

September 17, 2021

**DISSENTING VIEWS ON SUBTITLE A.
BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO
UNIVERSAL PAID FAMILY AND MEDICAL LEAVE**

Committee Republicans oppose Subtitle A. Subtitle A lays the groundwork for the Democrats' \$3.5 trillion tax hike and spending spree designed to reach the tentacles of the federal government into every aspect of American life – from cradle to grave. Cue President Reagan's nine most terrifying words in the English language, "I'm from the government, and I'm here to help." In this case, it's the IRS and they're here to "help" you balance your work and family life.

Committee Democrats' ill-conceived paid family and medical leave "solution" would result in hundreds of billions of dollars spent on another new entitlement program rife with Washington mandates that will limit choices for families and result in permanently smaller paychecks for workers. This poorly designed program treats every worker and family situation the same while making the IRS their benefits manager. Instead of putting the American people first, Democrats dismissed a unique opportunity to work together to find common ground on an issue that both parties agree on, supporting working families.

Committee Republicans agree on the need for policies that expand access to both child care and paid family leave. In May, Republicans released a commonsense alternative with flexible solutions that working families can count on. The "[Protecting Worker Paychecks and Family Choice Act](#)" would ensure more Americans have access to family leave and flexibility that suits their workplaces. The discussion draft is based on the premise that strong economic growth is the foundation for ensuring flexible options for families through better jobs, lower unemployment, and higher wages – not one size-fits-all mandates that put Washington in control. The proposal would:

- ❖ Expand access to paid family and medical leave by incentivizing more employers to provide leave and focusing on gaps in coverage.
- ❖ Preserve what's working by expanding the employer-provided paid family and medical leave tax credit and creating new family savings accounts;
- ❖ Incentivize and reduces costs for small employers to offer paid family leave by providing more generous tax credits and paving the way for pooling and cost sharing; and
- ❖ Promote equitable access to paid leave by targeting policies to low-wage workers, who are least likely to receive paid leave through their employers.

This Republican proposal was put forward in good faith and in direct response to a letter from Chairman Neal that outlined plans to tackle the issues of paid family and medical leave and child care. The letter said, "...we invite you and your members to bring forward your proposals as well. Last week's hearing demonstrated that there is strong bipartisan agreement that the current status quo for working families is untenable and Congress needs to act...we look forward to continuing this Committee's history of bipartisan collaboration."¹

Five months later, Democrats put forward a short-sighted partisan program that includes zero Republican input or bipartisan collaboration. To ensure the Majority is fully aware of the missed opportunity to work with Republicans, an [amendment](#) was offered to strike and replace Subtitle A with the paid family and medical leave proposals in Division A of the "Protecting Worker Paychecks and Family Choice Act." The amendment was unanimously rejected by Committee Democrats.

The Congressional Budget Office (CBO) estimates the cost of the paid family and medical leave program in Subtitle A to be \$500 billion over 10 years. Subtitle A is similar in many ways to the FAMILY Act, a longstanding Democrat proposal, cosponsored by 202 House Democrats. The FAMILY Act would create a paid family and medical leave program run by the Social Security Administration (SSA) and funded by a new payroll tax. CBO estimated the cost of the FAMILY Act to be \$547 billion over 10 years.² An analysis by the American Action Forum found the FAMILY Act would require a 2.9% payroll tax to fully finance.³ That could cost an average worker making \$50,000 well over \$1,500 a year in new taxes, whether they use the program or not. Over a career that's more than \$60,000 for every worker in America.

Ways and Means Democrats are hiding the ball by not linking this new program to an explicit payroll tax. Don't be fooled. America's middle-class working families will shoulder the burden of the corporate income tax hike from 21 percent to 26.5 percent included in Subtitle I, which is being used to offset the cost of this new forever entitlement program. The Joint Committee on Taxation found that over 66 percent of the corporate tax increase will be borne by middle- and lower-income earners.

Twenty-two Democrat members of this Committee co-sponsored the FAMILY Act this session and every Democrat on this Committee, including Chairman Neal, cosponsored it last Congress. In addition, the American Academy of Pediatrics, Le Leche League, NARAL Pro Choice America, Planned Parenthood, and hundreds of other organizations have endorsed the FAMILY Act, saying "The FAMILY Act is the only paid national family and medical leave proposal that reflects what most people in the United States need."⁴ Committee Republicans offered an [amendment](#) that would allow supporters of the FAMILY Act to include that proposal, which they cosponsored, in this package. Committee Democrats unanimously rejected the FAMILY Act.

¹ Letter from Chairman Neal and Worker and Family Support Subcommittee Chair Danny Davis to Ranking Member Brady, April 27, 2021.

² CBO letter to Ranking Member Brady, re: Budgetary effects of H.R. 1185, the FAMILY Act, February 13, 2020.

³ American Action Forum, "Paid Leave and the Reconciliation Bill," Douglas Holtz-Eakin, September 1, 2021.

⁴ FAMILY Act Coalition letter addressed to Members of Congress, May 24, 2021.

Before signing-on to Chairman Neal’s version of paid family leave, House and Senate Democrats should hit the brakes. In the rush to claim ownership, Committee Democrats have created a shoddily constructed program with serious design flaws.

Let’s start with the IRS running a public benefits program. Democrats want to *increase* people’s interaction with the IRS by requiring workers to apply for paid family leave benefits through the Department of Treasury. There is zero policy rationale or justification that this new program should be, or could be, run by the Treasury Department.

Committee Democrats have demonstrated an astounding lack of consideration and concern for how this program will actually function for working families. Relying on a lazy, partisan budgetary tool to jam this program through the legislative process with no time for critical review or assessment, throwing out any semblance of sound policymaking. That’s what putting politics over the American people looks like.

President Biden’s own Treasury Department has firmly rejected Chairman Neal’s proposal saying in an email to Minority Committee staff that the Department, “does not have the internal expertise to stand-up a permanent benefit entitlement program...” and “Treasury does not have the functional expertise to administer large benefit entitlement programs.”⁵ (*See Figure A*) Yet this legislation punts decision-making authority on critical operational components to Treasury forty times. The bill expects the Department to turn around notices of benefits within 15 days of receiving an application.

Committee Republicans offered an [amendment](#) to delay the effective date of Subtitle A until six months after Treasury can certify they have the expertise to stand-up this new entitlement program. The amendment was unanimously rejected by Committee Democrats.

Second, Subtitle A provides no protections for small businesses. Small employers across the country are facing a severe worker shortage as they attempt to fully rebound from the pandemic. There are more than 10 million job openings in the U.S., and small employers cannot find workers. Democrats’ proposal would create even more uncertainty for the businesses who can least afford to lose a worker on short notice.

Subtitle A only requires employees provide 7-days’ notice to their boss that they plan to take leave. The program would de-link employers from workers and leave employers hanging. Worse, the only verification that employer notice was provided is through self-attestation that the individual provides to Treasury.

Committee Republicans offered an [amendment](#) to ease the burden of labor challenges created by Subtitle A by creating meaningful protections and predictability for employers to plan around. The amendment would make three significant improvements to the underlying legislation by:

- (1) Aligning the bill with the FMLA standard requiring workers to provide 30 days’ notice to employers if they plan to take leave;
- (2) Strengthening the “self-attestation” standard; and
- (3) Requiring 60 days’ notice of anticipated leave from work for small employers.

⁵ Email from Treasury to Minority Committee staff dated May 12, 2021, submitted for the record.

The amendment was unanimously rejected by Committee Democrats.

Committee Democrats argue they “took care” of small business by creating a new grant program that reimburses small employers for the costs of labor disruption, up to 10 employees a year. To qualify, small businesses would be required to provide guaranteed job protection and meet strict group health plan coverage requirements. Not to mention the hassle factor of wrangling reimbursement out of Treasury. It’s a poor attempt to buy their way out of a serious issue that will negatively impact Main Street businesses who can’t afford to lose workers with specialized skills sets with just a weeks’ notice.

Figure A. Treasury Department Response to Chairman Neal’s Paid Family and Medical Leave proposal:

From [REDACTED]@treasury.gov [REDACTED]@treasury.gov
Sent: Wednesday, May 12, 2021 10:42 AM
To: [REDACTED]@treasury.gov [REDACTED]@treasury.gov [REDACTED]
[REDACTED]@mail.house.gov>; [REDACTED]@mail.house.gov>; [REDACTED]
[REDACTED]@mail.house.gov>; [REDACTED]@mail.house.gov>
Subject: RE: HWM/OTP -- Paid Leave Proposals (high level)

Hi [REDACTED] – Just wanted to share some high level thoughts from Treasury with you all in advance of our call today. Thanks! Best, [REDACTED]

- Treasury does not have the internal expertise and is not staffed to stand-up a new, permanent benefit entitlement program. In times of crises, such as the COVID-19 pandemic, Treasury has been responsible for certain emergency programs. However, these programs generally were temporary and Treasury served in a consulting role to support and advise on the programs for which other government entities were taking the lead (i.e., the Small Business Administration and the Federal Reserve). Treasury has no responsibility for large, permanent benefit entitlement programs.
- Treasury does not have the functional expertise to administer large benefit entitlement programs. The proposed legislation would require Treasury to create and staff an entirely new office (or division) to administer the paid leave benefit program, including determining individuals’ eligibility for the leave benefits and awarding grants to eligible States and employers that maintain leave programs. The proposed legislation makes Treasury responsible for taking applications from individuals seeking the paid leave benefit, vetting the applications, making determinations whether the individuals are eligible for the benefit, establishing a call center, and creating an appeals process for individuals to challenge denied benefits, among other administrative functions. These are not Treasury functions. Although the proposed legislation provides funding to establish and administer this benefit program, we question whether Treasury is the appropriate agency for this role. There are real questions regarding transferring functions that have historically been housed in other agencies, with systems and adjudication processes in place already, to the Treasury department.
- Treasury is not in a unique position to obtain the wage or income data required to determine an individual’s average monthly earnings and calculate the individual’s benefits. For employed individuals, the legislation proposes that Treasury use the National Directory of New Hires (NDNH) data base to calculate average monthly wages. Treasury does not maintain this database and has no particular familiarity with the data base. For self-employed individuals, the draft provides Treasury would receive the tax filing information from IRS via a confidentiality disclosure in the same manner as any other agency that would be better suited for program administration could receive the information. The NDNH and IRS self-employed earnings data could just as easily be transmitted to another agency (e.g., the Social Security Administration or HHS) to calculate the average monthly earnings and determine eligibility for the paid leave benefit.

Third, as they do throughout the larger budget reconciliation bill, Committee Democrats are unabashedly putting rich over poor by giving preference to high income earners and leaving the working class behind. According to the Congressional Research Service (CRS), under the benefit calculation formula in Subtitle A, a two-earner household making \$500,000 would be eligible to claim more than \$28,000 in taxpayer funded federal paid family and medical leave benefits—every year.

Meanwhile, the bill provides no minimum benefit for low-income earners.⁶ To correct this imbalance in the bill, Committee Republicans offered an [amendment](#) to reduce the maximum earnings eligibility limit to \$100,000 and provide a minimum and maximum benefit amount of \$580 and \$4,000, respectively, equivalent to what is included in the FAMILY Act. This amendment represented a simple guardrail to make sure benefits are targeted to those who need it most. The amendment to prohibit benefits for families making half a million dollars was unanimously rejected by Committee Democrats.

Fourth, Chairman Neal’s version of paid family and medical leave is not targeted to people who are working. Majority Committee staff confirmed this point in response to technical questions during the mark-up. Further, the bill itself references, providing benefits for those individuals who “does not have (or no longer has) an employer [.]”⁷ In order to apply for benefits under this subtitle an individual does not have to be currently working.

The requirement in Subtitle A is that an individual must have worked, at some point, for any length of time, in the previous quarter. Based on data provided by CRS, Minority Committee staff reviewed state paid leave laws already in place across the country. Each of the 10 states that have a paid leave program in place were reasonable enough to implement policies that require workers to have been employed 30-days prior to applying for benefits.⁸ Those states include California, Massachusetts, and New York.

Committee Republicans offered an [amendment](#) to strengthen the program’s connection to work by requiring that the individual applying for benefits must: 1) have wages or self-employment income in the 30-day period prior to applying for benefits, the same policy as state paid leave laws; and 2) been in employed at least 4 of the 5 most recent calendar quarters. The amendment to require applicants for paid leave benefits to be employed was unanimously rejected by Committee Democrats.

Fifth, Subtitle A includes several overt blind spots that make the program incredibly susceptible to fraud. Committee Democrats unanimously rejected two common sense amendments that would have closed loopholes to improve program integrity and protect theft of taxpayer dollars. The first [amendment](#) would have prevented two caregivers from qualifying for paid family and medical leave benefits for care provided at the same time, in the same household, to the same

⁶ Congressional Research Service memo to minority staff, re: Benefit Formula as Provided under Subtitle A of the Build Back Better Act (as Released on September 7, 2021), and Hypothetical Benefit Amounts for Individuals with \$250,000 in Annual Earnings, September 8, 2021.

⁷ Subtitle A, Sec. 2204(b)(3).

⁸ Congressional Research Service, Comparison of Selected State Leave Insurance Program Characteristics to the Building an Economy for Families Act (BEFA), May 25, 2021.

individual. CRS confirmed that there is nothing in the bill that would prevent two parents from taking the same paid leave time to care for their child:

“The BBBA proposes to calculate benefits on an individual basis (i.e., it does not appear to provide a maximum benefit per household or condition benefits for one household members on caregiving provided by another member). Therefore, by our read, the BBBA would not prohibit parents from claiming benefits for the same caregiving hours, as long as both parents meet the eligibility requirements and engaged in qualified caregiving for 4 hours in a week.”⁹

Duplicate receipt of benefits is bad policy. It shows how poorly thought out this program is and demonstrates how the underlying bill is not ready for prime time. Committee Republicans offered an amendment that would simply prohibit individuals in the same household from being treated as engaging in qualified caregiving for the same caregiving reason for the same caregiving hour. The amendment to prevent duplicate receipt of benefits was unanimously rejected by Committee Democrats.

The most pernicious provision in the bill would allow people to self-certify their identity and earnings in order to receive paid family and medical leave benefits. The word “self-attestation” appears no less than five times in the short description of the application for the program. Self-attestation in this program is ripe for fraud.

Democrats on this Committee have not learned from this same terrible policy that allowed anywhere from [\\$89 to \\$400 billion in pandemic unemployment benefits to be diverted away from unemployed workers into the hands of criminals using stolen identities](#). In the CARES Act, Congress created new pandemic unemployment programs that allowed self-certification to expedite emergency payments when businesses were closed. Democrats don’t like to talk about it and have not held a single oversight hearing to investigate – but fraudsters took full advantage of this glaring loophole. The Labor Department’s Inspector General issued a report in October 2020 that specifically pointed to the self-certification requirement as the primary weakness leading to fraudulent payments.¹⁰

Committee Republicans offered an [amendment](#) to avoid replicating the policies that enabled the largest fraudulent disbursement of taxpayer dollars in our nation’s history. The amendment would strike the language that allows for self-certification and require documentation of identity, earnings, and employment prior to Treasury authorizing family leave and or medical leave benefits. The amendment to close this fraud loophole was unanimously rejected by Committee Democrats.

Finally, this bill includes a new grant program designed to buy off large employers that will discourage companies from offering their own paid leave benefits, in favor of a one-size-fits-all federal benefit. In other words: if you like your paid leave, you can’t keep your paid leave. Many workers could end up with less flexibility or lose their benefits altogether as a result.

⁹ Congressional Research Service email to minority committee staff dated September 7, 2021.

¹⁰ Department of Labor, Inspector General, “COVID-19: States Cite Vulnerabilities in Detecting Fraud While Complying with CARES Act UI Program Self Certification Requirement,” October 21, 2020.

Subtitle A transfers the liability and cost of paid family and medical leave plans that big business already provides, on to American taxpayers. When Republicans created the first ever national paid family and medical leave program in the Tax Cuts and Jobs Act – the Employer-Provided Paid Family and Medical Leave tax credit – we allowed that credit to cover up to 25 percent of an employer’s paid family and medical leave benefits. At the time the Republican benefit which was considered almost too generous.

When the Majority published an initial discussion draft in May, the bill included a 40 percent reimbursement grant program for employers already providing paid family and medical leave to their workers. Now, the underlying bill has increased that to 90 percent reimbursement. Democrats are blatantly attempting to buy off big business. Why should hardworking taxpayers subsidize large employers like Amazon for benefits they are already providing?

This is a shameless give away to corporate interests to buy off their opposition to this bill. Committee Republicans offered an [amendment](#) to lower the reimbursement rate for big businesses to a reasonable 25 percent. The amendment was unanimously rejected by Committee Democrats.

The program in Subtitle A is completely disconnected from employers and work. Committee Democrats have not designed a paid leave program, they’ve designed a new cash benefits program that lacks adequate safeguards to prevent abuse. This is a rushed, fiscally irresponsible, federal takeover of paid leave that threatens existing employer paid parental leave policies and hamstring Main Street businesses.

There are better ways to support workers when they need time off from work without upending the existing employment and benefits arrangement of every single working American. Washington control means lower paychecks, fewer jobs, and less choice for families.

Committee Republicans have presented flexible solutions that working families can count on and laid out many of these in the “Protecting Worker Paychecks and Family Choice Act.” Democrats should hit the brakes on this recklessly flawed program and reach across the aisle to work with Republicans to find lasting bipartisan solutions to expand access to paid family and medical leave for working families.

A handwritten signature in black ink that reads "KEVIN BRADY". The signature is stylized with a large, sweeping initial "K" and "B".

Kevin Brady
Republican Leader
Committee on Ways and Means