

The Commonwealth of Massachusetts

Report

of the

**SENATE COMMITTEE ON
POST AUDIT AND OVERSIGHT**

entitled

**Concerning a Review of the Performance of the Commonwealth's
Unemployment Insurance System and Related Programs During the
COVID-19 Pandemic**

(under the provisions of Section 63 of Chapter 3
of the General Laws, as most recently amended by
Chapter 557 of the Acts of 1986)

August 18, 2022



The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

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Committees

Public Safety and Homeland Security

Senate Committee on Ways and Means

Environment, Natural Resources and Agriculture

August 18, 2022

Mr. Michael D. Hurley, Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Clerk Hurley:

Pursuant to M.G.L. Chapter 3, Section 63, the Senate Committee on Post Audit and Oversight respectfully submits to the full Senate the following report: Report of the Senate Committee on Post Audit and Oversight Concerning a Review of the Performance of the Commonwealth's Unemployment Insurance System and Related Programs During the COVID-19 Pandemic. This report is based on a review and research by the Senate Committee on Post Audit and Oversight.

The report presents an Executive Summary, the Committee's findings as well as recommendations to improve the performance of the Commonwealth's Unemployment Insurance System.

Respectfully filed by the Senate Committee on Post Audit and Oversight.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael O. Moore".

Senator Michael O. Moore, Chair
Senator James B. Eldridge, Vice Chair
Senator Harriette L. Chandler
Senator Barry R. Finegold
Senator Patricia D. Jehlen
Senator John F. Keenan
Senator Ryan C. Fattman
Senator Patrick M. O'Connor

Report of the Senate Committee on Post Audit and Oversight Concerning a Review of the Performance of the Commonwealth's Unemployment Insurance System and Related Programs During the COVID-19 Pandemic

I. Executive Summary

The COVID-19 pandemic challenged the Commonwealth's Unemployment Insurance System. The Department of Unemployment Assistance encountered an unprecedented level of claims, the roll out of new federal programs, and sophisticated fraud schemes. At the same time, some claimants found themselves enduring long delays to access benefits, interruptions in benefits, and difficulty navigating the Commonwealth's Unemployment Insurance System. Based on the Senate Committee on Post Audit and Oversight's review, the Committee makes several recommendations to address these challenges. Specifically, the Committee recommends:

- Creation of a Resiliency Plan to better prepare the Commonwealth for future claim surges.
- Establishment of an Ombuds Office to assist claimants and employers with their interactions with the Unemployment Insurance System.
- Continue efforts to replace the UI Online System in a timely, complete, and cost-effective manner.
- Enhance fraud detection tools and cyber security features to protect the Commonwealth and its residents while facilitating claimant access to the unemployment insurance system.
- Establishment of an Anti-Fraud Task Force to facilitate the investigation and recovery fraudulently obtained benefits.

II. Introduction

This report contains the findings and recommendations of the Senate Committee on Post Audit and Oversight (the Committee) related to the performance of the Commonwealth's Unemployment Insurance System and Related Programs During the COVID-19 Pandemic.¹ As part of its review, the Committee conducted an oversight hearing where it heard from the Secretary of Labor and Workforce Development Rosalin Acosta, First Assistant Inspector General Natalie Monroe, Division Chief Geoffrey Wood of the Attorney General's Insurance and Unemployment Fraud Unit, as well as representatives of the Employment Rights Coalition, AFL-CIO of Massachusetts, the National Federation of Independent Business of Massachusetts and the Retailers Association of Massachusetts.² The Committee also received information and documents from the Executive Office of Labor and Workforce Development and the Department

¹ The Committee notes that the House Committee on Post Audit and Oversight issued a detailed report titled "Unemployment Insurance During the COVID-19 Pandemic" in January of 2021. The report provides a description of the Unemployment Insurance programs and systems in place, program implementation, and program changes in response to growing demand, and the complications the systems have faced. The report is included as Attachment A.

² *Senate Post Audit and Oversight Hearing*, December 10, 2021, available at: <https://malegislature.gov/Events/Hearings/Detail/4114>

of Unemployment Assistance. Finally, the Committee reviewed related news articles, government reports, and other accounts.

The Committee thanks Secretary Acosta and the staff of the Executive Office of Labor and Workforce Development and the Department of Unemployment Assistance for their cooperation and assistance with the Committee's review.

III. Committee Jurisdiction

The Committee is a specially constituted body whose powers, including the authority to undertake special investigations, to summon witnesses, take testimony and compel the production of books, papers, documents and other evidence of agencies of the Commonwealth, are set forth in Sections 63 and 64 of Chapter 3 of the General Laws.

IV. The Executive Office of Labor and Workforce Development and the Department of Unemployment Assistance

The Executive Office of Labor and Workforce Development (EOLWD) operates under the direction of the Secretary of Labor and Workforce Development, who is appointed by the Governor.³ As part of EOLWD, the Department of Unemployment Assistance (DUA) is responsible for administering the Commonwealth's Unemployment Insurance (UI) Program.

1. The Massachusetts UI Program

Generally, the UI program provides financial assistance and transitional services to unemployed Massachusetts residents who are able to work, available to work, and looking for employment, with the goal of helping them become re-employed.

The UI program originated under the federal Social Security Act of 1935, which created the UI Program as a joint federal-state partnership. Each state is responsible for designing its own program subject to certain federal guidelines. The U.S. Department of Labor oversees the system, and in turn, each state administers its own program. The federal government determines the broad guidelines for coverage and eligibility but, within certain limits, states may determine program eligibility.

Chapter 151A of the General Laws governs the operation of the Commonwealth's UI program. It covers all aspects of unemployment compensation, including employer contributions to the Commonwealth's Unemployment Compensation Fund and the rates used; unemployment benefit claims; payment of and eligibility for benefits, claims, and appeals; and enforcement of the law.

2. Federal Unemployment Compensation Programs Created in Response to the COVID-19 Pandemic

³ See M.G.L. c. 23, § 1.

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020.⁴ The CARES Act created several new programs related to addressing the economic impacts of the COVID-19 pandemic, in part, by creating new benefit flexibility and providing additional program funding. Specifically, the CARES Act led to the creation of several temporary unemployment compensation programs: Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC). The PUA program provided up to 79 weeks of benefits to individuals who were unable to work because of a COVID-19 related reason but were not eligible for regular unemployment or extended benefits.⁵ Similar to the UI program, these new pandemic programs were implemented by the states, but were subject to U.S. Department of Labor rules, regulations and guidance issued over the course of the COVID-19 pandemic.⁶

V. Findings

1. The COVID-19 Pandemic Challenged the Commonwealth's Operation of the UI System and Related Pandemic Unemployment Compensation Programs

Claimants during the COVID-19 pandemic experienced long delays obtaining benefits, some months long, technological issues and errors with the UI Online System, and difficulty navigating program eligibility requirements. Claimants also experienced unexplained interruptions in benefits. As discussed below, and in Section 4, the UI Online system contributed to many of these delays. One example conveyed to the Committee involved the process for resetting a claimant's password.

Often, the "forgot password" function on UI Online does not work, even when a claimant knows the security question and answer and the verification phone number and email are correct. This requires DUA assistance over the phone to resolve, delays filing, and necessitates backdating the claim, a separate request the claimant must make and an issue for DUA to adjudicate.⁷

Other issues involved mixed messages. For example, claimants would sometimes receive information from DUA via U.S. mail only to call in and receive a contradictory message over the phone or that they should disregard the mailing. Claimants also had trouble navigating anti-fraud measures and technological barriers put in place. One account shared with the Committee illustrated this experience:

⁴ Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136.

⁵ Following an extension of certain benefits, federal pandemic UI benefits, including PUA, ended the week ending September 4, 2021.

⁶ See generally *Unemployment Insurance Relief During COVID-19 Outbreak: Guidance*, available at: <https://www.dol.gov/coronavirus/unemployment-insurance#guidance>

⁷ *Written Testimony of Massachusetts Employment Rights Coalition to the Senate Committee on Post Audit and Oversight*, December 10, 2021. This testimony is included as Attachment E.

[A claimant] struggled to receive unemployment benefits due to technological barriers. Her primary spoken language is Vietnamese, but she does not read Vietnamese. Her husband is a postal worker, and when the pandemic hit, she had to stay at home to care for their nine-year-old and 15-year-old children while he worked. She was receiving PUA, but in December 2020, encountered an identity verification issue and stopped receiving benefits. DUA scheduled two virtual hearings that she could not attend due to technology issues. She finally had an in-person hearing, but was confused by DUA's notice and went to DUA on the wrong day. In November 2021, a legal aid advocate helped her resolve the ID issue, almost one year from when she stopped receiving benefits.⁸

As discussed in Section 2, DUA also made overpayments on certain claims. These overpayments and subsequent repayment notices imposed an additional impact on claimants. The Committee heard the following example of an overpayment and its impact:

[A claimant's] legislator referred him to Greater Boston Legal Services (GBLS) for assistance after DUA issued an overpayment notice of close to \$7,000 in UI benefits. After calling DUA numerous times and speaking with staff at GBLS, it became clear that [the claimant's] overpayment resulted from DUA miscalculating his weekly benefit amount when he reapplied for benefits in March 2021. [The claimant] has since returned to work; his wife is retired and receives Social Security. Under the existing waiver standards, he will likely not be eligible for a waiver of an overpayment, even though it is the result of administrative error, because his household's current income is slightly more than their expenses. Further, he and his wife are concerned that DUA will require repayment given their liquid assets, including their savings and investments, which they are relying on for [the claimant's] retirement.⁹

As noted in both examples above, when claimants were unable to address issues with their claims by contacting DUA, they often turned to their state legislators, legal aid or other advocacy groups for assistance.¹⁰

⁸ *Id.* at p. 11.

⁹ *Written Testimony of Massachusetts Employment Rights Coalition to the Senate Committee on Post Audit and Oversight*, December 10, 2021, at p. 4.

¹⁰ Other states also encountered challenges implementing CARES Act unemployment compensation programs. According to the Inspector General for the U.S. Department of Labor (DOL), DOL's "guidance and oversight did not ensure states implemented the programs and paid benefits promptly; performed required and recommended improper payment detection and recovery activities; and reported accurate and complete program activities. This occurred primarily because states' information technology systems were not modernized, staffing resources were insufficient to manage the increased number of new claims, and according to state officials, guidance from [DOL] was untimely and unclear." *COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs*, U.S. DOL, Office of Inspector General, Report Number: 19-21-004-03-315, May 28, 2021, available at <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

2. DUA Made Overpayments to Certain Claimants

During the COVID-19 pandemic, DUA made overpayments to UI and PUA claimants. According to DUA, an overpayment occurred if an individual received an unemployment benefit payment and DUA later determined that they were not eligible to receive such payment.

The Committee learned that while the number of overpayments made were roughly equal between the UI program and the PUA program, most of the dollar value of the overpaid claims was through the PUA program.¹¹

DUA provided the following description for the cause of the overpayments during the COVID-19 pandemic:

The implementation of new programs, alongside a steep rise in the total volume of claims in 2020-2021, has led to an increase in the number of total overpayments in the DUA system. Current and historic overpayments in the unemployment system are driven by multiple reasons such as employer disputes regarding circumstances of separation or inadequate documentation verifying employment eligibility. These circumstances often trigger a change in benefit eligibility for the claimant and result in previously-processed benefit payments becoming ineligible and thus, an overpayment. However, despite the increase in overpayments due to a steep rise in claims, outstanding overpayments only represent 6.9% of the total benefits paid out to claimants. In comparison, the percentage of overpayments in 2019 was 1.9% of the total benefits paid out to claimants.¹²

An individual that received an overpayment is required to repay the amount of benefits that they received even if the overpayment is not the individual's fault unless the individual applies for and receives a waiver of their obligation to repay.¹³ In addition, DUA is required by the CARES

The Government Accountability Office (GAO) issued similar findings related to the performance of state UI systems during the pandemic, finding that "in the pandemic, challenges emerged relating to providing customer service, timely processing of claims, and implementing new programs. Moreover, GAO, the Department of Labor (DOL), and the DOL Office of Inspector General have reported on the need to modernize state IT systems." See *Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks*, GAO-22-105162, Jun 07, 2022, available at: <https://www.gao.gov/products/gao-22-105162>

¹¹ According to DUA, the total number of overpayments "as of January 31, 2022, totals 404,992 (representing overpayments between March 8, 2020 through January 31, 2022)." . . . The total dollar amount of established overpayments between March 8, 2020 through January 31, 2022 was \$4,345,269,642. As of January 31, 2022, the outstanding overpayment balance is \$2,326,011,396."

¹² *Department of Unemployment Assistance Overpayments Report: 2020-2021*, available at: https://malegislature.gov/Reports/12825/SD3023_DUA%202020-2021%20Overpayments%20Report.pdf

¹³ Overpayments are classified as fault or no fault by DUA. According to DUA, DUA makes fault findings only when it determines that an overpayment occurred because a claimant misrepresented a material fact or withheld information that the claimant knew or should have known was material to the decision to grant benefits. Before issuing a fault finding, DUA notifies the claimant that the claim may be subject to such a determination and provides

Act to identify and recover CARES Act benefits that were overpaid unless a waiver condition applies.¹⁴ As part the Commonwealth’s American Rescue Plan Act (ARPA) legislation, the Commonwealth required DUA to notify claimants of their right to seek a waiver of an overpayment.¹⁵

In the spring of 2022, the U.S. Department of Labor (DOL) waived a portion of the overpaid PUA claims. Specifically, the Commonwealth had requested that DOL provide relief for all claimants with overpayments related to a new employment substantiation requirement created midway through the PUA program.¹⁶ In addition, the Commonwealth requested “relief in the form of a blanket waiver for all non-fraudulent unemployment compensation overpayments for the following federal programs: Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Mixed Earner Unemployment Compensation (MEUC).”¹⁷ The Commonwealth’s waiver request was partially granted by DOL.¹⁸ The partial waiver granted by DOL waived overpayments to claimants who did not have notice of the new requirement. As a result, it only covers overpayments made for the period from the week ending January 2, 2021 through the week ending March 20, 2021.

a Fact-finding questionnaire for the claimant to respond to. While fault overpayments cannot be waived, claimants may appeal fault findings.

¹⁴ See *Unemployment Insurance Program Letter No. 20-21*, available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL_20-21.pdf

¹⁵ See St. 2021, c. 102, § 76, providing:

SECTION 76. The department of unemployment assistance shall establish a public information campaign to provide notice and promote awareness of the availability of an overpayment waiver related to unemployment insurance benefits overpayments. The information campaign shall include information related to: (i) an individual’s right to request an overpayment waiver; (ii) requirements to be deemed eligible for an overpayment waiver; (iii) how to access and apply for the waiver; (iv) information an individual is required to provide to the department in order to apply for the waiver; and (v) information related to collections actions while the request for a waiver overpayment is pending and after the final determination of the waiver request. The department shall seek to ensure the information campaign reaches individuals who received any unemployment insurance benefits that were accrued in 2020 and 2021, including benefits under chapter 151A of the General Laws, Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, Federal Extended Benefits, Federal Pandemic Unemployment Compensation and Mixed Earner Unemployment Compensation.

¹⁶ “Employment substantiation” refers to a federal rule change that required individuals to send DUA documents about their employment prior to their application for benefits.

¹⁷ See *Letter to DOL Secretary Walsh from Secretary Acosta Regarding Blanket Waivers*, February 23, 2022, available at: <https://www.mass.gov/doc/ma-usdol-letter-february-23/download>

¹⁸ See *Baker-Polito Administration Announces Unemployment Overpayment Relief Plans*, April 14, 2022, available at: <https://www.mass.gov/news/baker-polito-administration-announces-unemployment-overpayment-relief-plans>

The Committee notes that the General Court continues to evaluate legislative proposals related to overpayments.

3. EOLWD and DUA Made Dynamic and Substantial Changes in Response to the COVID-19 Pandemic

The COVID-19 pandemic imposed unprecedented demands on the operation of the Commonwealth UI System and related pandemic unemployment compensation programs. As explained by Secretary Acosta, the COVID-19 pandemic led to a “historic amount of transactions” for the Commonwealth’s system.¹⁹ A report filed by DUA illustrates the scope of the increase:

In 2020, DUA paid over \$21 billion in benefits to almost 2.25 million claimants, and in 2021, DUA paid nearly \$12 billion in benefits to over 1.7 million claimants, totaling over \$33 billion in benefits paid during 2020-2021. In comparison, in 2019, DUA paid out \$1.4 billion in benefits to approximately 400,000 claimants.²⁰

In addition, DUA was responsible for developing and rolling out new Federal programs created in response to the COVID-19 pandemic – with rules and guidance for such programs released and clarified mid-program. Finally, the response to the COVID-19 pandemic involved an “unprecedented level of mixed State/Federal benefits which requires a level of accounting and adjustment not associated with any earlier programs.”²¹

Finally, DUA underwent substantial staff increases – involving both the hiring and training of additional staff. According to DUA, the number of employees grew from “200 employees to over 2,000 employees” during the pandemic.²²

4. The UI Online System has Long Underperformed

At its creation, the Commonwealth’s UI Online System encountered delays, cost overruns, and operational issues and limitations. News reporting and past state agency reviews, including a previous Senate Post Audit and Oversight Report, have detailed persistent issues with the UI Online System.²³

¹⁹ *Written Testimony of Secretary Acosta to the Senate Committee on Post Audit and Oversight*, December 10, 2021. This testimony is included as Attachment B.

²⁰ *Department of Unemployment Assistance Overpayments Report: 2020-2021*, available at: https://malegislature.gov/Reports/12825/SD3023_DUA%202020-2021%20Overpayments%20Report.pdf

²¹ *Written Testimony of Secretary Acosta to the Senate Committee on Post Audit and Oversight*, December 10, 2021.

²² *Id.* at p. 1.

²³ For example, on the revenue collection side, the State Auditor found:

In December 2009, the Department of Unemployment Assistance (DUA) installed an automated unemployment insurance (UI) system called UI Online, which included a revenue component.

A 2014 Report by the Senate Committee on Post Audit and Oversight found:

The revenue (employer) side of the DUA website was rolled out in December 2009, with some problems that were addressed fairly quickly. The benefits (claimant) side of the project, called “UI Online,” was originally supposed to be completed by April 2011, but had to be postponed several times due to problems with design and implementation. Ultimately, after DUA insisted on a contract amendment providing for \$10,000 in liquidated damages for each day the benefits side was overdue, past July 1, 2013, it was declared completed, and UI Online went live on that date.

Claimants have had problems with many aspects of the new system, resulting in their being denied benefits, in their benefits being held up for weeks, if not months, and in claimant confusion – all of which have heightened the stress of an already difficult situation for the unemployed. UI Online is currently offered only in English. Lack of Internet access or computer proficiency has also made the system difficult for some claimants. UI Online also seems geared to people with broadband Internet access, which is less common in the western parts of the state and among lower-income residents. In addition, many people who tried to reach DUA shortly after go-live had excessively-long waits, an average of over an hour in July 2013, according to DUA. Some claimants have also received notices informing them that they owe DUA for overpaid benefits, sometimes in extremely large amounts. Some

However, according to DUA management, when this new system was implemented, it did not provide for records of collection activity performed on delinquent employer accounts to be carried over from its legacy system. Management stated that as a result, to find past delinquent UI contribution records, DUA had to retrieve hardcopy records for each associated employer and then determine what collection activities, if any, need to be completed moving forward. Additionally, the UI Online automated processes associated with the Revenue Enforcement Department did not function as intended.

Audit No. 2017-0221-3S, *Report of the Massachusetts State Auditor, Department of Unemployment Assistance*, June 15, 2018, available at <https://www.mass.gov/doc/departement-of-unemployment-assistance/download>

Regarding adjudications, 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 found:

[T]he 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.

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, available at: <https://archives.lib.state.ma.us/bitstream/handle/2452/335895/ocn936376630.pdf>

claimants received multiple daily notices of their overpayment status and/or were warned that their income tax refunds would be intercepted to recoup the alleged overpayments.²⁴

As described in Section 1, the UI Online System similarly struggled during the COVID-19 pandemic. However, Massachusetts is not alone, the “GAO, the Department of Labor (DOL), and the DOL Office of Inspector General have reported on the need to modernize state IT systems.”²⁵

During its hearing, the Committee heard that EOLWD is in the process of replacing the UI Online system.²⁶ In addition, Secretary Acosta informed the Committee that the experiences of the COVID-19 pandemic has helped to inform the procurement of the Commonwealth’s next generation UI Online system. Specifically, Secretary Acosta noted:

If there is any silver lining in all that we have experienced over the past 18 months, it is that we believe we have greater clarity in what a modern citizen- and employer-focused unemployment and re-employment operation and systems should look like. Thanks to the Legislature’s funding modernization efforts through Chapter 151 of the Acts of 2020, EOLWD is actively pursuing a comprehensive transformation and modernization of the DUA and MDCS technology systems and business operations. We have worked with the support of the Advisory committee members and every quarter EOLWD has provided the Legislature with a status report on our progress. In fact, as we speak, the EOLWD team is evaluating bids from the industry to replace the entire DUA infrastructure for which we hope to start construction in early 2022.

5. The Commonwealth Encountered an Unprecedented and Sophisticated Wave of Fraudulent UI and PUA Claims

During its hearing the Committee heard how the Commonwealth, like other states, faced unprecedented levels of fraudulent claims during the COVID-19 pandemic. Secretary Acosta described this unprecedented change in fraudulent claims on the Commonwealth’s UI system in her testimony before the Committee:

In terms of fraudulent and criminal activity, through the years DUA has had the staff and systems to monitor and address fraudulent claims, usually perpetrated by a small number of people using generally known schemes. During the COVID-19 pandemic, international organized crime brought to all states a level of

²⁴ *Report of the Senate Committee on Post Audit and Oversight entitled Massachusetts Information Technology Projects: Looking Back, but Moving Forward*, April 17, 2014, available at: <https://archives.lib.state.ma.us/bitstream/handle/2452/208353/ocn879874984.pdf>

²⁵ *See Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks*, GAO-22-105162, Jun 07, 2022, available at: <https://www.gao.gov/products/gao-22-105162>

²⁶ *See Bid Solicitation: BD-22-1043-1043C-1043L-66049, Employment Modernization & Transformation Program for Unemployment Solution*, available at <https://www.commbuys.com/bsa/external/bidDetail.sdo?docId=BD-22-1043-1043C-1043L-66049>

sophistication and volumes of criminal fraud never seen by any governmental entity. The Commonwealth was no exception in that respect. Criminal enterprises used personal information stolen in earlier national data breaches and attempted to file fraudulent unemployment claims. It is important to note that because the Commonwealth provides the highest weekly benefits in the nation and was one of the first states to pay federal benefits such as PUA, Massachusetts was hit early and also particularly hard by this criminal activity.²⁷

Similarly, in his testimony to the Committee, Division Chief Wood explained how the advent of COVID-19 substantially changed the type of UI fraud claims encountered by the Massachusetts Attorney General's Office. In early 2020, the Insurance and Unemployment Fraud Division (IUF) began to receive "hundreds upon hundreds of calls/ complaints/ emails – about identity fraud, claims being filed under people's names who had no idea they were collecting unemployment, as well as leads on potential fraud rings or people collecting benefits that should not have been."²⁸ These calls came from both inside Massachusetts as well as from other states. The IUF was not the only recipient of these calls - other state, local, and non-governmental organizations received similar reports. Indeed, First Assistant Inspector General Natalie Monroe explained:

Since the beginning of the COVID-19 pandemic and the relaxing of eligibility standards for unemployment insurance, [the Inspector General's Office] has seen a marked increase in the number of complaints relating to unemployment insurance. Specifically, between March 2020 and November 2021, our Office received 2,020 complaints relating to unemployment insurance. Of these, 181, or 9%, were "system complaints" – things such as individuals being locked out of their accounts, not being able to reach someone at DUA or DUA mistakenly providing our phone number to callers. The rest of the complaints – or 91% – concerned allegations of fraud. The majority of these complaints fell into four categories: 1. Identify theft, i.e., an individual tried to file for benefits but someone had already filed in their name. 2. Complaints that individuals were collecting benefits when they were ineligible for benefits – these complaints related to both regular UI benefits and PUA benefits. 3. Allegations that individuals falsely claimed to have custody of children when the children were in fact in someone else's custody. 4. Complaints of individuals hacking into and changing bank information on the system.²⁹

²⁷ *Written Testimony of Secretary Acosta to the Senate Committee on Post Audit and Oversight*, December 10, 2021, at p. 5.

²⁸ *Written Testimony of Division Chief Geoffrey Wood to the Senate Committee on Post Audit and Oversight*, December 10, 2021. This testimony is included as Attachment D.

²⁹ *Written Testimony of First Assistant Inspector General Natalie Monroe to the Senate Committee on Post Audit and Oversight*, December 10, 2021. This testimony is included as Attachment C.

The type of fraud encountered during the COVID-19 pandemic also took on a more sophisticated nature than the type of fraud encountered prior to the pandemic. Specifically, the Insurance and Unemployment Fraud Division was having to subpoena more banks, along with additional interviews, per case.³⁰ This increase in investigatory work was compounded by “perpetrators [that] moved money quickly from one account to another, often multiple times, [IUFD was] now talking about 10-20 bank accounts per case as opposed to one or two and roughly the same amount of interviews of victims and witnesses.” In turn, the IUFD found itself facing additional document review and analysis for each case. Ultimately, the IUFD had to reconfigure its long-standing staffing model to account for these changing circumstances.

The new PUA program added an additional dimension. Division Chief Wood noted that “PUA, with a new computer system and new records to present for the grand jury, new witnesses needed to testify to how it works” which presented additional challenges for both DUA and prosecution teams.³¹

Generally, the fraud encountered by the Commonwealth fell into three categories:

First, perpetrators who use victims’ personal identifying information (PII) without authorization to collect unemployment benefits and funnel money into a bank account the perpetrator controls. Second, perpetrators who “assist” others in opening unemployment claims then take a percentage of the money or keep the majority of the benefits; a significant issue in communities where English is not the primary language. Third, perpetrators who organize vulnerable populations to make false unemployment claims (ex: the homeless and recovery communities) and then receive a percentage of the fraudulent benefit payments.³²

VI. Recommendations

Based on its findings, the Committee makes the following recommendations. First, the establishment of a Resiliency Plan by the Department of Unemployment Assistance. Second, the creation of an ombuds office to support claimants and employers. Third, DUA should continue its efforts to replace the UI Online System. Forth, the implementation of enhanced anti-fraud measures both inside and outside of the UI system. Finally, the creation of an Anti-Fraud Task Force to facilitate the prosecution and recovery of fraudulently obtained UI, PUA and other related funds.

³⁰ *Written Testimony of Division Chief Geoffrey Wood to the Senate Committee on Post Audit and Oversight*, December 10, 2021.

³¹ *Id.*

³² *Written Testimony of Division Chief Geoffrey Wood to the Senate Committee on Post Audit and Oversight*, December 10, 2021.

1. Create a Resiliency Plan

The Department of Unemployment Assistance should create and maintain a Resiliency Plan.³³ The Resiliency Plan should contain policies and procedures DUA will undertake during future claim surges and DUA should review and update the plan at least once every two years.

At a minimum, the plan should include the following components: (1) the circumstances when the plan applies; (2) identification of who is responsible for activating the plan and overseeing its implementation; (3) modifications to staffing levels; (4) public communication initiatives; (5) changes to the UI system; and (6) other steps necessary to ensure the continuity of UI claims processing and customer service. For each component, DUA should identify the specific procedures and steps that DUA will take depending on the level of increases in unemployment insurance claims.

In addition, DUA should identify circumstances that may cause a surge in unemployment insurance claims and how different surge causes may uniquely impact different types of workers, including gig or seasonal workers, and different types of industries. The plan should include any special modifications for each component necessary to address disproportionately impacted worker or industry types.

Component 1: Activation

The plan should identify who is responsible for its activation. In addition, the plan should include set metrics defining what constitutes a surge in claims under which the plan should be activated by DUA and to what degree. Finally, DUA should design the plan with a goal of prompt implementation to maximize responsiveness following a surge in claims.

Component 2: Implementation

When writing the plan, DUA should include the procedures for internal communication to necessary DUA staff that the plan has been activated, the level to which the plan has been activated, and the changes being implemented under the plan. Communications related to the plan's implementation should include the name of the individual responsible for overseeing the plan deployment and contact information for said individual.

Component 3: Staffing

The plan should include the specific strategies that DUA will take regarding staffing levels. The strategies should be targeted to respond to different levels of claim surges. As mentioned above, these strategies should also include any necessary modifications for different types or workers or industry types which may be uniquely impacted. In addition, the plan should explain how existing staff would be reallocated to high-priority functions in response to high demand and

³³ Virginia enacted legislation requiring a Resiliency Plan for their UI System on April 27, 2022. *See* H270 enacted as Chapter 754 of the 2022 Session of the Virginia Legislature.

describe how DUA's hiring process will be streamlined to fill key vacant positions such as review and appeal staff. Finally, the plan should address when, and to what extent, DUA will engage the use of contractors to perform services related to the operation of the UI system. DUA should include a section under this component related to the process of onboarding and training of new staff and contractors who are hired or engaged in response to the claim surge.

Component 4: Communications

The Resiliency Plan should address communication activity and changes in the event of a surge in UI claims. DUA should include a strategy for communicating changes to the UI Online System, UI program information - including changes to the eligibility determination and the approval and appeal process. The Communications component should also: (1) specifically outline how communications will be delivered to DUA staff members, claimants, employers, and members of the General Court; (2) identify which staff will be responsible for different types of communications and the platforms and methods of communication that will be utilized; and (3) should identify the process by which communications will be made compatible and accessible for those utilizing screen readers and translated for non-English speakers.

Component 5: System Changes

The Plan should detail what changes DUA will make to the application, approval, and appeal process depending on the level, and cause, of the surge in UI claims. In addition, DUA should develop specific strategies or steps DUA will take to modify policies, procedures, or processes in response to high demands on its services. Finally, DUA should formalize a policy for prioritizing and assigning claims for review during periods of high claims volume. This policy should detail how prioritization may change in response to claims volume.

Component 6: Other Changes and Best Practices

Finally, the Plan should include other relevant aspects of operations to ensure continued efficient and effective administration of the UI program. DUA should include as a priority goal of the policy to ensure the continuity of UI claims processing and customer service.

2. Establish an Ombuds Office for DUA

An Unemployment Insurance Ombuds Office should be established within DUA.³⁴ The Unemployment Insurance Ombuds should support both claimants and employers by providing information, and assistance, to those individuals and entities interacting with the UI system. For employers, the Ombuds Office could answer employer questions about benefits eligibility, protests and appeals, employer accounts and other general unemployment questions. For employees, the Ombuds Office could assist in resolving issues of concern when receiving or

³⁴ Other states operate ombuds offices related to their UI programs. For example, Arizona and Michigan operate an ombudsman office and Virginia's reforms in response to the COVID-19 pandemic included the creation of an Unemployment Compensation Ombudsman.

attempting to receive benefits and services from DUA. However, the Ombuds would not provide legal advice to any individual or entity. Ultimately, the Ombuds would serve as a confidential, independent, and impartial resource for members of the public when unexpected issues arise while interacting with the UI system. The Ombuds Office should have sufficient staffing to respond to those seeking assistance within a timely manner.

In addition to providing assistance to those interacting with the UI system, the Ombuds Office would create educational materials and other resources related to the UI system. These materials should be made available to those utilizing a screen reader or other assistive technology and translated into non-English languages.

The Ombuds Office should have access to necessary DUA records and data upon request, and subject to appropriate statutory safeguards, in order to provide assistance to individuals and employers interacting with the UI system. In instances where the Ombuds Office has identified systemic issues, it should be able to report on such issues through the disclosure of de-identified information.

3. Continue Efforts to Replace UI Online

The Committee understands that DUA is in the process of procuring a replacement for the UI Online System. The Committee also understands that the Inspector General's Office offered DUA assistance with this procurement and the Committee encourages continued cooperation between DUA and the OIG in order to ensure that the procurement of the new UI Online System is done in a complete, timely and cost-effective manner.

The Committee also adopts the contract management recommendations of the Inspector General Office and reiterates the contract management recommendations from its 2014 Senate Post Audit and Oversight Report.

Strong contract management will help ensure that the procurement of a new UI Online System is completed in a timely, cost-effective and complete manner. In addition, strong contract management will help ensure that DUA gets a system that works for its business operations and that works for claimants and employers.

As recommended by the Inspector General's Office, the contract should reflect DUA's needs and expectations:

For instance, DUA should set timelines for performance and build accountability into the contract. A contract's terms should also be very clear regarding communication between the vendor and DUA, deliverables, milestones, training, costs, and penalties for not meeting the terms of the contract. Payment should clearly be tied to milestones and performance metrics. To be successful, DUA leadership must be fully engaged participants in the project. They need to closely

evaluate and analyze each stage of the project to ensure it is progressing appropriately and meeting the required performance metrics and milestones.

The Committee also adopts the recommendation that DUA should consider hiring an independent third-party expert to review the vendor's performance and implementation. As explained by the Inspector General's Office, "[t]his can greatly reduce the reliance on one expert, the vendor, which can have a vested interest in 'over design' and 'underreporting mistakes.'"³⁵

DUA should work closely with and strongly consider each recommendation of its Advisory Council. It is critical that EOLWD and DUA continue to engage and consider input from this Advisory Council so that the experiences of these represented populations are included at the outset of the design process to avoid the pitfalls that have blocked or delayed access to UI during the pandemic.

Finally, the Committee encourages EOLWD to complete the replacement of the UI Online System as quickly as possible, and to the extent feasible, roll out pieces of the system on a piece-by-piece basis to accelerate the replacement of the existing UI Online system.

4. Enhanced Fraud Detection Tools and Cyber Security Protections

The new UI Online System should enable multi-prong fraud detection. Specifically, the new UI System should include both upfront fraud detection tools and the resources and functionality to find fraud post-award. However, these measures should be implemented in a manner that ensures client ease-of-use.

Anti-fraud measures must be able to identify suspicious behaviors and raise flags when claims require additional review. For example:

- Funds for multiple claimants being sent to the same out-of-state bank.
- Funds for multiple claimants being sent to the same address or the same bank account.
- Multiple claims coming from the same IP address, especially multiple claims filed in batches or quick succession.
- Claimants collecting benefits without having a work history.

When claims are flagged by the UI Online System for additional review, the UI Online system must clearly explain to the claimant what has happened and what steps must be taken for the claim to finish processing – including what, if any, actions the claimant must take and the steps necessary.

When a claimant must take additional steps, DUA must ensure that the claimant is immediately provided with instructions and that the instructions are detailed and thorough so that claimants are able to navigate any flagged claims efficiently. In addition, DUA must ensure that the UI Online System provides guidance to claimants that aligns with the guidance provided via their telephone

³⁵ *Written Testimony of First Assistant Inspector General Natalie Monroe to the Senate Committee on Post Audit and Oversight*, December 10, 2021.

line and other DUA websites and resources. Clarity and ease-of-use for claimants must be a priority when an anti-fraud measure slows down the processing of their claim. Any steps or requirements imposed on a claimant should include options for those with limited English proficiency, disabilities, or technological limitations.

In addition to pre-detection fraud tools, the UI Online system should include post-award detection, auditing, data mining and analysis. These tools are essential to identifying individual errors – meaning identifying benefits that were granted when they should not have been. These tools are also essential to identifying fraud trends, red flags and internal fraud.

The new UI Online System must also have access to other state data. In addition to data matching with the Department of Revenue, DUA should also examine whether access to other data held by state agencies would help improve its fraud detection tools. Further, any technology solution that DUA builds also must be agile - it needs to be able to adapt to new fraud schemes and trends, as well as changes in reporting, compliance and eligibility requirements.

The Committee also strongly encourages that DUA ensure that cybersecurity is a priority in the creation of the new UI Online system. DUA should consult federal cybersecurity requirements and best practices when designing the system and training staff on its eventual use. As noted by the DOL, “[s]ecuring the confidentiality, integrity, and availability of information stored in [state workforce agency] UI IT systems is vital to controlling fraud in the UI program.”³⁶

Finally, DUA must maintain sufficient staffing to process potential instances of fraud and refer them to prosecutors and other investigative bodies in a timely manner.

5. Establish an Anti-Fraud Task Force

The Committee adopts the recommendation of the Office of the Attorney General that there be a standing task force, with DUA and the U.S. Department of Labor at the center, as they are the agencies that have the data necessary to prosecute these cases. The taskforce would be a key, collaborative effort to tackle the expansive amount of PUA and COVID related UI fraud. The Task Force should also include, at a minimum, the United States Attorney’s Office, State Police, FBI, the AGO, and the Inspector General. The task force should serve as a regular meeting of interested parties to discuss state and nationwide trends and specifically target cases involving victims and perpetrators of unemployment fraud in the Commonwealth.

VII. Conclusion

The COVID-19 pandemic challenged the Commonwealth’s Unemployment Insurance System. Claimants found themselves faced with an underperforming UI Online System and a difficult to navigate path to securing benefits. The Committee recognizes the diligent efforts of the staff of

³⁶ U.I.P.L No. 4-21, United States Department of Labor, available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_4-21_Acc.pdf

the Executive Office of Labor and Workforce Development and the Department of Unemployment Assistance during the pandemic and encourages a complete and timely replacement of the UI Online System. While circumstances like the COVID-19 pandemic may be hard to predict in the future, the Committee believes that proper planning, a next generation UI Online System, and the creation of an Ombuds Office to help claimants and employers will help address many of the issues experienced with the Commonwealth's Unemployment Insurance System during the COVID-19 pandemic.

Respectfully submitted,

Senator Michael O. Moore, Chair

Senator James B. Eldridge, Vice Chair

Senator Harriette L. Chandler

Senator Barry R. Finegold

Senator Patricia D. Jehlen

Senator John F. Keenan

Senator Ryan C. Fattman

Senator Patrick M. O'Connor



Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES

Unemployment Insurance During the COVID-19 Pandemic

A Report Issued by the House Committee on Post Audit and
Oversight
January 2021

Chairman David P. Linsky
Vice Chairman Daniel J. Ryan

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Letter from Chair Linsky:

As the Commonwealth continues to face rising COVID-19 cases and rollbacks in statewide as well as local reopening plans, urgent complaints regarding the Massachusetts unemployment compensation programs have been brought to the House Committee on Post Audit and Oversight's attention. The unemployment compensation programs in Massachusetts have been a lifeline for many as large sectors of the economy were shuttered to prevent transmission of COVID-19. Unemployment claims since March, when Governor Baker first declared a state of emergency, have swelled to unprecedented levels. This added strain on an already outdated system has aggravated existing problems and created new ones that demand accelerated solutions to ensure individuals receive the critical benefits they need. Complaints that have been brought to the Committee's attention include, but are not limited to, concerns regarding accessibility, confusion about the unemployment process from both the general public and legislative offices, communication issues, delayed benefit payments, holds on unemployment claims, and unemployment fraud.

Given the sheer amount of complaints received, the Committee met with the Department of Unemployment Assistance (DUA) and the Executive Office of Labor and Workforce Development (EOLWD) to discuss these issues. The goal of this meeting was to gain a fuller understanding of the unemployment compensation programs and their respective systems in Massachusetts, how they operate, and how the systems are being adapted to resolve ongoing issues. In addition, the Committee's goal was to assess how best it could leverage its role in the Legislature to both help alleviate pressure on DUA and EOLWD and ensure legislative offices have the information, tools, and resources they need to assist their constituents. During the discussion, DUA and EOLWD provided a summary of the programs and systems in place, their implementation, their adaptation to growing demand, the complications the systems have faced, and the solutions that have been implemented or are currently being implemented to resolve these issues.

During this discussion, the Committee learned, though it may seem oversimplified, that unemployment is a complicated and delicate system. It involves a series of interlocking steps, checks, and balances at the federal, state, and individual levels that all must come together to reach a solution. If even one piece is missing, incomplete, ineligible, or delayed, the entire process comes to a halt. This report is intended to be a resource for the Legislature as we continue to navigate the COVID-19 pandemic. It includes background information on the programs and systems in place, timelines, where possible, and any information the Committee can provide on resolutions to issues constituents are currently facing with their unemployment claims.

It should be understood that this report is not comprehensive. The unemployment systems are intricate and the Committee is not an expert on this subject. This report calls for a collaborative effort from DUA, EOLWD, and the Legislature to provide clarity and help individuals better navigate the unemployment insurance processes to receive benefits as quickly as possible. This report is a foundation to build upon and will hopefully provide some clarity and answer some questions. DUA and EOLWD have made it clear that they want to work with the Legislature to ensure these unemployment programs and systems function as efficiently as possible to support those who need them.

As such, and after careful consideration, the Committee would recommend the following to ensure collaboration continues and legislative offices are better able to help and inform their constituents:

- **DUA and EOLWD will host recurring town hall or briefing style meetings with the members of the Legislature and their staff to provide information and updates and serve as a forum for questions. These meetings will begin immediately.**
- **DUA and/or EOLWD will host a webinar or training session for legislative offices regarding the UI application process to further assist legislative offices in helping constituents navigate the UI application process.**

I would like to thank the Department of Unemployment Assistance and the Executive Office of Labor and Workforce Development for meeting with the Committee and for providing the information and resources detailed below. The Committee also includes with this report some links to helpful resources available on DUA and EOLWD's respective websites.

If you have any questions regarding DUA, the unemployment insurance compensation systems, programs, policies, or implementation, EOLWD and DUA have assured the Committee that they have a constituent services team that is ready to help with any questions and concerns as they arise. In addition, if there are concerns that are not addressed in this report or there are concerns that you feel are not being met, please do not hesitate to bring them to the House Committee on Post Audit and Oversight's attention either by contacting myself directly or through Lizzie Roche (elizabeth.roche@mahouse.gov) in my office.



Chairman David P. Linsky
House Committee on Post Audit and Oversight

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Executive Summary:

- Since the beginning of the COVID-19 Pandemic and state of emergency, Massachusetts has experienced an elevated level of unemployment and has seen an incredible influx of claims from across the Commonwealth, totaling **1,806,347 initial UI claims since March 15, 2020 and 913,358 initial PUA claims since April 20, 2020**¹.
- There are currently five unemployment programs in use in MA: **regular unemployment insurance (UI), Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), and unemployment extended benefits (EB)**.
- While unemployment programs are administered by the states, they are supervised by the Federal Government² and a “state’s failure to administer its UI program in conformity and substantial compliance with federal law can result in loss of the state’s certification and loss of its administrative grant to operate the program and/or its employers’ tax credits under the Federal Unemployment Tax Act (FUTA)”³.
- The process of applying for and receiving benefits, especially during the COVID-19 pandemic, involves a series of interlocking steps, which all have to line up for benefits to be authorized. If one step is missing, unsatisfactory, ineligible, or denied, the whole process stalls.
- Each step depends on a series of contingencies: claimants ability to provide all necessary documents, claimants having access to electronic devices, employers providing information in a timely manner, DUA having enough staff capacity to work through claims, etc.
- Timing of claim resolution varies: if every step in the process is completed and approved, holds could be lifted and claims authorized quickly (**between 48 and 72 hours**)⁴. If something is missing, rejected or requires an appeal the whole process could take much longer.
- “As of Sept. 30, there were **78,337 cases of overpayments totaling \$188,283,829**, according to the latest data from the state Department of Unemployment Assistance”⁵.

¹Executive Office of Labor and Workforce Development. *Massachusetts Weekly Unemployment Claimant Data 01-14-21*. January 14, 2021. <[Massachusetts Weekly Unemployment Claimant Data 01-14-21 | Mass.gov](#)>¹

²Department of Unemployment Assistance & Executive Office of Labor and Workforce Development. “A Guide to Benefits and Employment Services for Claimants”. January 8, 2018. <[download \(mass.gov\)](#)>

³Pallasch, John. Employment and Training Administration, U.S. Department of Labor. “Advisory: Unemployment Insurance Program Letter NO. 23-20.” May 11, 2020. <[Program Integrity for the Unemployment Insurance \(UI\) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act of 2020 - Federal Pandemic Unemployment Compensation \(FPUC\), Pandemic Unemployment Assistance \(PUA\), and Pandemic Emergency Unemployment Compensation \(PEUC\) Programs \(doleta.gov\)](#)>

⁴Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. “Meeting Notes.” December 18, 2020.

⁵Wade, Christian M. “State seeks \$190 million in ‘overpaid’ jobless benefits.” *The Eagle-Tribune*. January 12, 2021. <[State seeks \\$190 million in ‘overpaid’ jobless benefits | Merrimack Valley | eagletribune.com](#)>.

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- The Massachusetts unemployment system has been targeted by a “...national unemployment fraud scam...”⁶, in addition to other sources of fraud such as phishing, that have led to the **implementation of “...enhanced identity verification measures...”**⁷ and subsequent **delays in unemployment payments**⁸.
- DUA and EOLWD are working with “state and federal law enforcement agencies, municipalities, and dedicated constituent service personnel”⁹ on addressing and resolving these fraud related issues¹⁰.
- As of November 23rd, 2020, **171,805** claims have been identified as fraud and **\$242,220,594** has been recovered¹¹.
- The implementation of procedures to prevent unemployment fraud has further complicated the unemployment compensation processes by introducing new steps that need to be completed before payment can be authorized.
- The implementation of new UI programs and systems as well as new federal laws and guidance have also complicated and slowed the system.
- The UI online system is “a dinosaur”¹² and as DUA faces new challenges it is developing solutions, but as these policies are reactionary to new problems, they take time to implement.
- DUA and EOLWD have been working on solutions to address program capacity issues, accessibility issues, holds and delays on claims, and issues around unemployment fraud.
- DUA and EOLWD want to work with the Legislature to resolve problems and ensure the unemployment programs work as efficiently and quickly as possible¹³.
- Committee recommendations:
 - **DUA and EOLWD will host recurring town hall or briefing style meetings with the members of the Legislature and their staff to provide information and updates and serve as a forum for questions. These meetings will begin immediately.**
 - **DUA and/or EOLWD will host a webinar or training session for legislative offices regarding the UI application process to further assist legislative offices in helping constituents navigate the UI application process.**

⁶ Executive Office of Labor and Workforce Development. *UPDATE: Nationwide Unemployment Scam Targets Massachusetts Claimants*. December 1, 2020. <<https://www.mass.gov/news/update-nationwide-unemployment-scam-targets-massachusetts-claimants>>

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. “Meeting Notes.” December 18, 2020.

¹³ Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. “Meeting Notes.” December 18, 2020.

Background:

Unemployment Compensation Programs in Massachusetts

There are currently **five unemployment programs** in use in Massachusetts:

- 1) **Regular Unemployment Insurance (UI) Benefits**
- 2) **Pandemic Unemployment Assistance (PUA)**
- 3) **Pandemic Emergency Unemployment Compensation (PEUC)**
- 4) **Federal Pandemic Unemployment Compensation (FPUC)**
- 5) **Unemployment Extended Benefits (EB)**

Massachusetts, like all other states, has an unemployment insurance (UI) program, which is run under the Department of Unemployment Assistance within the Executive Office of Labor and Workforce Development. While DUA manages the UI program in the Commonwealth, all UI programs are supervised by the United States Department of Labor (USDOL)¹⁴.

It should be noted here that while state departments, such as DUA, have some autonomy and flexibility regarding the administration of their respective UI programs, USDOL controls the programs through certain federal guidance, laws, requirements, and advisories¹⁵. USDOL makes it known that “a state’s failure to administer its UI program in conformity and substantial compliance with federal law can result in loss of the state’s certification and loss of its administrative grant to operate the program and/or its employers’ tax credits under the Federal Unemployment Tax Act (FUTA)”¹⁶. This also extends to certain eligibility requirements for programs created under the CARES Act: if a UI program is unable to “...determine eligibility of claimants prior to paying benefits...”¹⁷ then it “...suggests that the state’s system is not adequate”¹⁸ and USDOL has the “...authority to terminate its agreements pursuant to the terms of the agreements for operating PEUC, PUA, and FPUC...”¹⁹.

Below is a timeline for regular UI benefits before the COVID-19 Pandemic:

Please note that this timeline is not comprehensive, but simplified to show a general picture of applying for and receiving benefits (information for this graphic was gathered from A Guide to Benefits and Employment Services for Claimants)²⁰. More information on the UI process, including eligibility, benefit calculations,

¹⁴ Department of Unemployment Assistance & Executive Office of Labor and Workforce Development. “A Guide to Benefits and Employment Services for Claimants”. January 8, 2018. <[download \(mass.gov\)](#)>

¹⁵ Pallasch, John. Employment and Training Administration, U.S. Department of Labor. “Advisory: Unemployment Insurance Program Letter NO. 23-20.” May 11, 2020. <[Program Integrity for the Unemployment Insurance \(UI\) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act of 2020 - Federal Pandemic Unemployment Compensation \(FPUC\), Pandemic Unemployment Assistance \(PUA\), and Pandemic Emergency Unemployment Compensation \(PEUC\) Programs \(doleta.gov\)](#)>

¹⁶Ibid.

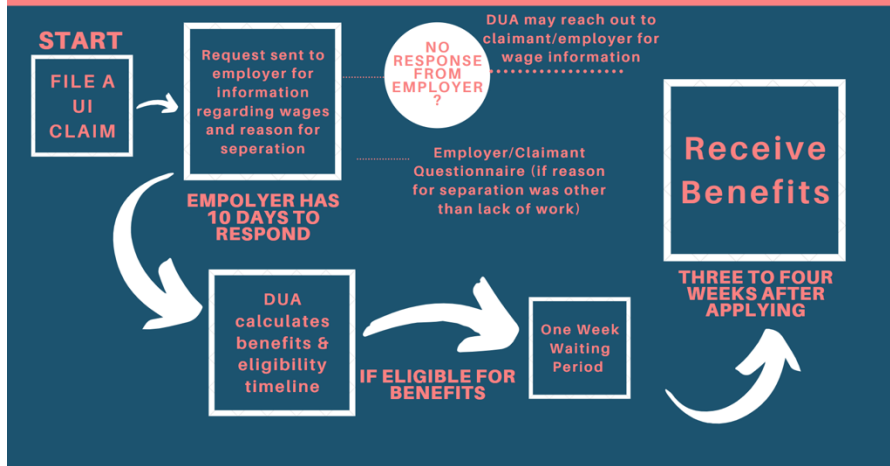
¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Department of Unemployment Assistance & Executive Office of Labor and Workforce Development. “A Guide to Benefits and Employment Services for Claimants”. January 8, 2018. <[download \(mass.gov\)](#)>

PRE-PANDEMIC REGULAR UI BENEFITS TIMELINE



maintaining/requesting benefits, and appeals processes, can be found in the [benefits guide](#) linked on the DUA website.²¹

As the pandemic progressed through March and sectors of the economy were shuttered across the country, national unemployment began to rise dramatically. In response, the Federal Government passed the CARES Act, which was signed into law on March 27, 2020²². Included in the CARES Act were additional unemployment supports such as:

- **Pandemic Unemployment Assistance (PUA)**, which provides

benefits to those who are “self-employed, independent contractors, gig economy workers, and others who otherwise would not qualify for regular UC or EB under state or federal law or PEUC”²³.

- **Pandemic Emergency Unemployment Compensation (PEUC)**, which provides “up to 13 weeks of unemployment insurance benefits to individuals who have exhausted their previous unemployment benefits”²⁴.
- An additional weekly benefit, **Federal Pandemic Unemployment Compensation (FPUC)**, of \$600 for eligible claimants, which was “available only for the period March 29-July 31, 2020”²⁵.

In addition, the soaring unemployment rate also triggered **federal extended benefits**, which provides a maximum of 20 additional weeks of benefits to eligible individuals who have exhausted their regular UI and PEUC benefits²⁶.

Both PUA and PEUC were slated to expire on December 31, 2020²⁷. However, on December 27, 2020, President Trump signed into law a bill that included *the Continued Assistance for Unemployed Workers Act of 2020*²⁸. This legislation included extensions for both PUA and PUEC to the week ending in **March 13**,

²¹ Ibid.

²² Department of Unemployment Assistance. “UPDATE: Massachusetts Department of Unemployment Assistance Announces Guidance On CARES Act Implementation.” <[UPDATE: Massachusetts Department of Unemployment Assistance Announces Guidance On CARES Act Implementation | Mass.gov](#)>

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Department of Unemployment Assistance. *Unemployment Extended Benefits (EB)*. <<https://www.mass.gov/info-details/unemployment-extended-benefits-eb>>

²⁷ Pallasch, John. Unemployment and Training Administration Advisory System. USDOL. “Unemployment Insurance Program Letter NO. 9-21.” Advisory to State Workforce Agencies. December 30, 2020. <[Continued Assistance for Unemployed Workers Act of 2020 \(Continued Assistance Act\) – Summary of Key Unemployment Insurance \(UI\) Provisions \(doleta.gov\)](#)>

²⁸ Ibid.

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2021²⁹. It should be noted that this deadline refers to the program availability and claimants that have not reached the limit of their eligible weeks may still claim benefits through the week ending in **April 10, 2021**³⁰.

In addition, *the Continued Assistance for Unemployed Workers Act of 2020* provides **11 additional weeks of FPUC**, with a benefit of \$300 and coverage beginning for the week ending in **January 2, 2021** and ending the week ending in **March 13, 2021**³¹. Finally, the legislation also extended the **High Unemployment Period Extended Benefits (HUP EB)** until "conditions for the **20-week entitlement 'trigger off' or until the week ending March 13, 2021**"³².

The *Continued Assistance for Unemployed Workers Act of 2020* also creates a new unemployment program for mixed earners: **Mixed Earners Unemployment Compensation (MEUC)**³³. The MEUC program will provide an additional \$100, "...in addition to FPUC, to individuals with \$5,000 or more in self-employment income in the previous tax year who are receiving unemployment benefits from a program other than Pandemic Unemployment Assistance (PUA)"³⁴. MEUC, if a state chooses to administer the program (the program is optional³⁵), will be available between the week ending in **January 2, 2021** and the "week ending on or before **March 14, 2021**"³⁶.

On its website, DUA has created a page dedicated to implementation updates for the provisions included in the *Continued Assistance for Unemployed Workers Act of 2020*. DUA notes that they have already implemented some of the new provisions for FPUC, PEUC, and HUP EB, including the following³⁷:

Federal Pandemic Unemployment Compensation (FPUC)

- ***"As of January 6, 2021, DUA has implemented FPUC for UI claimants. The additional \$300 was added to weekly benefit payments for the week ending January 2, 2021."***³⁸
- ***"PUA claimants will receive their FPUC payments beginning Monday, Jan. 11, 2021."***³⁹

Pandemic Emergency Unemployment Compensation (PEUC)

- ***"DUA has implemented the extended PEUC program. Eligible claimants will receive payment for the week ending January 2, 2021."***⁴⁰

²⁹ Department of Unemployment Assistance. "UPDATE: DUA issues information on the Continued Assistance for Unemployed Workers Act of 2020." <[UPDATE: DUA issues information on the Continued Assistance for Unemployed Workers Act of 2020 | Mass.gov](#)>

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Pallasch, John. Unemployment and Training Administration Advisory System. USDOL. "Unemployment Insurance Program Letter NO. 9-21." Advisory to State Workforce Agencies. December 30, 2020. <[Continued Assistance for Unemployed Workers Act of 2020 \(Continued Assistance Act\) – Summary of Key Unemployment Insurance \(UI\) Provisions \(doleta.gov\)](#)>

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Department of Unemployment Assistance. "UPDATE: DUA issues information on the Continued Assistance for Unemployed Workers Act of 2020." <[UPDATE: DUA issues information on the Continued Assistance for Unemployed Workers Act of 2020 | Mass.gov](#)>

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

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- *“For many PEUC claimants, the PEUC program will conclude the week ending **March 13, 2021**. However, claimants who are receiving PEUC during the week ending March 13, 2021 and have not yet exhausted their 24 weeks will be able to claim PEUC through the week ending **April 10, 2021**.”⁴¹*

High Unemployment Period Extended Benefits (HUP EB)

- *“HUP EB will remain active due to continued federal funding until conditions for the **20-week entitlement ‘trigger off’ or until the week ending March 13, 2021**. Eligible claimants are receiving their weekly benefits.”⁴²*

In addition, DUA is working to implement additional provisions for other UI programs:

Pandemic Unemployment Assistance (PUA)

- *“DUA has implemented the extended PUA program and payments after the week ending December 26, 2020 will be paid **beginning on Monday, January 11, 2021**. Claimants should continue to file weekly claim certifications as scheduled.”⁴³*

In an update on January 8, 2021, EOLWD and DUA formally informed the Legislature that they will “begin issuing the additional 11 weeks of Pandemic Unemployment Assistance (PUA) provided by the Continued Assistance for Unemployed Workers Act of 2020”⁴⁴. In addition, DUA noted that “Payments of PUA and the additional \$300 Federal Pandemic Unemployment Compensation (FPUC) will be issued beginning Monday, January 11, 2021”⁴⁵ and “Payments will be retroactive to week ending January 2, 2021 for eligible claimants”⁴⁶.

On their website, DUA also includes a summary of the programs and the changes included in the *Continued Assistance for Unemployed Workers Act of 2020*⁴⁷:

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. “Department of Unemployment Assistance.” January 8, 2021.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Department of Unemployment Assistance. “UPDATE: DUA issues information on the Continued Assistance for Unemployed Workers Act of 2020.” <[UPDATE: DUA issues information on the Continued Assistance for Unemployed Workers Act of 2020 | Mass.gov](#)>

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Continued Assistance for Unemployed Workers Act of 2020 Program	Program Summary
Federal Pandemic Unemployment Compensation (FPUC)	<ul style="list-style-type: none"> • Provides 11 weeks of an additional \$300 weekly benefit to eligible claimants. • A claimant must be eligible through a separate unemployment program to receive FPUC. • FPUC will be available for weeks of unemployment between the week ending January 2, 2021 and the week ending March 13, 2021. FPUC is not retroactive.
Pandemic Unemployment Assistance (PUA)	<ul style="list-style-type: none"> • Provides an additional 11 weeks of benefits, to a maximum of 57 weeks. The additional 11 weeks are not retroactive. • For many PUA claimants, the PUA program will conclude the week ending March 13, 2021. However, claimants who are receiving PUA during the week ending March 13, 2021 and have not yet exhausted their 57 weeks of benefits will be able to claim PUA through the week ending April 10, 2021. • New claimants filing after January 31, 2021 will be required to provide documentation of employment, self-employment, or a qualifying job offer within 21 days of filing. Claimants with established claims receiving payments in 2021 will have 90 days from the date they are notified to provide such documentation.
Pandemic Emergency Unemployment Compensation (PEUC)	<ul style="list-style-type: none"> • Provides an additional 11 weeks of benefits, up to a maximum of 24 weeks. The additional 11 weeks are not retroactive. • For many PEUC claimants, the PEUC program will conclude the week ending March 13, 2021. However, claimants who are receiving PEUC during the week ending March 13, 2021 and have not yet exhausted their 24 weeks will be able to claim PEUC through the week ending April 10, 2021.
High Unemployment Period Extended Benefits (HUP EB)	<ul style="list-style-type: none"> • HUP EB will remain active due to continued federal funding until conditions for the 20-week entitlement “trigger off” or until the week ending March 13, 2021.

In their update regarding these extensions and other provisions, DUA does note that it is still expecting further guidance from USDOL regarding the implementation of these program changes⁴⁸. New guidance could result in changes and/or delays. The program changes also include **new eligibility, reporting, and self-certification requirements for the federal programs** as well as a **new “return to work reporting requirement”**⁴⁹, which requires states to track, process, and adjudicate “...work refusal accusations”⁵⁰, though states are afforded some flexibility in the definition and implementation of this requirement⁵¹.

Finally, USDOL is making supplemental funding available to help with the administrative costs of implementing these changes⁵². A total of **\$500,000** “...will be added to the state’s COVID Pandemic grant in the following fashion: PUA administration **+\$250,000**, FPUC administration **+\$100,000**, and PEUC administration **+\$150,000**”⁵³. A [full summary](#) of the updates and amendments as well as attachments with additional information and program dates can be found in the [DOL Advisory: Unemployment Insurance Program Letter NO. 9-21](#), which is available on the DOL Employment & Training Administration website.

⁴⁸ Ibid.
⁴⁹ Pallasch, John. Unemployment and Training Administration Advisory System. USDOL. “Unemployment Insurance Program Letter NO. 9-21.” Advisory to State Workforce Agencies. December 30, 2020. <[Continued Assistance for Unemployed Workers Act of 2020 \(Continued Assistance Act\) – Summary of Key Unemployment Insurance \(UI\) Provisions \(doleta.gov\)](#)>
⁵⁰ Ibid.
⁵¹ Ibid.
⁵² Ibid.
⁵³ Ibid.

In their advisory, the USDOL Employment & Training Administration provided a summary of how the unemployment programs interlock, which includes the following program progression chart⁵⁴:

Program Progression Chart

Last Updated 12/30/20

Federal Pandemic Unemployment Compensation (FPUC)

- Additional amount each week for regular UC (including UCFE and UCX), PEUC, EB, PUA, STC, TRA, DUA, and SEA
- \$600 available for weeks of unemployment beginning after state signs Agreement through weeks ending on or before July 31, 2020
- \$300 available for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021

Mixed Earners Unemployment Compensation (MEUC)

- Optional program for states
- Additional amount each week for individuals with at least \$5,000 in self-employment income during specified timeframe
- Applies to claims for regular UC (including UCFE and UCX), PEUC, EB, STC, TRA, DUA, and SEA (excluding PUA)
- Additional \$100 available for weeks of unemployment no earlier than week ending January 2, 2021 through weeks ending on or before March 14, 2021

TRACK 2. Individual who is self-employed, seeking part-time employment, does not have sufficient work history, or is otherwise not eligible for regular UC, PEUC, or EB.

Individual must be unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 related reason in the CARES Act to qualify for PUA.

TRACK 1. Individual is eligible for regular UC, including UCFE and UCX

Regular Unemployment Compensation (UC)

Individual exhausts regular UC

Pandemic Emergency Unemployment Compensation (PEUC)

- For an individual whose regular UC benefit year expires after December 27, 2020, if the individual qualifies for new regular UC claim and meets criteria under the Continued Assistance Act, the state may provide an option for the individual to continue collecting PEUC

Individual exhausts PEUC

Extended Benefits (EB)

- If an individual qualifies for new regular UC claim, the individual must stop collecting EB and file new regular UC claim
- If an individual is collecting EB when additional PEUC weeks become available under the Continued Assistance Act, the individual must exhaust existing EB claim before reverting to PEUC claim

Individual exhausts EB or state is not triggered "on" AND Individual must be unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 related reason in the CARES Act to qualify for PUA.

Pandemic Unemployment Assistance (PUA)

- If an individual qualifies for new regular UC claim, the individual must stop collecting PUA and file new regular UC claim
- If an individual is collecting PUA when additional PEUC weeks become available under the Continued Assistance Act, the individual must stop collecting PUA and revert to PEUC claim
- If state triggers "on" to EB and an individual is eligible for EB, the individual must stop collecting PUA and file EB claim

COVID-19 Pandemic Related Process Changes

On it's website, DUA and EOLWD note certain **changes to the unemployment services and processes due to COVID-19**, including the following:

⁵⁴ Pallasch, John. United States Department of Labor Employment & Training Administration. "Attachment I: Coordination of Unemployment Benefit Programs, including Program Progression Chart." December 30, 2020. <[Continued Assistance for Unemployed Workers Act of 2020 \(Continued Assistance Act\) – Summary of Key Unemployment Insurance \(UI\) Provisions \(doleta.gov\)](#)>

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- “DUA may pay unemployment benefits if a worker is quarantined due to an order by a civil authority or medical professional, or leaves employment due to reasonable risk of exposure or infection or to care for a family member. The worker need not provide medical documentation and need only be available for work when and as able”⁵⁵.
- “DUA may pay unemployment benefits to a worker whose circumstances reasonably require the worker to take a leave of absence, reduce his or her hours, or quit work due to lack of child care, or other caregiver responsibilities”⁵⁶
- “While claimants are encouraged to look for work, including participating in seminars at the MassHire career centers, failure to fulfill ‘Worksearch’ requirements will not result in a disqualification from receiving benefits”⁵⁷.
- “MassHire Career Centers continue to provide a full array of virtual reemployment and training services to assist you with all your reemployment needs”⁵⁸.
- “Deadlines for requesting a hearing may, in some circumstances, be excused under DUA’s good cause provision. After 30 days, stricter provisions apply”⁵⁹.
- “Most hearings will be held remotely by telephone or video conference. In some cases, particularly for identity verification issues, they will be conducted in person”⁶⁰.

In addition, legislation allowed a waiver of the standard “...1-week waiting period for unemployment benefits”⁶¹, which authorized DUA to pay benefits immediately to persons who are unemployed for COVID-19 related reasons⁶².

The Department of Unemployment Assistance’s website also includes PDF guidebooks on how to apply for both [regular UI benefits](#) and [PUA benefits](#). These guides provide a **list of all materials individuals will need to apply for benefits**.

Massachusetts Unemployment Data

Since March 15, 2020, **1,806,347 individuals** have filed initial regular unemployment insurance claims in Massachusetts and since April 20, 2020, **913,358 have filed for Pandemic Unemployment Assistance (PUA)**⁶³. In the most recent statement of weekly unemployment data, released on January 14, 2021, the Executive Office of Labor and Workforce Development announced that **for the week ending January 9, 2021 4,670 individuals** filed initial Pandemic Unemployment Assistance (PUA) claims, which represents an increase of 54 claims over the previous week⁶⁴. Additionally, **“For the week ending January 9, 2021, Massachusetts had 31,093 individuals** file an initial claim for regular Unemployment

⁵⁵Department of Unemployment Assistance. *Changes to unemployment services during the COVID-19 pandemic*. <<https://www.mass.gov/info-details/important-employee-and-employer-information-related-to-covid-19>>

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Executive Office of Labor and Workforce Development. *Massachusetts Weekly Unemployment Claimant Data 01-14-21*. January 14, 2021.

<[Massachusetts Weekly Unemployment Claimant Data 01-14-21 | Mass.gov](#)>

⁶⁴ Ibid.

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Insurance (UI) benefits...“⁶⁵, which represents an **“increase of 5,233 claims** over the previous week”⁶⁶. While the number of initial claims filed week to week waivers, it still represents a significant influx of initial claims each week. For context, “...in the worst week of the Great Recession, **22,028** Massachusetts workers sought jobless benefits”⁶⁷.

Program	Period	Total Number of Initial Claims	Number of Initial Claims for the week ending 01/09/21*	Change in Initial Claims over Previous Week	Continued Weeks Claimed for the Week ending 01/09/21**	Change in Continued Weeks Claimed over Previous Week
<i>Regular UI</i>	Since March 15, 2020	1,806,347	31,093	+5,233	164,827	+6,982
<i>PUA</i>	Since April 20, 2020	913,358	4,670	+54	257,491	Lowest level since first week of the program ⁶⁸
<i>PEUC</i>	Since May 21, 2020	375,109	10,130	+4,305	NA	NA
<i>EB Program</i>	Since September 6, 2020 (when the first EB claims were filed)	113,172***	28,372	NA***	NA	NA

*EOLWD specifies that the period for regular UI, PUA and EB is the week ending January 9, 2021. PUEC has no specific period given⁶⁹.

**Continued weeks claimed for regular UI notes that the data is for the week ending 01/09/21. PUA does not give a specific period.⁷⁰

***EOLWD did not provide a total number of initial claims for EB and this total was reached by adding the total from last week’s report with the number of new initial claims that was provided⁷¹. EOLWD also did not provide data for the change in number of initial claims filed for EB between the previous week and the week ending January 9, 2021⁷².

***All data is from the Executive Office of Labor and Workforce Development Weekly Unemployment Claimant Data released on January 14, 2021⁷³

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Borchers, Callum. “More Than 240,000 Mass. Workers File Unemployment Claims In Worst Week On Record.” WBUR. April 30, 2020. <[More Than 240,000 Mass. Workers File Unemployment Claims In Worst Week On Record | Bostonmix \(wbur.org\)](https://www.wbur.org/boston/2020/04/30/more-than-240-000-mass-workers-file-unemployment-claims-in-worst-week-on-record)>

⁶⁸ Executive Office of Labor and Workforce Development. *Massachusetts Weekly Unemployment Claimant Data 01-14-21*. January 14, 2021. <[Massachusetts Weekly Unemployment Claimant Data 01-14-21 | Mass.gov](https://www.mass.gov/info-details/massachusetts-weekly-unemployment-claimant-data-01-14-21)>

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

It should be noted here that the unemployment data shows that the number of individuals filing initial claims for regular UI, PUA, and PUEC as well as continued weeks claimed for regular UI all increased for the week ending January, 9, 2021. EOLWD notes that the increase in initial regular UI claims is due to “seasonal trends and new establishment guidelines due to a surge in Covid-19 positive test results.”⁷⁴, which meant that “...increases in initial claim filings were widespread among all sectors”⁷⁵. Many new initial claims came from the professional and technical services (+644) and the health and social assistance sectors (+572)⁷⁶. EOLWD noted that the largest number of initial claims came from the “...information not available sector (either lacking industry or employer information)...”⁷⁷ with an increase of 2,047 claims⁷⁸. For full breakdowns of new claims filed by sector and demographic, read the summary available on the [Massachusetts Weekly Unemployment Claimant Data 01-14-21](#) page.

It should be noted here that one concern that was brought to the Committee’s attention regarded the repaying of overpayments by claimants. This means that claimants were asked to repay certain sums of benefits paid to them. In total, “As of Sept. 30, there were **78,337 cases of overpayments totaling \$188,283,829**, according to the latest data from the state Department of Unemployment Assistance”⁷⁹. There are many potential reasons for overpayments, including: claimants are “...deemed ineligible...”⁸⁰ for the benefits they received, errors are made on forms or other required documentation, or “...clerical errors are made by states in the rush to approve claims”⁸¹. On their website, DUA notes that they can work with claimants to create a “...repayment plan...”⁸² or claimants can “complete a ‘Request for Waiver of Overpayment’...”⁸³ through their UI online account or over the phone⁸⁴. In addition, claimants can appeal an overpayment determination “ within 10 days of the Notice of Determination being issued”⁸⁵. If a claimant is “...determined to be at fault...”⁸⁶ for an overpayment, DUA may charge an “...annual interest rate...”⁸⁷ of “...12% of the unpaid principal per year...”⁸⁸ that “...begins accruing 30 days after the Notice of Determination is issued”⁸⁹. Besides this interest payment, at-fault claimants may also be required to pay a “...one-time 15% penalty...”⁹⁰ and may also be required to “...serve penalty weeks for each week [they] were at fault for being overpaid benefits”⁹¹, during which claimants will still request benefits, but will be “...disqualified from receiving...”⁹² them. If a claimant does not repay overpayments, DUA may:

⁷⁴ Ibid.
⁷⁵ Ibid.
⁷⁶ Ibid.
⁷⁷ Ibid.
⁷⁸ Ibid.
⁷⁹ Wade, Christian M. “State seeks \$190 million in ‘overpaid’ jobless benefits.” The Eagle-Tribune. January 12, 2021. <[State seeks \\$190 million in ‘overpaid’ jobless benefits | Merrimack Valley | eagletribune.com](#)>.
⁸⁰ Ibid.
⁸¹ Ibid.
⁸² Department of Unemployment Assistance. “Repay unemployment benefit debt.” <[Repay unemployment benefit debt | Mass.gov](#)>
⁸³ Ibid.
⁸⁴ Ibid.
⁸⁵ Ibid.
⁸⁶ Ibid.
⁸⁷ Ibid.
⁸⁸ Ibid.
⁸⁹ Ibid.
⁹⁰ Ibid.
⁹¹ Ibid.
⁹² Ibid.

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- “...intercept [their] Massachusetts state and federal income tax refund”⁹³; or
- “[their] weekly unemployment benefits paid by Massachusetts or any other state may be reduced to repay [their] overpayment.”⁹⁴

The details of the current overpayment situation are unclear at this time: “... how much of the \$188.2 million the state has recouped...”⁹⁵, “...how many beneficiaries have sought or gotten waivers”⁹⁶, or what “...the amount of a typical overpayment,”⁹⁷ is. It should be noted here that according to information the Committee has gathered from legislative offices, claimants are being asked to pay back large sums of money totaling tens of thousands of dollars. For those that have received overpayment determinations, DUA does offer some resources and information, which are available on their website: [Repay unemployment benefit debt | Mass.gov](#).

Massachusetts Unemployment Fraud Data and Information

On **December 1, 2020**, the Executive Office of Labor and Workforce Development released an update regarding MA’s unemployment insurance programs’ ongoing issues with fraud. The release provided new information about the ongoing scams that have resulted in delayed payments across the state as well as across the country.

The press release notes that as of **November 23, 2020**, between DUA and PUA, **171,805** claims have been identified as fraudulent because of individual reporting and **\$242,220,594** has been recovered of payments identified as fraudulent⁹⁸. To provide a reference point for the sheer scale of the fraud issue DUA is facing, in an advisory to State Workforce Agencies from the Employment and Training Administration of the U.S. Department of Labor, it was noted that in the **2019 calendar year** “states established **296,749 cases of UI fraud amounting to \$366.8 million**”⁹⁹.

Fraud and delays have plagued the unemployment insurance program in Massachusetts, as well as unemployment programs across the county, throughout the pandemic. DUA and EOLWD first announced on **May 27, 2020** that a “...national unemployment fraud scheme”¹⁰⁰ was targeting the MA unemployment system and that “Criminal enterprises in possession of stolen personal information from earlier national data breaches have been attempting to file large amounts of illegitimate unemployment claims...”¹⁰¹. The release went on to say that as a result, DUA would be “...implementing additional identity verification measures that will temporarily delay the payment timeframe for many unemployment claims...”¹⁰². In

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Wade, Christian M. “State seeks \$190 million in ‘overpaid’ jobless benefits.” The Eagle-Tribune. January 12, 2021. <[State seeks \\$190 million in ‘overpaid’ jobless benefits | Merrimack Valley | eagletribune.com](#)>.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Pallasch, John. Employment and Training Administration, U.S. Department of Labor. “Advisory: Unemployment Insurance Program Letter NO. 28-20.” August 31, 2020. <[Addressing Fraud in the Unemployment Insurance \(UI\) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance \(PUA\) and Pandemic Emergency Unemployment Compensation \(PEUC\) Programs \(doleta.gov\)](#)>

¹⁰⁰ Executive Office of Labor and Workforce Development. *Nationwide Unemployment Scam Targets Massachusetts Claimants*. May 27, 2020. <<https://www.mass.gov/news/nationwide-unemployment-scam-targets-massachusetts-claimants>>

¹⁰¹ Ibid.

¹⁰² Ibid.

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addition, "...certain unemployment claimants may be asked to provide additional identity information in order to verify the validity of their claim"¹⁰³.

In **July 2020**, EOLWD provided an update on the fraud situation that stated they were continuing the process of "...[implementing] additional identity verification measures..."¹⁰⁴, which would result in temporary delays¹⁰⁵. The statement noted that DUA was partnering with "the Massachusetts State Police, the Department of Corrections, and the National Guard on this identity verification effort"¹⁰⁶.

In its most recent release on **December 1, 2020**, EOLWD cited a continued effort by "...criminal enterprises"¹⁰⁷ to file fraudulent claims within the MA unemployment system¹⁰⁸. Again, EOLWD emphasized that DUA was implementing "...enhanced identity verification measures..."¹⁰⁹ that may cause payment delays¹¹⁰. In addition, the release noted that DUA was collaborating with "...state and federal law enforcement agencies, municipalities, and dedicated constituent service personnel to address the national unemployment fraud scheme"¹¹¹. Finally, the release emphasized that in addition to the criminal enterprise fraud, there is also an "...unemployment phishing scam..."¹¹² targeting claimants, which entails an individual receiving a text message that "includes a link requesting unemployment claimants enter their login and password on a site that looks similar to the official Unemployment Insurance (UI) Online website"¹¹³. On their website, DUA includes a page with information about other scams including calls, false websites, emails/text messages, applications for debit cards, false job offers, paid online surveys, or ATM threats¹¹⁴.

On **December 14, 2020**, DUA and EOLWD sent out a notice to the entire legislature providing [instructions](#) for constituents on how to upload documents to the UI Online Portal to verify their identities¹¹⁵. The instructions include step-by-step directions and corresponding example photos¹¹⁶. The instructions note that "Claimants who are asked to verify their identity will need to closely follow the instructions on the fact-finding questionnaire, as inaccurate or incomplete information will significantly delay processing or result in an ineligible determination"¹¹⁷. Constituents seeking to verify their identity must both fill out the questionnaire provided by DUA as well as provide the below documentation, which must include "the front and back of clear, legible, and unaltered copies..."¹¹⁸:

103 Ibid.

104 Executive Office of Labor and Workforce Development. *Nationwide Unemployment Scam Targets Massachusetts Claimants*. July 7, 2020. <<https://www.mass.gov/news/nationwide-unemployment-scam-targets-massachusetts-claimants-0>>

¹⁰⁵ Ibid.

106 Ibid.

107 Executive Office of Labor and Workforce Development. *UPDATE: Nationwide Unemployment Scam Targets Massachusetts Claimants*. December 1, 2020. <<https://www.mass.gov/news/update-nationwide-unemployment-scam-targets-massachusetts-claimants>>

¹⁰⁸ Ibid.

109 Ibid.

¹¹⁰ Ibid.

111 Ibid.

112 Ibid.

113 Ibid.

114 Department of Unemployment Assistance. *Unemployment Insurance Scams*. <<https://www.mass.gov/info-details/unemployment-insurance-scams>>

¹¹⁵ Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. "Department of Unemployment Assistance." Message to the MA Legislature. December 14, 2020. Email.

116 Department of Unemployment Assistance. *UI identity verification instructions*. <<https://www.mass.gov/info-details/ui-identity-verification-instructions>>

117 Ibid.

118 Ibid.

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- “Proof of Social Security number...”¹¹⁹.
- “Government issued identification such as a driver’s license, RMV issued identity card, military ID, passport, or any other identity card that was issued by a federal or state agency that has [the claimant’s] name, photograph and date of birth. Massachusetts driver’s license or RMV issued identity card is preferred”¹²⁰.
- “If [the claimant] has recently moved, it is recommended that [they] provide current proof of address. An example may be in the form of a current utility, bank statement, or lease agreement”¹²¹.

In this same correspondence, DUA and EOLWD requested that documents be uploaded to the UI Online Portal and “...personal information and documents not be emailed to DUA directly”¹²² due to security concerns. However, on **December 15, 2020**, after concerns were raised by members of the Legislature about constituents who may not have access to computers or do not have the ability to upload the necessary documents¹²³, DUA and EOLWD sent out another update with a new secure email ([UIOnline Secure Delivery@mass.gov](mailto:UIOnlineSecureDelivery@mass.gov)) for legislators and staff to email documents directly to DUA and noted that DUA was also accepting documents through the mail¹²⁴.

In an update on January 15, 2021, EOLWD informed the Legislature that DUA will begin sending out 1099-G forms for claimants on January 19, 2021¹²⁵. A 1099-G form is an IRS form that “Federal, state, or local governments file ... if they made payments of:

- Unemployment compensation.
- State or local income tax refunds, credits, or offsets.
- Reemployment trade adjustment assistance (RTAA) payments.
- Taxable grants.
- Agricultural payments

They also file this form if they received payments on a Commodity Credit Corporation (CCC) loan”¹²⁶. The advisory noted that “if [a] constituent has received a 1099-G related to a fraudulent claim...”

legislative office should, “...please direct them to fill out the fraud reporting form:

<https://www.mass.gov/info-details/report-unemployment-benefits-fraud>”¹²⁷. In addition, EOLWD emphasized that “...it may take up to four weeks for [DUA] to review the report and send the constituent a corrected Form 1099-G via US mail...”¹²⁸ and “...the claim will not impact their ability to collect unemployment should they need to in the future and no charges will be assessed to their employer (if applicable)”¹²⁹.

119 Ibid.

120 Ibid.

121 Ibid.

122 Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. “Department of Unemployment Assistance.” Message to the MA Legislature. December 14, 2020. Email.

123 Dubois, Michelle. State Representative. “Department of Unemployment Assistance.” Email to the Massachusetts Legislature. December 14, 2020.

124 Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. “Department of Unemployment Assistance.” Message to the MA Legislature. December 15, 2020. Email.

125 Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. “Department of Unemployment Assistance.” Email to the MA Legislature. January 15, 2021.

126 Internal Revenue Service. “About Form 1099-G, Certain Government Payments.” <[About Form 1099-G, Certain Government Payments | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/irs.gov)>

127 Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. “Department of Unemployment Assistance.” Email to the MA Legislature. January 15, 2021.

128 Ibid.

129 Ibid.

In addition to actions taken by DUA and EOLWD, the United State Attorney's Office District of Massachusetts announced that it is taking action to increase its capacity to handle the increasing caseload of unemployment insurance fraud, which includes hiring an assistant U.S. attorney specifically dedicated to "...prosecuting cases involving fraudulent schemes to unlawfully obtain unemployment insurance (UI) benefits and related offenses through the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020"¹³⁰.

Federal Guidance

On **May 11, 2020**, the Employment and Training Administration of the U.S. Department of Labor issued guidance to states regarding UI program integrity titled [ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 23-20](#). The summary provided "...information and guidance on three topics related to program integrity in the regular UI program and the CARES Act programs: 1) conformity and compliance with federal UC laws; 2) program integrity functions for the regular UI program and the CARES Act programs; and 3) technical assistance resources"¹³¹. The advisory emphasized that while USDOL has received some requests from states for more flexibility "...to support more expedited processing of claims,"¹³² states must continue to "...maintain key eligibility determination processes for regular UC claims in order to be in conformity and compliance with federal UC laws"¹³³. While USDOL has offered some adaptability and waivers on certain eligibility criteria as a response to the COVID-19 pandemic, many processes, which USDOL deem "...fundamental requirements..."¹³⁴, such as weekly certification processes and required interstate wages checks, still remain in place¹³⁵.

The advisory also notes that the UI program in general has "...longstanding processes designed to support UI program integrity..."¹³⁶, which are administered by "...state Benefit Payment Control (BPC) units"¹³⁷. The advisory also provides some background including that USDOL's Office of the Inspector General (OIG) has determined that "For the last eight years...the UI program [has been] out of compliance with the Improper Payment Elimination and Recovery Act of 2010 due to an improper payment rate over 10 percent"¹³⁸. This means that the UI system has been combatting fraud and improper payment for an extended period of time, though it should be noted that a exponential increase in claims since the beginning of the pandemic has only exacerbated and compounded this issue.

¹³⁰ USAO District of Massachusetts. *District of Massachusetts Receives Funding to Hire Prosecutor to Combat Unemployment Insurance Fraud*. November 24, 2020. <<https://www.justice.gov/usao-ma/pr/district-massachusetts-receives-funding-hire-prosecutor-combat-unemployment-insurance>>

¹³¹ Pallasch, John. Employment and Training Administration, U.S. Department of Labor. "ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 23-20." Advisory to State Workforce Agencies. May 11, 2020. <[Program Integrity for the Unemployment Insurance \(UI\) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act of 2020 - Federal Pandemic Unemployment Compensation \(FPUC\), Pandemic Unemployment Assistance \(PUA\), and Pandemic Emergency Unemployment Compensation \(PEUC\) Programs \(doleta.gov\)](#)>

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

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In an **August update**, USDOL reminded states that “...as a condition of a state receiving administrative grants for its UI program...”¹³⁹, they must provide, as interpreted by the Secretary of USDOL, “...’provision for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the agency through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation”¹⁴⁰ as well as “...ensure that payment of benefits is not made when payment is not due”¹⁴¹. In the advisory, USDOL provides a comprehensive overview of the duties expected of state UI systems as well as tools, resources, guidelines, and requirements: “States must make efforts to rapidly and proactively prevent, detect, and investigate fraudulent activity; establish and recover fraud overpayments; and pursue criminal and civil prosecution to deter fraud”¹⁴². This includes certain ID verification checks and “data mining and analytics”¹⁴³ as well as Integrity Data Hub (IDH) services including utilizing the Suspicious Actor Repository (SAR), suspicious e-mail domains, Multi State Cross-Match (MSCM), and a fraud alert system¹⁴⁴. The UI Integrity Center also provides services for states such as UI Integrity Center Fraud Calls and the Integrity Knowledge Exchange¹⁴⁵. All of these systems work across state and federal levels to assist with preventing and detecting UI fraud.

USDOL also notes that “...States are on notice that they should engage with the UI Integrity Center and utilize its important integrity tools and resources; implement and fully utilize all IDH functionalities; submit and review emergent fraud schemes through the IDH Fraud Alert System; and participate in UI Integrity Center fraud calls”¹⁴⁶ and any “...failure to take advantage of these resources may result in a state’s inability to comply with Federal law to prevent, detect, and recover improper and fraudulent payments”¹⁴⁷. There are also other fraud prevention methods states can utilize such as “the Social Security Administration’s Death Cross-match, Vital Statistics Cross-matches, Department of Motor Vehicles Cross-matches, Fictitious Employer Cross-matches, and other comparisons that detect shared characteristics...”¹⁴⁸. For a more comprehensive list of all the services, tools, and resources offered, please refer to the [ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 28-20](#).

In addition to these services and guidelines, USDOL provided states with supplemental funding to help “...support fraud prevention, detection, and investigation activities...”¹⁴⁹ specifically related to the PUA and PEUC programs¹⁵⁰. Of the \$100 million UDSOL offered, Massachusetts was eligible for **\$2,041,200 for PUA** and **\$388,800 for PEUC**¹⁵¹.

¹³⁹ Pallasch, John. Employment Training and Administration, U.S. Department of Labor. “Advisory: Unemployment Insurance Program Letter NO. 28-20.” August 31, 2020. <[Addressing Fraud in the Unemployment Insurance \(UI\) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance \(PUA\) and Pandemic Emergency Unemployment Compensation \(PEUC\) Programs \(doleta.gov\)](#)>

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Attachment I to UIPL No. 28-20. “State Size Classifications and Funding Allocation for Fraud Investigation Activities in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs.” August 31, 2020. <[Addressing Fraud in the Unemployment Insurance \(UI\) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance \(PUA\) and Pandemic Emergency Unemployment Compensation \(PEUC\) Programs \(doleta.gov\)](#)>

In **September of 2020**, USDOL sent out a [subsequent notice](#) with a reminder of the resources and tools available to states to help with fraud prevention and detection. This advisory notes several services available to states with a special focus on the National Directory of New Hires (NDNH) and the State Directory of New Hires (SDNH) as well as their ability to be used in cross-matches to reduce potential "...improper payments due to Benefit Year Earnings (BYE) errors..."¹⁵² as "...the economy reopens and an unprecedented number of individuals return to work..."¹⁵³. BYE errors refer to errors "...when individuals continue claiming UI benefits and fail to appropriately report earnings after returning to work"¹⁵⁴.

DUA/EOLWD Information:

It should be noted that all the information contained in this section (unless otherwise noted or cited) was provided by Director Jeffers of the Department of Unemployment Assistance (DUA), Secretary Acosta of the Executive Office of Labor and Workforce Development (EOLWD), and DUA/EOLWD staff during their conversation with the House Committee on Post Audit and Oversight on December 18, 2020 and subsequent communications. The information is broken down into sections based on the topic or issue addressed.

Secretary Acosta began the meeting by providing the committee with an overview of the unemployment programs available in Massachusetts as well as the federal legislation that created new programs in direct response to the COVID-19 pandemic, including PUA, PUEC, and FPUC¹⁵⁵. Secretary Acosta emphasized that the unemployment system has been under considerable strain since the beginning of the pandemic, which has led to the adoption and implementation of adaptive strategies to meet growing demand and the needs of claimants¹⁵⁶.

The complaints the Committee heard most from members and staff regarded the excessive waiting periods claimants were experiencing both for the distribution of benefits and communications from DUA. The resolutions to these issues involve the interlocking of a number of moving parts, such as increased capacity within DUA and PUA through staff hiring and training, resolving holds or delays in response to fraud, and supporting increased accessibility for claimants. The Committee will address each of these issues below. Please note that there is some cross-over among issue areas.

It should be noted that while EOLWD and DUA oversee the administration of the unemployment systems in Massachusetts, they are ultimately federal programs and, as such, EOLWD and DUA must follow and implement federal guidance to guarantee certain funding and federal supports¹⁵⁷.

DUA/PUA Capacity:

¹⁵²Pallasch, John. Employment Training and Administration, U.S. Department of Labor. "National Directory of New Hires (NDNH), State Directory of New Hires (SDNH), and Other Improper Payment Prevention and Detection Resources, Tools, and Services Available to States." Advisory to State Workforce Agencies. September 24, 2020. <[National Directory of New Hires \(NDNH\), State Directory of New Hires \(SDNH\), and Other Improper Payment Prevention and Detection Resources, Tools, and Services Available to States \(doleta.gov\)](#)>

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. "Meeting Notes." December 18, 2020.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

Before the pandemic, the Department of Unemployment Assistance (DUA) had about 200 employees who handled customer services and adjudication¹⁵⁸. However, as demand skyrocketed, it became clear that DUA needed to scale up its operation to match increasing numbers of claims. As a result, DUA accelerated hiring, increasing its staff to around **2,000 individuals**¹⁵⁹. It's important to note here that Secretary Acosta did mention that this number was reduced to about **1,000 individuals** when Massachusetts saw a decrease in claims, but is now expanding again to match a rising caseload¹⁶⁰. To increase their staff rapidly, DUA and EOLWD pulled from a few different sources including collaborating with MassHIRE, the career centers, and other agencies, and calling back seasonal or retired staff for additional support¹⁶¹. In addition, DUA and EOLWD contracted with vendors such as SAVILINX, LLC, FHCAN, and TEK SYSTEMS INC. to provide supplementary support¹⁶². At the beginning of the pandemic, DUA also moved all workers to remote work¹⁶³ and Director Jeffers noted that DUA was able to procure 500 computers in March¹⁶⁴.

Director Jeffers noted that because the structure of the PUA system has been streamlined since its implementation there has also been a **diversion and redirection of PUA staff to regular unemployment** to meet increasing demand¹⁶⁵. DUA is also restructuring their processes to further reduce wait times: DUA currently has **90 individuals** "whose job it is to look through documents and verify"¹⁶⁶. DUA expects this number of specialized staff to grow as they train more people and Director Jeffers noted specifically that they expect the number might double in the next two to three weeks (after the 12/18/20 meeting)¹⁶⁷. As the numbers of claims have continued to rise, DUA has also **added 128 telephone agents** and **over 20 supervisory staff** (in the week ending 12/18/20)¹⁶⁸. Director Jeffers emphasized that DUA is closely watching the increasing demand and is creating solutions as issues arise, such as building specialized teams with "**micro-training**"¹⁶⁹ to better address specific types of issues in a more timely fashion¹⁷⁰. Secretary Acosta also noted that DUA is working on adding staff to specifically address fraud related issues and holds on claims¹⁷¹.

Holds & Delays:

As cases began to rise in March and April, claimants faced delays in receiving their unemployment benefits. The causes for delays range from capacity to new regulations put in place to address unemployment fraud. DUA and EOLWD have implemented a range of adaptations to address these delays and streamline the unemployment process. Some of these strategies are straightforward, like increasing hiring and conducting "micro-training"¹⁷² to resolve issues faster, some needed legislative approval such

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Tansey, James. Director, House Post Audit and Oversight Bureau. "HPOA DUA hearing; J. Tansey notes." December 18, 2020.

¹⁶³ Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. "Meeting Notes." December 18, 2020.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

as eliminating the 1-week waiting period for benefits that was standard for claims before the COVID-19 pandemic¹⁷³, and some require more complicated solutions, such as the procedures put in place to address and prevent unemployment fraud.

Major unemployment fraud has plagued the Massachusetts system from the beginning of the pandemic (as discussed in the section titled *Massachusetts Unemployment Fraud Data and Information*). DUA and EOLWD have responded to this, under federal guidance and collaborating with state and federal law enforcement, with enhanced verification measures, which have, in turn, led to increased waiting times and delayed payments for claimants¹⁷⁴. Part of this is due to capacity issues, as discussed above, which DUA and EOLWD are addressing with increased hiring, targeted trainings, and internal triage teams¹⁷⁵. With these focused policies, DUA and PUA have been streamlining their processes to reduce waiting times for ID verification: **PUA went from a period of 36 days to verify identities to 2 days**¹⁷⁶ and, with the help of the internal triage teams, **DUA is working towards matching that 2 day resolution timeline**¹⁷⁷. In addition, DUA and EOLWD have contracted with the Massachusetts State Police and the National Guard to verify claims¹⁷⁸. However, fraud remains a tricky problem as schemes change “frequently”¹⁷⁹ and many fraudulent claims are made with real social security numbers¹⁸⁰. DUA and EOLWD are working with other states as well as law enforcement to “compare fraud schemes”¹⁸¹.

As a result of widespread fraud, DUA and EOLWD have implemented dozens of fraud detection methods that every claim has to be checked against before payments are authorized¹⁸². It should be noted here that some of the guidance regarding fraud detection and prevention was handed down by the Federal Government (as discussed in the section titled *Federal Guidance*), which DUA is required to implement¹⁸³. These detection methods include placing **holds on new initial claims and reopened claims** until verification is complete¹⁸⁴. It should be noted here that the claims are put on hold without correspondence to claimants¹⁸⁵. **Holds are also put on any claims where key information**, such as bank account details, **is changed** until the claimant can verify their identity¹⁸⁶. The verification process involves comprehensive fact finding through gathering and reviewing specific documentation and a claimant questionnaire (DUA includes [instructions for identity verification](#) on its website)¹⁸⁷. Each hold includes an **Action Due Date**, which is listed on a claimant’s account, by when individuals need to provide their information¹⁸⁸.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Department of Unemployment Assistance. “UI Identity Identification Instructions.” <[UI identity verification instructions | Mass.gov](#)>

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To address a backlog of ID verification holds, DUA and EOLWD mailed communications, called PIN letters, to claimants on December 2 and 3, 2020 as a way of self-verifying¹⁸⁹. If a claimant verified their claim by following the directions in the letter, the hold would be released in **2 business days**¹⁹⁰. If the claimant did not verify their claim, the hold remained and a request for documents and questionnaires was sent out¹⁹¹. As of the December 18, 2020 meeting, **43,000 claimants had responded to their PIN letters**¹⁹². On **January 12, 2021**, EOLWD informed the legislature that DUA will be “further assisting claimants with identity verification holds on their accounts”¹⁹³ by sending out another round of PIN letters¹⁹⁴. Claimants that receive these letters are instructed to enter the letter ID number and PIN number they receive into the designated spaces on [Verify Claim - Unemployment | Mass.gov \(state.ma.us\)](https://www.mass.gov/info-details/verify-claim-unemployment)¹⁹⁵. The guidance noted that “Once a claimant correctly enters the PIN number, their account will have the identity verification hold removed within 2 days”¹⁹⁶ and that “even if constituents have already submitted fact finding...”¹⁹⁷ legislative offices should direct them to follow the guidance included in their letter¹⁹⁸.

For other holds, there are three potential timelines for ID verification resolution (please note that this depends on how quickly individuals respond to information requests, how quickly employers respond to their questionnaires, and how quickly DUA/PUA are able to make a determination on the information provided):

- 1) If all necessary documentation is uploaded immediately, the claimant questionnaire completed, and the documents/questionnaire are accepted, holds could be lifted in as little as **72 hours after a claim is filed**¹⁹⁹.
- 2) “If the documents are unsatisfactory, [the claimant] will receive a determination denying [their] claim. **[They] may appeal this decision within 10 days of the determination**”²⁰⁰.
- 3) “If [the claimant does] not respond, [they] will receive a determination denying [their] claim. **[They] may appeal this decision within 10 days of the determination**”²⁰¹.

Secretary Acosta noted that the appeals process for ID verification issues could be conducted online through a web-cam²⁰².

In addition, some claims faced delays based on eligibility confusion. Massachusetts implemented the PUA program in April of 2020, which was before the Federal Government issued specific guidance for the program²⁰³. DUA developed and built a new system, separate from the UI system, to accommodate PUA,

¹⁸⁹ Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. “Meeting Notes.” December 18, 2020.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. “Department of Unemployment Assistance Update.” Email to the Massachusetts Legislature. January 12, 2021.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. “Meeting Notes.” December 18, 2020.

²⁰⁰ Department of Unemployment Assistance. UI identity verification instructions. <[UI identity verification instructions | Mass.gov](https://www.mass.gov/info-details/ui-identity-verification-instructions)>

²⁰¹ Ibid.

²⁰² Tansey, James. Director, House Post Audit and Oversight Bureau. “HPOA DUA hearing; J. Tansey notes.” December 18, 2020.

²⁰³ Ibid.

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but they prioritized paying claimants over waiting for guidance, which caused confusion when federal directives were eventually issued²⁰⁴. This resulted in significant delays between the two systems as individuals had to be denied for regular UI benefits before they could apply for PUA²⁰⁵. However, with increased communications between the programs, more specific reporting directions, and federal guidance, these issues have been significantly reduced²⁰⁶. Though it should be noted that this program is subject to change depending on further federal guidance²⁰⁷.

Some of these independent factors will be resolved or at least mitigated by the hiring of additional specialized staff and some of these issues can be addressed by improved access to DUA/PUA resources and information, which is discussed below.

Accessibility:

Early in the pandemic, it became clear that claimants were struggling to understand and access the DUA and PUA resources necessary to successfully apply for and receive benefits. As a result, DUA and PUA began to develop and implement changes to address and reduce these issues. DUA updated their website to include the most up to date information and developed step-by-step guides for the unemployment programs, which were translated into 12 languages²⁰⁸. DUA also built an entirely new system for PUA, completely separate from the UI online program, which is mobile friendly and, according to feedback from users, more user friendly²⁰⁹.

EOLWD noted in later communications with the Committee that the Office of Multilingual Services, which resides within EOLWD, offers "...language access services to EOLWD agencies"²¹⁰ (including DUA and the MassHire Department of Career Centers²¹¹). Specifically, DUA offers forms and publications in "Spanish, Portuguese, Haitian Creole, Chinese, Vietnamese, Russian, Khmer, Lao, Italian, French, Korean, and Arabic"²¹². In addition, DUA offers a multilingual UI online claimant booklet, debit card information, and UI online translation options²¹³. EOLWD also noted in later communications that the DUA call center also includes multilingual call agents that are available to assist constituents as needed²¹⁴. Finally, DUA and PUA also created multilingual applications and created a "mobile-friendly"²¹⁵ application (the online regular UI application had issues on mobile devices), which was also made available in multiple languages²¹⁶.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. "RE: House Post Audit and Oversight Report." Email to Elizabeth Roche. January 15, 2020.

²¹¹ Office of Multilingual Services. Executive Office of Labor and Workforce Development. "EOLWD Multilingual Services." <[Office of Multilingual Services | Mass.gov](#)>

²¹² Office of Multilingual Services. Executive Office of Labor and Workforce Development. "DUA Multilingual Services." <[DUA Multilingual Services | Mass.gov](#)>.

²¹³ Ibid.

²¹⁴ Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. "RE: House Post Audit and Oversight Report." Email to Elizabeth Roche. January 15, 2020.

²¹⁵ Roche, Elizabeth. Research Director, House Committee on Post Audit and Oversight. "Meeting Notes." December 18, 2020.

²¹⁶ Ibid.

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In addition, DUA and EOLWD have worked with the legislature to address specific issues, such as setting the UI benefits floor at \$100 per week, which resulted in 17,000 individuals becoming eligible for the \$300 weekly benefits provided under the Lost Wages Assistance Act²¹⁷. In response to legislator concerns, DUA also set up a secure email for legislative offices to submit documents on behalf of constituents who may not have the ability to upload and submit their documents²¹⁸.

Finally, DUA and EOLWD transitioned services online, hosting town hall style information sessions (from March to June) in English, Spanish, and Portuguese to address questions to a wider audience²¹⁹. DUA also improved their communications to provide updated information regarding the CARES Act program and the Lost Wages Assistance Program (LWA), implemented by MEMA, as well as guides and resources for claimants²²⁰. DUA and EOLWD also hosted virtual workshops and jobs fairs, which were attended by about 1,000 employees and 600-700 employers, and created a virtual Youth Works program, which had around "...4,400 kids in virtual programming over the summer"²²¹.

Employer Supports:

DUA and EOLWD has also created and changed policies to support employers during the COVID-19 pandemic. DUA and EOLWD emphasized the necessity of a bill, H.5206, *An Act financing a program for improvements to the Unemployment Insurance Trust Fund and relief to employers in the Commonwealth*²²². According to the Massachusetts Legislature's website, this bill was filed by Governor Baker on December 18, 2020 and was referred to the Joint Committee on Labor and Workforce Development on December 21, 2020²²³. The committee held an electronic hearing for the bill, where it accepted written and video/audio testimony, on December 23, 2020²²⁴. H.5206 received approval from the Joint Committee on Labor and Workforce Development as well as the House Committee on Bonding, Capital Expenditures and State Assets and was discharged to the House Committee on Ways and Means on January 5, 2021²²⁵. Members of the House Committee on Post Audit and Oversight wrote a letter to House leadership on December 23, 2020 to voice their support for this legislation and to ask that it be taken up as soon as possible. The legislature was unable to act on the bill before the expiration of the legislative session on January 6, 2021, and the Governor re-filed the legislation on January 13, 2021²²⁶.

DUA announced on December 24, 2020 that, since there was pending legislation that could impact these rates, the employer rate notices would not be released until 2021²²⁷. DUA advised employers to consult

²¹⁷ Ibid.

²¹⁸ Muradian, Jessica. Deputy Chief of Staff & Director of Legislative Affairs and Policy, Executive Office of Labor and Workforce Development. "Department of Unemployment Assistance." Message to the MA Legislature. December 15, 2020. Email.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² Ibid.

²²³ The 192nd General Court of the Commonwealth of Massachusetts. "Bill H.5206: An Act financing a program for improvements to the Unemployment Insurance Trust Fund and relief to employers in the Commonwealth." <[Bill H.5206 \(malegislature.gov\)](http://malegislature.gov/Bills/2020/H/5206)>

²²⁴ Cohen, Robert. "ELECTRONIC HEARING NOTICE: Joint Committee on Labor and Workforce Development 12/28." Email to the Massachusetts Legislature. December 23, 2020.

²²⁵ The 192nd General Court of the Commonwealth of Massachusetts. "Bill H.5206: An Act financing a program for improvements to the Unemployment Insurance Trust Fund and relief to employers in the Commonwealth." <[Bill H.5206 \(malegislature.gov\)](http://malegislature.gov/Bills/2020/H/5206)>

²²⁶ Finlaw, Sarah. Press Secretary, Governor's Office. "Baker-Polito Administration Re-Files Unemployment Legislation to Provide Employer Relief, Ensure Trust Fund Solvency." 1/13/21. <[Baker-Polito Administration Re-Files Unemployment Legislation to Provide Employer Relief, Ensure Trust Fund Solvency | Mass.gov](https://www.mass.gov/news/baker-polito-administration-re-files-unemployment-legislation-to-provide-employer-relief-ensure-trust-fund-solvency)>

²²⁷ Department of Unemployment Assistance. "2021 DUA employer rate notices." 12/24/20. <[2021 DUA employer rate notices | Mass.gov](https://www.mass.gov/news/2021-dua-employer-rate-notices)>

[Unemployment Insurance \(UI\) for Employers | Mass.gov](#) for more information and updates and submit any questions to UIEmployerReports@detma.org²²⁸.

Committee Recommendations:

The problems DUA and EOLWD are facing are expansive and ever-changing. While they are a result of the COVID-19 pandemic, they have also revealed and spot-lighted shortcomings and deficiencies in the unemployment systems that precede COVID-19. However, while addressing these deficiencies should be a long-term goal, the present priority should be getting benefits to those who need them as quickly and efficiently as possible. This will involve a collaborative effort between DUA, EOLWD, and the Legislature. The unemployment system is a delicate series of interlocking steps that all need to be completed and accepted for benefits to be distributed. In a simplified explanation, the unemployment insurance process works much like lock systems for water navigation: to reach the other side, each segment must flood with water to raise the ship and the doors must open to allow the ship to pass through. If the water does not rise or the doors do not open or a combination of the two, the ship will be stuck at a standstill.

As previously stated, claim resolution timelines are contingent on many independent factors that, when out of sync, could cause delays in benefit payments. The relative speed of each claim process is dependent on a series of contingencies. To name a few, though there are many more:

- Claimants must complete the questionnaire and upload documents as soon as possible, which depends on claimants understanding what information is required and having access to electronic devices (a computer or a phone) to upload documents and complete the questionnaire.
- Employers, in some cases, must provide a questionnaire within 10 days of receiving a request. This questionnaire also requires time for adjudication and is not always submitted by employers in a timely manner and could require additional requests from DUA.
- DUA/PUA must adjudicate all information and make a determination, which depends on having enough staff to meet demand.
- DUA/EOLWD must implement federal guidance and ensure programs are compliant with federal law.

At this time, the Legislature, DUA, and EOLWD can work to ensure that all the parties involved (the claimant, the employer, DUA, etc.) have all the information and tools necessary to create as smooth a process as possible, to ensure that all the segments fill with water and all the doors open. This means:

- Prioritizing accessibility:
 - Clear instructions to claimants on what they need to provide and what the process to receive benefits or to verify their identity is, available in as many languages as possible
 - Providing as many vehicles as possible for claimants to provide necessary documents and complete required questionnaires
 - Availability of DUA staff to answer questions, whether through the call centers, additional virtual town halls, or through legislative offices

²²⁸ Ibid.

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- Translation and multilingual services
- Increasing capacity:
 - Increasing staff in call centers, in adjudication, and identity verification processes
 - Increasing training to handle specific issues
- Process Transparency:
 - Keeping the Legislature informed so that it can better understand the issues and help constituents navigate those issues
 - Open and on-going communication between the Legislature and DUA/EOLWD to address any issues or concerns that may arise.

Some of the measures listed above, DUA and EOLWD are already undertaking, some need to be built out more and some need to be revisited. This will be a collaborative process. Secretary Acosta made it clear to the Committee that DUA and EOLWD are ready and willing to work with the Legislature to resolve issues and improve the unemployment programs and their respective systems. At this time, the Committee recommends that:

- **DUA and EOLWD host recurring town hall or briefing style meetings with the members of the Legislature and their staff to provide information and updates and serve as a forum for questions. These meetings will begin immediately.**
- **DUA and/or EOLWD host a webinar or training session for legislative offices regarding the UI application process to further assist legislative offices in helping constituents navigate the UI application process.**

Senate Committee on Post Audit and Oversight Executive Session

Hello Chairman Moore and distinguished members of the Senate Committee on Post Audit and Oversight. Thank you for the opportunity to speak with you about the work our team began during the COVID-19 pandemic and continues to do to assist unemployment claimants and employers. For those of you that I have not had the opportunity to meet, my name is Rosalin Acosta and I serve as Secretary of Labor and Workforce Development. I am also joined today by Martha Wishart, Chief Counsel at the Department of Unemployment Assistance. As everyone is aware, the COVID-19 crisis began in March of 2020 and has continued to affect lives and businesses around the world. Throughout the pandemic, the Department of Unemployment Assistance staff has worked tirelessly for the Massachusetts workforce and businesses to deliver unemployment benefits in a timely and accurate manner amid ever-changing Federal programs and laws. Additionally, the MassHire Department of Career Services (MDCS) has worked relentlessly to help the workforce gain stable fulfilling employment and to help businesses struggling to fill unfilled positions.

As the pandemic began, it quickly became clear that we had to staff up, while also being sure to protect the health and safety of our employees. The team at DUA grew from 200 employees to over 2,000 employees to meet the needs of workers who were displaced by the pandemic. We moved our call center and most of our staff to working remotely. DUA issued two sets of emergency regulations to expand access to unemployment benefits as broadly as possible and since has adopted a number of policies designed to eliminate barriers to accessing benefits. Additionally, working with the Legislature, we enacted legislation to eliminate the one-week waiting period, to extend certain benefits, and to make adjustments to the ways employers are charged. We thank you for your partnership in getting that legislation passed to help claimants and employers.

Together, these measures supported DUA's ability to address an unprecedented crisis that resulted in historic numbers of claimants and a total of over \$33 billion in claims that were paid out over the course of 2020 and 2021 – which represents by far the largest figure over such a time period in DUA's history. We appreciate the Legislature's continued partnership as we supported the Commonwealth's workforce through the impacts of this pandemic.

Trust Fund:

Let me begin with where we are today: as of November 30th, 2021, the Unemployment Insurance Trust Fund balance is \$2.9 billion. That total is a preliminary, unaudited figure. It does reflect the actual cash balance of the account reported by the United States Treasury through November, but may be subject to adjustments and revisions due to an ongoing reconciliation and review processes.

The UI Trust Fund is currently undergoing a comprehensive review to reconcile inflows and outflows, to validate balances and activity during the COVID pandemic timeframe. We have also engaged in a process flow analysis to show how our revenues, payments, and reporting systems

interact and how they had to adapt and change due to changes in federal and state law and as new programs came online. Other key considerations during that time period include:

1. A historic amount of transactions
2. An unprecedented emergency roll-out of Federal programs with rules issued mid-program, requiring real time adjustments; and
3. An unprecedented level of mixed State/Federal benefits which requires a level of accounting and adjustment not associated with any earlier programs.

When we have reconciled the financial aspects and reviewed the business processes, we hope to have more findings and action items to improve in the future. We expect that there may also be adjustments and restatements of certain reports and financial information that are incorporated into the UI Trust Fund.

While that process is ongoing, I can share with you the following other aspects of the financial state of our system:

- The Commonwealth of Massachusetts has incurred a loan balance of approximately \$2.3 billion that was borrowed from the federal government for the purpose of paying unemployment benefits.
- That loan will need to be repaid starting in November 2022 to avoid unfavorable terms from the federal government. Those terms are intended to incentivize states, like Massachusetts, to repay their loan balances relatively quickly.
- The Legislature has authorized bond financing to pay back the deficit owed to the federal government and to bring the trust fund back to a place in which benefits can be paid. We thank you for your partnership in passing that legislation. We also appreciate the recent approval of ARPA funds to support and stabilize the UI system.
- In addition to the \$2.3 billion in Federal borrowing, the UI Trust fund currently has approximately \$400 million in credits outstanding to certain employers who overpaid their unemployment insurance in calendar year 2021 due to downward mid-year rate adjustments in 2021. Those employers with credits on their accounts will be able to deduct those amounts from their UI obligations going forward. As a result of these credits, future revenue to the UI Trust Fund will be reduced over time, largely in Q1 and Q2 of calendar year 2022.
- We expect to publish the next Unemployment Trust Fund Report by the end of the month. These will provide disclosures regarding fund activities, outlook, and other information. We take our responsibility seriously to provide this information to the public, the employer community, and our legislative partners. That's why we're working diligently to ensure we publish accurate reports in short order, which will also be critical in our efforts to bond.

Response to COVID:

Now I would like to give you a brief recap of the steps that were taken in response to COVID-19 during its first year and then provide an update on the general steps that we have taken as we push through the second year of this pandemic. As I mentioned earlier, beginning in March of 2020 DUA scaled up its call center and other functions to respond to the surge of unemployment claims and to provide constituent support. Commonwealth employees from multiple state agencies, along with MassHire Career Centers staff, City of Boston employees and staff from third-party call centers were trained and deployed to support DUA. Additional seasonal staff and retired DUA employees were hired and have provided needed support.

We launched a Spanish language online, mobile-friendly, unemployment benefits application for those who needed to apply. This was followed by additional language applications in Portuguese, Haitian Creole, Chinese, and Vietnamese.

We stood up a system for accepting applications and administering payments under an entirely new program, Pandemic Unemployment Assistance (PUA) within a month of the effective date of the CARES Act. We also added new benefits programs to the UI system: Federal Pandemic Unemployment Compensation (FPUC), which provided a supplemental UI weekly benefit to claimants, and Pandemic Extended Unemployment Compensation (PEUC). This provided an extension of unemployment benefits for those who exhausted their regular claim.

From March 23rd to June 1st of 2020, we hosted daily town halls in English, Spanish, and Portuguese, which were attended by over half a million unique individuals to answer common questions and concerns that constituents were having, to help them through the UI Online process and in many cases, solve their issues in real time. We also deployed a team to update the DUA website with the latest information that claimants and employers would need to know, including step-by-step guides to filing a claim. In addition, our multilingual page supplied and continues to supply valuable unemployment assistance information in 12 languages: Spanish, Portuguese, Haitian Creole, Chinese, Vietnamese, Russian, Khmer, Lao, Italian, French, Korean, and Arabic. We also engaged with many community-based organizations to make sure that the information on our website was helpful and easy to navigate.

Industry Impacts:

Overall, the industries that were most affected by the pandemic in terms of increased use of the UI system are Trade, Transportation, and Utilities; and Leisure and Hospitality.

Accommodation and Food Services (which falls under Leisure and Hospitality) has been the most severely impacted industry with 107,942 peak claimants between May and June 2020. This sector lost more than 60% of its jobs due to the pandemic and is struggling to recover more than other sectors. While 15,200 jobs have been added during the recovery period, as of September 2021, this sector still faced a net loss of 64,600 jobs from its pre-pandemic level.

The Trade, Transportation, and Utilities super sector had the highest number of continued claims in May 2020, and while claims have reduced significantly, the number remains the highest in comparison to other sectors. Within this super sector, Retail Trade had the greatest number of continued claims at the height of the pandemic.

It is important to note that a decline in claims does not necessarily indicate recovery in that industry, as part of the trend might be as result of workers exhausting their benefits or moving to different industries.

Super sectors most hit by the pandemic have yet to recover the jobs lost since February 2020. As of September 2021, jobs yet to be recovered are: Leisure and Hospitality with 78,000; Education and Health Services with 58,900; and Trade, Transportation, and Utilities with 22,100.

Accommodation and Food Services remains the hardest hit sector. This sector went from 9% pre-pandemic, to 18.5% peak pandemic, and ending September 2021, is still the highest at 15%.

Claimant data and suspicious claims:

Let me set the stage for the spike DUA experienced due to the pandemic. DUA paid close to 2.25 million claimants over \$21 billion in benefits, in 2020. In 2021 DUA has paid close to \$12 billion in benefits to over 1.7 million claimants. In total, over the past two years, DUA has paid \$33 Billion in benefits to almost 4 million claimants. In comparison, in 2019 DUA served approximately 400,000 unique claimants and paid out \$1.4 billion. Currently, there are approximately 62,000 active regular unemployment claims and around 42,500 PUA claims that are residual after the program has ended due to an active appeal or resolution of a prior issue.

While DUA continues to receive suspicious claim filings, DUA has put processes and systems in place that are stopping claims that are not legitimate. Suspicious claims average 5-15% of all initial weekly claims.

For regular unemployment, in April 2021 we averaged approximately 5,000 new claims per week, of which 2,000 passed DUA's fraud prevention measures and were immediately processed and paid. Of the remaining 3,000 new claims, 17% of those were immediately denied with the right to appeal for failing to pass certain checks, and 83% required claimants to provide additional identity verification information to the DUA before the claim could be approved and paid.

Between March, 15th and March 21st, 2020, Massachusetts had 147,995 individuals file an initial claim for unemployment insurance. This represented an historically unprecedented increase of 1,904% over the prior week and was regular UI alone.

Presently, we are receiving approximately 2,500 new claims per week. Approximately 40% of claims are processed and paid immediately, 20% are immediately denied, with appeal rights because the indicators tat these claims are not legitimate is very high and 40% require additional identity verification measures before the claim can be approved and paid. We do occasionally see significant increases in fraudulent or suspected fraudulent claims.

We realize it is essential to quickly get unemployment benefits to citizens in need, while also ensuring that taxpayer money does not fall into the hands of criminals. DUA has employed every resource we can to address this difficult balance. To that end, DUA instituted two

significant strategies to help legitimate claimants get their needed benefits with minimal burden or waiting times:

1. DUA implemented a web-based identity verification service called ID.me, which was endorsed by the US Department of Labor, the National Association of State Workforce Agencies (NASWA) and is working actively with 26 state workforce agencies. This service provides a quick and easy way for claimants to submit their documentation for identity verification. This service helped ease the confusion and burden for the claimants and reduced the manually intensive burden on DUA.
2. DUA significantly staffed, triaged, and automated the identity verification and appeals resolution processes. This enabled over 157,000 claimants, both UI and PUA claims, to go through the ID verification process through ID.me and over 40,000 of those were successfully validated (since March 2021).

Challenges:

The DUA team has faced many challenges since the beginning of the COVID-19 pandemic, including responding to ever-changing federal requirements and addressing the level and sophistication of criminal activity against the UI system. While DUA is used to changing federal requirements, what has been unique during the pandemic is the timing of the federal requirements and guidelines – often coming months after they were needed or requiring complex retroactive analysis and benefits determinations, and sometimes not to the benefit of the claimants.

In terms of fraudulent and criminal activity, through the years DUA has had the staff and systems to monitor and address fraudulent claims, usually perpetrated by a small number of people using generally known schemes. During the COVID-19 pandemic, international organized crime brought to all states a level of sophistication and volumes of criminal fraud never seen by any governmental entity. The Commonwealth was no exception in that respect. Criminal enterprises used personal information stolen in earlier national data breaches and attempted to file fraudulent unemployment claims. It is important to note that because the Commonwealth provides the highest weekly benefits in the nation and was one of the first states to pay federal benefits such as PUA, Massachusetts was hit early and also particularly hard by this criminal activity.

It is important that I explain how we have defined fraud in this context. Fraudulent claims are those where an individual subsequently contacted DUA and informed the agency that a claim had been made in the individual's name by an unknown party.

Prior to the pandemic, identity-related fraudulent claims were insignificant. Between April 1st, 2020 and Sept 30th, 2021 of the nearly 3.9M claims submitted, nearly 278,000 (7.1%) were identified as fraudulent. This is for both the regular UI and PUA programs.

As this wave of criminal identity fraud affected individuals during the pandemic, DUA created an online form that made it easy for people to notify DUA that a fraudulent claim had been filed in their name. The form is located at: mass.gov/dua/fraud.

Members of the public who self-identify and believe someone has applied for unemployment benefits using their personal information can use that secure fraud reporting form online or call the DUA customer service department. These claims are immediately flagged, and any future UI payments are stopped. The claim is also removed from the employer's account, and DUA ensured that the innocent individual did not receive a Form 1099-G during tax season.

We also provided links to resources and other helpful information to individuals who were victims of identity theft and fraud. In addition to the self-reporting form for individuals that had a fraudulent claim filed in their name, DUA also has an online form that employers can use to report suspected fraud to DUA. Those claims are reviewed and investigated by DUA staff before a decision is made on the claims.

Furthermore, upon learning of the criminal schemes, DUA was quick to contract with the Massachusetts State Police and the National Guard to assist in reviewing claimant documentation. Prior to implementation of ID.me, DUA employed nearly 300 staff to review, investigate and triage claims. Since implementing ID.me, the need for manual identity verification has decreased significantly. DUA currently has 50 employees focused on fraud and investigation. Program integrity staff has had to review only about 70 claims out of 72,000 regular UI claims going through ID.me.

While identity fraud has been a focus throughout the pandemic, the vast majority of the fraud was within the PUA program, which was fully funded by federal dollars and not attributable to the UI Trust Fund. Within the regular UI program, fraud accounted for approximately \$184M in payments from the UI Trust Fund.

In mid-March 2020, given the overwhelming volume of initial unemployment claims, DUA modified its process for notifying employers of claims filed by their employees. Most employers had shut down and were unable to respond to requests for information on claims. In order to prevent the entire claims process from screeching to a halt for months on end, we suppressed notices for certain issues for claims that were marked "COVID-19". It was important to get claimants benefits as soon as possible. For regular UI there were no changes to employment verification and wage reporting. Even while notices were suppressed, if the employer was missing from the claim, the Wage Processing department would investigate the discrepancy.

In June 2020, DUA reinstated lack of work notices to employers and then in August of 2020, DUA sent employers cumulative statements regarding billing, and allowed employers to protest these claims for an extended period of 60 days. Thereafter, DUA has returned to normal claims processing.

Overpayments:

DUA's efforts during the pandemic to make timely benefit payments to claimants while dealing with completely unprecedented claim volumes has resulted in some degree of increased

overpayments. Generally speaking, an overpayment occurs when a claimant receives unemployment benefits that they are not entitled to. This could occur if the claimant made a mistake when certifying for benefits, if they were not able or available to work, or knowingly gave false or misleading information when filing a claim. Overpayments can also result from employer or agency error. Claimants whose overpayments are found to be the result of “fault” or fraud receive a “Notice of Fault Finding” and have to pay interest on top of the overpayment amount.

For regular unemployment, there has been a long-standing overpayments collection process and related appeal and waiver process that is prescribed in DUA’s regulations. To be eligible for a waiver, claimants must show either an inability to pay or that the payment would be against equity and good conscience. DUA’s notices ensure that claimants are aware of the right to seek a waiver in the case of an overpayment.

The PUA overpayment collections process was implemented in June 2021 per federal requirement. Claimants who received PUA benefits that were later determined to be ineligible received a notice of overpayment informing them of the reason for the determination and notification of the amount they were overpaid. The notice of overpayment also provided claimants with the option of appealing the overpayment determination or filing for a waiver of the overpayment. The rules granting waivers for the PUA program are the same as those for traditional unemployment insurance. In both programs, overpayments that result from claimant fault or fraud are not eligible for waivers.

For those claimants who do not qualify for waivers, DUA’s notices of overpayment also provide instructions on how to repay the overpayment balance. Claimants can repay overpayments by credit/debit card, EBT transfers, and by submitting payments directly to DUA. Claimants who cannot repay the overpayment in full can request a repayment plan. DUA has the ability to intercept Massachusetts state and federal income tax refunds in order to collect overpayments.

In the PUA program, some overpayments were created because new eligibility issues were added as the program developed retroactively by the federal government. For example, PUA claimants who received payments may have later been rendered ineligible if, they could not show attachment to the labor market. This requirement (Employment Substantiation) did not exist until January 2021.

Currently, 171,716 claimants in UI Online have active overpayments that were established since March 8th, 2020. The average amount of overpayment established during the pandemic was approximately \$20,900, of which \$2,680 is attributable to regular UI and the balance is attributable to federal benefits. PUA has 211,567 cases of overpayments with an average overpayment amount of \$11,725.

Successes:

The Massachusetts Department of Unemployment Assistance has had many successes through the pandemic. When the CARES Act was first enacted, Massachusetts was among the very first states to get those much-needed funds into the hands of citizens. To implement the CARES Act programs (PUA, FPUC, and PEUC), DUA had to make significant changes to the existing UI

system and develop an entirely new system to support the PUA program. Additionally, DUA had to develop new processes and hire hundreds of additional staff to support the new programs. This work was completed in less than two months, with little implementation guidance.

When criminal activity started, Massachusetts DUA was among the first in the nation to notice the alarming trends and anomalous statistics, and again was among the first to respond to the fraud.

During the crucial first few weeks of the pandemic, DUA implemented virtual town halls in multiple languages to keep the public informed and provide an opportunity to answer commonly asked questions. In all, 81 town halls were held, which were attended by more than 500,000 constituents. The town halls were held in English, Spanish, and Portuguese (Massachusetts has the largest Portuguese speaking community in the US). For the first few months of the pandemic, the town halls were conducted daily including Saturdays and Sundays.

MassHire also had and continues to have successes, connecting jobseekers to employers through back-to-work strategies, which has been a priority for the MassHire system. After pivoting services to virtual during the shut-down and through the pandemic, targeted outreach campaigns for getting people back to work started in May 2021. Work search requirements were reinstated on June 15th, 2021 to align with the end of the state of emergency, which led to increased communication including a weekly email series to about 600,000 people in both English and Spanish, which is still happening, and webinars that 2,927 jobseekers and 675 employers have attended. As federal benefits concluded on September 4th, 2021, job availability in JobQuest, virtual events, and resources have all been frequently promoted.

From June through November 2021, the state-wide MassHire system offered job search assistance to 30,483 individuals and 27,065 people attended workshops.

A huge success was the August statewide MassHire Massachusetts Virtual Job Fair held August 16-20: 17,228 job seekers registered (which is an 85% participation rate), 1,693 employers participated, and 20,718 resumes were exchanged on the Premier platform (which was an optional feature).

To increase awareness about federal pandemic benefits ending September 4th, alerts were placed on UI Online log-in screens and the DUA website, notifying claimants that federal benefits would end even if an individual had a balance or weeks remaining. DUA conducted comprehensive training for its call center agents to ensure that they could assist claimants through the end of federal programs and provide key resources.

Built with an operating model for scale, the reimagined UI Walk-in Center became the “Re-Employment Center” and opened on August 2nd with the goal of connecting claimants with job search services immediately and seamlessly. The Re-Employment Center offers direct access to MassHire services, career center sign-up, and JobQuest registration, which streamlines experiences for claimants.

JobQuest, the central online portal for MassHire Career Center services and the state’s largest aggregate of job listings, has undergone a major redesign for a better user experience and is

now mobile-friendly, provides a virtual pathway that directs job seekers through a 5-step re-employment pathway, and offers new features like a resume builder and upload, enhanced job search, registration for a Career Center Seminar. From May to mid-September 2021, 30,756 new users visited JobQuest.

I am proud to say that the greatest success of DUA and EOLWD is the team that has worked tirelessly through all the challenges and criticism. This team has worked around the clock for 18 months, under very trying conditions, in the face of intense public scrutiny, all while having to deal with the same struggles as everyone else at home – yet I observed an organization focused on one mantra, “We are here to serve the citizens and our citizens are in need.”

If there is any silver lining in all that we have experienced over the past 18 months, it is that we believe we have greater clarity in what a modern citizen- and employer-focused unemployment and re-employment operation and systems should look like. Thanks to the Legislature’s funding modernization efforts through Chapter 151 of the Acts of 2020, EOLWD is actively pursuing a comprehensive transformation and modernization of the DUA and MDCS technology systems and business operations. We have worked with the support of the Advisory committee members and every quarter EOLWD has provided the Legislature with a status report on our progress. In fact, as we speak, the EOLWD team is evaluating bids from the industry to replace the entire DUA infrastructure for which we hope to start construction in early 2022. Shortly after we launch the DUA initiative we plan to issue a procurement for a modernization and transformation of the re-employment operations. Getting people back to work at fulfilling careers is as important as providing them financial benefits during periods of unemployment.

Until we get cost estimates it is difficult to provide a well-founded cost estimate for you today.

Our team continues to work hard to serve job seekers and employers in the Commonwealth. We are grateful for the continued partnership with the Legislature and the investment that was made to improve our IT infrastructure. As we continue to work to create a new UI Online and career services system with our partners on the advisory committee, we will continue to update the Legislature on the process and next steps.

Closing: Big picture things to remember:

- Policy priorities were on serving those with valid claims to help them take care of themselves and their families during the pandemic and keeping the system solvent and functioning for its users.
- Measured by number of claimants as individual people who needed and deserved assistance during this unprecedented time, and by dollars, the UI system has never served or processed more in a comparable period of time.
- During normal times, UI takes in revenues and pays benefits. During typical recessions, there may be additional federal funding and extended benefits. During the COVID pandemic, there were fundamental changes in federal and state law affecting the core programs and creating entirely new programs that had never existed before.

- The demands on the policy apparatus, the systems, and the accounting structure were significant, and roadblocks and hurdles were common.
- We knew that we would have to do everything to get benefits to people who needed them and solve issues as we went along because there was no time to delay. That's what we are still doing now.

This has been a shared endeavor among the Administration, the Legislature, the federal government, the employer community, and the working people of Massachusetts. We have work we still need to do, but I believe we can get through it together. I appreciate the opportunity to testify in front of the Committee today on the experiences of the Department of Unemployment throughout the COVID-19 pandemic and our continued work. I am happy to answer any questions you may have. Thank you.

Office of the Inspector General Testimony
Senate Committee on Post Audit and Oversight

Good afternoon, Chair Moore and members of the committee. Thank you for the opportunity to testify before the Senate Committee on Post Audit and Oversight. For those of you I haven't met, my name is Natalie Monroe and I'm the First Assistant Inspector General for Massachusetts.

As many of you know, the Office of the Inspector General is an independent agency tasked with preventing and detecting fraud, waste and abuse in public spending and in the use of public property.

My remarks today are designed to respond to questions that we received from the committee.

- First, in connection with this committee's evaluation of the performance of DUA's Unemployment Insurance system, I will provide you with information concerning UI fraud during the pandemic.
- I will also discuss anti-fraud measures that public agencies – such as DUA – may want to consider as they move forward. Fraud prevention saves public dollars. With respect to public benefits, it also helps ensure that assistance goes to those who are eligible, while keeping money out of the hands of those who aren't eligible.

DATA.

First, agencies that provide public benefits – such as DUA – encountered new and unexpected challenges during the pandemic. Claims for assistance increased dramatically. Rules and eligibility standards for individuals collecting unemployment insurance were relaxed. Moreover, the federal government created the Pandemic Unemployment Assistance program for individuals who could not work because of COVID-19 and who were ineligible for regular unemployment insurance.

In our experience, when claims increase, and when eligibility standards are relaxed, changed or eliminated, the potential for fraud and waste grows. This is especially true when those changes must be implemented quickly.

Our data and experience indicate that this occurred with respect to unemployment insurance. For instance, our Office operates a fraud hotline where individuals can report suspected wrongdoing involving local, state or federal funds. Since the beginning of the COVID-19 pandemic and the relaxing of eligibility standards for unemployment insurance, my Office has seen a marked increase in the number of complaints relating to unemployment insurance. Specifically, between March 2020 and November 2021, our Office received 2,020 complaints relating to unemployment insurance. Of these, 181, or 9%, were “system complaints” – things such as individuals being locked out of their accounts, not being able to reach someone at DUA or DUA mistakenly providing our phone number to callers. The rest of the complaints – or 91% – concerned allegations of fraud. The majority of these complaints fell into four categories:

1. Identify theft, *i.e.*, an individual tried to file for benefits but someone had already filed in their name.
2. Complaints that individuals were collecting benefits when they were ineligible for benefits – these complaints related to both regular UI benefits and PUA benefits.
3. Allegations that individuals falsely claimed to have custody of children when the children were in fact in someone else’s custody.
4. Complaints of individuals hacking into and changing bank information on the system.

I note that we regularly provide information about these complaints to DUA for its review, and DUA has been receptive to receiving this information. Also, as you may know, we have pursued UI and PUA fraud as part of our work. In one recent case, for instance, an individual was indicted for receiving over \$65,000 in PUA payments while he was working full time.

As I mentioned, when any benefits system faces increased claims and changing eligibility rules, the opportunities for fraud grow exponentially. Therefore, it’s important that any new unemployment system contain robust fraud prevention capabilities.

With that in mind, I turn to anti-fraud measures that this committee may want to evaluate, and that DUA may want to consider, as it moves forward with its new UI system.

ANTI-FRAUD MEASURES – in the system.

First, any public benefit system must be more than an information intake and payment processing platform. It must have built-in fraud detection tools that can identify suspicious behaviors and raise red flags. For example, some situations a UI-related system might identify as possible fraud are:

- Funds for multiple claimants being sent to the same out-of-state bank.
- Funds for multiple claimants being sent to the same address or the same bank account.
- Multiple claims coming from the same IP address, especially multiple claims filed in batches or quick succession.
- Claimants collecting benefits without having a work history.

In addition to up-front detection tools, any benefits system should include post-award detection, auditing, data mining and analysis. These are essential to identifying individual errors – meaning identifying benefits that were granted when they should not have been. These tools are also essential to identifying fraud trends, red flags and internal fraud.

Additionally, the system must have access to the right data from other agencies. For instance, DUA conducts data matching with DOR. However, given changing eligibility requirements – and the evolving fraud landscape – one question is whether DUA has access to all the data it needs from DOR and other agencies. To the extent possible, state agencies must make their data accessible to other agencies; this includes helping public benefit agencies understand and use the data.

Further, any public benefit technology solution that DUA builds also must be agile: it needs to be able to adapt to new fraud schemes and trends, as well as changes in reporting, compliance and eligibility requirements.

ANTI-FRAUD MEASURES – not in the system.

I have been focusing my comments on technology solutions. But technology alone does not prevent fraud. Successful fraud prevention programs incorporate a wide range of resources, policies, internal controls, infrastructure and people. I will touch on four.

Number one is **culture**. One critical component for every organization is developing a fraud prevention culture. This begins with the tone at the top: senior management must not only communicate the importance of fraud prevention, it must be responsible and accountable for fraud prevention. Through the leadership of

senior management, everyone in the organization must understand and value their role in fraud prevention.

Number two – agencies must have strong **reporting mechanisms**. Agencies must promote public awareness about public assistance fraud. For example, an agency must promote and advertise its fraud hotline, so members of the public know how they can report potential fraud. It is also important for agencies to have an internal fraud reporting process as well. Those inside an organization are often the best individuals to identify fraud risks, so a clear reporting mechanism – that is openly valued by senior management – is essential.

For instance, our Office operates a fraud hotline for individuals to report suspected wrongdoing involving local, state or federal funds.

- Individuals can contact the Office on a 24-hour confidential hotline, via email or through a portal on our [website](#).
- All complaints are treated confidentially, and individuals can choose to submit a complaint anonymously.
- Although not every complaint leads to an investigation, the Office evaluates each complaint to determine whether it falls within the Office's jurisdiction and whether it warrants action.
- When a complaint does not fall within our jurisdiction, moreover, we try to identify the appropriate agency or organization to address the complaint.

A third key is **resources**. Agencies must have adequate enforcement operations to ensure that investigations into potential fraud are responsive and proactive. In order to do that, an agency needs adequate staff resources to provide the appropriate level of prevention, investigation and analysis. Staff need to have the proper training and investigative tools to effectively carry out their duties.

Lastly, because DUA is in the process of procuring a new UI-related system, it is important to highlight **contract management** as a fraud prevention tool. Strong contract management will help ensure that DUA gets a system that works for its business operations, that works for its clients, and that has strong prevention tools. Strong contract management will also help avoid fraud and cost overruns during project implementation.

Good contract management begins with a strong procurement process. Therefore, agencies must know what they want and be specific in what they require

from a vendor before going out to bid. An agency cannot defer to vendor input but should develop specifications itself. Agencies should also seek out best practices and specifications in their subject areas before selecting a vendor or bidding out a new system.

Once a vendor is chosen, the contract should be very clear about the agency's needs and expectations. For instance, agencies should set timelines for performance and build accountability into the contract. A contract's terms should also be very clear regarding communication between the vendor and agency, deliverables, milestones, training, costs, and penalties for not meeting the terms of the contract. Payment should clearly be tied to milestones and performance metrics.

To be successful, agency leadership must be fully engaged participants in the project. They need to closely evaluate and analyze each stage of the project to ensure it is progressing appropriately and meeting the required performance metrics and milestones. For more complex procurements, agencies should consider hiring an independent third-party expert to review the vendor's performance and implementation. This can greatly reduce the reliance on one expert, the vendor, which can have a vested interest in "over design" and "underreporting mistakes." In short, strong contract management, including the principles listed above, will increase the likelihood that the goal of the contract is achieved.

In conclusion, I'd like to thank you for giving me the opportunity to address the committee this afternoon. Our Office would be happy to work with the committee further as it continues its work. I would also like to extend that offer to DUA as it moves forward with its procurement. I'd be happy to answer any questions.



**Senate Committee on Post Audit and Oversight
Unemployment Insurance Oversight Hearing
December 13, 2021
Testimony of Geoffrey Wood
Chief, Insurance and Unemployment Fraud Division
Office of the Attorney General**

As Prepared for Delivery

Thank you, Chairman Moore and members of the Committee, for the invitation to testify today. I appreciate this opportunity. My name is Geoff Wood and I am the Chief of the Insurance and Unemployment Fraud Division in the Office of Attorney General Maura Healey.

Let me start by providing some background on the Insurance and Unemployment Fraud Division (commonly referred to as "IUFD"). The statutory authority for the work IUFD performs related to unemployment fraud was created in 1941 by the Massachusetts Legislature, current General Law c. 151A, §42A, which states that the Attorney General or an attorney she designates shall represent the Director of Unemployment Assistance in all criminal proceedings related to unemployment fraud.

The Attorney General's Office has partnered with the DUA to deter unemployment fraud for decades. Currently IUFD is one of nine divisions that make up the AGO's Criminal Bureau.

Funding for unemployment fraud investigations and prosecutions is provided by the DUA. The AGO and DUA renew yearly memorandums of understanding that describe the goals, funding, and information sharing requirements for the subsequent fiscal year.

Current staffing allocated for the Division allows for eight Assistant Attorneys General, four criminal investigators and one administrative assistant.

One thing that is critical to keep in mind is that IUFD is not a crime prevention agency; we respond to allegations of fraud that has been already committed. By nature, therefore, we depend on either people or agencies to REFER information about a potential crime to us. So it follows that in order for us to perform our jobs effectively going forward we must continue to receive consistent referrals if we are going to have chance at success.

Pre-COVID, we received cases almost exclusively as referrals from the DUA. There were primarily two types of cases the Department referred to us. One was claimant fraud. Generally speaking, in this scenario, a person would falsely claim to have been separated from their job through no fault of their own – while in fact they were still employed. They would collect unemployment benefits while at the same time they were working. An investigation by DUA would discover overpayments to the claimant, and they would refer the case to us. IUFD would then analyze the target's financial accounts, his or her employment records, interview one or two work related witnesses and then, if warranted we would indict the target. A second type of case would be a business that was not paying their proper contributions into the Unemployment Trust Fund. Once identified by the DUA and referred to us, we would analyze the businesses payroll

records, interview one or two work related witnesses, and then potentially indict both the person or persons who controlled the business (maybe an owner or a director) as well as the business itself.

These two types of cases were the model for the Division for many years.

COVID blew this out of the water.

In early spring of 2020 we, much like many other agencies, received hundreds upon hundreds of calls/ complaints/ emails –about identity fraud, claims being filed under people’s names who had no idea they were collecting unemployment, as well as leads on potential fraud rings or people collecting benefits that should not have been. These calls were primarily from Massachusetts residents but many, many of them were from out of state as well. Calls from law enforcement agencies also spiked to never before seen levels, local police departments, local PD not from Massachusetts - from as far away as California, the south, Oregon, state and federal agencies were also contacting us, and I know the DUA as well as my colleagues at Greater Boston Legal Services and the other legal and community support providers throughout the state were also receiving similar calls at the time.

Communications to us fell into two general categories, either 1) people who were victims of unemployment fraud or 2) people reporting on others they felt were committing unemployment fraud. The executive branch has previously estimated that on the low end the fraud was around \$200 million – on the high end it was something north of \$1.5 billion.

Now, there are several challenges to investigating and prosecuting these new COVID fraud cases. First, they don't come packaged as referrals that the Department had already identified as fraud. They required much more up-front investigation to determine whether there was any fraud in the first place. We are executing more search warrants and conducting more digital evidence analysis. We were now using two investigators and attorneys per case when before only one was required.

Next, the scope of the fraud was so massive and the complexity was so different that we went from subpoenaing one or two banks accounts per case and maybe three interviews to having 3, 4, 5 victims, multiple targets all with bank accounts that we needed to subpoena records for. Coupled that with the fact that the perpetrators moved money quickly from one account to another, often multiple times, we were now talking about 10-20 bank accounts per case as opposed to one or two and roughly the same amount of interviews of victims and witnesses. The amount of document review and analysis per case exploded. This knocked out my staffing model that had been in place for years.

Additionally, add to the fact that there was now an entirely new type of benefit - PUA, with a new computer system and new records to present for the grand jury, new witnesses needed to testify to how it works – this has certainly been challenging to the DUA and as a result to our prosecution team as well.

One final challenge I will highlight is the relatively liberal eligibility rules for PUA benefits and the effect that has on our ability to prosecute these cases. Because people were so easily able to receive the CARES ACT benefits, there were issues to proving beyond a reasonable doubt that – in specific cases –the target was not entitled to PUA, even if he or she acquired it incorrectly.

We have attempted to focus our COVID related investigations on PUA and U/I fraud rings that can be described generally by the following three categories. First, perpetrators who use victims' personal identifying information (PII) without authorization to collect unemployment benefits and funnel money into a bank account the perpetrator controls. Second, perpetrators who "assist" others in opening unemployment claims then take a percentage of the money or keep the majority of the benefits; a significant issue in communities where English is not the primary language. Third, perpetrators who organize vulnerable populations to make false unemployment claims (ex: the homeless and recovery communities) and then receive a percentage of the fraudulent benefit payments.

I don't want to belabor this because I think it is a better use of your time, Mr. Chairman, to discuss what we've learned and where we think we should go from here.

First, staffing. In order to tackle these much more complex and sophisticated cases, we have needed to increase the staffing level of the division. This past year we requested and received a modest budget increase from the DUA for the equivalent of one additional Assistant Attorney General and half the cost of an additional investigator.

Second, Attorney General Healey and Criminal Bureau Chief Gina Kwon are to be commended for quickly recognizing our need to adapt to a new model of investigations - to be much more proactive on the front end. While we used to receive cases already identified as fraud, now we have been forced to figure that out. As I said, this takes significantly more work. Also, it leads to many more dead ends and closed cases. Cases that we may have received a tip about, that initially sounds like potential fraud, as we investigate we find reasons we will not be able to find probable cause for an indictment.

Finally the referral process for PUA and COVID related U/I identity fraud cases from the DUA has not been effective so far. We are not yet receiving the types of cases with massive amounts of identity fraud on a consistent or regular basis. In FY 2018 we received 27 referrals from the DUA. In FY 2019, 23. So far this year we have received 3 PUA and 0 COVID related U/I referrals, In FY 2022 Q1 we have received no referrals at all.

How do we go forward?

First, time is of the essence in trying to find and recoup money lost to fraud – and actually in any criminal matter this is true. We must receive timely referrals of PUA and COVID related U/I fraud cases if we are going to be able to effectively prosecute them.

Second, we must receive better and more consistent communication from the folks who have the data already in their systems about the money lost. A standing task force, with DUA and the US Department of Labor at the center (because they are the agencies that have the data necessary for

us to prosecute these cases) would be a key, collaborative effort to tackle the massive pile of PUA and COVID related U/I fraud. USAO, State Police, FBI, the AGO, the Inspector General – we should all be involved. The task force should serve as a regular meeting to discuss state and nationwide trends and specifically target cases involving victims and perpetrators of unemployment fraud in the Commonwealth.

Third, the pandemic has increased delays throughout the prosecution process (courts are backed up, grand juries meet less frequently, it's much more difficult to interview witnesses). Receiving timely records from large organizations has also been significantly delayed. Our ability to obtain financial records as a result of properly issued subpoena process is essential for us to be able to follow the money trail. A potential solution would be enhanced penalties for non-compliant banks, financial institutions, wireless and internet service providers that do not provide records in a timely manner in response to valid, grand jury subpoenas.

In closing, Mr. Chairman, I want to make sure I highlight that, in the eight years I have had the opportunity to work directly with the DUA, I have collaborated with some truly exceptional people who have battled through tremendous adversity as a result of the pandemic. From Director Jeffers on down these folks have gone above and beyond to help us do our job. I look forward to continuing to build upon the strong relationship that we have developed between our agencies, implementing the changes we have made within the IUFD, and beginning to receive the case referrals for the largescale PUA and COVID related U/I fraud so that we can not only recoup some of the money lost, but also bring justice to the thousands of Massachusetts fraud victims from these crimes.

Thank you very much, and I am happy to take any questions you may have.

THE MASSACHUSETTS EMPLOYMENT RIGHTS COALITION:
Statewide Advocacy for Low-Wage Workers

December 15, 2021

By email

Senator Michael Moore, Chair

Senator Jamie Eldridge, Vice-Chair

State House

24 Beacon Street

Room 109-B

Boston, MA 02133

RE: Senate Committee on Post Audit and Oversight– Employment Rights Coalition (ERC)
Written Testimony

Dear Chair Moore and Vice Chair Eldridge:

Thank you for the opportunity to testify before the Committee last Friday. Enclosed please find our written testimony that delves into our full recommendations in greater detail and highlights our clients' experiences. Here, we have summarized our most immediate recommendations for the Committee:

I. Legislative Recommendations

- Clarifying the Department of Unemployment Assistance's (DUA) standard for waiving non-fault, pandemic unemployment insurance (UI) overpayments by passing **HB 4202**, an Act Relative to Waivers for Non-Fault Overpayments, which provides easily ascertainable scenarios under which DUA is obligated to waive overpayment recovery. Further this bill requires DUA to provide plain language notice and assistance with waivers to individuals including those with language or technology barriers.
- Updating the eligibility and benefit formulas by passing **HB 2033** and **SB 1214**, an Act to Increase Unemployment Insurance Benefits for Low Wage Workers. These bills would update decades-old eligibility and benefit formulas, which provide benefit levels inadequate to sustain low-wage workers while they search for suitable jobs, and which disqualify low-wage workers with fluctuating work schedules from UI benefits altogether.
- Expanding the number and category of workers eligible for unemployment insurance UI by passing **HB 2015** and **SB 1215**, an Act Relative to Employee Definition Harmonization. While misclassified workers had the benefit of Pandemic Unemployment Assistance (PUA) during the pandemic, this imperfect fix expired on September 4, 2021. HB 2015 and SB 1215 harmonize the UI statute's definition of

“employee” with the definition used for purposes of Massachusetts’s wage and hour laws and is a significant first step towards facilitating access to UI for workers traditionally excluded due to misclassification. In addition, we recommend the Committee *oppose* **HB 1234**, an Act Establishing Portable Benefit Accounts for App-Based Drivers, which codifies gig-companies’ unlawful misclassification of their workers, depriving them of basic employment protections including access to UI.

II. Interim Technological Improvements

- The Executive Office of Labor and Workforce Development (EOLWD) and DUA should continue to work closely with the Advisory Council throughout the design of the UI Online overhaul to avoid pitfalls that delayed or blocked access to UI during the pandemic.
- EOLWD and DUA should pursue federal funding to support interim and incremental technological improvements to UI Online in advance of the UI Online overhaul, namely the U.S. Department of Labor (USDOL) equity grant and US Tiger Team grant. Massachusetts is allotted \$6.8 million and has until December 31, 2021, to apply for an equity grant. Massachusetts has until March 31, 2022, to apply for consultative services provided by Tiger Teams.

III. Fraud and Program Integrity Recommendations

- DUA should focus its anti-fraud enforcement efforts against high-impact, criminal enterprise targets which pose the greatest threat to the UI system going forward, while ensuring that those enforcement measures do not compromise equitable access and payment timeliness for claimants.
- Identity verification used in UI must follow the National Institute of Standards and Technology (NIST) Digital Identity Guidelines IAL/2/AAL2.¹ The federal government has tackled this problem before, and compliance with these guidelines will go a long way toward addressing many of the concerns highlighted above.
- All identity verification systems must be completely mobile responsive. Cell phones are the primary source of internet access for many claimants.
- There must be in-person options for verifying identity, such as UPS stores. Claimants that are unable to complete online identity verification must have an in-person alternative that is easily accessible and fast. DUA should clearly define how alternative verification should be done by referencing IAL2/AAL2 standards.
- Identity verification vendors such as ID.me should only get paid by the State when they successfully verify an individual’s identity, aligning incentives for vendors to

¹ Paul Grassi, James L. Fenton, Naomi B. Lefkowitz, Jamie M. Danker, Yee-Yin Choong, Kirsten K. Greene, Mary F. Theofanos, *Digital Identity Guidelines Enrollment and Identity Proofing Requirements*, National Institute of Standards and Technology, U.S. Department of Commerce (June 2017, last updated March 2, 2020), available at <https://doi.org/10.6028/NIST.SP.800-63a>.

find more solutions to help more real people through (while remaining standards-compliant).

- Claimants must be allowed to complete their application for benefits even if their identity verification is pending. It is appropriate to postpone payment until ID verification is completed but there must be a plain language notice to the claimant detailing why their payment is pending and what steps they must take to get their payment released. When these procedures end up taking more than 30 days, claimants should get expedited adjudication.

IV. Section 30 Training Opportunities Program (TOP) and Investment in Workforce Training

- Provide a clear notice in plain language about the opportunity to participate in job training and to obtain up to 26 weeks extended UI benefits in the language and the method of communication preferred by the claimant. We have been informed that notices have started going out in batches starting December 10, 2021.
- Provide accurate, adequate, and timely information when communicating with claimants in person, telephonically, or electronically about TOP, funded training programs, and application deadlines.
- Provide easily readable and understandable brochures to claimants in their primary language as required under the state's UI law during any in-person meeting with staff of DUA or the Department of Career Services (DCS), which outline TOP and funded training programs, including but not limited to: a) information about available training programs, b) contact information for Career Center staff who are assisting the claimant, c) application deadline dates, d) information about grounds for extending the application deadline and for waivers of the application for good cause, and e) if an orientation is required, the date of the next available orientation.
- Ensure that a claimant's participation in DCS or DUA meetings and orientations will not cause a claimant to miss the TOP or other training program application deadlines, and where these events occur within four weeks of the application deadline or after the application deadline has passed through no fault of the claimant, that the TOP application deadline shall be waived for good cause.
- Ensure that delays in approval of TOP applications will not have an adverse impact on claimants who must begin training prior to approval to avoid forfeiting the training.
- Ensure TOP staff assist claimants' access to extended UI to participate in training by providing timely information, making timely decisions on applications, educating claimants about appropriate training programs that are approved for TOP that will help claimants secure family-sustaining wages, assisting claimants secure approval for appropriate training programs that are not yet on the DUA approved training list and otherwise assisting claimants with their applications, reviewing late applications for grounds that constitute tolling or waivers for good cause, and assisting claimants

- whose application deadline should be tolled or waived in filing their application.
- Direct TOP staff to ensure access to claimants who need reasonable accommodation, who are victims of domestic violence, or who need basic skills including ESOL and provide specific information to claimants about programs that offer basic skills and ESOL.
 - Send claimants reminders, in their preferred language and preferred method of communication, after 10 weeks of receipt of UI benefits reminding claimants of extended UI and training deadlines.
 - Inform all claimants whose UI denial has been reversed either by a redetermination, the Hearings Department, Board of Review, or courts that these claimants have a full 21 weeks from the date of the decision to apply for extended UI benefits, regardless of whether their benefit year will end in less than 21 weeks or whether their benefit year has already ended and encourage them to do so.
 - Work with workforce development experts to broaden the range of approved training programs and the sources of funding for training, including Pell Grants.
 - Actively market the TOP program and opportunities to participate in training programs through public service announcements (PSAs), community-based organizations, and workforce training professionals.
 - Engage focus groups of affected claimants, unemployment advocates including community-based organizations, legal services and labor, and members of the DUA Advisory Council to design materials including the application form and information pertaining to TOP and training opportunities that are readily accessible with a particular emphasis on access for individuals who have disabilities, who have limited English proficiency, who need basic skills or whose current skills will not lead to a family-sustaining job, or who lack computer literacy or lack computer access and partner with the Executive Office of Technology Services and Security, the Massachusetts office of Disabilities, and multilingual experts to implement the suggestions that arise from the focus groups.

Adoption of these recommendations will ensure that Massachusetts is better prepared to handle future economic downturns and begins to address the systemic inequities characterized by the existing UI system. Please let us know how we can continue to be supportive in achieving such critical reforms.

Sincerely,

The Massachusetts Employment Rights Coalition
On its behalf,

Stephanie M. Herron Rice
South Costal Counties Legal Services, Inc.

Cory Mescon
Central West Justice Center

Jason Salgado
Greater Boston Legal Services

Hannah Tanabe
Greater Boston Legal Services

Cc: Senator Patricia Jehlen, Chair, Joint Committee on Labor & Workforce Development



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Testimony of

Christopher Carlozzi, State Director, National Federation of Independent Business
Regarding Unemployment Insurance Trust Fund Performance
Senate Post Audit and Oversight Committee
December 10, 2021

Chairman Moore and Vice Chairman Eldridge and Members of the Senate Post Audit and Oversight Committee:

My name is Christopher Carlozzi. I am the Director of the National Federation of Independent Business (NFIB) in Massachusetts. A non-profit, non-partisan organization, NFIB is the nation's and Massachusetts' largest small business advocacy group. In the Commonwealth, NFIB represents several thousand small and independent business owners involved in all types of industry, including manufacturing, retail, wholesale, service, and agriculture. The average NFIB member has five employees and annual gross revenues of about \$450,000. In short, NFIB represents the small Main Street business owners from across our state. On behalf of those small and independent business employers in Massachusetts, I would like to bring to your attention concerns with the Massachusetts unemployment insurance system during the COVID-19 pandemic.

Massachusetts employers are now facing substantial increases in unemployment insurance taxes this year as a result of the COVID-19 pandemic. Following the state mandated shutdowns and restrictions in 2020, many businesses were left with no choice but to layoff large portions of their workforce because their businesses were closed or faced restrictions and capacity limits. When employers received their 2021 unemployment insurance tax bills last Spring, businesses were overwhelmed by the dramatic tax increase due to solvency assessment charges. The Legislature has already acted on two separate occasions in 2021 to mitigate the impact of these taxes, but the result is still a UI Trust Fund that must be replenished by employers through UI taxes. Earlier in the year, officials estimated a potential \$7 billion deficit being amortized over a 20-year span, paid by employers.

It is important to remember UI taxes are paid by business owners and while the state was authorized to bond up to \$7 billion for UI, it is those employers that are responsible for paying it back. Now at the end of 2021, the total amount of what will be bonded is still very uncertain. But what is known, is that it will be paid for by business owners who are still struggling from their pandemic losses. They need to know what will be owed, so they can plan for 2022. Businesses need that predictability when it comes to what UI taxes will look like now and in the future.

While more than 30 states have used federal CARES Act or ARPA money to help shore-up and stabilize their UI trust funds, Massachusetts only recently committed \$500 million (down from Governor Baker's original \$1 billion amount) to provide relief. Other states used their federal money to wipe clean any COVID-related UI debt from their ledgers, essentially allowing trust funds to begin anew. This was a recognition that COVID related layoffs were not the fault of employers and instead due to the state mandated shutdowns and restrictions that resulted in unfortunate layoffs. When it came to replenishing trust funds, states like Maryland used \$1.1 billion, Georgia and Ohio closer to \$1.5 billion. Again, Massachusetts allocated \$500 million.

Employers across the Commonwealth, already facing financial hardship due to revenue loss from the pandemic, will be forced to pay for layoffs that were beyond their control. This scenario is already patently unfair to employers who had no choice but to close their doors. We are still hopeful the state will consider using additional ARPA funds or surplus revenue to further shore-up the trust fund and not just rely on higher unemployment insurance taxes on job creators.

There were many anecdotal reports of fraud occurring within the UI system during the early days of the pandemic. Employers were shocked to discover unemployment claims for employees that were never on their payroll, fictional characters like Mickey Mouse, [elected officials](#), or even the name of the business owner themselves. The state acted quickly when the rampant fraud across the United States made headlines in the national news, but to what degree was it addressed in Massachusetts?

While there is no question the number of unemployment claims rose exponentially in a relatively short period of time, the state of Massachusetts has failed to answer just how much of that \$7 billion is attributable to fraud. The US Department of Labor and the National Conference of State Legislatures (NCSL) both report UI systems across the nation paid out billions of dollars in fraudulent claims and overpayments. It was not just disingenuous individuals making fraudulent claims, international criminal groups targeted UI systems across the nation taking advantage of lax requirements during the state of emergency. While the numbers vary, conservatively [NCSL reports over \\$63 billion in fraud/overpayment claims nationwide](#), while the [US Department of Labor's Inspector General reports more than \\$87 billion](#). The state of Massachusetts has yet to provide just how much of the existing \$7 billion UI deficit is a result of fraudulent claims, but to extrapolate from the national numbers, that total may potentially be between \$1 - 2 billion (depending on the source).

The same can be said for overpayments. Earlier in the fall, legislation went before the Joint Committee on Labor and Workforce Development allowing most UI overpayments to be waived. Proponents argued the hardships created by the pandemic would make it difficult for individuals to cover the cost of reimbursement. In fact, in an October 20th State House News article, proponents argued that the total value of overpayments relating to the state UI system could be as much as \$531 million. That would mean \$31 million more than the \$500 million allocated by the state legislature to provide employers UI tax relief.

Massachusetts needs to determine just how many fraudulent claims have not yet been recouped and respond appropriately to re-deposit recovered funds into battered UI trust. It should not be the responsibility of employers to pay for any fraud or waived overpayments. Small businesses have struggled with the high cost of UI taxes in Massachusetts for some time, as the national Taxpayers Foundation repeatedly ranked Massachusetts worst in the nation or at the bottom of the state rankings. Massachusetts has the most generous maximum benefits in the nation, and they became even more generous last October when the average weekly wage increased. We also have lax

eligibility requirements, often leaving the state an outlier when it comes to eligibility. With only \$500 million being used from federal funds for the trust, it will mainly fall on the shoulders of employers to pay back whatever is bonded. That includes what the state borrowed from the federal government last year during the mandated shutdowns and restrictions.

On behalf of thousands of small business owners throughout the Commonwealth, NFIB urges this committee to investigate just how much of the \$7 billion unemployment insurance deficit is attributable to fraud or overpayments and ensure employers will not be help responsible for covering the cost of these claims within the system. Thank you.

The Commonwealth of Massachusetts

Report

of the

**SENATE COMMITTEE ON
POST AUDIT AND OVERSIGHT**

entitled

**Massachusetts Information
Technology Projects:
Looking Back, but Moving Forward**

(under the provisions of Section 63 of Chapter 3
of the General Laws, as most recently amended by
Chapter 557 of the Acts of 1986)

April 17, 2014



The Commonwealth of Massachusetts

MASSACHUSETTS SENATE

SENATOR CYNTHIA STONE CREEM
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Chair
SENATE POST AUDIT AND OVERSIGHT

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April 15, 2014

Mr. William F. Welch, Clerk of the Senate
State House, Room 335
Boston MA 02133

Dear Clerk Welch:

Pursuant to M.G.L. Chapter 3, Section 63, as most recently amended by Chapter 557 of the Acts of 1986, the Senate Committee on Post Audit and Oversight respectfully submits to the full Senate the following report: *Massachusetts Information Technology Projects: looking Back, but Moving Forward*.

This report is based on research by the Senate Committee on Post Audit and Oversight. The Committee held three public hearings on this issue and conducted interviews with a wide variety of stakeholders involved with procurement, development, and the implementation of information technology ("IT") projects recently undertaken by the Commonwealth of Massachusetts, as well as with industry experts.

The report presents findings and recommendations to improve the way the Commonwealth procures, develops, and implements large IT systems. It is our belief that if the Committee's findings and recommendations are followed for all major IT projects in Massachusetts, the citizens of the Commonwealth can expect fewer problems, better outcomes, and more-productive online interactions with their government in the future.

Respectfully filed by the Senate Committee on Post Audit and Oversight,

Senator Cynthia Stone Creem, Chair

Senator Gale D. Candaras

Senator Eileen M. Donoghue

Senator Benjamin B. Downing

Senator Michael O. Moore

Senator Robert L. Hedlund

Massachusetts Information Technology Projects: Looking Back, but Moving Forward

**A Report of the
Senate Committee on Post Audit and Oversight**

April 2014

Massachusetts Senate
The Honorable Therese Murray
Senate President

Senator Cynthia Stone Creem, Chair
Senator Gale D. Candaras
Senator Eileen M. Donoghue
Senator Benjamin B. Downing
Senator Michael O. Moore
Senator Robert L. Hedlund

Senate Committee on Post Audit and Oversight

Senator Cynthia Stone Creem, Chair

It shall be the duty of the Senate Committee on Post Audit and Oversight (established under Section 63 of Chapter 3 of the General Laws) to oversee the development and implementation of legislative auditing programs conducted by the Legislative Post-Audit and Oversight Bureau with particular emphasis on performance auditing. The Committee shall have the power to summon witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in connection with any authorized examination or review. If the Committee shall deem special studies or investigations to be necessary, they may direct their legislative auditors to undertake such studies or investigations.

Senate Post Audit and Oversight Bureau

This report was prepared by **Hilary Weinert Hershman**, Research Director, and **Michael Avitzur**, Legislative Counsel.

The Committee would like to acknowledge the assistance of Senator Creem's staff, including Chief of Staff Richard Powell, Legislative and Budget Director Catherine Anderson, Policy Counsel Lisamarie Sears, Executive Assistant Wendy Levine, as well as interns Adolph Dubose, Sean Lauziere, and Michael Kaplan.

EXECUTIVE SUMMARY

Key Findings and Recommendations

- On both the MASSTAX2 Project of the Department of Revenue (“DOR”) and the QUEST Project of the Department of Unemployment Assistance (“DUA”), there was a failure by the vendor (in both cases Deloitte Consulting LLP) and the agency to communicate and work constructively together to move these information-technology (IT) projects forward on schedule and produce the optimal product. The Commonwealth’s organizational structure for these IT projects was too decentralized to provide the comprehensive support, oversight and direction needed to ensure the success of the projects.
 - ⇒ The Commonwealth’s IT organizational structure should be reorganized, in order to enhance scrutiny, oversight, and consistency of IT development initiatives – including greater centralization of IT development oversight in the Information Technology Division (“ITD”), a larger role for the Operational Services Division (“OSD”), and a much stronger role for project managers working out of a new Project Management Department.
- Since most agencies take on major IT initiatives very infrequently, the Commonwealth does not have IT-development knowledge comparable to that of IT vendors.
 - ⇒ ITD must act as a clearinghouse for information about previous IT projects, assisting agencies with due diligence, conducting exit interviews with all parties, retaining artifacts from each project so that later IT projects will not need to “reinvent the wheel,” and formally documenting lessons learned, best practices, and other insights gained.
- The Commonwealth needs greater consistency in the procurement and contracting of IT projects.
 - ⇒ Through a new IT Contract Management Unit, ITD must play a greater role in providing structure and guidance for IT projects by enforcing across-the-board adherence by agencies to ITD policies and procedures. Contracts must be reviewed to ensure the Commonwealth’s interests are protected.
- DUA and DOR failed to do adequate and thoughtful planning before and during their IT initiatives.
 - ⇒ Before undertaking a large-scale IT initiative, it is imperative for a government client to prepare a written “business case,” fully documenting the reasons for the project, any perceived risks, and methods for mitigating them. Essential goals – and metrics to determine success in reaching those goals – must be well-defined from the start and kept in mind throughout the project.

- Problems arose in testing on the DUA and DOR projects that should have been anticipated. DUA, DOR, and Deloitte all failed to take sufficient care in planning and conducting the various forms of testing for the development of their projects.
 - ⇒ Testing protocols must be prepared as early as possible and carefully designed. ITD should take an active role in formulating and reviewing testing protocols, and the Project Manager needs to have a guiding role as well.

- Project planning was inadequate on the DUA Quest Project. DUA and Deloitte did not:
 - properly prepare for “go-live” of UI Online on July 1, 2013, resulting in many problems for claimants;
 - fully recognize, in advance of the go-live of UI Online, the types of problems that claimants would encounter in attempting to use the new system; or
 - correctly anticipate the demands that would be put on its website and phone lines after the UI Online go-live, nor the large number of claimants who encountered difficulties filing for benefits online or who failed to receive expected benefits in a timely manner.
 - ⇒ Agencies must improve their planning for go-live of new IT systems, especially those designed to be used by persons outside of the agencies, such as consumers or businesses. They also need to prepare better for dealing with practically-inevitable user and staff challenges and increased usage, deploying additional staff and other resources and establishing back-up plans and workarounds.

- The Committee did not see evidence that some agency leaders on the DUA and DOR projects remained apprised of their projects’ key goals.
 - ⇒ Conducting a robust return-on-investment (ROI) analysis at various stages throughout development and creating a clearly-defined set of measurable goals at the outset of a project will each assist leadership in determining whether termination of a contract is in the Commonwealth’s interest.

- Smaller, shorter projects would be less likely to fail, more likely to attract more bidders, and more flexible and better able to react to newly-imposed statutory and regulatory changes, problems with the vendor, changes in agency leadership and other staff turnover, and other unforeseen circumstances.
 - ⇒ Large IT projects should be broken down to smaller-scale projects. Unless there are compelling reasons for doing otherwise, the Commonwealth should divide traditionally-large IT projects into smaller-scale functional projects.

- The current procurement system unnecessarily narrows the field of IT project bidders acceptable to the Commonwealth, meaning the Commonwealth may pay more for a project, and may be presented with less-optimal solutions, than if there had been more competition.

⇒ More vendors should be encouraged to bid on the Commonwealth's IT projects, by measures such as simplified proposal requirements.

- The Executive Office of Labor & Workforce Development ("EOLWD") hired an employee of its vendor on the ongoing DUA QUEST Project for a leadership role at DUA, giving rise to a perception of conflict of interest.

⇒ ITD should develop protocols regarding the hiring of vendor employees for management positions in which they may be required to directly oversee the work of that same vendor, especially on the same project.

INTRODUCTION

This report presents case studies of three information technology (“IT”) projects recently undertaken by the Commonwealth of Massachusetts: the MASSTAX2 Project of the Department of Revenue (“DOR”) the QUEST Project of the Department of Unemployment Assistance (“DUA”), and the recently-begun Modernization Project of the Registry of Motor Vehicles (“RMV”). Acting on behalf of the Senate Post Audit and Oversight Committee, the Senate Post-Audit and Oversight Bureau (“Post-Audit Bureau”) has examined these three projects in depth. This examination sought to discover what led to the difficulties experienced with the QUEST and MASSTAX2 projects, as well as what efforts the RMV is taking to avoid such difficulties in conducting its own IT initiative and ideas about how to do better in the future.

As part of this examination, the Committee held three public hearings, on October 28, 2013; November 14, 2013; and February 11, 2014.¹ The Committee also delivered information requests to Deloitte Consulting LLP (“Deloitte”), the vendor for these projects, and several state agencies. In addition, Committee staff met with numerous individuals and agency representatives who were involved in the development, implementation, or use of these IT projects, as well as industry experts. The Committee and Post-Audit Bureau staff also reviewed news reports and other accounts of other IT projects – successful and unsuccessful – as well as literature on the causes of IT project failure. This report is based on the Committee’s findings from the information, testimony, and interviews developed during its examination.

THREE CASE STUDIES

1. DUA QUEST PROJECT

In 2006, DUA began an initiative to replace its computer system and change its business processes.² On June 21, 2006, DUA issued a request for quote (“RFQ”) for what DUA named the “QUEST Project.” Only three vendors submitted bids in response to the RFQ: BearingPoint, Deloitte Consulting LLP, and IBM. The selection committee determined that BearingPoint was the only vendor to meet their scoring requirements.³

In May 2007, BearingPoint and DUA executed a Statement of Work (“QUEST SOW”) containing the fundamental terms of their agreement.⁴ In February 2009, however, BearingPoint filed for bankruptcy protection.⁵ Shortly thereafter, Deloitte announced that it had agreed to purchase BearingPoint’s North American public-services unit, and in May 2009 Deloitte took over the QUEST Project, assuring DUA that it would keep the same key people on the project.⁶

The revenue (employer) side of the DUA website was rolled out in December 2009, with some problems that were addressed fairly quickly. The benefits (claimant) side of the project, called “UI Online,” was originally supposed to be completed by April 2011, but had

to be postponed several times due to problems with design and implementation. Ultimately, after DUA insisted on a contract amendment providing for \$10,000 in liquidated damages for each day the benefits side was overdue, past July 1, 2013,⁷ it was declared completed, and UI Online went live on that date.

Claimants have had problems with many aspects of the new system,⁸ resulting in their being denied benefits, in their benefits being held up for weeks, if not months, and in claimant confusion – all of which have heightened the stress of an already difficult situation for the unemployed. UI Online is currently offered only in English. Lack of Internet access or computer proficiency has also made the system difficult for some claimants. UI Online also seems geared to people with broadband Internet access, which is less common in the western parts of the state and among lower-income residents. In addition, many people who tried to reach DUA shortly after go-live had excessively-long waits, an average of *over an hour* in July 2013, according to DUA.⁹ Some claimants have also received notices informing them that they owe DUA for overpaid benefits, sometimes in extremely large amounts. Some claimants received multiple daily notices of their overpayment status and/or were warned that their income tax refunds would be intercepted to recoup the alleged overpayments.¹⁰

DUA claims that, “at the time of the [UI Online] launch, there were roughly 100-300 claimants that were impacted by data conversion [problems] on a weekly basis,”¹¹ which they imply is a small number in comparison to the over-100,000 people filing for benefits weekly.¹² But if we assume that these 100 to 300 claimants were all first-time users of the website, then – based on Post-Audit Bureau staff’s estimates that no more than 3,000 initial claims were filed through UI Online each week – the actual proportion of claimants affected by data-conversion issues alone may have been as high as 10%.

Many of these problems may be due to defects in the QUEST system discovered before and after go-live. According to a spreadsheet produced to the Committee by Deloitte, there remained, as of March 6, 2014, approximately 100 fixes to UI Online that were yet to be resolved by Deloitte, from among the 214 found by DUA prior to the October 31, 2013, contractual deadline for seeking changes at no additional cost to the Commonwealth.¹³ The Committee also saw documents reflecting serious concerns at DUA about the project’s progress and Deloitte’s lack of cooperation with DUA personnel.¹⁴

2. DOR MASSTAX2 PROJECT

In 2004, DOR started considering development of an integrated tax system to be known as MASSTAX2. DOR’s vision for MASSTAX2 was a system that would integrate the full scope of tax administration functions, while remaining scalable to meet increased demand for services, and flexible to remain efficient while implementing new technologies into the system.¹⁵

On February 20, 2009, DOR issued an RFR (request for response) for the new tax system. Two bidders were disqualified due to problems with their responses.¹⁶ These

disqualifications left as finalists only Accenture and Deloitte, which had proposed a COTS (commercial off-the-shelf) approach using software by SAP.

Toward the end of the evaluation process, the project's Selection Committee undertook a Best and Final Offer ("BAFO") round. Deloitte's BAFO represented a reduction of *more than 20%* from its original bid and more than 20% below Accenture's final bid.¹⁷ Prior to the BAFO, Accenture had held a scoring advantage over Deloitte.¹⁸ After the BAFO, however, Deloitte held the scoring advantage because its slashed bid had improved its score significantly.¹⁹

Although Deloitte was deemed the apparent successful bidder, the recommendation report cautioned that Deloitte's responses to the architectural requirements, which were expected to have the greatest impact on the success or failure of the MASSTAX2 project, *barely met the minimum thresholds established by DOR*.²⁰ As a result of these concerns, the Selection Committee was unable to reach a consensus on whether Deloitte's proposal would provide the Commonwealth and DOR with the best overall value.²¹ Nevertheless, DOR signed a contract with Deloitte for the MASSTAX2 project on December 30, 2010.²² Work on the MASSTAX2 Program was initiated in January 2011.

In order to meet the March 2013 go-live date for the MASSTAX2 initial deployment, user-acceptance testing ("UAT")²³ began in September 2012. The projected duration for UAT had been eight weeks with a cost of \$1.8 million, but it actually lasted 39 weeks at a cost of \$4.4 million – that is, *nearly five times longer and nearly 2½ times more expensive than expected*.²⁴ In addition, UAT revealed more than 1,000 defects within the system.²⁵

This was not the first inkling of problems. DOR also had ongoing issues with Deloitte's performance and disagreements about Deloitte's responsibilities over a long period of time.²⁶ Relatively early in the project, in December 2011, DOR had raised concerns with Deloitte about the parties' different understandings of the training plan, Deloitte's inability to make an agreement with Oracle about use of Oracle software, and the number of IBM software licenses required.²⁷ In an Executive Steering Committee meeting on December 20, 2011, the parties also noted their recognition of risks from "[u]ncovering significant fit issues late in program development" and "SAP's ability to meet DOR's needs most notably in the areas of P&I [penalties and interest] and Payments" – the latter referring to the late discovery that, apparently because of incorrect assumptions made by Deloitte and DOR, the SAP program could not be made to conform to the Commonwealth's method of calculating penalties for non-payment.²⁸

As soon as the UAT process was underway, DOR ceased making payments to Deloitte, based on a determination that the system would not live up to DOR's vision for the MASSTAX2 system.²⁹ Shortly thereafter, in August 2013, DOR opted to terminate its contract with Deloitte – after paying \$55 million on the project, including \$45 million in payments – and instead seek a new vendor to complete the project.¹³⁰

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DOR determined that it would be advisable to move forward with a company called Fast Enterprises, which had previously bid on the project, as its new vendor. DOR therefore issued a Notice of Intent to Accept a Best Value Offer, which offered competitors the opportunity to provide a comparable or better offer than Fast Enterprises,³¹ but no bidders responded. The Committee understands that DOR executed a contract with Fast Enterprises in January 2014 for the new system.

3. RMV (ALARS) Modernization

The ALARS modernization initiative of the RMV was launched in March 2009. The RMV's legacy computer system had become "an increasingly complex application that [was] at the end of its useful life," and "the available workforce that [was] familiar with the aging technology [was] shrinking at an increasing rate."³² Online traffic for the RMV site was also growing by about 8% per year.³³ In addition, "[t]he RMV's ability to respond to legislative, regulatory and general business efficiency changes in a timely and/or cost-effective manner [was] severely hampered and it [was] unlikely that this situation [was] going to change."³⁴

The RMV therefore determined that it was necessary to "replace the original ALARS and modernize RMV business processes."³⁵ The goal of the ALARS modernization is to enable online transactions and to reduce visits to RMV branch offices, providing cost savings to consumers in the form of avoided travel to the RMV.³⁶ On November 7, 2011, the RMV posted a Request for Proposal for the ALARS system modernization to Comm-PASS, the state's online procurement record system at the time.³⁷ Only two proposals were received, one from Deloitte, which partnered in its bid with Hewlett Packard, and the other from MorphoTrust USA.³⁸ The final review by the Selection Committee stated, however, that "after careful Technical Evaluation it was determined that MorphoTrust USA is NOT a viable technical solution."³⁹ A third-party analysis conducted by Gartner Group, a national research organization, reached the same conclusion.⁴⁰ In essence, therefore, Deloitte was the only ostensibly qualified and interested bidder for the RMV Modernization project. On March 7, 2013, the Massachusetts Department of Transportation ("MassDOT"), parent agency to the RMV, and Deloitte Consulting LLP signed a Master Development and Implementation Agreement. The contract amount was approximately \$77 million.⁴¹

According to a recent status report provided by Deloitte, the RMV Modernization Project is currently on schedule,⁴² and it appears from documents provided to the Committee that both the program advisory board and management teams have benefited from the experiences and best practices derived from challenges in other statewide IT contract implementations. As of the end of February 2014, Task Order 1 of the project (out of five task orders) was reportedly 89% complete with an expected end date in April 2014.⁴³

FINDINGS AND RECOMMENDATIONS

ORGANIZATIONAL AND MANAGEMENT ISSUES

FINDING 1: On both the DOR MASSTAX2 Project and the DUA QUEST Project, there was a failure by the vendor (in both cases Deloitte) and the agency to communicate and work constructively together to move the projects forward on schedule and produce the optimal product. The Commonwealth's organizational structure for these IT projects was too decentralized, and did not provide the comprehensive support, oversight, and direction needed to ensure the success of the projects.

Despite the requirements for monthly status reports on IT projects to be submitted to ITD, the Committee has seen no evidence that either ITD, DUA, or DOR leadership quickly took measures necessary to get the QUEST and MASSTAX2 projects on a more successful path – even though ITD and agency leadership were apprised that the projects were going off-track and that Deloitte, the vendor, was not deploying sufficient resources to get the job done. Both DUA and DOR regularly provided status assessments to ITD and agency leadership, which showed that these projects had repeated problems from early on.

In March 2011, the DUA QUEST Project Manager informed the DUA Director and ITD that “the Quest Benefit project is behind schedule and at risk of not being completed in [time] because Deloitte has not had the appropriate number of resources working this project, and has been having a serious attrition problem.”⁴⁴ At various times in 2012, the monthly status reports provided to ITD also noted the following concerns on the part of DUA:⁴⁵

- “DUA Project Mgmt. is not sufficiently included in Deloitte’s review ... and does not have a clear assessment of the current project status” (June 2012).
- “[Deloitte] disregards DUA management and behaves autonomously ... [M]onetary penalty to [Deloitte] should be considered as an incentive to eradicate plan slippage ... Deloitte’s dismissive behavior towards DUA requests ... and their procrastination ... lend itself to further project delays ... Deloitte does not adhere to new project plan and continues to miss deliverables ... Deploy[ment] delays may cause DUA [non-compliance] with Fed. programs” (October 2012).
- “Deloitte impeding DUA’s IT ability to complete enhancements” (November 2012).
- “[Deloitte] attempting to dilute quality measures on ... testing” (December 2012).

In each of those months, project status – using “traffic light” designations of green, yellow, and red – was “red” for Executive Action, Issues Management, Risk Management, and overall Project Assessment. Deloitte was aware of DUA’s concerns about its handling of the project.

DOR, too, had ongoing concerns about Deloitte’s performance and disagreements about its responsibilities in the DOR MASSTAX2 Project over a long period of time.⁴⁶

These problems were allowed to persist too long.

RECOMMENDATION: The Commonwealth’s IT organizational structure should be reorganized on the following lines, in order to enhance scrutiny, oversight, and consistency of IT development initiatives:

- a. **Greater centralization of IT development oversight in ITD**, including procurement and implementation processes. The Commonwealth Chief Information Officer (“CCIO”) and his or her IT Development staff should oversee the planning and progress of all IT projects costing more than a certain amount, as determined by ITD.
- b. **Creation of an IT Development Department** within ITD, whose duties would be to advise and assist agency and vendor IT staff on the development of new IT systems. The IT Development Department should include:
 1. An **IT Contract Management Unit** to assist agencies in preparing requests for proposals, selecting vendors, drafting contract terms and any necessary amendments, and reviewing contracts to ensure the Commonwealth’s interests are protected.
 2. A **Project Management Department**, staffed with experienced project managers who could be assigned to agencies to manage particular IT projects and/or other types of capital projects.

Project Managers should:

- **Take an active role in governing the vendor**, so the vendor does not control the process, and **protect the Commonwealth’s interests**.
- **Help new executive sponsors** (agency heads) get up to speed on an inherited project – and insist that any sponsor take ownership of the project and remain actively engaged.
- **Facilitate and mediate communications among agency, IT, and vendor staff**.
- Ensure that the design development team is **in regular contact with:**
 - **Future end-users** of the system;
 - **IT staff who handle ongoing IT operations** and who will become responsible for maintaining the system once it goes live and is handed off to them; and
 - **Customers** (the agency’s clientele) and their representatives.
- During design and implementation, be **co-located with the vendor’s employees and agency staff** delegated to the project in order to develop a more cohesive and productive work environment.
- **Challenge the agency and vendor to carefully consider all assumptions underlying both parties’ positions and determine whether they are realistic**.
- **Coordinate with the CCIO** and solicit his or her help when deemed necessary.

- Step in and **take decisive action to redirect a project** headed in the wrong direction, or alternatively assist with the decision on whether to **terminate a contract**.
- c. **Engagement of an experienced independent verification and validation (“IV&V”) consultant for all large IT projects**, those over a certain amount, as determined by ITD.⁴⁷
IV&V involves an independent third-party organization mainly to ensure that the product is structurally sound and built to the required specifications.⁴⁸
- d. **Enforcement of consistent and timely status reports**
ITD should require agencies to produce status reports on all ongoing IT projects on a monthly basis (or, more frequently, if insufficient progress is occurring) in a standard format that includes traffic-light color designations.
- e. **A greater role in IT projects for the Operational Services Division (“OSD”),** including:
- Coordinating more closely with ITD and assisting in the development of guidelines and protocols for all IT projects
 - Enforcing consistent rules, and
 - Conducting audits, to be shared with ITD, after projects are completed

FINDING 2: Since most agencies take on major IT initiatives very infrequently, the Commonwealth does not have IT-development knowledge comparable to that of IT vendors.

Most individual agencies take on major IT initiatives very infrequently – sometimes only once in several decades – whereas, for vendors, such activities are their primary line of work. Any learning that agency staff gain from such an endeavor is essentially lost to the Commonwealth if they never again work on such a project. But if that IT experience is instead concentrated within ITD, its staffers will regularly handle IT projects and gain expertise that can be applied to future projects, thus building a talent pool and shoring up institutional knowledge.

The Commonwealth also has no mechanism to gather and retain, for the benefit of future projects, the particulars of an IT project’s history and/or an agency’s experience with a particular system integrator or software vendor. This information can be a powerful learning tool to help understand why projects were successes or failures.

RECOMMENDATION: ITD must also create and maintain a clearinghouse for information about previous IT projects to:

- (i) **Assist with agencies' due diligence** – learning about prospective vendors' past performance for other public and private entities, including discussions with other states, where relevant – before a contract is signed.
- (ii) **Conduct exit interviews** with all parties and gather all other relevant information, including documentation, after a project's completion.
- (iii) **Retain artifacts** (analyses, programs, etc.) that are created for each project so that later IT projects will not need to “reinvent the wheel.”
- (iv) **Formally document lessons learned, best practices, and other insights**, so that an agency undertaking a new IT initiative is not starting from scratch and acting alone.

CONTRACT MANAGEMENT

FINDING 3: The Commonwealth needs greater consistency in the contracting of IT projects.

The Commonwealth does not have a single agency or department with the responsibility for oversight of designing, managing, and implementing new state IT projects. ITD, with its focus on IT systems and operations statewide, is in the best position to handle this task, by taking on greater ownership, responsibility, and accountability.

Because of this lack of consistency, state agencies have entered into IT contracts containing terms that are detrimental to the Commonwealth on intellectual property (“IP”), contradicting or undercutting the IP provisions of the state’s Standard Contract Form, which provides that the Commonwealth shall own any IP created expressly for the Commonwealth pursuant to contract.⁴⁹ For example, a provision in DUA’s contract with BearingPoint for the DUA QUEST project obligates the Commonwealth to pay for development of the system, but then BearingPoint, using the institutional knowledge gained through that work, can develop a similar system with only nominal changes and sell or license it to another state – without having to pay the Commonwealth any royalties.⁵⁰ Yet the Committee is not aware of evidence justifying the deviations from the standard contract provisions in this instance.

Another example is that, in the DOR project, a dispute arose over the training plan. DOR described Deloitte as proposing to deliver what DOR expected to be training classes as “Knowledge Transfer” (i.e., informal transmission of information) and that “Deloitte claim[ed] that the number of class hours is the number of total ‘attendee hours’, not ‘instruction hours.’”⁵¹

RECOMMENDATION: ITD, through the IT Contract Management Unit, must play a greater role in providing structure and guidance for IT projects by enforcing across-the-board adherence by agencies to ITD policies and procedures. Standard contracts should be the default for all IT projects, under

the supervision of a newly-created IT Contract Management Unit (which can also assist with procurement generally). All of this contract language should be periodically reviewed and updated by the ITD Contract Management Unit and should **cover at a minimum, the following areas:**

- a. **Protection of the Commonwealth's intellectual-property rights**
 - o Whenever an IT contract includes a provision that allows a contractor to use IP developed for the Commonwealth for subsequent clients, **the contract price should be substantially diminished or the Commonwealth should receive just compensation in the form of payments akin to royalties, and the contract should spell out the justification** for the deviation from the Standard Contract Form **and the compensation provided to the Commonwealth.**
- b. **Clear, functionally-oriented deliverable-acceptance criteria**, and time periods for review of deliverables that allows flexibility for extensions when necessary
- c. **Testing that is comprehensive** enough to fully probe the new system's functionality in handling all foreseeable scenarios
- d. **Payment method involving a "true up" at completion of each functional milestone**
 - o Contracts should provide for periodic (e.g., monthly) incremental payments with true up only when it is clear that a component of the system is working properly as intended and that sufficient progress is being made.⁵²
- e. **Training for agency staff**, including both end-users and IT operations staff
 - o Contracts must require specific, unambiguous requirements for the vendor to provide training for agency end-user and IT staff, based on the number of class-hours to be given, and should include a requirement that the contractor will present additional classes or training upon the Project Manager's request at specified hourly rates.
- f. **A warranty period of at least 9 to 12 months**
- g. **Financial penalties** to the vendor for delays
- h. Specific **provisions allowing for termination of the contract** if deemed necessary or beneficial by the client

CONTRACT IMPLEMENTATION AND TESTING

FINDING 4: DUA and DOR failed to conduct adequate and thoughtful planning before and during their IT initiatives.

In the case of DOR, the Committee has seen no evidence that, before accepting Deloitte's bid on MASSTAX2, DOR either investigated whether the SAP software Deloitte would be using could work – or could easily be customized to work – in a state with tax laws like those in Massachusetts or inquired whether SAP was willing to change the software to accommodate Massachusetts requirements.

Deloitte, as an experienced system integrator, should have investigated the compatibility of the SAP software with Massachusetts tax requirements and determined any steps needed to make it compatible prior to presenting its proposal to the Commonwealth. The Committee has also seen no evidence that Deloitte, before signing the contract with DOR, looked into whether either SAP or the Commonwealth would make the accommodations necessary to allow SAP's software to work for Massachusetts.

DUA should also have made sure that Deloitte conducted more-careful conversion of data from its legacy system and tested the converted data thoroughly. Although the Committee does not believe that data conversion is the cause of all of the problems claimants experienced with UI Online, DUA admits that it led to 100 to 300 claimants each week having problems with their claims.⁵³

RECOMMENDATION: Project development for a large-scale IT initiative should begin with a thorough planning process in which the essential goals of the project are well-defined by subject-matter experts and conveyed to agency leaders and the vendor. Before undertaking such a project, a government client must prepare a written "business case," fully documenting the reasons for the project, any perceived risks (including any need for conversion of data from the legacy system), and methods for mitigating them.

Essential goals – and metrics to determine success in reaching those goals – must be well-defined from the start and kept in mind throughout the project.

The business case must include a comprehensive analysis of the anticipated return on investment ("ROI") – that is, the benefit that a project is expected to produce. ITD's new ROI-calculation tool, called C.A.S.E., appears to be a valuable tool for this purpose, if it is used properly and performs as promised. At reasonable intervals after go-live of the project (e.g., one, two, five, and ten years), the Commonwealth should also compare actual ROI to the C.A.S.E.-predicted ROI, in order to verify the tool's accuracy.

Agencies should also consider phasing in new IT systems (when appropriate) by applying the system to a smaller population (e.g., by residence, age, etc.) to test

whether it operates as intended, and fix any problems before rolling it out to the entire subject population.

FINDING 5: Problems arose in testing on the DUA and DOR projects that should have been anticipated. DUA, DOR, and Deloitte all failed to take sufficient care in planning and conducting the various forms of testing for the development of the QUEST and MASSTAX2 projects. Testing is an area that may receive less than its due – initially, when a vendor is trying to reduce its bid, and later, if a project starts to run long and over-budget, especially with increasing pressure to “go live.”

On the MASSTAX2 Project, Deloitte and DOR failed to allow sufficient time for user-acceptance testing (“UAT”), creating a substantial delay, and the large number of problems discovered during the lengthy UAT period led DOR to terminate its contract with Deloitte.⁵⁴

On the QUEST Project, DUA concluded that Deloitte was “attempting to dilute” the testing plan,⁵⁵ and a lack of adequate testing by Deloitte and DUA likely contributed to the many problems experienced by users of DUA’s new UI Online system in filing their initial claims. Notwithstanding efforts by Deloitte and DUA, in the aftermath of a troubled roll-out, to downplay claimants’ troubles with UI Online, up to 10% of initial claimants may have had trouble with their claims due to data conversion issues alone.

RECOMMENDATION: Testing protocols must be prepared as early as possible and carefully designed. ITD should take an active role in formulating and reviewing testing protocols, and the Project Manager needs to have a guiding role as well. For each phase of testing, the details of the testing must be spelled out at the beginning of the project. Particularly in the case of user-acceptance testing and parallel testing,⁵⁶ the parties must allocate sufficient time and resources for testing, in order to have time to work out any problems that may arise.

FINDING 6: DUA and Deloitte did not properly prepare for go-live of UI Online, resulting in many problems for claimants.

The agency and vendor did not fully recognize, in advance of the go-live of UI Online, the types of problems that claimants would encounter in attempting to use the new system.

DUA and Deloitte did not correctly anticipate the demands that would be put on the website and phone lines after the UI Online go-live on July 1, 2013, nor the large number of claimants who encountered difficulties filing for benefits online or who failed to

receive expected benefits in a timely manner.⁵⁷ Not enough thought was given to the demands the initial roll-out would place on people, business processes, and technology, and DUA staff were not adequately trained in how to help claimants address the issues with which they were confronted under the new system.

As a result, an apparently unanticipated – although thoroughly foreseeable – flood of claimants sought help from DUA customer-service representatives, either by phone or in person, but were unable to obtain assistance in a timely manner or at all.

RECOMMENDATION: Agencies must improve their planning for “go-live” of new IT systems, especially those designed to be used by persons outside of the agencies, such as consumers or businesses.

Agencies need to prepare better for dealing with practically-inevitable user and staff challenges and increased usage that will occur in the early weeks and months of any new system implementation, as customers interact with it for the first time. Such planning should consider **deploying additional staff and other resources** (including phone-line capacity) to deal with website problems and respond to callers and visitors,⁵⁸ establishing **back-up plans and workarounds** to minimize disruptions to the agency’s overall mission, and anticipating the needs of all users – especially those who cannot (or will not) conduct business online, have limited reading skills in English, or are hard to reach through traditional outreach channels.

FINDING 7: The DUA and DOR projects offer case studies in how an agency handles major problems that arise during development of a new IT system. In each case, agency leadership explored the option of terminating their respective contracts with Deloitte and turning the project over to a new vendor. However, while DOR chose to take that course, DUA ultimately decided to stay with Deloitte, albeit with amendments to the contract terms.⁵⁹ The Committee uncovered no evidence that a cost-benefit analysis was ever conducted on the question of whether DUA should have severed ties with Deloitte when communications between client and vendor broke down.

The Committee did not see evidence that agency leaders on the DUA and DOR projects remained apprised of their projects’ key goals. The Committee has seen no evidence that the EOLWD Secretary at the time of the UI Online go-live was aware of the performance metrics created to evaluate the success of the DUA QUEST Project and whether the system designed by Deloitte performed well on those metrics.⁶⁰

RECOMMENDATION: Conducting a robust ROI analysis at various stages during project development and creating a clearly-defined set of measurable goals at the outset of a project will each assist leadership in determining whether termination of a contract is in the Commonwealth’s interest.

Agencies should not be overly cautious about deciding, in conjunction with ITD, when to terminate a failing project and find a new vendor to bring the agency's plan to fruition.

FINDING 8: Large IT projects are more likely to fail.

Large IT projects are much more likely than small projects to fail,⁶¹ and the longer a project is scheduled to last, the more likely it is to run over-time and over-budget,⁶² and to end up outdated by the time it is implemented. All three of the IT projects that were studied most closely for this report were developed and bid as large, unified projects, which increased the chance they would ultimately not succeed.

The DUA QUEST Project and the DOR MASSTAX2 Project also followed a “waterfall” approach to development, meaning that the entire project would come together – and be tested – only at the end, rather than being built piece by piece with functional testing, reevaluations of the scope and concept, and software updates at each step, as would be the case using an “agile” development approach. The vendors – first BearingPoint and then Deloitte on the DUA project, and Deloitte throughout the DOR project – used this approach in spite of its inflexible nature and high costs for adaptive modifications over a project's life.

Using an agile development approach, smaller, shorter projects with functional deliverables, smaller, shorter projects would be less likely to fail and would be more flexible and better able to react to:⁶³

- ***Newly-imposed statutory and regulatory changes***
On the DUA QUEST Project, both agency and vendor cited major changes in federal laws on unemployment benefits as sources of difficulties with implementing the project.⁶⁴
- ***Problems with the vendor***
If problems arise, it will be easier to switch to a new vendor, or even terminate the contract.
- ***Changes in agency leadership and other staff turnover***

There were **transitions in leadership** of each of these agencies – EOLWD, DUA, DOR, and RMV – as these projects proceeded from conception to implementation, and some of the problems with both the DUA QUEST and DOR MASSTAX2 projects undoubtedly resulted from these changes, as new state leaders were expected to take over sponsorship of projects without having been involved from the start or fully informed about the genesis of the projects.

Smaller, shorter projects delivered in functional increments can alleviate the problem of staff turnover in government, at all levels. A new executive who “inherits” a

project may not share his or her predecessor's understanding of the rationale, goals, and history of the project, nor share the same passion for, and commitment to, the project. But a shorter project will experience less turnover in participants, and a simpler one is more readily understood by new leadership and staffers.

Smaller, shorter projects would be more likely to attract a larger number of bidders – including those capable of handling only parts of a project.

RECOMMENDATION: Large IT projects should be broken down to smaller-scale projects. Unless there are compelling reasons for doing otherwise, **the Commonwealth should divide traditionally-large IT projects into smaller-scale** (meaning under a standard level, as determined by ITD) **functional projects.**

FINDING CAPABLE I.T. VENDORS

FINDING 9: The current procurement system unnecessarily narrows the field of IT project bidders acceptable to the Commonwealth and can result in the selection of a bidder about which the selection committee harbors serious doubts, as with the DOR project. Our current method of selection can also, unfortunately, create a situation where only one contractor appears willing and able to meet the agency's requirements, as occurred with the RMV Modernization Project.⁶⁵ Either way, **the Commonwealth may pay more for a project, and may be presented with less-optimal solutions, than if there had been more competition among vendors.**

RECOMMENDATION: More vendors should be encouraged to bid on the Commonwealth's IT projects, by methods including the following:

- a. **Proposal requirements should be simplified** to make it easier and less expensive for smaller vendors and companies that are not parties to statewide contracts to submit proposals.
- b. **Scoring criteria should be kept under wraps** to discourage bidders from structuring a bid to take advantage of the scoring system. Selection procedures should allow more leeway for selection committees to select a bidder other than the high scorer, if they have legitimate, articulable concerns about the high scorer's ability to accomplish the project properly.
- c. The selection committee for an IT project should **look warily on any major reduction in a vendor's bid** during the procurement process, because such a reduction calls into question whether the vendor will make corresponding reductions in testing, staffing, quality of staff, or other resources devoted to the project.

CONFLICTS OF INTEREST

FINDING 10: EOLWD hired an employee of its vendor on the ongoing DUA QUEST Project for a leadership role at DUA, giving rise to a perception of conflict of interest.

While DUA and its parent agency EOLWD were working with Deloitte – successor to BearingPoint – on the QUEST project, EOWLD hired a former employee of both BearingPoint and Deloitte for a leadership position at DUA. This hiring created the perception of a conflict of interest.

RECOMMENDATION: ITD should develop protocols regarding the hiring of vendor employees for management positions in which they may be required to directly oversee the work of that same vendor, especially on the same project. Although such individuals may bring with them a unique understanding of the vendor and the project, any such benefit may be outweighed by the perception of possible partiality. The Commonwealth must be aware of this potential issue in making all hiring decisions.

CONCLUSION

With more and more essential government operations being conducted online – and more and more of citizens’ interactions with their government occurring through a computer screen, rather than face-to-face or over the phone – information technology is now, by necessity, a critical function for the public sector, and one in which government must establish a level of competency which it has often not demonstrated to date.

Having examined the procurement, development, and implementation of three IT systems by the Commonwealth, the Committee concludes that the lessons learned from the three projects it studied in-depth are universal.

Among them:

- Stronger, consistent, and centralized oversight is required to develop projects and to keep them on track.
- Large projects should be broken into smaller pieces, whenever possible, to enhance flexibility and to increase the likelihood of success.
- More attention must be paid to contract language and to testing of new systems as they are developed.

If the Committee’s findings and recommendations are followed for all major IT projects in Massachusetts, the citizens of the Commonwealth can expect fewer problems, better outcomes, and more-productive online interactions with their government in the future.

ENDNOTES

Note: Most of the materials listed as sources are on file with the Committee, although some are also publicly available.

¹ At those hearings, the Committee heard testimony from representatives of the Executive Office of Labor and Workforce Development, including its then-Secretary Joanne Goldstein and current Secretary Rachel Kaprielian, formerly the Registrar of Motor Vehicles; Celia Blue, current Registrar of Motor Vehicles; the Director of the Department of Unemployment Assistance, Michelle Amante; current DOR Commissioner Amy Pitter and former Commissioner Navjeet Bal; Commonwealth Chief Information Officer William Oates and then-CCIO John Letchford; Chief Procurement Officer Gary Lambert; Gerald McDonough, General Counsel to State Auditor Suzanne Bump; Margaret Monsell, Staff Attorney for the Massachusetts Law Reform Institute; Michael Krigsman, an independent industry analyst; and numerous representatives of Deloitte Consulting LLP (“Deloitte”). The Committee was assisted at the hearings by Senator Michael Barrett, Senate Chair of the Committee on Children, Families and Persons with Disabilities, and Senator Kenneth J. Donnelly, Senate Chair of the Committee on State Administration and Regulatory Oversight.

² EXEC. OFFICE OF LABOR & WORKFORCE DEV., RFQ DUA QUEST 06-06 SOLICITATION (Jun. 21, 2006).

³ See ROBERT VELTEN, DUA QUEST RFR EVALUATION “VENDOR SCORE CARD EVALUATION WORKSHEET” (June 15, 2006).

⁴ The QUEST SOW expressly provided that the agreement between the parties consisted, in order of precedence, of the Commonwealth’s Standard Terms and Conditions, the Commonwealth’s Standard Contract Form, RFR ITS23 (a request for response for a statewide contract for IT vendors), Bearing Point’s response to RFR ITS23, the QUEST SOW, the RFQ for the QUEST system as amended plus Vendor Questions and Answers, and BearingPoint’s response to the RFQ. See STATEMENT OF WORK BETWEEN THE DIVISION OF UNEMPLOYMENT ASSISTANCE AND BEARINGPOINT, INC., FOR THE DUA QUALITY UNEMPLOYMENT SYSTEM TRANSFORMATION (QUEST) PROJECT, § 1, at 4 (May 18, 2007) (hereafter “QUEST SOW”).

⁵ *Deloitte Agrees to Buy BearingPoint Unit*, N.Y. TIMES, Mar. 24, 2009, available at <http://dealbook.nytimes.com/2009/03/24/deloitte-agrees-to-buy-bearingpoint-unit/>.

⁶ Letter from David Minkinen, Principal of Deloitte, to Robert Velten, MASSTAX2 Project Manager (May 21, 2009).

⁷ See QUEST SOW, *supra* note 4, at amend. 9, § 2.4.

⁸ Many frustrated unemployment claimants contacted their legislators. Post-Audit Bureau staff also spoke to advocates for unemployment claimants about the problems experienced after the go-live of UI Online, and one of these advocates testified at the November 14, 2013, SPAO hearing. In addition, problems with UI Online have been the subject of a series of articles in the *Boston Globe* that also served as a resource to the Committee.

⁹ Written Testimony of DUA Dir. Michelle Amante, at 4, Mass. S. Comm. on Post Audit & Oversight (Feb. 11, 2014) (hereafter “DUA Dir. Testimony”).

¹⁰ Although such interceptions are permitted under Massachusetts law, erroneous determinations by DUA could result in wrongful tax-refund interceptions.

¹¹ DUA Dir. Testimony, *supra* note 9.

¹² Written Testimony of EOLWD Sec’y Joanne F. Goldstein at 2, Mass. S. Comm. on Post Audit & Oversight (Oct. 28, 2013) (hereafter “EOLWD Sec’y Testimony”).

¹³ Spreadsheet, “Warranty Defects Report” (Mar. 11, 2014).

¹⁴ *See, e.g.*, Memorandum from Cari Birkhauser to Judi Cicatiello & John Glennon (Mar. 29, 2011); Memorandum from Judi Cicatiello, John Glennon, & Cari Birkhauser to David Minkkinen & Michael Marino (Mar. 30, 2011) (“The Quest Benefits project is behind schedule and at risk of not being implemented in July 2011, in part, because Deloitte has not had the appropriate resources on this project.”); *see also* document by unknown author entitled “Pains,” listing such items as “[s]hifting priorities,” “[t]oo many number one priorities,” and “[n]ot enough time to get projects done.”

¹⁵ MASS. DEP’T OF REVENUE, RECOMMENDATION REPORT APPARENT SUCCESSFUL BIDDER MASSTAX2 at 6 (2010) (hereafter “DOR Recommendation Report”).

¹⁶ *Id.* at 13-14.

¹⁷ *Id.* at 12.

¹⁸ Excel Spreadsheet, “Evaluation Workbook (Post-BAFO),” May 17, 2010.

¹⁹ *Id.*

²⁰ MASS. DEP’T OF REVENUE, RECOMMENDATION REPORT APPARENT SUCCESSFUL BIDDER MASSTAX2 at 6 (2010).

²¹ *Id.* at 15.

²² MASSTAX2 PROJECT, MASTER SOFTWARE DEVELOPMENT AND INTEGRATION AGREEMENT at 62 (Dec. 30, 2010) (hereafter “DOR Master Agreement”).

²³ “User acceptance testing” is end user testing of the system to ensure both clean conversion of data and system functionality. In software development, UAT is one of the final stages of a project and often occurs before a client or customer accepts the new system. *Glossary of Terms, Abbreviations and Acronyms*, JAMES MADISON UNIV., <http://www.jmu.edu/advancement/implementation/glossary.shtml> (last visited Apr. 10, 2014).

²⁴ DOR RESPONSE TO SPAO INFORMATION REQUEST #14 (Dec. 6, 2013).

²⁵ Written Testimony of DOR Comm’r Amy Pitter at 2, Mass. S. Comm. on Post Audit & Oversight (Oct. 28, 2013) (hereafter “DOR Comm’r Testimony”).

²⁶ *See* NTT Data, DOR Independent Verification and Validation (IV&V) Overall MASSTAX2 Program Assessment, July 2, 2013. This report, however, also places some responsibility on DOR for the difficulties with the project. *See id.* at 5. *See also, e.g.*, COMMONWEALTH OF MASS. DEP’T OF REVENUE MASSTAX2 PROGRAM, EXECUTIVE LEADERSHIP MEETING TOPICS – DISCUSSION DOCUMENT, June 5, 2012, at 11-14 (discussing points of contention at that time between DOR and Deloitte).

²⁷ COMMONWEALTH OF MASS. DEP’T OF REVENUE MASSTAX2 PROGRAM, EXECUTIVE LEADERSHIP MEETING TOPICS – DISCUSSION DOCUMENT (*INTERNAL MEETING*), Dec. 20, 2011, at 3-6.

²⁸ COMMONWEALTH OF MASS. DEP’T OF REVENUE MASSTAX2 PROGRAM, EXECUTIVE LEADERSHIP MEETING TOPICS – DISCUSSION DOCUMENT, Dec. 20, 2011, at 3.

²⁹ DOR Comm’r Testimony, *supra* note 25 at 2.

³⁰ This decision is documented by a fifth amendment terminating the DOR Master Agreement, *supra* note 22.

³¹ MASS. DEP'T OF REVENUE, NOTICE OF INTENT TO ACCEPT A BEST VALUE OFFER BETWEEN THE DEPARTMENT OF REVENUE AND FAST ENTERPRISES, LLC, at 1 (2013).

³² FY 12 ALARS Modernization Investment Brief (hereafter "ALARS IB"), at 5.

³³ *Id.* at 11.

³⁴ *Id.*

³⁵ *Id.* at 5.

³⁶ *Id.* at 15. Presumably it will also lower RMV customer-service personnel costs.

³⁷ Comm-PASS was recently replaced by a new system called COMMBUYS. *See COMMBUYS*, MASS.GOV (last visited Apr. 15, 2014), <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/conduct-a-procurement/commbuys/>.

³⁸ RMV BD. OF DIRS., STAFF SUMMARY SHEET – CONTRACT FOR RMV MODERNIZATION, Nov. 5, 2012, at 11.

³⁹ *Id.* at 13 (emphasis in the original).

⁴⁰ *See id.* The Staff Summary Sheet indicated that the Gartner Group had "confirmed that the **MorphoTrust USA Inc. solution [was] not technically viable** for a high-volume transaction system of 7,000,000 transactions per day." *Id.* (emphasis in original).

⁴¹ MASS. DEP'T OF TRANSP. & DELOITTE CONSULTING LLP, MASTER DEVELOPMENT AND IMPLEMENTATION AGREEMENT (Mar. 7, 2013).

⁴² Overall Program Status Executive Summary 2/15/2014 – 2/21/2014 (Deloitte document DC 045750).

⁴³ *Id.*

⁴⁴ Memorandum from Birkhauser to Cicatiello & Glennon, *supra* note 14.

⁴⁵ ITD Capital PMO Monthly Status Reports for MASSTAX2 for June, Oct., Nov., and Dec. 2012.

⁴⁶ *See* Discussion Document, *supra* notes 27 and 28.

⁴⁷ Half of large IT projects, those which have an initial budget greater than \$15 million, "significantly blow their budget and deliver less than half the value planned." Michael Bloch, Sven Blumberg, & Jürgen Laartz, *Delivering Large-Scale IT Projects on Time, on Budget, and on Value*, FIN. TIMES (Aug. 21, 2012), <http://www.ft.com/cms/s/0/d34acf86-eba8-11e1-9356-00144feab49a.html#axzz2xq4Woovr>.

⁴⁸ *Independent Verification and Validation (IV&V)*, JANALTA INTERACTIVE INC. – INVESTOPEDIA (last visited Apr. 15, 2014), <http://www.techopedia.com/definition/24836/independent-verification-and-validation--iv&v>.

⁴⁹ The current Standard Contract Form provides: "The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all 'deliverables' purchased or development with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights."

COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM (updated Mar. 21, 2014). The previous version of this form (updated June 27, 2011) contained the same language. The 2007 form provided that “[o]wnership can not [sic] be conveyed after performance if the Commonwealth has paid for development of a deliverable with just compensation.” COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM (updated June 8, 2007).

⁵⁰ QUEST SOW, *supra* note 4, sec. 7.4.4, at 15.

⁵¹ Discussion Document, *supra* note 27.

⁵² This is preferable to the current system of payment by deliverable, as the Committee’s examination has shown that it is possible for a vendor to successfully complete each deliverable while still not satisfying the original intent of the project.

⁵³ DUA Dir. Testimony, *supra* note 9. DUA describes this group as a “*rolling* number of about 100-300 claimants impacted by data conversion issues weekly” (emphasis added). EOLWD, SUMMARY: CONVERSION PROCESS FOR UI ONLINE (Feb. 7, 2014).

⁵⁴ *See supra* note 1.

⁵⁵ *See* Status Reports, *supra* note 45.

⁵⁶ In parallel testing, the same procedures are run on the legacy system and the new system, and the results are compared.

⁵⁷ *See supra* discussion at p. 5.

⁵⁸ DUA hired additional claims-takers before the go-live of UI Online, but had to hire more shortly thereafter. *Deloitte & DUA/EOWLD Testimony: Hearing Before the S. Post Audit & Oversight Comm.*, 2013 Leg., 188th Sess. (Oct. 28, 2013).

⁵⁹ *See* QUEST SOW, *supra* note 7, at 5.

⁶⁰ She was not the Secretary, however, at the time the QUEST project was originally planned or when the contract with BearingPoint was executed.

⁶¹ THE STANDISH GRP. INT’L, CHAOS MANIFESTO 2013 at 2 (2013). *See also infra* discussion at pp. 16-17, regarding advantages of small projects for attracting more bidders.

⁶² MICHAEL BLOCH, SVEN BLUMBERG, & JÜRGEN LAARTZ, DELIVERING LARGE-SCALE IT PROJECTS ON TIME, ON BUDGET, AND ON VALUE (Oct. 2012), available at www.mckinsey.com (last visited Apr. 5, 2014).

⁶³ THE STANDISH GRP. INT’L, *supra* note 61, at 2.

⁶⁴ *Joint Deloitte & DUA/EOWLD Testimony: Hearing Before the S. Post Audit & Oversight Comm.*, 2013 Leg., 188th Sess. (Oct. 28, 2013).

⁶⁵ *See supra* discussion at p. 7.

Addressing Necessary Reforms to Secure the Long-Term Solvency of the Unemployment Insurance Trust Fund Without Exacerbating Existing Inequities

I. Introduction

The undersigned members of the Commission agree that the Massachusetts Unemployment Insurance (UI) system is a vital part of our economy and serves as the first line of economic defense in a recession. With the help of the federal government, it provided vital relief to workers during the pandemic, allowing them to maintain their families and contribute to the local economy. The pandemic has underscored that a robust unemployment system must support its four vital and related goals:

- 1) Pay adequate weekly benefits so that UI prevents hunger and poverty, and jobless workers and their families can retain their housing and maintain essential family spending in our high cost of living state;
- 2) Maintain consumer spending and boost the local economy: research shows that UI benefits produce \$2.15 in increased economic activity (growth in GDP) for every \$1.00 of UI paid to laid off workers; moreover, the higher the UI reciprocity rate, the more Massachusetts can take advantage of well-timed federally funded UI;
- 3) Support workers and boost productivity by ensuring that workers can participate in job search, skills improvement, and seek employment that fits their skills, training, and prior work; and,
- 4) Boost labor supply by helping workers maintain their attachment to the labor force and permit employers to retain workers during temporary layoffs.

The undersigned make the following recommendations for responsible financing of the UI system to maintain these goals:

- 1) Adhere to forward-funding principles embodied in the Average High Cost Multiple (“AHCM”).
- 2) Increase the Taxable Wage Base (“TWB”) to reflect high wages and high costs of living in Massachusetts and broaden the tax base to increase fairness for small businesses and communities of color.
- 3) Ensure annual, predictable adjustments by indexing the TWB to keep up with overall wage growth, i.e., costs to the UI system and make corresponding adjustments to the experience rate so that these changes are cost neutral.

Although we must acknowledge the urgent need to repair the systemic inequities embedded in the Massachusetts UI system and highlighted by the COVID-19 pandemic, we recognize that, as explained in Section II below, these types of reforms are not the charge of *this* Commission and consequently direct our recommendations to the task at hand: long-term solvency of the Trust Fund.

II. Legislative History of the Work of the UI Commission

In 2020, and again in January 2021, the Governor filed *An Act Financing a Program for Improvements to the Unemployment Insurance Trust Fund and Relief to Employers in the Commonwealth*. The Act was engrossed as Chapter 9 of the Acts of 2021.

This legislation, as initially filed in 2021 (HB 55), sought to provide rate relief to employers of the Commonwealth, ensure that the UI Trust Fund (“Trust Fund”) was sufficiently solvent to continue funding benefits for Massachusetts workers, and establish a mechanism to repay federal borrowing. Specifically, it proposed freezing the experience rate of employers for calendar years 2021 and 2022 at rate schedule “E” and providing employers immediate rate relief by slowing the annual employer UI contribution growth rate. Without this freeze, employer contribution rates would have been based on the higher rate schedule “G” beginning on January 1, 2021. The Act also authorized the Commonwealth to issue special obligation bonds to repay the federal advances made to the Commonwealth from the federal unemployment account for the fiscal years 2020 to 2025.

In exchange for a freeze on rates and other relief directed at employers, the bill explicitly protected the amount and duration of benefits. Section 11 states in relevant part: *“Nothing in this act shall contribute to or allow for a reduction in benefits including, but not limited to, the amount or length of benefits, pursuant to said chapter 151A.”*

Based on legislators’ concerns that the bill was, once again, simply kicking the proverbial UI financing can down the road, the Senate added an amendment (S.B. 35, Amendment 1) that created the UI Commission. The House adopted the amendment, making no change to the description of the work of the Commission (and simply added additional members to the Commission). The amendment, adopted in both branches, and engrossed as Section 25, set out the specific parameters of the UI Commission:

The commission shall study the long-term solvency of the unemployment trust fund, including, but not limited to: (i) evaluating whether changes are necessary to the experience rating system in order to promote solvency and reduce the tax impact on small businesses; (ii) examining increasing or indexing the taxable wage base under section 14 of said chapter 151A; (iii) examining the industry specific impacts of changes to the unemployment tax rate; (iv) reviewing solvency efforts in other state unemployment tax systems; and (v) determining what changes are necessary to benefit from federal tax credits and federal interest-free borrowing under the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301-3305.

Accordingly, chapter 9 of the Acts of 2021, while explicitly protecting the amount and duration of UI benefits, outlines in detail what the Commission must study — addressing long-term solvency of the UI Trust Fund.

III. How We Got to Trust Fund Insolvency

The first step to understanding the reforms necessary to promote the long-term solvency of the UI Trust Fund is to examine the Massachusetts Trust Fund *before* the pandemic impacted the fund, along with the reasons for the Fund’s increasing insolvency before COVID. Two wrong-headed approaches, i.e., abandoning forward-funding principles and failing to increase and index the TWB, are the reasons that we already faced Trust Fund insolvency going into the pandemic.

A. Abandoning Forward-Funding Principles and the Average High Cost Multiple

In the 1990s, the *U.S. Advisory Council on Unemployment Compensation*—a White House appointed, bipartisan council composed of academics and business and labor representatives who held hearings across the country, heard expert testimony, and engaged in three years of study—recommended that, to achieve the goal of forward funding UI Trust Funds, states must have an Average High-Cost Multiplier (“AHCM”) of one times the reserve ratio in their trust fund balance (i.e., the state Trust Fund can sustain payouts at a certain level for one year).¹ The AHCM is memorialized in federal Department of Labor’s regulations.² However, as this was a difficult standard for states to meet, it was phased in over time, beginning at 0.5 in 2014 and increased by 0.1 each year until reaching 1.0 in 2019.

AHCM is defined as the reserve ratio, i.e., the balance of the UI Trust Fund expressed as a percentage of total wages paid in covered employment, divided by average cost rate of three high-cost years in the state’s recent history, typically the three highest years in the last 20 years or a period covering the last three recessions, whichever is higher. In this definition, the cost rate for any duration of time is defined as the benefit cost divided by the total wages paid in covered employment for the same duration, usually expressed as a percentage. As described by the Massachusetts Department of Unemployment Assistance (“DUA”), the AHCM measure “is designed to encourage States to build sufficient reserves to finance an economic downturn like those in the past.”³

At the start of 2020, the Massachusetts’ AHCM solvency rate was a mere 0.4% reserve ratio, **ranked 46th nationally** and continuing a streak of more than 20 consecutive years during which, in most years, Massachusetts was left without a Trust Fund deemed prepared for a recession.⁴ As a result, our Trust Fund balance was insufficient to withstand even a mild recession without going into debt, let alone the impact of COVID-19 on the Fund.

How did we get here? Benefits have stayed relatively constant over the past twenty years. Benefits are indexed annually to reflect a percentage of the total wages of all covered employees. This indexing is built into the UI law and anticipated.⁵ The tax rate schedule and experience tables are also included in the UI law and are designed to increase and to shrink employer assessments based on the solvency of the Fund.⁶ If the statutory trigger setting the tax rate schedule had been allowed to proceed as

¹ See Advisory Council on Unemployment Compensation *Collected Findings and Recommendations 1994 – 1996* available at https://oui.doleta.gov/dmstree/misc_papers/advisory/acuc/collected_findings/adv_council_94-96.pdf at pp. 21 – 25.

² 20 Code of Federal Regulations (CFR) 606.3; codifying *Funding Goals for Interest-Free Advances*, Final Rule of Employment & Training Admin., US DOL, Sept. 17, 2010.

³ Massachusetts Department of Unemployment Assistance, *Unemployment Insurance Trust Fund (Quarterly) Report*, February 2021, Trust Fund Solvency at p. 7.

⁴ In January, 2020, the Reserve Ratio was 0.79, the average 3 year high cost rate was 1.88 with an AHCM = 0.79/1.88 of 0.42. See: Dr. Wayne Vroman, The Urban Institute, *Four Ways to Finance State UI Trust Fund Debts* presented to the MA UI Trust Fund Study Commission Hearing, June 25, 2021 (“Vroman Testimony”), at slide 9.

⁵ Mass. General Laws, c. 151A, sec. 29(a). The maximum benefits are capped at 57.5% of the average wage of all covered workers in the UI system.

⁶ Mass. General Laws, c. 151A, sec. 14.

intended and legislatively enacted over the past two decades, the UI Trust Fund would be solvent going into a normal recession and would not have been in such a sorry state at the start of the pandemic. The trigger overrides represent billions of dollars diverted from the Trust Fund and cost the state lost revenues.

The source of insolvency is the intentional replacement of a forward-funded approach with a pay-as-you-go model that vitiates the very purpose of the statutory triggers designed to build up the Trust Fund. By abandoning traditional forward funding of UI, the state has undermined the counter-cyclical economic impact of UI.⁷ Virtually every year for over two decades, including this year, the business community, led by disproportionately favored large businesses, has demanded that the legislature freeze the schedules, either annually or sometimes for multiple years, despite the average cost of UI to Employers per Employee per year remaining relatively flat for the past 15 years. Indeed, the average cost of UI per employee was less in 2020 than in 2006.⁸ Before this assault on the Trust Fund, in CY 2000, Massachusetts had accumulated the recommended level of savings to achieve an AHCM of 1.00.⁹

These successful business lobbying efforts significantly reduced contributions into the UI system during periods of low unemployment, the ideal time to build up the necessary reserves under a forward-funding approach. The annual freeze to the state UI contribution rate schedule has resulted in chronic and increasing underfunding, directly leading to the need for ill-timed increases in employer assessments. Moreover, in this context, misplaced suggestions to cut worker benefits are an ill-advised distraction that simply do not address the underlying flaw in the state's UI financing of the Trust Fund.

B. Failing to Increase and Index the Taxable Wage Base

Only wages below an annual threshold known as the “taxable wage base” (“TWB”) are subject to state UI payroll taxes. Economists with expertise in UI financing have long identified the annual, automatic adjustment of UI wage bases (known as “indexing”) as a key UI financing policy. Closely related to indexing is maintaining a higher TWB level. All states with higher TWBs have indexing.¹⁰ For this reason, indexing and higher TWBs are addressed together.

In Massachusetts, the TWB is set at the low figure of \$15,000. Although Massachusetts' TWB of \$15,000 places us in the middle of the pack relative to other states' TWBs, our current wage base represents only 19.4% of the Massachusetts annualized average weekly wage, lower than 30 other states.¹¹ Further,

⁷ Wayne Vroman, *Topics in Unemployment Insurance Financing*, Kalamazoo Michigan, Upjohn Institute, 1998 pp. 95-98.

⁸ According to the Unemployment Insurance Trust Fund Reports for the applicable years, the cost of UI to employers per employee in February of 2006 was \$646 and for February of 2020 it was \$584. <https://lmi.dua.eol.mass.gov/LMI/UnemploymentInsuranceTrustFund>

⁹ US Department of Labor, *ET Financial Data Handbook 394*, <https://oui.doleta.gov/unemploy/hb394.asp>.

¹⁰ Comparison of State Unemployment Insurance Laws 2020, c. 2 Financing, Table 2-1 and 2-2 available at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/financing.pdf>.

¹¹ See Taxable Wage Base Staff Presentation, July 16, 2021 p. 4.

\$15,000, as a percentage of wages taxed, is approximately 0.236 of wages for 2021.¹² The TWB has only been increased three times in the past 30 years. Until 1992, the TWB was set at \$7,000 (set by Congress in 1983, MA linked in 1977). In 1992 it was increased to \$10,800, with a subsequent annual increase to \$13,000 in 1994 (this increase was approved in exchange for eligibility changes disadvantageous to workers, but the TWB increase was subsequently repealed without a corresponding repeal of the eligibility changes), in 2004 to \$14,000, and in 2014 to \$15,000.¹³

The obvious impact of paying for rising UI benefit levels on a fixed, low TWB is aptly described by economist Philip Levine:

A major deficiency in the current system of UI financing is that the infrequent, ad hoc adjustments to the taxable wage base lead to a continual erosion of its financial stability . . . Even in the absence of severe cyclical downturns, these basic relationships indicate that the current system of UI financing will drift toward insolvency.¹⁴

IV. Recommendations to Restore Trust Fund Solvency

UI financing experts generally agree on three key features to ensure a healthy unemployment trust fund: 1) adherence to forward-funding principles; 2) setting the TWB to reflect wages; and 3) indexing the TWB as a percentage of the state's average annual wage.

A. Adhere to Forward-Funding Principles and Work Towards Achieving the AHCM.

Forward funding requires sufficient UI taxes to build up balances in UI trust funds during periods of healthy economic growth to allow these balances to be drawn down during local or national downturns or recessions without necessitating benefit cuts or federal borrowing.¹⁵ This means working towards achieving the AHCM in contrast to the current practice of overriding tax schedules through short-sighted "pay-as-you-go" annual statutory Trust Fund trigger overrides. The Urban Institute's Dr. Wayne Vroman, one of the country's leading experts in UI Financing, testified before the Commission that the AHCM of 1.0 is a critical solvency guideline. He demonstrated this point through data showing that in 2020-2021, only 5 out of 30 states with an AHCM greater than or equal to 1.0 borrowed from the federal government, whereas 14 out of the 21 states with an AHCM of less than 1.0 were required to borrow.¹⁶

¹² Vroman Testimony at slide 4.

¹³ G.L. c. 151A, sec. 14(a)(4) as amended.

¹⁴ Phillip B. Levine, "Financing Benefit Payments," in *Unemployment Insurance in the United States: Analysis of Policy Issues*, (Christopher O'Leary & Stephen A. Wandner, ed. Upjohn Institute, 1997).

¹⁵ In 1996 the federal Advisory Council on UI warned: "The capacity of the UI system for economic stabilization is dependent upon the extent to which it is forward-funded. Under pay-as-you-go financing ...few reserves are available to stimulate the economy when needed because trust funds are not being built up during periods of economic health." Advisory Council on Unemployment Compensation, *Defining Federal and State Roles in Unemployment Insurance*, Washington, DC, 1996, p. 31.

¹⁶ Vroman Testimony at slide 11.

And as stated above, before Massachusetts embarked on its annual UI payroll freezes, it was able to have a pre-recessionary AHCM of 1.0.

As employee representatives, we have consistently supported, and continue to support, the Advisory Council on Unemployment Compensation's recommendation of an AHCM of 1, as amplified by the federal Department of Labor regulations. This is an achievable goal over time when the statutory trigger for the unemployment schedule is allowed to proceed as intended. Had the statutory requirement been faithfully followed, the Trust Fund would have built up when the economy was strong, ensuring that UI rates could remain stable during a recession, rather than raising rates at the worst possible time.

Forward-funding principles require that the Trust Fund grows during good economic times precisely so that it can fund increased UI claims during economic downturns without burdening businesses. Payment of adequate temporary wage replacements to the involuntarily unemployed stimulates the economy by maintaining consumer spending. This sensible approach avoids borrowing from the federal government that causes businesses to pay for associated interest and penalties before they have fully recovered. It also avoids cuts or freezes in benefits that undercut the positive economic impact of UI programs to the local economy. Another significant advantage of maintaining adequate state trust fund balances is that it permits the state to receive significant federal interest on the balance.

The Commission should set the stage for rejecting the low road, high-cost strategy of the past and, instead, embrace reforms that will result in long-term economic stability for workers and businesses alike. By establishing a funding goal consistent with the AHCM standard, the state will be better prepared to face recessions in the future and avert federal borrowing and the resultant additional costs on employers when they can least afford to pay.

B. Increase the TWB to reflect high wages and high costs of living in Massachusetts and improve fairness for small businesses and communities of color.

Massachusetts' low TWB of \$15,000 is highly regressive and results in employers of lower wage workers effectively contributing a higher ratio of UI taxes. For example, the employer of a minimum wage worker, annually paid \$28,000, pays taxes on almost half of those wages, whereas the employer of a worker earning the state average wage of \$77,324 is taxed at approximately 1/5th of those wages. UI's low TWB of \$15,000 stands in stark contrast with the TWB of \$142,800 for Social Security benefits.¹⁷

The low TWB has a disproportionate negative impact on smaller businesses, start-up firms, and lower income workers who are often workers of color. A higher TWB better aligns the constituencies that pay the tax with those who draw benefits from it. **Twenty states have a higher TWB.**¹⁸ No good reason for keeping the TWB low has been articulated in any of the Commission's meetings or by any of the experts called to testify.¹⁹ This is a critical reform that should be adopted.

¹⁷ Social Security Contribution and Benefit Base at <https://www.ssa.gov/oact/cola/cbb.html>.

¹⁸ Comparison of State Unemployment Insurance Laws 2020, c. 2 Financing, Table 2-1, Taxable Wage Base available at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/financing.pdf>.

¹⁹ Increases to the TWB include proposals that would increase the TWB to a level equal to the current Social Security TWB and like the SS TWB, index it to inflation.

C. Ensure annual predictable adjustments by indexing the TWB to keep up with overall wage growth and indexed UI benefit amount and make these changes cost neutral with corresponding adjustments to the experience rate.

States that index their TWB usually set the TWB as a percentage of their state's average annual wage in the prior 12-month period to reflect the same base and timing of the index to weekly benefit amounts.²⁰ Indexing the TWB permits the financing of the UI program to keep pace with the insured risk, i.e., lost wages, especially as MA (along with 34 other states) index the maximum weekly benefit amount.²¹ Without indexing the TWB, the share of wages subject to UI taxes declines as wages grow each year, and the benefit rate, based on average weekly wages, also increases. This widens the gap between tax receipts and payouts, triggering higher experience rates for employers.

States that index their TWB (**currently 19 states**)²² have historically healthy trust fund reserves and have experienced less federal borrowing (earning interest and avoiding assessments). Not surprisingly, states that index the TWB are associated with high AHCMs — they have a median AHCM of 1.25 compared to 0.88 for non-indexed states.²³ Indexing the TWB is particularly important in a high wage state like Massachusetts, as it improves the ability of UI financing to keep pace with growth in wages and the resulting costs to the UI system, thereby avoiding the need for a fluctuating UI trigger and annual counter-productive legislative overrides.

Taking the pressure off the experience rating system by increasing the taxable wage base has numerous advantages. First, the financing of the system is more predictable. Second, it could lead to a better relationship between employers and employees — the current system encourages employers to prevent employees from receiving adequate benefits.²⁴ The employers' benefit cut proposals at a time when far too many unemployed workers face unrelenting poverty, homelessness and food insecurity are a case in point. And again, to fulfill the mission of this Commission, we urge the adoption of **indexing the TWB** – a

²⁰ *Id.* at c. 2 Financing p. 2-5 at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/monetary.pdf>. Notably, the TWB for Social Security benefits is indexed to the national average wage, <https://www.ssa.gov/oact/cola/cbb.html>.

²¹ *Id.* at c. 3 Monetary Entitlement, Table 3-6 at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/monetary.pdf>.

²² *Id.* at c. 2 Financing, Table 2-2, Computation of Flexible Taxable Wage Bases available at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/financing.pdf>. Of the states with indexing, the formula ranges from 100% in Idaho and Hawaii to 46.5% (with the option for an increase) in Rhode Island. *Id.*

²³ Vroman Testimony, slide 11.

²⁴ See M.G.L. c. 151A, sec. 14A. Non-profit and municipal employers can choose to self-ensure. True financing reform should also study the ways in which financial incentives can be introduced to make the choice to contribute to the UI system is preferable. For example, municipal employers must pay on a taxable wage base that reflects an employee's entire wage.

step that UI financing experts agree is the single most important step toward long-term UI financial solvency.²⁵

V. Myth Busting: Correcting the Record

Recommendations around cutting or freezing UI benefits or decreasing eligibility for certain groups of workers, are both beyond this Commission's charge, as described in Section II above, and are the wrong target for reform. Benefit increases and expansions did not accompany prior UI payroll tax cuts, so the call for equality of sacrifice now rings hollow. Some of the suggested proposals are addressed here simply to point out why these suggestions are erroneous or counterproductive. Most importantly, they should not distract from the issue at hand, taking the necessary steps to produce long-term solvency.

A. The Length of Benefit Duration Is Overstated.

The state's unemployed workers do not universally receive 30 weeks of unemployment benefits; there are three limitations on benefits for this duration. First, unemployment must exceed 5.1% in at least one local region based on the average local unemployment for the prior 12 months. This standard was not met in the months preceding the pandemic; at the beginning of 2020, the maximum number of weeks of benefits for *all* workers was 26 weeks. Second, whenever federal benefits are available, the maximum number of weeks of state benefits is reduced to 26 weeks. Accordingly, in 2020 and 2021, during the payment of federal benefits under the CARES Act, the Continuing Assistance to Unemployed Workers Act, and the American Rescue Plan Act, the maximum number of weeks of state benefits for *all* workers was 26 weeks. Third, the number of weeks of benefits a worker is eligible to receive is determined through a complicated formula, one of the many formulas in the Massachusetts UI system that disfavor low wage workers and workers with fluctuating work schedules, disproportionately harming workers of color. Specifically, workers may receive a maximum total UI benefit calculated as the *lesser of* 30 times their weekly benefit amount *or* 36% of their base period earnings.²⁶ This means that workers with higher earnings will be able to get the maximum number of weeks of benefits available, whereas lower wage workers will be limited to weeks of benefits based on 36% of their prior base period earnings. As the number of weeks of entitlement equals 36% of the base period earnings divided by the weekly benefit amount, these workers will receive a lower number of weeks of benefits, indeed often far less than 26 weeks.

Importantly, considering the task before this Commission, i.e., improving the long-term solvency of the UI Trust Fund, capping benefits at 26 weeks would have a limited impact on overall costs.²⁷ Although a

²⁵ See: Dr. Wayne Vroman, Urban Institute, *Unemployment Insurance Performance & Trust Fund Restoration*, Testimony before Subcommittee on Human Resources, Committee on Ways and Means, US House of Representatives, Washington, DC, April 25, 2012. Dr. Vroman, with data supplied by the Massachusetts Department of Unemployment Assistance undertook a comprehensive study of UI financing options. His study, *inter alia*, articulated the following option: 1) enact an increase in the TWB (then at \$10,800 and suggesting \$18,000 in 2004) and index this increased TWB to average wages in covered employment to prevent its erosion. Wayne Vroman, Economist, The Urban Institute, *Unemployment Insurance Financing Options in Massachusetts*, December 2003. <https://www.urban.org/research/publication/unemployment-insurance-financing-options-massachusetts>.

²⁶ Mass. General Laws, c. 151A, sec. 30 (a).

long-standing goal of the business community, the impact of making this change is more symbolic than real.

B. The Maximum Weekly Benefit Amount Reflects That Massachusetts Is a High Wage State with a High Cost of Living and Virtually No Workers Receive the Maximum Amount of Benefits Plus the Maximum Dependency Allowance.

As outlined in the *Presentation to UI Study Commission*, October 8, 2021, by Andrew Stettner from The Century Foundation, a comparative analysis of the Northeastern states shows that although Massachusetts has the highest average weekly wage, the wage replacement rate provided by Massachusetts UI benefits to unemployed workers is in the middle of the pack, at 43.1%.²⁸ Moreover, the indexing formula setting 57.5% of the wages of all workers covered by the UI system as the maximum benefit is below the national average of 58%.²⁹ Furthermore, during the period of 2019 to 2020, Massachusetts enjoyed one of the higher increases in average weekly wages.³⁰ Therefore, given that Massachusetts is a high wage state, with a higher rate of college students in its workforce than any other state³¹, it is unsurprising that UI benefits are relatively high to account for the state's high cost of living, which in turn, provides the amount of benefits required to weather a recession or the recent pandemic.

Moreover, the employer memo, p. 5, Figure 1., showing Massachusetts at the top of the heap with respect to a maximum weekly benefit amount plus maximum dependency allowance of \$1,252 *vastly* overstates actual benefits received by Massachusetts unemployed workers. No one in the state would receive this amount in total benefits for the following reasons: First, the maximum weekly benefit is only available to high wage earners who have earned 57.5% or more of the average wage of all covered employees. The average weekly benefit amount individuals receive is currently \$441.24. Accordingly, many workers receive far less.³² Based on DUA's claimant data from January 2015 through present, nearly 40% of UI recipients statewide earned a weekly wage of less than \$400, meaning nearly 40% of UI

²⁸ Stettner, Andrew, *Presentation to UI Study Commission ("Stettner Presentation")*, The Century Foundation: October 8, 2021 at Slide 2, Source: US Dept of Labor Benefit Accuracy Management Data; Slide 3.

²⁹ Stettner Presentation, Slide 4. Additionally, 17 states set their maximum weekly benefit amount at a higher percentage than Massachusetts, ranging from a low of 57.7% to 70%. See Comparison of State Unemployment Insurance Laws 2020c. 3 Monetary Entitlement, Table 3-6 at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/monetary.pdf>.

³⁰ *Id.*, Slide 5.

³¹ Jeremy Thompson, *Educated and Encumbered: Student Debt Rising with Higher Education Funding Falling in Massachusetts*, Massachusetts Budget and Policy Center, March 18th, 2018. <https://massbudget.org/reports/pdf/Educated%20and%20Encumbered%20FINAL.pdf> , chart 1

³² In the fall of 2020, the legislature sought to ensure eligibility for the federal Lost Wages Assistance that based eligibility on a weekly benefit amount of \$100 or more a week. During this period, 82, 672 claimants UI weekly benefit amount was \$100 or less a week. Report of Secretary Rosalin Acosta, EOLWD to the Legislature pursuant to c. 197 of the Acts of 2020 (undated).

recipients qualified for \$200 or less in UI weekly benefits.³³ Second, the dependency allowance of \$25.00 per dependent is capped at 50% of an individual’s weekly benefit amount. Third, dependency allowances are available for children and not for other dependents.³⁴ For a worker to receive the maximum of \$1,252 in benefits touted in the employer memo, the worker would need to receive *both* the maximum weekly benefit amount *and* have 17 children (there are, on average, 2.52 children per household in Massachusetts).³⁵ Instead, the average worker with 2 children would receive a total weekly benefit of \$491 — an amount far below the theoretical \$1,252 and far less than needed to sustain that worker’s family in our high cost of living state.³⁶

C. The Employers’ Other Suggested Reforms Would Exacerbate Existing Inequities in the UI System.

The UI system, initially designed to benefit a white male head of household who is laid off from a permanent job, historically excluded predominantly black workers who toiled as domestic and agricultural workers.³⁷

The testimony of Alexa Tapia, Unemployment Insurance Campaign Coordinator for the National Employment Law Project, on June 25, 2021, provided the UI Commission with compelling evidence of the racial inequities that exist to this day in our UI systems.³⁸ In general, Black and Hispanic unemployed workers have a lower reciprocity rates for UI benefits compared to white unemployed workers.³⁹

³³ Department of Unemployment Assistance, Labor Market Information, *All UI Claimant Data from January 2015 to Present*, available at <https://lmi.dua.eol.mass.gov/LMI/ClaimantProfiles#>.

³⁴ See G. L. c. 151A § 29(c). The dependency allowance is available for a dependent child under age 18, as well as a dependent child over age 18 who is unable to work because of a physical or mental disability and a dependent child between ages 18 and 24 who is a full-time student at an educational institution.

³⁵ See: US Census Bureau: Massachusetts <https://www.census.gov/quickfacts/fact/table/MA#>

³⁶ MIT Living Wage Standard shows that an adult with 2 children requires a weekly income of \$1,905 in order to meet basic expenses. <https://livingwage.mit.edu/states/25>.

³⁷ Monee Fields-White, et al, *Unpacking Inequities in Unemployment Insurance*, New America, September 2020. <https://www.newamerica.org/pit/reports/unpacking-inequities-unemployment-insurance/not-designed-for-us-navigating-a-system-that-never-intended-to-serve-you>; Nichols, Austin and Simms, Margaret, *Racial and Ethnic Differences in Receipt of Unemployment Insurance Benefits During the Great Recession*, Urban Institute, June 2012.

The exclusion of domestic workers continued in Massachusetts until a reform movement led by Melnea Cass of the NAACP in 1970 fought for and achieved UI for domestic workers. Mass. General Laws c. 151A, sec. 4 and 6, as amended. However, disparities for agricultural workers exist to this day. UI legislation enacted in 2014 made it significantly more difficult and cumbersome for farmworkers to obtain UI. Farms are exempted from providing UI coverage if they pay their workers \$40,000 or less during a calendar quarter, up from \$20,000 per quarter. Mass. General Laws c. 151A, sec. 8A as amended by St. 2014, c. 144, sec. 42-44. This change also means that a new determination about a farmworker’s UI eligibility must be made every quarter.

³⁸ Alexia Tapia, National Employment Law Project, *Equity, Unemployment and the Road to Recovery*, presented to the MA UI Trust Fund Study Commission Hearing, June 25, 2021 (“Tapia Testimony”).

³⁹ Tapia Testimony, at slide 6.

Further, despite Black workers experiencing higher rates of unemployment, lower earnings for Black workers and other workers of color, means smaller UI benefits.⁴⁰ Of course, most recently, the pandemic has laid bare the disparate impact that low wage and unstable employment has on BIPOC communities, with COVID-19 most heavily impacting workers of color who filled the ranks of front-line essential work.⁴¹ These workers, in turn, face far too many barriers in accessing unemployment benefits.⁴²

Existing UI eligibility formulas exacerbate the inequities in UI systems—and would only be worsened by the employers’ recommendations. Namely, basing eligibility on earnings, and in particular on a multiple applied to earnings in the high quarter, fails to account for the increasingly precarious and sporadic nature of low-wage work. Such eligibility formulas disproportionately affect workers in low-wage jobs (which are disproportionately held by women of color) in which underemployment, volatile work hours, and fluctuating wages are common, effectively disqualifying claimants because of when their employer scheduled them for work, rather than how many hours the individual worked.⁴³

As Tapia noted, as a Commission tasked with studying the solvency of the UI Trust Fund, we have a responsibility to center equity in UI finance so that our efforts to stabilize the UI system serve to lay the foundation for equity. However, the employers’ recommendations, in addition to departing from the Commission’s statutory purpose, take the opposite tack — increasing barriers to unemployment benefits in ways that will disproportionately harm low wage workers, women workers, and workers of color.

The Massachusetts Taxpayer Foundation’s recent report, *Closing the Racial Divide in the U.S. and Massachusetts: A Baseline Analysis* provides important insights that are relevant in a review of the employers’ proposals at hand. The report found persistent racial disparities in all aspects of Massachusetts life including wealth, income, job opportunities, and unemployment. In describing the experienced and expected loss of income and the damage to low-wage workers in Massachusetts from pandemic-related job loss, the report noted that “it could get worse. Economists have expressed alarm that many jobs lost during the pandemic may never return — especially for mothers, Blacks, Hispanics,

⁴⁰ *Id.* at slide 4.

⁴¹ Gould, Elise, Daniel Perez, and Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus – Racism and Economic Inequality*, Economic Policy Institute, June 2020, finding that the economic situation of African Americans was particularly bleak in the pandemic due to their disproportionate employment in jobs deemed essential, which imposed substantial health risks during the pandemic. Although Black workers make up 11.9 percent of the overall U.S. labor force, they account for 17.0 percent of frontline industry workers.

⁴² Koffman, Ava and Hannah Fresques, *Black Workers Are More Likely to Be Unemployed but Less Likely to Get Unemployment Benefits*, Pro Publica, August 24, 2020.

⁴³ Bivens, Josh, Melissa Boteach, Rachel Deutsch, Francisco Diez, Rebecca Dixon, Brian Galle, Alix Gould-Werth, Nicole Marquez, Lily Roberts, Heidi Shierholz, and William Spriggs. 2021. *Reforming Unemployment Insurance: Stabilizing a System in Crisis and Laying the Foundation for Equity*. A joint report of the Center for American Progress, Center for Popular Democracy, Economic Policy Institute, Groundwork Collaborative, National Employment Law Project, National Women’s Law Center, and Washington Center for Equitable Growth. June 2021., <https://files.epi.org/uploads/Reforming-Unemployment-Insurance.pdf>

and older workers.”⁴⁴ Clearly, based on this analysis, now is simply not the time to contemplate freezing or cutting UI benefits as the employers suggest. Moreover, the report concludes that the examined data “lead[s] to an intractable conclusion: there exists in our society policies and practices that produce unfair outcomes for some, and harmful treatment for others, based on their race.”⁴⁵ Unfortunately, as outlined below, the employer proposals will produce exactly this undesirable result.

1. Moving from a 30 Times the Weekly Benefit Amount (WBA) Test to a 40 Times WBA Test Has a Disparate Impact on Impoverished Women.

The change from 30 times WBA to 40 times WBA essentially replaces the current eligibility test of duration of employment or “labor market attachment” from 15 weeks to 20 weeks during the base period. While seemingly innocuous, research provided when this proposal initially surfaced in the late 1990s demonstrated that this change would severely harm poor single mothers and their children. A Massachusetts Department of Transitional Assistance study found that over 70% of former welfare recipients were working and 90% had worked since leaving welfare. Even in a strong economy, however, the unemployment rate for former welfare recipients was eight times higher than for other workers.⁴⁶ The study found that the median duration of employment in a recipient’s last job was four months or approximately 17 weeks. The reasons for this short duration included lack of skills, lack of affordable childcare, transportation barriers, personal illness or disability, or the illness or disability of a child or family member. Although the study is dated, the reasons for short work duration remain in force, in particular the lack of available affordable childcare, which the pandemic has only exacerbated.⁴⁷

The effect of the proposed change on the Trust Fund would be negligible, while the impact on poor mothers and their children and others toiling in the high turn-over secondary labor market would be devastating.

2. Increasing the Threshold Monetary Eligibility Earnings Requirement Would Harm Minimum Wage Workers and Increase Massachusetts’ Outlier Status on This Requirement.

Under Massachusetts law, a worker must earn \$5,400 in their base period to be monetarily eligible for UI benefits. This amount is indexed to increase when the minimum wage increases and is calibrated to require a minimum wage worker to work at least 15 weeks to meet this standard. As a result of indexing, the monetary eligibility requirement will increase to \$5,700 on January 1, 2021.⁴⁸ Only 4 other

⁴⁴ Massachusetts Taxpayers Foundation, *Closing the Racial Divide in the U.S. and Massachusetts: A Baseline Analysis*, May 2021, p. 15.

⁴⁵ *Id.* p. 5.

⁴⁶ Massachusetts Department of Unemployment Assistance, *After Time Limits: A Study of Households Leaving Welfare Between December 1998 and April 1999*, Boston, Massachusetts, November 2000.

⁴⁷ The Boston Opportunity Agenda, *Boston’s Child Care Supply Crisis: The Combined Impact of a Pandemic*, July 2021 available at <https://www.bostonopportunityagenda.org/reports/2021/jul/child-care-supply-crisis-brief>; Harvard Business Review, *Childcare is a Business Issue*, April 29, 2021, <https://hbr.org/2021/04/childcare-is-a-business-issue>.

⁴⁸ Department of Unemployment Assistance UI Policy & Performance Interoffice Memorandum, *New Minimum Base Period Wage Requirement for Claims*, Nov. 1, 2021.

states in the country have a higher monetary eligibility threshold.⁴⁹ In a system that determines eligibility based on wages earned, rather than hours worked, raising the threshold simply operates to deny access to UI benefits to low wage workers who are disproportionately women and BIPOC.

Increasing the monetary eligibility threshold would precisely harm those workers, especially low-wage, women and BIPOC workers, who are already suffering the effects of the secondary labor market characterized by low wages, lack of benefits, poor working conditions, little flexibility, volatile work schedules, and high turn-over – conditions that have only worsened because of the on-going effect of the pandemic on the economy.

3. Changing the Eligibility Formula to 1.5 Times High Quarter Earnings Similarly Disadvantages Low Wage and BIPOC Workers.

Changing the monetary eligibility formula to 1.5 times a workers' high quarter earnings would exacerbate existing inequities in the current Massachusetts UI eligibility formula. Under existing law, monetary eligibility is determined in part by a worker having earnings in the base period of at least 30 times their weekly benefit amount, calculated as one-half their average weekly wage. However, current law disadvantages the predominantly low-wage/BIPOC claimants who have fluctuating wages or intermittent work histories by calculating the average weekly wage based on the highest quarter of earnings for claimants who worked two or fewer quarters in their base period.⁵⁰ The result is that low-wage claimants with higher earnings in one quarter as a result of fluctuating wages—caused, for example, by their employers' scheduling needs or the illegal failure to timely pay wages—will face significantly greater difficulty establishing monetary eligibility.

Switching the eligibility formula to 1.5 times high quarter earnings would only worsen this existing inequity. Under that test, even claimants with earnings across more than two quarters—whose average weekly wage is currently calculated by averaging the two highest quarters of earnings—would be shut out of UI eligibility altogether when intermittent or fluctuating work schedules resulted in disproportionately high earnings in a single quarter. The result of using such eligibility formulas is that the low wage workers most likely to experience periods of unemployment are among the least likely to receive UI benefits.⁵¹

4. Eliminating Jobless Benefits for Workers Who Quit Their Jobs Would Upend Almost a Century of Unemployment Policies and Reflects a Total Lack of Understanding of Requirements Imposed on Workers Who Quit and Seek UI Benefits.

⁴⁹ 2020 Comparison of State Unemployment Insurance Laws, Table 3-3: Base-Period Wage and Employment Requirements for Benefits, available at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/monetary.pdf> (showing that only Arizona, Maine, Michigan and Ohio have a higher base period minimum wage requirement).

⁵⁰ G.L. c. 151A, § 1(w).

⁵¹ Manuel Alcalá Kovalski and Louise Sheiner, *How Does Unemployment Insurance Work? And How is it Changing During the Coronavirus Pandemic?*, Brookings, July 20, 2020, <https://www.brookings.edu/blog/up-front/2020/07/20/how-does-unemployment-insurance-work-and-how-is-it-changing-during-the-coronavirus-pandemic/>

The Committee on Economic Security's historical overview of the Social Security Act of 1935 reviews the elements of the model unemployment program offered to the states on which they based their new unemployment laws.⁵² The voluntary quit provisions suggested that employees should be disqualified if they quit *without good cause*. Today, *all* states provide UI benefits where a claimant quit work for good cause. Notably, to prevail in a claim under this circumstance, a worker bears the burden of proving that good cause existed *and* that the worker left either involuntarily or for good cause attributable to the employer, such that the claimant is unemployed through no fault of their own.⁵³ In most cases, the employee must also prove that they made reasonable, good faith attempts to preserve their employment prior to quitting.⁵⁴

Examples of circumstances found to constitute good cause under Massachusetts law⁵⁵ include where the employer violates a worker's rights, engages in unreasonable treatment including threats to withhold pay and confinement in a small room,⁵⁶ fails to pay overtime in violation of Massachusetts wage law,⁵⁷ requires a worker to work 98 hours in six days,⁵⁸ reduces an employee's hours to the point where the employee had to quit,⁵⁹ lays off a claimant and rehires the same individual at substantially reduced wages for the same work,⁶⁰ and where the Department found that the employee had a reasonable belief that her job was hazardous to her health and consequently unsuitable.⁶¹

To eliminate unemployment benefits under circumstances that are all too common in the low wage job market would have a disastrous impact on low wage workers, women and BIPOC. And Massachusetts would be alone among the states in eliminating eligibility for workers who must quit their jobs for good cause.

VI. Conclusion

Trust fund insolvency is the result of the decades-long assault on the UI system, providing short-term benefits for large business while disfavoring the interests of workers and small businesses. And while the legislature intervened to keep UI payroll taxes low, these tax reductions were not "balanced" by

⁵² Social Security Administration, Report by the Committee on Economic Security, <https://www.ssa.gov/history/reports/ces/cesbook6.html>.

⁵³ *Sohler v. Director of the Div. of Emp't Sec.*, 377 Mass. 785, 788, n. 1 (1979).

⁵⁴ *Guarino v. Director of the Div. of Emp't Sec.*, 393 Mass. 89, 93 (1984).

⁵⁵ Mass. General Laws, c. 151A, sec. 25(e).

⁵⁶ *Workforce Unlimited, Inc. v. Ascencio*, 86 Mass App. Ct. 1109 (8/29/2014)(unpublished).

⁵⁷ Board of Review # 0025-4741-79 (3/25/2015).

⁵⁸ Board of Review # 112118 (3/3/2011).

⁵⁹ *Manias v. Director of the Div. of Emp't Sec.*, 388 Mass. 201 (1983).

⁶⁰ *Graves v. Director of the Div. of Emp't Sec.*, 384 Mass. 766 (1981).

⁶¹ *Carney Hosp. v. Director of the Div. of Emp't Sec.*, 382 Mass. 691 (1981).

corresponding UI eligibility or benefit expansions. It is only now, when clear-eyed review of UI financing principles are under investigation, that some proposals include sacrificing jobless benefits to “balance” the need for increased taxes. Such proposals will do little to correct the underlying financing issues resulting in Trust Fund insolvency.

By adopting the recommendations described above, the UI Study Commission can reverse these failed strategies and make sensible long-term reforms that will benefit workers, employers of all sizes and in all communities, and the state.

Respectfully submitted,

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