115TH CONGRESS
1ST SESSION

H. R. 4287

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 2017

Mr. Ben Ray Luján of New Mexico (for himself, Ms. Clarke of New York, Mr. Evans, Mr. Khanna, Ms. Michelle Lujan Grisham of New Mexico, Mr. Mcnerney, Mr. O’Halloran, Mr. Polis, Mr. Ruiz, and Mr. Ryan of Ohio) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Broadband Infrastructure Finance and Innovation Act of 2017”.

(b) Table of Contents.—The table of contents for 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.

SEC. 2. Definitions.

In this Act:

(1) Assistant Secretary.—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(2) BIFIA Program.—The term “BIFIA program” means the broadband infrastructure finance and innovation program established under this Act.

(3) Broadband Service.—The term “broadband service” means broadband Internet access service (as defined in section 8.2 of title 47, Code of Federal Regulations).

(4) Eligible Project Costs.—The term “eligible project costs” means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—
(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, historic preservation review, permitting, preliminary engineering and design work, and other preconstruction activities;

(B) construction and deployment phase activities, including—

(i) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land relating to the project and improvements to land), equipment, instrumentation, networking capability, hardware and software, and digital network technology;

(ii) environmental mitigation; and

(iii) construction contingencies; and

(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction and deployment.

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

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

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

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

and

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

(8) LETTER OF INTEREST.—The term “letter
of interest” means a letter submitted by a potential
applicant prior to an application for credit assistance
in a format prescribed by the Assistant Secretary on
the website of the BIFIA program that—
(A) describes the project and the location, purpose, and cost of the project;

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

(C) provides a status of environmental review; and

(D) provides information regarding satisfaction of other eligibility requirements of the BIFIA program.

(9) LINE OF CREDIT.—The term “line of credit” means an agreement entered into by the Assistant Secretary with an obligor under section 5 to provide a direct loan at a future date upon the occurrence of certain events.

(10) LOAN GUARANTEE.—The term “loan guarantee” means any guarantee or other pledge by the Assistant Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

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

(A) is primarily liable for payment of the principal of or interest on a Federal credit instrument; and
(B) may be a corporation, company, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

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

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

(B) that the Assistant Secretary determines will—

(i) provide access or improved access to broadband service to consumers residing in areas of the United States where such service is not available with a download speed of at least 100 megabits per second and an upload speed of at least 3 megabits per second; or

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

(I) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through such organizations;
(II) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations;

(III) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture; or

(IV) public safety agencies.

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

(14) PUBLIC AUTHORITY.—The term “public authority” means a Federal, State, county, town, or township, Indian tribe, municipal or other local gov-
ernment or instrumentality with authority to fi-
nance, build, operate, or maintain infrastructure for
the provision of broadband service.

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

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

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

(18) STATE.—The term “State” has the mean-
ing given such term in section 3 of the Communi-

(19) SUBSIDY AMOUNT.—The term “subsidy
amount” means the amount of budget authority suf-
ficient to cover the estimated long-term cost to the
Federal Government of a Federal credit instrument—

(A) calculated on a net present value basis;

and

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

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

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

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

SEC. 3. DETERMINATION OF ELIGIBILITY AND PROJECT SELECTION.

(a) ELIGIBILITY.—

(1) IN GENERAL.—A project shall be eligible to receive credit assistance under the BIFIA program if—
(A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and

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

(2) CREDITWORTHINESS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under the BIFIA program, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include—

(i) adequate coverage requirements to ensure repayment;

(ii) an investment-grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and

(iii) a rating from at least 2 rating agencies on the Federal credit instrument.

(B) SMALL PROJECTS.—In order for a small project to be eligible for assistance under the BIFIA program, such project shall satisfy alternative creditworthiness standards that shall be established by the Assistant Secretary under section 6 for purposes of this paragraph.
(3) APPLICATION.—A State, local government, agency or instrumentality of a State or local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Assistant Secretary shall submit a project application that is acceptable to the Assistant Secretary.

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

(A) in which the applicant is a local government, instrumentality of local government, or public authority (other than a public authority that is a Federal or State government or instrumentality);

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

(C) for which the Assistant Secretary determines that a local government is substantially involved in the development of the project.

(5) DEDICATED REVENUE SOURCES.—The applicable Federal credit instrument shall be repayable, in whole or in part, from—
(A) amounts charged to—

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

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

   (B) user fees;

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

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

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

   (A) the obligor; and

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

(7) BENEFICIAL EFFECTS.—The Assistant Sec-
retary shall determine that financial assistance for
the project under the BIFIA program will—
(A) foster, if appropriate, partnerships that attract public and private investment for the project;

(B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project; and

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

(8) PROJECT READINESS.—To be eligible for assistance under the BIFIA program, the applicant shall demonstrate a reasonable expectation that the contracting process for the construction and deployment of infrastructure for the provision of broadband service through the project can commence by no later than 90 days after the date on which a Federal credit instrument is obligated for the project under the BIFIA program.

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) Establishment of application process.—The Assistant Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Assistant Secretary, if adequate funds
are available to cover the subsidy costs associated with the Federal credit instrument.

(2) Preliminary Rating Opinion Letter.—
The Assistant Secretary shall require each project applicant to provide—

(A) a preliminary rating opinion letter from at least 1 rating agency—

(i) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

(ii) including a preliminary rating opinion on the Federal credit instrument;

or

(B) in the case of a small project, alternative documentation that the Assistant Secretary shall require in the standards established under section 6 for purposes of this paragraph.

(3) Technology Neutrality Required.—In selecting projects to receive credit assistance under the BIFIA program, the Assistant Secretary may not favor a project using any particular technology.

(c) Federal Requirements.—

(1) In general.—The following provisions of law shall apply to funds made available under the
BIFIA program and projects assisted with those funds:

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

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

(C) 54 U.S.C. 300101 et seq. (commonly referred to as the “National Historic Preservation Act”).

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

(2) NEPA.—No funding shall be obligated for a project that has not received an environmental categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) Title VI of the Civil Rights Act of 1964.—For purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), any project that receives credit assistance under the BIFIA program shall be considered a program or activity within the meaning of section 606 of such title (42 U.S.C. 2000d–4a).

(d) Application Processing Procedures.—
(1) NOTICE OF COMPLETE APPLICATION.—Not later than 30 days after the date of receipt of an application under this section, the Assistant Secretary shall provide to the applicant a written notice to inform the applicant whether—

(A) the application is complete; or

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

(2) APPROVAL OR DENIAL OF APPLICATION.—Not later than 60 days after the date of issuance of the written notice under paragraph (1), the Assistant Secretary shall provide to the applicant a written notice informing the applicant whether the Assistant Secretary has approved or disapproved the application.

(3) APPROVAL BEFORE NEPA REVIEW.—Subject to subsection (c)(2), an application for a project may be approved before the project receives an environmental categorical exclusion, a finding of no significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

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

SEC. 4. SECURED LOANS.

(a) IN GENERAL.—

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

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

(B) to refinance interim construction financing of eligible project costs of any project selected under section 3; or

(C) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(i) is selected under section 3; or

(ii) otherwise meets the requirements of section 3.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B)—
(A) if the maturity of such interim construction financing is later than 1 year after the substantial completion of the project; and

(B) later than 1 year after the date of substantial completion of the project.

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

(b) Terms and Limitations.—

(1) In General.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Assistant Secretary determines to be appropriate.

(2) Maximum Amount.—The amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eli-
gible project costs or, if the secured loan is not for a small project and does not receive an investment-grade rating, the amount of the senior project obligations.

(3) PAYMENT.—A secured loan under this section—

(A) shall—

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

(I) amounts charged to—

(aa) subscribers of broadband service for such service; or

(bb) subscribers of any related service provided over the same infrastructure for such related service;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; or

(IV) other dedicated revenue sources that also secure the senior project obligations; and
(ii) include a coverage requirement or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

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

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

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

(B) if the useful life of the infrastructure for the provision of broadband service being financed is of a lesser period, the useful life of the infrastructure.

(6) NONSUBORDINATION.—

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

(i) IN GENERAL.—The Assistant Secretary shall waive the requirement under subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—

(I) the secured loan—

(aa) is rated in the A category or higher; or

(bb) in the case of a small project, meets an alternative standard that the Assistant Secretary shall establish under section 6 for purposes of this subclause;

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

(III) the BIFIA program share of eligible project costs is 33 percent or less.
(ii) LIMITATION.—If the Assistant Secretary waives the nonsubordination requirement under this subparagraph—

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

(II) the obligor shall be responsible for paying the remainder of the subsidy cost, if any.

(7) FEES.—The Assistant Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

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

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

(B) shall not count toward the total Federal assistance provided for a project for purposes of paragraph (9).

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

(c) Repayment.—

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

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

(B) the useful life of the infrastructure for the provision of broadband service being financed.

(2) Commencement.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

(3) Deferred Payments.—

(A) In General.—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Assistant Secretary may, subject to subparagraph (C), allow the obligor to add un-
paid principal and interest to the outstanding
balance of the secured loan.

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

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

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

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferr-
al under subparagraph (A) shall be con-
tingent on the project meeting criteria es-
tablished by the Assistant Secretary.

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

(4) PREPAYMENT.—

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

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

(d) SALE OF SECURED LOANS.—

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

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

(e) LOAN GUARANTEES.—

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

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

(f) STREAMLINED APPLICATION PROCESS.—

(1) IN GENERAL.—The Assistant Secretary shall develop one or more expedited application processes, available at the request of entities seeking secured loans under the BIFIA program, that use a set or sets of conventional terms established pursuant to this section.

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

(A) that the project be a small project;

(B) the secured loan to be secured and payable from pledged revenues not affected by project performance, such as a tax-backed rev-
venue pledge, tax increment financing, or a system-backed pledge of project revenues; and

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

SEC. 5. LINES OF CREDIT.

(a) IN GENERAL.—

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

(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) RISK ASSESSMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), before entering into an agreement under this subsection, the Assistant Secretary, in consultation with the Director of
the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 3(b)(2)(A), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account the rating opinion letter.

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

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on—

(A) the senior obligations of the project receiving an investment-grade rating from 2 rating agencies; or

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

(b) TERMS AND LIMITATIONS.—

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

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

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

(A) represent a direct loan; and

(B) be made only if net revenues from the project (including capitalized interest, but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

(4) INTEREST RATE.—The interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United
States Treasury securities, as of the date of execution of the line of credit agreement.

(5) Security.—A line of credit issued under this section—

(A) shall—

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

(I) amounts charged to—

(aa) subscribers of broadband service for such service; or

(bb) subscribers of any related service provided over the same infrastructure for such related service;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; or

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

(ii) include a coverage requirement or similar security feature supporting the project obligations; and
(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

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

(7) Rights of third-party creditors.—

(A) Against Federal Government.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on a line of credit under this section.

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

(i) one or more lenders; or

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

(8) Nonsubordination.—

(A) In general.—Except as provided in subparagraph (B), a direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of
bankruptcy, insolvency, or liquidation of the obligor.

(B) PRE-EXISTING INDENTURE.—

(i) IN GENERAL.—The Assistant Secretary shall waive the requirement of subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—

(I) the line of credit—

(aa) is rated in the A category or higher; or

(bb) in the case of a small project, meets an alternative standard that the Assistant Secretary shall establish under section 6 for purposes of this subclause;

(II) the BIFIA program loan resulting from a draw on the line of credit is payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and
(III) the BIFIA program share of eligible project costs is 33 percent or less.

(ii) LIMITATION.—If the Assistant Secretary waives the nonsubordination requirement under this subparagraph—

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

(II) the obligor shall be responsible for paying the remainder of the subsidy cost.

(9) FEES.—The Assistant Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

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

(e) REPAYMENT.—
(1) Terms and Conditions.—The Assistant Secretary shall establish repayment terms and conditions for each direct loan under this section based on—

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

(B) the useful life of the infrastructure for the provision of broadband service being financed.

(2) Timing.—All repayments of principal or interest on a direct loan under this section shall be scheduled—

(A) to commence not later than 5 years after the end of the period of availability specified in subsection (b)(6); and

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

SEC. 6. ALTERNATIVE PRUDENTIAL LENDING STANDARDS FOR SMALL PROJECTS.

Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary shall establish alternative, streamlined prudential lending standards for small projects receiving credit assistance under the BIFIA
program to ensure that such projects pose no additional risk to the Federal Government, as compared with projects that are not small projects.

SEC. 7. PROGRAM ADMINISTRATION.

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

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

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

(2) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

(c) SERVICER.—

(1) IN GENERAL.—The Assistant Secretary may appoint a financial entity to assist the Assistant Secretary in servicing the Federal credit instruments.

(2) DUTIES.—A servicer appointed under paragraph (1) shall act as the agent for the Assistant Secretary.
(3) **Fee.**—A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Assistant Secretary.

(d) **Assistance From Expert Firms.**—The Assistant Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

(e) ** Expedited Processing.**—The Assistant Secretary shall implement procedures and measures to economize the time and cost involved in obtaining approval and the issuance of credit assistance under the BIFIA program.

(f) **Assistance to Small Projects.**—Of the amount appropriated under section 10(a), and after the set-aside for administrative expenses under section 10(b), not less than 20 percent shall be made available for the Assistant Secretary to use in lieu of fees collected under subsection (b) for small projects.

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

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

(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;
(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

SEC. 9. REGULATIONS.

The Assistant Secretary may promulgate such regulations as the Assistant Secretary determines to be appropriate to carry out the BIFIA program.

SEC. 10. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Assistant Secretary to carry out this Act $5,000,000,000 for fiscal year 2018, to remain available until expended.

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

SEC. 11. REPORTS TO CONGRESS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and every 2 years thereafter, the Assistant Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance.
under the BIFIA program, including a recommendation as to whether the objectives of the BIFIA program are best served by—

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

(2) establishing a Federal corporation or federally sponsored enterprise to administer the program.

(b) Application Process Report.—

(1) In general.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Assistant Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that includes a list of all of the letters of interest and applications received for assistance under the BIFIA program during the preceding fiscal year.

(2) Inclusions.—

(A) In general.—Each report under paragraph (1) shall include, at a minimum, a description of, with respect to each letter of interest and application included in the report—

(i) the date on which the letter of interest or application was received;
(ii) the date on which a notification was provided to the applicant regarding whether the application was complete or incomplete;

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

(iv) the date on which a notification was provided to the applicant regarding whether the project was approved or disapproved; and

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

(B) Correspondence.—Each report under paragraph (1) shall include copies of any correspondence provided to the applicant in accordance with section 3(d).