

GENDER AND UNEMPLOYMENT INSURANCE: WHY WOMEN RECEIVE UNEMPLOYMENT BENEFITS AT LOWER RATES THAN MEN AND WILL UNEMPLOYMENT INSURANCE REFORM CLOSE THE GENDER GAP?

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* B.A., 2008, University of Pennsylvania; Juris Doctor Candidate, 2011, Cornell Law School. I want to thank Emily Freimuth, Note Editor for the Cornell Journal of Law & Public Policy, for her advice during the writing and editing stages of this Note. I also want to thank the staff of the Erie County Bar Association Volunteer Lawyers Project for their guidance during my time representing clients denied Unemployment Insurance. That experience was the inspiration for this Note. Finally, I would like to thank my family for their continued love and support.

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I. INTRODUCTION

As unemployment continues to grow and exceed record recession levels, it has become increasingly vital that laid-off workers have a means to weather the economic climate by receiving unemployment benefits. The unemployment insurance benefit system provides temporary income assistance to workers who become unemployed through no fault of their own. However, not every worker qualifies for benefits once they become unemployed. Many unemployed workers are not receiving benefits. This is particularly true of women.¹ The fact that many women are not eligible for unemployment benefits, due to outdated eligibility requirements such as wage and hour requirements and restrictions placed on allowable reasons for job loss, is troublesome.² This Note argues that provisions introduced by the Unemployment Insurance Modernization Act of 2009 (UIMA)³, and later made into law under the American Recovery and Reinvestment Act of 2009 (ARRA)⁴, are a step in the right direction towards unemployment benefit reform in America. Part II provides background information on the unemployment insurance system generally and why the program is in need of modernization. Part III discusses the reasons why women are receiving unemployment insurance at lower rates than men and the importance of enabling more women to become eligible. Part IV examines the UIMA and ultimately the ARRA’s key reforms regarding unemployment insurance modernization, which the Note argues will allow unemployment benefits

1. See *An Economic Recovery Plan that Works for Women Must Include a Modernized Unemployment Insurance System*, NAT’L WOMEN’S LAW CTR. (2009), <http://www.nwlc.org/sites/default/files/pdfs/UIModernizationWomenJan09.pdf> [hereinafter *Economic Recovery Plan that Works for Women*].

2. See *id.*

3. See Unemployment Insurance Modernization Act, H.R. 290, 111th Cong. (2009).

4. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.

for women who would not have previously qualified. Lastly, Part V offers additional suggestions on what can be done through unemployment insurance reform to ensure women receive the benefits they are entitled to.

II. UNEMPLOYMENT INSURANCE GENERALLY

A. *Creation & Structure of Unemployment Insurance*

Unemployment Insurance (UI) was first started in 1935 as part of the Social Security Act (SSA).⁵ UI was conceived to provide temporary income to unemployed workers in order to improve the economy during recessions by increasing workers' spending.⁶ In January of 1935, President Franklin D. Roosevelt sent the SSA to Congress for consideration, with a vision that the unemployment insurance program was to be "constructed in such a way as to afford every practical aid and incentive toward the larger purpose of employment stabilization."⁷ The UI system was created to be a "first line of defense" in addressing the needs of unemployed families and the struggling economy.⁸ Congress passed the SSA in August 1935, establishing an unemployment insurance program that was "in part a creature of federal policy and part a creation of the states."⁹ The basic guidelines for states' UI systems are set out by the SSA of 1935 and interpreted by the Federal Department of Labor.¹⁰ States determine their own eligibility rules, benefit levels, and tax rates.¹¹ UI is funded by federal and state payroll taxes paid by employers¹² that are put into a state trust fund.

5. Annisah Um'rani & Vicky Lovell, *Women and Unemployment Insurance* FACT SHEET (Inst. for Women's Pol'y Research, Washington, D.C.), Sept.1999, at 1, available at <http://www.iwpr.org/pdf/w.pdf>.

6. *See id.*

7. *Implementation of Unemployment Insurance Provisions in the Recovery Act: Hearing Before the Subcomm. on Income, Sec., and Family Support of the H. Comm. on Ways & Means*, 111th Cong. 3 (2009) (statement of Maurice Emsellem, Policy Co-Dir., Nat'l Emp't Law Project) (quoting EDWIN E. WITTE, *THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 128* (1962)) [hereinafter *Hearing*].

8. *See id.* (quoting Arthur Larson & Merrill Murray, *The Development of the Unemployment Insurance System in the United States*, 8 VAND. L. REV. 181, 186 (1955)).

9. *See id.* at 3.

10. Annisah Um'rani & Vicky Lovell, *Unemployment Insurance and Welfare Reform: Fair Access to Economic Supports for Low-Income Working Women*, RESEARCH-IN-BRIEF (Inst. for Women's Pol'y Research, Washington, D.C.), Dec. 2000, at 2, available at www.iwpr.org/pdf/ui&welf.pdf [hereinafter *UI & Welfare Reform*].

11. *Id.*

12. *Id.*

B. Importance of Unemployment Insurance on Economic Recovery

The unemployment rate in the United States in December 2009 was 10%, and unemployment claims have surpassed record levels.¹³ Monthly job losses currently exceed 600,000, and there are four jobless workers for every job opening in the U.S. labor market.¹⁴ Due to limited job openings, the rate of long-term unemployment in March 2009 was the highest of any recession since records were first kept in 1948.¹⁵ In a national poll of unemployed workers in November of 2008, which was at the early stage of the economic downturn, two-thirds of the U.S. population had cut back on buying food and groceries, and one-fourth had skipped meals to save money.¹⁶ Because of staggering long-term unemployment, UI benefits have become even more vital. Unemployment benefits play a significant role in preventing the jobless from ending up in poverty.¹⁷

Congress created the UI system during the Great Depression as a means to stabilize the economy.¹⁸ Workers are more likely to spend than they are to save their UI benefits because of the financial strain that the workers' families face.¹⁹ Therefore, allowing more workers to become eligible for UI benefits would boost consumer demand, thus potentially spurring production and job growth.²⁰ In fact, unemployment benefits, along with food stamps and financial aid to cities and states, yield the biggest return for every dollar spent, as compared to tax cuts and tax rebates.²¹ In a study of several recent recessions, unemployment benefits were found to contribute \$2.15 in economic growth for every dollar circulating in the economy.²² Unemployment benefits also pose little long-run hazard to the federal budget because they are easy to cut back when the economy recovers.²³ This is in contrast to tax cuts and tax rebates, which do not yield as strong of a return and are difficult to take away once

13. *U.S. Department of Labor Strategic Plan, Fiscal Years 2011-2016*, U.S. DEP'T OF LABOR 4 (2010), www.dol.gov/_sec/stratplan/StrategicPlan.pdf; *Hearing, supra* note 7, at 2.

14. *Hearing, supra* note 7, at 2.

15. *See id.*

16. *See id.* at 3.

17. *See id.* at 4.

18. *See* Martha Coven & Chad Stone, *Unemployment Insurance Reforms Should Be Part of Economic Recovery Package: McConnell Criticism of Part-Time Worker Proposal is Misplaced*, CTR. ON BUDGET & POL'Y PRIORITIES 3 (Jan. 6, 2009), <http://www.cbpp.org/files/1-6-09ui.pdf>.

19. *Id.*

20. *Id.*

21. Editorial, *Lame Ducks and Recession Politics*, N.Y. TIMES, Nov. 9, 2008, at WK8, available at <http://www.nytimes.com/2008/11/09/opinion/09sun1.html> [hereinafter *Lame Ducks*].

22. *Hearing, supra* note 7, at 3.

23. *Lame Ducks, supra* note 21.

granted, thus causing additional budget deficits.²⁴ Additionally, unemployment benefits promote strong labor standards and economic opportunity.²⁵ While claiming UI benefits, workers have the ability to take the time needed to find the best available job for their skill-set, which ultimately results in higher pay.²⁶ On average, workers who had received UI benefits earned \$240 a month more at their subsequent jobs than workers who did not collect benefits.²⁷

C. *Unemployment Insurance Needs To Be Modernized*

A fundamental problem of the current UI system is the outdated eligibility requirements. The basic structure of the UI system has remained relatively the same since its inception in 1935.²⁸ Most states deny UI to a worker if the worker does not meet certain wage, income or hour requirements; the worker voluntarily quits her job without “good cause”; the worker has been fired for work-related misconduct; the worker is involved in a labor dispute; the worker is not available for or is not actively seeking work; or the worker turns down a suitable job.²⁹ Many workers, particularly women, do not meet these requirements for unemployment benefits because of different work patterns, even though their employers have paid UI taxes on their behalf.³⁰ The UI system was created at a time when married men tended to be the sole breadwinners of the family and does not take into account the realities of the composition of the current workforce.³¹ Because of outdated rules, many families are left without income protection despite their commitment to work.³² As a result of such strict eligibility requirements, only 37% of the unemployed actually received state unemployment benefits in 2008.³³

24. *Id.*

25. See *Hearing, supra* note 7, at 5.

26. *Id.*

27. *Id.*

28. See Walter Nicholson, *The Evolution of Unemployment Insurance in the United States*, 30 COMP. LAB. L. & POL'Y J. 123, 123 (2007).

29. Lucy A. Williams, *Unemployment Insurance and Low-Wage Work*, in *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA 160* (Joel F. Handler & Lucie White, eds., 1999) [hereinafter *HARD LABOR*].

30. See Coven & Stone, *supra* note 18, at 1.

31. See *id.*

32. *The Unemployment Insurance Modernization Act: Improving UI Equity and Adequacy for Women: Hearing on Modernizing Unemployment Insurance to Reduce Barriers for Jobless Workers Before the Subcomm. On Income Security & Family Support, H. Comm. On Ways & Means*, 110th Cong. 6 (2007) [hereinafter *Hearing on UIMA*] (testimony of Vicky Lovell, Dir. of Employment & Work/Life Programs, Institute for Women's Policy Research).

33. *Hearing, supra* note 7, at 6.

III. GENDER INEQUALITY IN THE UI SYSTEM

A. Reasoning Behind the Gender Gap in Unemployment Benefits

The fact that women qualify for unemployment benefits at lower rates than men can be attributed to the way the unemployment benefit system is designed in most states. The goal of the UI system in determining eligibility is to ensure that workers wishing to receive UI have a significant attachment to the workforce, are able and willing to work, and are actively looking for employment opportunities.³⁴ However, many of these eligibility screens do not consider important social and economic realities of women's lives.³⁵ Unemployed women are 10% less likely than men to receive unemployment benefits because of eligibility rules that disproportionately disqualify women.³⁶ Many women, especially single mothers, are excluded from the UI system due to (1) monetary eligibility criteria; (2) exclusion of part-time workers and those looking for a part-time job; and, (3) allowable reasons for job loss.

1. Monetary Eligibility Criteria

Nearly all states have wage and hour requirements for workers to receive UI benefits.³⁷ Due to states establishing UI eligibility rules in the pre-computer era when employment data could not be obtained quickly, many states exclude workers' most recent three to five months of employment when determining if they have worked and earned enough to qualify for unemployment benefits.³⁸ This generally means there is an 18-month earnings record requirement at a particular place of employment to qualify for UI, which in today's volatile labor market is a very large and unnecessary burden.³⁹ The UI system was designed this way to ensure people receiving UI had an adequate attachment to the labor force, but with job tenure rates falling over the past 25 years, a gap in an earnings record in today's job market does not mean a worker lacks attachment to the labor force.⁴⁰ As women are more likely than men to have been employed in their current job one year or less, recent earnings exclusions have had a

34. See Um'rani & Lovell, *supra* note 5.

35. See *id.*

36. *Hearing on UIMA*, *supra* note 32, at 3.

37. Vicky Lovell & Catherine Hill, *Fact Sheet: Today's Women Workers: Shut Out of Yesterday's Unemployment Insurance System*, INST. FOR WOMEN'S POL'Y RESEARCH 1 (2001), www.iwpr.org/pdf/a127.pdf.

38. See Coven & Stone, *supra* note 18, at 2.

39. See *Hearing on UIMA*, *supra* note 32, at 3, 5.

40. See *id.* at 3.

greater impact on their eligibility for UI benefits.⁴¹

Due to monetary eligibility requirements, low-wage workers must work more hours to qualify for UI benefits than high-wage workers must work.⁴² This is a reason why low-wage workers are half as likely to receive unemployment benefits than those earning more, even though they are twice as likely to become unemployed and are in more desperate need.⁴³ Earnings requirements continue to hamper women's ability to claim UI benefits as the gender wage gap persists; full-time female workers in 2007 earned 78 cents for every dollar earned by full-time male workers.⁴⁴ Given the fact that women are disproportionately represented in the low-wage workforce (they make up 60% of low-wage workers), monetary eligibility requirements disproportionately hinder women's access to UI benefits.⁴⁵

2. Part-Time Workers

In most states, workers are disqualified from UI if they worked part-time, or turned down a full-time job because they needed to work part-time, due to family obligations, such as caring for their children.⁴⁶ Under the law, this constitutes a "refusal of suitable work."⁴⁷ Additionally, most states find workers ineligible if workers restrict their available hours to certain shifts, hours, or days, even when this is due to compelling domestic circumstances.⁴⁸ When part-time workers do qualify, they are penalized in terms of benefit amounts compared to full-time workers.⁴⁹ For example, a worker who earns \$10 per hour and worked for 1,040 hours in her base period would earn around \$191 in UI if she worked 40 hours per week for 26 weeks, while that same worker would earn \$110 in UI if she worked 20 hours per week for 52 weeks.⁵⁰ Therefore, women are receiving less

41. See Lovell & Hill, *supra* note 37.

42. Vicky Lovell, *Fact Sheet: Women and Unemployment Insurance: Outdated Rules Deny Benefits That Workers Need and Have Earned*, INST. FOR WOMEN'S POL'Y RESEARCH 1 (Jan. 2008), http://www.iwpr.org/pdf/A132_WomenandUI.pdf.

43. See *An Economic Recovery Plan that Works for Women*, *supra* note 1; Barbara Hagenbaugh, *Many of the Jobless Get No Unemployment Benefits*, USA TODAY, Apr. 10, 2009, available at http://www.usatoday.com/money/economy/employment/2009-04-09-unemployed-but-no-benefits_N.htm.

44. See Ashley English et al., *Fact Sheet: Unemployment Among Single Mother Families*, INST. FOR WOMEN'S POL'Y RESEARCH 2 (Sept. 2009), http://www.iwpr.org/pdf/SingleMotherUE_C369.pdf.

45. See *Hearing on UIMA*, *supra* note 32, at 2; Lovell & Hill, *supra* note 37.

46. See Lovell & Hill, *supra* note 37.

47. See HARD LABOR, *supra* note 29, at 161.

48. *Id.*

49. *Id.*

50. *Id.*

weekly income on average than men, as part-time workers are predominately female.⁵¹

Cultural norms now accept women in the workforce, but still expect them to do the majority of family care work, which pushes women towards part-time work.⁵² Women account for 67% of all part-time workers, and approximately one in three female workers work part-time.⁵³ Moreover, 30% of women work part-time during their peak earnings years, ages 25–42, while only 13% of men work part-time during this age range.⁵⁴ The exclusion of part-time workers and those looking for part-time work in the UI system restricts at least one-third of the female labor force from receiving benefits.

3. Allowable Reasons for Job Loss

In order to be eligible for UI a worker must quit through no fault of his own, which means workers who voluntarily quit without good cause are disqualified.⁵⁵ Most states limit “good cause” for voluntarily quitting a job to reasons attributable to the employer and not domestic or compelling personal circumstances.⁵⁶ Thus, the interpretation of “voluntarily quitting” has a disproportionate impact on women. While the primary reason for male unemployment is a layoff or plant closing, the primary reason for female unemployment is loss of job due to family and personal reasons.⁵⁷

Workers who leave jobs due to family obligations are excluded from UI benefits.⁵⁸ In a majority of states, childbirth and childrearing are not considered “good cause” for voluntarily quitting a job.⁵⁹ A lack of childcare during work hours is a barrier to sustained employment for low-income women, as these positions often require evening and weekend shifts when safe and dependable childcare options are limited.⁶⁰ A common situation is one in which a worker has arranged for childcare during work, but the childcare provider becomes unavailable and no immediate replacement can be found, resulting in the worker's termination.⁶¹ In most states UI does not support such workers while new childcare arrangements

51. See *infra* following paragraph.

52. See *Hearing on UIMA*, *supra* note 32, at 6.

53. See *id.* at 4; Lovell & Hill, *supra* note 37.

54. Lovell & Hill, *supra* note 37.

55. See *HARD LABOR*, *supra* note 29; *UI & Welfare Reform*, *supra* note 10 at 3.

56. See *HARD LABOR*, *supra* note 29.

57. *Id.*

58. See *UI & Welfare Reform*, *supra* note 10, at 3.

59. See *id.*; *HARD LABOR*, *supra* note 29, at 160.

60. See *UI & Welfare Reform*, *supra* note 10, at 4.

61. See *Hearing on UIMA*, *supra* note 32, at 6.

are made and new work-searches are undertaken.⁶²

Women who are fired or quit their jobs due to domestic violence issues at home are also not eligible to receive UI benefits in many states.⁶³ The percentage of female welfare recipients currently victimized by domestic violence is thought to be as high as 65%.⁶⁴ Three-quarters of employed domestic violence victims have been harassed by their abusers at their places of work, 50% of victims have been late for work five or more times a month or have missed three days of work a month due to domestic violence, and 28% of victims are forced to leave early from work five days a month or more to maintain safety.⁶⁵ Such poor attendance records from victims of domestic violence often lead to their terminations, or they may be forced to quit their jobs to preserve their safety.⁶⁶ However, being a victim of domestic violence is not an allowable explanation for job-loss under the UI system in many states, so women who are terminated or leave their jobs as a consequence of their victimization at home are excluded from receiving UI benefits.⁶⁷

B. Importance of Allowing More Women to Qualify for Unemployment Insurance

Unemployment insurance benefits are increasingly important to women as women now make up a large percentage of the workforce and share equally with men in the problem of unemployment.⁶⁸ In 1950, women constituted 32% of the unemployed, whereas in 2007, women constituted 50% of all unemployed workers.⁶⁹ Families have become increasingly dependent on the female's income, as 69% of married mothers and 77% of unmarried mothers are employed outside the home, and on average wives bring in 35% of their families' total income.⁷⁰ In the 1930s, when the UI system was created, only 20% of mothers participated in the labor force.⁷¹ Dual-earner couples support 50% of all families with children under the age of 18, an increase of 37% since 1975.⁷² However, the unemployment rates for women are rising and will likely continue to increase, especially as the recession has spread to female-dominated retail

62. *Id.*

63. See *UI & Welfare Reform*, *supra* note 10, at 4.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. See *Hearing on UIMA*, *supra* note 32, at 6.

69. *Id.*

70. Lovell, *supra* note 42.

71. *Id.*

72. English et al., *supra* note 44, at 2.

and service sectors.⁷³

Unemployment statistics relating to single mothers, who account for one-fifth of all families with children, are particularly alarming.⁷⁴ In February 2009, unemployment among women with families who had no other source of income was 10.3%.⁷⁵ Single women who support families are almost twice as likely as married men to be unemployed.⁷⁶ One of every eight women who are the sole source of income for their families is currently unemployed, compared with one of every sixteen married men.⁷⁷ From December 2007 to August 2009, single mothers' unemployment rate increased by twice as much as married mothers' unemployment rate, suggesting single mothers have had trouble finding and keeping jobs while being a sole caretaker to their children.⁷⁸

Thus women, and single mothers in particular, who were already at the edge of poverty, are left without any economic security to help sustain them while they are between jobs. Families of single mothers already have a high poverty rate at 28.3% compared to the national poverty rate, which is 13.2%.⁷⁹ Without receiving UI benefits, these women must now look to welfare as a means to survive, putting further strain on public assistance programs.⁸⁰ Under the current system however, welfare is not widely available for low-income women who are looking for temporary assistance while between jobs.⁸¹ With only 33% of adult unemployed women receiving UI benefits, many women and single mothers are left without any financial help after losing their only means of providing for their families.⁸²

IV. UIMA & ARRA

A. Legislative History

The UIMA is federal legislation that provides substantial financial

73. *Unemployment Insurance Reforms Important to Women Can Mean More Funding For States*, NAT'L WOMEN'S LAW CTR, (Mar. 2009), <http://www.nwlc.org/sites/default/files/pdfs/UIModernizationWomenMarch09.pdf> [hereinafter *UI Reforms Important to Women*].

74. English et al., *supra* note 44, at 2.

75. *UI Reforms Important to Women*, *supra* note 73.

76. English et al., *supra* note 44, at 1.

77. *Id.*

78. *See id.* at 2.

79. *Id.*; Carmen DeNavas-Walt et al., *Income, Poverty and Health Insurance Coverage in the United States: 2008*, U.S. CENSUS BUREAU 13 (Sept. 10, 2009), <http://www.census.gov/prod/2009pubs/p60-236.pdf>.

80. *See HARD LABOR*, *supra* note 29, at 163.

81. *See id.* at 168; Um'rani & Lovell, *supra* note 5.

82. *See Lovell*, *supra* note 42.

incentives for states to make certain reforms to their UI programs. Democrat Jim McDermott introduced the UIMA in the House of Representatives on January 8, 2009 as H.R. 290.⁸³ The UIMA reforms were incorporated in the ARRA under the title Assistance for Unemployed Workers and Struggling Families Act, which was signed into law by President Obama on February 17, 2009.⁸⁴ Section 2003 of the ARRA, Special Transfers for Unemployment Compensation Modernization, is comprised of legislation identical to the UIMA.⁸⁵

B. ARRA Reforms

The ARRA provides up to \$7 billion to states in order to encourage them to enact specific reforms to improve UI coverage to workers who have historically been ineligible to receive benefits when they become unemployed, and to reward states that have enacted such reforms.⁸⁶ The incentive payments are transferred to the states' Unemployment Trust Fund from the Federal Unemployment Account.⁸⁷ States can receive one-third of their funding if they consider a worker's most recent earnings in determining eligibility, called the alternative base period (ABP).⁸⁸ A state can receive the remaining two-thirds of its funding if it adopts two of four of the following initiatives: (1) providing benefits to workers who are only available for part-time work; (2) allowing workers who must leave their job for a compelling family reason to still qualify for benefits; (3) providing an additional six months of weekly benefits to permanently laid-off workers who enroll in state-approved training and education programs; (4) offering additional allowances for unemployed workers caring for dependent children.⁸⁹

1. Alternative Base Period

To be eligible for UI benefits a person must have a specified amount of earnings during a specific time period prior to job termination.⁹⁰ Traditionally, when states calculate whether a worker has sufficient earnings to qualify for UI benefits, they look at the previous 12-month period, called the standard base period (SBP), which is the first four of five

83. H.R. 290.

84. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 2000, 123 Stat. 115, 436.

85. § 2003, 123 Stat. at 439.

86. § 2003(a)(1)(B), 123 Stat. at 440.

87. § 2003(a)(1)(A), 123 Stat. at 440.

88. § 2003(a)(1)(C)(i), 123 Stat. at 440.

89. § 2003(a)(3), 123 Stat. at 440-441.

90. *UI Reforms Important to Women*, *supra* note 73.

complete calendar quarters prior to a worker's job loss.⁹¹ For example, if a worker loses his job in September 2009, the SBP would exclude earnings from July to September because that period is incomplete, and the SBP would also exclude earnings from April to June because that was the fifth complete calendar quarter.⁹² Therefore, only the workers' earnings from April 1, 2008 to March 31, 2009 would be used to calculate earnings eligibility, in turn discarding the most recent six months of employment before the worker lost her job.⁹³ This system particularly hurts women, as they make up the majority of low-wage workers and have shorter average job tenure than do men.⁹⁴ Under the ARRA reforms, a state will receive one-third of its ARRA funding if it uses a base period that includes the most recently completed calendar quarter, or the ABP.⁹⁵ More than 40% of workers who would not have qualified for unemployment benefits because of insufficient earnings would be eligible to collect benefits under the ABP.⁹⁶

2. Seeking Part-Time Work

Traditionally, workers were ineligible for UI unless they were looking for full-time work, even if they had historically worked part-time or had family obligations that precluded full-time work.⁹⁷ Under the ARRA, "[a]n individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work solely because such individual is seeking only part-time work."⁹⁸ Because women comprise over two-thirds of the part-time workforce, allowing benefits to workers available only for part-time work will result in many more women becoming eligible for UI than under the current system.⁹⁹

3. Compelling Family Reason

Traditionally, states have denied UI benefits to workers who

91. See Lovell, *supra* note 42.

92. See *id.*

93. See *id.*

94. See discussion *supra* Part III.A.1.

95. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 2003(a)(2)(A), 123 Stat. 115, 440.

96. *The Unemployment Insurance Modernization Act: Filling the Gaps in the Unemployment Safety Net While Stimulating the Economy*, NAT'L EMP'T LAW PROJECT 1 (Jan. 30, 2009), http://nelp.3cdn.net/7cae491105e498ccee3_b3m6b5lyz.pdf.

97. See *Hearing on UIMA, supra* note 32, at 4.

98. § 2003(a)(3)(A), 123 Stat. at 440.

99. See discussion *supra* Part III.A.2.

voluntarily quit their jobs. Under the ARRA, a worker cannot be disqualified from unemployment compensation if he leaves his job due to a compelling family reason.¹⁰⁰ Compelling family reasons include: domestic violence, where the individual reasonably believes that continued employment would jeopardize his or her safety or the safety of his or her immediate family; illness or disability of the individual or a member of the individual's immediate family; and the need for an individual to accompany her spouse due to a change in location of the spouse's employment, where it would be impractical for the individual to commute.¹⁰¹ Because women account for 70% of workers who leave work for family-related reasons, allowing benefits for those who must leave their jobs for a compelling family reason will increase the amount of women eligible for UI.¹⁰²

4. Training and Education Programs

Traditionally, states have required individuals collecting unemployment to be actively searching for work, which makes it difficult to sign up for school or job training.¹⁰³ Under the ARRA, individuals enrolled in school or in a state-approved job-training program will satisfy the requirement that they be actively seeking new employment, and they also become eligible to receive an extra six months of unemployment compensation when their benefits have been exhausted.¹⁰⁴ The training program must "prepare individuals who have been separated from a declining occupation, or who have been involuntarily and indefinitely separated from employment as a result of permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation."¹⁰⁵ According to President Obama, "[o]ur unemployment insurance system should no longer be a safety net, but a steppingstone to a new future," and the UI system should offer workers "educational opportunities they wouldn't otherwise have," and give workers the skills needed to "get ahead when the economy comes back."¹⁰⁶ Providing income support while encouraging training and education will improve the economic security of individuals for the short and long term, particularly by strengthening women's job prospects, as they currently

100. § 2003(a)(3)(B), 123 Stat. at 440.

101. § 2003(a)(3)(B)(i)-(iii), 123 Stat. at 441.

102. See *UI Reforms Important to Women*, *supra* note 73; discussion *supra* Part III.A.3.

103. *Obama to Unemployed: More Help Is On The Way*, USA TODAY, May 8, 2009, http://www.usatoday.com/news/washington/2009-05-08-obama-jobs_N.htm [hereinafter *Obama to Unemployed*].

104. § 2003(a)(3)(C), 123 Stat. at 441.

105. § 2003(a)(3)(C)(ii), 123 Stat. at 441.

106. *Obama to Unemployed*, *supra* note 103.

comprise the majority of low-income workers.¹⁰⁷

5. Allowances for Unemployed Workers Caring for Dependent Children

Traditionally, workers received the same amount of UI benefits regardless of whether they were supporting dependent children. Under the ARRA, an individual who cares for a dependent is provided an additional allowance of at least \$15 per dependent per week on top of her regular unemployment compensation.¹⁰⁸ This reform is particularly helpful for single mothers.¹⁰⁹ As discussed *supra*, single mothers' unemployment rates are rising faster than those of married men and women.¹¹⁰ Therefore, single mothers are especially in need of additional allowances to care for their children when their family's only source of income is no longer present.

C. Criticism of ARRA UI Modernization

The \$7 billion in potential incentive payments to states to modernize their UI programs under the ARRA has generated substantial public discussion and controversy.¹¹¹ More than \$3.1 billion of the funding is still sitting in a federal trust fund because twenty-three states have not enacted the ARRA reforms as of August 31, 2009.¹¹² Republican governors or lawmakers in eleven states have declined to reform their UI system and twelve other states have either made only some of the changes, have not applied for the funds, or have not taken legislative votes on the reforms. Several governors say they will not make the indicated reforms under the ARRA because of implied long-run costs and infringement upon state sovereignty in determining UI benefits.¹¹³ Republican governors in states such as Texas, Louisiana, South Carolina, Mississippi, and Alabama have been outspoken against expanding UI benefits, arguing that federal funding

107. See *Hearing on UIMA, supra* note 32, at 2; *Today's Women Workers: Shut Out of Yesterday's Unemployment Insurance System, supra* note 33; *UI Reforms Important to Women, supra* note 73.

108. § 2003(a)(3)(D), 123 Stat. at 441.

109. See *UI Reforms Important to Women, supra* note 73.

110. See *supra* pp. 11-12.

111. See Wayne Vroman, *Unemployment Insurance in the American Recovery and Reinvestment Act (HRI)*, URBAN INST., (Mar. 20, 2009), <http://www.urban.org/url.cfm?ID=411851> [hereinafter *UI in the ARRA*].

112. See Matt Kelley, *\$3.1B Set Aside for Jobless Unclaimed*, USA TODAY, Aug. 31, 2009, http://www.usatoday.com/news/nation/2009-08-30-unemployment-funds-unclaimed_N.htm?csp=34.

113. *Id.*

for ARRA reforms will eventually run out and states will be left with higher costs for their UI programs and a greater number of people on its payroll.¹¹⁴ A spokesperson for Texas Governor Rick Perry said that “expanding the unemployment system would require raising taxes on businesses, thus ‘hurting the job-creation climate.’”¹¹⁵ The Perry spokesperson said taking the stimulus funds may have helped in the short-term, but the expanded benefits would have cost Texas at least \$75 million a year after the funding ran out, leading to higher taxes.¹¹⁶ The Perry spokesperson commented, “[i]f the federal government really wanted to help us, they would have sent those dollars down without any strings attached.”¹¹⁷

Another criticism of the ARRA UI reforms is that they shift UI toward a more general unemployment benefit, away from a system that protects workers from the risk of unemployment toward a system that pays workers to be unemployed.¹¹⁸ These critics say the UI system should insure workers against an unexpected event outside of their control, not provide benefits for not working.¹¹⁹ Thus workers who voluntarily leave their place of employment should not receive UI because ultimately the decision to leave their job was their own, even if the worker leaves due to a compelling family reason or to follow a spouse due to the spouse’s job relocation.¹²⁰ These critics also say paying UI benefits to workers who leave their jobs to care for ill family members could encourage abuse, as any illness, no matter how trivial, would enable the workers to receive UI payments.¹²¹

D. Response to ARRA UI Modernization Criticism

It is often said the UI program has two clients—the jobless worker who receives benefits and the employer whose payroll taxes finance the program.¹²² Politicians who object to the ARRA UI reforms appear to feel a greater sense of responsibility to the employer community than the unemployed community, as many of the states currently objecting to the

114. See Hagenbaugh, *supra* note 43.

115. *Id.*

116. See Kelley, *supra* note 112.

117. *Id.*

118. James Sherk, *Unemployment Insurance Modernization Act: The Heritage Foundation 2009 Labor Bootcamp*, HERITAGE FOUND. (Jan. 16, 2009), <http://www.heritage.org/Research/Reports/2009/01/Unemployment-Insurance-Modernization-Act-The-Heritage-Foundation-2009-Labor-Boot-Camp>.

119. *Id.*

120. *Id.*

121. *Id.*

122. See *UI in the ARRA*, *supra* note 111.

reforms have among the nation's lowest UI tax rates and lowest UI reciprocity rates.¹²³ Although it is true that the UI reforms will incur greater costs in the long run, the immediate incentive funds will increase state trust fund balances and preclude otherwise scheduled tax increases to replenish state reserves.¹²⁴ Many of the states who are refusing to enact UI reforms have very low or depleted trust funds, causing employer tax rates to increase.¹²⁵ For example, South Carolina and Indiana, two states that have declined to enact UI reforms, have completely exhausted their trust funds and are currently borrowing from the federal government to pay out UI benefits.¹²⁶ While it is difficult to estimate the long-term cost of the UI reforms for states, the point at which the added costs exceed the immediate infusions of funding is thought to be at least seven years into the future.¹²⁷

In response to criticism that modernizing the UI program by expanding coverage to more workers is creating a system that pays workers to be unemployed, it is important to remember the policy goals behind the UI system. Currently, the UI system supports a much smaller share of the unemployed than was the case earlier in the program's history.¹²⁸ The current level of UI benefit reciprocity in the United States is among the lowest levels found among countries with highly-developed economies.¹²⁹ States such as Texas, Mississippi and Louisiana, which have declined to enact ARRA UI reforms, currently pay UI benefits to less than 30% of their jobless workers.¹³⁰ Important economic stimulus goals are challenged when such a small percentage of the unemployed receive UI.¹³¹ While relaxing UI qualifying criteria to expand coverage to more jobless workers may result in a few instances of abuse, overly strict eligibility rules undercut the policy goals of the UI system as a whole.¹³²

E. Concluding Remarks on ARRA UI Reform

The ARRA reforms to modernize UI are crucial to improve the adequacy and equity of the UI program. The Center on Budget and Policy Priorities has estimated that the ARRA provisions modernizing UI benefits

123. *Id.*

124. *Id.*

125. *Id.*

126. See Sherk, *supra* note 118.

127. See *UI in the ARRA*, *supra* note 111.

128. See *Hearing on UIMA*, *supra* note 32, at 6.

129. *Concise Guide to Assistance for Jobless Workers in the American Recovery and Reinvestment Act*, NAT'L EMP'T LAW PROJECT 3 (Mar. 2009), <http://www.nelp.org/page/-/UI/ARRAConcise.pdf>.

130. *Id.* at 3.

131. *Id.*

132. *Id.*

have already helped keep 800,000 people out of poverty.¹³³ The UI system needs to be updated so it can continue to be an effective tool in stabilizing individual income and the national economy, as the workforce has evolved to include more female workers. The UI system is considered an effective public policy response to cyclical unemployment, but it has been less effective with regard to employment constraints women face due to family responsibilities, and with regard to low-income workers, most of whom are women.¹³⁴ The ARRA reforms will help expand UI coverage to create greater gender equity in the UI system and return the program to its former coverage levels.¹³⁵

V. SUGGESTED ADDITIONAL REFORMS FOR UI MODERNIZATION

A. *Improving the ARRA Funding Structure*

As discussed *supra*, for states to receive the full amount of incentive funding under the ARRA, they must implement the “alternative base period” provision in addition to two out of the four additional provisions.¹³⁶ However, all four of the additional provisions are essential to improve the equity and adequacy of the UI system. The first two provisions—providing benefits to workers who are only available for part-time work and allowing workers to qualify for benefits when they must leave their job due to a compelling family reason—are necessary to expand UI coverage to women currently disqualified from receiving benefits. The last two provisions—providing six months of extra benefits to permanently laid-off workers who enroll in state-approved training and education programs and offering additional allowances for unemployed workers caring for dependent children—are necessary to keep women out of poverty and on track to a better financial future. Therefore, states should not receive full funding under the ARRA unless they adopt *all* four reforms, with only partial funding handed out for each reform adopted.

133. See *Fact Sheet: The Worker, Homeownership, and Business Assistance Act of 2009*, THE WHITE HOUSE OFFICE OF THE PRESS SEC’Y (Nov. 6, 2009), <http://www.whitehouse.gov/the-press-office/fact-sheet-worker-homeownership-and-business-assistance-act-2009>.

134. See *Hearing on UIMA*, *supra* note 32, at 6; *supra* p. 8 (women comprise 60% of low-wage workers).

135. See *Hearing on UIMA*, *supra* note 32, at 6.

136. See *supra* pp. 13-14.

B. *Further Suggestions for Enhancing the UI System*

The UI system should be continually reviewed and periodically updated in order to remain effective and in accordance with Congress's and the people's intent. Suggestions for enhancing the UI system beyond the provisions of the ARRA include: (1) broadening what is included as a "compelling family reason" to leave work and remain eligible for UI; (2) reforming benefit levels; (3) reforming earnings requirements; (4) extending benefits during an economic crisis; and, (5) making it administratively more difficult for employers to contest workers' benefits.

1. Broadening "Compelling Family Reason"

Under the ARRA, job termination or leaving work due to a lack of childcare is not addressed as a compelling family reason that would qualify workers for UI benefits.¹³⁷ As discussed *supra*, inadequate childcare during work hours is a barrier to sustained employment for low-income women.¹³⁸ Including childcare difficulties as a compelling family reason to leave work will expand UI coverage for unemployed women and allow them greater financial stability while they search for more reliable childcare.

2. Reforming Benefit Levels

Since UI weekly benefit amounts are based on earnings, benefits for low-wage workers, who are disproportionately female, are often insufficient to support their families.¹³⁹ While the ARRA provides dependent allowances to supplement UI benefits,¹⁴⁰ the allowance is the same regardless of whether there is another earner in the household. A greater allowance should be given where there is no income coming into the household, either when a single parent is out of work, or when both parents are out of work. This additional allowance would help alleviate some of the many problems single mothers face when trying to provide for their families.¹⁴¹

137. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 2003(a)(3)(B)(i)-(iii), 123 Stat. 115, 441.

138. *See supra* Part.III.A.3.

139. Um'rani & Lovell, *supra* note 5.

140. § 2003(a)(3)(D), 123 Stat. at 441.

141. *See discussion supra* pp. 11-12.

3. Reforming Earnings Requirements

Although the ARRA's ABP provision will increase the number of part-time and low-income workers meeting the UI system's monetary eligibility requirements, there will still be many workers excluded by overall earnings requirements. Instead of measuring workforce attachment by earnings, workforce attachment should be measured by hours worked in either full-time or part-time positions.¹⁴² Eliminating earnings requirements or lowering earnings thresholds will ensure that part-time and low-income workers, primarily women, who are committed to the job market will not be excluded from the UI system.¹⁴³

4. Extending Benefits

Lengthening the amount of time unemployed workers receive UI benefits during a period of economic crisis will provide further financial stability for workers when jobs are scarce. As of September 2009, 15 million unemployed workers were competing for 3 million available jobs.¹⁴⁴ Policymakers agree with extending benefits; for example, on November 6, 2009 President Obama signed into law a bill that extends emergency unemployment compensation for workers who have been unemployed for an extended period of time and have exhausted regular UI benefits.¹⁴⁵ As of November 2009, there were 5.6 million workers who had been unemployed for at least twenty-seven weeks, making up 36% of all unemployed workers, the highest share in history.¹⁴⁶ The legislation will extend UI benefits for up to twenty additional weeks, with the longest extensions going to states with the highest unemployment rates.¹⁴⁷ This legislation improves upon the ARRA, which only offers extended benefits to workers in state-approved training or education programs, something not always feasible for many women with childcare duties.¹⁴⁸

142. See Um'rani & Lovell, *supra* note 5.

143. *Id.*

144. *Deal Reached on Extending Unemployment Benefits*, USA TODAY, Oct. 8, 2009, http://www.usatoday.com/news/washington/2009-10-08-unemployment-benefits-agreement_N.htm.

145. Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, 123 Stat. 2984 (2009).

146. See *Fact Sheet: The Worker, Homeownership, and Business Assistance Act of 2009*, *supra* note 133.

147. See President Barack H. Obama, Remarks from the Rose Garden on Rebuilding America's Infrastructure (Nov. 6, 2009), available at <http://www.favstocks.com/remarks-by-the-president-on-rebuilding-americas-infrastructure/1126299/>.

148. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 2003(a)(3)(C), 123 Stat. 115, 441.

5. UI Benefit Contention

Employers pay a lower tax rate if their former employees do not collect UI benefits, which creates an incentive for the business community to minimize the number of unemployed workers who receive benefits.¹⁴⁹ Because an employer's best interest is to limit the number of former employees drawing benefits, the system induces employers to contest workers' benefits as a matter of course. During the current economic downturn, legal aid groups reported an increase in the number of employers contesting a former worker's claim for unemployment benefits.¹⁵⁰ A non-profit group that provides free legal assistance in New York City said the organization is experiencing "explosive growth" in contested UI cases.¹⁵¹ Where employers claim workers were fired because of deficiencies in performance, the organization is "seeing more overblown reaction to what otherwise might have been a minor infraction of work rules."¹⁵² Workers, especially low-wage workers, who try to appeal their contested benefits at legal proceedings are often no match for experienced corporate human resources departments.¹⁵³ Low-wage workers have an inherent disadvantage when fighting with their employers for unemployment benefits. More should be done to make it harder for employers to contest former employees' unemployment benefits.

VI. CONCLUSION

Until recently, the UI system had not kept pace with the changing American workforce and economy. The UI system's lack of progress had denied women unemployment benefits, to which they were entitled, a problem made more noticeable during the recent economic recession when unemployment rates surpassed record recession levels. The provisions under the ARRA for UI modernization is a giant step towards eliminating unemployment benefit barriers for women and creating greater gender equality in the UI system.

149. See Hagenbaugh, *supra* note 43.

150. *Id.*

151. *Id.*

152. *Id.*

153. See John Murawski, *Jobless Fight Harder for Unemployment Benefits*, THE NEWS & OBSERVER, Nov. 15, 2009, <http://www.newsobserver.com/business/economy/story/190823.html?storylink=mirelated>.

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