



PUBLIC NOTICE

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DA 21-1018

Released: August 20, 2021

BROADBAND PROVIDERS MUST APPLY THE EMERGENCY BROADBAND BENEFIT DISCOUNT PRIOR TO CLAIMING REIMBURSEMENT AND ARE REMINDED OF MEASURES TO PROTECT AGAINST WASTE, FRAUD, AND ABUSE

WC Docket No. 20-445

By this Public Notice, the Wireline Competition Bureau (Bureau) and Office of Managing Director (OMD) remind participating providers in the Emergency Broadband Benefit (EBB) Program of their obligation, consistent with the EBB Program rules, to apply the EBB discount to a customer's account before the provider claims reimbursement for that discount and certifies as such when submitting reimbursement claims. We also remind EBB Program providers of program rules and requirements, adopted to guard against waste, fraud, and abuse in the EBB Program.

On February 25, 2021, the Federal Communications Commission (Commission) unanimously adopted a Report and Order that established the EBB Program, a \$3.2 billion federal initiative created by Congress in the Consolidated Appropriations Act, 2021 (Consolidated Appropriations Act),¹ to help lower the cost of internet for eligible households during the emergency period related to the COVID-19 pandemic.² Both the Consolidated Appropriations Act and *EBB Program Report and Order* specify numerous rules and requirements designed to prevent waste, fraud, and abuse in the EBB Program.³

Summary of EBB Program Reimbursement Requirements

Failure to comply with the rules governing the pass-through of the EBB discount and claims reimbursement may result in administrative forfeitures or other penalties for the provider. Additionally,

¹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904, 134 Stat. 1182, 2130 (2020), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

² See *Emergency Broadband Benefit Program*, Report and Order, 36 FCC Rcd 4612 (2021) (*EBB Program Order*).

³ See generally 47 CFR Part 54, Subpart P. The Consolidated Appropriations Act also specifies that a finding by the Commission or Inspector General of waste, fraud, abuse, or an improper payment identify: (a) the participating provider; (b) the amount of funding disbursed to the participating provider; (c) the amount of disbursements identified as an improper payment; (d) the extent to which the funding identified as an improper payment was reimbursement for a connected device or reimbursement for an internet service offering; (e) whether, in the case of a connected device, such device, or the value thereof, has been recovered; (f) whether funds from the Emergency Broadband Connectivity Fund were made available by the participating provider to a person outside of the eligible household; and (g) whether any funds from the Emergency Broadband Connectivity Fund were made available to reimburse a participating provider for an Emergency Broadband Benefit made available to an eligible household in which all members of such household necessary to satisfy the eligibility requirements described in subsection (a)(6) were deceased. Consolidated Appropriations Act, div. N, tit. IX § 904(b)(7).

both the Consolidated Appropriations Act and the Commission's rules⁴ are clear that providers are prohibited from charging households for the amount of the internet offering for which the provider is seeking reimbursement. Circumventing this rule by charging customers for the full amount of the internet service offering and then issuing delayed reimbursements to the customers violates EBB Program rules.

Participating providers receive reimbursement from the EBB Program for discounts granted to eligible low-income households for qualifying service and connected devices.⁵ Participating providers must transmit the household's information to the National Lifeline Accountability Database (NLAD) in order to successfully enroll the household in the EBB Program and also to seek reimbursement for any service and connected device support provided to that household.⁶ Reimbursement claims for the EBB Program are based on the number of Program subscribers enrolled with each provider in the NLAD as of the first day of each month (referred to as the "snapshot date").⁷

To receive reimbursement, providers must submit certified reimbursement claims based on the Program subscribers captured on the snapshot date through the Lifeline Claims System by the 15th of each month, or the following business day in the event the 15th is a holiday or falls on a weekend.⁸ As explained in the *EBB Program Order*, the Consolidated Appropriations Act requires that providers make several certifications when submitting their reimbursement claims, including that "each eligible household for which the provider is seeking reimbursement for providing Internet service has not or will not be charged (1) for that offering if the standard rate for that offering is less than or equal to the amount of the EBB Program benefit for that household; or (2) more for that offering than the difference between the standard rate for that offering and the amount of the EBB Program benefit for that household."⁹ An officer of each participating provider must make these certifications when submitting a reimbursement claim, and the *EBB Program Order* directed USAC to make changes to the Lifeline Claims System to ensure that providers are prompted to make these certifications when submitting reimbursement claims.¹⁰

Providers participating in the EBB Program must ensure that they are complying with the EBB Program requirements. As such, providers must apply the EBB discount to a customer's account before seeking reimbursement for that customer's discount and certify to the same. Under the EBB Program rules, providers may not, for example, charge a customer for the internet service offering, seek a reimbursement from USAC, and then later provide the discount to the customer only after receiving the reimbursement. Failure to comply with these rules may result in administrative forfeitures or other penalties.¹¹

⁴ 47 CFR §§ 54.1603(a) ("The Emergency Broadband Benefit Program support amount for all participating providers shall equal the *actual discount provided* to an eligible household off of the actual amount charged to such household . . .") (emphasis added), 54.1608(e)(6)(A).

⁵ 47 CFR § 54.1608.

⁶ *EBB Program Order*, 36 FCC Rcd at 4634, para. 47 ("all providers, including those that use an approved alternative verification process or verify eligibility via a school . . . must enroll their subscribers in NLAD prior to claiming reimbursement for those subscribers, to prevent duplicative support between providers.").

⁷ 47 CFR § 54.1608(a); *EBB Program Order*, 36 FCC Rcd at 4615-16, para. 8.

⁸ 47 CFR § 54.1608(g).

⁹ *EBB Program Order*, 36 FCC Rcd at 4659, para. 93 (citing Consolidated Appropriations Act, div. N, tit. IX, §§ 904(b)(6)(B)(i)-(II)); see also 47 CFR § 54.1608(e)(6)(A).

¹⁰ *EBB Program Order*, 36 FCC Rcd at 4659-60, paras. 93-94.

¹¹ *Id.* at 4678-79, para. 141.

Summary of EBB Program Waste, Fraud, and Abuse Protection Requirements

The Consolidated Appropriations Act and *EBB Program Report and Order* include several rules and requirements designed to prevent waste, fraud, and abuse in the EBB Program, including the following:¹²

Household Eligibility

- Participating providers are required to implement policies and procedures for ensuring that their EBB Program households are eligible to receive the Emergency Broadband Benefit.¹³ In doing so, a provider may not provide a consumer with an activated device that it represents enables use of Emergency Broadband Benefit-supported service, nor may it activate service that it represents to be Emergency Broadband Benefit-supported service, unless and until it has: (1) confirmed that the household is an eligible household pursuant to section III(B) of the *EBB Program Order*;¹⁴ (2) completed the eligibility determination and certification required by section III(B) of the *EBB Program Order*;¹⁵ and (3) completed any other necessary enrollment steps established in the *EBB Program Order*.¹⁶
- Providers participating in the EBB Program will use the National Lifeline Eligibility Verifier (National Verifier) or their own FCC-approved alternative household eligibility verification processes, or a combination of both, to verify household eligibility before enrolling subscribers in the National Lifeline Accountability Database (NLAD) and seeking reimbursement.¹⁷ Permitting these providers to use Universal Service Administrative Company (USAC)'s eligibility determination systems in a manner consistent with the Consolidated Appropriations Act bolsters program protections against waste, fraud, and abuse.¹⁸
- Providers that are seeking to offer EBB service in jurisdictions in which they do not have an eligible telecommunications carrier (ETC) designation are required to submit an application with the Wireline Competition Bureau that details, among other things, their plans to combat waste, fraud, and abuse.¹⁹ A provider seeking to use an alternative verification process, among other things, must also submit documentation demonstrating that its eligibility verification process safeguards against waste, fraud,

¹² See generally 47 CFR Part 54, Subpart P. The Consolidated Appropriations Act also specifies that a finding by the Commission or Inspector General of waste, fraud, abuse, or an improper payment identify: (a) the participating provider; (b) the amount of funding disbursed to the participating provider; (c) the amount of disbursements identified as an improper payment; (d) the extent to which the funding identified as an improper payment was reimbursement for a connected device or reimbursement for an internet service offering; (e) whether, in the case of a connected device, such device, or the value thereof, has been recovered; (f) whether funds from the Emergency Broadband Connectivity Fund were made available by the participating provider to a person outside of the eligible household; and (g) whether any funds from the Emergency Broadband Connectivity Fund were made available to reimburse a participating provider for an Emergency Broadband Benefit made available to an eligible household in which all members of such household necessary to satisfy the eligibility requirements described in subsection (a)(6) were deceased. Consolidated Appropriations Act, div. N, tit. IX § 904(b)(7).

¹³ *EBB Program Order*, 36 FCC Rcd at 4680, para. 146; 47 CFR § 54.1606(b).

¹⁴ *EBB Program Order*, 36 FCC Rcd at 4680, para. 146; 47 CFR §§ 54.1605, 1606(b).

¹⁵ *EBB Program Order*, 36 FCC Rcd at 4680, para. 146; 47 CFR § 54.1608(e)(4).

¹⁶ See *EBB Program Order*, 36 FCC Rcd at 4680, para. 146.

¹⁷ *Id.* at 4626, para. 31.

¹⁸ *Id.*

¹⁹ *Id.* at 4626-28, paras. 33-34.

and abuse,²⁰ and a provider using an alternative verification process to determine subscriber eligibility is required to certify that its process is designed to avoid waste, fraud, and abuse.²¹

Election Notice Certifications and Requirements

- Broadband providers seeking to participate in the EBB Program must submit an election notice to USAC.²² In those election notices, providers are required to certify under penalty of perjury that the provider understands and complies with all of the Program's statutory and regulatory obligations.²³ In addition to the election notice, a non-ETC provider that is seeking approval to participate in the EBB Program must also certify that it will: (1) de-enroll from the EBB Program any household it has a reasonable basis to believe is no longer eligible to receive the benefit consistent with EBB Program requirements; (2) comply with the EBB Program's document retention requirements and agree to make such documentation available to the Commission or USAC, upon request or any entities (for example, auditors) operating on their behalf; and (3) agree to the Commission's enforcement and forfeiture authority.²⁴

Reimbursement and Document Retention Requirements

- Providers are only eligible to receive reimbursement for offerings that were available on and include the same terms as those available as of December 1, 2020.²⁵ The December 1, 2020 restriction avoids arbitrage opportunities and waste in the EBB Program by preventing unscrupulous providers from taking advantage of the increased subsidy available.²⁶ In addition, associated equipment (*i.e.*, equipment necessary for the transmission functions of internet service offerings supported through the EBB Program, which households may choose to receive) must be billed monthly on the same terms and same manner as it would have been in an offering available on December 1, 2020 in order to be eligible for reimbursement.²⁷ As such, any price manipulation concerning the EBB Program subsidy is strictly prohibited and providers are warned that the Commission's audit mechanisms and other program integrity efforts conducted by USAC will contain measures to identify non-compliance with this and other EBB Program requirements.
- Providers are only eligible to receive a one-time reimbursement of up to \$100 for providing one connected device (defined as a "laptop or desktop computer or tablet" and not a mobile phone) per household if the eligible household contributes more than \$10 but less than \$50.²⁸ Providers are warned that the Commission's audit mechanisms and other program integrity efforts conducted by

²⁰ *Id.* at 4643-44, para. 66.

²¹ 47 CFR § 54.1608(e)(9).

²² *EBB Program Order*, 36 FCC Rcd at 4621-22, para. 21; USAC, Getting Started, <https://www.usac.org/about/emergency-broadband-benefit-program/system-resources/get-started/> (last visited Aug. 20, 2021).

²³ *EBB Program Order* 36 FCC Rcd at 4621-22, para. 21; USAC, EBB Service Provider Election Form, https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Application_Docs/EBBP-Service-Provider-Election-Form-3_24.pdf (last visited Aug. 20, 2021).

²⁴ *See EBB Program Order*, 36 FCC Rcd at 4627-28, para. 34; FCC, Emergency Broadband Benefit Program, <https://www.fcc.gov/emergency-broadband-benefit-program> (last visited Aug. 20, 2021).

²⁵ *See EBB Program Order*, 36 FCC Rcd at 4647, para. 72; *see also* 47 CFR §§ 54.1608(a), 54.1600(n).

²⁶ *EBB Program Order*, 36 FCC Rcd at 4647, para. 72.

²⁷ *See id.* at 4650-51, para. 78.

²⁸ *Id.* at 4651-53, paras. 80-81.

USAC will contain measures to identify non-compliance with this and other EBB Program requirements.

- In order to receive EBB Program reimbursement, an officer of the participating provider must certify, among other things, as part of each request for reimbursement, that the officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject the officer to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise.²⁹
- Participating providers are required to maintain records that document their compliance with the EBB Program requirements for the six full preceding calendar years and provide that documentation to the Commission or USAC upon request.³⁰ Providers are required to retain all documentation related to eligibility and reimbursement claims for an EBB household for as long as the applicant receives the Emergency Broadband Benefit from that provider, but for no less than the six full calendar years following the termination of the EBB Program.³¹ This requirement is similar to the document retention requirement used in the Lifeline program but is long enough to cover the statute of limitations under the False Claims Act³² laws for federal wire fraud,³³ and ensures that documentation is available to confirm EBB Program compliance.
- If a check of the Do Not Pay system administered by the U.S. Department of Treasury's Bureau of Fiscal Service results in a finding that an EBB Program provider should not be paid, the Commission will withhold issuing commitments and payments.³⁴

Summary of EBB Program Audit Plan

- The Consolidated Appropriations Act requires the Commission to adopt audit requirements to ensure that participating providers are in compliance with the program rules and to prevent waste, fraud, and abuse in the EBB Program.³⁵ OMD has implemented an audit plan of participating providers that complies with the Consolidated Appropriations Act.³⁶ In particular, OMD has conducted an assessment of the EBB Program payment workflows and internal controls to assess potential risks and remediation. In addition, OMD has initiated an audit plan to, among other things, verify providers' compliance with EBB Program rules and requirements and to prevent waste, fraud, and abuse in the program.
- Within one year of the date of the enactment of the Consolidated Appropriations Act, the Commission's Office of Inspector General must conduct an audit of the disbursements made to a representative sample of participating providers.³⁷

Summary of EBB Program Enforcement Measures

- As stated in the *EBB Program Order*, the Commission will utilize existing, statutorily permitted enforcement powers to initiate investigations and impose administrative forfeitures in the EBB

²⁹ See 18 U.S.C. §§ 286-287, 1001, 1341, 31 U.S.C. §§ 3729-3730, 3801-3812; 47 CFR § 54.1608(e).

³⁰ 47 CFR § 54.1611.

³¹ See *id.*

³² *EBB Program Order*, 36 FCC Rcd at 4644, para. 67 (citing 31 U.S.C. § 3731(b)(1)).

³³ *Id.* at 4644, para. 67 (citing 18 U.S.C. §§ 1343, 3282).

³⁴ *Id.* at 4664, para. 109.

³⁵ Consolidated Appropriations Act, div. N, tit. IX § 904 (b)(7).

³⁶ *Id.* §§ 904(b)(7)-(8); see also *EBB Program Order* 36 FCC Rcd at 4677-78, paras. 139-140.

³⁷ Consolidated Appropriations Act, div. N, tit. IX. § 904(b)(8).

Program.³⁸ Specifically, the Commission will apply its suspension and debarment rules currently applicable to the Universal Service Fund program to EBB Program participating providers.³⁹

- The Commission will also withhold EBB Program funds from participants found to be in violation of the EBB Program rules, if appropriate, and will seek to recoup improperly disbursed funds, in addition to appropriate enforcement penalties.⁴⁰ These enforcement mechanisms sufficiently balance the need for widespread participation in the EBB Program with the importance of maintaining the program's integrity.
- On May 11, 2021, the Commission's Enforcement Bureau released an advisory reminding EBB Program participating providers of their obligation to comply with the EBB Program rules, including ensuring that existing Lifeline customers give their informed affirmative consent to participate in the EBB Program and are able to choose not to apply their Emergency Broadband Benefit with their Lifeline provider without jeopardizing their existing Lifeline service.⁴¹ Failure to comply with the rules governing the consumer disclosure and enrollment process may lead to customer confusion and loss of service, while potentially providing anticompetitive advantages over other service providers.⁴² Additionally, the *EBB Program Enforcement Advisory* reminded providers that customers must pay a portion of the cost of a connected device subsidized by the EBB Program, and circumventing this rule by conjuring a "credit" in lieu of a customer payment or otherwise offering a connected device free of charge is contrary to the policy of requiring households receiving subsidized connected devices to have an ownership stake in the devices.⁴³ Providers were also reminded that they must retain documentation demonstrating compliance with this requirement, which is subject to audit.⁴⁴

For further information, please contact Eric Wu of the Wireline Competition Bureau's Telecommunication Access Policy Division at (202) 418-1543 or Eric.Wu@fcc.gov or Thomas Buckley, Assistant Managing Director, Office of Managing Director at (202) 418-0725 or Thomas.Buckley@fcc.gov.

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³⁸ See *EBB Program Order* 36 FCC Rcd at 4678-79, para. 141.

³⁹ *Id.* at 4678-79, para. 141 (citing 47 CFR § 54.8).

⁴⁰ See *id.* at 4678-79, para. 141; see also 47 CFR Part 1, Subpart O (Collection of Claims Owed the United States).

⁴¹ *Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Subscriber Consent to Enroll and Require a Co-Pay for Connected Devices*, Enforcement Advisory No. 2021-06, DA 21-551, at 1 (EB, 2021) (*EBB Program Enforcement Advisory*).

⁴² *Id.*

⁴³ *Id.* at 2-3.

⁴⁴ *Id.* at 3.