



# PUBLIC NOTICE

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**DA 21-1453**

**Released: November 18, 2021**

## **WIRELINE COMPETITION BUREAU SEEKS COMMENT ON THE IMPLEMENTATION OF THE AFFORDABLE CONNECTIVITY PROGRAM**

**WC Docket No. 21-450**

**Comments Due: December 8, 2021**

**Reply Comments Due: December 28, 2021**

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## I. INTRODUCTION

1. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (Infrastructure Act or Act),<sup>1</sup> which modifies and extends the Emergency Broadband Benefit Program (EBB Program)<sup>2</sup> to a longer-term broadband affordability program to be called the Affordable Connectivity Program (sometimes referred to as “ACP”).<sup>3</sup> The Infrastructure Act directs the Commission to undertake a proceeding to adopt final rules for this modified program. Consistent with this directive, the Wireline Competition Bureau (Bureau) herein seeks comment on the requirements for the Affordable Connectivity Program and a timeline for its rapid implementation.

2. The Commission established the rules for and structure of the EBB Program earlier this year based on the framework provided in the Consolidated Appropriations Act. The text of the Infrastructure Act establishing the Affordable Connectivity Program relies in large part on the EBB Program directives in the Consolidated Appropriations Act by overlaying new Affordable Connectivity Program requirements on top of EBB Program requirements, as well as by providing additional requirements. The Infrastructure Act, however, retains many of the EBB Program requirements found in the Consolidated Appropriations Act. The Infrastructure Act, for example, does not modify the procedural and rulemaking timeline requirements contained in section 904(c) of the Consolidated Appropriations Act, and we interpret section 904(c) as also pertaining to the promulgation of rules for the Affordable Connectivity Program. Therefore, for purposes of this rulemaking, the Bureau must initiate this rulemaking within five days of enactment of the Infrastructure Act, must set a 20-day public comment period followed by a 20-day period for replies, and the Commission must resolve the rulemaking within 60 days of enactment.

3. The Infrastructure Act also directs the Commission to effectuate for the Affordable Connectivity Program specified changes, such as to EBB Program eligibility and the program benefit amount, by the effective date, which the statute defines as the date the Commission notifies Congress that all EBB Program funds have been fully expended or December 31, 2021, whichever is earlier.<sup>4</sup> We do not project EBB Program funds will be fully expended by December 31, 2021, and therefore, for the purposes of this rulemaking, we consider December 31, 2021 to be the effective date of the Affordable Connectivity Program and the date on which the EBB Program ceases. We request that stakeholders include in their comments how the changes to program eligibility and benefit amount impact the providers, consumer groups, governmental agencies and others as they prepare to support outreach for and enrollment in the Affordable Connectivity Program. We also urge commenters to suggest ways in which the Commission could facilitate these program changes so as to minimize any potentially disruptive impacts on low-income consumers.

4. Pursuant to the Infrastructure Act, the amendments removing and adding certain qualifying eligibility programs, changing the benefit level, and making other modifications to the EBB Program requirements are “delayed amendments” that do not take effect immediately.<sup>5</sup> The Infrastructure

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<sup>1</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), *available at* <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (Infrastructure Act).

<sup>2</sup> The EBB Program was established in Section 904 of Division N – Additional Coronavirus Response and Relief, Title IX – Broadband Internet Access Service, in the Consolidated Appropriations Act. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(c) 134 Stat. 1182, 2134 (2020), *available at* (Consolidated Appropriations Act), <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

<sup>3</sup> Infrastructure Act, div. F, tit. V, § 60502(a)(2).

<sup>4</sup> *Id.* at § 60502(b).

<sup>5</sup> *Id.* at § 60502(b)(2).

Act also provides for a 60-day transition period for “households that qualified” for the EBB Program before the effective date that would otherwise see a reduction in their benefit as a result of the changes made through the delayed amendments.<sup>6</sup> Accordingly, the 60-day transition period for the Affordable Connectivity Program will start on December 31, 2021 for all households enrolled in the EBB Program before the effective date. During the transition period, households currently enrolled in the EBB Program will continue to receive the same benefit level they are receiving as of the effective date, thereby ensuring a seamless migration for all EBB Program households to the Affordable Connectivity Program. Moreover, the Affordable Connectivity Program will also begin to accept enrollments on the effective date. To ensure an orderly transition, the Bureau will provide additional guidance to participating providers, households, outreach partners, and other stakeholders concerning the end of the EBB Program, the 60-day transition period, the Affordable Connectivity Program requirements, and any other guidance necessary for enrollment of households in the Affordable Connectivity Program.

## II. BACKGROUND

5. The EBB Program was established by the Consolidated Appropriations Act, 2021, which was enacted on December 27, 2020.<sup>7</sup> The EBB Program was intended to provide relief during the COVID-19 pandemic and uses funding from the \$3.2 billion Emergency Broadband Connectivity Fund to support participating providers’ provision of certain broadband services and connected devices to qualifying households. Under the requirements of the Consolidated Appropriations Act, the Bureau issued a public notice on January 4, 2021 seeking comment on the rules for and implementation of the EBB Program.<sup>8</sup> The Commission voted unanimously to adopt EBB Program rules, and pursuant to statutory requirements, the final order was adopted on February 25, 2021.<sup>9</sup> The EBB Program launched on May 12, 2021 and the Commission staff and the program administrator, the Universal Service Administrative Company (USAC), have overseen and administered the EBB Program since that date.<sup>10</sup> As of today over seven million households have enrolled in the program.<sup>11</sup>

6. On November 15, 2021, the Infrastructure Act became law,<sup>12</sup> modifying and extending the EBB Program and renaming it the Affordable Connectivity Program. The Infrastructure Act, while leaving many aspects of the framework Congress created for the EBB Program largely intact, makes significant modifications to the eligibility criteria to be used for the Affordable Connectivity Program, sets out additional consumer protection requirements, reduces the standard benefit amount from \$50 per month to \$30 per month, imposes a new standard for determining the households that are eligible to receive the enhanced benefit of up to \$75 per month, requires providers to allow enrolled households to apply the affordable connectivity benefit to any of the provider’s internet service offerings, and sets forth additional requirements for providers regarding the promotion of the program. Whereas with the EBB Program, Congress did not set an implementation date for the program, the Infrastructure Act provides

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<sup>6</sup> *Id.* at § 60502(b)(1), (b)(2).

<sup>7</sup> Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904(c).

<sup>8</sup> *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 15 (WCB 2021) (*EBB Program Public Notice*).

<sup>9</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 4612 (2021) (*EBB Program Order*).

<sup>10</sup> *Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021) (*EBB Launch Date Public Notice*).

<sup>11</sup> USAC, EBB Program Enrollment and Claims Tracker, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited Nov. 12, 2021).

<sup>12</sup> H.R. 3864 – Infrastructure Investment and Jobs Act, <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf>.

that certain revisions to the eligibility criteria, the subsidy amount, and the removal of the restriction that supported-service offerings be offered at the same rate as they were offered as of December 1, 2020 shall be effective on the date that the Commission submits a certification to Congress announcing that the \$3.2 billion appropriated for the EBB Program in the Consolidated Appropriations Act “has been fully expended” or “December 31, 2021, whichever is earlier.”<sup>13</sup>

### III. DISCUSSION

#### A. Participating Providers

##### 1. Providers Eligible to Participate

7. The Infrastructure Act does not alter the definition of participating provider or the framework through which providers may seek to participate in the Affordable Connectivity Program. Like participation in the EBB Program, provider participation in the Affordable Connectivity Program is voluntary. For both the Affordable Connectivity and EBB Programs, a “participating provider” is defined as a broadband provider that is either designated as an eligible telecommunications carrier (ETC) or a provider that seeks approval from the Commission to participate in the program.<sup>14</sup> To participate in the EBB Program, ETCs and their affiliates in the states or territories where the ETC is designated were required to file the appropriate information with USAC and did not need to seek approval from the Commission in those states. All other broadband providers needed to seek approval from the Commission to participate in the EBB Program.

8. Providers that have not been designated as ETCs by the states or the Commission were required, in order to participate in the EBB Program, to file an application with the Commission that meets the program requirements and must be approved by the Commission. The Infrastructure Act leaves these requirements unchanged for providers seeking to participate in the Affordable Connectivity Program.<sup>15</sup> Moreover, the Infrastructure Act does not modify or eliminate the requirement that the Commission “automatically approve as a participating provider a broadband provider that has an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse.”<sup>16</sup>

9. The Commission established an expedited and automatic approval process in the EBB Program.<sup>17</sup> We propose that all existing EBB Program providers, even those that lack ETC designations or are not affiliated with an ETC, would not need to file or resubmit a completely new application to participate in the ACP prior to resubmitting their ACP election notice to USAC. Only a provider that did not participate in the EBB Program and is not an existing ETC or affiliated with an ETC would need to file an entirely new FCC approval application. We seek comment on this proposal.

10. As noted above, the Consolidated Appropriations Act also required that the Commission “automatically approve as a participating provider any broadband provider that has an established program as of April 1, 2020 that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse.”<sup>18</sup> In the EBB Program, the Commission implemented this statutory obligation by allowing service providers to

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<sup>13</sup> Infrastructure Act, div. F, tit. V, § 60502(b)(1).

<sup>14</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(12) (2020) (definition of participating provider) *redesignated* by Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(B)(ii), (a)(2)(D), § 904(a)(11) (2021).

<sup>15</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(d).

<sup>16</sup> *Id.* at § 904(d)(2)(B).

<sup>17</sup> *EBB Program Order*, 36 FCC Rcd at 4624-28, paras. 25-35.

<sup>18</sup> Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904(d)(2)(B).

file “automatic applications” where the provider’s application would be reviewed on a priority basis if it established it had a pre-existing program as of April 1, 2020 that offered discounted service for certain eligible households.<sup>19</sup> In defining what constitutes an “established program” the Commission adopted a “broad interpretation,” finding that “any eligible broadband provider that maintains an existing program that was made available by April 1, 2020 to subscribers meeting at least one of the criteria in the Consolidated Appropriations Act’s definition of an eligible household” meets the requirements of an established program.<sup>20</sup> The Commission explained that the principal consideration in determining what constitutes an “established program” for automatic approval is whether EBB eligible subscribers would have received a financial benefit through either reduced rates or rate forbearance.<sup>21</sup> Further, a provider must also show its program is “widely established” by demonstrating the program is offered to subscribers in a substantial portion of the provider’s service area in the jurisdiction for which it is seeking approval.<sup>22</sup> The established program must have been available by April 1, 2020 to subscribers meeting at least one of the criteria in the definition of an EBB Program eligible household. Specifically, providers offering broadband households discounted rates based on criteria such as low-income status, loss of income, participation in certain federal, state, or local assistance programs, or other means-tested eligibility criteria qualify for this automatic approval process.<sup>23</sup> Additionally, the Commission made eligible for automatic approval providers that made commitments to keep low-income subscribers connected during the pandemic and offered widely available bill forbearance or forgiveness programs beginning no later than April 1, 2020 and continuing through the end of the EBB Program.<sup>24</sup> We propose to retain the process developed for review and approval of automatic applications for such non-ETC providers, and we seek comment on that proposal.

11. The Infrastructure Act makes several changes to the ways households can qualify for the Affordable Connectivity Program. In the EBB Program, a household may qualify if it meets the requirements of a provider’s existing low-income or COVID-19 program,<sup>25</sup> subject to the requirements of the provider’s approved verification process. However, under the Affordable Connectivity Program, eligibility for a provider’s COVID-19 program no longer qualifies a household to receive ACP benefits.<sup>26</sup> Additionally, the Infrastructure Act removes eligibility for households that qualified based on having experienced a substantial loss of income since February 29, 2020.<sup>27</sup> Given these changes, we seek comment on how the Commission should revise the process for determining whether a provider’s “established program” qualifies it for automatic approval to become a participating provider in the Affordable Connectivity Program. In keeping with the directive of Congress, we propose to modify the requirements of what constitutes an “established program” to reflect the removal of COVID-19-specific response programs and other short-term bill forbearance or forgiveness programs. Accordingly, a provider seeking to participate in the Affordable Connectivity Program that did not participate in the EBB Program or is otherwise not an ETC or affiliated with an ETC can demonstrate an “established program” for automatic approval by submitting information demonstrating that it maintains an existing low-income

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<sup>19</sup> 47 CFR § 54.1601(b)(2); *EBB Program Order*, 36 FCC Rcd at 4625-26, paras. 27-32.

<sup>20</sup> *EBB Program Order*, 36 FCC Rcd at 4625, para. 28.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 4625-26, para. 29.

<sup>23</sup> *Id.* at 4625, para. 28.

<sup>24</sup> *Id.*

<sup>25</sup> Consolidated Appropriations Act, div. N., tit. IX § 904(a)(6)(D), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i) (2021).

<sup>26</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i), § 904(a)(6)(D) (2021).

<sup>27</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(C), *struck by* Infrastructure Act, div. F, tit. V, §sec. 60502(b)(1)(A)(i)(II) (2021).

program that was made available by April 1, 2020 to subscribers meeting at least one of the criteria in the revised definition of an eligible household. We propose, consistent with the Infrastructure Act's modifications to the statute, that to qualify for automatic approval, providers must demonstrate that they are offering broadband subscribers discounted rates based on criteria such as low income, participation in federal, state, or local assistance programs, or other means-tested eligibility criteria, and must also demonstrate the pre-existing verification process used for this existing program.

12. We next propose that the Commission should delegate to the Bureau the authority to review and approve or deny service provider applications consistent with the authority it possessed for the EBB Program. We propose to require only providers that did not participate in the EBB Program to seek Commission approval prior to submitting to USAC the ACP election notices. We also propose that applications should be reviewed on a rolling basis throughout the Affordable Connectivity Program. We seek comment on these proposals. What efficiencies should the Commission consider to manage the speedy and thorough review of provider applications? Once the Commission has approved (or denied) an application, how should it inform the applicant of that determination? We seek comment generally on using the application and review processes from the EBB Program in the Affordable Connectivity Program, and any modifications the Commission should consider for the implementation of the Affordable Connectivity Program.

13. We seek comment on any additional changes that should be made to the provider approval process given the anticipated longer timeframe of the Affordable Connectivity Program. For instance, what requirements for notice and approval should the Commission impose with respect to transactions between participating providers? Historically, transactions that alter the ownership interests of ETCs participating in the High Cost and Lifeline programs must receive approval from the Bureau under its license transfer, Universal Service Fund and compliance plan authorities.<sup>28</sup> Should the Commission impose a similar requirement for ACP providers? Should the Commission instead only require the providers to maintain up-to-date ownership information in its election notice filed with USAC? We also recognize that providers are not required to participate in the Affordable Connectivity Program and we anticipate that some providers may wish to voluntarily relinquish their eligibility. Should the Commission adopt a formal process providers must follow to relinquish ACP eligibility? Must the Commission act on such notice before a provider can withdraw from the Affordable Connectivity Program? We seek comment on a process through which ACP providers can cease

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<sup>28</sup> *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018). (*Hargray/ComSouth Order*). The Commission directed the Bureau to impose the *Hargray/ComSouth* mixed support conditions on future transactions between parties receiving different types of high-cost universal service support "where necessary to remedy a public interest harm." *Hargray/ComSouth Order*, 33 FCC Rcd at 4789, para. 27, n.72. The Bureau has imposed the condition on grants of multiple mixed support transactions. See, e.g., *Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc.*, WC Docket No. 20-389, Order on Reconsideration, FCC 21-63 (2021); *Domestic Section 214 Application Granted for the Transfer of Control of Prairieburg Incorporated*, WC Docket No. 21-30, Public Notice, DA 21-333 (WCB 2021); *Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 20-432, Public Notice, DA 21-114 (WCB 2021); *Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 20-373, Public Notice, DA 20-1509 (WCB 2020); see also *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Universal Service Support*, Public Notice, 29 FCC Rcd 9144, 9145 (WCB 2014) (*2014 ETC Public Notice*). The Bureau has clarified that any transfer of ownership or control of an ETC with an approved Lifeline compliance plan requires Commission approval in advance of the transaction. This includes renewing compliance plan approval for changes in the corporate ownership and control of the ETC. The Bureau has exercised this authority in multiple Lifeline contexts. See, e.g., *Wireline Competition Bureau Approves the Wireline and Wireless Compliance Plan of Global Connection*, WC Docket Nos. 11-42, 09-197, Public Notice, DA 18-854 (WCB 2018).

providing service supported by the program while also ensuring that their subscribers are provided adequate notice and given the opportunity to transfer their benefit to another service provider.

## 2. Election Notice

14. In the EBB Program, the Commission required all participating providers to file an election notice with USAC to participate. The Commission also established an expedited process where existing ETCs and other approved providers could gain access to the necessary USAC systems being used to administer the EBB Program. The EBB provider election notice includes: (1) the states in which the provider plans to participate in the EBB Program; (2) a statement that, in each such state, the provider was a “broadband provider” as of December 1, 2020; (3) a list of states where the provider is an existing ETC, if any; (4) a list of states where the provider received FCC approval, whether automatic or expedited, to participate, if any; (5) whether the provider intends to distribute connected devices under the EBB Program; (6) a description of the internet service offerings for which the provider plans to seek reimbursement from the EBB Program in each state; (7) documentation demonstrating the standard rates for those services; and (8) any other administrative information necessary for USAC to establish participating providers in the EBB Program.<sup>29</sup> Should the Commission require all providers to submit a new election notice for the Affordable Connectivity Program? By doing so, the Commission would not only give providers an opportunity to refresh the information they initially provided for the EBB Program, but would also ensure that providers are committed to participating in this new program and understand the program requirements. Alternatively, we seek comment on whether the Commission should require only providers that have not certified any claims for the EBB Program to submit an election notice for the Affordable Connectivity Program. Would this alternative approach be sufficient to ensure that EBB Program providers are committed to participate in the Affordable Connectivity Program and are aware of the new program requirements? If the Commission does not require all EBB Program providers to submit new election notices in order to participate in the Affordable Connectivity Program, should the Commission require those providers to update their election notices to reflect new services and connected devices to be offered in the Affordable Connectivity Program? We also seek comment on the EBB Program election notice form and process administered by USAC and what modifications would be appropriate for the Affordable Connectivity Program.<sup>30</sup>

15. The Infrastructure Act removes the Consolidated Appropriations Act requirement that the EBB Program supported service must have been offered “in the same manner, and on the same terms, as described in any of such provider’s offerings for broadband internet access service to such household, as on December 1, 2020.”<sup>31</sup> Moreover, the Infrastructure Act also imposes a new requirement that providers “shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same rates and terms available to households that are not eligible households.”<sup>32</sup> Given these changes, we seek comment on the information and the supporting documentation that should be collected by USAC as part of the election process to help guard against waste, fraud, and abuse, and to ensure that the provider offers supported service through the Affordable Connectivity Program at the same terms available to households not eligible for the program. For instance, should the Commission require a demonstration that the service offering was generally available for a specific period of time prior to the submission of the election notice or the launch of the Affordable Connectivity Program? If so, what should that period of time be? Would such a requirement be consistent with the Infrastructure Act’s requirement that eligible households be allowed to apply the

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<sup>29</sup> *EBB Program Order*, 36 FCC Rcd at 4618-24, paras. 14-24.

<sup>30</sup> USAC, Getting Started, <https://www.usac.org/about/emergency-broadband-benefit-program/system-resources/get-started/> (Click on “Submit an Election Notice”) (last visited Oct. 26, 2021).

<sup>31</sup> Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904(a)(13) (definition of standard rate), *struck by* Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(iv).

<sup>32</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(i) (2021).

benefit to any internet service offering of the provider? How should promotional and contract rates be evaluated for purposes of determining whether the supported service is offered on the same terms as those offered to non-eligible households? We also seek comment on the appropriate geographic area for evaluating whether the service is offered at the same rates and terms as those offered to non-eligible households. Can a provider's rates in one geographic area be used as a reference for comparable rates for the Affordable Connectivity Program in another area? How large of a geographic area should the Commission use as a reference for comparing rates? How should rates in areas where a provider recently expanded service be considered?

16. EBB Program election notices are also required to include information about the connected devices offered by the provider. With respect to the connected devices providers seek to offer through the Affordable Connectivity Program, what information should the Commission require in the election notice? Should providers be required to submit documentation on the retail rate of the device, including, but not limited to, the make, model, and specifications of the device, and the cost of the device to the provider? Currently, in the EBB Program, providers only need to include documentation detailing the equipment, rates, applicable costs of the laptop, desktop or tablet and provide summary information regarding the devices, rates, and costs.<sup>33</sup> We seek comment on requiring connected device specifications and the cost of the device in the ACP election notice to help USAC and the Commission determine whether the reimbursement claims for the device are compliant with the Commission's rules and to help guard against waste, fraud, and abuse.

17. We also propose that with their election notices providers submit to USAC the lists of ZIP codes where they will offer the supported services to be used to populate the Companies Near Me tool on USAC's website without delay.<sup>34</sup> The Companies Near Me tool allows consumers to find a Lifeline or EBB Program provider in their area. We seek comment on this proposal and other information the election notice should collect.

18. As in the EBB Program, we propose to accept election notices on a rolling basis throughout the Affordable Connectivity Program. Should the Commission adopt a specific timeframe for acting on provider elections? How should the timeframe take into account the need for USAC simultaneously to administer the EBB Program or the Affordable Connectivity Program, and also process election notices? Once USAC has reviewed an election notice and verified that the broadband provider is eligible to participate in the Affordable Connectivity Program, how should it inform applicants of that determination? We also seek comment on when and under what circumstances USAC should reject an election notice. Can USAC take into account past complaints, enforcement actions, fraud convictions, or audit findings as bases for rejecting a provider's election for the Affordable Connectivity Program? Further, if an applicant fails to provide with its election notice or application the information that may be required under our rules, should that be a basis for rejecting or delisting that applicant? Are there other reasons that would justify rejection? Because the Infrastructure Act eliminated the EBB Program requirement that participating providers must have offered a broadband service as of December 1, 2020 in order for that service to qualify for EBB Program support, we anticipate the Affordable Connectivity Program will be open to a broader range of providers. We seek comment on what information should be collected from providers to ensure that they are legitimate broadband providers committed to adhering to the ACP rules and are capable of providing broadband service to eligible households. For example, should the Commission require providers to certify that they would be able to promptly provide service in an area if a subscriber requested it? Should the Commission require providers to certify that they will respond to consumer complaints filed using the dedicated ACP complaint process within 30 days?

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<sup>33</sup> See USAC, Getting Started, <https://www.usac.org/about/emergency-broadband-benefit-program/system-resources/get-started/> ("Click on Submit an Election Notice") (last visited Oct. 26, 2021).

<sup>34</sup> See USAC, *Stay Connected | Companies Near Me*, <https://getemergencybroadband.org/companies-near-me/> (last visited Oct. 26, 2021).



19. Participating providers necessarily will have to interact with both the Commission and USAC. We propose that, as with the EBB Program election process, a broadband provider will be required to have already registered with the Commission and USAC and to have received both an FCC Registration Number (FRN) and Service Provider Identification Number, if applicable, before filing an election notice. We propose to retain for the Affordable Connectivity Program the information requested on the EBB Program election form.<sup>35</sup> This includes a requirement that providers include their data universal numbering service (DUNS) and employer identification numbers (EIN) on the election form. We seek comment on this proposal and ask what other financial information from providers we should collect on the election notice to ease the administration of the program. For instance, requiring each participating provider to file a separate election notice rather than allowing affiliated providers the ability to file a joint election notice would ease the processing of payments to each provider in the Affordable Connectivity Program. We thus propose requiring each participating provider to file an election notice separately, that would include the FRN, EIN, and DUNS for the entity receiving payment. We seek comment on this proposal. We also seek comment on any burdens related to the election notice process, particularly for small providers, and possible ways to alleviate these burdens.

### 3. Access to USAC Systems

20. The Infrastructure Act leaves unchanged the requirement that the Commission “expedite the ability of all participating providers to access the National Verifier and the National Lifeline Accountability Database (NLAD) for the purposes of determining whether a household is an eligible household.”<sup>36</sup> We propose that all participating providers be required to have their agents and other enrollment representatives registered with the Representative Accountability Database (RAD), as is currently required for the Lifeline<sup>37</sup> and EBB Programs as a way to minimize waste, fraud, and abuse.<sup>38</sup> As it does in the Lifeline program, should the Commission prohibit participating ACP providers from offering or providing to their enrollment representatives or their direct supervisors any commission compensation that is based on the number of consumers who apply for or are enrolled in the ACP with that provider?<sup>39</sup> In the *EBB Program Order*, the Commission declined to apply this prohibition to the EBB Program “to avoid discouraging provider participation and diminishing consumer choice in the [EBB] Program.”<sup>40</sup> Should the longer-term nature of the Affordable Connectivity Program change the Commission’s assessment of whether these concerns outweigh the possible benefits of the prohibition in guarding against waste, fraud, and abuse? What other actions should the Commission consider to protect the Affordable Connectivity Program and enrolling households from waste, fraud and abuse caused by rogue agents of providers?

21. To access the databases, Affordable Connectivity Program providers will be required to accept USAC’s OnePortal Terms and Conditions, agreeing that their access is conditioned on their compliance with federal laws regarding privacy, data security, and breach notification. We propose that once USAC has verified a broadband provider’s election notice, it should expeditiously process and prioritize registrations from such providers and take any other steps needed to facilitate access by

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<sup>35</sup> See USAC, *About | Emergency Broadband Benefit Program | System Resources | Get Started*, <https://www.usac.org/about/emergency-broadband-benefit-program/system-resources/get-started/>, Election Notice (last visited Oct. 26, 2021) (the election form currently collects provider identification information including name, address, FRN, DUNS number, EIN (Federal Tax ID), SPIN, Data Act Business Type, officer information, and contact information).

<sup>36</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(F), § 904(b)(3) (2021).

<sup>37</sup> 47 CFR § 54.406(a).

<sup>38</sup> *Id.* at § 54.1607.

<sup>39</sup> *Id.* at § 54.406(b).

<sup>40</sup> *EBB Program Order*, 36 FCC Rcd at 4681, para. 147.

participating providers to these databases. For providers with an election notice that is verified for the Affordable Connectivity Program, but not for the EBB Program, should the Commission direct USAC to limit the provider's access to USAC systems before the Affordable Connectivity Program is launched? We seek comment on ways to help providers, especially those who are new to USAC systems, gain access to and familiarity with the systems they need to enroll households in the Affordable Connectivity Program.

22. We propose that the Commission formalize a process for limiting provider access to USAC systems or removing participating providers from the Affordable Connectivity Program in situations where there are concerns of waste, fraud, and abuse. For example, should USAC remove providers if there is a trend of troubling complaints that suggest that the provider is not offering eligible households broadband service or connected devices, is failing to properly enroll subscribers pursuant to ACP rules, is not passing through the discounts to subscribers, is providing devices that do not provide the connectivity that was promised or that consumers require, or is otherwise acting in a way that suggests failures to comply with the Affordable Connectivity Program rules? Should the Commission promulgate rules providing for spot checks by USAC or the Commission to monitor provider compliance? Should the Commission supplement its document retention rules to facilitate such monitoring? Should the Commission provide for a mechanism to promptly delist or suspend providers or their agents where there is sufficient evidence they have (1) submitted material, false information to USAC or the Commission, (2) failed to submit information required by the approval or election process, or (3) otherwise failed to comply with ACP program rules? We seek comment on this proposal and request comments on the tools USAC and the Commission have available or should have available to lock out and/or remove providers from the Affordable Connectivity Program.

#### 4. Alternative Verification Process Review

23. The Consolidated Appropriations Act allows a participating provider to “rely upon an alternative verification process of the participating provider,” to determine household eligibility and enroll households in the EBB program, subject to certain conditions.<sup>41</sup> Pursuant to the process set out by the Consolidated Appropriations Act, the “participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement,” and the Commission has seven days after receipt of the information to notify the participating provider if its “alternative verification process will be sufficient to avoid waste, fraud, and abuse.” This approval allows participating providers to verify all household eligibility criteria through their own eligibility verification process in addition to, or instead of, using the National Verifier. The Infrastructure Act does not modify the requirement that a provider seeking automatic approval must have eligibility “verification processes that are sufficient to avoid fraud, waste, and abuse.”<sup>42</sup> However, by eliminating a provider's existing COVID-19 program as a basis for inclusion, the Infrastructure Act does modify the types of acceptable “existing programs” that a provider's alternative verification process would incorporate to determine a household's eligibility in the Affordable Connectivity Program. We seek comment on the impact of this change on the Commission's consideration of alternative verification process requirements.

24. The Commission required alternative verification processes for the EBB Program to be at least as stringent as methods used by the National Verifier.<sup>43</sup> To meet this standard, EBB participating providers that use alternative verification processes need to collect a prospective subscriber's: (1) full name, (2) phone number, (3) date of birth, (4) e-mail address, (5) home and mailing addresses, (6) name and date of birth of the benefit qualifying person if different than applicant, (7) basis for inclusion in program (e.g., SNAP, SSI, Medicaid, school lunch, Pell Grant, income, provider's existing program, etc.)

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<sup>41</sup> Consolidated Appropriations Act, div. N., tit. IX, § 904(b)(2)(B).

<sup>42</sup> *Id.* at § 904(d)(2)(B).

<sup>43</sup> *EBB Program Order*, 36 FCC Rcd at 4642-43, para. 66.

and documentation supporting verification of eligibility, and (8) certifications from the household that the information included in the application is true.<sup>44</sup> The provider is required to describe the processes it (or a third-party) uses to verify the required information, and is required to explain why the alternative process would be sufficient to avoid waste, fraud, and abuse.<sup>45</sup> The provider is also required to explain how it trains its employees and agents to prevent ineligible enrollments, including enrollments based on fabricated documents.<sup>46</sup> If the alternative verification process fails to include any of the required information, the provider is required to explain why such information was not necessary to prevent waste, fraud, and abuse.<sup>47</sup> Finally, if a provider without an established low-income or COVID-19 program seeks approval of an alternative verification process, it is required to explain why it proposes to use an alternative verification process instead of the National Verifier eligibility determinations.<sup>48</sup> We propose to require the same information for any provider seeking approval for an alternative verification process in the Affordable Connectivity Program, and we seek comment on this proposal.

25. We propose that providers with approved EBB Program alternative verification processes can continue to use those processes when enrolling households in the Affordable Connectivity Program in a manner consistent with the Affordable Connectivity Program's revised eligibility criteria. We seek comment on this proposal and any changes that would be necessary to update the alternative verification process application to incorporate these statutory changes for the Affordable Connectivity Program. The Infrastructure Act continues to allow providers to use their alternative verification processes based on the provider's eligibility requirements for its existing low-income program<sup>49</sup> and does not require alternative verification processes to verify all of the statutory household eligibility bases for inclusion in the Affordable Connectivity Program.<sup>50</sup> Additionally, the Infrastructure Act does not modify the requirement that an alternative verification process must be sufficient to avoid waste, fraud, and abuse, as required by the Consolidated Appropriations Act. Thus, we propose that providers with existing approved alternative verification processes may approve households for the Affordable Connectivity Program if the household meets the criteria for the provider's existing low-income program or the statutory eligibility requirements, and these providers need not seek new Commission approval for their alternative verification processes. However, we also propose that providers with approved alternative verification processes must seek new Commission approval to verify any eligibility criteria not originally contained in prior approved processes. For example, a provider will need to seek approval from the Commission if it intends to verify in its alternative verification process household participation in the Special Supplemental Nutritional Program for Woman, Infants and Children (WIC) if the provider's approved processes do not specify WIC or if WIC is not a qualifying program for the provider's own low-income program. We seek comment on this approach.

26. The household eligibility determinations made by the National Verifier represent a strong waste, fraud, and abuse prevention tool. The importance of the independent household eligibility reviews and verification conducted by the National Verifier was recognized by Congress,<sup>51</sup> and the Commission has also stated that the National Verifier is an effective tool and important protection against waste, fraud,

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i)(II), § 904(a)(6)(D).

<sup>50</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(B).

<sup>51</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2).

and abuse.<sup>52</sup> During the EBB Program, the periodic updates to the National Verifier to improve the EBB household verification process proved to be an effective and robust tool for providers and households to efficiently determine household eligibility. In fact, many providers with approved alternative verification processes choose to use the National Verifier process in addition to or in lieu of their own alternative processes.<sup>53</sup> In light of the reliance on the National Verifier by many providers with an alternative verification process in the EBB Program and the robust verification tools offered by the National Verifier, we propose to approve alternative verification process applications only from providers with existing low-income programs and where the provider's existing low-income program requires the provider to use an alternative verification process and not the National Verifier. Accordingly, providers with existing programs that have an established eligibility approval process that would be incompatible with the National Verifier or other justification that prevents the provider's eligibility process from using the National Verifier would be able to seek an alternative verification process. We seek comment on this proposal.

27. During the EBB Program, some providers without an established low-income program sought approval of an alternative verification process even where the providers had already been designated as ETCs, had been providing Lifeline service for years, and had a history of using the National Verifier and other USAC systems to determine eligibility for Lifeline. These providers typically claimed they needed an alternative verification process for efficiency reasons or administrative ease, but their requests for approval did not address the increased risk of waste, fraud, and abuse inherent in not using the National Verifier. Moreover, these alternative verification processes were untested and seemingly created only for the purpose of the EBB Program application. We are concerned that in such cases, the provider may not have the appropriate financial incentives to make accurate eligibility determinations, because the Emergency Broadband Connectivity Fund, and not the provider itself, is subsidizing the discounted service.<sup>54</sup> In contrast, a provider who is enrolling households in its own low-income program has an adequate financial incentive to make accurate eligibility determinations because the process was developed to support an existing program through which the provider had committed to subsidize the discounted service offered to eligible households.

28. Accurately determining household eligibility is the principal consideration for the National Verifier and its independent reviews. The accuracy of the eligibility decision is the principal tool in preventing improper payments and other waste, fraud, and abuse in the EBB Program and will continue to be in the successor Affordable Connectivity Program. A proposal to use an alternative verification process that does not offer an explanation for why the alternative process is necessary when the provider could easily use the National Verifier fails to make the statutorily required showing that the

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<sup>52</sup> *EBB Program Order*, 36 FCC Rcd at 4635, para. 49; *FCC Enforcement Advisory: Lifeline Providers Remain Liable for Ensuring the Eligibility of Their Subscribers to Receive Lifeline Service*, Public Notice, 34 FCC Rcd 11934, 11934-36 (EB 2019); *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4009-16, para. 132-144 (2016) (*2016 Lifeline Order*).

<sup>53</sup> One of the many advantages of using the National Verifier is that it has connections to state and federal databases for various eligibility programs enabling automated eligibility decisions so that consumers who participate in those programs do not need to provide documentation to show they qualify. Specifically, the National Verifier has connections to the Centers for Medicare and Medicaid Services and the Department of Housing and Urban Development, allowing automated eligibility verification for recipients of Medicaid and Federal Public Housing Assistance. USAC and the FCC have also entered into agreements with 19 states/territories for access to SNAP data for purposes of confirming eligibility for the EBB Program. In addition, the National Verifier application process for the EBB Program was designed to allow automated verification for applicants seeking to qualify based on a child or dependent's receipt of free and reduced price school breakfast or lunch program benefits at community eligibility provision (CEP) schools. We expect to continue to be able to rely on, and add to, these connections in administering the Affordable Connectivity Program.

<sup>54</sup> *EBB Program Order*, 36 FCC Rcd at 4642-43, para. 65.

process will be “sufficient to avoid waste, fraud, and abuse.”<sup>55</sup> Further, the National Verifier maintains a number of database connections that produce automatic eligibility approvals that individual providers would have to conduct through a manual application review process.<sup>56</sup> All of these considerations weigh in favor of limiting the use of alternative verification processes to providers that maintain an existing verification process used for its own low-income program or other purpose unrelated to the EBB Program, Affordable Connectivity Program, or similar federal assistance program. We seek comment on our proposal and the Commission’s authority to limit approvals of an alternative verification process to such providers.

## B. Household Eligibility

29. The Affordable Connectivity Program will provide eligible households a discount on broadband internet access service and a connected device.<sup>57</sup> Consistent with the EBB Program requirements, we interpret the Infrastructure Act to limit the ACP benefit to one-per-household for both the monthly benefit and the one-time connected device reimbursement.<sup>58</sup> In administering the EBB Program, the Commission used the definition of “household” under the Lifeline rules and did not limit the number of participating households that could be located at a particular address.<sup>59</sup> We propose to apply this same definition and approach to the Affordable Connectivity Program. Consistent with the approach in the EBB Program, we also propose (1) to make available a Household Worksheet (with necessary modifications specific to the Affordable Connectivity Program) to help a household determine whether it is an independent economic household from other existing ACP subscribers at the same address, and (2) to require ACP providers using their own approved alternative verification processes to include measures to confirm that a household is not receiving more than one ACP benefit.<sup>60</sup> We seek comment on these proposals. Are any changes to the administration of the one-per-household requirement warranted for the Affordable Connectivity Program? For purposes of individual and household duplicate checks, should the Commission make clear that service providers are also required to check their internal records?

30. We next seek comment on implementing the eligibility criteria for the Affordable Connectivity Program. A household may qualify for the Affordable Connectivity Program if at least one member of the household: (1) meets the qualifications for participation in the Lifeline program (with the

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<sup>55</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(B)(ii)(I) (delegating the authority to the Commission to determine whether “the alternative verification process will be sufficient to avoid waste, fraud, and abuse”); *EBB Program Order*, 36 FCC Rcd at 4642-44, paras. 64-66.

<sup>56</sup> See n.53, *supra*; USAC, *Lifeline Business Update*, at 52, 67 (Jan. 25, 2021), <https://www.usac.org/wp-content/uploads/about/documents/leadership/materials/hcli/2021/2021-01-HCLI-Briefing-Book.pdf>.

<sup>57</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(1), *amended by* Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(i), (a)(2)(D), (a)(2)(F), § 904(b)(1) (2021).

<sup>58</sup> See *EBB Program Order*, 36 FCC Rcd at 4632, para. 44; Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6), (a)(7), *amended by* Infrastructure Act, div. F, tit. V, secs. 60502 (a)(2)(A), (b)(1)(A)(ii), § 904(a)(6), (a)(7)(A) (2021).

<sup>59</sup> *EBB Program Order*, 36 FCC Rcd at 4632-34, paras. 44, 46; 47 CFR § 54.400(h) (defining household as “any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An ‘economic unit’ consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.”).

<sup>60</sup> *EBB Program Order*, 36 FCC Rcd at 4632-34, paras. 44,46; 47 CFR § 54.1606 (c); USAC, Emergency Broadband Benefit Program Household Worksheet, [https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Application\\_Docs/EBB-Household-Worksheet-FINAL.pdf](https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Application_Docs/EBB-Household-Worksheet-FINAL.pdf) (last visited Oct. 26, 2021).

modification that the qualifying household income threshold is at or below 200 percent of the Federal Poverty Guidelines for a household of that size); (2) has been approved to receive school lunch benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act, or the school breakfast program under section 4 of the Child Nutrition Act of 1966; (3) has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 in the current award year; (4) meets the eligibility criteria for a participating provider's existing low-income program, subject to approval by the Commission and any other requirements deemed by the Commission to be necessary in the public interest; or (5) receives assistance through the WIC Program, established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. § 1786).<sup>61</sup> In addition to adding WIC as a qualifying program for ACP, Congress in the Infrastructure Act raised the maximum income for qualifying based on household income for purposes of the ACP from "135 percent" to "200 percent" of the Federal Poverty Guidelines for a household of that size, and eliminated as qualifying criteria substantial loss of income since February 29, 2020 and participation in a provider's COVID-19 Program. Commission rules governing the Affordable Connectivity Program will need to reflect these eligibility changes, and the National Verifier will require modifications to implement them.

31. We seek comment on the qualifying benefit programs for the Affordable Connectivity Program. In the *EBB Program Order*, the Commission determined that households with students enrolled in schools or school districts participating in the Community Eligibility Provision (CEP) are eligible for the EBB Program regardless of whether anyone in the household applied for school lunch or breakfast assistance individually.<sup>62</sup> We seek comment on whether the Commission should take the same approach for the Affordable Connectivity Program. Should the Commission revisit in the Affordable Connectivity Program its decision to allow EBB Program eligibility based only on attendance at a CEP school if the household would not otherwise qualify for the school lunch and breakfast program? Given that the Affordable Connectivity Program is not an emergency, temporary program like the EBB Program, and will have a longer duration than the EBB Program, is there still a compelling reason to allow CEP student eligibility? In a long-term program, how does the Commission assess the risk of allowing households that are not otherwise eligible for the school lunch and breakfast program to receive the ACP benefit? Are there alternatives that the Commission should consider to ensure that households seeking to qualify based on participation in the CEP would otherwise qualify for the school lunch and breakfast program?

32. We also seek comment on whether and how the free and reduced price school lunch and breakfast program eligibility criteria apply where schools elect administrative provisions under the National School Lunch Act that have similar elements as the CEP. For example, many students receive meals from schools that elect to participate in alternative United States Department of Agriculture (USDA) mechanisms without annual eligibility determinations that, like the CEP, may result in students receiving free school breakfast or lunch even though the student did not individually apply for assistance.<sup>63</sup> Would expanding the eligibility of the Affordable Connectivity Program to include students attending Provision 2 and Provision 3 schools broaden participation in the Affordable Connectivity

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<sup>61</sup> Consolidated Appropriations Act § 904(a)(6)(A-E) (2021), *amended in part and stricken in part by* Infrastructure Act, div. F, tit. V, secs. 60502(b)(1)(A)(i)(I), 60502(b)(1)(A)(i)(II), 60502(b)(1)(A)(i)(III), (IV), 60502(b)(1)(A)(i)(III), (V), 60502(b)(1)(A)(i) (VI). The ACP eligibility criteria do not change the eligibility criteria for the Commission's longstanding Lifeline program. *See* Consolidated Appropriations Act, div. N, tit IX, § 904(e).

<sup>62</sup> *EBB Program Order*, 36 FCC Rcd at 4638-39, paras. 55-56.

<sup>63</sup> Provisions 2 and 3 of the National School Lunch Act reduce application burdens and meal counting and claiming procedures, and cover a four-year period after the school's initial eligibility determinations for free and reduced price school meals. The initial eligibility determinations are based on the number of students who qualify for free and reduced price school lunch during the base year, but eligible families are not required to apply each year. *See* USDA Website, Provisions 1, 2, and 3, <https://www.fns.usda.gov/cn/provisions-1-2-and-3> (last visited Oct. 26, 2021).

Program to low-income households the Infrastructure Act intends to benefit?<sup>64</sup> Given that the Affordable Connectivity Program is not an emergency program, is the risk of allowing households to qualify under these provisions, even if the household would not otherwise qualify for the school breakfast and lunch program, justified? Should the Commission only permit households to enroll in the Affordable Connectivity Program based on these provisions if the household would individually qualify for the school lunch and breakfast program, even if the household is not required to submit an annual application? While Provisions 2 and 3 require schools to provide school meals at no charge to all participating students, schools with high rates of poverty are most likely to use these provisions.<sup>65</sup> With respect to the possible inclusion of Provisions 2 and 3, do the existing information collection and documentation requirements for the school lunch and breakfast program already cover the types of documentation that would be sufficient for the Affordable Connectivity Program to demonstrate participation in Provision 2 or 3, or should the Commission revise its documentation requirements to accommodate their inclusion?<sup>66</sup> Are there databases that identify which schools use Provisions 2 or 3? Is there a potential for waste, fraud, and abuse associated with any documentation for Provisions 2 or 3 that the Commission should not rely on for purposes of demonstrating eligibility for the Affordable Connectivity Program?

33. For households seeking to qualify for the Affordable Connectivity Program based on a current student's participation in a school lunch or breakfast program, we propose allowing households to qualify based on documentation from the current school year in which they submit their ACP application *or* the school year immediately preceding their ACP application submissions. This approach would ensure that households are not precluded from participation in the Affordable Connectivity Program due to school closures or school participation in non-annual eligibility determination processes.<sup>67</sup> We seek comment on this idea.

34. Pursuant to the statute, a household with a student who receives free or reduced-price school lunch or breakfast can qualify for the Affordable Connectivity Program through the National Verifier, a service provider's alternative verification process, or school-based eligibility verification.<sup>68</sup> Households that seek to enroll in the EBB Program via the National Verifier based on participation in a school lunch or breakfast program at a non-CEP school are required to provide specific information and documentation at the time of enrollment, including the name of the consumer or benefit qualified person,

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<sup>64</sup> We propose to clarify that participation in the Summer Food Service Program would not qualify a household to participate in the ACP, because that program is separate from the National School Lunch Program and the School Breakfast Program and is not limited to schools, and thus does not seem to fall within the statutory provision. *See* USDA, Child Nutrition Programs, <https://www.fns.usda.gov/cn> (Sept. 10, 2021) (describing the USDA Child Nutrition Programs); Congressional Research Service, *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, at 23, (Feb. 11, 2019), <https://sgp.fas.org/crs/misc/R43783.pdf> (discussing sites eligible for the Summer Food Service Program).

<sup>65</sup> As with the CEP, schools that use provisions 2 and 3 pay the difference between the federal reimbursement and the cost of providing meals at no charge to all participating students. *See* USDA, Provisions 1, 2, and 3, <https://www.fns.usda.gov/cn/provisions-1-2-and-3> (last visited Oct. 26, 2021) (describing the reimbursement structure for Provisions 2 and 3).

<sup>66</sup> USAC, Acceptable Documents, <https://www.usac.org/about/emergency-broadband-benefit-program/application-and-eligibility-resources/application-documents/acceptable-documents/> (last visited Oct. 26, 2021); *EBB Program Order*, 36 FCC Rcd at 4643-44, para. 66 (describing the general information collection and document retention processes for providers relying on an approved alternative verification process), *Id.* at 4644-45, 68 (describing the information collection and documentation requirements for school-based eligibility verifications).

<sup>67</sup> For example, qualifying schools may use Provision 1, which allows eligibility for free and reduced price school meals to be certified for a two-year period. *See* USDA Website, Provisions 1, 2, and 3, <https://www.fns.usda.gov/cn/provisions-1-2-and-3> (last visited Oct. 26, 2021).

<sup>68</sup> Consolidated Appropriations Act div. N, tit. IX § 904(b)(2)(A-C).

qualifying program, the name of the school or school district that issued the documentation, issue date of the documentation (subject to the applicable time limitations) that aligns with the benefit period, and a letter from the school or school district confirming that a member of the household is approved to participate in the school or lunch or breakfast program during the allowed time period.<sup>69</sup> Service providers using an approved alternative verification process are subject to strict subscriber information collection and document retention requirements.<sup>70</sup> We propose that the Commission extend these same requirements to the Affordable Connectivity Program, with modifications to the acceptable documentation dates to reflect the expected longer duration of the Affordable Connectivity Program. We seek comment on this proposal. For National Verifier enrollments, if the benefit qualifying person attends a school that participates in the CEP, the household selects the school during the application process.<sup>71</sup> Are there any modifications that we should consider to guard against potential, waste, fraud and abuse where households seek to enroll through the National Verifier based on participation in the CEP? For example, should the household be required to provide documentation that the benefit qualifying person attends the school that participates in the CEP?

35. For the EBB Program, where a service provider relies on a school to verify student eligibility for the school lunch or breakfast program, the service provider must certify that it relied on school-provided information and must retain documentation of (1) the school providing the information, (2) the program that the school participates in, (3) the household that qualifies (and qualifying student) and (4) the program the household participates in.<sup>72</sup> Where school-based eligibility verification is used, does the information that providers are required to provide to the NLAD and related document retention requirements sufficiently guard against waste, fraud and abuse?<sup>73</sup> If not, what additional information should be transmitted to the NLAD or what additional documentation should the Commission require service providers to retain where school-based eligibility verifications are used? Is there any additional information that the Commission should require service providers or households to provide at the time of enrollment where a household seeks to enroll based on participation in the school lunch or breakfast program? Should the Commission require service providers to retain any additional documentation of a specific household's ACP eligibility through participation in a school lunch or breakfast program? Should the Commission make any other changes to the required documentation for any other qualifying programs where household eligibility is verified through manual reviews in the National Verifier?

36. The Infrastructure Act permits participating providers to use the same three methods of verifying household eligibility for the Affordable Connectivity Program that are currently used for the EBB Program: (1) use of the National Verifier and the NLAD; (2) reliance on the participating provider's alternative verification process, subject to certain conditions; and (3) reliance on a school to verify eligibility under the free and reduced price school lunch or school breakfast program.<sup>74</sup> For the Affordable Connectivity Program, we propose using the same processes used in the EBB Program for

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<sup>69</sup> USAC, Acceptable Documents, <https://www.usac.org/about/emergency-broadband-benefit-program/application-and-eligibility-resources/application-documents/acceptable-documents/> (last visited Nov. 1, 2021). School participation in the CEP is verified through a database, and USAC conducts program integrity reviews to ensure program compliance. *EBB Program Order*, 36 FCC Rcd at 4639, para. 56.

<sup>70</sup> *EBB Program Order*, 36 FCC Rcd at 4643-44, para. 66-67; 47 CFR § 54.1611.

<sup>71</sup> Where a household seeks to qualify based on the CEP, USAC conducts program integrity reviews to ensure program compliance. *EBB Program Order*, 36 FCC Rcd at 4639, para. 56.

<sup>72</sup> *EBB Program Order*, 36 FCC Rcd at 4644-45, para. 68; 47 CFR § 54.1606(a)(3).

<sup>73</sup> *EBB Program Order*, 36 FCC Rcd at 4644-45, para. 68 (outlining the certification and documentation requirements for service providers relying on school-based eligibility verifications and declining to require additional information out of concern of imposing significant administrative burdens on schools, especially during the COVID-19 pandemic, including relevant privacy and consent requirements).

<sup>74</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(A)-(C).



tracking the eligibility of households and verifying household eligibility, with necessary modifications to conform to the ACP requirements, including changed eligibility criteria.<sup>75</sup> To guard against duplicative support, we propose requiring all participating providers to track enrollments of eligible households in the Affordable Connectivity Program in the NLAD, including households whose eligibility is verified through a permitted alternative verification process or school-based verification, and to update subscriber information in the NLAD within 10 business days of receiving the changed information.<sup>76</sup> We seek comment on this proposal.

37. The Commission's EBB Program rules prohibit participating providers from enrolling or claiming support for any prospective subscriber if USAC cannot verify the subscriber's status as alive, unless the subscriber produces documentation to the National Verifier to demonstrate his or her identity and status as alive.<sup>77</sup> We propose to apply the same requirements to the Affordable Connectivity Program, and we seek comment on that proposal. To promote program integrity, we also propose directing USAC to ensure through its program integrity reviews that households whose eligibility is verified through an alternative verification process or other non-National Verifier process comply with this requirement.

38. If a household's eligibility cannot be verified through the National Verifier's automated databases, we propose applying the same documentation requirements used for the EBB Program to the qualifying programs for the Affordable Connectivity Program, to the extent consistent with our proposals in this Public Notice.<sup>78</sup> As noted above, the Infrastructure Act added WIC as a qualifying program for the ACP. If WIC participation cannot be validated through an automated database connection at launch of the Affordable Connectivity Program, what documentation should the Commission require as we work to establish an automated connection capable of qualifying WIC participants? For example, do WIC participants receive benefit award letters, approval letters, statements of benefits, or benefit verification letters? Is there any documentation we should not permit to verify WIC participation for program integrity reasons? How should we consider WIC Electronic Benefit Transfer (EBT) cards? Do these cards contain sufficient identifying information that would prevent someone who is not enrolled in WIC from using the card to support their enrollment in the Affordable Connectivity Program? In contrast to the other benefit qualifying programs, WIC is designed to provide benefits over a shorter time period, and eligibility is based on income and specific eligibility categories for women, infants and children.<sup>79</sup> For WIC, the benefit period typically lasts six months to one year, after which time the participant must renew their eligibility to continue receiving WIC benefits.<sup>80</sup> What, if any, impact should this have on administering WIC as a qualifying program for the Affordable Connectivity Program? Is the annual recertification requirement that we propose below sufficient for households that qualify for the Affordable

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<sup>75</sup> See generally *EBB Program Order*, 36 FCC Rcd at 4635-45, paras. 49-68 (describing eligibility verifications for the EBB Program); 47 CFR § 54.1606(a)-(d) (outlining the eligibility verification requirements for the EBB Program).

<sup>76</sup> *EBB Program Order*, 36 FCC Rcd at 4634, para. 47; 47 CFR § 54.1606(d)(1)-(8).

<sup>77</sup> 47 CFR § 54.1606(d)(9).

<sup>78</sup> USAC Website, Acceptable Documents, <https://www.usac.org/about/emergency-broadband-benefit-program/application-and-eligibility-resources/application-documents/acceptable-documents/> (last visited Oct. 26, 2021).

<sup>79</sup> USDA, Who Gets WIC and How to Apply, <https://www.fns.usda.gov/wic/who-gets-wic-and-how-apply> (last visited Oct. 26, 2021).

<sup>80</sup> For WIC, where the income criterion is met, a child would be eligible for WIC through their fifth birthday, an infant through their first birthday, and women are eligible depending on whether they are pregnant, postpartum, or breastfeeding. See USDA, Categorical Requirement, <https://www.fns.usda.gov/wic/wic-eligibility-requirements>, (last visited Oct.26, 2021).

Connectivity Program based on participation in WIC, given the shorter-term benefit period in the program? Are there any other considerations in administering WIC as a qualifying program?

39. *Enrollment.* Consistent with Lifeline and the EBB Program, we propose that the Commission require, for the Affordable Connectivity Program, the program-wide use of NLAD as a tool for enrollment, as well as reimbursement calculations and duplicate checks in all states, territories, and the District of Columbia, regardless of a state's NLAD opt-out status in the Lifeline program.<sup>81</sup> We seek comment on this approach. We propose that providers be required to transmit to NLAD information about the subscriber,<sup>82</sup> service, connected device, the reliance on an AVP or school eligibility determination to verify a subscriber's eligibility, and whether the household lives on Tribal lands or high cost areas that are eligible for the enhanced support of up to \$75 a month for ACP-supported service. We seek comment on this proposal and the other information that should be submitted to NLAD to assist in the administration of the Affordable Connectivity Program and to provide USAC and the Commission with information to support the providers' claims for reimbursement.

40. Consistent with the EBB Program we propose requiring prospective ACP subscribers who are not already enrolled in Lifeline to submit an application in order to enroll in the Affordable Connectivity Program. Households enrolled in the Lifeline program are automatically eligible for the Affordable Connectivity Program based on their Lifeline eligibility,<sup>83</sup> and as with the EBB Program, we propose not to require these households to submit new applications or new eligibility documentation to participate in the Affordable Connectivity Program, provided that the household opts in or affirmatively requests enrollment in the Affordable Connectivity Program and is already enrolled in NLAD. That said, we propose that existing Lifeline subscribers in the NLAD opt-out states of California, Oregon, and Texas should have the option to submit an application to the National Verifier for the Affordable Connectivity Program if they choose. Because state administrators or agencies in those states continue to verify household eligibility for Lifeline consumers, USAC generally does not have real-time data regarding subscriber Lifeline eligibility for purposes of automatic enrollment in the EBB Program like it does for Lifeline consumers whose eligibility is confirmed by the National Verifier. These three NLAD opt-out states have worked closely with USAC since the start of the EBB Program to streamline the EBB enrollment process for subscribers by increasing the frequency of eligibility listings to USAC on a weekly basis. As a result, service providers in the NLAD opt-out states are able to enroll existing Lifeline subscribers whose eligibility was verified by the state based on the most recent weekly update, rather than having to wait until the state's next monthly file is submitted to USAC.<sup>84</sup> USAC and the Bureau will continue to work with the states to ensure that these weekly updates will continue for purposes of enrolling in the Affordable Connectivity Program existing Lifeline subscribers in California, Oregon, and Texas, although the National Verifier application will also be available as a way for Lifeline consumers in these states to verify their ACP eligibility. We seek comment on whether USAC should make additional changes to this process to administer the Affordable Connectivity Program. Are there any other

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<sup>81</sup> See *EBB Program Order*, 36 FCC Rcd at 4658, para. 91; 47 CFR § 54.1606(d).

<sup>82</sup> For the EBB Program, providers are required to transmit the following subscriber information to the NLAD: subscriber's full name; full residential address; date of birth; the telephone number associated with the Emergency Broadband Benefit Program service; the date on which the Emergency Broadband Benefit Program discount was initiated; the date on which the Emergency Broadband Benefit Program discount was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for the Emergency Broadband Benefit Program. 47 CFR § 54.1606(d)(4).

<sup>83</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6)(A); *EBB Program Order*, 36 FCC Rcd at 4637, para. 52.

<sup>84</sup> USAC, Emergency Broadband Benefit Program Adds Weekly Updates to Streamline Enrollments for Lifeline Subscribers in California, Oregon and Texas (Sept. 29, 2021), <https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Bulletins/Streamline-Enrollments-CA-OR-TX-9-29.pdf>.

challenges with relying on NLAD data from opt-out states, and if so, how can those challenges be overcome to facilitate the administration of and enrollment in the Affordable Connectivity Program?

41. As is permitted for the EBB Program, we propose allowing households seeking to enroll in the Affordable Connectivity Program to verify their identity through the last four digits of their social security number or other approved identity documentation.<sup>85</sup> We seek feedback on the practice of allowing eligible consumers to verify their identity by submitting documentation rather than providing the last four digits of their social security number. Did this more flexible approach encourage participation by households that otherwise would not have completed an application for the EBB Program? If the Commission adopts this approach for the Affordable Connectivity Program, how can USAC improve the experience for applicants? Are there other sources, systems or databases we could rely upon to more quickly qualify households providing alternative documentation?

42. Where participating providers rely on the National Verifier to enroll households in the Affordable Connectivity Program, we propose requiring eligible households to interact directly with the National Verifier to apply for the Affordable Connectivity Program, as is currently required for the EBB Program and the Lifeline program.<sup>86</sup> Consistent with the Lifeline program and the EBB Program, we propose to provide access to an online portal and application form to apply for the Affordable Connectivity Program, and make available an eligibility check application programming interface (API) that allows providers to help consumers with the ACP application. We also propose using the National Verifier automated database connections wherever possible to verify household eligibility for the Affordable Connectivity Program, and extending to the Affordable Connectivity Program the existing manual documentation review process used for the EBB Program (with necessary modifications to reflect the ACP eligibility criteria) where eligibility cannot be verified through a National Verifier automated database. We seek comment on these proposals.

43. The Infrastructure Act made several changes to the eligibility criteria for the Affordable Connectivity Program. As a result of these changes, the systems at USAC will require significant development to, among other capabilities, create a new application portal in the National Verifier and make changes in the NLAD to permit and track enrollments under these new qualifying programs. We seek comment on ways to expedite the development and testing of the new application, and on any other suggestions for readying the relevant systems to accept enrollments starting on December 31, 2021, as permitted by the Infrastructure Act, for households that qualify for the Affordable Connectivity Program based on the changed eligibility criteria.

44. *De-enrollments.* To guard against waste, fraud and abuse, we propose to extend the de-enrollment requirements applicable to both the Lifeline and EBB Programs to the Affordable Connectivity Program, with any necessary modifications to conform to the eligibility criteria for the Affordable Connectivity Program. We similarly propose to require participating providers to transmit the de-enrollment information to the NLAD within one business day of de-enrollment.<sup>87</sup> Based on our experience with the EBB Program, we believe it would be beneficial for USAC to continue to process de-enrollment requests directly from subscribers and notify the subscriber's provider when those de-enrollments occur.<sup>88</sup> We seek comment on these proposals. To the extent technically feasible, should

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<sup>85</sup> *EBB Program Order*, 36 FCC Rcd at 4637-38, para. 53; USAC Website, Acceptable Documents, <https://www.usac.org/about/emergency-broadband-benefit-program/application-and-eligibility-resources/application-documents/acceptable-documents/> (last visited Oct. 26, 2021).

<sup>86</sup> 47 CFR § 54.1606(a); *EBB Program Order*, 36 FCC Rcd at 4638, para. 54.

<sup>87</sup> See *EBB Program Order*, 36 FCC Rcd at 4679, para. 144 (extending to the EBB Program the requirements in “rule 54.405(e)(1), (2), and (5), for de-enrollments generally, de-enrollments for duplicative support, and de-enrollments requested by the subscriber, respectively.”); 47 CFR § 54.1609(a)-(c) (outlining the EBB de-enrollment requirements); § 54.1606(d)(7) (outlining the requirements for transmitting de-enrollments to the NLAD).

<sup>88</sup> See *EBB Program Order*, 36 FCC Rcd at 4679, para. 144.

there be a consumer self-service option to terminate Affordable Connectivity Program service? Could service providers give consumers a self-service option to terminate Affordable Connectivity Program service through their systems?

45. As with the Lifeline and EBB Programs, we also propose to apply a usage requirement to the Affordable Connectivity Program.<sup>89</sup> Where a household receives a service for which a fee is not assessed or collected, limiting reimbursement to households who are actually using a supported service is an important safeguard against waste, fraud, and abuse. We propose applying the same usage definition for the Lifeline and EBB Programs to the Affordable Connectivity Program,<sup>90</sup> and similarly propose to prohibit participating providers from claiming Affordable Connectivity Program reimbursement for households that are not actually using a service for which a fee is not assessed or collected.<sup>91</sup> Is the existing definition of usage adequate and does it include sufficient methods by which subscribers receiving fixed broadband service could demonstrate usage? Should the test be modified to ensure a subscriber is actually using a supported service rather than simply keeping a device powered?

46. We seek comment on whether the proposed definition of usage could result in service providers receiving payment where the subscriber is not actually using their ACP service. In the *2019 Lifeline Notice of Proposed Rulemaking*<sup>92</sup> the Commission asked whether it may be possible for a provider to install an application “app” on an end-user’s device that would “use” data without the end-user’s knowledge. This, and any other data usage that is not generated by the consumer would make it difficult to differentiate legitimate subscriber usage from data usage that happens without the knowledge or direction of the subscriber. The Lifeline usage rules require that the activities that demonstrate usage must be “undertaken by the subscriber.”<sup>93</sup> Would making clear that usage of data means usage of data initiated by the ACP subscriber rather than fabricated by an app or some other means sufficiently address this issue? Are there other steps that the Commission should take to ensure that where ACP service is subject to the usage requirement, service providers are only being reimbursed where the end user is actually using the service? What records should service providers be required to maintain to sufficiently demonstrate actual subscriber usage of their ACP service during an audit or investigation?

47. Alternatively, for purposes of the Affordable Connectivity Program should the usage documentation standards that have historically been used in Lifeline, with the need to rely on records supporting subscribers’ calling, texting and billing activity, as well as data usage, be discontinued in favor of a different model for the Affordable Connectivity Program? For instance, should the Commission mandate a third-party app on subscriber devices that confirms the subscriber is accessing its ACP-supported service so that records substantiating subscriber usage no longer need to be reviewed? Or could subscribers simply be required to contact USAC periodically, to confirm they want to continue with the service? Would these proposals raise any privacy concerns? Are there other alternatives the

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<sup>89</sup> See *EBB Program Order*, 36 FCC Rcd at 4658-59, 4680, paras. 92, 145; 47 CFR § 54.405(e)(3) (requiring Lifeline subscribers who receive a service for which a fee is not assessed or collected to use their service at least every 30 days).

<sup>90</sup> 47 CFR § 54.407(c)(2) (defining usage); 47 CFR § 54.1608(c) (adopting the Lifeline program definition of usage to the EBB Program).

<sup>91</sup> See *EBB Program Order*, 36 FCC Rcd at 4658-59, para. 92; 47 CFR § 54.1608(c) (outlining the usage requirement for claiming reimbursement for EBB subscribers), § 54.407(c)(2) (providing that for Lifeline subscribers who receive a service for which a fee is not assessed or collected, ETCs can only seek reimbursement if the subscriber has used the service in the last 30 days or cured their non-usage).

<sup>92</sup> *Bridging the Digital Divide for Low-Income Consumers et al.*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10948, para. 146 (2019) (*2019 Lifeline Notice of Proposed Rulemaking*).

<sup>93</sup> 47 CFR § 54.407(c)(2).

Commission should consider to ensure that payments are only issued for ACP service the subscriber is actually using where required by program rules?

48. Consistent with the Lifeline program, for purposes of the Affordable Connectivity Program, for households that subscribe to an ACP service that is subject to a usage requirement, we propose a 30-day non-usage period, and a 15-day period for households to cure their non-usage. As with the Lifeline program, households that subscribe to an ACP service that is subject to a usage requirement and have not used their ACP-supported service in 30 days cannot be claimed for reimbursement after the initial 30-day non-usage period unless and until they have cured their non-usage.<sup>94</sup> In order to cure non-usage, an ACP subscriber would need to demonstrate usage as defined in the Lifeline rules, and we propose to extend the Lifeline usage rules to the Affordable Connectivity Program, with any modifications the Commission may adopt for the Affordable Connectivity Program.<sup>95</sup> We seek comment on these proposals. Given that the Affordable Connectivity Program is not an emergency program and will have a longer duration than the EBB Program, we further propose requiring the de-enrollment of households who do not cure their non-usage in the permitted cure period, as is currently required in the Lifeline program.<sup>96</sup> Are any modifications warranted to administer non-usage and de-enrollment for non-usage requirements for the Affordable Connectivity Program?

49. *Recertification.* We next seek comment on implementing a subscriber recertification requirement for the Affordable Connectivity Program to ensure enrolled subscribers continue to meet the ACP eligibility criteria from year to year. Annual recertifications are an important program safeguard for the Lifeline program to ensure the continued eligibility of enrolled subscribers. Accordingly, because the Affordable Connectivity Program is expected to extend multiple years, we propose requiring households enrolled in the Affordable Connectivity Program to recertify their eligibility for the Affordable Connectivity Program at least annually (e.g., once a calendar year), starting with the calendar year following their enrollment in the Affordable Connectivity Program. For purposes of this requirement, should the Commission adopt the existing Lifeline rules and processes governing recertification and de-enrollment of households who do not pass recertification or fail to timely recertify?<sup>97</sup> For EBB enrolled subscribers that transition to the Affordable Connectivity Program, what should be considered their enrollment date for the purposes of any ACP recertification requirement?

50. For households whose eligibility for the Affordable Connectivity Program is verified through the National Verifier, we propose to model recertification after the Lifeline program, where USAC is responsible for recertification for households who enrolled through the National Verifier.<sup>98</sup> To recertify these households, USAC uses the automated databases in the National Verifier for recertification, and provides a paper recertification form, and online and Interactive Voice Response recertification option for households whose eligibility cannot be verified through the National Verifier's

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<sup>94</sup> See *id.*

<sup>95</sup> See *id.* (outlining the activities that constitute usage for purposes of the Lifeline program).

<sup>96</sup> See 47 CFR § 54.405(e)(3).

<sup>97</sup> See 47 CFR § 54.410(f) (describing the Lifeline recertification rules), § 54.410(g) (requiring Lifeline subscribers to re-complete the one-per-household worksheet if at the time of recertification changes to the household would prevent the subscriber from certifying to the accuracy of the information on their recertification *and* the subscriber resides at the same address as another Lifeline subscriber); § 54.405(e)(4) (describing the de-enrollment of subscribers who do not respond to recertification requests); USAC, Recertification, <https://www.usac.org/lifeline/national-verifier/recertification/> (last visited Oct. 26, 2021) (generally describing USAC's recertification processes).

<sup>98</sup> The proposals we make in this section do not seek to change the Lifeline recertification processes for Lifeline subscribers in the opt-out states.

automated database connections.<sup>99</sup> To promote administrative efficiency and minimize the administrative burden on providers and consumers, to the extent that it is technically feasible to track recertification of a particular subscriber across the Lifeline program and Affordable Connectivity Program, should the Commission allow households enrolled in both programs to rely on their Lifeline program recertification, including Lifeline program recertifications conducted by state agencies or state administrators for the opt-out states, to satisfy any recertification requirements we adopt for the Affordable Connectivity Program? Given the difference in eligibility criteria between the Affordable Connectivity and Lifeline programs, what bearing, if any, should a consumer's unsuccessful recertification for the Lifeline program have on the household's participation in the Affordable Connectivity Program? Should additional consumer outreach or notification be required for ACP households that did not pass or did not timely respond to a Lifeline recertification attempt? Should an unsuccessful recertification for the Lifeline program automatically trigger a need to verify continued eligibility for the Affordable Connectivity Program if the subscriber relied on their enrollment in a Lifeline-qualifying program to qualify for the Affordable Connectivity Program? Is there anything else we should consider concerning the interplay between Lifeline recertifications and any recertification requirement the Commission may adopt for the Affordable Connectivity Program?

51. How should the recertification process work for households enrolled in the Affordable Connectivity Program whose initial eligibility was verified through a process other than the National Verifier? Should the Commission require USAC to perform the recertifications for these households, or should ACP participating providers be required to perform recertifications? To the extent it is technically and administratively feasible, would requiring USAC to recertify all ACP subscribers best promote program integrity and administrative efficiency? If ACP participating providers perform the recertifications for households enrolled in the Affordable Connectivity Program through a process other than the National Verifier, should the Commission require those providers to submit their recertification plan to the Bureau for prior approval? If so, how should that approval process work? If ACP participating providers conduct recertifications, should the Commission require them to follow the customer notification timelines and processes that USAC currently uses for Lifeline recertifications? Where USAC conducts recertifications for the Lifeline program, for example, the annual recertification is due by the subscriber's anniversary date, rather than using a single uniform recertification deadline for all subscribers.<sup>100</sup> We expect that, for the Affordable Connectivity Program, USAC and any service providers conducting recertifications would take a similar approach. How should households be timely de-enrolled from the Affordable Connectivity Program upon a failed recertification effort? Is there anything else the Commission should consider in establishing a recertification requirement for households enrolled in the Affordable Connectivity Program?

### **C. Covered Services and Devices**

52. Just as in the EBB Program, the Affordable Connectivity Program will permit eligible households to receive a discount off the cost of broadband service and certain connected devices, and participating providers to receive a reimbursement for providing such discounts.<sup>101</sup> Similar to the EBB

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<sup>99</sup> See FCC Form 5630, Lifeline Annual Recertification Form, <https://www.lifelinesupport.org/wp-content/uploads/Lifeline-Recertification-Application-Form-5630.pdf>.

<sup>100</sup> USAC, Recertification, <https://www.usac.org/lifeline/national-verifier/recertification/> (last visited Oct. 26, 2021) (providing the timeline for USAC's recertification processes).

<sup>101</sup> *EBB Program Order*, 36 FCC Rcd at 4645, para. 69; Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(i), (a)(2)(D), (a)(2)(F), § 904(b)(1) (2021) (Broadband internet access service is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part).

Program, the Infrastructure Act defines “internet service offering” as broadband internet access service provided to a household by a broadband provider.<sup>102</sup> Broadband internet access service retains the definition provided in section 8.1(b) of the Commission’s rules.<sup>103</sup>

53. The Infrastructure Act also adds a new requirement that a participating provider “shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households.”<sup>104</sup> We seek comment on whether “any internet offering” should include legacy or grandfathered plans or whether it only includes current offerings of a provider to new customers. We also seek comment on how providers will make all of their offerings available for the Affordable Connectivity Program. In particular, we seek comment on how providers expect to manage available offerings to ensure compliance with these statutory requirements. It may be that providers offer different plans in different geographies. We seek comment on the extent to which geography affects plan availability, and whether some households will be more limited in their ability to apply the affordable connectivity benefit than others? How much time will providers need to assess their available offerings, and does an expedited timeline for launch of the ACP impact a provider’s ability to go from hand-picking qualifying service offerings for inclusion in the EBB Program to the comprehensive approach described in the Act?

54. We next seek comment on whether the Commission should provide clarity on the internet service offerings that are eligible for reimbursement in the Affordable Connectivity Program. In the *EBB Program Order*, the Commission declined to apply minimum service standards to the internet service offerings eligible for EBB discounts.<sup>105</sup> Should the Commission reconsider this approach for the Affordable Connectivity Program? Does the Commission have the authority under the Infrastructure Act to institute minimum service standards for the Affordable Connectivity Program? The Affordable Connectivity Program will feature a lower standard support amount of \$30.<sup>106</sup> Would setting minimum service requirements help to ensure that households are receiving a competitive broadband service that is covered by the support amount? Should the Commission consider other approaches to ensure that households are receiving a competitive service offering? Are such standards necessary given the additional consumer protections in the Infrastructure Act and the requirement that providers make all of their service offerings available for the Affordable Connectivity Program? If the Commission were to adopt minimum service standards, what should the minimum standards be? Should the Commission adopt the minimum service standards in place for the Lifeline program or different standards?<sup>107</sup> How should the Affordable Connectivity Program standards evolve over time? Given the functional differences between how a household uses a mobile and fixed internet connection, we seek comment on whether different service standards should be considered for mobile versus fixed internet service, and if so, what to base those standards on.

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<sup>102</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(a)(8) (2021).

<sup>103</sup> Infrastructure Act, div. F, tit. V, § 60501; Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(1) (*citing* 47 CFR § 8.1(b)).

<sup>104</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (2021).

<sup>105</sup> *EBB Program Order*, 36 FCC Rcd at 4647-48, para. 73.

<sup>106</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i), § 904(a)(7) (2021).

<sup>107</sup> For example, should the Commission implement for ACP the proposals to amend the Lifeline program minimum service standards that are summarized in the *Report on the State of the Lifeline Marketplace*? See Wireline Competition Bureau, *Report on the State of the Lifeline Marketplace* (June 2021), available at <https://www.fcc.gov/document/bureau-releases-report-state-lifeline-marketplace>. For example, the report noted comments that “Lifeline broadband subscribers with disabilities may require data-intensive and high-speed video conferencing services.” *Id.* at 17 n.100.

55. While the Infrastructure Act removes the EBB Program requirement that a qualifying internet service offering be “offered in the same manner and on the same terms, as described in any of such provider’s offerings for broadband internet access service to such household as of December 1, 2020,”<sup>108</sup> it does allow a household to apply the ACP benefit to any internet service offering “at the same terms available to households that are not eligible households.”<sup>109</sup> We seek comment on the contours and administrability of this requirement. We seek comment on whether this requirement ensures that eligible households receive competitive broadband service offerings, and what additional safeguards and requirements, if any, the Commission could adopt. For example, the Commission viewed the December 1, 2020 requirement for acceptable service offerings in the EBB Program “as a method of avoiding arbitrage opportunities and waste in the [EBB Program] by allowing unscrupulous providers to take advantage of the increased subsidy available.”<sup>110</sup> Does the Commission have the authority under the Infrastructure Act to impose any limitations on the services offered? We seek comment on rules that would enhance the opportunity that low-income households participating in the Affordable Connectivity Program would receive a competitive internet service offering that meets the needs of the household. While households should be able to apply the ACP benefit to an internet service offering of their choosing, should the Commission prevent providers from introducing into the marketplace internet service offerings that seek only to maximize the ACP benefit reimbursement while not actually providing households with a market-rate internet service? Should the Commission be concerned that providers will have an incentive to raise the price of a \$15 plan to a \$30 dollar plan solely to maximize the reimbursement amount? Are there additional measures the Commission can take to reduce price gouging and other harms? Alternatively, will providers respond to the requirement that Affordable Connectivity Program and non-ACP subscribers have access to the same service offerings by restricting offerings of certain plans for all of their customers? How can the Commission reduce the incentive for providers to enact pricing or offering strategies that may harm non-eligible households?

56. Under the EBB Program, providers are required to make available “at least one EBB Program-reimbursed service to each of its eligible households within its service area.”<sup>111</sup> We seek comment on whether the Commission should adopt this policy for the Affordable Connectivity Program. Is this requirement still necessary given that an ACP household may apply the benefit to any broadband service offered by the provider? We also seek comment on providers’ ability to quickly implement the Infrastructure Act’s requirement that a household may apply the benefit to any internet service offering of the participating provider, at the same terms available to households not participating in the Affordable Connectivity Program. What provider billing and system changes are necessary in order to provide discounted broadband service to ACP households? We suspect that the requirement to make the benefit available to all broadband services will have a significant impact on providers and we seek comment on whether providers would be prepared to participate in the Affordable Connectivity Program by the Infrastructure Act’s contemplated effective date of December 31, 2021. We also seek comment on whether the statutory deadline for implementing this change could deter providers from electing to participate in the program or cause them to delay their election until their systems were prepared to support the application of the benefit across all available broadband services.

57. *Multiple Dwelling Units.* We also seek comment on whether the Commission should adopt measures to make it easier for residents in multiple dwelling units with bulk broadband providers to

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<sup>108</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(9) (2020), *amended by* Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii); Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), (b)(1)(A)(iii), § 904(a)(8) (2021).

<sup>109</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7) (2021).

<sup>110</sup> *EBB Program Order*, 36 FCC Rcd at 4647, para. 72.

<sup>111</sup> *Id.* at 4628, para. 37.



participate in the Affordable Connectivity Program.<sup>112</sup> In the *EBB Program Order*, the Commission determined that eligible households that “live at a single address, such as senior and student living, mobile home parks, apartment buildings, and federal units, that receive service as part of a bulk billing arrangement where the households ‘are not directly billed for services by their internet service provider, but instead pay a monthly fee for broadband services to their landlord’” should be permitted to participate in the EBB Program.<sup>113</sup> The Commission agreed with commenters and made the EBB Program available to such households, “as long as the provider is approved in the Program and the household is eligible under the statute,” and set out additional guidelines for such situations.<sup>114</sup> Should the Commission adopt this flexibility in the Affordable Connectivity Program? What else should the Commission consider about such arrangements?

58. *Bundled Service Offerings.* In the *EBB Program Order*, the Commission found that bundled service offerings such as those offering voice, data, and texting could be eligible for the EBB Program if such bundled offerings were offered in the same manner and on the same terms on or before December 1, 2020.<sup>115</sup> However, the Commission declined to allow the Emergency Broadband Benefit to be applied to the full price of broadband-bundled video service, finding that it was not contemplated in the statute and not necessary to ensure that consumers in the EBB Program have a robust choice in broadband service offerings.<sup>116</sup> We propose that, as in the EBB Program, voice, data, and text bundled services should be eligible for ACP support, while broadband-video bundled services should not. We seek comment on this proposal.

59. *Associated Equipment.* The Infrastructure Act modifies the definition of the benefit to be applied to broadband service. Specifically, the affordable connectivity benefit “means a monthly discount for an eligible household applied to the actual amount charged to such household, in an amount equal to such amount charged, but not more than \$30, or if an internet service offering is provided to an eligible household on Tribal land, not more than \$75.”<sup>117</sup> The Infrastructure Act removed a reference to “associated equipment” that was included in the definition of “emergency broadband benefit” previously.<sup>118</sup> The prior inclusion of “associated equipment” allowed the Commission to include “equipment necessary for the transmission functions of Internet service offerings supported through the EBB Program,” which the Commission found includes equipment such as modems, routers, and hotspot devices and antennas.<sup>119</sup> In light of this modification of the definition, we seek comment on whether monthly rental costs for equipment such as modems, routers, hot spot devices, antennas, and any other equipment that is necessary for the transmission functions of internet service offerings should be eligible for the affordable connectivity benefit. To the extent the Commission makes the monthly rental costs for such equipment eligible in the Affordable Connectivity Program, we seek comment on whether the Commission should continue to disallow reimbursement for upfront costs for such equipment that a provider may charge a consumer when they begin receiving broadband service.

60. *Connected Devices.* The Infrastructure Act retains the definition of connected device and the reimbursement rate for such devices used in the EBB Program. For the Affordable Connectivity

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<sup>112</sup> See *id.* at 4633, para. 45.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 4649, para. 76.

<sup>116</sup> *EBB Program Order*, 36 FCC Rcd at 4649, para. 76.

<sup>117</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(A)(i), § 904(a)(7) (2021).

<sup>118</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7) (2020), amended by Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(A), (b)(1)(A)(ii) (2021).

<sup>119</sup> *EBB Program Order*, 36 FCC Rcd at 4650-51, para. 78.

Program, participating providers, in addition to providing an ACP-supported broadband service to the household, may be reimbursed up to \$100 for a connected device delivered to the household, provided that the “charge to such eligible household is more than \$10 but less than \$50 for such connected device.”<sup>120</sup> A connected device is defined in the statute as a laptop, desktop computer, or a tablet.<sup>121</sup>

61. In the *EBB Program Order*, because the Consolidated Appropriations Act declined to include cellular phones or smartphones in the definition of connected devices, the Commission found that a connected device could not include “devices that can independently make cellular calls such as large phones or phablets.”<sup>122</sup> We propose that the Commission adopt the same approach in the Affordable Connectivity Program, and we seek comment on that proposal. One EBB Program provider has suggested the EBB Program could support some tablets with cellular capabilities.<sup>123</sup> Should the Commission provide additional guidance or flexibility with respect to the characteristics or features that would make a laptop, desktop, or tablet eligible under the program?

62. The Infrastructure Act also does not alter the requirement that a provider may not receive reimbursement for more than one connected device per household.<sup>124</sup> In the *EBB Program Order*, the Commission found that there was no legal basis to allow households to receive more than one connected device through the EBB Program.<sup>125</sup> We propose to adopt the same approach for the Affordable Connectivity Program. We also seek comment on interpreting the one-time connected device reimbursement restriction to prevent providers from claiming a device reimbursement in the Affordable Connectivity Program for a household that received a reimbursable connected device in the EBB Program. Should the Commission prohibit households that received a connected device through the EBB Program from receiving a second device in the Affordable Connectivity Program (and therefore prohibiting providers from claiming a connected device discount reimbursement for a household enrolled in the Affordable Connectivity Program if that household received a connected device through the EBB Program)? The *EBB Program Order* also clarifies that participating providers must actually charge the household a co-payment at least \$10 but no more \$50 before they can receive reimbursement of up to \$100 for a connected device.<sup>126</sup> We also propose that providers be required to retain documentation proving that the eligible household made a compliant financial contribution towards the cost of the connected device, as well as the amount thereof, before the provider seeks reimbursement. We seek comment on this proposal. In the *EBB Program Order*, the Commission declined to require USAC to collect and review documentation supporting the connected device claim.<sup>127</sup> Documentation requirements serve important protections against program waste, so we seek comment on whether the Commission should require a provider to submit documentation supporting a connected device claim in the Affordable Connectivity Program. Should the Commission require a review of a provider’s supporting documentation before processing the reimbursement claim for a connected device?

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<sup>120</sup> Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(5) (2021).

<sup>121</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(1)-(5).

<sup>122</sup> *EBB Program Order*, 36 FCC Rcd at 4651, para. 79.

<sup>123</sup> Global Connection Inc. of America Petition for Limited Waiver, WC Docket No. 20-445, at 1-10, (filed Oct. 26, 2021) (seeking a limited waiver of the Commission’s determination in the *EBB Program Order* that the definition of tablets does not include devices that can independently make cellular calls, such as large phones or phablets).

<sup>124</sup> Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(C)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(5) (2021).

<sup>125</sup> *EBB Program Order*, 36 FCC Rcd at 4652-53, para 81.

<sup>126</sup> *Id.*; *FCC Enforcement Advisory: Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Subscriber Consent to Enroll and Require a Co-Pay for Connected Devices*, Public Notice, 36 FCC Rcd 8324, 8325-26 (EB 2021).

<sup>127</sup> *EBB Program Order*, 36 FCC Rcd at 4660, para. 97.

63. The *EBB Program Order* and rules require that providers seeking reimbursement for the connected device discount certify, under penalty of perjury, that the reimbursement claim for the connected device reflects the market value of the device.<sup>128</sup> In determining whether the amount claimed for the connected device reflects no more than the market value of the device, should the Commission take into account the amount of the co-pay collected from the household? If the Commission were to maintain for the Affordable Connectivity Program the “market value” standard used for the EBB Program, how should the market value be determined, particularly where a device offered by a provider through the program is not available in the retail market? What information should the providers be required to retain and provide to demonstrate that they claimed an appropriate amount for the device?

64. We also seek comment on requiring that the reimbursement amount for a connected device reflects the cost of the connected device to the provider. For example, there are many tablets sold for less than \$100, and providers may be able to purchase them at wholesale cost or receive volume discounts.<sup>129</sup> Under the rules of the EBB Program, in those circumstances, providers would be able to seek reimbursement for the higher market value of the device, rather than the cost to the provider for obtaining and delivering the device to the household, and make a profit from the EBB Program. Should the Affordable Connectivity Program permit providers to profit off the benefit by receiving more funding in reimbursement than the provider’s cost to procure and supply the device? Would using a cost-based standard allow USAC and the Commission to determine if the provider is claiming the appropriate amount, particularly where the provider’s device is not widely available or not sold in retail stores? We seek comment on how the Commission can ensure that providers are not claiming amounts beyond what it cost them to provide the device. We also seek comment on whether limiting providers to claiming a reimbursement amount that reflects the cost to them of acquiring and providing the device to the household would discourage providers from offering connected devices eligible for reimbursement from the Affordable Connectivity Fund? If the Commission were to adopt a cost-based approach, what sort of incentive would providers need (e.g., cost-plus) in order to find offering a device worthwhile? How can the Commission be sure that any such incentive is reasonable and does not lead to offers of inferior devices and/or overcharge to the Affordable Connectivity Fund or consumers?

65. In the *EBB Program Order*, the Commission adopted a rule prohibiting providers from seeking connected device reimbursement for a household if that household is not receiving the EBB for service provided by the same participating provider, and the Commission required claims for connected devices must be made “concurrent with or after the provider’s first reimbursement claim for service for that household.”<sup>130</sup> In response to feedback from providers, the Bureau subsequently released an order waiving this rule, explaining that granting the waiver removes a disincentive that could discourage providers from offering connected devices if there is uncertainty about a provider’s ability to seek reimbursement for a connected device delivered to a household that transfers its benefit to another provider before the first provider has the opportunity to claim reimbursement for the discounted device.<sup>131</sup> Accordingly, the waiver allows providers to seek reimbursement for a connected device provided to a household that had been receiving an EBB-supported service from that provider at the time the device was supplied to the household, even if the household subsequently transferred their EBB service benefit to a different provider.<sup>132</sup> We seek comment on allowing a provider to claim reimbursement for a connected device where the provider delivered a connected device and ACP-supported service to the

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<sup>128</sup> *Id.*; 47 CFR § 54.1608(e)(8).

<sup>129</sup> Best Buy, <https://www.bestbuy.com/site/searchpage.jsp?id=pcat17071&st=tablets+under+%24100> (last visited Oct. 26, 2021).

<sup>130</sup> 47 CFR § 54.1608(e)(3); *EBB Program Order*, 36 FCC Rcd at 4660, para. 96.

<sup>131</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-631 (WCB May 28, 2021) (*Connected Device Reimbursement Waiver Order*).

<sup>132</sup> *Connected Device Reimbursement Waiver Order* at 5-6.

household, but the household transferred its benefit to a different provider before the end of the service month. We also seek comment on whether other adjustments to the connected device claims process should be considered for the Affordable Connectivity Program. What modifications should the Commission adopt to improve the reimbursement process?

66. We also seek comment on the process for resolving disputes involving the connected device reimbursement process. USAC has developed a dispute process to be applied in scenarios where a provider seeks to claim a connected device for a household that has already been claimed by another provider for a connected device. In order to demonstrate that the household is eligible to be claimed by the second provider for a connected device, perhaps because the household contends that it did not receive the connected device from the first provider, the second provider must notify USAC that it wishes to initiate the dispute process. Once the second provider files a dispute, USAC will request from the household's previous provider documentation confirming that the connected device was delivered to the household, the household was charged a co-pay of more than \$10 but less than \$50 toward the purchase price, and the household consented to purchase the device. USAC will then review the response and documentation provided and determine whether the new provider is eligible to receive reimbursement for the connected device for the household. We propose to maintain this dispute resolution process for the Affordable Connectivity Program and we seek comment on this proposal. What other factors should the Commission consider in developing policies or procedures for ACP connected device claims?

67. We next seek comment on EBB household experiences choosing qualifying connected devices for the EBB Program to determine if there are any other improvements the Commission can make to the Affordable Connectivity Program. Did providers offer a broad range of device choices? Data from the EBB Program show that the vast majority of connected devices supported were tablets, with far fewer households receiving laptop or desktop computers. Were the devices offered to households too restrictive or limited in function? Should the Commission require that a connected device be able to connect to all Wi-Fi devices, and not just certain hotspots? We also seek comment from providers on what factors they considered in their decisions to offer or not to offer connected devices in the EBB Program.

68. For the EBB Program, the Commission declined to adopt minimum system requirements for connected devices, finding that setting such standards “could limit consumer choice and exacerbate barriers to broadband service that may have existed prior to COVID-19.”<sup>133</sup> The Commission instead said that it expected devices to support video conferencing platforms, should be Wi-Fi enabled and have video and camera functions.<sup>134</sup> The Commission also stated that it expected that connected devices be accessible to and usable by those with disabilities.<sup>135</sup> We seek comment on whether the Commission should adopt minimum system requirements and other minimum specifications for connected devices given the longer-term nature of this new program? For example, should the Commission establish a minimum size for tablets to ensure that the screen size is adequate for meaningful use? Given that this is intended to be a long-term program, if the Commission does adopt minimum system requirements, how often should they be updated, if at all?

69. We also propose that the Commission apply the requirements of section 54.10 of the Commission's rules to the Affordable Connectivity Program in the same manner as those requirements are applied in the EBB Program.<sup>136</sup> Section 54.10 says that a “Federal subsidy made available through a

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<sup>133</sup> *EBB Program Order*, 36 FCC Rcd at 4653, para. 82.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 4654, para. 82.

<sup>136</sup> USAC, Supply Chain – COVID-19 Broadband Programs, <https://www.usac.org/about/reports-orders/supply-chain/covid-19-programs/> (last visited Oct. 26, 2021); USAC, USAC EBB Program Enrolments – EBB Program October Enhancements, [https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Bulletins/EBB\\_Oct\\_Enhancements\\_10\\_26.pdf](https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Bulletins/EBB_Oct_Enhancements_10_26.pdf) (last visited Oct. 27, 2021).

program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service may not be used to” “[p]urchase, rent, lease, or otherwise obtain, any covered communications equipment or service,” or “[m]aintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained.”<sup>137</sup> Section 54.10 further notes that “covered communications equipment or service” is defined in section 1.50001 as “any communications equipment or service that is included on the Covered List,”<sup>138</sup> and section 1.50001 further defines “communications equipment or service” as “any equipment or service used in fixed and mobile networks that provides advanced communication service, provided the equipment or service includes or uses electronic components,”<sup>139</sup> and any device that is on a Covered List is one that poses an unacceptable risk to the national security of the United States or the security and safety of United States persons.<sup>140</sup> As discussed above, a connected device supported by the Affordable Connectivity Program includes a laptop, desktop computer, or tablet, and we believe that funds used for such devices could reasonably be considered to be funds for capital expenditures, and further that such capital expenditures could reasonably be considered to be “necessary for the provision of advanced communications service” as defined in section 1.50001 and contemplated by section 54.10. We seek comment on the application of section 54.10 to the Affordable Connectivity Program and on how the Commission and USAC can verify a provider’s compliance with this requirement.

#### **D. Enhanced Affordable Connectivity Benefits**

70. *Tribal Lands Benefit.* The Affordable Connectivity Program retains from the EBB Program the enhanced, \$75 per month subsidy for households located on Tribal lands. For the EBB Program, the Commission adopted the definition of Tribal lands<sup>141</sup> used in the Lifeline program. That definition covers “any federally recognized Indian tribe’s reservation, pueblo, or colony including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Homes Lands – areas held in trust for Native Americans by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et seq. as amended, and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412.”<sup>142</sup> We propose that the Commission use the same Tribal lands definition from Lifeline and the EBB Program for determining the areas that would qualify for the enhanced benefit in the Affordable Connectivity Program, as well as use the same maps for Tribal lands that are used in those predecessor programs.<sup>143</sup> We seek comment on this proposal and on using existing USAC processes for verifying that an eligible household is located on Tribal lands. We also seek comment on whether the off-reservation Tribal land designation process for Lifeline in section 54.412 of the Commission’s rules should be adopted and used in the Affordable Connectivity Program. Should the Commission consider other changes to the definition of Tribal lands?<sup>144</sup> Are there other factors the Commission should consider?

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<sup>137</sup> 47 CFR § 54.10.

<sup>138</sup> *Id.* at § 54.10(b).

<sup>139</sup> *Id.* at § 1.50001(c).

<sup>140</sup> *Id.* at § 1.50002(b)(1).

<sup>141</sup> *EBB Program Order*, 36 FCC Rcd at 4654-55, paras. 83-86.

<sup>142</sup> 47 CFR § 54.400(e).

<sup>143</sup> USAC, Eligible Tribal Lands for the Lifeline Program (2021), [https://www.usac.org/wp-content/uploads/lifeline/documents/tribal/fcc\\_tribal\\_lands\\_map.pdf](https://www.usac.org/wp-content/uploads/lifeline/documents/tribal/fcc_tribal_lands_map.pdf).

<sup>144</sup> 47 CFR § 54.412 (A request for designation of off reservation Tribal lands must: “be made to the Commission by a duly authorized official of a federally recognized American Indian Tribe or Alaska Native Village,” “clearly describe a defined geographical area for which the requesting party seeks designation as Tribal lands,” “demonstrate the Tribal character of the area or community,” “provide sufficient evidence of a nexus between the area or

(continued....)

71. *High-Cost Areas.* The Infrastructure Act also provides for a separate enhanced benefit for households that are served by providers in high-cost areas. The Infrastructure Act requires the Commission to establish a mechanism by which an ACP participating provider in a high-cost area, as defined in a separate section of the Infrastructure Act, may receive an enhanced benefit of up to \$75 for broadband service “upon a showing that the applicability of the lower limit under subparagraph A [the \$30 rate] to the provision of the affordable connectivity benefit by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.”<sup>145</sup> We seek comment on how the Commission can best administer this provision efficiently and with a minimal burden on qualifying households and providers.

72. As a preliminary matter, “high-cost area” is defined elsewhere in the Infrastructure Act as the “unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States (as determined by the Assistant Secretary [of Commerce for Communications and Information], in consultation with the [Federal Communications] Commission).”<sup>146</sup> The Act further provides that factors to be incorporated into this determination are: (1) the remote location of the area; (2) the lack of population density of the area; (3) the unique topography of the area; (4) a high rate of poverty in the area; or 5) any other factor identified by the Assistant Secretary, in consultation with the Commission, that contributes to the higher cost of deploying broadband service in the area.”<sup>147</sup>

73. Given that the distribution of the enhanced benefit depends on a mechanism that is based on a determination of high-cost areas developed primarily by a separate agency, the enhanced reimbursement to providers for broadband services in high-cost areas cannot be provided until the National Telecommunications and Information Administration (NTIA) identifies such high-cost areas. We seek comment on how this mechanism should work once NTIA makes the determination of high-cost areas. What should a provider be required to show to establish that there would be a “particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network” if the provider is limited to providing a discount of only \$30?<sup>148</sup> Should the Commission adopt a specific standard or test for such hardship, and if so, what should it be? Who should decide whether the provider has met such a standard? How should aggrieved providers appeal decisions related to this standard? How should we take into consideration other subsidies and financial benefits used by the providers to deploy broadband service in these high-cost areas when evaluating provider requests for the enhanced benefit? Are there administrative steps the Commission can take while the NTIA is working to identify the qualifying high-cost areas to speed the development of the mechanism? We seek comment on any other matters related to the mechanism for high-cost areas.

### **E. Reimbursement**

74. We propose to provide reimbursement for discounted services and connected devices delivered to a qualifying household after a provider has elected to participate in the Affordable

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community and the Tribe, and describe in detail how program support to the area or community would aid the Tribe in serving the needs and interests of its citizens and further the Commission’s goal of increasing telecommunications access on Tribal lands.”).

<sup>145</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(7)(B), *amended by* Infrastructure Act, div. F, tit. V, § 60502(a)(2)(G)(i).

<sup>146</sup> Infrastructure Act, div. F, tit. I, § 60102(a)(2)(G)(i).

<sup>147</sup> *Id.* Unserved area, for purposes of this determination, are defined as “an area in which not less than 80 percent of broadband serviceable locations are unserved locations.” *Id.* at § 60102(a)(2)(G)(ii).

<sup>148</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(G)(i), § 904(a)(7)(B) (2021).

Connectivity Program.<sup>149</sup> We propose that participating providers be reimbursed through a process similar to the EBB Claims System administered by USAC, and subject to all the requirements of the Lifeline Claims System.<sup>150</sup> In both the Lifeline and EBB programs, providers are required to submit a reimbursement request through USAC's Claims System based on the number of households enrolled in the NLAD on a specific date each month, called a snapshot date.<sup>151</sup> Providers must review the snapshot report, validate the households for which they are requesting reimbursement, indicate a reason for any unclaimed subscribers, and review, correct, and certify the requested reimbursement amount.<sup>152</sup> In the EBB Program, the Commission also established a uniform snapshot date of the first of each month for EBB claims, finding that having a uniform snapshot date brings efficiencies to the reimbursement process by restricting support to eligible subscribers that are enrolled in NLAD by the snapshot date.<sup>153</sup> The Commission also found that using a uniform snapshot date removes uncertainties for providers regarding the amount that could be claimed if the Commission allowed providers to claim subscribers on a pro-rata basis.<sup>154</sup> For the Affordable Connectivity Program, we seek comment on whether the Commission should also adopt a uniform snapshot date for determining the households that are eligible to be claimed for service in a service month, and whether the snapshot date should be the first day of each month. Are there other alternatives to the snapshot paradigm that the Commission should consider for the Affordable Connectivity Program? We also seek comment on how alternatives to the snapshot date approach would affect the claims process for connected devices.

75. In the *EBB Program Order*, the Commission required participating providers that are applying both the Lifeline discount and the Emergency Broadband Benefit to a household's supported broadband service to apply the full Lifeline discount first before determining the reimbursement amount claimed under the EBB Program in order to maximize the scarce funding in the temporary EBB Program. The Commission found that this approach was consistent with the requirements of section 54.403(b) of the Commission's rules regarding the application of Lifeline support.<sup>155</sup> We propose to adopt this approach for the Affordable Connectivity Program. We also seek comment on clarifying that the "full Lifeline discount" includes both federal and any state support. We seek comment on this idea and whether the Commission would have the authority to require that any benefit provided by a state low-income broadband program be applied before a provider calculates the amount to claim from the Affordable Connectivity Program.

76. We further seek comment on whether the Commission should allow providers to claim partial month support. The Affordable Connectivity Program provides a more generous monthly subsidy

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<sup>149</sup> We note that the Infrastructure Act did not change the establishment of the Affordable Connectivity Fund in the United States Treasury and, unless exempted, the fund is subject to government-wide statutes governing the administration of federal funds. *See, e.g.*, 31 U.S.C. § 3301 *et seq.*

<sup>150</sup> *Wireline Competition Bureau Provides Guidance on the Lifeline Reimbursement Payment Process Based on NLAD Data*, Public Notice, 33 FCC Rcd 128 (WCB 2018). Providers are required to submit a reimbursement request based on the number of subscribers enrolled in NLAD on the snapshot date. Providers must review the snapshot report, validate the subscribers for which they are requesting reimbursement, indicate a reason for any unclaimed subscribers, and review, correct, and certify the requested reimbursement amount. Further information on the Lifeline Claims System can be found on USAC's website at <https://www.usac.org/lifeline/reimbursement/lifeline-claims-system/>.

<sup>151</sup> *Wireline Competition Bureau Provides Guidance on the Lifeline Reimbursement Payment Process Based on NLAD Data*, Public Notice, 33 FCC Rcd 128 (WCB 2018).

<sup>152</sup> *Id.* Further information on the Lifeline Claims System can be found on USAC's website at <https://www.usac.org/lifeline/reimbursement/lifeline-claims-system/>.

<sup>153</sup> *EBB Program Order*, 36 FCC Rcd at 4657-58, para. 90.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 4660, para. 95.

than the Lifeline program and will extend for a much longer period of time than the EBB Program. As a result of these differences, should the Commission consider allowing for partial month, pro-rated support? Specifically, should the Commission permit a provider to claim for pro-rated, partial reimbursement a household that receives service from the provider during part but not all of a service month? In situations where the household switches to a supported service offered by another ACP provider, should both the former provider and the new provider be able to claim pro-rated partial reimbursement for the household for the same month? How will the use of the snapshot date work with partial claims? What will providers need to change about their billing and claims processes to seek partial month support? Will providers be able to determine the appropriate amount to pass through to the household and also claim from the program? The Commission in the *EBB Program Order* found that “employing a method that allows for partial claims would be cumbersome to administer.”<sup>156</sup> We seek comment on whether the same consideration applies for a program that is not temporary and is expected to provide support for years. We also seek comment on whether allowing providers to claim reimbursement for partial month support would cause customer confusion about the discount they should expect to receive for their ACP-supported service. Beyond customer confusion, what other consumer impacts might result from allowing providers to claim reimbursement for a partial month? Lastly, we seek comment on how disputes between providers over appropriate partial month claims should be resolved.

77. Once a provider has received its snapshot report for the previous month, the EBB Program requires the provider to upload and certify its claims by the 15<sup>th</sup> day of each month, or the following business day in the event the 15<sup>th</sup> falls on a weekend or holiday. Due to the limited funds and temporary nature of the EBB Program, the Commission concluded that claims cannot be revised after that mid-month deadline.<sup>157</sup> The Commission adopted this approach in part to assist USAC and the Commission in creating a reliable forecast for the limited-funding program.<sup>158</sup> Given the newness of the EBB Program and the number of providers participating, the Bureau has issued waivers allowing these providers extra time to certify the reimbursement claims.<sup>159</sup> Because the Affordable Connectivity Program will extend longer than the EBB Program, we seek comment on whether the Commission should offer providers more flexibility regarding the deadlines by when they must certify their claims. We seek comment on the length of time providers should have for uploading and certifying their claims for a service month. In addition to the questions posed above,<sup>160</sup> we seek comment on how any flexibility offered to providers for service claims would impact the claims process for connected devices. Given that the connected device benefit is a one-time benefit, would allowing providers the flexibility to delay the certification of claims interfere with the administration of the claims process for devices? We seek comment on the ways the Commission could offer flexibility to the claims process for service and devices while guarding against waste, fraud, and abuse in the program.

78. We also seek comment on whether providers should be permitted to revise their certified claims. For example, the Lifeline program has a one-year deadline for upward revisions that increase the amount of funding requested by the provider. We seek comment on a reasonable revision period.

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<sup>156</sup> *Id.* at 4658, para. 90.

<sup>157</sup> *Id.* at 4661, paras. 98-100.

<sup>158</sup> *Id.* at 4661, paras. 98-99.

<sup>159</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-980 (WCB 2021), <https://docs.fcc.gov/public/attachments/DA-21-980A1.pdf> (granting participating providers that uploaded but did not certify reimbursement claims for the May and/or June 2021 service months by the July 15, 2021 deadline until August 16, 2021 to certify such claims); *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-1098 (WCB 2021), <https://docs.fcc.gov/public/attachments/DA-21-1098A1.pdf> (granting participating providers that uploaded but did not certify reimbursement claims for the July 2021 service month by the August 16, 2021 deadline until September 15, 2021 to certify such claims).

<sup>160</sup> *Supra* paras. 61-65.



Should the Commission only allow upward revisions in certain circumstances? If so, what are the circumstances in which a revision would be justified? Because funding for the Affordable Connectivity Program is limited, if the Commission allows revisions, we seek comment on imposing reasonable restrictions on upward revisions in the final months of the program when funds are close to exhaustion. Finally, regardless of any rules permitting revisions, and consistent with the Commission's directives in the *EBB Program Order*, we propose that providers would continue to have an obligation to report any non-compliant conduct, including the receipt of excessive payments.<sup>161</sup>

79. The Infrastructure Act retains most of the provider certifications that were required by the EBB Program. Providers are required to certify that: each household for which the provider is seeking reimbursements will not be charged an early termination fee if it later terminates a contract;<sup>162</sup> each household was not subject to a mandatory waiting period;<sup>163</sup> and each household will be subject to a participating provider's generally applicable terms and conditions.<sup>164</sup> Providers are also required to certify that each household for which the provider is claiming reimbursement for a connected device discount has been charged the required co-pay.<sup>165</sup> Providers claiming a household whose eligibility was determined by the provider's alternative verification process must also certify that such households were verified by a process that was designed to avoid waste, fraud and abuse.<sup>166</sup> We propose that these certifications accompany each request for reimbursement, by participating providers, and that each certification be submitted under penalty of perjury. We also propose that the Commission model the certifications used in the EBB Program to the extent that they are consistent with the rules adopted for the Affordable Connectivity Program and include any additional certifications that may be appropriate to satisfy new rules for the Affordable Connectivity Program.<sup>167</sup> Should the Commission add any other certifications as a prerequisite to reimbursement? We propose to require providers to certify that, for any reimbursement claims for a delivered connected device, the household was charged a compliant co-pay and that the co-pay was collected? Should the provider also be required to certify that it will not charge, or has not charged, the household for the amount for which the provider is seeking reimbursement?

#### **F. Consumer Protection Provisions**

80. The Infrastructure Act includes several additional provisions related to consumer protection that build upon the existing consumer protection measures in the Consolidated Appropriations Act. The Infrastructure Act leaves unchanged the requirements that participating providers must not deny an eligible household the ability to participate in the Affordable Connectivity Program based on any past or present arrearages with that provider.<sup>168</sup> Moreover, providers are still required to certify that subscribers will not be required to pay an early termination fee if the eligible household being claimed elects to enter into a contract to receive such internet service offering and later terminates the contract.<sup>169</sup>

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<sup>161</sup> See *EBB Program Order*, 36 FCC Rcd at 4661, n.322.

<sup>162</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(B), § 904(b)(6)(A)(i) (2021).

<sup>163</sup> *Id.* at § 904(b)(6)(A)(ii) (2021).

<sup>164</sup> *Id.* at § 904(b)(6)(A)(iii) (2021).

<sup>165</sup> *Id.* at § 904(b)(6)(B) (2021).

<sup>166</sup> *Id.* at § 904(b)(6)(C) (2021).

<sup>167</sup> See USAC, Emergency Broadband Benefit Program, Reimbursement Claims at 34-35 (2021), <https://www.usac.org/wp-content/uploads/about/documents/ebb-program/EBB-LCS-training.pdf>; USAC, USAC EBB Program Enrolments – EBB Program October Enhancements, [https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Bulletins/EBB\\_Oct\\_Enhancements\\_10\\_26.pdf](https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Bulletins/EBB_Oct_Enhancements_10_26.pdf) (last visited Oct. 27, 2021).

<sup>168</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

<sup>169</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(B), § 904(b)(6)(A)(i) (2021).

Providers must also still certify that the subscriber was not subject to a mandatory waiting period for their ACP-supported service based on having previously received internet service from the provider,<sup>170</sup> and that the household will be subject to the provider's generally applicable terms and conditions as applied to other customers.<sup>171</sup> We next seek comment on how to implement the new consumer protection provisions included in the Infrastructure Act.

### 1. Credit Check Prohibition

81. The Infrastructure Act prohibits a participating provider from requiring an eligible household to submit to a credit check as a condition for applying the ACP benefit to that provider's internet service offerings.<sup>172</sup> We propose to prohibit providers from inquiring, requesting or otherwise causing a consumer to submit to a credit check, or from accessing a consumer's credit information, before enrolling the consumer in the Affordable Connectivity Program. We seek comment on how the Commission should ensure that providers are not requiring households to submit to credit checks as a prerequisite for enrolling in the Affordable Connectivity Program with the provider. Should the Commission rely on self-certification and require providers to certify under penalty of perjury that the households they are claiming were not subject to credit checks as a condition of enrolling with the provider for the Affordable Connectivity Program? Should this requirement apply to all households enrolled in the Affordable Connectivity Program, or only to new households enrolling in the Affordable Connectivity Program? Must providers make this certification for existing customers? We seek comment on our proposal and on other approaches the Commission should consider to ensure that providers are complying with this requirement.

82. We also seek comment on whether a credit check may be permitted in certain circumstances. Should the Commission allow providers to use the results of a credit check to determine which equipment or devices may be offered to a household so long as the household has access to equipment or devices necessary to use the ACP-supported service? Should the Commission allow providers to use the results of a credit check for services that are not covered by the ACP benefit if the household selects a bundled service plan? Is permitting use of a credit check under these limited circumstances consistent with the statutory provision prohibiting credit checks as a condition for participation in the Affordable Connectivity Program? Would permitting a provider to use the results of a credit check to determine which plans are made available to a household be inconsistent with this statutory provision?

### 2. Non-Payment

83. The Infrastructure Act permits a participating provider to terminate a subscriber's access to broadband internet access service supported by the Affordable Connectivity Program after 90 days of non-payment.<sup>173</sup> The Infrastructure Act, however, does not disturb the requirement that providers cannot decline to enroll a household based on "any past or present arrearages with a broadband provider . . ."<sup>174</sup> We seek comment on how the Commission should reconcile these provisions. Should this non-payment provision apply only to new instances of non-payment associated with the ACP-supported service after a subscriber is enrolled with a participating provider? If a subscriber is de-enrolled for non-payment, how could the subscriber transfer the benefit to a different provider? Could a subscriber de-enrolled for non-payment be able to participate in the Affordable Connectivity Program with a different provider or even re-enroll with the same provider? What options should be available to providers when their ACP

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<sup>170</sup> *Id.* at § 904(b)(6)(A)(ii) (2021).

<sup>171</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(B), § 904(b)(6)(A)(iii) (2021).

<sup>172</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(7)(A)(ii) (2021)

<sup>173</sup> *Id.* at § 904(b)(7)(B) (2021).

<sup>174</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(a)(6).

subscribers are in non-payment? Should providers be required to mitigate the non-payment by lowering a consumer's service quality (e.g., lowering the customer's download speeds) if the rate of the supported service exceeds the amount of the benefit applied to the consumer's bill? Should the Commission allow for this mitigation? Should the Commission require providers to transmit to NLAD information that will allow the Commission to determine whether the household is assessed and charged a fee for the ACP-supported service after the benefit has been applied?

84. Similar to the EBB Program, we propose that providers in the Affordable Connectivity Program must pass through the ACP benefit to households before claiming reimbursement for the discount.<sup>175</sup> Based on our experience in the EBB Program,<sup>176</sup> we are concerned that providers may fail to timely apply the ACP benefit to a household's bill after the household is enrolled in the program. In particular, there were complaints that some providers in the EBB Program were delaying application of the program benefit to subscriber accounts for an unreasonable period of time. Subscribers reported to the Commission that, because the EBB Program benefit was not timely applied, they were sent to collections or experienced service interruptions. We seek comment on how to address situations where the provider fails to apply the ACP benefit to a household's bill consistent with the Commission's rules and, as a result, the household does not receive the benefit and is required to pay the full amount for the internet service. Should the Commission affirmatively require that providers immediately apply the discount to a household's broadband bill or consumer account upon enrollment in the Affordable Connectivity Program? Should providers have to apply the ACP benefit to the consumer's account before being able to terminate access to the supported service for non-payment?

85. To prevent undue termination of service and loss of vital benefits, we propose to require participating providers to provide adequate notice to subscribers of their delinquent status before terminating the subscriber's service for non-payment. We seek comment on this proposal, specifically on the frequency of notice, timing, and method of communicating the notice. We also seek comment on whether the Commission should develop a process by which subscribers may dispute their provider's claim of non-payment. We seek comment on the process for households to dispute allegations of non-payment with the provider and whether the provider could terminate the household's internet service for non-payment pending resolution of the dispute.

### 3. Consumer Complaint Process

86. The Infrastructure Act requires the Commission to establish a dedicated complaint process for Affordable Connectivity Program participants to file complaints about the compliance of participating providers with program rules and requirements, including complaints "with respect to the quality of service received under the Program."<sup>177</sup> We seek comment on this requirement, generally, including how the Commission should measure quality of service received under the Program?

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<sup>175</sup> 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); *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, Public Notice, DA 21-1018 (WCB Aug. 20, 2021) at 2 (*EBB Program Discount Application Public Notice*).

<sup>176</sup> The Bureau and the Office of the Managing Director reminded EBB Program participating providers of their obligation to apply the EBB discount to a subscriber's account before the provider may claim reimbursement for that discount. Participating providers were also reminded that under EBB Program rules, providers cannot charge a subscriber for the internet service offering, seek reimbursement, and then later provide the discount only after receiving reimbursement. *EBB Program Discount Application Public Notice* at 2.

<sup>177</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii) § 904(b)(9)(A) (2021).

87. To date, consumers have used the Commission's Consumer Complaint Center to file EBB-related informal complaints against their providers with the Commission.<sup>178</sup> The Commission's informal consumer complaint process is a long-standing, free, and effective way for consumers to raise issues with their providers and bring issues to the attention of the Commission. To comply with the requirements of the Infrastructure Act, we propose that the Commission add Affordable Connectivity Program content to the Consumer Complaint Center to educate consumers about the program, a dedicated pathway in the Consumer Complaint Center to file ACP-related complaints, including notification to the providers that the complaint involves the Affordable Connectivity Program, clear direction to consumers on how to correctly file an ACP complaint, and dedicated Commission staff from the Commission's Consumer and Governmental Affairs Bureau (CGB) to review and process the complaints. We seek comment on these proposals. Are there other ways the Commission can provide improvements to its existing informal consumer complaint process to benefit the dedicated complaint process for ACP participants? What, if any, additional changes or modifications should the Commission make to the existing informal consumer complaint process to comply with the Infrastructure Act requirement?

88. The Infrastructure Act also requires the Commission to act expeditiously to investigate potential violations of program rules and requirements and to enforce compliance.<sup>179</sup> Moreover, the Commission is permitted to impose forfeiture penalties to enforce compliance.<sup>180</sup> Consistent with this statutory direction, we propose to use the Commission's existing, statutorily permitted enforcement powers to initiate investigations of program rule violations. We seek comment on this proposal.

89. The Infrastructure Act also requires participating providers to provide Affordable Connectivity Program participants with information on the Commission's dedicated complaint process.<sup>181</sup> Should the Commission require participating providers to prominently display the Commission's contact center phone number and the website address for the Commission's Consumer Complaint Center on the subscriber's bill, on the provider's Affordable Connectivity Program webpage, and on all of the provider's marketing materials? We seek comment on how information about the dedicated consumer complaint process should be disseminated to consumers. If a consumer complains to the participating provider regarding an ACP-supported service or any difficulty enrolling with the provider, does the provider have an obligation under the statute to inform the consumer of their right to file a complaint with the Commission? If not, should the Commission require participating providers to do so?

90. The Infrastructure Act also requires the Commission to regularly issue public reports regarding consumer complaints alleging provider non-compliance with the Affordable Connectivity Program rules.<sup>182</sup> We seek comment on what these statutorily mandated reports should include, the frequency of such reports, and the method by which the reports should be made available to the public. How should the Commission balance subscriber privacy and its obligations under the Privacy Act<sup>183</sup> with the need for transparency when determining the contents of those reports?

#### **4. Additional Consumer Protections**

91. The Infrastructure Act mandates that the Commission promulgate additional rules to protect consumers who participate in or seek to participate in the Affordable Connectivity Program.<sup>184</sup> As

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<sup>178</sup> See FCC, *Filing an Informal Complaint*, <https://www.fcc.gov/consumers/guides/filing-informal-complaint> (last visited Oct. 26, 2021).

<sup>179</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(C)(i) - (ii) (2021).

<sup>180</sup> *Id.* at § 904(b)(9)(C)(ii) (2021).

<sup>181</sup> *Id.* at § 904(b)(9)(B) (2021).

<sup>182</sup> *Id.* at § 904(b)(9)(D) (2021).

<sup>183</sup> 5 U.S.C. § 552a.

<sup>184</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A)(i) - (v) (2021).

a preliminary matter, we note that the Infrastructure Act states that the Commission must craft these particular rules “after providing notice and opportunity for comment in accordance with section 553 of title 5, United States Code,” which is the Administrative Procedure Act (APA).<sup>185</sup> At the same time, section 904(h) provides an exemption from APA requirements for “regulation[s] promulgated under subsection (c),” the general rulemaking for section 904, which includes the consumer protection requirements. We seek comment on how the Commission should reconcile these apparently conflicting provisions.

92. In the event that the Commission concludes that the Infrastructure Act requires the consumer protection rules to be implemented through APA notice-and-comment rulemaking, the Bureau seeks comment on whether the Commission could find that there is good cause to depart from those requirements.<sup>186</sup> The APA generally requires us to adopt rules only after publishing a Commission-level “general notice of proposed rule making” in the Federal Register and providing a reasonable comment period after the Federal Register publication.<sup>187</sup> In addition, the APA generally requires that final rules be effective no sooner than 30 days after publication in the Federal Register.<sup>188</sup> Complying with these APA rulemaking requirements for this set of consumer protection rules would push the effective date of these rules at least two months beyond the December 31 effective date of the delayed amendments to the statute. Under these circumstances, would there be good cause for other than strict adherence to the APA requirements?<sup>189</sup>

93. As for the substantive topics the Commission must evaluate, the Infrastructure Act requires that the Commission promulgate rules prohibiting any inappropriate upselling or downselling by a provider.<sup>190</sup> We first seek comment on what practices constitute inappropriate upselling or downselling. Are upselling or downselling always inappropriate, or are there instances where such practices are beneficial to the consumer? If so, when is upselling or downselling appropriate? What, if any, upselling or downselling practices should be permitted?

94. The Infrastructure Act also requires that the Commission promulgate rules that would protect consumers in the Affordable Connectivity Program from any inappropriate requirements that a consumer opt-in to an extended service contract as a condition of participating in the Affordable Connectivity Program.<sup>191</sup> The Infrastructure Act, however, does not alter the requirement from the EBB Program that participating providers must certify that an eligible household will not be required to pay an early termination fee if the household elects to enter into—but later terminates—a contract for internet

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<sup>185</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(11) (2021).

<sup>186</sup> See 5 U.S.C. § 553(b)(B) (providing an exemption “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”)

<sup>187</sup> 5 U.S.C. § 553(b), (c). See also, e.g., 47 CFR § 0.291(e) (prohibiting the Wireline Competition Bureau from issuing a notice of proposed rulemaking).

<sup>188</sup> 5 U.S.C. § 553(d).

<sup>189</sup> See 5 U.S.C. § 553(b)(B). See also, e.g., *Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984) (good cause exists where agency was implementing a statutory requirement with a limited time for action set by Congress). We note, however, that courts have construed this exemption narrowly. See, e.g., *Sorenson Commc’ns v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) (discussing section 553(b)(B) exemption). The APA also provides that upon an agency finding of “good cause,” an exception can be made to the requirement that rules be published at least 30 days before their effective date. 5 U.S.C. § 553(d)(3). Courts have approved agencies’ use of this exemption in cases involving tight statutory deadlines. See, e.g., *Kollett v. Harris*, 619 F.2d 134, 145 n.15 (1st Cir. 1980) (due to imminent effective date of Supplemental Security Income program under the Social Security Act, the agency had good cause to make regulations effective immediately).

<sup>190</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A)(i) (2021).

<sup>191</sup> *Id.* at § 904(b)(11)(A)(ii) (2021).

service.<sup>192</sup> We first seek comment on what constitutes an inappropriate opt-in requirement. Can a provider require an opt-in to a longer term contract before the household enrolls in the Affordable Connectivity Program? Should the Commission prohibit opt-ins prior to enrollment in all situations? Or are there times when pre-enrollment opt-in is beneficial to the enrolling household? Are there circumstances where an extended service contract would be beneficial to consumers, and if so, what are those circumstances? We also seek comment on the tension between the consumer protection provisions described above. How should the Commission determine the circumstances in which requiring an extended service agreement would be inappropriate in light of the requirement that providers must also certify that the household will not be required to pay an early termination fee?<sup>193</sup>

95. The Infrastructure Act also prohibits providers from implementing any inappropriate restrictions on the ability of a customer to switch internet service offerings.<sup>194</sup> Should the Commission prohibit providers from limiting their ACP-supported service offerings to new or existing customers? How can the Commission determine what constitutes an inappropriate restriction? Are there any restrictions on the ability to switch internet service offerings that would be considered appropriate, and if so, under what circumstances would such restrictions be appropriate? What restrictions should the Commission prohibit or permit?

96. The Infrastructure Act requires the Commission to promulgate rules to protect consumers from any inappropriate restrictions by a participating provider on the ability of a consumer to switch participating providers other than a requirement that the customer return customer premises equipment provided by the participating provider.<sup>195</sup> We seek comment on what constitutes an inappropriate restriction of a consumer's ability to switch participating providers? Should the Commission prohibit providers from seeking to recover any discounts passed through to the household if the provider is unable to claim the household as a result of the transfer? Should an attempt or threat to recover the discount be considered an inappropriate restriction on the consumer's ability to switch providers? What restrictions should the Commission prohibit or permit? Have there been any practices by providers in the Lifeline or EBB Programs that have the effect of restricting a consumer from transferring their benefit to another provider? For example, should the Commission require that a provider offer a way for the customer to de-enroll online and also provide sufficient customer care representatives to respond to customers' requests or calls within a certain time (e.g., 30 minutes)? Should failure to provide reasonable customer care operations be considered a sufficient reason to delist the provider?

97. Additionally, the Infrastructure Act requires that the Commission promulgate rules related to unjust and unreasonable acts or practices that undermine the purpose, intent, or integrity of the Affordable Connectivity Program.<sup>196</sup> We seek comment on what additional consumer protection measures the Commission should enact to protect prospective and existing program participants. For example, to ensure that eligible households receive their ACP-supported service without delay, should the Commission require that providers enroll eligible households or transfer their benefit within a set time after the subscriber provides affirmative consent to enroll with the provider and that failure to do so constitutes an unjust and unreasonable practice? We seek comment on what steps the Commission should take to ensure that providers pass through the Affordable Connectivity Program discount to subscribers. We also propose to prohibit providers from unreasonably delaying the application of Affordable Connectivity Program discounts to subscribers' bills.<sup>197</sup>

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<sup>192</sup> 47 CFR § 54.1608(e)(6)(B).

<sup>193</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(B)(iii)(II), §§ 904(b)(6)(A)(i)-(iii) (2021).

<sup>194</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A)(iv) (2021).

<sup>195</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(1)(B)(iii)(II), §§ 904(b)(6)(A)(i)-(iii) (2021).

<sup>196</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(11)(A)(v) (2021).

<sup>197</sup> *EBB Program Discount Application Public Notice*.

98. We also seek comment on how USAC and the Commission can best address provider misconduct to avoid consumers being subject to potential fraudulent activity that could or may have already occurred. What is the best method to notify the public of any such conduct? How can the Commission address circumstances where an unauthorized provider holds itself out to consumers as a participating provider in the Affordable Connectivity Program? How should the Commission treat misconduct by providers authorized to participate in the Affordable Connectivity Program? Should the Commission have requirements for how the Affordable Connectivity Program is advertised and promoted, with remedies for violations of those requirements? We further propose that failure to provide the service that is advertised and promoted shall be considered a violation of ACP program rules. We seek comment on these proposals and other protections the Commission should consider based on commenters' experiences with the EBB and Lifeline Programs.

## 5. Disclosures and Consumer Consent

99. We next seek comment on the disclosures and consumer consent providers participating in the Affordable Connectivity Program should be required to make before enrolling consumers in the program. In the EBB Program, for example, the Commission required participating providers to make several disclosures to their customers and to obtain their consent before enrolling them in the program.<sup>198</sup> Specifically, providers are required to disclose to an existing subscriber prior to enrollment that the EBB Program is a government program that reduces the customer's broadband internet access service bill, is temporary in nature, that the household will be subject to the provider's undiscounted rates and general terms and conditions at the end of the program if they continue to receive service, that the household may obtain broadband service supported by the EBB Program from any participating provider of its choosing, and that the household may transfer its EBB Program benefit to another provider at any time.<sup>199</sup> Additionally, Lifeline enrollees must opt in or affirmatively request enrollment in the EBB Program.<sup>200</sup>

100. For the Affordable Connectivity Program, we propose requiring that providers make similar disclosures to all consumers before enrolling them in the program. We propose that the disclosures describe that the Affordable Connectivity Program is a government program that reduces the customer's broadband service bill up to the maximum benefit amount for that household, and that the household would be subject to the undiscounted service rate and generally applicable terms and conditions upon de-enrollment from the program and/or at the program's end. Given that the Affordable Connectivity Program is a longer term program compared to the EBB Program, we seek comment on what the disclosure should state about the Affordable Connectivity Program's length that would be useful and informative for the household. We also propose that the disclosure notify the household of its ability to file a complaint against its provider through the Commission's Consumer Complaint Center and that a provider may disconnect the household's ACP-supported service for non-payment as described in the Infrastructure Act. If the Commission adopts a recertification requirement for the Affordable Connectivity Program, should the disclosure advise households of that as well? We also propose that households be notified that they can apply the ACP benefit to any broadband service offering of the participating provider, at the same terms available to households that are not eligible for ACP-supported service. We seek comment on these disclosures and ask what other information is essential for a household to know about the Affordable Connectivity Program and the rights of consumers under the program when enrolling with a provider? As is required in the EBB Program, we propose to require participating providers to collect and retain documentation demonstrating that the household was provided these disclosures before enrolling with the provider.<sup>201</sup> We seek comment on what types of

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<sup>198</sup> *EBB Program Order*, 36 FCC Rcd at 4629, para. 38.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 4637, para. 52.

<sup>201</sup> *Id.* at 4629, para. 38.

documentation providers should retain to demonstrate compliance with notice and consent requirements. What should constitute proof of opt-in or affirmative consent?

101. The EBB Program rules also require participating providers to collect and retain documentation that the provider, before enrolling an existing subscriber in the EBB Program, gave the subscriber notice, among other things, that they may transfer their EBB Program benefit to another provider at any time.<sup>202</sup> The EBB Program rules further require that service providers “obtain, from each new and existing subscriber, consent to transmit the subscriber’s information” to the NLAD.<sup>203</sup> Section 54.1606(d)(2) of the Commission’s rules also prohibits providers from providing EBB-supported service or claiming support for a consumer that is currently receiving an EBB-supported service if the consumer is not “seeking to transfer his or her Emergency Broadband Benefit.” However, some providers report that households enrolled in the EBB Program are being transferred to new providers perhaps even without the household’s consent or knowledge of the transfer or its effect on the household’s existing service.<sup>204</sup> We seek comment on EBB participating providers’ experience with transfers of households between providers in the EBB Program. Are there restrictions or requirements the Commission should implement to ensure that a household has fully consented to transfer its benefit at the time of transfer? Should the Commission consider limiting the number of times a household can transfer its benefit per month in order to assist providers in managing the application of the discount on their subscriber’s ACP-supported service? Is there some other metric or benchmark by which the Commission can determine if or when to impose an appropriate limitation on transfers? Should the Commission require that households independently verify a request to transfer? How should such verification take place? How will the Commission balance these limitations with the importance of allowing households freedom to move between providers? What is the harm, if any, of households switching between participating providers, given the importance of household choice in selecting the preferred provider? We also seek comment on our proposal to require participating providers, before transferring-in a household, to clearly disclose in easily understood language that the household will be transferred and that the ACP benefit will now be applied to the transfer-in provider’s service.

102. In addition to a disclosure requirement, we propose that participating providers seeking to enroll any subscriber in the Affordable Connectivity Program must obtain that household’s affirmative consent after the household has reviewed the program disclosures and before the provider can enroll the household in the program. We also propose that such consent must be obtained by a provider performing a transfer transaction for a subscriber already enrolled in the program.<sup>205</sup> How should the new provider record and document the transfer request? How should notice of a transfer be communicated to the household? Should providers be required to provide written notice to the household that it has been transferred and enrolled in the program with the new provider? Should providers be required to confirm the household’s transfer request before and/or after initiating the transfer? Should providers be required to certify that all transfers completed by the provider are bona fide, requested by the household, and made pursuant to program rules? As in the EBB Program,<sup>206</sup> we propose to require providers to obtain a record of this affirmative consent from the household and to make such documentation available to the Commission and USAC upon request and in a timely manner. We propose that such documentation clearly identify subscriber information, the date consent was given, and the method of consent. We seek comment on what form such consent should take. In the EBB and Lifeline Programs, a subscriber’s oral

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<sup>202</sup> *Id.*

<sup>203</sup> 47 CFR §54.1406(d)(6).

<sup>204</sup> Letter from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 1-2 (filed Sept. 27, 2021) (ACA Connects *Ex Parte*).

<sup>205</sup> See USAC, *EBB Program NLAD Reminder: How to Transfer Consumer to a New Service Provider*, July 20, 2021, <https://www.usac.org/wp-content/uploads/about/documents/ebb-program/Bulletins/Transfer-Bulletin-7.19.pdf>.

<sup>206</sup> *EBB Program Order*, 36 FCC Rcd at 4629, para. 38; see also 47 CFR § 54.1611.



consent is an acceptable form of consent.<sup>207</sup> For the Affordable Connectivity Program, should the Commission consider requiring providers to obtain written consent from a subscriber prior to transferring or enrolling the subscriber rather than allowing oral consent? We also propose to prohibit a participating provider from linking consent to enroll in the Affordable Connectivity Program with some other action or program, or from automatically enrolling a subscriber based on information provided by the subscriber for some other purpose.<sup>208</sup> For example, we propose that participating providers be required to obtain consent for participation in the Lifeline program, the EBB Program, and the Affordable Connectivity Program separately. We also seek comment on a proposal to prohibit providers from requiring a consumer to accept a connected device in order to enroll with the provider.

103. Moreover, we seek comment on when providers can begin to obtain a subscriber's consent to enroll in the Affordable Connectivity Program. Similar to the approach in the EBB Program,<sup>209</sup> we propose that only providers with an election notice for the Affordable Connectivity Program fully processed by USAC can provide disclosures and collect consents from subscribers regarding their interest in enrolling in the Affordable Connectivity Program. We seek comment on this proposal. What else should the Commission consider to protect consumers from being unwittingly enrolled in the Affordable Connectivity Program or transferring their ACP benefit? We seek comment on these proposals.

104. The *EBB Program Order* also requires providers to collect an affirmative opt-in from EBB households before they can be charged “an amount higher than they would pay under the full EBB Program reimbursement amount permitted” by the program's rules.<sup>210</sup> We propose that the Commission adopt a similar requirement for the Affordable Connectivity Program. We seek comment on what notice and opt-in requirements are necessary to protect households from unexpected charges and to prevent providers from providing unwanted and undiscounted broadband service to low-income consumers. Given that the Affordable Connectivity Program is expected to be a longer-term program, we seek comment on when, during a household's participation in the program, providers should be required to obtain the affirmative consent from the households to continue providing the household broadband service after the end of the program and to charge it a rate higher than what it would pay if it were receiving the full discount permitted under rules for the Affordable Connectivity Program. Does collecting such consent from households at the time of enrollment fully inform households and adequately protect them from unexpected charges? If providers are permitted to collect consent at the time of enrollment to continue service after the program end date, how should providers be required to give notice to consumers before raising the price of the service? If the Commission were to allow this affirmative opt-in to be collected at the time of enrollment, we propose that providers be prohibited from imposing, as a condition of enrollment, an affirmative opt-in to continue receiving service from the provider after the end of the program, or de-enrollment. In other words, we propose that households should be permitted to decline to provide this opt-in at the time of enrollment. We seek comment on these issues.

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<sup>207</sup> 47 CFR §§ 54.1612(a) and 54.419(a) (providing that “an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature”).

<sup>208</sup> *Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Subscriber Consent to Enroll and Require a Co-Pay for Connected Devices*, Public Notice, 36 FCC Rcd 8324 (EB 2021).

<sup>209</sup> *EBB Launch Date Public Notice* at 2 (“Providers may not obtain consent from subscribers to enroll them in the EBB Program until the provider's election notice has been fully processed by USAC.”).

<sup>210</sup> *EBB Program Order*, 36 FCC Rcd at 4673, para. 132.

105. We recognize that providers will need time to prepare the necessary disclosures and ensure they have mechanisms in place for obtaining and capturing a consumer's affirmative consent before enrolling the household in the program. We seek comment on the time that providers need to make changes to their disclosure and consent mechanisms for purposes of the Affordable Connectivity Program. What would be the earliest date that providers could make these changes and be ready to enroll new subscribers in the Affordable Connectivity Program? Is there a concern that if providers may be unable to develop required disclosures and consent mechanisms in time for the launch of the Affordable Connectivity Program, providers may delay enrolling households until those systems are in place to ensure that enrollment of consumers is compliant with program rules?

**G. Promoting Awareness about and Participation in the Affordable Connectivity Program**

106. The Infrastructure Act also requires participating providers to notify all consumers who either subscribe to or renew a subscription to an internet service offering about the Affordable Connectivity Program and how to enroll.<sup>211</sup> We seek comment on this requirement. What does it mean to “renew” a subscription for the purposes of this requirement? What are effective methods or best practices providers should employ to ensure that such notifications occur? Should the Commission, for example, require providers to certify when they submit claims for reimbursement that they have provided such notifications to the households? What, if anything, should the Commission require of participating providers to ensure their subscriber base is informed about the Affordable Connectivity Program? Should the notification about the existence of the Affordable Connectivity Program be provided in the consumer's preferred language? What policies or practices should the Commission enact to monitor compliance with this statutory obligation? We seek comment on whether providers will have adequate time to train their customer service representatives and prepare their systems in order to provide the required information to consumers on the December 31, 2021 effective date of the Affordable Connectivity Program.

107. Pursuant to the Infrastructure Act, the Commission must collaborate with relevant Federal agencies to ensure a household that participates in any program that qualifies it for the Affordable Connectivity Program is provided with information about the Affordable Connectivity Program, including enrollment information.<sup>212</sup> We seek comment on how the Commission could collaborate with such agencies. We also seek comment on how state and federal agencies that operate qualifying programs can best support eligible households. Is there a role for these agencies in educating qualifying consumers about the Affordable Connectivity Program? We also seek comment on what information about the Affordable Connectivity Program the Commission should distribute to households participating in a qualifying program.

108. The Infrastructure Act also requires the Commission to “ensure relevant Federal agencies update their Systems of Records Notices” to ensure that a household participating in a qualifying program is provided information about the Affordable Connectivity Program.<sup>213</sup> We seek comment on how, and whether the Commission has the authority, to compel other agencies to update their System of Records Notices to the extent required to ensure that a household participating in an ACP-qualifying program receives information about the program. We seek comment on the steps the Commission could take to ensure that other agencies update their System of Record Notices to allow the use of personally identifiable information in order to share information about the Affordable Connectivity Program.

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<sup>211</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(10)(A) (2021).

<sup>212</sup> *Id.* at § 904(b)(10)(B) (2021).

<sup>213</sup> *Id.*

109. The Infrastructure Act also provides that the Commission may conduct outreach efforts to encourage households to enroll in the Affordable Connectivity Program.<sup>214</sup> The Act permits the Commission to facilitate consumer research, conduct focus groups, engage in paid media campaigns, provide grants to outreach partners, and provide an orderly transition for participating providers and consumers from the EBB Program to the Affordable Connectivity Program.<sup>215</sup> How should the Commission utilize these statutorily provided tools to inform the public about the program? What topics should the Commission include in consumer research and/or focus groups? What methods of consumer research are proving effective in the current pandemic environment?

110. While the Commission administers various types of federal financial assistance programs, it does not have experience with the unique statutory and regulatory requirements applicable to grant programs.<sup>216</sup> As such, we seek comment on considerations applicable to standing up a grant program in support of consumer outreach. For example, should grants be used as part of the Commission's first consumer outreach efforts under the modified program or might grants instead be best utilized as part of the longer term program management?

111. We also seek comment on the ability to engage in paid media campaigns.<sup>217</sup> What types of paid media will be most effective in reaching eligible households? Will social media and other types of online advertising be effective? How should the Commission allocate funding for paid media? Are there effective media strategies developed or used by stakeholders to promote the EBB Program that could inform the Commission's efforts?

112. The Infrastructure Act also permits the Commission to provide grants to outreach partners. We first seek comment on any considerations specific to starting a grant program for consumer outreach partners. Should the Commission itself provide such grants? What types of outreach activities should the grants support? We seek comment on the scope and objectives of the outreach plans. What outreach gaps were identified during the EBB Program that grant funding could be effective in addressing? What criteria should the Commission use to review and accept grant proposals? What reporting requirements should the Commission establish for grant recipients? Should the Commission impose restrictions on who may participate as an outreach partner? Should the Commission institute a cap on the individual grant amount and if so how much should that funding cap be? What expenses should be allowed under the grant program? Should the Commission allow grant funding to cover personnel costs, such as salaries, and other financial benefits? Should the Commission limit the activities and administrative expenses that grant funds can be used to cover? How much of the total funding amount should the Commission set aside for grants to outreach partners? What safeguards should the Commission consider to prevent fraud and waste in a potential ACP grant program? Grant application processes and required reporting can be burdensome and may discourage smaller, locally focused organizations from applying. How can the Commission balance the need for grant oversight with the desire to make the grant program within reach for non-profits that are best positioned to serve their local communities?

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<sup>214</sup> *Id.* at § 904(b)(10)(C)(i) (2021).

<sup>215</sup> *Id.* at § 904(b)(10)(C)(ii) (2021).

<sup>216</sup> *See, e.g.*, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as the Uniform Guidance) at 2 CFR Part 200. Part 200 consolidated numerous Office of Management and Budget Circulars pertaining to grants management. Grants.gov provides helpful information regarding federal government grant programs and related overarching statutory and regulatory policies.

<sup>217</sup> We note that the Commission's ability to engage in media campaigns is subject to certain appropriations restrictions. *See, e.g.*, Consolidated Appropriations Act, 2021—Public Law No: 116-260 (12/27/2020), Division E—Financial Services and General Government Appropriations Act, 2021, Title V—Independent Agencies, Federal Communications Commission, Salaries and Expenses, sections 715, 718, and 731.

113. In addition to the examples listed in the Infrastructure Act, are there other tools the Commission should consider utilizing to increase the effectiveness of program outreach efforts? Effective provider outreach and implementation of the Affordable Connectivity Program will also encourage program enrollment. Should the Commission share consumer feedback on the EBB Program and the results of ACP consumer research with providers to inform their outreach and implementation efforts? Are there legal or policy considerations that might impact sharing such information with providers? How can the Commission best share this consumer feedback and research results? Are there lessons learned or effective strategies developed or used by stakeholders, partners or providers to promote the EBB Program that should inform the Commission's ACP outreach? What are best practices the Commission should employ in its outreach efforts? The Infrastructure Act also provides an amount of funding appropriated to the Commission for the Affordable Connectivity Program. We seek comment on how the Commission should allocate funding to these outreach projects. In the absence of funds appropriated expressly for this outreach, should the Commission allocate some of the administrative funds permitted by the statute to this outreach? How much of the funding should the Commission set aside for outreach?

### 1. Public Awareness

114. The Infrastructure Act requires participating providers, in collaboration with state agencies, public interest groups, and non-profit organizations, to carry out public awareness campaigns in their areas of service that highlight the value and benefits of broadband internet access service, and the existence of the Affordable Connectivity Program.<sup>218</sup> We seek comment on the best methods to publicize the availability of broadband services and connected devices supported by the Affordable Connectivity Program. What are the most effective means of publicizing the benefit to the communities most in need? We also seek comment on whether the Commission should require providers to market the Affordable Connectivity Program in the languages spoken in the areas they serve. We propose that providers be required to include in promotional materials how consumers can enroll in the program, including how consumers can best contact the provider in order to enroll in the Affordable Connectivity Program. We seek comment on these proposals. We also seek comment on the most effective ways providers can collaborate with state agencies, non-profit organizations, and public interest groups to promote the Affordable Connectivity Program.

115. We next seek comment on an advertising requirement. The Lifeline program requires providers to "publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service."<sup>219</sup> Specifically, providers must "[i]ndicate on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household."<sup>220</sup> We propose that the Commission adopt a similar advertising requirement for the Affordable Connectivity Program. We seek comment on requiring participating providers to indicate on all materials describing the Affordable Connectivity Program the eligibility requirements for consumer participation; that the Affordable Connectivity Program is non-transferable and limited to one discount per household; a list of qualifying connected devices, if any, with device specifications; the provider's customer service telephone number, which must be prominently displayed on all promotional materials and on the provider's website; and that the Affordable Connectivity Program is a federal government benefit program operated by the Federal Communications Commission and, upon its conclusion, or when a household is no longer eligible, customers will be subject to the provider's regular rates, terms, and conditions. We seek comment on our proposal to require providers to clearly display on their website the monetary charges to the customer, and the

<sup>218</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(8) (2021).

<sup>219</sup> 47 CFR § 54.405(b).

<sup>220</sup> *Id.* at § 54.405(c).

available upload/download speeds and data caps for its internet service offerings. What other information should providers be required to include in their ACP-related marketing materials? We also seek comment on whether there are any marketing practices in the EBB Program that were misleading to customers.

## 2. Commission Guidance

116. The Infrastructure Act provides that the Commission may issue guidance, forms, instructions, publications, or technical assistance as necessary or appropriate to carry out the Affordable Connectivity Program.<sup>221</sup> This authorization includes actions intended to ensure that “programs, projects, or activities” are completed in a timely and effective manner.<sup>222</sup> We seek comment on the meaning of this provision. We propose that this provision suggests that the Commission should continue to work with USAC and others to ensure that the administrator, providers, and consumers have the tools necessary to meaningfully implement and participate in this program. We seek comment on what guidance from the Commission would be helpful for providers. What resources would be helpful to consumers looking to participate in the program? Are there aspects of the current EBB Program enrollment process that need additional explanation or more detailed instructions? Similarly, what resources would help providers looking to participate in the program? For the EBB Program, USAC offered provider training and office hours, added training materials to the provider-focused website, and sent bulletins to providers on system changes and new enrollment features.<sup>223</sup> Nevertheless, would additional explanation or more detailed instructions on program process or systems help providers to better serve their program eligible customers? How else can the Commission ensure that this program is implemented effectively?

### H. Data Reporting and Tracking of Available Funding

117. In the *EBB Program Order*, the Commission instructed USAC to develop a tracker that reported on disbursements and program enrollment to allow providers and the public to monitor the balance of the Emergency Broadband Connectivity Fund and prepare for the end of the program.<sup>224</sup> The tracker is available to the public on USAC’s website<sup>225</sup> and includes data on EBB Program enrollment nationwide, by state, and by three-digit ZIP code areas that is updated weekly, and the total claims made by providers each month.<sup>226</sup> To provide more information about where subscribers are enrolling in the EBB Program, the Commission released more granular enrollment data that included enrollee demographic information, such as age breakdown, eligibility category, type of broadband service, and enrollment numbers by five-digit ZIP code areas, all of which are updated monthly.<sup>227</sup> We seek comment on how stakeholders used the data available on the EBB Enrollments and Claims Tracker and whether enrollment and claims data regarding the Affordable Connectivity Program would be similarly useful. Should the Commission consider any modifications to the type or format of the public data reports, as well as the frequency of updates, for the Affordable Connectivity Program?<sup>228</sup> In suggesting data to

<sup>221</sup> Infrastructure Act, div. F, tit. V, § 60502(d).

<sup>222</sup> *Id.*

<sup>223</sup> See USAC, Emergency Broadband Benefit Program, <https://www.usac.org/about/emergency-broadband-benefit-program/> (last visited Nov. 2, 2021).

<sup>224</sup> *EBB Program*, 36 FCC Rcd 4162, 4665-66, paras. 111-112.

<sup>225</sup> USAC, EBB Program Enrollments and Claims Tracker, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited Oct. 26, 2021).

<sup>226</sup> Press Release, FCC, *Emergency Broadband Benefit Program Enrolls 2.3 Million Households In First 3 Weeks of Program* (Jun. 7, 2021), <https://docs.fcc.gov/public/attachments/DOC-373047A1.pdf>.

<sup>227</sup> Press Release, FCC, *Five Million Households Enrolled in Broadband Discount Program* (Aug. 27, 2021), <https://docs.fcc.gov/public/attachments/DOC-375271A1.pdf>.

<sup>228</sup> ZIP code-level data is redacted to protect the identity of EBB Program subscribers. For EBB enrollment data at the ZIP code-level, USAC redacts any ZIP codes meeting the criteria developed by the FCC to protect subscriber

(continued....)

report publicly, commenters should consider the limitations on the Commission's ability to make available personal identifiable information on the households enrolled in the program.

118. We also seek comment on the performance measures the Commission should use in determining the success of the Affordable Connectivity Program. How should success in the Affordable Connectivity Program be defined? The Commission, for example, set three program goals for the Lifeline program: (1) ensuring the availability of voice and broadband service for low-income Americans; (2) ensuring the affordability of broadband service for low-income Americans; and (3) minimizing the contribution burden on consumers and businesses.<sup>229</sup> In the *2016 Lifeline Order*, the Commission stated that it will measure its progress toward achieving the affordability prong of the goal by "measuring the extent to which voice and broadband service expenditures exceed two percent of low income consumers' disposable household income as compared to the next highest group."<sup>230</sup> We seek comment on the goals the Commission should adopt for the Affordable Connectivity Program. How should the Commission consider the concepts of broadband affordability, adoption, and availability for low-income households? We also seek comment on the extent to which the Commission should measure the cost effectiveness of administering the Affordable Connectivity Program.

119. Should the Commission track how the Affordable Connectivity Program is delivering value to low-income consumers? If so, how can this be measured? Should the Commission consider evaluating take-up rates in communities with low connectivity? Should service type or quality be considered in an analysis? Further, should the Commission seek to understand whether the Affordable Connectivity Program is expanding the market for broadband by enrolling subscribers with no existing broadband service as opposed to those that apply the subsidy to an existing plan? If so, what information should the Commission require that providers submit to understand this distinction? What additional measures of performance should the Commission consider, and what information might be requested from providers to measure performance? Should the Commission use participation rates to measure program performance? To calculate those participation rates, how should the Commission estimate the program eligible population, especially given the limitations in data collection due to the ongoing pandemic? Should data be collected on enrollees' current internet access when applying? If so, should this data be collected from providers or enrollees? What additional data are needed to accurately estimate ACP eligibility? We seek comment on the availability of such data and recommended approaches for collection, such as requiring participating providers to submit household eligibility information. Should the Commission consider prioritizing reaching certain demographics of low-income consumers and develop targeted outreach? Should the Commission seek to collect additional demographic information about ACP subscribers and, if so, how can the burdens to consumers and providers be minimized? How might this information be used in measuring the success of the Affordable Connectivity Program? We seek comment on whether the Commission should identify goals for this program and how the Commission can measure its success in meeting those goals. Should the success of the Affordable

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privacy and to reduce the risk of identification of enrolled households. ZIP codes are excluded if their estimated population is below 50, if a population estimate for the ZIP code is not available in the American Community Survey, if there are fewer than 1,000 enrolled households in a ZIP code and those households comprise most of a ZIP code's estimated population, or if the number of EBB enrolled households in a ZIP code equals or exceeds the population estimate range for that ZIP code. USAC, *EBB Program Enrollment and Claims Tracker*, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited Oct. 26, 2021).

<sup>229</sup> *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4112, para. 408 (2016) (*2016 Lifeline Order*); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No., 11-42, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6671, para. 25 (2012) (*Lifeline Reform Order*).

<sup>230</sup> *2016 Lifeline Order*, 31 FCC Rcd 4112, para. 408; see also Universal Service Monitoring Report, CC Docket No. 96-45, et al., Report, <https://docs.fcc.gov/public/attachments/DOC-369262A1.pdf> at Table 6.12 (2020).

Connectivity Program be measured against Lifeline or the EBB Program? Given that Lifeline-eligible households will be eligible for the Affordable Connectivity Program, how should the Commission judge the concurrent performances of the two programs? Are there any additional data that Lifeline providers participating in the Affordable Connectivity Program can provide to the Commission that can be used to judge any substitution or complementarity between Lifeline and the Affordable Connectivity Program?

120. Given that the Affordable Connectivity Program is anticipated to be a longer-term program than the EBB Program, what data should the Commission ask providers to submit to judge the efficacy of the Affordable Connectivity Program? The subsidy provided by the Affordable Connectivity Program is larger than that provided by the Lifeline program. As such, should the Commission ask ACP providers to submit summary statistics on subscribers' usage of plan features (*e.g.*, mobile data usage) to gauge whether the Affordable Connectivity Program is providing value to households beyond what the Lifeline program offers? We also seek comment on what data providers should submit regarding the service type a household is receiving. Currently, providers in the EBB Program indicate the type of service a household receives through the EBB Program.<sup>231</sup> Should the Commission also ask ACP providers to indicate the service plan characteristics – such as upload and download speeds, data allowances, and co-payment – associated with a subscriber's service plan? If this information were required, what is an appropriate frequency (*e.g.*, quarterly, semi-annually) for providers to submit such data on a recurring basis? Is there a method of submission that would minimize burden on providers (*e.g.*, via NLAD at the time of enrollment)?

#### **I. Transition to the Affordable Connectivity Program**

121. As explained above, the Infrastructure Act provides for a 60-day transition period for “households that qualified” for the EBB Program prior to the December 31, 2021 effective date, that would otherwise see a reduction in their benefit as a result of the changes made through the delayed amendments concerning the eligibility criteria and discount level for the Affordable Connectivity Program.<sup>232</sup> During the transition period, we propose that households enrolled in the EBB Program as of December 31, 2021 would not be required to submit a new application to enroll in the Affordable Connectivity Program. However, before the end of the 60-day transition period, EBB-enrolled households that qualified for the EBB Program through eligibility criteria that are not applicable to the Affordable Connectivity Program will be required to demonstrate their eligibility to receive an ACP benefit after the transition period ends. We expect this requirement will affect only a small number of households currently enrolled in the EBB Program. The Bureau will provide guidance on the processes that this subset of EBB-enrolled households will need to complete in order to demonstrate eligibility to receive the ACP benefit after the transition period.

122. We also propose requiring all households seeking to participate in the Affordable Connectivity Program, including EBB-enrolled households that are eligible for the Affordable Connectivity Program, to opt-in or affirmatively request enrollment in the Affordable Connectivity Program. Moreover, we propose to require EBB-enrolled households transitioning to the Affordable Connectivity Program that share an address with another ACP household to verify that they are only obtaining one ACP benefit per household, by either completing the one-per-household worksheet, or a similar process under a provider's approved alternative verification process. However, given that these EBB-enrolled households would have completed a worksheet for the EBB Program already, we propose that such households may complete the worksheet for the Affordable Connectivity Program after the 60-day transition period if necessary. We seek comment on this proposal and the timing for the confirmation

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<sup>231</sup> See USAC, EBB Additional Data Page, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/additional-ebb-program-data/> (see “Total Enrolled EBB Subscribers by Service Type”) (last visited Oct. 26, 2021).

<sup>232</sup> Infrastructure Act, div. F, tit. V, § 60502(b)(2).

of the household's compliance with the one-per-household requirement.<sup>233</sup> We believe that these approaches for EBB Program-enrolled households transitioning to the Affordable Connectivity Program would best promote an orderly transition and minimize administrative burdens on participating households. We seek comment on these proposed approaches.

123. We next seek comment on establishing a deadline by when EBB-enrolled households that are eligible for and intend to participate in the Affordable Connectivity Program must opt in or affirmatively request enrollment in the Affordable Connectivity Program after the end of the 60-day transition period. Would it be feasible to require EBB-enrolled households to opt in or request enrollment by the end of the transition period? Are there alternatives to requiring ACP opt-in that the Commission should consider for EBB-enrolled households that remain eligible for the Affordable Connectivity Program and previously consented to continue receiving service from their provider at the end of the EBB Program? Given that the Affordable Connectivity Program is a new program with a different benefit amount, we are concerned by the idea of allowing providers to rely on prior consent for the EBB Program for enrollment in the Affordable Connectivity Program. We also seek comment on how to treat an EBB-enrolled household that remains eligible for the Affordable Connectivity Program but does not provide opt-in or affirmatively request enrollment to participate in the Affordable Connectivity Program by any deadline the Commission may adopt.

124. We seek comment on service provider notice requirements for EBB-enrolled households that transition to the Affordable Connectivity Program and would experience a change in their benefit level at the end of the 60-day transition period. Should the Commission require that participating providers issue notices to consumers with the same content as was contemplated for the 15-day and 30-day end of EBB Program notices in the EBB Program rules, with modifications as necessary to comport with the Affordable Connectivity Program rules?<sup>234</sup> We seek to minimize the potential for consumer confusion, and seek comment on when the rate change notices should be issued to these consumers. Would 30-days' notice be sufficient time to allow consumers to prepare for the reduced benefit amount under the Affordable Connectivity Program? Should the Commission adopt a uniform deadline for these consumer notices, such as 30 days before the end of the transition period, or should the timing of the notices coincide with consumer billing cycles? Would a single notice be sufficient to communicate any rate changes that occur as a result of the changed benefit amount under the ACP? Should the Commission require that the notices make clear that consumers can cancel their service before the rate change takes effect? Would it be sufficient for service providers to notify consumers of the expected rate change under the Affordable Connectivity Program via a bill message? We seek comment on these ideas.

125. The Infrastructure Act also contains language addressing a transition period for certain households. In particular, legislative text in the Delayed Amendments provides that, after December 31, 2021, an eligible household that was participating in the EBB Program on the date of enactment and that also qualifies for the Affordable Connectivity Program "shall continue to have access to an affordable

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<sup>233</sup> Where not already required under the recertification requirements the Commission may adopt for the Affordable Connectivity Program, this would be a one-time, one-per household recertification for all EBB Program households that transition to the Affordable Connectivity Program and reside at the same address as another household enrolled in the Affordable Connectivity Program. Notwithstanding this proposal, subscriber address changes or transfers to another service provider may trigger the need for an ACP-enrolled household to complete a new household worksheet or undergo a service provider equivalent process.

<sup>234</sup> See 47 CFR § 54.1610(c) (requiring participating providers to issue consumer notices no later than 15 days after the announcement of the final EBB Program service month outlining the last date of the full benefit amount, the last date of the partial benefit amount, and the expected rate when service ends); 47 CFR § 54.1610(d) (requiring providers to issue a notice at least 30 days before the end of the EBB Program notifying consumers about the end of the EBB Program and state that the household would be subject to the providers' generally applicable terms and conditions at the end of the EBB Program if the household elects to continue receiving broadband service from the participating provider).



service offering.”<sup>235</sup> We seek comment on this language and its relation to the 60-day transition period into the Affordable Connectivity Program for all households enrolled in the EBB Program starting on December 31, 2021. What is intended by the language providing that such households “shall continue to have access to an affordable service offering”? What are the outer bounds on the period of time when such households shall no longer continue to have access? What is the purpose of the language limiting such households to those that were participating the EBB Program on the date of enactment?

126. *Database Connections for the Affordable Connectivity Program.* Access to program databases for automated eligibility verification is essential to an optimal household application experience in the National Verifier. While the existing computer matching agreements (CMAs) allow USAC to continue utilizing the National Verifier’s EBB Program connections for purposes of the Affordable Connectivity Program, accessing eligibility databases for WIC, a new eligibility program under the Affordable Connectivity Program, will likely require new or amended CMAs and interconnection security agreements with each of USAC and the Commission’s state partners.<sup>236</sup> Both USAC and the states will also need to undertake technical development to build those connections. We invite comment on these challenges and potential solutions to avoid delays in establishing eligibility database connections for the Affordable Connectivity Program.

127. In addition, the Infrastructure Act contemplates data sharing with the Department of Health and Human Services (HHS), USDA and the Department of Education by requiring the Secretaries of those agencies to execute a Memorandum of Understanding with USAC to share National Verifier data and to begin sharing such data shortly after executing the Memorandum.<sup>237</sup> We seek comment on data maintained by these agencies that could be used by the National Verifier to speed enrollments in the Affordable Connectivity Program and combat program waste. In the case of USDA, we seek comment on whether there is a centralized eligibility database for WIC data, which is administered at the state level. The National Verifier also has a number of current CMAs with state agencies permitting access to USDA SNAP participant data in those states. How should USAC and the USDA incorporate these existing CMAs into the Memorandum of Understanding? With respect to the Department of Education, Pell Grant recipients will be eligible to enroll in the Affordable Connectivity Program but, for the EBB Program, applications based on Pell Grant participation are subject to manual review. An automated connection with the Department of Education for Pell Grant data would improve the enrollment experience of Pell Grant recipients. Are there any legal barriers or other challenges that would prevent CMA access to Pell Grant data?<sup>238</sup> Finally, with respect to the Memorandum of Understanding with HHS, USAC and the HHS agency Centers for Medicare & Medicaid Services have a current CMA permitting data sharing to qualify Medicaid recipients nationwide for Lifeline and the EBB Program. We seek comment on whether other agencies within HHS would have any data that would benefit applicants for the Affordable Connectivity and Lifeline programs.

## **J. Sunsetting of Affordable Connectivity Program**

128. We seek comment on what considerations the Commission should include regarding the end of the Affordable Connectivity Program when the funding is fully expended. If establishing requirements for the sunset of the Affordable Connectivity Program, how can the Commission benefit from the rules already established for the wind-down of the EBB Program? We seek comment on whether the Commission should delegate to the Bureau the responsibility for setting the requirements for the wind-down of the Affordable Connectivity Program. What notice requirements should the Commission consider for the wind-down? How much notice should the Commission give to providers

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<sup>235</sup> Infrastructure Act, div. F, tit. V, sec. 60502(b)(3).

<sup>236</sup> See *supra* n.53 regarding National Verifier eligibility database connections for the EBB Program.

<sup>237</sup> Infrastructure Act, div. F, tit. V, sec. 60502(e).

<sup>238</sup> 20 U.S.C. § 1232g; 34 CFR Part 99.

and households regarding the end of the program? How much notice will participating providers require in order to give adequate notice to households? The Commission and USAC have developed a projection forecasting the termination of the EBB Program. How best can the Commission forecast the end of the Affordable Connectivity Program?

#### **K. Audits and Program Integrity Reviews**

129. The Infrastructure Act leaves unchanged the requirement that the Commission adopt audit requirements to ensure that participating providers are in compliance with the program requirements and to prevent waste, fraud, and abuse.<sup>239</sup> Moreover, within one year of the date of enactment of the Infrastructure Act, the Commission's Office of Inspector General shall conduct an audit of the disbursements to a representative sample of participating providers.<sup>240</sup> As with the EBB Program, the Bureau proposes that the Commission delegate authority to the Office of Managing Director (OMD) to develop and implement an audit process of participating providers, for which it may obtain the assistance of third parties, including but not limited to USAC.<sup>241</sup> Such audits would be in addition to any audits conducted by the Commission's Office of Inspector General. We seek comment on the audit requirements and procedures to be used to test provider compliance with Affordable Connectivity Program rules, including whether "spot checks" of provider practices should be incorporated into those procedures. We also propose adopting for the Affordable Connectivity Program the documentation retention requirements used in the EBB Program.<sup>242</sup>

130. In the EBB Program, the Commission directed USAC to conduct program integrity reviews of oversubscribed addresses,<sup>243</sup> of a sample of households qualifying based on a member of their household's enrollment in a CEP school,<sup>244</sup> and a sample of households enrolled through an alternative verification process,<sup>245</sup> in addition to other areas as determined by the Bureau and USAC to deter waste, fraud, and abuse in the Program. The Bureau proposes that USAC also develop a plan and conduct program integrity reviews, subject to OMD and Bureau approval, to determine provider and consumer compliance with ACP program rules. We seek comment on the areas that might be most at risk for non-compliance that should be the subject of a program integrity review.

#### **L. Enforcement**

131. The Infrastructure Act leaves unchanged the declaration that a violation of section 904 or any regulation promulgated under that section "shall be treated as violation of the Communications Act of 1934 or a regulation promulgated under such Act."<sup>246</sup> The Commission is compelled to enforce the section of the Infrastructure Act establishing the Affordable Connectivity Program and associated regulations "in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Communications Act of 1934 were incorporated or made a part of this section."<sup>247</sup> The Commission in the *EBB Program Order* stated that it would use its existing statutorily permitted enforcement powers to conduct investigations and impose administrative forfeitures, and would apply the Commission's suspension and debarment rules applicable to USF

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<sup>239</sup> Infrastructure Act, div. F, tit. V, secs. 60502(a)(1)(B)(iii), (a)(2)(D), (a)(2)(F), § 904(b)(12) (2021).

<sup>240</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(D), § 904(b)(13) (2021).

<sup>241</sup> *EBB Program Order*, 36 FCC Rcd at 4678, para. 140.

<sup>242</sup> 47 CFR § 54.1611.

<sup>243</sup> *EBB Program Order*, 36 FCC Rcd at 4634, para. 46.

<sup>244</sup> *Id.* at 4639, para. 56.

<sup>245</sup> *Id.* at 4644, para. 67.

<sup>246</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(g).

<sup>247</sup> *Id.*

participants to EBB Program providers.<sup>248</sup> Moreover, as discussed above, the Infrastructure Act expressly granted the Commission the authority to impose forfeiture penalties to enforce compliance, and we propose that the Commission use its existing, statutorily permitted enforcement powers to initiate investigations of program rule violations for the Affordable Connectivity Program.<sup>249</sup> We repeat here our request for comment on this proposal. Additionally, the Commission currently has pending a suspension and debarment proceeding proposing rules that would be applicable to conduct under the USF programs, Telecommunications Relay Services and the National Deaf- Blind Equipment Distribution Program.<sup>250</sup> We seek comment on whether an extension of the suspension and debarment rules proposed in that proceeding (when finalized) to the Affordable Connectivity Program, as well as any ACP grant program for outreach partners, would be desirable to prevent waste, fraud, and abuse, and if so, what modifications (if any) of such proposed suspension and debarment rules should be considered for the grant program.

132. The Infrastructure Act leaves unchanged the safe harbor provision in the Consolidated Appropriated Act stating that the Commission may not enforce a violation of the Act using sections 501, 502, or 503 of the Communications Act, or any rules of the Commission promulgated under such sections, if a participating provider demonstrates that it relied in good faith on information provided to such provider to make any verification required by section 904(b)(2).<sup>251</sup> Section 904(b)(2) imposes a duty on providers to verify whether a household is eligible to receive discounted service and a connected device through the program, and the Commission in the *EBB Program Order* established that the safe harbor will apply to providers who use the National Verifier for eligibility determinations or any alternative verification process approved by the Commission.<sup>252</sup> The Commission provided that the safe harbor applies to providers who act in good faith with respect to the eligibility verification processes and that the Commission has extensive experience evaluating the good faith actions of regulated entities.<sup>253</sup> We propose that the Commission adopt this application of the safe harbor adopted in the *EBB Program Order* to providers participating in the Affordable Connectivity Program and that providers that reasonably rely on documentation regarding eligibility determinations provided by eligible households or an eligibility determination from the National Verifier will be able to avail themselves of this statutory safe harbor with respect to their compliance with the Affordable Connectivity Program rules. We seek comment on this proposal.

#### **M. Administration of the Affordable Connectivity Fund**

133. Section 904 of the Consolidated Appropriations Act, 2021, as amended by the Infrastructure Act, authorizes the Commission to use the services USAC to administer the Affordable Connectivity Fund, including developing and processing reimbursements and distributing funds to participating providers.<sup>254</sup> Based on USAC's extensive experience administering both the Lifeline and EBB Programs, the Bureau proposes using USAC to administer the Affordable Connectivity Program. Given the challenging timeframe provided in the Act for the implementation of the Affordable Connectivity Program, the Bureau proposes that relying on USAC as the administrator would best facilitate the orderly implementation and administration of the Affordable Connectivity Program and would also minimize provider and consumer confusion. We seek comment on the use of the USAC

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<sup>248</sup> *EBB Program Order*, 36 FCC Rcd at 4678-79, para. 141 (citing 47 CFR § 54.8).

<sup>249</sup> *Supra* para. 88, Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B)(ii), § 904(b)(9)(C)(ii) (2021).

<sup>250</sup> *Modernizing Suspension and Debarment Rules*, GN Docket No. 19-309, Notice of Proposed Rulemaking, 34 FCC Rcd 11348 (2019).

<sup>251</sup> Consolidated Appropriations Act, div. N, tit. IX, § 904(j).

<sup>252</sup> *EBB Program Order*, 36 FCC Rcd at 4629-30, para 40.

<sup>253</sup> *Id.*

<sup>254</sup> Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904(i)(5).

administered systems, including, but not limited to, the Lifeline National Verifier, National Lifeline Accountability Database, Representative Accountability Database, and the Lifeline Claims System for administering the Affordable Connectivity Program. We also seek comment on using established USAC functions and processes for administering the Affordable Connectivity Program, including, but not limited to, call centers, provider and communications outreach and training, program integrity reviews, audits, assisting the Commission in conducting its review, and data services. We seek comment on this proposal. In addition, how should the Commission measure USAC's performance in administering the Affordable Connectivity Program? What aspects of USAC's administration of the EBB Program were most effective from the perspective of the providers and applicants, and what aspects may need improvement going forward?

134. Given that the Affordable Connectivity Program is expected to be a longer-term program than the EBB Program, we propose that the Commission require providers to submit to USAC annual officer certifications, under penalty of perjury, relating to the Affordable Connectivity Program. We further propose that each officer must certify that the participating provider has policies and procedures in place to ensure compliance with ACP rules. We seek comment on the contents of this certification and feedback on whether such certifications would help guard against waste, fraud, and abuse in the Affordable Connectivity Program. This practice is currently used across the Commission's Universal Service Fund programs through the use of FCC Form 481 that requires providers participating in High Cost and Lifeline to annually certify their compliance with those programs' rules.<sup>255</sup> Pursuant to section 54.416 of the Commission's rules, ETCs must also certify to their compliance with Lifeline program rules and that ETCs have policies and procedures in place to ensure that their Lifeline subscribers are eligible for Lifeline service. We seek comment on these ideas.

135. *Administrative Cap.* The Infrastructure Act continues to make available to the Commission no more than 2% of the Affordable Connectivity Fund (formerly called the Emergency Broadband Connectivity Fund) for the administration of the Affordable Connectivity Program.<sup>256</sup> The Infrastructure Act further appropriates an additional \$14.2 billion (in addition to the amounts previously appropriated under the Consolidated Appropriations Act, 2021) into the Affordable Connectivity Fund.<sup>257</sup> Thus, the overall cap on administrative costs is \$348 million (some of which has already been expended for the EBB Program). In the *EBB Program Order*, the Commission directed OMD and USAC to re-evaluate the program's budget to determine if any funds budgeted for administrative expenses should instead be used to fund reimbursements.<sup>258</sup> Should the Commission similarly require a re-examination of the administrative funds and budget in the Affordable Connectivity Program to determine if any funds can be used for reimbursements? If so, at what intervals should the re-evaluation take place? In the *EBB Program Order*, the Commission also required that USAC regularly report to OMD USAC's program budget for the administration of the EBB Program.<sup>259</sup> We propose that the Commission require similar regular reporting from USAC on its projected budget for the administration of the Affordable Connectivity Program. We seek comment on this proposal.

136. *Red Light and Do Not Pay.* To implement the requirements of the Debt Collection Improvement Act of 1996, the Commission has established what is commonly referred to as the red light rule. Under the red light rule, the Commission will not take action on applications or other requests by an

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<sup>255</sup> See USAC, File FCC Form 481, <https://www.usac.org/high-cost/annual-requirements/file-fcc-form-481/> (last visited Oct. 26, 2021) (describing the annual certification requirements for High Cost and Lifeline service providers).

<sup>256</sup> Infrastructure Act, div. F, tit. V, secs. 60502(a)(2)(C), (a)(2)(E) § 904(i)(3) (2021).

<sup>257</sup> Infrastructure Act, div. J, tit. IV.

<sup>258</sup> *EBB Program Order*, 36 FCC Rcd at 4656, para. 86.

<sup>259</sup> *Id.*

entity that is found to owe debts to the Commission until that debt is fully paid or resolved.<sup>260</sup> In the EBB Program, the Commission waived the red light rule given the limited duration and emergency nature of that Program.<sup>261</sup> The red light rule is not waived for the Lifeline program or other longstanding programs such as the Telecommunications Relay Service. In contrast to the EBB Program, we propose to apply the red light rule to the Affordable Connectivity Program and thus ACP providers would be subject to the red light rule. We seek comment on this approach.

137. In the *EBB Program Order*, the Commission explained that pursuant to the requirements of the Payment Integrity Information Act of 2019 (PIIA), the Commission is required to ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and to prevent improper payments before the release of any federal funds.<sup>262</sup> To that end, the Commission explained that to meet this requirement, the Commission will make use of the Do Not Pay system administered by the Department of Treasury's Bureau of the Fiscal Service and if a check of the system reveals that a provider cannot be paid, the Commission will withhold issuing commitments and payments to that provider.<sup>263</sup> The Commission further explained that USAC may work with the EBB Program provider to give it an opportunity to resolve the listing in the Do Not Pay system, however the provider will be responsible for working with the relevant agency to correct its information before payment can be made by the Commission.<sup>264</sup> The Commission also noted that providers not registered in the System for Award Management (SAM) may elect to participate in the EBB Program, enroll eligible households and receive program commitments, but active SAM registration is required in order to receive payment.<sup>265</sup> We seek comment on the payment administration process used for the EBB Program and on providers' experiences with the payment process as may be relevant for the Affordable Connectivity Program.

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<sup>260</sup> *Amendment of Parts 0 and 1 of the Commission's Rules/Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR § 1.1910.

<sup>261</sup> *EBB Program Order*, 36 FCC Rcd at 4663, para. 105.

<sup>262</sup> *Id.* at 4664, para. 109 (citing Payment Integrity Information Act (PIIA), Pub. L. No. 116-117, 134 Stat. 113 (2019)).

<sup>263</sup> *EBB Program Order*, 36 FCC Rcd at 4664, para. 109. In 2021, OMB issued updated guidance on compliance with PIIA. OMB Memorandum M-21-19, Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement, (rel. March 5, 2021).

<sup>264</sup> *EBB Program Order*, 36 FCC Rcd at 4664, para. 109 (citing <https://fiscal.treasury.gov/DNP/>).

<sup>265</sup> *Id.* at 4664, para. 108. SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's partners in support of federal awards, grants, and electronic payment processes. Registration in the SAM provides the Commission with information necessary to provide funding to applicants and to ensure accurate reporting pursuant to the Federal Funding Accountability and Transparency Act of 2006, as amended by the Digital Accountability and Transparency Act of 2014 (collectively, Transparency Act or FFATA/DATA Act). Pub. L. No. 109-282, 120 Stat. 1186 (2006) and Pub. L. No. 113-101, 128 Stat. 114 (2014), codified at 31 U.S.C. § 6101 note. In August 2020, OMB updated the rules governing compliance with the Transparency Act as part of wider ranging revisions to title 2 of the Code of Federal Regulations. 85 Fed. Reg. 49506 (published Aug. 13, 2020) (including revisions to 2 CFR Parts 25, 170, 183, and 200). OMB explained that the SAM registration requirements were expanded "beyond grants and cooperative agreements to include other types of financial assistance" to ensure compliance with FFATA. 85 Fed. Reg. 49506, 49517. In addition, in 2021, OMB issued guidance on implementation of the American Rescue Plan Act. OMB Memorandum M-21-20, Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources (rel. Mar. 19, 2021).

## N. Application of Part 54 Regulations

138. In enacting the Affordable Connectivity Program, the Infrastructure Act did not make any substantive changes to section 904(f), which permits the Commission to apply rules contained in part 54 of the Commission's rules to the EBB Program.<sup>266</sup> In addition to the specific instances identified above, we seek comment on applying the regulations contained in subpart E of part 54 to the Affordable Connectivity Program, to the extent that those rules do not conflict with the Affordable Connectivity Program parameters established by the Infrastructure Act. For example, we seek comment on what definitions in section 54.400 should also be applied the Affordable Connectivity Program.<sup>267</sup> Should the Commission include subscriber eligibility determination and certification rules as found in section 54.410?<sup>268</sup> We also seek comment on whether regulations in subpart H of the Commission's rules, which pertain to USAC's functions as administrator of the USF, should be applied to the Affordable Connectivity Program. We propose to apply sections 54.702(c) of the Commission's rules prohibiting USAC from making policy, interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress. What other provisions of subpart H, would, if applied, facilitate the effective administration of the Affordable Connectivity Program? Alternatively, we seek comment on whether the Commission should consider adopting distinct rules for the Affordable Connectivity Program rather than relying on definitions and processes from Lifeline-specific rules. What are the benefits of establishing ACP-specific rules rather than cross-referencing and relying on Lifeline rules? Finally, we urge commenters to provide feedback on the EBB Program and how the Commission can best use the experiences from the EBB Program to inform its rulemaking with respect to the Affordable Connectivity Program. We invite providers, consumer groups, EBB subscribers, other governmental agencies, non-profit organizations, and community institutions to share with us in this proceeding their experiences in navigating the EBB Program and what the Commission should consider when establishing rules for the Affordable Connectivity Program.

## O. Administrative Procedure and Paperwork Reduction Acts

139. The Infrastructure Act does not modify section 904(h), which exempts the Commission from certain rulemaking requirements under the APA and the Paperwork Reduction Act (PRA).<sup>269</sup> Because section 904(h) applies these exemptions to regulations promulgated to implement the EBB Program (*i.e.*, under section 904(c) of the Consolidated Appropriations Act), we understand these exemptions extend to the implementation of amendments that modify the EBB Program, with the possible exception of those consumer protection provisions for which the Infrastructure Act specifically requires the Commission to promulgate rules in accordance with the APA.<sup>270</sup> Furthermore, the PRA in its ordinary operation includes statutory comment periods that encompass several months,<sup>271</sup> which cannot be completed consistent with the deadlines in the Infrastructure Act. Exempting this rulemaking proceeding from the APA's rulemaking requirements is also essential for the timely promulgation of final

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<sup>266</sup> See Infrastructure Act, div. F, tit. V, sec. 60502(a)(2)(D), § 904(f) (2021).

<sup>267</sup> See, e.g., *EBB Program Order*, 36 FCC Rcd at 4679, para. 143 (adopting certain definitions from 47 CFR § 54.400).

<sup>268</sup> See, e.g., *id.* at 4680, para. 146.

<sup>269</sup> See Consolidated Appropriations Act, div. N, tit. IX, § 904(h) (establishing that 5 U.S.C. § 553 shall not apply to a regulation promulgated under § 904(c) or a rulemaking proceeding to promulgate such a regulation and that a collection of information conducted or sponsored under the regulations required by § 904(c) shall not constitute a collection of information for the purposes of 44 U.S.C. §§ 3501-3531).

<sup>270</sup> Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(11) (2021); see *supra* para. 91 (requesting comment on how to harmonize sections 904(b)(11) and 904(h)).

<sup>271</sup> 44 U.S.C. §§ 3506(c)(2) (60-day comment period), 3507(b) (30-day comment period).

rules in advance of the implementation and outreach efforts that will be required for the eventual launch of this new program. We seek comment on these interpretations.

140. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended, requires that an agency prepare an initial regulatory flexibility analysis “[w]henver an agency is required by [5 U.S.C. § 553], or any other law, to publish general notice of proposed rulemaking for any proposed rule.” Pursuant to the Consolidated Appropriations Act, as extended under the Infrastructure Act, section 553 generally does not apply to the rulemaking proceeding implementing the Affordable Connectivity Program.<sup>272</sup> Furthermore, to the extent notice and comment under the APA is otherwise required for those consumer protection regulations that are required under section 904(b)(11), the Commission will either find good cause to dispense with such notice and comment or will subsequently issue a Notice of Proposed Rulemaking that will include an Initial Regulatory Flexibility Analysis.<sup>273</sup> Accordingly, no Initial Regulatory Flexibility Analysis is required for in this Public Notice.

141. *Paperwork Reduction Act.* Pursuant to section 904(h)(2) of the Consolidated Appropriations Act, as extended under the Infrastructure Act, the collection of information sponsored or conducted under the rules proposed in this Public Notice is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521.<sup>274</sup>

142. The Commission, as part of its continuing effort to advance digital equity for all,<sup>275</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>276</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

#### IV. FILING REQUIREMENTS

143. *Comment Filing Procedures.* Pursuant to section 1.419 of the Commission’s rules, 47 CFR § 1.419, interested parties may file comments on or before December 8, 2021, and reply comments on or before December 28, 2021.<sup>277</sup> All filings should refer to WC Docket No. 21-450. Filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission. Comments may be filed by paper or by using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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<sup>272</sup> See Infrastructure Act, div. F, tit. V, sec. 60502(A)(3)(B), § 904(h)(1).

<sup>273</sup> See *supra* paras. 91-92.

<sup>274</sup> See Consolidated Appropriations Act, div. N, tit. IX, § 904(h)(2).

<sup>275</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>276</sup> The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

<sup>277</sup> See 47 CFR § 1.4(j) (filing dates that would otherwise fall on a holiday shall be filed on the next business day).

- Electronic Filers: Comments and replies may be filed electronically via ECFS: <http://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.

Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.<sup>278</sup>

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

144. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice).

145. *Ex Parte Rules.* Proceedings in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>279</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission’s *ex parte* rules.

146. *Contact Person.* For further information, please contact Eric Wu, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-1543 or by email at [eric.wu@fcc.gov](mailto:eric.wu@fcc.gov).

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<sup>278</sup> In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission’s electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>279</sup> See 47 CFR §§ 1.1200(a), 1.1206.



## APPENDIX A

The text below is the Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904, as modified by the Infrastructure and Investment Jobs Act, div. F, tit. V, secs. 60501, 60502(a)-(b). The ***bolded and italicized*** text will be effective upon the earlier of 12/31/2021 or Commission certification to Congress of expenditure of funds. Infrastructure Act, div. F, tit. V, 60502(b)(1).

## TITLE IX—BROADBAND INTERNET ACCESS SERVICE

## SEC. 904. BENEFIT FOR BROADBAND SERVICE.

(a) DEFINITIONS.—In this section:

(1) BROADBAND INTERNET ACCESS SERVICE.—The term “broadband internet access service” has the meaning given such term in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation.

(2) BROADBAND PROVIDER.—The term “broadband provider” means a provider of broadband internet access service.

(3) COMMISSION.—The term “Commission” means the Federal Communications Commission.

(4) CONNECTED DEVICE.—The term “connected device” means a laptop or desktop computer or a tablet.

(5) DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER.—The term “designated as an eligible telecommunications carrier”, with respect to a broadband provider, means the broadband provider is designated as an eligible telecommunications carrier under section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)).

(6) ELIGIBLE HOUSEHOLD.—The term “eligible household” means, regardless of whether the household or any member of the household receives support under subpart E of part 54 of title 47, Code of Federal Regulations (or any successor regulation), and regardless of whether any member of the household has any past or present arrearages with a broadband provider, a household in which—

(A) at least one member of the household meets the qualifications in subsection (a) or (b) of section 54.409 of title 47, Code of Federal Regulations (or any successor regulation) ***except that such subsection (a), including for purposes of such subsection (b), shall be applied by substituting ‘200 percent’ for ‘135 percent’;***

(B) at least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(C) at least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under subsection (a)(2)(B);

(D) at least one member of the household meets the eligibility criteria for a participating provider’s existing low-income program, subject to the requirements of subsection (a)(2)(B) and any other eligibility requirements the Commission may consider necessary for the public interest;  
***or***

(E) ***at least one member of the household receives assistance through the special supplemental nutritional program for women, infants, and children established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786).***

(7) AFFORDABLE CONNECTIVITY BENEFIT.—

(A) **IN GENERAL.**—Subject to subparagraph (B), the term “affordable connectivity benefit” means a monthly discount for an eligible household applied to the actual amount charged to such household, in an amount equal to such amount charged, but not more than \$30, or, if an internet service offering is provided to an eligible household on Tribal land, not more than \$75.

(B) **HIGH-COST AREAS.**—The Commission shall, by regulation, establish a mechanism by which a participating provider in a high-cost area (as defined in section 60102(a)(2) of the Infrastructure Investment and Jobs Act) may provide an affordable connectivity benefit in an amount up to the amount specified in subparagraph (A) for an internet service offering provided on Tribal land upon a showing that the applicability of the lower limit under subparagraph (A) to the provision of the affordable connectivity benefit by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.

(8) **INTERNET SERVICE OFFERING.**—The term “internet service offering” means, with respect to a broadband provider, broadband internet access service provided by such provider to a household.

(9) **NATIONAL LIFELINE ACCOUNTABILITY DATABASE.**—The term “National Lifeline Accountability Database” has the meaning given such term in section 54.400 of title 47, Code of Federal Regulations (or any successor regulation).

(10) **NATIONAL VERIFIER.**—The term “National Verifier” has the meaning given such term in section 54.400 of title 47, Code of Federal Regulations, or any successor regulation.

(11) **PARTICIPATING PROVIDER.**—The term “participating provider” means a broadband provider that—

(A)

(i) is designated as an eligible telecommunications carrier; or

(ii) meets requirements established by the Commission for participation in the Affordable Connectivity Program and is approved by the Commission under subsection (d)(2); and

(B) elects to participate in the Affordable Connectivity Program.

(b) **AFFORDABLE CONNECTIVITY BENEFIT PROGRAM.**—

(1) **ESTABLISHMENT.**—The Commission shall establish a program, to be known as the “Affordable Connectivity Program”, under which the Commission shall, in accordance with this section, reimburse, using funds from the Affordable Connectivity Fund established in subsection (i), a participating provider for an affordable connectivity benefit, or an affordable connectivity benefit and a connected device, provided to an eligible household.

(2) **VERIFICATION OF ELIGIBILITY.**—To verify whether a household is an eligible household, a participating provider shall—

(A) use the National Verifier or National Lifeline Accountability Database;

(B) rely upon an alternative verification process of the participating provider, if—

(i) the participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement; and

(ii) not later than 7 days after receiving the information required under clause (i), the Commission—

(I) determines that the alternative verification process will be sufficient to avoid waste, fraud, and abuse; and

(II) notifies the participating provider of the determination under subclause (I); or

(C) rely on a school to verify the eligibility of a household based on the participation of the household in the free and reduced price lunch program or the school breakfast program described in subsection (a)(6)(B).

**(3) USE OF NATIONAL VERIFIER AND NATIONAL LIFELINE ACCOUNTABILITY DATABASE.**—The Commission shall—

(A) expedite the ability of all participating providers to access the National Verifier and National Lifeline Accountability Database for purposes of determining whether a household is an eligible household, without regard to whether a participating provider is designated as an eligible telecommunications carrier; and

(B) ensure that the National Verifier and National Lifeline Accountability Database approve an eligible household to receive the affordable connectivity benefit not later than 2 days after the date of the submission of information necessary to determine if such household is an eligible household.

**(4) REIMBURSEMENT.**—From the Affordable Connectivity Fund established in subsection (i), the Commission shall reimburse a participating provider in an amount equal to the affordable connectivity benefit with respect to an eligible household that receives such benefit from such participating provider.

**(5) REIMBURSEMENT FOR CONNECTED DEVICE.**—A participating provider that, in addition to providing the affordable connectivity benefit to an eligible household, supplies such household with a connected device may be reimbursed up to \$100 from the Affordable Connectivity Fund established in subsection (i) for such connected device, if the charge to such eligible household is more than \$10 but less than \$50 for such connected device, except that a participating provider may receive reimbursement for no more than 1 connected device per eligible household.

**(6) CERTIFICATION REQUIRED.**—To receive a reimbursement under paragraph (4) or (5), a participating provider shall certify to the Commission the following:

(A) That each eligible household for which the participating provider is seeking reimbursement for providing an internet service offering discounted by the affordable connectivity benefit—

(i) will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such internet service offering if such household later terminates such contract;

(ii) was not, after the date of the enactment of this Act, subject to a mandatory waiting period for such internet service offering based on having previously received broadband internet access service from such participating provider; and

(iii) will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other customers.

(B) That each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device has not been and will not be charged \$10 or less or \$50 or more for such device.

(C) A description of the process used by the participating provider to verify that a household is an eligible household, if the provider elects an alternative verification process under paragraph (2)(B), and that such verification process was designed to avoid waste, fraud, and abuse.

**(7) REQUIREMENT TO ALLOW CUSTOMERS TO APPLY AFFORDABLE CONNECTIVITY BENEFIT TO ANY INTERNET SERVICE OFFERING.**—

(A) IN GENERAL.—A participating provider—

- (i) shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same terms available to households that are not eligible households; and
  - (ii) may not require the eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider.
- (B) Non-Payment.— Nothing in subparagraph (A) shall prevent a participating provider from terminating the provision of broadband internet access service to a subscriber after 90 days of nonpayment.
- (8) PUBLIC AWARENESS.—A participating provider, in collaboration with the applicable State agencies, public interest groups, and non-profit organizations, in order to increase the adoption of broadband internet access service by consumers, shall carry out public awareness campaigns in service areas that are designed to highlight—
  - (A) the value and benefits of broadband internet access service; and
  - (B) the existence of the Affordable Connectivity Program.
- (9) OVERSIGHT.—The Commission—
  - (A) shall establish a dedicated complaint process for consumers who participate in the Affordable Connectivity Program to file complaints about the compliance of participating providers with, including with respect to the quality of service received under, the Program;
  - (B) shall require a participating provider to supply information about the existence of the complaint process described in subparagraph (A) to subscribers who participate in the Affordable Connectivity Program;
  - (C)
    - (i) shall act expeditiously to investigate potential violations of and enforce compliance with this section, including under clause (ii) of this subparagraph; and
    - (ii) in enforcing compliance with this section, may impose forfeiture penalties under section 503 of the Communications Act of 1934 (47 U.S.C. 503); and
  - (D) shall regularly issue public reports about complaints regarding the compliance of participating providers with the Affordable Connectivity Program.
- (10) INFORMATION ON AFFORDABLE CONNECTIVITY PROGRAM.—
  - (A) PARTICIPATING PROVIDERS.—When a customer subscribes to, or renews a subscription to, an internet service offering of a participating provider, the participating provider shall notify the customer about the existence of the Affordable Connectivity Program and how to enroll in the Program.
  - (B) FEDERAL AGENCIES.—The Commission shall collaborate with relevant Federal agencies, including to ensure relevant Federal agencies update their System of Records Notices, to ensure that a household that participates in any program that qualifies the household for the Affordable Connectivity Program is provided information about the Program, including how to enroll in the Program.
  - (C) COMMISSION OUTREACH.—
    - (i) IN GENERAL.—The Commission may conduct outreach efforts to encourage eligible households to enroll in the Affordable Connectivity Program.
    - (ii) ACTIVITIES.—In carrying out clause (i), the Commission may—
      - (I) facilitate consumer research;

- (II) conduct focus groups;
- (III) engage in paid media campaigns;
- (IV) provide grants to outreach partners; and
- (V) provide an orderly transition for participating providers and consumers from the Emergency Broadband Benefit Program established under paragraph (1) (as that paragraph was in effect on the day before the date of enactment of the Infrastructure Investment and Jobs Act) to the Affordable Connectivity Program.

(11) CONSUMER PROTECTION ISSUES.—

(A) The Commission shall, after providing notice and opportunity for comment in accordance with section 553 of title 5, United States Code, promulgate rules to protect consumers who participate in, or seek to participate in, the Affordable Connectivity Program from—

- (i) inappropriate upselling or downselling by a participating provider;
- (ii) inappropriate requirements that a consumer opt in to an extended service contract as a condition of participating in the Affordable Connectivity Program;
- (iii) inappropriate restrictions on the ability of a consumer to switch internet service offerings or otherwise apply support from the Affordable Connectivity Program to a different internet service offering with a participating provider;
- (iv) inappropriate restrictions on the ability of a consumer to switch participating providers, other than a requirement that the customer return any customer premises equipment provided by a participating 1 provider; and
- (v) similar restrictions that amount to unjust and unreasonable acts or practices that undermine the purpose, intent, or integrity of the Affordable Connectivity Program.

(B) EXCEPTIONS.—In complying with this paragraph, the Commission may take advantage of the exceptions set forth in subsections (e) and (f).

(12) AUDIT REQUIREMENTS.—The Commission shall adopt audit requirements to ensure that participating providers are in compliance with the requirements of this section and to prevent waste, fraud, and abuse in the Affordable Connectivity Program. A finding of waste, fraud, or abuse or an improper payment (as such term is defined in section 2(d) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note)) identified by the Commission or the Inspector General of the Commission shall include the following:

- (A) The name of the participating provider.
- (B) The amount of funding made available from the Affordable Connectivity Fund to the participating provider.
- (C) The amount of funding determined to be an improper payment to a participating provider.
- (D) A description of to what extent funding made available from the Affordable Connectivity Fund that was an improper payment was used for a reimbursement for a connected device or a 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 any funding from the Affordable Connectivity Fund was made available to a participating provider for an affordable connectivity benefit for a person outside the eligible household.
- (G) Whether any funding from the Affordable Connectivity Fund was made available to

reimburse a participating provider for an affordable connectivity 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.

(13) **RANDOM AUDIT REQUIRED.**—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Commission shall conduct an audit of a representative sample of participating providers receiving reimbursements under the Affordable Connectivity Program.

(14) **NOTIFICATION OF AUDIT FINDINGS.**—Not later than 7 days after a finding made by the Commission under the requirements of paragraph (12), the Commission shall notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate with any information described in such paragraph that the Commission has obtained.

(15) **EXPIRATION OF PROGRAM.**—At the conclusion of the Affordable Connectivity Program, any participating eligible households shall be subject to a participating provider’s generally applicable terms and conditions.

(c) **REGULATIONS REQUIRED.**—

(1) **IN GENERAL.**—Not later than 60 days after the date of the enactment of this Act, the Commission shall promulgate regulations to implement this section.

(2) **COMMENT PERIODS.**—As part of the rulemaking under paragraph (1), the Commission shall—

(A) provide a 20-day public comment period that begins not later than 5 days after the date of the enactment of this Act;

(B) provide a 20-day public reply comment period that immediately follows the period under subparagraph (A); and

(C) during the comment periods under subparagraphs (A) and (B), seek comment on—

(i) the provision of assistance from the Affordable Connectivity Fund established in subsection (i) consistent with this section; and

(ii) other related matters.

(d) **ELIGIBILITY OF PROVIDERS.**—

(1) **RELATION TO ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION.**—The Commission may not require a broadband provider to be designated as an eligible telecommunications carrier in order to be a participating provider.

(2) **EXPEDITED APPROVAL PROCESS.**—

(A) **IN GENERAL.**—The Commission shall establish an expedited process by which the Commission approves as participating providers broadband providers that are not designated as eligible telecommunications carriers and elect to participate in the Affordable Connectivity Program.

(B) **EXCEPTION.**—Notwithstanding subparagraph (A), the Commission shall automatically approve as a participating provider a broadband provider that has an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program governed by the rules set forth in subpart E of part 54 of title 47, Code of Federal Regulations (or any successor regulation).

(f) **PART 54 REGULATIONS.**—Nothing in this section shall be construed to prevent the Commission from providing that the regulations in part 54 of title 47, Code of Federal Regulations, or any successor

regulation, shall apply in whole or in part to the Affordable Connectivity Program, shall not apply in whole or in part to such Program, or shall be modified in whole or in part for purposes of application to such Program.

(g) **ENFORCEMENT.**—A violation of this section or a regulation promulgated under this section shall be treated as a violation of the Communications Act of 1934 (47 U.S.C. 151 et seq.) or a regulation promulgated under such Act. The Commission shall enforce this section and the regulations promulgated under this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Communications Act of 1934 were incorporated into and made a part of this section.

(h) **EXEMPTIONS.**—

(1) **CERTAIN RULEMAKING REQUIREMENTS.**—Section 553 of title 5, United States Code, shall not apply to a regulation promulgated under subsection (c) or a rulemaking proceeding to promulgate such a regulation.

(2) **PAPERWORK REDUCTION ACT REQUIREMENTS.**—A collection of information conducted or sponsored under the regulations required by subsection (c) shall not constitute a collection of information for the purposes of subchapter I of chapter 35 of title 44, United States Code (commonly referred to as the Paperwork Reduction Act).

(i) **AFFORDABLE CONNECTIVITY FUND.**—

(1) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the Affordable Connectivity Fund.

(2) **APPROPRIATION.**—There is appropriated to the Affordable Connectivity Fund, out of any money in the Treasury not otherwise appropriated, \$3,200,000,000 for fiscal year 2021, to remain available until expended.

(3) **USE OF FUNDS.**—Amounts in the Affordable Connectivity Fund shall be available to the Commission for reimbursements to participating providers under this section, and the Commission may use not more than 2 percent of such amounts to administer the Affordable Connectivity Program.

(4) **RELATIONSHIP TO UNIVERSAL SERVICE CONTRIBUTIONS.**—Reimbursements provided under this section shall be provided from amounts made available under this subsection and not from contributions under section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)).

(5) **USE OF UNIVERSAL SERVICE ADMINISTRATIVE COMPANY PERMITTED.**—The Commission shall have the authority to avail itself of the services of the Universal Service Administrative Company to implement the Affordable Connectivity Program, including developing and processing reimbursements and distributing funds to participating providers.

(j) **SAFE HARBOR.**—The Commission may not enforce a violation of this section under section 501, 502, or 503 of the Communications Act of 1934 (47 U.S.C. 501; 502; 503), or any rules of the Commission promulgated under such sections of such Act, if a participating provider demonstrates to the Commission that such provider relied in good faith on information provided to such provider to make the verification required by subsection (b)(2).

**APPENDIX B****THE INFRASTRUCTURE AND INVESTMENT JOBS ACT**

The text below is the Infrastructure and Investment Jobs Act sections that do not directly modify Consolidated Appropriations Act, 2021, div. N, tit. IX, § 904.

**DIVISION F—BROADBAND****TITLE V—BROADBAND AFFORDABILITY****SEC. 60502. BROADBAND AFFORDABILITY.****(b) Delayed Amendments to Affordable Connectivity Program.—**

(1) **IN GENERAL.**—Effective on the date on which the Commission submits the certification required under paragraph (4), or December 31, 2021, whichever is earlier, section 904 of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260), as amended by subsection (a) of this section, is amended— (see *bolded and italicized text above*)

(2) **APPLICABILITY OF AMENDMENT TO ELIGIBILITY.**—A household that qualified for the Emergency Broadband Benefit Program under section 904 of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) before the effective date in paragraph (1) and, as of that effective date, would, but for this subparagraph, see a reduction in the amount of the benefit under that Program, shall, during the 60-day period beginning on that effective date, be eligible for that benefit in the amount in effect with respect to that household, as of the day before that effective date.

(3) **TRANSITION.**—After the effective date under paragraph (1), an eligible household that was participating in the Emergency Broadband Benefit Program under section 904 of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) on the date of enactment of this Act and qualifies for the Affordable Connectivity Program established under that section (as amended by this section) shall continue to have access to an affordable service offering.

(4) **CERTIFICATION REQUIRED.**—On the date on which the amounts appropriated under section 904(i)(2) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) have been fully expended, the Commission shall submit to Congress a certification regarding that fact.

**(c) Broadband Transparency Rules.—**

(1) **RULES.**—Not later than 1 year after the date of enactment of this Act, the Commission shall issue final rules regarding the annual collection by the Commission of data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program established under section 904 of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) (as amended by this section) to which an eligible household subscribes.

(2) **UPDATES.**—Not later than 180 days after the date on which rules are issued under paragraph (1), and when determined to be necessary by the Commission thereafter, the Commission shall revise the rules to verify the accuracy of data submitted pursuant to the rules.

(4) **REDUNDANCY AVOIDANCE.**—Nothing in this subsection shall be construed to require the Commission, in order to meet a requirement of this subsection, to duplicate an activity that the Commission is undertaking as of the date of enactment of this Act, if—

- (A) the Commission refers to the activity in the rules issued under paragraph (1);
- (B) the activity meets the requirements of this subsection; and
- (C) the Commission discloses the activity to the public.



(5) AVAILABILITY OF DATA.—

(A) PUBLIC AVAILABILITY.—The Commission shall make data relating to broadband internet access service collected under the rules issued under paragraph (1) available to the public in a commonly used electronic format without risking the disclosure of personally identifiable or proprietary information, consistent with section 0.459 of title 47, Code of Federal Regulations (or any successor regulation).

(B) DETERMINATION OF PERSONALLY IDENTIFIABLE INFORMATION.—The Commission—

(I) shall define the term “personally identifiable information”, for purposes of clause (A) through notice and comment rulemaking; and

(II) may not share any data under subparagraph (A) before completing the rulemaking under subclause (i) of this clause.

(d) Guidance.—The Commission may issue such guidance, forms, instructions, publications, or technical assistance as may be necessary or appropriate to carry out the programs, projects, or activities authorized under this section and the amendments made by this section, including to ensure that such programs, projects, or activities are completed in a timely and effective manner.

(e) Coordination.—The Secretary of Agriculture, the Secretary of Education, and the Secretary of Health and Human Services shall—

(1) not later than 60 days after the date of enactment of this Act, enter into a memorandum of understanding with the Universal Service Administrative Company to provide for the expeditious sharing of data through the National Verifier (as that term is defined in section 54.400 of title 47, Code of Federal Regulations, or any successor regulation), or any successor system, for the purposes of verifying consumer eligibility for the program established under section 904 of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260), as amended by this section; and

(2) not later than 90 days after the date of enactment of this Act, begin to share data under the memorandum of understanding described in paragraph (1) for the purposes described in that paragraph.

## **DIVISION J—APPROPRIATIONS**

### **TITLE IV—FINANCIAL SERVICES AND GENERAL GOVERNMENT EXECUTIVE OFFICE OF THE PRESIDENT AND 8 FUNDS APPROPRIATED TO THE PRESIDENT**

*FEDERAL COMMUNICATIONS COMMISSION AFFORDABLE CONNECTIVITY FUND.* For an additional amount for the “Affordable Connectivity Fund”, \$14,200,000,000, to remain available until expended, for the Affordable Connectivity Program, as authorized under section 904(b)(1) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260), as amended by section 60502 of division F of this Act: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 4112(a) of H. Con. Res. 71 (115th Congress), the concurrent resolution on the budget for fiscal year 2018, and to section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.