



July 2009

Do You Get the Points?

Elaborate scoring systems to be applied by RUS, NTIA

Jeffrey J. Gee
gee@fhhlaw.com
(703) 812-0511

The American Recovery and Reinvestment Act of 2009 (the “Recovery Act”) appropriated \$7.2 billion to fund broadband related projects. As with all stimulus spending measures, the need to get money injected into the system quickly is balanced against the need to ensure that funds are spent in ways that most efficiently and effectively promote the purposes of the funding as set out by Congress. Thus, rather than simply dumping 72 million \$100 bills out of the back of a cargo plane, the Federal agencies in charge of these funds have attempted to set up objective criteria against which applicants for funding may be judged. Applicants seeking broadband funding must understand these criteria and the scoring methods the government will use to determine which projects are worthy of funding.

BIP is intended to facilitate broadband deployment in rural areas. BTOP has a broader mission: (1) deploying broadband infrastructure in unserved and underserved areas in the United States; (2) enhancing broadband capacity at public computer centers; and (3) promoting sustainable broadband adoption projects. While BIP funding is reserved for projects serving rural areas, BTOP-funded projects are anticipated to serve a variety of geographic areas. All of the criteria used to evaluate funding applications are based on these purposes and the priorities of each program.

BIP Evaluation Criteria

BIP funding requires that 75% of the area to be served be in a rural area that “lacks sufficient access to high speed broadband service to facilitate rural economic development.” RUS will give priority to projects that: (1) give end users a choice of providers; (2) serve the highest proportion of rural residents that lack access to broadband service; (3) are projects of current or former RUS borrowers (also known as Title II borrowers); and (4) are fully funded and ready to start once Recovery Act funding is received.

The application process uses a scoring system that awards points based on how well the proposed project meets BIP’s purposes and priorities. After establishing whether a particular applicant is eligible for BIP funding (ineligible or incomplete applications will

be rejected), all applications will be ranked based on their total score. Each application is independently scored against the criteria. That is, applications are not scored relative to other applications. Only the highest scoring applications, however, will be allowed to proceed to the next level of evaluation. Lower scoring applications will be rejected.

The scoring criteria are grouped into four categories: (1) Project Purpose; (2) Project Benefits; (3) Project Viability; and (4) Project Budget and Sustainability. For BIP applications, each of these categories is given an equal number of points (25) and the number of points within each category is based on fairly specific criteria.

Project Purpose (25 points total):

- ✓ *Proportion of rural residents served in unserved areas* (1-5 points) – One point for every 10,000 unserved households.
- ✓ *Rural area targeting* (1-5 points) – One point for every 5% increase in the rural service area over the minimum 75 percent requirement.
- ✓ *Remote area targeting* (1-5) points – One point for every 50 miles a service area is located from a non-rural area.
- ✓ *Recovery Act/other governmental collaboration* (1-5 points) – One point for each Recovery Act or other governmental program that is partnered with the proposed project.
- ✓ *RUS Title II Borrower* (5 points) – All or nothing five points if the application is a past or present RUS Title II borrower.

Project Benefits (25 points total):

- ✓ *Performance of the offered services* (10 points) – Ten points are awarded if the project will deliver broadband speeds that meet or exceed the benchmarks set for the type of service provided (*e.g.*, wireline “last mile” projects must deliver at least 20 Mbps service to households).
- ✓ *Affordability of services offered* (1-5 points) – Up to five points given if the proposed rates are considered affordable for the target audience.
- ✓ *Choice of provider* (5 points) – Applications that propose to allow more than one provider to serve end users will receive five points.
- ✓ *Critical community facilities* (5 points) – Applications that propose to offer discounted rate packages to all “critical community facilities” in the proposed funded service area will receive five points.

Project Viability (25 Points)

- ✓ *Applicant’s organizational capability* (1-12 points) – RUS will evaluate past performance and accomplishments of the project’s management team and award

points accordingly.

- ✓ *Community support* (2 points) – Community support for the project must be evidenced by letters of support are received from all communities in the proposed funded service area. To receive the two points, the letters must be from a “designated community leader” in each community.
- ✓ *Ability to promptly start project* (10 points) – Applicants must demonstrate that all licenses and regulatory approvals have been obtained, all required contractors and vendors are ready to enter into contracts, all required equity contributions have been made, and that the project timeline is reasonable.
- ✓ *Disadvantaged small businesses* (1 point) – Applicants that meet the definition of a socially and economically disadvantaged small business concern under Section 8(a) of the Small Business Administration will receive one point.

Project Budget and Sustainability (25 Points)

- ✓ *Reasonableness of the budget* (1-5 points) – Points awarded based on the clarity and reasonableness of the proposed budget.
- ✓ *Leverage of outside resources* (1-10 points) – Points awarded on a sliding scale based on the ratio of outside funding to requested BIP funding with greater outside funding earning a greater number of points.
- ✓ *Extent of grant funding* (1-10 points) – Points awarded on a sliding scale based on ratio of funds requested in the form of grants to funds requested in the form of loans with loan funding favored over grant funding (*e.g.*, zero points if grant funds make up 100% of the request and ten points if loan funds make up 100% of the request).

BTOP Evaluation Criteria

As noted above, BTOP’s purposes are slightly different from BIP’s purposes. In addition, as previously stated, BTOP funding will be distributed among three different project categories: Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption Projects. As these projects have different goals and priorities, the evaluation criteria differ for each category of project. Thus, although BTOP applications are evaluated on the same broad criteria as BIP applications (Project Purpose; Project Benefits; Project Viability; and Project Budget and Sustainability), the specific factors and weight given to each factor vary from BIP evaluations. In addition, the information provided thus far suggests that BTOP scoring may be less rigidly structured than the BIP scoring system, with reviewers of BTOP applications having more latitude to weigh and balance factors within each criterion. As with BIP application, the highest scoring applications will proceed to more detailed analysis. Lower scoring applications will be rejected. Thus, as with BIP applications, applicants must ensure their applications fully

address each of the following criteria.

Project Purpose (30 points) Applications will be judged with respect to how well the proposed project matches BTOP’s statutory purposes. In doing so, reviewers will consider:

- ✓ The project’s “fit” with BTOP statutory purposes;
- ✓ The level of collaboration with other Recovery Act and other governmental programs;
- ✓ The project’s ability to enhance service for health care, education, and children;
- ✓ Whether the applicant meets the definition of a socially and economically disadvantaged small business concern under section 8(a) of the Small Business Administration.

Project Benefits (25 points) The factors considered in reviewing project benefits vary according to the type of project being reviewed.

For Broadband Infrastructure “Last Mile” projects, factors include cost-effectiveness, performance of the offered service, affordability of services offered, and the degree to which the project meets nondiscrimination, interconnection, and choice of provider standards.

For Broadband Infrastructure “Middle Mile” projects, factors include the impact the project will have on the proposed service area, the level of need in that area, network capacity, the affordability of the services offered, and the degree to which the project meets nondiscrimination, interconnection, and choice of provider standards.

For Public Computer Center projects, factors include the degree to which the center will be available to the public, the training and educational programs to be offered, and the availability and qualifications of the proposed consulting and teaching staff.

For Sustainable Broadband Adoption projects, factors include the number of new broadband users that may be generated by the program, the projected cost per new user, and demonstrated innovation in methods to encourage sustainable broadband adoption.

Project Viability (25 points)

Technical feasibility. For Broadband Infrastructure and Computer Center projects, applications will be evaluated on the comprehensiveness and appropriateness of the proposed technical solutions and system designs. For Sustainable Broadband Adoption projects, the operational details of the project will be assessed.

Organizational capability. Reviewers will assess the experience and expertise of the project's management team and applicant's past history with similar projects.

Community involvement. Reviewers will examine whether the project proposes meaningful "linkages" with community organizations in the project area, with special emphasis on community anchor institutions, public safety organizations and socially and economically disadvantaged small business concerns.

Ability to promptly start project. Reviewers will evaluate whether required licenses and regulatory approvals have been obtained, whether required contractors and vendors are ready to enter into contracts, and whether the project timeline is reasonable.

Project Budget and Sustainability (20 points)

Reasonableness of the project budget. Applicants must be able to demonstrate that their proposed budgets are reasonable based on, among other things, the budget's clarity, level of detail and appropriateness to the proposed project.

Sustainability of the project. Projects must be able to demonstrate that their projects are sustainable past the initial funding period. For Broadband Infrastructure and Computer Center projects, reviewers will consider business plans, market projections and other relevant data. For Sustainable Broadband Adoption projects, reviewers will consider whether the increases in broadband adoption rates will be sustained beyond the conclusion of the project.

Leverage of outside resources. All projects must meet a matching funds requirement of 20% of total project costs. Applicants must demonstrate the ability to provide, from non-federal sources, funds required to meet or exceed that 20% matching funds requirement unless a waiver of that requirement has been requested.

As noted above, applicants must be mindful of the scoring systems that will be used to evaluate BIP and BTOP applications. The evaluation of applications does not end with the scoring systems, however. Indeed, the scoring system is just the first stage of the overall grant process. In step two of the process, applicants are required to submit additional documentation to support the claims made in their initial applications. Thus, applicants should not attempt to "game" the scoring system by making unsupportable claims as to their projects' purpose, benefits, viability or sustainability. Rather, applicants should seek to ensure that they have ample evidence that their projects match the statutory purposes and priorities of the funding programs. Doing so will require a considerable amount of time and effort. As less than a month remains until the August 14 deadline for first round funding, organizations interested in applying for funding should begin those efforts immediately.