

Issue in Brief:

H.R.5376, the Build Back Better Act (BBBA), which passed the House on November 19 and is currently being considered in the Senate, proposes expanded federal spending to make child care and pre-kindergarten much more accessible to families. Unfortunately, the bill [as currently written](#) includes legal requirements that will make it impossible or risky for many faith-based child care and pre-K programs to participate.

Since 1990, the federal government has supported child care mainly by providing child care certificates to eligible families. Families have been able to choose faith-based providers, if they wish, and those providers are guaranteed the right to offer services that include religious activities and teaching, the right to consider religion when hiring staff, and the right to be religiously selective in admissions. The BBBA would create a different child care certificate program that is subject to the Head Start nondiscrimination requirement (see p. 285 of H.R. 5376). As a consequence, providers would not be able to hire based on religion or be religiously selective in admissions, and they would be subject to a gender identity nondiscrimination requirement. It is unclear if child care located in a house of worship would be eligible for grants to expand or improve the facilities. The Rehabilitation Act's ban on disabilities discrimination in programs and employment would be applied, possibly requiring major operational changes (this is a consequence of certificates being deemed Federal Financial Assistance—see p. 243).

All of the noted restrictions and uncertainty apply also to the proposed new federal universal free pre-K program, including the ban on religious hiring (the Head Start restrictions apply—see p. 314). Because the pre-K programming would be paid for by grants or contracts with providers, not certificates or scholarships offered to families, no religious activities or teaching would be allowed during the federally supported pre-K day.

These problems can be solved. Congress should route the additional child care funding through the longstanding Child Care and Development Block Grant (CCDBG) program's certificate system without introducing additional restrictions to the program. It should subsidize pre-K programs by offering families pre-K certificates or scholarships modeled on the CCDBG certificates, again without additional restrictions. Then parents would have more choices of programs. The language in the bill should also make it clear that child care and pre-K programs connected to houses of worship are eligible for facilities grants.

As a reminder, houses of worship and faith-based nonprofits are legally free to ask Congress for changes in legislation. Please join us in signing the letter to Congress and please forward this email to other providers and supporters of faith-based child care and pre-K. **We ask that you add your signature no later than Thursday December 16.**