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The Digital Equity Act of 2021

Introduction

The Digital Equity Act is included in the Senate-passed version of the Infrastructure Investment and Jobs Act (H.R. 3684). Submitted as an amendment in the nature of a substitute (S.Amdt. 2137) on August 1, 2021, by Senator Charles Schumer for Senator Kyrsten Sinema, it passed by the Senate August 10, 2021. The final language of the act was not available at the time of publication.

The Digital Equity Act states that access to a broadband connection and digital literacy have become increasingly necessary for individuals to participate in society, the economy, and civic institutions; access health care and essential services; obtain education; and build careers. The act cites high societal and economic costs of digital exclusion, which decreases an individual's opportunity for economic success, educational achievement, positive health outcomes, social inclusion, and civic engagement. Additionally, among other observations, the act asserts that digital exclusion exacerbates wealth and income gaps, and that reducing digital exclusion will require additional, ongoing investment and research efforts.

The Digital Equity Act would establish two grant programs: the State Digital Equity Capacity Grant Program and the State Digital Equity Competitive Grant Program. Both programs would be administered by the Assistant Secretary of Commerce for Communications and Information, who also serves as Administrator of the National Telecommunications and Information Administration (NTIA). In developing these programs, the Assistant Secretary would be required to consult with the Secretaries of Agriculture, Housing and Urban Development, Education, Labor, Health and Human Services, Veterans Affairs, and the Interior; the Federal Communications Commission (FCC); the Federal Trade Commission; the Director of the Institute of Museum and Library Services; the Administrator of the Small Business Administration; the federal co-chair of the Appalachian Regional Commission; and the head of any other agency that the Assistant Secretary determines to be appropriate.

The act would require the Assistant Secretary to provide annual reports to Congress on the status of each program. States could appeal or challenge the amount of the grants they are awarded under both programs. Additionally, both programs are intended to supplement, not supplant, other federal or state funds intended to promote digital equity. Grant and subgrant recipients for both programs would be required to report on their activities and use of funds each year to the Assistant Secretary.

Defined Terms in the Act

Digital equity means “the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.”

Digital inclusion means “the activities that are necessary to ensure that all individuals in the United States have access to, and the use of, affordable information and communication technologies, such as reliable fixed and wireless broadband internet service; internet-enabled devices that meet the needs of the user; and applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration.” Further, it “includes obtaining access to digital literacy training; the provision of quality technical support; and obtaining basic awareness of measures to ensure online privacy and cybersecurity.”

Digital literacy means the “skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.”

A **community anchor institution** means a “public school, a public or multi-family housing authority, a library, a medical or healthcare provider, a community college or other institution of higher education, a state library agency, and any other non-profit or governmental community support organization.”

The term **covered populations** means “individuals who live in covered households; aging individuals; incarcerated individuals, other than individuals who are incarcerated in a Federal correctional facility; veterans; individuals with disabilities; individuals with a language barrier” (i.e., those who are English learners and have low levels of literacy), as well as “individuals who are members of a racial or ethnic minority group; and individuals who primarily reside in a rural area.”

A **covered household** means “a household, the income of which for the most recently completed year is not more than 150% of an amount equal to the poverty level, as determined by using criteria of poverty established by the Bureau of the Census.”

State Digital Equity Capacity Grant Program

The intent of the State Digital Equity Capacity Grant Program is to ensure that states have the capacity to promote the achievement of digital equity and support digital inclusion activities. This program would have two phases. Phase one would consist of the development of a

State Digital Equity Plan; phase two would consist of awarding grants to states for the implementation of their plans.

For the purposes of this program, an **administering entity** is an entity selected by the governor (or equivalent official) to apply for funding under this program that would be responsible for receiving and administering capacity grants; overseeing the State Digital Equity Plan; and making subgrants to eligible entities. An **eligible entity** is a state, Indian tribe, Alaska Native entity, or a Native Hawaiian organization; a not-for-profit entity providing services in the state; a community anchor institution; a local educational agency; an entity that conducts a workforce development program; a state agency responsible for administering or supervising adult education and literacy activities; a public or multi-family housing authority; or a partnership between any of these entities. Schools may not be an administering entity.

Phase I: State Digital Equity Planning Grants

During the first year after enactment of the Digital Equity Act, the Assistant Secretary would be required to award grants to states for the development of their State Digital Equity Plans. To be awarded a planning grant, a state would submit an application to the Assistant Secretary. States would be eligible for only one planning grant. Applicants would be required to name and describe the state's administering entity and provide a certification that the state's administering entity would develop its State Digital Equity Plan within one year unless an extension, not longer than six months, is granted. Awards would have to be made within 60 days of the application window opening, and states would be allowed to appeal the amount of the grant awarded. The act would appropriate \$60.0 million for planning grant awards.

Phase II: State Digital Equity Capacity Grants

The distribution of the State Digital Equity Capacity Grants would begin within two years of the distribution of the planning grants. States would be required to apply for the grants. Applicants would be required to provide a description of the state's administering entity, its Digital Equity Plan, and certification that the state would implement that plan. Grant amounts would be calculated according to the following formula:

- 50% to be based on the population of the state in proportion to the total population of all eligible states;
- 25% to be based on the number of individuals in the state who are members of covered populations in proportion to the total number of individuals in all eligible states who are members of covered populations; and
- 25% to be based on the comparative lack of availability and adoption of broadband in the state in proportion to the lack of availability and adoption of broadband of all eligible states.

The data used to calculate the grant amounts would be collected from the FCC's "Section 706 Report"; the American Community Survey; if necessary, other data collected by the Bureau of the Census; the NTIA Internet

Use Survey; and any other source that the Assistant Secretary determines to be appropriate.

The minimum amount of any grant would have to be at least 0.5% of the total amount of grants awarded to eligible states for that fiscal year. If funds remain after all awards have been made in a fiscal year, they would be distributed to states that have already been awarded grants. States would be required to expend the grant funds during a five-year period beginning on the date the state is awarded the grant funds.

The act would authorize \$240.0 million to be appropriated for FY2022 and \$300.0 million per year for FY2023 through FY2026. From these amounts, not more than 5% could be used for program administration; at least 5% would be made available for grants to Indian tribes, Alaska Native entities, and Native Hawaiian organizations; and at least 1% would be made available for grants to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Digital Equity Competitive Grant Program

The intent of the State Digital Equity Competitive Grant Program is to award grants to eligible entities to support efforts to achieve digital equity, promote workforce development, promote digital inclusion activities, and spur greater adoption of broadband among covered populations. The grants would cover not more than 90% of the cost of a single project, although that limit could be waived. Grants would be required to support at least one of the following activities:

- develop and implement digital inclusion activities that benefit covered populations;
- facilitate the adoption of broadband by covered populations for educational and employment opportunities;
- implement training programs for covered populations that cover basic, advanced, and applied skills, or other workforce development programs;
- provide equipment, networking capability, hardware and software, or digital network technology for broadband services to covered populations at low or no cost; or
- construct, upgrade, expand, or operate new or existing public access computing centers for covered populations through community anchor institutions.

The act would authorize \$250.0 million to be appropriated for each of the first five fiscal years in which funds are made available (the program could be extended). From these amounts, not more than 5% could be used to administer the program; at least 5% would be set aside for grants to Indian tribes, Alaska Native entities, and Native Hawaiian organizations; and at least 1% would be set aside for grants to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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