Summary of the FCC's Order on the
Emergency Connectivity Fund
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Background

Federal legislation: The $7.171 billion Emergency Connectivity Fund (ECF) was included in the American Rescue Plan Act (ARPA)[1] passed by Congress and signed by President Biden on March 11, 2021. Throughout the legislative process on the Act, the American Library Association (ALA) advocated for libraries and the communities they serve as part of its longstanding commitment to broadband equity.

Purpose of the Emergency Connectivity Fund: Millions of patrons and students depend on public libraries and schools for their internet access. But when libraries and schools closed their buildings to the public because of COVID-19 pandemic health and safety guidance, many patrons and students lost internet access because they lacked access at home. From the school perspective this lack of home connectivity is often called the "homework gap," and from the library perspective it is the "connectivity gap." The primary purpose of the ECF is to help bridge these gaps.

Federal Communications Commission (FCC) actions: Like the regular E-rate program,[2] the FCC also has responsibility for implementing the ECF program. On March 16 the FCC released a Public Notice seeking comments on how it should craft its regulations for the ECF. The ALA responded to this Notice[3] requesting the FCC give libraries (and schools) maximum flexibility on the use of ECF program funds. On May 11, 2021, the FCC released its ECF Order establishing the regulations on how libraries and schools can apply for funding.[4] Below the ALA offers a list of key points and a summary of the 91-page Order.

Key Points

Paragraph numbers are from the Order where more detailed information can be found.

- *ECF purpose:* The primary purpose of the ECF program is to provide adequate internet access to library patrons and students who now do not have access at home or other off-campus locations (¶15).
- *Cost reimbursement:* 100% of the cost of eligible equipment (e.g., Wi-Fi hotspots, laptops) and services (e.g., internet access) will be reimbursed to library and school applicants (¶28, ¶68).
- *Internet service:* Applicants must purchase a commercially available internet service unless they can document that none is available (¶35).
- *Application window:* As of the date of this summary the window has not been announced, but it is assumed to open beginning in mid-to-late June. The window will be open for 45 days and allow applicants to apply for eligible expenses from July 1, 2021, to June 30, 2022. Applications will be made using a version of the E-rate's Form 471 (¶78, ¶90).[5] Applicants must have an E-rate Productivity Center (EPC) account to apply.
- *No bidding:* The ECF program does not require competitive bidding (e.g., a Form 470), though all applicable local and state procurement regulations must be followed (¶87).

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[1] The Emergency Connectivity Fund is section 7402 in the ARPA, Public Law 117-2. https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf.
[2] Information on the E-rate program is at: https://www.usac.org/e-rate/.
[3] ALA comments are at: https://ecfsapi.fcc.gov/file/10405314108601/ALA_ECF_Comments_04052021.pdf.
[4] The Order is available at: https://www.fcc.gov/document/fcc-launch-717-billion-connectivity-fund-program-0.
[5] The FCC has submitted to the Office of Management and Budget (OMB) a revised form 471 for the ECF program. See https://omb.report/icr/202105-3060-007/doc/111623500.

- *Upfront reimbursements:* Applicants can submit requests for reimbursement before they have paid for the requested equipment or services (¶94). This will help libraries and schools who have problems paying the upfront costs.
- *SAM registration:* All applicants must register with the federal government's System for Award Management (SAM) (¶101). (This can be done in advance of the ECF application window; thus, applicants are encouraged to register ASAP.)
- *CIPA compliance:* CIPA does *not apply* to:[6]
  - Computers purchased with the ECF if the school or library does *not* also receive ECF for internet access or E-Rate for internet access or internal connections (¶112).[7]
  - Student or patron-owned computers used to access the internet (¶113).
- *Inventory and document retention:* Applicants must keep an inventory of devices provided to individuals, including who the device was loaned to and when it was returned (similar to other circulation records). (¶117). Applicants must retain ECF-related documents for at least 10 years (¶119).

Summary

The summary below generally follows the sequence in the Order. This is a straight-forward review of the Order and generally does not attempt to answer the many questions being asked by the library and school communities.[8] Also, to keep this to a manageable length, some sections of the Order with less impact or importance to applicants are not referenced.

Eligible Schools and Libraries (¶24)

Eligible applicants: Schools, libraries, and consortia that are eligible for the regular E-Rate program also are eligible to apply for the ECF program. As ALA advocated, the Order also clarifies that all tribal libraries are eligible for ECF funding even if they are not currently eligible to participate in the E-rate program.

Eligible Equipment and Services (¶28)

Eligible equipment: ARPA defines ECF-eligible equipment to include:
1) Wi-Fi hotspots;
2) Modems;
3) Routers;
4) Devices that combine a modem and router; and
5) Connected devices (e.g., laptops, tablets).

Air-cards used to connect end-user devices to the internet via cellular data services are wireless modems and thus eligible for support. However, mobile phones—including smart phones—are not eligible because they lack the functionality needed to perform remote learning. In addition, cybersecurity tools and video conferencing equipment are also not eligible (¶28, ¶32, ¶44). [9]

Eligible services: ARPA also states that "advanced telecommunications or information services" are eligible for funding. This basically means broadband connectivity and internet access to connect otherwise unconnected

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[6] The CIPA (Children's Internet Protection Act) does apply under other conditions and readers are encouraged to review this section of the Order carefully.

[7] This is important because under this condition libraries can purchase computers (i.e., laptops, tablets) using the ECF without necessarily needing to be CIPA compliant.

[8] Some of these questions are being collected and forwarded to the FCC. For example, see the list by the State E-rate Coordinators' Alliance (SECA): https://ecfsapi.fcc.gov/file/1051753894047/FCC%20questions%20Re%20R%26O%2021-58%20as%20filed%20May%2017%202021.pdf.

[9] Appendix B (p. 90) in the Order has a list of equipment and services ineligible for ECF support.

students and library patrons are eligible. However—with one exception—it is important to note that schools and libraries will only be reimbursed for purchasing a commercially available service providing wired or wireless internet access (¶35). The exception is when there is no commercial internet access available. Under such a circumstance, schools and libraries can use ECF support to construct their own networks to connect students and patrons but they must provide evidence on how they determined that no commercial service was available (¶40, ¶41). Evidence may be challenged by providers. Note: If commercial service is not available, applicants can partner with a commercial provider to extend its services to unconnected students and library patrons. This may be a more straightforward and viable option than constructing their own networks.

Service Locations and Per-Location/Per-User Limitations (¶48)

Off-campus locations: Recognizing that students and patrons may be engaged in remote learning from a variety of off-campus locations besides their homes, the FCC did not define or limit the specific off-campus locations where ECF-eligible equipment and services can be used (¶49). In two specific examples highlighted in the Order, the FCC states that Wi-Fi hotspots on school buses and bookmobiles can receive ECF support (¶61). Accordingly, ALA interprets this provision to mean that a host of sites off library property are likely eligible, such as community centers or homeless shelters, among others.

Limits on ECF support: To maximize limited funds, a library or school cannot receive ECF support for more than one fixed (i.e., wired) internet connection per location (¶54). A library or school also cannot receive support for more than one Wi-Fi hotspot or device per patron or student who lacks adequate internet connectivity. However, there is no per-location limit on hotspots (¶55). For example, a household with an adult library patron and a school student can get two hotspots.

Documentation of use: To help prevent waste, fraud, and abuse, the FCC will require schools and libraries to document the students and patrons served at each off-campus location. (See the *Inventories* section below for related information.) If the FCC or USAC requests this documentation, they will safeguard student and patron privacy in accordance with applicable privacy laws (¶60).

Eligible Uses (¶62)

Eligible Uses: The Order requires schools and libraries to use equipment and services primarily for educational purposes—the same as the E-rate program. For schools, this purpose is defined as "activities that are integral, immediate, and proximate to the education of students." For libraries, it is defined as "activities that are integral, immediate, and proximate to the provision of library services to library patrons." This means that ECF-supported equipment or services, like internet access, can be used for ***any service the library offers.*** In this respect it is important for libraries to take an expansive view of "educational purpose" and not limit it in the narrower context of school classroom education. The equipment and services can be used for other purposes when not needed for educational purposes. There is no requirement to monitor how the equipment or service is being used (¶63, ¶65).

Reasonable Support Amount (¶68)

Reimbursement amounts: The ECF language in ARPA states that libraries and schools will be reimbursed for 100% of the costs of equipment and services, although the FCC can adjust or deny reimbursements for costs deemed unreasonable. The Order makes two exceptions to the 100% reimbursement in that it sets a maximum of $400 for a connected device (¶69) and $250 for a Wi-Fi hotspot (¶71). The hotspot cost cap is just for the physical device; it does not pertain to the service plan. No cost guidance is given for other types of eligible equipment and internet access, but the Order directs USAC to carefully review funding requests and identify any that are out of line with the broader pool of applicant requests (¶72).

Insufficient funding: The Order acknowledges that the $7.171 billion may be insufficient to fully fund all requests. The FCC recognized that many comments were filed, including by ALA, advocating for a budget cap for schools and libraries. Budget maximums would give applicants certainty they would receive at least some funding. The

FCC stated, however, that ARPA requires 100% reimbursement, which precludes setting applicant budget caps (¶75- ¶77). With no caps libraries are encouraged to be ambitious in their funding requests. (This one-time allocation of $7 billion is more than double the $3 billion total annual disbursement in the E-rate program.)

Application Process (¶78)

Application window: The Order does not say when the first application filing window will open, but it is expected to be in mid-to-late June. When it opens, libraries and schools will have 45 days to submit applications (¶83) for purchases made between July 1, 2021, and June 30, 2022 (the same as the regular E-rate funding year). If there are funds remaining after this first window, USAC will open a subsequent application window allowing applicants to request funding for equipment and services previously purchased between March 1, 2020, and June 30, 2021 (¶78).

Certification of need: For library certification, the Order requires that a library provide patrons with a copy of its acceptable use policy (AUP), which explains that ECF equipment or service is intended only for patrons who do not have internet access sufficient to meet their needs.[10] Furthermore, the Order requires patrons to sign a statement to this effect (¶82). Applicants will need to sign-off on these various certifications on the ECF version of Form 471.

No bidding: To speed funding to applicants, the Order allows schools and libraries to seek reimbursement for the cost of equipment and services without conducting a competitive bidding process. (This is a major change from the E-rate program which requires competitive bidding.) Applicants must certify they have complied with all applicable local and state procurement requirements (¶87).

Using current E-rate processes: The Order directs USAC to use the existing E-Rate application (i.e., Form 471) and other E-Rate forms and processes whenever feasible (¶90).

Prioritization: If funding demand exceeds the funds available, the FCC will prioritize requests based on an applicant's E-Rate discount rate for category one services (i.e., broadband and internet access) with an added 5% increase for rural applicants.[11] Schools and libraries with higher discounts will receive funding before those with lower discounts. This means that *applicants in the lower discount bands may receive no funding*. Many parties, including ALA, requested that if funds are not sufficient the FCC should provide a prorated amount of funding to all applicants, but it declined to do so (¶91).

Invoicing and Reimbursement Process (¶92)

Invoice options: Invoicing will be very similar to the E-rate's current Bill Entity Applicant Reimbursement (BEAR) and Service Provider Invoice (SPI) processes. While applicants can request their service providers to submit invoices (SPI), the Order does not require service providers to do so (¶95).

Prospective payments: In a major change from the E-rate program, the Order allows applicants who have contracts or are otherwise legally obligated to purchase equipment and services to submit requests for reimbursement *before they have paid for the requested equipment and services*. This will help applicants who have problems paying the upfront costs (¶94). Applicants and service providers can submit reimbursement requests and invoices for prior and prospective purchases for 60 days from the date they receive a funding commitment decision letter from USAC (¶98).

System for Award Management (SAM) registration. All applicants receiving funds from the ECF program must register with the federal government's System for Award Management (SAM). SAM provides the FCC with the information it needs to provide ECF funding to applicants. Note: The Order recommends that applicants start the

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[10] Libraries will have to revise their AUPs to reflect these ECF requirements.
[11] The discount matrix is on p. 75 in the Order.

SAM registration process immediately because it may take up to 20 days for registrations to become active. For more information and to register, go to https://www.sam.gov. There is no cost to register (¶101).

Children's Internet Protection Act (¶108)

CIPA compliance: The Order outlines several different conditions under which CIPA applies.
- CIPA applies to the use of school- or library-owned computers to access the internet if the school or library accepts ECF support for internet access or E-Rate for internet access or internal connections (¶108, ¶111).
- CIPA does *not* apply to computers purchased with the ECF if the school or library does not also receive ECF for internet access or E-Rate for internet access or internal connections (¶112). Note: This is important because under this condition libraries can purchase computers using the ECF without needing to be CIPA compliant.
- CIPA does *not* apply to *student- or patron-owned computers* used to access the internet when schools or libraries have received ECF support or E-rate support (¶113).[12]

Protections Against Waste, Fraud, and Abuse (¶115)

Inventories: The Order requires schools and libraries to maintain inventories of devices and services purchased with ECF support. Examples of what the inventories must include are: (a) device type, and; (b) name of the person the device was loaned to and the dates the device was loaned and returned (¶117). (It is not clear if this requirement applies only to the current loaning of devices or if there is need to retain past loan records too.) Schools and libraries must also maintain a record of the services purchased including: (a) type of service (e.g., cable, fiber, wireless), (b) upload and download speeds; and (c) name of the person who received the service (¶118).

Document retention: The Order requires libraries and schools to retain records for *at least 10 years* from the last date of service or delivery of equipment funded by the ECF. This appears to mean that the information collected in the above *Certification of need* and *Inventories* sections must be retained for 10 years (¶119). (The 10-year document retention requirement is the same as the E-Rate program's requirement.)

Gift rule: The Order allows service providers to offer applicants broadband connections, devices, networking equipment, or other items of value that are directly related to addressing the pandemic-related needs of students and library patrons through June 30, 2022 (¶122).

Audits: The Order authorizes the FCC to develop and implement an audit process for ECF program participants (¶132). The Order also directs USAC and FCC staff to follow all applicable federal and state laws protecting the privacy of students and patrons in any audit. Whenever possible, auditors will accept anonymized information in response to requests6 (¶134).

Treatment of equipment during and after COVID-19 emergency: The Order prohibits schools and libraries from selling or transferring equipment for three years after its purchase. After this, equipment may be sold, transferred, disposed of, donated, or traded (¶135).

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Updates to this summary will be made as more information becomes available. In the meantime, if you have any questions on the summary, please direct them to Robert Bocher at robert.bocher@gmail.com. And for more information, please visit ALA's broadband policy resource page at www.ala.org/advocacy/broadband.

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[12] This confirms the position ALA has held since the passage of CIPA in 1999 that the law does not apply to patron owned computers (e.g., laptops, tablets).