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The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F

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The Infrastructure Investment and Jobs Act (P.L. 117-58): Summary of the Broadband Provisions in Division F

Division F of the Infrastructure Investment and Jobs Act (P.L. 117-58) creates or modifies grant programs to try to address the digital divide and establishes or modifies reporting requirements. The term *digital divide* has been used to characterize the gap between those who have access to telecommunications and information technologies and those who do not. One subset of the digital divide is access to high-speed internet, also known as broadband.

In the legislation, Congress found, “The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing.” The pandemic also highlighted the persistent digital divide in the United States as a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education. The legislation authorizes six grant programs, each aimed at addressing specific elements of the digital divide: broadband grants for states, the District of Columbia, Puerto Rico, and other U.S. territories (Title I); the State Digital Equity Capacity Grant Program and State Digital Equity Competitive Grant Program (Title III); middle mile grants (Title IV); an extension and modification of the Emergency Broadband Benefit (Title V); and amendments to programs supporting tribal connectivity (Title II). Appropriations for these programs are provided in Division J. The table below provides summary data for each program.

The legislation includes a number of new or amended reporting requirements, including clarification of the reporting requirements for the Federal Communications Commission’s (FCC’s) broadband maps (Title I), a report by the FCC on the future of Universal Service Fund (Title I), an annual report to Congress by the Assistant Secretary of Commerce for Communications and Information on the grant programs created through Title III, a report by the Government Accountability Office (GAO) on broadband affordability (Title IV), and a report by GAO evaluating the FCC’s process to establish, review, and update the speed thresholds for broadband service (Title V).

Other provisions include direction to the FCC to require broadband service providers to adopt consumer labels to allow consumers to make informed choices among providers (Title V); and direction to the FCC to adopt rules to prevent “digital discrimination” and identify steps necessary to eliminate such discrimination (Title V).

Overview of Authorizations and Appropriations in Division F of P.L. 117-58

Name	Authorized Appropriation	Appropriation	Administering Agency	Eligible Entities
Broadband Equity, Access, and Deployment Program	\$42.45B	\$42.45B	NTIA	States and sub-grantees
Tribal Broadband Connectivity Program	\$2.00B	\$2.00B	NTIA	Tribal governments
State Digital Equity Capacity Grant	\$1.5B	\$1.5B	NTIA	Statewide-level administering entities and sub-grantees
State Digital Equity Competitive Grant	\$1.25B	\$1.25B	NTIA	Those entities not serving as a state administering entity
Middle Mile Grant	\$1.00B	\$1.00B	NTIA	States and organizations
Affordable Connectivity Fund	\$14.2B	\$14.2B	FCC	Qualified consumers

Note: NTIA=National Telecommunications and Information Administration; FCC=Federal Communications Commission.

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Introduction to Division F – Broadband

The Infrastructure Investment and Jobs Act (P.L. 117-58) was signed into law by President Joe Biden on November 15, 2021. Among the law’s numerous provisions, Division F authorizes grant programs to address the digital divide and establishes or modifies reporting requirements; appropriations for these programs are provided in Division J (**Table 1**).

The term *digital divide* has been used to characterize the gap between those who have access to telecommunications and information technologies and those who do not. One subset of the digital divide is access to high-speed internet, also known as broadband.

In the legislation, Congress found:

- Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States.
- The persistent digital divide in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education.
- The digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly shared by all.
- In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service.
- The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing.¹

Table 1. Overview of Authorizations and Appropriations in Division F of P.L. 117-58

Name	Authorized Appropriation	Appropriation	Administering Agency	Eligible Entities
Broadband Equity, Access, and Deployment Program	\$42.45B	\$42.45B	NTIA	States and sub-grantees
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Middle Mile Grant	\$1.00B	\$1.00B	NTIA	States and organizations
Affordable Connectivity Fund	\$14.2B	\$14.2B	FCC	Qualified consumers

Notes: NTIA=National Telecommunications and Information Administration; FCC=Federal Communications Commission.

¹ P.L. 117-58, §60101.

This report provides a summary of the five titles of Division F: Broadband Grants for States, District of Columbia (DC), Puerto Rico, and Territories (Title I); Tribal Connectivity Technical Amendments (Title II); Digital Equity Act of 2021 (Title III); Enabling Middle Mile Broadband Infrastructure (Title IV); and Broadband Affordability (Title V).

Title I—Broadband Grants for States, District of Columbia, Puerto Rico, and Territories²

Title I of Division F authorizes the appropriation of \$42.45 billion³ for a new grant program—the Broadband Equity, Access, and Deployment Program⁴—to be established and administered by the Assistant Secretary of Commerce for Communications and Information, more commonly referred to as the administrator of the National Telecommunications and Information Administration (NTIA) or “NTIA Administrator.”⁵ The program is to consist of two distribution phases. In the first phase, NTIA is to allocate grants to eligible entities—the 50 states, DC, Puerto Rico, and the territories of American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands⁶—to “bridge the digital divide.” Title I defines the term **eligible entity** to mean the same as U.S. state, and defines state to include DC, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands.⁷ State is used in this broader sense through the remainder of this section. States will apply for the funds allocated to it. In the second phase, states are to competitively award the money distributed by NTIA to “subgrantees”⁸ to carry out broadband deployment activities within the state’s jurisdiction.⁹

Key Terms Defined in Title I

An **unserved location**¹⁰ is a broadband-serviceable location that has no access to broadband or reliable broadband service that offers an internet speed of at least 25 megabits per second (Mbps) for downloads, 3 Mbps for uploads, and a transmission latency low enough for real-time, interactive internet applications.¹¹

A **high-cost area** is an unserved area where the cost of deploying broadband service is higher than the average cost in all unserved areas.¹² An **unserved area** is an area where at least 80% of broadband-serviceable locations are unserved locations.¹³

² This section written by Ling Zhu, Analyst in Telecommunications Policy, lzhu@crs.loc.gov, 7-9876.

³ Title II of Division J of the bill appropriates the authorized funds, to remain available until expended.

⁴ P.L. 117-58, §60102(b) (2021).

⁵ NTIA is an executive branch agency within the Department of Commerce. While Title I of Division F refers to the administrator of the grant program as “the Assistant Secretary [of Commerce for Communications and Information],” this section refers to the program administrator as NTIA.

⁶ P.L. 117-58, §60102(a)(2)(F) and (M).

⁷ *Ibid.*, §60102(b)(1).

⁸ Title I refers to an entity that receives a sub-grant in the program as a “subgrantee.”

⁹ P.L. 117-58, §60102(f).

¹⁰ *Ibid.*, §60102(a)(1)(A).

¹¹ The FCC is to define the terms *location* and *broadband-serviceable location* as of the date of enactment of the bill. NTIA, in coordination with the FCC, is to determine whether a broadband service is a “reliable broadband service.”

¹² P.L. 117-58, §60102(a)(2)(G)(i).

¹³ *Ibid.*, §60102(a)(2)(G)(ii).

An **unserved service project** is a project to construct and deploy infrastructure for the provision of broadband service, by which at least 80% of broadband-serviceable locations served would be unserved locations.¹⁴

An **underserved service project** is a project in which at least 80% of broadband-serviceable locations served by the project would be unserved or underserved locations.¹⁵ An **underserved location** is a location that lacks reliable broadband service that offers at least 100 Mbps for downloads, 20 Mbps for uploads, and a latency low enough for real-time, interactive applications.¹⁶

An **eligible community anchor institution** is a community organization that lacks access to gigabit-per-second-level broadband service and includes a school, library, health clinic, health center, hospital or other medical provider, public safety entity, higher education institution, public housing organization, or community support organization.¹⁷

Phase I: Distributing Grants to States

P.L. 117-58 authorizes appropriations of \$42.450 billion for the program. It requires NTIA to use a three-step process to determine the allocation of the appropriated amount to each state.

- First, NTIA is to allocate \$100 million to each of the 50 states, DC, and Puerto Rico, and \$25 million to each of the four territories, for a total of \$5.3 billion.¹⁸
- Second, NTIA is to allocate a portion of \$4.245 billion to each state based on the state's share of unserved locations in high-cost areas in the country.¹⁹
- Third, of the remaining \$32.905 billion, NTIA is to allocate to each state a portion based on its share of unserved locations in the country.²⁰

In calculating the amount allocated to each state as described above, NTIA is to rely on the FCC's broadband maps, developed as required by the Broadband Deployment Accuracy and Technological Availability Act (Broadband DATA Act, P.L. 116-130),²¹ to determine the number of unserved locations.²² NTIA, in consultation with the FCC, also must designate the high-cost areas throughout the country.²³

¹⁴ Ibid., §60102(a)(1)(B).

¹⁵ Ibid., §60102(a)(1)(D).

¹⁶ Ibid., §60102(a)(1)(C).

¹⁷ Ibid., §60102(a)(1)(E) & (2)(E).

¹⁸ Section 60102(c)(2) refers to this portion of grant funds as the "minimum initial amount" for each state.

¹⁹ P.L. 117-58, §60102(c)(1).

²⁰ At this final step, the calculation would use the state's share of unserved locations, regardless of whether the unserved locations are in high-cost areas. (See P.L. 117-58, §60102(c)(3).)

²¹ The Broadband DATA Act directs the FCC to create broadband DATA maps to show the extent of broadband service availability in the country, the areas that are unserved, and the availability of fixed and mobile broadband services.

²² P.L. 117-58, §60102(c)(1)(A). As of the most recent FCC broadband deployment report, broadband mapping data under the Broadband DATA Act was not available yet (see FCC, *Fourteenth Broadband Deployment Report*, January 13, 2021, p. 15, <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>).

²³ Ibid., §60102(a)(2)(G)(i).

Title I requires a state to apply to NTIA for the grant funds allocated to it.²⁴ During the pre-deployment stage, a state that wants to participate in the program must submit a letter of intent in which it could request up to 5% of its minimum initial amount (or \$5 million) for planning and initial deployment activities.²⁵ After receiving NTIA's formal notice of available amounts, the state is to submit an initial proposal for a grant.²⁶ Upon NTIA's approval, the NTIA is to make available 20% or more of the total amounts allocated to it.²⁷ The state would need to submit a final proposal for the remainder of the money.²⁸

Phase II: Sub-Grants Awarded by States

After receiving grant funds from NTIA, a state may competitively award sub-grants to subgrantees to carry out the broadband deployment activities specified in Title I.²⁹ These activities are (1) unserved service projects; (2) underserved service projects; (3) projects connecting eligible community anchor institutions; (4) broadband data collection, mapping, and planning; (5) installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multi-family residential building; (6) broadband adoption programs; and (7) other activities determined by NTIA. In awarding sub-grants for projects to construct and deploy broadband infrastructure and networks, states should prioritize unserved service projects, then underserved service projects, and then projects connecting eligible community anchor institutions.³⁰

To inform future federal broadband planning, a state is required to submit to NTIA (1) an initial report after receiving grant funds, (2) semiannual reports, and (3) a final report after expending all funds.³¹ An entity awarded a sub-grant is required to submit semiannual reports to the state to track the effectiveness of its use of the funds.³²

The program is to require either a state or the entity receiving a sub-grant to contribute at least 25% of project costs.³³ The matching contribution may include funds from state and local governments, for-profit or non-profit entities, regional commissions, or others; in-kind contributions; or funding that the state or subgrantee received from existing federal broadband programs under the Families First Coronavirus Response Act (P.L. 116-127), the CARES Act (P.L. 116-136), the Consolidated Appropriations Act, 2021 (P.L. 116-260), or the American Rescue Plan Act of 2021 (P.L. 117-2).³⁴ An entity that has received broadband funds from a federal, state, or local government may still apply for a sub-grant in the program, and conversely, an entity receiving a sub-grant in the program will still be eligible to apply for other broadband

²⁴ Ibid., §60102(c)(4).

²⁵ For each of the four territories, the planning funds will be up to \$1.25 million. (See P.L. 117-58, §60102(e)(1)(C)(i).)

²⁶ P.L. 117-58, §60102(e)(3)(A)(i).

²⁷ Ibid., §60102(e)(3)(D)(ii)(III).

²⁸ Ibid., §60102(e)(4)(A)(i).

²⁹ Ibid., §60102(f).

³⁰ Ibid., §60102(h)(1)(A)(i).

³¹ Ibid., §60102(j)(1).

³² Ibid., §60102(j)(2)(A).

³³ This matching requirement does not apply to broadband deployment projects in high-cost areas. (See P.L. 117-58, §60102(h)(3)(A)(i).)

³⁴ P.L. 117-58, §60102(h)(3)(B)(iii).

funds from federal, state, or local governments.³⁵ Last, states must use the federal funds from the program to supplement, not displace, the amounts that the state would otherwise make available for broadband deployment.³⁶

Coordination Among Federal Agencies

The FCC, NTIA, and the Department of Agriculture (USDA) are the three primary federal agencies that administer existing grant programs for broadband deployment. Title I requires coordination among these agencies to align the goals, application and reporting processes, and project requirements of their programs.³⁷ As for the newly created program under Title I, subject to an existing interagency agreement,³⁸ NTIA is required share the final reports submitted by states with the FCC and USDA, so they could refer to those reports when determining whether to award additional grants under their programs.³⁹ The FCC and USDA are also required to provide data to NTIA to coordinate tracking of the construction and use of broadband infrastructure.⁴⁰

Under Title I, NTIA and the FCC are also required to collaborate to standardize and coordinate reporting of locations where broadband service was provided using program funds.⁴¹ Within two years of enactment, NTIA, in consultation with the FCC, must create a website that would enable a consumer to determine whether he or she is eligible for a federal or state subsidy or a low-income plan for broadband service, and how to apply.⁴²

Broadband DATA Maps

Congress mandated in the Broadband DATA Act of 2020 (P.L. 116-130) that the FCC create maps showing the availability of broadband internet access service in the country, the areas that remain unserved, and the availability of fixed and mobile broadband services.⁴³ The FCC is to create those maps based on data reported by broadband service providers.⁴⁴ Title I reiterates those service providers' responsibility to provide the FCC with any information necessary to augment

³⁵ Ibid., §60102(k).

³⁶ Ibid., §60102(l).

³⁷ Ibid., §60102(m).

³⁸ On June 25, 2021, the three agencies entered into the interagency agreement mandated by the Broadband Interagency Coordination Act of 2020 (part of the Consolidated Appropriations Act, 2021 (P.L. 116-260)). The agreement requires coordination among the three agencies for the distribution of funds for broadband deployment under the FCC's High-Cost Programs, the programs administered by the Rural Utilities Service of USDA, and the programs administered by or coordinated through NTIA. The coordination can "prevent duplication of support and ensure stewardship of taxpayer dollars." (See NTIA, *About Broadband USA*, at <https://broadbandusa.ntia.doc.gov/about>.) According to the agreement, these agencies shall "share information with each other about existing or planned projects that have received or will receive funds for new broadband deployment [under the covered programs]." (See FCC, USDA, and NTIA, *Interagency Agreement*, June 25, 2021, at https://www.ntia.doc.gov/files/ntia/publications/bica_-_section_904_interagency_agreement.pdf.)

³⁹ P.L. 117-58, §60102(j)(1)(D).

⁴⁰ Ibid., §60102(j)(1)(E).

⁴¹ Ibid., §60102(j)(3).

⁴² Ibid., §60102(j)(4)(A).

⁴³ 47 U.S.C. §642(c)(1).

⁴⁴ Ibid., §642(c)(1), (b)(2)(A) & (B).

its effort to create Broadband DATA maps.⁴⁵ Title I further requires the FCC to publish the maps on its website.⁴⁶

Broadband Deployment Locations Map

In addition to broadband DATA maps, Title I requires the FCC to create a new Deployment Locations Map to provide a centralized, authoritative source of information on the geographic footprint of each broadband infrastructure deployment project funded by the federal government.⁴⁷ The FCC must publish the map on its website and update it frequently.⁴⁸ Title I makes \$10 million available to the FCC to implement this requirement (out of the overall \$42.45 billion authorization for Division F, discussed above).⁴⁹

Report on the Future of the Universal Service Fund

Title I requires the FCC to evaluate how it should achieve mandated universal service goals, which are universal services to all Americans for high-speed, switched, broadband telecommunications capability.⁵⁰ The FCC is then required to submit to Congress a report recommending further actions the FCC and Congress could take to achieve those goals.⁵¹

Title II—Tribal Connectivity Technical Amendments⁵²

Section 905 of Division N—“Additional Coronavirus Response and Relief” of the Consolidated Appropriations Act (CAA), 2021 (P.L. 116-260)—established two grant programs at NTIA. One supports broadband infrastructure deployment to areas lacking broadband. The other, called the Tribal Broadband Connectivity Program, supports broadband connectivity on tribal lands throughout the country.

Under the Tribal Broadband Connectivity Program, an eligible entity (defined as a tribal government, tribal college or university, the Department of Hawaiian Homelands, a tribal organization, or a native corporation) may use the grant funds for—

- broadband infrastructure deployment,
- affordable broadband programs,
- distance learning,
- telehealth,
- digital inclusion efforts, and

⁴⁵ P.L. 117-58, §60103(b).

⁴⁶ *Ibid.*, §60103(e).

⁴⁷ *Ibid.*, §60105(b) & (c)(1).

⁴⁸ *Ibid.*, §60105(c)(2) & (e)(1).

⁴⁹ *Ibid.*, §60105(h).

⁵⁰ See 47 U.S.C. §1302(a), (d)(1).

⁵¹ P.L. 117-58, §60104(c).

⁵² This section written by Colby Leigh Rachfal, Analyst in Telecommunications Policy, crachfal@crs.loc.gov, 7 -2710.

- broadband adoption activities.⁵³

Title II of Division F amends Section 905 to change to the Tribal Broadband Connectivity Program and remove the condition that funds be made available “during the COVID-19 pandemic.” Other amendments include changes to the time that an eligible entity will have to commit⁵⁴ or expend⁵⁵ its funds. For example, eligible entities will have four years rather than one year after receiving grant funds to expend them. Additionally, Section 905 stated that if eligible entities do not commit grant funds within 180 days after receiving them, the funds would revert to the Treasury. Title II extends the timeline to 18 months and requires that NTIA make uncommitted funds available to other eligible entities (e.g., other tribal governments).

Title II of Division F authorizes appropriations of \$2 billion for the Tribal Broadband Connectivity Program. If additional funds are appropriated in the future, Title II authorizes the NTIA Administrator to use a portion to fund grant applications that it received but did not fund during the initial round.⁵⁶ The NTIA Administrator is also required to allocate any remaining funds through subsequent funding rounds and inform eligible entities of the additional available funds. Title II of Division J, while not part of Division F, appropriates an additional \$2 billion for grants for the Tribal Broadband Connectivity Program, to remain available until expended.⁵⁷

Title III—Digital Equity Act of 2021⁵⁸

Title III, known as the Digital Equity Act of 2021, 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 establishes two grant programs: the State Digital Equity Capacity Grant Program⁵⁹ and the State Digital Equity Competitive Grant Program.⁶⁰ Both programs are to be administered by the NTIA Administrator. In developing these programs, the NTIA Administrator

⁵³ For additional information on the Tribal Broadband Connectivity Program, see CRS Report R46701, *The Consolidated Appropriations Act, 2021 Broadband Provisions: In Brief*, coordinated by Colby Leigh Rachfal.

⁵⁴ Commit means the funds are designated for a specific project, there is a contract for work, or there is some sort of agreement to use the funds for a specific purpose.

⁵⁵ Expend means that the funds are going to be paid out or they have been fully used.

⁵⁶ On September 8, 2021, NTIA announced that it had received more than 280 applications for the Tribal Broadband Connectivity Program, totaling over \$5 billion in funding requests for the initial round. For more information, see National Telecommunications and Information Administration, *NTIA’s Tribal Broadband Connectivity Program Receives More Than 280 Applications, over \$5 Billion in Funding Requests*, September 8, 2021, available at <https://www.ntia.doc.gov/press-release/2021/ntia-s-tribal-broadband-connectivity-program-receives-more-280-applications-over>.

⁵⁷ Section 905 of Division N of the Consolidated Appropriations Act, 2021 (P.L. 116-260) provided \$1 billion for the Tribal Broadband Connectivity Program.

⁵⁸ This section written by Patricia Moloney Figliola, Specialist in Internet and Telecommunications Policy, pfigliola@crs.loc.gov, 7-2508.

⁵⁹ P.L. 117-58, §60304.

⁶⁰ *Ibid.*, §60305.

is required to consult with the Secretaries of Agriculture, Housing and Urban Development, Education, Labor, Health and Human Services, Veterans Affairs, and the Interior; the 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 NTIA Administrator determines to be appropriate.

The law requires the NTIA Administrator to provide annual reports to Congress on the status of each program. States may appeal or challenge the amount of the grants that NTIA awards to them 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 are required to report on their activities and use of funds each year to the NTIA Administrator.

Terms Defined in the Act

Title III defines the following terms for both programs.⁶¹

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.”

⁶¹ Ibid., §60302.

State Digital Equity Capacity Grant Program

The intent of the State Digital Equity Capacity Grant Program⁶² is to ensure that states⁶³ have the capacity to promote the achievement of digital equity and support digital inclusion activities. This program has two phases. Phase I is to consist of the development of a State Digital Equity Plan; Phase II is to 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. Schools may not be an administering entity. 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. Additionally, other entities (other than schools) may be permitted to join a partnership of eligible entities if the Assistant Secretary determines such action to be in the public interest.

Phase I: State Digital Equity Planning Grants

During the first year after enactment of the Digital Equity Act, the NTIA Administrator is required to award grants to states for the development of their State Digital Equity Plans.⁶⁴ To be awarded a planning grant, a state must apply to the NTIA Administrator. States are to be eligible for one planning grant. Applicants must name and describe the state's administering entity and provide a certification that the state's administering entity will develop its State Digital Equity Plan within one year unless an extension, not longer than six months, is granted. Awards would be made within 60 days of the application window opening, and states are allowed to appeal the amount of the grant awarded. The law appropriates \$60 million⁶⁵ for planning grant awards.

Phase II: State Digital Equity Capacity Grants

NTIA is required to begin distributing the State Digital Equity Capacity Grants⁶⁶ within two years of the distribution of the planning grants. States must apply for the grants and provide a description of the state's administering entity, its Digital Equity Plan, and certification that the state will implement that plan to NTIA. NTIA would calculate grant amounts based on the following formula:

- 50% based on the population of the state in proportion to the total population of all eligible states;
- 25% 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

⁶² Ibid., §60304.

⁶³ "States" are defined as the 50 states; Washington, DC; and Puerto Rico. §60302.

⁶⁴ Ibid., §60304(c).

⁶⁵ Ibid., §60304(k)(1).

⁶⁶ Ibid., §60304(d).

- 25% 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.⁶⁷

NTIA is to use data 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 NTIA Administrator determines to be appropriate to calculate grant amounts.⁶⁸

The minimum amount of any grant is to be at least 0.5% of the total amount of grants awarded to eligible states for that fiscal year. If funds remain after NTIA awards all funds in a fiscal year, NTIA may distribute remaining funds to states that have already been awarded grants. States are to be required to expend the grant funds during a five-year period beginning on the date NTIA awards funds to the state.⁶⁹

The law authorizes Congress to appropriate \$240 million for FY2022 and \$300 million per year for FY2023 through FY2026.⁷⁰ From these amounts, not more than 5% may be used for program administration; at least 5% is to be made available for grants to Indian tribes, Alaska Native entities, and Native Hawaiian organizations; and at least 1% is to be made available for grants to the territories. Title II of Division J appropriates the authorized \$240 million for FY2022.

State Digital Equity Competitive Grant Program

The intent of the State Digital Equity Competitive Grant Program⁷¹ 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. For the purposes of this program, an **eligible entity** is a political subdivision, agency, or instrumentality of a state, including an agency of a state that is responsible for administering or supervising adult education and literacy activities, or for providing public housing; an Indian Tribe, an Alaska Native entity, or a Native Hawaiian organization; a foundation, corporation, institution, or association that is a not-for-profit entity and not a school; a community anchor institution; a local educational agency; an entity that carries out a workforce development program; and partnership between any of the above entities. Additionally, other entities (other than schools) may be permitted to join a partnership of eligible entities if the Assistant Secretary determines such action to be in the public interest.

The grants may not cover more than 90% of the cost of a single project, although that limit may be waived. Grants will 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;

⁶⁷ Ibid., §60304(d)(3)(A)(i).

⁶⁸ Ibid., §60304(d)(3)(A)(i)(aa)-(dd).

⁶⁹ Ibid., §60304(d)(3)(B).

⁷⁰ Ibid., §60304(k)(2)(A)-(B).

⁷¹ Ibid., §60305.

- 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 law authorizes \$250 million to be appropriated for each of the first five fiscal years in which funds are made available (the program may be extended).⁷² From these amounts, the NTIA may not use more than 5% to administer the program; at least 5% is to be set aside for grants to Indian tribes, Alaska Native entities, and Native Hawaiian organizations; and at least 1% is to be set aside for grants to the territories.⁷³ Title II of Division J appropriates the authorized \$250 million for FY2022.

Title IV—Enabling Middle Mile Broadband Infrastructure⁷⁴

Title IV authorizes the appropriation of \$1 billion for five years (FY2022 through FY2026) for another new grant program⁷⁵ to support the deployment of middle mile infrastructure.⁷⁶ “Middle mile” networks connect national and regional internet backbones to local connection sites (e.g., a school, library, business, or residence).

Key Terms Defined in Title IV

The **eligible entities** in Title IV include “a State, political subdivision of a State, Tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning council [sic, perhaps intended to be ‘council’], Native entity, or economic development authority”; or a partnership of any two or more of these.⁷⁷

An **unserved area** under Title IV is an area that does not have access to broadband service with at least 25 Mbps download and 3 Mbps upload speeds.⁷⁸ A tribally underserved area is also an unserved area.⁷⁹ An **underserved area** is an area that does not have access to broadband service with at least 100 Mbps download and 20 Mbps upload speeds.⁸⁰

An **anchor institution** is a school, library, medical or healthcare provider, community college or other higher-education institution, or community support organization.⁸¹

⁷² Ibid., §60305(l)(1).

⁷³ Ibid., §60401(j)(1)-(2).

⁷⁴ This section written by Ling Zhu, Analyst in Telecommunications Policy, lzhu@crs.loc.gov, 7-9876.

⁷⁵ P.L. 117-58, §60401(h).

⁷⁶ Ibid., §60401(a)(10).

⁷⁷ P.L. 117-58, §60401(a)(4).

⁷⁸ Ibid., §60401(a)(17).

⁷⁹ For the definition of *Tribally underserved area*, see P.L. 117-58, §60401(g).

⁸⁰ P.L. 117-58, §60401(a)(16).

⁸¹ Ibid., §60401(a)(1).

The Middle Mile Grant Program

NTIA is to administer the program and distribute grants on a technology-neutral, competitive basis to eligible entities.⁸² An eligible entity would be required to use the grant funds for the construction, improvement, or acquisition of middle mile infrastructure.⁸³ The purpose of the grant⁸⁴ is to reduce the connecting cost between unserved and underserved areas and the internet backbone and to promote broadband connection resiliency.⁸⁵ In each eligible project, the amount from the grant may not cover more than 70% of the total cost.⁸⁶

The law requires NTIA to weigh four elements in considering grant applications: (1) a priority assigned by NTIA, (2) the commitment made by the applicant, (3) use of the required data source, and (4) specific requirements for middle mile infrastructure using fiber optic technology (see **Table 2**).

Table 2. Eligibility Criteria and Requirements for Middle Mile Grants

Element	Description
NTIA assigned priority	<p>NTIA would be directed to give priority to applications that satisfy two or more of the following conditions:</p> <ul style="list-style-type: none"> • Adoption of fiscally sustainable middle mile strategies • Commitment to offering non-discriminatory connection to terrestrial and wireless last mile broadband providers • Identification of business partners of terrestrial and wireless last mile providers • Identification of supplemental investments or in-kind support • Demonstration of benefits to national security interests
Eligible entity's commitments	<p>Applicants would be required to commit to the following:</p> <ul style="list-style-type: none"> • Having financial, technical, and operational capabilities to carry out the project, operate the resulting middle mile broadband network, and support retail broadband service • Prioritizing connection of its middle mile infrastructure to last mile broadband networks in unserved areas or non-contiguous trust lands⁸⁷ • Prioritizing the offering of wholesale broadband service on a carrier-neutral basis • Completing the grant project within five years • Sharing the locations of its middle mile infrastructure with the NTIA, the FCC, and local governments
Data source	<p>In mapping out gaps in broadband coverage, an eligible entity will be required to use data from (1) the FCC's fixed broadband map,⁸⁸ (2) the state or the tribal government, and (3) speed and usage surveys conducted by the eligible entities.</p>

⁸² Ibid., §60401(c).

⁸³ Ibid.

⁸⁴ Ibid., §60401(b)(1).

⁸⁵ Broadband connection resiliency could be achieved through creating alternative network connection paths to prevent single points of failure on a broadband network. (See P.L. 117-58, §60401(b)(1)(B).)

⁸⁶ Ibid., §60401(f).

⁸⁷ The term *trust land* is defined in 38 U.S.C. §3765.

Element	Description
Middle mile infrastructure with fiber optic cable	<p>An eligible entity proposing to build middle mile infrastructure using fiber optic technology shall:</p> <ul style="list-style-type: none"> • Ensure its network can provide at least 1 Gigabit per second (Gbps) (download/upload) service to an anchor institution; and • Include direct interconnect facilities that help provide broadband service to anchor institutions within 1,000 feet of its middle mile infrastructure.

Source: CRS analysis of P.L. 117-58, §60401(d) & (e).

a. 47 U.S.C. §642(c)(1)(B).

Title V – Broadband Affordability⁸⁸

Title V contains five sections that address broadband affordability, interagency coordination, consumer labels, reporting requirements for the Government Accountability Office (GAO), and digital discrimination.⁸⁹ The title⁹⁰ extends and modifies the Emergency Broadband Benefit (EBB) that was enacted as part of the CAA 2021. The program is administered by the FCC, but the agency engaged the Universal Service Administrative Company (USAC) to implement the EBB Program. USAC uses the framework of an existing program that helps provide affordable voice and broadband service to low-income consumers.

The EBB is currently a temporary program funded by an appropriation of \$3.2 billion, available until expended or until six months after the COVID-19 pandemic terminates (as declared by the Secretary of Health and Human Services). Under Title V, the EBB is to be renamed the Affordable Connectivity Program (ACP)⁹¹ and the EBB sunset provision tied to the COVID-19 pandemic is to be eliminated.⁹² Separately from Division F, Division J appropriates an additional \$14.2 billion for the ACP, to remain available until expended.⁹³

Under the current EBB program, the FCC subsidizes broadband service for eligible households, defined as households that suffered income loss during the pandemic or meet other specified need-based criteria, such as eligibility for federal school lunch programs. Monthly subsidies paid to providers through USAC cover the cost of residential broadband service (up to \$50 on non-tribal lands and \$75 on tribal lands) and provides discounts of up to \$100 for computing devices supplied by participating broadband providers.⁹⁴

The ACP reduces the maximum monthly payment from \$50 to \$30 per household.⁹⁵ It also mandates that the FCC establish procedures allowing participating providers to claim up to \$75 per household on tribal lands in cases where the service cannot be maintained at the lower rate. In addition, the income eligibility threshold for households is increased from 135% of the federal

⁸⁸ This section written by Brian E. Humphreys, Analyst in Science and Technology Policy, bhumphreys@crs.loc.gov, 7-0975.

⁸⁹ P.L. 117-58, §60502-60506(2021).

⁹⁰ Section 60502.

⁹¹ P.L. 117-58, §60502(a)(2)(2021).

⁹² Ibid., §60502(a)(3).

⁹³ P.L. 117-58, Division J, Title IV, “Federal Communications Commission Affordable Connectivity Fund.”

⁹⁴ For more information on the EBB, see CRS Insight IN11612, *The Emergency Broadband Benefit: Implementation and Future Policy Directions*, by Brian E. Humphreys.

⁹⁵ P.L. 117-58, §60502(b)(1)(ii)(II).

poverty level to 200%.⁹⁶ The ACP retains other needs-based qualification criteria established under the original EBB program and adds enrollment in the USDA Supplemental Nutrition Assistance Program as an additional qualification criterion.⁹⁷ The ACP eliminates the CAA provision that established income loss directly attributable to the COVID-19 pandemic as an EBB eligibility criterion.⁹⁸

For providers, the ACP eliminates provisions restricting service plan offerings to those available on or before December 1, 2020.⁹⁹ This change could serve to support broadband service expansion by allowing participating providers to offer new services. Under the ACP, providers are also required to offer any service plan to eligible subscribers on the same terms as those offered to non-eligible subscribers.¹⁰⁰

The ACP introduces new consumer protections to prohibit participating providers from forcing beneficiaries to submit to credit checks, upgrade to more expensive plans, or accept extended service contracts as a condition of service.¹⁰¹ The program also introduces consumer outreach mandates for broadband providers, requiring them to inform new or renewing customers about the availability of program benefits.¹⁰²

Coordination with Certain Other Federal Agencies

Title V amends the Communications Act of 1934 to mandate increased coordination among departments that administer federal anti-poverty programs and USAC to improve the beneficiary eligibility verification process. The FCC also must notify Congress upon expenditure of the original appropriation for the EBB program, and issue rules for annual collection of data on consumer prices and subscription rates for participating broadband providers' service offering under the ACP.

Consumer Broadband Labels

Title V directs the FCC to require broadband providers to provide potential subscribers with consumer labels for service plans. These labels must display basic plan information in plain language in an easy-to-read format as described in a 2016 FCC Public Notice.¹⁰³ In addition, the section requires the FCC to conduct public hearings to assess how consumers evaluate different service plans and whether disclosures required under existing regulations are “available, effective, and sufficient.”¹⁰⁴

GAO Report

GAO is required to submit a report to Congress evaluating the process used by the FCC to establish broadband speed thresholds, and whether the agency adequately takes into account the

⁹⁶ Ibid., §60502(b)(1)(A)(i)(I).

⁹⁷ Ibid., §60502(b)(1)(A)(i)(VI).

⁹⁸ Ibid., §60502(b)(1)(A)(i)(II).

⁹⁹ Ibid., §60502 (b)(1)(A)(iii).

¹⁰⁰ Ibid., §60502 (a)(3)(B)(ii).

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid., §60504(a).

¹⁰⁴ Ibid., §60504(c)(2).

certain changing uses of the internet and needs of consumers when establishing such thresholds.¹⁰⁵

Digital Discrimination

This section states that all broadband subscribers should benefit from equal access to the internet within any given provider’s service area, regardless of income level, race, ethnicity, color, religion, or national origin. Under this provision, the FCC is required to adopt rules to prevent “digital discrimination” and identify steps necessary to eliminate such discrimination where it is found to exist.¹⁰⁶ The FCC is also required to develop model policies and best practices to prevent discrimination, which could be adopted by states and localities.¹⁰⁷ The FCC is also required to revise its public complaint process to accept complaints relating to digital discrimination.¹⁰⁸

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¹⁰⁵ Ibid., §60505(b).

¹⁰⁶ Ibid., §60506(b).

¹⁰⁷ Ibid., §60506(d).

¹⁰⁸ Ibid., §60506(e).