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 recipiency 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 ("AHMC") 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

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[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,

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[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]

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[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**

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[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

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[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 state[31], 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

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[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 recipiency rates for UI benefits compared to white unemployed workers.[39]

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[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,

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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

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[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.

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[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 law[55] 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

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[52] Social Security Administration, Report by the Committee on Economic Security, https://www.ssa.gov/history/reports/ces/cesbookc6.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.

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