

# **The Consolidated Appropriations Act, 2021 Broadband Provisions: In Brief**

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## Introduction

Access to broadband—high-speed internet access that is faster than traditional dial-up access, always on, and relies on high-speed transmission technologies (e.g., fiber optic cable, cable modem, wireless)—remains a key interest for Congress. Broadband is currently deployed throughout the United States, primarily by the private sector. While the number of new broadband subscribers continues to grow, studies and data indicate that the rate of broadband deployment in many urban, suburban, and high-income areas is higher than in rural and low-income areas. The term “digital divide” is used to describe the gap between those who have access to broadband and those who do not.

The Coronavirus Disease 2019 (COVID-19) pandemic compelled many federal, local, and state governments, in addition to large and small businesses, to implement remote working or distance learning policies to help mitigate the spread of the virus. While a portion of the U.S. population had the option and ability to shift activities online, others did not, further revealing discrepancies in broadband access.

On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136) to provide additional funding to help address adverse impacts of the COVID-19 pandemic. Included among the provisions in the CARES Act were those aimed at addressing discrepancies in broadband access that were magnified by the shift to remote work and distance learning due to the pandemic. On December 27, 2020, Congress enacted the Consolidated Appropriations Act, 2021 (P.L. 116-260), which also included provisions to increase broadband availability and accessibility for underserved areas and populations of the United States.

This report discusses Division N, Title IX of the Consolidated Appropriations Act, 2021 (P.L. 116-260) that contains supplemental appropriations for broadband programs. The report provides information on each broadband program or initiative grouped by lead agency, including background and history (if applicable), deadlines, appropriation amounts, and eligibility information.

## Federal Communications Commission Broadband Provisions

The Federal Communications Commission (FCC) regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia, and U.S. territories. It is an independent government agency overseen by Congress. Federal support for broadband infrastructure occurs partly through the FCC’s Universal Service Fund (USF) programs. Among the FCC’s broadband activities are the *Bridging the Digital Divide for All Americans* initiatives<sup>1</sup> and the *Keep Americans Connected* initiative.<sup>2</sup>

Sections 901, 903, 904, and 906, of Division N of the Consolidated Appropriations Act, 2021, respectively:

- modify the Secure and Trusted Reimbursement Program at the FCC;

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<sup>1</sup> Federal Communications Commission, *Bridging The Digital Divide For All Americans*, FCC Initiatives, at <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans>.

<sup>2</sup> Federal Communications Commission, *Keep Americans Connected*, FCC Initiatives, at <https://www.fcc.gov/keep-americans-connected>.

- appropriate additional funding to the FCC COVID-19 Telehealth Program;
- establish and appropriate funding to the Emergency Broadband Benefit Program at the FCC; and
- appropriate funding to the FCC to create the broadband data maps required under the Broadband Deployment Accuracy and Technological Availability Act (P.L. 116-130), as well as funding to carry out the Secure and Trusted Communications Reimbursement Program that was required to be established by the FCC in the Secure and Trusted Communications Networks Act of 2019 (P.L. 116-124).

## **Section 901. Amendments to the Secure and Trusted Communications Networks Reimbursement Program**

On March 12, 2020, the President signed into law the Secure and Trusted Communications Networks Act of 2019 (P.L. 116-124). The act prohibits certain federal subsidies from being used to purchase communications equipment or services that pose national security risks, and establishes a reimbursement program for the replacement of communications equipment or services posing such risks. The law was enacted in response to congressional concerns about the Chinese network equipment makers, Huawei and ZTE, their susceptibility to Chinese government influence over business operations, and the potential for the Chinese government to use its telecommunications companies for malicious purposes such as espionage and cyberattacks.<sup>3</sup> While larger U.S. telecommunication providers have avoided use of Huawei equipment, smaller U.S. providers—many of whom receive subsidies from the FCC—use Huawei equipment in their networks. Thus, the act was intended in part to assist smaller U.S. telecommunications companies with the cost of removing and replacing untrusted equipment from their networks.

The act requires the FCC to publish within one year of enactment—by March 12, 2021—a list of “covered equipment.”<sup>4</sup> The act prohibits the use of certain FCC subsidies to purchase such “covered equipment.” Further, the act requires the FCC to establish the Secure and Trusted Communications Reimbursement Program to assist small communications providers (i.e., providers with 2 million or fewer customers) with the costs of removing “covered equipment” from their networks, and replacing the “covered equipment” with more secure communications equipment—a process known as “rip and replace.” Under the provisions of this act, small communication providers must complete the replacement within a year of the date that they received the funds for reimbursement from the FCC. The intent of the act is to assist smaller telecommunication providers with removing equipment that, according to the FCC, poses a threat to U.S. security.

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<sup>3</sup> U.S. Congress, House Committee on Energy and Commerce, Secure and Trusted Communications Networks Act of 2019, report to accompany H.R. 4998, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 116-352, part 1 (Washington, DC: GPO, 2019), pp. 8-9.

<sup>4</sup> The National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232) defines “covered telecommunications equipment or services” as (1) telecommunications equipment produced by Huawei or ZTE or any subsidiary or affiliate of such entities; (2) for certain safety and security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or any subsidiary or affiliate of such entities; (3) telecommunications or video surveillance equipment services provided by such entities or using such equipment; or (4) telecommunications or video surveillance equipment or services produced by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, where “covered foreign country” is defined as the People’s Republic of China.

The act also directs several federal agencies—including the FCC, National Telecommunications and Information Administration (NTIA), Office of the Director of National Intelligence (ODNI), Federal Bureau of Investigation (FBI), and the Department of Homeland Security (DHS)—to cooperate and share information on supply chain security risks with trusted telecommunication providers and suppliers.

Section 901 of Division N of P.L. 116-260 amends the Secure and Trusted Communications Act (P.L. 116-124) in several ways. Section 901:

- changes the criteria for eligible providers to which the FCC can provide reimbursement from providers with 2 million customers to providers with 10 million customers;
- references a November 22, 2019, FCC Report and Order which names two entities on the “covered equipment” list—Chinese equipment manufacturers Huawei and ZTE;
- sets a priority for allocation of funds under the Secure and Trusted Communications Reimbursement Program:
  - first, to providers with fewer than 2 million customers;
  - next, to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service; and
  - last, to any remaining eligible applicants.
- expands the definition of advanced communications service providers to include accredited public or private non-commercial educational institutions, providing their own facilities-based educational broadband service, and health care providers and libraries providing advanced communications service; and
- limits the funds that the FCC may spend on the reimbursement program to no more than \$1.9 billion.

## **Section 903. FCC COVID-19 Telehealth Program**

The COVID-19 Telehealth Program was created as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).<sup>5</sup> Congress appropriated \$200 million in the CARES Act to help health care providers provide services to patients at their homes or mobile locations. The program provides support to eligible health care providers through funding for their telecommunications services, information services, and devices necessary to provide connected care services.

Section 903 appropriated an additional \$250 million in funds for the program.<sup>6</sup> On January 6, 2021, the FCC’s Wireline Competition Bureau issued a Public Notice seeking comment on the metrics the agency intends to use in awarding these funds.<sup>7</sup> The intent of the proceeding is to ensure the equitable distribution of funding with at least one applicant funded in every state. Comments were due on January 19, 2021.

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<sup>5</sup> For more information on the program, see Federal Communications Commission, *COVID-19 Telehealth Program*, at <https://www.fcc.gov/covid-19-telehealth-program>.

<sup>6</sup> \$50,000 of this appropriation is to be used by the FCC Inspector General for oversight of the program.

<sup>7</sup> Federal Communications Commission, *Wireline Competition Bureau Seeks Comment on COVID-19 Telehealth Program Application Evaluation Metrics*, January 6, 2021, at <https://docs.fcc.gov/public/attachments/DA-21-14A1.pdf>.

## **Section 904. Benefit for Broadband Service During Emergency Period Relating to COVID-19**

Section 904 of Division N of P.L. 116-260 created the Emergency Broadband Benefit Program, which subsidizes broadband service for eligible households—defined as those households that suffered income loss during the pandemic or meet other need-based criteria specified in the act.<sup>8</sup> The FCC is to administer the program, reimbursing participating broadband providers for serving eligible households. The FCC is to automatically approve for participation any broadband provider that has an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households, and maintains verification processes that are sufficient to avoid fraud, waste, and abuse.

The FCC may reimburse providers up to \$50 for service to each eligible household on non-tribal lands, and \$75 for service to each eligible household on tribal lands to offset the cost of providing standard rate internet service—defined as a participating provider’s monthly retail rate for service as of December 1, 2020, excluding taxes and government fees. The FCC may also reimburse costs of providing a computer or tablet to eligible households if needed to access the internet in certain cases. There is no monthly subscription cost to participating households if the standard rate is less than the reimbursement rate. Providers may charge subscribers the difference in cases where the standard rate is greater.

Congress appropriated \$3.2 billion to fund the program. The funding remains available until expended. The program expires six months after the Secretary of Health and Human Services terminates the COVID-19 public health emergency declared on January 31, 2020. At that point, participants may accept standard terms and conditions of service from participating broadband providers, or terminate service without penalty. The emergency broadband benefit is separate from the existing FCC Lifeline program that subsidizes broadband and telephone service for certain low-income subscribers, and participation in Lifeline does not disqualify households from receiving the emergency broadband benefit.

The act required the FCC to promulgate implementing regulations by February 25, 2021, and the FCC adopted a Report and Order to establish the program on February 25, 2021.<sup>9</sup>

## **Section 906. Appropriations for Federal Communications Commission Activities**

Since 2018, the FCC has had the primary responsibility for developing a comprehensive map of broadband access in the United States. However, the data available to make the map may be incomplete. The FCC relies on self-reported service data from broadband service providers, which is not independently verified. Additionally, the FCC currently considers a census block<sup>10</sup>

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<sup>8</sup> For more information on the program, see Federal Communications Commission, *Emergency Broadband Benefit*, at <https://www.fcc.gov/broadbandbenefit>.

<sup>9</sup> Federal Communications Commission, *In the Matter of Emergency Broadband Benefit Program*, Report and Order, February 25, 2021, at <https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf>.

<sup>10</sup> According to the United States Census Bureau,

Census blocks are statistical areas bounded by visible features, such as streets, roads, streams, and railroad tracks, and by nonvisible boundaries, such as selected property lines and city, township, school district, and county limits and short line-of-sight extensions of streets and roads. Generally, census blocks are small in area; for example, a block in a city bounded on all sides by streets. Census blocks in suburban and rural areas may be large, irregular, and bounded by a variety of

served if at least one home or business in that census block has broadband access. More granular, verified data is needed to create a comprehensive map to help guide investments to improve broadband access.

In response to growing congressional interest in more accurate broadband data and mapping, Congress enacted the Broadband Deployment Accuracy and Technological Availability Act (P.L. 116-130) on March 23, 2020. The act requires the FCC to change the way broadband data is collected, verified, and reported. Section 906 of P.L. 116-260 appropriates \$65 million to the FCC to create the broadband data maps required under the act.

Section 906 also appropriates \$1.9 billion to carry out the Secure and Trusted Communications Networks Act of 2019, of which \$1.895 billion is to be used to carry out the reimbursement program, with the remaining amount (\$5 million) presumably available to the FCC for administration of the fund.<sup>11</sup>

## National Telecommunications and Information Administration Broadband Provisions

NTIA is the executive branch agency that is principally responsible for advising the President on telecommunications and information policy issues. One focus of the agency's programs and policymaking is expanding U.S. broadband internet access and adoption.<sup>12</sup> Historically, NTIA administered the Broadband Technology Opportunities Program (BTOP),<sup>13</sup> an approximately \$4 billion grant program focused on deploying broadband infrastructure, enhancing and expanding public computer centers, and encouraging the sustainable adoption of broadband service.<sup>14</sup> NTIA currently operates the BroadbandUSA program, which provides information and technical assistance to local and state governments, industry, and nonprofits that seek to enhance broadband connectivity and promote digital inclusion.<sup>15</sup>

### Section 902. Connecting Minority Communities

Section 902 of Division N of P.L. 116-260 requires the establishment of an Office of Minority Broadband Initiatives within the NTIA no later than June 25, 2021. Major duties of the office include collaboration with other federal agencies that carry out broadband programs and state, local, and tribal governments, historically Black colleges and universities, tribal colleges and

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features, such as roads, streams, and transmission lines. In remote areas, census blocks may encompass hundreds of square miles. Census blocks cover the entire territory of the United States, Puerto Rico, and the Island Areas. Census blocks nest within all other tabulated census geographic entities and are the basis for all tabulated data.

For more information see United States Census Bureau, *2010 Census Summary File 1*, 2010 Census of Population and Housing, September 2012, p. 614, at <https://www.census.gov/prod/cen2010/doc/sf1.pdf>.

<sup>11</sup> For more information on the Secure and Trusted Communications Act or the reimbursement program, see "Section 901. Amendments to the Secure and Trusted Communications Networks Reimbursement Program."

<sup>12</sup> NTIA's programs and policymaking also focus on expanding the use of spectrum by all users and ensuring that the internet remains an engine for continued innovation and economic growth. For more information, see National Telecommunications and Information Administration, *Our Mission*, at <https://www.ntia.doc.gov/>.

<sup>13</sup> BTOP was funded by the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

<sup>14</sup> National Telecommunications and Information Administration, *Broadband Technology Opportunities Program*, at <https://www.ntia.doc.gov/category/broadband-technology-opportunities-program>.

<sup>15</sup> BroadbandUSA, *How We Can Help*, at <https://broadbandusa.ntia.doc.gov/ntia-common-content/how-we-can-help>.



universities, minority-serving institutions, and stakeholders in the communications, education, business, and technology fields to:

- promote initiatives relating to broadband connectivity for anchor communities;<sup>16</sup>
- promote digital opportunities for anchor communities; and
- promote the rapid, expanded deployment of programs and activities to increase access of unserved historically Black colleges and universities, tribal colleges and universities, minority-serving institutions, and anchor communities to broadband.

Additionally, Section 902 establishes the Connecting Minority Communities Pilot Program to provide grants to eligible recipients in anchor communities for the purchase of broadband service or any eligible equipment, or to hire and train information technology personnel. According to the act, NTIA must enact a final rule no later than February 10, 2021, establishing a method for identifying which eligible recipients in anchor communities have the greatest unmet financial needs. As of the date of the publication of this report, NTIA has not released a final rule.

P.L. 116-260 appropriated \$285 million for this pilot program, with the funds available until expended. Additionally, P.L. 116-260 required that no less than 40% of the funds go to historically Black colleges and universities and no less than 20% of the funds go to eligible recipients.

## **Section 905. Grants for Broadband Connectivity**

Section 905 establishes two grant programs at the NTIA: one to support broadband connectivity on tribal lands throughout the country, the other to support broadband infrastructure deployment to areas lacking broadband.

### **Connectivity on Tribal Lands**

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

- broadband infrastructure deployment;
- affordable broadband programs;
- distance learning;
- telehealth;
- digital inclusion efforts; and
- broadband adoption activities.

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<sup>16</sup> According to P.L. 116-260, the term “anchor community” means “any area that (i) except as provided in subparagraph (B), is not more than 15 miles from a historically Black college or university, a Tribal College or University, or a Minority-serving institution; and (ii) has an estimated median annual household income of not more than 250 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).” Pursuant to subparagraph (B), “with respect to a Tribal College or University that is located on land held in trust by the United States, the Assistant Secretary, in consultation with the Secretary of the Interior, may establish a different maximum distance for the purposes of subparagraph (A)(i) if the Assistant Secretary is able to ensure that, in establishing that different maximum distance, each anchor community that is established as a result of that action is statistically comparable to other anchor communities described in subparagraph (A).”



Section 905 appropriated \$1 billion for this program, with the funding to remain available until expended. It also required that new construction of broadband infrastructure prioritize projects that deploy broadband infrastructure to unserved households.<sup>17</sup> Additionally, an eligible entity may enter into a contract with a sub grantee, including a non-tribal entity, as part of the use of grant funds.

According to the act, NTIA must issue a notice by February 25, 2021, that invites eligible entities and covered partnerships to submit grant applications; details how awards are to be made; and outlines the requirements for grant applications, including the allowable use of funds. As of the date of the publication of this report, NTIA has not issued a notice. After issuance of the notice, an eligible entity may submit an application for a grant. NTIA must approve or deny an application no later than 90 days after receiving it. Denied applicants have the opportunity to respond to and correct any deficiencies in the application. NTIA must allocate funds to the eligible entity or covered partnership no later than 14 days after approval.

## **Broadband Infrastructure Deployment**

Section 905 appropriated \$300 million to implement a broadband infrastructure deployment program in which grants are to be awarded on a competitive basis to covered partnerships<sup>18</sup> for covered broadband projects.<sup>19</sup> To be eligible for a grant, a covered partnership must submit an application which includes descriptions of the covered partnership; the covered broadband project to be funded; the proposed broadband speed offerings; the cost of the project; the proposed area to be served by the project; and any support<sup>20</sup> provided to the provider for the deployment of broadband service in the proposed service area.

In awarding grants, Section 905 required priority given to applications for covered broadband projects as follows, in decreasing order of priority:

- covered broadband projects designed to provide broadband service to the greatest number of households in an eligible service area;
- covered broadband projects designed to provide broadband service in an eligible service area that is wholly within any area other than—(i) a county, city, or town

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<sup>17</sup> According to P.L. 116-260, with respect to a household, the term “unserved” means “the household lacks access to qualifying broadband service and no broadband provider has been selected to receive, or is otherwise receiving, federal or state funding subject to enforceable build out commitments to deploy qualifying broadband service in the specific area where the household is located by dates certain, even if such service is not yet available, provided that the federal or state agency providing the funding has not deemed the service provider to be in default of its buildout obligations under the applicable federal or state program.”

<sup>18</sup> According to P.L. 116-260, a “covered partnership” means “a partnership between (A) a state, or 1 or more political subdivisions of a state; and (B) a provider of fixed broadband service.”

<sup>19</sup> According to P.L. 116-260, a “covered broadband project” means “a competitively and technologically neutral project for the deployment of fixed broadband service that provides qualifying broadband service in an eligible service area.”

<sup>20</sup> According to P.L. 116-260, support includes any grant, loan, or loan guarantee provided by a state; by the Secretary of Agriculture to include any program to provide grants, loans, or loan guarantees under Sections 601 through 603 of the Rural Electrification Act of 1936 (7 U.S.C. 950bb et seq.), the Community Connect Grant Program, the broadband loan and grant pilot program known as the “ReConnect Program”; any high-cost universal service support; any grant provided under Section 6001 of the American Recovery and Reinvestment Act of 2009; amounts made available for the Education Stabilization Fund under the heading “Department of Education” in Title VIII of Division B of the CARES Act; any other grant, loan, or loan guarantee provided by the federal government for the provision of broadband service.

- that has a population of more than 50,000 inhabitants; and (ii) the urbanized area contiguous and adjacent to a city or town described in clause (i);
- covered broadband projects that are the most cost effective, prioritizing projects in areas that are the most rural;
- covered broadband projects designed to provide broadband service with a download speed of not less than 100 megabits per second and an upload speed of not less than 20 megabits per second; and
- any other covered broadband project that meets the requirements.

According to the act, NTIA must issue a notice by February 25, 2021, that invites eligible entities and covered partnerships to submit grant applications; details how awards are to be made; and outlines the requirements for grant applications, including the allowable use of funds. As of the date of the publication of this report, NTIA has not issued a notice. After issuance of the notice, an eligible entity may submit an application for a grant. NTIA must approve or deny an application no later than 90 days after receiving it. Denied applicants have the opportunity to respond to and correct any deficiencies in the application. NTIA must allocate funds to the eligible entity or covered partnership no later than 14 days after approval.<sup>21</sup>

## Considerations for the 117<sup>th</sup> Congress

As the COVID-19 pandemic continues to highlight differences in broadband availability and accessibility across the United States, the 117<sup>th</sup> Congress has a wide variety of short- and long-term options to address the digital divide. In the short term, Congress may provide oversight of the administration of these new FCC and NTIA broadband programs and initiatives to ensure federal dollars are spent effectively and verify that areas where broadband is needed the most are targeted.

In the long-term, Congress may choose to conduct a study to understand whether these new programs were effective (e.g., how the digital divide was addressed through these programs) and how these programs interact with existing ones (e.g., whether they are duplicative or complementary). In addition to considering whether to make these new broadband programs permanent and reauthorize appropriations on an annual basis, Congress might also opt to provide additional support on top of these new programs to encourage the continued expansion of broadband infrastructure deployment and adoption. Alternatively, Congress could opt to allow state and local governments, private industry, and non-profit organizations to address these perceived challenges.

## For More Information

For additional information about the digital divide, broadband deployment, and federal broadband programs, see CRS Report R46613, *The Digital Divide: What Is It, Where Is It, and Federal Assistance Programs*; CRS In Focus IF11520, *The Universal Service Fund and COVID-19: The FCC and Industry Response*; CRS In Focus IF11748, *Federal Universal Service Fund and Other Selected Federal Broadband Programs: A Primer*; and CRS Report R46108, *Demand for Broadband in Rural Areas: Implications for Universal Access*.

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<sup>21</sup> For more information on the NTIA programs see BroadbandUSA, *Overview of Consolidated Appropriations Act, 2021*, at <https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021>.

To contact a CRS analyst on a particular Section discussed in this report, please see **Table 1**.

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