

# **Funding for Environmental Assessment and Remediation at Child Care Facilities**

**A Review of Selected Resources**

July 2019



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## PART ONE

### Introduction

Environmental site hazards at a child care facility may arise from contamination of the air, soil, or water caused by historical uses of the property or nearby activities. Identifying and remediating such hazards before a child care facility is licensed and during child care operations can help prevent and reduce harmful exposures to children and staff. It is especially important to prevent environmental exposures to young children, because their developing bodies and certain behaviors (such as hand-to-mouth) make them more vulnerable to the effects of contaminants.<sup>1</sup>

In recent years there has been growing awareness of the importance of identifying site hazards that could potentially affect child care facilities. States including New Jersey, New York, and Delaware have incorporated requirements for identifying and addressing site hazards as part of the child care licensing process.<sup>2</sup> In 2010, the Connecticut Department of Health created the non-regulatory Child Daycare Screening Assessment for Environmental Risk (SAFER) Program to help determine whether a day care center or group day care home may be affected by hazardous chemicals and to assist in addressing any identified hazards.<sup>3</sup> In 2017, the CDC's Agency for Toxic Substances and Disease Registry (ATSDR) published *Choose Safe Places for Early Care and Education: Guidance Manual*, offering practical tools to a broad range of stakeholders who can play a role in ensuring that child care facilities "are located on sites where hazards have been considered, addressed, and mitigated to protect children's health."<sup>4</sup>

As states continue to develop strategies for identifying and addressing environmental site contamination risks at child care facilities, some child care providers may be faced with expenses for conducting an environmental assessment and for undertaking any needed remediation. Such costs could present challenges for existing child care operators, especially those serving low- and moderate-income families. This paper highlights some of the federal, state, and non-governmental funding sources that might potentially be available to help ensure that child care programs are able to address environmental hazards and continue serving their communities.

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<sup>1</sup> See U.S. Environmental Protection Agency, *America's Children and the Environment*, 3d. Ed., at 8 (2013), <https://www.epa.gov/ace/americas-children-and-environment-third-edition>.

<sup>2</sup> See *generally* Environmental Law Institute, *Addressing Environmental Site Hazards at Child Care Facilities* (2018), <https://www.eli.org/sites/default/files/eli-pubs/eli-cc-safe-siting-policy-paper-final.pdf>.

<sup>3</sup> Conn. Dept. of Health, Child Day Care SAFER Program, <https://portal.ct.gov/DPH/Environmental-Health/Environmental-and-Occupational-Health-Assessment/Child-Day-Care-SAFER-Program>.

<sup>4</sup> ATSDR, *Choose Safe Places for Early Care and Education: Guidance Manual* at 7 (2017), [https://www.atsdr.cdc.gov/safeplacesforECE/cspece\\_guidance/index.html](https://www.atsdr.cdc.gov/safeplacesforECE/cspece_guidance/index.html).

The examples of financial assistance programs presented in this paper can serve as a *starting point* for exploring funding resources that are available in other states or that could be established in the future. The paper focuses on programs that are relevant to a large number of states; however, the paper is not based on in-depth research of all states and thus is not offered as an exhaustive overview or compilation of existing funding sources. There are other types of funding sources not covered here that could be tapped in some cases – e.g., following a disaster. Additionally, there may be relevant programs at the tribal or local government level, though it is beyond the scope of this paper to explore those resources directly.

The emphasis here is on resources for addressing site-related problems such as contamination of playground soil and drinking water wells, as well as contamination of indoor air resulting from “vapor intrusion” of pollutants in the soil and groundwater. However, most of the funding program examples described in the following chapters have a broader focus and therefore might also be resources for addressing other indoor environmental health issues, such as lead, asbestos, or radon contamination. Because the focus of the paper is funding for environmental assessment and remediation at existing child care facilities, programs that fund only new construction or major rehabilitation are not included.

Following this Introduction, each of the next three chapters addresses a different source of funding:

- Part One – Federal Funding Programs
- Part Two – State Funding Programs
- Part Three – Non-Governmental Funding Programs

The paper closes with observations on how states can use these programs in the future to address facility-related environmental health problems in child care facilities. A list of the key federal and state government programs described in the paper, along with their websites, is included in the Appendix.

## **The Role of Federal and State Superfund and Brownfields Programs**

Federal and state superfund and brownfields programs, while not discussed in this paper, play an important role in ensuring and facilitating the cleanup of certain contaminated sites.

*Superfund.* The federal “Superfund” law allows the U.S. Environmental Protection Agency (EPA) to clean up sites that have been contaminated by hazardous substances and that pose a risk to health or the environment. EPA can also require those responsible for the contamination to perform the cleanup or to reimburse the government for its cleanup activities. If contamination at a Superfund site affects nearby homes or commercial facilities, the cleanup may involve assessment and remediation at those properties as well. To learn more about the federal Superfund program, see <https://www.epa.gov/superfund>.

Most states have their own programs for cleaning up or requiring responsible parties to clean up contaminated sites that are not covered by the federal Superfund program. These programs, administered by environmental agencies, vary from state to state. This list of state hazardous waste agencies and programs can provide a starting point for finding out about the cleanup programs in your state: <https://www.epa.gov/hwgenerators/links-hazardous-waste-programs-and-us-state-environmental-agencies>.

*Brownfields.* Another type of cleanup program aims to spur cleanup and redevelopment of “brownfields” – properties that are vacant or underutilized due to contamination. Federal and state brownfields programs offer financial, technical, legal, and other incentives to encourage cleanup by developers and other parties who are *not* responsible for the contamination. Brownfields funding programs could thus facilitate the development of new child care facilities on sites that have been cleaned up. To learn more about federal and state brownfields programs, see <https://www.epa.gov/brownfields/overview-epas-brownfields-program> and <https://www.epa.gov/brownfields/2017-state-brownfields-and-voluntary-response-programs>.

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## PART TWO

### Federal Funding Programs

This paper discusses two federal funding programs: (1) The Child Care and Development Fund (CCDF), administered by the Administration for Children and Families within the U.S. Department of Health and Human Services; and (2) the Community Development Block Grant (CDBG) program, administered by the U.S. Department of Housing and Urban Development (HUD). They are the focus here because they are large funding programs that have explicit priorities with respect to health and safety-related activities at existing child care facilities.<sup>5</sup>

This chapter discusses the types of activities that are eligible for CCDF and CDBG funding, examples of how states use these funds to address environmental health at child care facilities, and considerations for using the funds in this manner. At the end of the chapter is a short description of selected federal programs that provide funding for home repairs, which also might be appropriate for addressing environmental issues in home-based child care.

The U.S. Environmental Protection Agency has developed the *Guide to Finding Federal Assistance and Resources for Environmental Justice Efforts* as a resource for searching more broadly for federal financial assistance programs.<sup>6</sup>

#### **The Federal Child Care and Development Fund Program**

The Child Care and Development Fund is the largest federal funding program supporting the provision of child care services. The CCDF was established by the Child Care and Development Block Grant Act of 1990, amended in 2014, for the purpose of improving the quality, availability, and affordability of child care facilities across the U.S. 42 U.S.C. § 9857. The Act and its implementing regulations, 45 C.F.R. §§ 98.1 et seq., are administered by the Office of Child Care within the Administration for Children and Families (ACF).

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<sup>5</sup> This paper does not describe federal programs focused solely on new construction, such as the U.S. Department of Agriculture's (USDA) Community Facilities Direct Loan and Grant Program. That program provides financial assistance to public bodies, tribes, and community-based non-profits in *developing* essential community facilities, including child care centers, in rural areas. USDA, Community Facilities Direct Loan & Grant Program, <https://www.rd.usda.gov/programs-services/community-facilities-direct-loan-grant-program>.

<sup>6</sup> U.S. EPA, *Guide to Finding Federal Assistance and Resources for Environmental Justice Efforts* <https://www.epa.gov/sites/production/files/2019-06/documents/ejiwg-guide-to-assistance-and-resources-for-ej-efforts-updated.pdf>.

CCDF program allocations in Fiscal Year 2019 exceeded \$8 billion – \$7.67 billion to states, \$360 million to tribes, and \$26.38 million to U.S. territories.<sup>7</sup> CCDF funding is provided to state, tribal, and territorial “Lead Agencies” in the form of block grants, and those agencies in turn distribute the funding consistent with the Act and its regulations.

To receive funding, states submit to the Administration for Children and Families a three-year CCDF Plan, which serves as both the application and the description of how the state will use the funds. State Plans use an ACF template that requires states to indicate which of the allowable categories of spending they plan to use.<sup>8</sup>

### ***How CCDF Funds Could be Used for Environmental Assessment and Remediation***

*Required Spending on Quality Improvement.* While CCDF is used primarily to subsidize the cost of child care for lower-income working families, state grantees must spend a prescribed minimum percentage of the funds they receive on “activities designed to improve the quality of child care services and increase parental options for, and access to, high quality child care...” 45 C.F.R. 98.50(b). These quality improvement funds are to be used for all children, regardless of whether the children receive CCDF subsidies. According to CCDF regulations, funding for quality improvement activities may be awarded directly by the state (through the Lead Agency) or indirectly, through “grants or contracts with local child care resource and referral [CCR&R] organizations or other appropriate entities.” 45 C.F.R. § 98.50(c)(3). CCR&R agencies are located throughout the country and provide a variety of services, including child care referrals to parents and training and technical assistance to providers.<sup>9</sup>

In meeting this minimum spending requirement, states *must invest in at least one* of 10 allowable quality improvement activities listed in the Act and regulations. Following are listed activities that most closely relate to facility environmental health and safety.

- **Health and Safety.** The regulations allow funds to be used for “[f]acilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards.” 45 C.F.R. § 98.53(a)(6). This provision offers the closest nexus to facility-related environmental health issues. It echoes an express purpose of the Act: to “assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards established in this subchapter and in State law (including State regulations)....” 42 U.S.C. § 9857. Thus, states may use CCDF funds to facilitate compliance with health and safety requirements and with licensing standards, and doing so can help fulfill the mandatory minimum spending on quality improvement.

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<sup>7</sup> U.S. Dept. of Health & Human Services (DHHS), Admin. for Children and Families, FY 2019 CCDF Allocations (Based on Appropriations), <https://www.acf.hhs.gov/occ/resource/fy-2019-ccdf-allocations-based-on-appropriations>.

<sup>8</sup> U.S. DHHS, Admin. For Families and Children, Draft CCDF Preprint for Public Comment, [https://www.acf.hhs.gov/sites/default/files/occ/fy\\_2019\\_2021ccdf\\_plan\\_preprint\\_11\\_30\\_17.pdf](https://www.acf.hhs.gov/sites/default/files/occ/fy_2019_2021ccdf_plan_preprint_11_30_17.pdf).

<sup>9</sup> See *generally*, Child Care Aware of America, Child Care Resource and Referral, <https://www.childcareaware.org/about/child-care-resource-referral/>.



- Quality Rating and Improvement Systems (QRIS). Another allowable quality improvement activity is “developing, implementing, or enhancing a tiered quality rating and improvement system for child care providers and services.....” 45 C.F.R. § 98.53(a)(3). States may use CCDF funding for QRIS activities that “[b]uild on licensing standards and other regulatory standards for such providers,” “[d]escribe the safety of child care facilities,” and “[p]rovide, to the maximum extent practicable, *financial incentives* and other supports designed to...help child care providers improve the quality of services.” 45 C.F.R. § 98.53(a)(3) (emphasis added). Thus, CCDF funding could potentially be used to provide financial assistance to child care providers participating in a state’s QRIS to improve facility environmental health and safety, particularly if the state’s QRIS criteria includes such items.
- Other Quality Activities. CCDF regulations also provide a catch-all quality improvement spending category, allowing states and tribes to undertake “other activities” that they determine will “improve the quality of child care services provided, and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible.” 45 C.F.R. § 98.53(a)(10). Though not aimed at facility related items, this category of spending could potentially provide a basis for states to fund facility repairs or improvements with demonstrated outcomes for child “safety” or “well-being.”

In addition to quality improvement, other required areas of CCDF spending may potentially allow support for facility-related health and safety. For example, CCDF recipients must spend a stated minimum percentage of CCDF funds on “quality of care for infants and toddlers.” 45 C.F.R. § 98.50(c). This provision allows funds to be spent on, among other things: “Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety....” 45 C.F.R. § 98.53(a)(4)(vi). Although this provision references health issues such as safe sleep practices, first aid, and CPR, the language is broad enough to be a possible vehicle for using CCDF funds for environmental health-related costs for facilities that serve infants and toddlers.

*CCDF Restrictions on Using Funds for Construction-Related Activities.* CCDF regulations prohibit the use of CCDF funds for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. 45 C.F.R. § 98.56(b). However, as described in the following chart, the regulations expressly allow certain *minor improvements* to facilities that could include costs for addressing facility-related environmental health concerns.

Use of CCDF Funds for Construction by State Agencies and Nonsectarian Organizations <sup>10</sup>	
Permitted Uses	Prohibited Uses
<ul style="list-style-type: none"> <li>Minor remodeling and upgrading of child care facilities are expressly permitted “to assure that providers meet State and local child care standards, including applicable health and safety requirements.”</li> <li>“Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at §98.2 may be considered minor remodeling and are, therefore, not prohibited.”</li> </ul> <p>45 C.F.R. § 98.56(b)(1).</p>	<ul style="list-style-type: none"> <li>Purchase or improvement of land. 45 C.F.R. § 98.56(b)(1).</li> <li>Construction, defined as: “the erection of a facility that does not currently exist.” 45 C.F.R § 98.2.</li> <li>Major renovation, defined as “(1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change.” 45 C.F.R. § 98.2.</li> </ul>

Thus, assessment and remediation of site-related environmental contamination would likely not be prohibited, provided the activities did not involve “structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area.”

**Examples of How States Have Used CCDF Funds**

As outlined above, there are two main categories of quality improvement spending that provide opportunities for addressing environmental issues at child care facilities: health and safety compliance, and quality rating improvement systems. A review of the 2019-2022 CCDF State Plans<sup>11</sup> shows that:

- Nearly half of the states use CCDF funding (and in some cases state funding as well) to assist providers financially in addressing some types of health and safety matters.
- More than half of the states use CCDF funding to support their Quality Rating Improvement System programs.

Many states provide incentive funding through their QRIS program. While QRIS grants appear to be focused more on strengthening the child care *program* rather than the facility itself, the grants could be structured to allow expenditures related to facility health and safety.

<sup>10</sup> Tribes and tribal organizations are subject to different requirements regarding construction/renovation. For example, tribal agencies are permitted to spend funds on construction and major renovations of child care facilities after complying with stipulated requirements and receiving approval from the Secretary. 45 C.F.R. § 98.84. For sectarian organizations, minor remodeling is allowed *only if* necessary to bring the facility into compliance with health and safety requirements established by CCDF regulations. Construction or permanent improvement of any building or facility is prohibited. 45 C.F.R. § 98.56(b)(1), (2).

<sup>11</sup> The 2019-2022 CCDF State Plans are available at <https://www.acf.hhs.gov/occ/resource/state-plans>. Item 2.3.6 on the CCDF Plan template asks whether the state uses a QRIS. Item 7.7.2 on the template asks: “Does the state/territory provide financial assistance to support child care providers in complying with minimum health and safety requirements?” If so, the Plan indicates which types of providers (e.g., licensed versus unlicensed) can access the financial assistance.

While many states provide funding to support health and safety, the CCDF health and safety category is broad; it could encompass licensing requirements such as employee background checks, as well as environmental health-related testing and repairs. It is difficult to determine the specific items that states are supporting with these CCDF funds because CCDF reporting requirements do not include details for this area of spending.<sup>12</sup> In some states, legislation authorizing child care development programs establishes the framework for providing this type of financial assistance.

This paper does not provide an overview of how all states use their CCDF quality improvement funds. However, the limited review undertaken here suggests that most states do not currently award quality improvement grants to providers for environmental assessment or remediation. Grant programs in Minnesota and New Jersey reflect some of the possibilities and challenges for using CCDF funds to address facility-related environmental health broadly and site contamination specifically.

*Minnesota Child Care Service Development Grants program.* Minnesota uses a combination of CCDF and state funds to make grants to child care providers for quality improvement through its Child Care Service Development Grants program. State law establishes the authority and framework for this program, which is administered by the Department of Human Services, the state's CCDF Lead Agency. Minn. Stat. 119B.21. While 10 percent of state appropriations for the program may be used for "statewide child care development initiatives," the remainder must be distributed to child care resource and referral organizations, which in turn award grants to child care centers or family child care providers.

The state law allows grants to be used for several specified activities. For family child care, these activities include: "facility improvements, including but not limited to improvements to meet licensing requirements" and "other uses approved by the commissioner." The law also authorizes "emergency assistance" for child care programs generally. Minn. Stat. 119B.21, Subd. 5. Within the framework of the state law and any guidance provided by the Department, resource and referral agencies make funding decisions based on local priorities and the advice of local proposal review committees. Minn. Stat. 119B.21, Subd. 3.

The law caps grants to family child care providers at \$1,000, but does not establish a dollar limit on grants to child care centers or on grants to address emergencies. Nevertheless, resource and referral organizations may establish such limits.<sup>13</sup> The law requires child care centers to provide a 25 percent

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<sup>12</sup> The Act and regulations require Lead Agencies to submit an annual Quality Progress Report that describes how quality funds were expended, including what types of activities were funded and measures used to evaluate progress on improving the quality of child care programs and services. However, the reporting form does not inquire about financial assistance to providers for health and safety. U.S. DHHS, Admin. for Families and Children, Quality Progress Report for State/Territory – FFY 2018, [https://www.acf.hhs.gov/sites/default/files/occ/fy2018\\_qpr\\_pre\\_print.pdf](https://www.acf.hhs.gov/sites/default/files/occ/fy2018_qpr_pre_print.pdf).

<sup>13</sup> For example, regional child care service grants for child care centers are capped at \$2,000 in some counties and at \$2,500 in others. See Child Care Aware of Minnesota-West/Central, Grant Application Guides, available at: <http://www.childcareawarewc.org/grants-and-scholarships/>.

match, while no match is required for family child care providers. Minn. Stat. 119B.21, Subd. 5. Such dollar limits may be typical of similar grants to providers in other jurisdictions.<sup>14</sup>

Child care resource and referral organizations in Minnesota make “regional” grants annually on a competitive basis, for “supplies and equipment, and training and professional development opportunities.”<sup>15</sup> Emergency grants are also available to address urgent facility needs that arise and might otherwise prevent the child care facility from operating.

Minnesota’s resource and referral agencies provide guidelines that set forth eligibility and other elements of the program. The current grant program guidelines for child care center grants in one region note that the primary focus is on preparing young children for kindergarten and beyond, but that “[m]inor construction or renovations are allowed with documentation that the project is required by licensing.”<sup>16</sup> The guidelines provide an extensive list of “health and well-being” items that might be funded, including these examples that relate to environmental health:

- carbon monoxide alarms
- radon detectors
- air purifiers
- dehumidifiers
- lead content detectors for toys and other items

*New Jersey Health and Safety Small Grants program.* In 2018, the New Jersey Department of Human Services, which is the state’s CCDF Lead Agency, announced new CCDF-funded grant programs available to providers participating in the state’s Child Care Subsidy Program. While the programs’ stated focus is on expanding capacity to serve infants and increasing access to quality programs, the agency notes that the grants “also provide a great opportunity to help programs and providers bring their facility into compliance with health and safety requirements ....”<sup>17</sup>

One of these programs, the Health and Safety Small Grants program, is potentially relevant for environmental assessment and remediation needs. Eligible activities under this program include the purchase of items and “minor repairs to abate documented health and safety violations.” New Jersey’s

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<sup>14</sup> In Montana, e.g., a new provider mini-grant program capped grants at \$2,000 for family/group child care and \$3,000 for child care centers. Child Care Connections, For Providers, <http://www.cccmontana.org/Providers/Program/how-to-become-a-registered-licensed-child-care-provider>.

<sup>15</sup> Child Care Aware of Minnesota-West/Central, Grants and Scholarships, <http://www.childcareawarewc.org/grants-and-scholarships/>.

<sup>16</sup> Child Care Aware of Minnesota-West/Central, Regional Grant Guide and Submission Instructions, available at: <http://www.childcareawarewc.org/grants-and-scholarships/>.

<sup>17</sup> N.J. Dept. of Human Services, Child Care Development Block Grant Funding Announcement, <http://www.childcarenj.gov/Providers/Grants>.

child care licensing regulations include requirements related to the assessment and remediation of environmental site hazards.<sup>18</sup>

The program is open to licensed child care centers, registered family child care providers, schools, and summer youth camps. Grants are based on available funds and released by priority and are limited in amount to \$10,000 for child care centers and \$2,000 for family child care providers.

### ***Considerations for Using CCDF Funds for Environmental Assessment and Remediation***

The CCDF program allows funds to be used to assist child care providers in addressing health and safety matters, and the CCDF regulations themselves do not appear to prohibit the use of CCDF funds for environmental assessment and remediation activities. CCDF Lead Agencies that have indicated in their plans that they intend to use CCDF funds to make health and safety grants (or to support a QRIS program that awards grants) could, within the constraints of state law, use funds for this purpose. States that indicated in their State Plans that they would not be using CCDF to provide financial assistance for health and safety could change the plan to do so; CCDF recipients are required to submit a plan amendment notice within 60 days of making a change and to make the amendment publicly available.<sup>19</sup>

*Health and Safety Priorities.* One purpose of the Child Care and Development Block Grant Act is to: “assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards *established in this subchapter and in State law (including State regulations)*...” 42 U.S.C. § 9857 (emphasis added). The regulations allow quality improvement expenditures that address “Lead Agency requirements” and “licensing standards.” Thus, states may be more likely to provide financial assistance for health and safety problems that are tied directly to a state licensing or other regulatory requirement.

The CCDF Act and regulations require Lead Agencies to have in effect licensing requirements that include consideration of “[b]uilding and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic,” though the regulations do not specifically reference facility-related environmental health issues. 45 C.F.R. § 98.41(a)(1)(v).

States have a variety of regulatory requirements related to specific environmental contaminants such as lead, asbestos, and radon, and a few states have explicit child care licensing requirements for eliminating environmental site hazards. At the same time, many states do have more general child care licensing standards that could be interpreted expansively to provide a nexus for using CCDF funding to address an identified environmental site contamination problem. For example, several states have requirements that make reference to health and safety of the child care site, while a few address

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<sup>18</sup> See generally, Environmental Law Institute, Addressing Environmental Site Hazards at Child Care Facilities, App. A (2018), <https://www.eli.org/sites/default/files/eli-pubs/eli-cc-safe-siting-policy-paper-final.pdf>.

<sup>19</sup> U.S. DHHS and State Capacity Building Center, CCDF Fundamentals for State and Territory Administrators at 14 (Aug. 2017), [https://www.acf.hhs.gov/sites/default/files/occ/rg\\_ccdf\\_fundamentals.pdf](https://www.acf.hhs.gov/sites/default/files/occ/rg_ccdf_fundamentals.pdf); 45 C.F.R. § 98.14(d).

specifically the risk of contaminated soils. And many states require licensed providers to maintain the premises free of health or safety hazards generally.<sup>20</sup>

Given the broad language of the CCDF statute and regulations, a wide variety of environmental health issues could be addressed through CCDF health and safety financial assistance. Indeed, the Administration for Children and Families encourages states to address environmental site contamination and other environmental health issues at child care facilities. The agency has published a resource guide, *Caring for Our Children Basics: Health and Safety Foundations for Early Care and Education*, which presents “the minimum health and safety standards experts believe should be in place where children are cared for outside of their homes.”<sup>21</sup> Standard 5.1.1.5 states that an environmental audit of the site location should take place before occupying an existing building or constructing/renovating a building, in order “to properly evaluate and, where necessary, remediate or avoid sites where children’s health could be compromised.”<sup>22</sup> The standards are not federal requirements, but “ACF hopes *Caring for Our Children Basics* will be a helpful resource for states and other entities as they work to improve health and safety standards in licensing and quality rating improvement systems.”<sup>23</sup>

*Limited Amount of Financial Assistance.* Perhaps a more significant challenge in using CCDF funds for environmental assessment and remediation is the limited amount of these state grants – both the overall amount of CCDF/state funding that the state sets aside for the grants and any caps on individual awards or matching requirements that might be established by state law or policy. To the extent that CCDF (and related state) funding is used for facility-related health and safety, state practice seems to be to award grants for small repairs and equipment. This might include environmental health-related items such as carbon monoxide alarms and radon testing. Portable air cleaners, which could be used to assist facilities with indoor air quality problems, might also fit within the scope of state CCDF grant funding as currently implemented. To the extent that states consider site assessment or remediation as eligible for this funding, the grant amounts might only cover some of the costs.

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<sup>20</sup> Environmental Law Institute, *Addressing Environmental Site Hazards at Child Care Facilities at 7* (2018), <https://www.eli.org/sites/default/files/eli-pubs/eli-cc-safe-siting-policy-paper-final.pdf>.

<sup>21</sup> U.S. DHHS, Admin. For Families and Children, *Caring for Our Children Basics: Foundations for Early Care and Education*, <https://www.acf.hhs.gov/ecd/caring-for-our-children-basics>. The document is founded on *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, Third Edition*, created by the American Academy of Pediatrics, the American Public Health Association, and the National Resource Center for Health and Safety in Child Care and Early Education, available at: <https://nrckids.org/CFOC>.

<sup>22</sup> U.S. DHHS, Admin. for Families and Children, *Caring for Our Children Basics: Foundations for Early Care and Education*, Section 5.1.1.5, available at: <https://www.acf.hhs.gov/ecd/caring-for-our-children-basics>.

<sup>23</sup> U.S. DHHS, Admin. for Families and Children, *Caring for Our Children Basics: Foundations for Early Care and Education*, <https://www.acf.hhs.gov/ecd/caring-for-our-children-basics>.

### **Funding Environmental Assessment and Remediation at Head Start Facilities**

The federal government also provides funding for early care and education through Head Start and Early Head Start, which promote school readiness of children aged five and younger from economically-disadvantaged families. Head Start programs may be based in community centers and schools, as well as in child care centers and family child care homes. The Administration for Children and Families, through the Office of Head Start, awards funding to local agencies to provide comprehensive child development services. See generally, U.S. DHHS, Office of Head Start, Head Start Programs, <https://www.acf.hhs.gov/ohs/about/head-start>.

Administrative costs of running a Head Start program may not exceed 15 percent of the total approved Head Start program costs. 45 CFR 1303.5. Head Start funds may be used for facility repairs and minor renovations (generally those that cost less than \$250,000) without the need to file a separate application for funding. See U.S. DHHS, Office of Head Start, Facilities Guidance Attachment 1, available at: <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-17-01-attachment-1>. Thus, a facility that discovers a potential site contamination or other environmental health problem might be able to use program funds for assessment and remediation, though those funds may be limited. Indeed, Head Start regulations require that grantees have a system for ensuring that all facilities where children are served are “free from pollutants, hazards and toxins [sic] that are accessible to children and could endanger children’s safety.” 45 C.F.R. §§ 1302.47(b)(1)(iii). In addition, Head Start grantees who are eligible for funds for the purchase, construction or renovation of a facility must submit a “Phase I environmental site assessment that describes the environmental condition of the proposed facility site and any structures on the site.” 45 CFR 1303.44(a)(12).

## The Federal Community Development Block Grant Program

The Community Development Block Grant (CDBG) program was established by Congress in 1974 with the passage of the Housing and Community Development Act. 42 U.S.C. 5301 et seq. Administered by the U.S. Department of Housing and Urban Development (HUD), CDBG is the largest source of federal funding for community development activities. The program had an annual budget of over \$3.3 billion dollars in both 2018 and 2019. About 70% of this funding was budgeted for grants to local governments (“entitlement communities”); nearly 30% was budgeted for states, which in turn distribute the funds to non-entitlement local communities. The budget also included a \$65 million set aside for tribes and \$7 million for U.S. territories.<sup>24</sup> This chapter describes program rules that apply to states and entitlement communities.

### ***How CDBG Funds Could be Used for Environmental Assessment and Remediation***

The CDBG program is governed by the federal authorizing statute and implementing regulations adopted by HUD. 24 CFR part 570. CDBG-assisted activities must meet one of three national objectives in order to be eligible for CDBG funding: (1) benefitting low- and moderate- income persons; (2) aiding in preventing or eliminating slums or blight; or (3) meeting an urgent need. 24 CFR 570.200(a)(2); 24 CFR 570.208 (entitlements) and 570.483 (States).

The CDBG statute lists specific types of activities that may be eligible for funding. 42 U.S.C. 5303. Program regulations further delineate eligible activities, and activities not specifically authorized are considered ineligible. 24 CFR 570.201 – 207. Depending on the specific circumstances, an environmental assessment and remediation project at an existing child care facility might fall under one or more of the categories of eligible activities listed in the regulations.<sup>25</sup>

*Public Facilities and Rehabilitation Activities.* Rehabilitation activities at a child care facility usually fall under the category of eligible activities that provides for the acquisition, construction, and rehabilitation of “public facilities and improvements.” 24 CFR 570.201(c). Although the term is not defined in the CDBG law or regulations, HUD interprets “public facilities and public improvements” to include “all facilities and improvements that are publicly owned, or that are owned by a nonprofit and open to the general public.”<sup>26</sup>

Another provision of the CDBG regulations establishes more generally that funds may be used to finance the rehabilitation of publicly or privately-owned residential buildings and commercial buildings. 24 CFR 570.202(a). This section of the regulations lists the types of rehabilitation activities that may be financed

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<sup>24</sup> U.S. Dept. of Housing & Urban Dev’t. (HUD), CPD Appropriations Budget, [https://www.hud.gov/program\\_offices/comm\\_planning/about/budget/](https://www.hud.gov/program_offices/comm_planning/about/budget/).

<sup>25</sup> For CDBG-funded construction of a new child care center, the funding could include project-specific assessment and remediation of environmental contaminants. See, e.g., 24 CFR 570.203--204.

<sup>26</sup> HUD, Basically CDBG at 6-1 (July 2012), <https://files.hudexchange.info/resources/documents/Basically-CDBG-Chapter-6-Public-Facilities.pdf>. One HUD guidance document lists child care centers as an example of a public facility. HUD, Public Facilities and Improvements with Community Development Block Grant Funds: Introduction at 3, <https://www.hudexchange.info/onecpd/assets/File/CDBG-Public-Facilities-Improvements-Introduction-Transcript.pdf>.



with CDBG grants, loans, and other mechanisms. For non-profit child care facilities, along with child care located in homes, the list includes “abatement of asbestos hazards (*and other contaminants*) in buildings and improvements.” 24 CFR 570.202(b)(2) (emphasis added). For private, for-profit child care located in commercial facilities, rehabilitation activities are limited to “abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations.”<sup>27</sup> 24 CFR 570.202(a)(3).

Thus, provided a national objective is being met, the CDBG regulations authorize broadly the remediation of environmental contaminants in non-profit or home-based child care buildings, and a more limited scope of remediation in private, for-profit child care centers, as part of the rehabilitation of the facility.

*Clearance and Remediation.* The CDBG program also allows funding to be used generally for “clearance, demolition, and removal of buildings and improvements, including....*remediation of known or suspected environmental contamination.*” 24 CFR 570.201(d) (emphasis added). This category of remediation activities includes “project-specific environmental assessment costs not otherwise eligible....” Thus, removal of environmental contaminants – e.g., on a child care center playground – might be eligible as a stand-alone activity under this “clearance” category.

Other CDBG funding categories might also be relevant to environmental contamination at child care facilities in certain circumstances:

- CDBG funds may be used to provide *relocation payments* and other assistance for permanently and temporarily relocated businesses and non-profit organizations under the authority of 24 CFR 570.201(i) and 570.606. This could potentially be used to provide assistance to a child care provider who leases space that must be vacated due to environmental contamination. In order to provide this type of assistance, the CDBG recipient agency must adopt a written policy describing the assistance and must provide “equal relocation assistance within each class of displaced persons.” 24 CFR 570.606(d).
- To the extent that a *natural disaster* leads to environmental health problems at a child care facility, there may be additional CDBG funds to address the problem. CDBG Disaster Recovery (CDBG-DR) funding is authorized under the CDBG Act, and Congress has on multiple occasions enacted appropriations acts that provide CDBG-DR funding following declared disasters. The CDBG program regulations apply to the use of CDBG-DR funds, however appropriations acts may establish additional requirements and/or grant HUD authority to issue waivers from CDBG requirements.<sup>28</sup>

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<sup>27</sup> Assistance to for-profit businesses is also governed generally by the requirements of 24 CFR 570.203 (“Special Economic Development Activities”).

<sup>28</sup> See *generally*, U.S. Dept. of Housing and Urban Devt., CDBG-DR Laws, Regulations, and Federal Register Notices, <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notice/>.

### ***Examples of How States and Entitlement Communities Have Used CDBG Funds***

Within the broad guidelines set forth in HUD regulations, recipients prioritize projects and activities. In order to receive CDBG funding, states and entitlement communities must submit a three- to five-year Consolidated Plan, which describes the jurisdiction's priorities and goals for using CDBG and other HUD funding. The grantee carries out activities identified in the Consolidated Plan by describing them in Annual Action Plans, which describe the activities that will be carried out and the specific federal and non-federal resources that will be used each year, as well as how the state will distribute funds.<sup>29</sup>

The CDBG program requires that recipient jurisdictions undertake a process of public participation when developing their Consolidated Plan and Annual Action Plan. 24 CFR § 570.302 and 24 CFR part 91. Non-entitlement communities must also secure public approval prior to submitting an application to the state for CDBG funds. The public thus has an opportunity to provide input on which activities the jurisdictions will fund in the coming year.

It is not possible to provide an overview here of environmental remediation activities that have been supported by CDBG funds, given the large number of individual jurisdictions receiving funding and the absence of a publicly searchable database that collects detailed information about state-funded activities.<sup>30</sup> Following are three examples of how CDBG funds have been used recently to support facility-related health and safety repairs and remediation in child care facilities.

*Hoboken, New Jersey.* Hoboken, a CDBG entitlement community just outside New York City, receives funding for Public Facilities, Public Services, Planning, and Administration. In 2018, the City awarded \$115,269.50 to HOPES Community Action Partnership Inc., to conduct critical site improvements. HOPES Inc. provides preschool and administers a Head Start program serving 72 children. The funding allowed HOPES Inc. to remove, dispose of, and replace damaged windows, sinks, and toilets. The award also covered costs associated with environmental assessment, permitting, and architectural and engineering fees. The project was funded under the CDBG Public Facilities category.<sup>31</sup>

*City of Easton and Northampton County, Pennsylvania.* The city of Easton and Northampton County, located in eastern Pennsylvania, are CDBG entitlement communities and work together to pool CDBG resources in making awards to projects within the city and county. In 2017, for example, they awarded CDBG Public Facilities funds to the Third Street Alliance, a neighborhood center in Easton that provides

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<sup>29</sup> HUD Exchange, Consolidated Plan Process, Grant Programs, and Related HUD Programs, <https://www.hudexchange.info/programs/consolidated-plan/consolidated-plan-process-grant-programs-and-related-hud-programs/>.

<sup>30</sup> As noted earlier, the Annual Action Plan provides short descriptions of projects to be undertaken during the coming project year. In addition, state and local governments that receive CDBG funds report all activity occurring in a program year in the Consolidated Annual Performance and Evaluation Report (CAPER). These reports describe general areas of activity, but do not necessarily provide details about individual projects. CAPER and other reports and plans submitted by individual CDBG recipient jurisdictions are available at: <https://www.hudexchange.info/programs/cdbg/cdbg-reports-program-data-and-income-limits/>

<sup>31</sup> Hoboken, N.J., 2018 CDBG Associated Annual Action Plan, available at: <https://www.hudexchange.info/programs/consolidated-plan/con-plans-aaps-capers/>; EII interview with Hoboken CDBG administrator (May 2019).

daycare services, along with transitional housing, emergency shelter, and other services to low- and moderate-income residents. The CDBG funding was used to abate asbestos in flooring in the center.<sup>32</sup>

*New Hampshire.* The New Hampshire Community Development Finance Agency administers the state CDBG allocation, which provides funding for housing and public facilities, economic development, emergencies, and planning. Any non-entitlement city, town, or county in the state is eligible to apply for funding up to \$500,000 per calendar year; the municipality may sub-grant its award to a nonprofit group to conduct the approved project. In 2015-2016, for example, the town of Farmington received \$500,000 in state CDBG funds under the Housing and Public Facilities category, which it sub-granted to a local non-profit organization to make critical renovations at the Farmington Childcare Center. The renovations included both interior and exterior improvements, as well as energy efficiency upgrades.<sup>33</sup>

### ***Considerations for Using CCDF Funds for Environmental Assessment and Remediation***

*Timing of Funding.* Site contamination and other environmental health projects with adequate lead time could be proposed as part of the regular process that states and local entitlement communities undertake to select projects for inclusion in their Annual Action Plans. It might also be possible for states and local jurisdictions to earmark funding to a local agency for a particular purpose, such as environmental health-related repairs and rehabilitation at child care and other public facilities; the agency would then have discretion to award funds for individual projects.

*Type of Project.* Environmental assessment and remediation at child care facilities often fall within the Public Facilities category of CDBG funding. In addition to addressing environmental contaminants such as asbestos and lead, funds could potentially be used to install a mitigation system to mitigate indoor air contaminants resulting from vapor intrusion or to remove environmental contaminants on a child care center playground. Depending on the nature of the project and the contamination, these activities might be eligible as part of the rehabilitation of the facility or as a stand-alone “clearance” activity. (Private, for-profit child care centers might be more limited in how they can use CDBG rehabilitation funds.)

CDBG funding might also be used to support the relocation expenses of child care facilities that are required to relocate due to environmental site contamination. This category of funding requires advance planning because it can only be provided if the recipient has in place a policy governing how such funds will be distributed.

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<sup>32</sup> Easton, PA., 2018 CDBG Associated Annual Action Plan, available at: <https://www.hudexchange.info/programs/consolidated-plan/con-plans-aaps-capers/> (searchable database); ELI interview with City of Easton Redevelopment Authority (May 2019).

<sup>33</sup> New Hampshire 2016 CDBG Associated Annual Action Plan, available at: <https://www.hudexchange.info/programs/consolidated-plan/con-plans-aaps-capers/> (searchable database); ELI interview with N.H. Community Development Finance Authority (May 2019).

## Federal Funding for Home Repairs

The CCDF and CDBG programs are potential funding sources for both center- and home-based child care. Other federal funding programs that focus on financial assistance for *residential* properties generally might also be available to address environmental contamination in home-based child care. Following are examples of federal programs that provide financial assistance directly to homeowners for home repairs.

*USDA Rural Housing Repair Loans and Grants program.* This USDA program, also known as the Section 504 Home Repair program, provides loans and grants to very low-income homeowners to repair and remove health and safety hazards in their rural dwellings. Loans are arranged for up to 20 years at one percent interest. Grants may be available for those 62 and older. Loans up to \$20,000 and grants up to \$7,500 are available.<sup>34</sup>

*USDA Household Water Well System Grants program.* This USDA program provides grants to non-profit organizations and tribes to increase access to clean and reliable water for households in rural areas. The non-profit grantees create a revolving loan fund for eligible individuals who own and occupy their homes, who in turn use the funds to service their household water well systems. Loans may be awarded up to \$11,000 at a one percent fixed interest rate for up to 20 years.<sup>35</sup>

*FHA Limited 203(k) program.* This program permits homebuyers and homeowners to finance up to \$35,000 into their mortgage to repair, improve, or upgrade their home. More extensive repairs/improvements can also be financed through the broader 203(k) program.<sup>36</sup>

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<sup>34</sup> USDA, Single Family Housing Repair Loans and Grants, <https://www.rd.usda.gov/programs-services/single-family-housing-repair-loans-grants>. A separate program provides funding for home repairs indirectly through state, local, and tribal agencies and non-profit organizations. USDA, Housing Preservation Grants, <https://www.rd.usda.gov/programs-services/housing-preservation-grants>.

<sup>35</sup> USDA, Household Water Well System Grants, <https://www.rd.usda.gov/programs-services/household-water-well-system-grants>.

<sup>36</sup> HUD, 203(k) Rehabilitation Mortgage Insurance – Limited 203(k), [https://www.hud.gov/program\\_offices/housing/sfh/203k](https://www.hud.gov/program_offices/housing/sfh/203k).

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## PART THREE

### State Funding Programs

In addition to administering federal funding programs, states operate their own financial assistance programs that might be potential sources of funding to address environmental health issues at child care facilities. This chapter describes examples of state funding programs in three areas: site assessment and remediation; child care facilities; and home repair.

#### **State Funding for Site Assessment and Remediation**

State hazardous substance assessment and remediation programs are an important potential source of funding to address site-related contamination at child care facilities. Environmental agencies, which manage state superfund and brownfields programs, may also have resources to provide in-kind or financial assistance where potential site contamination is discovered at a child care facility. The following programs in New Jersey, Vermont, and Wisconsin reflect different ways in which states have provided this type of support.

*New Jersey Hazardous Discharge Site Remediation Fund (HDSRF) Child Care Facility Grants.* In order to receive a license, child care centers in New Jersey must submit written verification that no further environmental site remediation is needed, pursuant to Department of Environmental Protection (NJ DEP) standards and requirements. N.J. Admin. Code §§3A:52- 5.3(i). Applicants are required to hire a state-certified Licensed Site Remediation Professional (LSRP) to conduct a Preliminary Assessment (PA) and any needed follow-up, prior to issuing a “Response Action Outcome” (RAO) letter for submission to the licensing agency.<sup>37</sup>

New Jersey law establishes a grant program for child care centers that provides reimbursement up to \$1,500 for the required Preliminary Assessment. N.J.S.A. 52:27D-130.7. The program is part of the state’s Hazardous Discharge Site Remediation Fund (HDSRF), which is funded through state appropriations, loan repayments, cost recovery, and other sources. N.J.S.A. 58:10B-4. The NJ DEP administers the child care facility grants program in conjunction with the New Jersey Economic Development Authority (NJEDA), which administers the HDSRF.

HDSRF Child Care Facility grants are not need-based; existing or prospective owners of child care centers that are licensed or applying for a license and that satisfy the application requirements receive a grant. In order to receive a grant, a child care center owner submits an application along with the LSRP invoice;

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<sup>37</sup> NJ DEP, Environmental Guidance for All Child Care Centers & Educational Facilities, <https://www.nj.gov/dep/dccrequest/>. A Preliminary Assessment is similar in scope to a Phase I Environmental Site Assessment. N.J. Stat. 58:10B-1.

NJ DEP then provides reimbursement based on the cost of the PA, up to \$1500.<sup>38</sup> While the cost of a PA varies based on many factors, the HDSRF grants do not cover the full cost in most cases.<sup>39</sup>

*New Jersey Spill Compensation Fund Claims Program.* The New Jersey Spill Compensation Fund was created by the New Jersey Spill Compensation and Control Act in 1977. N.J. Stat. 58:10-23.11 et seq. The purpose of the Spill Fund is to “provide compensation for damages to property and persons resulting from the discharge of hazardous substances, including all cleanup and removal costs and all direct and indirect damages arising in connection with a discharge of a hazardous substance,” though responsible parties remain strictly liable for cleanup and removal costs.<sup>40</sup> Spill Fund revenues are generated primarily from a tax on petroleum and other hazardous substances from major facilities.<sup>41</sup>

The NJ DEP Environmental Claims Administration manages the Spill Fund’s Claims Program pursuant to agency rules, which establish the following order of priorities for claims: “1. Potable water restoration and vapor intrusion mitigation at residential properties; 2. Potable water restoration and vapor intrusion mitigation at schools and child care facilities; and 3. All other categories of claims.” N.J.A.C. 7:1J-2.2. Claims may be filed by any individual, business or governmental entity that has suffered damages as a result of the discharge of a hazardous substance, however there is a statute of limitations for filing a claim of one year from the date of discovery.<sup>42</sup> Most claims to the Spill Fund involve contamination of drinking water wells.<sup>43</sup>

*Vermont Environmental Contingency Fund – Dry Cleaner/Child Care Project.* In early 2017, trichloroethylene and perchloroethylene were discovered in the soil gas at a state office building located on the site of a former dry cleaner in Vermont. Following the incident, state officials undertook a project to investigate historic and current locations of dry cleaners throughout the state, to identify whether those sites posed a threat to existing child care facilities and to address those risks.<sup>44</sup>

Working in partnership, three state agencies – environment, health, and child care licensing – determined that there were seven child care facilities located within 200 feet of the 420 historic or current dry cleaners identified by the agencies. The Department of Environmental Conservation (DEC) then conducted soil gas and/or indoor air sampling for 11 chemicals at the seven child care facilities, and the Department of Health developed a matrix for interpreting the data. Based on the results, additional assessment or mitigation of indoor air was not needed, with the exception of one facility that required additional investigation due to concentrations detected in soil gas. Though no evacuations or relocations

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<sup>38</sup> NJ DEP, HDSRF Child Care Facility Grant Application, [https://www.nj.gov/dep/srp/finance/hdsrf/hdsrf\\_ccfg.htm](https://www.nj.gov/dep/srp/finance/hdsrf/hdsrf_ccfg.htm). See generally, NJ DEP Environmental Guidance for All Child Care Centers (HDSRF Grant Facts), <https://www.nj.gov/dep/dccrequest/faqs.html#hdsrfgrantfaqs>.

<sup>39</sup> ELI interview with NJ DEP HDSRF Grant program (May 2019).

<sup>40</sup> NJ DEP, Spill Fund FAQs, [https://www.nj.gov/dep/srp/finance/spillfund/spillfund\\_faqs.htm#q03](https://www.nj.gov/dep/srp/finance/spillfund/spillfund_faqs.htm#q03).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* Claim forms are available at <https://www.nj.gov/dep/srp/finance/ecaclaim.htm>.

<sup>43</sup> N.J. DEP, The NJ Spill Compensation Fund Claims Program, <https://www.nj.gov/dep/srp/finance/eca.htm>.

<sup>44</sup> Information about this project is based on an ELI communications with the Vermont Departments of Health and Environmental Conservation (April-June 2019).

were required, the state agencies had worked together in advance to identify alternate locations for the child care providers if necessary.

Funding for the sampling was provided by Vermont's Environmental Contingency Fund (ECF), which also would have been used for any necessary remediation if the responsible party would or could not fund the work. The ECF is a fund established by state law, administered by the DEC. The agency may make disbursements from the Fund "to undertake action that the Secretary considers necessary to investigate or mitigate, or both, the effects of hazardous material releases to the environment." 10 Vt. Stat. 1283(a). The state can use the ECF to pay upfront costs of sampling and mitigation at a site with suspected contamination if an owner cannot or is unwilling to cover the costs, and the state may bring an action to seek reimbursement from the owner. 10 Vt. Stat. 1283(c). The ECF is supported in part by revenue from a hazardous waste tax established under state law. 10 Vt. Stat. 1283(f).

*Wisconsin Fee-Exempt Environmental Sample Analysis.* The Wisconsin State Laboratory of Hygiene (WSLH), founded in 1903 at the University of Wisconsin, is the state's public, environmental, and occupational health laboratory.<sup>45</sup> Fee-exempt environmental sample analysis through the WSLH is available to local health departments and tribal health centers to support a variety of activities, including environmental health investigations, emergency response, and select surveillance activities. The Wisconsin Department of Health Services helps administer this service by providing guidance to local and tribal public health agencies, working with them on budgeting fee-exempt laboratory services, and assisting with interpretation of test results.<sup>46</sup>

In general, support from this service is not intended to be used when testing falls under the responsibility of another party (e.g., the property owner or neighboring properties), or when it is associated with commercial purposes (facility licensing inspections, real estate transfers, etc.). Thus, this service could potentially be used by local and tribal public health agencies for environmental assessment at child care facilities in certain situations, such as when they are conducting public health investigations, or as part of public health emergency response activities.

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<sup>45</sup> Wisc. State Laboratory of Hygiene, At a Glance, <http://www.slh.wisc.edu/about/glance/>.

<sup>46</sup> Information about this program is based on an ELI Interview with the Wisc. Div. of Public Health, Bureau of Environmental and Occupational Health (May 2019).

### **State Dry Cleaner Remediation Funds**

In the 1990s, a number of states set up formal mechanisms to ensure funding for future investigation and remediation of dry cleaning facilities, given the large number of such facilities throughout the U.S. and the likelihood of some level of contamination at many of the sites. These states include Alabama, Connecticut, Illinois, Florida, Kansas, Minnesota, Missouri, North Carolina, Oregon, South Carolina, Tennessee, Texas, and Wisconsin.

Dry cleaning businesses may participate in their state Dry Cleaner Remediation Fund by paying fees to the fund in exchange for some level of financial relief in cleaning up contaminated sites. Although limited in scope, these programs might be a source of partial funding for investigating and remediating contamination at child care facilities located near or at dry cleaner properties that are registered with the fund, including dry cleaners that are no longer in operation.

Some state programs expressly allow third-party/adjacent landowners to submit claims for contamination caused by participating dry cleaners. For example, in Alabama: “An impacted third party or adjacent landowner may seek payment from the fund for cost of investigation, assessment, or remediation” if the dry cleaner owner fails or refuses to engage in investigation or cleanup and there is a threat to public health or safety. Al. Code §22-30D-7 (b)(1). See also Tn. Admin. Code 0400-15-03-.02(22).

In addition to states with formal Dry Cleaner Funds, a number of other states have been active in the remediation of drycleaner sites under other authorities. *See generally*, State Coalition for Remediation of Drycleaners, <https://drycleancoalition.org>.

### **State Funding for Child Care Facilities**

Apart from CCDF-related health and safety grants discussed in Part Two, states have enacted a variety of laws that authorize and fund state programs to provide financial assistance to child care facilities. The funding may be provided through one-time or ongoing appropriations.

The California and Washington programs highlighted below provide assistance for both construction and repair of child care facilities. These programs reflect the emphasis of many states on building or expanding child care facilities to address the shortage of affordable child care.<sup>47</sup> Though new construction is not the focus of this paper, state programs that fund new or expanded facilities can help prevent exposure to environmental site contaminants by ensuring that facilities undergo an

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<sup>47</sup> Minnesota is another state that has provided funding in recent years with the goal of increasing child care slots. The Department of Human Services has administered the Minnesota Early Childhood Learning Facilities Grant Program, authorized by state law (Mn. Stat. 256E.37). In addition, the Minnesota Department of Employment and Economic Development has implemented the Greater Minnesota Child Care Grants Program, created by the state legislature in 2016 (2016 Mn. Laws, Ch. 189, Art 12, §2) to increase child care services outside the Twin Cities metro area.



environmental assessment and providing funding for any necessary follow-up sampling and remediation.

*California Renovation and Repair Loan (CRRL) Program.* The California Child Care Facilities Revolving Fund, established by state law in 1997, is implemented by the California Department of Education's (CDE) Early Learning and Care Division. Cal. Educ. Code 8278.3. Appropriations and loan repayments have enabled the Department to commit over \$167 million in funding through 2017-2018. Local education agencies comprise nearly two thirds of participants in the Revolving Fund, while private child care providers comprise about one third. To be eligible, applicants must currently be providing CDE-subsidized early education and support services.<sup>48</sup>

The law initially authorized the program to provide only for the lease-purchase of relocatable child care facilities. In 2000, the law was amended to add the CRRL program for the "renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services." Cal. Educ. Code 8278.3(a). Loans are provided free of interest and must be repaid within 10 years.<sup>49</sup>

Given the law's broad language and the absence of program regulations or guidance defining eligible repair activities, the CRRL program offers a potential vehicle for child care providers who seek funding for environmental assessment and remediation activities. There is currently approximately \$26 million in the Revolving Fund; however, in FY 2017-2018, CDE received only two new applications for funding. According to the Department, this may be due to the fact that the non-profit providers who most need funding are reliant solely on CDE reimbursement for child care, and the agency's low reimbursement rates make it difficult for providers to pay back loans.<sup>50</sup> The state legislature is currently considering a bill to transform the Fund from a loan program to a grants program.<sup>51</sup>

*Washington State Early Learning Facilities Competitive Grant program.* Washington's Early Learning Facilities Grant and Loan program was established by state law in 2017.<sup>52</sup> The program is administered by the Washington State Department of Commerce (Commerce) in coordination with the Washington State Department of Children, Youth and Families. Rev. Code Wash. (RCW) 43.31.565 – 583. The program aims to help preschool contractors (under the state's Early Childhood Education Assistance Program), as well as child care subsidy providers (under the state's Working Connections Child Care program) to "expand, remodel, purchase, or construct early learning facilities and classrooms necessary

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<sup>48</sup> Cal. Dept. of Education, Child Care Facilities Revolving Fund 2017-18 Annual Report-Legislative Report at 4 (Aug. 2018), <https://www.cde.ca.gov/sp/cd/op/lrlegrpt2018ccfrf.asp>.

<sup>49</sup> Cal. Dept. of Education, Child Care Facilities Revolving Fund Program Information, <https://www.cde.ca.gov/sp/cd/op/ccfrf.asp>.

<sup>50</sup> Cal. Dept. of Educ., Child Care Facilities Revolving Fund 2017-18 Annual Report-Legislative Report at 4 (Aug. 2018), <https://www.cde.ca.gov/sp/cd/op/lrlegrpt2018ccfrf.asp>.

<sup>51</sup> Ca. Assembly Bill 452, available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB452](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB452).

<sup>52</sup> Wash. Dept. of Commerce, Community Capital Facilities – Early Learning Program, <https://www.commerce.wa.gov/building-infrastructure/capital-facilities/early-learning-program/>

to support state-funded early learning opportunities for low-income children.” Wash. Chapter 12, Laws of 2017, §1.<sup>53</sup> The program is supported entirely by state bond funds.

To be eligible for the Early Learning Facilities Competitive Grant, an applicant must: have a Washington State business license to provide early learning services; either serve or intend to serve low-income children; and be or intend to be an active participant in good standing in Early Achievers, the state’s quality rating improvement program.<sup>54</sup> The program is open to center-based and home-based providers (in addition to local governments, tribes, educational service districts, and others) who commit to using the facility for child care for either 10 or 20 years, depending on the grant or loan amount received. RCW 43.31.575. Commerce has established as a program match goal that grants will constitute 75 percent or less of the total project cost.<sup>55</sup>

Available grant categories include \$10,000 pre-design grants and larger awards up to \$800,000 for facility renovation, construction, and purchasing. RCW 43.31.577. In addition, the program allows funds to be used for “minor renovations and repairs of existing facilities” in an amount up to \$100,000. RCW 43.31.577. Examples of allowable repairs provided in program guidance include new windows, new HVAC equipment, and painting.<sup>56</sup>

Although a central focus of the Early Learning Facilities Grant program is to increase capacity, a project is not required to show that it will increase capacity in order to be eligible for repair funds. State law (RCW 43.31.581) includes benefit to low-income children as one of the considerations in developing priorities for project selection, and Commerce’s scoring criteria include “projects that benefit low income and other at-risk children” as one of several factors to be considered.<sup>57</sup>

Nonetheless, all projects awarded funding thus far were designed to increase capacity. The Early Learning Facilities Competitive Grant program received \$5,666,120 in the 2017-2019 state capital budget, which was awarded through one round of funding in late 2018.<sup>58</sup> One of the 16 projects awarded funding in 2018 was a minor renovations and repairs grant in the amount of \$73,300. Two of the six pre-design awards included an environmental site analysis.<sup>59</sup>

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<sup>53</sup> See generally, Wash. Dept. of Children, Youth and Families, Early Childhood Education and Assistance Program, <https://www.dcyf.wa.gov/services/early-learning-providers/eceap> and Working Connections Child Care Program, <https://www.dcyf.wa.gov/services/earlylearning-childcare/getting-help/wccc>

<sup>54</sup> See generally, Wash. Dept. of Children, Youth and Families, Early Achievers, <https://dcyf.wa.gov/services/earlylearning-childcare/early-achievers>.

<sup>55</sup> Wash. Dept. of Commerce, 2017-2019 Early Learning Facilities Eligible Organizations Program Grant Guidelines at 5 (June 2018), <http://www.commerce.wa.gov/wp-content/uploads/2018/06/17-19-Eligible-Organizations-Program-Guidelines.pdf>.

<sup>56</sup> *Id.* at 3-5.

<sup>57</sup> *Id.* at 7.

<sup>58</sup> *Id.* at 6. This is part of approximately \$11 million appropriated by the legislature for both competitive grants and loans. Wash. Chapter 298, Laws of 2018, §1005.

<sup>59</sup> Wash. Dept. of Commerce, Commerce Awards \$5.6 Million to Increase Number of Early Learning Facilities (Oct. 2018), <https://www.commerce.wa.gov/news-releases/community-programs-facilities/commerce-awards-5-6-million-to-increase-number-of-early-learning-facilities/>; Environmental Law Institute email communication with Washington State Dept. of Commerce (June 2019).

In addition to the competitive grants program, the state law also established a separate grants program for K-12 schools, as well as a competitive loan program that will be administered through community development financial institutions under contract with the Department of Commerce.<sup>60</sup>

### **State Funding for Home Repairs**

In addition to receiving federal funds for affordable housing, states operate a variety of programs supported by state funds to provide financial assistance to property owners for residential rehabilitation or repair. Some of these are focused on specific contaminants such as lead or radon, or on sources of contaminants such as private drinking water wells.<sup>61</sup>

In addition, a number of states have funding for the general rehabilitation or repair of affordable housing that could potentially be tapped to address site contamination-related problems at residential properties. One example is the Minnesota Housing Finance Agency's Rehabilitation Loan Program for low-income homeowners to improve safety, livability, or energy efficiency of their homes. Loans may be made up to \$27,000 (or \$15,000 in an emergency), and loans are forgiven if the owner does not sell, transfer or move out of the property during the loan term.<sup>62</sup> Similarly, the Rental Rehabilitation Deferred Loan program makes loans for health and safety improvements to small or mid-sized affordable rental housing outside the metropolitan areas. The program provides a maximum loan of \$25,000 per unit and partial loan forgiveness is possible at maturity for qualified owners.<sup>63</sup>

It is beyond the scope of this paper to describe the range of housing repair programs that may exist at the state or local level. According to the Housing Trust Fund Project, nearly all states (and hundreds of local jurisdictions) operate housing trust funds, which "receive ongoing dedicated sources of public funding to support the preservation and production of affordable housing."<sup>64</sup> Within this broad purpose, state laws, regulations, and/or guidance determine eligible projects and priorities for funding, which may include rehabilitation or repair. For example, Washington's Housing Trust Fund authorizes funding for new construction and rehabilitation of low- and very low-income housing units, and preference must be given to projects that include an early learning facility. Wash. Rev. Code 43.185.050. Funded projects

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<sup>60</sup> Additionally, the program includes grants for individual projects that are identified directly in legislative appropriations. Wash. Dept. of Commerce, Community Capital Facilities Early Learning Program, <https://www.commerce.wa.gov/building-infrastructure/capital-facilities/early-learning-program/>.

<sup>61</sup> Examples of such programs include: Maryland's Lead Hazard Reduction Loan and Grant Program, <https://dhcd.maryland.gov/Residents/Pages/lhrglp/default.aspx>; Colorado's Low Income Radon Mitigation Assistance (LIRMA) Program, <https://www.colorado.gov/pacific/cdphe/low-income-radon-mitigation-assistance>; and Wisconsin's Well Compensation Grant Program, <https://dnr.wi.gov/Aid/WellCompensation.html>.

<sup>62</sup> Minn. Housing Finance Agency, Rehabilitation Loan/Emergency and Accessibility Loan Program, <http://www.mnhousing.gov/sites/Satellite?c=Page&cid=1358904992980&d=Touch&pagename=External%2FPage%2FEXTStandardLayout>.

<sup>63</sup> Minn. Housing Finance Agency, Rental Rehabilitation Deferred Loan Program, <http://www.mnhousing.gov/sites/Satellite?c=Page&cid=1358905404900&d=Touch&pagename=External%2FPage%2FEXTStandardLayout>.

<sup>64</sup> Housing Trust Fund Project, What are Housing Trust Funds, <http://htfp.wpengine.com/housing-trust-funds/>.

must include a Phase I Environmental Site Assessment and a Phase II assessment if necessary, as well as limited surveys for asbestos, lead-based paint, and mold in existing buildings.<sup>65</sup>

The Housing Trust Fund Project provides a list of states with housing trust funds and the agencies that operate those programs.<sup>66</sup>

### Relocation Assistance for Tenants

Some of the funding programs described here may be available only to the owner of the property requiring assessment or remediation. Moreover, while a child care facility that leases space may be allowed to undertake minor repairs, site assessment and remediation may require the property owner's authorization and involvement. Where an owner is unwilling or unable to address potential site contamination, a child care provider who leases the space might need to relocate.

As noted in Part Two, federal Community Development Block Grant funds may be used to provide relocation payments for permanently and temporarily relocated businesses and non-profit organizations. Federal and state laws also provide for relocation assistance when federally- or state-funded construction or rehabilitation projects lead to the displacement of residents or certain organizations and businesses. See HUD Exchange, Real Estate Acquisition and Relocation Overview in HUD Programs, <https://www.hudexchange.info/programs/relocation/overview/#overview-of-the-ura>. Some states and local governments may also have laws that require tenant relocation assistance in other circumstances – for example, as a result of code enforcement actions or if the property is going to be removed from the rental market. See, e.g., Calif. Health & Safety Code 17975; Los Angeles Municipal Code 151.09.A.10; Seattle Municipal Code, 22.210,010, et seq.; Portland (OR) Municipal Code 30.01.085.

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<sup>65</sup> Washington Dept. of Commerce, Evergreen Sustainable Development Standard 3.0.1 at 45, available at: <https://www.commerce.wa.gov/building-infrastructure/housing/housing-trust-fund/housing-trust-fund-evergreen-sustainable-development/>.

<sup>66</sup> Housing Trust Fund Project, State Housing Trust Funds 2019, <https://housingtrustfundproject.org/wp-content/uploads/2019/01/State-htfund-admin-and-date-2019.pdf>.

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## PART FOUR

### Non-Governmental Funding Programs

Community and economic development organizations are located at the state and regional level throughout the U.S. This chapter provides examples of community development organizations that provide financial assistance to child care facilities for capital improvements that may include environmental remediation. It also describes some of the ways that philanthropic organizations such as private foundations have made funding available for child care facilities. Within a given state there may be other types of non-governmental organizations that work on children's health, early education, and other issues that can either provide financial assistance directly or help identify funding resources for the particular community.

#### Community Economic Development Organizations

There are numerous community economic development organizations across the U.S. that work to promote sustainable housing and economic development in low-income, underserved neighborhoods. As part of this work, they may manage programs that advance the development of affordable child care services. One type of community economic development organization – the Community Development Financial Institution or CDFI – is found in many states and regions of the U.S.

In the mid-twentieth century, CDFIs emerged as a solution to inaccessible affordable credit and capital in economically distressed communities. Today, CDFIs operate across the country in the form of both for-profit and non-profit entities such as community development banks, community development credit unions, community development loan funds, community development venture capital funds, and microenterprise loan funds. CDFIs aim to expand economic opportunity in low-income communities by providing access to financial products and technical assistance.<sup>67</sup>

CDFI financial assistance programs may be supported by funding from multiple sources, including state and local governments, philanthropies, and banks. CDFIs that have been certified by the U.S. Department of the Treasury may also receive and administer funds made available through Treasury's CDFI Fund. The CDFI Fund's Community Development Financial Institutions Program offers direct investment in and training for CDFIs that provide loans, investments, financial services, and technical assistance to underserved communities.<sup>68</sup>

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<sup>67</sup> U.S. Dept. of the Treasury, CDFI Fund Program Information, <https://www.cdfifund.gov/about/Pages/default.aspx>.

<sup>68</sup> U.S. Department of Treasury, CDFI Fund Fact Sheet, [https://www.cdfifund.gov/Documents/CDFI\\_Brochure%20Updated%20Dec2017.pdf](https://www.cdfifund.gov/Documents/CDFI_Brochure%20Updated%20Dec2017.pdf).

Following are two examples of CDFIs that have a focus on providing financing to support child care in economically underserved communities.

*First Children's Finance.* First Children's Finance provides loans and business-development assistance to child care businesses serving low- and moderate-income families in the states of Minnesota, North Dakota, South Dakota, Iowa, and Wisconsin. In addition to providing direct support for child care facilities, the organization works with communities in public-private partnerships to develop plans and policies to create new child care capacity and to protect the existing supply.

The First Children's Finance loan pool comprises a variety of public and private funding sources, including the federal CDFI Fund. It also includes a Child Care Facilities Grant from the Minnesota Department of Human Services. This grant is authorized by Minnesota law, for the purpose of making loans to expand or improve child care or early education sites. The law requires the grant to be used for, among other things, a revolving loan fund and a fund to provide "forgivable loans or grants to match all or part of a loan...."<sup>69</sup>

First Children's Finance works with child care businesses that are expanding, as well as those experiencing financial or management challenges. Loans can be made to address site contamination as well as other environmental health problems such as radon, lead, and water well contamination. The framework for the loan programs can accommodate the need to make repairs or remediation on an expedited basis. The organization also offers technical assistance during the life of the loan, which could include re-financing if the child care provider is experiencing financial difficulty.<sup>70</sup>

First Children's Finance has multiple loan products, including traditional loans with payback periods and interest rate that vary with the amount of the loan. Loans to family child care providers who own their home typically range from \$5,000 to \$25,000. Loans to child care centers that own or lease their space range from \$5,000 to \$125,000. A typical term for a smaller loan is five years, while larger loans might be repaid over 10-12 years.<sup>71</sup>

Consistent with the requirements of its Minnesota Child Care Facilities Grant, First Children's Finance also makes small microloans that provide for forgiveness of interest and/or principal. Borrowers must meet specific criteria, such as continuing to serve children. Forgivable loans are currently used for start-up of new child care businesses in high poverty areas or in communities that are experiencing a severe shortage of child care slots. It might be possible, though, for an existing child care facility to receive a forgivable loan for environmental testing or remediation that is needed in order to continue operating.<sup>72</sup>

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<sup>69</sup> Mn. Stat. 119B.25. In FY2018, the state provided a grant of \$523,579, which included approximately one-third state funds and two-thirds CCDF funds. Mn. Dept of Human Services, Child Care Development Grants (presentation) (Jan. 2019), [https://www.senate.mn/committees/2019-2020/3096\\_Committee\\_on\\_Human\\_Services\\_Reform\\_Finance\\_and\\_Policy/CDS\\_CCDF\\_Grants\\_Sen\\_HSR\\_2019.01.pdf](https://www.senate.mn/committees/2019-2020/3096_Committee_on_Human_Services_Reform_Finance_and_Policy/CDS_CCDF_Grants_Sen_HSR_2019.01.pdf)

<sup>70</sup> Environmental Law Institute interview with First Children's Finance (April 2019).

<sup>71</sup> First Children's Finance, Loan Fund Facts, <http://www.firstchildrensfinance.org/programs-services-2/loan-fund/>.

<sup>72</sup> Environmental Law Institute email communications with First Children's Finance (June 2019).

*Low Income Investment Fund.* The Low Income Investment Fund (LIIF) is a Treasury-certified CDFI headquartered in San Francisco that provides capital to support high-impact projects in economically disadvantaged communities. LIIF's areas of investment include housing, child care, education, and community facilities. Though most of its funding recipients are located in California, LIIF has provided funding to projects enhancing child care in New York and the District of Columbia as well.<sup>73</sup> LIIF administers various programs and products geared toward preserving or enhancing quality child care, including affordable, flexible community capital loans and grants. Both non-profit and for-profit child care providers are eligible to apply for funding with LIIF.<sup>74</sup>

One loan program hosted by LIIF is the Revolving Loan Fund which provides loans to improve an existing child care facility or to build a new one.<sup>75</sup> The Revolving Loan Fund provides low-interest loan products and is funded through a combination of banks, foundations, and the CDFI Fund.<sup>76</sup>

LIIF also administers a range of grants for facility development and/or improvements. Grants can in some cases be used for pre-development activities, including planning and feasibility studies, as well as for facility development. Site evaluations must be provided when required by local regulations. The application for a Capital New Development grant to plan and develop early care and education facilities requires applicants to attach a Site Evaluation that includes physical characteristics of the property such as "soils and environmental reports."<sup>77</sup> Site evaluations may be required for facility renovations as well.<sup>78</sup>

One of LIIF's grant programs is the *Child Care Facilities Fund* (CCFF), a public-private collaboration that offers both financial and capacity-building assistance to center- and family-based child care providers to support enhancement and preservation of quality child care spaces. The CCFF receives funding from the City and County of San Francisco, and eligible recipients must be located within and serving families in that geographic area.

The CCFF program offers Renovation and Repair Grants up to \$10,000 to family-based providers with a minimum of 20% of their enrollment from low-income households "whose licenses may be in jeopardy due to health and safety emergencies." Center-based providers with a minimum of 20% of their enrollment from low-income households may apply for a grant of up to \$100,000.

Grants for expansion and new construction are also available through the CCFF program. Small family child care providers may apply for CCFF Expansion Grants of up to \$15,000 to cover the costs of facility improvements and construction. Center-based child care providers with a minimum of 20% of their enrollment from low-income households may apply for pre-development grant assistance of up to

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<sup>73</sup> ELI interview with LIIF administrators (April 2019).

<sup>74</sup> Low Income Investment Fund, About LIIF, <http://www.liifund.org/about-liif/our-impact-2/>.

<sup>75</sup> Low Income Investment Fund, Revolving Loan Program, <http://www.liifund.org/products/community-capital/capital-for-child-care-facilities>.

<sup>76</sup> Environmental Law Institute interview with LIIF administrators (April 2019).

<sup>77</sup> Low Income Investment Fund, Center New Development Application FY19 (on file with ELI).

<sup>78</sup> Environmental Law Institute communications with LIIF administrators (June 2019).

\$30,000 per facility, as well as Capital New Development Grants of up to \$1,000,000 for construction, renovation, and equipment and other quality improvements on a case-by-case basis.”<sup>79</sup>

LIIF also manages a Bridge Fund, which provides no- interest, repayable grants to help bridge operating and cash flow issues for subsidized child care centers.<sup>80</sup>

## Philanthropic Organizations

As noted in the previous section, philanthropy may be one source of funding for CDFIs and other community development organizations. Philanthropic foundations might also play a role in supporting child care facility improvements through grant-making to other types of organizations that support child care. For example, there are over 750 community foundations in United States – grant-making public charities that serve people in a defined local geographic area. In 2011, community foundations provided over \$4 billion in funding to a wide range to nonprofit activities.<sup>81</sup>

It is beyond the scope of this paper to discuss philanthropic funding generally or its potential with respect to child care capital projects. Following are two examples of how foundations have extended this type of support by providing grants to non-profits and to state agencies.

*Healthy Child Care Colorado.* Healthy Child Care Colorado is a non-profit organization whose mission is “to work collaboratively to improve the quality of health, safety, and wellness in early childhood programs across Colorado by improving the everyday practice of professionals, and by building safe, supportive environments.”<sup>82</sup> The organization addresses a variety of health and wellness issues through grants, professional development, technical assistance, and advocacy.

Healthy Child Care Colorado currently operates a Capital Improvement Grant Program that is funded by private foundations. The program makes available four different types of grants:

- Health and safety: For addressing health, safety and licensing issues through physical improvements to the facility; maximum grant of \$2,000 with a 25% match.
- Small Projects: For permanent facility improvements; maximum grant of \$5,000 with a 100% match.
- Medium Projects: For permanent facility improvements; provides 50% of the project funding, up to a \$25,000 grant.
- Large Projects: For permanent facility improvements; provides 25% of the project funding, up to a \$50,000 grant.

Grants may be made to those who own or lease a child care facility, though medium and large projects require tenants to have a long-term lease. Funds can be used for capital campaigns, which include opening a new center.<sup>83</sup>

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<sup>79</sup> Low Income Investment Fund, Child Care Facilities Fund, <http://www.liifund.org/products/grants/grants-for-child-care/ccff/>

<sup>80</sup> Environmental Law Institute communications with LIIF administrators (June 2019).

<sup>81</sup> Council on Foundations, Community Foundations, <https://www.cof.org/foundation-type/community-foundations-taxonomy>.

<sup>82</sup> Healthy Child Care Colorado, Mission, <https://healthychildcareco.org/about/our-story/>

<sup>83</sup> Healthy Child Care Colorado, Capital Improvement Grant information and Application, available at: <https://healthychildcareco.org/programs/capital-improvement-grants/>.



Funding priorities include geographic distribution statewide, addressing unmet service gaps (especially in infant and toddler care), and increasing access to quality programs. The organization regards environmental health issues as critical to ensuring quality child care, and grants can be used to cover related permanent facility improvements, including environmental remediation and repair. Costs associated with environmental site assessments, however, are not eligible to be funded.<sup>84</sup>

All applications for funding are reviewed by a committee that typically includes a representative of the state licensing agency and a certified playground safety inspector. Healthy Child Care Colorado offers technical assistance webinars prior to each grant round and makes itself available to answer potential applicants' questions via email and phone.<sup>85</sup>

*Pennsylvania Department of Human Services.* The Pennsylvania Department of Human Services, which licenses child care providers through its Office of Child Development and Early Learning, operates a quality rating improvement system known as Keystone STARS. In 2013, Keystone STARS administered a pilot mini-grant program that was funded in part by a private foundation grant to the agency. The purpose of the program was to assist participating child care providers in achieving higher quality environmental health standards through grants up to \$5,000. The grants awarded were used for a variety of activities, including radon testing and mitigation; purchase of items such as HEPA-vacuum cleaners, dehumidifiers, walk-off mats, healthier toys, and BPA-free bottles and cups; replacement of carpeting and furniture with healthier alternatives; and development of no-idling policies and signs.<sup>86</sup>

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<sup>84</sup> Healthy Child Care Colorado, Capital Improvement Grant information and Application, available at: <https://healthychildcareco.org/programs/capital-improvement-grants/>; Environmental law Institute communications with Healthy Child Care Colorado (May, June 2019).

<sup>85</sup> ELI Communication with Healthy Child Care Colorado (June 2019).

<sup>86</sup> Penn. Healthy & Green Initiative, PA Healthy & Green Mini-Grant Summary (on file with ELI); PA Green and Health Mini Grant 2015 Application Worksheet, [http://www.cscinc.org/wp-content/resource\\_pdfs/Healthy%20Green%20Application%20and%20Worksheet%202015.pdf](http://www.cscinc.org/wp-content/resource_pdfs/Healthy%20Green%20Application%20and%20Worksheet%202015.pdf).

## **Funding Environmental Remediation through Supplemental Environmental Projects**

Supplemental Environmental Projects (SEPs) are projects that violators of environmental laws voluntarily agree to undertake as part of an enforcement settlement, and that provide a tangible environmental or public health benefit. See EPA, Supplemental Environmental Projects (SEPs), <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps#facts>

SEPs may be included in federal environmental enforcement cases, pursuant to federal SEP policy. Most states also will consider allowing a SEP in a state enforcement action in at least some circumstances, and many states have formal SEP policies. Federal and state SEP policies determine the types of projects that might be considered as SEPs, detailing considerations such as the project's substantive nexus to the violation and establishing general categories of allowable SEP projects.

Some state policies expressly allow remediation of environmental contaminants as a possible SEP project. For example, Montana's SEP guidance states: "Environmental restoration projects could include, in appropriate circumstances, projects that involve the remediation of facilities and buildings, provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as contaminated soils, asbestos, and leaded paint, which are continuing sources of releases and/or threats to human health and the environment." Mt. Dept. of Env. Quality, Supplemental Environmental Projects Policy at 7 (Rev. March 2017), [https://deq.mt.gov/Portals/112/DEQAdmin/ENF/Documents/SEP\\_Policy\\_Final.pdf](https://deq.mt.gov/Portals/112/DEQAdmin/ENF/Documents/SEP_Policy_Final.pdf).

Thus, SEPs are not government programs, but rather projects that a violator voluntarily agrees to undertake and to fund directly. Nevertheless, some states maintain lists of potential SEPs or otherwise provide a process for submitting potential SEPs for consideration during enforcement actions. A practical limitation on using SEPs is the timing of SEP projects, which are negotiated in the course of an enforcement action. It might be possible, however, to propose as a SEP a pilot project that would identify child care facilities located near current or former polluting sources and provide site assessments and/or remediation for those facilities as appropriate.

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## PART FIVE

### Observations

The federal, state, and non-governmental funding programs discussed in this paper span the areas of health, environment, early care and education, and economic development. While they all are potential funding sources for environmental assessment and remediation at child care facilities, each source presents some limitations – e.g., limits on dollar amounts of available grants or limits on the types of child care facilities eligible. In addition, competing priorities for enhancing the quality of child care may make it difficult to secure funding from programs that support a wide range of activities for improving child care facilities and services.

Nevertheless, the programs described here offer a starting point for child care providers and the agencies and organizations working with them to explore existing programs that might be available in their jurisdictions. They also suggest models for states to expand or refocus their programs or to develop new programs or pilot projects that remedy environmental hazards while preserving the supply of affordable child care.

*Federal Programs.* The Child Care and Development Fund and Community Development Block Grant programs are two large federal programs that operate in every state and are potential sources of funding for child care facilities to address environmental health and safety issues. Though each program has constraints, they may be viable sources of funding in certain situations.

- CCDF regulations allow states to make financial assistance available to providers to address health and safety issues, and many states do already provide such assistance. States that do not currently make grants available in this way could change their programs to do so.

Due in part to the small size of these grants, environmental health-related items funded by the programs tend to be equipment such as carbon monoxide alarms or portable air cleaners. To facilitate the use of CCDF funds for other environmental assessment and remediation activities, states could – consistent with existing state legislation governing such funds – establish guidelines that expressly allow health and safety grants to be used in this way on a regular or emergency basis. States could also set aside a portion of the funds for a program or pilot project to distribute funding as potential site contamination is identified at a particular child care facility. Given competing health and safety needs and the limited amount of health and safety funds available through CCDF, these grants would be more appropriate for site-related contamination problems of a smaller scale.

- Under CDBG regulations, environmental assessment and remediation at child care facilities might be an eligible activity, depending on the type of facility and the specific nature of the contamination to

be addressed. States and entitlement communities can consider including specific remediation projects in their annual spending plan, or they might consider providing a grant to a local agency or organization for the purpose of assisting child care facilities with environmental remediation.

*State Programs.* States operate a wide array of programs that provide financial assistance to individuals, organizations, and businesses. In particular, many states have programs in the areas of site assessment and remediation, child care, and home repairs that might be available to provide help if potential site contamination is identified at a particular child care facility. The state program examples described here may not be common across the U.S., but other states might have related programs that could be adapted or expanded to address this need. Because these funding programs are typically governed by state law and/or regulations, future work in this area may require enacting or revising legislation or regulations in some cases.

- The site assessment/remediation funding examples described here are most directly applicable to addressing site contamination issues. Other states may have existing environmental protection programs that could provide assistance in a case where there is no responsible party willing or able to address site contamination at an operating child care facility. It is thus important to review a state environmental agency's suite of cleanup programs to identify potential resources for specific cases or for environmental assessment and remediation at child care facilities generally.
- State funding programs for child care facilities focus heavily on addressing the shortage of affordable child care through construction and expansion of facilities. Such programs can help prevent future site contamination problems by requiring and funding environmental assessments and remediation as part of a new construction or expansion project. In order to protect the current supply of affordable child care, these funding programs could be framed broadly to support environmental assessment and remediation at existing facilities.

*Non-Governmental Programs.* There are also a broad range of non-governmental funding programs at the state and local levels whose missions might encompass child care facility health and safety improvements.

CDFIs and other community development programs are potential sources of financing for environmental remediation at both new and existing child care facilities. While commercial loans may not be a viable option for many child care providers, some CDFIs offer no-interest loans, forgivable loans, or other flexible financing to assist businesses that serve lower income communities.

Private foundations and other philanthropic organizations constitute a diverse and extensive network of potential funding throughout the U.S. While environmental assessment and remediation are not common areas of foundation funding, foundations serving local communities may have priority areas that could encompass environmental health in early education or may have programs to support local community services and facilities.

## APPENDIX

### Principal Federal and State Programs Described in this Paper

PROGRAM	WEBSITE
<b>FEDERAL FUNDING PROGRAMS</b>	
Child Care and Development Fund	<a href="https://www.acf.hhs.gov/archive/occ/resource/child-care-and-development-fund">https://www.acf.hhs.gov/archive/occ/resource/child-care-and-development-fund</a> <a href="https://www.acf.hhs.gov/occ/plans">https://www.acf.hhs.gov/occ/plans</a>
Community Development Block Grant Program	<a href="https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs">https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs</a>
<b>STATE FUNDING PROGRAMS</b>	
Site Assessment and Remediation <ul style="list-style-type: none"> <li>• New Jersey Hazardous Discharge Site Remediation Fund (HDSRF) Child Care Facility Grants</li> <li>• New Jersey Spill Compensation Fund Claims Program</li> <li>• Vermont Environmental Contingency Fund – Dry Cleaner/Child Care Project</li> <li>• Wisconsin Fee-Exempt Environmental Sample Analysis</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="https://www.nj.gov/dep/srp/finance/hdsrf/hdsrf_cfg.htm">https://www.nj.gov/dep/srp/finance/hdsrf/hdsrf_cfg.htm</a></li> <li>• <a href="https://www.state.nj.us/dep/srp/finance/eca.htm">https://www.state.nj.us/dep/srp/finance/eca.htm</a></li> <li>• <a href="https://dec.vermont.gov/grant-loan-programs/Contaminated%20Sites%20Management">https://dec.vermont.gov/grant-loan-programs (“Contaminated Sites Management”)</a></li> <li>• <a href="http://www.slh.wisc.edu/about/glance/">http://www.slh.wisc.edu/about/glance/</a></li> </ul>
Child Care Facilities <ul style="list-style-type: none"> <li>• California Renovation and Repair Loan (CRRL) Program</li> <li>• Washington State Early Learning Facilities Competitive Grant program</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="https://www.cde.ca.gov/fg/fo/r2/crrl1819rfa.asp">https://www.cde.ca.gov/fg/fo/r2/crrl1819rfa.asp</a></li> <li>• <a href="https://www.commerce.wa.gov/building-infrastructure/capital-facilities/early-learning-program/">https://www.commerce.wa.gov/building-infrastructure/capital-facilities/early-learning-program/</a></li> </ul>



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