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ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

November 23, 2020

The Honorable Gene Dodaro  
Comptroller General  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Dodaro:

We write to request an audit by the U.S. Government Accountability Office (GAO) of the Rural eConnectivity Pilot Program (ReConnect Pilot Program) within the U.S. Department of Agriculture (USDA). As the committee of jurisdiction on communications policy, it is our responsibility to ensure federal programs to expand broadband infrastructure and connect all Americans are administered efficiently and effectively. Without appropriate oversight, however, we are concerned that this program could overbuild existing federally and privately supported broadband networks.

As GAO and others have reported, access to broadband infrastructure is critical for economic development, educational and job opportunities, and public health and safety.<sup>1</sup> Yet, overbuilding broadband networks diverts scarce budget resources from unserved areas to areas where broadband is available or will be made available through private investment or other federal resources. On March 23, 2018, the Consolidated Appropriations Act of 2018 was enacted into law and appropriated \$600,000,000 in new funding for a temporary pilot program at the USDA to support broadband infrastructure deployment.<sup>2</sup> Subsequently, Congress appropriated \$1,452,060,000 to this temporary pilot program in 2019 and 2020.<sup>3</sup> Given the need to ensure the most efficient and effective use of federal dollars to promote broadband infrastructure deployment and guard against waste, fraud, and abuse, we request an in-depth GAO audit of broadband support provided by the Rural Utilities Service (RUS), an agency

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<sup>1</sup> U.S. Government Accountability Office, *FCC's Data Overstate Access on Tribal Lands*, GAO-18-630, Sept. 2018, available at <https://www.gao.gov/assets/700/694386.pdf>.

<sup>2</sup> "Consolidated Appropriations Act of 2018," P.L. 115-141, Section 779.

<sup>3</sup> "Consolidated Appropriations Act of 2019," P.L. 116-6 and "Consolidated Appropriations Act of 2020," P.L. 116-94.

within the USDA responsible for implementing and administering the temporary ReConnect Pilot program.

In Fiscal Year 2019 (FY19), USDA awarded \$744,303,168 to 82 projects in 34 different states and territories under the ReConnect Pilot Program.<sup>4</sup> Of these projects, 43 projects were funded through grants, 32 projects were funded through a combination of loans and grants, and 7 projects were funded through loans. USDA has also begun a second round of funding under the ReConnect Pilot Program. In Fiscal Year 2020 (FY20), USDA has awarded \$642,858,229 to 83 projects in 34 states as of November 17, 2020.<sup>5</sup> These projects are funded through grants. None of the ReConnect Pilot Program projects (for both FY19 and FY20) include other broadband grants, loans, or loan guarantee programs that RUS oversees. Government watchdogs have long raised concerns with USDA's management of its broadband infrastructure support programs.<sup>6</sup>

On February 10, 2011, the Energy and Commerce Committee's Communications and Technology Subcommittee held a hearing on broadband spending appropriated by the American Reinvestment and Recovery Act (ARRA). At that hearing, the USDA's Inspector General (IG) observed that both the USDA Office of the Inspector General (OIG) and GAO shared oversight responsibilities with respect to RUS' Recovery Act broadband program. The IG expressed concerns about RUS that had been "raised by [its] prior audits and investigations ... and the amount of money being spent on broadband." Specifically, OIG found that RUS had a history of "not maintain[ing] its focus on rural communities lacking preexisting broadband service," that RUS had devoted "significant portions of its resources to funding competitive service in areas with preexisting broadband access rather than expanding service to communities without existing access," and that "RUS' decision to fund certain providers in rural communities, but not others...could create an unlevel playing field for providers already operating without Government subsidies." The IG observed that RUS faced "ongoing challenges" in effectively implementing its broadband program.<sup>7</sup>

Additionally, we have questions about how USDA coordinates its administration of the ReConnect Pilot Program and other broadband programs, including with the principal federal broadband support program: the Universal Service Fund (USF) administered by the Federal Communications Commission (FCC). The FCC awards over \$4 billion annually to support broadband deployment in high-cost areas, similar to the areas purported to be served through the temporary ReConnect Pilot Program. The FCC also collects national broadband availability data that serves as the basis for the efficient use of those federal resources. We request GAO review whether USDA coordinates effectively with the FCC to ensure RUS funds, including those made available for the ReConnect Pilot Program, are not sent to areas also receiving USF funds.

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<sup>4</sup> See, <https://www.usda.gov/reconnect/round-one-awardees>

<sup>5</sup> See, <https://www.usda.gov/reconnect/round-two-awardees>

<sup>6</sup> *ARRA Broadband Spending: Hearing before Subcomm. on Communications and Technology, H. Comm. on Energy and Commerce*, 112th Cong., Statement of Mark Goldstein, Director of Physical Infrastructure Issues, GAO (Feb. 10, 2011), available at <https://www.govinfo.gov/content/pkg/CHRG-112hhrg65760/pdf/CHRG-112hhrg65760.pdf>.

<sup>7</sup> *ARRA Broadband Spending: Hearing before Subcomm. on Communications and Technology, H. Comm. on Energy and Commerce*, 112th Cong., Statement of the Hon. Phyllis K. Fong, Inspector General, U.S. Department of Agriculture (Feb. 10, 2011), available at <https://www.govinfo.gov/content/pkg/CHRG-112hhrg65760/pdf/CHRG-112hhrg65760.pdf>.

Congress enacted the Broadband DATA Act on March 23, 2020, to bring clarity to the state of broadband availability throughout the United States.<sup>8</sup> The broadband serviceable location fabric and coverage maps established by the FCC under this Act will provide the federal government with a clearer picture of where broadband is and is not available. That mapping exercise is not yet completed, and we are actively overseeing the implementation of this law to ensure that the FCC completes its work as soon as possible. However, the National Telecommunications and Information Administration (NTIA), the principal advisor to the President on all telecommunications issues, has collected broadband availability data for up to 20 states and that data should be used to ensure that federal funds are being used efficiently until the FCC's coverage maps are complete. Nonetheless, the USDA announced rules for the second round of funding under the temporary ReConnect Pilot Program, without accurate maps and notwithstanding that this program is a temporary program.

Because of our concern about overbuilding, interagency coordination, and the mismanagement of appropriated funds, we request that GAO conduct an in-depth audit of the ReConnect Pilot Program, including whether USDA coordinates effectively with the FCC to ensure no RUS funds are sent to areas already receiving USF funds, and report to the Committee on any other issues of concern regarding the funding and administration of the ReConnect Pilot Program. In addition, we request that the review answer the following questions:

### **Overbuilding**

1. To what extent do the service areas of completed ReConnect-funded projects match those specified in their applications?
  - a. For any projects where the service area did not match the application, what is the nature of the discrepancy?
  - b. For any projects where the service area did not match the application, did these projects receive approval from RUS for the change, and if so, what was the rationale for the approval?
  - c. For any projects where the service area did not match the application, and where the RUS approved modifications to a project, was there a public notification process open for comment? For those projects, did that process elicit competitive bids?
2. What oversight actions is RUS taking to ensure that ReConnect-funded projects meet the projections for new households served?
3. Have grants, loans, or grant/loan combinations been made in areas where the FCC determines a proportion of the population and households in the area already have broadband coverage from unsubsidized competitors or subsidized competitors?
  - a. If so, how many households already have broadband coverage from unsubsidized competitors or subsidized competitors?
  - b. What proportion of the total grants, loans, or grant/loan combinations awarded by RUS cover areas where the households were already served?

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<sup>8</sup> "Broadband DATA Act," P.L. 116-130.

4. To what extent, if any, has RUS funded competitive service in areas with existing broadband?
  - a. If any, how many instances were existing providers supported through any other RUS mechanism?
  - b. If any, how many instances were existing providers supported through the USF program?
  - c. If any, how many instances were existing providers supported through a state program?
  
5. In addition to the temporary ReConnect Pilot Program, RUS has a program to facilitate the deployment of middle mile infrastructure. What steps, if any, is RUS taking to coordinate that support with support provided under the temporary ReConnect Pilot Program, the USF program, or any state subsidy programs?

### **Interagency Coordination**

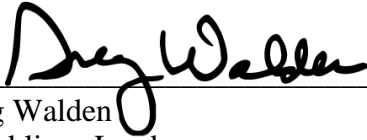
6. To what extent is there coordination prior to making awards for the ReConnect Pilot Program between RUS, the FCC, and the National Telecommunications and Information Administration (NTIA)?
  - a. To what extent, if any, did RUS consult the NTIA broadband maps prior to making funding decisions?
  
7. To what extent, if any, is there waste, fraud, and abuse by recipients of the ReConnect Pilot Program?
  - a. What efforts does RUS undertake to identify and prevent instances of waste, fraud, and abuse by recipients of the program?
  - b. How will the broadband coverage maps established under the Broadband DATA Act impact administration of the ReConnect Pilot Program?
  
8. How does RUS verify claims that an area is unserved or claims about the nature and extent of broadband service that is provided? If not, how does it verify this information?
  
9. What impact does the definition of “broadband service” used by USDA—as opposed to the definition used by the FCC—have in creating waste, fraud, and abuse in the temporary ReConnect Pilot Program by overbuilding existing broadband networks or providing support to areas where there is a legally enforceable obligation to deploy broadband as a result of a federal or state support mechanism?
  
10. The House of Representatives unanimously passed H.R. 1328, the ACCESS BROADBAND Act, which would create an Office of Internet Connectivity and Growth at NTIA, which has deep expertise in broadband deployment, and has a long history of convening interagency coordination on telecommunications matters. To what extent would having a broadband grant program at the NTIA rather than a temporary program at the RUS improve coordination among federal agencies to avoid overbuilding and reduce waste, fraud, and abuse?

**Transparency and Administration**

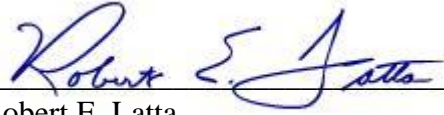
11. How does RUS ensure that its funding determinations are the most cost effective?
  - a. How does RUS ensure interested and affected parties can comment and compete for the most cost-effective way to serve any given area in a timely manner before applications receive funding under the ReConnect Pilot Program?
12. To what extent, if any, have applicants approved for ReConnect Pilot Program awards been unable to fulfill their buildout commitments or subsequently withdrawn from the program due to an inability to pay back the loan?
13. Has RUS taken actions against non-compliant award recipients to date?
14. To what extent are the goals and measures used in the ReConnect Pilot Program adequate to prevent overbuilding and reach unserved areas?
15. Is RUS sufficiently open and transparent about its awards to allow for meaningful oversight of its implementation and administration of its awards?
16. Are there instances in which projects funded with ReConnect Pilot Program funds or other RUS broadband funds cannot be sustained in the absence of further government funding, either through additional infusions from RUS or from other government programs, such as the FCC's Universal Service Fund?
17. Of the awardees receiving a grant or a grant/loan combination award under the ReConnect Pilot Program, were any of those funds used as collateral for other loans or loan guarantees?
18. Of the awardees receiving a loan or grant/loan combination award under the ReConnect Pilot Program, were any of those loans made with collateral or down-payments provided with USF funds?
  - a. What controls, if any, does RUS have in place to prevent grant or loan funds from being used as collateral or a down payment?
  - b. What impact, if any, does an awardee using grant or loan funds as collateral or a down payment have on RUS meeting its stated goals and objectives?
19. To what extent did RUS rely on NTIA to help set up their program? To what extent is NTIA involved in providing guidance on choosing applicants or reviewing applications for the ReConnect program?

Thank you for your attention to this issue. Completing this report in a timely manner is very important because RUS is now accepting applications to award hundreds of millions of dollars in grants, loans, and loan guarantees. If you have any questions about this request, please have your staff contact Kate O'Connor or Evan Viau with Committee staff at (202) 225-3641.

Sincerely,



Greg Walden  
Republican Leader  
Committee on Energy and Commerce




Robert E. Latta  
Republican Leader  
Subcommittee on Communications and  
Technology



Pete Olson  
Member of Congress



Adam Kinzinger  
Member of Congress



Gus M. Bilirakis  
Member of Congress



Bill Johnson  
Member of Congress



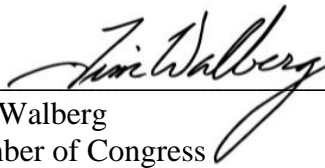
Billy Long  
Member of Congress



Bill Flores  
Member of Congress



Susan W. Brooks  
Member of Congress



Tim Walberg  
Member of Congress



Greg Gianforte  
Member of Congress