

117TH CONGRESS
1ST SESSION

H. R. 1700

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 HOUSE OF REPRESENTATIVES

MARCH 9, 2021

Mr. MCNERNEY (for himself and Mrs. AXNE) introduced the following bill;
which was referred to the Committee on Energy and Commerce

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”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 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.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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

9 (3) BROADBAND SERVICE.—The term
 10 “broadband service”—

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

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

4 (C) does not include dial-up internet access
5 service.

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

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

17 (B) construction and deployment phase ac-
18 tivities, including—

19 (i) construction, reconstruction, reha-
20 bilitation, replacement, and acquisition of
21 real property (including land relating to
22 the project and improvements to land),
23 equipment, instrumentation, networking
24 capability, hardware and software, and dig-
25 ital network technology;

1 (ii) environmental mitigation; and
2 (iii) construction contingencies; and
3 (C) capitalized interest necessary to meet
4 market requirements, reasonably required re-
5 serve funds, capital issuance expenses, and
6 other carrying costs during construction and
7 deployment.

8 (5) FEDERAL AGENCY.—The term “Federal
9 agency” has the meaning given the term “agency”
10 in section 551 of title 5, United States Code.

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

16 (7) INDIAN TRIBE.—The term “Indian Tribe”
17 has the meaning given such term in section 4(e) of
18 the Indian Self-Determination and Education Assist-
19 ance Act (25 U.S.C. 5304(e)).

20 (8) INSTITUTION OF HIGHER EDUCATION.—The
21 term “institution of higher education”—

22 (A) has the meaning given the term in sec-
23 tion 101 of the Higher Education Act of 1965
24 (20 U.S.C. 1001); and

1 (B) includes a postsecondary vocational in-
2 stitution.

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

7 (10) LENDER.—The term “lender” means any
8 non-Federal qualified institutional buyer (as defined
9 in section 230.144A(a) of title 17, Code of Federal
10 Regulations (or any successor regulation), known as
11 Rule 144A(a) of the Securities and Exchange Com-
12 mission and issued under the Securities Act of 1933
13 (15 U.S.C. 77a et seq.)), including—

14 (A) a qualified retirement plan (as defined
15 in section 4974(c) of the Internal Revenue Code
16 of 1986) that is a qualified institutional buyer;
17 and

18 (B) a governmental plan (as defined in
19 section 414(d) of the Internal Revenue Code of
20 1986) that is a qualified institutional buyer.

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

1 (A) describes the project and the location,
2 purpose, and cost of the project;

3 (B) outlines the proposed financial plan,
4 including the requested credit assistance and
5 the proposed obligor;

6 (C) provides a status of environmental re-
7 view; and

8 (D) provides information regarding satis-
9 faction of other eligibility requirements of the
10 BIFIA program.

11 (12) LINE OF CREDIT.—The term “line of cred-
12 it” means an agreement entered into by the Assist-
13 ant Secretary with an obligor under section 5 to pro-
14 vide a direct loan at a future date upon the occur-
15 rence of certain events.

16 (13) LOAN GUARANTEE.—The term “loan guar-
17 antee” means any guarantee or other pledge by the
18 Assistant Secretary to pay all or part of the prin-
19 cipal of and interest on a loan or other debt obliga-
20 tion issued by an obligor and funded by a lender.

21 (14) OBLIGOR.—The term “obligor” means a
22 party that—

23 (A) is primarily liable for payment of the
24 principal of or interest on a Federal credit in-
25 strument; and

1 (B) may be a corporation, company, part-
2 nership, joint venture, trust, or governmental
3 entity, agency, or instrumentality.

4 (15) POSTSECONDARY VOCATIONAL INSTITU-
5 TION.—The term “postsecondary vocational institu-
6 tion” has the meaning given the term in section
7 102(c) of the Higher Education Act of 1965 (20
8 U.S.C. 1002(c)).

9 (16) PROJECT.—The term “project” means a
10 project—

11 (A) to construct and deploy infrastructure
12 for the provision of broadband service; and

13 (B) that the Assistant Secretary deter-
14 mines will—

15 (i) provide access or improved access
16 to broadband service to consumers residing
17 in areas of the United States that have no
18 access to broadband service or do not have
19 access to broadband service offered—

20 (I) with a download speed of at
21 least 100 megabits per second;

22 (II) with an upload speed of at
23 least 100 megabits per second; and

24 (III) with latency that is suffi-
25 ciently low to allow multiple, simulta-

1 neous, real-time, interactive applica-
2 tions; or

3 (ii) provide access or improved access
4 to broadband service to—

5 (I) schools, libraries, medical and
6 healthcare providers, community col-
7 leges and other institutions of higher
8 education, museums, religious organi-
9 zations, and other community support
10 organizations and entities to facilitate
11 greater use of broadband service by or
12 through such organizations;

13 (II) organizations and agencies
14 that provide outreach, access, equip-
15 ment, and support services to facili-
16 tate greater use of broadband service
17 by low-income, unemployed, aged, and
18 otherwise vulnerable populations;

19 (III) job-creating strategic facili-
20 ties located within a State-designated
21 economic zone, Economic Develop-
22 ment District designated by the De-
23 partment of Commerce, Empower-
24 ment Zone designated by the Depart-
25 ment of Housing and Urban Develop-

1 ment, or Enterprise Community des-
2 ignated by the Department of Agri-
3 culture; or

4 (IV) public safety agencies.

5 (17) PROJECT OBLIGATION.—The term
6 “project obligation” means any note, bond, debenture,
7 or other debt obligation issued by an obligor in
8 connection with the financing of a project, other
9 than a Federal credit instrument.

10 (18) PUBLIC AUTHORITY.—The term “public
11 authority” means a Federal, State, county, town or
12 township, Indian Tribe, municipal, or other local
13 government or instrumentality with authority to fi-
14 nance, build, operate, or maintain infrastructure for
15 the provision of broadband service.

16 (19) RATING AGENCY.—The term “rating agency”
17 means a credit rating agency registered with the
18 Securities and Exchange Commission as a nationally
19 recognized statistical rating organization (as defined
20 in section 3(a) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78c(a))).

22 (20) SECURED LOAN.—The term “secured
23 loan” means a direct loan or other debt obligation
24 issued by an obligor and funded by the Assistant

1 Secretary in connection with the financing of a
2 project under section 4.

3 (21) SMALL PROJECT.—The term “small
4 project” means a project having eligible project costs
5 that are reasonably anticipated not to equal or ex-
6 ceed \$20,000,000.

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

10 (23) SUBSIDY AMOUNT.—The term “subsidy
11 amount” means the amount of budget authority suf-
12 ficient to cover the estimated long-term cost to the
13 Federal Government of a Federal credit instru-
14 ment—

15 (A) calculated on a net present value basis;

16 and

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

21 (24) SUBSTANTIAL COMPLETION.—The term
22 “substantial completion” means, with respect to a
23 project receiving credit assistance under the BIFIA
24 program—

1 (A) the commencement of the provision of
2 broadband service using the infrastructure
3 being financed; or

4 (B) a comparable event, as determined by
5 the Assistant Secretary and specified in the
6 credit agreement.

7 **SEC. 3. DETERMINATION OF ELIGIBILITY AND PROJECT SE-**
8 **LECTION.**

9 (a) ELIGIBILITY.—

10 (1) IN GENERAL.—A project shall be eligible to
11 receive credit assistance under the BIFIA program
12 if—

13 (A) the entity proposing to carry out the
14 project submits a letter of interest prior to sub-
15 mission of a formal application for the project;
16 and

17 (B) the project meets the criteria described
18 in this subsection.

19 (2) CREDITWORTHINESS.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), to be eligible for assistance
22 under the BIFIA program, a project shall sat-
23 isfy applicable creditworthiness standards,
24 which, at a minimum, shall include—

1 (i) adequate coverage requirements to
2 ensure repayment;

3 (ii) an investment-grade rating from
4 at least two rating agencies on debt senior
5 to the Federal credit instrument; and

6 (iii) a rating from at least two rating
7 agencies on the Federal credit instrument.

8 (B) SMALL PROJECTS.—In order for a
9 small project to be eligible for assistance under
10 the BIFIA program, such project shall satisfy
11 alternative creditworthiness standards that shall
12 be established by the Assistant Secretary under
13 section 6 for purposes of this paragraph.

14 (3) APPLICATION.—A State, local government,
15 agency or instrumentality of a State or local govern-
16 ment, public authority, public-private partnership, or
17 any other legal entity undertaking the project and
18 authorized by the Assistant Secretary shall submit a
19 project application that is acceptable to the Assist-
20 ant Secretary.

21 (4) ELIGIBLE PROJECT COST PARAMETERS FOR
22 INFRASTRUCTURE PROJECTS.—Eligible project costs
23 shall be reasonably anticipated to equal or exceed
24 \$2,000,000 in the case of a project or program of
25 projects—

1 (A) in which the applicant is a local gov-
2 ernment, instrumentality of local government,
3 or public authority (other than a public author-
4 ity that is a Federal or State government or in-
5 strumentality);

6 (B) located on a facility owned by a local
7 government; or

8 (C) for which the Assistant Secretary de-
9 termines that a local government is substan-
10 tially involved in the development of the project.

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

14 (A) amounts charged to—

15 (i) subscribers of broadband service
16 for such service; or

17 (ii) subscribers of any related service
18 provided over the same infrastructure for
19 such related service;

20 (B) user fees;

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

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

1 (6) APPLICATIONS WHERE OBLIGOR WILL BE
2 IDENTIFIED LATER.—A State, local government,
3 agency or instrumentality of a State or local govern-
4 ment, or public authority may submit to the Assist-
5 ant Secretary an application under paragraph (3),
6 under which a private party to a public-private part-
7 nership will be—

8 (A) the obligor; and

9 (B) identified later through completion of
10 a procurement and selection of the private
11 party.

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

15 (A) foster, if appropriate, partnerships
16 that attract public and private investment for
17 the project;

18 (B) enable the project to proceed at an
19 earlier date than the project would otherwise be
20 able to proceed or reduce the lifecycle costs (in-
21 cluding debt service costs) of the project; and

22 (C) reduce the contribution of Federal
23 grant assistance for the project.

24 (8) PROJECT READINESS.—To be eligible for
25 assistance under the BIFIA program, the applicant

1 shall demonstrate a reasonable expectation that the
2 contracting process for the construction and deploy-
3 ment of infrastructure for the provision of
4 broadband service through the project can commence
5 by no later than 90 days after the date on which a
6 Federal credit instrument is obligated for the project
7 under the BIFIA program.

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

10 (A) IN GENERAL.—If an eligible project is
11 carried out by an entity that is not a State or
12 local government or an agency or instrumen-
13 tality of a State or local government or a Tribal
14 Government or consortium of Tribal Govern-
15 ments, the project shall be publicly sponsored.

16 (B) PUBLIC SPONSORSHIP.—For purposes
17 of this Act, a project shall be considered to be
18 publicly sponsored if the obligor can dem-
19 onstrate, to the satisfaction of the Assistant
20 Secretary, that the project applicant has con-
21 sulted with the State, local, or Tribal govern-
22 ment in the area in which the project is located,
23 or that is otherwise affected by the project, and
24 that such government supports the proposal.

25 (b) SELECTION AMONG ELIGIBLE PROJECTS.—

1 (1) ESTABLISHMENT OF APPLICATION PROC-
2 ESS.—The Assistant Secretary shall establish a roll-
3 ing application process under which projects that are
4 eligible to receive credit assistance under subsection
5 (a) shall receive credit assistance on terms accept-
6 able to the Assistant Secretary, if adequate funds
7 are available to cover the subsidy costs associated
8 with the Federal credit instrument.

9 (2) PRELIMINARY RATING OPINION LETTER.—
10 The Assistant Secretary shall require each project
11 applicant to provide—

12 (A) a preliminary rating opinion letter
13 from at least one rating agency—

14 (i) indicating that the senior obliga-
15 tions of the project, which may be the Fed-
16 eral credit instrument, have the potential
17 to achieve an investment-grade rating; and

18 (ii) including a preliminary rating
19 opinion on the Federal credit instrument;
20 or

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

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

5 (4) PREFERENCE FOR OPEN-ACCESS NET-
6 WORKS.—In selecting projects to receive credit as-
7 sistance under the BIFIA program, the Assistant
8 Secretary shall give preference to projects providing
9 for the deployment of open-access broadband service
10 networks.

11 (c) FEDERAL REQUIREMENTS.—

12 (1) IN GENERAL.—The following provisions of
13 law shall apply to funds made available under the
14 BIFIA program and projects assisted with those
15 funds:

16 (A) Title VI of the Civil Rights Act of
17 1964 (42 U.S.C. 2000d et seq.).

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

20 (C) 54 U.S.C. 300101 et seq. (commonly
21 referred to as the “National Historic Preserva-
22 tion Act”).

23 (D) The Uniform Relocation Assistance
24 and Real Property Acquisition Policies Act of
25 1970 (42 U.S.C. 4601 et seq.).

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

6 (3) TITLE VI OF THE CIVIL RIGHTS ACT OF
7 1964.—For purposes of title VI of the Civil Rights
8 Act of 1964 (42 U.S.C. 2000d et seq.), any project
9 that receives credit assistance under the BIFIA pro-
10 gram shall be considered a program or activity with-
11 in the meaning of section 606 of such title (42
12 U.S.C. 2000d–4a).

13 (4) CONTRACTING REQUIREMENTS.—All labor-
14 ers and mechanics employed by contractors or sub-
15 contractors in the performance of construction, al-
16 teration, or repair work carried out, in whole or in
17 part, with assistance made available through a Fed-
18 eral credit instrument shall be paid wages at rates
19 not less than those prevailing on projects of a simi-
20 lar character in the locality as determined by the
21 Secretary of Labor in accordance with subchapter
22 IV of chapter 31 of title 40, United States Code.
23 With respect to the labor standards in this para-
24 graph, the Secretary of Labor shall have the author-
25 ity and functions set forth in Reorganization Plan

1 Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.
2 App.) and section 3145 of title 40, United States
3 Code.

4 (5) NEUTRALITY REQUIREMENT.—An employer
5 receiving assistance made available through a Fed-
6 eral credit instrument under this Act shall remain
7 neutral with respect to the exercise of employees and
8 labor organizations of the right to organize and bar-
9 gain under the National Labor Relations Act (29
10 U.S.C. 151 et seq.).

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

21 (d) APPLICATION PROCESSING PROCEDURES.—

22 (1) NOTICE OF COMPLETE APPLICATION.—Not
23 later than 30 days after the date of receipt of an ap-
24 plication under this section, the Assistant Secretary

1 shall provide to the applicant a written notice to in-
2 form the applicant whether—

3 (A) the application is complete; or

4 (B) additional information or materials are
5 needed to complete the application.

6 (2) APPROVAL OR DENIAL OF APPLICATION.—

7 Not later than 60 days after the date of issuance of
8 the written notice under paragraph (1), the Assist-
9 ant Secretary shall provide to the applicant a writ-
10 ten notice informing the applicant whether the As-
11 sistant Secretary has approved or disapproved the
12 application.

13 (3) APPROVAL BEFORE NEPA REVIEW.—Subject
14 to subsection (c)(2), an application for a project may
15 be approved before the project receives an environ-
16 mental categorical exclusion, a finding of no signifi-
17 cant impact, or a record of decision under the Na-
18 tional Environmental Policy Act of 1969 (42 U.S.C.
19 4321 et seq.).

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

24 **SEC. 4. SECURED LOANS.**

25 (a) IN GENERAL.—

1 (1) AGREEMENTS.—Subject to paragraphs (2)
2 and (3), the Assistant Secretary may enter into
3 agreements with one or more obligors to make se-
4 cured loans, the proceeds of which shall be used—

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

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

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

15 (i) is selected under section 3; or

16 (ii) otherwise meets the requirements
17 of section 3.

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

22 (A) if the maturity of such interim con-
23 struction financing is later than 1 year after
24 the substantial completion of the project; and

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

3 (3) RISK ASSESSMENT.—Before entering into
4 an agreement under this subsection, the Assistant
5 Secretary, in consultation with the Director of the
6 Office of Management and Budget, shall determine
7 an appropriate capital reserve subsidy amount for
8 each secured loan, taking into account each rating
9 letter provided by a rating agency under section
10 3(b)(2)(A)(ii) or, in the case of a small project, the
11 alternative documentation provided under section
12 3(b)(2)(B).

13 (b) TERMS AND LIMITATIONS.—

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

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

1 grade rating, the amount of the senior project obli-
2 gations.

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

5 (A) shall—

6 (i) be payable, in whole or in part,
7 from—

8 (I) amounts charged to—

9 (aa) subscribers of
10 broadband service for such serv-
11 ice; or

12 (bb) subscribers of any re-
13 lated service provided over the
14 same infrastructure for such re-
15 lated service;

16 (II) user fees;

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

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

23 (ii) include a coverage requirement or
24 similar security feature supporting the
25 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 one 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 one or more obli-
8 gors lines of credit in the form of direct loans to be
9 made by the Assistant Secretary at future dates on
10 the occurrence of certain events for any project se-
11 lected 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 such serv-
9 ice; or

10 (bb) subscribers of any re-
11 lated service provided over the
12 same infrastructure for such 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) one 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 the enact-
 23 ment of this Act, the Assistant Secretary shall establish
 24 alternative, streamlined prudential lending standards for
 25 small projects receiving credit assistance under the BIFIA

1 program to ensure that such projects pose no additional
2 risk to the Federal Government, as compared with
3 projects 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 propriations 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 unit of State or local
2 government to approve or regulate any rate of re-
3 turn on private equity invested in the project; or

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

7 **SEC. 9. REGULATIONS.**

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

11 **SEC. 10. FUNDING.**

12 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated to the Assistant Secretary
14 \$5,000,000,000 for fiscal year 2022 to carry out this Act,
15 and such amount is authorized to remain available until
16 expended.

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

21 **SEC. 11. REPORTS TO CONGRESS.**

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

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

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

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

9 (b) APPLICATION PROCESS REPORT.—

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

20 (2) INCLUSIONS.—

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

○