



BROADBANDUSA
CONNECTING AMERICA'S COMMUNITIES

Federal Interest

Broadband Technology Opportunities Program (BTOP)

Recipient Webinar
WASHINGTON, DC
June 2013

Made Possible by the Broadband Technology Opportunities Program

Funded by the American Recovery and Reinvestment Act of 2009





Objective:
Understand Federal Interest obligations for BTOP
grant projects and the scope of the documentation
requirement





Agenda

- Background on the purpose of the requirement
- Scope of the Federal Interest
- Documentation of the Federal Interest
- Recordkeeping and monitoring requirements
- Examples of Federal Interest documentation
- Questions





Federal Interest requirement protects taxpayer investment in BTOP award funds

- Recipients and subrecipients hold all real and personal property acquired or improved with BTOP funds in trust for the public purposes of the grant
- The Federal Interest applies to the following
 - **Real property:** land and improvements, structures, and appurtenances
 - **Fixtures:** personal property that is legally considered part of the realty
 - **Personal property:** tangible and intangible property except for supplies
- Grant recipients play a key role in ensuring that the taxpayer investment is protected and maintained throughout the useful life of the property





Federal Interest requirements apply to recipients or subrecipients that acquire or improve property

- All recipients and subrecipients that acquire or improve property, in whole or in part, with BTOP funds must comply with the Federal Interest requirement
- While Federal Interest exists, recipients and subrecipients shall not
 - Sell, lease, transfer, assign, convey, hypothecate, mortgage, or otherwise convey any interest in the BTOP-funded property without the prior written approval of the Grants Office
 - Use the BTOP Property for purposes other than the purposes for which the award was made without the prior written approval of the Grants Office
- Federal Interest lasts for the estimated useful life of the property, per the BTOP Useful Life Schedule





Amount of Federal interest is based on the percentage of Federal participation in project

- If the recipient or subrecipient obtains permission to dispose of property before the Federal Interest expires, it may be required to reimburse the Government for its share
 - EXCEPTION: If equipment becomes worth less than \$5,000, the recipient may freely dispose of it
- The amount of the Federal Interest is computed as the percentage of the then current fair market value of the BTOP Property attributable to NTIA's participation in the BTOP project

For Example:

Suppose the award is \$7 million and the required match is \$3 million, so the Federal participation in the project is 70%. The recipient uses \$100,000 in federal and/or matching funds to purchase 5 pieces of \$20,000 equipment for the project. At time of purchase, the Federal Interest in the equipment is $70\% * \$100,000 = \$70,000$. Later, suppose the value of each unit declines to \$50,000. The Federal Interest in the equipment is now $70\% * \$50,000 = \$35,000$.

- Recipients may not designate which property is purchased with federal funds and which is purchased with cash match





Recipients with construction projects or significant equipment purchases must document the Federal Interest

YES or **NO**

KEY QUESTIONS



Is the award a BTOP Infrastructure or Comprehensive Community Infrastructure project?



Is the award a Public Computer Center (PCC) project with a construction component consisting of more than minor alteration activities such as the installation of cabinetry, doors, and furniture; the replacement or repair of wallboard and ceilings; rough-ins for plumbing or electrical work; painting; wallpapering; and carpeting?



For PCC/SBA recipients, do you have equipment, as defined by the Uniform Administrative Requirements, with an aggregate current fair market value exceeding \$50,000

If **ANY** answer is “YES”

Recipients and subrecipients must execute and file in the appropriate office(s) documentation of the Federal Interest with respect to property acquired or improved, in whole or in part, with Federal or cash matching funds.





Required documentation for Federal Interest depends on the type of property

- **Attorney Certification(s)** from counsel, licensed by the state within which the filings were made, that the Covenant and/or UCC documentation has been properly executed and recorded or filed
- **Covenant of Purpose, Use, and Ownership** to be filed in the real property records in the jurisdiction in which the real property is located
 - For leases, easements, and other less-than-fee-simple interests, recipient may include acknowledgement of Federal Interest and right of assignment in the agreement with landowner instead of filing covenant
- **UCC-1 Form** to be completed for fixtures and personal property
 - File the form for fixtures with the appropriate real property records of the jurisdiction where the real property is located and renew for as long as its useful life
 - File the form for Personal Property with the appropriate state office in accordance with the state's codification of the Uniform Commercial Code (UCC), Article 9 and renew for as long as its useful life
 - Maintain copies of all new or updated UCC-1 documentation
 - For capital leases (e.g., certain IRUs), recipient can include acknowledgement of Federal Interest and right of assignment in the agreement with lessor instead of filing UCC-1





Recipients must ensure that recordkeeping is timely and documented with the NTIA and the Grants Office

- Federal Interest documentation must be recorded or filed as soon as reasonably possible following any purchase, lease, or other acquisition or improvement of real property, fixtures, or personal property
- Recipients and subrecipients must also timely file continuation statements for fixtures and personal property for the duration of the Federal Interest
- At closeout or upon request, recipients or subrecipients must provide the Grants Office with
 - Copy of the instruments reflecting the documentation of the Federal Interest with the recording or filing stamp and information clearly visible
 - Attorney's certification(s)





Attachment C – SAMPLE Attorney Certification

RE: [Covenant of Purpose, Use and Ownership and/or UCC-1 Form(s)]

NTIA BTOP Grant No. _____

Pursuant to 28 U.S.C. § 1746, I hereby certify as follows:

I am legal counsel at _____ a.

I am licensed to practice law in the State of _____ having been a license holder of said state and in good standing since _____.

[For Covenants] Attached hereto is a certified copy of that document entitled "Covenant of Purpose, Use and Ownership" reflecting that this document was filed in the _____ on _____, 2011, bearing the recording data evidencing that this document is recorded as [insert recording data, e.g., instrument number, book and page number, etc.] and consists of _____ recorded pages as certified by _____ of _____.

[For UCC-1s] Attached hereto is a certified copy of UCC-1 form(s) reflecting that this document was filed in the _____ on _____, 2011, bearing the following filing information [insert filing data, e.g., instrument number, etc.] and consists of _____ recorded pages as certified by the Secretary of State of _____ b.

I certify that this [Covenant of Purpose, Use and Ownership and/or UCC-1 form(s)] has/have been validly executed and properly recorded as noted above.

I certify under the penalty of perjury that the foregoing is true and correct.

Executed on this _____ day of _____ c.

d.

(Attorney name and title)
(Address and phone number)

Attorney Certification

A recipient or subrecipient must obtain a certification from counsel, licensed in the state where any recordings or filings were made, which asserts that the documentation necessary to secure the Federal Interest has been properly filed in accordance with applicable state law and

- a. Indicates that attorney has been licensed in appropriate jurisdiction
- b. Covers all appropriate UCC and/or Covenants (in this case, only filed a UCC-1)
- c. Dated **on or after** filings were made (verify with date on filings)
- d. Signed





UCC-1 Example

1. Finalized and filed in the appropriate location
2. Debtor name is the proper recipient or subrecipient, does not include acronyms, and only uses d.b.a. with the full debtor name
3. Documentation lists the National Telecommunications and Information Administration as the secured party with 1401 Constitution Ave NW street address and includes correct and full BTOP award #
4. Correctly represents the federal share in property or does not directly reference the federal share in the UCC documentation
5. Adequately describes the covered property (see next slide)
6. Includes correct and full BTOP Award #
7. Comports with BTOP useful life schedule

1. **FILED**

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

BTOP Recipient
Recipient Address
Recipient City, State Zip

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

2. 1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
BTOP Recipient

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. SEE INSTRUCTIONS ADD. INFO RE. ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #: if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADD. INFO RE. ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #: if any

3. SECURED PARTY - insert one name of TOTAL ASSIGNOR (SP) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
US Department of Commerce, National Telecommunications and Information Administration

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
1401 Constitution Ave NW Washington DC 20230 USA

4. THE FINANCIAL STATEMENT IS TO BE FILED IN THE REAL ESTATE DIVISION (if applicable) OR THE SECURED PARTY DIVISION (if applicable)

5. **Description of asset as part of Grant # NTXXXB1XXXXXXXXX**

6.

7. **Reference to BTOP Useful Life Schedule**

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. THIS FINANCING STATEMENT IS TO BE FILED (FOR RECORD) IN THE REAL ESTATE DIVISION (if applicable) OR THE SECURED PARTY DIVISION (if applicable) (check one) All Debtors Debtor 1 Debtor 2

7. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC 1) (REV. 05/22/02) International Association of Commercial Administrators (IACA)





Equipment List

Adequately describes the covered property

- Description (make and model)
- Quantity
- Serial numbers or similar id for each individual item
- Location of equipment
- For fiber, maps of the fiber route or fiber end points are the preferred method for demonstrating location and ensuring that the Federal Interest is preserved in the correct fiber strands

SAMPLE
Schedule A: Equipment List

Recipient Name
Recipient Address
NTIA/BTOP Award No. XXXXXXXXXXXXXXXXXXXXXXX

Quantity	Description	Manufacturer and Model Number	Serial Number(s)	Unit Cost	Price	Tag Number	Date of Acquisition	Useful Life per BTOP Schedule
3 (example)	4 Port 10/100/1000 Switch	Cisco ME 3400G-2-CS-A	6500748 6500749 6500750	\$xxxx	\$xxxx	101 102 103	10/31/2010	10 years





NTIA monitors and reviews Federal Interest documentation for recipients and subrecipients

Resources

- Federal Interest Fact Sheet
 - Attachment A: Sample Covenant of Purpose, Use, and Ownership
 - Attachment B: UCC-1 Instructions and Sample Format for Equipment List
 - Attachment C: Sample Attorney Certification
- BTOP Useful Life Schedule
- Uniform Administrative Requirements, 15 CFR §§ 14.30-37 & 24.31-34





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Questions

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