Revised: December 12, 2021(includes Senate HELP Committee Amendments)

CHILD CARE AND PREKINDERGARTEN IN THE BUILD BACK BETTER ACT: A GUIDE FOR POLICYMAKERS

CREATING A BIRTH THROUGH FIVE CHILD CARE AND EARLY LEARNING ENTITLEMENT

As outlined by the White House, the Biden administration's Build Back Better (BBB) framework would create an ambitious $400 billion early childhood initiative – funding both universal prekindergarten for 3- and 4-year-olds and initiatives designed to improve affordability, quality, and compensation within the child care arena.

On November 19, 2021, The Build Back Better Act (H.R. 5376) was passed in the House by a vote of 220-213 and is currently awaiting debate in the U.S. Senate. Based on the House Version and reflecting proposed amendments released by the Senate's Health, Education, Labor and Pensions (HELP) Committee on December 11, 2021, this guide is intended to familiarize policymakers with the major early childhood proposals contained therein. Readers should note that this language is under active debate and that modifications remain likely.

The Center for Law and Social Policy (CLASP) has released estimates of state child care allocations for Years 1-3, which can be accessed here.

EXPLORING THE ACT'S CHILD CARE PROVISIONS

What would the child care provisions of the Build Back Better Act mean for families?
Broadly speaking, the intent of the proposal is to ensure that child care is accessible, affordable, and high-quality. Using a sliding fee scale and family copayments based on income, the proposal would dramatically expand the availability of child care subsidies, especially among middle- and upper-middle class families.

Which families and children will be eligible for child care supports?
Families earning up to 250% of state median income will – over a period of years – become eligible to receive subsidized care.

In addition to income, eligible children must: 1) be less than 6 years of age, and 2) have not yet entered kindergarten.

Are there any additional work or education requirements for families above and beyond income?
Yes, though they are very broad and likely to qualify the overwhelming majority of adult caregivers.

In addition to income, qualifying parents/guardians are required to participate in an "eligible activity." These activities include: a) full- or part-time employment, b) self-employment, c) job search activities, d) job training, e) secondary, postsecondary, or adult education, f) health treatment, g) activities designed to prevent child abuse and/or family violence, h) employment and training activities under the Food and Nutrition Act of 2008, i) employment and training opportunities under the Workforce Innovation and Opportunity Act, j) work activities under the Social Security Act, and k) taking leave under the Family and Medical Leave Act, a similar state/local leave law, or a leave program provided by an employer.

The bill also makes accommodations for certain categories of vulnerable children, independent of the activities above. These include children with disabilities, children experiencing homelessness, children in foster or kinship care, children receiving child protective services, and children residing with parents/guardians more than 65-years-old.

States will not be permitted to add additional requirements above and beyond those established in federal law.

On what timeline will families become eligible to receive expanded benefits?

Eligibility will phase in between federal fiscal year (FFY) 2022 and FFY2025. Presuming an approved state application to the federal government, eligibility will expand as follows:

- FFY2022: Children whose family income does not exceed **100%** of state median income.
- FFY2023: Children whose family income does not exceed **125%** of state median income.
- FFY2024: Children whose family income does not exceed **150%** of state median income.
- FFY2025-FFY2027: Children whose family income does not exceed **250%** of state median income.

As approved by the House, states will have flexibility to expand benefits to families with incomes exceeding the thresholds specified above [subject to approval by the federal government and not to exceed 250% of SMI] during FFY2022, FFY2023, and FFY2024, in the event that they can document that they have appropriately prioritized services based on family income. In petitioning to do so, the state may take geographic variations in the cost of living into account.

How will the family copayments work?

If enacted, the proposal will dramatically reduce child care costs for the majority of Americans. Similar to health insurance, out-of-pocket child care costs will take the form of family copayments. The amount of these copayments will be linked to family income as measured against the median income in the states in which they reside and cover all eligible children in the household.

- Families with incomes **not more than 75% of state median income will not incur copayments** and will have their care fully subsidized.
- Families **between 75%-100% of state median income** will incur a copayment **not to exceed 2%** of annual family income.
- Families **between 100%-125% of state median income** will incur a copayment of **at least 2% but not more than 4%** of annual family income.
- Families **between 125%-150% of state median income** will incur a copayment of **at least 4% but not more than 7%** of annual family income.
- Families **between 150%-250% of state median income** will incur a **copayment of 7%** of annual family income.

The Hunt Institute has created an interactive, online calculator to assist families in estimating their child care copayments and eligibility timelines, which can be accessed here.

Can providers elect to charge participating families more than the copayment detailed above?

No. Between the state subsidy and parent copayment, all provider costs must be covered. No additional costs may be passed on to parents.

Will the subsidy payment cover the full day and calendar year?

Yes.

What is the median state income in my state and how does this compare to the federal poverty definition?

Although the federal Child Care and Development Block Grant sets its upper limit for income eligibility at 85% of State Median Income (SMI), states have often calculated their own limits in relation to the federal poverty definition – currently $26,500 for a family of four – and provided subsidy benefits primarily to families experiencing deep economic hardship. BBB's use of SMI – and provision of child care benefits to families up to 250% of this more state-specific benchmark – is designed to create a more universal benefit, open to middle- and upper-middle-class families. Recent state median income data from the U.S. Census Bureau can be located here and should be considered in relation to family size.

Which child care providers would be eligible to participate?

Both center- and family-based child care providers are eligible to participate if they are: a) licensed to provide child care services under state law, and b) participating in their states' tiered quality measurement systems by the end of the third fiscal year for which their states receive funding. Separate provisions are made for tribal child care programs. Eligible programs must meet state and local requirements applicable to the Child Care and Development Block Grant Act. There are some provisions for "grandfathering in" providers currently deemed eligible by states during the first 3.*5* years of grant funding. States must also ensure "pathways" to licensure for providers in a variety of settings.

States will have 2.5 years to develop updated licensing standards.

Can faith-based providers participate?

Assuming faith-based programs are freely chosen by parents, there is no prohibition against the use of child care subsidies within sectarian child care settings. The bill does, however, restrict the use of grant funds to construct, permanently improve, or conduct major renovations on buildings or facilities used primarily for sectarian instruction or religious worship.

*The Senate HELP Committee amendments released on December 11, 2021, clarify that child care certificates shall be considered *indirect* Federal financial assistance to providers. This amendment is presumably intended to address concerns that House language may have triggered federal compliance obligations and nondiscrimination provisions limiting the faith-based providers' employment of individuals sharing their religious beliefs. The HELP Committee amendment also removes Section 654 of the Head Start Act from Build Back Better's non-discrimination provisions.

Who will administer the program in states and how will they apply to participate?

The governor of each state, territory, or Tribe will designate a lead agency (a state agency or joint interagency office) to administer the program. Over the Act's anticipated six-year funding timeline, states will submit two types of applications, each for a period of not more than 3 years: a transitional state plan and a full state plan.

- The **transitional state plan** will include an assurance that the state will submit a full state plan and a description of how funds received by the state will be spent to expand access to assistance for direct child care services and increase the supply and quality of child care within the state.
- **Full state plans** will detail (among other things) how the state will address payment rates (sufficient to cover the cost of quality, provide living wages for all staff, and establish a wage ladder), enact or continue to administer a tiered system for measuring the quality of eligible child care providers, and ensure that all children can attend care at the highest quality level within 3 years of the bill's enactment.

Activities under the Act may be administered either directly by the lead agency identified or through other state government agencies, local or regional child care resource and referral organizations, community development financial institutions, or other intermediaries with experience supporting child care providers.

How will providers afford to offer care at the highest tier?

BBB includes a variety of grant funding streams (discussed below) designed to expand access to high quality care, but its most significant change for providers is likely to be a change in payment rates. This begins with a reconfiguration of the method by which they are calculated.

At present, most state subsidy systems are based on market rate studies - with subsidy payments often set well below 100% of the going rate for care in a community. Recognizing that many parents struggle to afford care, market rates are often a better reflection of what the market can bear than the true cost of quality. This results in both strain on parents and inequitable compensation for early educators.

Build Back Better shifts this dynamic, requiring states to establish new payment rates based on **cost estimation models** that consider not only geographic and tiered quality differences, but also presume living wages for all child care staff – to include pay parity with elementary school teachers with similar credentials and annual cost of living increases.

The bottom line is that providers can expect significantly higher payment rates.

Will our state have to have a quality rating system?

Yes, each state plan must certify that it has enacted – or will enact within 3 years of *first* receiving funds – a tiered system for measuring the quality of eligible child care providers, to include quality standards defining each progressive level. States will be required to create and implement plans designed to ensure all children can participate in programs at the highest level of quality within 6 years.

States' quality measurement systems, plans to ensure all children's participation at the highest level of quality, and wage ladders must all be enacted within three years of each state first receiving funds for its full state plan.

Will states have to revise their existing quality rating systems?

Maybe. States will need to assure that their tiered quality systems have indicators and thresholds that are appropriate for child development in different types of child care settings, including child care centers and family child care homes, and are appropriate for providers serving different age groups, including mixed age groups. The highest quality tier must meet or exceed federal Head Start Program Performance Standards, and states must assure that sufficient resources will be provided for programs at lower tiers to progress toward the highest tier. States will also need to incorporate standards for care provided during non-traditional hours.

Does that mean we will create a single set of federal program standards for all early care and education programs?

No. Each state will be responsible for maintaining its own program standards as part of its tiered quality system. At the highest tier, states will be required, at minimum, to mirror key quality components of the Head Start Program Performance Standards (or an equivalent set of evidence-based standards approved by the Administration for Children and Families).

How else will the Act support expanded access and improvements in child care quality?

In addition to subsidy expansion, the Build Back Better Act contains funding streams designed to improve access and quality via:

- Startup grants and supply expansion grants to support child care providers, with priority to those reaching underserved communities.
- Quality grants designed to support providers in meeting or making progress toward the highest tier of the state's tiered quality measurement system.
- Facilities grants for the remodeling, renovation, repair – and, under limited circumstances, construction – of child care buildings and facilities.

Our state has opted out of certain federal funding opportunities in the past. Will it be permitted to opt out here?

Yes and no. Should a state fail to apply for funding, the Act contains provisions designed to permit localities to do so directly. In the event that specific communities remain underserved, funds may be repurposed for expansion of Head Start/Early Head Start programming, transmitting funds directly from the federal government to local implementing agencies.

*Senate HELP Committee amendments give the Secretary of DHHS increased flexibility to recoup funds unobligated by the states and redirect them – either to a participating state or to local governments and Head Start/Early Head Start grantees.

What will happen to the funds our state currently receives under the Child Care and Development Block Grant?

States that draw down child care entitlement funding under the Act will continue to receive funding under Child Care and Development Block Grant. Effective FFY25, however, they will not be permitted to use more than 10% of this funding to support children under the age of 6.

In what manner will states be funded?

Funding will be administered on a formula basis (over $100 billion based on the Child Care and Development Block Grant Act) during federal fiscal years 2022, 2023, and 2024. States would be required to use 50 percent of allotted funds on expanding access to child care subsidies; 25 percent of funds on child care supply and quality building activities; and 25 percent of funds on either subsidy and grant expansion or supply and quality building, and up to 7% on the cost of administration. Effective FFY2025, the program will become an entitlement, with additional funds as necessary to meet the needs of all eligible children and families.

Will state matching funds be required?

Yes. Federal funds are ultimately estimated to cover 90% of direct child care expenditures, with states providing a 10% non-federal share. The federal government will reimburse states at their Federal Medical Assistance Percentage (FMAP) rate for child care quality and supply activities and reimburse 50 percent of state administrative expenses.

With this new federal investment on the horizon, can our state take existing investments and repurpose them toward other needs?
No. States may not supplant other federal, state, or local public funds expended to provide child care services and states receiving funds must maintain expenditures at the average level for the previous 3 years. (Calculated as the average of as Federal, State, and local public funds expended during fiscal years 2019, 2020, and 2021.)

EXPLORING THE ACT'S UNIVERSAL PREKINDERGARTEN PROVISIONS

What would the universal Pre-K provisions of the Build Back Better Act mean for families?
In addition to the child care supports described above, the Build Back Better Act proposes to create – over a period of years - a universal prekindergarten entitlement for all 3- and 4-year-old children.

Which children will be eligible for universal pre-k? What will it cost families?
All children who are 3- or 4-years-old on the date established by the applicable local education agency for kindergarten entry. Programs will be free of charge to families.

What will happen to states' existing prekindergarten programs?
Designed as a state-federal partnership, the proposed expansion will build on – rather than replace - existing state prekindergarten infrastructure, providing additional funding and permitting more children to be served.

Who will be eligible to provide universal pre-K?
Expanded state prekindergarten programs will operate using a mixed delivery model, meaning that both public and private preschool providers will be eligible to receive funding from states. Approved providers will include public schools, licensed center-based child care providers, licensed family child care providers, networks of community- and neighborhood-based child care providers, Head Start agencies and delegate agencies, and consortia thereof.

What funding is being made available to states for this purpose?
The Act entails a three-year rollout process, which will build toward a universal entitlement for all American children. During FFY22, states will split $4 billion, with allocations of $6 billion and $8 billion during FFY23 and FFY24 respectively. Effective FFY2025, Congress will allocate funds as may be necessary to provide service to all preschoolers.

During the first 3 years of transitional implementation, state allocations will be based on a formula that considers both the proportion of American children under 6 residing below 200% of the federal poverty definition in each state and existing federal preschool investments.

How will states apply to participate? Who will administer the program in the states?
As with the child care investments detailed earlier in this document, states will submit both transitional and full state plans to the federal government, each lasting no more than 3 years. A lead agency will be identified by the governor.

Are states required to provide matching funds?
Eventually, yes. During the first 3 years of the rollout, state costs will be 100% covered by the federal government. A non-federal share will later be required, currently projected at 90/10 in FFY2025, 75/25 in FFY2026, and 60/40 in FFY2027.

Is there a maintenance of effort requirement?
Yes, in the event that a state fails to maintain its existing preschool investments (the average of federal, state, and local public expenditures across 2019, 2020, and 2021), its federal award will be reduced by an amount equal to the reduction in question. Waivers of this maintenance of effort requirement can be granted by the Administration for Children and Families in the event of an economic downturn or other mitigating circumstance.

What else will be expected of states?

States receiving funding under the Act shall: a) administer a state prekindergarten program, b) support a continuous quality improvement system for providers to include training, technical assistance, monitoring, professional development and coaching, c) provide outreach and enrollment support to families, d) build supporting data systems, e) support staff in pursuing credentials and degrees, f) support the inclusion of children with disabilities, g) provide age-appropriate transportation, and h) conduct and/or update statewide needs assessments detailing access to high-quality preschool services. State plans will include:

- Plans for achieving universal, high-quality, free, inclusive, and mixed delivery preschool services.
- Documentation that the state has in place developmentally appropriate, evidence-based preschool standards that are – at minimum – as rigorous as those in use in federally funded Head Start programs.
- Assurances that their programs will be universally available to all children without additional eligibility requirements.

What is the duration of the prekindergarten program proposed?

At least 1,020 hours annually.

Who will receive enrollment priority as states transition to the universal model?

Priority for initial enrollment will go to children in high need areas, as well as to children experiencing homelessness, children in foster or kinship care, children in families engaged in migrant or seasonal agricultural labor, children with and dual language learners.

What are the education requirements for teachers?

Lead teachers in the preschool program must hold bachelor's degrees in early childhood education no later than 6 years after the date on which the state receives funding under the Act. There are exceptions, however, to grandfather non-degreed teachers employed by an eligible provider for three of the 5 years immediately preceding the date of enactment.

How will teachers be compensated?

Independent of provider type, the Act requires that lead teachers participating in the state preschool program earn salaries equivalent to those of elementary school staff with similar credentials and experience. All program staff must earn a living wage.

Can private preschool providers be assured that the program's mixed delivery system will be robust and more than "in name only?"

Yes. The Act specifies that states must ensure that their preschool models will not disrupt the availability of infant/toddler care and document how it will equitably distribute any new slots funded. Taken in combination with the Act's child care provisions, there is reason to believe that universal expansion can happen with strong consideration for the needs of private sector providers. Further, few school districts have the physical capacity to serve such a large influx of new students, necessitating the widespread participation of private and community-based providers.

How will the expansion impact Head Start enrollment?

The Act calls on states to partner with Head Start agencies to ensure full utilization of available Head Start slots.

How will payment to providers be handled? How much will providers receive per child?

As with many existing mixed-delivery systems, states will establish contracts and subgrants to provide payment to non-public providers. While a specific per-child amount is not currently specified, the Act requires that this funding be sufficient to meet the requirements of the bill – including its pay parity requirements. As with child care subsidies, this is likely to entail substantial increases in the rates paid to providers.

Head Start programs, and many others, provide comprehensive services that extend beyond classroom instruction. Are there provisions to ensure they can continue doing so?

Yes. The Act specifies that states shall award enhanced payments to eligible providers serving a high percentage of low-income students to support comprehensive services.

Can states decline to apply/participate?

Yes, but - as with the child care investments above - the Act contains provisions for making grants directly to localities and/or expanding Head Start services in the event that a state declines participation. As with child care, Senate HELP committee amendments provide additional flexibility for the Secretary of DHHS to redirect unobligated funds to participating states, as well as to localities and Head Start/Early Head Start providers.

The Secretary of USDHHS shall consult with the Secretary of Education in making awards to localities. Head Start agencies receiving funding for this reason to serve children up to 200% of the federal poverty definition.