



# Social Security Cares

Why America Is Ready for Paid Family and Medical Leave

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Ann O'Leary, Matt Chayt, and Eve Weissman

September 2012

Center for American Progress



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# Introduction and summary

Our economy is fueled by individuals who combine work with parenting or with caring for an elderly or ailing relative. Two-thirds of families today are led by two income-earners or a single-parent wage-earner, which means no one can easily stay at home in these families—whether to take care of a sick child or elderly parent, to care for a newborn child, or even to take care of themselves in the event of a serious illness.<sup>1</sup>

While the phenomenon of workers combining work with care is not new, one thing is now clear: This trend is not going to be reversed but rather will continue to accelerate. In fact, in 2010 half of all births to women under age 30 were to single mothers.<sup>2</sup> If a single mom or one of the breadwinners in a two-earner family must stay at home to care for an ill child, then they may face loss of pay, loss of opportunity to advance in the workplace, or, in the worst cases, loss of a job. While these scenarios are most likely for those workers earning the lowest wages, no worker in the United States is fully protected against these possibilities.<sup>3</sup>

This is where our proposed Social Security Cares Act would come into play. The proposed new law would establish a national paid family and medical leave program as part of Social Security. This new program would provide partial wage replacement for workers across the country who temporarily need to take time off from their jobs to tend to their own medical condition, to care for an ill family member, or to take care of and bond with a newborn or newly adopted child.

While paid family and medical leave would be a new addition to our system of social insurance, it is built on historic programs put in place during the New Deal and expanded over time to protect workers against the loss of income due to a range of unexpected and planned events. Social insurance—including unemployment insurance, old age and survivors insurance (commonly referred to simply as Social Security), and Social Security disability insurance—is financed through a payroll tax on employers and employees. Our most prominent social insurance programs—old age and survivors insurance and Social Security disability insurance—are run through the Social Security Administration.

Providing paid family and medical leave through social insurance administered by the Social Security Administration would benefit more than just the workers facing the strain of balancing work and care—it would also benefit businesses and taxpayers.

Businesses, in particular small businesses, would have a more productive and stable workforce and would not have the burden of administering insurance for their workers.<sup>4</sup>

Taxpayers would benefit too. The reason: There are a number of administrative efficiencies that would be gained by operating Social Security Cares through the Social Security Administration, including access to an expansive national infrastructure currently administering numerous federal programs serving individuals across our nation. A national program could also help avoid confusing and unnecessary variation across states and preserve scarce resources for overburdened state governments.

This paper explains in detail the benefits of administering paid family and medical leave through the Social Security Administration—specifically the Center for American Progress’s proposed Social Security Cares program.<sup>5</sup> Under this proposal, the commissioner of the Social Security Administration would establish an Office of Paid Family and Medical Leave within the agency to administer the Social Security Cares program.<sup>6</sup> In this way, the expertise of the Social Security Administration staff would be immediately brought to bear in the design and implementation of the new law, relying on their experience at setting standards, evaluating applications, and adjudicating disputes.<sup>7</sup>

There is also historical precedent for this proposed new program. The implementation of the new Social Security Cares program would not be the first time that the Social Security Administration has enhanced the protection it offers to American families. In fact, Social Security has evolved over time to serve Americans’ changing needs, as laid out in a companion paper by Heather Boushey and Sarah Jane Glynn.<sup>8</sup> The Social Security Act was originally passed in 1935 to provide income security for seniors but has since grown to include Social Security disability insurance—benefits for workers who are expected to be out of work due to disability for a year or more (1956)—and supplemental security income, a purely need-based income for persons with disabilities (1972).<sup>9</sup>

Social Security also adapted to shifting demographics over the decades. In 1983 Congress ensured that funds would be available to sustain aging baby boomers by pre-emptively boosting revenue and adjusting the retirement age.<sup>10</sup> In addition,

the Social Security Administration has demonstrated that it has the capacity to handle at least a small percentage of claims quickly through the Compassionate Allowances Initiative and Quick Disability Determinations, two programs that expedite the applications of workers whose medical conditions make them more likely to qualify for Social Security disability insurance.

As a result of these prior successes, there is reason to be optimistic about the implementation of Social Security Cares. The Social Security Administration already administers claims through a process requiring a lengthy application and evaluation procedure. To be sure, as we discuss in detail below, the Social Security Administration does currently have challenges administering the Social Security Disability Insurance program in a timely manner due to large increases in the case-load and lack of adequate funding to administer it. But the Social Security Cares application and claims evaluation process would be far simpler than that associated with Social Security disability insurance payments.

Under Social Security Cares, a large number of cases—those related to leave for pregnancy, child birth, or baby bonding—will be easy to prove and less open to interpretation. The Social Security Administration can model such determinations on the existing Social Security Survivors Benefits program, which requires the proof of death of the beneficiary. In the case of pregnancy or baby bonding, the claimant will merely need to show proof of birth or adoption of the child. In addition, there are programs similar to Social Security Cares from which administrators can glean valuable lessons.

Two states, California and New Jersey, have been offering their residents a paid family leave program for several years, and their experience is instructive.

For short-term disability insurance claims or claims to care for a person with a serious illness or short-term disability, the Social Security Administration will be able to use strategies for evaluating similar claims developed in the five states—California, Hawaii, Rhode Island, New York, and New Jersey—with statewide temporary disability insurance programs.

In 1993 Congress laid the foundation for Social Security Cares by passing the Family and Medical Leave Act, which requires covered employers to give workers job-protected unpaid leave for designated health and family reasons. The Family and Medical Leave Act would provide the qualifying standards for the admin-

istration of Social Security Cares, thus saving substantial time and effort in the implementation process of the proposed new program benefits.

Social Security Cares would also establish a uniform national process for obtaining paid family and medical leave in the United States instead of what the current system requires, which is based on a mixture of state- and employer-specific policies. No one will lose access because they change locations or switch jobs. To ensure the effectiveness of a national paid family and medical leave insurance, implementing the new Social Security Care program will depend on:

- A focused outreach campaign
- A simplified and timely application process
- A fair and timely appeals process
- A well-trained staff

Briefly, here is why these four ingredients are important to the successful implementation of our proposed Social Security Cares program.

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### A focused outreach campaign

A campaign will be needed to boost public awareness about the benefits of Social Security Cares and the availability of the program administered by the Social Security Administration. This campaign should be targeted at potential beneficiaries, including those caring for or likely to care for sick children and elderly relatives.

The outreach campaign should also be targeted to the public at-large to stress that as a social insurance program, Social Security Cares will be a self-sustaining program that does not add to the federal budget, and that the program will be there for you when you need it.

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### A simplified and timely application process

The purpose of a paid family and medical leave program is to allow people to leave the labor market for a short period of time, receive wage replacement during the absence, and seamlessly return to work. In order for the program to be effective, the application process will need to be as simplified and streamlined as possible so that those who apply will either quickly receive their benefits or be told that they do not qualify.

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## A fair and timely appeals process

The Social Security disability insurance program has been under fire recently for the untimely and uneven handling of appeals.<sup>11</sup> The Social Security Administration should certainly work to correct these problems, but regardless, the challenges will unlikely be as significant for the Social Security Cares program. For one, a number of the qualifying reasons for taking leave under Social Security Cares are very straightforward, and for those that are less clear-cut, the agency can learn from the procedures used in states currently operating temporary disability insurance programs.

Second, the financial stakes are lower for the federal government with Social Security Cares because this is a temporary program with a limit of up to 12 weeks of leave (as compared to long-term disability insurance, which could leave a worker out of the workforce for the rest of his or her life). These factors mean that more applicants will receive benefits during the initial determination process rather than needing to await benefit confirmation through the appeals process.

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## A well-trained staff

In order to ensure timely and fair applications and appeals, staffing for Social Security Cares would best be served by drawing on the experience of training and retaining staff from a the multitude of existing social insurance programs, including Social Security Disability Insurance, Survivor's Benefits, and Old Age Insurance.

In the main text of our report, we will demonstrate why the Social Security Administration is the right place to administer this new Social Security Cares program and then detail how exactly the program will work in practice. But let's cut to the chase: We already have the tools to provide working families the paid time off they need to care for loved ones and themselves—the time-tested Social Security program. Swift passage of this proposal can be followed by efficient and effective implementation by the Social Security Administration. For the millions of low- and middle-income Americans struggling every year to make ends meet and keep their jobs when an emergency arises or a new child is welcomed into the family, passage of the proposed Social Security Cares Act cannot happen soon enough.



## Social Security Cares unpacked

Most employees in the United States who need to take leave from work following the arrival of a new child, the serious illness of a family member, or their own serious illness, have no options for income replacement. At best, federal law may protect them from losing their job, but only if they have been employed for long enough (at least 12 months), worked enough hours (at least 1,250 hours in the previous year), and work for a large enough employer (at least 50 employees in a 75-mile radius). These restrictions mean that about half of private-sector workers are ineligible for job-protected leave<sup>12</sup>, and nearly 90 percent of those who needed leave but did not take it cited financial reasons.<sup>13</sup>

Social Security Cares, a program proposed in the Center for American Progress report “Helping Breadwinners When It Can’t Wait” and included in the Center’s proposal to modernize Social Security, “Building It Up, not Tearing It Down,” would begin to address these inadequacies in our current federal employment laws.<sup>14</sup>

Social Security Cares would provide up to 12 weeks of partial wage replacement for eligible workers who need to take leave from work in order to bond with a child after birth or adoption, to recover from their own serious illness, to provide care for a seriously ill family member, to assist an active member of the military in deploying, or to care for a military service member with a serious injury or illness, the same length of leave and qualifying conditions provided under the Family and Medical Leave Act.<sup>15</sup> Like the Family and Medical Leave Act, Social Security Cares leave would be gender neutral, meaning that men and women qualify for the same amount of leave, which would encourage greater uptake by men. Social Security Cares expands the definition of family to include domestic partners and other family members, as nine states and the District of Columbia have already done.<sup>16</sup>

In order to insure workers with labor force attachment, coverage would be based on whether a worker has established the necessary employ-

ment history to be eligible for Social Security Disability Insurance. Eligibility is age-adjusted, meaning that younger workers with less work-history can still be covered. Because eligibility is tied to lifetime employment history, not tenure or hours with a specific employer, workers who hold multiple part-time jobs, work for small businesses, and those who have changed employers within the previous year are not penalized, provided they have sufficient labor force attachment.

Social Security Disability Insurance eligibility requirements and more information on the workers who would be covered under Social Security Cares are explained in greater detail in the Center for American Progress report “Comprehensive Paid Family and Medical Leave for Today’s Families and Workplaces: Crafting a Leave System that Builds on the Experience of Existing Federal and State Programs.”<sup>17</sup>

There are several ways that the program could potentially be funded, outlined in *Helping Breadwinners When It Can’t Wait* and *Building It Up, not Tearing It Down*. For the purposes of the reports in this series, we assume the funding mechanism would mirror how it was done in California and New Jersey. In California, payroll taxes toward the longstanding disability insurance trust fund increased to 1.2 percent of payrolls, using the State Disability Insurance wage base (this fund covers both State Disability Insurance and Paid Family Leave), and, in New Jersey, a new trust fund was established equal to 0.12 percent of payrolls, using the Social Security wage base.

Social Security Cares would include language to prevent retaliation and discrimination against leave takers, but unlike the Family and Medical Leave Act would not require job protection. Social Security Cares leave is intended to be taken in conjunction with this existing leave law for those workers who qualify, and to extend its protections to part-time workers, workers in small businesses, and domestic partners would need to be addressed through separate legislative action.

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## A flexible agency

### How the Social Security Administration responds to America's changing needs

Social Security Cares represents the next major evolution for an agency, the Social Security Administration, which has already adapted several times to serve the changing needs of American families. The Social Security Administration is an independent agency that administers Social Security, a social insurance program consisting of retirement, disability, and survivors benefits. Benefits are funded by Social Security payroll taxes on workers' earnings, which are paid by American workers and their employers, and the amount of the benefit is calculated based on an employee's long-term contributions.

Congress amended the Social Security Act to include benefits for disabled workers in 1956. But many people recognized the need for a wage replacement program to assist disabled workers in the 1930s when the Social Security Act originated. In fact, former President Franklin D. Roosevelt's 1934 U.S. Committee on Economic Security proposed that Congress pass a temporary disability insurance program and conduct further studies to develop a system for permanent disability.<sup>18</sup> After enactment of the 1935 Social Security Act, which did not include either temporary or permanent disability insurance, serious thought was given to expanding the program to provide such benefits, though there was active opposition to the program stemming from concerns about both high costs and administrative difficulties in making disability determinations.

The issue was debated in Congress throughout the 1940s and early 1950s, until Social Security disability insurance, which provides monthly permanent disability insurance benefits, was added in 1956, followed by supplemental security income in 1972, which provides purely need-based income for persons with disabilities.<sup>19</sup> Temporary disability insurance was dropped as a concept due to concern that employees would "work the system" to create fraud; that the costs of the program would be high; and that the program would crowd out state programs and charitable efforts.<sup>20</sup> The Social Security Administration therefore was never given the opportunity to effectively develop such a program.

The Social Security program also can adapt to shifting demographics. In 1983, a commission studied Social Security and reviewed demographic data about the United States. The commission looked to projections showing that the system

would struggle to pay benefits to the so-called baby boomer generation—those born between 1946 and 1960. The commission recommended boosting revenue by initiating a gradual raise in the retirement age and by raising payroll taxes. Congress successfully passed legislation to do both.<sup>21</sup>

In addition, since February 2008 Social Security demonstrated resilience in another way: using computers to expedite review of applications for disability benefits from applicants who clearly meet the relevant standards. Social Security’s Quick Disability Determinations program uses a “computer-based predictive model” to “identify cases where a favorable disability determination is highly likely and medical evidence is readily available.” The Social Security Administration is now seeking to further expand the Quick Disability Determinations program.<sup>22</sup> This process will be extremely useful in making quick determinations for the medical disability component of the Social Security Cares program.

Another program, Compassionate Allowances, provides an additional shortcut to disability benefits for a set list of conditions that is still growing. In October 2011 the Social Security Administration added 13 new conditions to the list of qualifying disabilities for a current total of 113.<sup>23</sup> The Compassionate Allowances program has simple criteria: By alleging one of the listed conditions, the applicant is designated an application automatically, and Social Security expedites processing of the claim.<sup>24</sup> Lessons from the Compassionate Allowance program can be applied to expediting claims for leave associated with the birth or adoption of a baby, which will be easy to demonstrate and should automatically qualify an individual for Social Security Cares benefits.

To be sure, the Social Security Administration is far from flawless in processing claims for Social Security disability insurance. For instance, there is wide variation among State Disability Determination Services in the initial decision to allow or deny a claim for disability insurance.<sup>25</sup> Some of the variation may be explained by differences in industry, but may also be a result of different judgment calls that lead to differential access. In the past year, the *Wall Street Journal* has also reported on a wide variation in the awarding of benefits depending on the lawyers and judges involved in appealing cases.<sup>26</sup> In creating a new program, the Social Security Administration would need to be careful not to replicate the same flaws and inconsistencies that are part of the Social Security disability insurance program.

# Implementation of Social Security Cares

The Social Security Administration does not currently administer a short-term benefits program similar to temporary disability insurance or paid family leave, but it does administer two national long-term disability insurance programs: Social Security disability insurance and supplemental security income. It is this expertise and infrastructure that the Social Security Administration could build upon to meet the needs of a new national paid family and medical leave program.

Under the proposed Social Security Cares Act, the commissioner of the Social Security Administration would establish an Office of Paid Family and Medical Leave within the agency to administer the Social Security Cares program.<sup>27</sup> This new office would be headed by a director, appointed by the commissioner and responsible for receiving Social Security Cares applications, determining eligibility for benefits, making benefit payments, record-keeping, and preventing fraud and abuse.<sup>28</sup> The director would also establish regulations governing the application and the certification processes.<sup>29</sup> The new law would establish the Family and Medical Leave Insurance Trust Fund—which would be separate from the old age and survivors insurance and the disability insurance trust funds—to pay Social Security Cares benefits, funded by a small increase in the Social Security payroll tax on employees and employers.<sup>30</sup>

The current organizational structure of the Social Security Administration involves a large and interrelated network of regional offices, processing centers, field offices, hearing offices, and teleservice centers.<sup>31</sup> More than 80,000 federal and state employees process Social Security applications through a network of 1,260 offices across the country.<sup>32</sup> While applicants for any type of Social Security benefits start their applications in the same way—by filing an application online, on the phone, or in one of the Social Security field offices located across the country—the claims for disability insurance are more time-intensive and extensive and are administered through a federal-state partnership.

In determining eligibility for Social Security disability insurance or supplemental security insurance, applicants first apply for Social Security disability insurance online, by phone, or at one of the agency's 1,260 field offices located across the country.<sup>33</sup> Once the Social Security field office has determined whether an applicant meets the basic nonmedical disability insurance eligibility requirements such as paying enough into the system given the worker's age and employment history, the application is sent to a Disability Determination Service office.<sup>34</sup>

The Disability Determination Service's are state-run agencies that work under guidance provided by the Social Security Administration to determine whether the applicant meets the medical and occupational criteria to qualify for Social Security disability insurance. If an applicant is denied benefits, then the applicant may appeal through four levels of appeals, including administrative reconsideration, a hearing before an administrative law judge, a hearing before an appeals council, and finally an appeal to a federal district court judge.<sup>35</sup>

Because of the complexity of determining whether a worker has a disability that could prevent them from working for a significant period of time—in many cases, for life—the disability insurance application process is designed to be very rigorous. As the chief actuary of the Social Security Administration recently stated while testifying before the House Subcommittee on Social Security on the future of the Social Security disability insurance program:

*Disability insurance is arguably the most difficult form of insurance to administer. It is easy to determine whether an insured person has reached retirement age or has died. ... The determination of whether a person is disabled is a highly complex process subject to human judgment by the claimant, their representative, the claim examiner and the medical consultant.*<sup>36</sup>

From an administrative, fiscal, and efficiency standpoint, we believe it makes most sense for the Social Security Administration to administer Social Security Cares in the same manner as Social Security disability insurance and supplemental security insurance. Applicants for Social Security Cares would enter the system in the same way that all applicants come forward—with initial determinations based on employment and earnings history made by the Social Security Administration's field offices and claims processing centers, and then determination for medical and family leave made by the Disability Determination Services in each state. Social Security disability insurance has more in common with Social Security Cares than with other programs such as old age insurance or supplemental secu-

rity insurance because it involves the review of whether an applicant qualifies first based on attachment to the labor force and then based on a medical disability (or the medical disability of the person to whom they are providing care). Of course, some cases—those involving leave related to the birth or adoption of a child—will require a simple proof of the birth or adoption in the same way that Social Security Survivors' Benefits requires a simple proof of death of the beneficiary.

With regard to the short-term disability and caregiving claims, Social Security Cares is in fact even simpler than the long-term Social Security disability insurance program because Social Security Cares does not involve a determination regarding the person's medical disability and continued ability to work.<sup>37</sup> The Social Security Cares program will only provide benefits to workers who qualify for a short-term leave from work under the same criteria used by the Family and Medical Leave Act. This reliance on the same criteria as required for unpaid leave under the Family and Medical Leave Act would help because workers are familiar with the allowable reasons for taking unpaid leave; the law has developed over time through court interpretation and updated regulations to make very clear the permissible reasons for leave; and the Social Security Administration could gain knowledge from employers on effectively administering claims. (see box on following page)

In implementing Social Security Cares, a key consideration is how this new national program would interact with the paid family leave programs currently in place in New Jersey and California, as well as the temporary disability insurance programs operating in those two states and Hawaii, Rhode Island, and New York. While Social Security Cares is intended to extend paid leave benefits to residents of states that do not currently have comparable programs, it will be important to engage advocates, policymakers, and program administrators in both New Jersey and California in discussions and decision making around the creation and implementation of this new federal program.

Further, the five states with functional temporary disability insurance programs may also have strong interests in shaping and influencing the development and implementation of the Social Security Cares program.<sup>40</sup> At this stage, we recommend that states with paid family leave or temporary disability insurance programs allow workers to sequentially take leave under the state and federal programs. Because many workers move from state to state to pursue jobs (4.8 million workers in 2011 alone),<sup>41</sup> and the state benefits are not portable between states, it is critical for all workers across states to have access to Social Security Cares, a federal program that would be portable.<sup>42</sup> We recommend that Congress explore

how best to build on the good work of pioneer states by allowing workers to take leave under both state and federal leave programs, and allow those workers who move from state to state to have the benefit of national paid family and medical leave insurance program.

## Social Security Cares and the Family and Medical Leave Act

Social Security Cares is the natural outgrowth of an earlier federal law, the Family and Medical Leave Act, enacted in 1993. This law ensures that eligible employees can take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. By creating a social insurance program that provides income for workers during these important leaves, the Social Security Cares program will go one step further to make it possible for all eligible workers to take the leave they need.

The Family and Medical Leave Act is enforced by the Wage and Hour Division in the U.S. Department of Labor's Employment Standards Administration, but employees are granted the leave through their employers. The Department of Labor issues guidelines, factsheets, and posters to aid employers in carrying out the program. The department has been working for nearly 20 years to enforce and raise awareness about unpaid family and medical leave.

Thus, among employers and federal agencies, the key criteria for this proposed law are already widely understood and used. This will be an immense asset during the rollout of Social Security Cares since it borrows key standards from the Family and Medical Leave Act. Social Security Cares incorporates the language of this earlier law in two important ways:

- Social Security Cares would use the “qualifying events” such as the birth of a baby or the serious illness of the employee found in the

Family and Medical Leave Act as a shortcut to establishing who may take paid family and medical leave.<sup>38</sup>

- Social Security Cares also uses the same certification standards as the Family and Medical Leave Act to establish what information is needed in an application for leave.

Employees seeking unpaid leave under the Family and Medical Leave Act apply and provide notice to their employers. Nevertheless, some of the provisions of the Family and Medical Leave Act are instructive as to how to best implement the proposed Social Security Cares law. For instance, the Family and Medical Leave Act lays out a certification process—including relevant facts about the medical condition (if for medical leave) and a procedure for obtaining additional medical opinions.<sup>39</sup> We recommend that the Social Security Administration look to the process established under this existing law as another point of guidance in developing criteria for medical leave determinations.

The passage of the Family and Medical Leave Act in 1993 was a crucial first step toward recognizing the family responsibilities of American workers. The Social Security Cares Act builds on the foundation laid by the Family and Medical Leave Act to offer leave that is reinforced by replacement income to make it possible for more workers to honor their family responsibilities. In implementation, officials should draw on the existing Family and Medical Leave Act infrastructure wherever relevant and possible.

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## Public versus private programs

The social insurance programs currently administered by the Social Security Administration do not allow individuals or employers to opt out by substituting a private insurance plan for the publicly provided social insurance. We recommend that Social Security Cares adopt the same policy—to function as a mandatory program for workers and their employers. One uniform system with no “opt out” for employers will promote consistency across geographic regions, income levels, and occupations in terms of the benefits received. One national system will also mean less racial, ethnic, and income discrepancies in terms of who has access to and uses the program.

In addition, a no-opt-out rule will help ensure that the rules are clear in terms of who is entitled to benefits, the amount of benefits available, and the process for applying to receive the benefits. If a worker moves or changes jobs, his or her access to the program would not be affected. Since the program would be paid for through an increased payroll tax on employers and employees, having one uniform program implemented across the country will be administratively easier to manage.

A nationwide program would also make it easier to administer Social Security Cares through existing local Social Security offices and staff who are already familiar with the concept of a uniform benefit flowing through local field offices and state Disability Determination Service offices. Of course, just as with retirement benefits and long-term disability benefits such as 401(k) retirement plans and supplemental long-term and short-term disability insurance,<sup>43</sup> employers and individuals can also establish supplemental private programs for paid family and medical leave.

In California, for example, many employers opt in to the state paid family and medical leave plan as basic insurance for their employees and then establish supplemental programs that provide even greater benefits to employees. This allows businesses already providing generous paid leave benefits to get a break because the state program covers a certain amount of the benefit that they would otherwise be providing.<sup>44</sup>

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## State and local government employees

When Social Security was first enacted, state and local government workers were not included in the program.<sup>45</sup> Over time Congress has amended the law to allow more and more state and local employees to opt in, and in 1990 Congress made Social Security coverage mandatory for state and local government employees who are not



covered by an alternative public pension plan.<sup>46</sup> Yet more than one-quarter of state and local government employees are not covered by Social Security.<sup>47</sup>

Those state and local workers who today are not covered by Social Security have alternative public pension plans. In contrast, state and local workers do not uniformly have access to paid family and medical leave. Only 23 percent of state and local workers are covered by short-term disability insurance, and only 11 percent of part-time state and local workers have such coverage.<sup>48</sup> While more state and local workers have access to paid sick days (89 percent), access is uneven, with only 41 percent of part-time workers and only 62 percent of the lowest-wage workers having such access.<sup>49</sup> Furthermore, the Supreme Court just weakened the ability of state government workers to enforce their rights to unpaid, job-protected leave under the Family and Medical Leave Act.<sup>50</sup>

As a result, we recommend that Congress explore the option of requiring all state and local governments and their employees to participate in the new Social Security Cares program to ensure national uniformity and equity between government and private-sector workers. We recognize that the administrative costs for state and local governments not participating in Social Security could be great and we urge Congress to take that into consideration in making the final determination as to how best to include such workers.

# Application, evaluation, and benefit distribution of Social Security Cares

This section focuses on the application, evaluation, and benefit distribution systems that would be implemented for Social Security Cares. We begin with the application process.

The application is a fundamental aspect of any social insurance program. In order for Social Security Cares to be effective, it is necessary to develop an application that is user-friendly and accessible while also gathering all of the information needed to minimize time and error in the evaluation process. Data on the successes and failures of applications for other public programs at both the state and federal level could provide useful insight to crafting an effective application for this new proposed program.

Under the proposed program, and as noted above, individuals may apply for benefits when taking leave for reasons identical to those specified in section 102(a)(1) of the Family and Medical Leave Act:

- To bond with a newborn, adopted, or foster-care child
- To care for a child, spouse, or parent with a serious medical condition
- To deal with a serious medical condition preventing the applicant from performing the functions of their job
- To address the most common issues arising for a child, spouse, or parent of an active member of the armed forces when the military member is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative child care (called “qualifying exigencies”)
- To care for a covered military service member with a serious injury or illness<sup>51</sup>

Social Security Cares would expand the definition of allowable leave takers to include a domestic partner or child of a domestic partner.

Under the Social Security Cares proposal, applications for paid family and medical leave must be filed no earlier than 30 days prior to and no later than 90 days

following the day for which the benefit is sought.<sup>52</sup> The certification required to establish eligibility for one of the allowed reasons would be aligned with the certification that workers are required to provide to their employers under the Family and Medical Leave Act.<sup>53</sup> For instance, workers seeking leave to recover from their own serious illness or to care for a family member with a serious illness must provide documentation from a health care provider.<sup>54</sup>

Specifically, certification must include the date when the medical condition commenced, the projected duration of the condition, and “appropriate medical facts” known by the relevant health care provider.<sup>55</sup> Where leave is sought to care for a spouse, child, or parent with a serious medical condition, the medical certification must specify that the applicant is needed to care for the family member and must specify the estimated amount of time required to provide such care.<sup>56</sup> Where leave is sought because the applicant cannot perform his or her job due to his or her own serious medical condition, the medical certification must include a statement to this effect and, if applicable, the expected duration of the intermittent leave or reduced leave schedule.<sup>57</sup> Finally, where benefits are requested for planned medical treatments requiring intermittent leave or a reduced leave schedule, the certification must include the expected dates and duration of such treatment.<sup>58</sup>

Both the existing unpaid Family and Medical Leave program and the proposed Social Security Cares Act outline additional steps for obtaining second opinions as to the validity of requested time off, resolving conflicting medical opinions, and requiring that applicants obtain subsequent recertifications.<sup>59</sup>

Key issues to be addressed in creating effective Social Security Cares application and certification processes are the quality and quantity of data required to effectively evaluate applications without overly burdening claimants and reasonable requirements around timing and deadlines. The Social Security Cares application can build off of the federal Family and Medical Leave application since many applicants will likely apply to both programs.

The need for the comprehensive information necessary to evaluate claims should be balanced with the important goal of creating customer-friendly application forms. The Social Security Cares program we propose lays out specific information required to apply for paid family and medical leave. It is also essential that the application and certification processes establish reasonable timelines for submission of applications that meet the needs and expectations of applicants while providing program administrators enough time to adequately evaluate claims.

Timing is critical because the success of the program rests in part on ensuring that filing deadlines are reasonable and easy to follow for claimants and that benefits are received in a timely manner.

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## Processing of claims

The claims process is central to a functional social insurance program. The efficiency of evaluating claims will play a decisive role in the program's overall effectiveness. It is critical to ensure that evaluations of claims are fair and that they take place within reasonable time limits.

Currently, 77 percent of Social Security disability insurance awards are made at the initial application stage or at the agency reconsideration stage.<sup>60</sup> The processing time for initial claims is 109 days and for reconsideration cases is 73 days.<sup>61</sup> These timeframes are appropriate given the extensive review required to qualify for Social Security disability insurance, the long-term and permanent nature of disability insurance, and the importance of weeding out fraud and abuse. But the processing time for Social Security Cares benefits will need to be much quicker. Social Security Cares benefits only last up to 12 weeks—they are limited to 60 working days—and will be needed almost immediately in order to ensure that the program meets its goals of providing useful wage replacement when the worker is temporarily out of work.

The good news is that the Disability Determination Service agencies that process these initial claims have a very good track record in recent years of quickly processing claims under the Quick Disability Determination and Compassionate Allowance programs, for both of which processing time is currently 9.7 days.<sup>62</sup> The Social Security Administration should build on this effective model to develop an efficient and timely processing system for the easy-to-determine claims under short-term paid family and medical leave such as the birth of a child or baby bonding.

The Social Security Administration can also follow the examples set by New Jersey and California in using quick and efficient claims processing. Similar to paid leave in New Jersey and California, those evaluating Social Security Cares claims will require far less detailed medical information than is needed to evaluate Social Security disability insurance applications fairly and effectively. As California and New Jersey have done, Social Security Cares staff should balance the need to combat fraud with the need for a streamlined system that gets financial help to families who need it.

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## Medical claims

In addition to ensuring adequate staffing and training of claims processes, there are other considerations the new program will have to face. A key issue is the way in which the proposed program will handle the verification of claims. As noted above, workers who are applying for both Family and Medical Leave Act and Social Security Cares benefits will be able to submit the same information to their employers and the Social Security Administration. But the Social Security Administration will still need to determine the best way to evaluate the certifications from health care providers.

The program could employ “claim administrators with medical training” to evaluate applications or could adopt a standard “set of medical guidelines” similar to the medical disability advisor used in California, making it easier for less-skilled staff to perform evaluations.<sup>63</sup> Medical guidelines can be both time- and cost-efficient—allowing staff to effectively review and process the majority of applications and saving only the most complicated and suspicious cases for highly trained medical professionals.<sup>64</sup> This method is consistent with the current evaluation of medical disabilities under the Social Security disability insurance and supplemental security insurance programs in which claims processors first evaluate whether the applicants’ medical impairments fall within a specified medical listing of impairments.<sup>65</sup>

Some claims under Social Security Cares will be even more straightforward. For instance, the training required to assess newborn- or adoption-related bonding claims is relatively simple.<sup>66</sup> The Social Security Administration’s experience with Survivors Benefits and prior success with Quick Disability Determinations and Compassionate Allowances suggests the agency can tackle shorter, clearer-cut determinations of this nature.

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## Offices and staff

The effectiveness of any social insurance program depends on trained and competent staff to process and evaluate applications and to administer benefits in a timely manner. It will be important to determine how many—and what kind of—staff positions are needed to effectively administer the proposed Social Security Cares program. It will also be important to determine how much funding is necessary to hire staff and to provide them with the initial training they will need to get the program off the ground effectively.

As noted above, we recommend that the Social Security Administration build upon the expertise of training disability claims administrators by having applications processed by the existing network of local Social Security Administration field offices and state-based Disability Determination Services offices, currently used to evaluate disability insurance claims.

It is critical that the Social Security Cares program have adequate resources to support a trained and qualified staff so the program runs well from the beginning. Disability claims evaluators are already working in a highly complex system and thus are well-suited to easily adapt to and adopt simplified procedures for evaluating Social Security Cares claims. Yet the existing network for processing Social Security disability insurance and supplemental security insurance claims is already strained. There has been a 14 percent reduction in Disability Determination Services employees in the past two years alone, which is having a direct impact on the number of days it requires to process initial claims—it is expected to be 111 days in fiscal year 2012 ending in October, and 137 days in FY 2013.<sup>67</sup> More than 300 Social Security Administration field offices or Disability Determination Services offices have closed in the past year.<sup>68</sup>

Three important and interrelated issues emerge regarding the staffing of Social Security Cares under the Social Security Administration. First, how many personnel will be needed to effectively run the program, and what type of training and experience will they require? New Jersey and California offer helpful lessons and insights. New Jersey hired relatively few new staff and ultimately reduced the overall number of people working for the state's division in charge of the program due to institutional knowledge and existing staff expertise that carried over from the state's temporary disability insurance program.<sup>69</sup> But in the case of the federal government, it is unclear whether and to what extent the Social Security Cares program would benefit from the skills and knowledge of the Social Security Administration staff. California, however, faced early implementation challenges due to staff shortages resulting from state budget cuts to the department administering the program.<sup>70</sup> The upshot: While considering this proposed new insurance program, Congress must undertake an evaluation of how many staff personnel will be required to effectively run Social Security Cares and the type and extent of training for these staffers that will be necessary.

Second, and directly related to these questions, are the issues of how much funding will be needed to hire and train staff. New Jersey did not have to invest significant resources in hiring and training staff for the reasons outlined above.<sup>71</sup>

Conversely, California faced a funding shortfall, which created early implementation issues largely because of the lack of adequate staffing. Thus determining the level of necessary funding to hire and train the requisite number of people to effectively implement and run the program is essential.

Third, it would be useful to assess both whether it is feasible to use existing Social Security Administration staff to process Social Security Cares claims and the extent to which current staff would in fact be able to employ knowledge and expertise from Social Security disability insurance in operating the new paid family and medical leave program. Based on New Jersey's experience, it seems that using at least some experienced Social Security Administration staff to implement the proposed new program would be well-advised.

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## Distribution

The Social Security Administration currently processes Social Security retirement and disability checks on a monthly basis, which may not comport with the quick turnaround time required for the paid family and medical leave benefits envisioned under the proposed Social Security Cares Act.<sup>72</sup> In order to build on the administrative efficiencies of the Social Security Administration, Social Security Cares would provide for monthly benefit checks. But Congress should require the Social Security Administration to evaluate whether monthly checks meet the needs of beneficiaries and to examine the administrative hurdles the Social Security Administration would need to break down in order to administer checks on a weekly or biweekly basis.

Under the proposed Social Security Cares program, if an application is filed before the date for which leave is requested, monthly benefits would accrue starting the first month in which the individual is qualified for the benefits; or, if the applicant files after having qualified for the program, the benefits would accrue retroactively to the month that the applicant was eligible for medical or family leave.<sup>73</sup> Payments would be made no later than 20 days after the applicant's monthly benefit claim report for the month is received.<sup>74</sup> Further, there would be a waiting period of five days so that beneficiaries would only accrue benefits starting five days after the earliest date for which the individual qualified for family or medical leave.<sup>75</sup>

The process for distributing benefits is a central aspect of any social insurance program. Distribution must take place within a reasonable timeframe so that

claimants have access to the benefit when they need it. Generally, the shorter the benefit period, the quicker the turnaround time required for successful benefit distribution. Many people taking time off from work for hours, days, or weeks require wage replacement to meet basic expenses such as rent, utilities, and food. Indeed, this is the very purpose of the proposed Social Security Cares program.

Therefore, the system for distributing benefits must operate in a relatively short time-frame to be effective. Implementing Social Security Cares through the Social Security Administration would ensure that the new program would benefit from recent advances in technology and the mechanization of benefit distribution from the U.S. Department of Treasury directly to the bank accounts of individual beneficiaries.

Additionally, the Social Security Cares program would need to have a very flexible and responsive system to adjudicate disputes and fix administrative errors because a lengthy process for addressing administrative problems will undermine the very purpose of a program designed to provide short-term wage replacement. Operating the Social Security Cares program under the Social Security Administration would allow the program to tap into existing employment records, wage data, payment systems, and appeals networks.

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## Appeals process

The appeals process is also a key element of any social insurance program. Applicants must be able to appeal unfavorable decisions through an accessible, transparent, and expeditious system in order to maintain the program's integrity and ensure basic fairness. Important considerations are the organization and structure of the process; the timeliness with which appeals are handled; the degree to which the process is accessible to claimants—allowing people to easily file and pursue claims, including the need or utility of representation; and the extent to which the process is fair, consistent, and unbiased.

The Social Security disability insurance appeals process allows claimants to contest Social Security Administration decisions. An appeal must be filed within 60 days of receipt of the decision letter.<sup>76</sup> As a general rule the Social Security Administration considers the date of receipt to be five days after the date printed on the letter, unless it can be proven that the letter was received later.<sup>77</sup> The appropriate level of the appeal process a claimant should pursue is indicated in the letter.<sup>78</sup>



On average, over the last 10 years, 45 percent of applicants for Social Security disability claims ultimately receive benefits, but only 28 percent are awarded benefits at the initial claims process.<sup>79</sup> The remaining awards are made through the appeals process. There are four levels of appeal: reconsideration, a hearing by an administrative law judge, review by the Social Security Appeals Council, and, finally, the federal court system.

It may make more sense to create an entirely different appeals process for the proposed program. There are a number of concerns about tying the Social Security Cares appeals process closely to that of the Social Security disability insurance program. In particular, ensuring fair and consistent decisions and timely handling of claims are crucial. As the Social Security disability insurance appeals process currently stands, there is considerable backlog in how quickly cases are reviewed and processed. Integration of appeals from new paid family and medical leave applicants could add to the backlog and could mean that the process for handling Social Security Cares appeals would be untenably slow.

Further, Social Security disability insurance appeals require much more detailed presentation and analysis of evidence and information regarding the claim. The Social Security disability insurance processes are more comprehensive and in depth than what is necessary for a shorter-term paid family leave benefit. Creating a new appeals system with fewer levels of review will help ensure an effective Social Security Cares appeals system.

# Social Security Cares benefits calculations

In calculating the amount of money to be paid to beneficiaries of the new Social Security Cares program, the proposed program builds off the existing structure of the original Social Security Act.<sup>80</sup> The benefits paid under Social Security Cares also build on the benefits established in New Jersey’s program. The monthly benefit provides two-thirds of a worker’s wage earnings—calculated by taking the worker’s highest annual earnings in the past three years and multiplying that by one-eighteenth to get a monthly benefit amount. Benefits are capped at \$4,000 per month (following California’s model), with a minimum monthly amount of \$580—equal to the federal minimum wage (\$7.25) multiplied by 20 hours per week for four weeks.

The traditional Social Security disability benefit is calculated using a more complex formula that takes into account a given beneficiary’s age, number of years worked, salary earned during those productive years, and wage base during the beneficiary’s working years.<sup>81</sup> The Social Security Administration gathers “employment and wage data cover[ing] employment history and wages earned” but not “hours worked.”<sup>82</sup>

Additionally, the agency currently only collects this data once each year.<sup>83</sup> Depending on the benefits calculations, administration of the proposed Social Security Cares program under the Social Security Administration could require more robust and frequent data collection than the agency currently undertakes. It will be an important part of congressional consideration of the proposal, then, to assess the associated cost and the capacity of the agency to enhance the quality and quantity of data collection.

In terms of understanding Social Security Cares, data on the income level of beneficiaries, the industries where beneficiaries work, the size of employers, the rate of workers who return to their previous jobs, the number of individuals receiving care, and the employees’ marital status, educational level, and use of intermittent leave would be useful and feasible data for the Social Security Administration to collect.<sup>84</sup> Indeed, the agency has a robust and well-established data collection operation under the Social Security Administration’s Office of Retirement and

Disability Policy.<sup>85</sup> Three divisions within the Office of Retirement and Disability Policy work together to collect and disseminate statistics: the Office of Program Development and Research; the Office of Research, Evaluation, and Statistics; and the Office of Retirement Policy.

From its considerable data sources, the Social Security Administration publishes such resources as demographic studies of the Social Security recipient population, including race and ethnicity data, age data, health data, mortality data, and even immigration status data. The Social Security Administration's ability to collect and analyze large amounts of data is thus quite robust. Americans can be confident that the Social Security Administration will be able to handle the new data required even though the amount of information to be collected is substantial.

Particularly important new data to collect would be on the racial, ethnic, and geographic composition of claimants and beneficiaries, thus ensuring uniformity of access to benefits across geographic areas, as well as across subpopulations; on the reasons for denying claims; and on the usage of the appeals process. It is also critical to collect data in a format that can be shared with academics and policy-makers while protecting the privacy and confidentiality of program participants. In the end, collecting and analyzing usage data is crucial to efforts to improve the program's operation; without it, administrators will be unable to target areas for programmatic improvement.

The New Jersey and California experiences also offer an important lesson. These two states are not marked by robust data collection, but they have demonstrated the importance of establishing a plan for consistent and thorough data collection and then incorporating it into the Social Security Cares legislation. This will entail deciding what information should be collected, the processes for collecting such data, the entity best positioned to collect the information, and the associated cost.

# Raising awareness about Social Security Cares

The success and viability of any public program is largely dependent on the ability to convey clear, accurate, and timely information to the public about what it is, who is eligible, and how to apply. Of course the need for such outreach and communication is even greater when the program is new, and people do not have prior experience with or knowledge about the benefits it is set up to provide.

Public education for a national paid family leave insurance program may face greater challenges than state programs, given the need to reach a wider national audience with consistent and accurate information. But ultimately, linking paid family and medical leave under the proposed Social Security Cares program to the Social Security Administration may help promote the program, given that many people are already aware of and comfortable with the existence of the Social Security Administration.

In New Jersey, the original legislation included language to cover costs associated with a public outreach campaign. Yet because New Jersey implemented the Family Leave Insurance program in the midst of the Great Recession, the outreach efforts were limited.<sup>86</sup> New Jersey carried out public education and outreach through one-on-one meetings and small- and large-group presentations across the state. The director of the Family Leave Insurance program spoke about the program to any business and organization, large or small, that made a request.<sup>87</sup>

From 2003 to 2004 the California Employment Development Department set out to conduct a one-year public education campaign consisting of promotional billboards, multilanguage informational brochures, and direct outreach to clinics and community centers.<sup>88</sup> The outreach effort encountered several major problems, which ultimately hampered public awareness about the program. Only \$1 million was initially allocated to fund outreach, after which public funding disappeared, and the outreach effort faltered.<sup>89</sup>

Based on the experiences in New Jersey and California, advocates and policymakers should develop an outreach strategy before the new Social Security Cares

program goes into effect, and the new program itself should stipulate that ongoing outreach and education funding is part of the cost of administering the program. At minimum, it would be helpful to determine the groups of people and geographic areas that should be targeted, the optimal methods of outreach (billboards, radio advertisements, website, hotlines), and the estimated cost of the campaign.

Such advance planning is important to ensure that effective outreach can begin at the outset, that ideological and/or political disagreements do not impede outreach efforts, and that adequate funding is allocated for this crucial purpose. The education campaign for Social Security Cares should be broad, aimed at both educating the public at-large and also reaching people who are most likely to need the program in the near future by interfacing with health providers and others.

Both New Jersey and California demonstrated that an effective outreach effort should focus on ways to productively educate, train, and engage employers to instill a working knowledge of the program and how it interacts with and relates to other public benefits. This is critical to ensure employers have the tools necessary to convey accurate information to their employees.

# Conclusion

The Social Security Administration provides a useful federal framework for implementation and administration of the proposed Social Security Cares program for nationwide paid family and medical leave. Social Security Administration programs—the Social Security disability insurance program in particular—share similar policy goals with Social Security Cares: Ensuring that individuals (and families of individuals) who are unable to work have access to critical financial support in the form of partial wage replacement.<sup>90</sup> Paid family and medical leave simply extend the notion of social insurance under the Social Security Administration’s programs to shorter time-off periods.<sup>91</sup>

Further, using the Social Security Administration eliminates state-by-state variations present in other social insurance models such as unemployment insurance and workers compensation, as well as temporary disability insurance and current paid family leave programs in several states, thus helping to ensure that workers across the country receive the same types of benefits. This paper demonstrates that while the innovations of Social Security Cares are new to the federal government, the Social Security Administration has proven itself ready to administer the new program through its impressive capacity and history of adaptability.

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## Acknowledgements

Thank you first goes to the team of individuals at University of California, Berkeley, School of Law and Georgetown University Law Center, who collaborated together to dig deeply into questions of how best to administer national paid family leave insurance. That work, funded by the Sloan Foundation, resulted in a Social Security Caresd “Family Security Insurance: A New Foundation for Economic Security,” which we relied upon heavily in considering how to administer the Social Security Cares proposal.

Thank you to Heather Boushey for her leadership on the Social Security Cares proposal and her collaboration with Sarah Jane Glynn on this project; to Vicki Shabo for her leadership and very helpful comments on this draft; to Katie Corrigan for her great work on the “Family Security Insurance” report and her helpful comments on this draft; to Chris Longo for his helpful comments based on New Jersey’s experience; to Morna Miller and Kathryn Olson of the House Subcommittee on Social Security of the Ways and Means Committee for their helpful technical comments on how Social Security Cares may fit into the existing programs run by the Social Security Administration; to the Rockefeller Foundation for funding the project; and to the University of California, Berkeley, School of Law’s Chief Justice Earl Warren Institute on Law and Social Policy for collaborating with the Center for American Progress on this research effort.

Finally, thank you to the terrific team of research assistants who aided us at the University of California, Berkeley, School of Law, including Sam Stefanki and Gabriela Lopez.



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- 85 For a more robust description of the Office of Retirement and Disability Policy's role in data collection, see its website at <http://www.ssa.gov/policy/about.html>.
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