



# PUBLIC NOTICE

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DA 23-406

Released: May 12, 2023

## WIRELINE COMPETITION BUREAU AND OFFICE OF THE MANAGING DIRECTOR PROVIDE GUIDANCE ON EMERGENCY CONNECTIVITY FUND PROGRAM UPON TERMINATION OF THE EMERGENCY PERIOD

### WC Docket No. 21-93

The Wireline Competition Bureau (Bureau) and Office of the Managing Director (OMD) offer guidance to participants in the Emergency Connectivity Fund (ECF) Program on the expiration of the COVID-19 public health emergency on May 11, 2023 and announce June 30, 2024 as the sunset date for the ECF Program.

As part of the American Rescue Plan Act of 2021 (Act), Congress appropriated \$7.171 billion and directed the Federal Communications Commission (Commission) to promulgate rules to distribute funding from the ECF to eligible schools and libraries for the purchase *during the COVID-19 emergency period* of eligible equipment and/or advanced telecommunications and information services for use by students, school staff, and library patrons at locations that include locations other than a school or library.<sup>1</sup> On May 10, 2021, the Commission adopted the *Emergency Connectivity Fund Report and Order* establishing the rules for the ECF Program to distribute the funding to eligible schools and libraries.<sup>2</sup>

For purposes of the ECF, section 7402 of the Act defines the COVID-19 emergency period as beginning on the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to section 319 of the Public Health Service Act,<sup>3</sup> and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists.<sup>4</sup> On January 31, 2020, the Department of Health and Human Services declared that a public health emergency exists and has existed since January 27, 2020.<sup>5</sup> The COVID-19 public health emergency expired at the end of the day on May

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<sup>1</sup> American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117<sup>th</sup> Cong., tit. VII, § 7402(a)(1)-(2) (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (American Rescue Plan Act) (enrolled bill) (emphasis added).

<sup>2</sup> See generally *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696 (2021) (*Emergency Connectivity Fund Report and Order*).

<sup>3</sup> See H.R. 1319, tit. VII, § 7402(d)(5)(A). The Secretary of Health and Human Services determined that a public health emergency has been in existence since January 27, 2020 as a result of COVID-19 pursuant to section 319 of the Public Health Service Act. 47 U.S.C. § 247d.

<sup>4</sup> H.R. 1319, tit. VII, § 7402(d)(5)(B); see also 47 U.S.C. § 247d.

<sup>5</sup> Department of Health and Human Services, Administration for Strategic Preparedness & Response, Determination That A Public Health Emergency Exists (Jan. 31, 2020) <https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx>.

11, 2023,<sup>6</sup> and thereafter, ECF funding will only be available for purchases of eligible equipment and services made by June 30, 2024, the sunset date for the program.

As of May 11, 2023, \$3.173 billion has been disbursed to ECF participants. For all funding requests with outstanding commitments or pending decisions (e.g., funding decisions, post-commitment requests, appeals, waivers, or requests for reimbursements), the expiration of the COVID-19 emergency period requires that all purchases of eligible equipment and services must be made by June 30, 2024, in order for the purchase to be eligible for reimbursement through the ECF Program.

Below is a summary of upcoming deadlines based on the sunset of the ECF Program on June 30, 2024:

- **Service delivery date:** The service delivery dates were extended in the *May 2023 Service Delivery Deadline Extension Order* as detailed below.<sup>7</sup>
  - **ECF Application Filing Windows 1 and 2**
    - Applicants with funding requests with a service delivery date of June 30, 2023, the expiration of the COVID-19 emergency period has no impact on these requests.
    - Applicants that received a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) approving an appeal, waiver, or post-commitment request for a service funding request on or after July 1, 2022:
      - Recurring service funding requests have a service delivery date of 14 months after the date of the letter, or June 30, 2024, whichever date is earlier.
      - Approved, up-to-12 months of recurring service funding requests associated with an approved special construction request have a service delivery date of June 30, 2024.
    - Applicants that received an FCDL or RFCDL approving an appeal, waiver, or post-commitment request for an equipment funding request on or after January 1, 2023:
      - Equipment funding requests have a service delivery date 180 days after the date of the letter, but not to exceed beyond June 30, 2024.
    - Applicants with other service delivery dates (e.g., special construction funding requests that have a deadline of one year from the date of the letter), must meet the service delivery date listed in the ECF Portal or on USAC's Open Data.

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<sup>6</sup> News Release, Department of Health and Human Services (HHS), HHS Secretary Xavier Becerra Statement on End of the COVID-19 Public Health Emergency (May 11, 2023), <https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html>; Department of Health and Human Services (HHS), COVID-19 Public Health Emergency (PHE), <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html> (last visited May 12, 2023).

<sup>7</sup> *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405 (WCB May 12, 2023).

- **ECF Application Filing Window 3**
  - All applicants with approved third filing window funding requests for recurring services, non-recurring services, and equipment have a service delivery date of June 30, 2024.
  - Applicants with other service delivery dates (e.g., special construction funding requests that have a deadline of one year from the date of the letter), must meet the service delivery date listed in the ECF Portal or on USAC's Open Data.
- **Pending Appeals, Waivers, or Post-Commitment Change Requests on June 30, 2024**
  - Applicants or service providers with pending appeals, waivers, or post-commitment change requests as of **June 30, 2024** will also have a service delivery date of June 30, 2024.
  - Applicants, in such a scenario, must have purchased the eligible equipment and/or services by June 30, 2024, to be eligible to be reimbursed through the ECF program after the end of the COVID-19 emergency period. However, applicants making such a purchase *do so at their own risk* if the funding decision is ultimately denied.
  - **Invoice filing deadline date:** The invoice filing deadline date remains unchanged under the ECF Program rules. Pursuant to section 54.1711(e) of the Commission's rules, requests for reimbursement must be filed within 60 days of the FCDL; an RFCDL approving a post-commitment change or a successful appeal of a previously denied or reduced funding; or service delivery date, whichever is later.<sup>8</sup>
- **ECF Application Filing Windows 1 and 2**
  - Applicants with funding requests with a service delivery date of June 30, 2023, ECF requests for reimbursement must still be filed by August 29, 2023.
  - Applicants with a different or later service delivery date, requests for reimbursement must be filed within 60 days of the service delivery date.
- **ECF Application Filing Window 3**
  - Applicants with funding requests with a service delivery date of June 30, 2024, ECF requests for reimbursement must be filed by August 29, 2024.
  - Applicants with a different or later service delivery date, requests for reimbursement must be filed within 60 days of the service delivery date.
- **Pending Appeals, Waivers, or Post-Commitment Change Requests on June 30, 2024**
  - If the invoice filing deadline occurs after June 30, 2024, the applicant or service provider can file an ECF request for reimbursement and receive funds after June 30, 2024, provided that the eligible equipment and services were purchased prior to June 30, 2024. However, as noted above, applicants making such a purchase *do so at their own risk* if the funding decision is ultimately denied.
  - Once the COVID-19 emergency period ends, the Commission cannot waive or extend the date to provide applicants with additional time to purchase eligible equipment and/or services beyond June 30, 2024. This is a statutorily set date,

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<sup>8</sup> 47 CFR § 54.1711(e).

and the statutory language requires that purchases be made before this date to be eligible for reimbursement through the ECF Program.

To reduce processing delays near the invoice filing deadlines, the Bureau recommends filing requests for reimbursement as soon as the eligible equipment or services are received. The Commission will de-obligate unused funds to make them available for the remaining timely-filed third application filing window funding requests. We encourage applicants to assist the Commission and other applicants by filing post-commitment requests to reduce funding requests with outstanding, excess commitments,<sup>9</sup> or cancel funding requests that will not be used.<sup>10</sup> As soon as the invoice filing deadline date has passed for a funding request, USAC will begin the de-obligation process for any remaining, unused funding. The Bureau does not expect to grant waivers of the ECF invoice filing deadline date, absent extraordinary circumstances. Therefore, we encourage applicants, and service providers who agreed to invoice on behalf of the applicant, to submit their ECF requests for reimbursement as soon as possible after receiving the eligible equipment and/or services.

Finally, the Commission is committed to protecting against waste, fraud, and abuse, and ensuring that funds disbursed through the ECF Program are used for their intended purposes of providing broadband connectivity and connected devices to students, school staff, and library patrons with unmet needs during the emergency period. The Commission and USAC may conduct audits and other reviews or investigations to verify compliance with ECF Program rules and requirements.<sup>11</sup> In the event of a violation of program rules or requirements, the Commission may seek recovery of disbursed funds or take other appropriate action(s).

*Additional Information.* For assistance, all ECF Program participants can check the Frequently Asked Questions (FAQs) at the Commission's website for the Emergency Connectivity Fund Program, <https://www.fcc.gov/emergency-connectivity-fund-faqs>, which have recently been updated to reflect these changes and address questions. Participants can also contact Kate Dumouchel of the Wireline Competition Bureau's Telecommunications Access Policy Division at 202-418-1839 or [kate.dumouchel@fcc.gov](mailto:kate.dumouchel@fcc.gov) for additional information.

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<sup>9</sup> For example, if a school district received a commitment for \$20,000, but ultimately only required and invoiced for \$10,000, the applicant can file a post-commitment request to reduce the commitment from \$20,000 to \$10,000 and the remaining \$10,000 can be made available to other applicants before the sunset of the program on June 30, 2024.

<sup>10</sup> For additional information about reducing or cancelling a funding request, please visit <https://www.emergencyconnectivityfund.org/ecf-post-commitment-request-form/post-commitment-changes/>.

<sup>11</sup> 47 CFR § 54.1714.