

As of May 1, 2021

# Proposed Federal Programs



Metropolitan Life Insurance Company | 200 Park Avenue | New York, NY 10166  
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## Federal Programs: Background

It has been 28 years since the federal government passed the federal Family and Medical Leave Act (FMLA) providing unpaid, job protected leave to millions of Americans. Since then, expanding the benefit to include wage replacement benefits has been a topic of conversation in many branches of the federal government at every level. Both the Democrats and Republicans agree that a federal paid family and medical leave program is valuable to workers and employers alike. Both parties have submitted their own versions of paid family and medical leave (“PFML”) bills throughout the years with many similar leave reasons and benefit offerings. The biggest difference is that each party has a different idea of how to fund and run the programs.

In 2021, President Biden has made it one of his top priorities as a recovery component to rebuild the economy and our future post pandemic. In April 2021, the House Ways and Means committee conducted a hearing regarding a PFML program, which may signal that lawmakers are exploring different ways to administer and fund these important employee benefits. In fact, a Congressional vote on a federal PFML program may be on the horizon.

Below please find a high-level summary of the federal PFML proposals as of May 1, 2021 compared to the well-known federal FMLA program. This is not a complete detailed comparison. For more information, the links to each program have been included in the last section of the comparison.



# 2021 PFML Federal Proposals vs. FMLA Comparison Chart

## 2021 PFML Federal Proposals vs. FMLA Comparison Chart

	American Families Plan	Building on Economy for Families Act (“BEFA”)	Family and Medical Insurance Leave (“FAMILY”) Act	Family and Medical Leave Act (“FMLA”)
<b>Active</b>	No	No	No	Yes
<b>Key Dates</b>	Proposed: April 2021 10 -year phase in plan	Proposed: April 2021  Benefits payable January 1, 2023	Proposed February 2021 First presented 2013 and has been vetted ever since <ul style="list-style-type: none"> <li>• Tax Effective date is 120 days after enactment</li> <li>• Applications may be filed beginning 18 months after enactment</li> </ul>	February 1993
<b>Sponsor</b>	President Joe Biden	House Ways and Means Committee Chairman Richard E Neal (D-MA)	Sen Kristen Gillibrand (D-NY) and US Rep Rosa DeLauro (D-CT)	President Bill Clinton signed into law
<b>Full Plan</b>	<a href="#">The American Families Plan</a>	<a href="#">Building of Economy for Family’s Act</a>	<a href="#">Family Act S. 463</a>	<a href="#">US Department of Labor (FMLA)</a>
<b>Purpose</b>	Proposed legislation would offer 12 weeks of paid family leave for all Americans and is part of Biden’s \$1.8 trillion American Families Plan.  This plan also <ul style="list-style-type: none"> <li>• Expands education investments in students and teachers</li> <li>• Expands childcare access, nutrition and tax credits, and</li> <li>• Tax reform for those earning over \$400,000 and corporations</li> </ul>	Proposed program includes Universal Paid Family and Medical Leave (outlined below):  This plan also <ul style="list-style-type: none"> <li>• Increases funds for childcare entitlements,</li> <li>• Establishes a childcare information network improving access to local daycares,</li> <li>• Provides a refundable payroll tax credit for childcare providers for increased wages, and</li> <li>• Permanently extends the American Rescue Plan’s Child Tax Credit</li> </ul>	Proposed paid leave for the employee’s own serious health condition or for family leave based on the qualifying events.	Unpaid leave for the employee’s own serious health condition or for family leave based on the qualifying events.
<b>Administration</b>	Administrative agency not identified	The Secretary of the Treasury (“Secretary”) administers the program. (Sec. 2210)	SSA administers law and establishes the Office of Paid Family and Medical Leave (“OPFML”). (Sec. 4)	Administered by employers or third-party administrators

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<b>Private Plan Option</b>	TBD	Yes	No	Yes
<b>Employer Eligibility</b>	TBD	Appears to apply to all employers since it does not have a specific definition of “employer.”	Appears to apply to all employers since it does not have a specific definition of “employer.”	Traditional FMLA: Employers with 50 or more employees:  FFCRA: <ul style="list-style-type: none"> <li>• Applies to employers with fewer than 500 employees</li> <li>• Job restoration obligations only apply to employers with 25 or more employees</li> <li>• Excludes certain health care employers</li> </ul>
<b>Employee Eligibility</b>	All workers	Open to all public and private sector workers, without regard to employer size or tenure on the job.  <ul style="list-style-type: none"> <li>• Full and part-time workers,</li> <li>• GIG workers and</li> <li>• Self-employed workers</li> </ul>	Mandate on employers and individuals through imposition of a payroll tax.	Traditional FMLA: <ul style="list-style-type: none"> <li>• Employed for at least 12 months;</li> <li>• Employed for at least 1,250 hours during the last 12 months; and</li> <li>• Works at a worksite where 50 or more employees work within 75 miles</li> </ul> FFCRA: <ul style="list-style-type: none"> <li>• Employed for at least 30 calendar days</li> <li>• Special rule if laid off and rehired</li> </ul>
<b>Qualifying Events</b>	Similar to state leaves Own serious health condition, Child Bonding <ul style="list-style-type: none"> <li>• Family Member with a Serious health condition</li> <li>• Qualifying military exigency</li> <li>• Safety leave</li> <li>• Bereavement</li> </ul>	Specifically refer to and mirror the FMLA <ul style="list-style-type: none"> <li>• Own serious health condition,</li> <li>• Child Bonding</li> <li>• Family Member with a Serious health condition</li> <li>• Qualifying military exigency</li> <li>• Military caregiver</li> </ul> (Sec. 2202(C)(2))	Same as traditional FMLA <ul style="list-style-type: none"> <li>• Own serious health condition,</li> <li>• Child Bonding</li> <li>• Family Member with a Serious health condition</li> <li>• Qualifying military exigency</li> <li>• Military caregiver</li> </ul> (Sec. 3(6), 5(j))	FMLA: <ul style="list-style-type: none"> <li>• Own serious health condition,</li> <li>• Child Bonding</li> <li>• Family Member with a Serious health condition</li> <li>• Qualifying military exigency</li> <li>• Military caregiver</li> <li>• FFCRA: care for a minor child if school/childcare is closed due to COVID-19</li> </ul>

	American Families Plan	Building on Economy for Families Act (“BEFA”)	Family and Medical Insurance Leave (“FAMILY”) Act	Family and Medical Leave Act (“FMLA”)
<b>Duration</b>	12 weeks  3 days Bereavement	12 weeks (60 caregiving days) in a benefit period (~one year).  Up 20 caregiving days per month.  (Sec. 2203)	12 weeks (60 caregiving days) in a benefit period (one year).  (Sec. 5(a), 5(c))	12 weeks of unpaid leave per year, except:  <ul style="list-style-type: none"> <li>• 26 weeks of unpaid leave to care for a covered servicemember; and</li> <li>• FFCRA 12 weeks paid</li> </ul>
<b>Approved Family Members</b>	TBD	<ul style="list-style-type: none"> <li>• Parent</li> <li>• Spouse/Domestic Partner</li> <li>• Parent of Spouse/Domestic Partner</li> <li>• Child, child’s spouse,</li> <li>• Sibling, sibling’s spouse</li> <li>• Grandparent,</li> <li>• Grandchild,</li> <li>• Spouse of a grandparent</li> <li>• Spouse of a grandchild,</li> <li>• Any other individual who is related by blood or affinity and whose association with the employee is equivalent of a family relationship</li> </ul>	<ul style="list-style-type: none"> <li>• Parent</li> <li>• Spouse</li> <li>• Child</li> </ul>	<ul style="list-style-type: none"> <li>• Parent</li> <li>• Spouse/Domestic Partner,</li> <li>• Child</li> </ul>
<b>Benefit Payment Frequency</b>	TBD	Monthly	Monthly	N/A
<b>Benefit Minimum/Maximum</b>	\$4000/month	See “Benefit” section below/will be addressed by regulations.  (Sec. 2203)	Minimum: \$580 per month.  Maximum: \$4,000 per month. Annually indexed.	Traditional FMLA: N/A FFCRA:  <ul style="list-style-type: none"> <li>• Minimum: none</li> <li>• Maximum: \$200 per day and \$10,000 in total</li> </ul>

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<b>Waiting Period</b>	TBD	Yes	Yes	N/A
<b>Intermittent use</b>	TBD	Yes	Yes	Yes
<b>Benefit</b>	Estimated to be 80% of full wages for lowest earners.	<p>Estimated 2/3 wage replacement tiered.</p> <p>The monthly benefit amount is the daily benefit rate multiplied by the number of caregiving days in a month.</p> <p>Daily benefit rate is 1/20 the sum of:</p> <ul style="list-style-type: none"> <li>• 85% of the individuals’ average monthly earnings (“AME”), up to 1/12 of \$15,080 in 2023;</li> <li>• 75% of AME, up to 1/12 of \$34,248 in 2023;</li> <li>• 55% of AME, up to 1/12 of \$72,000 in 2023;</li> <li>• 25% of AME, up to 1/12 of \$100,000 in 2023; and</li> <li>• 5% of AME, up to 1/12 of \$250,000 in 2023</li> </ul> <p>After 2023, wage caps will be indexed.</p> <p>(Sec. 2203)</p>	<p>Estimate 2/3 wage replacement tiered</p> <ul style="list-style-type: none"> <li>• The greater of:</li> <li>• 1/18 of the employee’s highest earnings during the most recent three calendar years; or</li> <li>• Minimum benefit amount multiplied by the quotient (up to 1) obtained by dividing the number of caregiving days in such month by 20;</li> </ul> <p>(Sec. 5(b))</p>	Unpaid except for FFCRA qualifying event, which is paid at 2/3 of earnings.
<b>Coordination with State Leaves</b>	TBD	<p>Employees who are covered under State PFML laws are not eligible for BEFA.</p> <p>(Sec. 2202(c)(2)(D))</p> <p>Starting in 2024, Secretary will make a grant to each state that, for the prior year, enacted a PFML law and met certain data sharing requirements.</p> <p>(Sec. 2209)</p>	<p>FAMILY doesn’t preempt or supersede any state or local law that provides similar PFML benefits. (Sec. 5(b))</p> <p>Statute provides that coordination will be determined by regulations. (Sec. 5(b))</p>	FMLA doesn’t preempt or supersede any state or local benefits.

	American Families Plan	Building on Economy for Families Act (“BEFA”)	Family and Medical Insurance Leave (“FAMILY”) Act	Family and Medical Leave Act (“FMLA”)
<b>Coordination with Employer Benefits</b>	TBD	Starting in 2024, Secretary will make (reimbursement) grants to employers that provide PFML benefits to their employees that mirror BEFA. (Sec. 2210)	FAMILY doesn’t diminish obligation of an employer to comply with contracts, CBAs, or employment benefit programs that provide other leave rights. (Sec. 5(b))  FAMILY PFML benefit can be reduced by certain benefits received by an employee for a similar reason.	
<b>Funding</b>	Propose Appropriations	Proposed Treasury appropriations. (Sec. 2208)	Proposed payroll tax into a new Federal Family and Medical Leave Insurance Trust Fund, funded by: <ul style="list-style-type: none"> <li>• Money in the Treasury for the first 3 years of enactment, which must be repaid within 10 years of first appropriation; and</li> <li>• 100% of the taxes referenced in the amendments to the IR Code (Sec. 6)</li> </ul>	Traditional FMLA: N/A  FFCRA: fully employer paid, through traditional payroll, with tax credit available.
<b>Cost</b>	TBD	Proposed Treasury appropriations.	Proposed taxes: <ul style="list-style-type: none"> <li>• Individual tax: 0.2% of all wages received in any calendar year</li> <li>• Excise tax for employers: 0.2% of all wages paid in any calendar year</li> <li>• Self-employed tax: 0.4% of any self-employment income in any taxable year</li> </ul> (Sec. 7)	Traditional FMLA: N/A  FFCRA: fully employer paid, through traditional payroll, with tax credit available.