

117TH CONGRESS
1ST SESSION

S. 741

To establish a broadband infrastructure finance and innovation program to make available loans, loan guarantees, and lines of credit for the construction and deployment of broadband infrastructure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

Mr. LUJÁN (for himself and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish a broadband infrastructure finance and innovation program to make available loans, loan guarantees, and lines of credit for the construction and deployment of broadband infrastructure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Broadband Infrastructure Finance and Innovation Act of
6 2021”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Determination of eligibility and project selection.
- Sec. 4. Secured loans.
- Sec. 5. Lines of credit.
- Sec. 6. Alternative prudential lending standards for small projects.
- Sec. 7. Program administration.
- Sec. 8. State and local permits.
- Sec. 9. Regulations.
- Sec. 10. Funding.
- Sec. 11. Reports to Congress.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) ASSISTANT SECRETARY.—The term “Assist-
 6 ant Secretary” means the Assistant Secretary of
 7 Commerce for Communications and Information.

8 (2) BIFIA PROGRAM.—The term “BIFIA pro-
 9 gram” means the broadband infrastructure finance
 10 and innovation program established under this Act.

11 (3) BROADBAND SERVICE.—The term
 12 “broadband service”—

13 (A) means broadband internet access serv-
 14 ice that is a mass-market retail service, or a
 15 service provided to an entity described in para-
 16 graph (12)(B)(ii), by wire or radio that pro-
 17 vides the capability to transmit data to and re-
 18 ceive data from all or substantially all internet
 19 endpoints, including any capabilities that are

1 incidental to and enable the operation of the
2 communications service;

3 (B) includes any service that is a func-
4 tional equivalent of the service described in sub-
5 paragraph (A); and

6 (C) does not include dial-up internet access
7 service.

8 (4) ELIGIBLE PROJECT COSTS.—The term “eli-
9 gible project costs” means amounts substantially all
10 of which are paid by, or for the account of, an obli-
11 gor in connection with a project, including the cost
12 of—

13 (A) development phase activities, including
14 planning, feasibility analysis, revenue fore-
15 casting, environmental review, historic preserva-
16 tion review, permitting, preliminary engineering
17 and design work, and other preconstruction ac-
18 tivities;

19 (B) construction and deployment phase ac-
20 tivities, including—

21 (i) construction, reconstruction, reha-
22 bilitation, replacement, and acquisition of
23 real property (including land relating to
24 the project and improvements to land),
25 equipment, instrumentation, networking

1 capability, hardware and software, and dig-
 2 ital network technology;

3 (ii) environmental mitigation; and

4 (iii) construction contingencies; and

5 (C) capitalized interest necessary to meet
 6 market requirements, reasonably required re-
 7 serve funds, capital issuance expenses, and
 8 other carrying costs during construction and
 9 deployment.

10 (5) FEDERAL CREDIT INSTRUMENT.—The term
 11 “Federal credit instrument” means a secured loan,
 12 loan guarantee, or line of credit authorized to be
 13 made available under the BIFIA program with re-
 14 spect to a project.

15 (6) INVESTMENT-GRADE RATING.—The term
 16 “investment-grade rating” means a rating of BBB
 17 minus, Baa3, bbb minus, BBB (low), or higher as-
 18 signed by a rating agency to project obligations.

19 (7) LENDER.—The term “lender” means any
 20 non-Federal qualified institutional buyer (as defined
 21 in section 230.144A(a) of title 17, Code of Federal
 22 Regulations (or any successor regulation), known as
 23 Rule 144A(a) of the Securities and Exchange Com-
 24 mission and issued under the Securities Act of 1933
 25 (15 U.S.C. 77a et seq.)), including—

1 (A) a qualified retirement plan (as defined
2 in section 4974(c) of the Internal Revenue Code
3 of 1986) that is a qualified institutional buyer;
4 and

5 (B) a governmental plan (as defined in
6 section 414(d) of the Internal Revenue Code of
7 1986) that is a qualified institutional buyer.

8 (8) LETTER OF INTEREST.—The term “letter
9 of interest” means a letter submitted by a potential
10 applicant prior to an application for credit assistance
11 in a format prescribed by the Assistant Secretary on
12 the website of the BIFIA program that—

13 (A) describes the project and the location,
14 purpose, and cost of the project;

15 (B) outlines the proposed financial plan,
16 including the requested credit assistance and
17 the proposed obligor;

18 (C) provides a status of environmental re-
19 view; and

20 (D) provides information regarding satis-
21 faction of other eligibility requirements of the
22 BIFIA program.

23 (9) LINE OF CREDIT.—The term “line of cred-
24 it” means an agreement entered into by the Assist-
25 ant Secretary with an obligor under section 5 to pro-

1 vide a direct loan at a future date upon the occur-
2 rence of certain events.

3 (10) LOAN GUARANTEE.—The term “loan guar-
4 antee” means any guarantee or other pledge by the
5 Assistant Secretary to pay all or part of the prin-
6 cipal of and interest on a loan or other debt obliga-
7 tion issued by an obligor and funded by a lender.

8 (11) OBLIGOR.—The term “obligor” means a
9 party that—

10 (A) is primarily liable for payment of the
11 principal of or interest on a Federal credit in-
12 strument; and

13 (B) may be a corporation, company, part-
14 nership, joint venture, trust, or governmental
15 entity, agency, or instrumentality.

16 (12) PROJECT.—The term “project” means a
17 project—

18 (A) to construct and deploy infrastructure
19 for the provision of broadband service; and

20 (B) that the Assistant Secretary deter-
21 mines will—

22 (i) provide access or improved access
23 to broadband service to consumers residing
24 in areas of the United States that have no

1 access to broadband service or do not have
2 access to broadband service offered—

3 (I) with a download speed of not
4 less than 100 megabits per second;

5 (II) with an upload speed of not
6 less than 20 megabits per second; and

7 (III) with latency that is suffi-
8 ciently low to allow real-time, inter-
9 active applications; or

10 (ii) provide access or improved access
11 to broadband service to—

12 (I) schools, libraries, medical and
13 healthcare providers, community col-
14 leges and other institutions of higher
15 education, museums, religious organi-
16 zations, and other community support
17 organizations and entities to facilitate
18 greater use of broadband service by or
19 through those organizations;

20 (II) organizations and agencies
21 that provide outreach, access, equip-
22 ment, and support services to facili-
23 tate greater use of broadband service
24 by low-income, unemployed, aged, and
25 otherwise vulnerable populations;

1 (III) job-creating strategic facili-
 2 ties located within a State-designated
 3 economic zone, Economic Develop-
 4 ment District designated by the De-
 5 partment of Commerce, Empower-
 6 ment Zone designated by the Depart-
 7 ment of Housing and Urban Develop-
 8 ment, or Enterprise Community des-
 9 ignated by the Department of Agri-
 10 culture; or

11 (IV) public safety agencies.

12 (13) PROJECT OBLIGATION.—The term
 13 “project obligation” means any note, bond, deben-
 14 ture, or other debt obligation issued by an obligor in
 15 connection with the financing of a project, other
 16 than a Federal credit instrument.

17 (14) PUBLIC AUTHORITY.—The term “public
 18 authority” means—

19 (A) the Federal Government or a Federal
 20 instrumentality with authority to finance, build,
 21 operate, or maintain infrastructure for the pro-
 22 vision of broadband service; or

23 (B) the government of a State, political
 24 subdivision of a State, or Indian Tribe, or an
 25 instrumentality thereof, with authority to fi-

1 nance, build, operate, or maintain infrastruc-
2 ture for the provision of broadband service.

3 (15) RATING AGENCY.—The term “rating agen-
4 cy” means a credit rating agency registered with the
5 Securities and Exchange Commission as a nationally
6 recognized statistical rating organization (as defined
7 in section 3(a) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78c(a))).

9 (16) SECURED LOAN.—The term “secured
10 loan” means a direct loan or other debt obligation
11 issued by an obligor and funded by the Assistant
12 Secretary in connection with the financing of a
13 project under section 4.

14 (17) SMALL PROJECT.—The term “small
15 project” means a project having eligible project costs
16 that are reasonably anticipated not to equal or ex-
17 ceed \$20,000,000.

18 (18) STATE.—The term “State” has the mean-
19 ing given the term in section 3 of the Communica-
20 tions Act of 1934 (47 U.S.C. 153).

21 (19) SUBSIDY AMOUNT.—The term “subsidy
22 amount” means the amount of budget authority suf-
23 ficient to cover the estimated long-term cost to the
24 Federal Government of a Federal credit instru-
25 ment—

1 (A) calculated on a net present value basis;
 2 and

3 (B) excluding administrative costs and any
 4 incidental effects on governmental receipts or
 5 outlays in accordance with the Federal Credit
 6 Reform Act of 1990 (2 U.S.C. 661 et seq.).

7 (20) SUBSTANTIAL COMPLETION.—The term
 8 “substantial completion” means, with respect to a
 9 project receiving credit assistance under the BIFIA
 10 program—

11 (A) the commencement of the provision of
 12 broadband service using the infrastructure
 13 being financed; or

14 (B) a comparable event, as determined by
 15 the Assistant Secretary and specified in the
 16 credit agreement.

17 **SEC. 3. DETERMINATION OF ELIGIBILITY AND PROJECT SE-**
 18 **LECTION.**

19 (a) ELIGIBILITY.—

20 (1) IN GENERAL.—A project shall be eligible to
 21 receive credit assistance under the BIFIA program
 22 if—

23 (A) the entity proposing to carry out the
 24 project submits a letter of interest prior to sub-

1 mission of a formal application for the project;
 2 and

3 (B) the project meets the criteria described
 4 in this subsection.

5 (2) CREDITWORTHINESS.—

6 (A) IN GENERAL.—Except as provided in
 7 subparagraph (B), to be eligible for assistance
 8 under the BIFIA program, a project shall sat-
 9 isfy applicable creditworthiness standards,
 10 which, at a minimum, shall include—

11 (i) adequate coverage requirements to
 12 ensure repayment;

13 (ii) an investment-grade rating from
 14 not less than 2 rating agencies on debt
 15 senior to the Federal credit instrument;
 16 and

17 (iii) a rating from not less than 2 rat-
 18 ing agencies on the Federal credit instru-
 19 ment.

20 (B) SMALL PROJECTS.—In order for a
 21 small project to be eligible for assistance under
 22 the BIFIA program, the project shall satisfy al-
 23 ternative creditworthiness standards that shall
 24 be established by the Assistant Secretary under
 25 section 6 for purposes of this paragraph.

1 (3) APPLICATION.—A public authority, public-
 2 private partnership, or any other legal entity under-
 3 taking the project and authorized by the Assistant
 4 Secretary shall submit a project application that is
 5 acceptable to the Assistant Secretary.

6 (4) ELIGIBLE PROJECT COST PARAMETERS FOR
 7 INFRASTRUCTURE PROJECTS.—Eligible project costs
 8 shall be reasonably anticipated to equal or exceed
 9 \$2,000,000 in the case of a project or program of
 10 projects—

11 (A) in which the applicant is a public au-
 12 thority (other than the Federal Government, a
 13 Federal instrumentality, or a State government
 14 or instrumentality);

15 (B) located on a facility owned by a polit-
 16 ical subdivision of a State; or

17 (C) for which the Assistant Secretary de-
 18 termines that a political subdivision of a State
 19 is substantially involved in the development of
 20 the project.

21 (5) DEDICATED REVENUE SOURCES.—The ap-
 22 plicable Federal credit instrument shall be repayable,
 23 in whole or in part, from—

24 (A) amounts charged to—

1 (i) subscribers of broadband service
 2 for that service; or

3 (ii) subscribers of any related service
 4 provided over the same infrastructure for
 5 that related service;

6 (B) user fees;

7 (C) payments owing to the obligor under a
 8 public-private partnership; or

9 (D) other dedicated revenue sources that
 10 also secure or fund the project obligations.

11 (6) APPLICATIONS WHERE OBLIGOR WILL BE
 12 IDENTIFIED LATER.—A public authority may submit
 13 to the Assistant Secretary an application under
 14 paragraph (3), under which a private party to a
 15 public-private partnership will be—

16 (A) the obligor; and

17 (B) identified later through completion of
 18 a procurement and selection of the private
 19 party.

20 (7) BENEFICIAL EFFECTS.—The Assistant Sec-
 21 retary shall determine that financial assistance for
 22 the project under the BIFIA program will—

23 (A) foster, if appropriate, partnerships
 24 that attract public and private investment for
 25 the project;

1 (B) enable the project to proceed at an
2 earlier date than the project would otherwise be
3 able to proceed or reduce the lifecycle costs (in-
4 cluding debt service costs) of the project; and

5 (C) reduce the contribution of Federal
6 grant assistance for the project.

7 (8) PROJECT READINESS.—To be eligible for
8 assistance under the BIFIA program, the applicant
9 shall demonstrate a reasonable expectation that the
10 contracting process for the construction and deploy-
11 ment of infrastructure for the provision of
12 broadband service through the project can commence
13 by not later than 90 days after the date on which
14 a Federal credit instrument is obligated for the
15 project under the BIFIA program.

16 (9) PUBLIC SPONSORSHIP OF PRIVATE ENTI-
17 TIES.—

18 (A) IN GENERAL.—If an eligible project is
19 carried out by an entity that is not a State or
20 political subdivision of a State, an agency or in-
21 strumentality thereof, or a Tribal government
22 or consortium of Tribal governments, the
23 project shall be publicly sponsored.

24 (B) PUBLIC SPONSORSHIP.—For purposes
25 of subparagraph (A), a project shall be consid-

1 ered to be publicly sponsored if the obligor can
 2 demonstrate, to the satisfaction of the Assistant
 3 Secretary, that the project applicant has con-
 4 sulted with the government of the State, polit-
 5 ical subdivision of a State, or Indian Tribe in
 6 the area in which the project is located, or that
 7 is otherwise affected by the project, and that
 8 the government supports the proposal.

9 (b) SELECTION AMONG ELIGIBLE PROJECTS.—

10 (1) ESTABLISHMENT OF APPLICATION PROC-
 11 ESS.—The Assistant Secretary shall establish a roll-
 12 ing application process under which projects that are
 13 eligible to receive credit assistance under subsection
 14 (a) shall receive credit assistance on terms accept-
 15 able to the Assistant Secretary, if adequate funds
 16 are available to cover the subsidy costs associated
 17 with the Federal credit instrument.

18 (2) PRELIMINARY RATING OPINION LETTER.—

19 The Assistant Secretary shall require each project
 20 applicant to provide—

21 (A) a preliminary rating opinion letter
 22 from not less than 1 rating agency—

23 (i) indicating that the senior obliga-
 24 tions of the project, which may be the Fed-

1 eral credit instrument, have the potential
 2 to achieve an investment-grade rating; and
 3 (ii) including a preliminary rating
 4 opinion on the Federal credit instrument;
 5 or

6 (B) in the case of a small project, alter-
 7 native documentation that the Assistant Sec-
 8 retary shall require in the standards established
 9 under section 6 for purposes of this paragraph.

10 (3) TECHNOLOGY NEUTRALITY REQUIRED.—In
 11 selecting projects to receive credit assistance under
 12 the BIFIA program, the Assistant Secretary may
 13 not favor a project using any particular technology.

14 (4) PREFERENCE FOR OPEN-ACCESS NET-
 15 WORKS.—In selecting projects to receive credit as-
 16 sistance under the BIFIA program, the Assistant
 17 Secretary shall give preference to projects providing
 18 for the deployment of open-access broadband service
 19 networks.

20 (c) FEDERAL REQUIREMENTS.—

21 (1) IN GENERAL.—The following provisions of
 22 law shall apply to funds made available under the
 23 BIFIA program and projects assisted with those
 24 funds:

1 (A) Title VI of the Civil Rights Act of
2 1964 (42 U.S.C. 2000d et seq.).

3 (B) The National Environmental Policy
4 Act of 1969 (42 U.S.C. 4321 et seq.).

5 (C) Division A of subtitle III of title 54,
6 United States Code (commonly referred to as
7 the “National Historic Preservation Act”).

8 (D) The Uniform Relocation Assistance
9 and Real Property Acquisition Policies Act of
10 1970 (42 U.S.C. 4601 et seq.).

11 (2) NEPA.—No funding shall be obligated for
12 a project that has not received an environmental cat-
13 egorical exclusion, a finding of no significant impact,
14 or a record of decision under the National Environ-
15 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

16 (3) TITLE VI OF THE CIVIL RIGHTS ACT OF
17 1964.—For purposes of title VI of the Civil Rights
18 Act of 1964 (42 U.S.C. 2000d et seq.), any project
19 that receives credit assistance under the BIFIA pro-
20 gram shall be considered a program or activity with-
21 in the meaning of section 606 of that title (42
22 U.S.C. 2000d–4a).

23 (4) CONTRACTING REQUIREMENTS.—

24 (A) IN GENERAL.—All laborers and me-
25 chanics employed by contractors or subcontract-

1 tors in the performance of construction, alter-
2 ation, or repair work carried out, in whole or in
3 part, with assistance made available through a
4 Federal credit instrument shall be paid wages
5 at rates not less than those prevailing on
6 projects of a similar character in the locality as
7 determined by the Secretary of Labor in ac-
8 cordance with subchapter IV of chapter 31 of
9 title 40, United States Code.

10 (B) AUTHORITY AND FUNCTIONS OF SEC-
11 RETARY OF LABOR.—With respect to the labor
12 standards described in subparagraph (A), the
13 Secretary of Labor shall have the authority and
14 functions set forth in Reorganization Plan
15 Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.
16 App.) and section 3145 of title 40, United
17 States Code.

18 (5) NEUTRALITY REQUIREMENT.—

19 (A) IN GENERAL.—In the case of a recipi-
20 ent of assistance made available through a Fed-
21 eral credit instrument under this subtitle that is
22 an employer, the employer shall remain neutral
23 with respect to the exercise of employees and
24 labor organizations of the right to organize and

bargain under the National Labor Relations Act
(29 U.S.C. 151 et seq.).

(B) DEFINITIONS.—In this paragraph, the
terms “employee”, “employer”, and “labor or-
ganization” have the meanings given those
terms in section 2 of the National Labor Rela-
tions Act (29 U.S.C. 152).

(6) REFERRAL OF ALLEGED VIOLATIONS OF AP-
PLICABLE FEDERAL LABOR AND EMPLOYMENT
LAWS.—The Assistant Secretary shall refer any al-
leged violation of an applicable labor and employ-
ment law to the appropriate Federal agency for in-
vestigation and enforcement, and any alleged viola-
tion of paragraph (4) or (5) to the National Labor
Relations Board for investigation and enforcement,
utilizing all appropriate remedies up to and includ-
ing debarment from the BIFIA program.

(d) APPLICATION PROCESSING PROCEDURES.—

(1) NOTICE OF COMPLETE APPLICATION.—Not
later than 30 days after the date of receipt of an ap-
plication under this section, the Assistant Secretary
shall provide to the applicant a written notice to in-
form the applicant whether—

(A) the application is complete; or

1 (B) additional information or materials are
 2 needed to complete the application.

3 (2) APPROVAL OR DENIAL OF APPLICATION.—
 4 Not later than 60 days after the date of issuance of
 5 the written notice under paragraph (1), the Assist-
 6 ant Secretary shall provide to the applicant a writ-
 7 ten notice informing the applicant whether the As-
 8 sistant Secretary has approved or disapproved the
 9 application.

10 (3) APPROVAL BEFORE NEPA REVIEW.—Subject
 11 to subsection (c)(2), an application for a project may
 12 be approved before the project receives an environ-
 13 mental categorical exclusion, a finding of no signifi-
 14 cant impact, or a record of decision under the Na-
 15 tional Environmental Policy Act of 1969 (42 U.S.C.
 16 4321 et seq.).

17 (e) DEVELOPMENT PHASE ACTIVITIES.—Any credit
 18 instrument secured under the BIFIA program may be
 19 used to finance up to 100 percent of the cost of develop-
 20 ment phase activities as described in section 2(4)(A).

21 **SEC. 4. SECURED LOANS.**

22 (a) IN GENERAL.—

23 (1) AGREEMENTS.—Subject to paragraphs (2)
 24 and (3), the Assistant Secretary may enter into

1 agreements with 1 or more obligors to make secured
 2 loans, the proceeds of which shall be used—

3 (A) to finance eligible project costs of any
 4 project selected under section 3;

5 (B) to refinance interim construction fi-
 6 nancing of eligible project costs of any project
 7 selected under section 3; or

8 (C) to refinance long-term project obliga-
 9 tions or Federal credit instruments, if the re-fi-
 10 nancing provides additional funding capacity for
 11 the completion, enhancement, or expansion of
 12 any project that—

13 (i) is selected under section 3; or

14 (ii) otherwise meets the requirements
 15 of section 3.

16 (2) LIMITATION ON REFINANCING OF INTERIM
 17 CONSTRUCTION FINANCING.—A loan under para-
 18 graph (1) shall not refinance interim construction fi-
 19 nancing under paragraph (1)(B)—

20 (A) if the maturity of the interim construc-
 21 tion financing is later than 1 year after the
 22 substantial completion of the project; and

23 (B) later than 1 year after the date of sub-
 24 stantial completion of the project.

1 (3) RISK ASSESSMENT.—Before entering into
 2 an agreement under this subsection, the Assistant
 3 Secretary, in consultation with the Director of the
 4 Office of Management and Budget, shall determine
 5 an appropriate capital reserve subsidy amount for
 6 each secured loan, taking into account each rating
 7 letter provided by a rating agency under section
 8 3(b)(2)(A)(ii) or, in the case of a small project, the
 9 alternative documentation provided under section
 10 3(b)(2)(B).

11 (b) TERMS AND LIMITATIONS.—

12 (1) IN GENERAL.—A secured loan under this
 13 section with respect to a project shall be on such
 14 terms and conditions and contain such covenants,
 15 representations, warranties, and requirements (in-
 16 cluding requirements for audits) as the Assistant
 17 Secretary determines to be appropriate.

18 (2) MAXIMUM AMOUNT.—The amount of a se-
 19 cured loan under this section shall not exceed the
 20 lesser of 49 percent of the reasonably anticipated eli-
 21 gible project costs or, if the secured loan is not for
 22 a small project and does not receive an investment-
 23 grade rating, the amount of the senior project obli-
 24 gations.

1 (3) PAYMENT.—A secured loan under this sec-
2 tion—

3 (A) shall—

4 (i) be payable, in whole or in part,
5 from—

6 (I) amounts charged to—

7 (aa) subscribers of
8 broadband service for that serv-
9 ice; or

10 (bb) subscribers of any re-
11 lated service provided over the
12 same infrastructure for that re-
13 lated service;

14 (II) user fees;

15 (III) payments owing to the obli-
16 gor under a public-private partner-
17 ship; or

18 (IV) other dedicated revenue
19 sources that also secure the senior
20 project obligations; and

21 (ii) include a coverage requirement or
22 similar security feature supporting the
23 project obligations; and

1 (B) may have a lien on revenues described
2 in subparagraph (A), subject to any lien secur-
3 ing project obligations.

4 (4) INTEREST RATE.—The interest rate on a
5 secured loan under this section shall be not less than
6 the yield on United States Treasury securities of a
7 similar maturity to the maturity of the secured loan
8 on the date of execution of the loan agreement.

9 (5) MATURITY DATE.—The final maturity date
10 of the secured loan shall be the lesser of—

11 (A) 35 years after the date of substantial
12 completion of the project; and

13 (B) if the useful life of the infrastructure
14 for the provision of broadband service being fi-
15 nanced is of a lesser period, the useful life of
16 the infrastructure.

17 (6) NONSUBORDINATION.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (B), the secured loan shall not be
20 subordinated to the claims of any holder of
21 project obligations in the event of bankruptcy,
22 insolvency, or liquidation of the obligor.

23 (B) PREEXISTING INDENTURE.—

24 (i) IN GENERAL.—The Assistant Sec-
25 retary shall waive the requirement under

1 subparagraph (A) for a public agency bor-
2 rower that is financing ongoing capital
3 programs and has outstanding senior
4 bonds under a preexisting indenture, if—

5 (I) the secured loan—

6 (aa) is rated in the A cat-
7 egory or higher; or

8 (bb) in the case of a small
9 project, meets an alternative
10 standard that the Assistant Sec-
11 retary shall establish under sec-
12 tion 6 for purposes of this sub-
13 clause;

14 (II) the secured loan is secured
15 and payable from pledged revenues
16 not affected by project performance,
17 such as a tax-backed revenue pledge
18 or a system-backed pledge of project
19 revenues; and

20 (III) the BIFLA program share
21 of eligible project costs is 33 percent
22 or less.

23 (ii) LIMITATION.—If the Assistant
24 Secretary waives the nonsubordination re-
25 quirement under this subparagraph—

1 (I) the maximum credit subsidy
2 to be paid by the Federal Government
3 shall be not more than 10 percent of
4 the principal amount of the secured
5 loan; and

6 (II) the obligor shall be respon-
7 sible for paying the remainder of the
8 subsidy cost, if any.

9 (7) FEES.—The Assistant Secretary may estab-
10 lish fees at a level sufficient to cover all or a portion
11 of the costs to the Federal Government of making
12 a secured loan under this section.

13 (8) NON-FEDERAL SHARE.—The proceeds of a
14 secured loan under the BIFIA program, if the loan
15 is repayable from non-Federal funds—

16 (A) may be used for any non-Federal share
17 of project costs required under this Act; and

18 (B) shall not count toward the total Fed-
19 eral assistance provided for a project for pur-
20 poses of paragraph (9).

21 (9) MAXIMUM FEDERAL INVOLVEMENT.—The
22 total Federal assistance provided for a project re-
23 ceiving a loan under the BIFIA program shall not
24 exceed 80 percent of the total project cost.

25 (c) REPAYMENT.—

1 (1) SCHEDULE.—The Assistant Secretary shall
2 establish a repayment schedule for each secured loan
3 under this section based on—

4 (A) the projected cash flow from project
5 revenues and other repayment sources; and

6 (B) the useful life of the infrastructure for
7 the provision of broadband service being fi-
8 nanced.

9 (2) COMMENCEMENT.—Scheduled loan repay-
10 ments of principal or interest on a secured loan
11 under this section shall commence not later than 5
12 years after the date of substantial completion of the
13 project.

14 (3) DEFERRED PAYMENTS.—

15 (A) IN GENERAL.—If, at any time after
16 the date of substantial completion of the
17 project, the project is unable to generate suffi-
18 cient revenues to pay the scheduled loan repay-
19 ments of principal and interest on the secured
20 loan, the Assistant Secretary may, subject to
21 subparagraph (C), allow the obligor to add un-
22 paid principal and interest to the outstanding
23 balance of the secured loan.

24 (B) INTEREST.—Any payment deferred
25 under subparagraph (A) shall—

1 (i) continue to accrue interest in ac-
 2 cordance with subsection (b)(4) until fully
 3 repaid; and

4 (ii) be scheduled to be amortized over
 5 the remaining term of the loan.

6 (C) CRITERIA.—

7 (i) IN GENERAL.—Any payment defer-
 8 ral under subparagraph (A) shall be con-
 9 tingent on the project meeting criteria es-
 10 tablished by the Assistant Secretary.

11 (ii) REPAYMENT STANDARDS.—The
 12 criteria established pursuant to clause (i)
 13 shall include standards for reasonable as-
 14 surance of repayment.

15 (4) PREPAYMENT.—

16 (A) USE OF EXCESS REVENUES.—Any ex-
 17 cess revenues that remain after satisfying
 18 scheduled debt service requirements on the
 19 project obligations and secured loan and all de-
 20 posit requirements under the terms of any trust
 21 agreement, bond resolution, or similar agree-
 22 ment securing project obligations may be ap-
 23 plied annually to prepay the secured loan with-
 24 out penalty.

1 (B) USE OF PROCEEDS OF REFI-
 2 NANCING.—The secured loan may be prepaid at
 3 any time without penalty from the proceeds of
 4 refinancing from non-Federal funding sources.

5 (d) SALE OF SECURED LOANS.—

6 (1) IN GENERAL.—Subject to paragraph (2), as
 7 soon as practicable after substantial completion of a
 8 project and after notifying the obligor, the Assistant
 9 Secretary may sell to another entity or reoffer into
 10 the capital markets a secured loan for the project if
 11 the Assistant Secretary determines that the sale or
 12 reoffering can be made on favorable terms.

13 (2) CONSENT OF OBLIGOR.—In making a sale
 14 or reoffering under paragraph (1), the Assistant
 15 Secretary may not change the original terms and
 16 conditions of the secured loan without the written
 17 consent of the obligor.

18 (e) LOAN GUARANTEES.—

19 (1) IN GENERAL.—The Assistant Secretary
 20 may provide a loan guarantee to a lender in lieu of
 21 making a secured loan under this section if the As-
 22 sistant Secretary determines that the budgetary cost
 23 of the loan guarantee is substantially the same as
 24 that of a secured loan.

1 (2) TERMS.—The terms of a loan guarantee
 2 under paragraph (1) shall be consistent with the
 3 terms required under this section for a secured loan,
 4 except that the rate on the guaranteed loan and any
 5 prepayment features shall be negotiated between the
 6 obligor and the lender, with the consent of the As-
 7 sistant Secretary.

8 (f) STREAMLINED APPLICATION PROCESS.—

9 (1) IN GENERAL.—The Assistant Secretary
 10 shall develop 1 or more expedited application proc-
 11 esses, available at the request of entities seeking se-
 12 cured loans under the BIFIA program, that use a
 13 set or sets of conventional terms established pursu-
 14 ant to this section.

15 (2) TERMS.—In establishing the streamlined
 16 application process required by this subsection, the
 17 Assistant Secretary may allow for an expedited ap-
 18 plication period and include terms such as those that
 19 require—

20 (A) that the project be a small project;

21 (B) the secured loan to be secured and
 22 payable from pledged revenues not affected by
 23 project performance, such as a tax-backed rev-
 24 enue pledge, tax increment financing, or a sys-
 25 tem-backed pledge of project revenues; and

1 (C) repayment of the loan to commence
2 not later than 5 years after disbursement.

3 **SEC. 5. LINES OF CREDIT.**

4 (a) IN GENERAL.—

5 (1) AGREEMENTS.—Subject to paragraphs (2)
6 through (4), the Assistant Secretary may enter into
7 agreements to make available to 1 or more obligors
8 lines of credit in the form of direct loans to be made
9 by the Assistant Secretary at future dates on the oc-
10 currence of certain events for any project selected
11 under section 3.

12 (2) USE OF PROCEEDS.—The proceeds of a line
13 of credit made available under this section shall be
14 available to pay debt service on project obligations
15 issued to finance eligible project costs, extraordinary
16 repair and replacement costs, operation and mainte-
17 nance expenses, and costs associated with unex-
18 pected Federal or State environmental restrictions.

19 (3) RISK ASSESSMENT.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), before entering into an
22 agreement under this subsection, the Assistant
23 Secretary, in consultation with the Director of
24 the Office of Management and Budget and each
25 rating agency providing a preliminary rating

1 opinion letter under section 3(b)(2)(A), shall
 2 determine an appropriate capital reserve sub-
 3 sidy amount for each line of credit, taking into
 4 account the rating opinion letter.

5 (B) SMALL PROJECTS.—Before entering
 6 into an agreement under this subsection to
 7 make available a line of credit for a small
 8 project, the Assistant Secretary, in consultation
 9 with the Director of the Office of Management
 10 and Budget, shall determine an appropriate
 11 capital reserve subsidy amount for each such
 12 line of credit, taking into account the alter-
 13 native documentation provided under section
 14 3(b)(2)(B) instead of preliminary rating opinion
 15 letters provided under section 3(b)(2)(A).

16 (4) INVESTMENT-GRADE RATING REQUIRE-
 17 MENT.—The funding of a line of credit under this
 18 section shall be contingent on—

19 (A) the senior obligations of the project re-
 20 ceiving an investment-grade rating from 2 rat-
 21 ing agencies; or

22 (B) in the case of a small project, the
 23 project meeting an alternative standard that the
 24 Assistant Secretary shall establish under section
 25 6 for purposes of this paragraph.

1 (b) TERMS AND LIMITATIONS.—

2 (1) IN GENERAL.—A line of credit under this
3 section with respect to a project shall be on such
4 terms and conditions and contain such covenants,
5 representations, warranties, and requirements (in-
6 cluding requirements for audits) as the Assistant
7 Secretary determines to be appropriate.

8 (2) MAXIMUM AMOUNTS.—The total amount of
9 a line of credit under this section shall not exceed
10 33 percent of the reasonably anticipated eligible
11 project costs.

12 (3) DRAWS.—Any draw on a line of credit
13 under this section shall—

14 (A) represent a direct loan; and

15 (B) be made only if net revenues from the
16 project (including capitalized interest, but not
17 including reasonably required financing re-
18 serves) are insufficient to pay the costs speci-
19 fied in subsection (a)(2).

20 (4) INTEREST RATE.—The interest rate on a
21 direct loan resulting from a draw on the line of cred-
22 it shall be not less than the yield on 30-year United
23 States Treasury securities, as of the date of execu-
24 tion of the line of credit agreement.

1 (5) SECURITY.—A line of credit issued under
2 this section—

3 (A) shall—

4 (i) be payable, in whole or in part,
5 from—

6 (I) amounts charged to—

7 (aa) subscribers of
8 broadband service for that serv-
9 ice; or

10 (bb) subscribers of any re-
11 lated service provided over the
12 same infrastructure for that re-
13 lated service;

14 (II) user fees;

15 (III) payments owing to the obli-
16 gor under a public-private partner-
17 ship; or

18 (IV) other dedicated revenue
19 sources that also secure the senior
20 project obligations; and

21 (ii) include a coverage requirement or
22 similar security feature supporting the
23 project obligations; and

1 (B) may have a lien on revenues described
 2 in subparagraph (A), subject to any lien secur-
 3 ing project obligations.

4 (6) PERIOD OF AVAILABILITY.—The full
 5 amount of a line of credit under this section, to the
 6 extent not drawn upon, shall be available during the
 7 10-year period beginning on the date of substantial
 8 completion of the project.

9 (7) RIGHTS OF THIRD-PARTY CREDITORS.—

10 (A) AGAINST FEDERAL GOVERNMENT.—A
 11 third-party creditor of the obligor shall not have
 12 any right against the Federal Government with
 13 respect to any draw on a line of credit under
 14 this section.

15 (B) ASSIGNMENT.—An obligor may assign
 16 a line of credit under this section to—

17 (i) 1 or more lenders; or

18 (ii) a trustee on the behalf of such a
 19 lender.

20 (8) NONSUBORDINATION.—

21 (A) IN GENERAL.—Except as provided in
 22 subparagraph (B), a direct loan under this sec-
 23 tion shall not be subordinated to the claims of
 24 any holder of project obligations in the event of

1 bankruptcy, insolvency, or liquidation of the ob-
 2 ligor.

3 (B) PRE-EXISTING INDENTURE.—

4 (i) IN GENERAL.—The Assistant Sec-
 5 retary shall waive the requirement of sub-
 6 paragraph (A) for a public agency bor-
 7 rower that is financing ongoing capital
 8 programs and has outstanding senior
 9 bonds under a preexisting indenture, if—

10 (I) the line of credit—

11 (aa) is rated in the A cat-
 12 egory or higher; or

13 (bb) in the case of a small
 14 project, meets an alternative
 15 standard that the Assistant Sec-
 16 retary shall establish under sec-
 17 tion 6 for purposes of this sub-
 18 clause;

19 (II) the BIFIA program loan re-
 20 sulting from a draw on the line of
 21 credit is payable from pledged reve-
 22 nues not affected by project perform-
 23 ance, such as a tax-backed revenue
 24 pledge or a system-backed pledge of
 25 project revenues; and

1 (III) the BIFIA program share
2 of eligible project costs is 33 percent
3 or less.

4 (ii) LIMITATION.—If the Assistant
5 Secretary waives the nonsubordination re-
6 quirement under this subparagraph—

7 (I) the maximum credit subsidy
8 to be paid by the Federal Government
9 shall be not more than 10 percent of
10 the principal amount of the secured
11 loan; and

12 (II) the obligor shall be respon-
13 sible for paying the remainder of the
14 subsidy cost.

15 (9) FEES.—The Assistant Secretary may estab-
16 lish fees at a level sufficient to cover all or a portion
17 of the costs to the Federal Government of providing
18 a line of credit under this section.

19 (10) RELATIONSHIP TO OTHER CREDIT INSTRU-
20 MENTS.—A project that receives a line of credit
21 under this section also shall not receive a secured
22 loan or loan guarantee under section 4 in an amount
23 that, combined with the amount of the line of credit,
24 exceeds 49 percent of eligible project costs.

25 (c) REPAYMENT.—

1 (1) TERMS AND CONDITIONS.—The Assistant
 2 Secretary shall establish repayment terms and condi-
 3 tions for each direct loan under this section based
 4 on—

5 (A) the projected cash flow from project
 6 revenues and other repayment sources; and

7 (B) the useful life of the infrastructure for
 8 the provision of broadband service being fi-
 9 nanced.

10 (2) TIMING.—All repayments of principal or in-
 11 terest on a direct loan under this section shall be
 12 scheduled—

13 (A) to commence not later than 5 years
 14 after the end of the period of availability speci-
 15 fied in subsection (b)(6); and

16 (B) to conclude, with full repayment of
 17 principal and interest, by the date that is 25
 18 years after the end of the period of availability
 19 specified in subsection (b)(6).

20 **SEC. 6. ALTERNATIVE PRUDENTIAL LENDING STANDARDS**
 21 **FOR SMALL PROJECTS.**

22 Not later than 180 days after the date of enactment
 23 of this Act, the Assistant Secretary shall establish alter-
 24 native, streamlined prudential lending standards for small
 25 projects receiving credit assistance under the BIFIA pro-

1 gram to ensure that those projects pose no additional risk
 2 to the Federal Government, as compared with projects
 3 that are not small projects.

4 **SEC. 7. PROGRAM ADMINISTRATION.**

5 (a) REQUIREMENT.—The Assistant Secretary shall
 6 establish a uniform system to service the Federal credit
 7 instruments made available under the BIFIA program.

8 (b) FEES.—The Assistant Secretary may collect and
 9 spend fees, contingent on authority being provided in ap-
 10 propriation Acts, at a level that is sufficient to cover—

11 (1) the costs of services of expert firms retained
 12 pursuant to subsection (d); and

13 (2) all or a portion of the costs to the Federal
 14 Government of servicing the Federal credit instru-
 15 ments.

16 (c) SERVICER.—

17 (1) IN GENERAL.—The Assistant Secretary
 18 may appoint a financial entity to assist the Assistant
 19 Secretary in servicing the Federal credit instru-
 20 ments.

21 (2) DUTIES.—A servicer appointed under para-
 22 graph (1) shall act as the agent for the Assistant
 23 Secretary.

1 (3) FEE.—A servicer appointed under para-
 2 graph (1) shall receive a servicing fee, subject to ap-
 3 proval by the Assistant Secretary.

4 (d) ASSISTANCE FROM EXPERT FIRMS.—The Assist-
 5 ant Secretary may retain the services of expert firms, in-
 6 cluding counsel, in the field of municipal and project fi-
 7 nance to assist in the underwriting and servicing of Fed-
 8 eral credit instruments.

9 (e) EXPEDITED PROCESSING.—The Assistant Sec-
 10 retary shall implement procedures and measures to econo-
 11 mize the time and cost involved in obtaining approval and
 12 the issuance of credit assistance under the BIFIA pro-
 13 gram.

14 (f) ASSISTANCE TO SMALL PROJECTS.—Of the
 15 amount appropriated under section 10(a), and after the
 16 set-aside for administrative expenses under section 10(b),
 17 not less than 20 percent shall be made available for the
 18 Assistant Secretary to use in lieu of fees collected under
 19 subsection (b) for small projects.

20 **SEC. 8. STATE AND LOCAL PERMITS.**

21 The provision of credit assistance under the BIFIA
 22 program with respect to a project shall not—

23 (1) relieve any recipient of the assistance of any
 24 obligation to obtain any required State or local per-
 25 mit or approval with respect to the project;

1 (2) limit the right of any State, political sub-
 2 division of a State, or agency or instrumentality
 3 thereof to approve or regulate any rate of return on
 4 private equity invested in the project; or

5 (3) otherwise supersede any State or local law
 6 (including any regulation) applicable to the construc-
 7 tion or operation of the project.

8 **SEC. 9. REGULATIONS.**

9 The Assistant Secretary may promulgate such regula-
 10 tions as the Assistant Secretary determines to be appro-
 11 priate to carry out the BIFIA program.

12 **SEC. 10. FUNDING.**

13 (a) APPROPRIATION.—There are appropriated to the
 14 Assistant Secretary, out of any money in the Treasury not
 15 otherwise appropriated, \$5,000,000,000 to carry out this
 16 Act for fiscal year 2021, to remain available until ex-
 17 pended.

18 (b) ADMINISTRATIVE EXPENSES.—Of the amount
 19 appropriated under subsection (a), the Assistant Secretary
 20 may use not more than 5 percent for the administration
 21 of the BIFIA program.

22 **SEC. 11. REPORTS TO CONGRESS.**

23 (a) IN GENERAL.—Not later than 1 year after the
 24 date of enactment of this Act, and every 2 years there-
 25 after, the Assistant Secretary shall submit to Congress a

1 report summarizing the financial performance of the
2 projects that are receiving, or have received, assistance
3 under the BIFIA program, including a recommendation
4 as to whether the objectives of the BIFIA program are
5 best served by—

6 (1) continuing the program under the authority
7 of the Assistant Secretary; or

8 (2) establishing a Federal corporation or feder-
9 ally sponsored enterprise to administer the program.

10 (b) APPLICATION PROCESS REPORT.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this Act, and annually
13 thereafter, the Assistant Secretary shall submit to
14 the Committee on Commerce, Science, and Trans-
15 portation of the Senate and the Committee on En-
16 ergy and Commerce of the House of Representatives
17 a report that includes a list of all of the letters of
18 interest and applications received for assistance
19 under the BIFIA program during the preceding fis-
20 cal year.

21 (2) INCLUSIONS.—

22 (A) IN GENERAL.—Each report under
23 paragraph (1) shall include, at a minimum, a
24 description of, with respect to each letter of in-
25 terest and application included in the report—

1 (i) the date on which the letter of in-
2 terest or application was received;

3 (ii) the date on which a notification
4 was provided to the applicant regarding
5 whether the application was complete or
6 incomplete;

7 (iii) the date on which a revised and
8 completed application was submitted (if
9 applicable);

10 (iv) the date on which a notification
11 was provided to the applicant regarding
12 whether the project was approved or dis-
13 approved; and

14 (v) if the project was not approved,
15 the reason for the disapproval.

16 (B) CORRESPONDENCE.—Each report
17 under paragraph (1) shall include copies of any
18 correspondence provided to the applicant in ac-
19 cordance with section 3(d).

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