



**Report of the Unemployment Insurance Study Committee
December 2021**

Representative Emilie Kornheiser, Chair

Senator Christopher Pearson, Vice Chair

Representative Michael Marcotte

Senator Michael Sirotkin

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I. Introduction and Background

In 2021 Acts and Resolves No. 51, Sec. 14a, the General Assembly created the Unemployment Insurance Study Committee to examine the solvency of Vermont's Unemployment Insurance (UI) Trust Fund, the adequacy of UI benefits, the possibility of granting the Commissioner of Labor authority to reduce or waive certain penalties, and potential options for mitigating the liability of reimbursable employers for benefits paid under certain circumstances. The Study Committee is composed of four members, one member each from the House Committees on Commerce and Economic Development and on Ways and Means and the Senate Committees on Economic Development, Housing and General Affairs and on Finance. The Committee was provided with funding for three meetings.

The Committee began by reviewing Vermont's UI law, which has been shaped by the complicated interaction between State-level policy decisions, federally imposed requirements, and, more recently, the limitations of Vermont's aging mainframe computer system. Many provisions of the law are the result of painstaking legislative compromise between stakeholders within the constraints of federal limitations and administrative possibility. Many other provisions of Vermont's law were enacted to address specific federal requirements, which must be satisfied to avoid the loss federal administrative funding and a credit against the federal UI tax paid by employers.¹

Because of these challenges, many aspects of Vermont's UI law have remained unchanged for years or, in some cases, decades. One provision examined by the Committee, Vermont's statutory formula for determining a claimant's weekly benefit amount, was last adjusted in January 1988 by an act passed in 1986.² Similarly, Vermont's UI tax schedules were last updated in 1984³, and the taxable wage base, which is now annually updated, remained at \$8,000.00 from 1983 until 2010.⁴

Against this backdrop, Vermont's mainframe computer system has continued to use software that dates to the 1970s. The coding language used on the mainframe, F-COBOL, is so old that the State staff skilled at working in that language have all retired. Further complicating this situation is the lack of documentation for the UI software, which raises the risk of unpredictable results following any changes to the code.⁵ Finally, the mainframe lacks the development and testing environments that allow changes to be safely made in modern computer systems.⁶

¹ See, e.g., 2012 Acts and Resolves No. 162, § E.401.2 and 2014 Acts and Resolves No. 179, § E.400.1 (enacting federally required 15 percent penalty for benefits received because of fraud).

² See 1986 Acts and Resolves No. 146, § 2.

³ See 1984 Acts and Resolves No. 124, § 2.

⁴ See 1983 Acts and Resolves No. 16, § 3 (enacting \$8,000.00 taxable wage base for all wages paid after December 31, 1982); 2009 (Sp. Sess.) Acts and Resolves No. 2, § 1 (establishing \$10,000.00 taxable wage base for calendar year 2010); and 2010 Acts and Resolves No. 124, § 2 (establishing \$13,000.00 taxable wage base for 2012, \$16,000.00 taxable wage base for 2013, and provisions governing annual adjustments to taxable wage base in subsequent years).

⁵ See Appendix 3: The Feasibility of Changing the Unemployment Insurance Mainframe Program.

⁶ *Id.*

Because of the lack of State staff skilled in the F-COBOL programming language, the State has been forced to utilize contactors to make changes and address issues related to the mainframe. The lack of documentation means that even skilled contractors cannot be certain of the impact of changes to the underlying code.⁷ The absence of development and testing environments requires programming changes to be made using the same mechanism used to make routine edits to correct inaccurate data in the system.⁸ There is little ability to test new code before it goes live in the system, and each time a change is made, there is a risk that an unanticipated issue will cause the system to crash. During the height of the pandemic, as VDOL struggled to process an unprecedented number of claims and implement multiple new federal programs, the mainframe crashed roughly once a week.

During the past decade, the Vermont Department of Labor (VDOL) has engaged in two separate federally funded efforts to develop a modern unemployment IT system as part of a consortium with other states. For a variety of reasons, in both instances, the State had to pull out of the consortium without having successfully replaced the mainframe. When the pandemic arrived in Vermont, the State was in the process of dissolving the most recent consortium because of a lack of cooperation between the lead state and the partner states, including Vermont.

During the initial weeks of the pandemic, weekly claims jumped from fewer than 5,000 claims in the weeks leading up to the pandemic to 76,457 regular UI claims during the week ending April 25, 2020.⁹ In addition, VDOL was tasked with implementing a range of emergency federal programs. These unprecedented challenges overwhelmed the VDOL's limited staff resources and aging mainframe system, leading to a significant backlog in claims processing, frequent crashes of the mainframe, enormous amounts of staff overtime, the need to contract out call center functions, a dramatic increase in fraud attempts by organized crime actors, and numerous other issues that have been well-documented in legislative testimony and news reports since then.

The unprecedented surge in unemployment and challenges in processing claims at the beginning of the pandemic highlighted not only the limitations of the mainframe but a lack of flexibility in certain areas of the law. One issue of particular concern to the General Assembly during the early weeks of the pandemic was the Commissioner's lack of authority to waive, suspend, or modify the amount that an individual was required to repay following an overpayment and the period of disqualification imposed on an individual who had previously been determined to have committed fraud in relation to an UI claim. 21 V.S.A. § 1347 imposes requirements for claimants to repay benefits that are overpaid because of mistake, error, or fraud but does not provide the Commissioner with any authority to waive or reduce an individual's liability to repay those amounts under appropriate circumstances. Similarly, once a period of disqualification from eligibility for UI benefits is imposed against an individual following a finding of fraud, the period of disqualification does not expire until it has been served and the Commissioner is without authority to reduce that penalty.¹⁰ Because of this, legislators received numerous reports from

⁷ *Id.*

⁸ *Id.*

⁹ For additional context, in the week ending November 5, 2021, the Department of Labor reported only 2,181 regular unemployment claims; less than three percent of the number of claims the Department was handling in late April of 2020.

¹⁰ The period of disqualification is commonly referred to as a "penalty week" or "penalty weeks."

constituents and Vermont Legal Aid regarding claimants whose benefits were significantly reduced or who were ineligible to receive benefits because of a period of disqualification imposed in relation to a prior claim. Despite the concern these reports generated, a legislative solution to the issue was not found.

Legislative action was, however, able to able to mitigate some potential adverse consequences of the pandemic by relieving employers from COVID-19-related charges against their experience rating and by removing the unprecedented benefit payments in 2020 from the calculation used to determine the balance needed in the UI Trust Fund and the tax schedule necessary to achieve that balance. However, significant reserves remaining in the Trust Fund despite 2020's unprecedented benefit payments raised new questions regarding what the appropriate target balance for the Trust Fund is and whether Vermont's UI taxes might be higher than necessary.

In addition to the challenges to employers who pay regular UI taxes, the pandemic presented significant challenges to nonprofit employers who reimburse the Trust Fund for any benefits paid that are attributable to that employer. The cost of reimbursing the Trust Fund for benefits paid in relation to even a single claim can be significant for a smaller nonprofit employer, even during good economic times. In some instances, the way that benefits are charged under Vermont law means that an employer may be charged for benefits paid to a claimant despite not being the reason for the unemployment. This is because Vermont's law charges benefit costs to the employers who paid the wages in a claimant's base period that are used to determine the claimant's weekly benefit amount.¹¹ In some instances, the employer who laid off the claimant may have only paid a small portion of the claimant's base period wages or may not have paid any wages in the claimant's base period. While reimbursable employers did receive some federal relief, the unique circumstances of the pandemic exacerbated these challenges for reimbursable employers.

Throughout the pandemic and until September 2021, UI claimants benefitted from a variety of federal programs that supplemented regular UI benefits or provided additional benefits when claimants exhausted their regular benefits.¹² The positive impact of the increased benefits on claimants' well-being and the State economy raised questions regarding whether Vermont's benefits should be increased, particularly for lower-income claimants who may struggle to make ends meet during a period of unemployment. Some members of the General Assembly also felt that providing an increase in benefits in concert with the measures intended to prevent or mitigate tax-related impacts on employers would carry on a tradition of sharing benefits and burdens between employers and employees in the State's UI system.

These considerations sparked multiple proposals in the General Assembly, including a dependent benefit that was proposed by the Senate and a \$25.00 supplemental benefit for all claimants that was ultimately enacted as part of 2021 Acts and Resolves No. 51. However, on August 24 of this year, the VDOL informed legislative leadership that the U.S. Department of Labor (USDOL) had determined that the newly enacted supplemental benefit did not conform

¹¹ A base period is usually four of the last five completed calendar quarters. *See* 21 V.S.A. § 1301(17).

¹² These programs included Federal Pandemic Unemployment Compensation, Mixed Earners Unemployment Compensation, and Pandemic Emergency Unemployment Compensation. In addition, self-employed individuals were able to receive benefits through the federal Pandemic Unemployment Assistance program.

with the requirements of federal law. USDOL issued a formal notice of nonconformance the following week, on September 1, and left the State with three options: (1) pay the supplemental benefit as part of the regular weekly benefit amount; (2) delay implementation of the original legislation until the mainframe system can be modernized so that it is able to process the supplemental benefit in accordance with federal requirement; (3) pay the supplemental benefit from a separate funding stream; or (4) repeal the supplemental benefit provision. Because of the significant issues with the mainframe, the VDOL has indicated that the first option would be difficult, if not impossible, to implement and would carry a significant risk of a catastrophic mainframe crash that could prevent the State from processing claims and paying benefits for weeks.

The events and issues outlined above provided the basis for the Committee's legislative charge and informed its work. The Committee's legislative charge, work, and recommendations in relation to these issues are discussed in detail in the following sections of this report.

II. Legislative Charge

The General Assembly established the UI Study Committee in 2021 to examine the solvency of Vermont's UI Trust Fund, its benefit structure, potential grants of authority for the Commissioner of Labor to reduce or waive certain penalties, and potential measures to mitigate the liability of reimbursable employers for some benefit charges. Specifically, the Study Committee was charged with studying the following issues:

- A. the solvency of Vermont's UI Trust Fund and the amount necessary to ensure that the Trust Fund remains solvent and able to continue meeting the needs of claimants during a future economic recession and subsequent recovery;
- B. the adequacy and appropriateness of Vermont's UI benefits, whether Vermont's benefits should be increased, and whether the Vermont statutes related to benefits should be modified in any manner;
- C. instances for which it may be appropriate to provide the Commissioner of Labor with authority to reduce or waive a period of disqualification imposed in relation to a determination of UI fraud;
- D. instances for which it may be appropriate to provide the Commissioner of Labor with authority to reduce or waive an individual's liability to repay overpaid UI benefits; and
- E. potential statutory changes to mitigate the impact of benefit charges attributed to reimbursable employers who paid wages to a claimant during the claimant's base period but did not cause the claimant to become unemployed.

During its examination of those issues, the General Assembly directed the Study Committee to consider the following:

- A. best practices and high performing aspects of other states' UI systems;
- B. shortcomings, challenges, and opportunities for improvement in Vermont's UI system;
- C. potential changes and improvements to the VDOL's staffing, resources, information technology, training, funding, communications, practices, and procedures that are

- necessary to address the shortcomings, challenges, and opportunities for improvement identified;
- D. potential statutory changes necessary to address the shortcomings, challenges, and opportunities for improvement identified; and
 - E. to the extent possible, the anticipated cost of implementing the changes and improvements identified and any ongoing costs associated with such changes and improvements.

III. Summary of Study Committee Activities

The Study Committee met three times to hear testimony from stakeholders and experts on the issues within its jurisdiction.¹³ The Committee took testimony on and discussed the following subjects:

- Vermont’s existing laws related to the issues that the Committee was charged with examining;
- the laws of other states regarding the issues that the Committee was charged with examining;
- a determination from USDOL that prevented a \$25.00 supplemental UI benefit from being implemented in Vermont;
- the capabilities and limitations of Vermont’s existing mainframe computer and IT system and the replacement of the mainframe with a modern system;
- potential changes to Vermont’s UI tax laws to provide sufficient reserves to pay benefits during a recession without taxing employers more than is necessary to do so;
- various models for altering Vermont’s UI benefits;
- the use of surcharges to generate additional funding for various UI-related purposes;
- potential statutory changes to provide the authority to waive or reduce an individual’s liability to repay overpaid UI benefits;
- potential statutory changes to provide the authority to waive or reduce a period of disqualification from UI benefits under certain circumstances;
- potential statutory changes to mitigate adverse impacts of Vermont’s existing laws on reimbursable nonprofit employers; and
- whether it might be appropriate to require nonprofit employers with fewer than four employees to participate in the unemployment insurance system.

IV. Solvency of Vermont’s Unemployment Insurance Trust Fund

Background

Prior to the closure of many parts of Vermont’s economy in response to the COVID-19 pandemic in March 2020, USDOL had ranked Vermont’s UI Trust Fund as the healthiest in the nation based on a comparison of its current fund balance to potential future high benefit costs. USDOL’s assessment was based on a measure known as the Average High Cost Multiple (AHCM), which projects future benefit costs based on past experience. A state’s AHCM is determined by the following formula:

¹³ See Appendix 2: Witness List.

$$AHCM = \frac{(Trust\ Fund\ Balance - outstanding\ loans)/(Total\ Wages)}{Average\ High\ Cost\ Rate^{14}}$$

An AHCM of 1.0 is an indication that a trust fund's balance is sufficient to pay an average year of recession-level benefits, according to the U.S. Department of Labor. As of January 1, 2020, Vermont's Trust Fund had a balance of over \$516 million and an AHCM of 2.53.¹⁵ By January 1, 2021, the Trust Fund's balance had fallen to roughly \$222 million and the AHCM had dipped to 0.86.¹⁶

Vermont's Trust Fund is funded by payroll taxes known as UI contributions that are paid by employers who are covered by the UI law. The amount of taxes that an employer pays for each of its employees is determined by three things: (1) the State's taxable wage base; (2) the current tax schedule for the State; and (3) the employer's tax class for purposes of UI.

The taxable wage base for Vermont is currently \$14,100.00. The wage base is updated annually on January 1. In most years, the taxable wage base increases on January 1 "by the same percentage as . . . the State annual average wage" determined pursuant to 21 V.S.A. § 1338(g).¹⁷ However, when the tax schedule drops to either Schedule III or Schedule I, the taxable wage base is decreased by \$2,000.00 in the following year. The most recent such decrease occurred this past January.

The provision for annual adjustments to the taxable wage base was added in 2010 following the depletion of the Trust Fund during the 2008 recession.¹⁸ Prior to the recession, Vermont's taxable wage base had remained at \$8,000.00 since 1983. In contrast, the maximum weekly benefit had increased each year from 1986 until it was temporarily frozen at \$425.00 in 2009.¹⁹ With inflation steadily eroding the value of the taxable wage base and benefit amounts steadily increasing, Vermont's Trust Fund balance slowly decreased throughout the early 2000s, and the 2008 recession forced Vermont to borrow from the federal government in order to continue paying UI benefits.²⁰ The annual indexing of Vermont's current taxable wage base, which increases the taxable wage base amount by the same percentage as the maximum weekly benefit, is designed to avoid a similar situation.

21 V.S.A. § 1326(e) provides for five different rate schedules depending on the health of the Trust Fund. The rate schedule is adjusted annually on July 1 based on the ratio "determined by

¹⁴ Average High Cost Rate is the average of the three highest annual benefit cost rates in the last twenty years or, if longer, a period including three national recessions.

¹⁵ U.S. Department of Labor, State Unemployment Insurance Trust Fund Solvency Report 2020, available at: <https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf>.

¹⁶ U.S. Department of Labor, State Unemployment Insurance Trust Fund Solvency Report 2021, available at: <https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2021.pdf>.

¹⁷ 21 V.S.A. § 1321(b).

¹⁸ See 2009 Acts and Resolves No. 124, § 2. Prior to the enactment of that provision, 2009 (Sp. Sess.) Acts and Resolves, No. 2, § 1 increased the taxable wage base from \$8,000.00 to \$10,000.00 for calendar year 2010.

¹⁹ See 1986 Acts and Resolves No. 146, § 3; 1998 Acts and Resolves No. 101, § 10; 2002 Acts and Resolves No. 143, § 65; and 2009 (Sp. Sess.) Acts and Resolves No. 2, § 2.

²⁰ See Appendix 5: Vermont Unemployment Insurance Trust Fund: Data and Options.

dividing the current fund ratio by the highest benefit cost rate.”²¹ That relationship is shown by the following formula:

$$\frac{(Prior\ CY\ end\ Trust\ Fund\ balance\ / Prior\ CY\ wages)}{(Highest\ 12\ -\ month\ benefit\ total\ in\ last\ 10\ yrs\ / Wages\ in\ quarters\ ending\ in\ that\ period)}$$

The resulting ratio determines the tax schedule for the coming year, with a ratio of 2.50 or above resulting in the lowest tax schedule, Schedule I, and a ratio below 1.00 resulting in the highest tax schedule, Schedule V. The current tax schedule is Schedule III.²² The tax schedules and related ratios were last updated in 1984, when the number of schedules was reduced from seven to five.²³

Within each tax schedule, there are 21 tax classes. Employers who have no attributable benefits charges in the last three years are assigned to class 0, while employers with attributable benefit charges during that period are assigned to classes 1 through 20 based on their benefits ratio in comparison to other employers. An employer’s benefits ratio measures its UI experience and is determined by dividing the amount of benefits attributable to the employer during the previous three years by their taxable payroll during that period. Employers with the lowest benefits ratios are assigned to class 1, and those with the highest are assigned to class 20.

Under the Federal Unemployment Tax Act, covered employers are subject to a federal tax of 6.0 percent on the first \$7,000.00 of wages paid to an employee each calendar year. This amount may be reduced by up to 90 percent for employers who pay state UI taxes in a state whose UI program meets the requirements of federal law.²⁴ The standard tax credit is equal to the amount of state UI tax paid by the employer.²⁵ An additional credit is allowed for employers who are paying a reduced state tax rate if the reduced rate is based on “experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date.”²⁶ Because of this, all states impose a UI payroll tax on employers as required by federal law and utilize an experience rating system for purposes of determining employer tax rates.²⁷

Apart from those requirements, however, federal law does not establish specific standards for UI trust fund balances and leaves other aspects of state tax structure up to the discretion of the individual states. Because of this, UI tax structures vary significantly from state to state. Three

²¹ 21 V.S.A. § 1326(e)

²² The tax schedule for the period from July 1, 2021, to June 30, 2022, would have been Schedule V if not for an amendment to 21 V.S.A. § 1326(d) that requires the highest benefit cost rate to be calculated without consideration of calendar year 2020.

²³ See 1983 (Adj. Sess.) Acts and Resolves No. 124, § 2.

²⁴ In a state that meets the federal requirements and does not have any outstanding federal loans to its unemployment insurance trust fund under Title XII of the Social Security Act, employers will pay a maximum of \$42.00 per covered employee each calendar year.

²⁵ 26 U.S.C. § 3302(a).

²⁶ 26 U.S.C. § 3303(a)(1).

²⁷ While most employers are required to pay unemployment insurance taxes, which are commonly known as unemployment contributions, federal law requires states to permit state and local government employers, federally recognized Indian tribes, and covered nonprofits to reimburse the state unemployment trust fund for benefit costs in lieu of paying regular contributions like other employers.

statutory factors that directly impact the balance a state's trust fund are a state's taxable wage base, its tax schedules, and, in some instances, surcharges that the state may impose.

All states have a taxable wage base that is at least equal to the federal taxable wage base of \$7,000.00 to ensure that all of their employers are able to take advantage of the full federal tax credit. Four states—Arizona, California, Florida, and Tennessee—have a taxable wage base that is equal to the federal amount. Of the remaining states, 10 states have a taxable wage base between \$7,000.00 and \$9,999.00; 19 states, including Vermont, have a taxable wage base between \$10,000.00 and \$20,000.00; and the remaining 18 states have a taxable wage base above \$20,000.00.²⁸ The highest current taxable wage base is \$56,500.00 in Washington State.

All states utilize a progressive tax structure into which employers are sorted based on their “experience.” Employers who have generated lower UI benefit charges relative to their payroll have a lower experience rating and are assigned a lower tax rate, while those who have generated a greater amount of benefit charges relative to their payroll are assigned a higher tax rate. The highest tax rate is typically at least 5.4 percent to ensure that employers will be able to take advantage of the full standard federal tax deduction. All states measure experience over at least three years pursuant to federal law, with some states electing to utilize more than three years of experience. In addition, every state provides a “new employer” rate, which is a default rate charged to employers until they have sufficient experience to be experience rated like other employers.

To address concerns related to UI trust fund solvency during economic downturns, states typically employ one of two strategies. The first is to utilize multiple tax schedules like Vermont and the second is to utilize a solvency surcharge or other increase that applies when the balance of the trust fund drops below a certain amount.

Under the first model, a state will have a series of tax schedules that it moves between depending on the balance of its trust fund. When the fund balance is low, the state will move to a schedule with higher tax rates, and as the fund's balance increases, it will gradually move to schedules with lower rates. Among the states that employ the first model, variations include the number of tax schedules, the actual rates within a given schedule, the number of rates within a particular schedule, and how quickly the state can move between schedules. Changes to these factors can influence the amount of revenue generated at a given schedule and how quickly a state's trust fund balance can recover from a significant recession.

Under the second model, a state will have specific increases, known as a solvency surcharge, that spring into place if the state's UI trust fund balance drops below a certain amount.²⁹ Solvency surcharges and other mechanisms to prevent a state's UI trust fund from running out of funds take a variety of forms. The surcharge provisions in Missouri, Kansas, and Washington provide representative examples of some of these approaches. In Missouri, there is only one tax

²⁸ See U.S. Department of Labor, Employment and Training Administration; Significant Provisions of State Unemployment Insurance Laws; July 2021; available at: <https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/July2021.pdf>. Nebraska has two different taxable wage bases, \$24,000.00 for high tax employers and \$9,000.00 for other employers.

²⁹ See Appendix 4: Examples of UI Solvency Surcharge Provisions.

schedule, but the rates in the schedule are increased by 10, 20, or 30 percent when the UI trust fund balance drops below \$450 million, \$400 million, and \$350 million, respectively.³⁰ Like Missouri, Kansas has a single tax schedule whose rates can be increased by between 13 percent and 26 percent when its AHCM drops below 0.75, with the largest percentage increase occurring when the AHCM drops below 0.25.³¹ However, Kansas also provides for a reduction in tax rates of between 13 and 26 percent when its AHCM rises above 1.25. Finally, in Washington, a solvency surcharge of up to 0.2 percent is triggered when the Commissioner determines that the UI trust fund balance “will provide fewer than seven months of UI benefits.”³²

Modeling the UI Trust Fund, Average High Cost Multiple, Tax Rate Schedule, and Taxable Wage Base

The Committee asked the Joint Fiscal Office (JFO) to examine the solvency of the Vermont UI Trust Fund over time as well as develop the ability to model several different scenarios that tweaked various parameters in the UI system.

Using publicly available data on the Vermont UI Trust Fund, JFO looked at the UI Trust Fund balance and the AHCM, one measure of solvency, over time. JFO also investigated the actions of four states that were able to increase their AHCM during the difficult pandemic period when most states experienced a sharp decline in their UI trust funds. Looking ahead to a time when parameters of the UI system can be changed in a modernized system, JFO also looked at the amount of revenue associated with step changes in the Tax Rate Schedule and Taxable Wage Base Amount.

History of the UI Trust Fund and Average High Cost Multiple

The balance in the UI Trust Fund in Vermont has a seasonal pattern each year, generally starting the year with a lower balance in the first quarter, displaying a somewhat higher balance during the second and third quarters, and dipping down again in the fourth quarter. During the past two decades, the Trust Fund dropped to a zero balance only once—in the aftermath of the 2008 recession (see Figure 1). At that time, Vermont had to borrow from the USDOL to continue paying UI benefits. Since 2011, the Trust Fund has recovered. The Trust Fund balance reached a high point in the fourth quarter of 2019 before declining sharply during the 2020–2021 period of the pandemic.

The AHCM is a measure of UI Trust Fund solvency that is used as a guide to solvency by the USDOL. That federal agency suggests that the AHCM should be greater than or equal to 1.0 to maintain a solvent Trust Fund. Vermont’s AHCM did not meet the criteria for solvency from the fourth quarter of 2008 through the first quarter of 2015 (see Figure 2). During that period, Vermont’s economy was buffeted by the recession of 2007–2009 and its slow recovery. After reaching the critical threshold of 1.0 in 2015, Vermont’s AHCM continued to climb and attained 2.5 in the latter half of 2019, the highest AHCM among the states. It then fell close to 1.0 in the

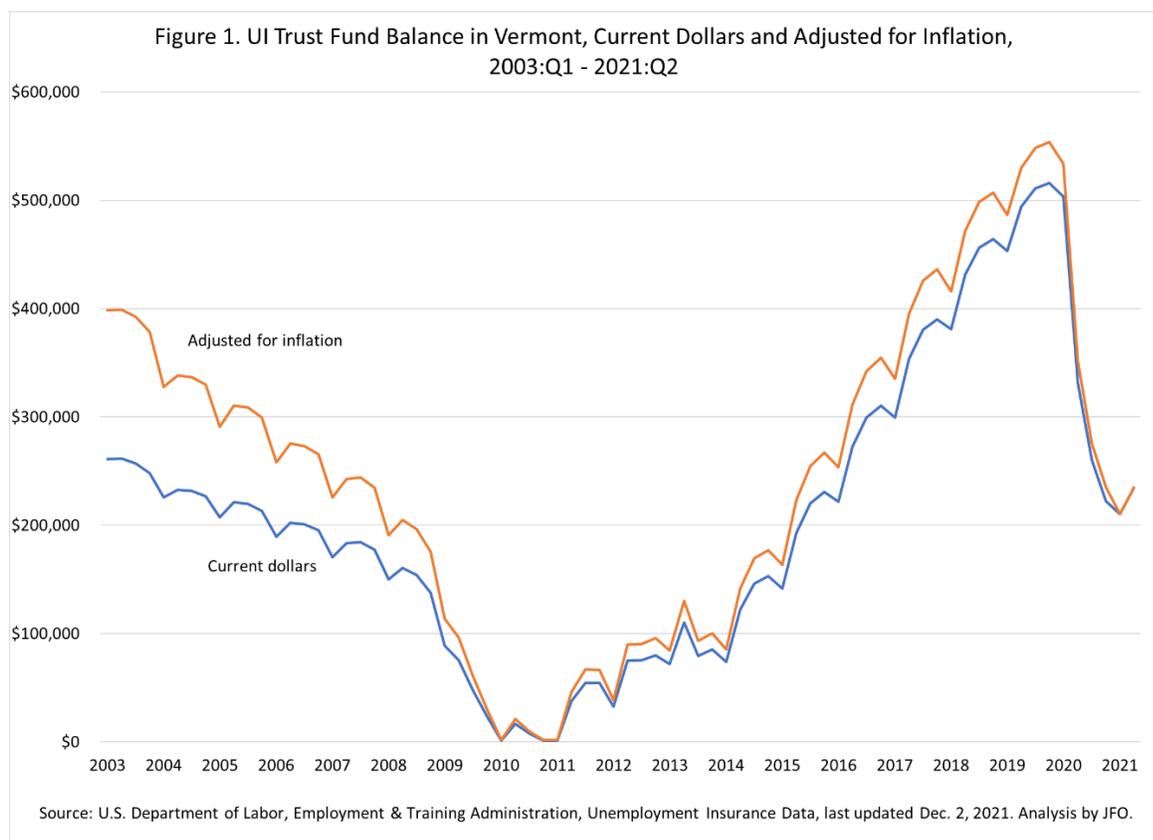
³⁰ V.A.M.S. § 288.121.

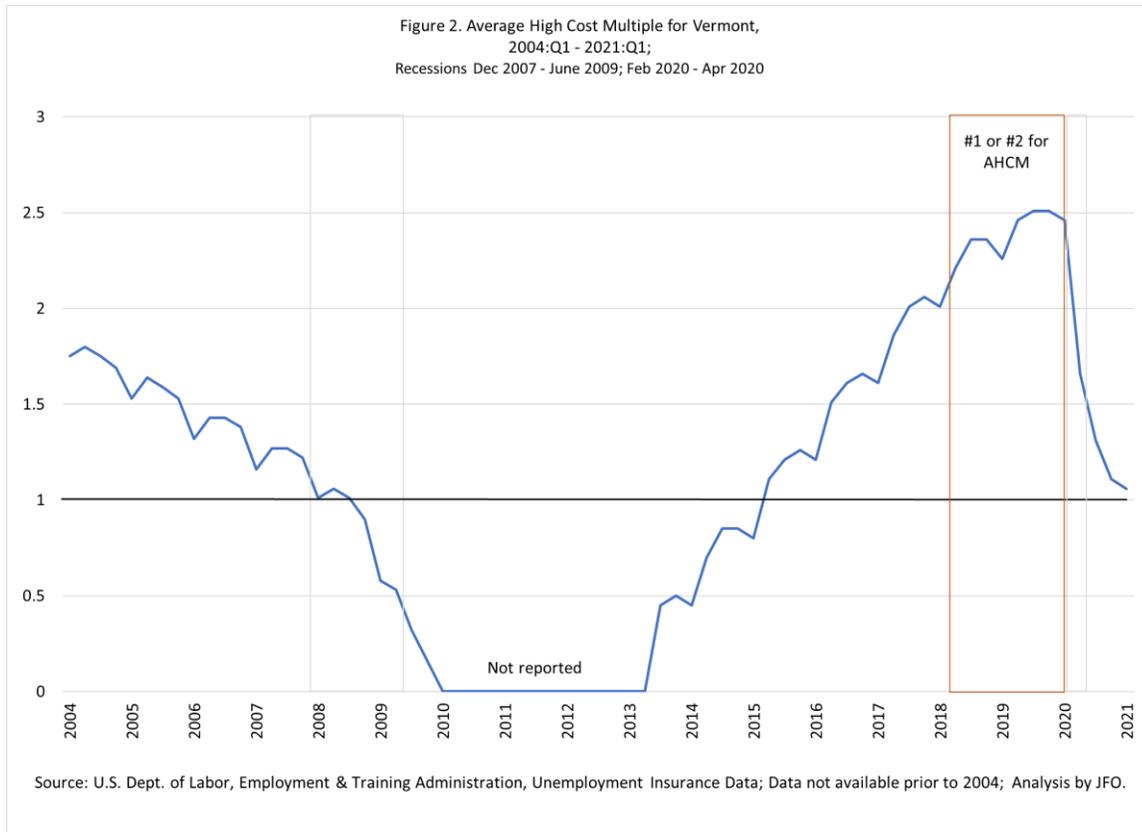
³¹ K.S.A. § 44-710a (AHCM figures applicable beginning in 2022; before 2022, the highest increase is triggered when the AHCM drops below 0.2).

³² R.C.W.A. § 50.29.041. The solvency surcharge provision is temporarily suspended during rate years 2021–2025.

first quarter of 2021 following a sharp spike in UI benefits during the pandemic. More recent data on Vermont's AHCM had not been released as of December 2, 2021.

Most states experienced sharp falls in their trust funds and associated AHCMs during the pandemic, but four states reported an increase in their AHCMs from January 1, 2020, to January 1, 2021. Those four states were Maine, Idaho, North Dakota, and South Carolina. Each of those four states used Coronavirus Relief Funds to boost their UI trust funds directly.





Changes to the Tax Rate Schedule and Taxable Wage Base

JFO explored the idea of maintaining the same UI tax rates for employers but reducing revenues coming into the UI Trust Fund and imposing a surcharge to fund a new special fund. The Study Committee suggested that the surcharge would raise about \$100 million to \$110 million (including administrative expenses) over 10 years and then sunset. Employers would pay the same amount in overall UI taxes, but the special fund might be used to finance and administer extra benefits for UI recipients or other purposes, such as an ombudsman's office or modernization. VDOL believes it would be feasible to lower the Tax Rate Schedule by changing the statute for a fixed amount of time. VDOL also believes that reducing the Taxable Wage Base by changing the statute would be feasible.

However, VDOL is concerned about setting up a mechanism to collect the surcharge separate from the Trust Fund. Currently, all UI revenue goes immediately into the UI Trust Fund using a mainframe program. After the revenue arrives in the Trust Fund, it can be used only for paying UI benefits and cannot be used to pay for administrative costs associated with a surcharge. Further work is needed to assess impacts to the mainframe from implementing a surcharge.

JFO's rough modeling of changes to the Tax Rate Schedule and the Taxable Wage Base Amount suggests the following preliminary results based on total taxable wages of about \$3.5 billion, just below the amount of total taxable wages in 2019 (see Table 1):

- Lowering the Tax Rate Schedule by one level—from Tax Rate Schedule III to II, for example—would lower UI revenues about \$18.4 million per year.
- Lowering the Taxable Wage Base Amount by \$1500.00—from \$14,600.00 to \$13,100.00, for example—would lower UI revenues about \$9 million per year.

**Table 1. JFO Preliminary Estimates of UI Trust Fund Revenues
Following Changes to the Tax Rate Schedule or Taxable Wage Base**
Based on Total Taxable Wages of \$3.5 Billion (like 2019)

Policy Change	Reduction in UI Revenues
Lower Tax Rate Schedule one level e.g., from Schedule III to Schedule II	\$18.4 mil
Lower Taxable Wage Base \$1500.00 e.g., from \$14,600.00 to \$13,100.00	\$9 mil

Note: Highly preliminary estimates by JFO, expressed in 2020 dollars.

Committee Recommendations

After compiling the information contained in this section, the Committee determined that the balance of the Trust Fund appears to be generally healthy and beginning to recover from the high levels of unemployment during the early part of the COVID-19 pandemic. However, the Committee did not have sufficient time to determine “the amount necessary to ensure that the Trust Fund remains solvent and able to continue meeting the needs of claimants during a future economic recession and subsequent recovery.” Therefore, the Committee recommends that the General Assembly utilize this information in combination with the annual UI Trust Fund Report for further work on this issue during the coming legislative session. In addition, the Committee encourages the General Assembly to remain mindful of the efforts in 2021 Acts and Resolves No. 51 to balance tax savings for employers with additional benefits for claimants in determining what steps, if any, to take in relation to this issue.

V. Adequacy of Vermont’s Unemployment Insurance Benefits

Background

In Vermont, a claimant’s weekly UI benefits are determined by dividing the total wages earned by the claimant during the two highest quarters of the claimant’s base period by 45, up to the State maximum weekly benefit.³³ Vermont’s maximum weekly benefit is annually adjusted at the beginning of July to be equal to 57 percent of the State average weekly wage for the preceding calendar year and is currently \$583.00 per week.³⁴

³³ 21 V.S.A. § 1338(e).

³⁴ 21 V.S.A. § 1338(f) and (g).

While Vermont does not have a specific minimum weekly benefit amount, a claimant's minimum weekly benefit is determined by the amount of base period wages required to qualify for UI benefits. Vermont currently requires a claimant to have earned at least \$2,999.00 in one calendar quarter in their base period and an additional 40 percent of that amount spread across the remaining three calendar quarters of their base period. Thus, the current minimum weekly benefit amount for Vermont is \$75.00.³⁵ As a practical matter, few, if any, claimants receive the minimum benefit amount.

The Committee examined the wide variety of weekly benefit amounts and formulas utilized by other states.³⁶ Because federal law does not set any standards regarding UI benefit amounts, each state has a somewhat different benefit formula, and the weekly benefit amount that a claimant would be eligible for varies greatly from state to state. In general, however, all states provide a single wage replacement rate that applies to all claimants, as well as a maximum weekly benefit amount and, in some cases, a minimum weekly benefit amount. In addition, certain states provide a dependent benefit, which provides an additional amount per dependent for a claimant's dependents. As with the underlying weekly benefits, the additional amount, number of dependents, and types of dependents covered varies from state to state.³⁷

Despite the significant flexibility afforded by federal law, Vermont's ability to change its weekly benefit amount is limited by its outdated mainframe computer system. VDOL and the Agency of Digital Services (ADS) both testified that while it is theoretically possible to reprogram the mainframe to adjust Vermont's weekly benefit amount, such a change would present significant risks to the stability of the system. Because the weekly benefit amount is tied to numerous other calculations performed by the mainframe, any coding error could result in a cascade of errors throughout the system, which could, in turn, result in a system crash. In a worst-case scenario, such a crash could disable the system for an extended period and render Vermont unable to administer its UI program. Because of these risks, both VDOL and ADS advised against making an immediate change to the benefits formula.

While a change to the underlying formula presents significant challenges, VDOL and ADS did indicate that a change to the maximum weekly benefit amount could be possible because that amount is updated annually. In addition, the possibility of creating a minimum weekly benefit was also discussed. However, due to recent mainframe issues resulting from changes to the maximum benefit and the general concerns regarding any changes to the mainframe that were expressed by VDOL, ADS, and the Legislative IT Consultant, establishing a minimum benefit is unlikely to be viable until the mainframe is replaced with a modern system.

Modeling of Potential Approaches

The challenges presented by the aging computer system played a significant role in the events that prevented a \$25.00 increase in benefits from being implemented in early October of this year.

³⁵ With high quarter wages of \$2,999.00 and wages spread equally across the remaining three quarters, the minimum amount necessary for a claimant to qualify for unemployment insurance benefits is \$3,399.00 (\$2,999.00 + \$400.00). Therefore, the weekly benefit for that claimant would be $\$3,399.00/45 = \75.53 , which rounds off to \$75.00.

³⁶ See Appendix 6: 50 State Summary of UI Benefit Rates.

³⁷ See Appendix 6: 50 State Summary of UI Benefit Rates.

As discussed in greater detail above, USDOL determined that the payment of a supplemental benefit with Trust Fund dollars was not permissible unless the increased benefit was calculated as part of the weekly benefit amount or implemented with non-Trust Fund dollars. Because of this, the Committee considered potential ways to implement an equivalent increase in benefits through a separate funding stream, an increase in the maximum weekly benefit, the creation of a minimum weekly benefit, future changes to the weekly benefit formula, or some combination of those measures. Each option considered is discussed in greater detail below.

The Committee reviewed potential options for decreasing UI contributions by roughly \$100 million over 10 years and creating a surcharge that raises a corresponding amount that would be directed to a special fund that could be used, at least in part, to provide the increased benefits. As discussed in the previous section, while VDOL believes that regular UI contributions could be reduced through a reduction in the tax schedule or taxable wage base, it expressed concern about setting up a mechanism to collect the surcharge separate from the Trust Fund. Because of the potential challenges, the Committee believes that additional work on this issue is necessary in order to determine if it is a viable option.

Apart from potential impacts to the stability of the mainframe system, the Committee considered how creating a minimum benefit amount might impact claimants differently than an increase in the maximum weekly benefit. A minimum benefit amount would effectively increase the wage replacement rates for those claimants who are at the lowest income level and entitled to the smallest weekly benefit.³⁸ In contrast, increasing the maximum weekly benefit would provide additional benefits to claimants with significantly higher earnings during their base period.³⁹ Other considerations examined by the Committee were the number of claimants who might be impacted by the creation of a minimum benefit versus an increase in the maximum benefit and the potential implications of providing wage replacement rates near or above 100 percent for the lowest-wage claimants.

Using publicly available data on the Vermont UI Trust Fund together with aggregated data on recipients of UI benefits provided by VDOL, JFO estimated the cost of increasing the maximum weekly UI benefit and, separately, the cost of increasing the minimum weekly UI benefit. Given the old mainframe system currently in use for managing the UI program, raising the maximum UI benefit is likely the only feasible option until a modernized UI system is in place. VDOL currently updates the maximum benefit amount each July based on the increase in the State average weekly wage.

The Cost of Increasing the Maximum Weekly UI Benefit

The maximum weekly UI benefit in the second half of 2020 was \$531.00. The Study Committee asked JFO to raise the maximum benefit to a level that would cost the Trust Fund approximately \$10 million per year, including any administrative costs to implement the change. Leaving the change in place for 10 years would be expected to cost about \$100 million over those 10 years. Using 2020 dollars and allowing for reasonable administrative costs, JFO targeted the

³⁸ An individual must earn at least \$4,199.00 in their base period to qualify for unemployment insurance benefits. As a practical matter, most claimants earned significantly more during their base period.

³⁹ Assuming no fluctuation in quarterly earnings, this works out to an annual wage of more than \$52,000.00.

annual cost at about 10 percent below the \$10 million annual target. Moreover, considering the high degree of uncertainty surrounding the aggregate level of UI benefits over the coming decade because of lingering pandemic effects and ensuing effects on the economy, JFO estimated the cost of raising the maximum benefit at three different levels of annual UI benefits.

Using a baseline level of UI benefits at \$90 million, close to the level of benefits in 2013 (adjusted for inflation) when the economy was recovering from the recession of 2008–2010, JFO’s preliminary estimate of the cost of raising the maximum weekly UI benefit from \$531.00 to \$751.00 is about \$8.8 million dollars (see Table 2).⁴⁰ Both inflation and administrative costs would raise the total annual cost closer to \$10 million.

If the economy were to experience another slowdown caused by further pandemic concerns, the annual amount of UI benefits might rise to a higher level. Using annual UI benefits at \$118 million implies a preliminary estimated cost of about \$11.5 million associated with raising the maximum benefit to \$751. On the other hand, low levels of unemployment associated with aggregate annual benefit payments of \$65 million, close to those seen in 2019, would lead to a preliminary annual cost estimate of \$6.3 million. Again, inflation and administrative costs would increase the annual costs. Moreover, more people with higher weekly earnings could decide to apply for UI benefits because they would receive a higher reimbursement rate than before the increase in maximum benefit. The size of that increase is difficult to estimate in advance.

**Table 2. JFO Preliminary Estimates of UI Trust Fund Revenues
Following Changes to the Maximum or Minimum UI Benefit**
Raise Maximum Benefit from \$531.00 to \$751.00
Or Raise Minimum Benefit from about \$75.00 to \$340.00

Three Scenarios for Aggregate UI Benefits	Additional Cost to UI Trust Fund	
	Raise Maximum Benefit	Raise Minimum Benefit
a. \$90 million (like 2019)	\$8.8 million	\$8.5 million
b. \$118 million (lingering pandemic)	\$11.5 million	\$11.2 million
c. \$65 million (strong economy)	\$6.3 million	\$6.2 million

Note: Highly preliminary estimates by JFO, expressed in 2020 dollars.

The Cost of Increasing the Minimum Weekly UI Benefit

Vermont’s current minimum weekly UI benefit is established only by the wage levels required for UI eligibility. In practice, the lowest weekly benefit amount calculated at the time of benefit claim in the second half of 2020 was about \$83.00. Using the distribution of weekly benefit

⁴⁰ All dollar amounts are expressed in 2020 dollars. Appendix 4 has more details about the data and methods underlying the cost estimates.

amounts provided by VDOL for the second half of 2020, JFO estimated how high the minimum benefit would have to be to cost the UI program about \$10 million per year. As in the case of raising the maximum benefit, both inflation and administrative costs would raise the actual cost. JFO again targeted an annual cost about 10 percent below the \$10 million per year.

Again, JFO used three different levels of annual aggregate UI benefits to give a range of cost estimates that depend on the amount of UI benefits paid out in a year. In the base case of \$90 million in annual UI benefits, raising the minimum weekly benefit to \$340.00 from its current level of about \$75.00 would cost about \$8.5 million in 2020 dollars, based on JFO's preliminary estimates (again, see Table 2).⁴¹

If annual UI benefits were higher at \$118 million, JFO's preliminary estimate of the cost of raising the minimum benefit to \$340.00 is \$11.2 million. If the economy were strong and annual UI benefits were lower at \$65 million, JFO's preliminary estimate of the cost is \$6.2 million. Again, inflation and administrative costs would lead to higher total annual costs.

Raising the minimum weekly benefit from about \$75.00 to \$340.00 could have important implications for the UI program. Weekly benefits currently provide 57.8 percent of a recipient's wages from the two highest quarters in the base period (usually four of the five most recent completed quarters). A weekly benefit of \$83.00 corresponds to a weekly wage of \$143.60. Raising that recipient's weekly benefit to \$340.00 implies the recipient would receive about 2.4 times their average weekly wage while receiving UI benefits. Such a high level of benefits could lead to what is called "induced entry," meaning that some people who would not have applied for UI benefits prior to the increased minimum benefit would choose to claim benefits. Any induced entry would further raise the cost of the change in benefit amount, but the quantitative effect is difficult to estimate.

Putting aside current mainframe issues, changing the underlying weekly benefit formula could provide additional benefits to claimants without requiring the creation of either a separate funding stream, the creation of a minimum benefit, or an increase in the maximum weekly benefit. Given the current constraints of the mainframe, such an option would need to be implemented as a part of or following its replacement with a modern IT system. The primary option considered by the Committee was the creation of a progressive weekly benefit formula in which the rate of wage replacement would decrease as a claimant's base period wages reached certain thresholds.⁴² For example, a claimant's base period wages could be replaced at 65 percent up to a specific wage level, such as \$500.00, and wages above that amount could be replaced at 55 percent until the claimant reached the maximum weekly benefit amount. Thus, a claimant who had earned an average of \$500.00 per week would receive \$325.00 per week in benefits, while a claimant who had earned more than \$500.00 per week would receive \$325.00 plus 55 percent of any earnings over \$500.00 until reaching the maximum weekly benefit. This model would provide additional wage replacement for claimants with lesser means and could then gradually reduce wage replacement for claimants who had higher base period wages and are therefore entitled to a higher weekly benefit. However, such a model could have implications with respect to eligibility for

⁴¹ Again, all dollar amounts are expressed in 2020 dollars. See Appendix 4 for further details.

⁴² See Appendix 7: Progressive Unemployment Benefits Structure: Explanation and Examples.

other benefits, and any consideration should examine the potential impact on other benefit programs the unemployment claimants may participate in.

Committee Recommendation

The Committee concluded that the current UI benefit formula does not provide adequate benefits for low-income claimants. However, the existing mainframe system prevents the General Assembly from making meaningful changes to the UI benefits formula and statutes at this time. Therefore, the Committee is not providing a specific recommendation for a change to the UI benefits formula and related statutes at this time. However, the Committee encourages the General Assembly and VDOL to consider its recommendations related to the capabilities of the new IT system, which are set forth in section IX of this report.

VI. Potential Waiver or Reduction of a Period of Disqualification

Background

21 V.S.A. § 1347(e) provides that the Commissioner of Labor shall impose a period of disqualification of up to 26 weeks against any individual who received UI benefits because the individual “intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits.” During that period, the individual “shall be disqualified and shall not be entitled to receive benefits to which he or she would otherwise be entitled.”⁴³ The statute provides no authority for the Commissioner to waive or reduce this period of disqualification. Additionally, in 2012, language providing that a period of disqualification would expire “after three years from the date [of the determination] or the date of the final decision on an appeal from such determination” was repealed.⁴⁴

In examining the practices of other states, the Committee did not find examples of other states that provide authority for a discretionary waiver or reduction of a period of disqualification. However, it did find examples of states in which the period of disqualification expires after a certain period. For example, in Georgia a period of disqualification can only be imposed for the calendar quarter in which the fraud determination is made and the following four quarters, while in Rhode Island the period of disqualification lasts for one year after a fraud conviction.⁴⁵

The Committee examined potential legislative language that would reestablish a limited period of time during which a disqualification could be imposed as well as language that would permit a period of disqualification to be waived during a state of emergency that results in significant unemployment, as occurred during the early months of the COVID-19 pandemic. The Committee also examined the possibility of providing individuals with a right to petition the Commissioner for reconsideration of a fraud finding within two years after the determination is made, even if the individual fails to file a timely appeal.

Committee Recommendation

⁴³ 21 V.S.A. § 1347(e).

⁴⁴ See 2012 Acts and Resolves No. 162, § E.401.2.

⁴⁵ See, e.g., Ga. Code Ann. § 34-8-255(a)(4) and 8 R.I. Gen. Laws Ann. § 28-44-24(a).

Because the State Auditor's Office is also in the process of preparing a report on fraud and fraud prevention within the UI program, the Committee believes that it would be premature to recommend any specific actions without first considering the findings and recommendations in the Auditor's report. Therefore, the Committee recommends that during the coming legislative session, the General Assembly give further consideration to potential for limiting the period of time during which an individual can be disqualified from benefits and the potential for allowing a waiver of a period of disqualification under certain emergency circumstances. In addition, the Committee also recommends that the General Assembly consider providing individuals with a right to petition for reconsideration of a fraud determination within one year from the date of the determination so that it is consistent with other reconsideration rights under Vermont's UI laws. Finally, the Committee recommends that all of these proposals be considered in conjunction with the findings and recommendations in the Auditor's report.

VII. Potential Waiver or Reduction of Liability for an Overpayment

Background

21 V.S.A. §1347(c) requires an individual who has received an overpayment of UI benefits to repay that amount to the Commissioner. 21 V.S.A. § 1347(d) permits the Commissioner to "withhold, in whole or in part, any future benefits payable to" an individual who has received an overpayment. The statute does not provide authority to the Commissioner to waive or reduce the amount of an overpayment that an individual is liable to repay.

The Committee found that many, though not all, states provide authority to waive or reduce the amount that an individual is liable to repay when the individual is without fault. The states that provide this authority also often require a finding that requiring repayment of the benefits would be against equity and good conscience before an individual's liability may be reduced or waived.

The Committee considered requiring, or granting authority to, the Commissioner to reduce or waive the amount of an overpayment that an individual is liable to repay in instances when the individual is without fault or when requiring repayment would be against equity and good conscience, or both. The Committee also considers potentially limiting the amount that can be withheld from an individual's future weekly benefits to not more than 50 percent of the weekly benefit amount.

Committee Recommendation

The Committee recommends that the General Assembly enact legislation that would waive or reduce the amount of an overpayment that an individual is liable to repay in instances when the individual is without fault and when requiring repayment would be against equity and good conscience. However, the Committee does not have a specific recommendation for legislative language related to this issue because such language should be crafted in light of the findings and recommendations in the Auditor's report.

VIII. Nonprofit Reimbursable Employers

Background

Pursuant to 26 U.S.C. §§ 3304(6) and 3309, the State is required to provide UI coverage to the employees of nonprofit organizations with four or more employees. In addition, pursuant to § 3309(a), the State must provide the organizations with the right to elect to reimburse the Trust Fund for the amounts of UI compensation that are attributable to the organization in lieu of paying regular contributions. A state may also elect to cover nonprofit organizations with fewer than four employees, but Vermont does not do so.

Vermont law requires a covered nonprofit organization that elects to become a reimbursable employer to reimburse the Trust Fund in “an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of” the organization.⁴⁶ Each organization that has elected to become a reimbursable employer is billed by VDOL on a quarterly basis for the benefits that are attributed to it.⁴⁷ A nonprofit reimbursable employer may petition the Commissioner for permission to pay a percentage of its payroll in each calendar quarter plus an additional amount at the end of the year equal to the amount by which the payments are less than the amount of the benefits attributable to that employer. If the payments exceed the amount of benefits attributable to the employer for the year, the excess may be refunded or credited against the payments due for the next calendar year.⁴⁸ A reimbursable employer is liable for all benefits paid that cannot be charged to another employer, “including benefits paid but denied on appeal or benefits paid in error.”⁴⁹ Benefits that are improperly paid that the Commissioner orders the claimant to repay “will be credited to the [reimbursable] employer’s account when repayment . . . is actually received by the Commissioner.”⁵⁰

Act 51 charged the Committee with exploring potential options “to mitigate the impact of benefit charges attributed to reimbursable employers who paid wages to a claimant during the claimant’s base period but did not cause the claimant to become unemployed.” Such an occurrence could, depending on the length of the unemployment claim, result in significant, unanticipated liability for a reimbursable nonprofit employer and exacerbate its existing budgetary constraints.

As mentioned above, a nonprofit employer is not required to become a reimbursable employer. Instead, it elects to do so in lieu of paying regular UI contributions. According to Common Good Vermont, about 15 percent of surveyed nonprofit organizations elect to become reimbursable employers.

The trade-off inherent in electing to be a reimbursable employer is that while the employer may not be liable for regular UI contributions in the short-term, it may be required to reimburse the UI Trust Fund for a significant amount following a claim. In contrast, an employer that pays

⁴⁶ 21 V.S.A. § 1321(c)(2).

⁴⁷ 21 V.S.A. § 1321(c)(3).

⁴⁸ 21 V.S.A. § 1321(c)(3)(B)(iv).

⁴⁹ 21 V.S.A. § 1321(f).

⁵⁰ *Id.*

contributions may see its tax rate increase for three years following an unemployment claim, but it will not be required to reimburse its full liability for a claim all at once.

Vermont also offers another option for nonprofits that have elected to become a reimbursable employer. Namely, the nonprofit may request to pay a percentage of its payroll each quarter and then annually true up that amount against the actual amount of benefits that are attributable to its wages. This option both reduces the significant, all-at-once liability experienced by a normal reimbursable employer and, if the employer has no benefits liability for that year, provides a sum that can be rolled forward to reduce the amount due from the employer in the next year.

The Committee was unable to determine the extent to which nonprofit employers are aware of the potential cost of reimbursing the UI Trust Fund for benefits paid. In addition, it was not clear whether reimbursable nonprofit employers are aware that they may elect to pay a quarterly percentage in lieu of reimbursing the full amount of benefits all at once.

The Committee also examined provisions in other states' laws that could be utilized to mitigate the impact on reimbursable nonprofit employers. The two potential changes that the Committee examined were changing the manner in which benefits are charged to an employer's experience and requiring some form of bonding by reimbursable employers.

As discussed above, Vermont charges employers for benefits in proportion to the base period wages the employer paid to the claimant. This means that an employer who paid a claimant wages more than a year ago may be liable for some portion of the claimant's benefits, while the most recent employer may not be liable for the benefits that it paid to the claimant during the quarter in which the claimant became unemployed and possibly the quarter before that.⁵¹ In contrast to Vermont, seven states charge benefits to the most recent employer and six other states charge benefits in the inverse order of employment.⁵² While such a change might address the impact on some reimbursing employers, it would also dramatically impact all employers and could have unanticipated negative impacts and ripple effects throughout the UI program. The Committee did not have sufficient time to fully consider what those impacts might be.

While Vermont does not require nonprofits that become reimbursable employers to obtain a bond to ensure that they can reimburse the UI Trust Fund for benefits paid, 30 states and Washington, DC, either require such a bond or provide authority for their UI agency to require such a bond if there is reason to believe the nonprofit may not be able to reimburse the trust fund for the full amount of benefits paid.

The Committee also examined whether nonprofit organizations with fewer than four employees should also be covered by Vermont's UI law. According to Common Good Vermont, just under 18 percent of surveyed nonprofit organizations indicated that they are exempt from the UI law. In recent years, the General Assembly has heard from several employees who were unaware that the wages they earned from a small nonprofit employer would not qualify them for UI benefits. In some instances, the employer had four or more employees when the individual began working for them but later decreased its workforce, and the individual was unable to use

⁵¹ See 21 V.S.A. § 1301(17)(B).

⁵² See Appendix 8: Summary of State Laws Relating to Reimbursable Employers.

wages earned from the nonprofit to establish a UI claim. In other instances, individuals were simply unaware that the nonprofit employer was too small to be covered by the UI law.

With respect to this issue, the Committee discussed two possible options. The first is to require nonprofit employers with three or fewer employees to notify current and new employees that their wages would not make them eligible for UI compensation. VDOL testified that such a requirement would be difficult to enforce because it does not track nonprofit employers with fewer than four employees and such employers are not required to register with VDOL.

The second option is to extend coverage to all nonprofit employers, regardless of the number of employees. Due to time constraints, however, the Committee was unable to hear testimony from any organizations that would be impacted by such a change. In addition, the State does not currently track the number of nonprofits that would fall into this category, so the Committee was unable to determine how many employees and employers might be impacted by such a change.

Committee Recommendations

The Committee did not have sufficient time or information to develop a recommendation on either issue related to reimbursable nonprofit employers. With respect to the issue of mitigating the impact of benefit charges attributed to reimbursable employers who paid wages to a claimant during the claimant's base period but did not cause the unemployment, it is important for the General Assembly to develop a better understanding of the reasons why a nonprofit organization chooses to become a reimbursable employer. The General Assembly should also develop a better understanding of whether nonprofit organizations fully understand the potential costs and benefits of being either a contributing employer or a reimbursable employer and whether additional education and outreach may be helpful. In addition, the General Assembly should examine one or more bonding models employed by other states and determine if such an approach could help to mitigate impacts on reimbursable employers under certain circumstances.

With respect to extending coverage to all nonprofit organizations, the Committee believes that all employees should be covered by UI. However, the Committee is also cognizant of the small budgets and critical services provided by the many small nonprofits in Vermont. Therefore, the Committee recommends that the General Assembly seek testimony from small nonprofits that would be impacted by such a change and explore notice to employees as a potential alternative to extending coverage to all nonprofit organizations. In addition, the Committee encourages the General Assembly to work with VDOL, ADS, and the Secretary of State to explore potential options for developing better data to inform policy decisions relating to nonprofit employers and employees.

IX. RECOMMENDATIONS FOR IT SYSTEM MODERNIZATION

The current mainframe impacts every single issue that the Committee considered and prevents the development or implementation of many policy proposals that the Committee examined. Replacing the mainframe with a modern IT system is crucial to the future viability of Vermont's UI program. However, any new IT system must be developed in such a way that it can be responsive to changing policy priorities and needs. As became clear with many of the issues

explored by the Committee, the needs of the today's UI program and the people who rely on it are very different from the needs that the program was developed to address during the 1970s and 1980s. It is likely that the needs of the UI program and the technology available to meet those needs will continue to evolve during the coming decades, and the IT system must be designed to adapt to those needs and incorporate advances in technology.

With respect to the system itself, the Committee recommends that the General Assembly advocate for a system in which all variables can be adjusted to allow for development of new policies that respond to the needs of Vermonters. Of particular interest to the Committee because of its legislative charge is the ability to make adjustments to all aspects of benefits, taxes, penalties, and overpayment recovery. With respect to benefits, any new system should allow for adjustment to the weekly benefit formula and the minimum or maximum benefit as well as the implementation of a progressive benefit formula or targeted benefits like a dependent benefit. With respect to taxes, a new system should be able to make adjustments within individual tax schedules, add new tax schedules, add and process surcharges, and allow for changes to how employers are experience rated. Finally, a new system should be able to process adjustments to penalties and overpayment amounts and to retroactively correct errors that are made as a claim is filed and processed. With respect to all of these issues, the system should be designed to be able to implement short-term changes that respond to specific indicators economic health by adjusting benefit amount and length, tax rates, and penalties and overpayment recovery.

At a fundamental level, the Committee strongly recommends that the System be designed to allow for the development of changes to the underlying software and the UI program without endangering the health of the system and the ability of the UI program to function. The new IT system should be able to better track information related to employer-size, hourly wages, hours worked, earnings, and other economic and demographic data that can inform policy decisions. In short, it should enable Vermont's UI program to better serve Vermonters both now and in the future.

The replacement of the mainframe and development of the new IT system is crucial to the future success of the UI program. The Committee strongly urges VDOL, ADS, and the General Assembly to work collaboratively to ensure that the new system is developed quickly and in a manner that will serve Vermont well for years to come.

Report of the Unemployment Insurance Study Committee



*Representative Emilie Kornheiser, Chair
Chair*

Senator Christopher Pearson, Vice

Representative Michael Marcotte

Senator Michael Sirotkin

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Appendix 1: 2021 Acts and Resolves No. 51, Section 14a

Sec. 14a. UNEMPLOYMENT INSURANCE; TRUST FUND; BENEFITS; PENALTIES; REIMBURSABLE EMPLOYERS; STUDY COMMITTEE; REPORT

(a) Creation. There is created the Unemployment Insurance Study Committee to examine the solvency of Vermont's Unemployment Insurance Trust Fund, its benefit structure, potential grants of authority for the Commissioner of Labor to reduce or waive certain penalties, and potential measures to mitigate the liability of reimbursable employers for some benefit charges.

(b) Membership. The Committee shall be composed of the following four members:

(1) one current member of the House Committee on Commerce and Economic Development, who shall be appointed by the Speaker of the House;

(2) one current member of the House Committee on Ways and Means, who shall be appointed by the Speaker of the House;

(3) one current member of the Senate Committee on Economic Development, Housing and General Affairs, who shall be appointed by the Committee on Committees; and

(4) one current member of the Senate Committee on Finance, who shall be appointed by the Committee on Committees.

(c) Powers and duties.

(1) The Committee shall study the following issues:

(A) the solvency of Vermont's Unemployment Insurance Trust Fund and the amount necessary to ensure that the Trust Fund remains solvent and able to continue meeting the needs of claimants during a future economic recession and subsequent recovery;

(B) the adequacy and appropriateness of Vermont's unemployment insurance benefits, whether Vermont's benefits should be increased, and whether the Vermont statutes related to benefits should be modified in any manner;

(C) instances for which it may be appropriate to provide the Commissioner of Labor with authority to reduce or waive a period of disqualification imposed in relation to a determination of unemployment insurance fraud;

(D) instances for which it may be appropriate to provide the Commissioner of Labor with authority to reduce or waive an individual's liability to repay overpaid unemployment insurance benefits; and

(E) potential statutory changes to mitigate the impact of benefit charges attributed to reimbursable employers who paid wages to a claimant during the claimant's base period but did not cause the claimant to become unemployed.

(2) In studying the issues set forth in subdivision (1) of this subsection, the Committee shall compare Vermont's unemployment insurance system with the unemployment insurance systems of other states and specifically identify:

(A) best practices and high performing aspects of other states' unemployment insurance systems;

(B) shortcomings, challenges, and opportunities for improvement in Vermont's unemployment insurance system;

(C) potential changes and improvements to the Vermont Department of Labor's staffing, resources, information technology, training, funding, communications, practices,

and procedures that are necessary to address the shortcomings, challenges, and opportunities for improvement identified pursuant to subdivision (B) of this subdivision (c)(2);

(D) potential statutory changes necessary to address the shortcomings, challenges, and opportunities for improvement identified pursuant to subdivision (B) of this subdivision (c)(2); and

(E) to the extent possible, the anticipated cost of implementing the changes and improvements identified pursuant to subdivisions (C) and (D) of this subdivision (c)(2) and any ongoing costs associated with such changes and improvements.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Counsel, the Office of Legislative Operations, and the Joint Fiscal Office.

(e) Report. On or before December 15, 2021, the Committee shall submit a written report to the House Committees on Appropriations, on Commerce and Economic Development, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Speaker of the House shall call the first meeting of the Committee to occur on or before September 15, 2021.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Committee shall cease to exist on December 31, 2021.

(g) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than 3 meetings. These payments shall be made from monies appropriated to the General Assembly.

Appendix 2: Witness List

- Michael Harrington, Commissioner, Department of Labor
- Cameron Wood, Director, Unemployment Insurance Division, Department of Labor
- John Quinn, Secretary, Agency of Digital Services
- Shawn Nailor, Deputy Secretary, Agency of Digital Services
- Kelli Kazmarski, Staff Attorney, Vermont Legal Aid
- Morgan Webster, Executive Director, Common Good Vermont
- Emma Paradis, Program Associate, Common Good Vermont
- Joyce Manchester, Senior Economist, Joint Fiscal Office
- Damien Leonard, Legislative Counsel, Office of Legislative Council

Staff for the Study Committee

- Damien Leonard, Legislative Counsel, Office of Legislative Counsel
- Joyce Manchester, Senior Economist, Joint Fiscal Office
- Michael Ferrant, Director of Legislative Operations
- Phil Petty, Committee Assistant

Appendix 3: The Feasibility of Changing the Unemployment Insurance Mainframe Program

Lisa Gauvin, the IT consultant for the Joint Fiscal Office, wrote the following memo to Catherine Benham, Chief Fiscal Officer for the Joint Fiscal Office, regarding the feasibility of changing the UI mainframe program.

MEMORANDUM

To: CATHERINE BENHAM, CHIEF FISCAL OFFICER, JOINT FISCAL OFFICE

From: LISA M GAUVIN, IT CONSULTANT FOR THE JOINT FISCAL OFFICE

Subject: THE FEASIBILITY OF CHANGING THE UNEMPLOYMENT INSURANCE
MAINFRAME PROGRAM

Date: November 1, 2021

Executive summary

This analysis provides detailed concerns about changing the mainframe UI program and identifies specific factors that contribute to risks posed by changes. This analysis also outlines unintended consequences to consider when attempting workarounds outside the UI program to enact desired changes.

The key findings presented here include the following:

- Any changes to the program are extremely risky and should be avoided. The reasons include: no way to safely make and test changes, no documentation, and limited access to skilled programmers.
- This is no fault of current staff but a result of using a 40-year-old program.
- It is important to recognize that if this program were written in a modern programming language and conformed to today's development and documentation standards, the expectations for changes within this program would be wholly justified.
- The new modernized program must have ease of use, accessibility, security, and rigorous protection against fraud. It must also provide flexibility to *enable* the policy vision of state leaders.

Explanation of the key findings

In recent weeks, JFO has received multiple requests for the legislative IT consultant to consider the feasibility and risks of changing the Vermont Department of Labor's (VDOL) unemployment insurance (UI) mainframe program to support enacted and proposed changes. Outgoing IT Consultant for the Joint Fiscal Office, Dan Smith, and I assessed these proposed changes and describe them in detail below.

After careful analysis, Dan Smith and I each concluded that changes to the state mainframe UI program pose a high degree of risk and should be avoided for the following reasons:

- The mainframe UI program does not have the traditional environments for development and testing that allow safe changes to be made in modern systems⁵³. This is highly unusual, if not unique, for a critical citizen-accessed system in this state.
- The lack of these environments should restrain the state from making changes to code because of the high risk to day-to-day business conducted using the UI program. These risks include, but are not limited to:
 - the inability for citizens, employers, or state staff to access the UI program for an unpredictable amount of time,
 - corrupt data,
 - data loss,
 - incorrect calculations.
- There is no documentation of the UI program to inform code changes. This lack of documentation means that a change in program code could have unpredictable results, including system failure. If the code impacts other data, processes, or calculations, programmers may not realize that a change caused an error in another part of the program until a later date.
- The state does not have staff skilled in F-COBOL, the code used in the UI program. The state relies on contractors to address changes or issues, and there is no documentation to guide them.
- The findings in this analysis are not the result of the negligence of the current staff, but an outcome of letting an essential system operate without an upgrade for 40 years.
- As state staff works on the specification for the new modernized system, their intent is to include flexibility to enable future policy changes. I have already agreed to work with them on this.
- We advise state leaders to be aware that efforts to change the UI program, whether in the existing UI program itself or through workarounds outside it, may have the unintended consequence of diverting staff away from work on the new UI system.

For more information about the assessment of the environments in use by the UI program, please see Addendum 1 of this document.

Factors that contribute to the risk of making changes

⁵³ The use of the word “systems” versus “program” is intentional. Modern information systems are made up of application, database, reporting and authentication servers and are best describes as “systems” versus the limited components of the existing UI program.

After careful analysis of the documents and discussions, Dan Smith and I identified the following factors that are the basis of why changes to the UI program are risky:

- Technical limitations – There are no development or **true** test environments set up to develop and test a revised UI program. *Please see ADDENDUM 1 of this memo for more details about this statement.*
Regarding changes related to the extra \$25 payment, more analysis would be needed to confirm changes did not exceed the character screen limits of the existing programming language. (This refers to the number of characters allowed on the old “green screen” used by F-COBOL.) According to Deputy Secretary Nailor, there are finite limits to expanding this part of the program, and it is unclear if this change would reach those limits.
- Documentation limitations – There is no documentation of the UI program. Documentation is required for anyone to make changes in a safe and timely manner. Deputy Secretary Nailor is exploring if old penalty week code in the UI program can be reused. He noted that it was a problem that they didn’t know the reason why the code had been removed. It could relate to problems with functionality in the program, or it could have been a policy directive, or still another technical reason. *(See the next section in this document, “How we approached this feasibility and risk analysis,” for the context of the penalty week information.)*
- Human resource limitations – VDOL doesn’t have the staff skilled in the F-COBOL programming language used to write the UI program interface. The state is dependent on contractors who know this language, but without documentation, even experienced F-COBOL programmers cannot know the impact of the changes they make. It was relayed to me that if a change in the code is required, VDOL contacts ADS, who contacts a contractor, who makes the change, notifies ADS, who then notifies VDOL the change is complete. In addition, this team is also involved with documenting requirements and developing an RFP for the replacement system. Deputy Secretary Nailor also shared that ADS has a staff of 16 assigned to VDOL, but currently has six open positions. Human resource limitations should be carefully considered when asking for workarounds to make desired changes. In many cases, the same staff is charged with developing the RFP for the new UI program.
- Schedule limitations – Even if the above limitations could be resolved, it would not be possible to make changes this fiscal year. This is particularly relevant for the extra \$25 benefit.

Dan Smith and I believe **each** of the above findings would be enough to justify a decision not to alter the UI program.

It has been shared with me that VDOL changed the maximum benefit amount in the program successfully in the last year or two. A more recent change caused errors due to staff changes and the lack of documentation of the code that should be adjusted when this change is made. This is a reminder that successful changes in the past do not guarantee future success.

We conclude that the risks associated with making code changes without the best practice use of dedicated development, test, and production environments coupled with the challenges of

recovering a critical 40-year-old mainframe program (if a change causes the system to go down) within an acceptable timeframe, are significant. We advise against changes to the UI program.

How we approached this feasibility and risk analysis

To assess the risks that changes to the UI program presented, Dan Smith and I looked at two specific proposed changes.

In one instance, we were asked to assess VDOL's decision not to alter the UI program to distribute the extra \$25 benefit authorized in Act 51.

In another instance, I looked at the risk of changing the existing penalty weeks functionality in the program. In a recent meeting with the Unemployment Insurance Study Committee, Deputy Secretary Shawn Naylor committed to *exploring* the possibility of a change to the penalty weeks functionality in the program. This commitment involved assessing inactive code in the program that, on the surface, appeared to make the requested change to penalty weeks functionality.

When examining the risk of changing the mainframe program, Dan and I did the following:

- Dan reviewed Act 51, documents from legislative testimony, and Commissioner Harrington's letter to Sen. Balint of 9/1/2021.
- Dan had discussions with Commissioner Michael Harrington and Cameron Wood, UI Program Director.
- I reviewed Dan's findings and had remaining technical questions, which I discussed with ADS Deputy Secretary Shawn Nailor. This discussion was regarding the decision not to change the program to accommodate the extra \$25 payment included in Act 51.
- I reviewed Deputy Secretary Nailor's testimony to the Unemployment Insurance Study Committee on October 19th regarding penalty weeks.
- I met with Deputy Secretary Nailor on October 26th to ask additional technical questions about the program environment.

Next Steps

It is important to recognize that if this program were written in a modern programming language and conformed to today's development and documentation standards, the expectations for changes within this program would be wholly justified.

The only acceptable outcome of this situation will be the implementation of a new UI system that meets the 21st-century expectations of Vermont citizens, which includes ease of use, accessibility, security, and rigorous protection against fraud. It must also provide flexibility to *enable* the policy vision of state leaders.

Deputy Secretary Nailor is very supportive of the idea of working together to ensure the upcoming RFP includes requirements that will provide flexibility to support the type of changes suggested by the UI Study Group.

Please reach out if you have any questions about this analysis or its conclusions.

Addendum 1: Impact of Mainframe UI Environments On Risk

A modern system includes, at a minimum, three environments and sometimes a fourth pre-production environment. In its most basic terms, an environment consists of a program interface and a database where data is input via the program interface. Each environment of a modern system usually includes an application server, database server, authentication server, and a reporting server. This contrasts with the outdated UI program, which is simplistic in nature.

The three typical environments (with optional fourth listed) are:

- **Development** – Environment where developers write and change code and conduct preliminary testing.
- **Test** – Environment that is a replica of the production environment. Developers move changes from the development environment to the test environment, and rigorous testing is done here. Because the test environment is set up like production, there is relative assurance that once an altered or new portion of code passes testing, it will work when moved to production.
- **Pre-Production (optional)** – **This is usually used in complex systems only** – where you may have numerous complex modules that must work together. In the test environment you would test the module, in pre-production you would test the intersection points between all modules as a final test.
- **Production** – This is where “live” data and current programs are in use.

The current mainframe UI system environment is set up differently:

- **Development** – Does not exist
- **Test** – Does not exist
- **Pre-Production** – The UI program includes an **Edit Environment** that I would classify as a hybrid pre-production environment. I would classify it like this because its purpose is to ensure edited data from the production environment is “checked” for errors before the corrected data is “fixed” in production. This means it is a required production process that is most likely used often if not every day.
- **Production Environment** – Does exist

What is the purpose of the UI program edit environment and why is it needed?

This UI edit environment was described as the environment where “edits” are made to production data because the production interface does not allow edits via the user interface. This means all edits must be made within the data stored in the system. The UI program doesn’t store information in discreet fields but long strings of data. To illustrate this, I created this fictional string of data, but for UI, the data string is probably hundreds of characters long.

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If incorrect data is entered into the production environment, a programmer must go into the long string of data and correct the inaccurate data. The current process is to move the string to the test environment, change the incorrect data in the string, and then load all updated data overnight via a batch file process. If the corrected data does not trigger errors during the overnight run, a programmer then queues the strings of corrected data into production using the same process.

Why is all of this important?

I am sharing this information to make this important point. The current UI environment doesn't include a development environment and a TRUE test environment. Best practices require testing changes to codes in a dedicated test environment.

The UI edit environment, which I classified as a pre-production environment, should be considered part of a production process because it is the only way to test edits before loading them in production. This process is probably used often if not daily.

If the state uses this environment to test code changes to enact a policy change, it risks making the environment unavailable for the typical daily edits. What happens then? Would programmers risk loading untested changes directly in the production environment? In addition, because there is no documentation, it is possible that a change could cause a problem that might not be evident until calculations or reports are run – and then how would it be possible to back out the changes?

Not having a true development and test environment risks bringing down the entire UI system for an unpredictable amount of time.

Appendix 4: Examples of Solvency Surcharge Provisions

Examples of Solvency Surcharge Provisions

Prepared by Damien Leonard, Legislative Counsel
October 19, 2021

State	Surcharge Amount	When Charged?	Where are Funds Deposited?	Permissible Uses?	Notes
AK	<ul style="list-style-type: none"> • Difference between Reserve Rate and 3% • No greater than 1.1% • Cannot increase by more than 0.3% from year to year 	<ul style="list-style-type: none"> • When Reserve Rate is below 3% • Reserve Rate equals UITF balance divided by payroll of covered employers in previous 12 months 	UITF	Benefits and other UITF uses.	Credit if Reserve Rate is greater than 3%
CA	Each employer's tax rate multiplied by 1.15	When balance of UITF is less than 0.6% of wages in covered employment	UITF	Benefits and other UITF uses.	
CT	<ul style="list-style-type: none"> • Amount necessary to maintain UITF at balance equal to AHCM of 1.0 • No greater than 1.4% 	When balance of UITF is projected to drop below AHCM of 1.0	UITF	Benefits and other UITF uses.	Employers receive reduced rate during next year if UITF ends year above AHCM of 1.0
GA	Increase in tax rates by 25%-100% depending on Reserve Ratio	<ul style="list-style-type: none"> • Statewide Reserve Ratio below 1.7% • Reserve Rate equals UITF balance divided by payroll of covered 	UITF	Benefits and other UITF uses.	Employers receive rate reduction when Reserve Ratio is above 2.4%

State	Surcharge Amount	When Charged?	Where are Funds Deposited?	Permissible Uses?	Notes
		employers in previous year			
ID	<ul style="list-style-type: none"> Equal to 20% of taxable wage rate Payable by all taxable employers except deficit rated employers paying a higher deficit tax rate 	<ul style="list-style-type: none"> When Reserve Fund is less than 1% of state taxable wages from two years ago. 	Employment Security Reserve Fund	<ul style="list-style-type: none"> Loans to UITF Security for federal loans Repayment of loans and interest 	
IL	0.4-0.55%	Permanent	UITF or, if bond obligations outstanding, the Master Bond Fund	<ul style="list-style-type: none"> Benefits and other UITF uses; or Bond obligations 	
KS	13-26% increase in employer tax rates depending on UITF percentage of AHCM	Applies when UITF is less than 75% of AHCM	UITF	Benefits and other UITF uses	13-26% decrease in employer tax rates when UITF is greater than 125% of AHCM
LA	Up to 30% of employer's quarterly contributions	UITF projected to drop below \$100million in next four calendar quarters	UITF	Benefits and other UITF uses	10% reduction in tax rates if UITF exceeds \$400million
MO	<ul style="list-style-type: none"> 0.25%-1.5% for max rate employers Increases by 0.25% for each additional year at max rate 	<ul style="list-style-type: none"> Employers taxed at maximum rate for 2+ consecutive years subject to max rate surcharge All employers subject to 	UITF	Benefits and other UITF uses	

State	Surcharge Amount	When Charged?	Where are Funds Deposited?	Permissible Uses?	Notes
	<ul style="list-style-type: none"> 10-30% increase for all employers 	<p>solvency increase when UITF drops below \$450million</p>			
NJ	10% increase	<ul style="list-style-type: none"> Reserve ratio below 1.0% Reserve ratio is UITF balance divided by total taxable wages 	UITF	Benefits and other UITF uses	
OH	0.025-0.2% plus additional percentage derived from average contribution rate of all employers	<ul style="list-style-type: none"> 15% or more below minimum safe level Minimum safe level is amount equal to two standard deviations above average UI benefits from 1970 to most recent CY 	UITF	Benefits and other UITF uses	
OK	Up to 33.3% of UI tax liability for last quarter as necessary to maintain UITF balance of \$25million	UITF projected to drop below \$25million in next quarter	UITF	Benefits and other UITF uses	
PA	<ul style="list-style-type: none"> Surcharge of 4-8% on contributions due Rate of contribution increased by 0.1-0.75% 	<ul style="list-style-type: none"> Surcharge triggered when ratio of UITF balance to average benefit cost for past 3 	UITF	Benefits and other UITF uses	Surcharge of - 1.5% when ratio of UITF balance to average benefit cost for past 3 years is at least 1.5

State	Surcharge Amount	When Charged?	Where are Funds Deposited?	Permissible Uses?	Notes
	depending on ratio of UITF balance to average benefit costs for past 3 years	<p>years is less than 1.25</p> <ul style="list-style-type: none"> • Contribution rate increased when ratio of UITF balance to average benefit costs for past 3 years is less than 1.1 			
SD	0.1-1.5%	UITF balance less than \$11million	UITF	Benefits and other UITF uses	
VA	0.2%	<ul style="list-style-type: none"> • UITF balance is 50% or less of adequate fund balance • Adequate fund balance is 138% of AHCM 	UITF	Benefits and other UITF uses	
WA	Up to 0.2%	UITF balance is insufficient to provide 7 months of benefits	UITF	Benefits and other UITF uses	

Appendix 5: Vermont Unemployment Insurance Trust Fund: Data and Options

Part 1. Data. Figures 1 and 2 in the text are based on the following data showing Trust Fund Balances and Average High Cost Multiples for Vermont, 2002 to 2021.

Year	Quarter	Trust Fund Balance(000)	Average High Cost Multiple		Year	Quarter	Trust Fund Balance(000)	Average High Cost Multiple
2002	3	NA	NA		2012	1	\$32,480	0
2002	4	NA	NA		2012	2	\$75,114	0
2003	1	\$261,339	NA		2012	3	\$75,622	0
2003	2	\$261,656	NA		2012	4	\$80,100	0
2003	3	\$257,294	NA		2013	1	\$71,859	0
2003	4	\$248,152	NA		2013	2	\$110,507	0
2004	1	\$225,780	1.75		2013	3	\$79,457	0.45
2004	2	\$232,966	1.8		2013	4	\$85,353	0.5
2004	3	\$231,892	1.75		2014	1	\$73,857	0.45
2004	4	\$226,959	1.69		2014	2	\$122,267	0.7
2005	1	\$207,341	1.53		2014	3	\$146,123	0.85
2005	2	\$221,074	1.64		2014	4	\$152,934	0.85
2005	3	\$219,854	1.59		2015	1	\$141,519	0.8
2005	4	\$213,378	1.53		2015	2	\$192,993	1.11
2006	1	\$189,622	1.32		2015	3	\$220,244	1.21
2006	2	\$202,518	1.43		2015	4	\$230,963	1.26
2006	3	\$200,828	1.43		2016	1	\$222,054	1.21
2006	4	\$195,303	1.38		2016	2	\$272,369	1.51
2007	1	\$170,724	1.16		2016	3	\$299,665	1.61
2007	2	\$183,544	1.27		2016	4	\$310,194	1.66
2007	3	\$184,518	1.27		2017	1	\$299,406	1.61
2007	4	\$177,613	1.22		2017	2	\$353,539	1.86
2008	1	\$149,982	1.01		2017	3	\$380,566	2.01
2008	2	\$160,643	1.06		2017	4	\$389,954	2.06
2008	3	\$153,975	1.01		2018	1	\$380,927	2.01
2008	4	\$137,837	0.9		2018	2	\$431,606	2.21
2009	1	\$89,072	0.58		2018	3	\$456,190	2.36
2009	2	\$75,275	0.53		2018	4	\$464,156	2.36
2009	3	\$46,872	0.32		2019	1	\$453,306	2.26
2009	4	\$23,038	0.16		2019	2	\$493,923	2.46
2010	1	\$1,376	0		2019	3	\$510,986	2.51
2010	2	\$16,907	0		2019	4	\$516,159	2.51
2010	3	\$7,713	0		2020	1	\$503,767	2.46
2010	4	\$1,363	0		2020	2	\$331,444	1.66
2011	1	\$1,376	0		2020	3	\$260,191	1.31
2011	2	\$37,763	0		2020	4	\$222,169	1.11
2011	3	\$54,804	0		2021	1	\$210,520	1.06
2011	4	\$54,533	0		2021	2	\$234,657	-

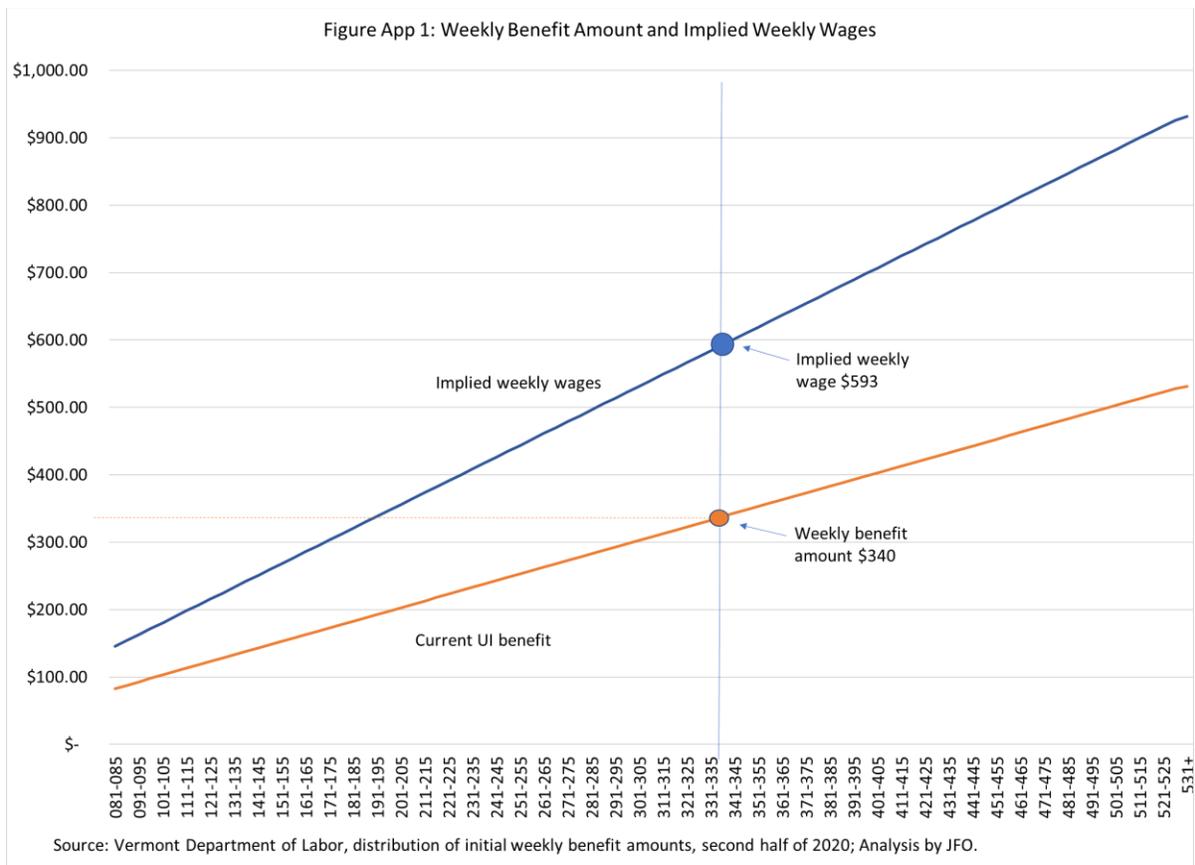
Source: U.S. Department of Labor, Employment & Training Administration; last updated December 2, 2021.

Part 2. Technical Details Underlying the JFO Estimates of Raising the Maximum and Minimum Weekly UI Benefits

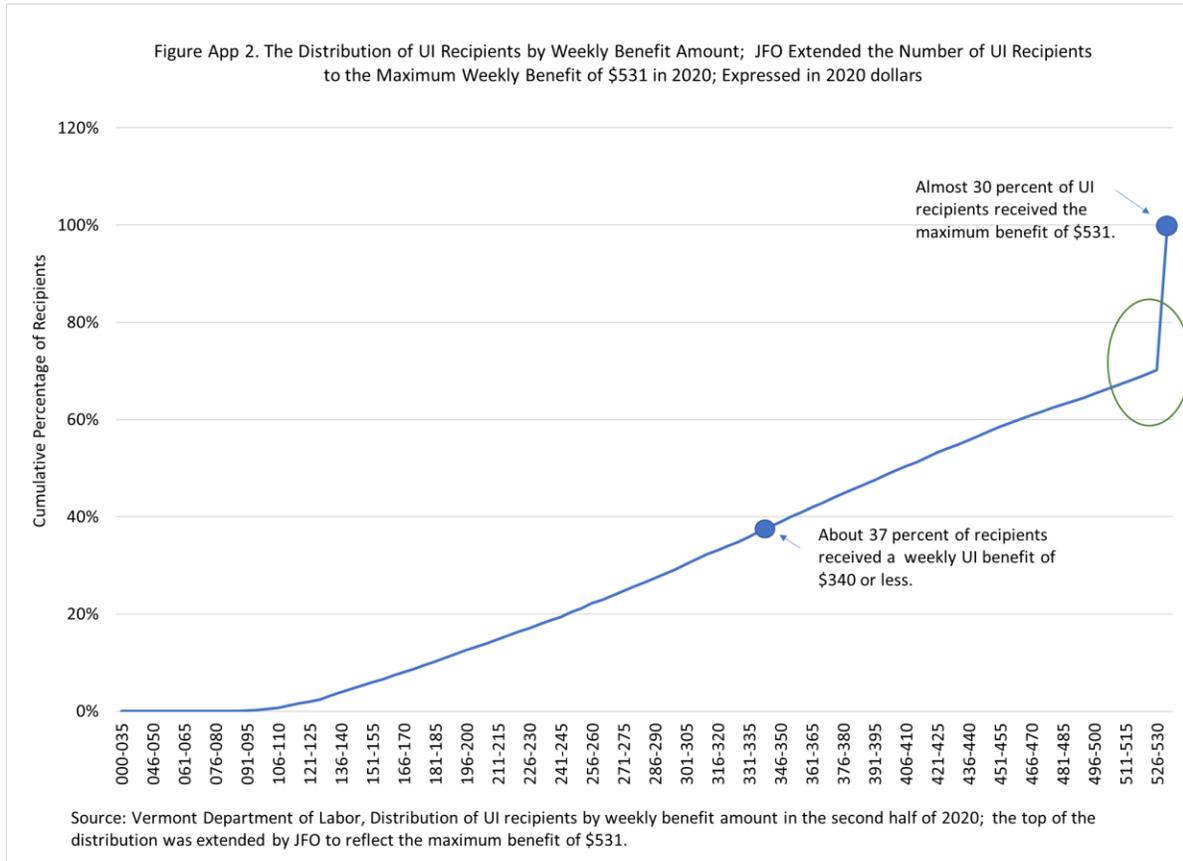
JFO would not have been able to analyze changes to the UI Trust Fund without assistance from the Vermont Department of Labor (VDOL). JFO is grateful to Mathew Barewicz, Cameron Wood, and others at the Vermont Department of Labor for helpful discussions regarding the methodology that underlies the JFO estimates in this report.

The estimate of the cost of raising the maximum weekly UI benefits rests on two critical distributions provided by VDOL. The first is the distribution of weekly UI benefit amounts in the second half of 2020 according to the initially calculated weekly benefit amount at the time of filing the first claim. The second is the distribution of reported wage earnings in 2019 for UI recipients in 2020 who received the maximum weekly benefit amount.

JFO assumed that each initial weekly benefit amount equals 57.8 percent of the recipient’s average weekly wage during their two highest quarters of earnings in recent years. Figure App 1 shows the implied weekly wage for each level of the weekly benefit amount up to the 2020 maximum benefit of \$531 in the second half of 2020.

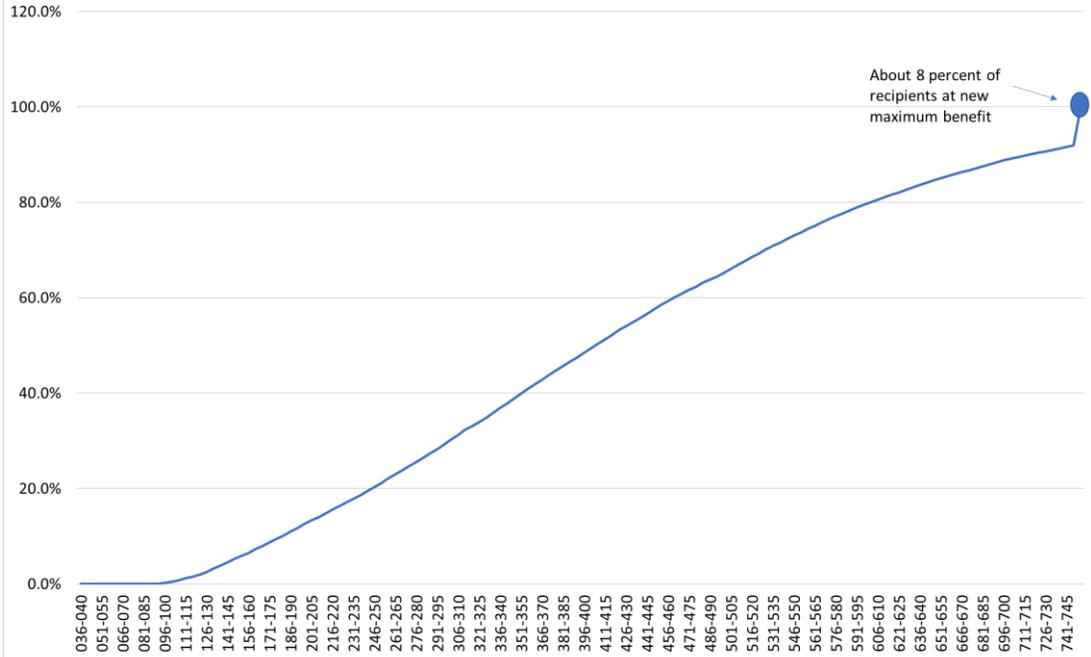


To estimate the cost of raising the minimum or maximum weekly benefit amount, JFO needed to know how many recipients received specific levels of weekly benefits. Figure App 2 shows the distribution of recipients by initial weekly benefit amount in the second half of 2020. Subsequent analysis suggests that the distribution of initial weekly benefit amounts is not much different from that of actual benefit amounts paid. About 37 percent of recipients received a weekly benefit of \$340 or less, and almost 30 percent of UI recipients were eligible for the maximum benefit.



To estimate the cost of raising the maximum benefit above \$531, the maximum benefit in the second half of 2020, JFO also needed information about the average weekly wages of UI recipients at the maximum. The Vermont Department of Labor provided highly aggregated information on reported wage earnings in 2019 for UI recipients at the maximum benefit during calendar year 2020. Figure App 3 shows the distribution of UI recipients by initial weekly benefit amount as extended by JFO up to the hypothetical maximum benefit amount of \$751. About 8 percent of UI recipients are at the new maximum benefit of \$751. Of course, induced entry could expand the number of people with higher incomes who choose to apply for UI benefits if they become unemployed and are aware of higher available weekly benefits.

Figure App 3. Distribution of UI Recipients by Initial Weekly Benefit Amount, Extended by JFO up to a New Maximum Benefit at \$751; Expressed in 2020 Dollars



Source: Vermont Department of Labor, Distribution of UI recipients by weekly benefit amount and distribution of weekly wage for UI recipients at the maximum benefit, 2020; Analysis by JFO.

Appendix 6: 50 State Summary of UI Benefit Rates

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
VT	1/45 of wages in two high quarters of base period	\$81.00	\$583.00	57%	N/A
AL	1/26 of average wages paid to individual during two high quarters of base period § 25-4-72(b)	\$45.00. Individuals with WBA amount below \$45.00 are not entitled to receive benefits. § 25-4-72(b)(2)	\$275.00 § 25-4-72(b)(5)	N/A	N/A
AK		\$56.00	\$370.00	N/A	\$24.00/dependent; \$72.00 max for 3 dependents
AZ	1/25 of wages in high quarter of base period	\$190.00	\$240.00	N/A	N/A
AR	1/26 of average wages paid to individual during four quarters of base period	\$81.00	\$451.00	66.67%	N/A
CA	1/23-1/26 of wages in high quarter of base period	\$40.00	\$450.00	N/A	N/A
CO	<ul style="list-style-type: none"> • 60% of wages in high quarter of base period; or • 50% of wages in high 	\$25.00	\$590.00 or \$649.00	50-55% of SAWW depending on benefit formula	N/A

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
	quarter of base period				
CT	1/26 of average wages during two high quarters of base period plus dependent allowance	\$15.00	\$667.00	60%	\$15.00/dependent; \$75.00 max for 5 dependents
DE	1/46 of wage in two high quarters of base period	\$20.00	\$400.00	N/A	N/A
DC	1/26 of wages in high quarter of base period	\$50.00	\$444.00	50%	N/A
FL	1/26 of wages in high quarter of base period	\$32.00	\$275.00	N/A	N/A
GA	1/42 of wages in two high quarters of base period	\$55.00	\$365.00	N/A	N/A
HI	1/21 of wages in high quarter of base period	\$5.00	\$639.00	70%	N/A
ID	1/26 of wages in high quarter of base period	\$72.00	\$463.00	55%	N/A
IL	47% x wages in 2 high quarters of base period divided by 26	\$51.00	\$505.00	64.7%	<ul style="list-style-type: none"> • 17.6% of AWW or \$26.00, whichever is greater, for dependent child up to \$185.00 • 9% of AWW or \$15.00, whichever is greater, for dependent spouse up to \$93.00
IN	47% of AWW in base period	\$37.00	\$390.00	N/A	N/A
IA	1/19-1/23 of wages in high quarter of base period	\$73.00	\$493.00	53-65% depending on # of dependents	<ul style="list-style-type: none"> • \$4.00-\$30.00/dependent depending on WBA and number of dependents; max of 4 dependents

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
					<ul style="list-style-type: none"> • Formula for WBA amount changes depending on number of dependents from 1/23 of HQW for 0 dependents to 1/19 of HQW for 4 dependents. • Max WBA also increases depending on # of dependents from 53% of SAWW for 0 dependents to 65% of SAWW for 4 dependents
KS	4.25% of wages in high quarter of base period	\$125.00	\$503.00	55%	N/A
KY	1.1923% of base period wages	\$39.00	\$569.00	62%	N/A
LA	1/25 of average wages of four quarters	\$10.00	\$247.00	66.67%	N/A
ME	1/22 of average wages in two high quarters of base period	\$80.00	\$511.00	52%	\$10.00/dependent; max of \$255/week or 50% of WBA, whichever is less
MD	1/24 of wages in high quarter of base period plus dependent allowance	\$50.00	\$430.00	N/A	\$8.00/dependent; max of \$40.00 for 5 dependents
MA	<ul style="list-style-type: none"> • 1/13 of wages in high quarter of base period • 1/21-1/26 of wages in high quarter of base period 	\$103.00	\$855.00	57.5%	\$25.00/dependent; capped at 50% of WBA (\$427.00)
MI	4.1% of wages in high quarter of base period	\$150.00	\$362.00	N/A	\$6.00/ dependent; max of \$30 for 5 dependents

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
MN	Greater of: <ul style="list-style-type: none"> • 50% of 1/13 of wages in high quarter of base period up to 42% of SAWW; or • 50% of base period wages up to 66.67% of SAWW 	\$29.00	\$491.00 or \$762.00	66.67%	N/A
MS	1/26 of wages in high quarter of base period	\$30.00	\$235.00	N/A	N/A
MO	4.0% of wages in high quarter of base period	\$35.00	\$320.00	N/A	N/A
MT	<ul style="list-style-type: none"> • 1.9% of wages in two high quarters of base period; or • 1.0% of total base period wages 	\$169.00	\$572.00	66.5%-67.5% depending on tax schedule.	N/A
NE	50% of average weekly wage of high quarter of base period	\$70.00	\$456.00	50%	N/A
NV	1/25 of wages in high quarter of base period	\$16.00	\$483.00	50%	N/A
NH	0.8-1.1% of annual wages	\$100.00	\$427.00	N/A	N/A
NJ	60% of AWW during base period	\$132.00	\$731.00	56.67%	7% of WBA for 1 st dependent; 4% for each additional dependent; max of \$93.00; WBA +

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
					dependency allowance cannot exceed max WBA
NM	53.5% of AWW in high quarter of base period	\$90.00	\$484.00	53.5%	\$25.00/dependent; max of \$50.00 for 2 dependents
NY	1/26 of wages in high quarter of base period	\$108.00	\$504.00	N/A	N/A
NC	Last 2 quarters of base period divided by 52	\$15.00	\$350.00	N/A	N/A
ND	1/65 of wages in two high quarters of base period	\$43.00	\$640.00	<ul style="list-style-type: none"> • 62%; or • if avg. contribution rate paid by employers is below national avg., 65% 	N/A
OH	50% of AWW during base period plus dependent allowance	\$140.00	\$498.00	50-66.67% depending on # of dependents	Dependents increase max WBA. (50% of AWW for 0; 60% of AWW for 1-2; and 66.67% for 3+); max dependent allowance is \$174.00.
OK	1/23 of wages in high quarter of base period	\$16.00	\$461.00	Depending on condition of fund: <ul style="list-style-type: none"> • \$520; or • 50-60% 	N/A
OR	1.25% of base period wages	\$157.00	\$673.00	64%	N/A
PA	1/24-1/25 of wages in high quarter of base period plus dependent allowance	\$68.00	\$583.00	66.67%	\$5.00 for 1 st dependent, \$3.00 for up to 1 additional dependent; max of \$8.00
RI	3.85% of the average of the total wages in two high	\$59.00	\$661.00	57.5%	Greater of \$15.00 or 5% of WBA for each child; max of \$165.00 for 5 children

State	UI Benefit Rate	Minimum	Maximum	Max % of SAWW	Dependent Benefit?
	quarters of base period				
SC	1/26 of wages in high quarter of base period	\$42.00	\$326.00	66.67%	N/A
SD	1/26 of wages in high quarter of base period	\$28.00	\$428.00	50%	N/A
TN	1/52 of wages in two high quarters of base period	\$30.00	\$275.00	N/A	N/A
TX	1/25 of wages in high quarter of base period	\$70.00	\$535.00	47.6%	N/A
UT	1/26 of wages in high quarter of base period minus \$5.00	\$35.00	\$617.00	62.5% ⁵⁴ - \$5.00	N/A
VA	1/50 of wages in two high quarters of base period	\$60.00	\$378.00	N/A	N/A
WA	3.85% of wages in two high quarters of base period	\$201.00	\$844.00	63%	N/A
WV	55% of 1/52 of median wages in worker's wage class	\$24.00	\$424.00	66.67%	N/A
WI	4.0% of wages in high quarter of base period	\$54.00	\$370.00	N/A	N/A
WY	4.0% of wages in high quarter of base period	\$38.00	\$526.00	55%	N/A

⁵⁴ Percentage of insured average weekly wages.

Appendix 7: Progressive Unemployment Benefits Structure: Explanation and Examples

Current Unemployment Benefits Formula in Vermont

- Two highest quarters in base period divided by 45 (roughly 57.7% of claimant’s average weekly wage)
- Maximum benefit is \$583.00 (57% of State Average Weekly Wage for previous year ending May 31)
- Wage replacement is flat for all claimants up to the maximum weekly benefit

Progressive Unemployment Benefits Formula

- Wage replacement rate varies depending on claimant’s income with greater wage replacement for lower incomes
- Similar concept to progressive tax rates in which individuals with higher income are taxed at a greater rate than individuals with lower income
- Basic example:
 - Claimant’s base period wages up to X are replaced at 65% and wages above X are replaced at 55%.
 - Can include maximum and minimum weekly benefits to further increase wage replacement for the lowest income claimants and to further decrease it for the highest income claimants.

Two Proposals for Progressive Unemployment Benefits Structures

Economic Policy Institute:

Wage Amount	Replacement Rate	Minimum/Maximum Benefit	Range of Benefits
Up to 50% of SAWW (~\$511.00)	85%	\$307.00 (minimum)	\$307.00-\$434.00
51-100% of SAWW	70%	N/A	\$435.00-\$793.00
Over 100% of SAWW	50%	\$1533.00	\$794.00-\$1533.00

Proposal is available at: <https://www.epi.org/publication/section-5-benefit-levels-increase-ui-benefits-to-levels-working-families-can-survive-on/>

*Arindrajit Dube*⁵⁵

Wage Amount	Replacement Rate	Minimum/Maximum Benefit	Range of Benefits
Up to \$400.00	80%	\$230.00 (~20% of US AWW in 2020)	\$230.00-\$320.00
\$401.00-\$700.00	65%	N/A	\$321.00-\$515.00
Over \$701.00	50%	\$910.00 (~80% of US AWW in 2020)	\$515.00-\$910.00

Proposal is available at:

https://www.hamiltonproject.org/assets/files/Unemployment_InsurancePP_v4.2.pdf

⁵⁵ Proposal amounts are based on 2020 U.S. Average Weekly Wage.

Appendix 8: Summary of State Laws Relating to Reimbursable Employers

State	How are reimbursing employers billed for chargeable benefits?	How are benefit charges allocated for reimbursable employers?	Bonding Requirement?
VT	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	No
AL	Billed each quarter	Proportion of base period wages	Yes
AK	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	Yes
AZ	Billed each quarter	Proportion of base period wages	No
AR	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	Yes
CA	Billed each quarter	Proportion of base period wages	No
CO	Billed each quarter	Inverse order of employment	Maybe
CT	Billed each quarter	Proportion of base period wages	Maybe
DE	Billed each quarter	Each employer charged amount of benefit wages paid by that employer during base period	No
DC	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	Maybe
FL	Billed each quarter	Proportion of base period wages	No
GA	Billed each quarter	Most recent employer	Yes
HI	Billed each quarter	Proportion of base period wages	Yes
ID	<ul style="list-style-type: none"> Billed each quarter; May elect to pay a percentage of payroll with annual adjustment for over/underpayment. 	Employer who paid largest portion of wages	Maybe

State	How are reimbursing employers billed for chargeable benefits?	How are benefit charges allocated for reimbursable employers?	Bonding Requirement?
IL	Billed each quarter	Most recent 30-day employer	No
IN	Billed each month	Inverse order of employment	No
IA	Billed each quarter	Inverse order of employment	No
KS	Billed each quarter	Proportion of base period wages	Maybe
KY	Billed each quarter	Most recent 10-week employer	Maybe
LA	Billed each quarter	Proportion of base period wages	No
ME	Billed each month	Most recent employer	Yes
MD	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	Yes
MA	Billed each quarter	Inverse order of employment	Maybe
MI	Billed each quarter	Proportion of base period wages	Yes
MN	Billed each quarter	Proportion of base period wages	No
MS	Billed each quarter	Proportion of base period wages	Maybe
MO	Billed each quarter	Proportion of base period wages	Yes
MT	Billed each quarter	Proportion of base period wages	No
NE	Billed each quarter	Inverse order of employment	No
NV	Billed each quarter	Employer who paid 75% of wages; if none then proportion of base period wages	No
NH	Billed each month	Most recent employer	No
NJ	Billed each month	Proportion of base period wages	Maybe
NM	Billed each quarter	Proportion of base period wages	Yes
NY	Billed each quarter	Proportion of base period wages	Yes
NC	Billed when balance in account drops below 1% of payroll for last 4 calendar quarters.	Proportion of base period wages	Yes
ND	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	No

State	How are reimbursing employers billed for chargeable benefits?	How are benefit charges allocated for reimbursable employers?	Bonding Requirement?
OH	<ul style="list-style-type: none"> Billed each quarter; May request to pay monthly installments with annual adjustment for over/underpayment. 	Proportion of base period wages	Yes
OK	Billed each quarter	Proportion of base period wages	No
OR	Billed each quarter	Proportion of base period wages	Yes
PA	Billed each quarter	Proportion of base period wages	Yes
RI	Billed each month	Most recent base period employer	Maybe
SC	<ul style="list-style-type: none"> Billed each quarter; May elect to pay two percent of quarterly taxable payroll with annual adjustment for over/underpayment. 	Most recent employer	Yes
SD	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Inverse order of employment	Maybe
TN	<ul style="list-style-type: none"> Billed each quarter; May elect to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	No
TX	Billed each quarter	Proportion of base period wages	Maybe
UT	Billed each month	Proportion of base period wages	Maybe
VA	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Most recent 30-day or 240-hour employer	Maybe
WA	<ul style="list-style-type: none"> Billed each quarter; May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	Maybe

State	How are reimbursing employers billed for chargeable benefits?	How are benefit charges allocated for reimbursable employers?	Bonding Requirement?
WV	<ul style="list-style-type: none"> • Billed each quarter; • May request to pay a percentage of payroll with annual adjustment for over/underpayment. 	Proportion of base period wages	No
WI	Billed each quarter	Proportion of base period wages	Yes
WY	Billed each quarter	Proportion of base period wages	Maybe