job creation, which is consistent
2595 with many of the key purposes of the Recovery Act.⁶⁰

2596

2597 Dated: _____

2598

2599

2600 _____

2601 James R. Newby, Acting Administrator

2602 Rural Utilities Service

2603

2604 _____

2605 Thomas C. Power, Chief of Staff

2606 National Telecommunications and Information Administration

265 ⁵⁸ See Qwest at 10–12; NCTA at 6; Windstream at 9.

266 ⁵⁹ See Qwest at 10–14; Windstream at 9.

267 ⁶⁰ See State of Alabama at 7.