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Brief
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Understanding Child Care and Pre-Kindergarten Provisions in the Build Back Better Act

The **most recent version** of the Build Back Better (BBB) Act includes historic investments in child care and preschool totaling $390 billion. These investments create a child care entitlement for most children from birth through age five and universal pre-kindergarten for three- and four-year-olds, which would provide significant increases to access for families and children, improve the quality of the programs, and increase pay and support for providers. The U.S. House of Representatives passed this bill on November 19, 2021. The measure is now being considered by the Senate.

This brief outlines key provisions of *Section 23001 Birth Through Five Child Care and Early Learning Entitlement* and *Section 23002 Universal Preschool* included in the Build Back Better Act.

Child Care

Available Funding

What funds are available and how will they be allocated?

To carry out the child care provisions of the BBB Act, the U.S. Department of Health and Human Services (HHS) makes funding available to states beginning in FY 2022, with entitlement funding (where funds are allotted as necessary to serve the population of eligible children and families) beginning in FY 2025. $100 billion of the bill's $390 billion investment in child care and preschool will be allocated to the Birth Through Five Child Care and Early Learning Entitlement and will be distributed as capped funding to states over the first three years. The available funding in those first three years will be

- $24 billion in FY 2022,
- $34 billion in FY 2023, and
- $42 billion in FY 2024.

Beginning in FY 2025, the funding adjusts to fit "such sums as may be necessary" or an entitlement structure. Beginning in FY 2025, there is a 90:10 cost sharing agreement that requires the federal government to cover 90 percent, and states to cover 10 percent, of costs associated with direct services and payment rates.[1]

In the first three years of funding (FY 2022 - FY 2024), states are required to allocate

- 50 percent of funds toward expanding access to subsidies;
- 25 percent to support quality building activities;
- 18 percent to support expanding subsidy access or supply building and quality activities; and

- 7 percent to support expanding subsidy access, supply building and quality activities, or state administrative costs.

Following the first three years of capped funding, beginning in FY 2025, the BBB Act establishes federal-state cost sharing agreements for state expenditures associated with quality and supply building and state program administration activities. Costs associated with state quality and supply building activities will be reimbursed by the federal government according to the federal medical assistance percentage (FMAP) rates, which vary by state.[2] States are required to reserve 5-10 percent of amounts made available in the previous year to support these quality activities. State administrative costs will be split so that the federal government covers half of state expenditures, and the state covers the other half.[3]

Funds to carry out federal administrative, monitoring, and enforcement activities for the program are also included in these resources ($130 million per year for FY 2022 - FY 2025). For years FY 2026 and beyond, 1 percent of all funds appropriated in the previous year will be set aside to carry out those activities in the current year.[4]

How can states access funding?

States become eligible to access funds and receive assistance by submitting an application containing a state plan to the U.S. Secretary of Health and Human Services (Secretary) for approval. For a three-year period following the enactment of the BBB Act, the Secretary will award funds to states with an approved transitional state plan that covers up to a three-year period. Transitional plans must detail how funds will be spent to expand access to child care assistance, increase supply, and improve the quality of child care programs. Following the transitional plan, states must submit a full plan also covering a three-year period that includes detailed information on how states will manage payment rates; licensing for providers; eligibility of families; prioritizing underserved populations; compensation for care workers; and improving overall program quality.

While states are receiving these BBB funds, they must ensure stable funding for other child care programs. This is known as maintenance of effort (MOE). Specifically, states must maintain the same level of spending, on average, for other child care services as they did during the three years before receiving child care-related BBB funds. The expenditures from other child care programs can be used to count toward the non-federal share, or state match, of expenditures for direct assistance; quality and supply building activities; or state administration activities, so long as they are not already being used as a match requirement for another federal award. States can also meet match requirements for quality improvement and supply building, as well as state administrative costs, through state or local sources, donations, or in-kind contribution of facilities, property, equipment, or services.

Resources to Support Economic Stability, Affordability & Quality

What supports and resources are available for providers?

In their state plans, states will outline how they will use funds to meet the requirements for improving the quality of child care providers and programs. To support the costs associated with quality improvements, states are required to develop and implement a cost estimation model within three years after receiving funding. States must certify that the model increases payment rates, wages, and access to professional development and training. The model must also account for variations in costs of direct services. In addition, states must certify that payment practices support the fixed costs of providing child care.

Cost estimation models and payment rates. Payment rates must be based on cost estimation models. States must develop these models within three years of receiving funds and do so in consultation with community stakeholders. The model must reflect variations in the cost of care according to geographic area, provider type, a child's age, as well as the costs of providing inclusive care for children with disabilities. The model should also incorporate the costs associated with providers operating at different tiers of quality including the costs of meeting higher standards within a state's system of quality measures. In addition, states must update the cost estimation model at least once every three years. State payment rates must ensure that participating providers and all their child care staff are provided, at minimum, a living wage. In addition, providers who have similar credentials and experience to elementary educators must receive equivalent wages. States must also certify that wages are adjusted annually to account for cost-of-living increases and other increases that are incorporated into a wage ladder for eligible providers and child care staff.

Additional support for child care providers. In addition to increased payment rates and wages, providers can access additional resources and supports through startup and supply extension grants from HHS. Providers supporting or seeking to provide care to children in underserved populations will be prioritized for grants. These grants can be used to support providers in meeting quality standards as well as remodeling, renovating, or repairing facilities. Further, child care providers can use these grants to support health and safety requirements to meet state quality standards and meet licensure requirements; make progress toward meeting higher tiers; and/or sustain quality, including increasing provider wages and supporting fixed costs. At the discretion of the Secretary, states can also award grants for construction, permanent improvement, or major renovations with some exceptions and limitations.

How do providers participate in the new system of supports and resources?

An eligible provider can be a center-based, family child care, or other provider of child care services who:

- Is licensed in the state in which child care services are provided;
- Participates in the state's tiered system of measuring quality, by the last day of the third fiscal year in which a state receives funds; **and**
- Satisfies the state and local requirements for providers under the Child Care and Development Block Grant (CCDBG) Act.

To assist providers with transitioning to meet all the above eligibility requirements, there is an established three-and-a-half-year grace period, beginning when a state receives funding. During this time, providers who are eligible under the CCDBG Act will be deemed eligible for the three-and-a-half-year period.

Within two-and-a-half years after receiving funding, states must develop a licensing pathway and standards appropriate for child care providers in a variety of settings. This licensing pathway is to ensure providers eligible under the CCDBG Act have a pathway to meet the licensing requirements under the new child care provisions. States must demonstrate that they created the licensing pathway and standards in consultation with experts including child care directors; providers; staff; families; and others with early childhood education and child development knowledge.

Who is eligible to receive child care assistance?

Children and families will gain access to the program based on their families' income and their parent or parents' participation in eligible activities or if a child is included in a population deemed vulnerable. Eligible activities for parents include full- and part-time work, job search activities, and job training, as well as a variety of education-related activities. Other allowable activities include health treatments, including mental health and substance abuse treatment services, and activities related to preventing child abuse, neglect, and family violence.

Children included in the definition of vulnerable populations are children with disabilities; infants and toddlers with disabilities; children experiencing homelessness, children in foster care, children in kinship care; children who are receiving, or need to receive, child protective services; or those residing with a parent who is more than 65 years old. States should ensure that once children and families are deemed eligible to receive assistance, they are not required to re-determine eligibility before 12 months. Additionally, states should implement the processes for determination and re-determination in a way that reduces barriers to enrollment, supports continuity of services, and supports child wellbeing.

Income eligibility limits are phased in from FY 2022—FY 2024, beginning with a maximum income of:

- 100 percent state median income (SMI) in FY 2022;
- 125 percent SMI in FY 2023; and
- 150 percent SMI FY 2024.

If a state can cover the required populations more quickly, it may use payments in the first three years to expand access to direct services that go beyond the income eligibility phase-in thresholds, but do not exceed 250 percent SMI. Beginning in FY 2025, income eligibility limits will be expanded to allow families with incomes up to 250 percent SMI to participate.

To support children and families in underserved populations, states must also prioritize increasing child care access, improving quality, and expanding the supply of providers within these populations. Underserved populations are defined as children and families with low incomes; infants and toddlers; children with disabilities; dual language learners; children experiencing homelessness; children in foster or kinship care; and those receiving care during nontraditional hours. Vulnerable children, as defined by the lead agency, can also be considered priority populations.

How does funding address affordability for families?

States receiving funding must certify, through their state plans, how those funds will be used to expand access and improve affordability for families receiving full- or part-time care.

Full-time care. For families receiving full-time care, states must establish a scaled copayment structure where no family earning up to 250 percent SMI will pay more than 7 percent of its annual family income toward child care costs for all children in care.

Families earning incomes at and below 75 percent SMI will have no co-payment. Families earning above

75 percent will be charged copayments depending on their income level, as follows:

- Families earning above 75 percent and not more than 100 percent SMI will have a copayment of more than 0 percent and not more than 2 percent of their family income;
- Families earning above 100 percent and not more than 125 percent SMI will have a copayment of more than 2 percent and not more than 4 percent of their family income;
- Families earning above 125 percent and not more than 150 percent SMI will have a copayment of more than 4 percent and not more than 7 percent of their family income; and
- Families earning above 150 percent and not more than 250 percent SMI will have a copayment of no more than 7 percent of their family income.

Part-time care. To determine copayments for families who receive part-time care, states should establish a reduced copayment proportional to the amount of care received at the appropriate income eligibility threshold. In addition, states must use funds during the first three years of capped funding to waive or reduce co-payments to ensure any eligible family receiving financial assistance for eligible children does not pay more than 7 percent of annual income toward the cost of care.

How do investments improve program quality?

States must have, or must implement, a tiered system for measuring quality for eligible providers. This system must include appropriate standards for center-based and family child care settings, as well as those offering non-traditional hours and serving children in different and/or mixed age groups. Standards for the highest tier of quality measurements must, at a minimum, be equivalent to Head Start performance standards.

States must provide sufficient resources and supports to assist providers in progressing toward higher quality standards, including by providing adequate funding. Such funding can be used to support workforce training and professional development including earning a degree and credentialing; developing, implementing, or enhancing state quality tiered measurement systems; improving the supply of programs and services for underserved populations; and improving access for children experiencing homelessness or in foster care. Funds can also be used to provide technical assistance to those providing care or seeking to acquire licensure to do so.

Tribes, Territories, and Other Entities

How can tribes and territories access funding?

Indian tribes; tribal organizations; and territories will be eligible to receive funding if they submit an application for approval that meets the requirements specified by the Secretary. In the first three years of capped funding, 4 percent is reserved annually for Indian tribes and tribal organizations. This funding level equates to the following amounts per year:

- $960 million in FY 2022;
- $1.36 billion in FY 2023; and
- $1.68 billion in FY 2024.

Territories will receive no less than half of 1 percent to fund programs in the first three years. This funding level equates to the following amounts per year:

- $120 million in FY 2022;
- $170 million in FY 2023; and
- $210 million in FY 2024.

Beginning in FY 2025, funding for tribes, tribal organizations, and territories will reflect an entitlement structure.

Can other entities apply to run programs?

Beginning in FY 2023, funds will be made available to eligible localities in states that do not apply to receive funding. Eligible localities are defined as a city, county, or other local government entity, or a Head Start agency. These funds will be provided through grants, which will be prioritized to localities that serve high percentages of historically underserved children and families. The $3.8 billion in annual funding will be split between city, county, and other local government entities, as well as Head Start agencies—with Early Head Start agencies receiving 75 percent of available funding and other local entities receiving 25 percent of funds. Funding for localities will be allotted based on the number of children from families with incomes below 200 percent of the federal poverty line within that state, proportional to the number of children who meet that income threshold in all states where localities are able to apply.

Universal Preschool

What funds are available and how will they be allocated?

To carry out the universal preschool provisions of the BBB Act, $18 billion in funding is available for FY 2022—FY 2024, with an open-ended funding structure beginning in FY 2025. The open-ended funding that begins in FY 2025 allocates "such sums as may be necessary" and provides funding based on the number of children to whom states provide preschool services.

States would receive funds through HHS, and the Secretary of HHS and the Secretary of the U.S. Department of Education (DoEd) (Secretaries) would co-manage program administration. Funds will be allotted to states based on a formula that considers the number of children who are under age 6 **and** whose families are at or below the 200 percent poverty line, when compared to all states with approved plans for the fiscal year in which funds are being allotted. In addition, the formula will consider existing federal preschool investments through Head Start programs. States will use funds to cover costs associated with providing "high-quality, free, inclusive, and mixed delivery preschool services."

The provisions also require the federal government to cover 100 percent of state expenditures for preschool services in the first three years, FY 2022—FY 2024. The federal share of state expenditures for preschool services will gradually decline in the following years, to 90 percent in FY 2025; 75 percent in FY 2026; and 60 percent in FY 2027.[5]

The funds laid out above include amounts reserved to carry out federal administrative; monitoring; research; technical assistance; and other related activities. The funding amounts for federal administrative activities are:

- $165 million in FY 2022;
- $200 million in FY 2023;
- $200 million in FY 2024;
- $208 million in FY 2025;
- $212 million in FY 2026; and
- $216 million in FY 2027.

In addition, beginning in FY 2022, $2.5 billion will be set aside to improve compensation and benefits for Head Start staff and ensure compensation is adequate to attract and retain qualified staff and enhance program quality.

Beginning in FY 2025, the federal government will cover 50 percent of state expenditures for each fiscal year to support state activities including administration; quality improvement; outreach; building data systems; transportation; inclusive access for children with disabilities; and needs assessments. However, payments for state activities cannot be more than 10 percent of total state expenditures. States will use matching funds to cover all costs not covered by the federal government. In addition, unused funds from states that did not apply can be reallotted to states with approved plans from FY 2022—FY 2024.

To draw down the full amount of available federal funds, states must meet MOE and federal matching—or non-federal share of costs—requirements. Allowable sources for the state match, or non-Federal share, of direct service and other related costs include:

- Cash or in-kind, including fairly evaluated facilities, property, equipment, or services;
- Increased spending to expand half-day kindergarten programs into full-day programs, beyond the amount spent the day before the BBB Act takes effect; and
- Philanthropic and/or private organization contributions.

In addition, a state's share cannot come from funds used as matching or as non-federal contributions toward other federal awards. And, a state cannot use more than 100 percent of its current average spending, between 2019–2021, on pre-kindergarten programs.

For MOE requirements, states must maintain their per child fiscal spending for their preschool programs—those funded under the BBB Act or other public programs—relative to spending from the previous fiscal year. States that do not meet these requirements risk a reduction of federal support, with some exceptions for states that experience unforeseen economic hardships, including natural disasters, or states that require reductions in specific programs and provide justification to the Secretaries.

How can states access funding?

States are eligible to receive funding when the state governor submits an application containing a plan for universal "high-quality, free, inclusive, and mixed delivery preschool services" to the Secretary for approval. The governor will designate a lead agency (a state agency or joint interagency office) to administer the state preschool program. Upon approval, state plans will remain in effect for three years. Or states can opt to submit a one-year transitional plan that contains the information required by the Secretary. For full state plans, the information required by the Secretary, in collaboration with the DoED Secretary, includes certification of how the state will:

- Use developmentally appropriate, evidence-based standards;
- Prioritize high-need and underserved communities;
- Improve the quality of existing programs to meet new standards and support overall continuous quality improvement, including degree and/or experience requirements for lead teachers;
- Meet state preschool education standards, which are at least as rigorous as Head Start standards, within one year after the state receives funding;
- Establish a mixed delivery system without reducing the total number of state-funded preschool programs from year to year for eligible children;
- Ensure access for children with disabilities;
- Make all preschool services universally available without additional eligibility requirements beyond those at the federal level; and
- Support professional development and increased wages.

What resources and supports are available for providers, teachers, and other staff—and who can access them?

Eligible providers can access funds through subgrants or contract awards in an amount sufficient to operate a universal, high-quality, free, inclusive, and mixed delivery preschool program. Provider subgrant and contract amounts will reflect variations in the costs of preschool services based on geographic area, provider type, age of children served, and any needs associated with providing inclusive care for children with disabilities. The state will award subgrants or contracts to providers for a period of three years, unless the award is terminated, suspended, or the award period is reduced. In addition, providers can receive enhanced payments if they offer preschool services to high percentages of children with low incomes.

Using those enhanced payments, providers can support comprehensive services; health and developmental screenings; and service referrals for the children and families they serve. Eligible providers can use funds for:

- Professional development, credentialing, and degree attainment for staff;
- Living wages for all staff, and setting salaries and salary schedules that reflect pay parity with elementary teachers for staff with similar education and experience;
- Continuous quality improvement supports for providers of preschool services participating, or seeking to participate, in the state preschool program;
- Materials, equipment, and supplies; and
- Rent or mortgage, utilities, building security, building maintenance, and insurance.

Eligible providers are those who provide services in states receiving funding. Specifically, they are defined as:

- A local education agency that acts alone, in a consortium, or in collaboration with an educational service agency;

- A Head Start agency or an agency funded under the Head Start Act;
- A licensed center-based, family child care, community, or neighborhood-based network of licensed family child care providers; or
- A consortium of the types of providers and agencies listed above.

How does funding provide families free, high-quality, inclusive, mixed delivery preschool services, and how do families gain access?

Families are eligible if they have children who are three or four years old on the date established by the local education agency responsible for determining kindergarten entry and live in a state that has submitted an application and receives funding. Eligible families will have free access through the available pool of eligible providers. The funds provided will ensure that the programs available to eligible families are part of a system focused on continuous quality improvement. This will occur through the use of data, research, monitoring, training, technical assistance, professional development, and coaching.

States receiving funding must prioritize equity and inclusion for children and families. Before expanding to other areas, states must use funds to establish and expand preschool services within and across high-need/underserved communities, including children experiencing homelessness; children in foster or kinship care; children whose families engage in migrant or seasonal agricultural labor; children with disabilities; and dual language learners. States must also certify that children with disabilities have access to preschool consistent with provisions in the Individuals with Disabilities Education Act (IDEA) to support inclusive preschool programs.

To support a mixed delivery system, states must describe in their state plans how:

- The state preschool system will ensure any new slots will not disrupt the stability of infant and toddler care throughout the state;
- The State Advisory Council on Early Childhood Education will be consulted in how state slots are distributed;
- Partnership Head Start agencies and programs will be fully utilized; and
- New preschool slots will be equitably distributed among child care providers, including family child care; Head Start agencies; and schools.

Can tribes, territories, and migrant or seasonal families access funds?

The Secretary will reserve the following amounts from total funding to carry out activities under the universal preschool provisions for Indian tribes and tribal organizations; territories; and families who are engaged in migrant or seasonal agricultural labor:

- For tribes and tribal organizations: $2.5 billion, available until September 30, 2027;
- For territories: $1 billion, available until September 30, 2027, which will be allocated based on relative need, as determined by the Secretary; and
- For children and families engaged in migrant or seasonal agricultural labor: $300 million, available until September 30, 2027.

Indian tribes and territories seeking to participate and receive funds through this program must submit an application to the designated agency.

Can other entities access funds?

Beginning in FY 2023, additional funds will be available to provide universal preschool grants in states that have not received payments under the universal preschool provisions of the BBB Act. This will include $1.9 billion for all eligible localities, including Head Start agencies, and an additional $1.9 billion solely for Head Start agencies for each year of the program.

Funding for localities will be proportional to the number of children who are under age six and from families with incomes at or below 200 percent of the poverty line, when compared to all states that have not received payments. Eligible localities are defined as a city, county, or other local government; a local education agency; or a designated, or eligible to be designated, Head Start or Early Head Start agency. Head Start agencies are defined as any entity designated, or eligible to be designated, as a Head Start agency under the Head Start Act.

The Secretary will determine the requirements for eligible localities to apply for funding and operate preschool programs that are, to the greatest extent possible, consistent with requirements applied to states in providing universal, high-quality, free, and inclusive programs. The Secretary will prioritize entities serving communities with a high percentage of children from families with incomes at or below 200 percent of the federal poverty line.

Conclusion

The child care and universal pre-kindergarten provisions in the Build Back Better Act—passed in the House of Representatives on November 19, 2021, and reflected in this brief—offer a historic and transformative opportunity to lower cost and increase availability of care for families, improve compensation and sustainability for providers, and address equity. This is a once-in-a-generation moment for children, families, providers, and our country that would have impacts for generations to come. The bill has moved to the Senate for consideration in the coming weeks.

Endnotes

[1] Due to the requirements of the Budget Control Act of 2011, related to mandatory spending, open-ended or entitlement funding under this act is subject to sequestration or funding reductions. To avoid this, legislative text related to federal-state cost-sharing agreements beginning in FY 2025 notes the federal share of costs for direct services as 95.440 percent. However, the federal to state match requirement for direct services, 90:10, will be the match rate applied to expenditures and federal reimbursements that states will experience; the additional funds are solely to account for sequestration.
[2] Due to the requirements of the Budget Control Act of 2011, related to mandatory spending, open-ended or entitlement funding under this act is subject to sequestration or funding reductions. To avoid this, legislative text related to federal-state cost-sharing agreements beginning in FY 2025 notes the federal share of costs for quality improvement and supply building as the product of 1.06045 percent and state FMAP rates. However, state FMAP rates will be the match rate applied to expenditures and federal reimbursements that states will experience; the additional funds are solely to account for sequestration.
[3] Due to the requirements of the Budget Control Act of 2011, related to mandatory spending, open-ended or entitlement funding under this act is subject to sequestration or funding reductions. To avoid this, legislative text related to federal-state cost-sharing agreements beginning in FY 2025 notes the federal share of costs for state administrative costs as 53.022 percent. However, the federal to state match requirement for direct services, 50:50, will be the match rate applied to expenditures and federal reimbursements that states will experience; the additional funds are solely to account for sequestration.
[4] Due to the requirements of the Budget Control Act of 2011 related to mandatory spending, open-ended or entitlement funding under this act is subject to sequestration or funding reductions. To avoid this, legislative text related to federal administrative expenditures is listed as 1.06 percent of the previous year's total funding, beginning in FY 2026. However, the federal administrative set aside amount will be 1 percent of the previous year's total expenditures; the additional funds are solely to account for sequestration.
[5] Due to the requirements of the Budget Control Act of 2011 related to mandatory spending, open-ended or entitlement funding under this act is subject to sequestration or funding reductions. To avoid this, legislative text related to the federal share of expenditures for FY 2025, FY 2026, and FY 2027 are listed 95.440 percent, 79.534 percent, and 63.627 percent, respectively. However, in FY 2025, the federal administrative set aside amount will be 90 percent of the previous year's total expenditures. This amount will decline to 75 percent in FY 2026 and 60 percent in FY 2025. The additional funds are solely to account for sequestration.