FIRST FIVE YEARS FUND

December 13, 2021

Early Learning and Care in the Build Back Better Act

As part of President Biden's Build Back Better agenda, Congress is considering the Build Back Better Act with proposals aimed at creating jobs, providing tax relief to the middle-class, and lowering costs for working families. Lawmakers will use the budget reconciliation process to bypass a procedural hurdle in the Senate and pass the bill with a simple majority. In August, both chambers of Congress adopted a concurrent resolution on the FY2022 budget providing instructions and establishing overall funding levels to guide Congressional committees as they craft their individual portions of the budget reconciliation package.

On November 19, 2021, the House passed H.R. 5376, and on December 11, 2021, the Senate House Education, Labor, and Pensions (HELP) Committee and Senate Finance Committee released their proposed texts, which included amendments to the child care and early learning provisions passed by the House.

The child care and preschool provisions in the Senate HELP text would provide federal funding to:

- Make child care affordable for all families with children from birth through age 5 using a sliding scale for copayments in which families earning less than 75% of state median income (SMI) pay nothing and a limit of 7% of family income for families earning between 150 and 250% SMI.
    - $100 billion during the first 3 years ($24 billion in FY2022, $34 billion in FY2023, and $42 billion in FY2024) and such sums as may be necessary in FY2025-FY2027.
    - $4.75 billion in FY2022 to remain available until September 30, 2027 for Birth through Five Child Care and Early Learning Grants to be awarded to localities in states that have not received payments under the entitlement program.
    - $14.25 billion in FY2022 to remain available until September 30, 2027 to award grants to Head Start agencies in states that have not received payments under the entitlement program to carry out the purposes of the Head Start Act.
- Guarantee access to high-quality, free, inclusive, and mixed-delivery preschool services available to all three- and four-year-old children on a voluntary basis.
    - $4 billion in FY2022, $6 billion in FY 2023, $8 billion in FY2024, and such sums as may be necessary in FY2025-2027
    - $9.5 billion in FY2022 to remain available until September 30, 2027 for grants to localities in states that have not received payments under the universal preschool program.
    - $9.5 billion in FY2022 to remain available until September 30, 2027 to award grants to Head Start agencies in states that have not received payments under the universal preschool program to carry out the purposes of the Head Start Act.
    - $2.5 billion annually for FY2022-2027 to improve compensation for Head Start staff.

The tax-related proposals in the Senate Finance text include extending American Rescue Plan Act (ARPA) changes to the Child Tax Credit (CTC) that make the CTC fully refundable, increase the amount of the credit, and allow for advance monthly payments.
The table below summarizes the child care and early learning provisions included in the Senate HELP and Finance Committees' proposed Build Back Better Act. Differences with the Senate committee text and the version of the Build Back Better Act passed by the House are noted using ~~strikethrough~~ and blue text for new provisions.

Senate HELP
Child Care and Early Learning Entitlement
Sec. 23001(c). Appropriates funds to the Department of Health and Human Services (HHS) for a new child care and early learning entitlement program for children ages birth through five ($24 billion in FY2022, $34 billion in FY2023, $42 billion in FY2024, and such sums as may be necessary in FY2025-FY2027). Additionally, appropriates $172 million in FY2022, $220 million in FY2023, $225 million in FY2024, $230 million in FY2025, $235 million FY2026, and $240 million in FY2027 ~~$130,000,000 in FY2022-FY2025 and 1.06% of the prior year's appropriation in FY2026 and FY2027~~ for HHS' federal administration costs. **Sec. 23001(b)(4)(A)(iii), (d)(2).** Outlines the phase-in for family eligibility based on state median income (SMI): in FY2022, families earning up to 100% SMI; in FY2023, up to 125% SMI; in FY2024, up to 150% SMI in the third year; and in FY2025-2027 up to 250% SMI. Effective Oct. 1, 2024, states with an approved plan must offer child care assistance to all families who apply and are otherwise eligible. **Sec. 23001(b)(4)(B).** In FY2022-2024, allows states who have appropriately prioritized assistance for direct child care services based on income, with the Secretary's approval, to use funds to serve children who are otherwise eligible but whose family income exceeds the current max SMI (up to 250% SMI). In determining eligibility under these circumstances, states may also, with the Secretary's approval, consider regional variations in cost of living and expand eligibility based on those variations. **Sec. 23001(f)(4), (g)(1)(D).** To be eligible for funding, requires states to receive approval of a state plan. Submitted plans must include the requirements listed in (4) and summarized below, as well as such information as the Secretary shall require by rule. The Secretary may reallot funds appropriated for FY2022-2024 from states, Indian Tribes, Tribal Organizations, and territories without an approved application to those with an approved application and to eligible localities and Head Start agencies. Further, funds that are unobligated on Oct. 1, 2024 may be realloted to states, Indian Tribes, Tribal Organizations, and territories with an approved application and without unobligated funds or to an eligible locality or Head Start agency. **Sec. 23001(f)(4)(E), (F).** Establishes a sliding scale for parent copayments in which copayments are based on a percentage of a family's income. Families with a family income of no more than 75% of SMI would pay no copayment. For families earning 75-100% SMI, the copayment would be between 0-2% of income; for 100-125% SMI, a copayment of 2-4%; for 125-150% SMI, a copayment of 4-7%; and for 150-250% SMI, a copayment of 7%. Providers are prohibited from charging for direct child care services for an eligible child more than the total of financial assistance received and the applicable copayment. **Sec. 23001(f)(4)(G).** Requires states' child care plans to assure that children receiving assistance will receive such assistance for not less than 12 months, and the child's eligibility determination and redetermination shall be implemented in such a manner that supports child

well-being and reduces barriers to enrollment, including continuity of services. (Subsection (m)(2) specifies children under 6 already receiving assistance under CCDBG will automatically be deemed eligible and may continue to use the child care provider of the family's choice.)

Sec. 23001(c), (g)(2). Specifies how total funding for the new birth through five child care and early learning entitlement program will be used for certain purposes as follows:
[*Note: While funding amounts are specified, rather than designating a percentage of funds, the specified amounts are roughly equivalent to the percentages in the Budget text.*]

In FY2022 ($24 billion):
- $11,460,000,000 for assistance for direct child care services ((h)(1)(A))
- $5,730,000,000 for activities to improve the quality and supply of child care services ((h)(1)(B))
- $4,125,600,000 for assistance for direct child care services ((h)(1)(A)) or activities to improve the quality and supply of child care services ((h)(1)(B))
- $1,604,400,000 for assistance for direct child care services ((h)(1)(A)), activities to improve the quality and supply of child care services ((h)(1)(B)), or administration ((h)(1)(C))
- $960,000,000 for Indian Tribes and Tribal Organizations
- $120,000,000 for Territories

In FY2023 ($34 billion):
- $16,235,000,000 for (h)(1)(A)
- $8,117,500,000 for (h)(1)(B)
- $5,844,600,000 for (h)(1)(A) or (B)
- $2,272,900,000 for (h)(1)(A), (B), or (C)
- $1,360,000,000 for Indian Tribes and Tribal Organizations
- $170,000,000 for Territories

In FY2024 ($42 billion):
- $20,055,000,000 for (h)(1)(A)
- $10,027,500,000 for (h)(1)(B)
- $7,219,800,000 for (h)(1)(A) or (B)
- $2,807,700,000 for (h)(1)(A), (B), or (C)
- $1,680,000,000 for Indian Tribes and Tribal Organizations
- $210,000,000 for Territories

Sec. 23001(g)(2), (h)(2)(C)(i)(I). In FY2025-2027, states receive reimbursement from the Federal government for 95.440% of the cost of child care assistance; at the FMAP rate multiplied by 1.06045 for child care quality and supply activities; and 53.022% for administrative expenses.

[*Note: These amounts appear different in summary documents. In order to account for sequestration, a 1.06045 multiplier was added to bill text. In practice, states will receive reimbursement for 90% of the cost of child care assistance; at the FMAP rate for child care quality and supply activities; and 50% for administrative expenses.*]

States must reserve between 5 and 10% of total funds for activities that increase the quality and supply of eligible child care providers.

Sec. 23001(j)(3). Imposes a maintenance-of-effort (MOE) requirement based on an average of state spending on child care in the preceding three fiscal years. This spending can be counted in meeting state match requirements.

Preschool Services Program

Sec. 23002(b). In FY2022, appropriates ~~$4~~ $3.2 billion for subgrants and contracts for local preschool programs (subsection (d)) and $800 million for state activities and subgrants (subsection (c)(3) and subsection (d)); in FY2023, ~~$6~~ $4.8 billion for subsection (d) and $1.2 billion for subsections (c)(3) and (d); in FY2024, ~~$8~~ $6.4 billion for subsection (d) and $1.6 billion for subsections (c)(3) and (d); and in FY2025-2027, such sums as may be necessary to provide the federal share of the cost of universal, high-quality, free, inclusive, and mixed delivery preschool services. In FY2022, appropriates the following amounts to remain available until Sept. 30, 2027: $2.5 billion for payments to Indian Tribes and Tribal Organizations; ~~$1~~$1.25 billion for payments to territories distributed on the basis of relative need; and $300 million for eligible local entities that serve children in families who are engaged in migrant or seasonal agricultural labor. Additionally, the following amounts are provided for federal activities including administration, monitoring, technical assistance and research to remain available until Sept. 30, 2027: $165 million in FY2022, $200 million in each of FY2023-FY2024, $208 million in FY2025, $212 million in FY2026, and $216 million in FY 2027.

Sec. 23002(c)(2). In FY2022-2024 requires the Secretary of HHS, in collaboration with the Secretary of Education to provide funding to states with approved plans using a formula that considers the proportion of children below age 6 whose families have a family income at or below 200% of the poverty line and the existing Head Start investments in preschool in the state.

For FY2025-2027, directs the Secretary to pay an amount equal to 95.440% of state expenditures, and in subsequent years, reduces the federal share (thus increasing the non-federal share, commonly known as the “state match”) as follows: 79.534% in FY2026; and 63.627% in FY2027. (Sec. 23002(f) specifies a state’s non-federal share can include funds spent to expand half-day kindergarten programs to full-day and limits current spending (based on the average spending amount for FY2019-2021) on prekindergarten programs at 100% for these purposes.)

Additionally, directs the Secretary to pay an amount equal to 53.022% for activities in (c)(3) (described below), with a maximum payment equal to ~~10~~ 5% of state expenditures for preschool services.
[*Note: These amounts appear different in summary documents. In order to account for sequestration, a 1.06045 multiplier was added to bill text. In practice, the federal government will pay 90% of state expenditures in FY2025-2027, 75% in FY2026, 60% and in FY 2027, and 50% of state-level expenses in FY2025-FY2027.*]

The Secretary may reallot funds appropriated for FY2022-2024 from states without an approved ~~application~~ state plan or transitional state plan to those with an approved ~~application~~ plan or to an eligible locality or Head Start agency. Further, funds that are unobligated on Oct. 1, 2024 may be realloted to a state with an approved ~~application~~ plan and without unobligated funds or to an eligible locality or Head Start agency.

Sec. 23002(c)(3). Requires states that receive funding to administer the state's preschool services program; support a continuous quality improvement system; provide outreach and enrollment support for families of eligible children, including specific outreach to families of underserved populations; support data systems building; support staff of eligible providers in pursuing credentials and degrees; support activities that ensure access to inclusive preschool programs for children with disabilities; provide age-appropriate transportation services; and conduct or update the state's statewide needs assessment.

Sec. 23002(c)(5), (6). To be eligible for funding, requires states to submit a plan that must, among other requirements, certify that it has or will have developmentally appropriate, evidence-based preschool standards in place within 18 months of receiving funds and describe how it will support a mixed-delivery system for any new slots, including by facilitating the participation of Head Start and other programs offered by licensed child care providers; ensure the state preschool program does not disrupt the stability of infant and toddler care throughout the state; distribute new preschool slots and resources equitably among child care providers, including family child care providers, Head Start agencies and schools; and ensure a highly-qualified early childhood workforce. Additionally, the plan must include assurances that all preschool services will be universally available without additional eligibility requirements and be high-quality, free, and inclusive. Plans must also provide an assurance that all local preschool programs meet state preschool education standards within 1 year of a program receiving funding; offer programming that meets the duration requirements of at least 1,020 annual hours; and adopt policies and practices to conduct outreach and provide expedited enrollment, including prioritization, to children experiencing homelessness, children in foster or kinship care, children in families who are engaged in migrant or seasonal agricultural labor, children with disabilities, and dual language learners. Each states' plan shall stay in effect for up to 3 years.

Sec 23002(d)(3). Specifies states must prioritize establishing and expanding programs within and across high-need communities by awarding subgrants or contracts to providers operating or with capacity to operate within such communities. The state must use a research-based methodology approved by the Secretary to identify high-need communities as determined by factors outlined in the bill.

Grants to Localities and Head Start Expansion in Non-Participating States

Sec. 23001(i)(1)-(2), (4). Establishes Birth through Five Child Care and Early Learning Grants to be awarded ~~in accordance with rules established~~ as determined by the Secretary to localities in states that have not received payments under the entitlement program. Sec. 23001(c)(4) designates ~~$950 million annually~~$4.75 billion in FY2022 to remain available until September 30, 2027 for these purposes. Eligible localities include cities, counties, or other units of general local government, as well as Head Start grantees. Entities serving a high percentage of individuals from underserved populations would be prioritized for localities and Head Start expansion grants (explained further below).

Sec. 23001(i)(3). Directs the Secretary of HHS to award grants to Head Start agencies in a state that have not received payments under

the entitlement program to carry out the purposes of the Head Start Act. Sec. 23001(c)(5) appropriates ~~$2.85 billion annually for FY2023-2027~~$14.25 billion in FY2022 to remain available until September 30, 2027 for these purposes. Additionally, subsection (i)(2)(E) allows the Secretary to recoup any unused localities grant funding for Head Start grants. **Sec. 23001(g)(1)(D).** Allows the Secretary to reallot funds from states without an approved application or with unobligated funds to an eligible locality or Head Start agency. **Sec. 23002(e)(1)-(2), (4).** Authorizes the Secretary, in consultation with the Secretary of Education, to award grants, in accordance with rules established by the HHS Secretary, to localities in states that have not received payments under the universal preschool program. Sec. 23002(b)(2)(F) designates ~~$1.9 billion annually for FY2023-2027~~$9.5 billion in FY2022 to remain available until September 30, 2027 for these purposes. Eligible localities include cities, counties, or other units of general local government, a local educational agency, or a Head Start agency. Entities serving communities with a high percentage of children from families with incomes at or below 200% of the poverty line would be prioritized for localities and Head Start expansion grants (explained further below). **Sec. 23002(e)(3).** Directs the Secretary of HHS to award grants to a Head Start agency in a state that has not received payments under the universal preschool program to carry out the purposes of the Head Start Act. Sec. 23002(b)(2)(G) appropriates ~~$1.9 billion annually for FY2023-2027~~$9.5 billion in FY2022 to remain available until September 30, 2027 for these purposes. Additionally, subsection (f)(2)(D) allows the Secretary to recoup any unused localities grant funding for Head Start grants. **Sec. 23002(c)(2)(C).** Allows the Secretary to reallot funds from states without an approved application or with unobligated funds to an eligible locality or Head Start agency. **Sec. 23002(b)(2)(E).** Appropriates $2.5 billion annually for FY2022-2027 to improve compensation for Head Start staff.
Supply of Care
Sec. 23001(f)(4)(H). Requires states' child care plans to assure they will prioritize increasing access to and the quality and supply of child care for underserved populations, including, at a minimum, low-income children; children in underserved areas; infants, toddlers, and children with disabilities; children who are dual language learners; children experiencing homelessness; children in foster or kinship care; children who receive care during nontraditional hours; and vulnerable children, as defined by the lead agency. **Sec. 23001(h).** In FY2202-2024, the bill appropriates specific amounts for improving the quality and supply of child care services. In FY2025-2027, states must reserve between 5 and 10% of total funds for activities that increase the quality and supply of eligible child care providers.
Quality
Sec. 23001(f)(4)(B). Within 3 years of receiving funds, requires states to create a tiered system for measuring the quality of child care

providers that, among other requirements, includes a set of standards for determining a provider's tier of quality; includes different standards for care during nontraditional hours; and provides sufficient resources and supports for providers not at the highest tier to progress toward higher quality standards. **Sec. 23001(f)(4)(C).** Requires states' child care plans to certify that within 6 years of enactment their implemented policies and financing practices will ensure all families of eligible children can choose care at the highest quality tier. **Sec. 23001(f)(4)(J).** Requires states' child care plans to demonstrate that it consulted or will consult with organizations representing child care directors, teachers, or other staff; early childhood education experts; and families; to develop, within 2.5 years of receiving funds, licensing standards for child care providers and a pathway to licensure available to and appropriate for providers in a variety of settings, that will offer CCDBG-eligible providers a pathway to become eligible providers for the entitlement program and assure an adequate supply of child care. Sec. 23001(b)(5)(B) specifies CCDBG-eligible providers would be deemed eligible for 3.5 years after their home state receives funding. Plans must also describe the timeline the state will use to ensure sufficient time for these providers to comply with licensing standards and remain eligible 3.5 years after the State first receives funding. **Sec. 23001(h).** In FY2202-2024, the bill appropriates specific amounts for improving the quality and supply of child care services. In FY2025-2027, states must reserve between 5 and 10% of total funds for activities that increase the quality and supply of eligible child care providers.
Facilities
Sec. 23001(h)(2)(C)(ii)(III). From a portion of the quality child care amount, requires states to provide support, including through awarding facilities grants, for remodeling, renovation, or repair of a building or facility to the extent currently allowed by CCDBG. In FY2022-2024 and in subsequent years with the Secretary's approval, allows states to provide facilities grants for construction, permanent improvement, or major renovation of a building or facility primarily used for providing child care services. **Specific funding for child care facilities is not included.**
Providers and Workforce
Sec. 23001(b)(1)(B). States nothing in this section shall preclude the use of child care certificates for sectarian child care services if freely chosen by the parent and specifies child care certificates shall be considered indirect federal financial assistance to the provider. **Sec. 23001(b)(5).** Defines "eligible child care provider" as a center-based child care provider, a family child care provider, or other provider of child care services for compensation that is licensed to provide child care services under state law applicable to the child care services it provides, or in the case of an Indian Tribe or Tribal organization, meets the rules set by the Secretary; participates in the state's tiered

system for measuring the quality of eligible child care providers not later than ~~the last day of the third fiscal year for which~~ 4 years after the state first receives funds under this section and for the remainder of the period for which the provider receives funds; and satisfies state and local requirements applicable to child care providers, including certain CCDBG requirements.

Sec. 23001(f)(4)(A). Requires states' child care plans to certify that within 3 years of receiving funds, payment rates for child care assistance will be sufficient to meet the cost of child care (including fixed costs) and set (with pay being paid) based on an approved cost estimation model or cost study and correspond to differences in quality based on the state's tiered system for measuring quality.

Specifies the cost estimation model or cost study must include rates for direct child care services that are sufficient to cover providers' fixed costs and reflect ~~rates for providers~~ the cost of child care at each tier of the state's tiered system for measuring quality and variations in the cost of child care services by geographic area, type of provider, and age of child, and the additional costs associated with providing inclusive child care services. Additionally, states must certify payment rates enable providers not at the highest tier to increase quality.

States must update the cost estimation model at least every 3 years.

Sec. 23001(f)(4)(A)(ii)(II)(cc), (D). Requires states' child care plans to certify payment rates will ensure that wages for staff of child care providers, at a minimum, provide a living wage, are equivalent to wages for elementary educators with similar credentials and experience, and are adjusted annually for cost-of-living increases. States must also certify that within 3 years of receiving funds, they will have a wage ladder for staff that meets these requirements.

Sec. 23001(h)(1)(A). Specifies "assistance for direct child services" consists only of assistance for direct child care services for eligible children through grants and contracts and child care certificates; increasing child care provider payment rates to support the cost of providing high-quality direct child care services, including rates sufficient to support increased wages for staff of eligible child care providers; waiving or reducing copayments to ensure families of children receiving assistance do not pay more than 7% of family income toward the cost of child care involved for all eligible children in the family; and grants and contracts to cover a portion of fixed operating expenses of eligible child care providers serving eligible children receiving assistance to support increased wages, program stability, and continuity of services for all children in such programs.

Sec. 23001(h)(2)(B). In FY2025-FY2027, requires states to ensure parents of eligible children can access services through a grant or contract or a certificate. Grants or contracts must, at a minimum, support providers operating expenses to meet and sustain required health, safety, and quality and wage standards and address underserved populations. Certificates would be issued directly to a parent to be used as a payment or deposit for child care services.

Sec. 23002(a)(6). Defines "eligible providers" for the purposes of universal preschool as local educational agencies that are licensed by the State or meet comparable health and safety standards; Head Start agencies or delegate agencies; a licensed center-based provider, licensed family child care provider, or ~~community- or neighborhood-based~~ network of licensed family child care providers; or a consortium of such entities.

Sec 23002(c)(5)(J), (d). Requires states' plans to certify subgrant amounts are sufficient to enable eligible providers to meet program requirements and provide for increased staff payment amounts. Additionally, specifies subgrants or contracts with providers will be for at least 3 years; requires the amount to reflect variations in the cost of services by geographic area, type of provider, and age of child, and the additional costs associated with providing inclusive child care services; and requires enhanced payments to providers offering comprehensive services, health and development screenings, and service referrals for children and families they serve. Priority would be given to programs in high-need communities.

Sec. 23002(c)(5)(B). Requires states' plans to provide assurances that it will:

- Provide salaries and set salary schedules for preschool staff that are equivalent to salaries of elementary school staff with similar credentials and experience; and
- At a minimum, provide a living wage for all staff of such providers; and
- Require educational qualifications for teachers in the preschool program including, at a minimum, requiring lead teachers to have a baccalaureate degree in early childhood education or a related field within 6 years of a state receiving funds (excluding individuals employed by an eligible child care provider or early education program for a cumulative 3 of the last 5 years from the date of enactment and with necessary content knowledge and teaching skills).

Senate Finance

Tax

Sec. 127102 ~~137102~~. Extends through 2022 the American Rescue Plan Act (ARPA) modifications to the Child Tax Credit (CTC) making the CTC fully refundable, increasing the amount of the credit to $3,000 for children ages 6-17 and to $3,600 for a child under age 6, and reducing the additional $1,000/$1,600 per child by $50 for every $1,000 a taxpayer's modified AGI exceeds $75,000 ($150,000 for joint returns and $112,500 for head of household). The credit plateaus at $2,000 and then phases out at the present levels in effect through 2025. Also extends through 2022 the ARPA provision of CTC advance payments with some amendments, including to specify that payments should be made monthly and to place income restrictions on which taxpayers are eligible for advance payments

Sec. 127103 ~~137103~~. Makes the CTC fully refundable after 2022.

Sec. 127104 ~~137104~~. Appropriates funds to remain available until Sept. 30, 2026 as follows:

- $3.963 billion for the IRS to administer the CTC and advance CTC payments, and
- $1 billion for the Department of Treasury to support efforts to increase enrollment of CTC eligible families, for advance CTC payments, and for other tax benefits.

Sec. 127201~~137201~~. Makes permanent the ARPA eligibility expansion of the Earned Income Tax Credit (EITC) for taxpayers with no qualifying children and the ARPA provision allowing taxpayers to use prior-year earned income to compute the EITC. For tax year 2021, the ARPA amended the childless EITC to reduce the minimum age from 25 to 19 (except for certain full-time students); eliminate the upper age limit; increase the credit percentage and phaseout percentage to 15.3%; increase the income at which the maximum credit amount is reached to $9,820; and increase the income at which phaseout begins to $11,610 for unmarried filers ($17,550 if married). Under these parameters, the maximum credit amount nearly triples to $1,502. Amounts will be indexed for inflation.

Sec. 128510 ~~138515~~. For tax years 2022-2025, amends the Employer- Provided Child Care Credit to increase from 25% to 50% the percent of qualified child care expenditures that can be claimed as a credit and increase the maximum amount of the credit from $150,000 to $500,000. Qualified child care resource and referral expenditures that can be taken into account each year are capped at $1.5 million. (Current law allows a credit of 10% of such expenses.)

Provisions related to the Child and Dependent Care Tax Credit and dependent care assistance programs are not included.