



FACT SHEET
Broadband Technology Opportunities Program
Non-Duplication of E-Rate Funding

Overview

A Broadband Technology Opportunities Program (BTOP) recipient must avoid using BTOP or matching funds in any manner that would either: (1) result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area; or (2) duplicate funds that the recipient has received under any Federal program, including Federal universal service support programs.¹

The schools and libraries universal service support program, also known as "E-Rate," is one of four Federal universal service support programs established by the Federal Communications Commission (FCC) to help provide communities across the country with affordable telecommunications and information services pursuant to Section 254 of the Telecommunications Act of 1996. Because BTOP and E-Rate both provide Federal funding to Community Anchor Institutions (CAIs) for broadband services, recipients must avoid the duplication of funding for the same services.

E-Rate Summary

The Universal Service Administrative Company (USAC) administers the E-Rate program under the direction of the FCC. Eligible schools, school districts, and libraries may apply for E-Rate funding individually or as part of a consortium. They may apply for four categories of eligible services:

- Telecommunications services;
- Internet access;
- Internal connections; and
- Basic maintenance of internal connections.

E-Rate applicants must provide additional resources, including end-user equipment (*e.g.*, computers, telephones, etc.), software, professional development, and the other elements that are necessary to utilize the connectivity funded by the E-Rate program. Discounts provided to applicants under the E-Rate program range from 20 to 90 percent of the pre-discount costs of eligible services, and depend on the level of poverty and the urban/rural status of the population served. The FCC's rules also note that requests for eligible services shall receive first priority for funding (priority one services) under the E-Rate program, while support for internal connections and basic maintenance of internal connections (priority two services) will be a secondary priority for funding.

¹ See Recovery and Reinvestment Act of 2009 § 6001(h)(2)(D) ("ARRA"); Notice of Funds Availability and Solicitation of Applications, 75 Fed. Reg. 3,792, 3810 at § IX.C.5.e (Jan. 22, 2010) ("Round Two NOFA"); Notice of Funds Availability and Solicitation of Applications, 74 Fed. Reg. 33,104, 33108 at § II.B.3.f (July 9, 2009) ("Round One NOFA"); OMB Circular A-122, App. A, ¶ A.2.f; Department of Commerce Financial Assistance Standard Terms and Conditions § B.04.





The E-Rate application process requires applicants to develop a technology plan for priority two services, select a service provider through a competitive bidding process, and submit an application for funding to USAC. To open the competitive bidding process, an E-Rate applicant must submit an FCC Form 470 to USAC for posting to its website, which identifies the recipients to be served and describes the specific services requested. Applicants also must follow state and local competitive bidding requirements and may use other solicitation methods in addition to the required FCC Form 470 (*See* 47 C.F.R. §§ 54.504, 54.508).

After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers. E-Rate applicants also must evaluate and consider all submitted bids. Applicants may consider several relevant factors as part of the evaluation, but price must be the primary factor in selecting the winning bid and the applicant must select the most cost-effective service offering. Please note that providers of eligible services cannot charge eligible entities a price that is above the lowest corresponding price for supported services, unless the FCC finds that the lowest corresponding price is not compensatory (*See* 47 C.F.R. § 54.511).

Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services. USAC will issue the funding commitment decision letters in response to Form 471, approving or denying the requests for discounted services.

If USAC approves a request for funding, the applicant must submit FCC Form 486 to USAC, which confirms the receipt of supported services from the specified service providers. Services can be billed to USAC in one of two ways for reimbursement:

- If the applicant pays only the reduced cost of the services, then the service provider must file an FCC Form 474, Service Provider Invoice (SPI) form, to receive its reimbursement; or
- If the applicant pays the full cost of the services, then the applicant and service provider must jointly submit an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) form, to secure reimbursement from USAC. In this case, USAC remits payment to the service provider, which then reimburses the applicant.

Potential Duplication Scenarios – Illustrative Examples

The examples below are intended to provide guidance regarding unjust enrichment and duplication issues that may arise when a BTOP recipient also receives E-Rate funds from USAC. Please follow the questions and answers related to each example scenario to understand how to address these potential unjust enrichment and duplication issues.

Example 1: Support for Monthly Service Costs of a CAI Connected by a BTOP Infrastructure Project

A recipient of a BTOP Infrastructure award, which includes Middle Mile and Last Mile recipients under the Round One NOFA and Comprehensive Community Infrastructure (CCI) recipients under the Round Two NOFA, directly connects a CAI using BTOP funds. The CAI subscribes to broadband service provided by this BTOP Infrastructure recipient and the recipient receives payment for the CAI's broadband services with some of the payment being supported by the E-Rate program and the rest of the funding coming directly from the CAI.

1.1. Do the E-Rate funds duplicate the Infrastructure recipient's BTOP award funds?

No. In this case, BTOP and E-Rate complement, and do not conflict with, one another (*See* ARRA § 6001(a)). The funds are used for two different purposes (*e.g.*, building infrastructure and paying for broadband service) and will normally benefit different entities. As a result, the subsidies from E-Rate do not result in unjust enrichment or violate the general prohibition on duplication. Moreover, E-Rate's competitive





bidding and “lowest corresponding price” requirements limit the monthly service fees that the Infrastructure recipient can charge for serving the CAI (*See* 47 C.F.R. §§ 54.504, 54.511). These factors, to the extent practicable, prevent duplication of the BTOP investment in non-recurring costs and unjust enrichment of the Infrastructure recipient (*See* ARRA § 6001(h)(2)(D)).

1.2. How should the Infrastructure recipient characterize the E-Rate funds it receives for the CAI's monthly broadband service? How can it use these funds?

These funds are program income. Program income is gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award, including income from fees for services performed (15 C.F.R. § 14.2(aa); *see also* 15 C.F.R. § 24.25(b)).

A BTOP recipient may add program income to its award or reduce the non-Federal share of its project (*See* Round Two NOFA; Round One NOFA Program Income Waiver²; 15 C.F.R. § 14.24; 15 C.F.R. § 24.25).

- Recipients of Last Mile and Middle Mile awards under the Round One NOFA must account for all program income earned during the award period and add it to the total approved project budget to further eligible project objectives, including reinvestment in project facilities (Round One NOFA § V.E). NTIA has issued a waiver to allow Round One recipients to use program income to finance the non-Federal share of their projects. Recipients should follow guidance provided by the Grants Office to use program income in this manner.
- Recipients of CCI awards under the Round Two NOFA must account for all program income earned during the award period and use the income in one or both of the following ways (*See* Round Two NOFA § V.F):
 - Add program income to the total project budget to conduct additional activities that will further eligible project objectives, including reinvestment in project facilities or funding BTOP compliance costs; or
 - Use program income to finance the non-Federal share of the project.

Including E-Rate funds as match, where authorized, does not violate 15 C.F.R. § 14.23(a)(5) or 15 C.F.R. § 24.24(b). This characterization of funds also does not constitute prohibited duplication of Federal funding because such funds are counted toward different costs when they are paid by the E-Rate program (*e.g.*, the CAI's monthly service costs) and when they are used as match (*i.e.*, the Infrastructure recipient's eligible BTOP project costs).

1.3. How should the Infrastructure recipient characterize the funds it receives directly from the CAI for monthly broadband service? How can it use these funds?

These funds are program income. They may be used in the same manner as the E-Rate funds discussed above.

² See July 2011 notification email to Round One BTOP Recipients.





1.4. What if the CAI pays the entire amount of the service fees to the Infrastructure recipient and the Infrastructure recipient receives E-Rate funding that must be passed back to the CAI?

This payment arrangement does not alter the essential character of the funds. Under the applicable cost principles, the Public Computer Center (PCC) or Sustainable Broadband Adoption (SBA) recipients may not use BTOP funds to pay for the portion of the CAI's broadband service fees reimbursed through E-Rate (*See, e.g., OMB Circular A-87, Attachment A*). The Infrastructure recipient continues to have program income in the amount of the broadband service fees.

Example 2: Support for PCC or SBA CAI Participants' Monthly Service Costs Where the CAI Also Is Connected by a BTOP Infrastructure Project

A CAI participates in a project funded through a BTOP PCC or SBA award where the CAI obtains free or reduced rate broadband service. An Infrastructure recipient directly connects this CAI using BTOP funds, and the CAI subscribes to broadband service from the Infrastructure recipient. The Infrastructure recipient receives payment for the CAI's broadband services and some of the payment is supported by the E-Rate program while the rest comes directly from the CAI.

2.1. Can the PCC or SBA recipient count the E-Rate subsidies obtained by participating CAI's toward its non-Federal share?

No. The use of E-Rate subsidies as matching funds for a PCC or SBA project would constitute prohibited duplication. Matching contributions must be allowable costs (*See 15 C.F.R. § 14.23(a)(4); 15 C.F.R. § 24.24(a)(1)*). To be allowable, costs must be the net of applicable credits. (*See OMB Circular A-21, Att. A, ¶ C.5; OMB Circular A-87, App. A, ¶ C.4; OMB Circular A-122, App. A, ¶ A.5; 48 C.F.R. § 31.201-5*). E-Rate subsidies are credits because they directly offset the CAI's cost of monthly broadband services. As a result, the percentage of broadband service fees funded by E-Rate is not an allowable matching contribution.

2.2. Can the PCC or SBA recipient spend BTOP PCC or SBA funds for the percentage of the CAI's monthly broadband service not covered by E-Rate?

Yes, provided that: (1) the fees are paid during the BTOP award period; (2) the fees cover service that is received during the BTOP award period; and (3) these fees are included in the approved budget for the PCC or SBA award. Alternatively, the PCC or SBA recipient may use non-Federal funds to pay these fees and count the payment toward its matching contribution.

2.3. Do PCC or SBA funds spent on the CAI's broadband service fees duplicate the Infrastructure recipient's BTOP award funds?

No. The BTOP Infrastructure project is complementary, and not duplicative, of the PCC or SBA project. The funds benefit different entities and apply to different costs.

2.4. Do the E-Rate funds duplicate the Infrastructure recipient's BTOP award funds? How should the Infrastructure recipient characterize these funds, and how can it use them?

See Example 1.





2.5. How should the Infrastructure recipient characterize the PCC or SBA funds it receives for the CAI's monthly broadband service? How can it use these funds?

As in Example 1, these funds are program income. An exception may exist where the Infrastructure recipient and the PCC or SBA recipient, or their subrecipients involved in the transaction, are the same or closely related entities.

Example 3: Support for Building Internal Connections

An Infrastructure recipient builds a connection to a CAI that is receiving PCC or SBA funds. The Infrastructure recipient also sets up internal connections for the CAI, and the CAI receives E-Rate reimbursement for a percentage of this work from the E-Rate program.

3.1. Can the PCC or SBA recipient count the E-Rate funds spent on the CAI's internal connections toward its non-Federal share?

No. The use of E-Rate subsidies as matching funds for a PCC or SBA project would constitute prohibited duplication. Matching contributions must be allowable costs (*See* 15 C.F.R. § 14.23(a)(4); 15 C.F.R. § 24.24(a)(1)). To be allowable, costs must be the net of applicable credits (*See* OMB Circular A-21, Att. A, ¶ C.5; OMB Circular A-87, Att. A, ¶ C.4; OMB Circular A-122, Att. A, ¶ A.5; 48 C.F.R. § 31.201-5). E-Rate subsidies are credits because they directly offset the CAI's cost of establishing internal connections. As a result, the percentage of internal connection costs funded by E-Rate is not an allowable matching contribution.

3.2. Can the PCC or SBA recipient use BTOP PCC or the CAI's SBA funds for the percentage of the CAI's internal connection costs not covered by E-Rate?

Yes, provided that these costs are included in the approved budget for the PCC or SBA award. Alternatively, the PCC or SBA recipient may use non-Federal funds to pay these costs and count the payment toward its matching contribution.

3.3. Can the Infrastructure recipient charge the costs of establishing the internal connections to its BTOP award?

The recipient cannot charge the cost of establishing the internal connections to its BTOP award if the costs are reimbursed by E-Rate. This would result in unjust enrichment as a result of support for non-recurring costs through another Federal program (*See* ARRA § 6001(h)(2)(D)).

3.4. Can the Infrastructure recipient count the E-Rate funds it receives for internal connections toward its non-Federal share?

No. This situation would result in unjust enrichment as a result of support for non-recurring costs through another Federal program (*See* ARRA § 6001(h)(2)(D)). The Infrastructure recipient may charge the cost of work on the outside plant to its BTOP grant and separately receive E-Rate funding for different work performed inside the building.





3.5. How should the Infrastructure recipient characterize the funds it receives for the CAI's internal connections? How can it use these funds?

If the Infrastructure recipient uses BTOP funds to serve the same CAI (*e.g.*, by constructing outside plant), the payments from the E-Rate program and the CAI for internal wiring are program income. The Infrastructure recipient may deduct the labor and materials costs of performing the internal wiring from these payments to calculate program income (*See* 15 C.F.R. § 14.24(f); 15 C.F.R. § 24.25(c)). As noted above, an Infrastructure recipient should not charge internal wiring costs reimbursed by E-Rate to the BTOP grant. For a discussion of the permissible uses of program income, see Example 1.

Example 4: Support for Providing Lateral Connections

A BTOP Infrastructure recipient builds a Middle Mile network and provides a lateral connection to a CAI up to a demarcation point (at the building). The CAI receives E-Rate reimbursement for a percentage of this work from the E-Rate program for providing fiber installation within the property line.

4.1. Can the Infrastructure recipient charge the costs of constructing the lateral connections to its BTOP award?

An Infrastructure recipient may not charge the costs of constructing the lateral connection if the costs are reimbursed by E-Rate. This situation would result in unjust enrichment as a result of support for non-recurring costs through another Federal program (*See* ARRA § 6001(h)(2)(D)).

4.2. How should the Infrastructure recipient characterize the funds it receives for the lateral portion reimbursed by E-Rate funds? How can it use these funds?

If the Infrastructure recipient uses BTOP funds to serve the same CAI (*e.g.*, by constructing a portion of the lateral connection that is not covered under E-Rate), the payments from the E-Rate program and the CAI for such construction are program income. For a discussion of the permissible uses of program income, see Example 1.

4.3. Can the CCI recipient use BTOP funds for the portion of the lateral costs not covered by E-Rate?

Yes, provided that these costs are included in the proposed service area and approved budget for the CCI award. Alternatively, the CCI recipient may use non-Federal funds to pay these costs and count the payment toward its matching contribution.

Example 5: Service to a CAI by a Third Party Last Mile Provider

A BTOP Infrastructure recipient builds a Middle Mile connection, and a third-party Internet Service Provider (ISP) buys wholesale broadband services from the BTOP Infrastructure recipient.

5.1. Do the funds that the ISP pays to the Infrastructure recipient duplicate BTOP award funds?

No, for the reasons explained in Example 1. NTIA also recognizes that the Infrastructure recipient may not have any way of knowing whether the money from the ISP includes funds received from E-Rate.

Furthermore, the unjust enrichment prohibition of ARRA § 6001(h)(2)(D) is limited to the Infrastructure recipient (including subrecipients), not an unaffiliated service provider.





5.2. How should the Infrastructure recipient characterize the funds it receives from the ISP?

These funds are program income and should be handled as described in Example 1.

Additional Resources

- FCC Universal Service website: www.fcc.gov/wcb/tapd/universal_service/.
- USAC Schools and Libraries Division: www.universalservice.org/sl/.
- USAC E-Rate application and competitive bidding requirements: www.universalservice.org/sl/about/overview-process.aspx.
- FCC Regulations, Schools and Libraries Program, 47 CFR Part 54 Subpart F: www.gpo.gov/fdsys/pkg/CFR-2010-title47-vol3/pdf/CFR-2010-title47-vol3-part54-subpartF.pdf.

