



National Employment Law Project

***State of Massachusetts
Joint Committee on Labor and Workforce Development***

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Background

My name is George Wentworth. I am a Senior Staff Attorney with the National Employment Law Project (NELP) testifying in support of SB901/HB1772, An Act Modernizing and Protecting the Unemployment Insurance System. NELP is a national law and policy center based in New York City that engages in research, policy analysis and advocacy on behalf of low wage and jobless workers. NELP is committed to improving the effectiveness of the unemployment insurance (UI) system by promoting state and federal policies that will maximize program access for low-wage workers and improve income security for all workers. A key to any vital unemployment insurance program is responsible financing and much of this testimony relates to the challenge of keeping the state's Unemployment Trust Fund solvent through implementation of forward financing principles.

Social insurance experts, economists and a bi-partisan federal commission have all identified four related purposes for unemployment insurance (UI):

- Income replacement for laid off workers to prevent hardships and maintain living standards during periods between jobs.
- Boosting the economy by maintaining consumer spending and reducing the spread of layoffs through benefit payments from trust funds accumulated during better times.
- Support for job search and matching of laid off workers to jobs that better fit their skills, training, and past work.
- Retaining attachment to the labor market and specific employers during temporary layoffs.¹

To serve these significant social purposes, UI benefits are paid by virtue of prior employment and as a matter of right under conditions largely established by state UI laws. Unemployment insurance is the first line of defense against the economic impact of wage loss due to unemployment. UI benefits keep food on the table, help pay rent

¹ See *Advisory Council on Unemployment Compensation, Defining Federal and State Roles in Unemployment Insurance* (1996) p.7

and mortgages and cover health care costs. Mark Zandi, chief economist for Moody's Economy.com, studied the economic impact of various forms of government outlays during the previous recession and testified in February 2012 before the U.S. Joint Economic Committee that each dollar of unemployment insurance spent generates \$1.55 in economic activity. In addition, another major study covering five recessions concluded that each dollar of UI benefits produces \$2.15 in economic growth because such a substantial portion of unemployment benefits are spent on basic goods and services.²

The Massachusetts UI program has been vital to the state's economic stability during the Great Recession and the ensuing slow recovery. The program paid out nearly \$2.8 billion in CY 2009³ to over 350,000⁴ Massachusetts workers. This represents an increase of about 74% over CY 2008 when the system paid out just under \$1.6 billion in benefits.⁵ Benefit payments fell to approximately \$2.0 billion in CY 2010⁶ before declining again in CY 2011 to \$1.7 billion, where they remained in CY 2012.⁷ As the state's average unemployment rate increased from 5.3% in 2008 to 8.2% in 2009, UI benefits nearly doubled as a percentage of the state's total payroll.⁸ Clearly, the Massachusetts unemployment insurance program has played a key role in moderating the impact on the state's economy of the worst recession since World War II.

Financing

At the end of March, the Massachusetts UI Trust Fund was dangerously close to being insolvent with a balance of \$81.8 million,⁹ and the state took a cash flow loan of approximately \$10.9 million to finance benefits in early April. While the state avoided a negative year-end balance in recent years, there is a repeated pattern of requiring cash flow loans early in the year when benefit payments exceed trust fund revenues. Massachusetts's trust fund is in better shape than many states' funds. However, this fortunate outcome is attributable to the state's *relatively* moderate peak unemployment rate and rapid recovery, rather than the responsible financial

² Lawrence Chimerine et al. *Unemployment Insurance as an Economic Stabilizer: Evidence of Effectiveness over Three Decades*, Unemployment Insurance Occasional Paper 99-8

³ U.S. Department of Labor, *Handbook 394*, <http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp>.

⁴ Estimated from first payments for 2009, U.S. Department of Labor, *Monthly Program and Financial Data*, <http://www.workforcesecurity.doleta.gov/unemploy/claimssum.asp>.

⁵ U.S. Department of Labor, *Handbook 394*.

⁶ U.S. Department of Labor, *Handbook 394*.

⁷ U.S. Department of Labor, *Handbook 394*.

⁸ Calculations based on U.S. Department of Labor, *Handbook 394*.

⁹ Commonwealth of Massachusetts, Executive Office of Labor and Workforce Development, Department of Unemployment Insurance, *March Status Update: UI Trust Fund, Month-End Balance*, March 2013.

management of the state's trust fund. Massachusetts low taxable wage base and persistent legislative overrides to the statutory tax schedule leave the UI trust fund vulnerable to future downturns when the state could find itself among those needing federal loans.

Currently, 21 states are borrowing over \$21 billion from the federal government to pay UI benefits and an additional six states have issued a combined \$10 billion in bonds in private debt markets to pay off loans from the federal government.¹⁰ The U.S. Department of Labor (USDOL) projects that borrowing states will continue to carry sizable loan balances beyond 2017.¹¹

How did states get in this situation? The obvious answer is both the depth and duration of the recent economic downturn. Unemployment peaked at 10 percent in 2010 while the number of unemployed workers exceeded 15 million for several months. Over five years after the start of the recession, the economy is still more than 2.5 million jobs short of pre-recession employment levels. In comparison, employment returned to pre-recession levels within four years of the onset of the 2001 recession and back-to-back recessions of the early 1980s.

Another unique aspect of the current downturn is the emergence of epidemic long-term unemployment. Nationally, the average duration of all unemployed workers was just over 39 weeks in 2012, essentially unchanged from a year earlier, while by the end of the year, the percentage of unemployed workers who have been without work for 27 weeks or longer improved slightly to 39%. As a result of prolonged unemployment spells, the percentage of unemployed workers exhausting state benefits reached a historic high of 55% in 2009 and, at 47%, remained well above historic norms as of 2012.¹² Nationwide, the estimated average duration for unemployed workers receiving regular state and federal benefits was 35 weeks in FY 2012.¹³

¹⁰ U.S. Department of Labor, <http://www.workforcesecurity.doleta.gov/unemploy/budget.asp#tfloans> (accessed January 16, 2012).

¹¹ U.S. Department of Labor, *UI Outlook FY 2013 Budget Midsession Review*, Status of State Accounts, <http://www.ows.doleta.gov/unemploy/pdf/MSR.pdf>.

¹² U.S. Department of Labor, *Quarterly Unemployment Insurance Data Summary, 3rd Quarter 2012*, http://www.workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum12/DataSum_2012_3.pdf.

¹³ *UI Outlook FY 2013 Budget Midsession Review*, Key Data -- FY 2012/FY 2013.

Massachusetts also experienced rapid labor market deterioration as the state's unemployment rate grew from 4.5% in January 2008 to 8.7% in October 2009. However, state unemployment never went as high as the national average and the state benefited from a relatively rapid recovery which brought the unemployment rate down to its current level of 6.4%. The average duration of unemployment is high at 34 weeks, but still substantially better than in other states.

Despite the severity of the recent downturn, in aggregate, state UI trust funds paid out a lower amount of benefits relative to covered wages than during the milder recessions of the 1970s and 1980s. Massachusetts paid 1.9% of covered wages in benefits in 2009, but this recent peak payout rate was exceeded in 1991 and for three years during the 1970s. Nearly all states experienced a higher annual payout rate at an earlier time; yet during this downturn both the number of states requiring federal loans and the amount borrowed were unprecedented.

The severity of the Great Recession contributed to the demise of state trust funds, but was not the only factor driving unprecedented borrowing. In general, most state unemployment trust funds did not do enough to prepare for this recession and, in fact, were less prepared than they were for the last recession. At the beginning of CY2001, there was about \$54 billion in state trust funds to withstand the national recession that followed 9/11.¹⁴ By way of comparison, state trust fund balances had dropped to about \$38 billion by the beginning of CY2008 when the current recession began—a decline of over 42%¹⁵ and half the amount recommended by UI financing experts.¹⁶ While the breadth and depth of this recession have accelerated the current trust fund crisis, the problem—now national in scope—has its roots in the failure of many states to engage in responsible financial planning.

Unemployment Insurance financing experts are generally agreed that there are three key features in maintaining healthy unemployment trust funds: (1) adherence to forward funding principles, (2) setting taxable wage bases that are responsive to recessionary payment levels, and (3) indexing taxable wage bases as a percentage of the state's average annual wage.

¹⁴ U.S. Department of Labor, *Handbook 394*, <http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp>.

¹⁵ U.S. Department of Labor, *Handbook 394*.

¹⁶ Evangelist, Michael, 2011, "Lessons Left Unlearned," New York, NY: National Employment Law Project, http://www.nelp.org/page/-/UI/2012/Report_UI_Solvency.pdf.

To meet the primary goals of the UI program—payment of adequate temporary wage replacement to involuntarily unemployed individuals and stimulation of economic activity by maintaining consumer spending—a state must have a UI financing mechanism that will collect sufficient UI payroll taxes to maintain a strong program. UI programs were intended by their designers to accumulate reserves in trust funds prior to recessions in order to provide funding of higher UI claims during economic downturns. This is known as “forward financing.” Wayne Vroman, the nation’s leading authority on UI financing, summarizes the economic rationale supporting forward funding of UI programs:

Trust fund balances are built up before recessions, drawn on during recessions, and then rebuilt during the subsequent recoveries. The funding arrangement implies that the program acts as an automatic stabilizer of economic activity, that it makes larger benefit payments than tax withdrawals during recessions and larger tax withdrawals than benefit payments during economic expansions.¹⁷

Under the same rationale, cutting UI benefits or raising UI payroll taxes during a recession undermines the positive economic impact of UI. We support forward financing because state UI programs work best when they build up trust fund reserves during periods of economic growth and then rely upon those reserves to moderate or avoid UI payroll tax increases and/or UI benefit restrictions during economic recessions. In our view, Massachusetts should understand and support forward financing of its UI trust fund as a first step toward addressing its current solvency dilemma.

Traditional forward funding of UI has significant advantages. Maintaining adequate state trust fund balances permits states to receive significant federal interest payments on those trust fund balances. States that have abandoned forward financing, whether consciously or not, have lost out on federal interest payments which could have been relied upon to pay UI benefits during a recession.

As is often the case, states that borrowed during the downturn faced interest and loan repayment penalties before their economies were fully recovered. Long-term federal loans cost indebted states \$2.8 billion in 2012, including interest payments of \$1.1

¹⁷ Wayne Vroman (1998), *Topics in Unemployment Insurance Financing*, p. 10.

billion and \$1.7 billion of FUTA credit reductions.¹⁸ The federal government is expected to raise \$2.6 billion through the FUTA credit reduction in 2013.¹⁹

In addition, since states with solvency concerns face pressures to make cuts on the benefits side of the UI cost equation, states with adequately financed trust funds can avoid these pressures. Just as tax increases during a recession are bad policy, benefit cuts or freezes undercut the positive economic impact of UI programs.

A key concept in measuring trust fund solvency is known as the Average High Cost Multiple (AHCM). A High Cost Multiple (HCM) of 1.0 means that a state has adequate reserves in its fund to pay out benefits for one year at its historically highest level of benefit payments without relying on any new payroll tax revenues. An *Average High Cost Multiple* of 1.0 means the state is able to pay a year of benefits at a level equal to the average payout in the three high payout calendar years during the past three recessions or twenty years.

In 1995, the Advisory Council on Unemployment Compensation, a federal advisory panel, recommended that states maintain a pre-recession AHCM of 1.0. Generally, this has been the measure of solvency utilized by the USDOL in recent years. In CY2000, 30 states²⁰ (including Massachusetts) had accumulated the recommended level of savings (AHCM of 1.0).²¹ By CY2007, only 19 states met this solvency standard; Massachusetts had fallen to an AHCM of 0.5 – reserves adequate to pay benefits for just six months.²²

Of the 19 states that met the solvency standard in 2007, only six required a federal loan and three of these states were able to repay their loans quickly. In comparison 30 of the 34 states with inadequate reserves borrowed.²³ NELP estimates that had the 34 states that started the recession with inadequate reserves met the AHCM solvency benchmark, the number of borrowing states would have fallen to 13 with the total

¹⁸ U.S. Department of Labor, *UI Outlook FY 2013 Budget Midsession Review, Status of Loan Accounts*, <http://www.ows.doleta.gov/unemploy/pdf/MSR.pdf>.

¹⁹ U.S. Department of Labor, *UI Outlook FY 2013 Budget Midsession Review, Status of Loan Accounts*, <http://www.ows.doleta.gov/unemploy/pdf/MSR.pdf>. U.S. Department of Labor, *UI Outlook FY 2014 Budget Midsession Review, Status of Loan Accounts*, http://www.workforcesecurity.doleta.gov/unemploy/pdf/prez_budget.pdf.

²⁰ For purposes of this testimony, “states” encompasses all 53 unemployment insurance jurisdictions, including the District of Columbia, Puerto Rico, and the Virgin Islands.

²¹ U.S. Department of Labor, *Handbook 394*.

²² U.S. Department of Labor, *Handbook 394*.

²³ Evangelist, 2012.

amount borrowed dropping to \$9 billion by the end of 2010.²⁴ Even though the Great Recession was severe, adequately prepared trust funds would have allowed most states to weather the storm without resorting to loans, while dramatically reducing the amount borrowed in those states that still required federal assistance.

Only wages below an annual threshold known as the “taxable wage base” are subject to state UI payroll taxes. NELP has long identified the annual, automatic adjustment of UI wage bases (known as “indexing”) as a key UI financing policy. Closely related to indexing is maintaining a higher taxable wage base level. All states with higher taxable wage bases have indexing. For this reason, indexing and higher taxable wage bases are addressed in tandem.

Of the 16 states with indexed taxable wages in 2007, ten were considered adequately prepared for the recession, while only 8 of 35 non-indexed states met the solvency standard.²⁵ States with indexed taxable wage bases also outperformed non-indexed states with only six (38%) requiring a loan during the downturn, compared to 29 (83%) of the non-indexed states.²⁶ Only two of the top ten largest states have an indexed taxable wage base, which is unfortunate given the fact that the largest twelve states accounted for over three-quarters of the total amount borrowed in 2012.²⁷ It is no coincidence that Washington, the largest state to avoid borrowing, also has an indexed taxable wage base.

In 2013, taxable wage bases range from a high of \$39,800 (WA) to three programs with taxable wage bases at the federally allowed minimum of \$7000 (AZ, CA, and PR).²⁸ A total of 20 states have taxable wage bases of \$10,000 or less.²⁹ Notably, while a majority of states have maintained low taxable wage bases, 18 programs had taxable wage bases over \$20,000 in 2013.³⁰ All of these states had indexing. See chart.

²⁴ Ibid.

²⁵ Ibid. (counts exclude Puerto Rico and Virgin Islands)

²⁶ Vroman, Wayne, 2012, “The Challenges Facing the UI Financing System.” Washington, DC: Urban Institute, <http://www.urban.org/UploadedPDF/412629-the-challenge.pdf>.

²⁷ Borrowed amount includes those states that issued bonds in the private debt market. See Evangelist, 2012.

²⁸ U.S. Department of Labor, *Significant Provisions of State UI Laws*, July 2011, <http://www.workforcesecurity.doleta.gov/unemploy/content/sigpros/2010-2019/July2011.pdf>.

²⁹ U.S. Department of Labor, *Significant Provisions of State UI Laws*.

³⁰ U.S. Department of Labor, *Significant Provisions of State UI Laws*. Count includes the Virgin Islands.

State Taxable Wage Bases

\$10,000 or less	Over \$10 to \$15 K	Over \$15 to \$20K	Above \$20K
(20 States)	(14 States)	(1 State)	(18 States)
Alabama, Arizona, California, District of Columbia, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Nebraska, New York, Ohio, Pennsylvania, Puerto Rico, Tennessee, Texas, and Virginia	Arkansas, Colorado, Connecticut, Delaware, Illinois, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, South Carolina, South Dakota, West Virginia, and Wisconsin	Vermont	Alaska, Hawaii, Idaho, Iowa, Minnesota, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, Virgin Islands, Washington, and Wyoming

Indexing is usually accomplished by setting a state’s taxable wage base as a percentage of a state’s average annual wage in a prior 12 month period. Of the 18 states with indexing, the formula ranges from 100 percent in Idaho to 46.5 percent in Rhode Island, with a couple of states using less common methods.³¹ (See following chart.) Indexing promotes UI solvency in a couple of important ways. The strongest rationale for indexing is that weekly benefit amounts increase each year due to growth in wages. This growth in benefit levels is especially true in the 36 [check #] states that index maximum weekly benefit amounts, a group of states that includes Massachusetts.³² But, even where maximum weekly benefit amounts are fixed and require legislative amendments, benefit amounts increase because of the growth in wages. As a result, average benefit payouts rise without any legislative action.

States with Indexed Taxable Wage Bases

2013 Taxable Wage Base	State	Indexing Criterion
\$36,900	Alaska	75% SAAW
\$39,600	Hawaii	100% SAWW
\$34,800	Idaho	100% SAAW
\$26,000	Iowa	66.7% AWW times 52
\$29,000	Minnesota	60% SAAW
\$27,900	Montana	80% SAAW

³¹ U.S. Department of Labor, Comparison of State UI Laws, Chapter on Financing, Table 2-2: Computation of Flexible Taxable Wage Bases, <http://www.workforcesecurity.doleta.gov/unemploy/comparison2013.asp>. Count includes the Virgin Islands.

³² U.S. Department of Labor, *Comparison of State UI Laws*, Chapter on Monetary Entitlement, Table 3-6: States with Automatic Adjustments to Benefit Amounts, <http://www.workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2013/monetary.pdf>

\$26,900	Nevada	66.7% SAAW
\$30,900	New Jersey	28 times AWW
\$22,900	New Mexico	60% SAAW
\$20,900	North Carolina	50% SAAW
\$31,800	North Dakota	70% SAAW
\$20,100	Oklahoma	50% SAAW
\$34,100	Oregon	80% SAAW
\$20,200	Rhode Island	46.5% SAAW
\$30,300	Utah	75% prior fiscal year wage
\$23,600	Virgin Islands	60% SAAW
\$39,800	Washington	115% of prior TWB but not more than 80% SAAW
\$23,800	Wyoming	55% SAAW

Note: SAAW is state annual average wage. AWW is state’s average weekly wage.
Source: USDOL Comparison of State Unemployment Insurance Laws (2013), Table 2.2.

The obvious impact of paying for rising UI benefit levels on a fixed taxable wage base is aptly described by economist Philip Levine. "A major deficiency in the current system of UI financing is that the infrequent, ad hoc adjustments to the taxable wage base lead to a continual erosion of its financial stability Even in the absence of severe cyclical downturns, these basic relationships indicate that the current system of UI financing will drift toward insolvency."³³

Conversely, higher taxable wage bases put UI financing on a broader basis and increase the responsiveness of UI taxes when recovering from higher UI payments during a recession. Wayne Vroman has shown there is a strong correlation between taxable wage base levels and the ability of states' UI financing mechanisms to produce sufficient revenues to maintain solvent trust fund reserves during a recession. Similarly, the Advisory Council on Unemployment Compensation found from its studies that increasing state taxable wage bases was associated with improvements in the solvency of UI trust funds, as measured by reserve ratios. In short, Massachusetts needs further increases in its taxable wage levels over time in order to reach and maintain adequate forward financing of its UI Trust Fund. **More importantly, the**

³³ Phillip B. Levine, "Financing Benefit Payments," in *Unemployment Insurance in the United States: Analysis of Policy Issues*, (Christopher O’Leary & Stephen A. Wandner, ed. Upjohn Institute, 1997).

single most important step toward long-term UI financial solvency would be indexing its taxable wage base.

Ten years ago, Massachusetts enacted legislation to address the impending insolvency of its Unemployment Trust Fund. The taxable wage base was increased from \$10,800 to \$14,000, effective January 2004. Despite an expert study recommending it, the legislation did not include an indexing feature. Proponents for increasing the taxable wage base pointed out that \$10,800 was only 24% of the average annual wage for Massachusetts workers. Today, \$14,000 is only 23% of the state's annual average wage and the state faces potential insolvency again.³⁴

Solvency Recommendations

- (1) *Increase and index the current taxable wage base.* SB901/HB1772, An Act Modernizing and Protecting the Unemployment Insurance System, would set the taxable wage base at 57.5% of the state average annual wage (SAAW). This makes sense since the maximum weekly benefit rate is set at 57.5% of the average annual weekly wage. If the purpose of UI is to insure against the loss of wages due to involuntary unemployment, then tying the wages that are subject to tax to the benefit formula promotes that purpose. How and over what period of time an increase is implemented needs to be carefully considered in the context of the state's economic recovery. However, some form of indexing that relates the taxable wage base to increasing the average annual wage is central to a responsible financing system and a strong insurance program.

- (2) *Insulate implementation of solvency measures from legislative intervention.* A major shortcoming of the current system is that tax schedules are subject to overrides and the legislature has overridden the statutory contribution rate in all but one of the past 15 years. These overrides represent billions of dollars that would have allowed the state to avert borrowing during the recession and will cost the state trust fund over \$400 million in lost revenue during 2013 alone.³⁵ Scheduled increases in the taxable wage base spread costs out more evenly to all

³⁴ Calculations based on U.S. Department of Labor, *Handbook 394*.

³⁵ Commonwealth of Massachusetts, Executive Office of Labor and Workforce Development, Department of Unemployment Insurance, *Unemployment Insurance Trust Fund Report: Quarterly Outlook Report February 2013*.

employers and while they will initially increase per employee contributions, costs will stabilize and become more predictable over time. To commit to forward financing means having the political will to allow the system to operate as intended.

- (3) *Establish a fund solvency goal of an Average High Cost Multiple of 1.0.* By establishing a fund goal that is consistent with the recognized national standard, the state will be better prepared to face future recessions and avert federal borrowing and the resultant additional costs that fall on employers when they are least able to pay.

Massachusetts can achieve an AHCM of 1.0 on an incremental basis by establishing annual trust fund solvency goals that enable the state to meet new federal requirements for interest-free cash flow borrowing. As a result of its depleted trust fund, Massachusetts continues to rely on interest-free cash flow loans to make UI payments early in the calendar year. **Starting in 2014, states that do not meet a new AHCM requirement will owe interest on cash flow borrowing.**³⁶ The AHCM requirement is phased in over five years, starting at 0.50 in 2014 and increasing to 1.0 in 2019. Current state trust fund projections show that the state will not meet the interest-free borrowing requirements through at least 2018.³⁷

Section 4 – Fair Treatment for Workers Who Take Temporary Jobs

In addition to the financing provisions of SB901/HB1772, NELP also urges this Committee to act favorably on section 4 of the bill which would eliminate existing provisions in the state's UI law that unfairly penalize workers who take jobs in the temporary employment industry.

In all states unemployment insurance law provides that a worker who is laid off for lack of work or for some other economic reason is presumptively eligible for benefits, so long as he or she has earned sufficient recent wages and is able and available for work. On the other hand, a worker who voluntarily leaves employment is generally ineligible for benefits unless the reason for leaving meets the definition of good cause under state law. Massachusetts unemployment insurance law, however, carves out an exception to

³⁶ 75 Fed. Reg. 57146, Sept. 17, 2010, 20 CFR 606.32.

³⁷ Commonwealth of Massachusetts, Executive Office of Labor and Workforce Development, Department of Unemployment Insurance, Unemployment Insurance Trust Fund Report: Quarterly Outlook Report February 2013.

this rule for workers who are laid off from a job in the employ of a “temporary help firm.” Section 25 (e) of Chapter 151A provides that:

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

For the purposes of this paragraph, "temporary help firm" shall mean a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects.

"Temporary employee" shall mean an employee assigned to work for the clients of a temporary help firm.

The effect of this provision is to create a double standard for unemployed workers who take an assignment for a fixed duration with a temporary help firm. If a worker receiving UI takes a job with a manufacturing firm and is laid off three months later, that worker can reactivate his unemployment claim and resume receipt of whatever benefits he has remaining. If that same worker takes a manufacturing job through a temporary help firm and the assignment ends after two weeks, the worker cannot requalify for benefits unless he has contacted the temporary help firm and sought out additional temporary employment. If the worker decides that he is no longer interested in employment in the temporary industry and instead wants to focus his work search on permanent jobs, he will be treated as having voluntarily left employment without good cause and in most cases, be denied unemployment benefits.

The inequitable treatment of “temporary employees” under the statute is exacerbated by changes in the labor market in the aftermath of the Great Recession. NELP has documented over the past two years how the majority of jobs that have been created in the current economic recovery are low-wage jobs.³⁸ A concurrent phenomenon has been the growth of temporary industry jobs where there were previously permanent jobs. In a recent speech, Sarah Forbes Raskin, a Governor of the Federal Reserve System, made the following observations:

³⁸ Bernhardt, Annette, *The Low Wage Recovery and Growing Inequality*, (August 2012), http://www.nelp.org/page/-/Job_Creation/LowWageRecovery2012.pdf.

Many employers are looking to make the employment relationship more flexible, and so are increasingly relying on part-time work and a variety of arrangements popularly known as "contingent work." This trend toward a more flexible workforce will likely continue. For example, while temporary work accounted for 10 percent of job losses during the recession, these jobs have accounted for more than 25 percent of net employment gains since the recession ended. In fact, temporary help is rapidly approaching a new record, and businesses' use of staffing services continues to increase.

Contingent employment is arguably a sensible response to today's competitive marketplace. Contingent arrangements allow firms to maximize workforce flexibility in the face of seasonal and cyclical forces. The flexibility may be beneficial for workers who want or need time to address their family needs. However, workers in these jobs often receive less pay and fewer benefits than traditional full-time or "permanent" workers, are much less likely to benefit from the protections of labor and employment laws, and often have no real pathway to upward mobility in the workplace.

Many workers who hold contingent positions do so involuntarily. Department of Labor statistics tell us that 8 million Americans say they are working part-time jobs but would like full-time jobs. These are the people in our communities who are "part time by necessity." As businesses increase their reliance on independent contractors and part-time, temporary, and seasonal positions, workers today bear far more of the responsibility and risk for managing their careers and financial security. Indeed, the expansion of contingent work has contributed to the increasing gap between high- and low-wage workers and to the increasing sense of insecurity among workers.³⁹

The fact is that in this economy, many workers who have lost good family-sustaining jobs are more likely to experiment with temporary industry employment as a possible route to eventual permanent work. As a matter of public policy, we should encourage the industry and initiative of unemployment insurance claimants who are adapting to the changing labor market and taking a risk on temporary work in the hopes that it will become permanent. But at the same time, lawmakers should not be penalizing those workers who take such risks. The current Massachusetts law effectively treats a worker who has completed a single temporary work assignment as if he or she is indentured to the temporary help firm. As a matter of contract law, the worker's obligations to the employer end with each assignment; after all, the worker accepted the offer of

³⁹ Raskin, Sarah Bloom, *Focusing on Low- and Moderate-Income Working Americans*, Speech at the National Community Reinvestment Coalition Annual Conference, Washington, D.C. , March 2013, <http://www.federalreserve.gov/newsevents/speech/raskin20130322.htm>.

employment based on the specific terms and conditions of that assignment. Yet, current law requires an individual who has worked for a temporary help firm for any length of time – even a day – to ask the temporary agency for more work or else face denial of future UI benefits.

The existing law basically provides the temporary help industry with protections that the rest of the business community does not enjoy. If a manufacturer lays off a machinist making \$20 per hour but wants to offer him a maintenance position at \$12 per hour, the machinist's UI eligibility will be decided by adjudicating the question of whether the employer offered the claimant "suitable work" as defined under the state's UI law. Yet in that same scenario if the employer is a temporary help firm, the employer has no obligation to affirmatively offer a new assignment and eligibility is not decided based on whether the work offered is suitable. Yet in that same scenario if the employer is a temporary help firm, the burden is on the claimant to request alternative work (the suitability of which may depend on the temporary assignments the claimant has accepted in the past) or be characterized as having voluntarily quit.

There is no good reason to treat the temporary industry more favorably under state UI law; in fact, it stands to reason that an industry whose primary product is contracted labor should expect that unemployment insurance charges will be part of its cost of doing business – a cost that can be recovered contractually from client employers. On the other hand, the current favorable treatment of the temporary industry destabilizes the economic security of workers who are trying out temporary assignments as a possible gateway to permanent work and those who simply cannot find suitable permanent work. These workers should not risk UI disqualification when they try to extricate themselves from the temporary industry. A temporary help firm can still make a new offer of work to a former employee and if the employee refuses the offer, the state can still determine that employee's eligibility based on the same "suitable work" standard to which all other workers are held.

NELP encourages this Committee to take the first steps toward repealing the state's current regressive treatment of temporary help firm employees. Current law discourages UI claimants from trying out temporary employment because any eventual decision to resume a search for permanent work jeopardizes eligibility for unemployment insurance – benefits that are intended to help the jobless worker get back into the labor market as close as possible to the employment from which the worker was originally displaced. A fair and responsible unemployment insurance program encourages workers to explore as many options as possible to get back to economic stability but does not penalize them for having made the effort.

