



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

**Report of the Special Commission to Conduct an
Investigation and Study of the Activities and Efficacy of the
Adjudication of Unemployment Insurance Claims by the
Department of Unemployment Assistance**

January 29, 2016



Commission Members	1
Executive Summary	2
Background	5
Measuring Massachusetts UI Performance – Meeting Federal Standards	10
Measuring Massachusetts UI Performance – Legislative Questions	16
Recent Changes in Massachusetts UI Performance	26
Recommendations	28
Acknowledgements	33

COMMISSION MEMBERS

Gerald McDonough, Chair of the Commission and Designee of State Auditor Suzanne M. Bump

John King, Designee of State Auditor Suzanne M. Bump

Rep. John W. Scibak, House Chair of the Joint Committee on Labor and Workforce Development

Sen. Daniel A. Wolf, Senate Chair of the Joint Committee on Labor and Workforce Development

Sen. Viriato deMacedo, appointee of the Minority Leader of the Senate

Rep. Nicholas Boldyga, appointed by the Minority Leader of the House of Representatives

Robert T. Cunningham, Director of the Department of Unemployment Assistance

Eileen McAnney, President of the Massachusetts Taxpayers Foundation

Monica Halas, Designee of the Executive Vice-President of the Massachusetts AFL-CIO

John Regan, Executive Vice President, Associated Industries of Massachusetts

Lisa Yanakakis, Designee of the Executive director of the Massachusetts Municipal Association

EXECUTIVE SUMMARY

In June 2014, in Section 75 of Chapter 144 of the Acts of 2014, the Legislature created the Special Commission to conduct an investigation and study of the activities and efficacy of the adjudication of unemployment insurance claims by the Department of Unemployment Assistance (DUA). Chapter 144 of the Acts of 2014 was titled An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms.

The Commission, composed of representatives from the Legislature, state government, municipal government, and employer and employee advocacy groups, held 11 meetings between March 24, 2015 and January 28, 2016, and considered a wide variety of recommendations, before agreeing on the following recommendations:

- 1. In any future cost savings initiative, including furloughs and or hiring freezes, the Commonwealth expressly exempt DUA from such initiatives.**
- 2. In order to reduce the excessive amount of initial adjudication decisions that are overturned, DUA should develop a means by which its adjudicators and hearings officers are informed about final decisions on their cases. DUA should track and monitor the performance of all adjudicators and hearings officers in this area.**
- 3. DUA should take special efforts to advise municipalities of their right to request an expedited determination, and that DUA publicize the dedicated municipalities' line to all municipalities.**

DUA shall continue to maintain its Municipal Assistance Line.

Additionally, the more employers participate in the UI Insurance system, the less the cost for any one employer. There are numerous barriers that discourage municipalities from participating as contributory employers, including a taxable wage base on the entirety of earnings, in contrast to private employers who pay taxes on a taxable wage base of \$15,000. We recommend legislation that will address this disparity and allow for more municipalities to participate voluntarily in the Unemployment Compensation Fund if deemed more cost effective.

- 4. DUA's Director should establish a method for prioritizing decisions for Claimants facing financial hardships who are waiting for initial benefits and/or appealing the denial of UI benefits before the Hearings Department and the Board of Review. The receipt of food stamps or other needs-based programs easily verifiable by DUA through interagency agreements shall be a sufficient but not a necessary method of proof. For claimants not receiving needs-**

based benefits, other indicia of hardship including but not limited to imminent eviction, threats of wage garnishment due to debts, medical or other unmet critical needs of the claimant or the claimant's family due to the delay of the receipt of UI may be considered.

5. **DUA should continue its on-going review of the design features of UI Online, accompanied by greater transparency and greater input by employers and claimants. As part of this review, to expedite the resolution of claims, DUA should consolidate all issues in a claim where feasible. DUA should make every effort to involve focus groups comprised of claimants and employers in order to test new filing/response systems before implementing any new systems.**
6. **Regarding DUA online:**
 - **DUA must ensure access by claimants of Limited English Proficiency.**
 - **DUA must ensure access to filing via telephone for those who cannot use UI Online.**
 - **DUA must ensure access to customer assistance personnel via telephone, so they can assist with claimant questions during their claims.**
 - **DUA should utilize Career Centers, where possible, with trained UI staff who can provide in person assistance with as much of the claim process as possible, not limited to just assistance with the initial filing of the claim.**
7. **In order to ensure that claimants receive the timely training that they need to return to the workforce with improved skills, DUA should ensure timely information about training programs and opportunities and timely adjudication of Training Opportunities Program (TOP) applications. DUA and the Department of Career Services (DCS) should improve communications to ensure that meaningful information about training opportunities and assessment of a claimant's need for training through TOP is provided as early as possible.**
8. **DUA should be required to post quarterly performance reports on its website, as well as any additional reports that would provide insight into DUA's performance, and review staffing in all departments, and implement a flexible staffing model that will**

permit DUA to manage sudden increases in the volume of work in different departments.

DUA should be required to continue its newly-implemented, centralized call-monitoring practice to exercise greater oversight and control over the quality of interactions between the public and customer service personnel. DUA also should be required to continue to update its regulations, policies, protocols, and training, as well as its IT system, in addition to providing ongoing refresher training to adjudicators to ensure that they are current on all DUA policies.

DUA should be required to monitor quality and timeliness of adjudication activity of business units through implementation of the federal Benefit Timeliness Quality (BTQ) and Benefit Accuracy Measurement (BAM) Programs. Quality and timeliness of individual separation and non-separation issues adjudicated is measured in BTQ through a case review of previously adjudicated issues. This audit ensures due process is given to interested persons while attempting to find all relevant facts to the decision, ensures that the correct section of law is applied in the determination, and the determination is correct. This audit also validates the relevant dates to ensure that timeliness of issue completion is adequately recorded for each issue.

BACKGROUND

1. The Statutory Mandate

The legislative mandate for the Commission, as it appears in Section 74 of Chapter 1434 of the Acts of 2014, is to conduct an investigation and study of the activities and efficacy of the adjudication of unemployment insurance claims by the department of unemployment assistance. The study was to include, but was not to be limited to:

(1) the number of claims received by the department of unemployment assistance quarterly since January 1, 2010 and the resulting status of each claim, including, but not be limited to:

- (i) the results of any initial determination about the claim,
- (ii) the results of any appeal from the initial determination,
- (iii) the number of rulings reversed through the appeals and review process,
- (iv) the number of claims arising under clauses (1) and (2) of subsection (e) of section 25 of chapter 151A of the General Laws and
- (v) the number of claims settled in favor of the claimant and in favor of the employer;

(2) the average length of time of the appeal and review process from initial determination to final disposition;

(3) the procedures used by the department to hire and train new employees who implement sections 39 through 41, inclusive, of said chapter 151A, including a determination as to whether or not employment procedures, under section 9K of chapter 23 of the General Laws, have been followed; and

(4) recommendations of the Commission relative to:

- (i) procedures through which the department may produce a quarterly report of the number of active claims and the status of said claims to be posted on the department's website;
- (ii) procedures through which any current backlog of cases may be fairly and efficiently resolved and avoided in future department proceedings;
- (iii) procedures through which oversight and quality control principles may be implemented to ensure the continuing prompt, equitable and transparent application of current law by the commissioner and the board of review; and

(iv) a complete review of the current statutes and regulations relative to the implementation of chapter 151A of the General Laws and any recommendations as to possible legislative reforms and streamlined procedures, including, but not limited to, recommendations and procedures for the uniform and effective implementation of section 25 of said chapter 151A.

The Commission was to report the results of its review, together with drafts of legislation, if any, necessary to carry out its recommendations, by filing the same with the clerks of the Senate and the House of Representatives, who were to forward the same to the Joint Committee on Labor and Workforce Development and the House and Senate Committees on Ways and Means on or before June 30, 2015.

Chapter 144 specifically provided that, unless specified otherwise, its provisions were to take effect 6 months after its effective date. Because the Act did not include an emergency preamble, the effective date was September 24, 2014, 90 days after it was signed by the Governor. Because the Act did not take effect until 6 months after the effective date, the Act took effect, and the Commission was only able to commence its work, as of March 24, 2015.

2. The Department of Unemployment Assistance

The Federal-State Unemployment Compensation (UI) Program, created by the Social Security Act of 1935 (SSA), offers the first economic line of defense against the ripple effects of unemployment. Through payments made directly to eligible, unemployed workers, it ensures that at least a significant proportion of the necessities of life, most notably food, shelter, and clothing, can be met on a week-to-week basis while a search for work takes place. As a temporary, partial wage replacement to the unemployed, UI is of vital importance in maintaining purchasing power and in stabilizing the economy.

Unemployment compensation is a social insurance program. It is designed to provide benefits to most individuals out of work, often through no fault of their own, for periods between jobs. In order to be eligible for benefits, jobless workers must demonstrate workforce attachment, usually measured by amount of wages and/or weeks of work, and must be able and available for work.

The UI program is a federal-state partnership based upon federal law, but administered by state employees under state law. Because of this structure, the program is unique among the country's social insurance programs. The UI program is also unique in that it is almost totally funded by private and public employer taxes, either federal or state – only three states collect taxes from employees.

Federal law defines certain requirements for the program. The SSA and the Federal Unemployment Tax Act (FUTA) set forth broad coverage provisions, some benefit provisions, the federal tax base and rate, and administrative requirements. The major functions of the federal government are to:

- ensure conformity and substantial compliance of state law, regulations, rules, and operations with federal law;
- determine administrative fund requirements and provide money to states for proper and efficient administration;
- set broad overall policy for administration of the program, monitor state performance, and provide technical assistance as necessary; and
- hold and invest all money in the unemployment trust fund until drawn down by states for the payment of compensation for all contributory employers. (Reimbursable employers, such as many non-profits and most municipalities in Massachusetts, are not eligible for the trust funds.)

Each state designs its own UI program within the framework of the federal requirements. The state statute sets forth the benefit structure (e.g., eligibility/disqualification provisions, benefit amount) and the state tax structure (e.g., state taxable wage base and tax rates). The primary functions of the state are to:

- determine operation methods and directly administer the program;
- take claims from individuals, determine eligibility, and insure timely payment of benefits to workers; and
- determine employer liability, and assess and collect contributions.

Pursuant to M.G.L. c. 23, § 1, there is a Department of Unemployment Assistance (DUA) within the Executive Office of Labor and Workforce Development. The statutory framework for the Massachusetts UI program is set forth in M.G.L. c. 151A.

3. The Massachusetts UI Adjudication Process

The determination of a claimant's eligibility for UI benefits is a critical part of the UI program function. When issues arise that may affect a claimant's past, present, or future benefits, the adjudicator is responsible for determining the claimant's eligibility for benefits. Such determinations may also affect an employer's liability for benefit charges depending on the type of issue adjudicated. The adjudicator's work impacts the rights of both claimants and employers.

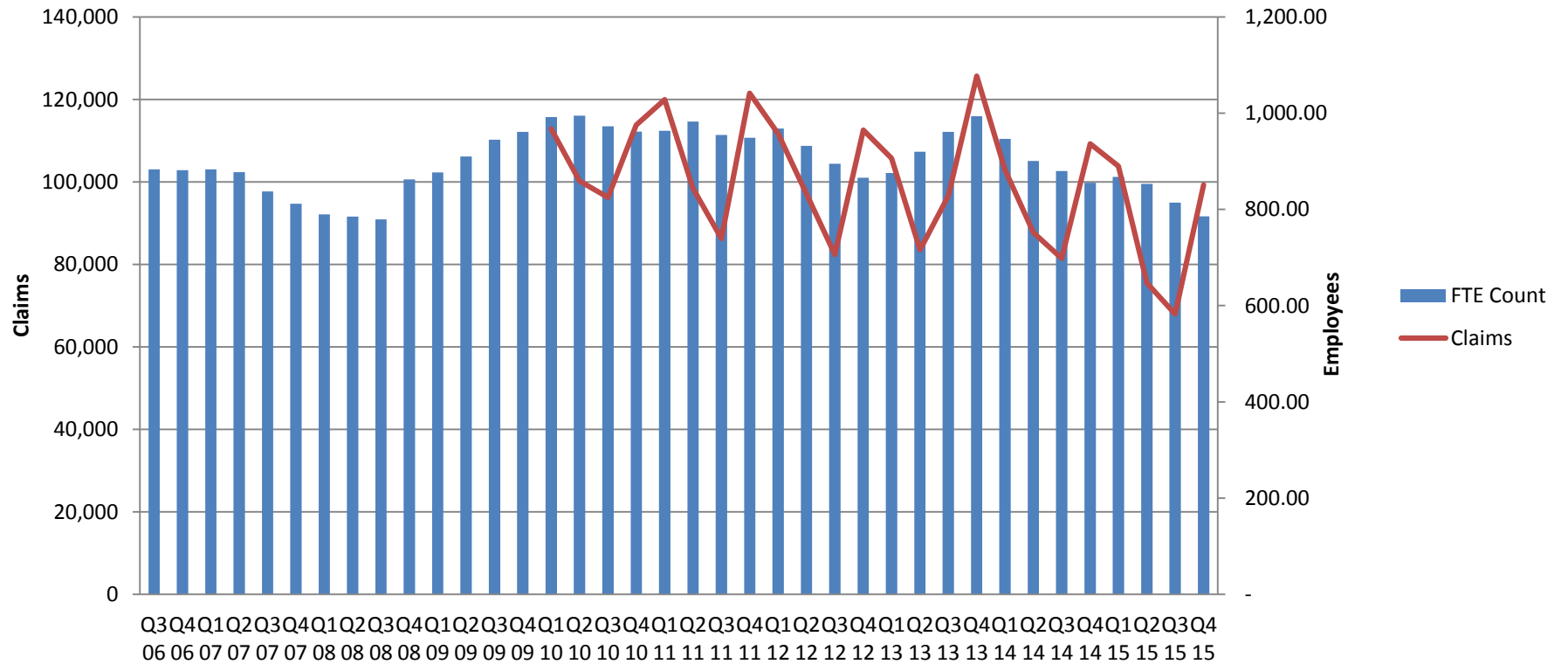
When issues arise, whether it is during the initial claims process or during the benefit year, fact finding is sent to the claimant and/or the employer to obtain information about the issue. When the fact finding is returned by the parties, an adjudicator must examine the facts submitted by the claimant and employer (if the issue is a two party issue) and make a determination of eligibility for benefits. Once a determination of eligibility is made, the affected parties are notified of the determination in the form of an appealable determination delivered in their preferred method (U.S. Postal Service or electronically).

The adversely affected party has the right to appeal the decision to the lower authority appeals department -- the DUA Hearings Department. If the adversely affected party does not receive the desired satisfaction from the lower authority appeals department, that party has the right to appeal to the higher authority appeals department – the DUA Board of Review. For the remainder of this report, we will use lower authority and hearings department interchangeably. Similarly, we will use higher authority and board of review interchangeably. The Board of Review then decides whether or not to grant a request for review. Whether the appeal is accepted or denied, an appealable determination is issued. If the adversely affected party chooses to appeal the Board of Review decision, the appeal is filed in a state district court.

4. Staffing the Department of Unemployment Assistance

This chart shows the total DUA FTE (full-time employee) count from before the recession in 2008 to the present. DUA staffing lagged going into the recession, as claims started to inch up in late 2007 and early 2008. Federally-enacted extension programs began in July 2008, reaching back to those who had exhausted their UI claims as far back as the summer of 2007. Additional extensions were enacted during 2009, 2010, and 2011. The extensions eventually provided up to 99 weeks of UI. The extended benefit programs started to be eliminated in the spring of 2012, when the unemployment rate declined, and the last two extensions ended in late January 2013. Staffing was increased in second quarter of 2013 to prepare for the new electronic UI benefits program. Due to unexpected system issues, staffing was further increased through the end of first quarter 2014. (See chart on subsequent page)

DUA Headcount



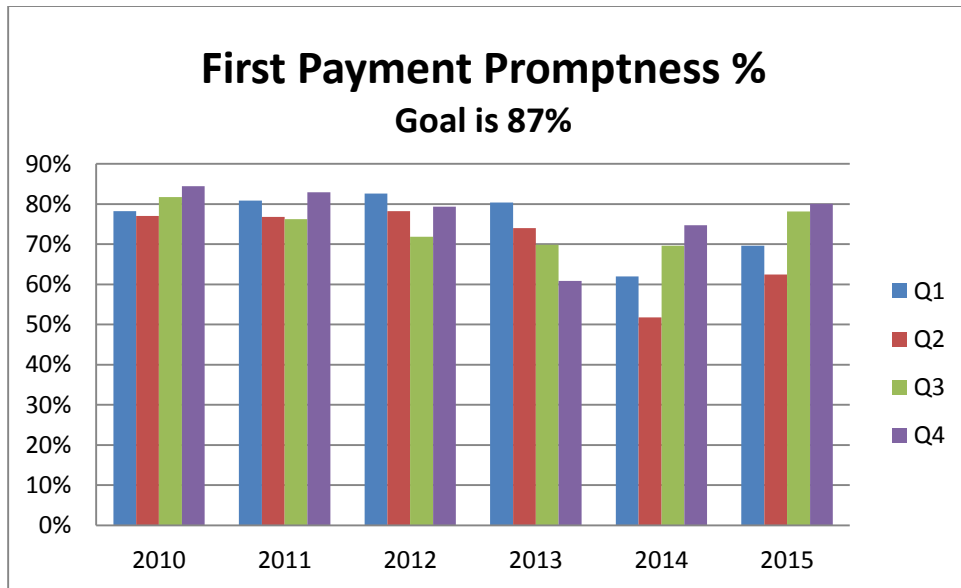
MEASURING MASSACHUSETTS UI PERFORMANCE

MEETING FEDERAL STANDARDS

The Federal government has established a series of goals to track how well states perform their responsibilities under the UI system. The following charts present data on Massachusetts performance pursuant to those measures.

First Payment Promptness: the percentage of all 1st payments made within 14 to 21 days after the week ending date of the first compensable week in the benefit year.¹

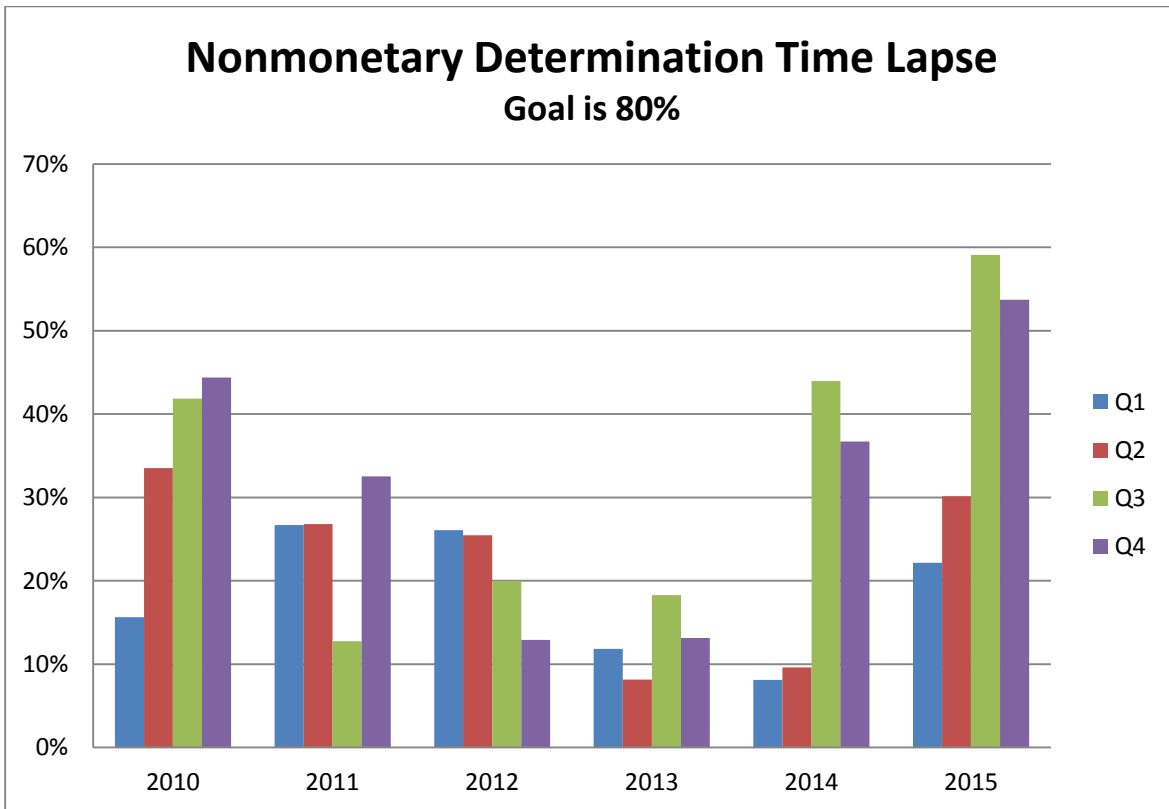
First Payment Promptness						
	2010	2011	2012	2013	2014	2015
Q1	78%	81%	83%	80%	62%	70%
Q2	77%	77%	78%	74%	52%	62%
Q3	82%	76%	72%	70%	70%	78%
Q4	84%	83%	79%	61%	75%	80%



¹ All references to days within this report are to calendar days.

Nonmonetary Determination Time Lapse: % of Nonmonetary Determinations (Separations and Non-Separations) made within 21 days of the date of detection of any nonmonetary issue that had the potential to affect the claimant’s benefit rights.

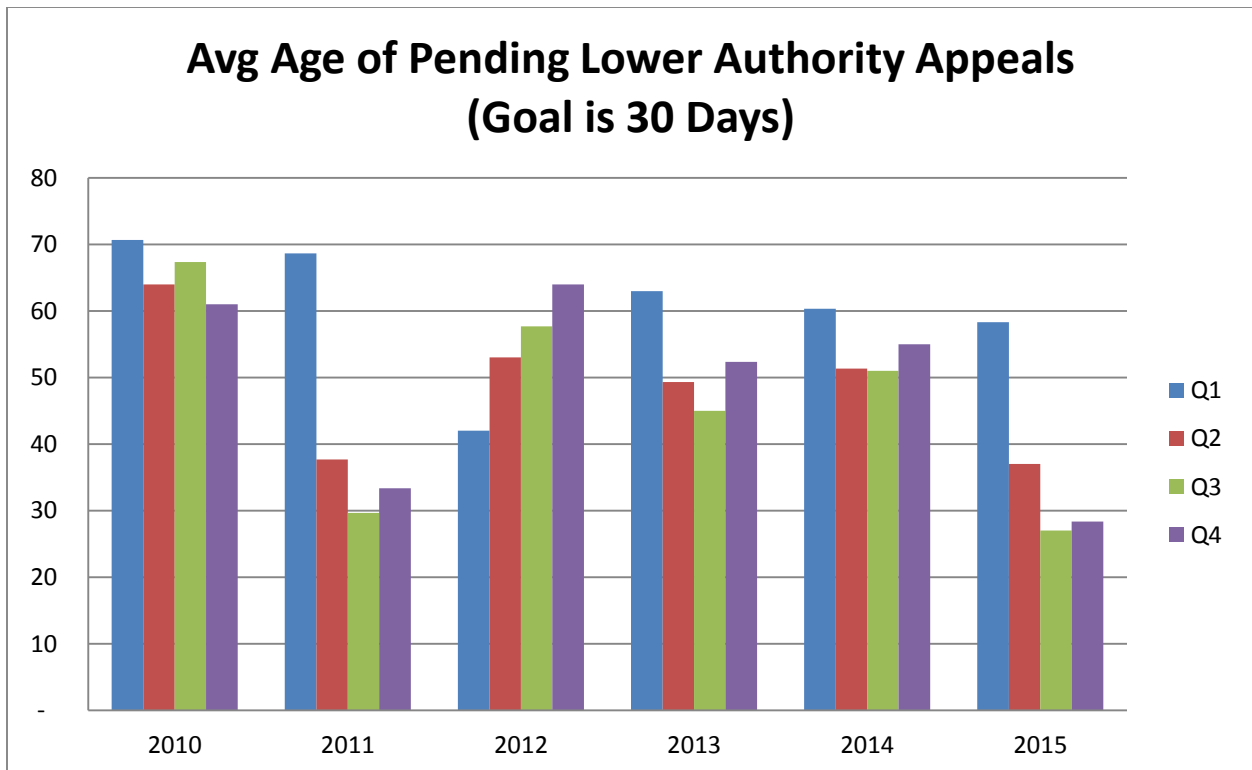
Nonmonetary Time Lapse						
	2010	2011	2012	2013	2014	2015
Q1	16%	27%	26%	12%	8%	22%
Q2	34%	27%	25%	8%	10%	30%
Q3	42%	13%	20%	18%	44%	59%
Q4	44%	33%	13%	13%	37%	54%



Average Age of Pending Lower Authority Appeals: The average number of calendar days from the appeal to the decision for all the DUA Hearings Department pending appeals.

Average Age of Pending Lower Authority Appeals						
	2010	2011	2012	2013	2014	2015
Q1	71	69	42	63	60	58
Q2	64	38	53	49	51	37
Q3	67	30	58	45	51	27
Q4	61	33	64	52	55	28

During Q4 2014 DUA had an appeals backlog exceeding 6000 pending appeals as a result of the UI Online system integration. DUA hired 10 Review Examiners in January 2015 to assist with the backlog of appeals. By the end of June 2015, the total number of pending appeals decreased to less than 2600 appeals due to the catch up effort. During 2015, incoming appeals volume continued to reduce. DUA’s pending caseload continues to trend downward despite the loss of 9 full-time review examiners since July 2015 because of system enhancements, increased familiarity with the system which allowed for greater efficiency and the reduction of incoming appeals. The appeals department is now able to turn around cases at a much higher rate, thereby enabling us to meet this federal metric.



LOWER AUTHORITY APPEALS CASE AGING
as of 12/31/15

Time Lapse Days	Appeals
≤ 25	1,096
26-40	271
41-90	344
91-120	40
121-180	19
181-360	8
> 360	
Total Pending Cases	1,778
	Time Lapse Days
Average Age	29
Median Age	20

The cases exceeding 40 days are largely attributable to postponements initiated by parties and their representatives. DUA receives postponement requests for approximately 20-25% of all scheduled hearings but every effort is made to promptly reschedule these cases. Another factor which causes delays in dispositions involves continued hearings – examiners have to continue cases when they’ve run out of the allotted time due to complex issues and/or if the parties are represented by attorneys/third party agents. In some instances, examiners have not disposed of cases within 10 days of concluding the hearings due to carrying backlogs or the complexity of the issues. Regional Hearing Managers have been working with examiners to ensure that they dispose of older cases.

Lower Authority Appeals Quality: % of Lower Authority Appeals with Quality Scores equal to or greater than 85% of potential points, based on the evaluation results of quarterly samples selected from the universe of lower authority benefit appeal hearings. The department of labor grades quality using 20 categories. This percentage equates to appeals with a quality score of 85% or better within those 20 categories.

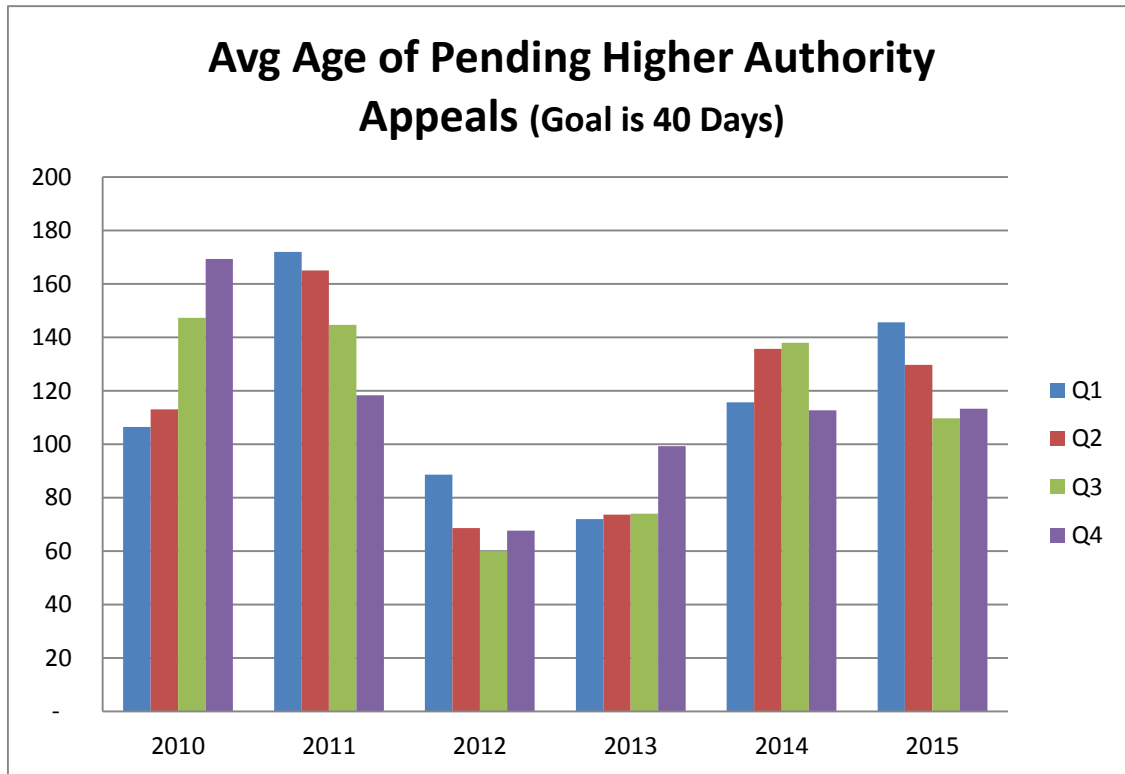
Lower Authority Appeals Quality Results						
	2010	2011	2012	2013	2014	2015
Q1	85	100	95	95	85	100
Q2	84	80	89	95	85	94
Q3	94	90	89	89	84	84
Q4	90	95	95	84	95	*

* Quality review is performed subsequent to quarter end and results are not yet available

HIGHER AUTHORITY APPEALS CASE AGING

Average Age of Pending Higher Authority Appeals: The average number of calendar days from appeal to the Board of Review to the date of their decision.

Average Age of Pending Higher Authority Appeals						
	2010	2011	2012	2013	2014	2015
Q1	107	172	89	72	116	146
Q2	113	165	69	74	136	130
Q3	147	145	60	74	138	110
Q4	169	118	68	99	113	113



HIGHER AUTHORITY APPEALS CASE AGING
as of 12/31/15

Time Lapse Days	Appeals
≤ 40	162
41-70	23
71-120	36
121-180	58
181-360	30
> 360	11
Total Pending Cases	320
	Time Lapse Days
Average Age	98
Median Age	34

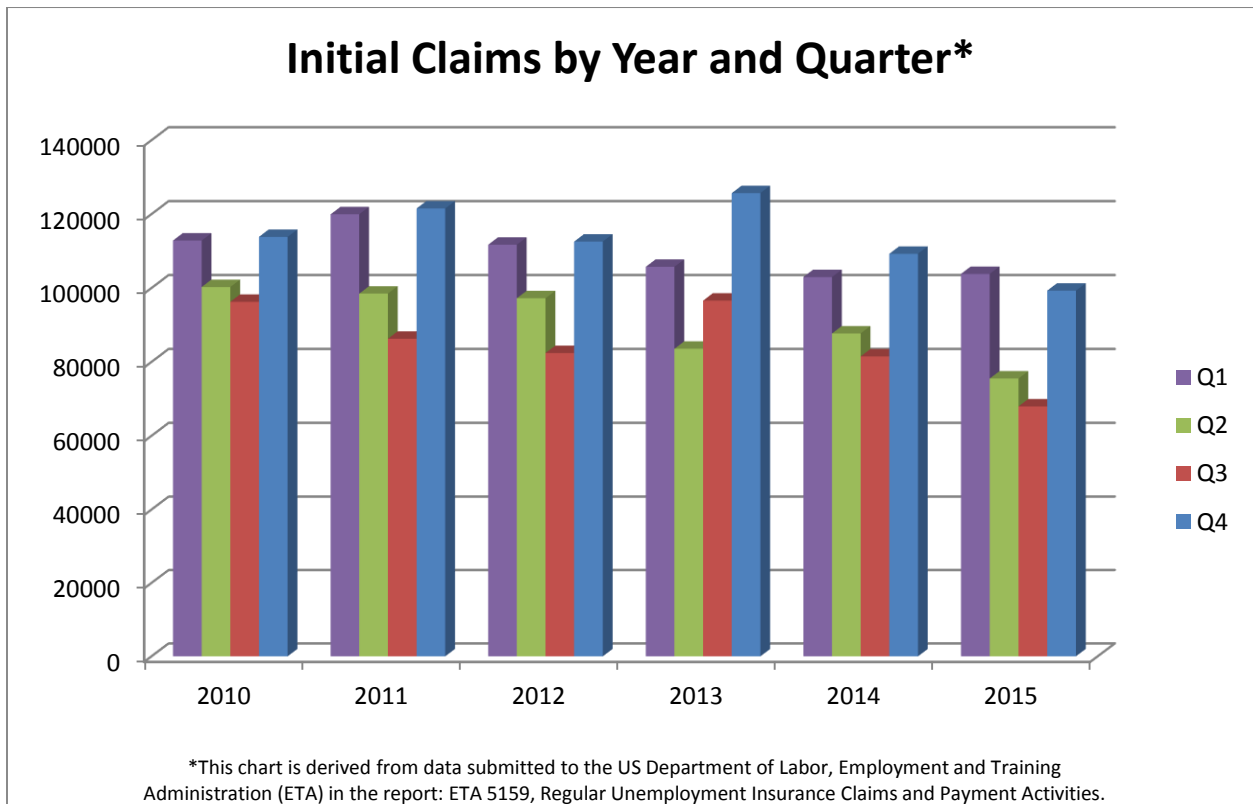
The Board of Review has been operating without a third member since July. The Board has borrowed a staff attorney to help reduce backlog and a new Board Member was appointed in mid-November. The Board of Review has a statutory obligation is to take action on all incoming appeals within 21 days and is meeting that obligation.

MEASURING MASSACHUSETTS UI PERFORMANCE

LEGISLATIVE QUESTIONS

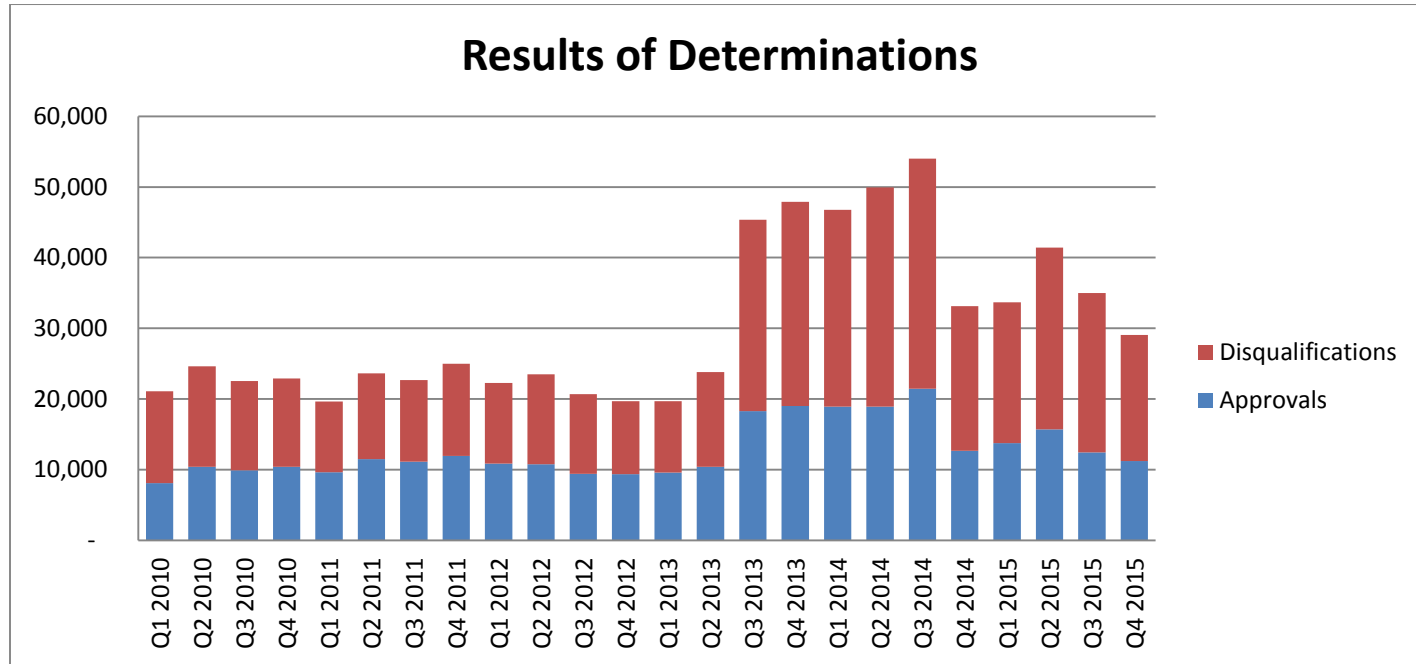
Section 75 of Chapter 144 of the Acts of 2014 required the Commission to consider a number of measurements of Massachusetts' UI performance, which are addressed below.

(1) The number of claims received by the Department of Unemployment Assistance quarterly since January 1, 2010, and the resulting status of each claim.



Initial Claims reflect new spells of unemployment with separations from employers that have to be verified to establish eligibility for UI. Outside of recessionary periods, initial claims are highest in the first quarter of each year due to weather-related separations. In the fourth quarter of 2011 and 2013 extensions triggered off enabling many claimants to reestablish eligibility for the regular UI program.

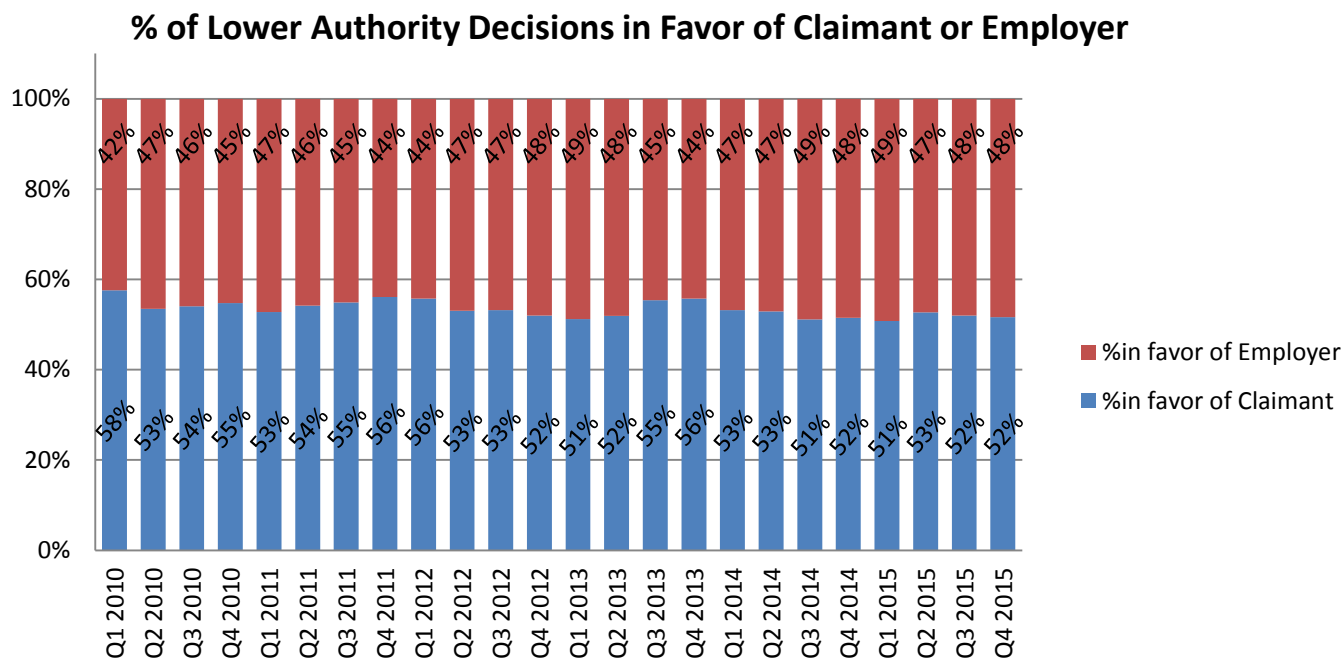
(i) the results of any initial determination about the claim



There is a noticeable spike in the number of issues in Q3 2013 when the UI Online system was implemented. The new benefits system was designed to capture issues that were previously overlooked in the legacy system. It erroneously created additional issues which DUA has worked to reduce. Also included in the issues backlog were employer protests of their charge statements. In spite of this increase, the percentages of disqualification remained relatively stable.

Results of Claim Determinations																								
	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q4 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Q1 2015	Q2 2015	Q3 2015	Q4 2015
Approvals	8,110	10,395	9,885	10,397	9,652	11,510	11,121	11,952	10,861	10,744	9,408	9,357	9,594	10,403	18,272	18,992	18,909	18,933	21,461	12,684	13,765	15,706	12,424	11,234
Disqualifications	12,999	14,231	12,644	12,514	9,995	12,126	11,570	13,019	11,417	12,751	11,296	10,316	10,080	13,384	27,078	28,885	27,871	31,000	32,572	20,460	19,928	25,732	22,571	17,821
Claims	112,832	100,262	96,256	113,827	119,943	98,482	86,256	121,510	111,709	97,217	82,390	112,564	105,733	83,549	96,576	125,676	102,960	87,703	81,473	109,258	103,801	75,499	67,949	99,284
Determinations	21,109	24,626	22,529	22,911	19,647	23,636	22,691	24,971	22,278	23,495	20,704	19,673	19,674	23,787	45,350	47,877	46,780	49,933	54,033	33,144	33,693	41,438	34,995	29,055
% of Approvals	38%	42%	44%	45%	49%	49%	49%	48%	49%	46%	45%	48%	49%	44%	40%	40%	40%	38%	40%	38%	41%	38%	36%	39%
Disqualifications	62%	58%	56%	55%	51%	51%	51%	52%	51%	54%	55%	52%	51%	56%	60%	60%	60%	62%	60%	62%	59%	62%	64%	61%

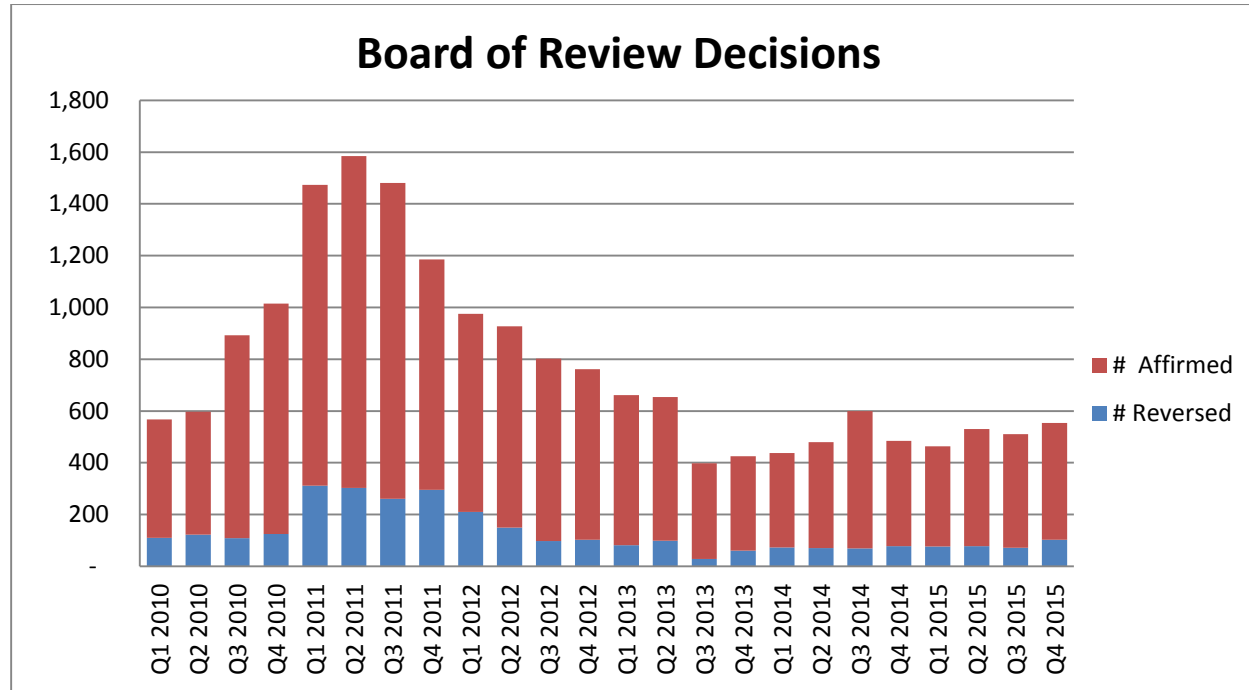
(ii) the results of any appeal from the initial determination (Lower Authority)



The graph shows that the majority of initial appeals decisions are in favor of the claimant, though the difference between the approval rates for employers and claimants is marginal.

Results of Appeal Lower Authority																								
	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q4 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Q1 2015	Q2 2015	Q3 2015	Q4 2015
Total Appeals	6,660	7,409	7,148	7,297	7,167	6,803	6,240	5,463	5,900	5,956	5,290	4,874	4,186	4,370	5,200	4,626	4,664	4,980	5,695	6,425	5,227	6,270	5,744	5,830
# in Favor of Appellant	2,454	2,739	2,647	2,789	2,628	2,643	2,505	2,228	2,361	2,346	2,073	1,883	1,587	1,695	2,148	2,320	2,067	2,272	2,507	2,899	2,255	2,807	2,606	2,673
# in favor of Claimant	3,834	3,963	3,863	3,998	3,780	3,686	3,425	3,066	3,288	3,159	2,816	2,533	2,143	2,270	2,879	2,580	2,482	2,637	2,912	3,309	2,653	3,304	2,985	3,011
# in favor of Employer	2,826	3,446	3,285	3,299	3,387	3,117	2,815	2,397	2,612	2,797	2,474	2,341	2,043	2,100	2,321	2,046	2,182	2,343	2,783	3,116	2,574	2,966	2,759	2,819
%in favor of Claimant	58%	53%	54%	55%	53%	54%	55%	56%	56%	53%	53%	52%	51%	52%	55%	56%	53%	53%	51%	52%	51%	53%	52%	52%
%in favor of Employer	42%	47%	46%	45%	47%	46%	45%	44%	44%	47%	47%	48%	49%	48%	45%	44%	47%	47%	49%	48%	49%	47%	48%	48%

(iii) the number of rulings reversed through the appeals and review process; includes higher authority appeals

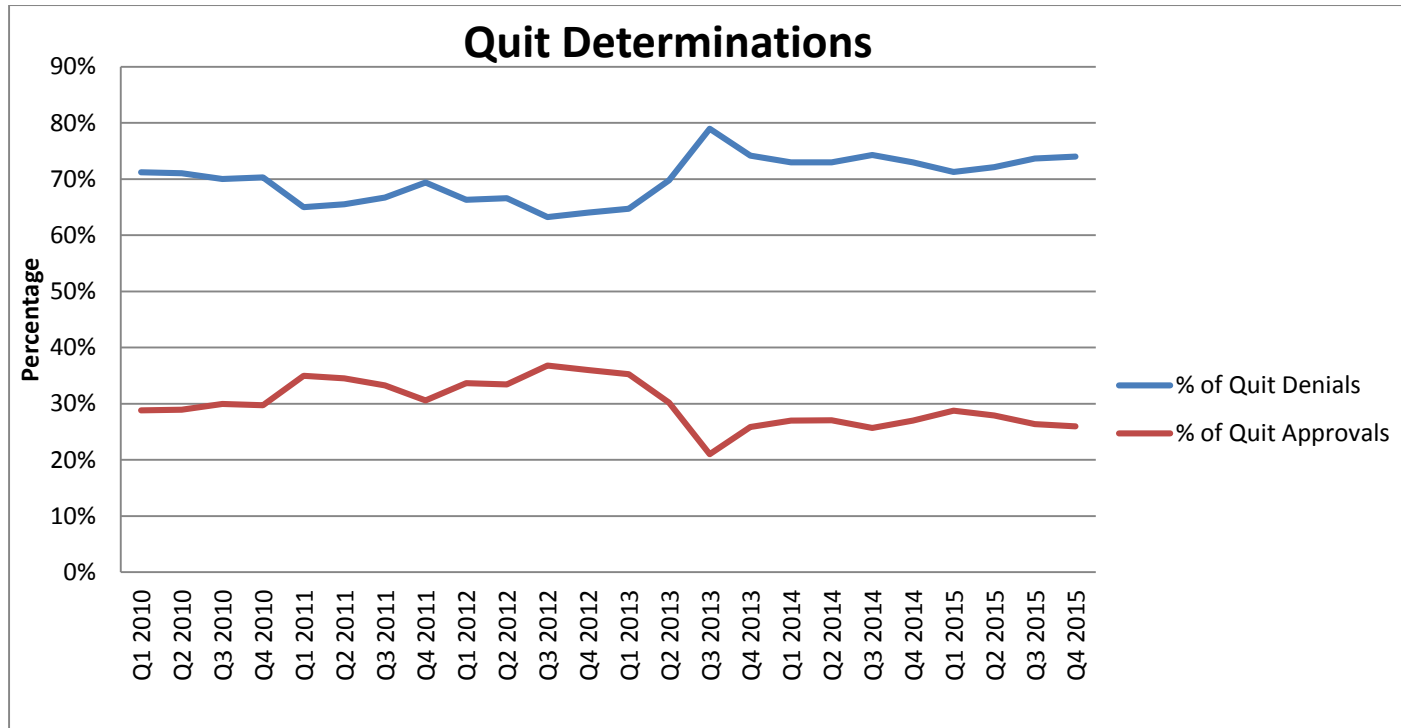


For the Board of Review decisions, the chart above shows the breakout of the decisions that were reversed versus those that were affirmed. Due to unexpected system issues upon implementation of the UI Online System, fewer Board of Review appeals were heard and a lower percentage of claims were reversed in Q3 2013. Overall, the vast majority of lower authority decisions are being affirmed upon appeal to the Board of Review.

Board of Review Decisions Only																								
	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q4 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Q1 2015	Q2 2015	Q3 2015	Q4 2015
# Reversed	110	122	109	125	311	303	261	295	210	150	97	102	82	99	28	60	73	70	69	78	76	78	71	103
# Affirmed	457	475	783	890	1,162	1,282	1,220	890	765	777	705	659	579	555	370	365	365	410	530	406	388	452	440	451
% Reversed	19%	20%	12%	12%	21%	19%	18%	25%	22%	16%	12%	13%	12%	15%	7%	14%	17%	15%	12%	16%	16%	15%	14%	19%
Total Decisions	567	597	892	1,015	1,473	1,585	1,481	1,185	975	927	802	761	661	654	398	425	438	480	599	484	464	530	511	554

(iv) The number of claims arising under clauses (1) and (2) of subsection (e)

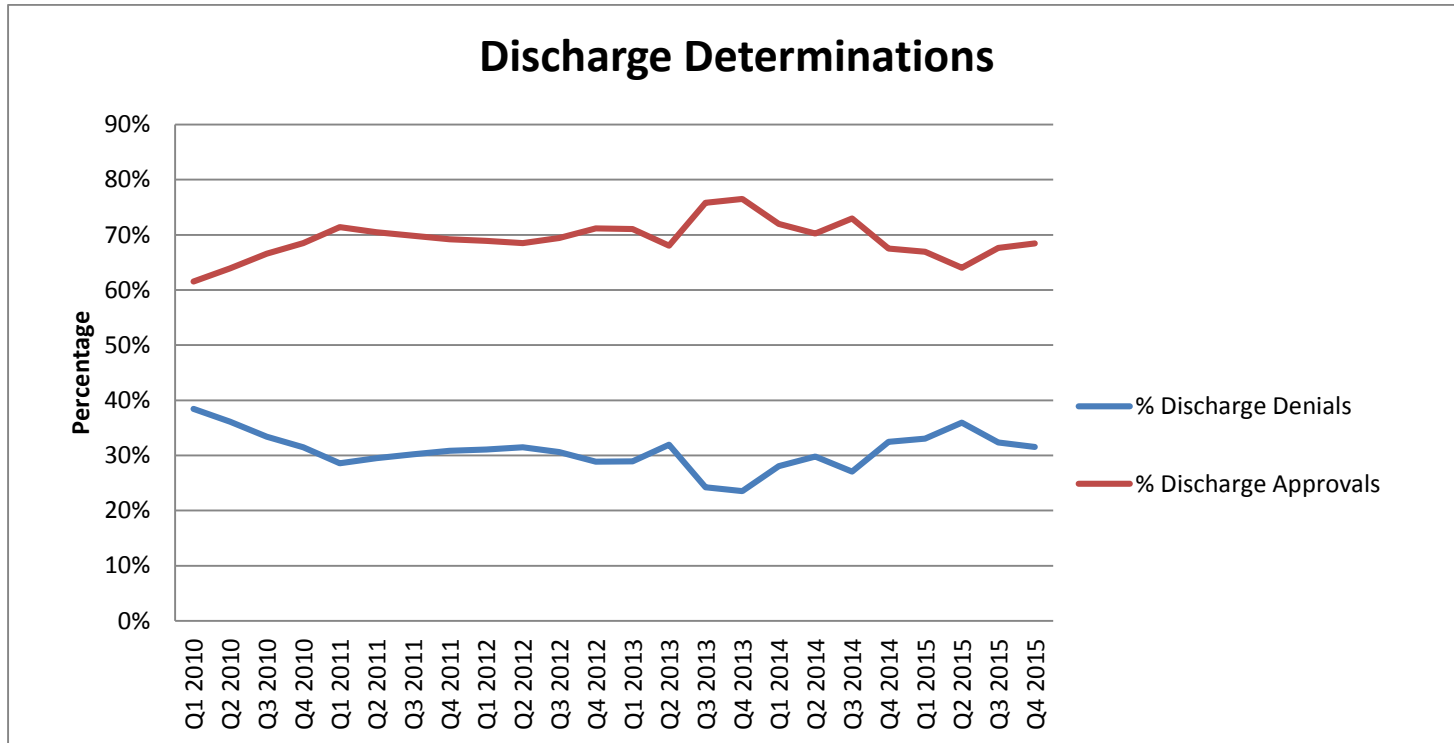
of section 25 of chapter 151A of the General Laws.



There is a noticeable spike in the number of quit determinations in Q3 2013, but this is also the case in Q4 2014 because of the cyclical nature of unemployment. Percentages of quit denials increased slightly since the UI online implementation. This increase may be attributable to employers having the online resources to respond more promptly to fact-finding questionnaires. Levels of denials and approvals since the UI Online implementation have remained steady.

Determinations related to Quits																								
	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q4 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Q1 2015	Q2 2015	Q3 2015	Q4 2015
Quit Determinations	6,902	8,292	7,242	7,728	5,659	7,435	6,681	8,246	6,743	7,653	6,380	6,114	5,584	7,168	9,726	6,772	7,434	7,686	8,584	5,069	5,105	8,236	6,444	5,621
Quit Denials	4,914	5,891	5,072	5,432	3,679	4,871	4,457	5,723	4,473	5,095	4,034	3,913	3,614	5,003	7,681	5,022	5,427	5,607	6,379	3,700	3,638	5,939	4,746	4,160
Quit Approvals	1,988	2,401	2,170	2,296	1,980	2,564	2,224	2,523	2,270	2,558	2,346	2,201	1,970	2,165	2,045	1,750	2,007	2,079	2,205	1,369	1,467	2,297	1,698	1,461
% of Quit Denials	71%	71%	70%	70%	65%	66%	67%	69%	66%	67%	63%	64%	65%	70%	79%	74%	73%	73%	74%	73%	71%	72%	74%	74%
% of Quit Approvals	29%	29%	30%	30%	35%	34%	33%	31%	34%	33%	37%	36%	35%	30%	21%	26%	27%	27%	26%	27%	29%	28%	26%	26%

(v) The number of claims arising under clauses (1) and (2) of subsection (e) of section 25 of chapter 151A of the General Laws.



Beginning in Q3 2013, when the UI Online system went live, there was an increase in the number of Discharge Determinations due to the growing backlog. In spite of the increase in the number of issues, the approval rate of discharge determinations remained fairly consistent.

Determinations related to Discharges																								
	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q4 2013	Q1 2014	Q2 2014	Q3 2014	Q4 2014	Q1 2015	Q2 2015	Q3 2015	Q4 2015
Discharge Determinations	7,741	9,536	7,526	8,135	7,017	9,397	7,950	9,442	8,142	8,985	7,086	6,962	6,963	8,176	10,984	9,509	10,163	10,398	11,039	6,309	6,429	9,532	6,941	6,035
Discharge Denials	2,976	3,442	2,513	2,563	2,006	2,773	2,399	2,910	2,530	2,830	2,168	2,008	2,016	2,611	2,659	2,235	2,850	3,096	2,986	2,050	2,126	3,426	2,245	1,905
Discharge Approvals	4,765	6,094	5,013	5,572	5,011	6,624	5,551	6,532	5,612	6,155	4,918	4,954	4,947	5,565	8,325	7,274	7,313	7,302	8,053	4,259	4,303	6,106	4,696	4,130
% Discharge Denials	38%	36%	33%	32%	29%	30%	30%	31%	31%	31%	31%	29%	29%	32%	24%	24%	28%	30%	27%	32%	33%	36%	32%	32%
% Discharge Approvals	62%	64%	67%	68%	71%	70%	70%	69%	69%	69%	69%	71%	71%	68%	76%	76%	72%	70%	73%	68%	67%	64%	68%	68%

(2) The average length of time of the appeal and review process from initial determination to final disposition

Average Age of Pending Lower Authority Appeals						
	2010	2011	2012	2013	2014	2015
Q1	71	69	42	63	60	58
Q2	64	38	53	49	51	37
Q3	67	30	58	45	51	27
Q4	61	33	64	52	55	28

Average Age of Pending Higher Authority Appeals						
	2010	2011	2012	2013	2014	2015
Q1	107	172	89	72	116	146
Q2	113	165	69	74	136	130
Q3	147	145	60	74	138	110
Q4	169	118	68	99	113	113

(3) The procedures used by the department to hire and train new employees who implement sections 39 through 41, inclusive, of said chapter 151A, including a determination as to whether or not employment procedures, under section 9K of chapter 23 of the General Laws, have been followed; and

DUA employs adjudicators to implement §§ 39(a) (determinations) and 39(b) (appeals from determinations). The Board of Review, which functions independently from DUA, employs its own review examiners to help implement § 41 (appeals from DUA hearings decisions).

Hiring for positions within both DUA and the Board of Review is coordinated by the Human Resources Department (HRD) of the Executive Office of Labor and Workforce Development (EOLWD), which follows Hiring Guidelines promulgated by the Human Resources Division of the Executive Office of Administration and Finance. New employees are hired on a non-partisan, merit basis, as required by G. L. c. 23, § 9K.

Training for New Adjudicators

According to policy, determinations under § 39(a) are made by adjudicators, who receive more than 100 hours of formal instruction. Newly-hired adjudicators also shadow experienced claims agents and, after completing their initial training, work on a limited number of cases under the close supervision of a unit supervisor, until the supervisor determines that their adjudication skills are sufficient for them to decide cases on their own. Specifically, newly-hired adjudicators:

- Participate in 2–3 hours of DUA-developed eLearning modules that introduce them to the basics of the unemployment insurance (UI) program.
- Participate in 2–3 hours of the U.S. Department of Labor’s seven module non-monetary determination online training.
- Attend a full day of UI Online initial claims training in UI concepts and claims procedures, including hands-on experience navigating DUA’s UI Online system.
- Spend time in the Call Center shadowing an experienced claims agent.
- Complete a 90-hour classroom program in Initial Adjudication Training. In a test environment, trainees file claims, create issues, undertake fact-finding, and issue determinations applying UI policies and procedures. This training has two segments: the first segment lasts 10 days; the second lasts three days.
- During a two-week break between the two classroom training segments, each new adjudicator is paired with an experienced JSRII to gain experience applying the sections of law learned in the first segment.

- To gain more familiarity with the adjudication process, following Initial Adjudication Training, each new adjudicator again is paired for several days with an experienced JSRII. The new adjudicator then is assigned a small number of cases. Proposed determinations are reviewed by the unit supervisor before being made final, until the manager decides that the new adjudicator's skills are good enough for the adjudicator to determine claims independently.

Training for New DUA Review Examiners (Lower Authority Appeals)

Appeals from determinations are heard and decided by review examiners under § 39(b). Newly-hired examiners receive training in both adjudications and hearings, including:

- Spend at least two weeks shadowing Call Center employees: one week observing the claims-taking process; a second week observing the adjudication process.
- Complete the same 90-hour Initial Adjudication Training program for newly-hired adjudicators.
- During the break between the two segments of the Initial Adjudication Training program, new examiners spend two weeks in their assigned units applying the sections of law learned in the first segment. New examiners shadow more experienced examiners as they begin the prehearing process. New examiners review all case materials from the adjudication level and mark exhibits for scheduled hearings. This approach helps examiners to ensure that parties and issues are correctly identified for the pending hearing and to develop good work habits.
- After completing adjudication training, new examiners observe the hearings process for one to three weeks.
- New examiners then attend five days of classroom training on:
 - appeals arising under §§ 25(e)(1) (voluntary quits) and (2) (discharges),
 - conducting a hearing,
 - evidentiary issues, and
 - writing decisions.
- Working under the guidance of experienced examiners, new examiners then begin holding hearings, on a reduced schedule, for cases arising under §§25(e)(1) and (2) as well as limited single-party issues. The experienced examiner observes the new examiner's hearings for approximately one month and reviews draft decisions for approximately six months.
- A new examiner's caseload is increased commensurately with the examiner's increased skills.

Training for New Board of Review Examiners (Higher Authority Appeals)

The Board of Review has discretionary authority under § 41 to review decisions by DUA review examiners. The Board is assisted by a corps of its own review examiners. Because a Board examiner's work includes advising whether a DUA decision is free from any legal error affecting substantial rights, the Board hires only lawyers as examiners. Newly-hired examiners are initially trained by the Board's Chief Counsel. This training involves:

- An overview of the unemployment insurance system, including relevant statutory, regulatory, and case law, along with detailed instruction as to how an unemployment claim works its way through the claims process, adjudication, hearings, the Board of Review, and the opportunity for appeal to the District Court.
- Instruction on the use of available legal resources, including providing a bound copy of Chapter 151A, the DUA regulations, access to Westlaw, and membership in the Social Law Library.
- Detailed instruction regarding separation issues arising under §§ 25(e)(1) and (2), which are the most common appellate issues, following which a new examiner is assigned two or three cases raising these issues. The Chief Counsel works closely with the new examiner, including discussing the facts and issues in the cases and reviewing initial drafts. Thereafter, a new examiner is assigned a reduced caseload under these sections. As an examiner's proficiency increases, the caseload increases and the intensity of supervision decreases.
- When the Board is satisfied with a new examiner's ability to review cases under §§ 25(e)(1) and (2), the examiner is assigned cases presenting other legal issues, beginning with basic eligibility issues under §§ 24(b) and (c).

RECENT CHANGES IN MASSACHUSETTS UI PERFORMANCE

The Department of Unemployment Assistance has made significant progress in the past year in our Adjudication performance measures. Please see the information below:

	Q/E Sept 2014	Q/E Sept 2015
Timely 1 st Payments	70%	78%
21 Day Determination	44%	59%
LAA 30 Day Disposal	5.0%	51.3%
LAA 45 Day Disposal	34.8%	79.4%
LAA Avg Age	51	27
HAA Avg Age	138	110
HAA 150 Day Disposal	76%	84%

DUA has been successful in implementing changes which consolidate issues into singular fact-finding where practical. DUA has refined the way the UI Online system handles certain non-workload credit issues which previously held or delayed payment. DUA has stopped sending claimants fact-finding for non-interested party base period employers and has implemented telephone calls with 48 hour deadlines for rebuttals and additional information. DUA conducted a lengthy review of its fact finding questionnaires that included input from the advocate and employer community as well as several levels of agency adjudication staff. The questionnaires were then sent to a readability consultant who made recommendations for the modification of language used in the questionnaires designed to reduce the reading level of the questionnaires so that they would be easier for all of our customers to understand.

DUA has implemented new business processes to assist most LEP claimants with fact-finding, including providing cover sheets and separate telephone numbers for assistance for LEP claimants whose primary language is Cantonese, French, Haitian Creole, Italian, Khmer, Korean, Laotian, Russian, or Vietnamese, in addition to DUA's existing special telephone numbers for LEP claimant whose primary language is Portuguese or Spanish.

DUA has focused on meeting its federal benchmarks for timeliness in payments, adjudications and appeals. Each manager in the agency is being performance-measured on agency success in those categories. The Lower Authority Appeals Unit, despite reductions in staffing in CYQ3, filed a strong report, nearing success in all three timeliness measures. The Higher Authority has taken steps to reduce their average age and is expected to meet their goals within the next year. Timely first payments are seeing improvement, but are not at pre-UI Online levels yet. The agency has undertaken a review of failures to determine if further system enhancements

or policy changes are required to ensure success throughout the year, regardless of the volume of claims.

Despite the increase in determinations under UI Online, DUA just filed its most timely quarter in more than 6 years for adjudication, making 59% of its decisions within 21 days. There is no deviation from past practice regarding percentage of those decisions being decided for the claimant. There has also been a reduction of determinations, due in part to a change in volume of claims, but also attributable to agency efforts cited above to reduce un-needed issues.

DUA plans on finally completing the revised Adjudication Handbook and delivering training to all adjudication staff on the revised policies and procedures. DUA's plans for the future include continuing the update of its regulations, policies, protocols and training as well as its IT system to allow for the optimum delivery of services.

RECOMMENDATIONS

The Legislature directed the Commission to make recommendations in three specific areas, as well as a complete review of the current statutes and regulations relative to the implementation of chapter 151A of the General Laws and any recommendations as to possible legislative reforms and streamlined procedures, including, but not limited to, recommendations and procedures for the uniform and effective implementation of section 25 of said chapter 151A. The Commission's recommendations are as follows.

1. As is apparent from the information about DUA's staffing levels lag behind changes in the economy, often resulting in decreasing staffing levels when the economy begins to contract and unemployment rises, and the state budget is decreasing. In previous economic downturns, when the state faced serious budgetary shortfalls, and instituted hiring freezes and/or furloughs, those budgetary restrictions were applied to DUA even though this does not result in any savings to the Commonwealth because Federal government reimburses the Commonwealth for the costs of DUA's employees.

Federal Dept. of Labor advisory, UIPL No. 09-98, 1/12/98, in fact, advises that any action taken by the state with respect to hiring freezes, shutdowns, furloughs, across-the-board staff reductions, and hiring delays must take into account the service delivery needs of the UI system to insure that the "method of administration" is consistent with Section 303(a)(1) of the Social Security Act. Sec. 303(a)(1) requires that State law provide for "Such methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."

For those reasons, the Commission recommends that:

In any future cost savings initiative, including furloughs and or hiring freezes, the Commonwealth expressly exempt DUA from such initiatives.

2. There are three points in the administrative adjudication process that involve the application of the law: determinations by DUA adjudicators; decisions by DUA review examiners on appeals from those determinations; and decisions by the Board of Review on appeals from review examiner decisions. The most significant issue regarding quality is in the number of Lower Authority Appeals in which Hearing Officers reverse initial decisions by adjudicators. With that in mind, the Commission recommends the following:

In order to reduce the excessive amount of initial adjudication decisions that are overturned, DUA should develop a means by which its adjudicators and hearings officers are informed about final decisions on their cases. DUA should track and monitor the performance of all adjudicators and hearings officers in this area.

3. Because most municipalities have limited finances, they are more likely to be reimbursable employers in the UI system, rather than electing to participate in the Unemployment Compensation Fund. As a result, these municipalities are responsible for paying for their entire UI costs. When an adjudicator makes an erroneous decision, and it takes several months for a hearing officer to reverse the decision, in order to be made whole, the municipality has to make its own effort to collect the overpayment, and the success rate in collecting overpayments is extremely low. In order to address this issue, the Commission recommends that:

DUA take special efforts to advise municipalities of their right to request an expedited determination, and that DUA publicize the dedicated municipalities' line to all municipalities.

Further, DUA should maintain its Municipal Assistance Line.

The more employers participate in the UI Insurance system, the less the cost for any one employer. There are numerous barriers that discourage municipalities from participating as contributory employers, including a taxable wage base on the entirety of earnings, in contrast to private employers who pay taxes on a taxable wage base of \$15,000. We recommend legislation that will address this disparity and allow for more municipalities to participate voluntarily in the Unemployment Compensation Fund if deemed more cost effective.

4. Delays in the resolution of disputes are even more problematic for low income claimants, whose very existence depends on receipt of UI benefits. The Commission, therefore, recommends that:

DUA's Director establish a method for prioritizing decisions for Claimants facing financial hardships who are waiting for initial benefits and/or appealing the denial of UI benefits before the Hearings Department and the Board of Review. The receipt of food stamps or other needs-based programs easily verifiable by DUA through interagency agreements shall be a sufficient but not a necessary method of proof. For claimants not receiving needs-based benefits, other indicia of hardship including but not limited to imminent eviction, threats of wage garnishment due to debts, medical or other unmet critical needs of the claimant or the claimant's family due to the delay of the receipt of UI may be considered.

5. When the UI Online system generates "decisions" automatically, due to the "lock box" nature of the system's design, it may be difficult and time-consuming to correct erroneous decisions, even when DUA determines it is appropriate to do so. Additionally,

the UI Online system generates multiple issues—adding to the complexity of the UI process -- that may impact the timeliness and quality of the adjudication process.

UI Online continues to flag items for review which are un-funded (not creditable for “workload”) and unnecessary. For example, only recently the system created an issue for review every time a training application was sent out, rather than only when a completed application was received. These reviews add volume to backlogs and delay payments. While the system has improved, there remain far too many false issues which impact the quality of the adjudication process.

We recommend that DUA continue its on-going review of the design features of UI Online, accompanied by greater transparency and greater input by employers and claimants. As part of this review, to expedite the resolution of claims, DUA should consolidate all issues in a claim where feasible. DUA should make every effort to involve focus groups comprised of claimants and employers in order to test new filing/response systems before implementing any new systems.

6. While the easiest method for DUA remains high utilization of UI Online, there are inherent barriers to an English-only, web-based system. Limited English Proficiency, lack of computer access or lack of computer skills, or disabilities which interfere with computer use can make accessing the UI system more challenging for some. DUA maintains phone lines in English, Spanish and Portuguese, as well as translators for many other languages. Walk-in service is available for filing claims at 30 locations across the state. Wait times at Career Centers and on the telephone lines can be very long, especially during peak periods. The Commission, therefore recommends that:
 - **DUA must ensure access by claimants of Limited English Proficiency.**
 - **DUA must ensure access to filing via telephone for those who cannot use UI Online.**
 - **DUA must ensure access to customer assistance personnel via telephone, so they can assist with claimant questions during their claims.**
 - **DUA should utilize Career Centers, where possible, with trained UI staff who can provide in person assistance with as much of the claim process as possible, not limited to just assistance with the initial filing of the claim.**
7. Claimants who need vocational training under the Training Opportunities Program (TOP) to return to the workforce are reliant on timely determinations for their access to timely training. Delayed adjudication of their applications can hinder their achievement of sustainable long-term employment opportunities.

We recommend that, in order to ensure that claimants receive the timely training that they need to return to the workforce with improved skills, DUA should ensure timely information about training programs and opportunities and timely adjudication of Training Opportunities Program (TOP) applications. We also recommend that DUA and the Department of Career Services (DCS) should improve communications to ensure that meaningful information about training opportunities and assessment of a claimant's need for training through TOP is provided as early as possible.

8. The Commission recognizes that DUA is now providing quarterly reports of new claims and determinations on its website. The available reports include monetary and non-monetary determinations of claims, time lapse of non-monetary determination, and benefit appeals. All of these reports can be found on: <http://www.mass.gov/lwd/unemployment-insur/how-is-dua-performing/>. The Commission further recognizes that DUA has gone through great lengths to review staffing in all departments to ensure that they are appropriately staffed to handle the backlog in a timely fashion. Adjudicators that have been used in the past to help handle the volume on the phone lines have returned to adjudicating claims. While in times of sudden economic changes, a large backlog may be unavoidable, the DUA has developed a flexible model that would allow them to shift staff appropriately in order to manage sudden increases in cases. The Commission, therefore recommends that:

DUA shall be required to post these quarterly reports on its website, as well as any additional reports that would provide insight into DUA's performance, and review staffing in all departments, and implement a flexible staffing model that will permit DUA to manage sudden increases in the volume of work in different departments.

DUA should be required to continue its newly-implemented, centralized call-monitoring practice to exercise greater oversight and control over the quality of interactions between the public and customer service personnel. DUA also should be required to continue to update its regulations, policies, protocols, and training, as well as its IT system, in addition to providing ongoing refresher training to adjudicators to ensure that they are current on all DUA policies.

DUA should be required to monitor quality and timeliness of adjudication activity of business units through implementation of the federal Benefit Timeliness Quality (BTQ) and Benefit Accuracy Measurement (BAM) Programs. Quality and timeliness of individual separation and non-separation issues

adjudicated is measured in BTQ through a case review of previously adjudicated issues. This audit ensures due process is given to interested persons while attempting to find all relevant facts to the decision, ensures that the correct section of law is applied in the determination, and the determination is correct. This audit also validates the relevant dates to ensure that timeliness of issue completion is adequately recorded for each issue.

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