



American  
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# POLICY ARTICLE

## AIPI Policy Brief: Infrastructure Investment and Jobs Act – Broadband Analysis

On Tuesday, August 10, 2021, the Senate passed [H.R. 3684](#). This historic legislation includes an extraordinary investment in Indian Country infrastructure and is the latest in a series of momentous legislation affecting Native communities. The [CARES Act](#), [Consolidated Appropriations Act 2021](#), and the [American Rescue Plan Act of 2021](#) provided significant investments into Indian Country to address the challenges of the COVID-19 pandemic. H.R. 3684 continues in such a direction by maintaining focus on existing adversities that circumstances brought on by the pandemic has magnified. However, H.R. 3684 expands its focus by turning attention to more long-standing challenges pertaining to highways, transportation, water, energy, and internet connectivity. In addition, it includes in its focus consideration of some of the unique interactions between infrastructure and Indian Country. For a full analysis, see [here](#). In this document, AIPI provides a deep dive and analysis of Tribal specific broadband components of the bill.

Earlier this year, the unprecedented dialogue with Tribal nations provided Federal entities with critical information on initiatives meant to serve Indian Country. Much of the input from Tribal Leaders at the various consultations, roundtable discussions, and webinars focused on several key themes. Some overall needs for broadband development recommended were establishing a Broadband Interagency Working Group, establishing a Tribal Broadband Deployment Advisory Group, and establishing a Broadband right-of-way pilot program to delegate the authority to grant rights-of-way to Tribes.<sup>1</sup> Unfortunately, these recommendations were not included in the broadband sections of the bill. Other needs expressed, such as specific funding for Tribes, additional appropriations, and funding directly to Tribes, were addressed through designating Tribes as eligible entities for grants, additional funding for Tribal broadband programs, and Tribal set-asides in new grant programs. The following sections will go over important Broadband development initiatives and look at the needs expressed by Tribes in each area.

Overarchingly, H.R. 3684 has the potential to bring transformative change to broadband expansion and development to numerous Tribal communities. Additional funding for the Tribal Broadband Connectivity program will provide much-needed additional resources directly to Tribes and Tribal entities to build their broadband infrastructure. In addition to that, there is now funding available for digital equity, middle mile infrastructure, and cybersecurity. These areas are critical for broadband infrastructure development but have not always received adequate attention in the effort to expand Tribal broadband

<sup>1</sup> National Congress of American Indians, [Indian Country Infrastructure Letter \(2021\)](#)

connectivity. In addition, the new funding to the Broadband Affordability Program will provide affordable internet access to many Tribal individuals on and off Tribal lands. With the right planning and collaboration, the resources made available in this bill could bring better broadband access to Tribal communities who are already connected and bring first-time access to rural and remote communities. Continued support in these areas of need is essential to make sure that every Tribal community has broadband access.

## Changes to the Tribal Broadband Connectivity Program

The infrastructure bill 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>2</sup>
2. The deadline to commit funds under the TBCG has been extended from 180 days to 18 months after receiving funds.<sup>3</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>4</sup>
4. Funds under the TBCG now have four years to be expended rather than one year.<sup>5</sup>
5. Extensions are now allowed for other projects, such as digital inclusion projects. Previously, extensions were only available for broadband deployment projects.<sup>6</sup>
6. If an eligible entity receives multiple grant awards, the rules/timelines apply separately to each grant.<sup>7</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>8</sup>
8. Regarding multiple rounds of funding, eligible entities do not have to resubmit an application if they failed to receive funding during the initial round of grant applications. However, it will still be considered in subsequent rounds of funding.<sup>9</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>10</sup>

Tribes and Tribal organizations advocated for a larger amount of funding for the TBCG in order to adequately meet broadband connectivity needs. The amount needed was estimated to be \$10 billion for all of Indian Country<sup>11</sup>, however, that need was only partly fulfilled with a \$2 billion appropriation to the TBCG. In addition to that, there was a call for additional funding for programs under the USDA, but the TNCG was the only one that received additional funding. Comments to extend timelines and to keep reverted money in the TBCG were considered, and funding is still intended to go directly to Tribes.

<sup>2</sup> H.R. 3684 Division J, Title II

<sup>3</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>4</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>5</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>6</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>7</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>8</sup> H.R. 3684 SEC. 60201 (1)(C) amending Pub. Law No. 116-260 to add Division N, Sec. 905 (c)(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)(B)

<sup>10</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>11</sup> National Congress of American Indians, [Indian Country Infrastructure Letter \(2021\)](#)

## Digital Equity Act of 2021

The infrastructure bill 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 Indian Country 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 “State Digital Equity Capacity Grant Program” authorizes \$60 million for planning grants to be made available to States for the development of State Digital Equity Plans, \$240 million for FY 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>12</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>13</sup>
3. Tribes and Tribal entities are 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>14</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 five percent to award grants to or enter into contracts or cooperative agreements with, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations.<sup>15</sup>

In consultations, Tribes and Tribal entities/organizations proposed to include \$4 billion for the Digital Equity Act with five percent set asides for Tribes. While the total of available grant funds does not equal the requested \$4 billion, the five percent set aside was actualized in both programs of the Digital Equity Act of 2021.

## Middle Mile Infrastructure

The infrastructure bill 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 middle mile infrastructure grants. Tribal considerations for middle mile infrastructure are as follows:

1. \$1 billion is appropriated to award middle mile infrastructure grants.<sup>16</sup>

<sup>12</sup> H.R. 3684 SEC. 60304 (k)(1)-(3)

<sup>13</sup> H.R. 3684 SEC. 60305 (l)(1)(2)

<sup>14</sup> H.R. 3684 SEC. 60304 (b)(2)(A); SEC. 60305 (b)(2)

<sup>15</sup> H.R. 3684 SEC. 60304 (i)(2); SEC. 60305 (j)(2)

<sup>16</sup> H.R. 3684 SEC. 60401 (h)

2. Tribes and Tribal entities are eligible entities under this section along with other entities such as States, utilities, co-ops, and nonprofit corporations.<sup>17</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>18</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 consideration to help determine if Tribes are underserved or unserved from the Assistant Secretary of Commerce for Communications and Information.<sup>19</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>20</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>21</sup>
7. Projects have five years to be completed from the date that funds are made available to eligible entities with a possible 1-year extension.<sup>22</sup>
8. Tribal mapping data is eligible to be used for mapping out gaps in broadband coverage.<sup>23</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>24</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>25</sup>
11. Federal Share of Project May Not Exceed 70% of Total Project Costs<sup>26</sup>, but Tribes may request a waiver. Tribes are also able to request waivers for other eligibility requirements.<sup>27</sup>

Comments from Tribes over the last few months stressed the critical need for middle mile infrastructure in Indian Country. However, the requests to provide funding set aside for Tribes were not included. Instead, Tribes are deemed to be eligible entities for middle mile infrastructure grants. The Comments requesting that Tribes have the ability to self-certify and make their own determination about unserved areas and middle mile connectivity was acknowledged by allowing for the use of Tribal mapping data.

## **Broadband Affordability**

<sup>17</sup> H.R. 3684 SEC. 60401 (a)(4)(A)

<sup>18</sup> H.R. 3684 SEC. 60401 (a)(4)(B)(i)-(ii)

<sup>19</sup> H.R. 3684 SEC. 60401 (a)(16)-(17), (g)(2)

<sup>20</sup> H.R. 3684 SEC. 60401 (d)(2)(A)-(E)

<sup>21</sup> H.R. 3684 SEC. 60401 (e)(1)(A)-(C)

<sup>22</sup> H.R. 3684 SEC. 60401 (e)(2), (e)(5)

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

<sup>24</sup> H.R. 3684 SEC. 60401 (e)(3)(B)(ii)(II)-(III)

<sup>25</sup> H.R. 3684 SEC. 60401 (e)(3)(C)(i)

<sup>26</sup> H.R. 3684 SEC. 60401 (f)

<sup>27</sup> H.R. 3684 SEC. 60401 (g)(1)

The Emergency Broadband Benefit Program (EBB) was established by the Consolidated Appropriations Act and provides subsidies for affordable internet access. The program allows for 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 changes the monthly benefit amount from \$50 to \$30 but does not change the \$75 benefit offered on Tribal lands.

1. \$14.2 billion in new funding appropriated to the Affordable Connectivity Program.<sup>28</sup>
2. The EBB was originally designated to last only through the emergency period relating to COVID-19; however, that timeline language has been removed to allow the program to continue long-term.<sup>29</sup>
3. The name of the Emergency Broadband Program is now called the Affordable Connectivity Program.<sup>30</sup>
4. The benefit amount for providers off Tribal lands is lowered from \$50 to \$30 a month. However, the benefit amount on Tribal lands remains at \$75.<sup>31</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>32</sup>
6. There are amendments to make it easier for customers to apply for the Affordability Benefit Program and allow for more options on internet service plans.<sup>33</sup>
7. Participating providers must assist with public awareness for the Affordable Connectivity Program. In addition, providers can collaborate with State agencies, public interest groups, and non-profit organizations.<sup>34</sup>
8. Amendments for consumer protection prohibit providers from inappropriate up-selling or down-selling, allowing customers to change providers, and other important considerations.<sup>35</sup>

## **State and Local Cybersecurity Grant Program**

The State and Local Cybersecurity Grant Program is a newly created program in 6 U.S.C. 551 et seq., also known as the Homeland Security Act of 2002. This program awards grants to Tribal governments and other eligible entities to address cybersecurity risks. Three percent of the funds in this newly created grant program are set aside for Tribal governments.

1. FEMA will administer the grant program and the application process will be determined by the Secretary of Homeland Security.<sup>36</sup>
2. There is \$2 million in FY 2022, \$4 million in FY 2023, \$3 million in FY 2024, and \$1 million in FY 2025 appropriated to this program.

<sup>28</sup> H.R. 3684 Division J, Title IV

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

<sup>30</sup> H.R. 3684 SEC. 60502 (a)(2) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)-(b)

<sup>31</sup> H.R. 3684 SEC. 60502 (b)(1) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)(7)

<sup>32</sup> H.R. 3684 SEC. 60502 (a)(3) adding Pub. Law No. 116-260, Division N, Sec. 904 (a)(7)(B)

<sup>33</sup> H.R. 3684 SEC. 60502 (a)(3) adding Pub. Law No. 116-260, Division N, Sec. 904 (a)(7)

<sup>34</sup> H.R. 3684 SEC. 60502 (a)(3) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)(10)

<sup>35</sup> H.R. 3684 SEC. 60502 (a)(3) amending Pub. Law No. 116-260, Division N, Sec. 904 (a)(11)

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

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>37</sup>
4. Cybersecurity plans must consist of the following to the extent practicable:<sup>38</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.
  - 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>39</sup>
6. Approved cybersecurity plans will be valid for two years and then must be reviewed annually thereafter.<sup>40</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>41</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>42</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>43</sup>
10. The Secretary of Homeland Security shall consult with Tribes in the implementation of this program.<sup>44</sup>

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

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