WAYS AND MEANS
REPUBLICANS | KEVIN BRADY, REPUBLICAN LEADER

DISCUSSION DRAFT:
"Protecting Worker Paychecks and Family Choice Act"

To promote increased access to paid family and medical leave and affordable child care in America, and for other purposes.

Section-by-Section

SECTION 1. SHORT TITLE. "Protecting Worker Paychecks and Family Choice Act."

DIVISION A – EXPANDING ACCESS TO PAID FAMILY AND MEDICAL LEAVE

SEC. 101. MODIFICATIONS TO EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE.
The Paid Family and Medical Leave Tax Credit (45S) was created by the Tax Cuts and Jobs Act, and most recently extended until December 31, 2025. This section makes the credit permanent as a start-up credit and provides for changes to increase take-up, including making it more generous for small businesses.

- Beginning in 2022, enhances the credit for smaller employers (up 50 employees and $25 million in gross receipts) newly adopting paid leave policies.
    - Enhancement: Credit ranging from 25-50% of wages paid during leave; allows some administrative expenses to be part of credit base in addition to wages.
- Limits the credit to employers newly offering paid leave plans for up to 5 years, with a phase-out as follows:
    - Years 1-3: full credit
    - Year 4: 75% of credit base
    - Year 5: 50% of credit base
    - Year 6: 0% (no credit)
- Grandfathers employers currently claiming the credit with a full credit through 2025, followed by phase-out starting in 2026.
- Makes a technical correction and clarifies that multi-state employers operating in states with mandated leave may claim a credit for wages paid in states without such mandate.

SEC. 102. FAMILY SAVINGS ACCOUNTS.
This section creates a new tax advantaged account designed to be a flexible savings vehicle for families to use to pay for school expenses, child care, elder care, and to provide for wage replacement during periods of parental or medical leave.

- Accounts are set up via the Federal Retirement Thrift Investment Board.
- Contributions to family savings accounts are supported by a "village":
    - Individuals can contribute to this account to save for short term and long-term education, family leave, elder care, and child care expenses;
    - Federal funding would provide a 1:1 match for every dollar up to $1,000 for individuals with an adjusted gross income of $50,000 or less;
    - Employers can contribute to the account to support their employees as an affordable supplement to existing employee benefit plans;
    - States can contribute to eligible accounts and count state contributions as Temporary Assistance for Needy Families maintenance of effort; and
    - Non-profits and other community-based organizations serving low-income families can contribute to the account as a supportive service.
- Contributions are tax deductible.
- Earnings are tax-free.
- Distributions are tax-free.
- Annual contribution limit of $5,000.
- Contributions roll over year to year.
- Once an individual turns 65, funds rollover into a retirement account that is subject to ordinary retirement rules.

SEC. 103. EXPAND SMALL EMPLOYER POOLING OPTIONS FOR PAID FAMILY AND MEDICAL LEAVE.

This section creates statutory alignment across definitions of "welfare benefits" related to existing pooling mechanisms for small business at the Department of Labor (DOL) and Internal Revenue Service (IRS) to include reference to paid family and medical leave. It also directs the two agencies to make recommendations to Congress on statutory changes that would facilitate the ability of small businesses to pool in order to lower administrative burden.

- Amends statutory definition of Multiple Employer Welfare Arrangements (MEWA's) at Sec. 3(40) of the Employee Retirement Income Security Act to recognize and include the full range of paid family and medical leave benefits. Currently, the definition is limited to employer disability policies. A MEWA happens when a group of employers combines their contributions in a self-contributing benefits plan for their employees. Requires DOL to issue regulations to implement this change, in coordination with Treasury.
- Amends statutory definition of Voluntary Employee Beneficiary Associations (VEBA's) at 501(c)(9) of the Internal Revenue Code to clarify that small employers may jointly fund paid family and medical leave benefits. VEBA's allow mutual associations of employers to set-aside funds tax-free to provide specified benefits to their employees, however the current statutory definition of welfare benefits does not specify family and medical leave insurance. Requires Treasury to issue regulations to implement this change, in coordination with DOL.
- Requires DOL and IRS to make recommendations to Congress within 6 months on any statutory barriers or other changes to federal law needed to facilitate small business

pooling for the purpose of providing paid family and medical leave benefits, including through the use of short-term disability insurance.

SEC. 104. PROMOTING EQUITABLE ACCESS TO PAID FAMILY LEAVE.

This section amends the Child Care Entitlement to States (CCES) to add a new grant condition to allow eligible low-income parents the option of receiving a child care subsidy directly, as partial wage replacement, to stay home with their baby, in lieu of child care assistance.

- Payments are limited to not more than 12 weeks after the birth or adoption of a child.
- To be eligible, parents must demonstrate a work history in the previous 4 consecutive quarters at the time of application.
- The amount of payment must not be less than the average child care subsidy otherwise provided to parents enrolling their child in infant care.
- The application must include assurances, and any additional documentation requested by the state, that the parent will not be receiving paid leave from any other source during the period.
- CCES received an increase of +$633 million (to $3.55 billion) in the *American Rescue Plan Act*. Any additional costs to states for implementing this requirement, estimated to be approximately $200 million, would be absorbed by this permanent increase.

SEC. 105. WORKING FAMILIES FLEXIBILITY ACT. (H.R. 1980)

This section, as introduced by Rep. Mary Miller (R-IL), amends the Fair Labor Standards Act to give private-sector employees the option of selecting compensatory time off in lieu of cash for overtime wages. An employee will be able to choose, based upon a voluntary agreement with his or her employer, to have overtime compensated with paid time off. This option has been available for federal, state, and local government employees for many years.

- The legislation does not change the 40-hour work week and does not change the rate of compensation of non-exempt employees. The legislation provides employees strong protections against the coercive use of compensatory time. For example, the arrangement must be an expressly mutual agreement between employee and employer and may not be a condition of employment. To be eligible, an employee must have worked at least 1,000 hours in a period of continuous employment with the employer during the preceding 12-month period and an agreement must be affirmed by a written or otherwise verifiable statement.
- An employee can accrue up to 160 hours of compensatory time each year and unused time must be paid out at the end of the year or at the end of employment.

DIVISION B – EXPANDING ACCESS TO AFFORDABLE CHILD CARE

SEC. 201 IMPROVING THE EMPLOYER-PROVIDED CHILD CARE TAX CREDIT.

This section amends the Employer-Provided Child Care Tax Credit (45F), an existing permanent tax credit aimed at helping employers provide child care for their employees, to improve take up. Currently, the IRS has said only about $50 million in total is claimed by employers.

Employers don't typically invest in building on-site child care facilities because of liability and usage concerns. This section would:

- Amend the definition of "qualified child care facility expenditures" to provide employers and families more flexible options, such as contracting with off-site child care providers for back-up child care for their employees.
- Increase the percentage reimbursement for small employers (up 50 employees and $25 million in gross receipts) from 25% to 50%.
- Request GAO study on impact of tax credit.

SEC. 202. INCREASING PARENT CHOICE AND PREVENTING THE CHILD CARE CLIFF.
This section makes two changes to the child care entitlement to:

- Require states to implement a graduated phase-out period for parents receiving child care assistance in order to prevent the child care cliff by implementing a two-tiered eligibility policy. This creates a glide path so parents can gradually increase their earnings toward independence, while slowly phasing out subsidy support.
- For fiscal years 2022 and 2023, increases from 70% to 100% the requirement for states to spend the entitlement portion of their Child Care and Development Fund (CCDF) block grant on child care assistance to families who are receiving assistance, families who are attempting through work activities to transition off of assistance, and families who are at risk of becoming dependent on assistance.
  - States have received $50 billion in new emergency funding for child care since the beginning of the COVID-19 pandemic, nearly all of it discretionary.
  - During the period for which this new substantial new funding remains available, this provision targets entitlement child care funding for vouchers to low-income families to increase parent choice of providers, including faith-based providers.

SEC. 203. TARGETING CHILD CARE FUNDS BASED ON POVERTY.
This section better targets child care dollars to states with higher concentrations of families in need. This section would distribute the new $633 million increase in child care entitlement funds made by the *American Rescue Plan Act* to each state based on the number of children under age 13 in poverty as compared to other states.

SEC. 204. WORKING FAMILIES CHILD CARE ACCESS ACT. (H.R. 2714)
This section, as introduced by Rep. Jackie Walorski (R-IN), would improve dependent care flexible spending accounts (FSAs) by tripling contribution limits, allowing funds to roll over at the end of the year without penalty, and expanding eligible expenses. The added flexibility would help working families pay for child care and related expenses, and it would incentivize more Americans to participate in dependent care FSAs. The Working Families Child Care Access Act would benefit working families by:

- Increasing annual contribution limits: In order to help offset the rising costs of child care, the bill would increase the annual contribution limit to $15,000, tripling the current inadequate limit of $5,000.

- Eliminating the burdensome “use-or-lose” rule: Working parents should not be penalized for putting money aside for child care during uncertain times. The legislation would allow them to roll over unused FSA funds into the following year without penalty.
- Expanding qualified expenses: The legislation would give parents more flexibility to use their dependent care FSA funds for adoption expenses, tutoring, sports activities, and art and music programs.
- Raising age limits: In order to ensure parents can save for child care and related expenses over a longer period of time, the bill would allow FSA funds to be used for children and dependents up to age 15, an increase from the current age limit of 13.

SEC. 205. MODERNIZING FINANCING OF EARLY CARE AND EDUCATION IN AMERICA.
This section establishes a bipartisan Commission to make recommendations to Congress on streamlining and reducing duplication in financing of early care and education programs. Federal funding for child care and early education in the United States involves multiple programs, with different eligibility requirements, governance structures, and quality standards. This creates challenges for families and communities in navigating services, and can lead to overlap, gaps in services and wasteful spending. The Commission would:

- Provide a Report to Congress with specific recommendations, including delineation of specific statutory changes, that address each of the following areas:

    (I) how to modernize and more effectively use existing federal funds to strengthen the delivery of child care and early education, and to improve the financing framework and governance structure at the federal level to improve access for families and accountability for taxpayer dollars;

    (II) advantages and disadvantages of streamlining or combining existing federal programs and funding streams in order to improve the overall quality of a mixed-delivery system;

    (III) options for an alternative financing framework or governance models that better leverage the federal investment in child care and early education funding, including re-envisioning current programs; and

    (IV) options for expanding the use of public and private partnerships that help to maximize the federal investment in early care and education.
- The commission would consist of 12 members appointed respectively by the Senate Majority and Minority Leader, House Speaker, House Minority Leader, Chair and Ranking Member of the Senate Finance Committee, Chair and Ranking Member of the House Committee on Ways and Means; Chair and Ranking Member of the Senate Health, Education and Labor Committee, Chair and Ranking Member of the House Committee on Education and Labor.

SEC. 206. CHILD CARE ACT OF 2021. (H.R. 1973)
This section, as introduced by Rep. Ashley Hinson (R-IA), would require Secretary of Health and Human Services to report to Congress on state and local child care regulations, including overburdensome regulations that increase the cost of child care. The report must include:

(1) A list of state-by-state child care regulations,
(2) A breakdown of those regulations focused on safety or quality measures,

(3) An analysis of whether these regulations impact the cost and supply of child care,
(4) The average cost of child care in the state,
(5) The number of child care providers per capita in the state, and
(6) A ranking of states by number of non-safety-based regulations.

DIVISION C – CHILD CARE STABILIZATION FUND OPTION

The *American Rescue Plan Act* appropriated $24 billion for a new child care stabilization fund in March. States must notify the Department of Health and Human Services (HHS) in December 2021 if they cannot obligate at least 50% of those funds. The sections in this Division offer options for states to repurpose unobligated funds aimed at increasing the supply of child care and emphasizing long-term stability in the sector. States choosing to repurpose unobligated funds must:

- Amend their Child Care and Development Fund state plan accordingly;
- States have until the end of FY 2024 to obligate, and until the end of FY 2025 to liquidate funds (two years longer than current law);
- States are no longer bound to the administrative and technical assistance (10%) and subgrant (90%) set-aside restrictions; and
- Subgrants would be available to new providers and states are not required to base subgrants amounts off child care providers current operating expenses.

Sec. 301. FAMILY CHILD CARE NETWORKS ACT of 2021.

This section, as introduced by Rep. Elise Stefanik (R-NY) and Rep. Lloyd Smucker (R-PA), provides states the option to use child care stabilization funds to include support for the creation or enhancement of family child care networks designed to increase or improve the quality of child care provided by family child care providers.

Sec. 302. INCREASING ACCESS TO SAFE CHILD CARE FACILITIES.

This section provides states the option to use child care stabilization funds to increase the availability of safe child care facilities by supporting making improvements to child care facilities to meet health and safety standards and to expand child care services.

Sec. 303. EXPANDING EMPLOYER-SPONSORED CHILD CARE GRANTS ACT.

This section provides states the option to use child care stabilization funds to offer start-up grants to employers to establish and expand child care programs for employees.

Sec. 304. CHILD CARE FUNDS ACCOUNTABILITY ACT.

This section requires HHS to use a portion of the $35 million designated for child care administration included in the *American Rescue Plan Act* to monitor compliance with requirements and ensure program integrity.