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CONNECTING AMERICA'S COMMUNITIES

Compliance

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Cynthia Schultz currently serves as the Director of Post-Award Grants Administration and Compliance for the Broadband Technology Opportunities Program, National Telecommunications and Information Administration. Ms. Schultz was formerly a partner at Patton Boggs LLP, where she specialized in technology and telecommunications law. As the former Director of Service Provider Support at the Universal Service Administrative Company, Ms. Schultz interacted with and advocated on behalf of service providers in the Federal Universal Service E-Rate Program. Prior to USAC, she served in senior management in the National Competition and Regulatory Policy Group at WorldCom. In addition, Ms. Schultz was Associate Counsel for Law and Public Policy at MCI. Prior to her work in telecommunications and technology, she served as a Trial Attorney in the distinguished Attorney General's Honors Program in the U.S. Department of Justice, Civil Division – Commercial Litigation Branch, International Trade Group.

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Agenda

- Roles and Responsibilities
- Applicable Financial Assistance Regulations
- Key Topics
 - BTOP Special Award Conditions (SACs)
 - Environmental Requirements
 - Reporting Requirements
 - Procurement
 - Davis-Bacon Act Requirements
 - Financial Management Requirements
 - Record Management Requirements
 - Preparing for Audits
 - Security Interests
 - Signage
 - Whistleblower Protection





Roles and Responsibilities: Federal Team

NTIA BTOP Program Office

- Administer and monitor programmatic aspects of recipients' projects.
- Work with Grants Offices to identify and address project challenges.
- Provide Technical Assistance.

NIST / NOAA Grants Offices

- Issue BTOP grant awards.
- Make decisions on award action requests.
- Manage administrative and business aspects of awards.
- Maintain official award files.

Compliance

- Procurement issues.
- NEPA/NHPA compliance.
- Audit requirements.
- SAC fulfillment.
- Reporting and Monitoring.
- Corrective actions.

Policy

- Program policy issues.
- Waiver requests.
- Guidance on budget modifications, equipment changes, purchase of fiber.





Roles and Responsibilities: Recipients, Subrecipients, Contractors

Recipient

- Achieve program results by managing and executing BTOP-funded project
- Comply with uniform administrative requirements, as well as all award terms and conditions
- Manage use of BTOP grant funds in accordance with Federal cost principles
- Ensure availability of matching contributions
- Monitor activities of subrecipients and contractors
- Comply with reporting and recordkeeping requirements

Subrecipients

- Determines who is eligible to receive what Federal financial assistance.
- Has its performance measured against whether the objectives of the program are met.
- Responsible for programmatic decision-making.
- Responsible for adherence to applicable Federal program compliance requirements.
- Uses Federal funds to carry out a program of the organization as compared to providing goods or services for a program.

Contractors

- Provides the goods and services within normal business operations.
- Provides similar goods or services to many different purchasers.
- Operates in a competitive environment.
- Provides goods or services that are ancillary to the operation of the Federal program.
- Is not subject to compliance requirements of the Federal program.





Applicable Financial Assistance Regulations

Organization Type	Administrative Requirements	Cost Principles	Audit Regulations and Standards
For-Profit Entities	15 CFR Part 14	48 CFR Part 31.2 (Federal Acquisition Regulations)	Government Auditing Standards (The Yellow Book)* OMB Circular A-133, Subpart B § 235
Institutions of Higher Education	15 CFR Part 14	2 CFR Part 220 (OMB Circular A-21)	OMB Circular A-133
Non-Profit Organizations	15 CFR Part 14	2 CFR Part 230 (OMB Circular A-122)	OMB Circular A-133
Hospitals	15 CFR Part 14	45 CFR, Part 74(E)	OMB Circular A-133
State, Local, and Tribal Governments	15 CFR Part 24	2 CFR Part 225 (OMB Circular A-87)	OMB Circular A-133

* Government Auditing Standards can be found at <http://www.gao.gov/govaud/ybk01.htm>





BTOP Special Award Conditions

- By accepting its BTOP award, the recipient agrees to meet all BTOP-wide and project specific Special Award Conditions (SACs).

BTOP-Wide SACs	Project-Specific SACs
Guidelines for Matching Funds	Construction-Related Requirements
Incorporation of Requirements from the NOFA	Accounting System Verification
Buy American Requirement	Buy America Waiver Approval
Whistleblower Protection	Security Interest in Real Property, Facilities, Equipment
Interest-Bearing Accounts	Sale or Lease of Real Property
Payments and Advances (ASAP)	NEPA/NHPA Requirements (Environmental Assessment)
Post-Award Reporting Requirements	For-Profit Recipient Audit Requirement
Baseline Project Plan	Indirect Costs Used as Cost Share
Non-duplication of Funding	Nondiscrimination and Interconnection
	Census Block Waiver
	Matching Waiver





BTOP Special Award Conditions

- The BTOP Program Office and Grants Office will monitor compliance with the special award conditions.
- The recipient must fulfill each special award condition no later than its specified deadline.
- With the fulfillment of each special award condition, the recipient must document completion and submit this documentation to its BTOP FPO and Grants Officer for the official award file.
- Failure to comply with a special award condition may result in corrective actions, such as a hold being placed on a recipient's ability to draw down funds or, in extreme cases, termination of award.
- Best Practices:
 - ✓ Communicate frequently with BTOP Federal Program Officer (FPO) and Grants Officer on SAC compliance status.
 - ✓ Review deadlines associated with each SAC and monitor progress weekly.





BTOP Special Environmental Award Conditions

- In some cases, the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act of 1966 (NHPA) require a BTOP grant award recipient to, among other activities:
 - Complete Environmental Assessment (EA) of its project and obtain an impact determination from NTIA.
 - Complete the consultation required under Section 106 of the NHPA and Section 7 of the Endangered Species Act.
 - Comply with all other Federal, state and local environmental and historic preservation laws.
- The BTOP Program Office is working with the NOAA Grants Office to effect a global amendment allowing the recipient to commence limited procurement activities before the completion of its EA.





Reporting Requirements

- BTOP recipients are required to submit the following reports each calendar quarter:

ARRA report

Financial report (SF-425)

Performance progress report

Baseline report (first award quarter only)

Quarter 1	January 1 – March 31	Quarter 3	July 1 – September 30
Quarter 2	April 1 – June 30	Quarter 4	October 31 – December 31

Report Type	Reporting Deadline	Where to Submit?
ARRA Report	10 th day after end of the quarter <i>(2Q10 deadline extended to July 14)</i>	FederalReporting.gov
Financial Report (SF-425)	30 th day after end of the quarter	Grants Office
BTOP-Specific Quarterly Performance Progress Report	30 th day after end of the quarter	NTIA BTOP Program Office
BTOP-Specific Baseline Report	30 th day after end of the first full award quarter only	NTIA BTOP Program Office





Visit

<http://www2.ntia.doc.gov/btopreporting>

for more information on **BTOP Performance Reporting Requirements**

and

<http://www.whitehouse.gov/Recovery/WebinarTrainingMaterials>

for more information on **Recovery Act Reporting Requirements**

Reporting Best Practices

General Reporting

- ✓ Assign reporting activities to single person responsible for completion and submission of all reports.
- ✓ Recognize that the recipient has ultimate responsibility for report completeness and accuracy.
- ✓ Coordinate closely with subrecipients and clarify reporting responsibilities.

ARRA

- ✓ Provide descriptions of the award, project, and jobs created or retained that are appropriately brief and that a lay person can understand.
- ✓ Report the BTOP Award Date accurately, as the date on which the Grants Officer signed the award.
- ✓ Make sure that the recipient's DUNS number remains active.
- ✓ Register with CCR and renew annually.





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links to Uniform
Administrative
Requirements

Procurement Standards

BTOP recipients must comply with all Federal regulations governing procurement:

- Recipients and subrecipients must have:
 - Written procurement procedures.
 - Written codes of conduct governing the performance of employees engaged in the award and administration of contracts.
- Selection of subrecipients and contractors must be based on:
 - Open and free competition, to the maximum extent practical.
 - Cost and price analysis.
 - Indications of contractor ability to perform successfully.
 - Efforts to partner with small/disadvantaged businesses.
- Contract clause requirements.
- Relevant regulations:
 - 15 CFR §§14.40-14.48 – Uniform Administrative Requirements for Federal grants, cooperative agreements, and subawards to *institutions of higher education, hospitals, other non-profits, and commercial organizations.*
 - 15 CFR § 24.36 – Uniform Administrative Requirements for Federal grants, cooperative agreements, and subawards to *state, local, and tribal governments.*





Procurement Methods

Competitive Proposals			Noncompetitive Proposals
Small Purchase	Sealed Bids	Proposal Solicitation	
<ul style="list-style-type: none">Simple and informal procurements for securing services, supplies, or other property that <i>do not cost more than \$100,000</i>.	<ul style="list-style-type: none">Procurements are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid is the lowest in price.	<ul style="list-style-type: none">Typically conducted with more than one source submitting an offer and a fixed-price or cost-reimbursement type contract is awarded.	<ul style="list-style-type: none">Entails solicitation of a proposal from single source when procurement by another method is not feasible.Used under limited circumstances.Requires cost analysis to verify data supporting proposal.





Procurement Documentation Requirements

- A description of the procurement policies and procedures used.
- Basis for contractor selection, including justification if not competed.
- Cost or price analysis.
- Data on all contracts awarded, such as:
 - Names of contractors with contact information.
 - Types of contractor (for example, small business, minority-owned, etc.).
 - Amounts of contracts awarded.
- Documentation of contract work, including:
 - Copies of award letters.
 - Inspection reports.
 - Contract amendments.
 - Payment log.
 - Evaluation of contractor performance.





Davis-Bacon Act Requirements

- The Recovery Act makes the wage requirements of the Davis-Bacon Act applicable to BTOP-funded construction contracts in excess of \$2,000.
- Recipients, subrecipients, and contractors must pay laborers and mechanics employed directly on the site of the work no less than the locally prevailing wages (including fringe benefits) listed in the Davis-Bacon wage determination for the work performed.
 - “Laborers and mechanics” do not include timekeepers, inspectors, engineers, architects, or executive, administrative, or professional employees
 - In general, “site of the work” includes the physical place where the construction will remain, and any other place where a significant portion of the construction occurs, if established specifically for the project.
 - Wage determinations available at www.wdol.gov.





Davis-Bacon Act Requirements (cont.)

- Each recipient must obtain weekly certified payroll records and a Statement of Compliance from its subrecipients and contractors, and maintain these records in its official files.
- Additional guidance is available in Department of Labor All-Agency Memorandum No. 207, available at: <http://www.dol.gov/whd/recovery/AAM207.pdf>.
- Department of Labor representatives are on site to answer specific questions.





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**Grants
Management** for
links to the Federal
Cost Principles.

Financial Management Systems

- BTOP recipients must comply with all Federal regulations governing financial management as described in the cost principles and award terms and conditions:
 - Financial management system standards.
 - Methods for making payments.
 - Satisfying cost sharing and matching requirements.
 - Accounting for program income.
 - Budget revision approvals.
 - Conducting audits.
 - Determining allowability of cost.
 - Establishing fund availability.
- The BTOP Program Office is working with the Grants Office to effect a global amendment allowing for a management assertion, rather than current CPA certification, of a recipient's accounting system.





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and click **Grants Management** for links to Uniform Administrative Requirements and Cost Principles.

Financial Management Systems

- Recipient resources include:
 - **15 CFR §14.20-21** – Uniform administrative requirements for Federal grants, cooperative agreements, and subawards to *institutions of higher education, hospitals, other non-profits, and commercial organizations*.
 - **15 CFR § 24.20** – Uniform administrative requirements for Federal grants, cooperative agreements, and subawards to *state, local, and tribal governments*.
 - **SF-424B** – For non-construction projects and **SF-424D** for construction projects.
 - **Financial Capability Checklist** – Helps the recipient validate the adequacy of its financial management systems.
 - **Financial Capability Questionnaire** – Helps recipient gather information about the financial capabilities of its subrecipients in order to assess their financial management systems.





Financial Capabilities Checklist

- Best practices indicate that effective financial management procedures and systems allow recipients to:
 - ✓ Establish and maintain accounting systems and financial records that accurately account for Federally-funded award(s).
 - ✓ Confirm that funds received for one project are not being used to fund another project.
 - ✓ Verify that Federal grant monies are not being co-mingled (Federal funds must be accounted for separately and distinctly).
 - ✓ Inform subrecipients of BTOP program financial requirements and how these may impact the Project Manager's reporting to the recipient.
 - ✓ Understand the subrecipients' financial operations, and ensure subrecipients have met audit requirements.
 - ✓ Account for receipts and expenditures, cash management, maintenance of financial records, and refunding disallowed expenses.
 - ✓ Prohibit supplanting of ongoing activities funded by existing budgets.





Record Management Requirements

- Complete records of all transactions through the life of the grant will facilitate reporting, monitoring, and audit activities for recipients, FPOs, and Grants Officers.
- Recipients should have electronic record keeping system in place with information organized in such a way that it is easily retrieved, understood, and reported.
- Subrecipient record management requirements flow from the uniform administrative requirements.
- OIG has unrestricted access and may interview recipient's personnel for as long as records are retained.
- Records must be kept for 3 years after final closeout or after audit, litigation, or claim is resolved.
- Relevant regulations
 - 15 CFR §§14.50-14.53 or 15 CFR § 24.40.
- Best Practices:
 - ✓ Include language in subrecipient and vendor agreements on record management requirements.
 - ✓ Document record management processes and procedures.
 - ✓ Establish clear lines of responsibility for updating and maintaining project records, including assigning this responsibility to a specific person and a backup.





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Requirements

Preparing for Audits

All BTOP awards are subject to A-133 and DOC Inspector General (IG) audits.

- Regulations:
 - OMB Circular A-133: states, local governments, and non-profits.
 - OMB Circular A-133 Subpart B § 210: Subrecipient and vendor determination.
 - OMB Circular A-133 Subpart B § 235: Program-specific audits.
- An organization with a BTOP award as its only Federal award may have a program-specific audit performed.
- Frequency of audits:
 - A-133 audits will be performed annually.
 - DOC IG audits will be performed on a schedule to be determined.
- Award period:
 - All awards have three-year award period; extension waivers are not encouraged.





Audit Best Practices

- Best Practices:
 - ✓ Maintain current and accurate project files.
 - ✓ Document project activities to establish an audit trail depicting, at a minimum, cost analysis, requestors and approving officials, receipt and payment information, and purchase justification.
 - ✓ Implement internal controls to include established system of procedures and effective internal reviews.





Security Interests

- Property that is acquired or improved with BTOP infrastructure grant funds is held in trust by the recipient (including subrecipients) for the benefit of the BTOP project for the useful life of the property.
- The Federal interest:
 - Protects the Federal share of the recipient's investment in real property, broadband facilities, and equipment acquired or approved with grant funds over the course of its useful life.
 - Prohibits the sale, mortgage, or other transfer or conveyance of an interest in this property.
 - Requires the recipient to use this property solely for the purposes for which the award was made.
- Recipients and subrecipients of BTOP grants involving construction must formally memorialize the Federal interest by executing and recording a Covenant of Purpose, Use, and Ownership or an Agreement and Mortgage.
- Recipients and subrecipients of BTOP grants for SBA and PCC projects that do not involve construction fall outside of this requirement.
- A recipient of a BTOP award involving construction should contact its assigned BTOP FPO if it anticipates any issue that may interfere with its ability to secure the Federal interest in covered property.





Signage

- Recipients of construction awards must display the Recovery Act logo on signage at construction sites. This requirement applies to projects classified as CCI, infrastructure, and PCC with construction.
- Primary emblem should be featured throughout the construction phase.
- Signage should be displayed in prominent location on site.
- Primary emblem must be displayed in a size at least six inches in diameter.



Primary Emblem



BROADBANDUSA
CONNECTING AMERICA'S COMMUNITIES

BroadbandUSA Emblem





Signage: Possible Uses

- In addition to mandatory usage at construction sites, recipients may choose to use the Recovery Act logo in other materials:
 - Banners to display in Public Computer Centers.
 - Signage to display at Sustainable Broadband Adoption training classes.
 - Decals to post on computers distributed through Sustainable Broadband Adoption programs.
 - News releases to announce project activities.
 - Computer training materials.





Whistleblower Protection

- Whistleblower Protection requirements of ARRA provide protection for employees of non-Federal employers making specified disclosures relating to possible fraud, waste, or abuse of Recovery Act funds.
- The recipients shall display a poster at its job sites
 - Poster can be downloaded from: <http://www.oig.doc.gov/recovery/whistleblower.html>.
- The OIG will verify the proper display of this poster as part of any field work conducted.
- Failure to display the poster may result in an audit finding.





Questions?

