

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.

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## 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

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## 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 agen-  
17          cy” 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 BIFLA  
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 gorical 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 BIFLA 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 BIFLA 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 defere-  
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 sidiy 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) **FEEES.**—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).

○