



BROADBANDUSA
CONNECTING AMERICA'S COMMUNITIES

Compliance and Reporting Requirements

Portland, Oregon
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Funded by the American Recovery and Reinvestment Act of 2009





What are Grants?

- Grants are cost reimbursable. No fee or profit allowed.
- Federal Rules and Regulations govern grants. Some examples of requirements:
 - Financial Management System in place that can record the federal funds separately
 - Written procedures in place for minimizing fund drawdowns, procurement, property standards.
 - Accounting records must be kept and must include supporting source documentation for all costs.
 - Draw downs done as needed. Cannot keep advanced funds for longer than 30 days.
 - Prior approvals for budget changes, change in key personnel, others.
 - Access to all records by DoC Office of Inspector General.
 - Cost principles stating which costs are allowable.
 - Quarterly or Semi-annual financial and technical reports
 - Audit





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What are the authorities and responsibilities of grants officer and the program official?

- Grants Officer--Only official with authority to bind the government, obligate funds, amend award, suspend or terminate award, resolve audits, and other administrative aspects.
- Program Official--Responsible for documenting evaluation and recommendation for award to grants officer and for monitoring and oversight of the work conducted under the award.





Financial Assistance Applicable Regulations

APPLICABLE REGULATIONS SPECIFIC TO ORGANIZATIONAL TYPE

TYPE	ADMINISTRATIVE*	COST PRINCIPLES	**AUDITS***
For Profit Entities	15 CFR Part 14	48 CFR Part 31.2 (Federal Acquisition Regulations)	Government Auditing Standards (Yellow Book) OMB Circular A-133, Subpart B § 235
Institutions of Higher Education	15 CFR Part 14	2 C.F.R. Part 220 (OMB Circular A-21)	OMB Circular A-133
Non Profit Organizations	15 CFR Part 14	2 C.F.R. 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 and Local Governments	15 CFR Part 24	2 C.F.R. Part 225 (OMB Circular A-87)	OMB Circular A-133
Tribal Governments	15 CFR Part 24	2 C.F.R. Part 225 (OMB Circular A-87)	OMB Circular A-133

NOTE: IN CONJUNCTION WITH ABOVE REFERENCED REGULATIONS, ALL AWARDEES MUST ALSO FOLLOW (as applicable):

- Department of Commerce Financial Assistance Standard Terms and Conditions <http://oam.ocs.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf>
- Special Award Conditions Under The Program
- Department of Commerce American Recovery and Reinvestment Act Award Terms <http://oam.ocs.doc.gov/docs/ARRA%20DOC%20Award%20Terms%20Final%205-20-09PDF.doc.pdf>
- * Administrative Requirements can be found at <http://oam.ocs.doc.gov/docs/GRANTS/15cfr14.pdf> (15 CFR Part 14) or <http://oam.ocs.doc.gov/docs/GRANTS/15cfr24.pdf> (15 CFR Part 24)

** Cost Principles can be found at http://www.whitehouse.gov/omb/grants_circulars/

*** <http://www.gao.gov/govaud/ybk01.htm>





Financial Assistance Applicable Regulations

Links to regulations and compliance guidelines can be found at:

<http://www.broadbandusa.gov/compliance.htm>





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DOC Pre-Award Notification Requirements 73 Fed. Reg. 7696 (February 11, 2008)

- Federal policies and procedures
- Debarment, suspension, drug-free workplace, lobbying
- Pre-Award screening for management capabilities, financial condition and responsibility
- No obligation for future funding
- Pre-award activities
- Freedom of Information Act
- False statements
- Application forms

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Government-wide Administrative Regulations for Recipients

- Uniform Administrative Requirements--OMB Circular A-110 (2 CFR 215) applies to educational institutions, non-profits, and commercial organizations; OMB Circular A-102 applies to state and local governments, 15 CFR part 24 applies to tribal governments.
- Financial and program management, including cost share and program income
- Property and procurement standards, reports and record keeping
- Requirements flow down to subrecipients

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Administrative Regulations Recipient Codes of Conduct

- Grantees and subgrantees must have a written code of conduct governing performance of employees engaged in the awarding and administration of contracts.
- No employee, officer, or agent of the grantee or subgrantee may participate in the selection, award, or administration of a contract, subcontract, or subgrant supported by Federal funds if a real or apparent conflict exists.
- Conflict exists when a recipient employee, officer, or agent, any immediate family member, a partner, or organization which employs or is about to employ one of the above, has a financial or other interest in the firm selected for the award.
- Grantees or subgrantees may not solicit or accept gratuities or favors from contractors, potential contractors, or subagreement parties.





Administrative Regulations – Procurement Standards

- 15 CFR 14.40 – 48
- Subcontractor disputes –no recourse to federal agency
- Recipient must have codes of conduct for employees conducting contracting
- Recipient must have written procurement procedures
- Competition is required unless justified
- Recipient must document (a) basis for contractor selection; (b) justification if not competed; (c) cost and price analysis





Administrative Regulations – Procurement Standards

- Prime and Subrecipients
 - Code of Conduct
 - Written procurement
 - Competition
 - Document basis of selection
 - Justification if not competed
 - Cost and price analysis
- Prime/Sub and Contractors
 - Ability to perform under Standard Terms and Conditions
 - Perform with integrity
 - Record of past performance
 - Necessary financial resources
 - Not debarred or on excluded party list





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Administrative Regulations

Financial Reports

- 15 CFR 14.50 -53 set forth the reporting requirements for recipient's financial and program performance and for record retention
- Recipients must manage and monitor subrecipient's performance and assure they comply with audit requirements
- May receive cash advances for immediate expenses only (usually monthly needs). Advances maintained in interest-bearing insured accounts
- Financial Reports and Performance Reports required on schedule set in terms of award





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Administrative Regulations Records Retention

- Records must be kept for 3 years after final closeout or after audit, litigation, or claim is resolved
- OIG has unrestricted access and may interview recipient's personnel for as long as records are retained





Government-wide Cost Principles for Recipients

- OMB Circular A-21--Applies to educational institutions. 2 CFR 220
- OMB Circular A-87--Applies to state and local governments. 2 CFR 225
- OMB Circular A-122--Applies to non-profits.
2 CFR 230
- 48 CFR Part 31--Applies to commercial organizations.
- OMB Circular A-87--Applies to tribal governments. 2 CFR 225





Cost Principles

Three Basic Guidelines for Cost Allowability

- For costs to be allowable they must be:
 - 1) Consistent Costs: consistent treatment between award and other activities of the organization
 - 2) Reasonable Costs: ordinary and necessary, market prices, prudent person, established practices.
 - 3) Allocable Costs: relative benefits received, all activities share cost, cost allocation plan.

Additionally, they should:

- Be determined in accordance with GAAP
- Not be included as a match for any other Federal award
- Adequately documented in the accounting records





Cost Principles

Direct Costs

Costs that can be identified specifically with a particular cost objective and comply with allowable guidelines, include:

- Personnel
- Travel
- Equipment
- Materials/supplies
- Contracts
- Other





Cost Principles

Indirect Costs

Costs that cannot be readily identified with a single cost objective but identified with common or joint objectives that comply with allowable guidelines, include:

- General administration
 - Salaries / expenses of executive officers
 - Personnel administration
 - Accounting
 - Fringe benefits
 - Office rent
 - Maintenance
 - Library expenses
 - Office supplies
 - General purpose office equipment, computers, printers, copiers, etc.

Indirect Costs must have an approved rate validated

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Are BTOP Grants Taxable?

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





Government-wide Audit Requirements

- Audits--OMB Circular A-133 applies to states, local governments, and non-profit organizations. This circular implements the Single Audit Act Amendments of 1996, establishing uniform audit requirements for non-Federal entities that administer Federal awards.
- OMB Circular A-133 Subpart B § 235 (program specific audits) Applies to For-Profit entities.
- Depending on the nature of the recipient, the appropriate OMB circulars and regulations are incorporated by reference into award agreements; thus becoming enforceable between the agency and the recipient on a contractual basis.
- Audits must be submitted to Federal Audit Clearinghouse 9 months after fiscal year end
- Audit of the award may result in the disallowance of costs after closeout





Recipient Certifications

- By signing the following certifications a recipient agrees to comply with:
 - BTOP Certifications
 - SF 424B – Non Construction Assurance to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
 - SF 424D – Construction Assurance to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
 - CD 511 – Certification regarding Lobbying
 - CD 512 – Certification regarding Debarment, Suspension, Ineligibility and voluntary Exclusion – Lower Tier Covered Transactions and Lobbying
 - SF-LLL – Disclosure of Lobbying activities





Key ARRA Requirements

- Section 1605: Buy American.
Requires that projects funded by ARRA for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel and manufactured goods in projects, unless one of several specified exemptions applies. This requirement is to be applied in a manner consistent with U.S. obligations under international agreements.
- Limited waiver of Buy American issued for certain broadband equipment in BIP and BTOP projects:
 - Broadband Switching Equipment
 - Broadband Routing Equipment
 - Broadband Transport Equipment
 - Broadband Access Equipment
 - Broadband Customer Premises Equipment and End-User Devices
 - Billing/Operations Systems
- For equipment not covered by waiver, applicants may seek waiver on a case-by-case basis.
- Complete language from Federal Register Vol. 74 , No. 125 detailing the Buy American Limited Waiver can be found at <http://www.broadbandusa.gov/files/RUS%20Buy%20American%20Waiver.pdf>





Key ARRA Requirements

- 2. Section 1606: Wage Rate Requirements.

Requires the payment of Davis-Bacon Act (40 USC Chapter 31) wage rates to “laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government” pursuant to the ARRA.





Freedom of Information Act (FOIA)

- It is the policy of DOC and BTOP to make records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA, while at the same time protecting sensitive information.
- The decision not to award a BTOP discretionary grant is not subject to an administrative appeal to any DOC or NTIA official or operating unit.
- Complete guidelines and instructions regarding making requests can be found at <http://osec.doc.gov/omo/FOIA/foiarequest.htm>





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National Environmental Policy Act and National Historic Preservation Act

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National Environmental Policy Act of 1969 (NEPA)

Requires that the federal government examine the potential impacts of an action and its reasonable alternatives prior to making a final decision

- Applies to actions funded by federal grants and matching funds

National Historic Preservation Act of 1966 (NHPA)

Section 106 requires that the federal government examine the potential impacts of its actions to historic, cultural, and Tribal resources prior to making a final decision

- Projects with the potential for adverse impacts may require consultation with a State Historic Preservation Office (SHPO) or a federally-recognized Tribe





NEPA and NHPA

- Separate federal statutes with their own separate, but similar, regulatory compliance processes
- Reviews may be conducted concurrently and the results included in the same document to streamline the process and avoid duplication of effort
- Compliance with both NEPA and NHPA, as well as other applicable environmental laws and permitting requirements, must be completed prior to project implementation, such as construction and ground disturbing activities.





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NEPA and NHPA: Federal Agency Roles and Responsibilities

- Ensure compliance with environmental and historic preservation laws
- Engage in public participation if required
- Initiate consultation with resource agencies such as a SHPO, a Tribal Historic Preservation Office (THPO), or the US Fish and Wildlife Service
- Make the decision regarding the level of review and analysis required, such as CE, EA, or EIS





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NEPA and NHPA: Applicant Roles and Responsibilities

- Gather and submit project-level information
- Obtain required permits, authorizations, and letters from appropriate governmental authorities
- Conduct any necessary studies as required by DOC or a consulting resource agency
- Provide information directly to a SHPO or THPO, if requested by DOC
- Complete all required environmental and historic preservation compliance activities within six months of award

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Levels of NEPA Review and Analysis

Documented in one of three ways:

- Categorical Exclusion (CE) - a category of actions that has been determined by a federal agency, based on its experience, to have no significant impact on the environment
- Environmental Assessment (EA) – a concise public document that provides analysis regarding the impacts of a proposed action or alternatives, and may identify mitigation measures
- Environmental Impact Statement (EIS) – an in-depth analysis prepared regarding a project that will have significant impacts to the environment





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Environmental Review Process for Comprehensive Community Infrastructure (CCI) and Public Computing Centers (PCC) with Construction

- An Environmental Questionnaire (EQ) is required with all CCI applications, and PCC applications with a construction component
- Federal staff will review the EQ to identify additional information needed, and to make a determination if the project qualifies for a CE, or if an EA or EIS is required
- Actions categorically excluded under NEPA are not excluded from review under Section 106 of NHPA





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Environmental Review Process for Public Computer Centers (PCC) with no Construction and Sustainable Broadband Adoption (SBA) Programs

- A complete DoC Environmental Checklist is required with all PCC and SBA applications
- SBA applications are not permitted to have a construction component, and are exempt from Section 106 compliance
- All applications will be reviewed to determine if the proposed projects qualify for a CE
- Applicants will be notified by NTIA environmental reviewers if further information is required

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NEPA Review Process

- For a project to qualify for a CE, it must fit the category definition and must not have the potential for an adverse effect that cannot be mitigated or resolved
- If the project qualifies for a CE and requires no Section 106 Consultation, the applicant has no further environmental compliance responsibilities
- If a proposed project does not qualify for a CE, then the applicant may need to prepare an EA and/or a Section 106 Consultation
- NTIA will review all EAs for legal sufficiency, and draft the final decision document
- Projects that may require an EA are:
 - Projects that require large amounts of ground disturbance (e.g. tower construction)
 - Projects that may impact protected resources, such as wetlands, threatened and endangered species, and cultural and historic resources





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NEPA Review Process

- After reviewing the EA, the federal decision is documented in a *Finding of No Significant Impact* (FONSI)
- Projects that cannot result in a FONSI and have significant impacts would require an EIS, which is not likely to be completed within ARRA timelines





Red Flag Issues

Certain issues may require additional analysis and approval from other stakeholder agencies. This issues include impacts to the following resource areas:

- Threatened and endangered species
- Cultural and historic resources
- Wetlands
- Floodplains
- Hazardous waste sites
- Protected lands such as parks and lands managed by Federal agencies





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BTOP and DOC Categorical Exclusions (CE)

- Neither an environmental assessment nor an environmental impact statement is required when there is a CE.
- A list of CEs for BTOP and Dept. of Commerce can be found at:
- http://www.nepa.noaa.gov/DoC_CEs_FRN_07-10-2009.pdf
- http://ceq.hss.doe.gov/nepa/NTIA_Federal_Register_Oct_13_2009.pdf





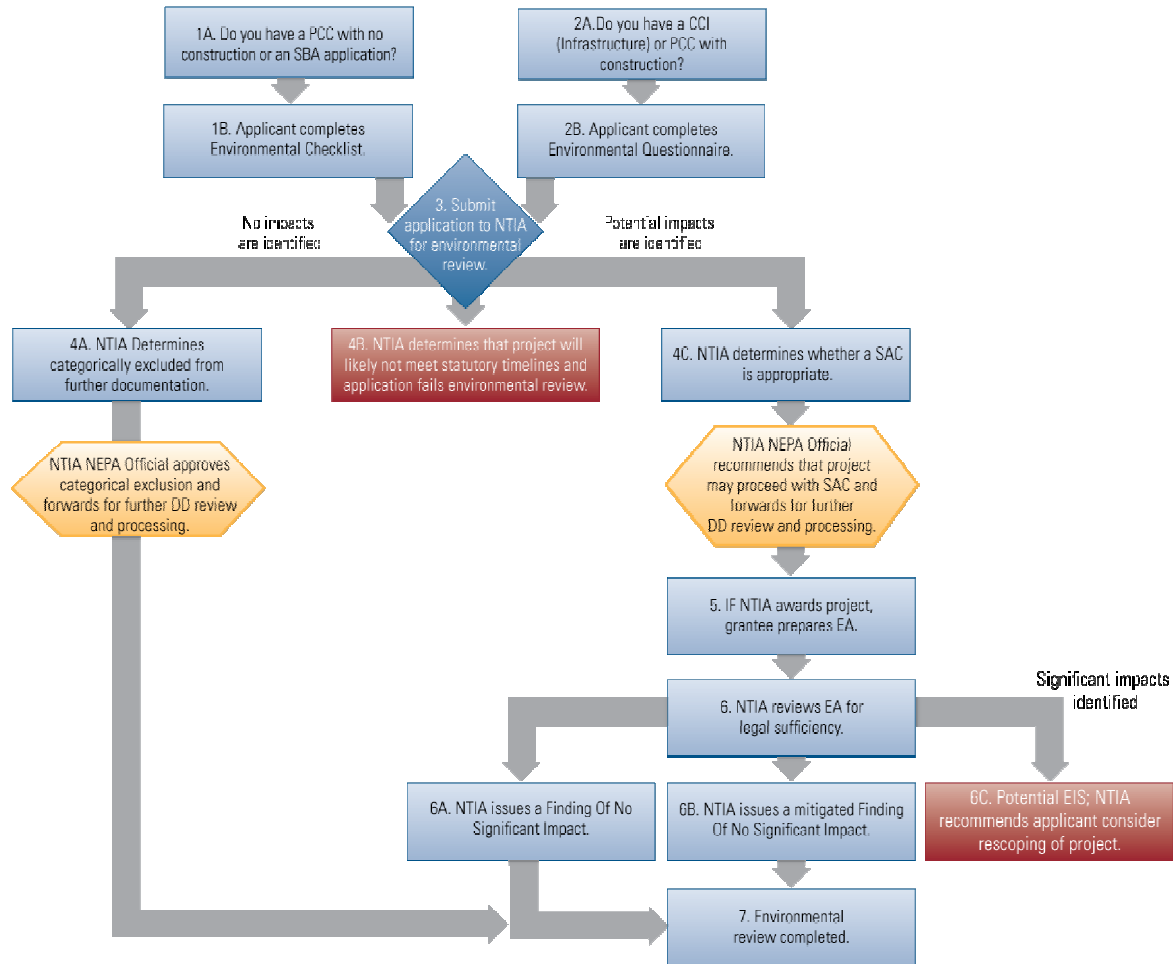
BTOP NHPA Compliance Tools

- NTIA signed a program comment with the Advisory Council on Historic Preservation (ACHP) and the Federal Communication Commission (FCC) to allow NTIA to adopt the results of the FCC's Section 106 compliance process
- NTIA also signed a Memorandum of Understanding (MOU) to allow the use of the FCC's Tower Construction Notification System (TCNS) for all infrastructure projects
 - TCNS notifies federally-recognized tribes about proposed projects in their areas of interest
 - Facilitates compliance with Section 106 of NHPA
- NTIA signed a Nationwide Programmatic Agreement (NPA) with ACHP
 - Post-award compliance with Section 106 is permitted through the use of special award conditions
 - SBA and Broadband Over Powerlines projects are exempt from Section 106 compliance requirements





The NEPA Review Process



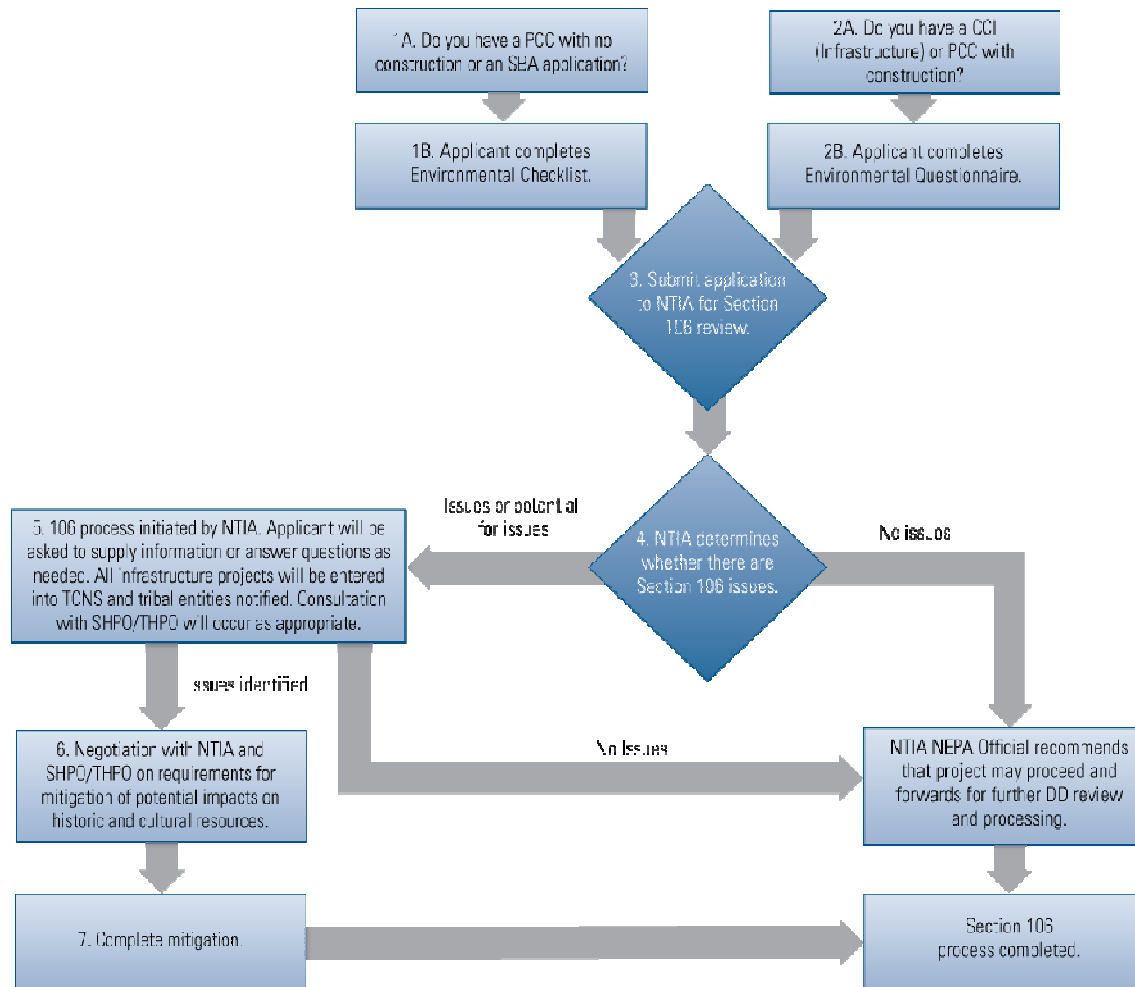
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The NHPA Review Process



*BID# 28A projects are exempted from Section 106 Review.

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ARRA Recipient Reporting

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ARRA Recipient Reporting

- Recipient reporting required by Section 1512 of the Recovery Act is intended to answer important questions, such as:
 - Who is receiving Recovery Act dollars and in what amounts?
 - What projects or activities are being funded with Recovery Act dollars?
 - What is the completion status of such projects or activities?
 - What impact have the projects or activities had on job creation and retention?





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ARRA Recipient Reporting

- Office of Management and Budget (OMB) guidance document M-09-21 at:
 - http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf
 - http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf (*updated*)





ARRA Recipient Reporting

- Who is required to report?
 - Prime recipients of all programs
- What is required?
 - Quarterly reporting, beginning the quarter ending 9/30/09
 - No later than 10 days after close of quarter
 - Federal agency providing funds will make reports publicly available no later than 30 days after close of quarter





ARRA Recipient Reporting

- What is required to report?
 - Total amount of funds received; and of that, amounts spent on projects and activities
 - List of projects and activities funded by name to include:
 - Description
 - Completion status
 - Estimates on jobs created or retained
 - Details on subawards and other payments





ARRA Recipient Reporting

- Nationwide data collection system at the website: www.FederalReporting.gov
- Initial training through webinars
 - <https://www.federalreporting.gov/federalreporting/downloads.do#webinars>
- Prime Recipients are not required to conduct all reporting on behalf of sub-recipients. The decision as to whether or not Prime Recipients will allow sub-recipients to report is solely within the purview of the Prime Recipient.





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BIP and BTOP Recipient Reporting

- In addition to the general Recovery Act reporting requirements, BIP and BTOP awardees must also report quarterly on information specified in NOFA. The information requested will vary depending on the type of project being funded.





BTOP Recipient Reporting

Comprehensive Community Infrastructure: Information regarding uses of funds, finances, broadband deployment and speeds, network management and interconnection, prices, and subscriptions.

- Interconnection agreements
- Traffic exchange relationships
- Broadband equipment purchases
- Utilization
- Network management
- Subscriptions
- Broadband speeds
- Network miles deployed
- “Cost per Mile” or “Cost per Subscriber”
- Price of broadband service





BTOP Recipient Reporting

Public Computer Centers: Information regarding uses of funds, technology and services offered, customers served.

- Number of new and upgraded PCCs
- Number of new and upgraded workstations available to the public
- Total hours of operation per week that the PCC is open
- Speed of broadband to PCC
- Primary uses of PCC
- Average number of users per week in PCC
- Total hours per week of training provided
- Number and cost of broadband equipment deployed
- Total project cost per workstation





BTOP Recipient Reporting

Sustainable Broadband Adoption: Information regarding uses of funds, technology and services offered, individuals served, and broadband users generated.

- Technology being fostered
- Efforts to aggregate demand for each location
- Increase in number of households, businesses and community
- Number and type of awareness campaigns
- Number and cost of any broadband customer premises equipment or end-user devices deployed
- Total market potential for households, businesses and community





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Enforcement

- High risk Special Award Conditions
- Suspension of payments
- Suspension of award
- Termination for cause
- Termination for convenience
- Debarment and Suspension

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BTOP Special Award Conditions

- Guidelines for Matching Funds
- Underserved and Unserved Service Areas
- Security Interest in Real Property
- NOFA Requirements
- Notice of Limited Waiver of Section 1605 (Buy America Requirement)
- Non-Discrimination and Interconnection
- Payments and Advances
- Post Award Reporting Requirements

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BTOP Special Award Conditions

- National Environmental Policy Act (NEPA)/Section 106 Environmental
 - Completion of environmental reviews and impact determinations to comply with National Environmental Policy Act of 1969
 - Completion of consultation required under Section 106 of the National Historic Preservation Act of 1966 and Section 7 of the Endangered Species Act
 - Compliance with all Federal, state and local environmental and historic preservation laws





Post-Award Processes and Tools

- NTIA has established active and helpful Post-Award processes and tools to assist grantees with every aspect of Post Award administration. These include:
 - BTOP Webinars (on reporting, compliance) – starting late February
 - Grantee Handbook
 - Reporting Guidelines
 - Compliance Guidelines
 - Technical Assistance – program support to assist in grant execution
 - In addition, there is a manned Help Desk to answer grantee questions: **1-877-508-8364**
 - Email inquiries can be sent to BroadbandUSA@usda.gov
 - www.broadbandusa.gov/compliance.htm

