

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'HALLERAN, 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.

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 2017”.

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” means broadband Internet ac-
 13 cess service (as defined in section 8.2 of title 47,
 14 Code of Federal Regulations).

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

1 (A) development phase activities, including
2 planning, feasibility analysis, revenue fore-
3 casting, environmental review, historic preserva-
4 tion review, permitting, preliminary engineering
5 and design work, and other preconstruction ac-
6 tivities;

7 (B) construction and deployment phase ac-
8 tivities, including—

9 (i) construction, reconstruction, reha-
10 bilitation, replacement, and acquisition of
11 real property (including land relating to
12 the project and improvements to land),
13 equipment, instrumentation, networking
14 capability, hardware and software, and dig-
15 ital network technology;

16 (ii) environmental mitigation; and

17 (iii) construction contingencies; and

18 (C) capitalized interest necessary to meet
19 market requirements, reasonably required re-
20 serve funds, capital issuance expenses, and
21 other carrying costs during construction and
22 deployment.

23 (5) FEDERAL CREDIT INSTRUMENT.—The term
24 “Federal credit instrument” means a secured loan,
25 loan guarantee, or line of credit authorized to be

1 made available under the BIFIA program with re-
2 spect to a project.

3 (6) 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 (7) 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 (8) 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 (9) 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 (10) 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 (11) 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 (12) PROJECT.—The term “project” means a
5 project—

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

8 (B) that the Assistant Secretary deter-
9 mines will—

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

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

19 (I) schools, libraries, medical and
20 healthcare providers, community col-
21 leges and other institutions of higher
22 education, and other community sup-
23 port organizations and entities to fa-
24 cilitate greater use of broadband serv-
25 ice by or through such organizations;

1 (II) organizations and agencies
2 that provide outreach, access, equip-
3 ment, and support services to facili-
4 tate greater use of broadband service
5 by low-income, unemployed, aged, and
6 otherwise vulnerable populations;

7 (III) job-creating strategic facili-
8 ties located within a State-designated
9 economic zone, Economic Develop-
10 ment District designated by the De-
11 partment of Commerce, Renewal
12 Community or Empowerment Zone
13 designated by the Department of
14 Housing and Urban Development, or
15 Enterprise Community designated by
16 the Department of Agriculture; or

17 (IV) public safety agencies.

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

23 (14) PUBLIC AUTHORITY.—The term “public
24 authority” means a Federal, State, county, town, or
25 township, Indian tribe, municipal or other local gov-

1 ernment or instrumentality with authority to fi-
2 nance, build, operate, or maintain infrastructure for
3 the provision of broadband service.

4 (15) RATING AGENCY.—The term “rating agen-
5 cy” means a credit rating agency registered with the
6 Securities and Exchange Commission as a nationally
7 recognized statistical rating organization (as defined
8 in section 3(a) of the Securities Exchange Act of
9 1934 (15 U.S.C. 78c(a))).

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

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

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

22 (19) SUBSIDY AMOUNT.—The term “subsidy
23 amount” means the amount of budget authority suf-
24 ficient to cover the estimated long-term cost to the

1 Federal Government of a Federal credit instru-
2 ment—

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

4 and

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

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

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

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

19 **SEC. 3. DETERMINATION OF ELIGIBILITY AND PROJECT SE-**
20 **LECTION.**

21 (a) ELIGIBILITY.—

22 (1) IN GENERAL.—A project shall be eligible to
23 receive credit assistance under the BIFLA program
24 if—

1 (A) the entity proposing to carry out the
2 project submits a letter of interest prior to sub-
3 mission of a formal application for the project;
4 and

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

7 (2) CREDITWORTHINESS.—

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

13 (i) adequate coverage requirements to
14 ensure repayment;

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

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

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

1 (3) APPLICATION.—A State, local government,
2 agency or instrumentality of a State or local govern-
3 ment, public authority, public-private partnership, or
4 any other legal entity undertaking the project and
5 authorized by the Assistant Secretary shall submit a
6 project application that is acceptable to the Assist-
7 ant Secretary.

8 (4) ELIGIBLE PROJECT COST PARAMETERS FOR
9 INFRASTRUCTURE PROJECTS.—Eligible project costs
10 shall be reasonably anticipated to equal or exceed
11 \$2,000,000 in the case of a project or program of
12 projects—

13 (A) in which the applicant is a local gov-
14 ernment, instrumentality of local government,
15 or public authority (other than a public author-
16 ity that is a Federal or State government or in-
17 strumentality);

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

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

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

1 (A) amounts charged to—

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

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

7 (B) user fees;

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

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

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

19 (A) the obligor; and

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

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

1 (A) foster, if appropriate, partnerships
2 that attract public and private investment for
3 the project;

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

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

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

19 (b) SELECTION AMONG ELIGIBLE PROJECTS.—

20 (1) ESTABLISHMENT OF APPLICATION PROC-
21 ESS.—The Assistant Secretary shall establish a roll-
22 ing application process under which projects that are
23 eligible to receive credit assistance under subsection
24 (a) shall receive credit assistance on terms accept-
25 able to the Assistant Secretary, if adequate funds

1 are available to cover the subsidy costs associated
2 with the Federal credit instrument.

3 (2) PRELIMINARY RATING OPINION LETTER.—

4 The Assistant Secretary shall require each project
5 applicant to provide—

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

8 (i) indicating that the senior obliga-
9 tions of the project, which may be the Fed-
10 eral credit instrument, have the potential
11 to achieve an investment-grade rating; and

12 (ii) including a preliminary rating
13 opinion on the Federal credit instrument;
14 or

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

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

23 (c) FEDERAL REQUIREMENTS.—

24 (1) IN GENERAL.—The following provisions of
25 law shall apply to funds made available under the

1 BIFIA program and projects assisted with those
2 funds:

3 (A) Title VI of the Civil Rights Act of
4 1964 (42 U.S.C. 2000d et seq.).

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

7 (C) 54 U.S.C. 300101 et seq. (commonly
8 referred to as the “National Historic Preserva-
9 tion Act”).

10 (D) The Uniform Relocation Assistance
11 and Real Property Acquisition Policies Act of
12 1970 (42 U.S.C. 4601 et seq.).

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

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

25 (d) APPLICATION PROCESSING PROCEDURES.—

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

6 (A) the application is complete; or

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

9 (2) APPROVAL OR DENIAL OF APPLICATION.—
10 Not later than 60 days after the date of issuance of
11 the written notice under paragraph (1), the Assist-
12 ant Secretary shall provide to the applicant a writ-
13 ten notice informing the applicant whether the As-
14 sistant Secretary has approved or disapproved the
15 application.

16 (3) APPROVAL BEFORE NEPA REVIEW.—Subject
17 to subsection (c)(2), an application for a project may
18 be approved before the project receives an environ-
19 mental categorical exclusion, a finding of no signifi-
20 cant impact, or a record of decision under the Na-
21 tional Environmental Policy Act of 1969 (42 U.S.C.
22 4321 et seq.).

23 (e) DEVELOPMENT PHASE ACTIVITIES.—Any credit
24 instrument secured under the BIFIA program may be

1 used to finance up to 100 percent of the cost of develop-
2 ment phase activities as described in section 2(4)(A).

3 **SEC. 4. SECURED LOANS.**

4 (a) IN GENERAL.—

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

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

11 (B) to refinance interim construction fi-
12 nancing of eligible project costs of any project
13 selected under section 3; or

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

19 (i) is selected under section 3; or

20 (ii) otherwise meets the requirements
21 of section 3.

22 (2) LIMITATION ON REFINANCING OF INTERIM
23 CONSTRUCTION FINANCING.—A loan under para-
24 graph (1) shall not refinance interim construction fi-
25 nancing under paragraph (1)(B)—

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

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

6 (3) RISK ASSESSMENT.—Before entering into
7 an agreement under this subsection, the Assistant
8 Secretary, in consultation with the Director of the
9 Office of Management and Budget, shall determine
10 an appropriate capital reserve subsidy amount for
11 each secured loan, taking into account each rating
12 letter provided by a rating agency under section
13 3(b)(2)(A)(ii) or, in the case of a small project, the
14 alternative documentation provided under section
15 3(b)(2)(B).

16 (b) TERMS AND LIMITATIONS.—

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

23 (2) MAXIMUM AMOUNT.—The amount of a se-
24 cured loan under this section shall not exceed the
25 lesser of 49 percent of the reasonably anticipated eli-

1 gible project costs or, if the secured loan is not for
2 a small project and does not receive an investment-
3 grade rating, the amount of the senior project obli-
4 gations.

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

7 (A) shall—

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

10 (I) amounts charged to—

11 (aa) subscribers of
12 broadband service for such serv-
13 ice; or

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

18 (II) user fees;

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

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

1 (ii) include a coverage requirement or
2 similar security feature supporting the
3 project obligations; and

4 (B) may have a lien on revenues described
5 in subparagraph (A), subject to any lien secur-
6 ing project obligations.

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

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

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

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

20 (6) NONSUBORDINATION.—

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

1 (B) PREEXISTING INDENTURE.—

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

8 (I) the secured loan—

9 (aa) is rated in the A cat-
10 egory or higher; or

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

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

23 (III) the BIFLA program share
24 of eligible project costs is 33 percent
25 or less.

1 (ii) LIMITATION.—If the Assistant
2 Secretary waives the nonsubordination re-
3 quirement under this subparagraph—

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

9 (II) the obligor shall be respon-
10 sible for paying the remainder of the
11 subsidy cost, if any.

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

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

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

21 (B) shall not count toward the total Fed-
22 eral assistance provided for a project for pur-
23 poses of paragraph (9).

24 (9) MAXIMUM FEDERAL INVOLVEMENT.—The
25 total Federal assistance provided for a project re-

1 ceiving a loan under the BIFIA program shall not
2 exceed 80 percent of the total project cost.

3 (c) REPAYMENT.—

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

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

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

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

17 (3) DEFERRED PAYMENTS.—

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

1 paid principal and interest to the outstanding
2 balance of the secured loan.

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

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

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

10 (C) CRITERIA.—

11 (i) IN GENERAL.—Any payment defer-
12 ral under subparagraph (A) shall be con-
13 tingent on the project meeting criteria es-
14 tablished by the Assistant Secretary.

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

19 (4) PREPAYMENT.—

20 (A) USE OF EXCESS REVENUES.—Any ex-
21 cess revenues that remain after satisfying
22 scheduled debt service requirements on the
23 project obligations and secured loan and all de-
24 posit requirements under the terms of any trust
25 agreement, bond resolution, or similar agree-

1 ment securing project obligations may be ap-
2 plied annually to prepay the secured loan with-
3 out penalty.

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

8 (d) SALE OF SECURED LOANS.—

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

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

21 (e) LOAN GUARANTEES.—

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

1 of the loan guarantee is substantially the same as
2 that of a secured loan.

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

10 (f) STREAMLINED APPLICATION PROCESS.—

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

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

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

23 (B) the secured loan to be secured and
24 payable from pledged revenues not affected by
25 project performance, such as a tax-backed rev-

1 enue pledge, tax increment financing, or a sys-
2 tem-backed pledge of project revenues; and

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

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

6 (a) IN GENERAL.—

7 (1) AGREEMENTS.—Subject to paragraphs (2)
8 through (4), the Assistant Secretary may enter into
9 agreements to make available to one or more obli-
10 gors lines of credit in the form of direct loans to be
11 made by the Assistant Secretary at future dates on
12 the occurrence of certain events for any project se-
13 lected under section 3.

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

21 (3) RISK ASSESSMENT.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), before entering into an
24 agreement under this subsection, the Assistant
25 Secretary, in consultation with the Director of

1 the Office of Management and Budget and each
2 rating agency providing a preliminary rating
3 opinion letter under section 3(b)(2)(A), shall
4 determine an appropriate capital reserve sub-
5 sidy amount for each line of credit, taking into
6 account the rating opinion letter.

7 (B) SMALL PROJECTS.—Before entering
8 into an agreement under this subsection to
9 make available a line of credit for a small
10 project, the Assistant Secretary, in consultation
11 with the Director of the Office of Management
12 and Budget, shall determine an appropriate
13 capital reserve subsidy amount for each such
14 line of credit, taking into account the alter-
15 native documentation provided under section
16 3(b)(2)(B) instead of preliminary rating opinion
17 letters provided under section 3(b)(2)(A).

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

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

24 (B) in the case of a small project, the
25 project meeting an alternative standard that the

1 Assistant Secretary shall establish under section
2 6 for purposes of this paragraph.

3 (b) TERMS AND LIMITATIONS.—

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

10 (2) MAXIMUM AMOUNTS.—The total amount of
11 a line of credit under this section shall not exceed
12 33 percent of the reasonably anticipated eligible
13 project costs.

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

16 (A) represent a direct loan; and

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

22 (4) INTEREST RATE.—The interest rate on a
23 direct loan resulting from a draw on the line of cred-
24 it shall be not less than the yield on 30-year United

1 States Treasury securities, as of the date of execu-
2 tion of the line of credit agreement.

3 (5) SECURITY.—A line of credit issued under
4 this section—

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 (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
13 are authorized to be appropriated to the Assistant Sec-
14 retary to carry out this Act \$5,000,000,000 for fiscal year
15 2018, to remain available until expended.

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

20 **SEC. 11. REPORTS TO CONGRESS.**

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

1 under the BIFIA program, including a recommendation
2 as to whether the objectives of the BIFIA program are
3 best served by—

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

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

8 (b) APPLICATION PROCESS REPORT.—

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

19 (2) INCLUSIONS.—

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

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

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

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

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

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

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

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