

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Ruby Shamir to Nicole Rabner re For Your Trip (partial) (1 page)	05/22/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15418

FOLDER TITLE:

Grambling State Commencement, 5/23/99 [2]

2012-1035-S

kc1069

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Pre Meeting on Paid Leave and UI

July 1, 1999

1. Decision on Scope of President's announced policy.
2. Effects on states with broader proposals and the associated constituencies
3. Process from here. Timetable? Input?
4. Intelligence on Opposition to the proposal
5. Strategy to reach out to others
 - Groups -- FMLA Coalition, UI groups, organized labor
 - Hill Staff -- Finance and Ways and Means Committees
6. Brief Discussion on Senate FMLA Oversight Hearing on 7/14 (Frazier?)

7/13 -- 14 => Dodd bill to drop
Hobby

16th (+) FMLA coalition

- substantive mtg Geni to set up
- advocates - DOC mtg
- Staff mtg, will
wk of the ~~12th~~

- mark up of Tax bill
SAS approvals -

Coalition

fr 16th 11am.

UI FOR NEW PARENTS Fact Sheet

- A 1996 study by the Commission on Family and Medical Leave found that wage loss was the most significant barrier to parents taking advantage of unpaid leave following the birth or adoption of a child.
- On Sunday, May 23, 1999, President Clinton directed the Secretary of Labor to propose new regulations and model State legislation to enable States to develop innovative ways of using the Unemployment Insurance (UI) program to support parents taking leave to care for a newborn or newly-adopted child.
- States today have significant flexibility in designing their own UI programs. Legislation was introduced in several States during this and prior years to provide UI benefits to workers on some form of leave to meet family obligations. The Administration was asked whether the UI program can be used for such purposes consistent with Federal UI law. Under new regulations that the Department of Labor (DOL) will propose, the States will be able to use UI to assist new parents.
- It is worth noting that paying UI to parents on leave following birth or adoption appears to be a logical extension of the UI program. All States already pay UI to workers who are laid off but whom the employer expects to recall. Providing paid leave for employees who have just become parents and need to take some time away from the job is somewhat analogous to this and other current uses of the program.
- States that wish to participate in the program proposed by the President will need to amend their laws. The UI program is authorized under the Social Security Act and the Federal Unemployment Tax Act but operates under laws specific to each State. These State laws determine how workers qualify for benefits within federal guidelines.
- The DOL will work with the States that have expressed interest this year in the course of issuing its regulation so that these States will be in a position to implement, at the first possible opportunity, appropriately structured plans to use UI to assist new parents.
- Whether the same people will be covered as under the FMLA, benefit duration, and other benefit issues, as well as employer costs issues, will be addressed during the rulemaking process. The DOL anticipates that the proposal will allow States to spread costs broadly throughout the system, rather than limiting costs to the particular employers whose employees use this benefit.
- It is difficult to predict when individuals will be able to receive benefits. The DOL must first issue regulations and model State legislation, and States must then change their own laws. DOL expects rules will be published around January 2000.

This new program will be wholly voluntary for the state

- The potential pool of those who may benefit from this initiative is not known, in part due to the fact that the specific eligibility rules will be set by the Federal regulations and State laws. Research shows that in 1998, 3.3 million women had children under the age of one and 58 percent of those mothers were in the workforce. In addition to working mothers, working fathers may also wish to take leave to care for their newborn or newly-adopted child and may be able to receive UI benefits.
- It is premature to estimate the cost of the new program until program parameters are designed. Since participation in this program by the States will be wholly voluntary, the cost will also depend on the number of States that participate.

June 4, 1999

May 14, 1999

MEMORANDUM

TO: Elena Kagan
FROM: Nicole Rabner
SUBJECT: Unemployment Insurance and Paid Leave Background

This memo and the attachments that follow serve as background for the meeting on Monday at 1pm with Ed Montgomery (Acting Deputy Secretary of Labor), Karen Tramentano, Barbara Chow, and others.

The question at issue is whether it is permissible under Federal law for States to allow individuals taking FMLA-leave to qualify for unemployment insurance benefits through some change to the State requirement that claimants be "available" for work. In 1997, Vermont introduced legislation to allow UI payments to individuals who were on leave under Vermont's family and medical leave law by "deeming" them available for work. Through a letter to the bill sponsors, the Department of Labor's Employment and Training Agency (ETA) objected to the pending legislation, asserting that it violates Federal law.

This year, in four State legislatures – Massachusetts, Vermont, Maryland, and Washington – bills have been introduced that would provide UI benefits to individuals on some form of FMLA-leave. These bills respond to growing surpluses in the states' UI trust funds, due to steady declines in unemployment. Senators Kennedy, Dodd, Leahy, and Murray (as well as groups such as the AFL-CIO, the National Partnership for Women and Families and the National Employment Law Project) have pressed Secretary Herman to withdraw DOL's objections. Secretary Herman reportedly has told Senator Kennedy that she would like to "find a way to get to yes."

Below is an overview of the case on either side of this debate, and attached are the following documents: (1) a DOL background paper prepared for an earlier meeting convened by Barbara Chow; (2) a briefing submitted to DOL by AFL-CIO and others (the executive summary of which is sufficient reading); and (3) letters from Senators Leahy and Murray on this issue.

The DOL Case

DOL maintains that statutory change is necessary to give States the authority to waive the "availability" requirement. Even though this requirement is not defined in Federal law, DOL argues that the Department has long interpreted the law to require that a claimant's unemployment is involuntary and due to a lack of work. They insist that exceptions made by DOL in the past (such as to allow claimants to receive benefits if they are on jury duty, on lay-offs and subject to recall, or in a medical emergency) do not violate the principle of being "available for work." And, they argue that because Congress amended Federal law to allow UI payments for temporary disability and self-employment, Congress reserves to itself "waivers" of the availability requirement.

It is clear, however, that DOL also thinks this is a bad idea. They suggest that allowing UI payments in FMLA-type situations would set a dangerous precedent, making it difficult to prevent other types of payments from the UI fund, such as to individuals on vacation, sick leave or sabbatical, or retirees. Further, they fear that eroding the basic tenet of the program would generate significant employer opposition, perhaps even instigating action to limit the scope of the program (i.e. a rider or legislation that sets a Federal definition of availability, thereby undermining DOL's future flexibility).

The Case of the Advocates

The advocates argue that the approach by Massachusetts and other States (to provide UI benefits to workers who are separated from their jobs for reasons that qualify for protection under their family and medical leave laws) is consistent with the broad discretion given to States to design and implement their own UI programs. They argue that the legislative history of the Social Security Act (which created the UI program) does not require States to adopt a particular definition of "availability" for work and that DOL does not have authority to impose limitations on a State's determination of UI eligibility. Further, they argue that there is ample precedent for State authority, with DOL approval, to carve exceptions to availability requirements. For instance, before Federal law was amended to speak to the issue, 22 States exempted workers who become disabled while unemployed from disqualification due to availability. And, employees on temporary lay-off need not be available for other jobs while on recall status. The advocates argue that while the proposed Massachusetts bill varies from these precedents in some ways, none of the differences distinguishes their validity under Federal law.

Most important, the advocates point to the fact that over one-third of all States cover compelling, personal circumstances as nondisqualifying reasons for leaving work, and these reasons also constitute "good cause" for the refusal of otherwise suitable work. These State laws, they argue, demonstrate that it is well-established that leaving for family and medical reasons render the leaving "involuntary" or not truly "initiated" by the employee.

Finally, the advocates argue that broad State discretion over availability requirements is supported not only by law but by sound public policy considerations, as well. States, they maintain, are best suited to determine their eligibility and disqualification requirements based on their differing economic and social circumstances. And, they argue, this experimentation is consistent with the UI program's underlying mission of employment stabilization.

Dodd
Murray
Leahy
Kennedy

UI FOR FMLA

ISSUE

- Is it permissible under Federal law for states to change their laws so that individuals on FMLA leave qualify to receive unemployment benefits by some change to the UI "availability test"? Do individuals who quit their jobs to care for children following childbirth or adoption meet this test?

BACKGROUND

- In 1997, Vermont introduced legislation which would allow UI payment to individuals who were on leave under Vermont's Family and Medical Leave Act. These individuals would be "deemed" to be available for work. ETA objected, saying that Federal UI law requires individuals to be available for work. "Deeming" an individual to be available simply avoids determining whether the individual actually is available.
- This year four bills have been introduced which would use UI to pay individuals on some form of FMLA. Three of the four States, anticipating conformity problems, have asked for the Department's comments. (Only the Massachusetts and Vermont bills are alive.)

Massachusetts would, using the "recall" approach, pay UI to individuals who were on leave under the FMLA and the State's maternity law. It would also pay individuals who could not take FMLA because the FMLA did not apply to their employers. A hearing is scheduled April 17. The agency will oppose the bill. The governor is expected to oppose the bill.

Vermont has introduced a bill that would pay individuals on leave under Vermont's FMLA law. It is similar to last year's, except that it also uses the "recall" approach. It appears that the agency will oppose the bill, but the Governor may not take any position at this time.

Maryland has introduced a bill that would pay individuals who quit their jobs to take care of a newborn or adopted child. Under the bill, individuals would be "deemed" to be available. A hearing is scheduled for March 16. The agency is opposing the bill. The governor has not taken any position. *(seem over new)*

Washington has introduced a bill that would pay individuals 4 weeks of benefits if they are on leave following giving birth.

UI vs FMLA - A BRIEF COMPARISON

- UI is an **insurance** program that insures against the risk of **involuntary** unemployment. The worker loses employment through no fault of his/her own and continues to be unemployed through no fault of his/his own because no other work is available.
- Employers pay taxes which fund the system and pay benefits. Employers willingly pay these when payment is made for involuntary unemployment. Employers object to being "charged" for benefits for workers on leave. *cd to address*
- Workers who leave jobs voluntarily due to good personal cause may receive UI. However, these workers must also be available for new work.

- Under the FMLA, the unemployment is not involuntary. The worker makes a choice between unemployment and work. The worker is generally not available for work. The employer is holding a job for the worker. When a worker quits to care for a child following childbirth or adoption, the worker is generally not available for work.

FEDERAL LAW AND AVAILABILITY

- Two provisions of Federal law have long been interpreted to require that the worker be available for work to receive UI:
 1. The “**withdrawal standard**” limits the use of unemployment fund moneys to payments with respect to an individual’s unemployment. We have interpreted “unemployment” to be limited to that which is involuntary and due to a lack of work. This means the individual must be “able and available” for work to receive UI benefits.
 2. UI must be paid through public employment offices. This requirement is not just organizational: since the earliest days of the program, it has been interpreted to require that the worker be “available”--the employment office finds work for the available worker. Otherwise, the requirement would not amount to much.
- The Senate Committee Report for the 1935 the Social Security Act (SSA), which created the Federal-State UI program, is a basis for these interpretations:

The essential idea in unemployment compensation is the creation of reserves . . . from which compensation is paid to workmen **who lose their positions when employment slackens and cannot find other work**. Unemployment compensation . . . payments are made . . . **only while the worker is involuntarily unemployed**. [Emphasis added.]
- The 1935 legislative history is replete with similar statements. In addition, subsequent Congressional actions also indicate UI is to be paid only to individuals who are unemployed due to lack of work. For example, in 1939 Senator Wager (who introduced the SSA in the Senate) introduced a bill to pay individuals with temporary disabilities because UI was paid only to workers who “unemployed due to a lack of a job.”

ARE THERE ALREADY EXCEPTIONS TO THE AVAILABILITY REQUIREMENT?

- Some argue that the Department has in cases “waived” the availability requirement. Three of these are:

Payments to Ill Claimants. In 11 States claimants who are ill may receive UI. This occurs only if the individual is initially available following separation **and** there is no work for the individual to perform. The notion is that an individual who is involuntarily unemployed should not be disqualified if no work is available. There is still an “availability” test since the individual must accept any offered work which is suitable.

Life threatening conditions. The Federal Extended Benefit (EB) law contains an exception to its work search requirement for claimants who are hospitalized for an emergency or life-threatening condition. This is an exception to the EB work search requirement only. It does not authorize an exception to the availability requirement. Like payments to ill claimants, the individual must accept any offered work which is suitable.

Jury Duty. The Department has approved waiving work search for claimants on jury duty and the Federal EB law also provides for this. The notion is that the individual who is involuntarily unemployed should not be denied for failing to look for work when the failure is created by the government. This is an exception to the work search requirement only. Availability for jury duty has been accepted as proof of availability for work. This is reasonable since employed individuals (who are certainly available) must go on jury duty.

- **Lay-offs and Recalls.** Some also argue that workers on "recall" are not available. There are differences between traditional recall situations and the FMLA situation:

In lay-offs, unemployment generally is caused by lack of work. The employer initiates the unemployment and the individual must be available for recall. For example, auto workers on lay-off must be available--if their recall date is moved up, they must report immediately. In FMLA situations, the worker initiates the unemployment and is responsible for its continuation. Also, the employer has no option to recall the worker and the individual is not available for other work. Although laid off auto workers may not be required to actively seek work, they are still available for recall. In FMLA situations, the individual never has to be available for work even though the employer is holding a position open.

Employers are willing to pay workers on lay-off to preserve their work force. This is consistent with the UI principle that employers bear the cost of unemployment they create. In FMLA situations, the employer obtains no benefit since it has created no unemployment and must hold the job open for the worker.

IMPLICATIONS

- Allowing payment in FMLA-type situations is a major change to the UI availability requirement. By setting this precedent, it may be difficult to prevent other types of payments from the unemployment fund where no current labor market attachment exists. For example: individuals on vacation, sick leave or sabbatical, or retirees. Eroding this basic tenet of the program would generate opposition by employers who may seek some program limitations in response--for example, a Federal definition of availability or means testing.
- DOL has consistently held that exceptions to the "withdrawal standard" may only be made by Congress. Congress amended Federal law to allow payments for temporary disability and self-employment which suggests Congress reserves to itself "waivers" of the availability requirement.

disputed

ALTERNATIVES

- States could establish a separate tax used to fund these payments. DOL has already presented this option to Vermont. The payments could be delivered through the UI system. DOL could provide "model legislation" for the States. This approach is disfavored because of the concern that legislatures would balk at setting up a new program.
- If the State has a temporary disability system, the State could use that system. However, only six States have such systems. Last year, California introduced a bill which would use its temporary disability system for FMLA purposes.
- Potentially, a pilot program to pay the administrative costs could be funded from the \$10 million FY 2000 request.
- Federal UI law could be amended to allow for a limited pilot authorizing payment of benefit from UI funds in FMLA-type situations. This would be similar to the self-employment pilot from several years ago. Consideration must be given to the policy statement this would make, however, and the strong opposition this would generate from stakeholders at a time when we are engaging them to help us develop a comprehensive, bi-partisan legislation reform proposal.

DECISIONS NEEDED

- Whether the Administration wants to change the UI policy on availability to enable States to use the UI trust fund to pay benefits to workers on FMLA.
- Whether some other option should be pursued to encourage paid leave for FMLA.

Greater Boston Legal Services

197 Friend Street • Boston, Massachusetts 02114 • Telephone (617) 371-1234 • TDD 371-1228 • Fax 371-1222

March 16, 1999

Ms. Kitty Higgins
Deputy Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

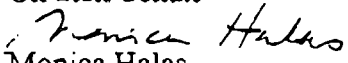
Re: The Massachusetts Unemployment Insurance\Family Leave Recall Bill

Dear Deputy Secretary Higgins:

I am writing to bring to your attention our response to the issues raised by Grace Kilbane after our meeting in your office. After thorough research, we are pleased to report that the Massachusetts legislation falls within the states' prerogative to determine unemployment eligibility including amending "availability" under specific circumstances as presented in our proposed legislation. This conclusion is supported after a careful review of federal law, legislative history, and state precedents which have received prior DOL approval.

In addition to a growing coalition in Massachusetts, several other partners in this initiative, including the offices of Senator Kennedy and Senator Dodds, the AFL-CIO, the National Partnership for Women and Families and others look forward to your response. As indicated in our letter to Ms. Kilbane, we are hopeful that a meeting can be quickly arranged to resolve any outstanding issues.

I have enclosed our letter to Ms. Kilbane and the memorandum setting forth our research and our conclusions. Thank you again for your interest in and assistance with this matter which is so critical to working families.

Sincerely,
The Family Leave Coalition
On their behalf

Monica Halas
Senior Attorney

enc(?)

Greater Boston Legal Services

197 Friend Street • Boston, Massachusetts 02114 • Telephone (617) 371-1234 • TDD 371-1228 • Fax 371-1222

March 15, 1999

Grace A. Kilbane
Director, Unemployment Insurance Service
Employment and Training Administration
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Grace:

I am writing once again on behalf of my colleagues Ann Bookman, Maurice Emsellem and Linda Johnson, to continue our correspondence concerning the proposed Massachusetts law which provides time-limited partial wage replacement through the unemployment system to individuals who must temporarily leave employment for family or medical reasons. As we indicated in our prior letter, we appreciate your thoughtful response to the issues we had discussed and your invitation to engage in further dialogue about how best to proceed.

Although we are late in reply, and we apologize for this, we felt your letter deserved the most careful review and a response based on thorough research of all materials relevant to the issues you addressed. We appreciate your understanding that the ability to enact this or similar legislation is so critical for working families. We took most seriously the charge to essentially look afresh at unemployment law and make sure that our approach is consistent with federal law.

To address the issues you raised, we reviewed the original Social Security Act, its legislative history, including statements of the drafters, opinions of the Department's chiefs of the former Bureau of Employment Security, and the opinions of legal experts including a comprehensive published work on the availability for work requirement. We also searched for examples where current state law waives availability as an eligibility criteria. In addition to our combined over 35 years of experience with unemployment law, we consulted other legal experts in this field. This in-depth research has resulted in some new conclusions that can be made about whether the concept of availability is a creature of federal or state law.

As the enclosed memorandum details, all of these sources definitively document the conclusion that the availability test is one that is determined by state law rather than federal law. None of the original or secondary sources controverts this conclusion in any way. In addition, over the years there have been numerous examples where states have waived availability as a factor in determining eligibility, and in each instance, DOL has not found an inconsistency with its directives. This is very good news for us all, as it permits the unemployment laws to continue to

operate on the local level, responding to the needs of the states' particular economic condition and, in that context, their ability to best address the needs of its unemployed workers.

However, we recognize that on an issue of such importance to the underlying policies of unemployment insurance, the Department's role in guiding the states is vitally important. As you are aware, the Massachusetts statute is just one approach to this issue and at least Vermont, Maryland, and Washington have also filed legislation which suggests that other approaches are possible.

We look forward to your response to our memorandum and, more importantly, to your suggestions as we continue our work on this type of legislation. We believe that another face-to-face meeting would facilitate coming to agreement on the parameters of state legislation. Thank you.

Sincerely,

Ann Bookman (MA)

Professor Ann Bookman
Holy Cross College

Maurice Emsellem (MA)

Maurice Emsellem
National Employment Law Project

Monica Halas

Monica Halas
Greater Boston Legal Services

Linda Johnson (MA)

Linda Johnson
Women's Statewide Legislative Network

enc (1)

cc: Cathy Curran, Wage & Hour Division
Suzanne Day, Office of Senator Chris Dodd
Cheryl Dorsey, Women's Bureau
Robert J. Haynes, President, Massachusetts AFL-CIO
Jonathan Hiatt, AFL-CIO General Counsel
✓ Donna Lenhoff, National Partnership for Women and Families
Senator Stephen Lynch, Massachusetts Joint Committee on Commerce and Labor
Representative Anne Paulsen, Massachusetts House of Representatives
Stephanie Robinson, Democratic General Counsel
Bill Samuel, Associate Deputy Secretary

March 15, 1999

**MEMORANDUM IN SUPPORT OF MASSACHUSETTS BILL
AMENDING ITS UNEMPLOYMENT COMPENSATION LAW
TO INCLUDE ELIGIBILITY FOR FAMILY AND MEDICAL LEAVE**

**Prepared by
Greater Boston Legal Services
National Employment Law Project¹**

Executive Summary

The Massachusetts Legislature has introduced a bill that would provide unemployment insurance (UI) for no longer than 12 weeks to workers who are separated from their jobs for reasons that qualify for protection under family and medical leave laws. Similar legislation has been introduced in Maryland, Vermont and Washington, raising the issue of whether federal UI law imposes any obligations on the states that would interfere with their broad discretion to enact this UI legislation.

This memorandum seeks to advance the on-going dialogue with DOL that has been extremely valuable to the development and improvement of the proposed state laws. As a result of these communications, the legal issues also have been significantly clarified. The question now boils down to whether the DOL has the authority to impose limitations on a state's eligibility requirements -- in particular a state's determination whether an individual must always be "available" for work at the time she applies for benefits. Based on the research described below, we conclude that the Massachusetts bill is consistent in all respects with the intent of the federal law (allowing states' broad authority to expand UI eligibility) and with past precedents in state UI laws.

We also believe that the state family leave bills are consistent with DOL's interpretation of the federal UI law. The proposed laws retain a genuine test of availability, as required by DOL, but allow for exceptions in particular circumstances just as the states have routinely done in other areas of UI eligibility. We therefore look forward to a continuation of the dialogue, informed by this most recent research, to address DOL's remaining concerns and to modify the Massachusetts proposal if necessary.

¹ For further information, please contact Maurice Emsellem, NELP, 212/285-3025, ext. 106, or email: emsellem@nelp.org; or Monica Halas, GBLS, 617/371-1234, ext. 621, or email: mhalas@gbls.org.

- **The legislative history of the Social Security Act does not require states to adopt any particular definition of availability for work and grants broad discretion to states to develop their eligibility requirements.**

Neither the plain language of the Social Security Act nor its legislative history provides any basis for a federal restriction on states' prerogatives to determine availability requirements. Ralph Altman, a senior official of the Bureau of Employment Security in 1950, provides the most comprehensive published survey of the availability for work requirement and concludes that "determination of availability for work under American unemployment compensation laws is *exclusively a state function*." This conclusion is supported by numerous statements from the initial drafters and enforcers of the federal unemployment laws, including the President, legislators, the Committee on Economic Security, and the Social Security Board itself. *Additionally, legislation which would have injected a federal availability requirement into the unemployment laws was rejected by Congress.*

- **The states' adoption of numerous exceptions to their availability requirements with prior DOL approval demonstrates that states have the authority to enact these exceptions.**

There is ample precedent for states' authority, with DOL approval, to carve exceptions to their availability requirements. Even before federal law was amended to speak to the issue, 22 states exempted trainees from the availability requirement. Numerous states have at one time or another exempted workers who become disabled while unemployed from disqualification due to unavailability. Most importantly, employees on temporary lay-off need not be available for other jobs while on recall status. The proposed bill varies from these precedents in some ways, but none of the differences distinguishes their validity under federal law. The leave bill maintains the state's availability requirement and preserves the unemployment system's focus on involuntary unemployment, applying a genuine test of availability. DOL's approval of this bill would thus be entirely consistent with past practice.

- **We have addressed the concerns that DOL has raised in connection to the scope of the bill and its relation to existing recall statutes and have provided analogous examples under numerous state precedents.**

DOL has raised concerns about the scope of the bill and seeks to explore several distinctions between the Massachusetts bill and other recall statutes. We conclude that these concerns and distinctions, where they exist, do not vitiate the legality of the Massachusetts bill under the federal/state statutory scheme, as they do not affect the fundamental availability requirement nor Massachusetts' ability to create exceptions to that requirement. For example, DOL questions the distinction between an employer initiated layoff as opposed to a family leave taken by the employee. However, federal law does not limit unemployment compensation to only those cases where an employer initiates the layoff. Over one-third of all states, including Massachusetts, cover compelling, personal circumstances as nondisqualifying reasons for leaving work, and these reasons also constitute "good cause" for the refusal of otherwise suitable work.

These state laws demonstrate that it is well-established that leaving for family and medical reasons --- the same reasons that qualify employees under the proposed Massachusetts law for family and medical leave --- render the leaving "involuntary" or are not truly "initiated" by the employee. Consequently, the fundamental availability requirements remain intact.

- **Compelling policy considerations support deference to the right of states to expand UI eligibility under their availability rules without federal restraints.**

Broad state discretion over availability requirements is supported not only by law but by sound public policy considerations as well. States are best suited to determine their eligibility and disqualification requirements based on their differing economic and social circumstances. Experimentation among states is not only allowed by the unemployment scheme but encouraged to discover new ways to adapt unemployment laws to further the goal of employment stabilization. Now more than any time in recent history, the opportunity exists for states to promote long-overdue reforms in the UI system, as reserves in UI trust funds have increased with the sustained decline in unemployment. Finally, the proposed bill itself furthers important federal and state policy interests, including the unemployment scheme's goals of employment stabilization and the FMLA's goals of providing access to family and medical leave.

I. Introduction

The Massachusetts Legislature has introduced a bill that would provide unemployment insurance (UI) for no longer than 12 weeks to workers who are separated from their jobs for reasons that qualify for protection under family and medical leave laws. Similar legislation has been introduced in Maryland, Washington and Vermont, raising the issue of whether federal UI law imposes any obligations on the states that would interfere with their broad discretion to enact this UI legislation.

This memorandum seeks to advance the on-going dialogue with DOL that has been extremely valuable to the development and improvement of the proposed state laws. As a result of these communications, the legal issues have also been significantly clarified. The question now boils down to whether DOL has the authority to impose limitations on a state's eligibility requirements -- in particular a state's determination whether an individual must always be "available" for work at the time she applies for benefits. Based on the research described below, we conclude that the Massachusetts bill is consistent in all respects with the intent of the federal law (allowing states' broad authority to expand UI eligibility) and with past precedents in state UI laws.

We also believe that the state family leave bills are consistent with DOL's interpretation of the federal UI law. The proposed laws retain a genuine test of availability, as required by DOL, but allow for exceptions in particular circumstances just as the states have routinely done in other areas of UI eligibility. We therefore look forward to a continuation of the dialogue, informed by this most recent research, to address DOL's remaining concerns and to modify the Massachusetts proposal if necessary.

II. Federal Law Grants States the Authority To Define Availability in Seeking to Expand UI Eligibility.

A. The Plain Wording Of The Applicable Federal Statutes Does Not Require States To Adopt Any Particular Availability Requirement.

No federal statute or regulation requires states to adopt any particular availability requirement. The applicable federal unemployment insurance laws, the Federal Unemployment Tax Act (FUTA) and the Social Security Act (SSA), contain no provisions regulating the substantive eligibility and disqualification requirements to be included in state unemployment legislation. See 26 U.S.C. §§ 3304, 3306; 42 U.S.C. §§ 503, 504 (1998). As Dr. Edwin Witte, Executive Director of the Committee on Economic Security, whom President Roosevelt appointed to draft the Social Security Act, points out, "[a]t the very outset of its final deliberations, the committee decided against federal dictation regarding the content of state unemployment compensation laws. It reached the conclusion that the federal bill should contain only a few necessary standards. . . ." Edwin Witte, *The Development of the Social Security Act* 125 (1962). These standards do not include any definition of availability for work to be followed by the states.

B. The Early History Of The Unemployment Laws Demonstrates That Availability Requirements Were Intended To Be Defined Solely By The States.

Despite the absence of statutory language authorizing federal control over state laws, DOI suggests that a federal availability requirement can be implied from the overall structure of the statutes and their legislative history. However, a review of the legislative history of FUTA and the SSA and contemporaneous commentary by those responsible for enforcing the newly-enacted laws demonstrates that states were intended to possess complete discretion in defining their eligibility and disqualification requirements. Federal law was envisioned as providing only a floor on the coverage and amount of unemployment benefits a state could grant; it was never intended to create a ceiling limiting a state's ability to provide for its citizens under its unemployment laws.

Indeed, availability for work is one area of law over which states have vast discretion. Ralph Altman, a senior official of the Bureau of Employment Security in 1950 (and with the Unemployment Insurance Service for many years thereafter), provides the most comprehensive published survey of the availability-for-work requirement and concludes that states can define availability for work in whatever manner they wish. He writes:

"The Social Security Act and the federal unemployment tax provisions of the Internal Revenue Code, which prompted almost all the state unemployment compensation laws, make no provision for payment of benefits to claimants. Neither do they establish any eligibility requirements which claimants must satisfy. . . . [T]he only [provisions] that affect state laws and administration on availability problems are those which protect labor standards . . . and those which provide that all compensation must be paid through public employment offices or such other agencies as the Labor Department may approve. *The practical result is that determination of availability for work under American unemployment compensation laws is exclusively a state function.*" Ralph Altman, *Availability for Work* 74-5 (1950) (emphasis added).

1. Congress Expressly Rejected On Numerous Occasions The Imposition Of Specific Federal Definitions And Standards On State Eligibility And Disqualification Rules.

Notably, legislation imposing specific federal requirements on state unemployment laws was proposed and rejected on numerous occasions during the formative years of the unemployment scheme. Senator Woodrum proposed in 1939 a number of specific requirements in connection with new unemployment legislation that would constrain states and the federal government in their ability to grant unemployment benefits, including a requirement that an eligible worker must be available for and seeking work. See H.R.J. Res. 151, 76th Cong. (1939) (printed in 84 Cong. Rec. 1160 (1939)). Senator Murray proposed a bill in 1940 which would have amended the Social Security Act to require states to follow specific guidelines in making

determinations of whether work is suitable. See S. 3365, 76th Cong. (1940). Other proposals would have imposed varying specific requirements on state unemployment laws. See S. 2203, 76th Cong. (1939) (Byrne amendments); H. R. 7762, 76th Cong. (1940) (McCormack bill).

All of these proposals were rejected in favor of maintaining a system of minimal federal control over state eligibility standards. See Edwin E. Witte, *Development of Unemployment Compensation*, 55 Yale L.J. 21, 46-7 (1945). While the Woodrum proposal arose in the context of a Works Progress Administration appropriation, it is notable that a comparable availability requirement never made its way into the general federal unemployment laws. Since Congress expressly declined at the outset to limit states' discretion over the details of their unemployment laws, including the specific area of availability for work, it would be inappropriate for a federal agency to adopt a contrary view sixty years later. See *Johnson v. Mississippi*, 421 U.S. 213, 228 (1975) ("[t]he absence of any evidence or legislative history indicating that Congress intended to accomplish . . . what it has failed or refused to do directly through amendment . . . necessitates our considered rejection of the [asserted claim] in this case.").²

2. The Initial Drafters And Enforcers Of The Unemployment Laws Believed That States Alone Should Define Eligibility And Disqualification Requirements, Including Availability For Work.

The Social Security Board recognized early on that in constructing the federal-state unemployment scheme, Congress required only a limited number of specific standards to be satisfied for state unemployment laws to be approved, and that all of those standards ensured only that states provide adequate compensation. In its first annual report, the Board explained that "[t]he amount of assistance and practically all the conditions under which assistance is granted are determined by the States. In unemployment compensation *the primary role of the Federal Government is to remove obstacles to State action.*" United States Social Security Board, *Annual Report* 8 (1936) (emphasis added). In a 1936 circular, the Board outlined the main features of the federal-state relationship in administering unemployment laws. Notably, in a section entitled "Essential Features of Unemployment Compensation," the Board never even hints at a federal requirement that states define availability to work in a particular manner. To the contrary, the Board goes on to conclude that "It is desirable that a State law should be at least as broad in its coverage as the Federal act. . . . *The State may, of course, go further and adopt a*

² There were also sound practical reasons why Congress would choose to leave the issue of availability for the states to decide. Although the Department's objection in the current controversy centers on a specific piece of proposed legislation, its interpretation necessarily entails a dramatic expansion in federal jurisdiction over state unemployment disputes. DOL argues that federal law imposes a requirement that individuals seeking unemployment compensation must be available for work in order to receive benefits. If valid, this rule applies not only to proposed legislative enactments but also to individual benefits determinations. The consequence is that a federal question potentially arises in any state unemployment dispute where availability for work is at issue. A federal question definitely arises in a case where a worker is erroneously deemed available for work, giving the U.S. Supreme Court jurisdiction over appeals from decisions of the Massachusetts Supreme Judicial Court on these issues. Absent an express statutory mandate, a federal agency should not adopt an interpretation of federal law which would inject federal courts into the review of state benefits determinations.

wider coverage . . . *This is a matter of policy for the State to decide.*" United States Social Security Board, *The Federal-State Program for Unemployment Compensation* 5, 9 (1936) (emphasis added).

Thus, the constraints that federal law placed on state action were viewed as creating select minimum standards, not maximums limiting states' abilities to provide benefits. President Roosevelt transmitted this very message to the Senate during the floor debates on the SSA: "[i]n order to encourage the stabilization of private employment Federal legislation should not foreclose the States from establishing means for inducing industries to afford an even greater stabilization of employment." 79 Cong. Rec. 545 (1935) (introduced by Sen. Smith).

Federal officials recognized from the very beginning that states enjoy considerable discretion in crafting eligibility guidelines, including availability for work. In its report to the president, the Committee on Economic Security recommended that any federal unemployment legislation give states near-total discretion over their unemployment laws. The Committee stated that "[t]he plan for unemployment compensation that we suggest contemplates that the States shall have broad freedom to set up the type of unemployment compensation they wish. We believe that all matters in which uniformity is not absolutely essential should be left to the States." Committee on Economic Security, Report to the President 20 (1935) (quoted in Murray Rubin, *Federal-State Relations in Unemployment Insurance* 22 (1983)). Ten years later, in its 1945 Annual Report, the Social Security Board reviewed the contents of all the states' laws and similarly concluded that "[t]he extent to which . . . claimants received benefits, and the amount and duration of their payments, depended entirely on the applicable State law," including whether "*a claimant was considered unavailable for work.*" United States Social Security Board, *Annual Report* 87 (1945) (emphasis added).

The U.S. Supreme Court acknowledged the broad discretion enjoyed by states in enacting unemployment laws in one of its decisions upholding the constitutionality of the federal-state unemployment system. In *Steward Machinery Co. v. Davis*, 301 U.S. 548, 593 (1937), the Court found that "[a] wide range of judgment is given to the several states as to the particular type of statute to be spread upon their books." Though the Court conceded that states may not "depart from those standards which in the judgment of Congress are to be ranked as fundamental," *id.* at 594, the standards deemed "fundamental" in this case were those explicitly codified by Congress.

State courts adopt the same position. In *Teledyne Columbia-Summerill Carnegie v. Unemployment Compensation Board of Review*, 634 A.2d 665 (Pa. Commw. Ct. 1993), the court upheld an order by the state unemployment compensation board of review determining that amounts received by employees in liquidation of pension benefits when a plant closed were not to be offset against unemployment benefits. In reaching this result, the court held that absent explicit federal definitions, states are free to define FUTA requirements as they see fit: "Beyond meeting these minimum standards, a state is free to design its unemployment compensation law and establish its own eligibility requirements. . . . [Federal statutes do not define] 'pension,' 'retirement pension,' or 'annuity,' and Employer does not cite any authority for the proposition that a state may not define these terms or that the Board's regulation is in direct conflict with

Section 3304(a)(15)." *Id.* at 669.

III. State Precedents Supporting the Massachusetts Bill Have Broadly Defined Availability For Work to Expand UI Eligibility.

Numerous states have enacted UI laws broadly defining their availability requirements, thus establishing ample precedent for the state family leave recall proposals. These state laws have been left undisturbed by DOL even where states enacted provisions eliminating their availability requirement in particular circumstances.

A. Recall.

The precedents in UI state laws that are the most directly analogous to family and medical leave are the recall statutes authorizing workers who are temporarily laid off from their jobs to be exempted from the state's availability rules. The Massachusetts bill is thus modeled on the state recall statutes and on Massachusetts' recall policy.³ These statutes, which exist in seven states (Arkansas, Delaware, Michigan, Missouri, New Mexico, Ohio and South Dakota), vary significantly in scope.⁴ Some states statutes, including the Michigan law and Massachusetts recall policy, are worded such that they allow for a waiver not only of the work-search obligations but also of the entire "availability" requirement. Thus, the state recall statutes and policies clearly illustrate the vast authority that states have to determine their availability rules. These states have concluded that it is bad policy to force workers to search for work or be available for work when they are only temporarily separated from their jobs. The Department has conceded that these state recall statutes, which provide the model for the Massachusetts bill, comply with federal UI law.

B. Training.

States have also dramatically altered their availability requirements to extend benefits to individuals in approved training programs. Prior to 1976, FUTA did not contain its current provision prohibiting states from disqualifying otherwise eligible workers from unemployment eligibility on the basis of their participation in a vocational training program. *See id.* at 549-50. Nevertheless, by 1966, twenty-two states had enacted provisions exempting unemployed workers in training or retraining programs from availability requirements if otherwise eligible. *See*

³ "A claimant who is temporarily unemployed because of a vacation shutdown or a brief layoff not to exceed four weeks with a definite date to return to work with the same employer is *not required to be available for work* or actively seeking work with other employers..." (Emphasis added). *See* Massachusetts Division of Employment and Training, *Service Representative Handbook, section 1051, Vacation Shutdown or Brief Layoff* (Rev. 10/96).

⁴ *See* Ark. Stat. Ann. sec. 11-10-507 (3)(E); 19 Del. C. sec. 3314(3)(1997); MSA sec. 17.531 (1998), sec. 23(1)(a); R.S. Mo. sec. 288.040.1(2)(1997); N.M. Stat. Ann. sec. 51-1-5-A. (1998); ORC Ann. 4141.29 (1996); ARSD 47:06:04:11.

William Haber & Merrill G. Murray, *Unemployment Insurance in the American Economy* 114 (1966). These states chose this policy based on their view of "unemployment insurance as part of a comprehensive labor market program." *Id.*

Such workers were clearly not available for work in any literal sense, since they were allowed to turn down work during their training periods. They were certainly no more available for work than an individual taking leave under the proposed Massachusetts bill. With over twenty state training laws already on the books, Congress amended FUTA to expressly require such availability exceptions to be followed in each state. This demonstrates not only that the availability requirement has been sharply limited by states in the past, but also that Congress limits state discretion only where it wishes to provide certain minimum benefit coverage, not to prevent higher levels of coverage from being granted. States are free to develop "comprehensive labor market programs" such as that implemented in part by the proposed Massachusetts bill.

C. Disability.

States are currently allowed to exempt disabled workers from availability requirements if the disability or illness arises after the worker applies for benefits.⁵ The only difference between these laws and the proposed Massachusetts legislation is that the proposed bill would exempt workers from the availability requirement at the time they apply for benefits. However, it is not clear why this difference should determine the legality of the state scheme under federal law. If states' abilities to define availability for work are constrained by federal law, then that constraint should presumably apply at any time the worker is receiving benefits. Under federal law, a state cannot provide benefits to a healthy worker who has become fully employed after applying for benefits; the law does not change merely because the worker has already applied for benefits. Similarly, if states may make disability and illness exceptions applicable after a worker applies for benefits, as DOL concedes they may, there is no appropriate basis for imposing a different standard at the benefits application stage.

D. Inverse Seniority Layoff.

Another relevant precedent in state law supporting the validity of the Massachusetts bill is the exemption that applies to workers who "choose" a layoff as authorized by a collective bargaining agreement. These laws, which exist in at least three states (Pennsylvania, Ohio and Michigan), typically apply where a collective bargaining agreement gives senior employees the option to choose a layoff and permits less senior employees to continue to work. Normally,

⁵ Notably, according to a study of utilization of leave under the federal Family and Medical Leave Act (FMLA) by the Commission on Family and Medical Leave, the major reason for leave-takers was the individual's own illness (59%) followed by 13.3% of all leave-takers where the individual left due to childbirth, adoption or placement of a foster child. These numbers were closely mirrored in non-covered worksites where 56.1% of all individuals left due to their own illness, and 14.7% left due to childbirth, adoption or foster child placement. See Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* 93 - 96 (1996).

these are used in temporary layoff situations, and they give workers input into which specific employees are going to be laid off in a particular layoff situation. The employer "initiates" the layoff and determines the overall number of employees laid off, but the employees' seniority system and individual choice determines which employees are laid off. The state statutes (and case law in selected states) exempt those workers who "choose" to be laid off in these situations from the "voluntary" quit disqualification. While not addressing the "availability" requirement per se, these state statutes make clear that not all layoffs can be neatly characterized as either employer or employee "initiated". As discussed below, the same is true in the case of workers taking family and medical leave.⁶

IV. Responses to DOL Questions Raised In Prior Correspondence

A number of concerns were raised in the letter from Grace Kilbane, Director of UIS, dated January 15, 1999, regarding the scope of the proposed bill and its relation to existing recall statutes. We will address each of these considerations in turn.

A. Query: For the purposes of a state's availability requirement, is there a relevant distinction between an employer initiated layoff as opposed to a family leave taken by the employee?⁷

⁶ There are several other relevant precedents worth noting. First, there is the deduction for retirement pay from UI that is required by federal law in specific circumstances. Although receipt of retirement pay while unemployed would appear to raise a question whether the individual is available for work, Congress focused instead on other objections. "Under these amendments, Congress appeared less interested in the retirement payment as a test of availability than with preventing duplicate payments attributable to the same employer." Gerald Hildebrand, *Federal Law Requirements for the Federal-State Unemployment Compensation System: Interpretation and Application*, 29 U.Mich.J.L. Ref. 527, 557 (1996). Second, DOL has authorized unemployed seasonal workers to refuse work that would interfere with their ability to return to their seasonal jobs. Department of Labor Manual of Precedent Decisions, AA 450.450 ("A seasonal worker who regularly works for one employer in one industry and who has definite prospects of recall to work may restrict the employment acceptable to him during the off-season to work which will permit him to return to his regular employment when the season begins."). Other examples that exist in Massachusetts and elsewhere include exemptions for acceptance of suitable work for workers receiving UI in work-sharing situations, the provisions allowing workers to recover UI on jury duty and refuse an offer of suitable work, and the part-time worker availability rules allowing workers to limit their availability to part-time rather than full-time work. For example, the Massachusetts statutory law provides that "[a]n otherwise eligible affected individual shall not be denied worksharing benefits for any week by reason of application of provisions relating to availability for work, active search for work or applying for or accepting suitable work with other than the worksharing employer. (Emphasis added). Massachusetts General Laws ch. 151A, §29D(h)(1). Under Massachusetts policy, the statutory provision which requires availability for work is deemed satisfied when an otherwise eligible claimant is summoned for jury duty during a period of unemployment. See Massachusetts Division of Employment Security, *Service Representative Handbook*, section 1039, *Jury Duty* (Rev. 10/96). Under recently promulgated Massachusetts regulations, various provisions are set forth as "conditions for limiting availability" to part-time employment which include a history of part-time work for "good cause" encompassing family and medical reasons. 430 Code of Massachusetts Regulations 4.42 - 4.45 (4/5/96).

⁷ This statement paraphrases DOL's letter, dated January 15, 1999, which specifically states: "[W]e would like your views on the distinctions between employees on temporary lay-off, where the employer initiates the (continued...)

First, it is well established that federal law does not limit unemployment compensation only to cases where an employer terminates its relationship with an employee. There are countless examples of state laws deeming an employee's initiation of his separation from work involuntary under certain circumstances, expanding unemployment coverage beyond the category of workers laid off through no fault of their own. Over one-third of the states cover compelling personal circumstances requiring an individual to leave his or her job, and such circumstances are not limited to those directly connected with the employment. See Advisory Council on Unemployment Compensation, *Unemployment Insurance in the United States: Benefits, Financing, Coverage* 110-2 (1995). These laws, conceded to be valid, cover claimants who leave their jobs due to compelling family circumstances. Another twenty-three states have special provisions for employees who quit work due to an illness or disability not necessarily connected with the individual's employment. See United States Department of Labor, *Comparison of State Unemployment Insurance Laws* Table 401.1 (1996). Thus, an employee-initiated temporary leave should not automatically be invalid under federal law when employees in so many other circumstances are allowed to collect benefits despite their employers playing no role in their separation from work.

Furthermore, the distinction between layoffs initiated by an employer and those initiated by an employee is ambiguous at best. For example, as described above, several states have laws that specifically allow workers to choose to take a lay-off and still qualify for unemployment benefits, as occurs with many layoff schemes authorized by collective bargaining agreements. The cases on this issue also make the point that states have vast discretion to fashion different solutions to the same problem. Compare *Ford Motor Co. v. Ohio Bureau of Employment Services*, 571 N.E.2d 727, 729 (Ohio 1991) (holding that an employee who elects voluntary termination under a plan or policy adopted by the employer to reduce the number of employees due to a lack of work in the employer's overall work force is entitled to unemployment compensation) with *Goewert v. Anheuser Busch, Inc.*, 919 P.2d 106, 111 (Wash. 1996) (holding that early retirement, even after a 10 percent reduction-in-force announcement, constitutes a voluntary quit without cause). The *Ford* case illustrates that a quit is sometimes considered involuntary even where the employee accepts, and even formally initiates, the separation. This demonstrates further that whether an employer or employee initiates a layoff is not the *sine qua non* of an employee's eligibility under federal law for unemployment benefits.

Lastly, it is inappropriate to characterize family and medical leave as always being "initiated" by an employee. In fact, it is unfortunately quite common for employers to coerce workers into taking family leave. For example, this often occurs when pregnant women seek an accommodation to stay on their jobs during the course of their pregnancy rather than go on unpaid family leave. The employer then denies the accommodation and the worker is forced to

⁷(...continued)

unemployment and the employee must return to work upon recall or have his or her UC terminated, and those on family leave, where the individual initiates the unemployment and is unavailable to return to work until the leave ends."

take unpaid family leave or else lose her job. See, e.g., *Harvender v. Norton Co.*, 4 Wage & Hour Cas.2d (BNA) 560 (N.D.N.Y. 1997) (holding that there is no right under FMLA to bring an action against an employer for placing an eligible employee on leave in a case where the employer denied a pregnant worker an accommodation to avoid being exposed to chemicals during her pregnancy and instead placed her on 12 weeks unpaid FMLA leave which ended four months before her due date). Employees take family and medical leave in many, if not most, cases due to circumstances beyond their control. Allowing employees to receive unemployment compensation during such leaves is thus fully consistent with the goals of compensating involuntary unemployment.

B. Query: Under what circumstances is an employee on temporary lay-off with no available work and a definite recall date required to return to work pursuant to federal UI law, and are the employee's obligations under federal UI law any different when the leave is based on the FMLA?⁸

Here, it is necessary to distinguish between what states are permitted to do under federal UI law and what current state laws require under their recall statutes. As described above, many states provide that employees are exempt from work-search requirements if they are on temporary layoff and will be recalled within a certain period of time. In certain circumstances, the recall statutes also allow for the availability requirements to be waived. The rationale for such an exception parallels that justifying the proposed recall bill. See Olga S. Halsey, *Claimants Awaiting Recall - Their Special Problems of Availability and Suitability for Work*, Social Security Bulletin, Oct. 1946, at 13 (evaluating state unemployment laws deeming employees on recall to be unavailable for work and finding that "[t]he practical result for the claimant is a denial of benefits which places economic pressure on him to sever an employment relationship, perhaps of years' standing, which has proved satisfactory to both the worker and his employer."). Such employees clearly need not seek work from other employers during this period or accept an offer of work, even of a vastly better paying job, from another employer.

Despite these very broad state statutory limitations on the availability rules, the question is whether federal law still requires that the workers be available during their layoff to return to work with their existing employer. This question appears to presume that an obligation exists under federal law to require availability in all circumstances. We, of course, take issue with this premise, as described in Section II. Nonetheless, there are indeed precedents in state law allowing workers who refuse suitable work to continue receiving UI benefits. For example, while not specific to the recall situation, the state training laws described above exempted workers in approved training from having to accept an offer of suitable work. See, e.g., *Alaska Department of Labor v. Boucher*, 581 P.2d 660 (Alaska, 1978) (quoting Alaska's 1974 training

⁸ Specifically, the DOL letter dated January 15, 1999, states: "In the case of employer initiated lay-offs, it has always been the Department's position that the individual must be available to return to work with the employer, particularly if the lay-off ends earlier than assumed. We are not aware of any State which does not require this of the individual. There is no similar requirement in the family leave recall proposals, and in fact, the employer is prohibited from recalling the employee for a minimum period."

provision as exempting "workers attending a training or retraining course with the approval of the employment security division or because, while attending the course, he is not available for work or *refuses an offer of work.*" (Emphasis added). The Massachusetts bill, like the state training statutes, simply makes adjustments to its suitable work requirements as permitted by federal law.

The case of *U.S. Steel v. Unemployment. Compensation Bd. of Review*, 389 A.2d 249, 250 (Pa. Cmwlth. 1978), involved a collective bargaining agreement which also allowed the workers to turn down certain offers of suitable work while on recall. In *U.S. Steel*, the court found that a collective bargaining agreement which restricted the employer's ability to recall workers during their vacation period while on an indefinite recall did not disqualify the workers from receiving benefits. The court noted that although the employees were to be deemed available unless they turned down an offer of suitable work, the collective bargaining agreement precluded any offer of suitable work during their vacation period. In holding that the employer's argument that the claimants were "unavailable for suitable work" was not dispositive of the claimants' eligibility for benefits while receiving vacation pay, the Court relied on the "social purposes" of the state's unemployment law. The social purposes behind providing unemployment outweigh the fact that during the vacation period the employees are, in fact, available. 389 A. 2d at 252. Similarly, under the family leave provisions, the goal of partial wage replacement (for a limited set reasons and limited period of time) satisfies the availability criteria.

C. Query: For the purposes of determining availability, is there a relevant distinction between a leave required by law and a leave authorized by the employer?⁹

As the purpose of the Massachusetts legislation is to provide partial wage replacement for reasons that satisfy the criteria of the Family and Medical Leave Act, we believe that it is unnecessary to distinguish between statutorily required leave and employer-provided leave as the defining issue in both is the *reason* for the leave. This is certainly consistent with current Massachusetts unemployment law. Both statutory and case law provide that an individual does not leave employment for disqualifying reasons where the *reason* for leaving is for an "urgent, compelling, and necessitous nature." See Massachusetts General Laws, chapter 151A, § 25(e). It is well-established that this provision includes child care and family responsibilities. *Manias v. Director of Div. of Employment Sec.*, 445 N.E.2d 75 (Mass. 1983).

⁹ The DOL letter states: "We would also appreciate your thoughts on the distinctions between leaves required under family leave laws and leaves merely authorized by employers. Is it your assumption that the fact that the leave is granted under a leave law creates a statutory presumption of availability? If so, how does this carry over into cases where an employer authorizes leave without a statutory requirement to do so?"

D. Query: Does the proposed exemption for workers on family and medical leave effectively eliminate a genuine test of availability under Massachusetts UI law?¹⁰

Massachusetts currently applies a genuine test of availability, and the proposed bill does not interfere with such a test. Federal law permits states to make generalized determinations concerning eligibility disqualifications in the interests of efficiency and administration so long as the unemployment laws target involuntary unemployment. The training and disability precedents in the various states demonstrate that such determinations are acceptable. Massachusetts as well has exercised a great deal of latitude in this area, including adjustments to availability covering training, illness, temporary lay-offs, jury duty, and other selected circumstances.¹¹ Furthermore, the proposed legislation contains such an individualized test. Though the bill itself creates a statutory presumption of availability, this presumption only arises if a variety of individual factors specified in the relevant leave legislation is satisfied (i.e., a worker must qualify for reasons acceptable under the FMLA leave first, which entails an individualized determination of the worker's circumstances).

Finally, it is important to emphasize that the proposed leave bill does not eliminate the state's general availability for work requirement. It leaves the existing structure in place, adjusting it to allow benefits to be granted in particular situations and simply creating time-limited exceptions based on illness or disability and family circumstances.

E. Query: What does federal UI law say specifically about compensation for individuals who are "involuntarily unemployed", defined by DOL to include a "suitable work" requirement?¹²

We have explained and illustrated previously in this memorandum that states are free to define what constitutes "involuntary" unemployment and have adopted broad definitions in a variety of circumstances. The suggestion that federal law requires a suitable work standard in *all circumstances* is not supported by either an explicit statutory mandate or legislative history.

¹⁰ In response to a memorandum written in support of the proposed Vermont law, DOL wrote a letter dated July 17, 1997. The letter restates the memorandum's conclusion ("States have latitude to determine what constitutes availability for work") and continues as follows: "Although this is true, States must still have a genuine test of availability. The Vermont proposal eliminates any test for workers on family leave by substituting a conclusive statutory presumption of availability even where facts demonstrate the individual is unavailable. No examination of the individual's circumstances is made."

¹¹ See Massachusetts General Laws, chapter 151A, §§ 24(c), 30 waiving availability requirements for participation in an approved training program or due to illness; and note 4, *infra*.

¹² In its letter dated January 15, 1999, DOL stated: "Lastly, Federal UC law limits withdrawals from a State's unemployment fund to 'compensation' for 'unemployment.' (Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act and Section 303(a)(5) of the Social Security Act). We believe the legislative history of the original Social Security Act is clear that only involuntary unemployment, that is, where no suitable employment is available, is to be compensated."

As required by the basic rules of statutory construction, it is necessary to rely primarily on the plain language of the statute to determine its legislative intent. The main provisions of the federal law relied on by DOL are Section 3304(a)(4) of FUTA, which states that "all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation," and Section 3306(h) defining "compensation" to mean "cash benefits payable to individuals with respect to unemployment." These limited statutory references to "unemployment" certainly do not rise to the level of a federal mandate preventing the states from waiving their suitable work requirements in selected circumstances. If anything, we believe these references to "unemployment" in the federal law support our position since it is conceded by DOL that states have the authority to define "unemployment" under state law.

Furthermore, it is notable that FUTA alludes to suitable work only once, in Section 3304(a)(5). Consistent with other aspects of federal UI law, Section 3304(a)(5) works to *prevent* states from denying compensation where no suitable work is available, again establishing a floor rather than a ceiling on state benefits. In addition, as discussed earlier, the Murray bill would have imposed specific standards for suitable work upon the states, but this bill was rejected, indicating congressional reluctance to dictate state policy in this field. Relying then on legislative history, DOL quotes from the draft state laws prepared by the Committee on Economic Security. However, as the Committee itself concluded, these provisions were absolutely never intended to constrain the states.¹³

Even if the federal law could be interpreted to impose a suitable work requirement on the states despite this limited statutory authority, nowhere has the case been made that the states must also require all workers to accept suitable work in all circumstances. To be clear, the Massachusetts bill should not be interpreted by DOL to eliminate the state's "suitable work" requirement. Therefore, we believe it is entirely consistent with DOL's interpretation of the federal law. In this sense, the Massachusetts bill is no different from the many other examples

¹³ In its letter to Senator Patrick Leahy, dated July 17, 1997, DOL references provisions of the Committee on Economic Security's original draft of a state unemployment statute as if they were substantive limitations on state legislative discretion. This draft was never enacted. Moreover, even if the draft had been enacted, as the Committee itself points out, these provisions were never intended to constrain the states:

"This draft is merely suggestive and is intended to present some of the various alternatives that may be considered in the drafting of the State unemployment compensation acts. Therefore, it cannot properly be termed a 'model' bill or even a 'recommended' bill. This is in keeping with the policy of the Social Security Board of recognizing that it is the final responsibility and the right of each state to determine for itself just what type of legislation it desires and how it shall be drafted." United States Social Security Board, *Draft Bills for State Unemployment Compensation of Pooled Fund and Employer Reserve Account Types 1* (1937) (quoted in Rubin at 23-4).

Although most states enacted the provisions of the draft bill, they did not do so because they thought the draft was binding. Rather, the enactment of the federal unemployment legislation was such that states had to move extremely quickly and had no alternative but to adopt the federal government's suggestions to assure compliance within the required time. See Raymond C. Atkinson, *The Federal Role in Unemployment Compensation Administration* 30 (1941).

of state legislation that define the contours of what is "involuntary unemployment" and whether an individual must accept all suitable work.

In fact, in Massachusetts as in many other states, the concept of suitability already covers most FMLA situations. For example, Massachusetts law allows a worker to refuse an offer of work for "good cause", which is defined to cover appropriate family circumstances.¹⁴ And the Massachusetts law permits workers to refuse an offer of work that does not meet the State's high standards of "health, safety and morals," which is entirely consistent with the concept of partial wage replacement for individuals on family and medical leave.¹⁵

As described above, there are also selected state laws that allow workers to refuse *any* offer of suitable work. For example, in some states, a worker on temporary lay-off with a definite date of recall has the right to reject any offer of work from another employer, even the most generous offer of employment. The state training exemptions in effect before the 1976 Amendments also allowed workers in approved training to refuse all suitable work. Here too, the Massachusetts bill would still retain its general requirement that UI claimants accept suitable work. In choosing where to draw the line to expand eligibility for a select group of workers, the Massachusetts Legislature would thus be exercising its clear authority under the federal-state UI scheme.

V. The Massachusetts Bill Significantly Advances the Basic Goals of the UI and FMLA Programs

A. States Need Flexibility to Fit Their Particular Unemployment Laws and Labor Policies to Meet the Economic Needs of Their Particular Economy

State discretion over availability standards is appropriate because states have different economic structures, budget surpluses or deficits, and job markets, and they should thus be allowed latitude to design unemployment laws which best serve their individual needs. A state with an unemployment funds surplus and many workers left uncovered when taking leave should be able to decide what scope of unemployment compensation coverage is appropriate. Thus, while DOL should continue to vigilantly guard against new state interpretations of availability

¹⁴ *Conlon v. Director of Div of Employment Sec.*, 413 N.E.2d 727 (Mass. 1980) (holding that good cause for the refusal of "suitable work" under Massachusetts law includes the refusal of work to the day shift in order to permit a claimant to fulfill her responsibilities to her children.)

¹⁵ See Massachusetts General Laws chapter 151A, §25(c); see also: *Carney Hospital v. Director of the Div of Employment Sec.*, 414 N.E. 2d 1007 (Mass. 1981) (holding as sufficient to overturn a disqualification of benefits that an employee had a reasonable belief that a severe skin infection was caused by the work environment; the claimant did not have to prove that this was in fact the case.)

laws that lower the floor,¹⁶ expansions of UI eligibility should be encouraged as recognized by the Social Security Board. United States Social Security Board, *The Federal-State Program for Unemployment Compensation* 5, 9 (1936) ("It is desirable that a State law should be at least as broad in its coverage as the Federal act . . . The State may, of course, go further and adopt a wider coverage.")¹⁷

Part of the rationale for implementing a federal-state unemployment compensation system rather than a completely federalized system was to encourage state experimentation with various compensation systems so that various methods could be tried and tested. In President Roosevelt's message to Congress during the SSA floor debates, he explained: "We believe, further, that the Federal act should require high administrative standards, but should leave wide latitude to the States in other respects, as we deem varied experience necessary within particular provisions in unemployment compensation laws in order to conclude what types are most practicable in this country." 79 Cong. Rec. 546 (1935).

Murray A. Rubin, former chief of the Division of Program Policy and Legislation of the Labor Department's former Bureau of Employment Security, offers the following observations based on his 29 years of government service: "An important advantage of a dual system was that it permitted wide latitude for experimentation by the states, needed because of the nation's lack of experience with unemployment insurance at the time. In the process, mistakes made by individual states could be confined within the boundaries of those states, while successful measures could be adopted and shared elsewhere." Rubin at 13. The benefits of such experimentation are great, and the costs are borne only by the experimenting states. Indeed, "[t]he entire unemployment insurance system would not be damaged if ideas which are tried out in individual states do not work." Haber & Murray at 441.

Massachusetts unemployment compensation law, which has as its statutory purpose "to lighten the burden on the worker and his family," exemplifies the beneficial result of permitting state experimentation in order to best serve the needs of unemployed workers. Massachusetts General Laws, chapter 151A, §74. Not only does Massachusetts law provide for the longest duration of benefits (30 weeks) and one of the most generous amounts (currently \$402 a week, plus a potential addition of \$200 in dependency allowance), it has long provided benefits for

¹⁶ See, e.g., Letter from Larry Heasty, Regional Director, U.S. Department of Labor, Employment Services and Unemployment Service to Videna Crosley, Director, State of Oregon, Employment Department, dated September 25, 1998 (correspondence discussing the legality of restrictions on UI under the state's JOBS Plus program); Unemployment Insurance Program Letter 41-98, dated August 17, 1998 (describing the minimum federal standards under which a claimant shall be denied UI for refusing to accept new work under Section 304(a)(5)(B)).

¹⁷ The Social Security Board held this view during the formative years of unemployment legislation. In its first annual report, the Board noted that "[t]he several State laws reflect the needs of a particular State, the manner of administering other labor laws within a State, the character of State government, and the demands of local public opinion." United States Social Security Board, *Annual Report* 44 (1936). That same year, the Board also explained that "[t]he State may enact the type of law which it judges best designed for the local conditions within the State." United States Social Security Board, *Functions and Progress of the Social Security Board* 36 (1936).

leaving for non-work connected reasons, including domestic responsibilities. Individuals are not only exempt from availability requirements while participating in approved training, but up to an additional eighteen times the weekly benefit amount are available for continued participation in training. Massachusetts General Laws, chapter 151A, § 30(c).

Although many states have closed offices for intake of claims, recently enacted state law requires that regional offices remain open and that multilingual orientations and forms are provided to facilitate access to newcomers. Massachusetts General Laws, c. 151A, §62A. In addition, interpreters are provided at no cost to claimants for all unemployment hearings concerning eligibility for benefits. Eligibility and higher benefits for low-wage workers is assured by both requiring a movable base period, and by including the most recent earnings in the calculation of the weekly benefit amount if the result is a 10% or greater amount. See Massachusetts General Laws, chapter 151A, §§ 1(a), 24(b), 25(e), 30. Benefits are provided to workers who reduce hours to preserve jobs through worksharing¹⁸ and benefits are also provided to workers who reduce their hours because of new or worsening disabilities. Massachusetts General Laws, chapter 151A, §29D; 430 Code of Massachusetts Regulations 4.45 (4/5/96).

Massachusetts is also the only state to provide health insurance benefits for unemployed workers and their families through a modest tax on employers. Massachusetts General Laws, chapter 151A, § 14G(j). Although the medical security plan is paid for out of a separate trust fund, it is administered by the Massachusetts Division of Employment Security as a needs based program of COBRA continuation benefits or direct coverage available to those families with an unemployed worker whose income is 400% or less of the federal poverty guidelines. And most recently, a portion of the employer tax was diverted to provide incumbent worker training targeted to low-wage, low-skilled workers. Massachusetts General Laws chapter 29, § 2RR; 430 CMR § 8.01 *et seq.* These numerous provisions, like the proposed benefits for family and medical leave further the purpose of the Massachusetts law to benefit "the worker and his family."

Experimental programmatic additions to the Massachusetts unemployment scheme are possible due to the solvency of the Massachusetts unemployment trust fund. Currently, the Massachusetts Trust Fund has a balance of \$1.694 billion. According to John King, Deputy Director of the Massachusetts Division of Employment and Training, this balance "represents far and away the largest balance the Fund has ever attained. Reserves are now large enough, even after excluding all anticipated 1999 contribution income, to pay benefits for twenty-nine months at current levels of unemployment and for more than one year at a severe recessionary level."¹⁹ This is precisely the time for the state to expand its efforts to help workers during times of difficulty. The trust fund is solvent, yet at the same time, there are sobering statistics that the

¹⁸ The administration is currently proposing providing lump sum unemployment benefits to individuals seeking self-employment. See Massachusetts House Bill No. 590 (filed 12/2/98).

¹⁹ Letter to Monica Halas, Greater Boston Legal Services, from John A. King, Deputy Director of Massachusetts Division of Employment and Training dated February 17, 1999.

Massachusetts boom economy has not reached all its citizens, particularly low wage workers. Added to this fact is the impact of the state's two-year time limit on welfare which means that many working poor heads of households will no longer be able to rely on public assistance when they are forced to take an unpaid leave. All of these factors, unique to the state, are best resolved at the state level where the needs of workers can be evaluated in the context of the particular state's economic condition.

The case for experimentation is particularly strong as applied to the proposed recall bill. The FMLA is a fairly recent federal enactment, and even more recent are findings that the FMLA's benefits are not enjoyed by a substantial number of the citizens the Act targets.²⁰ The proposed Massachusetts bill is an ideal opportunity to test a creative and innovative means for implementing the letter and spirit of the federal mandate. Just as Massachusetts was on the cutting edge as the first state to consider unemployment legislation in 1916, its willingness to consider such a bold modification constitutes exactly the type of experimentation that the federal-state scheme is designed to encourage.

B. The Proposed Legislation Furthers Important Federal Policies And Promotes The Exercise Of Federal Rights.

Extending unemployment compensation to workers on unpaid leave promotes stability in employment and strengthens the national economy, two key policy objectives of the unemployment system, since workers are able to return to work rather than be forced to search for new jobs. See Advisory Council on Unemployment Compensation, *Defining Federal and State Roles in Unemployment Insurance* 27. The policy underlying such legislation parallels the justification for defining availability to account for workers on recall status. The proposed recall bill effectively creates less unemployment by allowing workers to keep their jobs while on leave

²⁰ Other states are also attempting to pick up where the FMLA left off. For example, under proposed legislation introduced in Vermont, individuals who are eligible for leave under Vermont state law, as well as individuals who work for smaller employers who are not required to give leave who intend to return to employment within the timeframe of the leave are eligible for unemployment benefits. See Vermont Senate Bill 179. The statement of purpose which addresses the critical need to provide unemployment benefits for family and medical leave provides:

"The General Assembly finds that many low wage employees, those most in need of the protection of family leave laws, are least able to afford to take time from work without pay. These employees effectively are presented with the Hobson's choice of either taking unpaid leave from work for the birth of a child or the illness of themselves or a family member or having enough employment income to pay for basic necessities of life. Therefore, it is the purpose of this act to provide a real choice for these employees by making unemployment compensation available to those for whom family and parental leave has been merely an illusory right."

Under legislation proposed in the state of Maryland, an individual who voluntarily leaves employment immediately following the birth or adoption of a child has good cause for leaving and is deemed to be in compliance with availability requirements. See Maryland House Bill 1124. The State of Washington has pending legislation to qualify for unemployment those individuals who leave to care for a newborn child under one month old and who request reemployment at the end of the leave. See Washington House Bill 2074.

and less hardship on those separated from work when necessary to care for themselves or their families.

Furthermore, any doubts as to whether the proposed recall bill complies with federal law should be resolved in favor of the legislation's validity since the bill facilitates the exercise of federally-created rights. The bill is premised on findings that most workers are unable to take advantage of leave available under FMLA since it is currently unpaid and since it applies only to companies of 50 employees or more (a concern which the administration has most recently highlighted). The bill does not create an impediment to any federal right; to the contrary, it removes an obstacle to its exercise, by providing limited compensation to allow medium and low income workers to be able to enjoy family and medical leave as much as higher-income workers. Congress apparently contemplated such state legislation when it included a non-preemption provision in the FMLA. See 29 U.S.C. § 2651 (expressly permitting states to provide more protective family and medical leave guarantees, but not less, than that provided by FMLA).

A bipartisan congressional commission reached the same conclusion. According to the Commission on Family and Medical Leave, established by Congress to study the impact of the FMLA, the major reason why employees in FMLA-covered businesses do not take FMLA leave is that they cannot afford to do so. To make it possible for such workers to take needed leave, the Commission recommended that consideration be given to a uniform system of wage replacement. Specifically, the Commission suggested that states extend unemployment compensation qualifications to employees on family and medical leave. See Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* 199 (1996).²¹

Finally, the approach to availability that we suggest is not without precedent, as other states have carved out similar exceptions based on identical policy considerations. For example, in *Missouri Division of Employment Security v. Jones*, 679 S.W.2d 413, 415 (Mo. App. Ct. 1984), the claimant conceded that she was unable to work for a week due to the sickness and death of her mother. However, the court nonetheless awarded benefits, explaining that "[t]he meaning of 'available for work' varies, depending on the circumstances of each case," and holding that the availability requirement "do[es] not apply when a claimant is not available for work due to an unfortunate family emergency beyond her control. Any other result would be inconsistent with the policy of the Missouri Employment Security Law . . ." *Id.*

²¹ Specifically, the Commission recommended that "States should consider voluntarily extending unemployment compensation qualifications to employees on family and medical leave . . ." Commission on Family and Medical Leave, *A Workable Balance: Report to Congress on Family and Medical Leave Policies* 199 (1996). In its letter to Senator Leahy, dated July 17, 1997, DOL narrowly interprets the Commission's statement to cover only those situations in which a worker takes family and medical leave but remains available to accept work and where the individual quits work for family or medical circumstances (i.e., the situation where an individual is most likely separated from the job and is no longer eligible for FMLA leave).

VI. Conclusion

Based on the research described above, we conclude that the Massachusetts bill is consistent in all respects with the broad discretion to fashion state laws guaranteed under federal UI law and with past precedents in state UI laws. We also believe that the state family leave bills are consistent with DOL's interpretation of the federal UI law. The proposed laws retain a genuine test of availability, as required by DOL, but allow for exceptions in particular circumstances just as the states have routinely done in other areas of UI eligibility. We therefore look forward to a continuation of the dialogue, informed by this most recent research, to address DOL's remaining concerns and to modify the Massachusetts proposal if necessary.

 JACK J. LEAHY
VERMONT

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
AGRICULTURE, NUTRITION,
AND FORESTRY
APPROPRIATIONS
JUDICIARY

TO: Ms. Nicole Rabner
OF: WH Domestic Policy Office
FROM: Senator Leahy
OF: attn. Alison Pease 204-2414

DATE: 4/29/99

TIME: 3:15

3

PAGES (INCLUDING COVER SHEET)

Dear Ms. Rabner,

It has been brought to our attention that you are working with DOL on a FMLA and unemployment compensation issue. Senator Leahy asked me to fax you a copy of his letter to Secretary Herman in support of allowing states the flexibility to use unemployment compensation for FMLA.

Please call me if you have any questions.

Alison Pease
204-2414

PATRICK LEAHY
VERMONT

COMMITTEES:
AGRICULTURE, NUTRITION, AND
FORESTRY
APPROPRIATIONS
JUDICIARY

United States Senate

WASHINGTON, DC 20510-4502

April 12, 1999

The Honorable Alexis Herman
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Herman:

In 1997, I wrote to then-Acting Secretary Metzler about the DOL interpretation of a Vermont bill which would have extended unemployment compensation benefits to workers who qualify for coverage under the State family and medical leave law. I am writing to you again because I am concerned that the DOL is inhibiting the States from meeting the needs of an evolving labor market.

Currently, Vermont and several other states, including Washington, Massachusetts, and Maryland, have proposed initiatives to promote unemployment compensation reform to better serve women and working families and to address the limitations of the Family and Medical Leave Act. The cornerstone of this reform would allow states to use unemployment compensation to provide some financial assistance to employees on family and medical leave. When I initially wrote to Acting Secretary Metzler, Vermont was the first state in the nation to propose such an innovative approach to assisting those Vermonters who could least afford to take family and medical leave.

At the beginning of his administration, President Clinton signed into law the Family and Medical Leave Act of 1993. This landmark legislation allows employees at companies with more than 50 employees to take up to 12 weeks of unpaid leave for childbirth or adoption, or because of sickness of the employee or family member. However, this law benefits only the privileged few who can afford to take unpaid leave. Many Vermonters, who would otherwise be eligible for family and medical leave, are unable to enjoy this benefit simply because they cannot afford it. I believe that we need to do more to help these employees and their families.

As you review the Department's policies in this area, I encourage you to allow states the flexibility to try this innovative approach to family and medical leave. Federal unemployment law was designed to give the states significant discretion in determining eligibility and coverage for benefits. I believe that allowing the State of Vermont to make decisions on the use of the trust fund's abundant reserves is in compliance with the Federal Unemployment Tax Act.

Page Two
Secretary Herman
April 12, 1999

Giving states the flexibility to provide unemployment compensation benefits for employees on family leave would strengthen the Administration's commitment to working families and it would extend family and medical leave benefits to many Vermonters who would otherwise be unable to afford it.

Sincerely,

A handwritten signature in cursive script, reading "Patrick Leahy".

PATRICK LEAHY
United States Senator



U.S. SENATOR PATTY MURRAY
WASHINGTON

COMMITTEES

Appropriations
Labor and Human Resources
Budget
Veterans Affairs

Date: 5-13-99

To: Nicole Rabner

202-456-2878

From: Barbara Greene

Number of Pages (including cover sheet): 3

Message: Please see attached letter from
Sen. Murray on FMLA issue.
I can be reached in our Seattle
office, or contact Greg Williamson
in our DC office with questions.

2988 Jackson Federal Bldg.
915 Second Avenue
Seattle, WA 98174
(206)553-5545 phone
(206)553-0891 fax

PATTY MURRAY
WASHINGTON

COMMITTEES
APPROPRIATIONS
BUDGET
LABOR AND HUMAN RESOURCES
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510-4704

April 8, 1999

The Honorable Alexis Herman
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington D.C. 20210

Dear Sec. Herman,

I am writing regarding legislation that has been introduced in Washington and other states (Massachusetts, Vermont, and Maryland) to provide for partially paid family and medical leave by expanding the state's unemployment insurance program to cover workers in these situations.

I understand that the Department is in the process of reviewing its policy in this area to determine whether federal law would interfere with the states' traditional discretion to determine unemployment insurance eligibility. I have reviewed the detailed correspondence between the Department and Massachusetts contingent on this issue. Based on my review, I believe that the legislative history of the federal UI law is clear that it is within the purview of the states to define issues of eligibility, including whether individuals on family leave are "available" for work and eligible for UI.

As you know, I have long been involved in the efforts to provide families with assistance in balancing the demands of work with the responsibilities of family. The Washington bill and the other state initiatives offer critical benefits to their citizens as well as a valuable opportunity to experiment in the area of paid leave. I believe the Family Medical Leave Act of 1993, as key as it is to many workers and their families, does not meet the needs of all workers, particularly those at the lower income level. I am committed to finding solutions to this problem to allow all working families to be able to take family leave.

I am excited that so many states are in the process of considering how best to meet this challenge. While states are exploring different mechanisms, in many instances the expansion of the state unemployment insurance systems offers the most viable and affordable approach. It is also consistent with the goals of the unemployment compensation system to stabilize employment and evolve to meet the changing needs of the labor market. I believe that this state experimentation is well within Congress' intent to assist working Americans stay in the workforce through temporary unemployment insurance.

2930 WFTMORE AVENUE
SUITE 903
EVERETT, WA 98201 4107
(425) 259-6515

2988 JACKSON FEDERAL BUILDING
915 2ND AVENUE
SEATTLE, WA 98174-1003
(206) 553-5545

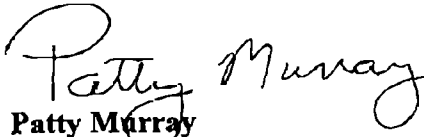
W. 601 1ST AVENUE
SUITE 500
SPOKANE, WA 99201-3817
(509) 624-9515

140 FEDERAL BUILDING
500 W. 12TH STREET
VANCOUVER, WA 98660-2871
(360) 696-7797

402 E. YAKIMA AVENUE
SUITE 390
YAKIMA, WA 98901 2700
(509) 453-7482

I hope that your policy review will ultimately allow for state innovation in this key area. I believe it is justified by the law as well as our shared commitment to assisting working families.

Sincerely,


Patty Murray
United States Senator

FAMILIES AND THE LABOR MARKET, 1969-1999:

ANALYZING THE “TIME CRUNCH”

MAY 1999

**A Report by the
Council of Economic Advisers**

EXECUTIVE SUMMARY

The American family has experienced dramatic changes over the last three decades – changes in the amount of time parents work for pay; changes in income and who earns it; changes in family size; and changes in how child care and household tasks are accomplished. This report assesses some of these changes and the challenges they create. The report seeks to further our national discussion concerning balancing work and family and to encourage a discussion of policies that could help strengthen American families. The major conclusions of the report include:

- **Increase in Hours Worked.** The hours American parents work in paid jobs have increased enormously since 1969 due to a dramatic shift of mothers' time from the household to the labor market. In 1969, 38 percent of married mothers worked for pay; in 1996, 68 percent did so. Both married mothers and single parents are working more for pay today than 30 years ago.
- **Reductions in Time Available for Children.** Although the evidence on time use within families is limited and needs further study, the increase in work from 1969 to 1996 has produced a reduction in the time available for parents to spend with children. The increase in hours mothers spend in paid work, combined with the shift toward single-parent families, resulted in families on average experiencing a decrease of 22 hours a week (14 percent) in parental time available outside of paid work that they could spend with their children.
- **Burdens on Women.** Virtually all of the increase in total hours families spend on paid work has come from increases in women's hours. While annual hours of paid work by all wives increased greatly – by 576 hours, or 93 percent – husbands' hours of paid work decreased slightly from 1969 to 1996. The "time crunch" falls heavily on employed women who spend over one third less time on child care and household tasks than women without paid jobs, but still have 25 to 30 percent less free time.
- **Changes in Family Income.** The average American family is better off economically today than in 1969. Not everyone has gained by working harder, however. Since 1969, the top quarter of families gained, while the lower quarter lost and the middle has remained nearly constant in per capita income, adjusted for inflation. The situation of lower-income families has been improving, however, in the strong economic expansion of the 1990s.
- **Rise of the Single Parent.** At the same time, the share of families with a single parent has expanded greatly since 1969. Single parents have half as much total time as two parents have and typically have less than half as much potential income. The rising number of single parents has increased the proportion of families that are "cash-strapped" and "time-poor."
- **Need for Policies to Help Families.** Increased time in market work among parents raises a key set of challenges to policy-makers seeking to help promote strong families, including – the need for flexibility in paid work hours, the need for available and affordable child care, the need for effective ways to support the earnings of families with low-wage earning parents, and the need to encourage two-parent families to form and stay together.

I. INTRODUCTION

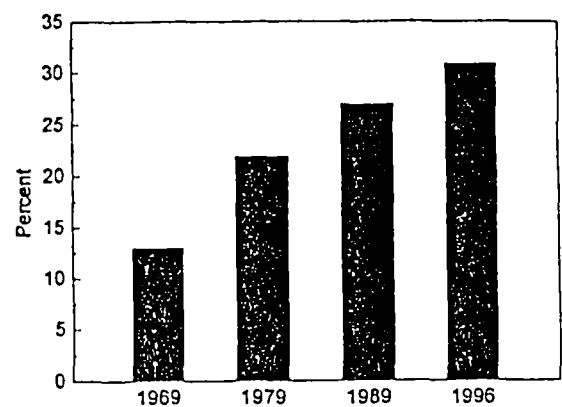
Dramatic changes have occurred over the last thirty years in how families combine work and family life. Clearly one of the most significant changes in the last three decades is the increasing amount of time women have devoted to market work – work that is performed for wages. Combined with hourly earnings increases among women, this means women's earnings have gone up substantially, while their time available in the home has declined. In contrast, men's average hours of paid work and earnings have remained relatively stable. As a result, families have higher incomes, but they have less time for other activities. In short, American families have been in the midst of change – change in time worked for pay; change in income and by whom it is earned; change in family size; and change in how child care and household tasks are accomplished. This report assesses these changes since 1969 for families with children under age 18.

Two other important trends in family life are also likely to affect the well-being of families with children, occurring along with changes in their income and time allocations. First, the share of families with children that are headed by a single parent has increased significantly (see figure 1). Since single parents typically have both lower incomes *and* less total adult time available for work in the home than married-couple families, this trend tends to increase the proportion of families who are “cash-strapped” and “time poor.” Second, families have decreased in size as the average number of children in families with children has declined (see figure 2).

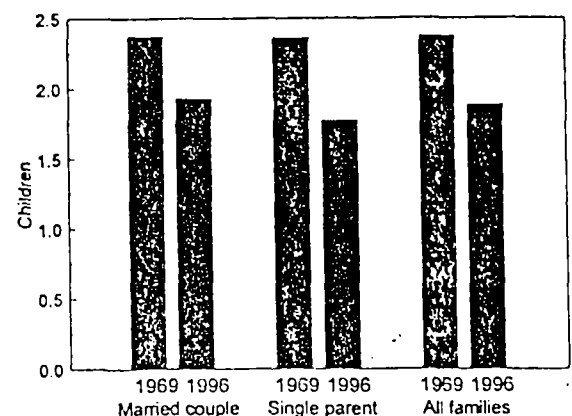
This paper will examine how families with children are faring in the face of all these changes. Key questions to be addressed include:

- How much have hours of market work increased for families?
- How have the extra hours worked by families affected family incomes? How have these trends differentially affected families that differ in skill level, minority status, and number of parents in the household?
- How have these changes in market work and income affected how families use their time in the home? In particular, how have these changes affected parental time available for children?

1. Single Parent Families as Share of All Families



2. Average Number of Children per Family



Some have argued that Americans are facing more and more of a "time bind" as they work longer and longer hours in order to attain an increasing standard of living.¹ Others have argued that, even with increases in hours of paid work, families are not realizing significant income gains, or that families are working harder and harder "just to stay in the same place."² No such "one size fits all" characterization adequately captures the variety of experience in different segments of the population. Different types of families have experienced different changes in paid work time and income.

II. ECONOMIC OVERVIEW

In general, we find that parents today are spending more time in paid work and have increased resources available to them. For most groups, family income has increased and family size is smaller. The average American child – particularly if he or she is living in a family headed by a married couple – is better off economically today than in 1969.

There are some groups for whom the economic picture is not as rosy. The continuing increase in the share of children living in single-parent families has substantially diminished the economic progress that families with children would otherwise have made, limiting both their income and their time. Less-educated parents, who have not experienced the wage gains of other parents, are working more hours without a commensurate increase in income. It is encouraging to note, however, that most of these families have experienced income gains in recent years during the strong economic expansion of the 1990s, making it somewhat easier for them to combine work and family life effectively.

Underlying and reinforcing the trends toward more paid work time and smaller families has been the long-term growth of women's wages. Rising wages pull women into the labor market by making it more expensive for them to stay at home, in terms of foregone income. Higher wage levels for women in the labor market, combined with changes in social attitudes toward market work among women, have dramatically changed participation rates among women in the labor force since 1969. There is little indication that this pattern will be substantially reversed in the near future.

¹ Hochschild (1997); Schor (1991).

² Bluestone and Rose (1997).

III. TRENDS IN HOURS OF MARKET WORK

The most dramatic change in the time allocation of families has been in time spent at work for pay. Since 1969, both married-couple and single-parent families have substantially increased their annual hours of paid work. These increases have come almost entirely from the women in these families, who are working more outside the home – more weeks in the year and more hours in the week – than they did thirty years ago. However, while the increase in paid work time has been widespread, the size of the increase has varied considerably across families, depending on the number of parents, their education, whether they have a preschool-age child, and their race or ethnicity.

The estimates of annual hours of work presented in this section are based on the March Current Population Survey (CPS), a large representative survey of about 50,000 households each year.³ While the CPS is the only large-scale representative sample which consistently measures hours of work and family incomes on an annual basis and is therefore the standard data set used for labor market analyses, some have argued that the CPS may be inaccurate because individuals may not be able to recall accurately their usual hours of work during the last year.⁴ In section V of this report we discuss alternative estimates of paid work time based upon “time diaries,” which require individuals to maintain detailed accounts of how they spent their time during a day.

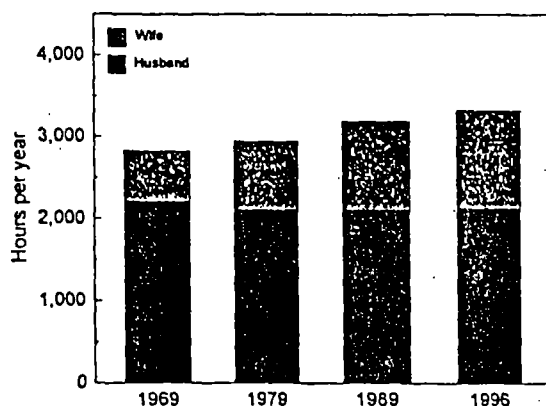
For this analysis, we use the same definition of a “family” as the Census Bureau: all related individuals living together in the same household. We restrict the analysis to families whose head is at least eighteen years old and where there is a child under age 18. A mother (or couple) and her (their) children living in a household headed by another family member are part of the head’s family, and an unmarried parent co-habiting with a domestic partner is classified as a single parent. Throughout this paper, unless otherwise specified, the terms “husbands,” “wives,” and “married women” refer only to those with children.

As shown in figures 3 and 4, annual hours of paid work have increased substantially for both married-couple and single-parent families. (All families with children under 18 are included in figures 3 through 6, including parents with zero hours of paid work.) A person who works forty hours a week for 50 weeks a year (a traditional “full-time” job) will work 2,000 hours in a year. For two-parent families (figure 3) annual hours of paid work increased by 497 hours (18 percent) from 1969 to 1996; for single-parent households (figure 4) they increased by 297 hours (28 percent).

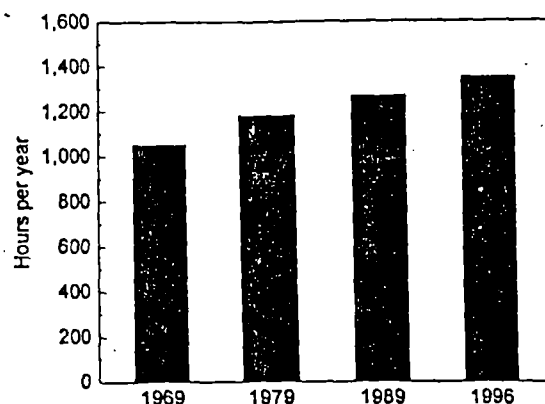
³ We are using the March 1970, 1980, 1990, and 1997 CPS data sets. The data collected each March refer to the previous calendar year. Thus we refer to data for 1969, 1979, 1989, and 1996. We chose those years because they represent peak years (or upswing, in 1996) in the business cycle and thus permit valid historical comparisons. For 1979, 1989, and 1996, information on annual hours of work was derived from two questions which ask how many weeks each individual worked in the previous year and how many hours they “usually worked” in the weeks they worked. Multiplying weeks worked by usual hours worked per week provides a measure of annual hours of work. The 1969 data are not strictly comparable to later years due to differences in data reporting. We have developed an imputation procedure to make these data more comparable to information in later years.

⁴ Juster and Stafford (1991); Robinson and Godbey (1997), chapter 4.

3. Annual Hours of Work, Married-Couple Families



4. Annual Hours of Work by Single Parents



Virtually all of the increase in families' hours of market work has come from increases in women's hours. Conceptually, the increase in women's hours can be divided into three components: more women are employed, employed women are working more hours per week, and employed women are working more weeks per year.

The most dramatic change has been in the percentage of women employed. In 1969, 38 percent of married women with children worked for pay, while in 1996, 68 percent did so – a 79 percent increase in employment. The increase in employment for single mothers has been less dramatic: 53 percent worked for pay in 1969 and 66 percent in 1996.

Average annual hours worked by those who worked for pay also increased over time, showing that not all of the increase in hours came simply from more women entering the labor force. This increase was much greater for wives (who experienced a 24 percent increase) than for single parents (who experienced an 8 percent increase). This is not surprising since on average, single parents in 1969 worked more hours per year for pay than wives did in 1996. Both hours worked per week and weeks worked per year increased for wives and single parents, among those who worked for pay. Each of these components of annual hours, like the total, increased more for wives than for single parents. Increases in weeks worked per year were more dramatic than increases in hours worked per week.

While annual hours of paid work by all wives increased greatly – by 576 hours, or 93 percent – husbands' hours of paid work decreased slightly from 1969 to 1996. This is the result of husbands working both slightly fewer weeks per year and hours per week. These trends are consistent with estimates reported elsewhere in the literature, based on a variety of data sources.⁵

The increase in families' hours of paid work has been widespread throughout the population. All types of families – whether defined by the head's education level, spouse's education level,

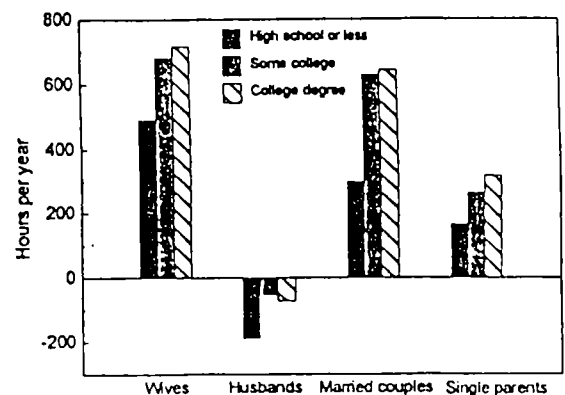
⁵ Ellwood (1998), Rones, Ilg and Gardner (1997) and Leete and Schor (1994) used CPS data, Bluestone and Rose (1997) used data from the Panel Study of Income Dynamics, and McGrattan and Rogerson (1998) used decennial Census data. All of these studies show increases in hours of work for women and decreasing or stable hours of work for men when nonemployment is taken into account.

presence of young children, or race or ethnicity of the household head – have experienced substantial increases in hours of paid work from 1969 to 1996. In virtually every case, the increase in family hours of paid work reflects increases by wives and by single parents, rather than by husbands.

While the basic trends have been similar, the magnitude of the increase in hours of paid work has differed substantially across different demographic groups. In part, this is because some groups, such as women with preschool-age children, had lower hours to start with and therefore more room for expansion than others.

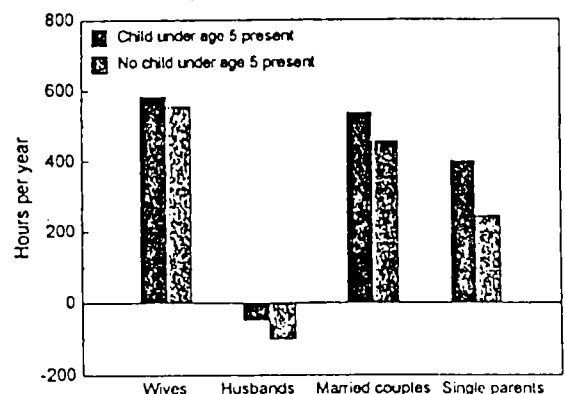
- *Families whose head had gone to college have increased their hours of paid work much more than those whose head had less education (see figure 5).* For married couples with a college-educated husband, annual hours of paid work increased by 644 hours (23 percent) – more than twice the increase for couples in which the husband had a high school diploma or less. The difference was due to the wives' hours increasing more and the husbands' hours decreasing less in the college-educated families. For single parents with a college degree, hours of paid work increased by 320 hours (20 percent), compared to 165 hours (16 percent) for single parents with a high school diploma or less.

5. Change in Annual Hours Worked, 1969-96
by Education Level of Head of Household



- *Families with a young child increased their hours of paid work more than those with only school-age children (see figure 6).* For single parents with a child under age five, hours of paid work increased by 400 hours (50 percent), compared to 246 hours (21 percent) for single parents without a young child. For married couples, hours of paid work increased by 537 hours (20 percent) for families with a child under age five, compared to 457 hours (15 percent) for families without a young child.

6. Change in Annual Hours Worked, 1969-96
by Presence of Child Under Age 5



Why have parents changed their hours of paid work? Trends in wages and trends in paid work hours influence each other. Rising wages tend to draw more individuals into the labor force, while falling wages tend to reduce participation. In turn, more work experience leads to faster wage growth, and vice versa. As a result, wages and paid work time tend to move up or down together.

Trends in hours of paid work for both men and women have roughly paralleled the trends in their wages since 1969 (discussed in section IV-A below).⁶ However, the magnitudes of the changes in paid work time are still not completely understood, and are not easily explained by changes in key economic variables.⁷ The increases in paid work among women seem to be more closely related to increases in their own wages than to the changes in their husband's wages over this period.⁸ Increased work among women may be affected by such hard-to-measure factors as changes in assumptions about women's role in the family, diminished discrimination against women in the workplace, or falling barriers to women entering non-traditional occupations. Highly educated women have benefited more from diminished discrimination than have women with less education, as higher-level professional and management jobs have opened up to them. Whatever the reason, large increases in market work hours among women have substantially changed the time allocation and income of families.

IV. TRENDS IN FAMILY INCOME

The upward trend in hours of market work raises questions about trends in family well-being. A family's economic well-being is typically measured by its income. Earnings are the largest part of family income, which also includes transfer payments such as welfare and unemployment insurance, interest, dividends, and other unearned income such as child support. Earnings come from wages and/or salary, plus any overtime, tips, or commissions. Rising work hours should lead to rising incomes, but the magnitude of this effect depends on changes in wages and other income sources that might be occurring at the same time.

A. Wages

During the same period in which women's hours of paid work have increased, inflation-adjusted wages have been increasing for women on average. Female college graduates' wages have risen more than wages among the less educated. In fact, female high school dropouts' wages have stagnated or even declined slightly. Men's wages have grown very little on average. They have fallen for men without college degrees and remained virtually constant for men with at least a BA.⁹ Because fringe benefits have grown since 1969, workers' hourly compensation (including the value of fringe benefits) has improved more than their wages alone.

⁶ Blank (1997), chapter 3; Juhn and Murphy (1997).

⁷ Blau (1998); Danziger and Reed (1997).

⁸ Juhn and Murphy (1997).

⁹ Blau (1998). These are the trends in mean weekly earnings of full-time workers aged 25-64. Other wage measures such as average hourly earnings or median weekly earnings show slightly different trends, but all show a similar relationship between education levels.

As we discussed above, these wage changes are positively related to changes in hours of work. More educated women have shown the largest increase in their market work, and their earnings have gone up even faster as wages and hours of work rose together. Less educated men have experienced both declining wages and declining hours of work, leading to earnings reductions.

B. Total Family Income

Putting the trends in wages and hours together, to what extent have increases in hours of paid work within families translated into increases in family income? To answer this question, we present estimates of average family incomes, by income component, to provide one assessment of how the changes in hours have affected the standard of living of families in the United States.¹⁰ Our income measure is based upon before-tax cash income only, including cash benefits such as welfare and unemployment insurance benefits, and does not include other family resources, such as fringe benefits, food stamps, and the Earned Income Tax Credit (EITC). While these other resources and taxes are important, they are difficult to measure accurately or consistently for individual families. Because food stamp use grew rapidly in the 1970s and the EITC expanded greatly in the 1990s, the income measure we use omits more of the resources available to low-income families today than in the 1960s. Our estimates therefore understate the gains made by low-income families since 1969.¹¹

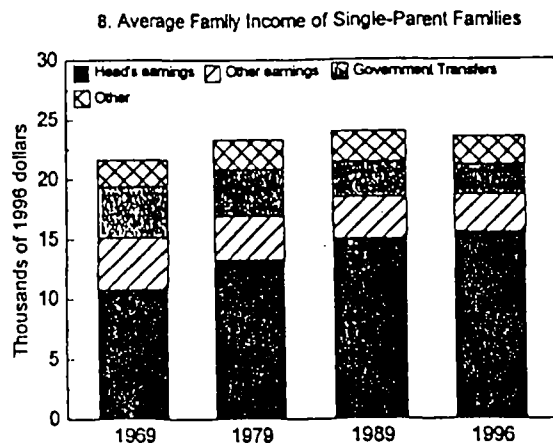
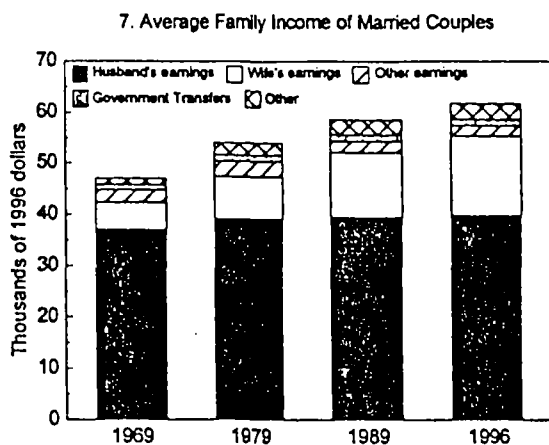
1. Trends in Income by Family Structure

Trends in income and in the various components of income (earnings, government transfers, other sources of income) have varied across different types of families.¹² Both married-couple families and single-parent families achieved increases in inflation-adjusted income from 1969 to 1996 (see figures 7 and 8). However, even though single parents had substantially higher rates of growth in paid work hours, married-couple families experienced a much larger average increase in income.

¹⁰ To adjust for changes in prices over time, these estimates use the CPI-U-X1 price index measure. The CPI-U-X1, an alternative to the CPI-U (Consumer Price Index for Urban Consumers), uses the rental equivalence approach to improve the treatment of home ownership costs.

¹¹ For estimates of changes in family incomes using a broader definition of income, see Levy (1996).

¹² Throughout the following analysis we use mean (that is, average) income, rather than the median or another indicator of the distribution. Changes in mean income can be decomposed into changes in means of the components of income, whereas changes in the median cannot. There has been a more positive change in mean income than in median income, as disproportionate growth in the upper tail of the income distribution pulls up the mean without affecting the median. We multiplied topcoded values by 1.45 before taking the means of the distributions so that the means would not be underestimated.



- *The incomes of married-couple families increased by more than their increase in paid work time. Their average family income increased by almost a third from 1969 to 1996 (\$14,800 in 1996 dollars), while their annual hours of paid work increased by less than a fifth.*
- *For single-parent families, incomes increased by much less than paid work time. They also increased much less than the incomes of married-couple families over this period, after adjusting for inflation. Average income of single-parent families increased by less than ten percent (\$1,920 in 1996 dollars) from 1969 to 1996, while their paid work hours increased by more than a quarter.*

Increases in the earnings of wives and single parents generated most of the income growth from 1969 to 1996. Single parents' earnings increased more than their total family incomes did, as earnings increases were offset by a forty percent decline in average government cash transfer payments. For two-parent families, increases in the wives' earnings represented two thirds of the increase in family income, with the remainder attributable to an increase in the husbands' earnings and an increase in unearned income from sources other than government transfer payments.

Among both wives and single parents, increased earnings reflect an increase in hours of work and an increase in hourly earnings rates. Rising earnings among wives reflected a startling 93 percent increase in their hours and a 52 percent increase in their earnings per hour. For single parents, hours of work increased by 28 percent, while hourly earnings increased by 17 percent.

2. Trends in Income by Other Demographic Characteristics

As with hours of paid work, trends in average family incomes differ substantially across groups of families classified by education, race or ethnicity, or presence of young children. Income growth has been greater for families whose head is highly skilled, for families headed by a non-Hispanic person, and for families with preschool-age children.

- *More highly educated families had greater income growth from 1969 to 1996.* Married couples' income grew by almost a third if the husband had a college education, but less than ten percent if the husband had a high school diploma or less. For single parents, inflation-adjusted incomes grew by eight percent if they had a college degree, but incomes fell by four percent for single parents with a high school diploma or less. Much of this difference in income growth reflects larger hours increases for highly skilled wives and single parents, and earnings declines for low skilled husbands. Erosion of the purchasing power of cash welfare benefits also helps explain why the inflation-adjusted incomes of less-educated single parents fell.
- *Average income growth for whites and blacks was substantially higher than for Hispanics.* Among families headed by a white person, average incomes grew for both married couples (18 percent) and single parents (2 percent) from 1979 to 1996.¹³ For blacks, average incomes grew by 18 percent for two-parent families and by 6 percent for single-parent families. Finally, for Hispanics, average incomes fell for both married couples (4 percent) and single parents (3 percent). The results for single parents are striking, given the relatively large increases in hours worked for pay by Hispanic single parents over this period. The results for married couples are less surprising, given that Hispanic couples increased their hours of paid work only about half as much as white or black married couples. An increasing share of recent immigrants with lower education and wage levels in the Hispanic population also helps explain why Hispanics' incomes fell. In addition, wages and cash welfare benefits declined.
- *Families with a child under age five had greater average income growth than families with older children.* For married couples, average incomes increased by 38 percent for families with a child under age five, compared to 27 percent for families with only older children. For single parent families, mean incomes increased by 17 percent for those with young children, but by just 6 percent for families with only older children.¹⁴

3. Recent Trends in Family Income

Trends in family income from 1992 to 1996 are considerably more favorable than the longer term trend since 1969. Even families headed by single parents with a high school diploma or less, whose real income deteriorated from 1969 through 1992, made income gains from 1992 to 1996 during the sustained period of economic expansion under the Clinton Administration.

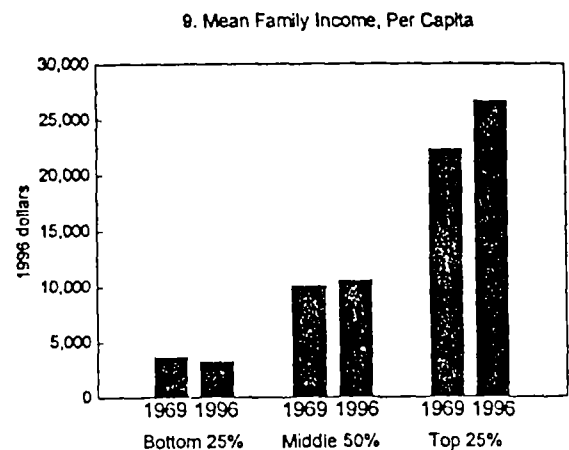
¹³ Our race and ethnicity comparisons begin in 1979 because the CPS did not identify Hispanics in 1969.

¹⁴ Of course, having a younger child often implies being a younger parent. We do not control for the age of the parent in this analysis.

C. The Distribution of Family Per Capita Income

To assess the implications of income growth for families with children, we need to take account of the increasing share of single-parent families, whose incomes are lower and grew much less than the incomes of married-couple families (see section IV-B-1 above). We also need to consider the decrease in family size, because a given family income provides more resources per child when there are fewer children in the family. Moreover, because less-skilled, lower-income parents have had slower income growth than highly skilled, higher-income parents, it is important to consider the trends in income for lower-income and higher-income families, not just the average family.

Figure 9 presents estimates which incorporate the combined effects of the increasing share of single-parent families and decreasing average family size, to assess changes in incomes for families with children. To reflect changes in the share of single-parent families, the diagram shows changes for the *combined* family income distribution of single-parent and two-parent families. In addition, as a crude way of adjusting for the differences in family size between two-parent and one-parent families and for the decreases in family size over time, family incomes are presented in per capita terms. (This is a crude measure because it does not cost twice as much to support two people as one. On the other hand, two do cost more to support than one. The true measure of equivalent income for different family sizes lies somewhere between per capita and total income.) The figure shows the change in average income per person for the lowest quarter, the highest quarter, and the middle half of the distribution of all families' per capita incomes.



These estimates indicate that while there has been substantial growth in income per person for families with high per capita income, income per person has been either stable or decreasing for other families when 1996 is compared with 1969. During the economic expansion from 1992 to 1996, however, families with lower per capita incomes also experienced rising income per person.

- *Since 1969, the top quarter of families gained, while the lower quarter lost and the middle half remained nearly constant in per capita income terms, after adjusting for inflation. The top quarter gained 20 percent (\$4,420 in 1996 dollars) from 1969 to 1996, while families in the lower quarter of the per capita income distribution had declines of 11 percent (\$410). For families in the middle half of the per capita income distribution, average income per person has remained relatively constant, with income gains of 4 percent (\$452).*

Since family size has been decreasing, it follows logically that increases in mean income are less dramatic, and decreases are more dramatic, when calculated on a family basis rather than on a per capita basis.

V. HOW DO FAMILIES RESPOND?

IMPLICATIONS FOR FAMILY TIME USE OUTSIDE THE JOB

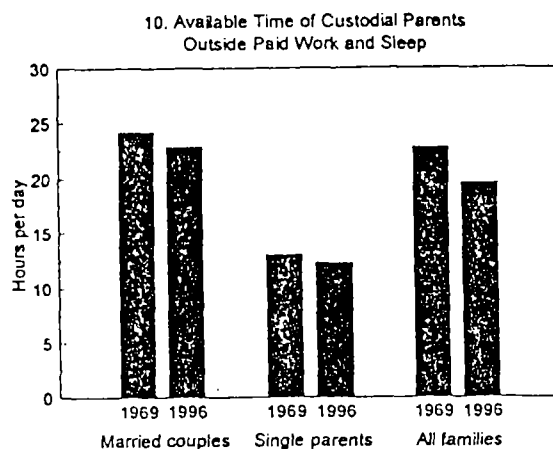
The trends in hours of paid work and family incomes described above have had a major impact on family life. Increasing hours of paid work may mean higher incomes, which provide more resources for parents and children. But increasing paid work time also means less time for other activities. The evidence on time allocation to non-market activities is much more limited than the data on hours of paid work and income, and conclusions must therefore be more tentative.

The CPS, with its larger sample size, only allows us to examine hours spent in paid work (and therefore hours available for other activities) along with changes in family size and structure. We have limited data on what people actually do with the time they do not spend in paid work, mainly from time-use diary studies. These studies have complete data only for a small sample of people. We begin with the CPS data regarding basic trends and then discuss the more detailed time-use diary data.

A. Trends in Current Population Survey Data

What can the CPS tell us about how the changes of the past several decades have affected the number of home hours that families have available for caring for children and maintaining a household? The data indicate that families have less total time to devote to unpaid activities, including time with children, because they are spending more time in the labor market and because the share of families with a single parent is growing.

Figure 10 shows the trends in non-market time that custodial parents potentially had available to spend with all their children, after subtracting time spent at paid work and allowing eight hours per day for sleep. We emphasize the fact that this is only time potentially available in the home; there is no information in the CPS about how parents actually spend their time outside paid work. Figure 10 shows that from 1969 to 1996, both married-couple and single-parent families experienced a decrease in time not spent on paid work. The overall decrease is greater than the decreases within either family type because the proportion of single-parent families increased over this period.



It can also be noted that changes in family size would affect the parental time potentially available per child. Statistics indicate that despite increases in paid work hours for each type of family, the amount of non-market time potentially available *per child* has increased for both married-couple and single-parent families since 1969. This measure is obviously misleading because it

assumes that a single child who spends time with a parent gets twice as much parental attention as each of two children who spend that same time with a parent. In any event, the increasing number of single-parent families has meant that overall, the average amount of family time potentially available per child has remained relatively constant when single-parent and married-couple families are considered as a whole.

B. Time Use in the Home Estimated from Time-use Diaries

Fortunately, we have a supplementary source of data: time-use diary surveys, which ask respondents to keep a detailed diary recording how they spend their time during a specific day. These surveys provide an alternative, more accurate method of measuring paid work time, as well as time spent in various kinds of unpaid activities, such as commuting, housework, child care, shopping, recreation, and personal care. The trends in hours of paid work time and non-market time described above are based on data which report individuals' estimates of their usual hours worked per week in the previous year. Such estimates may not accurately portray the actual hours worked for pay because the question is somewhat ambiguous and respondents may not be able to report accurately on a "usual" week in the few minutes allowed during the CPS interview. Time-use diary measures tend to show shorter paid work hours and sometimes even different trends than the CPS.¹⁵

Unfortunately, such time-use diary surveys are conducted much less frequently and with much smaller samples than the CPS. The latest available data were collected in 1985; results of a survey done in 1992-94 are not yet publicly available. Because of the small samples, time-use diary surveys cannot be used to examine trends for smaller subgroups of the population, such as single parents or blacks. Moreover, the individuals who complete the diaries may not represent the U.S. population as well as the CPS sample does. These surveys do, however, provide information about how much time is spent in different types of unpaid work at home, such as child care and housework, in leisure pursuits, and sleep.

1. Averages

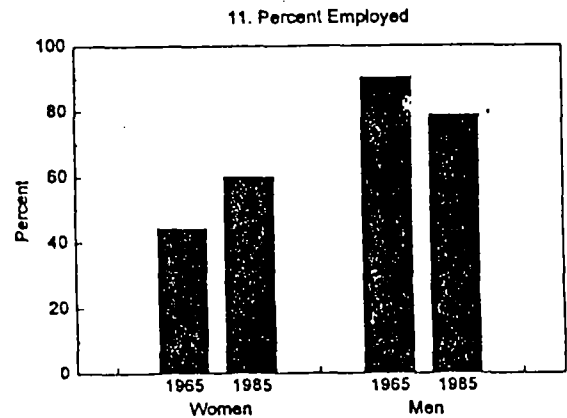
Time-use diaries indicate that the entry of many mothers into the workforce has placed them into what can be termed a "time crunch." While both employed and nonemployed women have managed to keep the amount of time spent with children relatively constant, many more women with children have moved from the "nonemployed" to "employed" category. The "time crunch" is best illustrated by the fact that in any single year, employed women spend over one third less time on child care and household tasks than women without paid jobs, but still have 25 to 30 percent less free time.¹⁶

¹⁵ Robinson and Godbey (1997), chapter 5.

¹⁶ Robinson and Godbey (1997), Tables 3 and 6.

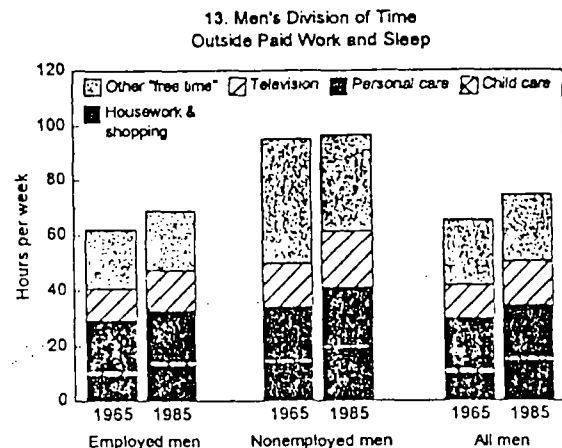
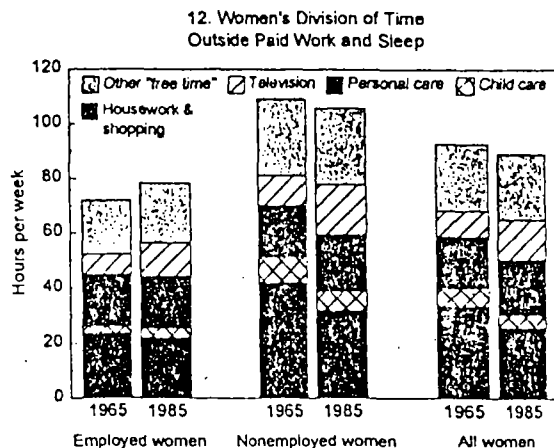
Time-use surveys conducted in the U.S. in 1965 and 1985 show that employed mothers spent virtually the same amount of time taking care of children in 1985 (6.7 hours per week) as in 1965 (6.3 hours per week). Mothers without paid jobs also maintained a consistent amount of time with children, spending 12 hours a week on child care in both years. The child care category in the time diaries includes only time spent on direct caregiving, not time shared with children while engaging in other activities.

When the shift of women into employment (shown in figure 11) is taken into account, mothers' time in child care declined by 10 percent overall, from ten to nine hours per week. Fathers did not make up the difference; their child care time remained about 2.6 hours per week from 1965 to 1985. This suggests that the increase in market work among women has reduced parents' total child care time.



Source: Time-Use Diary Surveys (Robinson & Godbey 1997)

Mothers have reduced their child care time by much less than they have increased their time in paid work because they have cut back on other activities. Women have markedly reduced time they spend on household chores (see figure 12). Men have somewhat increased the time they spend on housework (see figure 13), but it does not make up for all of the reduction by women. Since the "child care" category only captures activities that are directly focused on taking care of the child, any reductions in time parents spend with children while they are primarily engaged in another activity, such as cooking, cleaning, or shopping, are not reflected in the time-use data.



Time spent in commuting to work increased 13 percent (2.5 minutes per trip) between 1983 and 1995, according to a Federal Highway Administration survey.

2. Differences among Families

The effect of women's increased hours in the labor market on families is likely to vary between college-educated parents, whose incomes have been rising because their hours and wages both increased, and less-educated parents, whose incomes may have fallen despite increased work hours because of falling wages. The effect of women's increased hours in the labor market on families is also likely to vary between married couples, who can shift some housework and child care from working wife to husband, and single parents, who cannot. Within married-couple families, moreover, there are likely to be differences across education levels in this shifting of tasks, as child care time by fathers rises with their education. Unfortunately, the time-use diary survey samples are too small to be broken down into these subsamples. Thus, the above-quoted estimates are based on average trends and may miss important distinctions between high- and low-income groups, or between single-parent and two-parent families.

VI. KEY POLICY ISSUES RELATED TO THESE CHANGES IN FAMILY LIFE

The changes in American families and work patterns have created new opportunities, but also present significant policy challenges to private employers and government. In this section we identify four areas of policy that are important in helping families seeking to balance work and family life: increasing the flexibility of market work; supporting income among low-income working families; improving access to high quality and affordable child care; and encouraging the formation and maintenance of two-parent families.

A. Increasing the Flexibility of Paid Work

To an important extent, the effect of parents' market work time on children depends on when and where it is performed. By shifting from work in the home to work in the market, many women find themselves with far less flexibility in responding to family needs. Key employment arrangements that affect hours flexibility for parents include:

- *Flexible work arrangements* (defined as allowing workers to vary the time they begin or end work). These arrangements are an increasingly popular approach to decreasing the tension between work and family. In 1997, 28 percent of full-time wage and salary workers had flexible work schedules. This was up sharply from 15 percent in 1991, the most recent prior year when data were collected.¹⁷

Maintaining high productivity need not be inconsistent with allowing flexibility in work arrangements, as many private sector employers have discovered. The Federal government has led by example, instituting "flextime" which allows employees some discretion in when they work their allotted hours. The President has proposed a flextime initiative that would allow *all* workers to take

¹⁷ Data on alternative work arrangements comes from the 1991 and 1997 May supplements to the CPS.

“time-and-a-half” overtime compensation in the form of compensatory time for family and medical leave purposes or vacation instead of cash.

- *Flexibility in shift work.* This approach enables parents to share child care more easily by working different shifts. In order for shift work to make combining paid work and child care easier, however, the choice of shifts must be voluntary. For those workers who cannot determine their own schedules, the combination of shift work and work in the home is a potential source of stress and expense. Non-standard working hours may make it difficult both to find time to spend with children when they are awake and not in school and to arrange for child care while working. In 1997, 83 percent of full-time wage and salary workers were on regular daytime schedules, 4.6 percent were on evening shifts, 3.9 percent were on employer-arranged irregular schedules, 3.5 percent were on night shifts, and 2.9 percent were on rotating shifts.

This Administration has also played a major role in increasing flexibility among families by helping enact the Family and Medical Leave Act (FMLA), which enables workers to take up to 12 weeks unpaid leave to care for a new baby or ailing family member without jeopardizing their jobs. Since its inception in 1993, millions of workers have taken advantage of the FMLA to spend necessary time with their families. The President has also proposed expanding the FMLA to cover more workers and to allow FMLA-covered workers up to 24 hours per year for parent-teacher conferences or to accompany a child, spouse, or elderly parent for routine medical and dental care.

- *Working at home for pay.* This arrangement can increase parents’ flexibility. In 1997, 3.3 percent of all wage and salary workers were doing work at home for pay, up from 1.9 percent in 1991. An additional ten percent of all wage and salary workers in 1997 were doing work at home without receiving extra pay for it. Nearly 9 out of 10 workers who were paid for work at home were in white-collar occupations.

B. Giving All Parents, Especially Low-Income Parents, More Choices

While incomes have been rising for most people, families at the bottom of the income distribution, particularly the less educated and single parents whose inflation-adjusted incomes were lower in 1996 than in 1969, still face serious economic hardship. Many low-income parents are forced to work harder and spend less time with their families just to make ends meet. Recent policy changes that have helped these families cope include:

- Expansions in the Earned Income Tax Credit (EITC), to ensure that persons who work hard on their jobs can take home enough money to support their families;
- Providing a \$500-per-child tax credit to help offset the expense of raising children;
- Increases in the minimum wage from \$4.25 in 1993 to \$5.15 in 1997;

- Expanded child support enforcement provisions, which help ease the economic burden on single mothers and enforce responsibility for economic support of children on both parents;
- Major welfare reform legislation that has helped single mothers move from welfare to work;
- Employer tax credits to help create jobs for welfare recipients;
- Substantial expansions in support for vocational education, community college, and skill development among persons in lower-income families, including the creation of Hope Scholarships, increases in the maximum Pell Grant, and the passage of the Workforce Investment Act of 1998.

These steps, and the strong economy and steady economic growth of the last six years, have combined to create jobs, reduce unemployment, and raise wages for all workers – especially the less skilled who are most affected when jobs are scarce.

C. Improving Access to High Quality, Affordable Child Care

Most parents adjust to an increase in their paid work time by increasing their use of child care providers. The availability, cost, and quality of child care are crucial to the well-being of our children and the ability of parents adequately to balance the needs of work and family.

The primary child care arrangements for preschool-age children of employed mothers in the fall of 1994 were divided roughly equally among care in the child's home (by a relative or nonrelative), care in another home (by a relative or nonrelative), and care in an organized child care facility. Since comparable data were first collected in 1986, the trend shows a slight increase in the proportion of children receiving care in their own homes, relatively fewer children receiving care in another home, and relatively more children receiving care in an organized facility. In addition, the share of monthly income spent on child care by those purchasing this service rose from 6.3 percent to 7.3 percent between 1986 and 1993.¹⁸

The Clinton Administration has consistently emphasized the importance of child care availability and quality. Since 1993, child care subsidies for low-income families have grown by 80 percent. In addition, the Administration's budget proposal for the fiscal year 2000 includes a variety of proposals to help make child care more affordable and improve its quality, including an investment of \$7.5 billion over five years in the Child Care and Development Block Grant; combined with the funds provided in welfare reform, this new investment would enable the program to serve over one million additional children by fiscal 2004. Also, the President's budget includes \$5.1 billion over five years to increase the Child and Dependent Care Tax Credit for three million

¹⁸ The earliest comprehensive data on families' child care arrangements were collected by the Bureau of the Census in 1977. The earliest data that are compatible with the most recent data are from fall 1986. We use the 1986 data for consistency.

families earning under \$60,000 a year, and \$3 billion over five years in a proposed Early Learning Fund to improve the quality of care children receive.

In addition, the Administration is addressing the need for after-school care for children. Since 1970 the percentage of married couples who work full time, year round and have school-age children has nearly doubled (from 18.7 percent in 1970 to 37.3 percent in 1997). Today, the parents of over 28 million school-age children work outside the home. This has led to a strong demand for quality programs to ensure that children are safe and learning in the hours in which they are not supervised by a parent. In fact, experts estimate that every day roughly 5 to 7 million children are left unattended at home. The Clinton Administration has responded to this demand by increasing its investment in after-school programs from \$40 million to \$200 million in the 1999 fiscal year, which is estimated to reach roughly 400,000 children this year. And the President's fiscal year 2000 budget would triple the investment in these programs to \$600 million.

Together, these initiatives help parents ensure that their children are receiving quality care while they work.

D. Encouraging Two-Parent Families

When two-parent families form and stay together in a supportive relationship, many of the economic and emotional stresses of balancing work and family are eased. Two-parent families have greater earning potential and more potential time to spend with their children than single-parent families. Among the recent policies which have helped maintain married-couple families; the eligibility rules for Medicaid and other programs have been changed so as not to penalize two-parent families for staying together.

VII. CONCLUSION

This study indicates that there has been a large-scale shift of time spent by women from the home to the labor market over the last generation. For most families, this change has led to an increase in family income. The study also indicates that there has been a very large shift from married-couple to single-parent families over the last 30 years, reducing both income and parental time available for many children. While smaller family sizes have helped offset the increase in market work, many parents find it difficult to balance jobs and children.

This report demonstrates that single parents face the most difficulties. They have only half as much total time available as two parents, and single mothers typically have less than half as much earning power as a married couple because women's wages are lower than men's. Lack of income limits most single parents' ability to purchase time-saving goods and services and high quality child care. Thus, they face a severe "time crunch" as well as a "money bind."

Men without college educations have faced declining wages. While increased work by their wives has helped maintain their families' standard of living, it is still difficult for these families to afford child care. Moreover, less-educated workers are less likely to have jobs that permit parents to arrange their hours to accommodate family needs.

More educated parents, whose increased time in the labor market has been rewarded with considerably higher incomes than in 1969, can more easily afford high quality child care, household help, and other time-saving goods and services. Married-couple families, particularly those where the husband has a college degree, have seen substantial improvements in their economic situation over the last three decades. Even these couples, however, face the stress involved in balancing increased work and family.

While it is beyond the scope of this study to speculate about the causes of changing work and family patterns, what is clear is the magnitude of the change and the importance of the challenge. There is no more vital task for our society than raising our children well. Parents in all different income brackets and settings face every day the extraordinary task of dividing their time to maximize familial, economic and personal well-being.

It is the responsibility of employers and public policy-makers to continue the search for methods to help productive workers function as effective parents and responsible family members. If children, families, and our communities are going to withstand the stresses of the trends of the last 30 years, employers and public policy makers have a responsibility to do everything they can to help parents balance work and family. Workplaces and work hours must become more flexible, parents need more supports and more choices, and more children need to live with solid families in their lives.

REFERENCES

- Blank, Rebecca. 1997. *It Takes a Nation*. Princeton: Princeton University Press.
- Blau, Francine. 1998. "Trends in the Well-Being of American Women, 1990-1995." *Journal of Economic Literature* 36(March): 112-165.
- Bluestone, Barry and Stephen Rose. 1997. "Unraveling an Economic Enigma: Overworked and Underemployed." *The American Prospect*, March-April: 58-69.
- Danziger, Sheldon and Deborah Reed. 1997. "Working Longer and Earning More: The Changing Contribution of Wives' Earnings to Family Income." Unpublished manuscript, University of Michigan, February.
- Ellwood, David T. 1998. "Winners and Losers in America: Taking the Measure of the New Economic Realities." Unpublished manuscript.
- Hayes, Cherly, John Palmer and Martha Zaslow (eds). 1990. *Who Cares for America's Children? Child Care Policy for the 1990s*. Washington, DC: National Research Council Press.
- Hochschild, Arlie Russell. 1997. *The Time Bind: When Work Becomes Home and Home Becomes Work*. New York: Henry Holt & Company, Inc.
- Juhn, Chinhui and Kevin Murphy. 1997. "Wage Inequality and Family Labor Supply," *Journal of Labor Economics* 15(1), part 1: 72-97.
- Juster, F. Thomas and Frank P. Stafford (eds). 1985. *Time, Goods, and Well-Being*. Ann Arbor: University of Michigan Institute for Social Research, Survey Research Center.
- _____. 1991. "The Allocation of Time: Empirical Findings, Behavioral Models, and Problems of Measurement." *Journal of Economic Literature* 29 (June): 471-522.
- Leete, Laura and Juliet Schor. 1994. "Assessing the Time Squeeze Hypothesis: Hours Worked in the United States, 1969-1989." *Industrial Relations* 33(1): 25-43.
- Levy, Frank. 1996. "Where Did All the Money Go? A Layman's Guide to Recent Trends in U.S. Living Standards." MIT Industrial Performance Center Working Paper 96-008, July.
- McGrattan, Ellen R. and Richard Rogerson. 1998. "Changes in Hours Worked Since 1950." Federal Reserve Bank of Minneapolis *Quarterly Review*, Winter: 2-19.
- Robinson, John and Geoffrey Godbey. 1997. *Time for Life: The Surprising Ways Americans Use their Time*. State College: Pennsylvania State University Press.

Rones, Phillip L., Jennifer M. Gardner, and Randy E. Ilg. 1997. "Trends in Hours of Work Since the Mid-1970s." *Monthly Labor Review* 120(4): 3-14.

Schor, Juliet B. 1991. *The Overworked American: The Unexpected Decline of Leisure*. New York: Basic Books.

Office of the Chief Economist
Room S2514
200 Constitution Avenue, NW
Washington, DC 20210
202-693-6070

US Department of Labor

Fax

To: Nicole Rabner

From: Lisa B. Stuart

Fax: 456-2878

Pages: 2 including this cover sheet

Phone: 456-7263

Date: 05/25/99

Re: Employment Characteristics of Families **CC:**

☒ **Urgent**

☐ **For Review**

☐ **Please Comment**

☐ **Please Reply**

☐ **Please Recycle**

• **Comments:**

We hope to release a version of this at 10:30am. Let me know if you have any comments.

DRAFT

OFFICE OF PUBLIC AFFAIRS

USDL:99-

CONTACT: CARL FILLICHIO
PHONE: 202-693-4657

FOR RELEASE: IMMEDIATE
FRIDAY MAY 25, 1999

STATEMENT OF U.S. SECRETARY ALEXIS M. HERMAN REGARDING THE BLS EMPLOYMENT CHARACTERISTICS OF FAMILIES

The report on the Employment Characteristics of Families released today by the Bureau of Labor Statistics shows that almost 83% of all families, or roughly 5 out of 6, have at least one working member.

Wives and mothers are working in record numbers. For instance, both husbands and wives now work in 53% of all married couple families, whereas husbands are the sole earners in only 19%. Husbands and wives both work in 64% of all married-couple families with children under the age of 18; and single mothers work in 72% of all families maintained by women with children under 18.

More parents are working and working parents need more help meeting the dual challenges of earning enough to support their families while still spending enough time with their children. That is why the President announced policies this past weekend that will enable more families to receive income while they are taking family leave.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Ruby Shamir to Nicole Rabner re For Your Trip (partial) (1 page)	05/22/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15418

FOLDER TITLE:

Grambling State Commencement, 5/23/99 [2]

2012-1035-S

kc1069

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

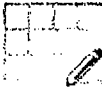
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

[001]



Ruby Shamir
05/22/99 11:09:44 AM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP

cc:

Subject: FOR YOUR TRIP

CONTACT INFO:

DOL

Grace Kilbane: [P6/(b)(6)] 202-329-4656.

Lisa Stuart

693-6070 W

[P6/(b)(6)]

OPM

John-Christopher Bua, Communications Director:

[P6/(b)(6)]

Henry Romero, Policy: 202-606-1996 (W), [P6/(b)(6)]

Donna Lenhoff

986-2600 x 3023

[P6/(b)(6)]

Bill Samuel

[P6/(b)(6)]

Henry Solano

[P6/(b)(6)]

Legislators Ask Pause in Relations With China

By DAVID E. SANGER
with FRANK BRUNI

WASHINGTON, May 26 — Members of Congress from both parties pressed today for a pause in relations with China and a reversal of years of liberalized high-technology sales to Beijing, arguing that evidence of Chinese espionage undercuts the Clinton Administration's policy of engagement.

In a letter to President Clinton, four influential members of Congress asked him to "set aside negotiations" with China over its admission to the World Trade Organization, the main diplomatic and economic initiative under way between Beijing and Washington. The signers included two members of the Senate Foreign Relations Committee who rarely agree: the committee's Republican chairman, Jesse Helms of North Carolina, and Russell D. Feingold, the Wisconsin Democrat.

Meanwhile, the Senate majority leader, Trent Lott, introduced a package of measures as an amendment to a defense authorization bill that would give the F.B.I. greater authority over security checks at the national laboratories and require the Administration to notify Congress of any investigations into possible violations of export-control laws.

Nonetheless, the Clinton Administration, while embracing some of the recommendations in the declassified version of the Cox Commission's report, tried on two fronts to limit the political and diplomatic recriminations against the Chinese.

In Paris, the United States Trade Representative, Charlene Barshefsky, held a brief meeting with China's Trade Minister, Long Yongtu, in the first effort to rekindle talks about getting China into the World Trade Organization this year.

"We did not really engage in the substance of the issues," Ms. Barshefsky said today in a telephone interview. She and others in the Administration argue that it would be foolish for the United States to walk away from market openings and other concessions China has made in years of negotiations that stopped just short of completion during Prime Minister Zhu Rongji's visit here last month.

But Ms. Barshefsky said that she was a realist, and "clearly the accidental bombing of the embassy and

the Cox report have engendered a degree of friction that will take some time to dissipate."

Meanwhile, the State Department is trying to assemble a high-level delegation to visit Beijing in the next week or two, to offer apologies for NATO's bombing of the Chinese Embassy on May 7 and an explanation of how the Central Intelligence Agency and the National Imagery and Mapping Agency misidentified the embassy and then hit it with a satellite-guided bomb.

The very idea of the mea culpa mission, to be led by Thomas R. Pickering, the Undersecretary of State for Political Affairs, has angered many conservative members of Congress. But it has been delayed, officials say, for another reason: The intelligence agencies, the Pentagon and the State Department are bogged down by internal disputes about how much detail to provide to

A bipartisan group tells Clinton that spying by Beijing undercuts his policy.

the Chinese.

"If we go and give them the same stuff that's already been said in public, they won't be satisfied, and there is the risk of an even bigger breach," one senior official said today. Inside the C.I.A. and the military, he continued, "There is a reluctance to name names and affix punishments, as the Chinese have demanded."

In public the Clinton Administration is still talking about keeping the three issues — China the spy, China the aggrieved, China the trading partner — on separate tracks. But it became increasingly clear today that they all converge on Capitol Hill. The House and the Senate will have to vote in the next two months on a temporary extension of China's trading status, and if a trade organization accord is signed later this year it would have to vote to permanently extend that status to Beijing.

For both parties, calibrating the

correct political response to the Cox Report this week has been a delicate matter. Republicans clearly want to stoke as much public outrage as possible, as a way of vilifying President Clinton and blemishing the Presidential aspirant Al Gore.

But, at the same time, many Republicans clearly do not want the fallout over this to be a chill in trade relations with China — especially members from agricultural states that count on the Chinese as customers. So they are doing a careful two-step, condemning what happened in the strongest terms on the one hand but then cautioning that this should not in any way be held against China when it comes to trade.

Mr. Lott, for example, has excoriated the Clinton Administration in recent days for ignoring evidence of the breach of national security — while in the next breath cautioning against overreacting in the area of trade. His package of reforms introduced today would only affect events within American borders, tightening security at nuclear labs, control exports of sensitive technology and put the F.B.I. in charge of performing security checks on employees at nuclear labs. A vote on the amendment was expected late tonight.

Mr. Lott's approach is attractive to many members because it gives them a chance to respond to the Cox Report without abandoning the engagement strategy — which was the Bush Administration's strategy.

Meanwhile, Representative Christopher Cox, who led the select committee that issued the report on Chinese espionage, appeared before a House subcommittee today to answer more questions. Pressed about whether evidence of espionage supports the report's conclusions that China's information about nuclear weapons designs is now on a par with that of the United States, Mr. Cox said the Chinese did get design information "on a par with us."

Even with mounting concerns over the findings of Mr. Cox's committee, it still seems unlikely, several members of Congress and lobbyists for American companies said today, that the annual extension of what used to be called "most-favored nation" status — it is now called "normal trade relations" — will be derailed. A permanent extension, which would deprive members of Congress of the chance to vent their anger each year, is more doubtful.

But the letter to Mr. Clinton, also signed by Representative Benjamin Gilman, the New York Republican, and Representative Tom Lantos, the California Democrat, argued that "the Chinese Government's sanctioning of the attack on our embassy in Beijing, the torching of the consulate, and the attacks on American businesses demonstrate clearly that our engagement policy and the delinking of trade from other issues such as human rights have not fostered the deep, stable and meaningful relationship between the United States and China that had been promised." It said that "the most responsible and appropriate step is to set aside negotiations."

The White House quickly responded. "We respectfully disagree," said Gene Sperling, head of the National Economic Council. "A strong China-W.T.O. agreement is exclusively about opening China's market to our businesses and workers, and we think if there is a good agreement there will still be a bipartisan majority for it."



Stephen Crowley/The New York Times

Representatives Norm D. Dicks, left, Democrat of Washington, and Christopher Cox, Republican of California, before House subcommittee.

Economic Scene

Michael M. Weinstein

Time isn't money if you are a parent badly in need of both.

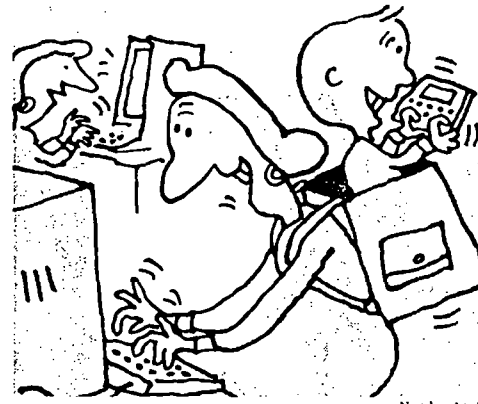
PRESIDENT CLINTON'S Council of Economic Advisers issued a report this week that it hopes can turn the notion of a "time crunch" into a rallying cry for the Administration's agenda for families.

Mothers, the report shows, are spending substantially more time working for pay today than they did 30 years ago, leaving them less time to spend at home with their children. The same day that the council released its report, the President proposed that states use surplus unemployment insurance money to subsidize parents who take time off to care for a new child.

Few will take exception to the report's data, though there will be critics of its recommendations. The council presumes without citing data that the time mothers spend working out of the home creates a worrisome amount of stress and that the report provides statistical spine for Government-led solutions. Perhaps. But the recommendations appear weak-kneed and unfocused.

Based primarily on the Government's annual survey of 50,000 households, the report says that the percentage of married women with children who work for pay soared to 68 percent in 1996 from 38 percent in 1969. By 1996, almost two-thirds of single mothers worked for pay. Between 1969 and 1996, two-parent families increased their annual hours of paid work by about 20 percent, and single parents increased their hours by about 30 percent. At the same time, the share of single-parent families more than doubled. Single parent families, the report says, are at greater risk to be "cash strapped and time poor."

The data do not document how parents spend their time at home. The council estimates, however, that the combination of increased hours of paid work and of the shift toward single-parent families has reduced the maximum amount of time that parents make available to their chil-



Nicolae Asciu

dren by 22 hours a week in recent decades.

By piling one interesting statistic on top of another, the council highlights drastic changes in American family life over a brief period. The council's findings are unlikely to prove controversial. Its interpretation of those trends will be.

The council says the trends on work outside the home "present significant policy challenges to private employers and government." Many economists will argue that employers have ample incentive to accommodate the needs of parents without nudging from Washington. After all, why would employers balk if workers preferred flexible work hours and generous maternity leaves to higher wages? The fact that the percentage of full-time workers with flexible work schedules roughly doubled in only six years, between 1991 and 1997, is evidence that employers do respond to the needs of working parents.

But there are sound economic reasons to question whether markets will provide the mix of fringe benefits and wages that working parents seek. Lawrence F. Katz, a labor economist at Harvard University, says there is the possibility that problems of "adverse selection" interfere with employer decisions. Companies might want to offer generous maternity leaves, for example, but fear that if they move first they will attract a

disproportionate share of job applicants who seek the maternity benefits but no long-term tie to the company. If so, Mr. Katz says, "even employers who want to provide generous benefits will not do so."

Christopher Ruhm, an economist at the University of North Carolina at Greensboro, says that his studies show that when Europe imposed more generous leave and other benefits, the percentage of women entering or remaining in employment rose. "If European employers were already providing the right mix of benefits and wages, you would not expect women to react to a change in rules."

The council's report offers four policy recommendations: flexible work hours; income support, like high minimum wages, for low-wage workers; affordable child care and after-school care, and encouragement of two-parent families. But the menu of recommendations is vague, poorly focused and full of self-congratulatory language. A higher minimum wage, for example, might be a dandy anti-poverty measure, but it does little to solve the problem of time crunch.

There are effective alternatives, says Prof. Claudia Goldin, an economic historian at Harvard. "The report's feeble recommendations overlook the obvious place where Government can make a difference, the public schools," she said. "The reason that that public schools don't open until 8 or 9, close at 2 or 3 and stay shut during the summer is historical. The hours no longer make sense." The most direct way to help working mothers, she says, "would be to open schools earlier, keep them open into the evening and make them available during the summer."

Professor Goldin's idea makes so much sense, one wonders why middle- and low-income families have not voted for schools to open longer in local elections. They surely wield a majority in many communities. If working parents are unmotivated to pry open the school door in exchange for higher taxes, perhaps they are not suffering as much stress and frustration as the council implicitly assumes. That would provide a ripe topic for another council report.

Clinton seeks benefit for new parents taking unpaid leave

By Mimi Hall
USA TODAY

GRAMBLING, La. — President Clinton proposed Sunday that states be allowed to use unemployment insurance to pay workers who need to take time off to care for a newborn or adopted child.

Clinton told graduating students at Grambling State University that, according to new statistics, parents today spend 22 fewer hours per week with their children than they did a generation ago.

"We as a nation must find a way to give your generation of parents some of that time back," the president said.

Delivering the first of three commencement addresses he's scheduled to give this spring, Clinton told nearly 500 graduates of the historically black university that he is directing the Labor Department to propose new regulations and model state legislation to authorize expansion of the unemployment insurance program.



By Mark Wilson, Reuters

Clinton: Receives an honorary law degree Sunday from Grambling's Eddie Robinson, left, and Neri Warner

White House aides said four states — Maryland, Massachusetts, Vermont and Washington — already have asked for federal permission to use surplus un-

employment money for people taking time off for child care.

"If you or any American has to choose between being good parents and successful in your careers, you have paid a terrible price, and so has your country," Clinton said.

Clinton also directed the federal Office of Personnel Management to allow federal employees to use up to 12 weeks of accrued sick leave to care for a sick spouse, child or parent. Current rules allow federal employees to take up to 13 days per year to care for a sick relative.

Under the Family and Medical Leave Act, employees are allowed to take up to 12 weeks of unpaid time. Clinton's plan would allow federal employees to take paid leave, and the White House hopes the program will set an example for private employers.

Aides said they expect that about 10,000 of the 2 million civilian federal workers would take the full 12 weeks in any given year, at a cost of about \$60 million to the government.