

Testimony of the Honorable Todd J. Zinser
Inspector General
U.S. Department of Commerce
before the House Energy and Commerce Committee
Subcommittee on Communications and Technology
May 16, 2012

Broadband Loans and Grants

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee:

I appreciate the opportunity to testify today about our oversight of the Broadband Technology Opportunities Program (BTOP), as well as the challenges the National Telecommunications and Information Administration (NTIA) faces in overseeing a large and diverse BTOP award portfolio.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided NTIA approximately \$4.7 billion to establish BTOP. This competitive grant program provides funds for deploying broadband infrastructure in unserved and underserved areas of the United States, enhancing broadband capacity at public computer centers, improving access to broadband services for public safety agencies, and promoting sustainable broadband adoption. BTOP awards were made in three major areas:

- *program infrastructure (comprehensive community infrastructure, or CCI)*, to provide institutions such as schools, libraries, and medical facilities with internet connectivity, including seven grant awards, totaling approximately \$382 million, targeting 700 megahertz (MHz) interoperable public safety wireless networks;

- *public computer centers (PCCs)*, to establish new public computer facilities or upgrade existing ones to provide broadband access to the general public or specific populations such as low-income individuals, the unemployed, seniors, children, minorities, and people with disabilities; and
- *sustainable broadband adoption (SBA)*, to foster broadband Internet usage and adoption, including among specific populations traditionally underserved by this technology.

Table I provides a summary of BTOP funding:

Table I. BTOP Funding

Category	Actual (in millions)
CCI	\$3,358
State Broadband Initiative Program	312
SBA	250
PCC	199
Rescission	302
Other ^a	147
Cancelled, modified, or terminated awards	127
Total	\$4,695

Source: OIG, based on NTIA data

^a includes transfer to OIG, transfer to Federal Communications Commission, and NTIA administrative expenses (figures have been rounded)

At the conclusion of the BTOP award process on September 30, 2010, NTIA had awarded 233 grants. As of April 30, 2012, the total number of BTOP grants decreased from 233 to 228 due to grant cancellations, modifications, and terminations, which resulted in approximately \$127 million returned to the U.S. Department of the Treasury (see table 2).

Table 2. BTOP Grants

Project Type	Number of Grants	Grant Totals (in millions)	Portion of Federal Funds Awarded
CCI	120	\$3,358	88.2%
PCC	65	199	5.2%
SBA	43	250	6.6%
Total	228	\$3,807	100.0%

Source: OIG, based on NTIA data

The Recovery Act also established a central role for Offices of Inspector General in monitoring their agencies' use of funds to prevent fraud, waste, and abuse. To date, our oversight efforts have assessed the establishment, implementation, and program operations of BTOP: this includes 6 reports and 29 recommendations developed to improve the administration of BTOP and monitoring of approximately \$4 billion in grant awards. Additionally we have provided training and established a formal complaint intake and analysis process. We currently have three open BTOP audit engagements, including an audit of BTOP grantees' matching share, NTIA's management and oversight of its contract for BTOP administration, and BTOP subrecipient monitoring. (Please see appendix for further details.) These, along with our Department-wide Recovery Act review of lessons learned, comprise our most immediate efforts to anticipate and address NTIA's ongoing challenges in administering the program.

Given the complex BTOP grant award profile, there are a number of challenges that now confront BTOP. My testimony will address these challenges, which include:

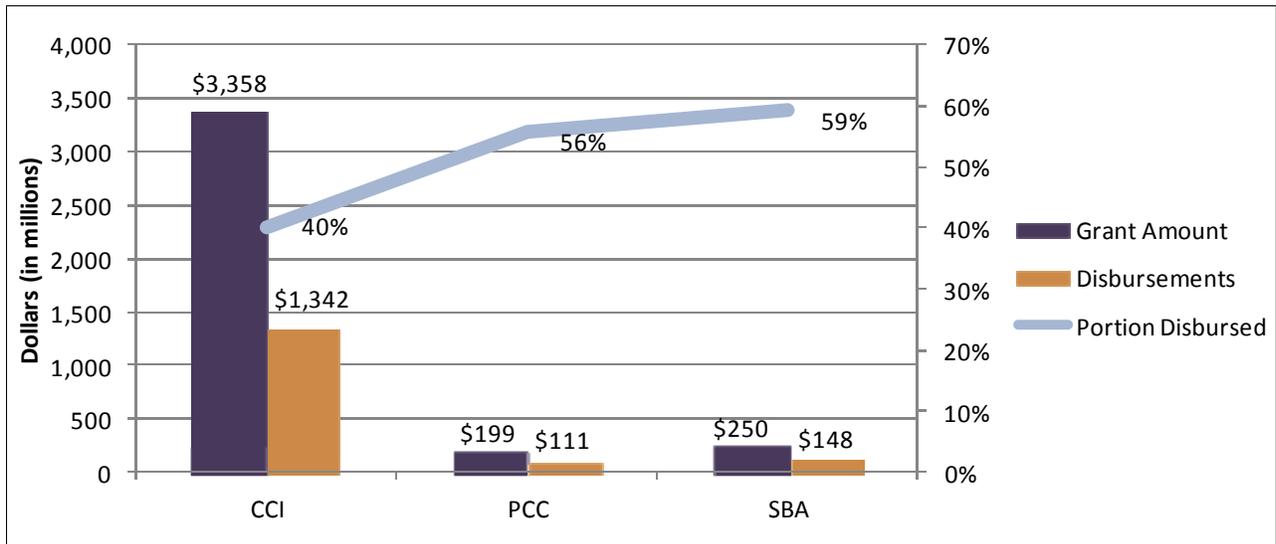
1. Slow awardee spending could result in unfinished grant projects;
2. NTIA is addressing program office monitoring issues but additional monitoring of equipment procurement may be needed;
3. Issues with awardee grant match documentation require closer NTIA oversight;

4. NTIA needs to assess the impact that the recently established First Responder Network Authority (FirstNet) program may have on existing BTOP public safety projects; and
5. Funding questions about 2013 and beyond raise concerns over continued BTOP oversight.

I. Slow Awardee Spending Could Result in Unfinished Grant Projects

In my November 2011 testimony to the House Subcommittee on Investigations and Oversight (Committee on Science, Space, and Technology), I reported that slow Recovery Act spending posed a challenge. Although overall BTOP disbursement increased from 20 percent (September 30, 2011) to 42 percent as of April 30, 2012, spending—particularly with infrastructure projects—continues to lag. Figure I below provides a summary of BTOP disbursements through April 30, 2012.

Figure I. BTOP Disbursements by Project Type (as of April 30, 2012)



Source: U.S. Department of the Treasury, Automated Standard Application for Payment

The July 2009 and January 2010 notice of funds availability (NOFA) required that all BTOP projects be fully completed within 3 years of the grant issuance and all BTOP grants be awarded by September 30, 2010. Since the first BTOP grants were awarded in December 2009, the forecasted completion dates range from November 2012 to September 2013. Also subsequent to December 2009, the Office of Management and Budget (OMB) has issued memorandum OMB M-11-34, stating that federal agencies “should work collaboratively and transparently with recipients of discretionary Recovery Act grants to accelerate the spending rate for all awarded funds while still achieving core programmatic objectives.” In this September 15, 2011, memorandum, OMB directs federal agencies to “establish aggressive targets, consistent with programmatic objectives, for outlaying remaining funds. . . . [and] take steps to complete Recovery Act projects by September 30, 2013.” While it aims to “accelerate the spending rate for all awarded funds while still achieving core programmatic objectives,” OMB’s directive does allow for deadline extension waivers where complex environmental review, the long-term nature of programs, or other special circumstances or contractual commitments prevent adjusting the timeline for spending.

Table 3 below provides additional details on projects with spending levels at 40 percent or less. With approximately 18 months or about one-half of the 3-year grant life remaining, those projects that have spent 40 percent or less of their grants present a higher risk of not meeting their spending deadlines.

Table 3. BTOP Grants with Spending Less Than or Equal to 40 Percent (as of April 30, 2012)

Project Type	Number of Grants	Portion of Type's Total Grants
CCI	49	41%
PCC	13	20%
SBA	8	19%
Total	70	31%

Source: U.S. Department of the Treasury, Automated Standard Application for Payment

Spending delays result from multiple causes. For example, special award conditions included in CCI awards require that an environmental assessment (EA) conclude prior to the start of construction. In our November 2011 BTOP award monitoring audit report, we noted that 118 BTOP grants required an EA and, at September 30, 2011, 12 awards continued to have outstanding EAs. Although all but one EA are now complete, the initial delay continues to affect the progress of BTOP projects. Additionally, in its March 2012 *Quarterly Program Status Report*,¹ BTOP reported to Congress that local permitting and agreements for predeployment activities have caused implementation schedule delays for some grant awards, including public safety awards.

2. NTIA Is Addressing Program Office Monitoring Issues but Additional Monitoring of Equipment Procurement May Be Needed

NTIA has overcome significant challenges in setting up and administering the BTOP program and continues to face challenges in overseeing such a diverse program. Given BTOP's complex grant portfolio and recipient profile, continual monitoring of the program and technological challenges becomes essential to ensuring \$3.8 billion in federal funds are safeguarded. In our

¹ National Telecommunications and Information Administration, March 2012. *Broadband Technology Opportunities Program (BTOP) Quarterly Program Status Report*. Washington, DC: NTIA, 12.

November 2011 BTOP award monitoring report, we determined that NTIA had taken steps to establish a comprehensive BTOP award oversight framework. However we also provided recommendations for improving internal controls over monitoring activities, including that NTIA:

- *strengthen the federal program officers' (FPOs') monitoring efforts*—by revising the FPO handbook to guide the performance of due diligence on seemingly inconsistent recipient information, as well as reinforcing the importance of following up on unresolved issues; streamlining site visits to provide additional time for onsite inspection of project progress and verification of source documents; and conducting FPO training to ensure consistency in the use of monitoring tools and execution of monitoring activities;
- *work with recipients at risk of not meeting award progress and completion requirements*—by helping them develop action plans that aim for revised completion dates; and
- *develop alternative strategies for those awards that will not be able to satisfy award terms*—possibly including project extensions or rescopings.

Implementing recommendations such as these improves NTIA's ability to ensure that operable broadband systems are deployed nationwide with financial integrity and in the spirit of the program's intent. NTIA submitted a responsive action plan to our report and has already taken a number of corrective actions.

As NTIA continues to implement our recommendations on program monitoring, we have identified grantee equipment procurement and installation as areas for NTIA to monitor.

Approximately \$3.4 billion in grants have been awarded to infrastructure projects, with 60 percent of spending remaining. With a large portion of those funds being spent on equipment

procurement and deployment, it becomes even more important to ensure that the equipment works and meets the intended objectives of BTOP. Based on the BTOP NOFA, it is our understanding that the equipment will meet the minimum technical requirements for broadband data rates: at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users. OIG will continue to monitor equipment procurements and testing closely; our FY 2012–13 audit plan identifies effective implementation of technology as an important area for review.

3. Issues with Awardee Grant Match Documentation Require Closer NTIA Oversight

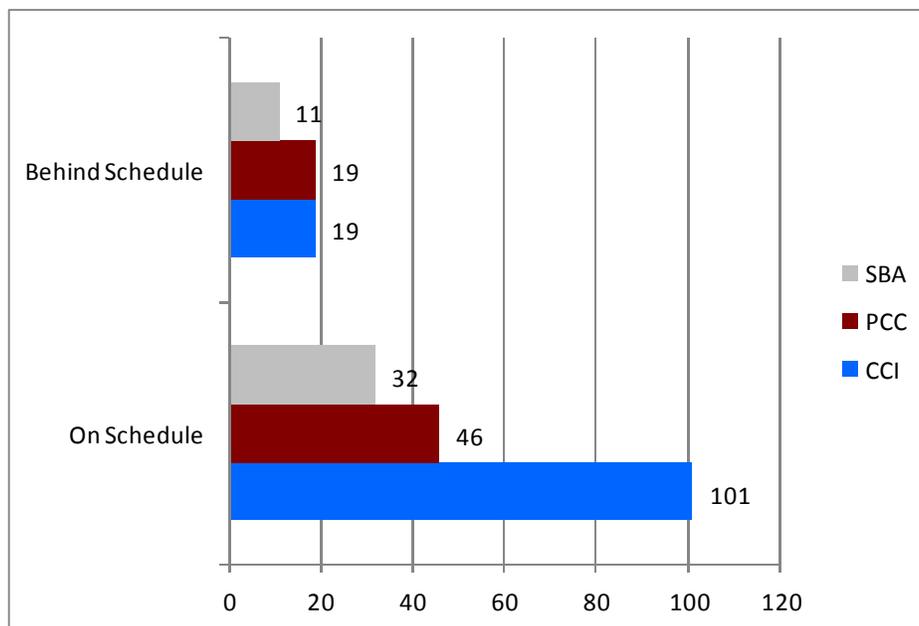
In April 2011, we initiated an audit to determine whether NTIA has processes in place to monitor BTOP recipient match and verify that match contributions meets federal administrative requirements. Since then, we have completed our interviews and testing; identified improvements needed to strengthen NTIA’s monitoring of BTOP grant match; and issued our draft report. Our findings include: (1) PCC and SBA grantees do not receive the same detailed match review as CCI projects; (2) grantees permitted a contractor and a subrecipient to access cash drawdowns through the U.S. Department of the Treasury; (3) grantees did not record the grant match in the financial records; and (4) some grantees were behind schedule in contributing their nonfederal match.

NTIA’s review of all CCI infrastructure match budgets has identified and addressed many potential match issues. However, its review of PCC and SBA match budgets is not as extensive and does not include all relevant grants. Since PCC and SBA awards have lower award amounts

that might not meet the grantees' independent auditors' testing thresholds, match issues may not be identified in a timely manner if NTIA does not address them.

Additionally, BTOP grant recipients are required to contribute and expend nonfederal matching share at the same general rate as they spend federal funds (i.e., proportionally). NTIA also tracks federal and nonfederal spending quarterly. As of December 30, 2011, 49 grant recipients had not met proportionality requirements (see figure 2). It is important that match funds are contributed in proportion to drawdowns, to ensure that projects are appropriately funded throughout their development and remain on schedule.

Figure 2. Status of Match Spending (as of December 31, 2011)



Source: OIG, based on NTIA data

We also reviewed BTOP award recipients' processes for drawing down federal funds and found that 2 of the 25 recipients we reviewed allowed third parties (a contractor in one instance and a subrecipient in the other) to draw down funds, which increases the risk of funds misappropriation. Because of the increased risk, NTIA should ensure award recipients are

aware of the issue and are monitoring the drawdowns appropriately. Table 4 provides a summary of the drawdowns that occurred.

Table 4. Treasury Cash Drawdowns Made by Entities Other Than Grantee

Project Type (OIG tested)	Total Drawdowns, as of September 30, 2011 (in millions)	Number of Drawdowns	Duration of Drawdowns
Infrastructure Grantee 1	\$7	26	14 months
Infrastructure Grantee 2	2	14	16 months
Total	\$9	40	—

Source: OIG analysis, based on NTIA and U.S. Department of the Treasury, Automated Standard Application for Payment

4. NTIA Needs to Assess the Impact that the Recently Established First Responder Network Authority (FirstNet) Program May Have on Existing BTOP Public Safety Projects

The passage of new legislation requiring NTIA to establish an interoperable nationwide public safety broadband network (PSBN) while continuing to oversee BTOP will place additional requirements on NTIA, increasing program risk. As we track the establishment of FirstNet, its impact on key BTOP public safety projects should be closely monitored.

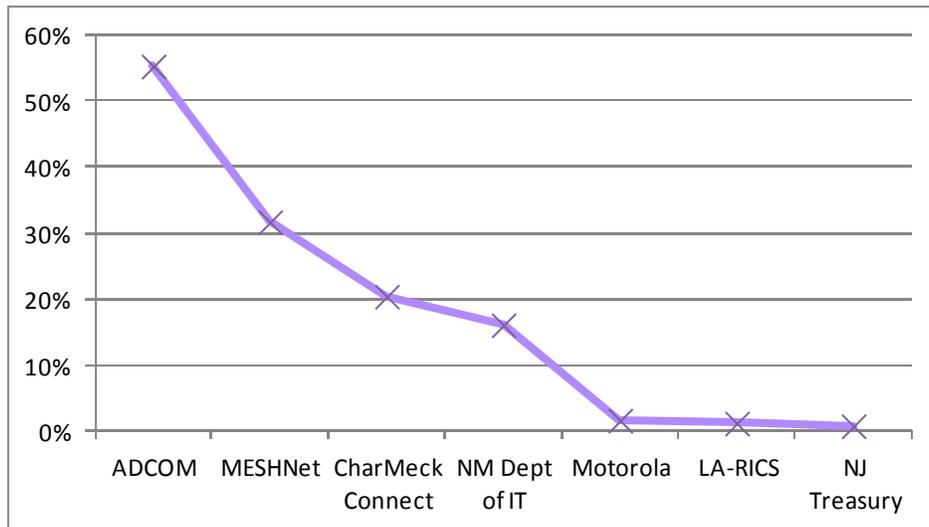
On February 22, 2012, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96), reallocating the D-block spectrum and \$7 billion in funding to NTIA for the establishment of an interoperable nationwide PSBN. Specifically, the law requires NTIA to establish an independent authority called the First Responder Network Authority (FirstNet) to (a) administer the D-block and existing public safety spectrum and (b) oversee the establishment and deployment of the PSBN.

Several BTOP projects involve networks similar to FirstNet's PSBN; as a result, our BTOP oversight helps us anticipate issues and concerns that could potentially arise with FirstNet. We have been closely following the progress of BTOP's seven existing public safety grant awards (totaling \$382 million), having already reviewed the BayWEB grant in a report issued May 2011 and a memorandum issued in January 2012. These seven large, complex infrastructure projects have already faced multiple deployment challenges, resulting in slow awardee spending:

- the Adams County (Colorado) Communications Center, Inc. (ADCOM)
- the city of Charlotte, North Carolina (CharMeck Connect)
- the Executive Office of the State of Mississippi (MESHNet)
- the Los Angeles Regional Interoperable Communications System (LA-RICS)
- Motorola, Inc. (in the San Francisco Bay area)
- the New Jersey Department of Treasury
- the New Mexico Department of Information Technology)

Causes include delays in EAs, vendor selection, design modifications, and establishment of governance structure. Figure 3 below depicts the federal fund amounts and the spending rates as of April 11, 2012, for these projects; only one of the projects has spent more than 50 percent of its federal funds.

Figure 3. Disbursement (by Percent) of BTOP Public Safety Grant Funds



Source: U. S. Department of the Treasury, Automated Standard Application for Payment

If deemed compatible, FirstNet will integrate the progress achieved by the seven public safety grantees into the PSBN (see table 5):

Table 5. Grants Likely to Transition to PSBN

Recipient	Federal Funds (in millions)
ADCOM	12
CharMeck Connect	17
MESHNet	70
LA-RICS	155
Motorola, Inc.	50
NJ Treasury	39
NM Dept of IT	39
Total	\$382

Source: NTIA BTOP infrastructure project reports; see <http://www2.ntia.doc.gov/awards>

Given the complexity and time requirements of PSBN, it will take FirstNet several more months to establish technical guidance, as well as rules and regulations. NTIA has informed OIG that it has asked all seven BTOP public safety projects to halt all long-term evolution (LTE) deployment activities while it establishes program requirements to avoid any waste of federal

funds. All seven projects currently are at risk of not completing by September 30, 2013, unless they transition to PSBN. As NTIA analyzes this issue, some potential areas of impact we anticipate are:

- *FCC spectrum waiver transfer to FirstNet.* The public safety network grantees were required to obtain a waiver from the FCC to gain a license to operate on the 700 MHz spectrum. Existing spectrum waivers will need to transfer to FirstNet, which will hold one license for the whole public safety spectrum. The existing seven projects will need to re-apply for the waivers from FirstNet.
- *LTE equipment purchases halted.* In an effort to avoid waste of funds, NTIA has asked BTOP public safety awardees to halt any future equipment purchases in light of upcoming directives from FirstNet containing network-related guidance. Three of the seven grants (i.e., ADCOM, CharMeck Connect, and MESHNet) already have received LTE equipment.
- *Grant deadline extensions.* NTIA officials are seeking extensions from OMB on BTOP grant deadlines for the seven public safety awards so that halting LTE efforts will not jeopardize federal funding.

With so much significant spending on public safety equipment procurement and deployment, it is imperative to ensure that the equipment works and meets the intended BTOP objectives.

OIG continues to oversee NTIA efforts to ensure it can monitor grantees' equipment procurements.

5. Funding Questions About 2013 and Beyond Raise Concerns Over Continued BTOP Oversight

Finally, Mr. Chairman, we would like to inform the Subcommittee that we have requested a waiver under section 1306 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, which requires unobligated Recovery Act funds be returned to the U.S. Department of the Treasury on December 31, 2012.

Recovery Act funds were transferred to OIG to fund oversight of BTOP. However, OIG has managed its BTOP budget so that it will have funding necessary to pay for FY 2013–15 salaries and expenses of auditors and investigators. These expenses cannot be obligated in advance. Without a waiver, OIG will lose its dedicated funding for BTOP oversight up to 9 months prior to the projected September 30, 2013, completion dates for the last BTOP projects, and even longer before project closeout procedures are completed. Our future BTOP oversight plan includes a combination of program audits and targeted audits of risky grants. In addition, we are responsible for investigating and resolving complaints of wrongdoing made against BTOP award recipients, for which we have established a formal complaint monitoring process.

On January 17, 2012, a request for a waiver for five Offices of Inspectors General was submitted to the President by the Council of Inspectors General on Integrity and Efficiency. While our communications with OMB have been positive, the request awaits OMB's decision. That it has not yet been approved by the President requires us to proceed with a degree of uncertainty, which has a significant impact on OIG's FY 2012 operations and FY 2013 planning. Given the Subcommittee's interest in oversight, we wanted to raise your awareness of this issue.

Additionally, while OIG is not in a position to speak to the Administration's budget request for NTIA oversight, that agency also faces challenges in funding the oversight of BTOP's responsibilities. As BTOP project completion dates for recipients approach, NTIA must continue monitoring awards. Recent NTIA reports concerning those grants with two-thirds completion deadlines of February 29, 2012, indicated that half had not met the deadline because of slower spending. If this trend of project delays continues, NTIA may need to consider granting no-cost extensions or cancelling projects; this underscores the importance of continued oversight.

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In conclusion, Mr. Chairman, for FY 2012 and beyond, these complex grant implementation issues present BTOP with many and unique challenges, particularly to NTIA's administration and oversight of this important program. The subcommittee's continued attention and oversight are important. For the Department to ensure effective implementation of BTOP, especially in light of fulfilling OMB and legislative requirements, OIG and NTIA will require Congress to continue your oversight efforts. This concludes my prepared statement, and I will be pleased to respond to any questions you or other Subcommittee members may have.

Appendix

OIG BTOP-Related Testimony, Reports and Memorandums, Works in Progress, and Training

OIG’s BTOP oversight efforts began immediately after passage of the Recovery Act. Our ongoing monitoring activities include: tracking grant recipient spending, reviewing quarterly progress reports submitted by recipients, attending BTOP biweekly meetings to learn updates on program status, attending quarterly meetings with contractors providing program services, reviewing single audit and program-specific audit reports (as well as complaints), and responding to BTOP program office questions. Further, our outreach efforts have resulted in 52 total training sessions, reaching more than 3,100 program staff and grant recipients with more than 3,300 total training hours. For further detail, see table below:

Table A. OIG Oversight of BTOP (2009–Current)

Related Testimony		
Title (Number)	Date	Congressional Audience
Stimulus Oversight: An Update on Accountability, Transparency, and Performance (OIG-12-012-T)	November 30, 2011	Committee on Science, Space, and Technology Subcommittee on Investigations and Oversight (U.S. House of Representatives)
ARRA Broadband Spending (OIG-11-019-T)	February 10, 2011	Committee on Energy and Commerce Subcommittee on Communications and Technology (U.S. House of Representatives)
Related Reports and Memorandums		
Title (Number)	Release Date	Summary of Recommendations
Misrepresentations Regarding Project Readiness, Governance Structure Put at Risk the Success of the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) Project (OIG-12-016-M)	January 10, 2012	NTIA should: <ul style="list-style-type: none"> • “[M]ake a determination whether the corrective actions underway by the grantee and political jurisdictions are sufficient to overcome the defects in the initial application” • “[With the Department,] gather lessons learned from this award to employ on other BTOP and future grant programs”

Related Reports and Memorandums (continued)		
Title (Number)	Release Date	Summary of Recommendations
NTIA Has an Established Foundation to Oversee BTOP Awards, But Better Execution of Monitoring Is Needed (OIG-12-013-A)	November 17, 2011	<p>NTIA should:</p> <ul style="list-style-type: none"> • Take prompt steps to strengthen federal program officers' monitoring efforts • Verify source documentation as part of its monitoring efforts • Strengthen its monitoring tools' internal control capabilities • Improve guidance for recipient match documentation during site visits • Help recipients at risk of noncompliance with award progress and completion requirements to revise completion dates, request project extensions, or rescope projects • Incorporate continuous trend analysis into its award monitoring process • Identify oversight strategies for all funding levels
Review of BTOP Award for the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) Project (OIG-11-024-1)	May 6, 2011	<p>NTIA should:</p> <ul style="list-style-type: none"> • Ensure independent review of complaints and document responses and results • Develop policies and procedures for timely response to complaints, including the communication of issues with OIG • Emphasize for BTOP staff the importance of communication with the grants office when responding to complaints • Ensure, when monitoring awards, that equipment is valued at cost (consistent with cost principles) • Direct BTOP to promptly communicate potential problems or deviations to the grants officer
Broadband Program Faces Uncertain Funding, and NTIA Needs to Strengthen Its Post-Award Operations (OIG-11-005-A)	November 4, 2010	<p>NTIA should:</p> <ul style="list-style-type: none"> • Manage the future lack of funding for BTOP by developing alternative approaches to monitoring and oversight • Ensure that agreements with other agencies, manuals and guidance, training and development, and monitoring procedures are clearly documented and fully adhered to

Related Reports and Memorandums (continued)		
Title (Number)	Release Date	Summary of Recommendations
NTIA Must Continue to Improve its Program Management and Pre-Award Process for its Broadband Grants Program: (ARR-19842-1)	April 8, 2010	<p>NTIA should:</p> <ul style="list-style-type: none"> • Create a staffing plan that outlines the necessary management resources and adjusts to key positions lost • Develop and implement documentation policies and procedures • Have in-house counsel document arising program issues and opinions from the Department's Office of General Counsel • Supplement reviewing staff to address unforeseen delays • Develop procedures for monitoring recipients at risk of experiencing delays in completing post-award NEPA requirements
NTIA Should Apply Lessons Learned from Public Safety Interoperable Communications Program to Ensure Sound Management and Timely Execution of \$4.7 Billion Broadband Technology Opportunities Program (ARR-19583)	March 31, 2009	<p>NTIA should:</p> <ul style="list-style-type: none"> • Seek to extend program office funding to ensure proper oversight • Use joint peer reviews before making grant awards • Complete a prompt environmental assessment of BTOP
Related Works in Progress		
Subject	Summary of Objectives	
NTIA's Processes for Broadband Technology Opportunities Program (BTOP) Grantees' Matching Share	Determine whether NTIA has adequate processes in place to ensure that BTOP grantees' matching shares of approximately \$1.4 billion meet both administrative requirements and the terms and conditions of the individual awards	
Management and Oversight of the Booz Allen Hamilton BTOP Contract	Determine (1) how NTIA ensures the receipt and quality of the goods and services they pay for; (2) what specific controls exist to verify invoices and payment processes; and (3) how NTIA mitigates risks associated with time and material contract and task orders	
BTOP Subrecipient Monitoring	Assess whether all subrecipients have been identified and properly classified and determine whether adequate controls are in place to ensure effective subrecipient monitoring and compliance with award terms and conditions	
Recovery Act Lessons Learned	As part of a federal government-wide Recovery Accountability and Transparency Board initiative, identify actions, mechanisms, and processes federal agencies used that were effective for implementing and administering Recovery Act programs—as well as those that were obstacles to successful Recovery Act programs (particularly relating to the overarching goals of transparency and accountability)	
Selected Trainings		
Subject	Date	Audience
BTOP	October 6, 2011	Grant recipients (mixed local, state, nonprofit)
State Broadband Data Initiative	April 28, 2011	NTIA staff; awardees
Subrecipient Monitoring	February 3, 2011	NTIA staff; awardees
Fraud Prevention	Various	NTIA staff; awardees