

SUBCHAPTER VI—RURAL BROADBAND
ACCESS

§ 950bb. Access to broadband telecommunications services in rural areas

(a) Purpose

The purpose of this section is to provide loans and loan guarantees to provide funds for the costs of the construction, improvement, and acquisition of facilities and equipment for broadband service in rural areas.

(b) Definitions

In this section:

(1) Broadband service

The term “broadband service” means any technology identified by the Secretary as having the capacity to transmit data to enable a subscriber to the service to originate and receive high-quality voice, data, graphics, and video.

(2) Incumbent service provider

The term “incumbent service provider”, with respect to an application submitted under this section, means an entity that, as of the date of submission of the application, is providing broadband service to not less than 5 percent of the households in the service territory proposed in the application.

(3) Rural area

(A) In general

The term “rural area” means any area other than—

- (i) an area described in clause (i) or (ii) of section 1991(a)(13)(A) of this title; and
- (ii) a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.

(B) Urban area growth

The Secretary may, by regulation only, consider an area described in section 1991(a)(13)(F)(i)(I) of this title to not be a rural area for purposes of this section.

(c) Loans and loan guarantees

(1) In general

The Secretary shall make or guarantee loans to eligible entities described in subsection (d) to provide funds for the construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in rural areas.

(2) Priority

In making or guaranteeing loans under paragraph (1), the Secretary shall give the highest priority to applicants that offer to provide broadband service to the greatest proportion of households that, prior to the provision of the broadband service, had no incumbent service provider.

(d) Eligibility

(1) Eligible entities

(A) In general

To be eligible to obtain a loan or loan guarantee under this section, an entity shall—

(i) demonstrate the ability to furnish, improve, or extend a broadband service to a rural area;

(ii) submit to the Secretary a loan application at such time, in such manner, and containing such information as the Secretary may require; and

(iii) agree to complete buildout of the broadband service described in the loan application by not later than 3 years after the initial date on which proceeds from the loan made or guaranteed under this section are made available.

(B) Limitation

An eligible entity that provides telecommunications or broadband service to at least 20 percent of the households in the United States may not receive an amount of funds under this section for a fiscal year in excess of 15 percent of the funds authorized and appropriated under subsection (k) for the fiscal year.

(2) Eligible projects

(A) In general

Except as provided in subparagraphs (B) and (C), the proceeds of a loan made or guaranteed under this section may be used to carry out a project in a proposed service territory only if, as of the date on which the application for the loan or loan guarantee is submitted—

- (i) not less than 25 percent of the households in the proposed service territory is offered broadband service by not more than 1 incumbent service provider; and
- (ii) broadband service is not provided in any part of the proposed service territory by 3 or more incumbent service providers.

(B) Exception to 25 percent requirement

Subparagraph (A)(i) shall not apply to the proposed service territory of a project if a loan or loan guarantee has been made under this section to the applicant to provide broadband service in the proposed service territory.

(C) Exception to 3 or more incumbent service provider requirement

(i) In general

Except as provided in clause (ii), subparagraph (A)(ii) shall not apply to an incumbent service provider that is upgrading broadband service to the existing territory of the incumbent service provider.

(ii) Exception

Clause (i) shall not apply if the applicant is eligible for funding under another subchapter of this chapter.

(3) Equity and market survey requirements

(A) In general

The Secretary may require an entity to provide a cost share in an amount not to exceed 10 percent of the amount of the loan or loan guarantee requested in the application of the entity, unless the Secretary determines that a higher percentage is required for financial feasibility.

(B) Market survey**(i) In general**

The Secretary may require an entity that proposes to have a subscriber projection of more than 20 percent of the broadband service market in a rural area to submit to the Secretary a market survey.

(ii) Less than 20 percent

The Secretary may not require an entity that proposes to have a subscriber projection of less than 20 percent of the broadband service market in a rural area to submit to the Secretary a market survey.

(4) State and local governments and Indian tribes

Subject to paragraph (1), a State or local government (including any agency, subdivision, or instrumentality thereof (including consortia thereof)) and an Indian tribe shall be eligible for a loan or loan guarantee under this section to provide broadband services to a rural area.

(5) Notice requirement

The Secretary shall publish a notice of each application for a loan or loan guarantee under this section describing the application, including—

- (A) the identity of the applicant;
- (B) each area proposed to be served by the applicant; and
- (C) the estimated number of households without terrestrial-based broadband service in those areas.

(6) Paperwork reduction

The Secretary shall take steps to reduce, to the maximum extent practicable, the cost and paperwork associated with applying for a loan or loan guarantee under this section by first-time applicants (particularly first-time applicants who are small and start-up broadband service providers), including by providing for a new application that maintains the ability of the Secretary to make an analysis of the risk associated with the loan involved.

(7) Preapplication process

The Secretary shall establish a process under which a prospective applicant may seek a determination of area eligibility prior to preparing a loan application under this section.

(e) Broadband service**(1) In general**

The Secretary shall, from time to time as advances in technology warrant, review and recommend modifications of rate-of-data transmission criteria for purposes of the identification of broadband service technologies under subsection (b)(1).

(2) Prohibition

The Secretary shall not establish requirements for bandwidth or speed that have the effect of precluding the use of evolving technologies appropriate for rural areas.

(f) Technological neutrality

For purposes of determining whether to make a loan or loan guarantee for a project under this

section, the Secretary shall use criteria that are technologically neutral.

(g) Terms and conditions for loans and loan guarantees**(1) In general**

Notwithstanding any other provision of law, a loan or loan guarantee under this section shall—

(A) bear interest at an annual rate of, as determined by the Secretary—

(i) in the case of a direct loan, a rate equivalent to—

(I) the cost of borrowing to the Department of the Treasury for obligations of comparable maturity; or

(II) 4 percent; and

(ii) in the case of a guaranteed loan, the current applicable market rate for a loan of comparable maturity; and

(B) have a term of such length, not exceeding 35 years, as the borrower may request, if the Secretary determines that the loan is adequately secured.

(2) Term

In determining the term of a loan or loan guarantee, the Secretary shall consider whether the recipient is or would be serving an area that is not receiving broadband services.

(3) Recurring revenue

The Secretary shall consider the existing recurring revenues of the entity at the time of application in determining an adequate level of credit support.

(h) Adequacy of security**(1) In general**

The Secretary shall ensure that the type and amount of, and method of security used to secure, any loan or loan guarantee under this section is commensurate to the risk involved with the loan or loan guarantee, particularly in any case in which the loan or loan guarantee is issued to a financially strong and stable entity, as determined by the Secretary.

(2) Determination of amount and method of security

In determining the amount of, and method of security used to secure, a loan or loan guarantee under this section, the Secretary shall consider reducing the security in a rural area that does not have broadband service.

(i) Use of loan proceeds to refinance loans for deployment of broadband service

Notwithstanding any other provision of this chapter, the proceeds of any loan made or guaranteed by the Secretary under this chapter may be used by the recipient of the loan for the purpose of refinancing an outstanding obligation of the recipient on another telecommunications loan made under this chapter if the use of the proceeds for that purpose will support the construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in rural areas.

(j) Reports

Not later than 1 year after the date of enactment of the Food, Conservation, and Energy Act

of 2008, and annually thereafter, the Administrator shall submit to Congress a report that describes the extent of participation in the loan and loan guarantee program under this section for the preceding fiscal year, including a description of—

- (1) the number of loans applied for and provided under this section;
- (2)(A) the communities proposed to be served in each loan application submitted for the fiscal year; and
- (B) the communities served by projects funded by loans and loan guarantees provided under this section;
- (3) the period of time required to approve each loan application under this section;
- (4) any outreach activities carried out by the Secretary to encourage entities in rural areas without broadband service to submit applications under this section;
- (5) the method by which the Secretary determines that a service enables a subscriber to originate and receive high-quality voice, data, graphics, and video for purposes of subsection (b)(1); and
- (6) each broadband service, including the type and speed of broadband service, for which assistance was sought, and each broadband service for which assistance was provided, under this section.

(k) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this section \$25,000,000 for each of fiscal years 2008 through 2012, to remain available until expended.

(2) Allocation of funds

(A) In general

From amounts made available for each fiscal year under this subsection, the Secretary shall—

- (i) establish a national reserve for loans and loan guarantees to eligible entities in States under this section; and
- (ii) allocate amounts in the reserve to each State for each fiscal year for loans and loan guarantees to eligible entities in the State.

(B) Amount

The amount of an allocation made to a State for a fiscal year under subparagraph (A) shall bear the same ratio to the amount of allocations made for all States for the fiscal year as—

- (i) the number of communities with a population of 2,500 inhabitants or less in the State; bears to
- (ii) the number of communities with a population of 2,500 inhabitants or less in all States.

(C) Unobligated amounts

Any amounts in the reserve established for a State for a fiscal year under subparagraph (B) that are not obligated by April 1 of the fiscal year shall be available to the Secretary to make loans and loan guarantees under this section to eligible entities in any State, as determined by the Secretary.

(l) Termination of authority

No loan or loan guarantee may be made under this section after September 30, 2012.

(May 20, 1936, ch. 432, title VI, § 601, as added Pub. L. 107-171, title VI, § 6103(a), May 13, 2002, 116 Stat. 415; amended Pub. L. 108-199, div. A, title VII, § 772, Jan. 23, 2004, 118 Stat. 40; Pub. L. 110-234, title VI, § 6110(a), May 22, 2008, 122 Stat. 1199; Pub. L. 110-246, § 4(a), title VI, § 6110(a), June 18, 2008, 122 Stat. 1664, 1960.)

REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (j), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Pub. L. 110-246, § 6110(a), amended section generally, substituting provisions authorizing loans and loan guarantees for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in rural areas and terminating such authority on Sept. 30, 2012, for provisions authorizing similar loans and loan guarantees and terminating such authority on Sept. 30, 2007.

2004—Subsec. (b)(2). Pub. L. 108-199 amended heading and text of subsec. (b)(2) generally. Prior to amendment, text read as follows: “The term ‘eligible rural community’ means any incorporated or unincorporated place that—

“(A) has not more than 20,000 inhabitants, based on the most recent available population statistics of the Bureau of the Census; and

“(B) is not located in an area designated as a standard metropolitan statistical area.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Pub. L. 110-234, title VI, § 6110(c), May 22, 2008, 122 Stat. 1203, and Pub. L. 110-246, § 4(a), title VI, § 6110(c), June 18, 2008, 122 Stat. 1664, 1964, provided that: “The amendment made by subsection (a) [amending this section] shall not apply to—

“(1) an application submitted under section 601 of the Rural Electrification Act of 1936 (7 U.S.C. 950bb) (as it existed before the amendment made by subsection (a)) that—

“(A) was pending on the date that is 45 days prior to the date of enactment of this Act [June 18, 2008]; and

“(B) is pending on the date of enactment of this Act [June 18, 2008]; or

“(2) a petition for reconsideration of a decision on an application described in paragraph (1).”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

REGULATIONS

Pub. L. 110-234, title VI, § 6110(b), May 22, 2008, 122 Stat. 1203, and Pub. L. 110-246, § 4(a), title VI, § 6110(b), June 18, 2008, 122 Stat. 1664, 1964, provided that: “The Secretary [of Agriculture] may implement the amend-

ment made by subsection (a) [amending this section] through the promulgation of an interim regulation.”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

Pub. L. 107-171, title VI, §6103(b), May 13, 2002, 116 Stat. 418, provided that:

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [May 13, 2002], the Secretary of Agriculture shall promulgate such regulations as are necessary to implement the amendment made by subsection (a) [enacting this section].

“(2) PROCEDURE.—The promulgation of the regulations shall be made without regard to—

“(A) the notice and comment provisions of section 553 of title 5, United States Code;

“(B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

“(C) chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’).

“(3) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this subsection, the Secretary shall use the authority provided under section 808 of title 5, United States Code.”

§ 950bb-1. National Center for Rural Telecommunications Assessment

(a) Designation of Center

The Secretary shall designate an entity to serve as the National Center for Rural Telecommunications Assessment (referred to in this section as the “Center”).

(b) Criteria

In designating the Center under subsection (a), the Secretary shall take into consideration the following criteria:

(1) The Center shall be an entity that demonstrates to the Secretary—

(A) a focus on rural policy research; and

(B) a minimum of 5 years of experience relating to rural telecommunications research and assessment.

(2) The Center shall be capable of assessing broadband services in rural areas.

(3) The Center shall have significant experience involving other rural economic development centers and organizations with respect to the assessment of rural policies and the formulation of policy solutions at the Federal, State, and local levels.

(c) Board of directors

The Center shall be managed by a board of directors, which shall be responsible for the duties of the Center described in subsection (d).

(d) Duties

The Center shall—

(1) assess the effectiveness of programs carried out under this subchapter in increasing broadband penetration and purchase in rural areas, especially in rural communities identified by the Secretary as having no broadband service before the provision of a loan or loan guarantee under this subchapter;

(2) work with existing rural development centers selected by the Center to identify policies and initiatives at the Federal, State, and local levels that have increased broadband penetration and purchase in rural areas and

provide recommendations to Federal, State, and local policymakers on effective strategies to bring affordable broadband services to residents of rural areas, particularly residents located outside of the municipal boundaries of a rural city or town; and

(3) develop and publish reports describing the activities carried out by the Center under this section.

(e) Reporting requirements

Not later than December 1 of each applicable fiscal year, the board of directors of the Center shall submit to Congress and the Secretary a report describing the activities carried out by the Center during the preceding fiscal year and the results of any research conducted by the Center during that fiscal year, including—

(1) an assessment of each program carried out under this subchapter; and

(2) an assessment of the effects of the policy initiatives identified under subsection (d)(2).

(f) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this section \$1,000,000 for each of fiscal years 2008 through 2012.

(May 20, 1936, ch. 432, title VI, §602, as added Pub. L. 110-234, title VI, §6111, May 22, 2008, 122 Stat. 1203, and Pub. L. 110-246, §4(a), title VI, §6111, June 18, 2008, 122 Stat. 1664, 1965.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of this title.

CHAPTER 31A—TELEMEDICINE AND DISTANCE LEARNING SERVICES IN RURAL AREAS

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TERMINATION OF CHAPTER

For termination of chapter by section 1(b) of Pub. L. 102-551, see note set out under section 950aaa of this title.

§ 950aaa. Purpose

The purpose of this chapter is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

(Pub. L. 101-624, title XXIII, §2331, as added Pub. L. 104-127, title VII, §704, Apr. 4, 1996, 110 Stat. 1108.)