



FACT SHEET
Broadband Technology Opportunities Program
Long-Term Treatment of Personal Property

Overview

This fact sheet provides general guidance for the long-term treatment of tangible personal property (*i.e.*, property other than real property and intangible personal property such as copyrights) funded under the National Telecommunications and Information Administration's (NTIA) Broadband Technology Opportunities Program (BTOP), and recipients' ongoing responsibilities for these items. This fact sheet is not a substitute for the terms and conditions of specific BTOP awards, including the Notices of Funds Availability at 74 Fed. Reg. 33014 (July 9, 2009) ("First NOFA") and 75 Fed. Reg. 3792 (Jan. 22, 2010) ("Second NOFA"), the Department of Commerce's (DOC's) Uniform Administrative Requirements (UARs) found at 15 Code of Federal Regulations (C.F.R.) Parts 14 and 24, and the Special Award Conditions. Should this fact sheet and the BTOP award terms differ, the terms and conditions of a specific BTOP award govern.

Overview of Applicable Requirements, Terms and Conditions of BTOP Awards

NTIA's goal is for BTOP-funded property to remain in use for the purposes of the award under which it was acquired for its estimated useful life, rather than to have it disposed of prior to the end of that useful life. NTIA recognizes that as projects come to an end, recipients may have some limited undeployed personal property and have questions about the limitations around using and disposing of those assets. Further, NTIA understands that as BTOP-funded projects continue to provide service to customers and communities, recipients may need to replace or upgrade their equipment. This fact sheet is meant to provide clear guidance for addressing a number of these types of situations.

Several different terms and conditions of BTOP awards restrict the disposition and use of BTOP-funded personal property. These are discussed below.

Sale/Lease Restriction

Both BTOP Notices of Funds Availability (NOFAs) prohibit the sale or lease of award-funded broadband facilities or equipment during their useful life unless NTIA grants a waiver. See First NOFA at 33123; Second NOFA at 3810. This prohibition (the "Sale/Lease Restriction") is not intended to limit infrastructure recipients from leasing facilities to another service provider for the provision of broadband services where the lease is an operating lease. See First NOFA at 33123; Second NOFA at 3810. Program-wide waivers for the sale of indefeasible rights-of-use are described in the Sale/Lease Restriction, Indefeasible Rights-of-Use and Fiber Swaps Fact Sheet, available at http://www2.ntia.doc.gov/files/btop_sale-lease_iru_factsheet_final_v2.pdf.

DOC Uniform Administrative Requirements

In addition to the Sale/Lease Restriction contained in the First and Second NOFAs, the terms of the award also include the Department's UARs, which contain provisions governing the use and disposition of grant-funded equipment, supplies, and real property. See 15 C.F.R. §§ 14.32, 14.34-37, 24.31-34. These provisions specify that the property shall be used for its originally authorized purpose for as long as it is needed. These provisions then describe when such property may be used for other federally funded projects and set out the disposition requirements a recipient must follow in cases when the property is no longer needed at some point during its estimated useful life. In many cases, the disposition requirements include sale of the property and repayment of the federal share to the federal government. Recipients should work with the Grants Office if they are considering any such disposition of grant-funded property.





The Department's UARs provide that a recipient shall not dispose of or encumber (e.g., mortgage or other type of lien) real property without approval of the Grants Office. See 15 C.F.R. §§ 14.32(a), 24.31(b). Additionally, non-profits, commercial entities, hospitals, and institutions of higher education may not encumber equipment without approval. See 15 C.F.R. § 14.34(c).

Security Interest Special Award Condition

The "Security Interest in Real Property including Broadband Facilities and Equipment" Special Award Condition (Security Interest SAC) attached to each Infrastructure award reinforces recipients' compliance obligations with respect to the federal interest in grant-funded property. The SAC provides that for the estimated useful life of the real property, facilities, or equipment, the recipient will not sell, transfer, convey, or mortgage any interest in the real property including broadband equipment acquired or improved in whole or in part with federal funds made available under the award, nor shall the recipient use the real property, including broadband facilities and equipment, for purposes other than the purposes for which the award was made, without the prior written approval of the Grants Officer. The SAC further provides that such approval may be withheld until such time as the recipient first pays to NTIA the federal share of the property.

Dealing with Personal Property at the End of a BTOP Award

As recipients enter and complete closeout, they are still required to adhere to the property management provisions of their awards. These include the above-referenced disposition and sale/lease requirements, and the additional requirements outlined below:

- **Inventory Management Requirements:** Recipients are required to have inventory management systems in place that track, among other things, equipment descriptions, equipment serial numbers, and equipment locations. Recipients must also have adequate systems in place to maintain BTOP-funded equipment, and recipients must conduct a physical inventory of BTOP-funded equipment at least once every two years, for the duration of the property's useful life, as long as its value remains above \$5,000 per unit. See 15 C.F.R. §§ 14.31, 24.32.
- **Security Interest Documentation:** State agencies typically require Uniform Commercial Code documentation to be renewed every five years. Recipients are responsible for adhering to any such requirements, ensuring that the Federal Interest remains properly recorded, throughout the useful life of BTOP-property, as long as its value remains above \$5,000 per unit.
- **Document Retention Requirements:** After closeout, recipients are required to maintain documentation associated with their awards for at least three years, and may be required to maintain such documentation even longer if an audit or litigation is pending. See 15 C.F.R. §§ 14.53, 24.42.

In some cases, at the end of the BTOP award period, a recipient may be left with undeployed supplies or equipment. This may be the result of necessary changes to the project or unanticipated fluctuations in demand for these materials. Recipients should treat such undeployed personal property as outlined below.

Treatment of Undeployed Equipment

The Department's UARs define equipment as tangible personal property with an acquisition cost of \$5,000 or greater and a useful life of at least one year. See 15 C.F.R. §§ 14.2(n), 24.3. Equipment acquired and charged to the grant as an allowable cost but undeployed at the expiration of the project period must be treated in one of the following ways:

- Recipients may continue to use BTOP-funded equipment for the purpose of their awards throughout the useful life of the property. See 15 C.F.R. §§ 14.34(c), 24.32(c)(1). Any further use of BTOP-funded equipment must comply with previously approved environmental and historic preservation assessments and fall within





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the approved project scope. However, if a recipient has an unreasonably large inventory of undeployed equipment, or cannot use the equipment for the purpose of its award, the recipient may be required to dispose of those assets.

- If the equipment is no longer needed, recipients should coordinate disposition of the equipment with the appropriate Grants Office. See 15 C.F.R. §§ 14.34, 24.32.

Treatment of Undeployed Supplies

Supplies are defined as tangible personal property other than equipment. See 15 C.F.R. §§ 14.2, 24.3. This means any personal property with a per-unit acquisition cost of less than \$5,000 or a useful life of less than one year are considered supplies. Supplies acquired and charged to the grant as an allowable cost but undeployed at the expiration of the project period must be treated as follows:

- Recipients may use BTOP-funded unused supplies to continue to deliver benefits to impacted communities in accordance with their awards. A reasonable amount of undeployed supplies may be retained to support the maintenance of BTOP-funded facilities. Further use of undeployed supplies is only permitted to complete previously approved BTOP routes and only if implemented in accordance with previously approved environmental and historic preservation assessments. The use of BTOP-funded supplies beyond these limited parameters may be subject to disposition.
- If there is a residual inventory of unused supplies with an aggregate value of \$5,000 or greater at the termination or completion of the project, then the recipient may (1) use the supplies on another federally sponsored project or program, (2) dispose of those supplies and compensate NTIA for its federal share of sale proceeds, or (3) retain the supplies for the recipient's non-federal use and compensate NTIA for the federal share of the fair market value of the supplies. See 15 C.F.R. §§ 14.35, 24.33.

Treatment of Replacement and Upgraded Property

If BTOP-funded facilities need to be replaced before the end of the item's useful life, or if the recipient wishes to replace BTOP-funded equipment to upgrade a system, then the recipient may use the original property as trade-in or sell the property and use the proceeds of the sale to offset the costs of replacement property. Such a property sale is subject to the approval of the Grants Officer after coordination with NTIA. See 15 C.F.R. §§ 14.34(e), 24.32(c)(4). NTIA will maintain its Federal Interest in the new replacement property, for the remaining useful life of the original piece of property, according to the original federal share of the award, multiplied by the percentage of the cost of the replacement property purchased with sale proceeds.

Alternatively, the recipient may request permission from the Grants Office to dispose of the replaced equipment. If the federal share is repaid, NTIA will relinquish its financial interest in the BTOP acquired property. However, as NTIA's interest is an undivided equitable reversionary interest in the BTOP-funded facilities in their entirety, NTIA would prefer that its Federal interest continue to run with the upgraded piece of equipment. Therefore, NTIA prefers that recipients use sale proceeds to offset the cost of replacement property.

Frequently Asked Questions

How is the federal share calculated?

The federal share is the federal contribution to a BTOP project. It is the percentage of federal participation in the project as determined by a recipient's CD-450, or any subsequent CD-451(s) modifying the percentage of federal participation in the project. In determining any amount needed to be repaid to the federal government following the disposition of BTOP-funded assets, recipients should take this percentage and multiply by the sale proceeds. For instance, if the sale of BTOP-funded property results in \$10,000 in sale proceeds, and the federal share of the project





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is 80 percent, recipients would be required to pay \$8,000 to the federal government ($10,000 \times .8 = 8,000$) in compensation of the federal share.

What is the useful life of BTOP-funded personal property?

The useful life of BTOP-funded personal property is determined under the BTOP Useful Life Schedule, which designates a specific useful life for different categories of personal property. See BTOP Useful Life Schedule, available at http://www2.ntia.doc.gov/files/fact_sheet_useful_life_schedule_082510_v1.pdf. The useful life begins on the date a piece of property is acquired.

What qualifies as “unused” supplies?

Unused supplies are supplies, as defined by the UARs, which were not deployed during the BTOP award period. NTIA does not consider remnants of deployed equipment which now qualify as supplies, such as partial fiber reels, to be unused supplies.

If we elect to keep unused supplies for other purposes and must repay the federal share, how is the fair market value of the supplies determined?

In determining the fair market value, recipients should conduct reasonable analysis and research of the market price.

May a BTOP Infrastructure recipient use BTOP-funded equipment or supplies to expand its network?

An Infrastructure recipient may continue to use BTOP-funded equipment and supplies to expand its network only if the work being contemplated was part of its approved BTOP project and the recipient was unable to complete the project during the BTOP award period. A recipient in such a situation would have to adhere to the environmental and historic preservation requirements detailed in its environmental approval.

Additional Resources

For additional guidance, please refer to the following resources:

- Round One NOFA, § V.E, 74 Fed. Reg. 33104, 33123 (July 9, 2009), available at http://www.ntia.doc.gov/files/ntia/publications/fr_bbnofa_090709.pdf
- Round Two NOFA, § V.F, 75 Fed. Reg. 3792, 3810 (Jan. 22, 2010), available at http://www.ntia.doc.gov/files/ntia/publications/fr_btopnofa_100115_0.pdf.
- Department of Commerce Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations, 15 CFR §§ 14.32, 14.34-37, http://www2.ntia.doc.gov/files/award_docs/15cfr14.pdf.
- Department of Commerce Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 15 CFR §§ 24.31-34, http://www2.ntia.doc.gov/files/award_docs/15cfr24.pdf.
- BTOP Useful Life Schedule, available at http://www2.ntia.doc.gov/files/fact_sheet_useful_life_schedule_082510_v1.pdf.
- BTOP Nondiscrimination and Interconnection Obligations Fact Sheet, available at: http://www2.ntia.doc.gov/files/Interconnection_Nondiscrimination_11_10_10_FINAL.pdf.
- BTOP Federal Interest Documentation Requirements Fact Sheet, available at: http://www2.ntia.doc.gov/files/fact_sheet_federal_interest_082510_v2_1.pdf.

