# New Federal Legislation Eases Access to Financing for Broadband Projects with Qualified Private Activity Bonds

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Congress has passed the Infrastructure Investment and Jobs Act of 2021, which President Biden signed on November 15, 2021. The Act includes approximately $65 billion in funding opportunities for the deployment of broadband services in rural areas. In addition to the creation of a broadband grant program, the new legislation modifies Section 142(a) of the Internal Revenue Code to add broadband as an allowable use for qualified private activity bonds.

Governmental bonds are issued to finance projects owned by state and local governments such as government office buildings, highways, and sewer and water facilities. Typically, for holders of governmental bonds, interest earned is exempt from federal income taxes. The Internal Revenue Code also allows the use of tax-exempt bonds, called qualified private activity bonds, by state and local governments to finance certain qualified private activities or projects that benefit private entities such as private hospital facilities or the expansion of a manufacturing facility.

With the new legislation, state and local governments can issue qualified private activity bonds beginning in 2022 to finance qualified broadband projects for rural areas. A qualified broadband project is any project designed to provide broadband service to underserved geographic areas where a majority of households do not currently receive certain minimum broadband speeds (an “Eligible Area”) and that results in such areas receiving certain minimum broadband speeds after the project is complete (the “Required Results”).

An Eligible Area is one or more census block group in which more than 50% of the residential households do not have access to certain minimum broadband speeds. Specifically, the broadband service delivered to an Eligible Area before the deployment of a qualified broadband project must be less than 25 megabits per second downstream and less than 3 megabits service upstream. To meet the Required Results, a qualified broadband project must provide internet access to residential locations, commercial locations or a combination of each, at speeds not less than 100 megabits per second for downloads and 20 megabits per second for upload, provided that at least 90% of the locations provided the Required Results are locations where, before the project, a broadband service provider either did not provide service or did not provide service meeting the minimum speeds required for an Eligible Area.

The new legislation also requires that an issuer of qualified private activity bonds notify each broadband service provider providing services within the Eligible Area of the project and the scope of the project. Such notice must include a request for information from such service providers regarding the provider’s ability to deploy, manage and maintain a broadband network capable of providing internet access to the

Eligible Area meeting the Required Results. Each broadband service provider must have at least 90 days to respond to the notice and request.

For qualified private activity bonds, Congress limits the amount of such bonds that states can use for private activities by setting an annual state volume limit known as volume cap. The amount of volume cap allocated to each state is currently the greater of either (i) $110 multiplied by the state's population or (ii) $324,995,000. Arkansas's volume cap limit for all categories for qualified private activity projects, except multifamily housing projects, for 2021 is $330,000,000. The Arkansas Development Finance Authority (ADFA) is the state agency responsible for allocating the State's volume cap amount among agencies, municipalities or private activity bond categories. An issuer wishing to obtain an allocation of volume cap for its qualified private activity project must submit an application to ADFA.

Under the new legislation, only 25% of any qualified broadband project is subject to volume cap restrictions. This means that an issuer with a qualified broadband project in the principal amount of $100,000 must apply to ADFA for an allocation of volume cap for 25% of the principal amount, or $25,000, while the remaining 75%, or $75,000 is exempt from the volume cap requirement. Any qualified broadband project owned by a state or local government is not subject to the volume cap restrictions.

Broadband projects in underserved areas now have access to more financing options with the addition of the use of qualified private activity bonds and the federal broadband grant program under the new legislation. However, because of the specific requirements for the Eligible Areas and the Required Results of a qualified broadband project, the number of broadband projects that are eligible to be financed with qualified private activity bonds may be limited.