

The American Rescue Plan as a Guide for Helping Mothers Permanently Secure Accessible, High-Quality Childcare and Out-of-School Time Care

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ABSTRACT

COVID-19 caused a perfect storm that showcased the indispensability of childcare to the overall well-being of children, families, and communities while simultaneously illuminating the many gaps and shortcomings rife within the American childcare system. The virus only exacerbated the accessibility and affordability challenges faced by families seeking high-quality childcare. This Note evaluates the necessity of accessible, high-quality childcare and out-of-school time options for working moms while considering the pandemic’s impact on the care industry. The Note argues that the American Rescue Plan’s influx of federal funding to the childcare and out-of-school time industry, while a necessary life-preserver, was not enough to sustain the sort of growth in quality and affordability long overdue. The Note asserts solutions such as making permanent monthly payments to families through the expanded 2021 Child Tax Credit and expanding incentivization structures for large companies to include in their plans how they will provide affordable childcare for their workers. With federal relief money expiring in 2024, now is the time for state and federal legislators to either make portions of the American Rescue Plan permanent or incorporate key ideas from the Plan into existing structures.

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INTRODUCTION

It is not an exaggeration to say that the COVID-19 pandemic was perhaps the first time in recent memory that a single event so powerfully and completely impacted individuals across the world. People worldwide had to deal with disruption to the status quo as governments and local communities faced novel challenges. As society more broadly looked to its elected officials and public leaders to guide the way, most families relied on their most trusted and unflappable resource: mothers. Many women across the United States found themselves juggling the demands of their jobs, children, and households while feeling the burden of childcare weighing heavier than ever.¹ With schools and daycares closed or operating at a limited capacity, mothers were forced to grapple with the realities and limitations of our nation's childcare and out-of-school time system.²

COVID-19 showcased the indispensability of childcare to the overall well-being of children, families, and communities while simultaneously illuminating

1. See Claire C. Miller, *The Pandemic Created a Child-Care Crisis. Mothers Bore the Burden.*, N.Y. TIMES (May 17, 2021), <https://www.nytimes.com/interactive/2021/05/17/upshot/women-work-force-employment-covid.html>.

2. *Id.*

the many gaps and shortcomings rife within the American childcare system.³ The virus exacerbated the typical accessibility and affordability challenges faced by families seeking high-quality childcare.⁴ Decades of underfunding have left today's childcare industry in a precarious state.⁵ The U.S.'s treatment of childcare as a private commodity rather than a public responsibility fuels the subpar marks the country received from a UNICEF study regarding childcare access, quality, and affordability.⁶ The same UNICEF study granted the U.S. a childcare ranking of forty out of forty-one similarly situated rich countries.⁷ Even before the pandemic, more than half of Americans lived in "childcare deserts"—that is, communities that do not have enough childcare nearby to serve the families that need it. These deficits are more likely to exist in low- and middle-income as well as rural communities, and the impact of childcare deserts disproportionately affects Black women.⁸ The declaration of a U.S. "childcare crisis" by policy organizations like the Center for American Progress predated the pandemic and such organizations have long referenced the crisis as an obstacle to mothers' full participation in the workforce.⁹ With mothers still perceived as default caregivers, they almost invariably spend more time than men on childcare duties.¹⁰ Amid the COVID-19 pandemic, many mothers made the sacrifice of stepping back from paid work to take on caregiving responsibilities.¹¹

This Note will evaluate the necessity of accessible, high-quality childcare and out-of-school time options for working moms while considering the pandemic's impact on the care industry as a whole. The Note will argue that the American Rescue Plan's influx of federal funding to the childcare and out-of-school time industry, while a necessary life preserver, is not enough to sustain the sort of growth in quality and affordability long overdue.¹² The benefits and support mothers received from the American Rescue Plan's child-based tax credits and childcare subsidies, in addition to the Plan's tenuous stabilization of the childcare and out-of-school time industry through state disbursements earmarked for childcare, was a necessary step in pandemic recovery that can serve as a guide

3. See CHILD CARE AWARE, DEMANDING CHANGE: REPAIRING OUR CHILD CARE SYSTEM 2 (Mar. 2022), [https://info.childcareaware.org/hubfs/2022-03-FallReport-FINAL%20\(1\).pdf](https://info.childcareaware.org/hubfs/2022-03-FallReport-FINAL%20(1).pdf).

4. *Id.*

5. *Id.*

6. Cf. ANNA GROMADA & DOMINIC RICHARDSON, UNICEF, WHERE DO RICH COUNTRIES STAND ON CHILDCARE? 7 (2021), <https://www.unicef-irc.org/publications/pdf/where-do-rich-countries-stand-on-childcare.pdf>.

7. *Id.*

8. See, e.g., Naomi R. Cahn & Linda C. McClain, *Gendered Complications of Covid-19: Towards A Feminist Recovery Plan*, 22 GEO. J. GENDER & L. 1, 14 (2020).

9. See generally LEILA SCHOCHET, CTR. FOR AM. PROGRESS, THE CHILD CARE CRISIS IS KEEPING WOMEN OUT OF THE WORK FORCE (2019), <https://www.americanprogress.org/issues/earlychildhood/reports/2019/03/28/467488/child-care-crisis-keeping-women-workforce/>.

10. Miller, *supra* note 1.

11. See *id.*

12. The District of Columbia (D.C.) will be used as an exemplar in the footnotes of this note to make some of the problems and potential solutions within the U.S. childcare landscape more concrete.

for future legislation securing all mothers' access to high-quality childcare and out-of-school time programming. This Note adds to the conversation around U.S. childcare system reform by directly addressing how specific pieces of a new and landmark piece of legislation can practically be implemented to better serve working mothers. The Note will assert solutions such as making permanent monthly payments to families through the expanded 2021 Child Tax Credit¹³ and expanding incentivization structures for large companies to include in their plans how they will provide affordable childcare for their workers.¹⁴ With federal relief money expiring in 2024,¹⁵ now is the time for state and federal legislation to be passed to either make portions of the American Rescue Plan permanent or incorporate key ideas from the Plan into existing structures.

Part II provides an overview of the childcare and out-of-school time (e.g., afterschool and summer camp) industries while also highlighting the longstanding issues that have plagued these industries. Part III focuses more specifically on mothers and their need for childcare before examining how the COVID-19 pandemic exacerbated many of the difficulties that already existed when it came to accessing childcare. Part IV outlines the history of childcare policy in the United States before explaining how provisions of the American Rescue Plan impacted the childcare industry and families more broadly. Part IV also includes a discussion of potential solutions regarding childcare that are either inspired by or expansions of the American Rescue Plan.

II. WHAT IS CHILDCARE AND WHY IS IT IMPORTANT?

A. Overview of the Childcare and Out-of-School Time Industries

Childcare is “the care [and supervision] of children, especially as a service while parents are working.”¹⁶ Perhaps the most commonly understood concept of childcare in the U.S. is the childcare centers that group children by age in a classroom-like environment and typically operate out of commercial buildings in either a non-profit or for-profit capacity.¹⁷ While many of these centers may be licensed or receive some formal quality assessment, that is not always required in some states that provide licensing exemptions for centers that might be based out of existing entities such as a school or faith-based organization.¹⁸ “School-age

13. *Advanced Child Tax Credit Payments in 2021*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/advance-child-tax-credit-payments-in-2021> (last visited Nov. 9, 2023).

14. David Shepardson, *U.S. Commerce to Ask Companies Seeking Chips Funding to Provide Childcare for Employees*, REUTERS (Feb. 28, 2023), <https://www.reuters.com/world/us/us-commerce-ask-companies-seeking-chips-funding-provide-childcare-employees-2023-02-28/>.

15. Sophie Quinton, *Federal Aid is Propping Up Child Care. It Isn't a Long-Term Fix.*, STATELINE (Jan. 12, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/01/12/federal-aid-is-propping-up-child-care-it-isnt-a-long-term-fix>.

16. *Childcare*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/childcare> (last visited Nov. 9, 2023).

17. *See Types of Child Care*, CHILD CARE AWARE, <https://www.childcareaware.org/families/types-child-care/> (last visited Nov. 9, 2023).

18. *Id.*

program” is a catch-all term for the childcare opportunities provided to children old enough to attend school but who need supervision when school is not in session.¹⁹ These programs may also offer care during school holidays or summer breaks.²⁰ While school-age programs are not always required to be licensed or participate in a quality assessment process, many still choose to do so.²¹ These programs also go by the aptly named out-of-school time (OST) care because its broadly covers any care organization that looks after kids once they enter formal education around age five.²²

Front of mind for most families is how they will pay for whatever type of care their child is receiving.²³ For many Americans, financial assistance for childcare costs can fall into one of four categories.²⁴ First are the hodgepodge of government programs.²⁵ Direct federal government financial assistance is typically provided to states and territories that filter assistance to low-income families through childcare vouchers or subsidies.²⁶ Direct federal government assistance may also cover state-funded preschool programs or Head Start programs that help prepare kids under five years of age with their overall development at little or no cost to the eligible low-income families that make it in.²⁷ Second is the local nonprofit and provider-specific assistance and discounts, such as scholarships or fee assistance programs that individual childcare providers might offer to families.²⁸ Another category is work and school-related programs, which can range from an employer-sponsored dependent care flexible spending account that puts aside a portion of an employee’s paycheck for childcare expenses to an even more direct employer resource such as an onsite child care center at the workplace.²⁹ The fourth category comes in the form of tax credits, such as the Child and Dependent Care Tax Credit, which reduce the overall tax families might owe and may even result in a tax refund.³⁰

There are also existing programs that assist financially burdened families seeking school-age care. Most prominently, the Department of Health and Human Services’ administration of the Child Care & Development Block Grant (CCDBG) supports care for school-age kids up to thirteen through certificates

19. *Id.*

20. *School-Age Child Care and Camp Programs*, CHILDCARE.GOV, <https://childcare.gov/consumer-education/school-age-child-care> (last visited Nov. 9, 2023).

21. *See Types of Child Care*, *supra* note 17.

22. *See Out of School Time*, CDC, <https://www.cdc.gov/healthyschools/ost.htm> (last visited Nov. 9, 2023).

23. *See Child Care Financial Assistance Options*, CHILDCARE.GOV, <https://childcare.gov/consumer-education/get-help-paying-for-child-care> (last visited Nov. 9, 2023).

24. *Id.*

25. *Id.*

26. *Id.*

27. *See id.*

28. *Id.*

29. *Id.*

30. *Id.*

that parents can utilize at their preferred provider.³¹ The 21st Century Community Learning Centers program (21CCLC), administered through the Department of Education, disburses about \$1 billion annually to states to support before and after-school care.³² The disbursement usually occurs through a competitive grant process to community organizations and school districts that use their programs to improve student academic outcomes.³³

B. Issues in the Childcare and Out-of-School Time Industry

While the pandemic exposed the deficits within the American childcare system, many childcare-related issues predated the spread of COVID-19.³⁴ For decades, families were already dealing with “out-of-reach child care costs, child care deserts, and inhospitable workplace policies.”³⁵ The difficulty of finding affordable and high-quality care has forced many mothers to take actions ranging from turning down a promotion or decreasing work hours to altogether dropping out of the workforce.³⁶

1. Accessibility

More than half of the population in the U.S., and in some states nearly two-thirds of their residents, live in childcare deserts.³⁷ Across the nation, childcare deserts correlate with areas of high poverty and higher percentages of residents of

31. CHILD CARE AWARE, *supra* note 3, at 21.

32. *Id.* at 22.

33. *Id.*; We can see an example of how families might be supported in their pursuit to pay for the programs by looking at D.C. For families struggling to pay for care, Washington, D.C. has a federally funded Child Care Subsidy Program that gives families options on which type of childcare setting is the best fit for their child. However, receiving subsidies through the program requires families to go through an intake and referral process. Once approved, all or part of the childcare cost is paid directly to the childcare provider, with some families expected to contribute a portion or a co-payment depending on their household income. See *Child Care Subsidy/Voucher Program*, OFF. STATE SUPERINTENDENT EDUCATION, <https://osse.dc.gov/service/child-care-subsidyvoucher-program> (last visited Nov. 9, 2023). D.C. also receives approximately \$6 million in 21CCLC dollars each year for disbursements to nonprofits focused on out-of-school activities like tutoring, the arts, and athletics. However, 2022 saw this grant program paused for applicants relying on disbursements as the D.C. Office of the State Superintendent of Education sought time to redesign how it is currently run. Lauren Lumpkin, *D.C. Afterschool Programs on Edge After City Closes Grant Competition*, WASH. POST (Dec. 31, 2022), <https://www.washingtonpost.com/education/2022/12/31/dc-afterschool-programs-21st-century-grants/>.

34. Julia Kashen & Rasheen Malik, *More Than Three Million Child Care Spots Saved by American Rescue Plan Funding*, THE CENTURY FOUND. (Mar. 9, 2022), <https://tcf.org/content/commentary/three-million-child-care-spots-saved-american-rescue-plan-funding/>.

35. *Id.*

36. *Fact Sheet: The American Families Plan*, THE WHITE HOUSE (Apr. 28, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/>.

37. Steven Jessen-Howard & Simon Workman, *Early Learning in the United States: 2019*, CTR. FOR AMERICAN PROGRESS (Sep. 16, 2019), <https://www.americanprogress.org/article/early-learning-united-states-2019/>. In D.C., these childcare deserts are concentrated in the Southwest and Southeast portions of the city, particularly in Wards 5, 7, and 8. Childcare deserts in Washington, D.C., correlate with areas of low-income and Black residents. *U.S. Child Care Deserts*, CTR. FOR AMERICAN PROGRESS, <https://childcaresdeserts.org/> (last visited Nov. 9, 2023).

color.³⁸ Issues of finding care are even worse for mothers who work outside of the standard “9-to-5” schedule because most childcare providers schedule their hours to fit the traditional workday.³⁹

Demand also far outweighs the supply for school-age programs.⁴⁰ It is estimated that about 25 million children who want to access before-school or after-school programs cannot do so, usually due to a lack of availability or funds.⁴¹ At a certain age, not securing any care often becomes the best option for parents, leaving an estimated 7.7 million children alone and unsupervised after school.⁴²

2. Affordability

In the past few years, childcare costs have exceeded the annual inflation rate, causing many families to experience the cost of childcare going up while their wages are not keeping pace.⁴³ A Senate policy brief stated that “in over half of all states in America, center-based infant child care now costs more than in-state public college tuition, and low-income parents spend over 17% of their income to access child care for their children aged 0 to 5.”⁴⁴

The childcare affordability issue is especially difficult to remedy because most childcare providers’ largest expense is worker wages, which are already at an incredibly low point.⁴⁵ Currently, childcare workers, on average, make less than \$23,760 a year.⁴⁶ Childcare workers commonly have multiple jobs or rely on public assistance to barely scrape by.⁴⁷ Providers can also struggle with general uncertainty about what funding might be coming in.⁴⁸

While most affluent countries in the world heavily subsidize childcare costs for disadvantaged groups, the U.S. stands in company with less rich countries like Slovakia and Cyprus where a single low-income parent would have to spend

38. See *U.S. Child Care Deserts*, *supra* note 37.

39. See Catherine Schur, Note, *Conspicuous by Their Absence: How Childcare Can Help Women Make It to the Top*, 27 GEO. J. LEGAL ETHICS 859, 869 (2014).

40. See CHILD CARE AWARE, *supra* note 3, at 21.

41. *Id.*

42. *Id.*

43. *Id.* at 42.

44. OFF. OF U.S. SENATOR ELIZABETH WARREN, UNIVERSAL CHILD CARE AND EARLY LEARNING ACT 1 (Feb. 2019), https://www.warren.senate.gov/imo/media/doc/Universal_Child_Care_Policy_Brief_2019.pdf; see also Chris Herbst, *The Rising Cost of Child Care in the United States: A Reassessment of the Evidence* (IZA Discussion Papers, No. 9072, 2015), <https://www.econstor.eu/bitstream/10419/111522/1/dp9072.pdf>.

45. BUREAU OF LAB. STAT., OCCUPATIONAL EMPLOYMENT STATISTICS: OCCUPATIONAL EMPLOYMENT AND WAGES (May 2017).

46. *Id.*

47. Kashen & Malik, *supra* note 34.

48. Lumpkin, *supra* note 33; For an example of uncertainty faced by providers, in 2022, the D.C. Office of the State Superintendent of Education paused applications for its 21st Century Community Learning Centers. Funds from this federal grant program typically go to nonprofits that provide afterschool programs for D.C. residents. The pause in funding forced many groups to forgo their typical application cycle and either scale back on the number of slots available in their programs or raise prices. *Id.*

between a third and a half of their salary to afford childcare for two children.⁴⁹ America's low childcare subsidization rates starkly contrast with nearly twenty other affluent countries, like Canada and Denmark, where a single low-income parent would pay less than 5% of their salary to pay for childcare for two children.⁵⁰

Even where relief might be present, it is often not enough.⁵¹ The primary source of childcare assistance for working families, the Child Care Development Block Grant, has subsidies that impact only a small number of families that need the support.⁵² In almost every state, fewer than one in ten eligible children under six receive childcare subsidies.⁵³ Additionally, the gap between how much these subsidies provide and how much childcare costs is at least \$7,000 in every state, with gaps of as much as \$20,000 in a handful of states.⁵⁴ With the Head Start program geared toward providing care for low-income children, the consistent underfunding has provided only four in ten eligible kids a spot off the waitlist and into actual programs.⁵⁵

3. Quality

Quality care provides children the emotional-social and academic support needed to be school-ready when they enter kindergarten.⁵⁶ Ensuring children do not only have access to childcare but, specifically, access to high-quality childcare has been linked to many positive long-term outcomes, "such as higher graduation rates from high school, higher income and better physical health."⁵⁷

Forty-three states and the District of Columbia have created a quantitative quality rating and improvement system which helps families by providing an easy numeric indicator of how childcare options perform under a set of defined program standards.⁵⁸ But participation in this rating system is voluntary in most states.⁵⁹ Similarly, with school-age programs or camp programs, the same state may require some programs to have licenses to operate while others are considered license-exempt due to their affiliations with another entity, like a public

49. ANNA GROMADA & DOMINIC RICHARDSON, UNICEF, WHERE DO RICH COUNTRIES STAND ON CHILDCARE? 8 (2021), <https://www.unicef-irc.org/publications/pdf/where-do-rich-countries-stand-on-childcare.pdf>.

50. *Id.* at 19–20.

51. *Cf.* Jessen-Howard & Workman, *supra* note 37 ("While some states have made progress through their proposed budget or through promising legislation, most states have a long way to go.").

52. *Id.*

53. *Id.*

54. *Id.*

55. MAXINE EICHNER, THE FREE-MARKET FAMILY: HOW THE MARKET CRUSHED THE AMERICAN DREAM (AND HOW IT CAN BE RESTORED) 113 (2020); In contrast to the underfunded luck of the draw system in most states, D.C. tops the nation by spending over \$16,000 on every child in its universal pre-K program.

56. CHILD CARE AWARE, *supra* note 3, at 12.

57. *Id.* at 11.

58. *Id.* at 13.

59. *Id.*

school or a faith-based organization.⁶⁰ A challenge for most providers in ensuring high-quality programs stems from difficulties in recruiting and retaining a highly qualified workforce.⁶¹ Many providers also struggle with general budget constraints that can sometimes produce roadblocks in accessing and training workers in a high-quality curriculum.⁶²

III. PROBLEMS FACED BY MOTHERS

A. Mothers' Need for Childcare and Out-of-School Time Care

With 65% of American women working outside the home, adequate childcare legislation is an invaluable tool that should support moms who work while also ensuring women can return to work after having kids.⁶³ The data is clear: maternal employment has a direct correlation with the availability and affordability of childcare.⁶⁴ When childcare prices rise, mothers' workforce participation decreases.⁶⁵ Even once mothers are in the workforce, the battle is just beginning.⁶⁶ Working mothers are often forced to miss out on career opportunities if the childcare they have secured is insufficient to meet their schedules' demands.⁶⁷ Access to childcare enables mothers to increase their contributions to household earnings, which for many families can help chipping away at stubborn cycles of intergenerational poverty.⁶⁸

As more women join the workforce and the demand for childcare increases, factors beyond simply having enough programs come into play. Families considering their options may prioritize factors such as "convenient locations, schedules that match those of the family, educational programs that fit with the family's values, safety, and affordability."⁶⁹ For example, out-of-school time programs that engage kids in enriching activities before and after school and during the summer can protect mothers' work schedules from being upended every time schools go on break.⁷⁰

The ripple effects of childcare, or the lack thereof, stemming from the pandemic have only intensified the burdens placed on mothers' professional

60. *School-Age Child Care and Camp Programs*, *supra* note 20.

61. OECD, EARLY CHILDHOOD EDUCATION: EQUITY, QUALITY, AND TRANSITIONS 26 (2020), <https://web-archiver.oecd.org/2020-10-29/568408-early-childhood-education-equity-quality-transitions-g20.pdf>.

62. *Id.*

63. See Angela C. Oldham, Comment, *Fix Me Baby One More Time: A Permanent Solution for Day Cares*, 65 DEPAUL L. REV. 1139, 1162 (2016).

64. See, e.g., Schur, *supra* note 39, at 867.

65. *Id.*

66. *Cf. id.* at 859.

67. *See id.* at 859.

68. OECD, *supra* note 61, at 4.

69. See Schur, *supra* note 39, at 866.

70. *Cf. School-Age Child Care and Camp Programs*, *supra* note 20.

aspirations.⁷¹ Since the start of the COVID-19 crisis, almost 2.5 million women have left the workforce compared to 1.8 million men.⁷² Even if one were to account for factors such as sector or seniority, women workers were “three times more likely than men to not be working as a result of childcare challenges.”⁷³ The greater impact on women in the workforce is partially due to pervasive gender norms that assume mothers will be the ones to downshift their careers when children need a parent at home to aid in remote learning,⁷⁴ or when the neighborhood daycare center is closed for the third time in a week after another kid tests positive for COVID.⁷⁵ Vice President Kamala Harris declared the loss of women in the workforce a national emergency in 2021, years after the initial onset of the COVID-19 pandemic, partly due to the fact that women’s labor force participation was at its lowest since 1988.⁷⁶

While many are concerned about women’s labor force exits and how a lack of childcare accessibility is impacting mothers specifically, it should be noted that not everyone sees the exits as a loss.⁷⁷ Long before the pandemic, a 2016 study found that nearly 18% of U.S. parents (more than 80% of whom were women) did not work outside the home, and that 18% figure did not change when researchers conducted the same study in 2021.⁷⁸ A 2021 survey expressed many women’s strong interest in “working less,” with nearly a third of mothers surveyed reporting they were considering “downshifting” their careers or pulling out of the workforce altogether.⁷⁹

71. See Emmalyn Krantz, *Paid Family Leave: How a Global Pandemic Exacerbates the Need for a Comprehensive National Paid Leave Policy*, 2022 U. ILL. L. REV. 1293, 1313 (2022).

72. Katie Rogers, *2.5 Million Women Left the Work Force During the Pandemic Harris Sees a ‘National Emergency.’* N.Y. TIMES (Mar. 30, 2021), <https://www.nytimes.com/2021/02/18/us/politics/women-pandemic-harris.html>.

73. See Krantz, *supra* note 71, at 1317; Jasmine Garsd, *Women Three Times More Likely Than Men to Not Work During Pandemic Because of Child Care*, MARKETPLACE (Aug. 21, 2020), <https://www.marketplace.org/2020/08/21/women-three-times-more-likely-than-men-to-not-work-during-pandemic-because-of-child-care/>.

74. “Many American women have carefully planned their working lives to accommodate children. They choose jobs with more flexibility or fewer hours, even if they earn less or are overqualified, or start businesses so they can control their schedules.” Miller, *supra* note 1.

75. “Many parents are finding themselves in the position of having to provide remote learning supervision for their children even though they are enrolled in a public or private school.” JULIE KASHEN ET AL., THE CENTURY FOUND. HOW COVID-19 SENT WOMEN’S WORKFORCE PROGRESS BACKWARD: CONGRESS’ \$64.5 BILLION MISTAKE 2 (Oct. 29, 2020), https://production-tcf.imgix.net/app/uploads/2020/10/05120307/womens-workforce_FinalPDF.pdf.

76. Rogers, *supra* note 72; see Krantz, *supra* note 71, at 1313.

77. Cf. Olga Khazan, *The Professional Women Who Are Leaning Out*, THE ATLANTIC (May 2, 2021), <https://www.theatlantic.com/politics/archive/2021/05/why-dont-more-american-moms-work-part-time/618741/>.

78. Richard Fry, *Almost 1 in 5 Stay-at-Home Parents in the U.S. Are Dads*, PEW RSCH. CTR. (Aug. 3, 2023), <https://www.pewresearch.org/short-reads/2023/08/03/almost-1-in-5-stay-at-home-parents-in-the-us-are-dads/>.

79. Khazan, *supra* note 77.

While mothers' desires regarding downshifting sounds good in theory, the reality in the U.S. is that high-paying part-time jobs are few and far between.⁸⁰ Mothers who might wish to work part-time have to rely on more companies being willing to hire part-time workers and would still have to contend with affordability and accessibility issues related to childcare for the portions of the day they are working.⁸¹ Additionally, when one probes deeper into societal opinions around working mothers, it becomes clear the heart of the issue is not a belief that women must return to a more traditional role in society that centers on domestic work.⁸² In fact, that notion was rejected by 79% of Americans in a Pew research study.⁸³ Rather, the dissatisfaction felt by many Americans is aimed at the current model of child-rearing that makes juggling working and parenting incredibly difficult.⁸⁴

B. Pandemic Exacerbation of the Disparities in Access to Quality Childcare and Out-of-School Time Programming

During the pandemic, almost all mothers dealt with the complications that arise when one can no longer rely on schools, daycares, or even other family and friends to help with childcare.⁸⁵ However, those most impacted were Black and Hispanic women, single moms, and the mothers of school-aged and younger children.⁸⁶ Before and during the pandemic, women of color, single moms, and low-wage earners often found it economically infeasible to exit the paid labor force to care for their children.⁸⁷ Black women especially had to face the duality of having notably higher levels of labor force participation than their white counterparts while simultaneously experiencing more job disruptions due to inaccessible childcare.⁸⁸ Childcare-related decisions were even harder for single parents who somehow juggled the responsibilities of earning and caring after the schools and daycares they relied on closed.⁸⁹ Women of color and low-income families are also less likely to have a backup if the childcare they previously secured falls through.⁹⁰ Black and Latino families disproportionately need childcare that can accommodate a nonstandard hour schedule.⁹¹ However, this kind of childcare is

80. *See id.*

81. *See id.*

82. *See* Janell Ross, *Most Americans Think Mothers Shouldn't Work Full-Time. The Reality is Far Different*, WASH. POST (Oct. 15, 2015, 2:09 PM), <https://www.washingtonpost.com/news/the-fix/wp/2015/10/15/most-americans-think-mothers-shouldnt-work-full-time-the-reality-is-far-different/>.

83. *Id.*

84. *Id.*

85. *See* Claudia Goldin, *Understanding the Economic Impact of COVID-19 on Women* 15 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29974, 2022), https://www.nber.org/system/files/working_papers/w29974/w29974.pdf.

86. *Id.* at 1.

87. KASHEN ET AL., *supra* note 75, at 3.

88. *Id.*

89. *Cf. id.*

90. *See* Cahn & McClain, *supra* note 8, at 19.

91. CHILD CARE AWARE, *supra* note 3, at 6.

in short supply across the country, and the pandemic only worsened those supply gaps.⁹²

The pandemic shuttered the childcare sector.⁹³ A 2020 survey given to parents with young children found that over 70% reported their childcare provider being closed or operating with limits to their hours of operation or available slots.⁹⁴ Childcare providers were hit especially hard by the pandemic, with many having to close temporarily or, even if they remained open, managing the impact of lost revenue from families that could no longer pay or who dropped out from utilizing their services entirely.⁹⁵

Ironically, women of color make up a substantial portion of the underpaid childcare workforce while having the least access to high-quality, affordable care for their children.⁹⁶ Women of color especially had larger and more persistent increases in labor force exits during COVID.⁹⁷ During the pandemic's first ten months, women of color lost more jobs than men because women-dominated industries like childcare were hit the hardest by the virus's economic effects.⁹⁸

IV. THE AMERICAN RESCUE PLAN AS A GUIDE

A. *History of U.S. Childcare Policy*

In contrast to other rich countries like France, Japan, or Australia, the U.S. has failed to establish a universal childcare policy.⁹⁹ Today, U.S. childcare policy resembles a “fractured and confusing amalgamation of laws and standards.”¹⁰⁰ But how did we get here? To understand the childcare-related policies stemming from the American Rescue Plan, it is important to situate these landmark provisions within the larger history of U.S. childcare policy.

The first prominent piece of federal legislation impacting childcare was the Lanham Act, passed in 1941.¹⁰¹ Under the backdrop of World War II and the introduction of millions of women into the workforce, the Lanham Act authorized the building of daycare centers that cared for the nearly 600,000 children of these

92. *Id.*

93. Catherine Powell, *Color of Covid and Gender of Covid: Essential Workers, Not Disposable People*, 33 YALE J. L. & FEMINISM 1, 15 (2021).

94. KASHEN ET AL., *supra* note 75, at 2.

95. *Id.*

96. See Gemma S. Decarvalho & Sarah Yergeau, *States Try to Rescue Child Care from the Brink—But for How Long?*, NAT'L WOMEN'S L. CTR. (Nov. 18, 2022), <https://nwlc.org/states-try-to-rescue-child-care-from-the-brink-but-for-how-long/>.

97. See Katherine Lim & Mike Zabek, *Women's Labor Force Exits During COVID-19: Differences by Motherhood, Race, and Ethnicity* 5 (June 14, 2023) (Bd. of Governors of the Fed. Rsr. Sys. Working Paper No. 2021-067), <https://www.federalreserve.gov/econres/feds/files/2021067r1pap.pdf>.

98. See Powell, *supra* note 93, at 16.

99. Madeline Marshall, *Why the US Doesn't Have Universal Child Care (Anymore)*, VOX (Feb. 18, 2022, 3:15 PM), <https://www.vox.com/videos/2022/2/18/22941032/us-universal-child-care-government-funded-policy>.

100. Schur, *supra* note 39, at 864.

101. Lanham Act, Pub. L. No. 76-862, 54 Stat. 1125 (1940).

working women.¹⁰² That effort became the first and only time the U.S. has implemented a universal childcare program.¹⁰³ For only fifty cents a day (amounting to about \$9 today), mothers could rely on a government-funded daycare center as they pursued work and other opportunities.¹⁰⁴ These daycare centers ranged from preschools for children between ages two and six to afterschool programs for school-age children.¹⁰⁵ Even after federal funding dried up in 1946 and many temporary daycare facilities closed, the steady rise in women's workforce participation meant the desire for permanent childcare solutions also began to increase.¹⁰⁶ After the war, federal childcare policies mostly targeted low-income families. For example, an income tax provision instituted in 1954 allowed low-income working mothers and widows to take a maximum deduction for childcare expenses.¹⁰⁷

Further development in childcare policy came in 1964 with the creation of the Head Start program.¹⁰⁸ As a core component of the Economic Opportunity Act, which was part of President Johnson's war on poverty agenda, the Head Start program was a federally run program that directly provided preschool education to low-income children and that supported other antipoverty services.¹⁰⁹ Policymakers envisioned the program breaking cycles of poverty by providing comprehensive preschool programming that meets kids' "emotional, social, health, educational, and psychological needs."¹¹⁰ However, the program's structure limited the impact it could have had on all mothers by initially only offering part-time care and making only low-income families eligible.¹¹¹

In 1971, the U.S. came as close as it has ever been to the passage of permanent universal childcare.¹¹² The Comprehensive Child Development Act (CCDA) resulted from women's organizations pressuring lawmakers to create a federal childcare program.¹¹³ Both chambers of Congress passed the final version of the bipartisan CCDA in 1971 that included the provision of "free childcare to families earning up to 44% of the national median income and offering childcare based on

102. Oldham, *supra* note 63, at 1145; *see* OFF. OF U.S. SENATOR ELIZABETH WARREN, *supra* note 44, at 1.

103. *See* OFF. OF U.S. SENATOR ELIZABETH WARREN, *supra* note 44, at 1.

104. Marshall, *supra* note 99.

105. *See* Goldin, *supra* note 85, at 2.

106. Marshall, *supra* note 99.

107. Schur, *supra* note 39, at 864.

108. Oldham, *supra* note 63, at 1147.

109. Economic Opportunity Act, Pub. L. No. 88-452, 78 Stat. 508 (1964); Oldham, *supra* note 63, at 1147.

110. SHELLEY L. SMITH ET AL., EARLY CHILDHOOD CARE AND EDUCATION: AN INVESTMENT THAT WORKS 3 (1995).

111. *See* Oldham, *supra* note 63, at 1147.

112. *See* Schur, *supra* note 39, at 865.

113. Economic Opportunity Amendments of 1971 (Title V: Comprehensive Child Development Act), S. 2007, 92nd Cong. (1971); *see* Schur, *supra* note 39, at 865.

a sliding fee scale to families earning up to 74% of the median income.”¹¹⁴ The bill called for a nationally funded system of childcare centers that would provide families with education, nutrition, and medical services.¹¹⁵ This nuanced eligibility criteria was intentional because the bill’s proponents were looking to avoid categorizing it as a “poor person’s program” and instead intended for the childcare centers to be available to all families on a sliding fee basis.¹¹⁶ Acknowledging the benefit of local control, the bill was specifically written to build on the Head Start program by contracting with local “sponsors,” which ranged from individual providers to school districts and states.¹¹⁷ The legislation also defined quality standards for care that states would follow.¹¹⁸

The momentum for a universal childcare policy stopped when President Nixon vetoed the Act.¹¹⁹ The President pointed to the bill’s “fiscal irresponsibility, administrative unworkability, and family-weakening implications of the system it envisions.”¹²⁰ While financial infeasibility and the likelihood of administrative defects are typical criticisms thrown at many new pieces of legislation; the family-weakening rhetoric from the bill’s opponents is perhaps the most troubling critique given the context of this bill’s push by women’s groups amidst a burgeoning women’s movement in the United States. Nixon’s veto sought to preserve the “traditional family structure” that sees the mother’s primary responsibility as raising kids in the home.¹²¹ Despite the reality of many low-income women already working outside of the home out of necessity, the political opposition was especially disturbed by the notion that a universal childcare program would include “middle-income couples that would like to farm out their children while they pursue individual careers.”¹²² Nixon’s veto reaffirmed a commonly held belief that educating and caring for children should remain the responsibility of individual families, not the government.¹²³

There are dual objectives at play here. On the one hand, there is a recognition that some form of childcare must exist at the local level for working-class mothers to be able to afford to raise their children. On the other hand, is the championing of efforts to block more comprehensive federal legislation that the CCDA’s opponents feared would upend middle-class and upper-class families that did not have

114. See Schur, *supra* note 39, at 865.

115. See OFF. OF U.S. SENATOR ELIZABETH WARREN, *supra* note 44, at 1.

116. *Id.*

117. *Id.*

118. See Oldham, *supra* note 63, at 1147.

119. See Schur, *supra* note 39, at 866.

120. *Id.*; see Jack Rosenthal, *President Vetoes Child Care Plan as Irresponsible*, N.Y. TIMES (Dec. 10, 1971), <https://www.nytimes.com/1971/12/10/archives/president-vetoes-child-care-plan-as-irresponsible-he-terms-bill.html>.

121. Schur, *supra* note 39, at 866.

122. Schur, *supra* note 39, at 866.

123. BRENDA K. BUSHOUSE, UNIVERSAL PRESCHOOL: POLICY CHANGE, STABILITY, AND THE PEW CHARITABLE TRUST 1 (2009).

the financial necessity for mothers to work.¹²⁴ The narrow miss of the CCDA becoming law is especially relevant considering that it remains the only effort in the U.S. that has ever come close to making a comprehensive childcare and education system for all working parents.¹²⁵

Brushing off the disappointment of the CCDA failing to pass, lawmakers pushed forward some consolatory measures that session with more money than initially planned being appropriated toward various programs and childcare-related expenditures, but this piecemeal approach lacked the cohesive, overarching strategy and enforcement the CCDA would have provided.¹²⁶ Additionally, a day after vetoing the CCDA, President Nixon signed a bill that created childcare tax deductions for middle-class and upper-class families.¹²⁷ This bill became the precursor to the tax deduction method still in effect today.¹²⁸ Congress developed a more formal childcare tax deduction program with the establishment of the Child and Dependent Care Tax Credit, which permits families to get money back for “work-related expenditures paid for child care cost.”¹²⁹ Starting with up to 20% back of the total childcare expenditures one made, many amendments and revisions have made it so taxpayers today can receive up to 35% of their childcare expenses back by utilizing these credits.¹³⁰ Further expansion to another existing program came in 1994 with the federal government’s development of the Early Head Start Program, which cares for children in their first three years.¹³¹ The government also approved full-day services for the Head Start Program in 1996.¹³²

B. Overview of the American Rescue Plan and its Child-Focused Provisions

The childcare industry faced significant challenges as a result of the COVID-19 pandemic.¹³³ Whether it was a state’s public health order forcing childcare centers to close temporarily, parents choosing to keep their kids at home in fear of them contracting the virus, or centers only operating at a limited capacity to adhere to social distancing guidelines, the childcare industry desperately needed a lifeline.¹³⁴ The first beacon of hope came in March 2020 through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which set aside nearly \$4 billion for childcare programs and the federal Head Start program.¹³⁵ As the American economy suffered the early impact of the pandemic, Republican Senate Majority Leader Mitch McConnell described the CARES Act as necessary “emergency relief” and secured

124. See Schur, *supra* note 39, at 866.

125. See Oldham, *supra* note 63, at 1147.

126. See Schur, *supra* note 39, at 871.

127. See Schur, *supra* note 39, at 866.

128. *Id.*

129. Oldham, *supra* note 63, at 1148.

130. *Id.*

131. *See id.*

132. *See id.*

133. See, e.g., Quinton, *supra* note 15.

134. *See id.*

135. *See id.*; Pub. L. No. 116-136, 134 Stat. 281 (2020).

bipartisan support for the law.¹³⁶ This statute was followed by the Coronavirus Response and Relief Supplemental Appropriations Act (CRSSA) in December 2020, which set aside over \$10 billion to prop up childcare programs and Head Start again.¹³⁷ However, the true life preserver the industry needed finally came in March 2021, when the American Rescue Plan (ARP) allocated nearly \$40 billion to the childcare sector.¹³⁸ Passed under a new President nearly a year after the CARES Act, the ARP did not receive bipartisan support and was described by its detractors as an overbroad Democratic “wishlist.”¹³⁹

This funding was essential for providers and, in many ways, staved off the possibly catastrophic effect the pandemic was projected to have on an already overburdened childcare industry.¹⁴⁰ Once relief funding was in the hands of providers, it allowed many to reopen, some to pay off debt, and others to provide well-deserved wage increases to place a band-aid on staffing difficulties.¹⁴¹ In Minnesota, one childcare advocate noted that notwithstanding the drops in attendance and overall revenue at the onset of the pandemic in her state, about as many childcare providers closed in 2020 as in previous years.¹⁴² She pointed to the stabilizing impact of federal aid as the key that kept most providers on their feet.¹⁴³

While the aid from the ARP came from the federal government, the implementation and disbursement of the dollars were largely left to state and local governments.¹⁴⁴ Federal aid flowed through the Child Care and Development Block Grant program (CCDBG), which gave states funding to help families afford childcare and improve the state’s quality of childcare.¹⁴⁵ The principle guidelines on the money were that states spend \$24 billion in childcare business stabilization grants by 2023 and \$15 billion in childcare supplemental funding and subsidy dollars by 2024.¹⁴⁶ The stabilization grants were available to all types of providers and could be spent on a number of necessities ranging from rent and wages to general operating expenses.¹⁴⁷ The subsidy dollars were geared toward supporting

136. Kelsey Snell, *What’s Inside the Senate’s \$2 Trillion Coronavirus Aid Package*, NPR (Mar. 26, 2020), <https://www.npr.org/2020/03/26/821457551/whats-inside-the-senate-s-2-trillion-coronavirus-aid-package>.

137. See Quinton, *supra* note 15; Pub. L. No. 116-260, 134 Stat. 1182 (2020).

138. Kashen & Malik, *supra* note 34; Pub. L. No. 117-2, 135 Stat. 4 (2021).

139. See Barbara Sprunt, *Here’s What’s in the American Rescue Plan*, NPR (Mar. 2021), <https://www.npr.org/sections/coronavirus-live-updates/2021/03/09/974841565/heres-whats-in-the-american-rescue-plan-as-it-heads-toward-final-passage>.

140. See Kashen & Malik, *supra* note 34.

141. *Id.*

142. Quinton, *supra* note 15.

143. *Id.*

144. See Karen Schulman, *Child Care Rescue: How States are Using Their American Rescue Plan Act Child Care Funds*, NAT’L WOMEN’S L. CTR. 1 (Oct. 2022), <https://nwlc.org/wp-content/uploads/2023/01/Child-Care-Rescue-State-Uses-of-ARPA-Funds-NWLC-Report.pdf>.

145. *Id.*

146. Quinton, *supra* note 15.

147. *Id.*

low-income families to afford care and could be used to increase subsidies to families or as payments to providers.¹⁴⁸ Additional provisions include \$35 million available through 2025 for administrative purposes such as providing technical assistance to the grant and subsidy programs and conducting research.¹⁴⁹ There was also a permanent \$633 million increase in annual funding of childcare entitlements to states.¹⁵⁰

Beyond the funding to childcare providers, the ARP impacted families directly by expanding the existing childcare tax credit system.¹⁵¹ Families that pay someone else to care for their child so that a parent can work or actively look for work are entitled to the Child and Dependent Care tax credit.¹⁵² The credit amount depends on income and the percentage of expenses incurred for the qualifying care.¹⁵³ Families with an annual income of less than \$200,000 (or \$400,000 if filing jointly) can claim the full Child Tax Credit for each qualifying child, which has been expanded up to \$3,600 a year after the ARP.¹⁵⁴ However, the most impressive ARP alteration to this long-time and still existing credit was a 2021 provision permitting advance payments of up to half of the credit to families.¹⁵⁵ These disbursements were divided and went out monthly from July 2021 through December 2021, essentially providing monthly child payments to families when many needed it the most.¹⁵⁶ The expanded child tax credit garnered support from most of the Democratic Party, but was short lived when Republicans opposed President Biden's attempts to preserve it.¹⁵⁷

The ARP also set aside \$500 billion that can be used to support young people when they are out of school.¹⁵⁸ Beyond the \$39 billion for childcare (which can include school-age programs), \$22 billion went to local educational agencies for learning recovering strategies that might implicate afterschool or summer enrichment programs.¹⁵⁹ Additionally, \$1.22 billion was earmarked explicitly for

148. *Id.*

149. *American Rescue Plan Act (ARP)*, CHILD CARE AWARE, <https://www.childcareaware.org/our-issues/public-policy/american-rescue-plan-arp-act> (last visited Nov. 9, 2023).

150. *Id.*

151. Blake Emerson, *Public Care in Public Law: Structure, Procedure, and Purpose*, 16 HARV. L. & POL'Y REV. 35, 37 (2021).

152. *Child and Dependent Care Credit Information*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/individuals/child-and-dependent-care-credit-information> (last visited Nov. 9, 2023).

153. *Id.*

154. *Child Tax Credit*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/individuals/child-tax-credit> (last visited Nov. 9, 2023); see Powell, *supra* note 93, at 38.

155. See *Advanced Child Tax Credit Payments in 2021*, *supra* note 13.

156. See *Child Tax Credit and Advance Child Tax Credit Payments*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/2021-child-tax-credit-and-advance-child-tax-credit-payments-topic-a-general-information> (last visited Nov. 9, 2023).

157. Jason DeParle, *The Expanded Child Tax Credit Is Gone. The Battle Over It Remains*, N.Y. TIMES (Nov. 25, 2022), <https://www.nytimes.com/2022/11/25/us/politics/child-tax-credit.html>.

158. *American Rescue Plan*, AFTERSCHOOL ALL., <https://www.afterschoolalliance.org/covid/American-Rescue-Plan.cfm> (last visited Nov. 9, 2023).

159. *Id.*

afterschool and another \$1.22 billion was earmarked for summer programs.¹⁶⁰ Finally, a huge share of \$350 billion went to state and local governments who were given free rein to use the money for childcare and other purposes.¹⁶¹

C. Impacts of the American Rescue Plan's Child-Focused Provisions on the Childcare Industry, Families, and Mothers

The American Rescue Plan Act provided the most significant investment in childcare in American history.¹⁶² Through states' various means of disbursement, ARP dollars have gone toward keeping childcare programs open, providing families access to quality childcare in flexible settings so they could return to work, and dedicating more funds to workers' compensation.¹⁶³ Forty percent of states have reduced or completely waived parental co-payments to increase the affordability of childcare programs for families who rely on subsidized care, and a majority of states have increased provider payment rates to improve the quality of care and encourage more providers to join the industry.¹⁶⁴ Expanded eligibility schemes put forward by several states have also allowed more middle-class families to qualify for assistance.¹⁶⁵

The ARP's expansion of the Child Tax Credit in 2021 benefitted families and lifted an estimated 4.1 million children (~40%) out of poverty by making the credit fully refundable and providing advance payments, which materialized as

160. *Id.*

161. *Id.* The District of Columbia received \$38.8 million in Child Care stabilization grants and \$24.9 million in Child Care discretionary funding. OFF. OF THE STATE SUPERINTENDENT, COVID RELIEF FUNDS FOR CHILD CARE 2 (July 26, 2021), https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/COVID%20Relief%20Funding%20Chart.pdf. Much of the discretionary funds went toward increasing subsidy pay rates and providing scholarships and other financial incentives to childcare workers. See *American Rescue Plan Act (ARP)*, *supra* note 149. Washington, D.C., specifically has developed the D.C. Leading Educators toward Advanced Degrees (LEAD) program, which gives these workers access to resources that can be used to complete coursework toward a degree in early childhood education. Schulman, *supra* note 144, at 6. The city also filtered a large portion of its ARP funding through the Office of the State Superintendent of Education (OSSE) Division of Early Learning (DEL), which administered three different grant programs: the Access to Quality Child Care Grant, Back-to-Work Child Care Grant, and DC Child Care Stabilization Targeted Grant. OFF. OF THE STATE SUPERINTENDENT, GRANT OPPORTUNITIES FOR CHILD DEVELOPMENT FACILITIES 3 (Dec. 2022), https://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/Grant%20Opportunities20for%20Child%20Development%20Facilities%20December%202022.pdf.

162. Diane Girouard, *Reflecting on the Impact of the American Rescue Plan Act: One Year Later*, CHILD CARE AWARE, (Mar. 11, 2022), <https://info.childcareaware.org/blog/reflectinontheimpactoftheamericanrescueplanact>.

163. *Id.*

164. *FACT SHEET: American Rescue Plan Funds Provided a Critical Lifeline to 200,000 Child Care Providers - Helping Millions of Families to Work*, THE WHITE HOUSE (Oct. 21, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/21/fact-sheet-american-rescue-plan-funds-provided-a-critical-lifeline-to-200000-child-care-providers-helping-millions-of-families-to-work> [hereinafter *American Rescue Plan Funds*].

165. *Id.*

monthly cash payments.¹⁶⁶ Nearly a third of families used these payments on school expenses, while one in four families used the advanced payments to cover childcare costs.¹⁶⁷ The \$24 billion stabilization dollars for childcare providers and \$15 billion for the Child Care and Development Block Grant helped keep a sinking industry afloat and provided mothers with the childcare they needed to reenter the workforce.¹⁶⁸ The ARP also made the Child and Development Tax Credit refundable and increased the overall amount of the credit, benefiting low-income families attempting to juggle childcare expenses and work.¹⁶⁹

Across the nation, about 12,000 childcare programs closed during the pandemic.¹⁷⁰ However, it is estimated that ARP funds (and the accumulation of prior relief funding) prevented nearly 200,000 childcare providers from permanently closing, which amounts to at least 9.5 million saved spots for children whose mothers want to get back to work.¹⁷¹ A national survey found that of the providers who received childcare stabilization grants, 92% reported it helped them stay open, and almost half reported using the grants to pay off the debt they had accumulated during the pandemic.¹⁷² The ARP also impacted mothers' employment rates. In March of 2021, employment rates for mothers with children below six were 3% below pre-pandemic levels.¹⁷³ After some time passed and various parts of the ARP took effect, the employment rate for mothers with children under six has fully bounced back to pre-pandemic levels.¹⁷⁴ ARP funding was also disbursed with an eye toward equity, with Childcare Stabilization assistance reaching providers in 98% of the persistent poverty counties in most states and nearly 45% of childcare providers who have received assistance being people of color.¹⁷⁵ The ARP also supported the childcare workforce. An overwhelming 88% of childcare centers that received those stabilization payments reportedly used them to pay for personnel costs as the childcare industry competes with other industries that have higher minimum pay.¹⁷⁶

166. *How the American Rescue Plan Provides Critical Relief to Women and Families*, NAT'L WOMEN'S L. CTR. (Mar. 24, 2021), <https://nwlc.org/how-the-american-rescue-plan-provides-critical-relief-to-women-and-families/> [hereinafter *ARP Provides Critical Relief*]; see *Child Tax Credit and Advance Child Tax Credit Payments*, *supra* note 156.

167. Daniel J. Perez-Lopez & Yeris Mayol-García, *Parents with Young Children Used Child Tax Credit Payment for Child Care*, U.S. CENSUS BUREAU (Oct. 26, 2021), <https://www.census.gov/library/stories/2021/10/nearly-a-third-of-parents-spent-child-tax-credit-on-school-expenses.html>.

168. See *ARP Provides Critical Relief*, *supra* note 166.

169. *Id.*

170. Dana Goldstein, *Why You Can't Find Child Care: 100,000 Workers Are Missing*, N.Y. TIMES (Oct. 13, 2022), <https://www.nytimes.com/2022/10/13/us/child-care-worker-shortage.html>.

171. *American Rescue Plan Funds*, *supra* note 164.

172. Kashen & Malik, *supra* note 34.

173. *American Rescue Plan Funds*, *supra* note 164.

174. *Id.*

175. *Id.*

176. *Id.* In D.C. specifically, it's estimated that federal relief funding stabilized four hundred eighty-five programs impacting about 23,800 kids in D.C. who still had a place to be cared for that might not have been possible without the ARP. *District of Columbia ARP Child Care Stabilization Fact Sheet*, ADMIN. FOR CHILD. AND FAMS. (Dec. 31, 2022), https://www.acf.hhs.gov/sites/default/files/documents/occ/District_of_Columbia_ARP_Child_Care_Stabilization_Fact_Sheet.pdf. Three hundred thirty-five

V. SUGGESTED IDEAS AND METHODS TO EXPAND THE AMERICAN RESCUE PLAN'S
CHILDCARE PROVISIONS AND OTHER NOVEL SOLUTIONS

A. Accessibility

There is much the government can do to incentivize the creation of more childcare and school-age programs, such as funding training programs for childcare employees or offering real estate/zoning privileges to developers that include childcare centers in their buildings.¹⁷⁷ For example, the U.S. Commerce Department recently announced its plan to require companies seeking at least \$150 million in funding from a multi-billion dollar semiconductor law to also submit plans to offer workers affordable child care.¹⁷⁸ Requiring large companies to grapple with the childcare question can go a long way in fulfilling what is often the most pressing need for working mothers.

Beyond adequately staffing existing centers and opening more centers, the other side of accessibility for some working mothers is finding programs (and spots in the few that do exist) that can care for young infants.¹⁷⁹ Additionally, it is harder for mothers to find childcare programs if they work beyond the standard nine-to-five workday.¹⁸⁰ A care system that is genuinely accessible will have options that fulfill families with specific needs beyond a one-size-fits-all option.

Furthermore, childcare programs cannot grow in number without workers. To stabilize the attrition rate of these essential employees, childcare workers need “higher pay, hiring or retention bonuses, and expanded benefits.”¹⁸¹ Funding the hiring and retaining of childcare workers will improve the quality, affordability, and accessibility of care options, ultimately supporting mothers’ ability to work.¹⁸² A cornerstone of any high-quality childcare program is the staff that works with the children.¹⁸³ Beyond simply retaining staff, it is incumbent upon any program to ensure staff are not only trained in basic safety procedures but also have access to ongoing opportunities to enhance the quality of their care and

of the childcare centers receiving those stabilization payments reported using them to pay for personnel costs and to ensure programs stayed staffed. *Id.* Focusing on the debilitating staffing shortages in the industry is a wise choice, with the childcare workforce still not bouncing back, with levels in August 2022 remaining 8.4% below pre-pandemic levels. Schulman, *supra* note 144. Not leaving behind school-age children, Washington, D.C., invested \$5 million of its ARP funding into Out-of-School Time grants that specifically go toward afterschool and summer programming. *Supporting Students with Afterschool & Summer Programs Funded by Pandemic Relief*, AFTERSCHOOL ALL., <http://www.afterschoolalliance.org/covid/partnerships.cfm> (last visited Nov. 9, 2023).

177. See Shepardson, *supra* note 14.

178. *Id.*; Joey Garrison, *Child Care a Requirement for Chip Makers Seeking Billions in Incentives Under Biden Rules*, USA TODAY (Feb. 28, 2023), <https://www.usatoday.com/story/news/politics/2023/02/28/child-care-required-chip-makers-applying-federal-funds/11358590002/>.

179. See Schur, *supra* note 39, at 866.

180. *Id.*

181. *American Rescue Plan Funds*, *supra* note 164.

182. *Id.*

183. See OECD, STAFF TEAMS IN EARLY CHILDHOOD EDUCATION AND CARE CENTERS 9 (Apr. 21, 2022), <https://www.oecd-ilibrary.org/docserver/2b913691-en.pdf>.

grow their skills.¹⁸⁴ Even remedying the fact that no federal tax provision is targeted specifically at childcare workers can make a significant difference.¹⁸⁵

B. Affordability

The cumulative impact of the stimulus relief packages on the childcare industry was necessary and incredible; however, these relief bills alone cannot fully address the underlying structural issues in how America's childcare system operates. The problem with our current childcare system is not superficial; it is systemic. How can one provide quality childcare services and pay a competitive wage while keeping prices affordable? The paradox between high-quality and low-cost is why a complete laissez-faire approach is not sufficient. Our history of leaving childcare to chance has led to severely lacking one (if not two) of those pieces. The industry has an intractable problem that requires substantial government action to remedy. The current piecemeal policy system that leaves families puzzling together individual solutions is not enough. Remedial government actions could look like: the direct provision of childcare, funding of privately provided childcare (whether through cash to families, reimbursements, or tax deductions), the extension of childcare-related loans, and mandates on employers and landlords to pay for childcare or develop on-site childcare centers.¹⁸⁶

184. The DC LEAD grant program's provision of scholarships and incentives for childcare educators to complete formal coursework is exactly the sort of initiative that can be replicated in states across the country to incentivize more workers to enter the field and improve overall quality. *DC Leading Educators Toward Advanced Degrees (DC LEAD) Grant*, OFF. OF STATE SUPERINTENDENT OF EDUC., <https://osse.dc.gov/page/dc-leading-educators-toward-advanced-degrees-dc-lead-grant> (last visited Nov. 9, 2023). Washington, D.C., is also engaging in forms of no-strings-attached investment in the childcare workforce, implementing a new law that provides teachers of children between zero and five years old with an annual bonus payment of up to \$14,000, and a new health insurance option. Recognizing that childcare workers have never been properly compensated due to its "reli[ance] on the underpaid and unpaid work of women" provides even more reason for more jurisdictions to target investment in the salaries and opportunities needed to sustain and grow a currently unstable workforce. Emily Berman, *D.C. is Giving Preschool Teachers a Pay Bump. Here's How it's Making a Difference to Them*, DCIST (Mar. 14, 2023), <https://dcist.com/story/23/03/14/d-c-is-giving-preschool-teachers-a-pay-bump-heres-how-its-making-a-difference-to-them/>.

185. NAT'L Women's L. CTR., STATES CAN MAKE CARE LESS TAXING 3 (2023), <https://nwlc.org/wp-content/uploads/2023/03/MakingCareLessTaxingFS.pdf>. D.C. responded to accessibility and access concerns through its "Summer in the City" event, inviting hundreds of families around D.C. to engage directly with summer program and enrichment providers. Organized by the Office of the Deputy Mayor for Education's Office of Out-of-School Time Grants and Youth Outcomes, this event is a collaboration that brings together multiple D.C. agencies and community-based organizations that serve youth, so parents have a clear understanding of what is offered and how they might be able to access some of the amazing high-quality summer opportunities they might not have known were available to them. The Office of Out-of-School Time Grants and Youth Outcomes also considers equity issues by noting where programs take place throughout the city and using their funding to ensure quality programs are spread as much as possible throughout the city to make programming inclusive to special-needs populations. Sam P.K. Collins, *Upcoming Event to Highlight D.C. Summer Enrichment Programming*, WASH. INFORMER (Mar. 14, 2023), <https://www.washingtoninformer.com/upcoming-event-to-highlight-summer-enrichment-programming/>.

186. See Schur, *supra* note 39, at 867.

The originally proposed Build Back Better Act (BBB) expanded some of the short-term investments the ARP made into childcare into a long-term commitment through funding support for universal preschool and additional initiatives that would raise wages for providers and make high-quality programs across the country more accessible for families.¹⁸⁷ President Biden's original 2020 Build Back Better Plan included a \$400 billion universal childcare program that would have capped payments to 7% of a family's income and raised pay for childcare workers to a minimum of \$15 an hour.¹⁸⁸ The ambitious bill never passed, despite thin Democratic majorities in both the House and Senate, due to some moderate democrats being alienated by the Bill's large price tag and framing as a "once-in-a-lifetime" piece of legislation.¹⁸⁹ However, the Inflation Reduction Act that eventually passed in lieu of the proposed BBB was gutted of any childcare-related provision.¹⁹⁰ Many found irony in the final version of a bill that provided for all sorts of new jobs but did not leave in provisions that would have helped ensure that mothers had the care system in place to participate equally in those jobs.¹⁹¹ It is estimated that if the U.S. were to pursue full subsidization of childcare, it would lead to an increase of 10% in employment for all mothers.¹⁹²

While the BBB version of a federally subsidized universal childcare system did not materialize, the affordability component of the proposal is by far the most important and should not be lost in any subsequent attempt. Developing a system where family childcare contributions are based on a sliding scale model is a viable solution. For example, Finland has a publicly funded model where low-income families pay nothing, and the highest-earning parents might pay up to \$4,000 a year for their first child in the program and less for any subsequent children.¹⁹³ Striking a balance between full subsidization and having parents pay what they can afford lessens the overall bill the government might be footing while ensuring that no child is barred from quality childcare because of financial hardship. It is not enough to continue relying on disjointed policies and underfunded systems such as Early Head Start, where less than four in a hundred eligible kids are lucky enough to get off the ever-growing waitlist.¹⁹⁴ It is also imperative that any potential universal childcare system makes affordable and accessible options that serve

187. See CHILD CARE AWARE, *supra* note 3, at 3.

188. Berman, *supra* note 184; Goldstein, *supra* note 170.

189. Sahil Kapur & Carol E. Lee, *Who Lost Biden's Agenda? Democrats Offer Competing Theories for Failure of 'Build Back Better,'* NBC NEWS (Apr. 17, 2022), <https://www.nbcnews.com/politics/congress/lost-bidens-agenda-democrats-offer-competing-theories-failure-build-ba-rcna24552>.

190. Lisa Hagen, *Child Care Funding, a Top CT Priority, Stripped From Biden Bill*, CONN. MIRROR (Aug. 5, 2022), <https://ctmirror.org/2022/08/05/ct-child-care-democrats-bill-reduce-inflation-murphy-blumenthal-biden/>; Ann Schimke et al., *Child Care Providers Brace for Future Without Biden's Proposed Early Childhood Funding*, CHALKBEAT (Aug. 3, 2022), <https://www.chalkbeat.org/2022/8/3/23290933/federal-spending-bill-cuts-child-care-preschool-biden-manchin>; Pub. L. No. 117-169, 136 Stat. 1818 (2022).

191. See Berman, *supra* note 184.

192. See Schur, *supra* note 39, at 867.

193. EICHNER, *supra* note 55, at 107.

194. *Id.*

the diverse needs of families, such as programs for children with disabilities, programs that operate at non-standard hours, and culturally/linguistically competent options that reflect the communities they are serving.¹⁹⁵

There is already proposed federal legislation that would strengthen U.S. childcare infrastructure, by establishing federally supported childcare options that are affordable, accessible, and high-quality.¹⁹⁶ Specifically, Senator Elizabeth Warren’s Universal Child Care and Early Learning Act champions a sliding scale payment option for families which works toward affordability, grants incentives for states to increase the number of their childcare centers, which touches on access, and encourages improvements in quality by directly investing into workforce training and compensation.¹⁹⁷ The plan also employs a “prime sponsors” model wherein an entity such as a state or a nonprofit serves as the primary delivery mechanism that strengthens the childcare system by disbursing federal funds and assessing the childcare needs and goals of the jurisdiction.¹⁹⁸

A universal “childcare for all” approach that can appeal to families of all class levels would have the ability to increase access to childcare for low-income families while also relieving middle-class families of the exorbitant cost of private programs.¹⁹⁹ Politicians across the aisle may accept a universal policy that provides childcare to both middle-income families and low-income families because they are less likely to see such a program as welfare.²⁰⁰ Therefore, Congress is more likely to provide a universal policy with continuous funding.²⁰¹ In contrast to the wariness around federally funded childcare from the 1970s, there has been a major shift in public perception today and increased bipartisan interest in federally funded early childhood programs.²⁰² This shift can be linked to a greater understanding of how children’s brain development and life outcomes are likely to be improved based on the quality of their early experiences.²⁰³ Sustained political support, continual funding, and universal services that touch all classes of Americans are also more likely to be licensed or standardized to a

195. See KASHEN ET AL., *supra* note 75, at 11.

196. See OFF. OF U.S. SENATOR ELIZABETH WARREN, *supra* note 44, at 3.

197. See, e.g., Cahn & McClain, *supra* note 8, at 46; Universal Child Care and Early Learning Act, S. 1398, 117th Cong. (2021).

198. Elliot Haspel, *The Universal Child Care and Early Learning Act: The Boldest Plan On Offer Is Quietly Received (3-Part Series, Part 2)*, EARLY LEARNING NATION (May 25, 2021), <https://earlylearningnation.com/2021/05/the-universal-child-care-and-early-learning-act-the-boldest-plan-on-offer-is-quietly-received-3-part-series-part-2/>.

199. ELIZABETH ROSE, THE PROMISE OF PRESCHOOL: FROM HEAD START TO UNIVERSAL PRE-KINDERGARTEN 132 (2010).

200. See ROBERT C. PIANTA & CAROLLEE HOWES, THE PROMISE OF PRE-K 67 (2009).

201. *Id.*

202. BIPARTISAN POL’Y CTR., HISTORY OF FEDERAL FUNDING FOR CHILD CARE AND EARLY LEARNING 5 (Oct. 2019), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/10/WEB_BPC_ECH-History-Brief_R01.pdf.

203. *Id.*

higher quality than the patchwork, underfunded systems reserved for low-income families that are more prevalent today.²⁰⁴

C. Quality

The licensing question in childcare spaces can often bring to mind varying opinions on choice and autonomy. However, studies consistently show that publicly operated childcare centers, centers on work sites, or centers simply receiving public funding pursuant to their conformity with specified standards provide children with higher-quality care than centers not beholden to any oversight or quality standard.²⁰⁵ In addition to the benefits the child receives while engaging in a high-quality care program, the impact on the mother's peace of mind and satisfaction in knowing her child is being well cared for and developmentally nurtured by attending a high-quality program cannot be forgotten.

However, improving the quality of the childcare industry will take the interaction of multiple policies and initiatives considering the amorphous standard under which quality can be defined.²⁰⁶ Some key ideas that can start a shift toward quality improvement are establishing a shared understanding of quality standards and a system that all stakeholders, from parents to providers to funders, can recognize and evaluate.²⁰⁷ For example, statewide afterschool networks have long been pushing to establish school-age quality frameworks for their respective states.²⁰⁸ It is important to increase federal funding to support those sorts of initiatives defining the standard for an industry that relies heavily on free-market, perhaps to its detriment. Once everyone is on the same page about the standards, utilizing strong positive incentives through funding or a co-sign from a reputable source can help providers strive toward maintaining or achieving high quality standards. These actions would allow the federal government to refute an oft-repeated criticism that federal childcare funding is more focused on quantity than quality.²⁰⁹

When thinking about quality childcare and how to encourage programs to pursue higher quality standards, one of the best incentives are payments going to providers that are bookmarked for quality improvement.²¹⁰ For example, the Child and Adult Care Food Program is a federal initiative that reimburses childcare and afterschool providers for the money spent on nutritious meals and snacks served to children.²¹¹ Such a program becomes a win-win-win because children

204. See Pianta & Howes, *supra* note 200, at 67; *Child Care Quality*, CHILD CARE SERVICES ASS'N, <https://www.childcareservices.org/families/child-care-quality/> (last visited Nov. 9, 2023).

205. See Schur, *supra* note 39, at 871.

206. See OECD, QUALITY ASSURANCE AND IMPROVEMENT IN THE EARLY EDUCATION AND CARE SECTOR 3 (May 9, 2022), <https://www.oecd-ilibrary.org/docserver/774688bf-en.pdf>.

207. *Id.*

208. *Issue: School-Age Child Care*, AFTERSCHOOL ALL., <http://www.afterschoolalliance.org/Issue-School-Age-Child-Care.cfm> (last visited Nov. 9, 2023).

209. ROSE, *supra* note 199, at 132.

210. See *Child and Adult Care Food Program*, USDA FOOD & NUTRITION SERV., <https://www.fns.usda.gov/cacfp> (last visited Nov. 9, 2023).

211. *Id.*

get nutritious food, providers do not have to shoulder the cost alone, and the expense is not passed on to parents through higher fees. Similar models to improve program quality could look like a federal initiative reimbursing providers for the money spent on curriculum development, program quality reviews, and workforce training.

D. Additional Considerations

While federal pandemic relief funding went a long way toward stabilizing the childcare industry and subsidizing programs for frontline worker families, Congress did not initially intend for these efforts to be a recurring source of aid that remedied long-standing issues of affordability and unequal access.²¹² With federal relief money expiring in 2024,²¹³ it is past time for legislators to consider and implement long-term solutions. Committing to a long-term investment in childcare ensures that children receive the continuity of care essential to their healthy growth and development while supporting mothers' re-entry into the workforce.²¹⁴ One such show of commitment could come in the form of bringing back an ARP expansion that had an immediate impact. Bringing back the 2021 expanded Child Tax Credit, which importantly included monthly checks to families, helped cut child poverty almost in half.²¹⁵ Outside the U.S., many other countries rely on similar schemes of offering cash payments to assist families with child-rearing costs.²¹⁶ Making the 2021 expanded credit system permanent would provide mothers with crucial funds to enable their access to quality childcare. Additionally, continuing specific ARP provisions like making the Child and Dependent Care Tax Credit refundable can ensure some of the most vulnerable families with little to no tax liability can still benefit from these credits.²¹⁷ Such an expansion would recognize that many of those left behind when credits only work for middle to high-income families are the mother-headed households and families of color who are largely the ones most burdened by childcare costs in the first place.²¹⁸

President Biden's attempt to preserve the highly popular tax program was blocked by Republicans and centrist Democrats who feared the guaranteed income would dissuade parents from working, despite evidence to the contrary.²¹⁹ Another common concern raised by those who oppose expanding the program or pursuing universal childcare is the cost.²²⁰ With a national debt of a little over \$30

212. Quinton, *supra* note 15.

213. *Id.*

214. See Cahn & McClain, *supra* note 8, at 45.

215. DeParle, *supra* note 157.

216. *See id.*

217. NAT'L WOMEN'S L. CTR., *supra* note 185, at 1.

218. *Id.*

219. DeParle, *supra* note 157.

220. Christopher Hickey, *Not the Year for Women and Parents: Child Care Provisions Were Cut from the Inflation Reduction Act - It's Not the First Time*, CNN (Aug. 12, 2022), <https://www.cnn.com/2022/08/12/politics/inflation-reduction-children-families/index.html>.

trillion dollars²²¹ and the perception that progressive government programs lock in habits of Congressional overspending that worsen inflation, fiscal conservatives are incredibly wary of leaving portions of the pricey ARP in place.²²² The concern around cost and soaring inflation is largely what led to Senator Manchin (D-WV) holding out on voting for the originally proposed Build Back Better legislation.²²³ There is a particular stigma around anything that can be deemed an entitlement program, which detractors say is the biggest driver of the 266% increase in government spending over the past 20 years.²²⁴

While some are concerned about the cost of pursuing an expansion of ARP childcare provisions, that perspective rarely views the expenditures as the economic investments they are. For example, researchers found that if portions of the Build Back Better Act that increased funding to the Child Care Development Block Grant and expanded universal preschool to 3- and 4-year-olds had remained, it could have yielded

- (1) \$48 billion in increases to economic output from increased parental employment; (2) \$60 billion in gains for businesses and state tax revenue from decreased child care-related disruptions; and (3) at least a \$30 billion boost to the economy from the expansion of the child care sector and related indirect and induced job increases.²²⁵

Despite the political deadlock that often occurs at the expense of a more comprehensive childcare policy, there is a growing movement amongst conservatives that embraces the idea of new benefits for parents.²²⁶ Interestingly, both liberals and the new conservative movement are supportive of continuing programs like the expanded Child Tax Credit in a way that sends families cash monthly per child.²²⁷ The new conservative movement is doing so not to ensure families can

221. Drew Desilver, *5 Facts About the U.S. National Debt*, PEW RSCH. CTR. (Feb. 14, 2023), <https://www.pewresearch.org/short-reads/2023/02/14/facts-about-the-us-national-debt/>.

222. *Rather Than Lock in Democrats' Overspending Congress Should End the Labor Shortage and Grow the Economy*, HOUSE COMM. ON WAYS & MEANS (Dec. 8, 2022), <https://waysandmeans.house.gov/rather-than-lock-in-democrats-overspending-congress-should-end-the-labor-shortage-and-grow-the-economy/>.

223. Hickey, *supra* note 220.

224. Preston Brashers, *Congress' Overspending is the Problem - Not a Lack of Tax Dollars*, HERITAGE FOUND. (Apr. 26, 2022), <https://www.heritage.org/taxes/commentary/congress-overspending-the-problem-not-lack-tax-dollars>.

225. Julie Kashen, *How Congress Got Close to Solving Child Care - Then Failed*, THE CENTURY FOUND. (Dec. 12, 2022), <https://tcf.org/content/commentary/how-congress-got-close-to-solving-child-care-then-failed/>.

226. Dana Goldstein, *In Post-Roe World, These Conservatives Embrace a New Kind of Welfare*, N.Y. TIMES (Feb. 10, 2023), <https://www.nytimes.com/2023/02/10/us/conservatives-child-care-benefits-roe-wade.html>.

227. *Id.*

afford childcare costs, but rather to encourage people to have more kids and for mothers to stay home part-time or full-time while raising their children.²²⁸

A publicly funded or heavily subsidized care system can take many forms, but the key feature is a centralized network that would bring much-needed cohesion to a currently disparate industry. Knowing the political landscape in America, for any sort of universal childcare system to feasibly work, it would likely have to include components that allow federal money to be filtered to state and local communities, which are often better equipped to allocate funding in a way that best serves childcare providers and mothers. In the 1930s and 1940s, the federal government created sophisticated, centralized administrative systems;²²⁹ these structures can be used to disburse federal childcare funding that is then supplemented with state and local know-how.

Regulation of quality can also benefit from collaboration between the federal government and state and local governments: the federal government should suggest guidelines while state and local governments oversee monitoring. Having stringent safety standards and proper child safety courses are non-negotiables, but the goal of achieving high-quality programming for all children would also prioritize some regulations regarding developmental curriculums. Instead of completely defunding states that might fall short of instituting these standards, creating an incentivization structure where states that meet high-quality standards are rewarded with bonus developmental funding could be a reasonable compromise. An incentive-based model mirrors the incredible leeway states had in utilizing their ARP childcare discretionary funds while at the same time receiving guidance from the federal Office of Child Care that strongly recommended states use some funding to prioritize areas of great need like workforce compensation.²³⁰ Currently, urging the federal government to play a key and long-term role in supporting the childcare industry is paramount, but it is also important to rely on states to fill the inevitable gaps by investing local resources and developing innovative policies to create the sustainable improvement the industry needs.²³¹ State economies can benefit from affordable childcare, as estimates suggest thirty-six states could see at least \$1 billion in benefits from universally affordable childcare through their front-end investment in children and working mothers.²³²

While pursuing a cohesive and better-funded childcare system, it is important to also think about other long-term investments and solutions that would support the school-age care space. The original Build Back Better Act proposed a scheme

228. *Id.*

229. See KAREN M. TANI, STATES OF DEPENDENCY: WELFARE, RIGHTS, AND AMERICAN GOVERNANCE, 1935-1972, at 275 (2016).

230. SCHULMAN, *supra* note 144, at 2.

231. KYRA MILLER ET AL., NAT'L WOMEN'S L. CTR., STATE CHILD CARE AND EARLY EDUCATION UPDATES 2022: PROGRESS ON A LONG PATH 3 (Dec. 15, 2022), <https://nwlc.org/wp-content/uploads/2022/12/Progress-on-a-Long-Path-State-Child-Care-and-Early-Education-Updates-2022.pdf>.

232. See Jessen-Howard & Workman, *supra* note 37.

that would have made strides toward long-term school-age care investment by shifting how states spend CCDBG funding to dramatically increase the funding earmarked for before and after school care.²³³ The shift primarily amounted to a requirement that states would have to spend at least 90% of their CCDBG funding on care for school-age children.²³⁴ While not an incredibly novel solution, it is a straightforward and essential one that could ensure school-age programs have the allotment they need to continue supporting the care of older children. Instituting more school-funded afterschool programs is also crucial because the extended care is more likely to coincide with working mothers' schedules that might not always allow time for pickup once school formally lets out.²³⁵

Afterschool programs additionally have the potential to help close gaps in learning.²³⁶ Building on numerous studies that show the benefits of private tutoring, programs that provide meaningful tutoring rather than a simple homework session should be prioritized for development and funding.²³⁷ Studies have found that the best programs have a blend of both academic and socially enriching activities for longer durations and within small group settings.²³⁸ However, given the small margins of many private afterschool programs,²³⁹ programs could run into financial trouble if enrollment drops. Instead, government subsidies should enable small group sizes and smaller care worker-to-child ratios to work. Finally, investment in the overall quality of and access to school-age programs necessitates age-appropriate licensing standards and support for the unique needs and training required of a school-age workforce.²⁴⁰

Policies do not change based on passion only but require an expanded mindset. Viewing childcare, and in fact, care more broadly, as a public good, economic imperative, and gender equity issue rather than simply a private obligation to families is a mental shift in the right direction toward more innovative and impactful childcare policy. Simply recognizing that increased government spending is a worthwhile investment in mothers and children can be a hard pill to swallow, but

233. See CHILD CARE AWARE, *supra* note 3, at 21–22.

234. *Id.* at 22.

235. See Sarah Mazzochi, Comment, *A New Twist on an Old Idea: How Year-Round Schooling and Revamped Out-of-School Care Can Improve the Lives of Women in Washington, D.C.*, 19 VA. J. SOC. POL'Y & L. 109, 117 (2011).

236. See *id.* at 124.

237. *Id.*

238. *Id.*

239. See Goldstein, *supra* note 170.

240. *Child Care Proposals*, AFTERSCHOOL ALL., <https://www.afterschoolalliance.org/policy-child-care-proposals.cfm> (last visited Nov. 9, 2023). D.C. recognizes the importance of school-age care and has created a network of afterschool and summer opportunities that focuses on ensuring D.C. children and youth can access quality care and enrichment. Their Learn24 initiative takes an equity-based approach in pursuing “coordination among government agencies, targeted grant-making, data collection and evaluation, and the provision of training, capacity building, and technical assistance to OST providers.” While the Mayor’s office is focused on the systems-level collaboration and reform, on the individual level of families, they have access to Learn24’s comprehensive program finder that allows parents to filter through offerings and hopefully find something that works for their family. See *Learn 24*, <https://learn24.dc.gov/> (last visited Nov. 9, 2023).

is the framing needed to push forward many of these more progressive and comprehensive reforms.²⁴¹ The transformative change in providing direct resources to all American families, brought about by the ARP, shows a potential route toward a well-supported childcare system of which the U.S. is beginning to scratch the surface.²⁴²

VI. CONCLUSION

The pandemic showed the essential nature of the care economy. At the same time, it also showed how fragile it can be. The importance of affordable, high-quality childcare cannot be overstated. Access to this sort of care is something that impacts the lives of not only children but the families, particularly mothers, who raise them. Studies show time and again that when the youngest and most impressionable members of our society receive high-quality care programming, it leads to positive outcomes in their future schooling and sets up a path that aids them in the workforce and beyond.²⁴³ The entrenched inequities in our society often start and are sustained by policies, or lack thereof, that mark children as being supported or subordinated before they ever really have a chance.²⁴⁴

A robust and well-funded universal childcare system is precisely the sort of change that can even the playing field. The significant investment into the childcare industry spurred on by the American Rescue Plan has been a lifeline for children, families, and childcare providers during the pandemic.²⁴⁵ The next step is converting short-term relief funding into long-term investments long overdue for the childcare industry. The bolstering of childcare in the U.S. is critical to allowing women, especially mothers, the freedom and opportunity to engage in their roles beyond caregiver and providing avenues for them to continue fostering every facet of themselves. With quality childcare being directly related to increased maternal employment and positive child development,²⁴⁶ it is up to policymakers and advocates to build upon the stabilizing foundation provided by pandemic relief dollars to finally make America's childcare system into the affordable, accessible, and high-quality model it should be.

241. See NAT'L WOMEN'S L. CTR., PRIORITIZING WOMEN AND FAMILIES OVER DEFICITS: IT'S TIME TO REJECT AUSTERITY (Mar. 14, 2023), <https://nwc.org/resource/talking-points-prioritizing-women-and-families-over-deficits-its-time-to-reject-austerity/>.

242. See Charisa Smith, *From Empathy Gap to Reparations: An Analysis of Caregiving, Criminalization, and Family Empowerment*, 90 FORDHAM L. REV. 2621, 2643 (2022).

243. OECD, *supra* note 61, at 4.

244. See Nancy E. Dowd, *Children's Equality: The Centrality of Race, Gender, and Class*, 47 FORDHAM URB. L.J. 231, 233 (2020).

245. See Girouard, *supra* note 162.

246. See Schur, *supra* note 39, at 867.