MEMORANDUM

TO: Child Care Aware® of America (CCAoA) Members and Advocates

FROM: CCAoA Policy & Advocacy Team

DATE: September 17, 2021

RE: Birth through Five Child Care & Early Learning Entitlement Program in the Build Back Better Act

On September 10, 2021, the U.S House of Representatives' Committee on Education and Labor passed its portion of the Build Back Better Act (BBB Act). This portion of the BBB Act includes a long-awaited, robust investment in affordable, high-quality child care for all families and for the first time, federally funded universal preschool for three- and four-year-olds. Together, these investments – totaling roughly $450 billion – are known as the Birth through Five Child Care and Early Learning Entitlement Program. Below are details about the Entitlement Program.

Additional changes are expected to be made to the legislative text as the House of Representatives and the Senate continue to move the BBB Act through the process.

I. Child Care

Beginning at the start of federal Fiscal Year (FY) 2025 on October 1, 2024, all families who apply for assistance in a State, territory, or Tribe (herein "state") with a U.S. Department of Health and Human Services (HHS)-approved plan shall be provided child care assistance for their eligible child. This Entitlement Program builds on the existing Child Care and Development Block Grant (CCDBG), and CCDBG remains intact as a program. States would continue to receive a mandatory allocation and discretionary funds for CCDBG. States that do not opt-in to the new Entitlement Program would continue to use CCDBG and states that do opt-in can use CCDBG funds for school-age care, with a 10% set aside for the birth-to-five population (including, for example, relative and family/friend/neighbor [FFN] providers who are not part of the licensed system).

State Plan Process: A state must submit a transitional plan (implemented over 1 year) and a full plan (implemented over 3 years). The transitional plan should describe how the state will expand access to child care assistance (particularly for families with income less than 85% of the state median income (SMI)[1]), how the state will increase the supply and quality of child care, and how the state will increase provider payment rates to cover the full costs of high-quality and increased educator wages.

The full plan should include, at a minimum, information on whether payment rates will cover the cost of child care, that they are set using the most recent, statistically valid/reliable cost estimation model or cost study approved by HHS, and that the payment rates will correspond to the state's QRIS program tiers. NOTE: This is significant because it gets rid of the Market Rate system of reimbursement, and requires payments to support the fixed costs of providing child care. The payment rates must also reflect variations in the cost of child care by geographic area, type of provider, and age of child. The rates must also support and be sufficient for child care providers *not* at the top QRIS tier to move up in the tiered ratings.

How the Child Care Program is Funded: The BBB Act includes a three-year phase-in for the proposed Birth to Five Child Care and Early Learning Entitlement.

- FY2022-2024: Appropriations would be set at $20 billion in FY2022, $30 billion in FY2023, and $40 billion in FY2024.
- FY2025-FY2027: Appropriations would be set at "such sums as may be necessary," consistent to ensure that funding in these years is sufficient to serve all eligible children whose families seek assistance.[2] States (including DC) would be required to match the open-ended funds in FY 2025-FY 2027; territories and tribal grantees would not be required to match these funds. Federal-state match rates would vary based on whether the expenditure is for child care assistance to eligible families (90% federal); quality investments (matched at the Federal Medical Assistance Percentage (FMAP) rate), which varies by state based on relative per capita income); or state administrative costs (50% federal; administrative costs include carrying out criminal background checks). Federal contributions for quality spending would be capped.
- Separate from match requirements, states would have to meet a maintenance-of-effort requirement in all years based on state spending on child care in FY2021. Territories and tribes will receive their funds after submitting applications as before.

Set-Asides: For FY 2022-2024, HHS must set aside: at least 4% of the funds for Indian Tribes, Tribal organizations, and Urban Indian organizations; at least 0.5% of 1% for Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands. For the amounts not reserved in this manner, HHS must make allocations using the formula in section 658O(b) of the CCDBG regulations.

Child care supply for Underserved Populations: The state must at least prioritize increasing child care access/quality/supply for low-income families, children in "underserved areas," infants/toddlers, children/infants/toddlers with disabilities, dual language learners, and children receiving nontraditional hours care.

Locality Grants: HHS must set aside $1.25B annually for each of FY 2023-2027 to carry out Locality Grants, which are Birth through Five Child Care and Early Learning grants to eligible localities in states that have indicated they do not intend to submit an application and plan for funds under this legislation. The locality grants will come from the state's allotment, which will correspond roughly to the state's proportion of children living at 200% below the Federal poverty line. The requirements for a state to provide child care under these grants will be consistent with the requirements applied to states that do apply for funds and submit a state plan to HHS. Localities will have to apply for these grants, and eligible entities are cities, counties, our other units of general local government, or a Head Start grantee. **While we hope that no states opt out of applying for the federal funds provided by this landmark legislation, CCR&Rs that are Head Start grantees located within states that choose to opt-out should consider applying for these grants.** Localities serving underserved populations will be prioritized for these grants.

Who is Considered an "Eligible Child"?

- A child 0-5 years old;
- Not yet in kindergarten;

- Without regard to the immigration status of the child or a parent;
- Whose family income in FY 2022 is less than 100% SMI; in FY 2023 is less than 115% SMI; and in FY 2024 is less than 130% SMI. The original bill considered in the Education & Labor Committee stated that in FYs 2025-2027 the family income must be less than 200% SMI. However, an amendment introduced by Rep. Mikie Sherrill (D-NJ) and ultimately included in the final bill passed out of the Committee removed the income limits after FY 2025.[3]
- A child must have one parent who is working or participating in another eligible activity (e.g.,
job search, job training, educational program, health treatment for a work-limiting condition, family leave). Exceptions to the parental activity requirement would be made for certain vulnerable children (including foster children and children experiencing homelessness) and for children with a parent over age 65.[4]

CCR&Rs' Involvement: A state's lead agency can administer this child care assistance directly or through other governmental or non-governmental agencies of the State, including child care resource and referral agencies (CCR&Rs). CCR&Rs will continue to receive support for their work through CCDBG in addition to the new programs.

Family Copay and the Sliding Fee Scale: The state must implement a sliding fee scale to determine the family's copay (pro-rata for part-time care). The sliding scale must include the following:

- A family with 75% or less of SMI has no copay;
- A family with 76%-100% of SMI shall have a copay of 0-2% of their income for all of their children;
- A family with 101%-125% of SMI shall have a copay of 2-4% of their income for all of their children;
- A family with 126%-150% of SMI shall have a copay between 4-7% of their income for all of their children;
- A family with an income over 150% of SMI shall have a copay of no more than 7% of their income for all of their children. The amendment introduced by Rep. Mikie Sherrill, discussed above, removed the 200% SMI cap on this part of the sliding scale fee in the original bill text.
- No copay shall be required of a family with a child eligible for Head Start or with a child who is part of a vulnerable population.[5]
- The state must certify that it does not permit a child care provider receiving Child Care Development Fund (CCDF) money to charge the family of an eligible child more than the sum of the voucher/subsidy plus the copayment.
- Eligibility continues for 24 months once determined. Re-determination should be implemented to minimize barriers to enrollment and to support child well-being.

Child Care Educator Compensation: The Entitlement Program gives child care providers the resources to raise wages for child care workers and expand available supply to serve more children and families. A state's full plan must set payment rates that ensure adequate wages for staff of child care providers. What this means is that at a minimum the state's payment rates "provide a living wage for all [child care] staff" *and* are equivalent to wages for elementary school educators with similar credentials and experience in the state. The wages must also be COLA-adjusted annually. The state plan must also certify the state has, or will implement within 3 years of receiving funds, a wage ladder for providers, along with the certification that it can "ensure adequate wages" for staff as described above.

QRIS: The state's plan must certify that it has a quality rating system or it will implement one within 3 years of receiving funds. The requirements for this quality rating system are that it:

- Has a highest tier standard that is at minimum is equivalent to Head Start performance standards OR other equivalent evidence-based standards approved by HHS; and
- Include quality indicators and thresholds appropriate for child development in different child care settings, including for settings that serve mixed-age groups.
- Include a different set of standards that include "indicators" for care during non-traditional hours; and
- Provide "sufficient resources and supports" for providers below the top tier to move up.

The state plan must also certify that it has implemented, or will implement within 6 years of enactment of the bill, "policies and financing practices" that ensure all families of eligible children can choose for their children to attend the highest quality tier of child care.

Quality set-aside: For FY 2025-2027 there is a requirement that states set aside between 5-10% of their funds to pay for quality activities. (These activities are described further below.) The funds must be used to increase the quality and supply of providers and the number of available slots, and a portion of the quality funds shall be used to provide technical assistance (TA), including TA to achieve licensure. Priority must be given to those providers who are in underserved communities and who are providing/who seek to provide child care for underserved populations. This quality set-aside money may be administered by the state, or by **CCR&Rs**, community development financing institutions (CDFIs), other experienced intermediaries, or those who enter into a contract with the state to provide this assistance. **This provides a new path forward to CCR&R activities and partnerships with state agencies.**

With the additional money for this new program, in the first few years states will have to devote at least 25% of the new program to quality and supply building. In later years, states will have to devote between 5-10% of their total funding under the new program to those purposes. Beginning in the 4th year, those funds would require a state match at the FMAP rate, but in the first 3 years of the program there is no match.

The quality activities that can be funded by the set-aside are as follows:

- Startup grants and supply expansion grants;
- Quality grants (to help providers reach the highest quality tier or to sustain quality);
- Facilities grants (for remodeling/renovations/repair permitted under CCDBG currently); the facility grants can start in FY 2022 for construction, permanent improvement, or major renovation of a building or facility primarily used for providing child care. Training and professional development of the early childhood workforce, including degree attainment and credentialing for early childhood educators. For example, free community college could be used to support early childhood educators in getting equitable access to higher education.
- Developing, implementing, or enhancing the state's QRIS program;
- Improving the supply and quality of developmentally appropriate child care programs and services for underserved populations;
- Improving child care access for children experiencing homelessness and for children in foster care; and
- Other activities to improve child care supply and quality, including those listed in existing CCDBG regulations (see [42 USC § 9858e(b)(1-10)]). This includes

additional support for CCR&Rs for current activities, on top of continued funding through CCDBG which will remain in place.

To put the amount of money that will be available for quality in perspective:

- In the 1st year of this Entitlement Program (FY 2022), there is $20 billion for child care. That means at a minimum, states must use $5 billion on quality and can use up to $10 billion.
- In Year 2 (FY 2023), there is $30 billion for child care. That means states must use at least $7.5-$15 billion on quality.
- In Year 3 (FY 2024), there is $40 billion for child care. That means at least $10-$20 billion on quality.

For context, the entire CCDBG discretionary program is <u>currently</u> funded at $5.9 billion. In FY 2019, about $1.6 billion went to quality spending.

Application of Existing CCDBG Statute: The state must certify that they apply the CCDBG statutory requirements regarding Parental Choice of Providers, Unlimited Parental Access, Health and Safety Requirements, Compliance with State and Local Health and Safety Requirements, Enforcement of Licensing and Other Regulatory Requirements (K(i) only, re: licensing and inspections), Consultation, and Disaster Preparedness.

Licensure: States must, within 3 years, maintain (if they already have them) or develop (if they do not have them) licensing standards and a pathway to licensure that are available to and appropriate for providers in a variety of settings. This provision is in place to ensure that providers currently eligible under CCDBG have a pathway to becoming eligible providers under the Entitlement Program. Resources will be available to assist states in developing the standards and the licensure pathway.

Other provisions:

- Federal nondiscrimination/civil rights statutes apply to the provision of these funds (Title IX, Title VI, Section 504 of the Rehabilitation Act, the ADA, and Section 654 of the Head Start Act).
- States are required to periodically report to HHS on the use of funds received.

Monitoring and enforcement: HHS will review and monitor state compliance with the law and with state plans. HHS will also promulgate a rule in the future regarding how an entity might submit a complaint or a finding that a state is failing to comply with its plan or the law, and on notification of non-compliance and sanctions.

Transition provisions: For FYs 2025-2027, a state can use no more than 10% of its CCDBG funds for child care for eligible children ages 0-5. A child aged 0-5 who is not yet in kindergarten and who is receiving CCDBG funds as of the date the funds are provided to their state shall be deemed automatically eligible for funds under this new law. The child's family may continue to use the provider of their choice.

II. Universal Preschool

Universal preschool: The BBB Act funds a new preschool program with "such sums as may be necessary" for each of FY 2022-FY 2028 to carry out this section. Funds would be appropriated to HHS and the program would be administered by HHS in collaboration with the U.S. Department of Education (ED).

Eligible children: Eligible children would be those ages three or four on the date established by the local educational agency for kindergarten entry. There would be no income, asset, or parental activity requirements.

Eligible providers: The legislation creates a mixed delivery system for preschool. Preschool providers would be eligible if they are Head Start agencies; local educational agencies (acting alone or with an educational service agency) that are licensed by the state or meet comparable health and safety standards; licensed child care providers (including center-based providers, family child care providers, and community- or neighborhood-networks of family child care providers); or consortia of such entities.

Use of funds: States will be able to use funds for certain state-level activities: costs of program administration, data systems, degree attainment, age-appropriate transportation for children, and improving inclusive services for children with disabilities, among others.

In addition, states could fund subgrants or contracts with eligible providers to cover the costs of enrolling and serving children in preschool programs. These include personnel costs; costs of meeting state standards (including those related to child development, licensure, and health and safety); professional development and training; materials, equipment, and supplies; and rent, mortgage, utilities, insurance, and costs associated with security and maintenance.

For providers serving a high percentage of low-income children, amounts should be enhanced to support comprehensive (including social and emotional) services, health and developmental screenings, and service referrals for participating families. Subgrants and contracts should generally be awarded for not less than three years. In awarding funds, states must prioritize high-need communities.

State Match: In FY 2022-FY 2024, there would be no state match required for spending on the *costs of preschool services*. Starting in FY 2025, states (including DC) must contribute a 10% match, in cash or in kind. The required state match would increase incrementally, stopping at 40% in FY 2028. Meanwhile, spending on *state-level activities* must be matched at 50% in each year (FY 2022-FY 2028).
Total spending on state-level activities would be capped.

In general, a state must maintain its combined fiscal effort per child under this section, as well as under any existing publicly funded preschool programs or state-funded Head Start programs. If a state reduces per child spending, HHS (in collaboration with ED) may correspondingly reduce federal funds. (States may request a waiver of this requirement in certain circumstances.) Funds provided under this section shall supplement, not supplant, other federal, state, and local funds for early childhood care and education programs.

State Plans: In 2023, states would submit a transitional plan for a period of one year that contains such information as HHS may require.
By 2024, a state must submit applications that include the following elements:

- A plan to provide universal, high-quality, free, inclusive preschool via a mixed delivery system;
- A certification that the state:
    - Has in place developmentally appropriate, evidence-based preschool standards that, at minimum, meet Head Start performance standards found in Section 641A of the Head Start Act[6];
    - Will prioritize the expansion of universal preschool to high-need communities, as defined by the state and approved by HHS that includes the consideration of the

rate of poverty of eligible children; rates of access to high-quality preschool, other indicators of community need as determined by HHS;
  - Will support a mixed delivery preschool system, including a requirement that the state facilitate the participation of Head Start and licensed child care providers;
  - Will ensure a highly qualified early childhood workforce; and
  - Preschool seats are distributed equitably among Head Start, child care (including family child care), and local public schools.
- An assurance that the state will:
  - Expand access to high-need communities before the state establishes and expands universal preschool to other communities;
  - Use funding to ensure children with disabilities have access to preschool in the least restrictive environment, consistent with the inclusivity provisions in the Individuals with Disability in Education Act (IDEA);
  - Partner with at least one institution of higher education to facilitate degree attainment for preschool staff;
  - Offer programming that provides at least 1,020 hours of instruction, consistent with Head Start performance standards.
  - Adopt policies and practices to conduct outreach and provide expedited enrollment to children:
    - Experiencing homelessness;
    - In foster care;
    - With disabilities;
    - In families who are engaged in migrant or seasonal agricultural labor;
    - Dual language learners.
  - Provide salaries and set salary schedules for staff equivalent to salaries of elementary school staff with similar credentials/experience;
  - Require, at a minimum, that all lead preschool teachers have a bachelor's degree in early childhood education or related field by 2029. NOTE: This does not apply to individuals working in child care programs for cumulative 3 of the last 5 years from the date of enactment and who have the necessary skills and knowledge to serve as preschool educators, as demonstrated through measures determined by the state.

Each state plan shall last for a period of three years.

III. Conclusion

The Birth through Five Child Care and Early Learning Entitlement Program within the Build Back Better Act is a watershed moment for the early care and education community – no doubt about it. From an overarching perspective, this bill takes the child care field away from the scarcity situation it has been mired in for decades. It creates a floor of child care licensing and provides time and funding to help educators across states and settings get to that floor. It also advances compensation for a deeply undervalued child care workforce.

In addition, it creates something that perhaps even ten years ago seemed undoable: federally-funded, universal preschool. What is more, it requires the creation of a mixed delivery preschool model, thereby helping solidifying child care's role in providing preschool and preserving the community-embedded programs that have been doing too much with too little for too long. However, the Entitlement Program faces a long road – and many challenges – before it can be signed into law. In order to preserve the gains in this legislation, CCAoA will need perhaps the largest advocacy effort ever given by its members to communicate to members of Congress just how important and transformative this Program is, and how important it is to preserve it as the legislation moves through the House and the politically divided Senate.