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Infrastructure Investment and Jobs Act: Funding for USDA Rural Broadband Programs

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act into law (P.L. 117-58). The act invests \$1.2 trillion in the nation's infrastructure, including roads, highways, and electric, water, and railway systems. The act also invests in broadband (i.e., high-speed internet) infrastructure, including in rural areas where households have historically had lower access to broadband compared with households in urban and suburban areas.

P.L. 117-58 includes funding for two U.S. Department of Agriculture (USDA) broadband programs that serve rural communities: the ReConnect Program and the Rural Broadband Program. This is in addition to provisions that amend or provide funding to broadband programs administered by the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC). This InFocus summarizes the provisions in the infrastructure act related to the ReConnect Program and the Rural Broadband Program.

Program Overviews

The ReConnect Program offers loans, grants, and loan/grant combinations to help construct or improve facilities required to provide broadband access to rural areas. Eligible applicants include corporations, cooperatives, public entities, U.S. territories, and federally recognized Indian tribes. The program can also fund the acquisition or upgrade of an existing system not currently providing sufficient broadband access.

The Rural Broadband Program offers loans to help construct, improve, or acquire facilities and equipment needed to provide broadband access to rural areas. Eligible applicants include corporations, cooperatives, public entities, U.S. territories, and federally recognized Indian tribes. Congress has also authorized the Rural Broadband Program to issue grants and loan guarantees (in recent years, Congress has appropriated funding only for direct loans).

Although the programs are similar in mission, key distinctions include funding levels and how the programs define *eligible service areas*. In recent years, Congress has provided more funding for the ReConnect Program than for the Rural Broadband Program. As an example, Congress appropriated \$550 million in FY2019, \$655 million in FY2020, and \$635 million in FY2021 for ReConnect Program grants and loan subsidies, and Congress appropriated \$5.8 million in FY2019, \$2 million in

FY2020, and \$2 million in FY2021 for Rural Broadband Program loan subsidies.

Congress has provided a more restrictive definition of eligible service areas for the Rural Broadband Program than for the ReConnect Program. The definition for eligible service areas involves two parts: the minimum broadband speeds that constitute "sufficient access" and the percent of households that have access to broadband at those speeds. ReConnect defines eligible service areas as areas where at least 90% of households lack sufficient broadband access to broadband. *Sufficient broadband access* is defined as speeds of at least 100 megabits per second download and 20 megabits per second upload (i.e., 100/20 Mbps). The Rural Broadband Program defines eligible service areas as areas where at least 50% of households do not have sufficient broadband access. *Sufficient broadband access* is defined as speeds of at least 25/3 Mbps.

Infrastructure Investment and Jobs Act Funding

Division J, Title I of P.L. 117-58 provides \$2 billion for USDA broadband programs, to remain available until expended. This includes \$1.926 billion for ReConnect Program grants and loans and \$74 million for Rural Broadband Program loans. This funding exceeds FY2021 levels by \$1.291 billion (+203%) for the ReConnect Program and by \$72 million (+97%) for the Rural Broadband Program. The act allows up to 4% of the funding for both programs to be used for administrative costs (i.e., \$80 million) and up to 3% of the funding to be used for technical assistance to potential applicants (i.e., \$60 million). It also directs \$5 million of the technical assistance funds to establish and support cooperatives to offer broadband service in rural areas. Additionally, the act directs USDA to collaborate with the FCC and the NTIA in awarding funding for broadband projects.

Infrastructure Investment and Jobs Act Requirements for ReConnect Projects

The infrastructure act includes not only funding but also language that directs how USDA is to administer the ReConnect Program funding. These provisions do not apply to the Rural Broadband Program. The provisions focus on the ReConnect Program's definition for eligible service areas (i.e., percent of households without sufficient broadband access and the minimum speeds that constitute sufficient access). The next section describes the provisions included in the act and compares these provisions with the current law, current regulations governing the ReConnect Program (7 C.F.R. §1740), or recent funding opportunity announcements (FOAs) published in the *Federal Register*.

Proposed Service Area Requirements

The act defines eligible areas for ReConnect projects funded by P.L. 117-58 as rural areas where at least 50% of households lack sufficient broadband access. It defines sufficient broadband access as speeds of at least 25/3 Mbps.

Less restrictive than current regulations. This definition of eligible areas is less restrictive than current ReConnect Program requirements. Currently, the program requires that 90% of households served by projects be in areas without sufficient broadband access. Regulations state that USDA will define the minimum speeds that constitute sufficient broadband access in FOAs; these speeds may not be lower than 10/1 Mbps. The latest FOA defines sufficient broadband access as 100/20 Mbps (86 *Federal Register* 58860, October 25, 2021).

Set-Aside for High-Need Rural Areas

The act requires that 10% of the funding for the ReConnect Program (i.e., \$192.6 million) be set aside for service areas where at least 90% of households are in a rural area without sufficient broadband access (speeds of at least 25/3 Mbps).

More restrictive than prior rounds of funding. This requirement is more restrictive than current ReConnect Program requirements for sufficient broadband access. The latest ReConnect FOA defines sufficient broadband access as speeds of at least 100/20 Mbps. The threshold for high-need areas—90% of households lacking sufficient access—is the same threshold that defines an eligible service area in current program regulations.

Broadband Buildout Speed for Projects

The act requires ReConnect Program projects to provide broadband service to the proposed service area at minimum speeds of 100/20 Mbps.

Less restrictive than prior rounds of funding. Current program regulations state that USDA will define *buildout speeds*—the minimum broadband speeds USDA requires project awardees to provide—in FOAs. The most recent FOA requires projects to deliver broadband to the proposed service area at speeds of at least 100/100 Mbps (i.e., 100 Mbps symmetrical speeds).

Rural in Character Exception

The act uses the definition of eligible rural area codified in the Rural Electrification Act: cities or towns with 20,000 or fewer inhabitants and not in an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants (7 U.S.C. §950bb(b)(3)). It also allows the Secretary of Agriculture to allocate up to \$50 million of ReConnect Program funds to projects in areas *rural in character*. Rural in character is a designation with statutory authority in the Consolidated Farm and Rural Development Act (P.L. 87-128). The designation allows the

Secretary of Agriculture to consider communities that do not meet the definition of a *rural area* under certain USDA Rural Development programs to be eligible for funding if they have qualities that are rural in character.

Similar to prior rounds of funding. The definition of rural area in P.L. 117-58 is the same definition used in current ReConnect program regulations. Regulations do not contain language allowing funding to be allocated to projects in areas rural in character. However, the Consolidated Appropriations Act, 2021 (P.L. 116-260, Division A, Section 791) allocated up to 10% of ReConnect Program funding for projects serving rural in character communities.

Other ReConnect Program Criteria

In addition to the criteria above, the act allows pole attachment fees and replacement costs for shared use of utility poles owned by electric cooperatives to be eligible costs under ReConnect projects funded by the bill. The act also waives matching requirements for applicants that are Alaska Native Corporations for federally recognized Tribes on substantially underserved trust lands. Additionally, it waives matching requirements for projects that serve colonias or persistent poverty counties (counties that have had a poverty rate of 20% or higher over the past 30 years).

Comparison with current law. Current law, program regulations, and prior FOAs have not specified whether pole attachment fees and replacement costs are eligible project costs. Current law allows USDA to waive matching requirements for certain utilities projects on underserved trust lands (7 U.S.C. §936f). In recent years, Congress has directed in annual appropriations acts that at least 10% of direct loan and grant funding under certain USDA rural housing, business, and utilities programs be allocated for projects in persistent poverty counties. This language did not apply to funding for the ReConnect Program.

Additional CRS Resources

- CRS In Focus IF11262, *USDA's ReConnect Broadband Pilot Program*, by Alyssa R. Casey
- CRS Report RL33816, *Broadband Loan and Grant Programs in the USDA's Rural Utilities Service*, by Lennard G. Kruger and Alyssa R. Casey
- CRS Report R46780, *Overview of the Universal Service Fund and Selected Federal Broadband Programs*, coordinated by Patricia Moloney Figliola

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