

116TH CONGRESS
1ST SESSION

S. 2344

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 SENATE OF THE UNITED STATES

JULY 30, 2019

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

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 2019”.

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

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

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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

9 (3) BROADBAND SERVICE.—The term “broad-
 10 band service”—

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

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

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

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

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

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

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

1 (ii) environmental mitigation; and

2 (iii) construction contingencies; and

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

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

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

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

24 (A) a qualified retirement plan (as defined
25 in section 4974(c) of the Internal Revenue Code

1 of 1986) that is a qualified institutional buyer;
2 and

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

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

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

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

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

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

22 (9) LINE OF CREDIT.—The term “line of cred-
23 it” means an agreement entered into by the Assist-
24 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 at
4 least 25 megabits per second;

5 (II) with an upload speed of at
6 least 3 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, and other community sup-
16 port organizations and entities to fa-
17 cilitate greater use of broadband serv-
18 ice by or through such organizations;

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

1 (III) job-creating strategic facili-
2 ties located within—

3 (aa) a State-designated eco-
4 nomic zone;

5 (bb) an economic develop-
6 ment district designated by the
7 Secretary of Commerce under
8 section 401 of the Public Works
9 and Economic Development Act
10 of 1965 (42 U.S.C. 3171);

11 (cc) a renewal community
12 designated by the Secretary of
13 Housing and Urban Development
14 under section 1400E of the In-
15 ternal Revenue Code of 1986 (as
16 in effect before the repeal of that
17 section by section 401(d)(5)(A)
18 of division U of the Consolidated
19 Appropriations Act, 2018 (Public
20 Law 115–141; 132 Stat. 348));

21 (dd) an empowerment zone
22 designated by the Secretary of
23 Housing and Urban Development
24 under section 1391 of the Inter-
25 nal Revenue Code of 1986; or

1 (ee) an enterprise commu-
2 nity designated by the Secretary
3 of Agriculture under section
4 1391 of the Internal Revenue
5 Code of 1986; or
6 (IV) public safety agencies.

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

12 (14) PUBLIC AUTHORITY.—The term “public
13 authority” means the Federal Government or a
14 State, county, town, township, Indian Tribe, munic-
15 ipal government, or other local government, or an in-
16 strumentality thereof, with authority to finance,
17 build, operate, or maintain infrastructure for the
18 provision of broadband service.

19 (15) RATING AGENCY.—The term “rating agen-
20 cy” means a credit rating agency registered with the
21 Securities and Exchange Commission as a nationally
22 recognized statistical rating organization (as defined
23 in section 3(a) of the Securities Exchange Act of
24 1934 (15 U.S.C. 78c(a))).

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

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

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

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

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

19 and

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

24 (20) SUBSTANTIAL COMPLETION.—The term
25 “substantial completion” means, with respect to a

1 project receiving credit assistance under the BIFIA
2 program—

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

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

9 **SEC. 3. DETERMINATION OF ELIGIBILITY AND PROJECT SE-**
10 **LECTION.**

11 (a) ELIGIBILITY.—

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

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

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

21 (2) CREDITWORTHINESS.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), to be eligible for assistance
24 under the BIFIA program, a project shall sat-

1 isfy applicable creditworthiness standards,
2 which, at a minimum, shall include—

3 (i) adequate coverage requirements to
4 ensure repayment;

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

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

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

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

23 (4) ELIGIBLE PROJECT COST PARAMETERS FOR
24 INFRASTRUCTURE PROJECTS.—Eligible project costs
25 shall be reasonably anticipated to equal or exceed

1 \$2,000,000 in the case of a project or program of
2 projects—

3 (A) in which the applicant is a local gov-
4 ernment, an instrumentality of a local govern-
5 ment, or a public authority (other than a public
6 authority that is the Federal Government or a
7 State government, or an instrumentality there-
8 of);

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

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

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

17 (A) amounts charged to—

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

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

23 (B) user fees;

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

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

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

10 (A) the obligor; and

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

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

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

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

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

1 (8) PROJECT READINESS.—To be eligible for
2 assistance under the BIFIA program, the applicant
3 shall demonstrate a reasonable expectation that the
4 contracting process for the construction and deploy-
5 ment of infrastructure for the provision of broad-
6 band service through the project can commence by
7 no later than 90 days after the date on which a Fed-
8 eral credit instrument is obligated for the project
9 under the BIFIA program.

10 (b) SELECTION AMONG ELIGIBLE PROJECTS.—

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

19 (2) PRELIMINARY RATING OPINION LETTER.—
20 The Assistant Secretary shall require each project
21 applicant to provide—

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

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

eral 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, alter-
native documentation that the Assistant Sec-
retary 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) Division A of subtitle III of title 54,
United States Code (formerly known as the
“National Historic Preservation Act”).

1 (D) The Uniform Relocation Assistance
 2 and Real Property Acquisition Policies Act of
 3 1970 (42 U.S.C. 4601 et seq.).

4 (2) NEPA.—No funding shall be obligated
 5 under the BIFIA program for a project that has not
 6 received an environmental categorical exclusion, a
 7 finding of no significant impact, or a record of deci-
 8 sion under the National Environmental Policy Act of
 9 1969 (42 U.S.C. 4321 et seq.).

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

17 (d) APPLICATION PROCESSING PROCEDURES.—

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

23 (A) the application is complete; or

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

1 (2) APPROVAL OR DENIAL OF APPLICATION.—

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

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

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

19 **SEC. 4. SECURED LOANS.**

20 (a) IN GENERAL.—

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

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

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

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

11 (i) is selected under section 3; or

12 (ii) otherwise meets the requirements
 13 of section 3.

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

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

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

23 (3) RISK ASSESSMENT.—Before entering into
 24 an agreement under this subsection, the Assistant
 25 Secretary, in consultation with the Director of the

1 Office of Management and Budget, shall determine
 2 an appropriate capital reserve subsidy amount for
 3 each secured loan, taking into account each rating
 4 letter provided by a rating agency under section
 5 3(b)(2)(A)(ii) or, in the case of a small project, the
 6 alternative documentation provided under section
 7 3(b)(2)(B).

8 (b) TERMS AND LIMITATIONS.—

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

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

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

24 (A) shall—

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

3 (I) amounts charged to—

4 (aa) subscribers of broad-
 5 band service for such service; or

6 (bb) subscribers of any re-
 7 lated service provided over the
 8 same infrastructure for such re-
 9 lated service;

10 (II) user fees;

11 (III) payments owing to the obli-
 12 gor under a public-private partner-
 13 ship; or

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

17 (ii) include a coverage requirement or
 18 similar security feature supporting the
 19 project obligations; and

20 (B) may have a lien on revenues described
 21 in subparagraph (A), subject to any lien secur-
 22 ing project obligations.

23 (4) INTEREST RATE.—The interest rate on a
 24 secured loan under this section shall be not less than
 25 the yield on United States Treasury securities of a

1 similar maturity to the maturity of the secured loan
 2 on the date of execution of the loan agreement.

3 (5) MATURITY DATE.—The final maturity date
 4 of a secured loan under this section shall be the ear-
 5 lier of—

6 (A) the date that is 35 years after the date
 7 of substantial completion of the project; or

8 (B) the last day of the useful life of the in-
 9 frastructure for the provision of broadband
 10 service being financed.

11 (6) NONSUBORDINATION.—

12 (A) IN GENERAL.—Except as provided in
 13 subparagraph (B), a secured loan under this
 14 section shall not be subordinated to the claims
 15 of any holder of project obligations in the event
 16 of bankruptcy, insolvency, or liquidation of the
 17 obligor.

18 (B) PREEXISTING INDENTURE.—

19 (i) IN GENERAL.—The Assistant Sec-
 20 retary shall waive the requirement under
 21 subparagraph (A) for a public agency bor-
 22 rower that is financing ongoing capital
 23 programs and has outstanding senior
 24 bonds under a preexisting indenture, if—

25 (I) the secured loan—

1 (aa) is rated in the A cat-
2 egory or higher; or

3 (bb) in the case of a small
4 project, meets an alternative
5 standard that the Assistant Sec-
6 retary shall establish under sec-
7 tion 6 for purposes of this sub-
8 clause;

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

15 (III) the BIFIA program share
16 of eligible project costs is 33 percent
17 or less.

18 (ii) LIMITATION.—If the Assistant
19 Secretary waives the nonsubordination re-
20 quirement under this subparagraph—

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

1 (II) the obligor shall be respon-
2 sible for paying the remainder of the
3 subsidy cost, if any.

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

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

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

13 (B) shall not count toward the total Fed-
14 eral assistance provided for a project for pur-
15 poses of paragraph (9).

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

20 (c) REPAYMENT.—

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

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

1 (B) the useful life of the infrastructure for
2 the provision of broadband service being fi-
3 nanced.

4 (2) COMMENCEMENT.—Scheduled loan repay-
5 ments of principal or interest on a secured loan
6 under this section shall commence not later than 5
7 years after the date of substantial completion of the
8 project.

9 (3) DEFERRED PAYMENTS.—

10 (A) IN GENERAL.—If, at any time after
11 the date of substantial completion of the
12 project, the project is unable to generate suffi-
13 cient revenues to pay the scheduled loan repay-
14 ments of principal and interest on the secured
15 loan, the Assistant Secretary may, subject to
16 subparagraph (C), allow the obligor to add un-
17 paid principal and interest to the outstanding
18 balance of the secured loan.

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

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

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

1 (C) CRITERIA.—

2 (i) IN GENERAL.—Any payment defer-
3 ral under subparagraph (A) shall be con-
4 tingent on the project meeting criteria es-
5 tablished by the Assistant Secretary.

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

10 (4) PREPAYMENT.—

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

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

24 (d) SALE OF SECURED LOANS.—

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

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

13 (e) LOAN GUARANTEES.—

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

20 (2) TERMS.—The terms of a loan guarantee
21 under paragraph (1) shall be consistent with the
22 terms required under this section for a secured loan,
23 except that the rate on the guaranteed loan and any
24 prepayment features shall be negotiated between the

1 obligor and the lender, with the consent of the As-
 2 sistant Secretary.

3 (f) STREAMLINED APPLICATION PROCESS.—

4 (1) IN GENERAL.—The Assistant Secretary
 5 shall develop one or more expedited application proc-
 6 esses, available at the request of entities seeking se-
 7 cured loans under the BIFIA program, that use a
 8 set or sets of conventional terms established pursu-
 9 ant to this section.

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

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

16 (B) the secured loan to be secured and
 17 payable from pledged revenues not affected by
 18 project performance, such as a tax-backed rev-
 19 enue pledge, tax increment financing, or a sys-
 20 tem-backed pledge of project revenues; and

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

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

24 (a) IN GENERAL.—

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

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

15 (3) RISK ASSESSMENT.—

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

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

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

15 (A) the senior obligations of the project re-
 16 ceiving an investment-grade rating from 2 rat-
 17 ing agencies; or

18 (B) in the case of a small project, the
 19 project meeting an alternative standard that the
 20 Assistant Secretary shall establish under section
 21 6 for purposes of this paragraph.

22 (b) TERMS AND LIMITATIONS.—

23 (1) IN GENERAL.—A line of credit under this
 24 section with respect to a project shall be on such
 25 terms and conditions and contain such covenants,

1 representations, warranties, and requirements (in-
2 cluding requirements for audits) as the Assistant
3 Secretary determines to be appropriate.

4 (2) MAXIMUM AMOUNTS.—The total amount of
5 a line of credit under this section shall not exceed
6 33 percent of the reasonably anticipated eligible
7 project costs.

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

10 (A) represent a direct loan; and

11 (B) be made only if net revenues from the
12 project (including capitalized interest, but not
13 including reasonably required financing re-
14 serves) are insufficient to pay the costs speci-
15 fied in subsection (a)(2).

16 (4) INTEREST RATE.—The interest rate on a
17 direct loan resulting from a draw on the line of cred-
18 it shall be not less than the yield on 30-year United
19 States Treasury securities, as of the date of execu-
20 tion of the line of credit agreement.

21 (5) SECURITY.—A line of credit issued under
22 this section—

23 (A) shall—

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

1 (I) amounts charged to—

2 (aa) subscribers of broad-
3 band service for such service; or

4 (bb) subscribers of any re-
5 lated service provided over the
6 same infrastructure for such re-
7 lated service;

8 (II) user fees;

9 (III) payments owing to the obli-
10 gor under a public-private partner-
11 ship; or

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

15 (ii) include a coverage requirement or
16 similar security feature supporting the
17 project obligations; and

18 (B) may have a lien on revenues described
19 in subparagraph (A), subject to any lien secur-
20 ing project obligations.

21 (6) PERIOD OF AVAILABILITY.—The full
22 amount of a line of credit under this section, to the
23 extent not drawn upon, shall be available during the
24 10-year period beginning on the date of substantial
25 completion of the project.

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

2 (A) AGAINST FEDERAL GOVERNMENT.—A
3 third-party creditor of the obligor shall not have
4 any right against the Federal Government with
5 respect to any draw on a line of credit under
6 this section.

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

9 (i) one or more lenders; or

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

12 (8) NONSUBORDINATION.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), a direct loan under this sec-
15 tion shall not be subordinated to the claims of
16 any holder of project obligations in the event of
17 bankruptcy, insolvency, or liquidation of the ob-
18 ligor.

19 (B) PRE-EXISTING INDENTURE.—

20 (i) IN GENERAL.—The Assistant Sec-
21 retary shall waive the requirement of sub-
22 paragraph (A) for a public agency bor-
23 rower that is financing ongoing capital
24 programs and has outstanding senior
25 bonds under a preexisting indenture, if—

1 (I) the line of credit—

2 (aa) is rated in the A cat-
3 egory or higher; or

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

10 (II) the BIFIA program loan re-
11 sulting from a draw on the line of
12 credit is payable from pledged reve-
13 nues not affected by project perform-
14 ance, such as a tax-backed revenue
15 pledge or a system-backed pledge of
16 project revenues; and

17 (III) the BIFIA program share
18 of eligible project costs is 33 percent
19 or less.

20 (ii) LIMITATION.—If the Assistant
21 Secretary waives the nonsubordination re-
22 quirement under this subparagraph—

23 (I) the maximum credit subsidy
24 to be paid by the Federal Government
25 shall be not more than 10 percent of

1 the principal amount of the secured
2 loan; and

3 (II) the obligor shall be respon-
4 sible for paying the remainder of the
5 subsidy cost.

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

10 (10) RELATIONSHIP TO OTHER CREDIT INSTRU-
11 MENTS.—A project that receives a line of credit
12 under this section may not also receive a secured
13 loan or loan guarantee under section 4 in an amount
14 that, combined with the amount of the line of credit,
15 exceeds 49 percent of eligible project costs.

16 (c) REPAYMENT.—

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

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

23 (B) the useful life of the infrastructure for
24 the provision of broadband service being fi-
25 nanced.

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

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

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

11 **SEC. 6. ALTERNATIVE PRUDENTIAL LENDING STANDARDS**
 12 **FOR SMALL PROJECTS.**

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

20 **SEC. 7. PROGRAM ADMINISTRATION.**

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

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

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

6 (2) all or a portion of the costs to the Federal
 7 Government of servicing the Federal credit instru-
 8 ments.

9 (c) SERVICER.—

10 (1) IN GENERAL.—The Assistant Secretary
 11 may appoint a financial entity to assist the Assistant
 12 Secretary in servicing the Federal credit instru-
 13 ments.

14 (2) DUTIES.—A servicer appointed under para-
 15 graph (1) shall act as the agent for the Assistant
 16 Secretary.

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

20 (d) ASSISTANCE FROM EXPERT FIRMS.—The Assist-
 21 ant Secretary may retain the services of expert firms, in-
 22 cluding counsel, in the field of municipal and project fi-
 23 nance to assist in the underwriting and servicing of Fed-
 24 eral credit instruments.

1 (e) EXPEDITED PROCESSING.—The Assistant Sec-
 2 retary shall implement procedures and measures to econo-
 3 mize the time and cost involved in obtaining approval and
 4 the issuance of credit assistance under the BIFIA pro-
 5 gram.

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

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

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

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

18 (2) limit the right of any unit of State or local
 19 government to approve or regulate any rate of re-
 20 turn on private equity invested in the project; or

21 (3) otherwise supersede any State or local law
 22 (including any regulation) applicable to the construc-
 23 tion or operation of the project.

1 **SEC. 9. REGULATIONS.**

2 The Assistant Secretary may promulgate such regula-
3 tions as the Assistant Secretary determines to be appro-
4 priate to carry out the BIFIA program.

5 **SEC. 10. FUNDING.**

6 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
7 are authorized to be appropriated to the Assistant Sec-
8 retary to carry out this Act \$5,000,000,000 for fiscal year
9 2020, to remain available until expended.

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

14 **SEC. 11. REPORTS TO CONGRESS.**

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

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

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

1 (b) APPLICATION PROCESS REPORT.—

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

12 (2) INCLUSIONS.—

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

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

19 (ii) the date on which a notification
20 was provided to the applicant regarding
21 whether the application was complete or
22 incomplete;

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

1 (iv) the date on which a notification
2 was provided to the applicant regarding
3 whether the project was approved or dis-
4 approved; and

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

7 (B) CORRESPONDENCE.—Each report
8 under paragraph (1) shall include copies of any
9 correspondence provided to the applicant in ac-
10 cordance with section 3(d).

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