

117TH CONGRESS  
1ST SESSION

# S. 741

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

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

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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”.

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

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

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

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

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

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

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

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

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

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

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

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

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

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

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

3                   (ii) environmental mitigation; and

4                   (iii) construction contingencies; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (IV) public safety agencies.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

19 (a) ELIGIBILITY.—

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

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

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

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

5 (2) CREDITWORTHINESS.—

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

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

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

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

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

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

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

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

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

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

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

24           (A) amounts charged to—

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

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

6 (B) user fees;

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

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

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

16 (A) the obligor; and

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

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

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

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

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

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

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

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

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

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

9           (b) SELECTION AMONG ELIGIBLE PROJECTS.—

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

18           (2) PRELIMINARY RATING OPINION LETTER.—

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

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

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

1 eral credit instrument, have the potential  
 2 to achieve an investment-grade rating; and

3 (ii) including a preliminary rating  
 4 opinion on the Federal credit instrument;  
 5 or

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

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

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

20 (c) FEDERAL REQUIREMENTS.—

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



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

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

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

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

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

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

23 (4) CONTRACTING REQUIREMENTS.—

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

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

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

18           (5) NEUTRALITY REQUIREMENT.—

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

1           bargain under the National Labor Relations Act  
2           (29 U.S.C. 151 et seq.).

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

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

18          (d) APPLICATION PROCESSING PROCEDURES.—

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

24                       (A) the application is complete; or

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

3 (2) APPROVAL OR DENIAL OF APPLICATION.—

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

10 (3) APPROVAL BEFORE NEPA REVIEW.—Subject

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

17 (e) DEVELOPMENT PHASE ACTIVITIES.—Any credit

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

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

22 (a) IN GENERAL.—

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

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

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

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

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

13 (i) is selected under section 3; or

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

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

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

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

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

11          (b) TERMS AND LIMITATIONS.—

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

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

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

3                   (A) shall—

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

6                                   (I) amounts charged to—

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

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

14                                   (II) user fees;

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

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

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

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

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

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

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

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

17 (6) NONSUBORDINATION.—

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

23 (B) PREEXISTING INDENTURE.—

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



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

5                   (I) the secured loan—

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

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

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

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

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

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

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

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

13 (8) NON-FEDERAL SHARE.—The proceeds of a  
14 secured loan under the 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 1 or more expedited application proc-  
11 esses, available at the request of entities seeking se-  
12 cured loans under the BIFIA program, that use a  
13 set or sets of conventional terms established pursu-  
14 ant to this section.

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

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

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

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

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

4 (a) IN GENERAL.—

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

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

19 (3) RISK ASSESSMENT.—

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

1 opinion letter under section 3(b)(2)(A), shall  
2 determine an appropriate capital reserve sub-  
3 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 that serv-  
9 ice; or

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

14           (II) user fees;

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

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

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

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

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

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

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

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

17 (i) 1 or more lenders; or

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

20 (8) NONSUBORDINATION.—

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

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

3 (B) PRE-EXISTING INDENTURE.—

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

10 (I) the line of credit—

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

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

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

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

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

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

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

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

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

25 (c) REPAYMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (c) SERVICER.—

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

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

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

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

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

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

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

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

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



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

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

8 **SEC. 9. REGULATIONS.**

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

12 **SEC. 10. FUNDING.**

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

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

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

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

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

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

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

10 (b) APPLICATION PROCESS REPORT.—

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

21 (2) INCLUSIONS.—

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

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

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

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

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

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

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

○