

Broadband Loan and Grant Programs in the USDA's Rural Utilities Service

Lennard G. Kruger
Specialist in Science and Technology Policy

October 14, 2011

Congressional Research Service
7-5700
www.crs.gov
RL33816

CRS Report for Congress
Prepared for Members and Committees of Congress
c11173008

Summary

Given the large potential impact broadband access may have on the economic development of rural America, concern has been raised over a "digital divide" between rural and urban or suburban areas with respect to broadband deployment. While there are many examples of rural communities with state of the art telecommunications facilities, recent surveys and studies have indicated that, in general, rural areas tend to lag behind urban and suburban areas in broadband deployment.

Citing the lagging deployment of broadband in many rural areas, Congress and the Administration acted in 2001 and 2002 to initiate pilot broadband loan and grant programs within the Rural Utilities Service (RUS) at the U.S. Department of Agriculture (USDA). Subsequently, Section 6103 of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171) amended the Rural Electrification Act of 1936 to authorize a loan and loan guarantee program to provide funds for the costs of the construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. The RUS/USDA houses two assistance programs exclusively dedicated to financing broadband deployment: the Rural Broadband Access Loan and Loan Guarantee Program and the Community Connect Grant Program.

The 110th Congress considered reauthorization and modification of the loan and loan guarantee program as part of the 2008 Farm Bill. The Food, Conservation, and Energy Act of 2008 became law on June 18, 2008 (P.L. 110-246). Title VI (Rural Development) contains authorizing language for the broadband loan program.

During 2009 and 2010, the Rural Broadband Access Loan and Loan Guarantee Program (also referred to as the Farm Bill Broadband Loan Program) was on hiatus as RUS implemented the Broadband Initiatives Program (BIP) established under the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). At the same time, final regulations implementing the broadband loan program as reauthorized by the 2008 Farm Bill were refined to reflect, in part, RUS experience in implementing BIP. Subsequently, on March 14, 2011, an Interim Rule and Notice was published in the *Federal Register* setting forth the rules and regulations for the broadband loan program as reauthorized by P.L. 110-246.

As reauthorized by the 2008 Farm Bill, the Rural Broadband Access Loan and Loan Guarantee Program is currently authorized through FY2012. Therefore, it is expected that the 112th Congress may consider reauthorization of the broadband loan program in the 2012 Farm Bill. As part of this consideration, Congress may focus on how effectively and cost efficiently the RUS broadband programs are addressing the lack of adequate broadband service in underserved rural communities.

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Background: Broadband and Rural America

The broadband loan and grant programs at RUS are intended to accelerate the deployment of broadband services in rural America. "Broadband" refers to high-speed Internet access and advanced telecommunications services for private homes, commercial establishments, schools, and public institutions. Currently in the United States, residential broadband is primarily provided via mobile wireless (e.g., "smartphones"), cable modem (from the local provider of cable television service), or over the telephone line (digital subscriber line or "DSL"). Other broadband technologies include fiber optic cable, fixed wireless, satellite, and broadband over power lines (BPL).

Broadband access enables a number of beneficial applications to individual users and to communities. These include e-commerce, telecommuting, voice service (voice over the Internet protocol or "VOIP"), distance learning, telemedicine, public safety, and others. It is becoming generally accepted that broadband access in a community can play an important role in economic development. A February 2006 study by the Massachusetts Institute of Technology for the Department of Commerce's Economic Development Administration marked the first attempt to measure the impact of broadband on economic growth. The study found that "between 1998 and 2002, communities in which mass-market broadband was available by December 1999 experienced more rapid growth in employment, the number of businesses overall, and businesses in IT-intensive sectors, relative to comparable communities without broadband at that time."[1]

Subsequently, a June 2007 report from the Brookings Institution found that for every one percentage point increase in broadband penetration in a state, employment is projected to increase by 0.2% to 0.3% per year. For the entire U.S. private non-farm economy, the study projected an increase of about 300,000 jobs, assuming the economy is not already at full employment.[2] Similarly, an August 2009 report from the USDA Economic Research Service found that counties with a longer history of broadband availability had higher employment growth and higher nonfarm private earnings than similarly situated counties with little or no broadband access since 2000.[3]

Access to affordable broadband is viewed as particularly important for the economic development of rural areas because it enables individuals and businesses to participate fully in the online economy regardless of geographical location. For example, aside from enabling existing businesses to remain in their rural locations, broadband access could attract new business enterprises drawn by lower costs and a more desirable lifestyle. Essentially, broadband potentially

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[1] Gillett, Sharon E., Massachusetts Institute of Technology, *Measuring Broadband's Economic Impact*, report prepared for the Economic Development Administration, U.S. Department of Commerce, February 28, 2006, p. 4. Available at http://www.eda.gov/ImageCache/EDAPublic/documents/pdfdocs2006/mitcmubbimpactreport_2epdf/v1/mitcmubbimpactreport.pdf.

[2] Crandall, Robert, William Lehr, and Robert Litan, *The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data*, June 2007, 20 pp. Available at http://www3.brookings.edu/views/papers/crandall/200706litan.pdf.

[3] Peter Stenberg, Mitchell Morehart, and Stephen Vogel, et al., *Broadband Internet's Value for Rural America*, United States Department of Agriculture, Economic Research Service, Economic Research Report Number 78, Washington, DC, August 2009, p. iii, http://www.ers.usda.gov/Publications/ERR78/ERR78.pdf.

allows businesses and individuals in rural America to live locally while competing globally in an online environment.

Given the large potential impact broadband may have on the economic development of rural America, concern has been raised over a "digital divide" between rural and urban or suburban areas with respect to broadband deployment. While there are many examples of rural communities with state of the art telecommunications facilities,[4] recent surveys and studies have indicated that, in general, rural areas tend to lag behind urban and suburban areas in broadband deployment. For example:

- The FCC's *Seventh Broadband Deployment Report*, released on May 20, 2011, concluded that as many as 26 million Americans live in areas unserved by broadband (defined as service no less than 4 Mbps download/1 Mbps upload), and stated that "the situation is particularly bleak for Americans in rural and Tribal areas."[5]
- The February 2011 Department of Commerce report, *Digital Nation: Expanding Internet Usage*, found that while the digital divide between urban and rural areas has lessened since 2007, it still persists with 70% of urban households accessing broadband service in 2009, compared to 60% of rural households.[6]
- According to data from the National Broadband Map, released in February 2011, 98.3% of the population in urban areas has available broadband speeds of at least 3 Mbps (download)/768 kbps (upload), as opposed to 84.8% of the population in rural areas.[7]
- 2010 data from the Pew Internet & American Life Project indicate that while broadband adoption is growing in rural areas, broadband users make up larger percentages of non-rural users than rural users. Pew found that the percentage of all U.S. adults with broadband at home is 70% for non-rural areas and 50% for rural areas.[8]
- The FCC's National Broadband Plan, released on March 16, 2010, found that 14 million people living in 7 million housing units do not have access to terrestrial broadband capable of download speeds of 4 Mbps, and that such housing units are more common in rural areas.[9]

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[4] See for example: National Exchange Carrier Association (NECA), *Trends 2006: Making Progress With Broadband*, 2006, 26 p. Available at http://www.neca.org/media/trends_brochure_website.pdf.

[5] Federal Communications Commission, *Seventh Broadband Deployment Report*, FCC 11-78, released May 20, 2011, p. 2, 4, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0520/FCC-11-78A1.pdf.

[6] U.S. Department of Commerce, National Telecommunications and Information Administration, *Digital Nation: Expanding Internet Usage*, February 2011, p. 16, available at http://www.ntia.doc.gov/reports/2011/NTIA_Internet_Use_Report_February_2011.pdf.

[7] NTIA, National Broadband Map, *Broadband Statistics Report: Broadband Availability in Urban vs. Rural Areas*, p. 7, available at http://www.broadbandmap.gov/download/reports/national-broadband-map-broadband-availability-in-rural-vs-urban-areas.pdf.

[8] Smith, Aaron, Pew Internet & American Life Project, *Home Broadband 2010*, August 11, 2010, p. 8, available at http://www.pewinternet.org/~/media//Files/Reports/2010/Home%20broadband%202010.pdf.

[9] Federal Communications Commission, *Connecting America: The National Broadband Plan*, March 17, 2010, p. 20, (continued...)

- An August 2009 report from the USDA Economic Research Service found that 70% of rural households with in-home Internet access had a broadband connection in 2007, compared with 84% of urban households.[10]

The comparatively lower population density of rural areas is likely the major reason why broadband is less deployed than in more highly populated suburban and urban areas. Particularly for wireline broadband technologies—such as cable modem and DSL—the greater the geographical distances among customers, the larger the cost to serve those customers. Thus, there is often less incentive for companies to invest in broadband in rural areas than, for example, in an urban area where there is more demand (more customers with perhaps higher incomes) and less cost to wire the market area.

The terrain of rural areas can also be a hindrance, in that it is more expensive to deploy broadband technologies in a mountainous or heavily forested area. An additional added cost factor for remote areas can be the expense of "backhaul" (e.g., the "middle mile") which refers to the installation of a dedicated line which transmits a signal to and from an Internet backbone which is typically located in or near an urban area.

Pilot Broadband Loan and Grant Programs

Given the lagging deployment of broadband in rural areas, Congress and the Administration acted to initiate pilot broadband loan and grant programs within the Rural Utilities Service of the U.S. Department of Agriculture. While RUS had long maintained telecommunications loan and grant programs (Rural Telephone Loans and Loan Guarantees, Rural Telephone Bank, and more recently, the Distance Learning and Telemedicine Loans and Grants) none were exclusively dedicated to financing rural broadband deployment. Title III of the FY2001 agriculture appropriations bill (P.L. 106-387) directed USDA/RUS to conduct a "pilot program to finance broadband transmission and local dial-up Internet service in areas that meet the definition of 'rural area' used for the Distance Learning and Telemedicine Program."

Subsequently, on December 5, 2000, RUS announced the availability of $100 million in loan funding through a one-year pilot program "to finance the construction and installation of broadband telecommunications services in rural America."[11] The broadband pilot loan program was authorized under the authority of the Distance Learning and Telemedicine Program (7 U.S.C. 950aaa), and was available to "legally organized entities" not located within the boundaries of a city or town having a population in excess of 20,000.

The FY2001 pilot broadband loan program received applications requesting a total of $350 million. RUS approved funding for 12 applications totaling $100 million. The FY2002 agriculture appropriations bill (P.L. 107-76) designated a loan level of $80 million for broadband loans, and

(...continued)

available at http://download.broadband.gov/plan/national-broadband-plan.pdf.

[10] *Broadband Internet's Value for Rural America*, p. iii.

[11] Rural Utilities Service, USDA, "Construction and Installation of Broadband Telecommunications Services in Rural America; Availability of Loan Funds," *Federal Register*, Vol. 65, No. 234, December 5, 2000, p. 75920.

on January 23, 2002, RUS announced that the pilot program would be extended into FY2002, with $80 million in loans made available to fund many of the applications that did not receive funding during the previous year.[12]

Meanwhile, the FY2002 agriculture appropriations bill (P.L. 107-76) allocated $20 million for a pilot broadband grant program, also authorized under the Distance Learning and Telemedicine Program. On July 8, 2002, RUS announced the availability of $20 million for a pilot grant program for the provision of broadband service in rural America. The program was specifically targeted to economically challenged rural communities with no existing broadband service. Grants were made available to entities providing "community-oriented connectivity," which the RUS defined as those entities "who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents."[13]

In response to the July 8, 2002, Notice of Funds Availability, RUS received more than 300 applications totaling more than $185 million in requested grant funding. RUS approved 40 grants totaling $20 million. The pilot program was extended into FY2003, as the Consolidated Appropriations Resolution of 2003 (P.L. 108-7) allocated $10 million for broadband grants. On September 24, 2003, 34 grants were awarded to eligible applicants who did not receive funding during the previous year.

Rural Broadband Access Loan and Loan Guarantee Program

Building on the pilot broadband loan program at RUS, Section 6103 of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171) amended the Rural Electrification Act of 1936 to authorize a loan and loan guarantee program to provide funds for the costs of the construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities.[14] Section 6103 made available, from the funds of the Commodity Credit Corporation (CCC), a total of $100 million through FY2007. P.L. 107-171 also authorized any other funds appropriated for the broadband loan program. The program was subsequently reauthorized by Section 6110 of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246).

Beginning in FY2004, Congress annually blocked mandatory funding from the CCC. Thus—starting in FY2004—the program was funded as part of annual appropriations in the Distance Learning and Telemedicine account within the Department of Agriculture appropriations bill. Every fiscal year, Congress approves an appropriation (loan subsidy) and a specific loan level (lending authority) for the Rural Broadband Access Loan and Loan Guarantee Program. **Table 1** shows—for the life of the program to date—loan subsidies and loan levels (lending authority).

[12] Rural Utilities Service, USDA, "Broadband Pilot Loan Program," *Federal Register*, Vol. 67, No. 15, January 23, 2002, p. 3140.

[13] Rural Utilities Service, USDA, "Broadband Pilot Grant Program," *Federal Register*, Vol. 67, No. 130, July 8, 2002, p. 45080.

[14] Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 950bb).

Table 1. Appropriations Funding for the Rural Broadband Access Loan and Loan Guarantee Program

	Direct Appropriations (subsidy level)	Loan Levels Specified in Annual Appropriations
FY2001 (pilot)	—	$100 million
FY2002 (pilot)	—	$80 million
FY2003	[a]	$80 million
FY2004	$13.1 million	$602 million
FY2005	$11.715 million	$550 million
FY2006	$10.75 million	$500 million
FY2007	$10.75 million	$500 million
FY2008	$6.45 million	$300 million
FY2009	$15.619 million	$400 million
FY2010	$28.96 million	$400 million
FY2011	$22.32 million	$400 million

Source: Compiled by CRS from appropriations bills.

a. Program received $40 million composed of $20 million from FY2002 plus $20 million from FY2003 of mandatory funding from the Commodity Credit Corporation, as directed by P.L. 107-171. In the FY2004, FY2005, and FY2006 appropriations bills, mandatory funding from the CCC was canceled.

The Rural Broadband Access Loan and Loan Guarantee Program is codified as 7 U.S.C. 950bb. On March 14, 2011, the RUS published in the *Federal Register* the Interim Rule (7 C.F.R. part 1738) implementing the Rural Broadband Access Loan and Loan Guarantee Program, as reauthorized by the 2008 Farm Bill (P.L. 110-246).[15] Entities eligible to receive loans include corporations, limited liability companies, cooperative or mutual organizations, Indian tribes, and state or local government. Individuals or partnerships are not eligible.

Specifically, Treasury rate loans, 4% loans, and loan guarantees are authorized for entities proposing to provide broadband to at least one service area within a rural area, defined as any area not contained in an incorporated city or town with a population in excess of 20,000 inhabitants, or an urbanized area contiguous and adjacent to a city or town that has a population greater than 50,000 inhabitants. In addition to being located entirely within a rural area, a service area must meet the following criteria to be eligible for a broadband loan:

- At least 25% of the households are underserved, meaning they are offered broadband service by no more than one "incumbent service provider." Incumbent service providers are broadband providers that RUS identifies as directly providing broadband service to at least 5 percent of the households within a service area.

[15] Department of Agriculture, Rural Utilities Service, "Rural Broadband Access Loans and Loan Guarantees," 76 *Federal Register* 13769-13796, March 14, 2011.

- No part of the service area has three or more "incumbent service providers."
- No part of the funded service area overlaps with the service area of current RUS borrowers and grantees.
- No part of the funded service area is included in a pending application before RUS seeking funding to provide broadband service. If two or more applications are submitted for the same service area, a lending decision must be reached on the application that was submitted to RUS first before a lending decision can be made on the other application(s).

Service area exceptions are provided for projects seeking existing broadband facility upgrades. RUS will give greatest priority to applicants that propose to offer broadband to the greatest proportion of households that have no incumbent service provider. While RUS is "technology neutral" with respect to which kind of broadband technologies are funded, each notice of funding will specify a minimum speed definition of broadband service for the purpose of determining the number of incumbent broadband service providers in a proposed service area. Additionally, RUS will specify a minimum broadband lending speed, which is the minimum bandwidth requirement that the applicant must deliver to the customer in order for RUS to fund a broadband loan. Minimum speeds will likely be increased periodically as broadband technology advances. For FY2011, the Notice of Solicitation of Applications (NOSA), released on March 14, 2011, defines broadband service as a minimum speed of 3 megabits per second (download plus upload speeds) for both fixed and mobile broadband service. The NOSA specifies the broadband lending speed at a minimum of 5 megabits per second (download plus upload) for fixed and mobile broadband.[16]

Applications for the Rural Broadband Access Loan and Loan Guarantee program are accepted at any time. Further information, including application materials and guidelines, is available at http://www.rurdev.usda.gov/utp_farmbill.html.

Community Connect Broadband Grants

The Consolidated Appropriations Act of 2004 (P.L. 108-199) appropriated $9 million "for a grant program to finance broadband transmission in rural areas eligible for Distance Learning and Telemedicine Program benefits authorized by 7 U.S.C. 950aaa." On July 28, 2004, RUS published its final rule on the broadband grant program, called the Community Connect Grant Program (7 C.F.R. part 1739, subpart A).[17] Further refinements to the final rule were published in the *Federal Register* on August 3, 2007.[18]

Essentially operating the same as the pilot broadband grants, the program provides grant money to applicants proposing to provide broadband on a "community-oriented connectivity" basis to

[16] Department of Agriculture, Rural Utilities Service, "Rural Broadband Access Loans and Loan Guarantees Program, Notice of Solicitation of Applications (NOSA).," 76 *Federal Register* 13797, March 14, 2011.

[17] Rural Utilities Service, USDA, "Broadband Grant Program," 7 C.F.R. part 1739, *Federal Register*, Vol. 69, No. 144, July 28, 2004, pp. 44896-44903.

[18] Department of Agriculture, Rural Utilities Service, "Community Connect Broadband Grant Program," 72 *Federal Register* 43131-43137, August 3, 2007.

currently unserved rural areas for the purpose of fostering economic growth and delivering enhanced health care, education, and public safety services. Funding for the broadband grant program is provided through annual appropriations in the Distance Learning and Telemedicine account within the Department of Agriculture appropriations bill. **Table 2** shows a history of appropriations for the Community Connect Broadband Grants.

Table 2. Appropriations for the Community Connect Broadband Grants

Fiscal Year	Appropriation
FY2002	$20 million
FY2003	$10 million
FY2004	$9 million
FY2005	$9 million
FY2006	$9 million
FY2007	$9 million
FY2008	$13.4 million
FY2009	$13.4 million
FY2010	$17.9 million
FY2011[a]	$13.4 million

Source: Compiled by CRS from appropriations bills.

a. P.L. 112-10, Department of Defense and Full-Year Continuing Appropriations Act, 2011.

Eligible applicants for broadband grants include incorporated organizations, Indian tribes or tribal organizations, state or local units of government, or cooperatives, private corporations, and limited liability companies organized on a for profit or not-for-profit basis. Individuals or partnerships are not eligible.

Funded projects must serve a rural area of 20,000 population or less where broadband service does not exist, serve one and only one single community, deploy free basic broadband service for at least two years to all community facilities, offer basic broadband to residential and business customers, and provide a community center with at least 10 computer access points within the proposed service area while making broadband available for two years at no charge to users within that community center.

Since the inception of the RUS broadband grant program, $97.1 million in grant money has been awarded to 195 communities. Awardees must contribute a matching contribution equal to 15% of the requested grant amount.

RUS typically publishes an annual Notice of Funding Availability (NOFA) in the *Federal Register*, which specifies the deadline for applications, the total amount of funding available, and the maximum and minimum amount of funding available for each grant. Further information, including application materials and guidelines, is available at http://www.rurdev.usda.gov/utp_commconnect.html.

The American Recovery and Reinvestment Act (P.L. 111-5)

On February 17, 2009, President Obama signed P.L. 111-5, the American Recovery and Reinvestment Act (ARRA). Broadband provisions of the ARRA provided a total of $7.2 billion, primarily for broadband grants. The total consisted of $2.5 billion to RUS broadband loan, grant, and loan/grant combinations, and $4.7 billion to NTIA/DOC for a newly established Broadband Technology Opportunities Program.[19]

The ARRA did not specify how the $2.5 billion is to be divided between the RUS grant and loan programs. Regarding projects applying for funding, the ARRA stated that

- at least 75% of the area to be served by a project receiving these funds shall be in a rural area without sufficient access to high speed broadband service to facilitate economic development, as determined by the Secretary of Agriculture;
- priority shall be given to projects that will deliver end users a choice of more than one broadband service provider;
- priority shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service;
- priority shall be given to borrowers and former borrowers of rural telephone loans;
- priority shall be given to projects demonstrating that all project elements will be fully funded, that can commence promptly, and that can be completed; and
- no area of a project may receive funding to provide broadband service under the Broadband Technology Opportunities Program at NTIA/DOC.

The ARRA also directed the Federal Communications Commission to develop a National Broadband Plan (NBP). The NBP was released on March 16, 2010. Among its many recommendations, the FCC recommended that Congress should consider expanding combination grant-loan programs. The NBP also recommended that Congress should consider expanding the Community Connect grant program, both in size and in the scope of its eligibility criteria.

Other Broadband Programs

Prior to enactment of the American Recovery and Reinvestment Act (P.L. 111-5), which established stimulus broadband grant and loan programs at RUS and the Department of Commerce, the Rural Broadband Access Loan and Loan Guarantee Program and the Community Connect Broadband Grants were the only federal programs *exclusively* dedicated to deploying broadband infrastructure.

[19] For more information on ARRA broadband programs, see CRS Report R41775, *Background and Issues for Congressional Oversight of ARRA Broadband Awards*, by Lennard G. Kruger.

There also exist other federal programs that provide financial assistance for various aspects of telecommunications development.[20] Though not explicitly or exclusively devoted to broadband, many of those programs are used to help deploy broadband technologies in rural areas. For example, since 1995, the RUS Rural Telephone Loan and Loan Guarantee program—which has traditionally financed telephone voice service in rural areas under 5,000 inhabitants—has required that all telephone facilities receiving financing must be capable of providing DSL broadband service at a rate of at least 1 megabyte per second.[21]

Another RUS telecommunications program, Distance Learning and Telemedicine (DLT), is used to support deployment of broadband technologies specifically for telemedicine and distance learning applications. DLT offers loans, grants, and loan/grant combinations to entities providing education and medical care via telecommunications.[22]

The other major vehicle for funding telecommunications development in rural areas is the Universal Service Fund (USF).[23] Subsidies provided by USF's Schools and Libraries Program and Rural Health Care Program are used for a variety of telecommunications services, including broadband access. While the USF's High Cost Program does not *explicitly* fund broadband infrastructure, subsidies are used, in many cases, to upgrade existing telephone networks. Regarding the USF High Cost Program, the Congressional Budget Office has found that "current policy implicitly provides funds for broadband in rural areas," adding that

> Whether such upgrades are motivated by the intention to provide broadband or better conventional telephone service is not immediately clear. However, the fact that wireline carriers as a whole have been losing subscribers and long-distance revenue over the past half decade suggests that at least part of the new investment in local loops has been made with the expectation of generating revenue from broadband subscriptions.[24]

RUS grants and loans are used as up-front capital (either grants or loans) to invest in broadband infrastructure, whereas the USF high cost fund is an ongoing subsidy to keep the operation of telecommunications networks in high cost areas profitable for providers. Many RUS telecommunications and broadband borrowers (loans recipients) receive high cost USF subsidies. In many cases, the subsidy received from USF helps provide the revenue necessary to keep the loan viable. The Rural Telephone Loan and Loan Guarantee program is highly dependent on high cost USF revenues, with 99% (476 out of 480 borrowers) receiving interstate high cost USF support. This is not surprising, given that the RUS Telecommunications Loans are available only to the most rural and high cost areas (towns with populations less than 5,000). Regarding broadband loans, 60% of BIP (stimulus) borrowers draw from state or interstate USF support

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[20] See CRS Report RL30719, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, by Lennard G. Kruger and Angele A. Gilroy.

[21] In the Rural Electrification Loan Restructuring Act (P.L. 103-129, the 1993 farm bill), Congress amended the Rural Electrification Act to require that facilities financed under this program be capable of providing broadband service at the rate of 1 megabyte per second (7 U.S.C. 935(d)(3)(B)(iv)(I)(cc).

[22] For more information on the DLT program, see http://www.rurdev.usda.gov/UTP_DLT.html.

[23] For more information on the Universal Service Fund, see CRS Report RL33979, *Universal Service Fund: Background and Options for Reform*, by Angele A. Gilroy.

[24] Congressional Budget Office, *Factors That May Increase Future Spending from the Universal Service Fund*, CBO Paper, June 2006, p. 25. Available at http://www.cbo.gov/ftpdocs/72xx/doc7291/06-16-UniversalService.pdf.

mechanisms, while 10% of farm bill (Rural Broadband Access Loan and Loan Guarantee Program) broadband borrowers receive interstate high cost USF support.[25] Thus, to the extent that USF may be reformed, this could have an impact on the viability of RUS telecommunications and broadband loans.

The 112th Congress is expected to oversee and consider possible universal service reforms currently being considered by the Federal Communications Commission. Such reforms could have a significant impact on the amount of financial assistance available for broadband deployment in rural and underserved areas. For more information on universal service, see CRS Report RL33979, *Universal Service Fund: Background and Options for Reform*, by Angele A. Gilroy.

Appropriations

The Rural Broadband Access Loan and Loan Guarantee Program and the Community Connect Grant Program are funded through the annual Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act. The appropriation provided to the broadband loan program is a loan subsidy which supports a significantly higher loan level.

Table 3. Recent and Proposed Appropriations for RUS Broadband Programs

(millions of dollars)

	FY2011 (Admin. request)	FY2011 (P.L. 112-10)	FY2012 (Admin. Request)	FY2012 (H.R. 2112 as passed by House)	FY2012 (H.R. 2112 as reported by Senate)
Broadband Loans	22.32	22.32 ($400 million loan level)	0	5.953 ($210 million loan level)	8.000 ($280 million loan level)
Community Connect Grants	17.98	13.40	17.98	0	10.372

FY2010

The Obama Administration's FY2010 budget proposal requested a $38.495 million loan subsidy to support a loan level of $532 million for the Rural Broadband Access Loan and Loan Guarantee Program, and $13.406 million for the Community Connect Grant Program.

On June 18, 2009, the House Appropriations Committee approved the FY2010 agriculture appropriations bill (H.R. 2997; H.Rept. 111-181). The committee approved a $28.96 million loan subsidy to support a loan level of $400 million for the Rural Broadband Access Loan and Loan

[25] Jessica Zufolo, Deputy Administrator, RUS, *Overview of the RUS Telecommunications Loan and Grant Programs*, July 2011, Slide 7, available at http://www.narucmeetings.org/Presentations/Zufolo_7-2011.pdf.

Guarantee Program, and $17.976 million for the Community Connect Grant Program. The House passed H.R. 2997 on July 9, 2009.

On July 7, 2009, the Senate Appropriations Committee approved its version of the FY2010 agriculture appropriations bill (S. 1406; S.Rept. 111-39). Matching the Administration request, the committee approved a $38.495 million loan subsidy to support a loan level of $532 million for the Rural Broadband Access Loan and Loan Guarantee Program, and $13.406 million for the Community Connect Grant Program. The Senate passed H.R. 2997 on August 4, 2009.

The conference report (H.Rept. 111-279) was filed on September 30, 2009, and adopted the House provisions: approved a $28.96 million loan subsidy to support a loan level of $400 million for the Rural Broadband Access Loan and Loan Guarantee Program, and $17.976 million for the Community Connect Grant Program. The bill was signed into law (P.L. 111-80) on October 21, 2009.

FY2011

The Obama Administration's FY2011 budget proposal requested a $22.32 million loan subsidy to support a loan level of $400 million for the Rural Broadband Access Loan and Loan Guarantee Program, and $17.976 million for the Community Connect Grant Program.

On July 15, 2010, the Senate Appropriations Committee reported the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2011. Matching the Administration's request, S. 3606 (S.Rept. 111-221) would provide $22.3 million to support a loan level of $400 million for the broadband loan program, and $17.97 million for community connect grants. The committee report directed the Secretary of USDA to analyze and report to the committee on the implications of the ARRA broadband investments toward extending broadband to remote underserved and unserved rural areas, and include lessons learned and suggestions on improving effectiveness of the regular broadband program, including the need for loan/grant combinations in developing successful projects with regular program funding. The Secretary was also directed to use preliminary information provided under the National Broadband Map initiative mandated by the ARRA, and submit the report no later than 30 days after issuance of the map.

The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10) rescinded existing unobligated past-year funding for the Rural Broadband Access Loan and Loan Guarantee Program ($39 million rescission) and the Community Connect Grants ($25 million rescission). For FY2011, P.L. 112-10 appropriated $22.3 million to the Rural Broadband Access Loan and Loan Guarantee Program for the cost of broadband loans (supporting a loan level estimated at $400 million), and $13.4 million to Community Connect Grants.

FY2012

The Administration's FY2012 budget proposal requested no funding for the Rural Broadband Access Loan and Loan Guarantee Program, citing an anticipated accumulation of past-year unobligated funding that would support a loan level totaling $1.2 billion. Since the FY2012 budget proposal was released, however, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10) rescinded all available unobligated budget authority from past years.

The Administration's FY2012 budget proposal requested $18 million for the Community Connect Grant Program.

On June 3, 2011, the House Appropriations Committee reported H.R. 2112, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012. As reported (H.Rept. 112-101), H.R. 2112 would provide no funding for either the Rural Broadband Access Loan and Loan Guarantee Program or the Community Connect Grant Program. On June 16, 2011, the House approved (by a vote of 221-198) an amendment offered by Representative Gibson that provides $6 million in budget authority for the broadband loan program. H.R. 2112, passed by the House on June 16, 2011, would provide a loan level of $210 million.

On September 7, 2011, the Senate Appropriations Committee reported its version of H.R. 2112 (S.Rept. 112-73). The Senate mark would provide $8 million in budget authority for broadband loans and a loan level of $282 million. The committee also provides $10.4 million for Community Connect grants. In its bill report, the committee encourages RUS to focus expenditures on projects that bring broadband service to currently unserved households.

Criticisms of RUS Broadband Programs

Broadband loan and grant programs have been awarding funds to entities serving rural communities since FY2001. Since their inception, a number of criticisms have emerged.

Loan Approval and Application Process

Perhaps the major criticism of the broadband loan program is that not enough loans are approved, thereby making it difficult for rural communities to take full advantage of the program. As of June 22, 2009, the broadband loan program received 225 applications, requesting a total of $4.7 billion in loans. Of these, 97 applications were approved (totaling $1.8 billion), 120 were returned (totaling $2.7 billion), and 8 are pending (totaling $170 million).[26] According to RUS officials, 28% of available loan money was awarded in 2004, and only 5% of available loan money was awarded in 2005.[27]

The loan application process has been criticized as being overly complex and burdensome, requiring applicants to spend months preparing costly market research and engineering assessments. Many applications are rejected because the applicant's business plan is deemed insufficient to support a commercially viable business. The biggest reason for applications being returned has been insufficient credit support, whereby applicants do not have sufficient cash-on-hand (one year's worth is required in most cases). The requirement for cash-on-hand is viewed as particularly onerous for small start up companies, many of whom lack sufficient capital to qualify

[26] Private communication, USDA, June 23, 2009.

[27] GAO, *Broadband Deployment is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, p. 33.

for the loan. Such companies, critics assert, may be those entities most in need of financial assistance.

In report language to the FY2006 Department of Agriculture Appropriations Act (P.L. 109-97), the Senate Appropriations Committee (S.Rept. 109-92) directed the RUS "to reduce the burdensome application process and make the program requirements more reasonable, particularly in regard to cash-on-hand requirements." The committee also directed USDA to hire more full-time employees to remedy delays in application processing times.

At a May 17, 2006, hearing held by the Senate Committee on Agriculture, Nutrition, and Forestry, the Administrator of the RUS stated that RUS is working to make the program more user friendly, while at the same time protecting taxpayer investment:

> As good stewards of the taxpayers' money, we must make loans that are likely to be repaid. One of the challenges in determining whether a proposed project has a reasonable chance of success is validating the market analysis of the proposed service territory and ensuring that sufficient resources are available to cover operating expenses throughout the construction period until such a time that cash flow from operations become sufficient. The loan application process that we have developed ensures that the applicant addresses these areas and that appropriate resources are available for maintaining a viable operation.[28]

According to RUS, the loan program was initially overwhelmed by applications (particularly during a two week period in August 2003), and as the program matured, application review times have dropped.[29] On May 11, 2007, RUS released a Proposed Rule which sought to revise regulations for the broadband loan program. In the background material accompanying the Proposed Rule, RUS stated that the average application processing time in 2006 was almost half of what it was in 2003.[30]

Eligibility Criteria

Since the inception of the broadband grant and loan programs, the criteria for applicant eligibility has been criticized both for being too broad and for being too narrow. An audit report released by USDA's Office of Inspector General (IG) found that the "programs' focus has shifted away from those rural communities that would not, without Government assistance, have access to broadband technologies."[31] Specifically the IG report found that the RUS definition of rural area has been "too broad to distinguish usefully between suburban and rural communities,"[32] with the result that, as of March 10, 2005, $103.4 million in loans and grants (nearly 12% of total funding

[28] Testimony of Jim Andrew, Administrator, Rural Utilities Service, U.S. Department of Agriculture, "Broadband Program Administered by USDA's Rural Utilities Service," full committee hearing before the Senate Committee on Agriculture, Nutrition, and Forestry, 109th Congress, May 17, 2006.

[29] Rural Utilities Service, private communication, January 18, 2007.

[30] Rural Utilities Service, Department of Agriculture, "Rural Broadband Access Loans and Loan Guarantees," Proposed Rule, *Federal Register*, Vol. 72, No. 91, May 11, 2007, p. 26744.

[31] U.S. Department of Agriculture, Office of Inspector General, Southwest Region, *Audit Report: Rural Utilities Service Broadband Grant and Loan Programs*, Audit Report 09601-4-Te, September 2005, p. I. Available at http://www.usda.gov/oig/webdocs/09601-04-TE.pdf.

[32] Ibid., p. 6.

awarded) had been awarded to 64 communities located near large cities. The report cited examples of affluent suburban subdivisions qualifying as rural areas under the program guidelines and receiving broadband loans.[33]

On the other hand, eligibility requirements have also been criticized as too narrow. For example, the limitation of assistance only to communities of 20,000 or less in population excludes small rural towns that may exceed this limit, and also excludes many municipalities seeking to deploy their own networks.[34] Similarly, per capita income requirements can preclude higher income communities with higher costs of living (e.g., rural Alaska), and the limitation of grant programs only to underserved areas excludes rural communities with existing but very limited broadband access.[35]

Loans to Communities With Existing Providers

The IG report found that RUS too often has given loans to communities with existing broadband service. The IG report found that "RUS has not ensured that communities without broadband service receive first priority for loans," and that although RUS has a system in place to prioritize loans to unserved communities, the system "lacks a cutoff date and functions as a rolling selection process—priorities are decided based on the applicants who happen to be in the pool at any given moment."[36] The result is that a significant number of communities with some level of preexisting broadband service have received loans. According to the IG report, of 11 loans awarded in 2004, 66% of the associated communities served by those loans had existing service. According to RUS, 31% of communities served by all loans (during the period 2003 through early 2005) had preexisting competitive service (not including loans used to upgrade or expand existing service).[37] In some cases, according to the IG report, "loans were issued to companies in highly competitive business environments where multiple providers competed for relatively few customers."[38] At the May 1, 2007, hearing before the House Subcommittee on Specialty Crops, Rural Development, and Foreign Agriculture, then-RUS Administrator James Andrews testified that of the 69 broadband loans awarded since the program's inception, 40% of the communities approved for funding were unserved at the time of loan approval, and an additional 15% had only one broadband provider.[39]

Awarding loans to entities in communities with preexisting competitive service raised criticism from competitors who already offer broadband to those communities. According to the National Cable and Telecommunications Association (NCTA), "RUS loans are being used to unfairly

[33] Ibid., p. 8.

[34] Martinez, Michael, "Broadband: Loan Fund's Strict Rules Foil Small Municipalities," *National Journal's Technology Daily*, August 23, 2005.

[35] GAO, *Broadband Deployment is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, p. 33-34.

[36] Ibid., p. 13.

[37] Ibid., p. 14.

[38] Ibid., p. 15

[39] Testimony of James Andrew, Administrator, Rural Utilities Service, U.S. Department of Agriculture, before the Subcommittee on Specialty Crops, Rural Development, and Foreign Agriculture, House Committee on Agriculture, May 1, 2007.

subsidize second and third broadband providers in communities where private risk capital already has been invested to provide broadband service."[40] Critics argued that providing loans in areas with preexisting competitive broadband service creates an uneven playing field and discourages further private investment in rural broadband.[41] In response, RUS stated in the IG report that its policies are in accordance with the statute, and that they address "the need for competition to increase the quality of services and reduce the cost of those services to the consumer."[42] RUS argued that the presence of a competitor does not necessarily mean that an area is adequately served, and additionally, that in order for some borrowers to maintain a viable business in an unserved area, it may be necessary for that company to also be serving more densely populated rural areas where some level of competition already exists.[43]

Follow-Up Audit by USDA Office of Inspector General

In 2008, as directed by the House Appropriations Committee (H.Rept. 110-258, FY2008 Agriculture appropriations bill), the IG reexamined the RUS broadband loan and loan guarantee program to determine whether RUS had taken sufficient corrective actions in response to the issues raised in the 2005 IG report. The IG concluded "the key problems identified in our 2005 report—loans being issued to suburban and exurban communities and loans being issued where other providers already provide access—have not been resolved."[44]

Specifically, the follow-up IG report found that between 2005 and 2008, RUS broadband borrowers providing services in 148 communities were within 30 miles of cities with 200,000 inhabitants, including communities near very large urban areas such as Chicago and Las Vegas.

The IG report also found that since 2005 "RUS has continued providing loans to providers in markets where there is already competing service."[45] Of the 37 applications approved since September 2005, 34 loans were granted to applicants in areas where one or more private broadband providers already offered service. These 34 borrowers received $873 million to service 1,448 communities. The IG report found that since 2005, 77% of communities which were expected to receive service from a project financed by an approved RUS broadband loan had at least one existing broadband provider present, 59% had 2 or more existing providers, and 27% had 3 or more existing providers.[46]

In an official response to the follow-up IG report, RUS fundamentally disagreed with the IG criticisms, stating that the loans awarded between 2005 and 2008 were provided "in a way

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[40] Letter from Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association to the Honorable Mike Johanns, Secretary of the U.S. Department of Agriculture, May 16, 2006.

[41] Testimony of Tom Simmons, Vice President for Public Policy, Midcontinent Communications, before Senate Committee on Agriculture, Nutrition, and Forestry, May 17, 2006.

[42] *Audit Report: Rural Utilities Service Broadband Grant and Loan Programs*, p. 17.

[43] Rural Utilities Service, private communication, January 18, 2007.

[44] U.S. Department of Agriculture, Office of Inspector General, Southwest Region, Audit Report Rural Utilities Service Broadband Loan and Loan Guarantee Program, Report No. 09601-8-Te, March 2009, p. 9.

[45] Ibid, p. 5.

[46] Ibid, p. 5-6.

entirely consistent with the statutory requirements of the underlying legislation governing administration of the program, the regulations and guidance issued by the Department to implement the statute, and the intent of Congress."[47] Specifically RUS argued that its May 11, 2007, Proposed Rule, and the subsequent changes to the broadband loan and loan guarantee statute made by the 2008 farm bill, both addressed concerns over loans to non-rural areas and to communities with preexisting broadband providers. However, the Final Rule based on the Proposed Rule and the 2008 farm bill had not yet been released and implemented during the 2005-2008 period examined by the IG, and RUS was compelled by law to continue awarding broadband loans under the existing law and rules.

During 2009 and 2010, the Rural Broadband Access Loan and Loan Guarantee program was in hiatus while RUS implemented the Broadband Initiatives Program (Recovery Act grants and loans) and developed new regulations implementing the 2008 Farm Bill. On March 14, 2011, the new rules were released. According to Jonathan Adelstein, "this regulation and other measures taken by the agency have addressed all the concerns raised by the OIG," and on March 24, 2011, "the OIG notified RUS that it has closed its audits of the RUS broadband loan program."[48]

Broadband Loan Reauthorization: 2008 Farm Bill

The 110th Congress considered reauthorization of the Rural Broadband Access Loan and Loan Guarantee program as part of the 2008 Farm Bill. The following are some key issues which were considered during the debate over reauthorization of the RUS broadband loan and loan guarantee program.

Restricting Applicant Eligibility

The RUS broadband program was criticized for excluding too many applicants due to stringent financial requirements (e.g., the requirement that an applicant have a year's worth of cash-on-hand) and an application process—requiring detailed business plans and market surveys—that some viewed as overly expensive and burdensome to complete. During the reauthorization process, Congress considered whether the criteria for loan eligibility should be modified, and whether a more appropriate balance could be found between the need to make the program more accessible to unserved and often lower-income rural areas, and the need to protect taxpayers against bad loans.

Definition of "Rural Community"

The definition of which communities qualify as "rural" had been changed twice by statute since the broadband loan program was initiated. Under the pilot program, funds were authorized under

[47] Ibid, p. 14.

[48] Testimony of Jonathan Adelstein, Administrator of RUS, before the House Subcommittee on Communications and Technology, Committee on Energy and Commerce, April 1, 2011, p. 8, available at http://republicans.energycommerce.house.gov/Media/file/Hearings/Telecom/040111/Adelstein.pdf.

the Distance Learning and Telemedicine Program, which defines "exceptionally rural areas" (under 5,000 inhabitants), "rural areas" (between 5,000 and 10,000) and "mid-rural areas" (between 10,000 and 20,000). RUS determined that communities of 20,000 or less would be eligible for broadband loans in cases where broadband services did not already exist.

In 2002, this definition was made narrower by the Farm Security and Rural Investment Act (P.L. 107-171), which designated eligible communities as any incorporated or unincorporated place with fewer than 20,000 inhabitants, and which was outside any standard metropolitan statistical area (MSA). The requirement that communities not be located within MSA's effectively prohibited suburban communities from receiving broadband loans. However, in 2004, the definition was again changed by the FY2004 Consolidated Appropriations Act (P.L. 108-199). The act broadened the definition, keeping the population limit at 20,000, but eliminating the MSA prohibition, thereby permitting rural communities near large cities to receive loans. Thus the current definition used for rural communities is the same as what was used for the broadband pilot program, except that loans can now be issued to communities with preexisting service.

The definition of what constitutes a "rural" community is always a difficult issue for congressional policymakers in determining how to target rural communities for broadband assistance. On the one hand, the narrower the definition the greater the possibility that deserving communities may be excluded. On the other hand, the broader the definition used, the greater the possibility that communities not traditionally considered "rural" or "underserved" may be eligible for financial assistance.

A related issue is the scope of coverage proposed by individual applications. While many of the loan applications propose broadband projects offering service to multiple rural communities, RUS identified a trend towards larger regional and national proposals, covering hundreds or even more than 1,000 communities.[49] The larger the scope of coverage, the greater the complexity of the loan application and the larger the possible benefits and risks to taxpayers.

Preexisting Broadband Service

Loans to areas with competitive preexisting service—that is, areas where existing companies already provide some level of broadband—sparked controversy because loan recipients are likely to compete with other companies already providing broadband service.

During reauthorization, Congress was asked to more sharply define whether and/or how loans should be given to companies serving rural areas with preexisting competitive service.[50] On the one hand, some argued that the federal government should not be subsidizing competitors for broadband service, particularly in sparsely populated rural markets which may be able only to support one provider. Furthermore, keeping communities with preexisting broadband service eligible may divert assistance from unserved areas that are most in need. On the other hand, many suburban and urban areas currently receive the benefits of competition between broadband

[49] Rural Utilities Service, private communication, January 18, 2007.

[50] The statute (7 U.S.C. 950bb) allows States and local governments to be eligible for loans only if "no other eligible entity is already offering, or has committed to offer, broadband services to the eligible rural community."

providers—competition which can potentially drive down prices while improving service and performance. It is therefore appropriate, others argued, that rural areas also receive the benefits of competition, which in some areas may not be possible without federal financial assistance. It was also argued that it may not be economically feasible for borrowers to serve sparsely populated unserved communities unless they are permitted to also serve more lucrative areas which may already have existing providers.

Technological Neutrality

The 2002 farm bill (P.L. 107-171) directed RUS to use criteria that are "technologically neutral" in determining which projects to approve for loans. In other words, RUS is prohibited from typically valuing one broadband technology over another when assessing loan applications. As of November 10, 2008, 37% of approved and funded projects employed fiber-to-the-home technology, 17% employed DSL, 25% fixed wireless, 19% hybrid fiber-coaxial (cable), and 2% broadband over powerlines (BPL).[51] No funding has been provided for projects utilizing satellite broadband.[52]

While decisions on funded projects were required to be technologically neutral, RUS (through the Secretary of Agriculture) had the latitude to determine minimum required data transmission rates for broadband projects eligible for funding. According to the statute, "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."

Some argued that the minimum speed thresholds should be raised to ensure that rural areas receive "next-generation" broadband technologies with faster data rates capable of more varied and sophisticated applications. On the other hand, significantly raising minimum data rates could exclude certain technologies—for example typical data transmission rates for fiber and some wireless technologies exceed what is offered by "current generation" technologies such as DSL and cable. Proponents of keeping the minimum threshold at a low level argued that underserved rural areas are best served by any broadband technology that is economically feasible to deploy, regardless of whether it is "next" or "current" generation.

[51] USDA, Rural Utilities Service, "FCC/USDA Rural Broadband Educational Workshop," power point presentation, November 20, 2008. Available at http://www.usda.gov/rus/telecom/broadband/workshops/FCC_USDABroadbandWorkshopNov20.pdf.

[52] According to the GAO, satellite companies state that RUS's broadband loan program requirements "are not readily compatible with their business model or technology," and that "because the agency requires collateral for loans, the program is more suited for situations where the providers, rather than individual consumers, own the equipment being purchased through the loan. Yet, when consumers purchase satellite broadband, it is common for them to purchase the equipment needed to receive the satellite signal, such as the reception dish." Satellite companies argue that in some rural areas, satellite broadband might be the most feasible and cost-effective solution. See GAO, *Broadband Deployment is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, pp. 34-35.

P.L. 110-246

The Food, Conservation, and Energy Act of 2008 became law on June 18, 2008 (P.L. 110-246). Section 6110, "Access to Broadband Telecommunications Services in Rural Areas," reauthorized the RUS broadband loan and loan guarantee program and addressed many of the criticisms and issues raised during the reauthorization process. The following summarizes broadband-related provisions that changed previous law.

Eligibility and Selection Criteria

- Defines rural area as any area other than (1) a city or town that has a population of greater than 20,000 and (2) an urbanized area contiguous and adjacent to a city or town with a population greater than 50,000. The Secretary may, by regulation only, consider not to be rural an area that consists of any collection of census blocks contiguous to each other with a housing density of more than 200 housing units per square mile and that is contiguous with or adjacent to an existing boundary of a rural area.
- Provides that the highest priority is to be given to applicants that offer to provide broadband service to the greatest proportion of households currently without broadband service. Eligible entities are required to submit a proposal to the Secretary that meets the requirements for a project to offer to provide service to a rural area and agree to complete build out of the broadband service within three years.
- Prohibits any eligible entity that provides telecommunications or broadband service to at least 20% of the households in the United States from receiving an amount of funds under this section for a fiscal year in excess of 15% of the funds authorized and appropriated for the broadband loan program.
- Directs the Secretary of Agriculture "from time to time as advances in technology warrant," to review and recommend modifications in rate-of-data transmission criteria for the purpose of identifying eligible broadband service technologies. At the same time, the Secretary is prohibited from establishing requirements for bandwidth or speed that have the effect of precluding the use of evolving technologies appropriate for use in rural areas.

Loans to Communities With Existing Providers

- Prohibits the Secretary from making a loan in any area where there are more than three incumbent service providers unless the loan meets all of the following requirements: (1) the loan is to an incumbent service provider that is upgrading service in that provider's existing territory; (2) the loan proposes to serve an area where not less than 25% of the households are offered service by not more than 1 provider; and (3) the applicant is not eligible for funding under another provision of the Rural Electrification Act. Incumbent service provider is defined as an entity providing broadband service to not less than 5% of the households in the service territory proposed in the application. Also prohibits the Secretary from making a loan in any area where not less than 25% of the households are offered broadband service by not more than one provider unless a prior loan has been made in the same area.

Financial Requirements

- Directs the Secretary to consider existing recurring revenues at the time of application in determining an adequate level of credit support. Requires the Secretary to ensure that the type, amount, and method of security used to secure a loan or loan guarantee is commensurate to the risk involved with the loan or loan guarantee, particularly when the loan or loan guarantee is issued to a financially healthy, strong, and stable entity. The Secretary is also required, in determining the amount and method of security, to consider reducing the security in areas that do not have broadband service.
- Allows the Secretary to require an entity to provide a cost-share in an amount not to exceed 10% of the amount of the loan or loan guarantee.
- Retains the current law rate of interest for direct loans—which is the rate equivalent to the cost of borrowing to the Department of Treasury for obligations of comparable maturity or 4%.
- Directs that loan or loan guarantee may have a term not to exceed 35 years if the Secretary determines that the loan security is sufficient.
- In case of substantially underserved trust areas (for example, Indian lands), where the Secretary determines a high need exists for the benefits of the program, the Secretary has the authority to provide loans with interest rates as low as 2% and may waive nonduplication restrictions, matching fund requirements, credit support requirements, or other regulations.

Loan Application Requirements

- Allows the Secretary to require an entity that proposes to have a subscriber projection of more than 20% of the broadband service market in a rural area to submit a market survey. However, the Secretary is prohibited from requiring a market survey from an entity that projects to have less than 20% of the broadband market.
- Requires public notice of each application submitted, including the identity of the applicant, the proposed area to be served, and the estimated number of households in the application without terrestrial-based broadband. Authorizes the Secretary to take steps to reduce the costs and paperwork associated with applying for a loan or loan guarantee under this section by first-time applicants, particularly those who are smaller and start-up Internet providers.
- Allows the Secretary to establish a pre-application process under which a prospective applicant may seek a determination of area eligibility. Provides that an application, or a petition for reconsideration of a decision on such an application, that was pending on the date 45 days before enactment of this act and that remains pending on the date of enactment of this act is to be considered under eligibility and feasibility criteria in effect on the original date of submission of the application.

Other Provisions

- Authorizes the Rural Broadband Access Loan and Loan Guarantee program at $25,000,000 to be appropriated for each of fiscal years 2008 through 2012.
- Requires that the Secretary annually report to Congress on the rural broadband loan and loan guarantee program. The annual report is to include information pertaining to the loans made, communities served and proposed to be served, speed of broadband service offered, types of services offered by the applicants and recipients, length of time to approve applications submitted, and outreach efforts undertaken by USDA.
- Section 6111 provides for a National Center for Rural Telecommunications Assessment. The Center is to assess the effectiveness of broadband loan programs, work with existing rural development centers to identify appropriate policy initiatives, and provide an annual report that describes the activities of the Center, the results of research carried out by the Center, and any additional information that the Secretary may request. An appropriation of $1 million is authorized for each of the fiscal years 2008 through 2012.
- Section 6112 directs the Chairman of the Federal Communications Commission (FCC), in coordination with the Secretary, to submit to Congress a report describing a comprehensive rural broadband strategy. Requires the report to be updated during the third year after enactment.

Implementation of P.L. 110-246

During 2009 and 2010, the Farm Bill Broadband Loan Program was on hiatus as RUS implemented the Broadband Initiatives Program (BIP) established under the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). At the same time, final regulations implementing the broadband loan program as reauthorized by the 2008 Farm Bill were on hold and were being refined to reflect, in part, RUS experience in implementing BIP. Subsequently, on March 14, 2011, an Interim Rule and Notice was published in the *Federal Register* setting forth the rules and regulations for the broadband loan program as reauthorized by P.L. 110-246.[53] While the rule is immediately effective, RUS is accepting public comment before ultimately releasing a final rule. The application guide and all supporting materials for the Farm Bill Broadband Loan Program is available at http://www.rurdev.usda.gov/utp_farmbill.html.

Meanwhile, pursuant to section 6112 of P.L. 110-246, the FCC released on May 22, 2009, its report on rural broadband strategy, entitled *Bringing Broadband to Rural America*.[54] The report made a series of recommendations including improved coordination of rural broadband efforts among federal agencies, states, and communities; better assessment of broadband needs,

[53] U.S. Department of Agriculture, Rural Utilities Service, "7 CFR Part 1738, Rural Broadband Access Loans and Loan Guarantees," 76 *Federal Register* 13770-13796, March 14, 2011.

[54] Michael J. Copps, Acting Chairman, Federal Communications Commission, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, May 22, 2009, 83 p.

including technological considerations and broadband mapping and data; and overcoming challenges to rural broadband deployment.

Broadband Loan Reauthorization: 2012 Farm Bill

As reauthorized by the 2008 Farm Bill, the Rural Broadband Access Loan and Loan Guarantee Program is currently authorized through FY2012. Therefore, it is expected that Congress will consider reauthorization of the broadband loan program in the 2012 Farm Bill. As part of this consideration, Congress may focus on how effectively and cost efficiently the RUS broadband programs are addressing the lack of adequate broadband service in underserved rural communities.

Author Contact Information

Lennard G. Kruger
Specialist in Science and Technology Policy
lkruger@crs.loc.gov, 7-7070