

**Written Testimony of**

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Good morning, Chairman Neal, Ranking Member Brady and members of the committee. My name is Vicki Shabo and I am a senior fellow for paid leave policy and strategy at the Better Life Lab at New America, a think and action tank here in Washington, D.C., though the views I express here are my own. Over the past decade, I have helped to shape federal, state and local paid leave policies that now provide security, stability and certainty for tens of millions of people and their loved ones.

It is remarkable that so many of you hail from the eight states and the District of Columbia, which have either implemented or will soon implement paid family and medical leave programs. Others of you represent states where governors have adopted paid parental or family leave for state employees. Some of you represent districts where some of the country's top employers are leading the way on implementing leave policies that go beyond the benefits offered by any of the state programs, whether the state itself has a paid leave program or not.

Unfortunately, however, most states and employers do not guarantee paid family and medical leave to workers, which means most workers, families and businesses face great precarity. Whether a son or daughter can afford to take time away from work to hold a parent's hand through chemotherapy treatments, a parent is home to see a baby's first smile, or a person can recover from a car accident before returning to work is largely dependent on the luck of geography and employer beneficence. This uneven access to paid leave translates into unequal life opportunities and perpetuates pervasive disparities in income and wealth. Workers' lack of access to paid leave also suppresses labor force participation and, as a result, creates a drag on our economy.

Developing a national paid family and medical leave program that provides income and employment protections for a full range of workers' serious family and personal medical needs is long overdue and urgently needed. A growing body of evidence shows the health, micro- and macro-economic and business of paid leave. There is also a growing body of research

confirming that state-run paid family and medical leave programs work well and that opponents' pre-passage concerns were unfounded. The established programs in a number of states show us the pathway forward to a strong, effective national paid family and medical leave program.

In Part I of my testimony, I provide a brief overview of access to paid and unpaid leave in the United States and the direct and hidden costs of the status quo. Parts II-IV cover three main points:

In Part II, I explain why characteristics of our country's evolving labor force, changes in the kinds of jobs being created, and demographic trends make access to guaranteed, earned paid family and medical leave more critical now than ever. A well-constructed national paid leave program would contribute to positive health outcomes and promote economic security and stability; it would advance gender, race, and economic equity; it would help support small businesses; and it would strengthen America's competitiveness in a global economy. Above all, it would align with the American values of independence and hard work by making it possible for working people to care for ourselves and for our loved ones while still having the ability to pay bills and feed our families – no matter where we live, where we work or the job we hold.

In Part III, I discuss how providing equitable baseline access to paid family and medical leave at the national level is achievable – and how key features of state programs provide a template for a national solution. I'll outline the key provisions of the FAMILY Act (H.R. 1185 / S. 463), proposed bipartisan legislation that has high levels of support in Congress, among businesses, and among voters. I'll outline potential modifications to the bill to align a new federal standard with existing state policy innovations: specifically, states have expanded beyond the FAMILY Act in covering more workers and more family members, offering sliding-scale wage replacement and providing employment protections.

In Part IV, I address problems with pending proposals that have erroneously been framed as "alternatives" to the FAMILY Act, but that are wholly insufficient and would even do more harm than good. New innovation in identifying paid leave solutions is worthy of celebration, but details matter considerably. For example, the New Parents Act (H.R. 1940), the parental-leave-only borrowing scheme before this committee, would require any new parent who uses Social Security during a parental leave to take a lifetime Social Security benefit cut, with disproportionate, negative effects on women and people of color. Under H.R. 1940, workers would be forced to pay back over the rest of their lifetime far more than they receive in parental leave benefits. H.R. 1940 also fails to provide benefits that are meaningful enough for most new parents to use, with an average wage replacement rate of only 44 percent for new parents and a

wage replacement rate of zero for everyone else, since the bill fails to address personal or family caregiving needs. The Advancing Support for Working Families Act (H.R. 5296) also proposes a loan to new parents that they would pay back much more immediately, and it does nothing to guarantee even one day of leave; put simply, it is not a paid leave bill. Lastly, the recently-extended paid leave business tax credit included in the 2017 tax bill simply perpetuates the status quo, providing government subsidies to companies that choose to provide even a minimal amount of paid leave without guaranteeing that a single worker will receive new, meaningful paid family and medical leave benefits.

My testimony shows why and how only one bill before Congress – the bipartisan FAMILY Act – offers a solid approach to providing America’s workers with the comprehensive and accessible paid family and medical leave they need.

## **I. The Market Has Failed America’s Workers, Families and Businesses – Unpaid Leave or None at All Perpetuates Inequality and Causes Harm**

### **A. The Family and Medical Leave Act Has Substantial Gaps**

In 1993, Congress passed the Family and Medical Leave Act (FMLA) to provide eligible workers in covered workplaces with up to 12 weeks of unpaid, job protected leave and a continuation of their health benefits when they need to take time away from work to care for a new child, a seriously ill parent, spouse or child, or to address their own serious health condition.<sup>1</sup> A 2012 report commissioned by the U.S. Department of Labor found that the FMLA covers approximately 59 percent of the workforce, leaving the other 41 percent – who are disproportionately lower-wage workers, people of color, and women – behind.<sup>2</sup>

The FMLA was enacted after a nine-year battle in Congress. Opponents at the time – some of the same groups standing in the way of progress to enact paid leave now – claimed that the FMLA would lead to unmanageable absenteeism in workplaces and impose costs on employers so large that layoffs and business closures would be inevitable.<sup>3</sup> They were wrong. It has been heartening to see former Members of Congress and organizations that once opposed the law

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<sup>1</sup> The Family and Medical Leave Act of 1993. Retrieved 8 December 2019, from <https://www.dol.gov/agencies/whd/laws-and-regulations/laws/fmla>

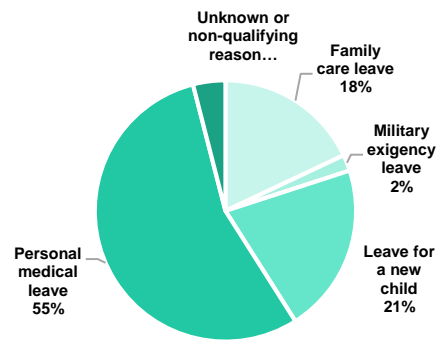
<sup>2</sup> Klerman, J. A., Daley, K., & Pozniak, A. (2012, September 7). *Family and Medical Leave in 2012: Technical Report*. Abt Associates Publication. Retrieved 8 December 2019, from <http://www.dol.gov/asp/evaluation/fmla/fmla2012.htm>

<sup>3</sup> Elving, R. (1995). *Conflict & Compromise: How Congress Makes the Law*. New York, NY: Simon & Schuster.

admit that the FMLA had no such effects and that the time has come to build on the FMLA to provide Americans with access to paid leave.<sup>4</sup>

Since its enactment, the FMLA has allowed millions of people to take necessary leave to care for themselves and their families. Workers who are able to use FMLA benefits do so most often to address their own serious health issue (55 percent), to care for a new child through birth, adoption or foster placement (21 percent), to care for a seriously ill, injured or disabled parent, spouse or child (18 percent), or for military care and deployment exigency purposes that Congress expanded the law to cover in 2008 and 2009 (2 percent).<sup>5</sup>

Figure 1. Distribution of FMLA Leaves Taken Annually by Leave Type



Source: U.S. Department of Labor. (2012). *Family and Medical Leave in 2012: Technical Report*.

Unfortunately, the FMLA is not enough because the leave it provides even to those who are covered by its protections is not paid. Without access to paid leave, workers often forgo taking necessary leave – or face significant financial hardships while taking unpaid leave.<sup>6</sup> According to the Pew Research Center, many workers who received little or no pay during a necessary period of leave had no choice but to use a variety of methods to make due, including drawing on savings earmarked for another purpose (50 percent), taking on debt (37 percent), putting off paying bills (33 percent) or using public assistance programs (17 percent).<sup>7</sup>

Consideration of a comprehensive national paid leave program that builds on the FMLA’s strong foundation is long overdue. The status quo is unsustainable, unaffordable and irresponsible. To build a robust 21<sup>st</sup> century economy with a strong and vibrant workforce and healthy families, we must do better.

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<sup>4</sup> C-SPAN. (2018, July 28). *Bipartisan Policy Center Panel on Paid Family Leave*. Retrieved 8 December 2019, from <https://www.c-span.org/video/?448613-1/ivanka-trump-discusses-paid-family-leave-proposal>; Santorum, R. (2018, November 26). Paid Family Leave Will Support Working Families. *National Review*. Retrieved 8 December 2019, from <https://www.nationalreview.com/2018/11/paid-family-leave-working-families-good-policy-good-politics/>

<sup>5</sup> See Klerman et al., note 2.

<sup>6</sup> Ibid.

<sup>7</sup> Stepler, R. (2017, March 23). *Key takeaways on Americans’ views of and experiences with family and medical leave*. Pew Research Center Publication. Retrieved 8 December 2019, from [http://www.pewresearch.org/fact-tank/2017/03/23/key-takeaways-on-americans-views-of-and-experiences-with-family-and-medical-leave/ft\\_17-03-23\\_familyleavetakeaways\\_2/](http://www.pewresearch.org/fact-tank/2017/03/23/key-takeaways-on-americans-views-of-and-experiences-with-family-and-medical-leave/ft_17-03-23_familyleavetakeaways_2/)

## **B. Most People Lack Paid Family and Medical Leave – and Disparities in Access are Growing**

Too few workers have the option to take paid leave to care for ourselves and our loved ones. In addition, labor force and job creation trends are on a collision path when it comes to work and care. The most recent U.S. Department of Labor employment figures show that women comprise more than half of all workers on U.S. payrolls, yet women are still disproportionately the default caregivers in their families. Moreover, the jobs and industries that are growing most quickly are jobs that tend not to offer workers the supports they need.<sup>8</sup> This is a dangerous powder keg for workers, families and the economy. As colleagues and I showed in a National Partnership for Women & Families white paper, *An Unmet, Growing Need: The Case for Comprehensive Paid Family and Medical Leave in the United States*, trends in birth rates, a growing aging population, and patterns of job-sector growth – make the enactment of a national solution a demographic and economic imperative.<sup>9</sup> Workers will not be able to help power the economy to its full potential until policies support working families in ways they currently do not.

As of March 2019, just 19 percent of the civilian workforce had access to paid family leave to care for a new child or a seriously ill loved one, and just 40 percent had access to employer-provided short-term disability insurance; access among private sector workers is slightly lower.<sup>10</sup>

It is a welcome development that, over the past five years, access to employer-provided paid family leave has improved nationally by 6 percentage points, from 13 percent in 2014 to 19 percent in 2019.<sup>11</sup> But the reality is that our country allows more than 113 million workers and

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<sup>8</sup> Horsley, S. (2020, January 10). *Women Now Outnumber Men on U.S. Payrolls*. National Public Radio. Retrieved 19 January 2020, from <https://www.npr.org/2020/01/10/795293539/women-now-outnumber-men-on-u-s-payrolls>

<sup>9</sup> Glynn, S.J., Eyster, K. & Shabo, V. (2018, July). *An Unmet, Growing Need: The Case for Comprehensive Paid Family and Medical Leave in the United States*. National Partnership for Women & Families White Paper. Retrieved 8 December 2019, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/an-unmet-growing-need-the-case-for-comprehensive-paid-leave-united-states.pdf>

<sup>10</sup> Bureau of Labor Statistics. (2019, September). *National Compensation Survey: Employee Benefits in the United States, March 2019* (Table 31 and 16). Retrieved 8 December 2019, from <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf> and <https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table16a.pdf> (To access data for private sector workers, simply change “civilian” to “private” in the URLs provided here.)

<sup>11</sup> Bureau of Labor Statistics. (2014, September). *National Compensation Survey: Employee Benefits in the United States, March 2014* (Table 32). Retrieved 8 December 2019, from <https://www.bls.gov/ncs/ebs/benefits/2014/ownership/civilian/table32a.pdf>; see Bureau of Labor Statistics, note 10, Table 31.

the loved ones who rely on them when they are in need of care to be left behind.<sup>12</sup> Moreover, aggregate gains mask deep disparities, both in access to paid family leave and in changes over time. For example, in 2014, 22 percent of the highest-wage workers had access to employer-provided paid family leave; today 34 percent do. In 2014, 4 percent of the lowest-wage workers had access to employer-provided paid family leave. Today? Just 6 percent.<sup>13</sup> It is important to emphasize this point: we have seen a 12-percentage point increase among the highest wage workers, but only a 2-percentage point increase among the lowest.

Consider this sobering analysis from the Brookings Institution: Forty-four percent of all workers (53 million people) are not paid enough to live on; they typically earn \$10.22 per hour, or \$18,000 per year, if they work full time, year round.<sup>14</sup> Two-thirds are in their prime working years (age 25 to 54), the age range during which people are most likely to become parents, may be providing care for ill or disabled loved ones, or both. Yet, at wages of \$10.22 per hour, these workers are among the 94 percent of workers in the lowest wage quartile without access to paid family leave. Survey research tells us something about the consequences. According to Pew Research Center's data, workers at this wage level report significant adverse effects when they take leave with little or no pay: 39 percent report using public assistance; 40 percent report taking on debt; 48 percent report putting off paying their bills; 49 percent report borrowing money from family or friends that they were expected to pay back; 53 percent report using savings earmarked for another purpose; and 87 percent report cutting back on spending.<sup>15</sup> In addition to the direct effects on workers and families' financial security, the upstream effects clearly ripple through families, neighborhoods, communities and local economies.

What's more, even in workplaces where paid parental or family caregiving leave may be available to some workers, it is generally not available to most or all workers, according to the 2012 FMLA report commissioned by the Department of Labor.<sup>16</sup> Lower-wage, hourly workers – those who can least afford to take unpaid leave and may be most fearful about on-the-job

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<sup>12</sup> Bureau of Labor Statistics. (2019, September). *National Compensation Survey: Employee Benefits in the United States, March 2019* (Appendix Table 2). Retrieved 8 December 2019, from [https://www.bls.gov/ncs/ebs/benefits/2019/appendixtable2019\\_02.htm](https://www.bls.gov/ncs/ebs/benefits/2019/appendixtable2019_02.htm) (calculation of number of affected workers derived from paid family leave access rates reported in Table 31 multiplied by the number of civilian workers represented in the Employment Benefits Survey)

<sup>13</sup> See Bureau of Labor Statistics, note 10, Table 31.

<sup>14</sup> Ross, M. and Bateman, N. (2020, 8 January). *Low unemployment isn't worth much if the jobs barely pay*. Brookings Blog Post. Retrieved on 22 January, 2020 from <https://www.brookings.edu/blog/the-avenue/2020/01/08/low-unemployment-isnt-worth-much-if-the-jobs-barely-pay/>

<sup>15</sup> Pew Research Center Social and Demographic Trends. (2016, November). Tables from Paid Family Leave Survey (unpublished data from Q91 series on file with author).

<sup>16</sup> See Klerman et al., note 2.

consequences for taking leave at all – are those most often left behind. Even much-celebrated announcements about new paid leave benefits from companies like Wal-Mart include a catch: the parental leave benefit Wal-Mart announced in January 2018 only applies to full-time and salaried employees, which leaves out an estimated 60 percent of its retail associate workforce.<sup>17</sup>

### **C. The Unacceptable Costs of the Status Quo and the Harmful Perpetuation of Inequality**

The costs of America's paid leave gaps are substantial. To be sure, new parents and their children suffer without paid leave. Nearly one-quarter of mothers (23 percent) return to work within two weeks of giving birth, while still recovering.<sup>18</sup> Most fathers do not have the opportunity to spend precious bonding time with their children or support their partners through recovery from childbirth because they take only short leaves or no leave at all.<sup>19</sup> What's more, children whose parents do not have access to paid leave are more likely to miss or be behind schedule in well-baby visits and immunizations.<sup>20</sup> In addition, a lack of access to paid family and medical leave may be tied to maternal depression, high infant mortality rates, and low birthweights.<sup>21</sup> And some new parents – especially women – leave the workforce all together because the cost of taking unpaid leave, combined with the high costs of child care, make quitting the more rational short-term choice. This deprives the economy of valuable human capital and results in lost productivity.<sup>22</sup>

It is imperative to remember that parents who take leave to care for new children are less than 25 percent of those who use FMLA leave each year. Many people, particularly Generation Xers

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<sup>17</sup> Gale, R. (2018, January 12). Walmart Announces Incomplete Paid Leave Policy for Employees. *Slate*. Retrieved 8 December 2019, from <https://slate.com/human-interest/2018/01/wal-mart-announces-new-employee-paid-leave-policy-leaves-part-timers-out-in-the-cold.html>

<sup>18</sup> See Klerman et al., note 2.

<sup>19</sup> Heilman, B., Cole, G., Matos, K., Hassink, A., Mincy, R., & Barker, G. (2016). *State of America's Fathers*. A MenCare Advocacy Publication. Retrieved 8 December 2019, from [http://men-care.org/soaf/download/PRO16001\\_Americas\\_Father\\_web.pdf](http://men-care.org/soaf/download/PRO16001_Americas_Father_web.pdf); Lenhart, A., Swenson, H. and Schulte, B. (2019, December). *Lifting the Barriers to Paid Family and Medical Leave for Men in the United States*. New America publication. Retrieved 8 December 2019, from <https://www.newamerica.org/better-life-lab/reports/lifting-barriers-paid-family-and-medical-leave-men-united-states/>

<sup>20</sup> Choudhury, A. & Polachek S. (2019, July). *The Impact of Paid Family Leave on the Timing of Infant Vaccinations*. IZA Institute of Labor Economics. Retrieved 8 December 2019 from, <http://ftp.iza.org/dp12483.pdf>

<sup>21</sup> Rossin-Slater, M. & Uniat, L. (2019, March 28). Paid Family Leave Policies and Population Health. *Health Affairs Policy Brief*. Retrieved 8 December 2019, from [https://www.healthaffairs.org/doi/10.1377/hpb20190301.484936/full/HPB\\_2019\\_RWJF\\_09\\_W.pdf](https://www.healthaffairs.org/doi/10.1377/hpb20190301.484936/full/HPB_2019_RWJF_09_W.pdf)

<sup>22</sup> U.S. Department of Labor. (2015, September). *The Cost of Doing Nothing: The Price We All Pay Without Paid Leave Policies to Support America's 21st Century Working Families*. Retrieved 8 December 2019, from <https://www.dol.gov/wb/resources/cost-of-doing-nothing.pdf>

and older millennials, are torn between parenting a child and caring for an adult who needs help. Juggling multiple caregiving responsibilities can require an employee to reduce their hours, miss opportunities for career advancement, and experience untold stresses that show up as health care expenses down the road; paid leave is an intervention that can help.<sup>23</sup> And for people with serious health issues who themselves need care, the lack of support from a family caregiver can mean medical complications and higher nursing home utilization, which can translate into unnecessary health care costs borne by taxpayers.<sup>24</sup> Access to paid leave can also mean a more successful return to work after addressing a serious health issue,<sup>25</sup> but many workers, including those addressing a cancer diagnosis, do not even have paid sick time to use for treatment and recovery.<sup>26</sup>

The inability to access paid leave poses yet another structural barrier for people who already face many others, as the very people who are least likely to have access to paid leave are also least likely to have savings or other resources to rely on. Workers who do not have access to paid leave are disproportionately people who work in low wage jobs and who have little job security.<sup>27</sup> They are disproportionately people of color who, due to structural racism in housing, employment, and access to capital, tend to have lower levels of wealth, and experience greater challenges in the event of a job loss.<sup>28</sup> They are child care and elder care workers who cannot afford to take time away from their jobs to care for their own loved ones – and who also may

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<sup>23</sup> National Alliance for Caregiving and Caring Across Generations. (2019, November). *Burning the Candle at Both Ends: Sandwich Generation Caregiving in the U.S.* Retrieved 8 December 2019, from [https://www.caregiving.org/wp-content/uploads/2019/11/NAC-CAG\\_SandwichCaregiving\\_Report\\_Digital-Nov-26-2019.pdf](https://www.caregiving.org/wp-content/uploads/2019/11/NAC-CAG_SandwichCaregiving_Report_Digital-Nov-26-2019.pdf)

<sup>24</sup> Arora, K., & Wolf, D. A. (2017, November 3). Does Paid Family Leave Reduce Nursing Home Use? The California Experience. *Journal of Policy Analysis and Management*, 37(1), 38-62. Retrieved 8 December 2019, from <http://onlinelibrary.wiley.com/doi/10.1002/pam.22038/full>

<sup>25</sup> WORLD Policy Analysis Center. (2018, February). *A Review of the Evidence on the Length of Paid Family and Medical Leave.* Retrieved 8 December 2019, from <https://www.worldpolicycenter.org/sites/default/files/WORLD%20Brief%20-%20Length%20Paid%20Family%20and%20Medical%20Leave.pdf>

<sup>26</sup> American Cancer Society Action Network. (2017, December 8). *Key Findings – National Surveys of Cancer Patients, Survivors, and Caregivers.* Retrieved 8 December 2019, from <https://www.acscan.org/sites/default/files/ACS%20CAN%20Paid%20Leave%20Surveys%20Key%20Findings%20Press%20Memo%20FINAL.pdf>

<sup>27</sup> Gupta, P., Goldman, T., Hernandez, E. & Rose, M. (2018, December). *Paid Family and Medical Leave is Critical for Low-wage Workers and Their Families.* CLASP publication. Retrieved 8 December 2019, from [https://www.clasp.org/sites/default/files/publications/2018/12/2018\\_pfmliscriticalfor\\_0.pdf](https://www.clasp.org/sites/default/files/publications/2018/12/2018_pfmliscriticalfor_0.pdf)

<sup>28</sup> National Partnership for Women & Families. (2018, August). *Paid Family and Medical Leave: A Racial Justice Issue – And Opportunity.* Retrieved 8 December 2019, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-family-and-medical-leave-racial-justice-issue-and-opportunity.pdf>



not be able to afford to pay others to provide care. For women of color, the intersecting effects of the gender-based wage gap, the racial wealth gap, and employment discrimination all contribute to an increased risk of financial insecurity that is exacerbated by the intergenerational family caregiving responsibilities that disproportionately fall on them.<sup>29</sup> People's lack of access to paid leave has dire consequences for the health, security, and dignity of workers who are stretched, for their loved ones, and for the economy, which loses the value of their productive labor. The implications are even greater if one considers the possibility of asking these same workers to jeopardize their future retirement security through cuts to Social Security's earned old-age benefits or to reduce the annual Child Tax Credit they receive, when, in reality, it is the same people who need both.

But this is not just a low-wage worker issue. Many middle- and even higher-wage workers must cobble together vacation, sick and personal time; navigate the requirements of applying for short-term disability benefits to supplement an unpaid FMLA leave; and face the scorn of supervisors who balk at providing the paid time off that a company touts access to on paper. National policy changes would tangibly improve their lives and change our country's culture.

The costs of doing nothing – now estimated by the Center for American Progress to be \$22.5 billion to families in lost wages,<sup>30</sup> with additional costs in the form of lost productivity, reduced retirement security and wealth, and higher public health and human services costs – are too high to continue down this road.

## **II. The Way Forward: The Outcomes Expected from Well-Designed Paid Leave Would Benefit Working People, Families, Businesses and the Economy**

### **A. State Innovations Pave the Way to a Well-Designed National Policy**

State policymakers, advocates, businesses and workers have begun to recognize the harm caused by the status quo and the value of a comprehensive, sustainable baseline paid leave program. As a result, the state paid leave landscape is changing rapidly and is creating demand to address America's paid leave failures at the national level. There are now eight states and the

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<sup>29</sup> Grant, K., Brumfield, C., Khan, S., Aderonmu, F. & Dutta-Gupta, I., (2019) *The Paid Family and Medical Leave Opportunity: What Research Tells Us About Designing a Paid Leave Program that Works for All*.

Georgetown Center on Poverty & Inequality. Retrieved 8 December 2019, from [http://www.georgetownpoverty.org/wp-content/uploads/2019/08/Georgetown\\_PLUS-PaidFamilyMedicalLeaveOpportunity-20190804.pdf](http://www.georgetownpoverty.org/wp-content/uploads/2019/08/Georgetown_PLUS-PaidFamilyMedicalLeaveOpportunity-20190804.pdf)

<sup>30</sup> Glynn, S. J. (2020, January 21). *The Rising Cost of Inaction on Work-Family Policies*. Center for American Progress. Retrieved 22 January 2020, from

<https://www.americanprogress.org/issues/women/news/2020/01/21/479555/rising-cost-inaction-work-family-policies/>

District of Columbia that have implemented or will soon implement paid family and medical leave programs for the workers in their states<sup>31</sup>:

- California (2002 enactment, 2004 implementation; multiple subsequent legislatively-adopted improvements)
- New Jersey (2008 enactment, 2009 implementation, with 2019 legislative improvements implemented in 2019 and 2020)
- Rhode Island (2013 enactment, 2014 implementation)
- New York (2016 enactment, 2018-2021 phased-in implementation to ramp up benefit levels and duration)
- Washington (2017 enactment, January 2020 implementation of benefit payments)
- District of Columbia (2017 enactment, July 2020 implementation of benefit payments)
- Massachusetts (2018 enactment, 2021 implementation of benefit payments)
- Connecticut (2019 enactment, 2022 implementation of benefit payments)
- Oregon (2019 enactment, 2023 implementation of benefit payments)

More than half of all U.S. states saw paid family and medical leave bills introduced in the most recent legislative sessions, with substantial progress in at least four.

State programs provide evidence as to the features that work. They reveal the importance of policy elements that improve the effectiveness of policies in meeting the needs of workers across the wage spectrum such as sliding scale wage replacement and job protection. They also dispel concerns about the impact of paid family and medical leave policies on businesses and show the value of public paid leave funds, especially for smaller enterprises.

Existing state paid leave programs are structured as universal social insurance funds, paid for through small payroll contributions from employers, employees, or both (see Appendix, Table 2). Each program covers leave to address an employee's own serious health issue, to care for a seriously ill, injured or disabled loved one, and to care for a newborn, adopted, or newly-placed foster child; some states cover leave for additional family and medical needs, including military caregiving and qualifying exigency leaves or situations related to domestic violence, stalking and sexual assault. Each provides wage replacement based on prior earnings up to a cap; the

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<sup>31</sup> National Partnership for Women & Families. (2019, August). *State Paid Family and Medical Leave Insurance Laws*. Retrieved 8 December 2019, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/state-paid-family-leave-laws.pdf>; New America. (2019, July). *Federal FMLA and State Paid Leave Program Usage and Coverage*. Retrieved 8 December 2019, from [https://newamericadotorg.s3.amazonaws.com/documents/Overview\\_of\\_FMLA\\_and\\_Paid\\_Leave\\_Use\\_and\\_Coverage.pdf](https://newamericadotorg.s3.amazonaws.com/documents/Overview_of_FMLA_and_Paid_Leave_Use_and_Coverage.pdf)

five newest laws do so on a sliding scale, so that lower-wage workers receive a higher share of their typical wages (see Appendix, Table 1). Sliding scale replacement rates make these programs more accessible and affordable. Each state program also covers caregiving for family members beyond parents, spouses and children such as grandparents, while the newest laws also recognize that sometimes our closest loved ones are chosen family, siblings, and grandchildren.<sup>32</sup> Some programs also incorporate critically-important employment protections that reach some or all of the 39 percent of workers who are not covered through FMLA job protection and health insurance continuation provisions.<sup>33</sup> These elements promote the flexibility and utility of paid leave benefits for workers across gender, race, job and income.

Advocacy for paid leave policies is no longer a project carried only by advocates for women and children or by activists seeking racial and economic justice, health care access, caregiver support, and stronger labor protections – though it is the hard work of organizations representing these groups and impacted people themselves that have been catalysts for change. Today, groups representing businesses, small business owners, and large companies are also speaking out about the benefits of paid leave, increasingly adopting policies of their own and calling on lawmakers to pass comprehensive policies.<sup>34</sup> Business groups were also instrumental in striking agreements with broad advocacy coalitions and lawmakers on both sides of the aisle to develop bills that passed with bipartisan support in Washington State, Massachusetts and Oregon.<sup>35</sup>

## **B. Designing Policy to Optimize Outcomes for Working People, Families, Business and the Economy**

A well-designed paid family and medical leave program can help us to build a country characterized by greater gender, economic, and racial justice; where children are healthier and

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<sup>32</sup> See New America, note 31.

<sup>33</sup> See National Partnership for Women & Families, note 31.

<sup>34</sup> Businesses Advancing National Paid Leave. Retrieved 8 December 2019, from [www.advancingpaidleave.org](http://www.advancingpaidleave.org); Small Business for Paid Family and Medical Leave. Retrieved 9 December 2019, from <https://www.smallbusinessforpaidleave.org/>

<sup>35</sup> Washington Hospitality Association. (2017, June 30). *Businesses support bipartisan law creating statewide paid family and medical leave*. Retrieved 8 December 2019, from <https://wahospitality.org/blog/businesses-support-bipartisan-law-creating-statewide-paid-family-and-medical-leave/>; Leung, S. (2018, June 28). How progressives and businesses made an unlikely deal on family leave. *The Boston Globe*. Retrieved 8 December 2019, from <https://www.bostonglobe.com/business/other/2018/06/28/how-progressives-and-businesses-made-unlikely-deal-family-leave/7fRz5Pv0VCy8WDbG32VeP/story.html?event=event25?event=event25>; Miller, M. (2019, June 14). Family leave bill inches through the legislature. *Mail Tribune (Oregon)*. Retrieved 7 December 2019, from <https://mailtribune.com/news/state-news/family-leave-bill-inches-through-legislature>

have greater opportunities for success; where workplaces honor workers' commitments to their families without adverse effects on labor force participation, wages or opportunities for advancement; where older and ill people and people with disabilities receive the care they need; and where businesses of all sizes can thrive. A well-designed paid leave program can also help catalyze a more vibrant and competitive national economy in which traditional work, entrepreneurship, gig work, and unpaid care work are equally valued.

With each new study on paid leave, we are learning more about how to most effectively design programs and outreach activities that maximize a policy's positive impacts while minimizing the possibility of adverse consequences. Equally important as program design is implementation, promotion and enforcement – and how partnerships among government, the private sector, community-based organizations and trusted intermediaries can help promote appropriate program use.<sup>36</sup>

The positive outcomes we can expect to see from a well-designed, sustainably funded and appropriately implemented national paid family and medical leave program include, but are not limited to:

1. **Improved labor force attachment and increased earnings for women.** California's paid family leave program was enacted in 2002, started paying benefits in 2004, and has been expanded multiple times since. Numerous studies of California's program suggest that women's labor force attachment, hours worked, and earnings increase when paid family leave is available for the arrival of a child<sup>37</sup> and for family caregiving.<sup>38</sup> The effects on duration of leave-taking are most pronounced for lower-wage women and women of color,<sup>39</sup> contributing to the possibility of helping to close the wage gap and promote women's workplace advancement over time. Some longer-term labor force outcomes

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<sup>36</sup> Mason, J. (2019). *Meeting the Promise of Paid Leave: Best Practices in State Paid Leave Implementation*. National Partnership for Women & Families. Retrieved 8 December 2019, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/meeting-the-promise-of-paid-leave.pdf>

<sup>37</sup> Rossin-Slater, M., Ruhm, C. & Waldfogel, J. (2013). The Effects of California's Paid Family Leave Program on Mothers' Leave-Taking and Subsequent Labor Market Outcomes. *J. Policy Anal Manage* 32(2): 224-245. Retrieved 8 December 2019, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3701456/>

<sup>38</sup> Saad-Lessler, J. & Bahn, K. (2017, September). *The Importance of Paid Leave for Caregivers: Labor Force Participation Effects of California's Comprehensive Paid Family and Medical Leave*. Center for American Progress. Retrieved 8 December 2019, from <https://www.americanprogress.org/issues/women/reports/2017/09/27/439684/importance-paid-leave-caregivers/>

<sup>39</sup> See Rossin-Slater et al., note 37; Saad-Lessler et al., note 38.

may be skewed toward higher-income women, but these can be smoothed over time with policy updates.<sup>40</sup>

Findings on workforce attachment improvements and earnings from California are consistent with studies that find that women who took paid leave through state TDI programs or employer policies were more likely to be working and to have higher earnings in the year after their child's birth than women who did not.<sup>41</sup> Nationally, it is estimated that policies like paid leave, which would improve women's labor force participation rates, could add \$500 billion to the United States economy.<sup>42</sup>

- 2. Better health and health care utilization for children.** A recent study found that the implementation of paid family leave in California resulted in a significant reduction in late vaccinations among children, particularly among children from low-income families.<sup>43</sup> This new study adds to a body of research about the effects of paid leave on health outcomes. Other studies have found a relationship between California's paid leave implementation and reduced risk of head trauma for infants (likely due to reduced parental stress)<sup>44</sup> as well as the role generally of paid leave in reducing the length of hospital stays for critically ill older children.<sup>45</sup> Parents who take paid leave are also more attuned to their child's cues, which improves children's neurological development and behavior over time.<sup>46</sup> But in order to make the most of the bonding time that a paid leave law makes available, or to make the use of paid leave for family care more accessible for working parents, programs must offer wage replacement that allows workers to meet

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<sup>40</sup> Jones, K. (2020, January). *Paid Family Leave Increases Mother's Labor Market Attachment*. Institute for Women's Policy Research Fact Sheet. Retrieved 20 Jan. 2020, from <https://iwpr.org/wp-content/uploads/2020/01/B383-Paid-Leave-Fact-Sheet.pdf>

<sup>41</sup> Houser, L., & Vartanian, T. P. (2012, January). *Pay Matters: The Positive Impacts of Paid Family Leave for Families, Businesses and the Public*. Rutgers, the State University of New Jersey Center for Women and Work Publication. Retrieved 8 December 2019, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/other/pay-matters.pdf>; Houser, L., & Vartanian, T. P. (2012, April). *Policy Matters: Public Policy, Paid Leave for New Parents, and Economic Security for U.S. Workers*. Rutgers, the State University of New Jersey Center for Women and Work Publication. Retrieved 8 December 2019, from [http://go.nationalpartnership.org/site/DocServer/RutgersCWW\\_Policy\\_Matters\\_April2012.pdf](http://go.nationalpartnership.org/site/DocServer/RutgersCWW_Policy_Matters_April2012.pdf)

<sup>42</sup> U.S. Department of Labor, note 22

<sup>43</sup> See Choudhury, note 20.

<sup>44</sup> Klevens, J., Luo, F., Xu, L., Peterson, C. & Latzman, N. (2016, December). Paid family leave's effect on hospital admissions for pediatric abusive head trauma. *Injury Prevention* 22:442-445. Retrieved 8 December 2019, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4981551/>

<sup>45</sup> Heymann, J. (2001, October 15). *The Widening Gap: Why America's Working Families Are in Jeopardy—and What Can Be Done About It*. New York, NY: Basic Books.

<sup>46</sup> Zero to Three. (2018, February). Paid Family Leave Talking Points. Retrieved 8 December 2019, from <https://www.zerotothree.org/resources/2157-paid-family-leave-talking-points>

their basic expenses and job protections so that the use of benefits from a public paid leave fund does not come at the expense of losing a job.

- 3. More engagement from men in the lives of their children and families.** California's paid family leave program, now in its 16<sup>th</sup> year, shows how policy and culture change can reinforce one another. When California's program was first implemented, men comprised less than one-sixth of parental leave claimants. By 2016, they comprised 37.5 percent of paid leave users in the state. In Rhode Island, too, men are just over one-third of paid parental leave users (36.7 percent).<sup>47</sup>

Policy changes help drive cultural changes, according to experts. As state laws have created paid leave benefits for people of all genders, some employers' practices in other jurisdictions have followed suit. A national standard would continue this trend, with benefits for men and their children, a more gender-equal division of household duties, diminished workplace stereotypes, and improvements in women's earnings and opportunities.<sup>48</sup> Public opinion studies shows that men want and expect to need to be able to care for their children and older loved ones to the same extent as women do, but that financial constraints, fears about work-related backlash and societal perceptions often hold them back.<sup>49</sup> A well-designed national paid family and medical leave law could help to remove those barriers.

- 4. Better outcomes and reduced health care costs for ill, injured or disabled loved ones and more economic security for their caregivers.** California's paid family leave program has been shown to reduce nursing home utilization by 11 percent, in part because family caregivers are more available to provide care.<sup>50</sup> Access to paid leave in California also shows labor force participation benefits for caregivers.<sup>51</sup> While there are

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<sup>47</sup> See Mason, note 36.

<sup>48</sup> Bartel, A., Rossin-Slater, M., Ruhm, C. Stearns, J. & Waldfogel, J. (2015, November). Paid Family Leave, Fathers' Leave-Taking, and Leave-Sharing in Dual-Earner Households. Retrieved 8 December 2019, from <https://www.dol.gov/agencies/oasp/evaluation/WorkerLeaveStudy/WL-Father-Leave-Taking-and-Leave-Sharing-in-Dual-Earner-Households>; Glynn, S.J. (2018, May 18). *An Unequal Division of Labor: How Equitable Workplace Policies Would Benefit Working Mothers*. Center for American Progress. Retrieved 8 December 2019, from <https://www.americanprogress.org/issues/women/reports/2018/05/18/450972/unequal-division-labor/>; see Heilman, et al., note 19

<sup>49</sup> See Lenhart et al., note 19.

<sup>50</sup> See Arora et al., note 24.

<sup>51</sup> See Saad-Lessler, note 38.

many unanswered research questions with respect to caregiving and personal medical leave,<sup>52</sup> the need for relief is clear.

Already, 43.5 million people provide unpaid care to family members, and most family caregivers also have full-time jobs.<sup>53</sup> An estimated 36 million working age adults live with a family member with a disability.<sup>54</sup> In addition, the majority of military caregivers – and more than three-quarters of caregivers for post-9/11 wounded warriors – are also in the labor force.<sup>55</sup> Caregiving leave will become increasingly important with generational shifts as the large Baby Boomer population ages, because there are fewer younger people to care for them.<sup>56</sup>

In particular, new research released in November 2019 by the National Alliance for Caregiving and Caring Across Generations chronicles the challenges facing the country's 11 million “sandwich” generation caregivers, half of whom (49 percent) are millennials caring for a young child as well for an older child with special needs or an older loved one.<sup>57</sup> This study finds that, although most millennial caregivers work, they are unlikely to have workplace benefits like paid leave or flexible hours. Most report at least one

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<sup>52</sup> Jacobs, E., (2018, October 22). *Paid Family and Medical Leave in the United States: A Research Agenda*. Washington Center for Equitable Growth. Retrieved 8 December 2019, from

<https://equitablegrowth.org/research-paper/paid-family-and-medical-leave-in-the-united-states/>

<sup>53</sup> National Alliance for Caregiving. (2015, June). *Caregiving in the U.S. 2015*. National Alliance for Caregiving and AARP Public Policy Institute Publication. Retrieved 8 December 2019, from <http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf>

<sup>54</sup> Grant, K., Sutcliffe, T. J., Dutta-Gupta, I., & Goldvale, C. (2017, October 1). *Security & Stability: Paid Family and Medical Leave and its Importance to People with Disabilities and their Families*. Georgetown Center on Poverty and Inequality Publication. Retrieved 8 December 2019, from [http://www.georgetownpoverty.org/wp-content/uploads/2017/10/Georgetown\\_PFML-report-hi-res.pdf](http://www.georgetownpoverty.org/wp-content/uploads/2017/10/Georgetown_PFML-report-hi-res.pdf)

<sup>55</sup> Ramchand, R., Tanielian, T., Fisher, M. P., Vaughan, C. A., Trail, T. E., Epley, C., Voorhies, P., Robbins, M. W., Robinson, E., & Ghosh-Dastidar, B. (2014). *Hidden Heroes: America's Military Caregivers* (see Figure 3.8). RAND Corporation Publication. Retrieved 9 December 2019, from <http://www.rand.org/health/projects/military-caregivers.html>

<sup>56</sup> Redfoot, D., Feinberg, L., & Houser, A. (2013, August). *The Aging of the Baby Boom and the Growing Care Gap: A Look at Future Declines in the Availability of Family Caregivers*. AARP Public Policy Institute Publication. Retrieved 8 December 2019, from [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/ltc/2013/baby-boom-and-the-growing-care-gap-insight-AARP-ppi-ltc.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2013/baby-boom-and-the-growing-care-gap-insight-AARP-ppi-ltc.pdf)

<sup>57</sup> See National Alliance for Caregiving, note 23; see also Parker, K., & Patten, E. (2013, January). *The Sandwich Generation: Rising Financial Burdens for Middle-Aged Americans*. Pew Research Center Publication. Retrieved 8 December 2019, from <http://www.pewsocialtrends.org/2013/01/30/the-sandwich-generation/>; Institute for Women's Policy Research, & IMPAQ International. (2017, January 19). *Family and Medical Leave-Taking among Older Workers*. Retrieved 8 December 2019, from <https://iwpr.org/publications/family-medical-leave-taking-among-older-workers/>

work effect, such as needing to go in late or leave early, taking a leave of absence to care for a loved one, cutting back on hours, or turning down a promotion.<sup>58</sup> The care needs that most sandwich generation caregivers describe are long-term conditions (55 percent); their care recipients are most often in their 60s and are likely to require care for many years.<sup>59</sup>

Research on the difficulties caregivers may have with stress, burnout and inflexible workplaces in the absence of policy and culture changes could mean that long-term family caregivers will increasingly find it difficult to continue to work and be unable to seize opportunities for advancement, leading to substantially diminished financial security during their own retirement. For example, research from AARP and the MetLife Mature Market Institute, which shows that adults 50+ suffer an average loss in lifetime earnings and retirement security of \$303,000+ when they leave a job to care for an aging parent.<sup>60</sup> All of these trends create urgency in developing policies that support working family caregivers, and paid leave is among the most critical.

5. **Savings to other programs funded through general revenues.** Too often, critics of new spending focus on what paid family and medical leave will cost, rather than on the costs already borne by workers and society as a result of the status quo. Among the potential for direct savings to other programs, paid leave can reduce nursing home costs, which are often paid for by Medicaid, as noted above. Research also shows a relationship between access to paid family and medical leave and reduced use of SNAP and other forms of public assistance.<sup>61</sup> Promoting financial independence for workers and families, using government resources efficiently and reducing direct and indirect costs to taxpayers are all essential reasons to invest in paid leave.
6. **Benefits for businesses, especially small businesses.** In California, New Jersey, and Rhode Island, the three states with the longest-standing paid family leave programs, researchers have consistently found that the concerns business representatives expressed prior to the laws' passage were unfounded. Research shows that employers have not been unduly challenged or harmed by the policies adopted in states. In fact, businesses

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<sup>58</sup> See National Alliance for Caregiving et al., note 23.

<sup>59</sup> Ibid.

<sup>60</sup> MetLife Mature Market Institute. (2011, June). *The MetLife Study of Caregiving Costs to Working Caregivers: Double Jeopardy for Baby Boomers Caring for Their Parents*. Retrieved 8 December 2019, from <https://www.caregiving.org/wp-content/uploads/2011/06/mmi-caregiving-costs-working-caregivers.pdf>

<sup>61</sup> See *Policy Matters*, note 41; *Policy Matters*, note 41; Menasce Horowitz, J., Parker, K., & Graf, N. (2017, March 23). *Americans Widely Support Paid Family and Medical Leave, but Differ Over Specific Policies*. Pew Research Center Publication. Retrieved 8 December 2019, from <http://www.pewsocialtrends.org/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/> (unpublished calculation).



in California, New Jersey, and Rhode Island are generally supportive of those states' laws. In California, researchers found that the vast majority of employers have seen a positive effect or no effect on employee productivity, profitability and performance – and smaller businesses see even more positive or neutral effects of the law than larger businesses.<sup>62</sup> Many businesses reported cost-savings, likely by coordinating their benefits with the state plan.<sup>63</sup> These businesses recognize state paid leave programs as a support rather than as a burden.

Even the Society for Human Resource Management (SHRM), a chief opponent of paid family leave before it was passed in California, issued a report finding that employers' concerns about the program had “not been realized” and that the law created “relatively few” new burdens for employers.<sup>64</sup> A report prepared on behalf of the New Jersey Business and Industry Association also found that the majority of both small and large New Jersey businesses adjusted easily to the state's law and experienced no effects on business profitability, performance or employee productivity.<sup>65</sup> This is consistent with additional qualitative research conducted among a cross-section of New Jersey employers.<sup>66</sup>

In Rhode Island, where business supporters were important allies in passing the paid leave law, research shows that businesses in key industries have adjusted easily. A study of small- and medium-sized food service and manufacturing employers in Rhode Island by researchers at Columbia Business School reports no negative effects on employee

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<sup>62</sup> Milkman, R., & Appelbaum, E. (2013). *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy* (pp. 67-68). Ithaca, NY: Cornell University Press; Bartel, A., Baum, C., Rossin-Slater, M., Ruhm, C. & Waldfogel, J. (2014, June 23). *California's Paid Family Leave Law: Lessons from the First Decade*. U.S. Department of Labor Publication. Retrieved 8 December 2019, from <http://www.dol.gov/asp/evaluation/reports/paidleavedeliverable.pdf>

<sup>63</sup> See Milkman, note 62.

<sup>64</sup> Redmond, J., & Fkiaras, E. (2010, January). *Legal Report: California's Paid Family Leave Act Is Less Onerous than Predicted*. Society for Human Resource Management Publication. Retrieved 8 December 2019, from [https://www.sheppardmullin.com/media/article/809\\_CA%20Paid%20Family%20Leave%20Act%20Is%20Less%20Onerous%20Than%20Predicted.pdf](https://www.sheppardmullin.com/media/article/809_CA%20Paid%20Family%20Leave%20Act%20Is%20Less%20Onerous%20Than%20Predicted.pdf)

<sup>65</sup> Ramirez, M. (2012). *The Impact of Paid Family Leave on New Jersey Businesses*. New Jersey Business and Industry Association and Rutgers University, The State University of New Jersey Presentation. Retrieved 8 December 2019, from <http://bloustein.rutgers.edu/wp-content/uploads/2012/03/Ramirez.pdf>

<sup>66</sup> Lerner, S., & Appelbaum, E. (2014, June). *Business As Usual: New Jersey Employers' Experiences with Family Leave Insurance*. Center for Economic and Policy Research Publication. Retrieved 8 December 2019, from <http://www.demos.org/sites/default/files/publications/nj-fli-2014-06.pdf>

workflow, productivity or attendance, and finds that 61 percent of employers surveyed support the law.<sup>67</sup>

### **III. It is Time for a Comprehensive, Inclusive and Sustainable National Paid Leave Policy – the FAMILY Act**

The FAMILY Act (H.R. 1185/S. 463) is the only bill currently pending in Congress that incorporates best practices from state policies and reflects the needs of working people, their families, and employers. As drafted, the FAMILY Act would have dramatic effects on families whose main breadwinner would otherwise be forced to take 12 weeks of unpaid leave; it would reduce the percentage of families that face significant economic insecurity by a whopping 81 percent nationwide.<sup>68</sup> The enactment of this now-bipartisan legislation would make paid family and medical leave available and accessible to workers across the country and wage spectrum, while still providing states and employers with the flexibility to provide more generous benefits.

#### **A. The FAMILY Act’s Key Provisions Enjoy Broad Support**

The FAMILY Act would create a national paid family and medical leave fund grounded in the same principles as Social Security – universality, sustainability and inclusiveness. It would cover eligible individuals across the country, no matter where they live, their employer, or their job, and it would apply whether they are caring for a new child, a seriously ill or injured loved one, their own serious health condition, or dealing with a family member’s call to military duty or a service member’s health issue. It would cover traditional employees and self-employed or “gig” workers by providing paid leave benefits through a newly-established federal fund. Leave would be available for up to 12 weeks annually, pending certification from a health provider as to the needed duration of leave. Workers who typically earn low and even mid-level wages would receive two-thirds of their typical wages for that time. Importantly, the FAMILY Act also protects workers who need to take time away from their jobs from retaliation.

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<sup>67</sup> Bartel, A., Rossin-Slater, M., Ruhm, C. & Waldfogel, J. (2016, January). *Assessing Rhode Island’s Temporary Caregiver Insurance Act: Insights from a Survey of Employers*. U.S. Department of Labor Publication. Retrieved 8 December 2019, from [http://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct\\_InsightsFromSurveyOfEmployers.pdf](http://www.dol.gov/asp/evaluation/completed-studies/AssessingRhodeIslandTemporaryCaregiverInsuranceAct_InsightsFromSurveyOfEmployers.pdf)

<sup>68</sup> diversitydatakids.org. (2018). *Full-Year Working Adults Ages 21-64 Living in Families Estimated to be Below 200% of the Federal Poverty Line After Wage Loss Due to 12 Weeks of Paid/Unpaid Family or Medical Leave (Share)*. Brandeis University, The Heller School, Institute for Child, Youth and Family Policy Publication. Retrieved 8 December 2019, from <http://www.diversitydatakids.org/data/ranking/670/full-year-working-adults-ages-21-64-living-in-families-estimated-to-be-below-200/#loct=2&cat=54,25&tf=21&ch=132,133,134> (unpublished calculation by the National Partnership for Women & Families)

The FAMILY Act fund would be self-sustaining and deficit-neutral, just like the state programs that have paved the way. Small payroll deductions from both employees and employers and contributions from self-employed workers would fund both the benefits and the administrative costs of the program. The program would be administered through a new Office of Paid Family and Medical Leave within the Social Security Administration (SSA) to help create an efficient, standard experience for people across the country without foreclosing the continuation of more generous state programs. Program integrity measures would help to ensure appropriate use, as has worked in the states.

This legislation has record levels of co-sponsorship in both chambers of Congress, including bipartisan support and more than 200 cosponsors in the House.<sup>69</sup> More than 700 organizations across the country,<sup>70</sup> child development experts,<sup>71</sup> business and management experts,<sup>72</sup> medical providers, and experts in social work and gerontology<sup>73</sup> are calling on Congress to address America's paid leave crisis with a comprehensive, national paid family and medical leave program like the FAMILY Act.

The popularity of comprehensive, inclusive and sustainable paid family and medical leave is indisputable. The vast majority of voters across party lines (80 percent of all voters) want a national paid family and medical leave plan that covers all working people and that allows leave-taking for all of the reasons for which FMLA leave can be taken, and they are willing to make payments into a fund to support the program (84 percent).<sup>74</sup> They also prefer such a

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<sup>69</sup> The Family And Medical Insurance Leave Act, H.R. 1185. Retrieved 8 December 2019, from <https://www.congress.gov/bill/116th-congress/house-bill/1185/>

<sup>70</sup> *FAMILY Act Coalition Letter to Congress*. (2019, November 13). Retrieved 8 December 2019, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/coalition/family-act-coalition-letter.pdf>

<sup>71</sup> Divecha, D., & Stern, R. (2015, February 10). Give our children a strong start. *The Hill*. Retrieved 8 December 2019, from <http://thehill.com/blogs/congress-blog/healthcare/232214-give-our-children-a-strong-start>

<sup>72</sup> *Letter from Business School Faculty to Congress in Support of National Paid Leave and the FAMILY Act*. (2015, September 15). Retrieved 8 December 2019, from <http://worklife.wharton.upenn.edu/wp-content/uploads/2012/11/Final-Business-School-Professors-Letter-to-Congress-in-Support-of-the-FAMILY-Act-September-15-2015.pdf>

<sup>73</sup> *Aging and Social Work Experts' Letter to Congress in Support of Strong National Paid Family and Medical Leave*. (2017, November 1). Retrieved 8 December 2019, from [http://www.bc.edu/content/dam/files/research\\_sites/agingandwork/pdf/documents/Caregiving\\_letter\\_10\\_30\\_2017.pdf](http://www.bc.edu/content/dam/files/research_sites/agingandwork/pdf/documents/Caregiving_letter_10_30_2017.pdf)

<sup>74</sup> Perry Udem Research and Bellwether Consulting. (2018, October). Voters' Views on Paid Family + Medical Leave. Retrieved 8 December 2019, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/voters-views-on-paid-family-medical-leave-survey-findings-august-2018.pdf>

program and its financing structure over other, less inclusive policy solutions like the Child Tax Credit loan and the Social Security pull-forward approaches, according to nationally representative surveys.<sup>75</sup>

Contrary to portrayals of paid leave as primarily a “moms and babies” issue in the media and among some lawmakers, most people who believe a national paid leave program could help them (72 percent of likely voters surveyed prior to the 2018 elections) see the value of paid family and medical leave in their own lives primarily for the *family caregiving leave* it will provide (65 percent say this would be most useful to them).<sup>76</sup> The majority of those surveyed who believe a program could help them also recognize the possibility that a *personal medical issue* could surface (57 percent say this is most useful).<sup>77</sup> And, of course, for people of reproductive age of all genders, paid leave to care for a new child is critical; the consulting firm EY reports that 40 percent of millennials would even consider moving to another country for paid parental leave.<sup>78</sup> Voters in survey after survey also say they are willing to pay for a paid leave program, and survey data show they would even be willing to contribute more than a program like the FAMILY Act would cost.<sup>79</sup>

Surveys show that seven in 10 small businesses, too, support the FAMILY Act model of shared employee-employer contributions because it helps them ensure their workers have access to leave while making the costs predictable and affordable.<sup>80</sup> As Sarah Piepenburg, the owner of a

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<sup>75</sup> Perry Udem, note 74; Data for Progress and YouGov Blue. (2019, October). Polling on Paid Family Leave. Retrieved 8 December 2019, from [http://filesforprogress.org/memos/family\\_leave\\_polling.pdf](http://filesforprogress.org/memos/family_leave_polling.pdf)

<sup>76</sup> See Perry Udem, note 74, and Lenhart, et al, note 19.

<sup>77</sup> See Perry Udem, note 74.

<sup>78</sup> See Perry Udem, note 74; EY. (2015, May 5). *Global generations: A global study on work-life challenges across generations*. Retrieved 8 December 2019, from [https://www.ey.com/Publication/vwLUAssets/Global\\_generations\\_study/\\$FILE/EY-global-generations-a-global-study-on-work-life-challenges-across-generations.pdf](https://www.ey.com/Publication/vwLUAssets/Global_generations_study/$FILE/EY-global-generations-a-global-study-on-work-life-challenges-across-generations.pdf)

<sup>79</sup> See Perry Udem, note 74; Data for Progress, note 75; National Partnership for Women & Families. (2016, September 29). *Voters' Willingness to Pay for a National Paid Leave Fund*. Retrieved 8 December 2019, from <http://www.nationalpartnership.org/research-library/work-family/paid-leave/memo-voters-willingness-to-pay-for-a-national-paid-leave-fund.pdf>

<sup>80</sup> Lake Research Partners. (2017, February). Polling commissioned by Small Business Majority and Center for American Progress. Retrieved 8 December 2019, from <http://www.smallbusinessmajority.org/sites/default/files/research-reports/033017-paid-leave-poll.pdf>, Main Street Alliance. (2017). *National Paid Family and Medical Leave: A Proposal for Small Business Success*. Retrieved 8 December 2019, from [https://d3n8a8pro7vhmx.cloudfront.net/mainstreetalliance/pages/10/attachments/original/1486411533/PF\\_ML\\_2017\\_Report.pdf?1486411533](https://d3n8a8pro7vhmx.cloudfront.net/mainstreetalliance/pages/10/attachments/original/1486411533/PF_ML_2017_Report.pdf?1486411533). See also Mason, J. note 36 (citing Main Street Alliance survey of 1,120 small businesses in California, Connecticut, Florida, Iowa, Maine, Massachusetts, Minnesota, Nevada,

local small retail business in Minnesota recently explained in an op-ed in her hometown paper, she much prefers the predictable, affordable contributions that would be required by a paid family and medical leave program over spending thousands of dollars out of pocket at unexpected times, like when one of her employees broke both arms and another needed a hip replacement. Providing paid leave to her employees on her own has meant falling behind on her commercial lease and home mortgage. She also explained that market-based solutions, like private temporary disability insurance policies, are cost-prohibitive for small businesses.<sup>81</sup>

Importantly, representatives of larger national business organizations, which traditionally oppose government intervention in the provision of paid leave, are signaling a willingness to engage in discussions about the scope of a national paid family and medical leave plan. To be sure, there are many important details that distinguish their ideas from a national model like the FAMILY Act, which respects state innovation and provides enforceable rights for all workers across the country, but it is quite significant that there is growing agreement that a comprehensive policy should be adopted and that it is time for national-level policy. For example the Business Roundtable recently called on the president and Congress to adopt a national plan that includes all FMLA reasons for leave.<sup>82</sup> Similarly, a representative of the U.S. Chamber of Commerce commented that a plan covering only the arrival of new children rather than a more inclusive FMLA approach would be a sticking point,<sup>83</sup> and signaled that a California-style paid family and medical leave program could be a good national option.<sup>84</sup>

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New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Washington and West Virginia, conducted from January to October 2018)

<sup>81</sup> Piepenburg, S. (2019, April 26). The cost of inaction on paid family and medical leave. *MinnPost*. Retrieved 8 December 2019, from <https://www.minnpost.com/community-voices/2019/04/the-cost-of-inaction-on-paid-family-and-medical-leave/>

<sup>82</sup> Business Roundtable (2019, December 11). *Business Roundtable Urges Congress to 'Act Promptly' on Paid Family and Medical Leave*. News Release. Retrieved 20 January 2020, from <https://www.businessroundtable.org/business-roundtable-urges-congress-to-act-promptly-on-paid-family-and-medical-leave>

<sup>83</sup> Bryant, M. (2019, October 28). The US doesn't offer paid family leave – but will that change in 2020? *The Guardian*. Retrieved 8 December 2019, from <https://www.theguardian.com/us-news/2019/oct/28/us-paid-family-leave-2020-election> (quoting Marc Freedman, vice president for workplace policy at the U.S. Chamber of Commerce: “We need to find something that will allow employers to operate on a national platform and we think in order to get there, the leave benefit must be more comprehensive than just strictly for new children.”)

<sup>84</sup> Douglas, G. (2019, September 26). *Chris Dodd, FMLA Champion, Sees Window for Paid Leave*. Bloomberg Law. Retrieved 8 December 2019, from <https://news.bloomberglaw.com/daily-labor-report/chris-dodd-fmla-champion-sees-window-for-paid-family-leave-1>

## **B. The FAMILY Act is Modest Compared to State Programs – and State Experience Shows Areas for FAMILY Act Modifications**

When the FAMILY Act was first introduced in 2013, its key provisions were more expansive than most aspects of the two state programs in place at that time. Now, however, states have innovated and the FAMILY Act's provisions are comparatively modest in many respects.

The points below, which discuss the FAMILY Act's provisions in relation to state programs, demonstrate that the FAMILY Act is a common-sense, middle-ground approach. In its consideration of the FAMILY Act, the committee should look to the states for areas in which the federal bill can be enhanced; while retaining most of the bill's original features, some modifications would provide both greater consistency with states and improve the accessibility of the program to lower-wage, vulnerable workers. Key features of the FAMILY Act and state-level policy enhancements the committee should incorporate into a final bill include:

1. **Covering virtually all workers.** The FAMILY Act covers most private and public sector workers. It applies to any worker who is insured for coverage under Social Security Disability Insurance (SSDI), has earned wages from work within the last 12 months, and has a qualifying condition or triggering event as defined by the FMLA. The committee should consider insuring all public sector workers, including those states in which some or all state and local employees are excluded from Social Security. Redefining basic eligibility for FAMILY Act benefits in Section 5(a)(1) based on eligibility for Medicare rather than SSDI would address this issue. In addition, tying eligibility to well-established federal social insurance programs makes sense as long as the workers most in need can access the program. However, crafting alternative eligibility rules may be necessary if further analyses show that individuals who have cycled in and out of work to provide care or to address a personal health issue or disability are excluded at high rates. In those cases, a recency of work requirement, along with a modest recent earnings requirement, could be applied as an alternative means of demonstrating eligibility.
2. **Comprehensive of all FMLA-covered events on a gender-equal basis.** The FAMILY Act would provide paid leave to covered workers equally, no matter their gender, for each FMLA-covered event. Federal legislation that does not cover leave for all of the reasons for which FMLA leave can be taken would not serve the needs of workers and families across the country and would be inconsistent with state-level policies (all of which cover FMLA new child, family care and personal medical leave and some of which add military caregiving leave, qualifying exigency leave and domestic and sexual violence leave). As noted above, both the Business Roundtable and the U.S. Chamber of Commerce agree that a federal program must include all FMLA reasons.

3. **Provide adequate wage replacement.** The FAMILY Act wage replacement formula set out in Section 5(b) of the legislation provides for a 66 percent wage replacement rate, up to a \$4,000 monthly cap. Based on assessments of state programs and research from other countries, and to align with newer state policies, the committee should consider revisiting the FAMILY Act's wage replacement scheme in favor of higher wage replacement for lower-wage workers and a sliding scale of wage replacement for everyone else, using a combination of wage replacement rates and maximum benefit levels to calibrate benefits more finely.

Research shows that adequate wage replacement is a critical component of designing an equitable and usable paid leave program for lower-wage workers. Researchers at UCLA concluded in 2018 that wage replacement should be at least 67 percent of a worker's usual wages to ensure access, but that an optimal wage replacement rate for both affordability and gender equity is 80 percent.<sup>85</sup>

Newer programs and amendments to New Jersey's program satisfy this requirement for low-wage workers. Washington, the District of Columbia and Massachusetts have each included higher wage replacement rates of 80 to 90 percent for lower-wage workers so they can afford to take leave, with reduced wage replacement rates for higher-income workers. The newest plans passed last year in Oregon and Connecticut, along with New Jersey's updated plan provide 85 percent (New Jersey, increased from 66 percent), 95 percent (Connecticut) and 100 percent (Oregon) wage replacement for some workers. Oregon's law provides the most generous wage replacement for workers at all wage levels, with workers who are paid 200 percent of the state average weekly wage set to receive 60 percent of their usual wages when their program begins paying benefits in 2023. This is a welcome innovation beyond original program parameters in California (55 percent wage replacement initially; now 60 percent for most workers and 70 percent for very low-wage worker), Rhode Island (60 percent), New Jersey (67 percent) and New York (ramping up to a maximum of 67 percent in 2021).

Appendix Table 1 shows how workers at various wage levels fare under each state policy. It shows that full-time, minimum wage workers will have between 80 percent and 100 percent of their wages replaced in each of the six newest or recently expanded programs. Workers paid the state average weekly wage will have between 50 percent and 83 percent of weekly wages replaced in each state, with most programs replacing 60

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<sup>85</sup> WORLD Policy Analysis Center. (2018, February). *A Review of the Evidence on Payment and Financing of Family and Medical Leave*. Retrieved 23 January 2020, from [https://www.worldpolicycenter.org/sites/default/files/WORLD%20Brief%20-%20Payment%20and%20Financing%20of%20Paid%20Family%20and%20Medical%20Leave\\_0.pdf](https://www.worldpolicycenter.org/sites/default/files/WORLD%20Brief%20-%20Payment%20and%20Financing%20of%20Paid%20Family%20and%20Medical%20Leave_0.pdf)

percent of wages or more.<sup>86</sup> Maximum benefit caps effectively set a “bend point” for wage replacement rates. It is important to set the maximum benefit level high enough that it improves program accessibility for middle-wage workers and encourages men’s leave-taking while also containing payments to higher wage workers and limiting program costs.

4. **Ensure a meaningful duration of leave.** The FAMILY Act offers a combined 12 weeks of leave annually for all FMLA purposes to create consistency with the FMLA, reflect the minimum amount of leave needed for maternal and child health, and provide adequate paid time off for people dealing with personal or family care needs.<sup>87</sup> States’ older TDI programs offer longer maximum durations of leave for workers with a qualifying health condition and some newer paid family leave programs go further, as much as 26 weeks of leave in Massachusetts. (See Appendix, Table 2). Some research suggests six months is the optimal duration for paid family and medical leave to improve outcomes for maternal health and child development, as well as for personal and family medical issues.<sup>88</sup>

Although 12 weeks of leave seems adequate as a starting point for federal policy, a policy with a longer total duration could be considered as well as long as the leave is provided gender-equally, for all FMLA reasons, with adequate wage replacement and with employment protections. Analyses show that people only use the leave they need, rather than the maximum amount available;<sup>89</sup> after all, with replacement of only a portion of one’s typical wages, people have an incentive to get back to work when their need to provide or receive care is over.

For example, California provides six weeks of paid leave for family caregiving, including caring for a new child, and 52 weeks of leave to recover from a temporary disability.<sup>90</sup> However, average utilization was 5.4 weeks for paid family leave, 12 weeks for individuals who gave birth, and 16 weeks for TDI according to an analysis conducted in 2018.<sup>91</sup> As originally constructed, New Jersey allowed six weeks for family

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<sup>86</sup> Table 1 in the Appendix estimates how workers at different wage levels (minimum wage, state average weekly wage, fractions and multiples of the state average weekly wage) will fare in state programs that are currently in place or that will soon be implemented or updated. This is based on current minimum and state average weekly wage rates applied to the wage replacement rules that are or will soon be in place in the eight state programs plus D.C.

<sup>87</sup> WORLD Policy Analysis Center, note 25.

<sup>88</sup> See Grant et al., note 29.

<sup>89</sup> See Mason, note 36.

<sup>90</sup> Cal. Unemp. Ins. Code §§ 3301(c), 2653.

<sup>91</sup> State of California Employment Development Department. (2018, June 12). *Disability Insurance (DI) – Monthly Data*. Retrieved 2 July 2018, from <https://data.edd.ca.gov/Disability-Insurance/Disability->



leave and 26 weeks for temporary disability;<sup>92</sup> as of 2018, average program utilization was 5.2 weeks for paid family leave and around 10 weeks for TDI (people who took leave after giving birth tend to combine the two types of leave).<sup>93</sup> Rhode Island provides four weeks of family leave and 30 weeks of leave for a temporary disability, up to a combined total of 30 weeks per year.<sup>94</sup> As of 2018, average utilization was 3.6 weeks for paid family leave and 10.4 weeks for TDI.<sup>95</sup>

5. **Inclusive of family members who need care.** The FAMILY Act incorporates the FMLA’s definition of family members (parents, children under 18, adult children incapable of self-care, spouses) and domestic partners. This is an area the committee should consider revisiting in favor of a more expansive definition that better aligns with state practices. As Figure 2 shows, each state paid leave law expands on the FMLA’s definition of “family,” recognizing that families come in many forms.<sup>96</sup>

**Figure 2. Family Definitions in State Paid Family and Medical Leave Programs**

	Programs in Place (implementation date)					Programs Enacted (implementation date)			
	CA (2004)	NJ (2009)	NY (2018)	RI (2014)	WA (2020)	CT (2022)	DC (2021)	MA (2021)	OR (2023)
Child	✓**	✓	✓**	✓**	✓**	✓	✓**	✓**	✓**
Parent	✓	✓	✓	✓	✓	✓	✓	✓	✓
Spouse	✓	✓	✓	✓	✓	✓	✓	✓	✓
Grandparent	✓*	✓*	✓	✓	✓	✓	✓	✓	✓
Grandchild	✓*	✓*	✓		✓	✓		✓	✓
Sibling	✓*	✓*			✓	✓	✓	✓	✓
Domestic Partner	✓	✓*	✓	✓				✓	✓
Parent-in-Law	✓	✓*		✓		✓	✓	✓	✓
Blood or Affinity		✓*				✓			✓

\*CA expansion, passed in 2013, implemented in 2014; NJ expansion, passed and implemented in 2019.  
 \*\*"Child" includes adult children; FMLA and other states are limited to minor children and adult children who are incapable of self-care.

Insurance-DI-Monthly-Data/29jg-ip7e/data; State of California Employment Development Department. (2018, June 12). *Paid Family Leave (PFL) – Monthly Data*. Retrieved 2 July 2018, from <https://data.edd.ca.gov/Disability-Insurance/Paid-Family-Leave-PFL-Monthly-Data/r95e-fvkm>

<sup>92</sup> N.J. Stat. § 43:21-39(b).

<sup>93</sup> New Jersey Department of Labor and Workforce Development. (2017, August). *Temporary Disability Insurance Workload in 2016: Summary Report*. Retrieved 2 July 2018, from [https://www.nj.gov/labor/forms\\_pdfs/tdi/TDI%20Report%20for%202016.pdf](https://www.nj.gov/labor/forms_pdfs/tdi/TDI%20Report%20for%202016.pdf); New Jersey Department of Labor and Workforce Development. (2017, August). *Family Leave Insurance Workload in 2016: Summary Report*. Retrieved 2 July 2018, from [https://www.nj.gov/labor/forms\\_pdfs/tdi/FLI%20Summary%20Report%20for%202016.pdf](https://www.nj.gov/labor/forms_pdfs/tdi/FLI%20Summary%20Report%20for%202016.pdf). Beginning in July 2020, New Jersey’s family leave duration will extend to 12 weeks, up from the original six.

<sup>94</sup> R.I. Gen. Laws §§ 28-41-7 28-41-35(d)(1), (f).

<sup>95</sup> Rhode Island Department of Labor and training. (2017). *2016 Annual Report*. Retrieved 3 July 2018, from <http://www.dlt.ri.gov/pdf/2016AnnualRpt.pdf>

<sup>96</sup> Figure 2 is an updated version of the figure included in New America, note 31.

In 2013, California amended its law to allow family caregiving for grandparents, grandchildren, siblings and parents-in-law. Now, each state paid leave program includes caring for a grandparent in addition to a parent, spouse, partner or child. Seven states permit family care leave to be used for siblings, grandchildren, or parents-in-law. The two newest laws in Connecticut and Oregon, as well as the updated law in New Jersey, recognize “chosen family” – where familial relationship is based on affinity rather than bloodlines. Families in the United States are diverse, and federal law should recognize different ways that families manage the care needs of their loved ones.

6. **Funded in an affordable, sustainable way.** The FAMILY Act would be funded through small payroll deductions shared equally by employers and employees, or paid in full by independent contractors who receive 1099 forms. Using payroll deductions to fund paid family and medical leave is consistent with state financing of paid leave: Each state plan is funded through payroll deductions that are either paid by employers, employees or shared by both. All states except those with very long periods of TDI leave set contribution rates at or below 1% of a capped taxable wage base.

Appendix Table 2 provides an overview of the payroll deduction amounts and the allocation of payment responsibility between employers and employees for each state program. To my knowledge, there has not been any backlash in states related to these payroll deduction rates, nor does the literature reflect any indication of pushback on these rates as too onerous for either low-wage workers or, where applicable, employers.

Researchers have modeled the costs of proposed and enacted paid leave programs in states across the country and at the federal level and routinely estimate payroll deductions at or below 1 percent – most within the 0.4 to 0.7 range – depending on the duration of leave and the wage replacement rate.<sup>97</sup> For workers, including lower-wage

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<sup>97</sup> Hayes, J., & Hartmann, H. (2018, February 2). *Paid Family and Medical Leave Insurance: Modest Costs are a Good investment in America's Economy*. Institute for Women's Policy Research Publication. Retrieved 8 December 2019, from [https://iwpr.org/wp-content/uploads/2018/02/B368\\_Paid-Leave-Fact-Sheet-1.pdf](https://iwpr.org/wp-content/uploads/2018/02/B368_Paid-Leave-Fact-Sheet-1.pdf); Pennsylvania Department of Labor & Industry. (2017, November 14). *Paid Family and Medical Leave in Pennsylvania: Research Findings Report* (p. 16). Retrieved 8 December 2019, from [https://www.dol.gov/wb/media/Pennsylvania\\_Final\\_Report.pdf](https://www.dol.gov/wb/media/Pennsylvania_Final_Report.pdf); Montana Budget & Policy Center. (2016, May). *Helping People Balance Work and Family: It's Within Montana's Reach* (Table 2). Retrieved 8 December 2019, from <http://www.mbadmin.jaunt.cloud/wp-content/uploads/2016/07/Paid-Leave-Updated-Report-3.pdf>; Glynn, S. J., Goldin, G., & Hayes, J. (2016). *Implementing Paid Family and Medical Leave Insurance Connecticut* (pp. 17-21). Institute for Women's Policy Research Publication. Retrieved 8 December 2019, from <https://www.ctdol.state.ct.us/FMLI%20report%20for%20CT.pdf>; University of Minnesota (2016, February). *Paid Family & Medical Leave Insurance: Options for Designing and Implementing a Minnesota Program* (Table 63). Retrieved 8 December 2019, from [https://mn.gov/deed/assets/paid-family-medical\\_tcm1045-300604.pdf](https://mn.gov/deed/assets/paid-family-medical_tcm1045-300604.pdf); Albelda, R., & Clayton-Matthews, A. (2016, July 18). *Cost, Leave and Length Estimates Using Eight Different Leave Program Schemes for Washington* (Table 2). Retrieved 8 December 2019,

workers, payroll deductions are a smart investment. Using the FAMILY Act's estimated 0.4 percent premium contribution, divided by employers and employees, the typical full-time worker would pay \$1.86 per week and would receive an earned benefit of just over \$7,500 in earned benefits during a 12 week leave.<sup>98</sup> This wage replacement level would allow a typical family to continue to pay their rent or mortgage, buy groceries, pay for diapers and medical supplies, and continue to make ends meet. Survey research shows that people are willing to pay much more than this for a paid family and medical leave benefit (for example, in 2018, seven in 10 likely voters indicated they would be willing to pay 1 percent or more), and that lower-income workers are just as or more supportive of this pay-for than others.<sup>99</sup>

There is one dramatic and absurdly high outlier among FAMILY Act cost estimates, but it includes completely unrealistic take-up assumptions. For example, it assumes that people in the United States will take 16 million parental leaves each year notwithstanding the fact that fewer than 4 million U.S. babies are born each year and many children do not have two parents available to take leave. The estimates from this study should be discounted, as they are based on a faulty public opinion poll rather than any type of program data or demographic analysis, and its author acknowledged substantial flaws in the survey question that led to its flawed take-up projections.<sup>100</sup>

7. **Include employment protections.** The FAMILY Act would offer anti-retaliation protections to the 41 percent of workers who are not already covered by the federal FMLA.<sup>101</sup> Although the anti-retaliation language would offer some protections for workers in businesses of all sizes, this language could be strengthened and additional language could be added to guarantee workers the right to return to their same or an equivalent job, just as FMLA does.

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from [http://governor.wa.gov/sites/default/files/documents/2016-11-22\\_WAPaidLeave\\_modeling\\_final\\_report.pdf](http://governor.wa.gov/sites/default/files/documents/2016-11-22_WAPaidLeave_modeling_final_report.pdf)

<sup>98</sup> U.S. Bureau of Labor Statistics. (2020, January 17). *Economic News Release: Table 1. Median usual weekly earnings of full-time wage and salary workers by sex, quarterly averages, seasonally adjusted*. Retrieved 22 January 2020, from <https://www.bls.gov/news.release/wkyeng.t01.htm>. Weekly payroll contributions calculated using 2019 Q4 seasonally adjusted median usual weekly earnings for full-time wage and salaried workers (\$933)\*.002; benefit amount for a 12-week leave is calculated as (\$933\*.67)\*12.

<sup>99</sup> See each source cited in note 79.

<sup>100</sup> Gitis, B. (2019, March 2019). *The Fiscal Implications of the FAMILY Act*. American Action Forum. Retrieved 8 December 2019, from <https://www.americanactionforum.org/research/the-fiscal-implications-of-the-family-act-how-new-paid-leave-benefits-increase-leave-taking-and-drive-up-estimated-program-costs/>

<sup>101</sup> See Klerman et al., note 2.

Employment protections are a critical component of paid leave policies, particularly for lower-wage and vulnerable workers: research on California's and New Jersey's programs have shown that workers without FMLA job protection such as low-income workers often fear repercussions for taking leave and therefore forgo the paid leave that the state plan makes available.<sup>102</sup>

Newer state laws address this critical need for employment security. Massachusetts, Connecticut and Oregon offer full job protection – reinstatement to the same or an equivalent job after returning from leave – for family and medical leave, and New York and Rhode Island offer job protection for family leave. The state FMLA law in California (California Family Rights Act) was also recently amended to offer job protection to new parents who work for small businesses and New Jersey recently amended its FMLA job protection rules to be more inclusive. FMLA and anti-discrimination laws are also more expansive than the federal FMLA in Washington, D.C. and Washington state.<sup>103</sup>

8. **Embed IT, worker and employer outreach and education funding to ensure effective implementation and use.** Laws, regulations and programs only work if systems are designed and resources allocated to allow for effective implementation. To properly implement the FAMILY Act, the Social Security Administration will need investments in data and information technology that could build a strong paid leave program backbone and shore up its ability to more efficiently and effectively administer its core programs as well. In addition, there are lessons to learn from states about implementation best-practices. Some state programs have suffered from confusion among workers and employers about eligibility and application requirements. Others have experienced delays in eligibility determinations and benefit payments.<sup>104</sup> To avoid such pitfalls, newer state policies provide for outreach and education resources, and states have begun to partner with private, nonprofit and public sector stakeholders to ensure that both workers and employers understand how the programs function and who they serve. Nonprofit organizations and state agencies have also worked to develop educational campaigns, know-your-rights materials, and innovative medical-legal partnerships in order to increase awareness among vulnerable workers. IT system

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<sup>102</sup> See State of California Employment Development Department. (2015, December 14). *Paid Family Leave Market Research*. Retrieved 8 December 2019, from [https://www.edd.ca.gov/Disability/pdf/Paid\\_Family\\_Leave\\_Market\\_Research\\_Report\\_2015.pdf](https://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf); Mason, note 36; see also Setty, S., Skinner, C., & Wilson-Simmons, R. (2016, March). *Protecting Workers, Nurturing Families: Building an Inclusive Family Leave Insurance Program Findings and Recommendations from the New Jersey Parenting Project*. National Center for Children in Poverty Publication. Retrieved 8 December 2019, from [http://www.nccp.org/publications/pub\\_1152.html](http://www.nccp.org/publications/pub_1152.html)

<sup>103</sup> See National Partnership for Women & Families, note 31.

<sup>104</sup> See Mason, note 36.

upgrades may help with the timely payment of claims and claims determinations. All of these lessons and innovations should be applied to federal policymaking and implementation as well.

#### **IV. Paid Leave, Economic Security and Retirement Security Are All Important – One Must Not Come at the Expense of Others**

Congress' search for solutions is exciting and long overdue, but details matter tremendously. The country has waited too long to act on paid family and medical leave to settle for a half-measure or any approach that would exacerbate inequality, force false-trade-offs and do more harm than good. The 2017 tax bill provision is an example of a proposal that has likely been ineffective; to the extent it has had any effect at all (and there is no evidence that it has), it has incentivized additional inequalities at taxpayers' expense. We must do better.

##### **A. A Child Tax Credit Loan is Not Paid Leave**

Before discussing the New Parents Act (H.R. 1940), I'd like to briefly address Representative Stefanik's proposal (H.R. 5296) to allow parents to take a no-interest loan of up to \$5,000 when a child is born or adopted, to be repaid by a family accepting a decade of Child Tax Credit (CTC) payments that are reduced by \$500 annually.

First, this is not paid leave. The proposal does not require new parents to take leave in order to claim the tax credit, and does not provide them with employment protections if they do. This means that the 40 percent of workers without FMLA protections could lose their job if they take this no-interest loan.

Second, this proposal – similar to the Social Security cut approach described below – requires people to make a calculation about the direness of their current need against the projected direness of their future need. In this case, the future harm is even more immediate; without improved access to quality affordable childcare, after school care, and family-sustaining wages, it is unlikely that any family who needs \$5,000 at the time a new child joins their family will be able to do so without the full value of their CTC over the subsequent decade. This is especially true for middle-income families whose net child-related tax benefits did not see a significant increase as a result of the 2017 tax bill and for families who already do not receive the full value of the CTC – disproportionately people of color, families with a single parent and people in rural areas.<sup>105</sup>

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<sup>105</sup> Romig, K. (2019, December 6). *"Paid Family Leave" Bill Offers a Loan, Not Leave*. Center on Budget and Policy Priorities. Retrieved 8 December 2019, from <https://www.cbpp.org/research/federal-tax/paid-family-leave-bill-offers-loan-not-leave>; National Partnership for Women & Families. (2020, January). *H.R.*

Third, there are serious uncertainties about the ability of the IRS to deliver benefits in real-time when a new child arrives. Providing a new child loan many months after the new child arrives does nothing to address a families' immediate financial needs. And, last, this proposal fails to meet the needs of family caregivers and workers with their own serious health issues.

#### **B. H.R. 1940 Forces New Parents to Accept a Lifetime Social Security Cut in Order to Use New Child Leave**

With respect to paid leave itself, it is encouraging to see growing bipartisan support for using a social insurance framework to create a national paid leave program. However, it is imperative that we not define down the realm of the possible and create a national policy that would be both insufficient to meet workers' needs and actively harmful to the country's most vulnerable workers, especially to women and people of color.

The New Parents Act (H.R. 1940), is wholly unacceptable and widely unpopular. This bill falsely purports to give new parents a choice between delaying the receipt of Social Security benefits and a temporary benefit cut, when – in reality, according to the Social Security Administration's chief actuary and researchers at the Urban Institute and the Center on Budget and Policy Priorities – both options result in a permanent lifetime benefit cut that is far more substantial than the value of paid parental leave benefits a worker would receive. Moreover, H.R. 1940 would most adversely affect women, low-wage workers and people of color.

When surveyed about a proposal like H.R. 1940, the public's reaction is net unfavorable. One national voter survey conducted by a bipartisan survey research team in 2018 found only 41 percent of respondents supported the proposal compared to the 58 percent who opposed it. Democrats, Independents, and Republicans ranked this approach last when compared to alternative paid leave proposals. And the idea of paying for paid leave by "drawing early on Social Security" received the support of just 3 percent of voters, whereas 38 percent said they supported a shared cost model like the FAMILY Act, 21 percent said they supported the full cost of a new program being paid for by employers or companies, and 19 percent said they supported using federal budget funds even if it meant a tax increase.<sup>106</sup> Another national voter survey conducted in 2019 found just 27 percent of respondents supported the proposal and 59 percent opposed it.<sup>107</sup>

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5296/S.2976 *Undermines the Child Tax Credit*. Fact Sheet. Retrieved 23 January 2020, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/hr-5296s-2976-undermines-child-tax-credit.pdf>

<sup>106</sup> See Perry Udem, note 74.

<sup>107</sup> See Data for Progress, note 75.

H.R. 1940's should not be considered a viable alternative. Social Security represents a promise to U.S. workers and their families that has been built up and honored for more than 80 years; Social Security has a history of updates to better reflect people's needs, but those updates have always been additive. H.R. 1940 would break with that tradition. It has five key problems:

### **1. Parental Leave Only Is Insufficient**

First, any plan that applies only to parents caring for new children and excludes 75 percent of people who take family and medical leave is unacceptable, short-sighted and would very likely be detrimental to the income and retirement security of a growing share of the population caring for aging and ill loved ones or addressing their own serious health issue. Parental-only leave would also lead to stark inequities within the workplace, even for people with young children. For example, a parent of a newborn would have access to paid time away from work for bonding, but a coworker whose six-month-old is critically ill or whose spouse needs postpartum care would have no guarantee of time or income support.

### **2. Wage Replacement Rates and Benefit Caps Are Too Low to Be Meaningful for Most People**

Second, although Social Security Disability Insurance (SSDI) wage replacement rates are progressive and high wage replacement to the very lowest-income workers, its wage replacement rates drop sharply even for lower-middle and middle-wage workers. The parental leave benefit made available through H.R. 1940 only provide an estimated 44 percent of usual wages to most workers.<sup>108</sup> Moreover, average SSDI benefits (approximately \$1,233 *per month* in 2019) are very low – much lower than what state plans offer and the FAMILY Act would provide.<sup>109</sup> Both of these elements mean the benefits H.R. 1940 would provide are inadequate for most working families, based on paid leave research and practice.

### **3. H.R. 1940's Policy Design Could Promote Gender Bias and Reinforce Gendered Caregiving Norms**

The first and second problems together create a third: the risk of exacerbating gender-based bias and reinforcing, rather than breaking down, gender stereotypes. Indeed, one reason the FMLA was designed to cover family caregiving leave and personal medical leave was to minimize the

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<sup>108</sup> Johnson, R. (2019, April 25). *Paid Leave is a Worthy Goal but so Is a Secure Retirement*. Urban Wire, the Urban Institute blog. Retrieved 23 January 2020, from <https://www.urban.org/urban-wire/paid-leave-worthy-goal-so-secure-retirement>

<sup>109</sup> Social Security Administration. (2019). *Annual Statistical Supplement, 2019* (Table 5.E1). Retrieved 23 January 2020, from <https://www.ssa.gov/policy/docs/statcomps/supplement/2019/5e.html#table5.e2>

potential for employment discrimination.<sup>110</sup> While fathers increasingly want to, and do, provide care for their families,<sup>111</sup> gender norms and stereotypes about gender, work and caregiving mean that some employers perceive mothers and young women as less committed workers. A paid leave program that is only accessible to parents, especially one with low wage replacement and low benefits, could exacerbate implicit bias and discrimination whereas gender-equal leave would help create workplace equity and foster women’s employment opportunities.

#### **4. Retirement Penalties Would Average Tens of Thousands of Dollars – with Especially Large Cuts in Retirement Benefits for Women, People of Color and Lower-Wage Workers**

Of intense concern are the cuts at retirement that workers who have used parental leave benefits will be forced to absorb. H.R. 1940 purports to give beneficiaries who draw on Social Security during a period of paid parental leave a “choice” between taking reduced monthly benefits for 60 months or delaying their retirement. In reality, H.R. 1940 will require a Social Security benefit cut that far exceeds the value of paid parental leave benefits for any parent who takes paid leave. Moreover, the penalty workers will pay also includes absorbing the unrepaid benefits of other new parents who defaulted on their pay-back requirement.<sup>112</sup> This is concentrating risk among an already precariously-situated group of people, whereas real social insurance, like the FAMILY Act, spreads the risk more broadly across the entire workforce and employer community.

The effects of H.R. 1940 on individuals’ retirement security would be dramatic. The Social Security Administration’s chief actuary estimates that a worker who exercises their option under the New Parents Act would have their Normal Retirement Age (NRA) and their Earliest Eligibility Age (EEA) delayed by two months for every one month of parental leave benefits

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<sup>110</sup> Family and Medical Leave Act of 1993, Pub. L. No. 103-3, § 2, 107 Stat. 6, 6-7 (1993), *available at* [https://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC\\_2\\_FINDINGS\\_AND\\_PURPOSES](https://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_2_FINDINGS_AND_PURPOSES).

<sup>111</sup> See Heilman, et al, note 19; Lenhart et al, note 19; Harrington, B., Van Deusen, F., Sabatini Fraone, J., Eddy, S., & Haas, L. (2014). *The New Dad: Take Your Leave. Perspectives on paternity leave from fathers, leading organizations, and global policies*. Boston College Center for Work & Family Publication. Retrieved 23 January 2020, from [http://www.thenewdad.org/yahoo\\_site\\_admin/assets/docs/BCCWF\\_The\\_New\\_Dad\\_2014\\_FINAL.157170735.pdf](http://www.thenewdad.org/yahoo_site_admin/assets/docs/BCCWF_The_New_Dad_2014_FINAL.157170735.pdf)

<sup>112</sup> Romig, K. and Bryant, K. (2019, September 12). *Cutting Social Security to Offset Paid Parental Leave Would Weaken Retirement Security*. Center on Budget and Policy Priorities publication. Retrieved 23 January 2020, from <https://www.cbpp.org/sites/default/files/atoms/files/9-12-19socsec.pdf>



they receive, or they would face a benefit reduction of 4.5 percent per month for 60 months.<sup>113</sup> The bill frames “pay back” options as a choice, but, as researchers at the Center on Budget and Policy Priorities explain, any delay in receiving Social Security benefits amounts to a lifetime benefit cut. They write: “Workers could not avoid the cut in lifetime retirement benefits by delaying the point at which they begin receiving those benefits. For example, if a worker who received three months of parental leave payments had planned to claim Social Security benefits at age 65 but delayed her claim by six months, her *monthly* benefit amount would be about the same as it would have been at age 65 in the absence of the parental leave benefits – but she would receive six fewer months of retirement benefits over her lifetime.”<sup>114</sup>

The Urban Institute estimates that a “low income” worker who earns \$1,700 per month would receive \$3,185 in parental leave benefits during a three-month period of leave, but would see a \$9,187 reduction in lifetime Social Security benefits while a “moderate income” worker – someone earning approximately \$48,000 per year or around \$4,000 per month – who takes three months of parental leave would receive approximately \$5,308 in parental leave benefits and then lose approximately \$15,147 in lifetime retirement benefits. A worker who takes two parental leaves of three months each would lose more than \$30,000 in Social Security benefits. All told, a typical worker would see a 3.1 to 4 percent reduction in lifetime Social Security benefits for each three-month leave. The policy would also penalize workers with larger families – a worker who takes three, three-month parental leaves would see a 12 percent lifetime reduction.<sup>115</sup> H.R. 1940 therefore not only provides inadequate benefits to new parents in the short term but also reduces those same workers’ retirement security in the long term.

Given the dynamics described above, H.R. 1940 would be particularly detrimental to women’s retirement security, as well as to people of color and low-wage workers. These populations of workers are less likely to have employer-provided paid parental leave<sup>116</sup> and would, therefore, be more likely to use the plan’s parental leave benefits. However, these populations are also the same workers who are most likely to rely on their Social Security benefits during retirement: Between 55 and 59 percent of women 65 or older rely on Social Security for at least half of their

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<sup>113</sup> Letter from Stephen C. Goss, Chief Actuary, Social Security Administration to the Honorable Marco Rubio and the Honorable Ann Wagner re New Parents Act. (2019, April 2019). Retrieved 23 January 2020, from [https://www.ssa.gov/OACT/solvency/RubioWagner\\_20190409.pdf](https://www.ssa.gov/OACT/solvency/RubioWagner_20190409.pdf)

<sup>114</sup> See Romig and Bryant, note 112.

<sup>115</sup> See Johnson, note 108.

<sup>116</sup> See Bureau of Labor Statistics, note 10, table 31; see also unpublished analysis of demographic data conducted for the National Partnership for Women & Families by Emily Del Morone, Ellen Hamilton, Elizabeth Krevsky, Alex Sproveri, & Claire Viall, The George Washington University Trachtenberg School of Public Policy & Public Administration, May 2018.

family's monthly income in retirement, including between 27 and 29 percent of older women for whom Social Security benefits make up 90 percent of their family's monthly income; one-third of Latinx and Black workers 65 or older rely on Social Security benefits for 90 percent or more of their family's monthly income in retirement.<sup>117</sup>

Women would be additionally harmed under this plan because they spend more time out of the workforce and/or reduce their working hours to care for children and older adults, and also have lower average wages for full-time, year-round work relative to men. These factors contribute to an existing gender gap in Social Security retirement benefits, which are an average of 20 percent lower for women – \$1,297 for women compared to \$1,627 per month for men, as of December 2018.<sup>118</sup> For women of color, the double bind of the wage gap and the racial wealth gap is even more punishing at retirement.<sup>119</sup> The fundamental goal of a national paid leave program should be to strengthen and support women and working families; H.R. 1940 instead promises to take the most from those who can afford it the least.

##### **5. The Social Security Administration Needs Enhanced Resources and Not a Diversion of Existing Resources to Administer a New Benefit**

Fifth, H.R. 1940 does not include authorization for any new resources for SSA to create or administer this new benefit. Rather than repurpose the agency's limited resources and further stretch already-overburdened staff with the implementation and execution of a new program without any new resources, Congress should instead provide SSA with increased funding to improve its technology, data systems and administrative infrastructure. These investments would help the agency help retirees and people with disabilities to live with greater financial security while also preparing it to take on a well-designed, fully-funded and evidence-based paid family and medical leave program like the FAMILY Act.

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<sup>117</sup> Dushi, I., Iams, H. M., & Trenkamp, B. (2017, May). The Importance of Social Security Benefits to the Income of the Aged Population. *Social Security Bulletin*, 77(2), 1-12. Retrieved 23 January 2020, from <https://www.ssa.gov/policy/docs/ssb/v77n2/v77n2p1.html>

<sup>118</sup> Social Security Administration. (2019). *Annual Statistical Supplement, 2019* (Table 5.A6). Retrieved 23 January 2020, from <https://www.ssa.gov/policy/docs/statcomps/supplement/2019/5a.html#table5.a6>

<sup>119</sup> McCulloch, H. (2017, January). *Closing the Women's Wealth Gap: What It Is, Why It Matters, and What Can Be Done About It*. Closing the Women's Wealth Gap Initiative Publication. Retrieved 23 January 2020, from <https://womenswealthgap.org/wp-content/uploads/2017/06/Closing-the-Womens-Wealth-Gap-Report-Jan2017.pdf>; see also Richard, K. (2014, October). *The Wealth Gap for Women of Color*. Center for Global Policy Solutions Publication. Retrieved 23 January 2020, from <http://www.globalpolicysolutions.org/wp-content/uploads/2014/10/Wealth-Gap-for-Women-of-Color.pdf>; National Academy of Social Insurance. (n.d.). *Social Security and People of Color*. Retrieved 23 January 2020, from <https://www.nasi.org/learn/socialsecurity/people-of-color>

## 6. Additional Concerns about Setting Harmful Precedents

Beyond the four corners of H.R. 1940 itself, the concept creates a dangerous precedent of diverting dedicated earned Social Security benefits for non-retirement purposes and in so doing, encourages an individualized, pro-privatization mindset about this bedrock social insurance program. The president of the Independent Women’s Forum, the organization which originally conceptualized the proposal underlying H.R. 1940, has said that reconceptualizing Social Security as an individual benefit is part of their agenda.<sup>120</sup> Social Security works because everyone pays in. Similarly, a national paid leave program would work because everyone would pay in. This would keep costs low and ensure benefits are meaningful and available when people need them.

Finally, although Social Security’s chief actuary has determined that H.R. 1940 as drafted would have a negligible effect on Social Security’s solvency over the long term because it includes a sunset provision, its effects would be much more substantial if its benefits were to be made permanent, as all other Social Security benefits are.<sup>121</sup> In fact, the program would run a deficit during every year of its operation because the cost of one cohort’s leave-taking would not be recouped until their retirement benefit offsets had been fully realized decades later. If we agree that paid leave is a public good and worthy of investment, we must commit to creating a robust program that is sustainable for the foreseeable future.

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Investing in paid leave is an investment in a brighter future. A well-designed plan like the FAMILY Act, especially with enhancements aligned with state policies, would greatly improve the quality of life of America’s workers and families, create certainty for workers and employers and bolster labor force participation and the country’s economy. The costs of the status quo are great and it is time to take action. It is not time to settle for harmful half-measures or to legislate from a mindset of short-sighted austerity. It is time for real paid leave for all.

I look forward to answering your questions and to working with you and your staff as you move forward on this issue.

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<sup>120</sup> Lukas, C. (2018, February 2). *Why Running Parent Leave Through Social Security Is The Smartest Live Option*. The Federalist Publication. Retrieved 23 January 2020, from <https://thefederalist.com/2018/02/02/running-parent-leave-social-security-smartest-live-option/>

<sup>121</sup> Romig and Bryant, note 112.

