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1 {York Stenographic Services, Inc.}

2 HIF091.160

3 HEARING ON H.R. 1343, A BILL TO CLARIFY NTIA AND RUS

4 AUTHORITY TO RETURN RECLAIMED STIMULUS FUNDS TO THE U.S.

5 TREASURY

6 FRIDAY, APRIL 1, 2011

7 House of Representatives,

8 Subcommittee on Communications and Technology

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:32 a.m.,
12 in Room 2322 of the Rayburn House Office Building, Hon. Greg
13 Walden [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Walden, Terry,
15 Blackburn, Bass, Latta, Guthrie, Eshoo, Doyle, Matsui,
16 Christensen, Barrow, Towns and Waxman (ex officio).

17 Staff present: Neil Fried, Chief Counsel,
18 Communications and Technology; Brian McCullough, Senior

19 Professional Staff Member, Commerce, Manufacturing, and
20 Technology; Ray Baum, Senior Policy Advisor/Director of
21 Coalitions; Paul Cancienne, Policy Coordinator, Commerce,
22 Manufacturing and Technology; Peter Kielty, Senior
23 Legislative Analyst; Debbie Keller, Press Secretary; Katie
24 Novaria, Legislative Clerk; David Redl, Counsel, Telecom;
25 Jim Barnette, General Counsel; Mike Bloomquist, Deputy
26 General Counsel; Phil Barnett, Democrat Staff Director; Shawn
27 Chang, Democratic Counsel; Jeff Cohen, FCC Detailee; Sarah
28 Fisher, Democratic Policy Analyst; and Roger Sherman,
29 Democratic Chief Counsel, Communications and Technology.

|
30 Mr. {Walden.} Good morning. The Subcommittee on
31 Communications and the Internet will come to order.

32 Welcome. Today is the subcommittee's second hearing
33 concerning the broadband stimulus programs administered by
34 NTIA and the Rural Utilities Service. We will be discussing
35 oversight of the programs and legislation to address risks
36 and ambiguities highlighted by the Inspectors General at our
37 last hearing. We are pleased to have Assistant Secretary
38 Strickling here and Administrator Adelstein, and I want to
39 thank both of you and your staffs for working with us on this
40 legislation, and we appreciate your testimony, your comments
41 and your counsel.

42 The NTIA and RUS have awarded \$7 billion covering 553
43 awards in a very short period of time as required by the law.
44 The dust is still settling, but as we heard during the
45 February hearing, it is logical to expect that issues of
46 fraud, waste and abuse will start popping up now that the
47 money is beginning to flow.

48 So far, award recipients have spent nearly 5 percent of
49 the funds. Approximately a dozen recipients have decided not
50 to pursue their projects and returned their awards worth \$70
51 million. Some have cited the economy and their inability to
52 fulfill their obligations if they moved forward. With 95

53 percent of the funding yet to be disbursed, the question is
54 how many programs will run into hiccups down the road.

55 As stewards of the taxpayers' money, I know we all want
56 to prevent misspent funds and fraud. So when the Inspectors
57 General, Comptroller General or Administrators identify
58 issues, it is important they are able to quickly determine
59 whether there is a problem and take appropriate action. It
60 is also important that Congress be apprised of such
61 developments in a timely fashion and be made aware of the
62 decisions the Administrators make.

63 While we are not seeking to change the programs, we will
64 continue to ask the important questions, including what
65 criteria are used to determine when it is time to terminate
66 an award. Out of fairness to the applicants who were denied
67 stimulus money, the successful applicants that are abiding by
68 the terms of their awards, and most importantly, the American
69 taxpayers, if an award recipient does not comply with the
70 terms of the award, it should be terminated.

71 I believe the legislation we are considering
72 accomplishes these goals. Working with the minority and
73 stakeholders, we have improved the language and addressed a
74 number of concerns. I am sure if it needs further
75 refinement, and we are aware of some of those suggestions, we
76 plan to work with the minority and all of you to get it right

77 and fix those things as we get up to the full committee.

78 The legislation clarifies the Administrators'
79 responsibility to deobligate funds when there is cause to
80 terminate the award. Additionally, it institutes a new
81 reporting requirement that will keep Congress apprised of
82 relevant developments regarding awards.

83 I thank Mr. Bass for taking leadership on this effort,
84 of this modest but necessary legislation. I know this is not
85 earth shattering, okay? We are going to move on to earth
86 shattering in the future. This is a housekeeping effort we
87 are trying to get done.

88 And on that note, I would also like to suggest that
89 given the schedule today and a number of votes that are going
90 to occur on the Floor, we probably only have about 40, 45
91 minutes to work through this. My goal would be, with the
92 support of the subcommittee, is to move through the testimony
93 as rapidly as possible, and if we can get into the markup on
94 the subcommittee, recognizing I think there are only a few
95 minor things we need to work out between here and full
96 committee, which we could do, so that we pass this on to the
97 full committee.

98 [The prepared statement of Mr. Walden follows:]

99 ***** COMMITTEE INSERT *****

|
100 Mr. {Walden.} With that, I would recognize my friend,
101 the ranking member from California, Ms. Eshoo.

102 Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning
103 to you, to all the members of the committee and to our
104 guests. I want to extend a warm welcome to Assistant
105 Secretary Strickling and to Administrator Adelstein, whom we
106 have the pleasure of working together for a number of years
107 where he served with distinction at the FCC.

108 I am going to ask that my--

109 Mr. {Walden.} Without objection.

110 Ms. {Eshoo.} --magnificent opening statement be--

111 Mr. {Walden.} Extraordinary.

112 Ms. {Eshoo.} --inserted into the record in the interest
113 of time, and we want to work with you, Mr. Chairman, because
114 I think that what I raised earlier about tweaking the
115 legislation because there is a sensitivity about the OIG and
116 DOJ. We do not want to pour cold water over cases that have
117 the potential for being prosecuted relative to fraud or
118 abuse.

119 I just want to say that this will be the second time
120 that I am voting on the same thing, and so you are right,
121 this is not earth shattering. In fact, I really do with all
122 due respect think it is a waste of time. Effective oversight

123 is very important in terms of the program and I welcome that.

124 So with that, I am going to place my comments in the
125 record, and also ask that the letter from the NATOA, the
126 National Association of Telecommunications Officers and
127 Advisors be placed in the record. Thank you.

128 [The prepared statement of Ms. Eshoo follows:]

129 ***** COMMITTEE INSERT *****

|

130 Mr. {Walden.} Without objection.

131 [The information follows:]

132 ***** COMMITTEE INSERT *****

|
133 Mr. {Walden.} Thank you. Does anyone else want to make
134 opening comments? Mr. Waxman.

135 Mr. {Waxman.} Thank you very much, for holding this
136 hearing. It is an important area for us to look at, and I
137 want to welcome Assistant Secretary Strickling and
138 Administrator Adelstein back to the committee. We appreciate
139 the extraordinary efforts that you and your colleagues have
140 put into establishing these programs and I look forward to
141 your testimony.

142 When Congress passed the landmark Recovery Act, we built
143 oversight into the very structure of these programs. We knew
144 it was imperative to provide the Departments of Commerce and
145 Agriculture with the tools necessary to conduct vigorous
146 oversight of approximately \$7 billion in broadband spending,
147 and the Commerce Department Inspector General was allocated
148 \$16 million and the Agriculture Department Inspector General
149 \$22.5 million to oversee and audit it. With billions of
150 dollars invested in hundreds of broadband projects throughout
151 the nation, Congress must not skimp on oversight funding.

152 The agencies tell us that they have adequate resources
153 to conduct effective oversight. However, Congress still
154 needs to be vigilant, and if unanticipated oversight
155 challenges emerge, we have to be ready to ensure that

156 agencies and their independent IGs have adequate resources to
157 oversee these projects.

158 It is inevitable in a program of this size and scope
159 that some of the projects funded will not work out as
160 anticipated. In fact, a handful of grant recipients have
161 already withdrawn from the programs. This money was promptly
162 deposited in the U.S. Treasury, as it should be.

163 Today we will consider a legislative proposal that
164 directs NTIA and RUS to do what they are already doing:
165 returning these deobligated funds to the Treasury. I don't
166 understand why we are enacting this duplicative legislation,
167 but I am not opposed to the legislation. What I like most
168 about the legislation before us today is not the substance,
169 which I think is probably unnecessary, but the process.
170 Chairman Walden has reached out to the Democrats to reach a
171 bipartisan consensus on the bill. Republican staff has
172 included Democratic staff in discussions about this measure
173 and has sought our input and suggestions, and I appreciate
174 this effort and hope it is a harbinger of how we will
175 approach future proposals.

176 As we consider this bill, we must be careful not to
177 adopt legislation that inadvertently complicates the ability
178 of the agencies to oversee these programs effectively and
179 make sure we do not encourage defunding projects without good

180 cause, especially now that obligated money has been
181 translated into real projects with real jobs in every State.

182 I want to yield the balance of my time to Mr. Doyle from
183 Pennsylvania, and I am looking forward to the testimony.

184 [The prepared statement of Mr. Waxman follows:]

185 ***** COMMITTEE INSERT *****

|
186 Mr. {Doyle.} Good morning. Thank you, Mr. Chairman,
187 for holding this hearing, and thank you, Mr. Waxman for
188 yielding. Happy April Fools Day to you both.

189 I agree with the need for today's hearing, and I believe
190 we should continue our oversight of the parts of the Recovery
191 Act that will help countless people throughout the country
192 get online. But that being said, remember the TV show
193 Seinfeld? If Seinfeld was a show about nothing, today's
194 markup is about very little.

195 While the Senate is about to mark up spectrum
196 legislation, we are marking up a bill that is already law. I
197 don't oppose the bill, but it seems to me that it is the
198 legislative version of the J. Peterman catalog. It is pages
199 of language about things we don't really need. After all,
200 the Administration is already returning canceled grants to
201 the Treasury for deficit reduction. So we really don't need
202 this bill, but as Jerry would say, not that there is anything
203 wrong with that.

204 I yield back.

205 [The prepared statement of Mr. Doyle follows:]

206 ***** COMMITTEE INSERT *****

|
207 Mr. {Waxman.} Thank you, Mr. Doyle, and Mr. Chairman,
208 we look forward to working with you even though we hear some
209 criticism, but I think that is important that we continue to
210 see where we can be together.

211 Mr. {Walden.} The gentleman returns the balance of his
212 time, and we love you too.

213 Ms. {Eshoo.} Let us not get carried away.

214 Mr. {Walden.} All right. I withdraw that statement.

215 Now we would like to turn to Mr. Strickling. Before I
216 do that, though, for our members who just came in, just so
217 you kind of know the lay of the land here, we probably only
218 have until about 11:15 and then we are going to have a series
219 of votes. I would prefer to go ahead and see if we can't get
220 in and out of the markup before we have to go vote.
221 Otherwise we may have to come back after the votes, which
222 could be in the afternoon. So with that, Mr. Strickling,
223 thank you for being here, thanks for your testimony.

|
224 ^STATEMENTS OF HON. LAWRENCE E. STRICKLING, ASSISTANT
225 SECRETARY FOR COMMUNICATIONS AND INFORMATION, NATIONAL
226 TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S.
227 DEPARTMENT OF COMMERCE; AND JONATHAN ADELSTEIN,
228 ADMINISTRATOR, RURAL UTILITIES SERVICE

|
229 ^STATEMENT OF LAWRENCE E. STRICKLING

230 } Mr. {Strickling.} Thank you, Chairman Walden, and
231 Ranking Member Eshoo, Vice Chairman Terry, members of the
232 subcommittee, thanks to all of you for the opportunity to
233 testify today on behalf of NTIA concerning the administration
234 of our grant programs.

235 I also would like to take this opportunity to
236 acknowledge and commend our Secretary, Secretary Locke who,
237 as you know, hopefully will be moving on to China but he has
238 played a very important role in the oversight of this
239 program, and I want to recognize my colleague, Administrator
240 Adelstein. I guess this starts our 2011 broadband tour. It
241 was quite a successful tour back in 2010 as we went to I
242 think seven different committees to testify about this
243 program.

244 I welcome the opportunity to comment on the draft

245 legislation that is the topic of today's hearing. Before I
246 speak to the draft bill, I would like to provide a quick
247 update on the status of our programs.

248 Since we completed our grant awards on time last
249 September, NTIA has been focused on providing vigorous
250 oversight and high-quality technical assistance to grantees
251 to ensure that they complete their projects on schedule, on
252 budget and that they deliver the promised benefits to the
253 communities that they serve, and I am pleased to report that
254 our projects have already made significant progress in
255 achieving those goals. In the last quarter of 2010, our
256 grant recipients reporting funding approximately 1,000 jobs.
257 To date, they have installed more than 4,000 computers for
258 public use. They have provided over 150,000 hours of
259 broadband training to date to over 65,000 people. In
260 Michigan, North Carolina, Maine and elsewhere, our
261 infrastructure projects have broken ground and have begun
262 building fiber and wireless facilities.

263 Consistent with our philosophy to focus on middle-middle
264 projects to prime the pump for private investment to serve
265 homes and businesses, I am also quite pleased to report that
266 our grantees have already entered into about 90
267 interconnection agreements which will allow the existing
268 incumbents and new entrants to serve last-mile customers.

269 I would also like to let you know that on February 17th
270 of this year, we in collaboration with the FCC unveiled the
271 National Broadband Map. This is the first public searchable
272 nationwide map of consumer broadband Internet availability in
273 the United States. The map is the most granular and
274 transparent data set of broadband availability that has ever
275 been published, and while we can draw many conclusions from
276 the map, there are two I want to emphasize this morning.

277 First, that our data shows that 5 to 10 percent of
278 Americans do not have access to a level of broadband service
279 necessary to perform a basic set of Internet applications as
280 defined by the FCC, and second, the map proves what we knew
281 during our grant review process, which is that anchor
282 institutions are greatly underserved across our country.
283 Two-thirds of the schools that were surveyed subscribe to
284 services slower than 25 megabits per second and 96 percent of
285 libraries that were surveyed subscribe at speeds slower than
286 25 megabits per second.

287 Now, protecting the federal funds we are spending is of
288 paramount importance to us. As the members of the
289 subcommittee are well aware, achieving these objectives is
290 challenging and requires us to perform diligent oversight and
291 provide technical assistance to our awardees. Our large and
292 complex grant program continues to raise novel issues, some

293 of which have potential to impact the progress of our
294 projects, and let me just give you one example. Before our
295 infrastructure grantees can begin construction, most of them
296 have to complete and submit an environmental and historic
297 preservation study in compliance with the National
298 Environmental Policy Act, the National Historic Preservation
299 Act and the Endangered Species Act. These processes can take
300 significant time and resources, and we have worked very hard
301 to find win-win solutions to enable our projects to move
302 forward in full compliance with these important laws, and we
303 are committed to working with our grantees to complete these
304 environmental requirements as rapidly and as thoroughly as
305 possible.

306 To solve these and other issues yet maintain the
307 rigorous implementation schedule demanded of these projects,
308 we have put into action a program-wide oversight strategy to
309 mitigate waste, fraud and abuse, to ensure compliance with
310 award conditions and to monitor the progress of each project
311 toward its timely completion. The technical assistance that
312 we have conducted to date includes holding multi-day grantee
313 conferences on key implementation topics. We have hosted
314 over 40 webinars and drop-in conference calls to provide
315 guidance on key topics, and by the end of June we will have
316 performed site inspections for 72 of our projects,

317 representing about half of the total grant pool. The goal of
318 our program is to identify issues early in the process and to
319 resolve them as promptly as we can.

320 Earlier this week, I notified Congress that we have had
321 two grantees terminate their awards recently, and while I am
322 disappointed that these two projects, one in Indiana, the
323 other in Wisconsin, will not be built, I do believe that our
324 diligent oversight led to the termination of these projects
325 early on with only a minimal expenditure of federal taxpayer
326 dollars. As required by law, we have already returned the
327 full \$14 million of the Indiana grant to the Treasury, and we
328 will promptly nearly all of the \$23 million Wisconsin grant
329 upon completion of an accounting with the State.

330 So given that experience, let me turn to the draft
331 legislation. We support the ultimate goals of the bill,
332 which are to protect against waste, fraud and abuse and to
333 ensure that unused or reclaimed funds are promptly returned
334 to the Treasury, and while we do not believe that the
335 additional steps are needed to ensure adequate protection of
336 taxpayer funds, and I think our action in response to the
337 Wisconsin and Indiana terminations prove that, we have no
338 objection if Congress believes that the reporting
339 requirements contained in the bill, in addition to the other
340 mechanisms already in place, would further protect taxpayers.

341 We do have some concerns, however, about the specific wording
342 of the requirement to deobligate and return funds to the
343 Treasury, and we look forward to working with the
344 subcommittee to clarify this language.

345 And allow me to close with some comments about our
346 relationship with the Inspector General. I am extremely
347 grateful for the ongoing efforts of the IG in helping to
348 oversee our grant programs. Throughout the life of the
349 program, the IG has identified additional steps we can take
350 to oversee our programs more effectively, and we have worked
351 hard to implement their recommendations as thoroughly as
352 possible. Now that we are in the oversight phase of our
353 program, we have had discussions with our IG as to how we
354 should handle complaints we receive about our projects. We
355 haven't received many, and in many respects the complaints
356 simply reflect policy disagreements and do not raise serious
357 allegations of waste, fraud and abuse, but nonetheless, the
358 Inspector General has told me we can do better, particularly
359 in developing a more structured process to review these
360 complaints, and to that end, we will be working with the IG
361 to improve our performance in this area just as we have with
362 every other recommendation the IG has made to us over the
363 course of the program.

364 Thank you again for the opportunity to testify, and I

365 will be happy to answer your questions.

366 [The prepared statement of Mr. Strickling follows:]

367 ***** INSERT 1 *****

|
368 Mr. {Walden.} Thank you, Mr. Strickling, and if you can
369 keep the committee in the loop, I am sure we all have
370 interest in that part of the process too as this rolls out,
371 so your suggestions to the IG and back and forth, if you can
372 keep us in that loop, that would be helpful as well.

373 Mr. {Strickling.} Absolutely.

374 Mr. {Walden.} Mr. Adelstein, thank you for being here.
375 We are delighted to have you here and we look forward to the
376 summary of your testimony as well, sir.

|
377 ^STATEMENT OF JONATHAN ADELSTEIN

378 } Mr. {Adelstein.} Thank you, Chairman Walden, Ranking
379 Member Eshoo and members of the subcommittee. It is an honor
380 to be here in front of you to talk about the Broadband
381 Initiatives Program we call BIP and legislation to amend the
382 Recovery Act. I am delighted to be here again with my
383 friend, Larry Strickling, which we have done many times
384 before including before this subcommittee. Our agencies
385 worked very closely together to fulfill the President's
386 vision of getting broadband out to every corner of this
387 Nation, and the Assistant Secretary has been an invaluable
388 partner throughout the process.

389 Our Secretary Tom Vilsack has made broadband a pillar of
390 his strategy to revitalize rural economies, and the direct
391 benefits of broadband to rural economies are immense. USDA's
392 Economy Research Service has studied the effects of broadband
393 in rural communities and concluded based on their statistical
394 analysis that employment growth was higher and non-farm
395 private earnings greater in counties with a longer history of
396 broadband availability.

397 The Recovery Act provided RUS with the unique
398 opportunity to jumpstart the rural economy, investing more

399 than \$3.5 billion in loans and grants to expand broadband
400 networks in the hardest to serve rural parts of the United
401 States. Demand for broadband financing under the Recovery
402 Act was really tremendous. RUS received over 2,000
403 applications totaling \$28 billion. We were able to make only
404 320 awards for that \$3.5 billion, only 16 percent of the
405 applications received. This amazing response and of course
406 the NTIA's map that the Assistant Secretary referred to I
407 think demonstrate the huge demand that remains in rural
408 America for improved broadband service.

409 In September 2010, the RUS completed the awards phase of
410 this program. Our selection process was extremely rigorous.
411 Of the \$3.5 billion in loans and grants, \$3.25 billion went
412 to 285 last-mile projects, \$173 million was for middle-mile
413 projects. We did \$3.4 million for 19 regional technical
414 assistance projects, and finally, \$100 million went to
415 satellite service to premises that were otherwise unserved by
416 any of the other grants under this program.

417 Now, these investments are going to make a big
418 difference. They connect nearly 7 million Americans, 360,000
419 businesses and more than 30,000 critical community
420 institutions to new or improved broadband service. They span
421 over 300,000 square miles, touch 31 tribal lands, serve 125
422 persistent poverty counties, about a third of the persistent

423 poverty counties in the United States, and will create more
424 than 25,000 immediate and direct jobs for workers. Once
425 built, though, these networks will provide the platform for
426 economic growth and job creation for years to come. These
427 projects are really extraordinary. I know in the interests
428 of time, I had a lot of great examples here. I will just one
429 example that is particularly important because it is in an
430 important district in Oregon, the Confederated Tribes of Warm
431 Springs Reservation in Oregon scheduled to break ground this
432 month just in a couple of weeks. It will bring broadband to
433 the entire 1,000-square-mile reservation, connecting 223
434 community institutions including government agencies,
435 emergency facilities, 775 households and 22 businesses. It
436 will be transformative for the Warm Springs Reservation. Our
437 excitement for these projects is matched by our commitment to
438 execute our duties very prudently and to be very careful with
439 taxpayer dollars.

440 RUS shares the goals of your legislation, Mr. Chairman,
441 to return unused or reclaimed funds to the U.S. Treasury and
442 to aggressively combat waste, fraud and abuse. The bill's
443 purpose is entirely consistent with the standard procedures
444 already in place for RUS programs including BIP. The RUS has
445 some concerns with the draft and we look forward to working
446 with the subcommittee to address them, and we would be happy

447 to provide any drafting assistance as needed if you should
448 request it.

449 To ensure our continued success and prudent portfolio of
450 management with regard to the Recovery Act, RUS has done a
451 lot of work. We have held compliance workshops. We visited
452 every award recipient and we have required quarterly reports
453 and annual CPA audits. We have our own field accountants and
454 we have sent our field accountants to each and every one of
455 these recipients before any money is spent to ensure that
456 their accounting system complies with all of our requirements
457 and that it is set up as something we can really audit and be
458 on top of.

459 Now, the USDA Inspector General, we work closely with
460 them and we appreciate their good work. I understand that in
461 the last month they were here before this committee raising
462 concerns about the broadband loan program administered under
463 a previous Administration, under a previous statute and under
464 previous regulations, and I share these concerns. To be
465 clear, none of the issues raised by the IG pertain to the
466 Recovery Act broadband program or the Obama Administration's
467 conduct of the RUS broadband loan program. The broadband
468 loan program was actually suspended during the Recovery Act
469 to allow the agency to address all of the concerns that were
470 raised by the IG and to implement statutory changes that were

471 made in 2008 and to integrate the lessons of the Recovery Act
472 into these new rules.

473 On March 14th, just last month, the RUS issued new
474 broadband regulations that open the program for applications
475 for the first time under this Administration. The new
476 regulation and other actions taken by the RUS have
477 satisfactorily addressed all of the issues raised by the IG,
478 so I am thrilled to report to the subcommittee that last week
479 the Inspector General concluded and closed completely the RUS
480 broadband loan audits, so the book is shut on that audit.

481 The new broadband loan program increases efficiencies,
482 targets limited resources and builds on the momentum created
483 by the Recovery Act BIP program to fill the gaps in rural
484 broadband access that were identified in NTIA's map.

485 So it is an honor to work with you, with our Inspector
486 General and with our federal partners including NTIA to make
487 affordable broadband service widely available throughout
488 rural America. Your continued support and guidance is deeply
489 appreciated. I appreciate the opportunity to testify and
490 look forward to any questions you may have.

491 [The prepared statement of Mr. Adelstein follows:]

492 ***** INSERT 2 *****

|
493 Mr. {Walden.} I appreciate the testimony of both the
494 gentlemen, and I want to congratulate you on fulfilling the
495 recommendations of that audit. I don't care who is in charge
496 where, I am glad you got it done because that one goes back
497 to 2005, I think, so thank you for doing that.

498 Again, for our committee members, given the schedule we
499 face, I am going to try to limit my questions. I think I am
500 just going to go with one if we could get into the markup but
501 I don't want to rush anybody. If we could get into the
502 markup before they call votes on the Floor, that would solve
503 having to come back after the votes, say, at 2:00 or
504 something, 2:30.

505 So Mr. Strickling, doesn't section 6001(i)(4) of the
506 ARRA state you may deobligate funds? I can tell you it does.

507 Mr. {Strickling.} You are correct.

508 Mr. {Walden.} Yes, ``may,' ' not ``shall,' ' and that is
509 really the issue. It isn't whether you deposit in the
510 Treasury, and not you personally. It could be somebody down
511 the road different has the flexibility whether you will or
512 won't deobligate. This legislation says you shall, and while
513 you have said and I trust that you will deobligate funds in
514 such cases as fraud, waste and insufficient performance,
515 doesn't this change provide you with that added legal

516 protection in that it reduces the ability of a failing
517 awardee to quibble over what would otherwise be your
518 discretionary decision?

519 Mr. {Strickling.} I can't debate the change in the
520 words. What I can tell you is, under Department of Commerce
521 guidance, it is less discretionary in the sense that we are
522 directed under DOC provisions that we will take these
523 actions. In any case, again, we don't have any issues with
524 your legislating in this area but I don't expect it to change
525 our day-to-day to practice.

526 Mr. {Walden.} But this does put certainty in the
527 statute because the guidance out of the department could
528 change in another Administration or even in this one, could
529 it not?

530 Mr. {Strickling.} I would agree with that.

531 Mr. {Walden.} So we are just trying to get some
532 certainty there.

533 I will yield now to anyone else on our side that may
534 want to ask a question. Mr. Bass?

535 Mr. {Bass.} Mr. Chairman, I just have two very quick
536 questions.

537 Secretary Strickling, what is the current requirement to
538 report to Congress regarding awards that show material
539 noncompliance, and do you think that the passage of this

540 legislation would increase the transparency of the Recovery
541 Act?

542 Mr. {Strickling.} I can't speak to there being a--I
543 can't identify a particular legislative directive to us to do
544 that, but I think as reflected in the letter I sent earlier
545 this week, it is certainly our practice to do so.

546 Mr. {Bass.} Both of you mentioned the number of awards
547 that you have made, amount of money spent to date. I think
548 you identified three that have been discontinued. Have you
549 learned anything from these returned awards that would be
550 beneficial to you in your oversight on the existing projects?

551 Mr. {Strickling.} We have actually had two projects
552 that went to award and we actually went through the process,
553 started the process with the applicant and then they have
554 since terminated. There is a third award that the applicant
555 never actually accepted the award, a small award up in
556 Minnesota to Leach Lake for about \$1.7 million. But of the
557 two projects, I think each of them presented a unique set of
558 circumstances. In Indiana, quite frankly, it was a situation
559 where other things were going on economically in the State.
560 It was a project designed to serve schools. Indiana is going
561 through a school consolidation, and our grantee along with
562 our folks at NTIA realized that their business case was
563 deteriorating as a result of this other set of governmental

564 actions and the project just didn't seem viable any longer
565 and so the applicant decided to withdraw because they
566 couldn't see that they would have an ongoing project after
567 the completion of the grant period.

568 We have been very focused on giving awards to projects
569 that we think are sustainable and will continue on even after
570 the grant period. In the Indiana case, I think again through
571 our oversight and discussions with the applicant, we learned
572 early on that the project really wasn't viable in the way we
573 thought it was when we had reviewed it during the review
574 process. Wisconsin again, totally separate set of facts
575 there that I would be happy to discuss with you separately.

576 Mr. {Bass.} Administrator Adelstein, do you have any
577 comments on that?

578 Mr. {Adelstein.} If there is anything we draw from
579 that, it is that we need to very aggressively work with and
580 oversee every aspect of each one of our awardees' programs
581 and the progress they are making on the projects. With each
582 of those 10 that we decided mutually not to move forward on,
583 there were a lot of issues that we worked hand in hand with
584 them. We sent our field accountants to visit them. We sent
585 our general field representatives to visit them. I
586 personally worked with a number of them. We met with them.
587 We determined whether or not changes they were proposing were

588 consistent with their original application. In some cases,
589 they weren't and we weren't able to work it out and so we
590 went our separate ways. Not one dime of taxpayer money was
591 spent in any of those projects so we were able to save the
592 taxpayer by up front making sure that they understood what we
593 expected and that they were meeting all of the concerns that
594 we had, and if they weren't, we didn't hesitate to rescind
595 the projects.

596 Mr. {Bass.} Thank you very much, Mr. Chairman.

597 Mr. {Walden.} Do any other members on our side have
598 questions they feel compelled to ask? If not, I will yield 5
599 minutes to the gentlewoman from California.

600 Ms. {Eshoo.} Thank you, Mr. Chairman. And again, thank
601 you to both of you for not only being here today but for the
602 work that you have done, which really speaks for itself.

603 I am going to go as quickly as possible because we are
604 under time constraints here. My question is, how does the
605 bill that is going to be marked up that you have obviously
606 reviewed, how does it differ in any way from your existing
607 mandate or practice to terminate grant or loan awards for
608 cause? Is the legislative language different from current
609 practices relative to the deobligations of funds? When an
610 award is deobligated, how does your agency work with the
611 awardee to account for the funds? I think that you have

612 touched on that. And how long does it take on average for a
613 deobligated fund to be returned to the U.S. Treasury, which
614 you already have a responsibility to do. And the last thing
615 I want to touch on, which is what both the majority and the
616 minority need to work through is this issue of the IG, the
617 OIG and where they may identify potential fraud and the
618 language of the bill--I mean, we don't want to throw ice
619 water on a case that has real potential to it. That is not
620 the intent of any member on the committee. So if you want to
621 comment on that, it is something that we need to work out,
622 and I think that is the intention from both sides of the
623 aisle.

624 Mr. {Strickling.} Yes.

625 Ms. {Eshoo.} In other words, what we are taking up
626 today, how different is it from what we have already passed?

627 Mr. {Strickling.} I think on the first part of your
628 question related to our practices with respect to
629 deobligating dollars and what happens to the dollars and
630 that, I don't think it really changes the existing law. In
631 terms of how long that takes, in the case of the Indiana
632 project, since there had been no expenditures of federal
633 dollars, we were able to very quickly return that full
634 amount. In the case of Wisconsin, we will do an accounting
635 with the State because we think they have spent a nominal

636 amount of dollars. We think it is less than \$100,000 of
637 allowable costs, which would they be allowed to recover, and
638 then the remainder will go to the Treasury, but we do have to
639 carry out that accounting.

640 Ms. {Eshoo.} But the legislation doesn't change any of
641 that?

642 Mr. {Strickling.} Fundamentally, no. On the issue of--
643 I mean, the second part of the legislation does impose some
644 time limits on us in terms of taking actions and reporting to
645 Congress, and I think Administrator Adelstein--

646 Ms. {Eshoo.} From what to what?

647 Mr. {Strickling.} --may have had a little more
648 experience with the implications of that.

649 Ms. {Eshoo.} From what to what? What is the time frame
650 on it?

651 Mr. {Adelstein.} The time frame is, as the chairman
652 knows, 30 days we have after we are given any information
653 that pertains to potential misuse of funds to make a
654 determination as to whether to terminate the project or not,
655 and then we are given 3 days subsequent to report to Congress
656 what our determination was, which is a new requirement. As
657 the Secretary said, all the other requirements are basically
658 consistent with existing law.

659 Ms. {Eshoo.} And what is the nexus between that and

660 this issue of a possible fraud and the effect that it would
661 have on that potential case? Is there a nexus between the
662 two?

663 Mr. {Adelstein.} There could be in some cases. In the
664 case of serious fraud, which of course this legislation is
665 designed to combat, RUS is generally given an indication by
666 OIG. We get a confidential little folder that says
667 confidential, do not report, and generally the OIG requests
668 us not to take action to rescind a loan or grant if they
669 refer it to the Department of Justice for criminal
670 prosecution. So we are asked basically to stay out of the
671 way of a criminal prosecution. Under this requirement,
672 however, we would be required--we would be at a loss, because
673 on the one hand, we are being told not to do it, and there is
674 potential obstruction of justice--

675 Ms. {Eshoo.} Mr. Chairman, I think this is the area we
676 need to work on.

677 Mr. {Walden.} That is the part we are going to work on.
678 Would the gentlewoman yield to me?

679 Ms. {Eshoo.} I would be glad to.

680 Mr. {Walden.} Because I want to just clarify something
681 Mr. Adelstein said. You said if you got any information you
682 would have to notify us, and actually I think if you look at
683 the language in the bill, such information that pertains to

684 material noncompliance. That is different than just saying
685 any information. We tried to set a fairly high standard.

686 Mr. {Adelstein.} I did say information pertaining to
687 misuse of funds, but you are exactly right. That is what the
688 legislation says, and it would have to be significant
689 information.

690 Mr. {Walden.} Yes, it is not just information.

691 Mr. {Adelstein.} So to your question, I mean, if there
692 was a serious one, these are the most serious cases where
693 they actually would be referred to DOJ for prosecution. We
694 would be sort of in a conflict between the requirement of
695 this law--

696 Ms. {Eshoo.} Well, we need to repair that.

697 Mr. {Walden.} We will work that out.

698 Ms. {Eshoo.} We are going to work that out, but I
699 appreciate this being raised because I think it is important,
700 and I think that my time is up, Mr. Chairman.

701 Thank you again, gentlemen. I think that you have
702 confirmed what we already know and have voted on. But thank
703 you. I do think that the oversight of the committee is what
704 is really key here. Thank you.

705 Mr. {Walden.} I thank the gentlewoman, and I would just
706 say that is why we are doing the hearing today is to flesh
707 out these sorts of issues and get it right.

708 Mr. Doyle.

709 Mr. {Doyle.} Thank you, Mr. Chairman.

710 Mr. Strickling, Mr. Adelstein, welcome. Thanks for your
711 good work.

712 As our last hearing, many of my Republican colleagues
713 expressed a belief that overbuilding is a persistent and
714 ongoing problem with these BTOP and BIP awards, and now that
715 you are finally both here to represent your respective
716 agencies, would you once and for all dispel these concerns?

717 Mr. {Strickling.} Sure. I do think it is a
718 misconception with our program in particular since we focused
719 on middle-mile projects, which are open network projects and
720 available to anybody to take advantage of, including the
721 incumbents as well as new entrants, and as I pointed out in
722 my opening remarks, we have already seen 90 interconnection
723 agreements that have been executed between our infrastructure
724 grant recipients and carriers who want to take advantage of
725 these facilities to improve the level of service that they
726 are offering to their end-user customers. So in that light,
727 what we see our role is doing is priming the pump. We are
728 putting these middle-mile facilities out there through these
729 organizations like Merit in Michigan and MCNC in North
730 Carolina that are going to be able to provide much middle-
731 mile capacity throughout their States of Michigan and North

732 Carolina, just to give two examples, and then other parties
733 including incumbents like AT&T in Michigan and North Carolina
734 can actually lease capacity on those systems to improve the
735 service that they offer to their end-user customers.

736 So what we did in evaluating our projects was to ensure
737 that we would be bringing substantial benefits to the area in
738 which the projects would be built, and we think our projects
739 pass that test.

740 Mr. {Doyle.} Thank you.

741 Mr. Adelstein?

742 Mr. {Adelstein.} Yes, we made a major effort in both
743 rounds of funding to prioritize the most remote rural areas.
744 In fact, we gave extra points priority for going to rural
745 areas. We gave extra points for the number of customers that
746 were totally unserved, extra points for being the most remote
747 in eligibility standards and trying to get people 50 miles
748 away from an urban area, which was actually too extreme for
749 some, so we ended up really making every effort I think we
750 could to avoid overlap, to make sure that there was service
751 to those who didn't have it, and in fact we did get service
752 out to the most rural areas, and we are going to serve many,
753 many millions of customers that don't have access to
754 broadband today.

755 Mr. {Doyle.} Thank you. Mr. Chairman, I will yield

756 back.

757 Mr. {Walden.} I recognize the gentlewoman from
758 California. Just know we have about 5 minutes before we go
759 vote. Otherwise we will have to come back after votes.

760 Ms. {Matsui.} I will keep that in mind.

761 I want to thank both of you for being here, and I
762 applaud your efforts in administering the BTOP and the
763 process. I believe Americans will have greater access to
764 broadband because of these programs, particularly in my home
765 State of California.

766 With that said, the GAO report noted that the
767 uncertainty of continued funding for oversight presents a
768 risk that both NTIA and RUS will have insufficient staff and
769 resources to actively monitor BTOP and BIP projects. I have
770 a question for both of you. Do both of you believe you have
771 sufficient funding to devote the resources necessary to
772 oversee compliance?

773 Mr. {Strickling.} As of now, yes, and I want to thank
774 the leadership of this committee for its help on a bipartisan
775 basis to ensuring that we got the resources we needed in this
776 fiscal year to provide appropriate oversight, but at the
777 level we are currently funded at in the existing C.R.,
778 assuming that continues through the rest of this fiscal year,
779 we are in fine shape, and again, it is through the efforts of

780 the leadership of this committee that we got to that point,
781 and I want to thank everyone for that.

782 Mr. {Adelstein.} RUS requested no additional funds in
783 order to oversee this program so we are basically dealing
784 with it out of our existing budget, which was already very
785 tight. So the President's full budget really is required in
786 order for us to do, I think, the level of oversight that we
787 need to do.

788 Ms. {Matsui.} So what you are saying is that the budget
789 currently is fine with you if you don't anticipate any cuts
790 in the budget moving forward?

791 Mr. {Strickling.} That is right.

792 Ms. {Matsui.} Okay. Fine. And that is all my
793 questions. Thank you.

794 Mr. {Walden.} Thank you. I recognize the gentlewoman
795 from Tennessee.

796 Mrs. {Blackburn.} Thank you, Mr. Chairman.

797 I have a question for Mr. Adelstein, and I will be happy
798 to submit it, but I want to refer to the letter that you
799 wrote the chairman regarding the recipients of RUS loans
800 using USF money to make payments on those loans. And Mr.
801 Chairman, I would love for us to have a copy of that letter
802 for the record, the letter you sent to the FCC chairman.

803 And then my question to you specifically about this,

804 some of these loans are for 30 years, and does that mean that
805 we shouldn't reform USF until that point in time and are we
806 really advocating the use of a ratepayer subsidy to pay off a
807 government subsidy? And in light of your letter and your
808 conversation in that letter, those would be the two
809 questions. We will submit these, and then I would ask for it
810 to be included in the record. Yield back.

811 Mr. {Walden.} Without objection.

812 Anyone else seeking recognition? If not--if you want
813 to, yes.

814 Dr. {Christensen.} I will just ask one.

815 Mr. {Walden.} The gentlelady from the Virgin Islands is
816 recognized.

817 Dr. {Christensen.} Thank you.

818 The bill calls for termination for insufficient
819 performance, and while I am sure some fall in that category
820 may need termination, we are trying to expand to places that
821 are rural and don't have a lot of experience, and don't you
822 think that maybe some of those should get technical
823 assistance and support rather than just be terminated? That
824 is my question. And I just wanted to say I have evidence of
825 really tight oversight in a letter to my government that I
826 received a copy of. Thanks.

827 Mr. {Strickling.} Just very, very briefly, I think in

828 terms of insufficient performance from our perspective, we do
829 intend to provide technical assistance where we can to work
830 with our grantees to help them over the bumps that they may
831 run to. I think an example of insufficient performance could
832 be where the entire project management staff resigns and
833 leave a program and there doesn't seem to be a plan in place
834 to bring leadership to the project. In that kind of
835 situation, we take a hard look at it and wonder whether it is
836 worth continuing on.

837 Mr. {Adelstein.} And we perform similarly. We make
838 every effort to work with our rural awardees because some of
839 them are really struggling sometimes, and each one of the 10,
840 we tried to work to save the ones we could. Sometimes they
841 couldn't be done. But we will give them every opportunity to
842 comply and to make it work.

843 Mr. {Towns.} I recognize time constraints, so I have
844 some questions and I would like to place in the record.

845 Mr. {Walden.} Absolutely. Yes, all members have that
846 privilege to submit questions for the record. Thank you, and
847 I appreciate your courtesy in trying to help us move this
848 along.

849 With that, the hearing is adjourned.

850 [Whereupon, at 11:12 a.m., the Subcommittee proceeded to
851 other business.]