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# POLICY ARTICLE

## AIPI Policy Article:

### H.R. 3684 The Infrastructure Investment and Jobs Act Policy Update

[H.R. 3684](#), the *Infrastructure Investment and Jobs Act*, passed both houses of Congress on Friday, November 5, 2021. President Biden is scheduled to sign the historic legislation this afternoon. AIPI provided an initial analysis of the bill in August of 2021 and this article serves as an update to our [original analysis](#) and list the changes that were included in the final version of the bill. Almost all these provisions remain the same as they did when the bill was first introduced. Any changes or corrections will be noted with an asterisk.

#### Changes to the Tribal Broadband Connectivity Program

The Infrastructure Investment and Jobs Act makes some important changes to the [Tribal Broadband Connectivity Program \(TBCG\)](#), which was established in the [Consolidated Appropriations Act, 2021](#). These changes are aimed at giving more time to apply for funding as well as more time to implement projects. Here is a list of the most important changes:

1. An additional \$2 billion is appropriated to the TBCG.<sup>1</sup>
2. The deadline to commit funds under the TBCG has been extended from 180 days after receiving funds to 18 months after receiving funds.<sup>2</sup>
3. In cases where funds are reverted, reverted funds will go back into the TBCG to be made available to other eligible entities rather than back to the Treasury.<sup>3</sup>
4. Funds under the TBCG now have 4 years to be expended rather than 1 year.<sup>4</sup>
5. Extensions are now allowed for other eligible projects other than broadband deployment projects.<sup>5</sup>
6. If an eligible entity receives multiple grant awards, the rules/timelines apply separately to each grant.<sup>6</sup>
7. Enables more funding under the TBCG to be used for planning and feasibility studies under the administrative expenses clause. 2.5% is now allowed where previously administrative expenses were fully restricted to 2%.<sup>7</sup>
8. Regarding multiple rounds of funding, eligible entities do not have to resubmit an application if it failed to receive funding during the initial round of

<sup>1</sup> H.R. 3684 Division J, Title II

<sup>2</sup> H.R. 3684 SEC. 60201 (1)(B)(i)(I) amending Pub. Law No. 116-260 Division N, Sec. 905 (c)(4)(A)(i)

<sup>3</sup> H.R. 3684 SEC. 60201 (1)(B)(i)(II) amending Pub. Law No. 116-260 Division N, Sec. 905 (c)(4)(A)(ii)

<sup>4</sup> H.R. 3684 SEC. 60201 (1)(B)(ii)(I) amending Pub. Law No. 116-260 Division N, Sec. 905 (c)(4)(B)(i)

<sup>5</sup> H.R. 3684 SEC. 60201 (1)(B)(i)(III) amending Pub. Law No. 116-260 to add Division N, Sec. 905 (c)(4)(B)(iii)

<sup>6</sup> H.R. 3684 SEC. 60201 (1)(B)(iii) amending Pub. Law No. 116-260 to add Division N, Sec. 905 (c)(4)(C)

<sup>7</sup> H.R. 3684 SEC. 60201 (1)(C) amending Pub. Law No. 116-260 to add Division N, Sec. 905 (c)(6)(B)

grant applications. It will still be considered if there are subsequent rounds of funding.<sup>8</sup>

9. Eligible entities have 180 days to submit a grant application from the date that notice is given of newly appropriated TBCG funding.<sup>9</sup>

## Digital Equity Act of 2021

The Infrastructure Investment and Jobs Act includes the Digital Equity Act of 2021. The Digital Equity Act aims to provide a sustained investment and effort for digital inclusion and creates the State Digital Equity Capacity Grant Program as well as the Digital Equity Competitive Grant Program. Broadband connection and digital literacy are increasingly critical for Tribes in relation to societal & economic participation, access to healthcare, essential services, education and career building. *The following comprises pertinent Tribal details included in the Digital Equity Act of 2021:*

1. The bill creates the new State Digital Equity Capacity Grant Program which authorizes \$60 million for planning grants to be made available to States for the development of State Digital Equity Plans, \$240 million for fiscal year 2022 and \$300 million for each of the three fiscal years from 2023 to 2026 for grants to States to support the implementation of State Digital Equity Plans and digital inclusion activities.<sup>10</sup>
2. The Digital Equity Competitive Grant Program makes available \$250 million for each of the first five fiscal years in which funds are made available for grants to a wide variety of public-sector and not-for-profit entities. Funds may be used for a range of digital inclusion and broadband adoption activities.<sup>11</sup>
3. Tribes and Tribal entities are considered to be eligible entities under this section along with other entities such as States, State political subdivisions, State agencies and State instrumentalities, community anchor institutions, local educational entities and nonprofit corporations, institutions, associations, or coalitions.<sup>12</sup>
4. From the amounts made available in a fiscal year to carry out the Program in each the “State Digital Equity Capacity Grant Program” as well as the “Digital Equity Competitive Grant Program”, the Assistant Secretary shall reserve not less than 5 percent to award grants to, or enter into contracts or cooperative agreements with, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations.<sup>13</sup>

## Middle Mile Infrastructure

The Infrastructure Investment and Jobs Act also provides for assistance with internet infrastructure that connects the large high-capacity national broadband networks with local communities, also known as middle mile infrastructure. Middle mile infrastructure investments are crucial to connecting Tribal communities to adequate broadband internet and this bill makes Tribes eligible for grants to make that happen. Tribal considerations for middle mile infrastructure are as follows:

1. \$1 billion is appropriated to award middle mile infrastructure grants for FY 2022 - FY 2026.<sup>14</sup>

<sup>8</sup> H.R. 3684 SEC. 60201 (1)(C) amending Pub. Law No. 116-260 to add Division N, Sec. 905 (e)(6)(B)

<sup>9</sup> H.R. 3684 SEC. 60201 (1)(C) amending Pub. Law No. 116-260 to add Division N, Sec. 905 (e)(6)(C)(iii)

<sup>10</sup> H.R. 3684 SEC. 60304 (k)(1)-(3)

<sup>11</sup> H.R. 3684 SEC. 60305 (l)(1)(2)

<sup>12</sup> H.R. 3684 SEC. 60304 (b)(2)(A); SEC. 60305 (b)(2)

<sup>13</sup> H.R. 3684 SEC. 60304 (i)(2); SEC. 60305 (j)(2)

<sup>14</sup> H.R. 3684 SEC. 60401 (h)

2. Tribes and Tribal entities are considered to be eligible entities under this section along with other entities such as States, utilities, co-ops, and nonprofit corporations.<sup>15</sup>
3. Middle mile infrastructure is defined as leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.<sup>16</sup>
4. Generally underserved areas are those areas determined to have access to the internet with speeds less than 100/20. Unserved areas are those with no access or access to the internet with speeds less than 25/3. It is possible to have additional considerations to help determine if Tribes are underserved or unserved from the Assistant Secretary of Commerce for Communications and Information.<sup>17</sup>
5. Applications with the following characteristics will be given priority: fiscally sustainable, Non-discriminatory interconnections, Identifies specific last mile broadband providers (with written interest and sustainable business plans), Supplemental investment or in-kind support, and benefits to national security.<sup>18</sup>
6. Eligible entities must agree to prioritize middle mile connections to unserved areas, connect non-contiguous trust land, and provide wholesale broadband service at reasonable rates on a carrier-neutral basis.<sup>19</sup>
7. Projects have 5 years to be completed from the date that funds are made available to eligible entities with a possible 1-year extension.<sup>20</sup>
8. Tribal mapping data is eligible to be used for mapping out gaps in broadband coverage.<sup>21</sup>
9. Tribal governments will get location information for all the middle mile broadband infrastructure in their area, in a uniform format decided by the Assistant Secretary.<sup>22</sup>
10. Anchor institutions within 1000 ft of the middle mile infrastructure must have access to broadband with speeds of at least 1 Gbps/1 Gbps.<sup>23</sup>
11. Federal Share of Project May Not Exceed 70% of Total Project Costs<sup>24</sup>, but Tribes may request a waiver. Tribes are also able to request waivers for other eligibility requirements.<sup>25</sup>

## Broadband Affordability

The Emergency Broadband Benefit Program (EBB) was established by the Consolidated Appropriations Act, 2021, and provides subsidies for affordable internet access. The program allows qualifying households to apply for monthly discounts on broadband internet services both on and off Tribal lands. This bill makes several amendments to extend the program and change benefit amounts. Changes to the EBB are set to go into effect on December 31st, 2021, but that date may change depending on the date this bill is signed and enacted.

<sup>15</sup> H.R. 3684 SEC. 60401 (a)(4)(A)

<sup>16</sup> H.R. 3684 SEC. 60401 (a)(9)(B)(i)-(ii)

<sup>17</sup> H.R. 3684 SEC. 60401 (a)(16)-(17), (g)(2)

<sup>18</sup> H.R. 3684 SEC. 60401 (d)(2)(A)-(E)

<sup>19</sup> H.R. 3684 SEC. 60401 (e)(1)(A)-(C)

<sup>20</sup> H.R. 3684 SEC. 60401 (e)(2), (e)(5)

<sup>21</sup> H.R. 3684 SEC. 60401 (e)(3)(B)(i)

<sup>22</sup> H.R. 3684 SEC. 60401 (e)(3)(B)(ii)(III)-(III)

<sup>23</sup> H.R. 3684 SEC. 60401 (e)(3)(C)(i)

<sup>24</sup> H.R. 3684 SEC. 60401 (f)

<sup>25</sup> H.R. 3684 SEC. 60401 (g)(1)

1. \$14.2 billion in new funding appropriated to the Affordable Connectivity Program.<sup>26</sup>
2. The EBB was originally designated to last only through the emergency period relating to COVID-19, however the program has been amended to continue indefinitely.<sup>27</sup>
3. The name of the Emergency Broadband Program is now called the Affordable Connectivity Program.<sup>28</sup>
4. The benefit amount for providers who do not serve Tribal lands is lowered from \$50 to \$30 a month. The Benefit amount on Tribal lands remains at \$75.<sup>29</sup>
5. Internet providers in high-cost areas and Tribal lands may be able to offer a benefit amount lower than \$30 a month and lower than \$75 a month on Tribal lands if the provider can show that the benefit will “cause particularized economic hardship to the provider...”<sup>30</sup>
6. There are amendments to make it easier for customers to apply for the Affordability Benefit Program, and to allow for more options on internet service plans.<sup>31</sup>
7. Participating providers must assist with public awareness for the Affordable Connectivity Program. Providers can collaborate with State agencies, public interest groups, and non-profit organizations.<sup>32</sup>
8. Amendments for consumer protection that prohibit providers from inappropriate upselling or down-selling, allowing for customers to change providers, and other important considerations.<sup>33</sup>

## State and Local Cybersecurity Grant Program

The State and Local Cybersecurity Grant Program is a newly created program in the Infrastructure Investment and Jobs Act, which was created by making amendments to the Homeland Security Act of 2002. This program awards grants to Tribal governments and other eligible entities to address cybersecurity risks. 3% of the funds are set aside for Tribal governments.

1. The grant program will be administered by FEMA and the application process will be determined by the Secretary of Homeland Security.<sup>34</sup>
2. \*There is \$200 million in FY 2022, \$400 million in FY 2023, \$300 million in FY 2024, and \$100 million in FY 2025 appropriated to this program.<sup>35</sup> These amounts have been corrected from our original analysis.
3. Cybersecurity grants must implement, develop, and/or revise a cyber security plan from an eligible entity, assist with activities that address imminent threats<sup>36</sup>
4. Cybersecurity plans must consist of the following to the extent practicable:<sup>37</sup>
  - a. Existing plans to protect against risks and threats to information systems.
  - b. Plans on how they will manage, monitor, and track information systems.
  - c. Plans on how they will monitor, audit, and track network activity.

<sup>26</sup> H.R. 3684 Division J, Title IV

<sup>27</sup> H.R. 3684 SEC. 60502 (a)(1) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)-(b)

<sup>28</sup> H.R. 3684 SEC. 60502 (a)(2) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)-(b)

<sup>29</sup> H.R. 3684 SEC. 60502 (b)(1) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)(7)

<sup>30</sup> H.R. 3684 SEC. 60502 (a)(3) adding Pub. Law No. 116-260, Division N, Sec. 904 (a)(7)(B)

<sup>31</sup> H.R. 3684 SEC. 60502 (a)(3) adding Pub. Law No. 116-260, Division N, Sec. 904 (a)(7)

<sup>32</sup> H.R. 3684 SEC. 60502 (a)(3) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)(10)

<sup>33</sup> H.R. 3684 SEC. 60502 (a)(3) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)(11)

<sup>34</sup> H.R. 3684 SEC. 70612 (a) amending Pub. Law No. 107-296 (as amended by Pub. Law 116-283)

<sup>35</sup> H.R. 3684 SEC. 70612 (a) amending Pub. Law No. 107-296 (as amended by Pub. Law 116-283)

<sup>36</sup> H.R. 3684 SEC. 70612 (a) amending Pub. Law No. 107-296 (as amended by Pub. Law 116-283)

<sup>37</sup> H.R. 3684 SEC. 70612 (a) amending Pub. Law No. 107-296 (as amended by Pub. Law 116-283)

- d. Plans on enhancing the preparation, response, and resiliency.
  - e. Plans on implementing a continuous cybersecurity vulnerability assessment.
  - f. Plans to ensure that the eligible entity will use best practices and methodologies to enhance cybersecurity.
  - g. Plans to promote delivery of safe, recognizable, and trustworthy online services.
  - h. Plans to ensure continuity of operations.
  - i. Plans to use the National Initiative for Cybersecurity Education Workforce Framework for Cybersecurity to identify needed cybersecurity workforces, enhance recruitment and retention efforts for those workforces, and train workforces in cybersecurity hygiene.
  - j. Plans to assess and mitigate risks and threats to critical infrastructure.
  - k. Plans to enhance capabilities to share cyber threat indicators with the Department of Homeland Security, States, and other local governments.
  - l. Plans to coordinate risks and threats with States and local governments.
5. The Secretary of Homeland Security, in consultation with the Secretary of Interior and Tribal governments, may modify grant requirements for Tribal governments if necessary.<sup>38</sup>
  6. Approved cybersecurity plans will be valid for 2 years and then must be reviewed annually thereafter.<sup>39</sup>
  7. Among other restrictions, funds cannot be used to supplant State or local funds, used for any cost-sharing contribution, or to pay a ransom.<sup>40</sup>
  8. The Secretary of Homeland Security shall consult with the Secretary of the Interior to determine how the 3% of funding set aside for Tribes shall be apportioned.<sup>41</sup>
  9. Generally, there is a cost share requirement of 10% in FY 2022, 20% in FY 2023, and 30% in FY2024 but there is a waiver available for Tribal governments.<sup>42</sup>
  10. The Secretary of Homeland Security shall Consult Tribes in the implementation of this program.<sup>43</sup>
  11. In 2 years after the enactment of this section, the program administrators shall develop a Tribal cybersecurity needs report in consultation with Tribes and the Secretary of Interior.<sup>44</sup>

<sup>38</sup> H.R. 3684 SEC. 70612 (a) amending Pub. Law No. 107-296 (as amended by Pub. Law 116-283)

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