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MODERNIZING UNEMPLOYMENT INSURANCE

PRESENTED TO: THE UNEMPLOYMENT INSURANCE STUDY COMMITTEE

Rep. Emilie Kornheiser, Vermont Representative

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EXECUTIVE SUMMARY

This report analyzes the opportunity for Vermont to implement new improvements to their Unemployment Insurance (UI) System. This report draws on and synthesizes the key findings of the December 2021 Report of the Unemployment Insurance Study Committee, the Memorandum on the Feasibility of Changing the Unemployment Insurance Mainframe Program, the Unemployment Insurance System Modernization plan, the Report on the Status of Misclassified Employees in the Vermont Workforce, and the Unemployment Fraud and Overpayment Review. This is combined with a review of the UI IT system and benefits in Massachusetts and the institution of automatic experience rate adjustments to support trust fund solvency in Connecticut. The report also briefly explores models and case studies from other states and countries that could serve as creative ideas as Vermont continues to look into UI modernization and improvement.

The focus here is on five core aspects of improving the Vermont UI system: fixing the outdated computer system that processes UI claims, optimizing UI benefits, improving the effectiveness and efficiency of employee misclassification enforcement, updating Vermont's trust fund financing, and assessing potential legislative changes to improve the existing fraud repayment and disqualification system. The report first outlines the main potential issues of the Vermont UI system by highlighting the challenge posed by the outdated UI mainframe system, analyzing current benefits payments, and looking at the solvency of the UI Trust Fund. Next, the report analyzes the planned Vermont UI Systems Modernization and outlines how Massachusetts updated their UI computer system. This is followed by a review of UI benefits in Vermont and the potential changes to the benefits formula outlined in the Report of the Unemployment Insurance Study Committee. The report then looks at employee misclassification, drawing on the analysis and recommendations of the Report on the Status of Misclassified Employees in the Vermont Workforce. Next, we review the solvency of the Vermont UI Trust Fund, which is generally strong, and recommend the consideration of automatic experience rate adjustments like those implemented in Connecticut. Finally, the report analyzes potential changes to fraud repayment and disqualification.

The report cites the Unemployment and Fraud Overpayment Review and the Report of the Unemployment Insurance Study Committee in its recommendation to eliminate penalty weeks, the implementation of administrative wage garnishment and a framework of tiered administrative penalties, and the introduction of a waiver of overpayment liability consistent with the reconsideration rights found in other sections of Vermont UI law. Successfully implementing changes to fraud penalty legislation would require creating clear definitions of varying degrees of fraud, which is outlined further in Section 2.5. This report concludes with a review of feasible steps that the government of Vermont could take immediately to improve the UI system. Vermont has already taken several important steps including initiating the UI systems modernization to replace the outdated mainframe system, the introduction of claimant ID proofing, and the creation of enhanced employer as well as initial and weekly claims portals. Vermont can build on these important steps with by establishing external Independent Verification and Validation (IV and V) as well as a project outcomes management office (POMO) for the UI systems modernization. Additionally, establishing a separate data environment for VDOL to use until the system modernization is complete may be helpful. Finally, the long systems modernization process allows the General Assembly to consider legislative changes to the existing fraud definition and penalty options. Throughout the UI modernization, it will be useful to promote better intergovernmental collaboration between ADS, CPO, and VDOL, a low cost and effective way to support modernization success and generate new ideas.

1 INTRODUCTION: OVERVIEW OF VERMONT UI SYSTEM

The UI system can be difficult to understand. With a hodgepodge of various systems, taxes, and benefits, each of the 50 states in the nation has its own unique structure. Following 2010 reforms in Vermont often known as the "Grand Bargain," the state's UI trust fund has been one of the most solvent in the nation.[1] There are two types of UI taxes, a state tax (SUTA) and federal tax (FUTA), both paid by employers on employee wages.[2] Figure 1.1 depicts a breakdown of the state and federal unemployment taxes in Vermont for a lay audience. The state tax is determined by a statewide taxable wage base ($14,100 for Vermont in 2021) and each individual employer's experience rate, which depends on the amount of benefits paid out to an employer's former employees in the previous three years. The experience rating discourages layoffs and stabilizes employment by issuing tax rate consequences for layoffs.[3] The SUTA flows into a centralized state trust fund account maintained at the federal level by the U.S. Treasury. This account serves as the source of benefit payments to UI claimants, and there are no official federal requirements for how much a state should save. But, if not enough money is paid into the fund, it can become insolvent, subjecting the state to federal loans and accompanying FUTA increases.[4] The timely payment of state taxes can reduce the FUTA from six percent to 0.6 percent.[5] On the claimant side, Vermonters "may be eligible for a maximum benefit amount equal to 26 weeks times their weekly benefit amount or 46 percent of the "base period" wages, whichever is less."[6] A claimant must be able and available for work and have either a return to work date or be participating in an active work search.[7] Vermonters also need a minimum wage of $4,019 for the first four of the last five completed calendar quarters to be eligible for UI benefits.[8]
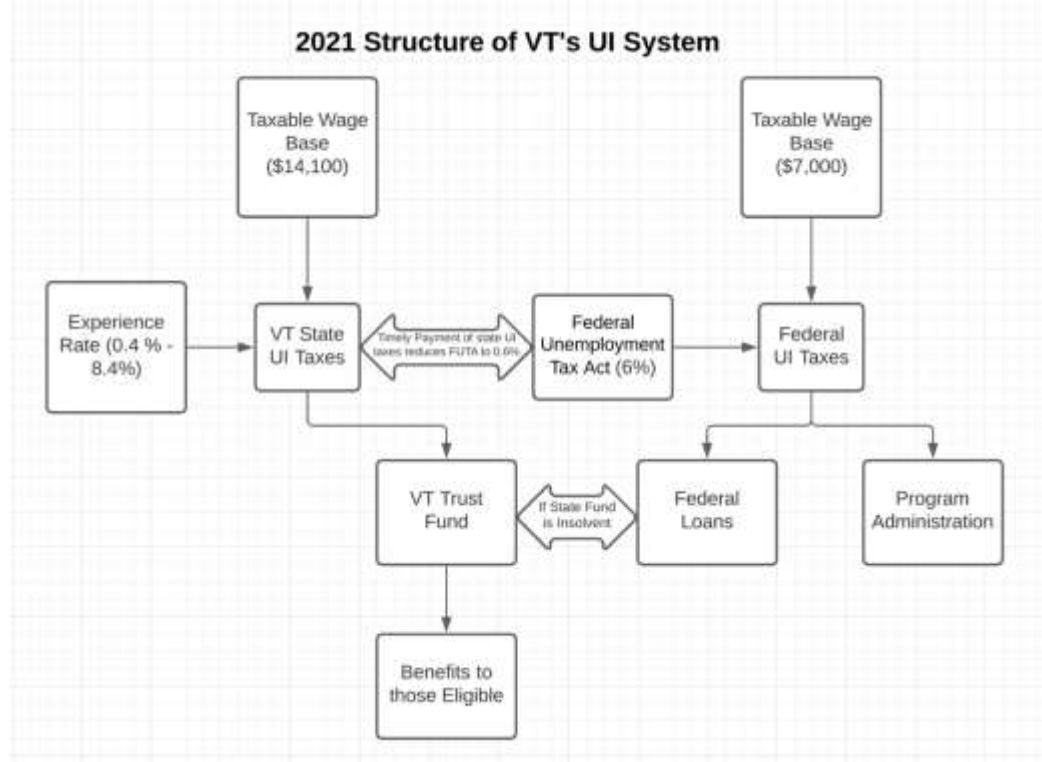

Figure 1.1: Vermont's UI System in 2021

1.1 MAIN ISSUES OF THE SYSTEM

The start of the COVID-19 pandemic, with its resulting high levels of layoffs, saw Vermont's unemployment rate soar from 3.1 percent in March 2020 to 15.6 percent in April.[9] This put a severe strain on the unemployment insurance system, which had never been tapped to handle such a high volume of benefits claims at once. This high-stress situation emphasized the weaknesses of the Vermont unemployment insurance system as many people saw delayed benefit approvals and payments, while struggling to make ends meet. Federal programs temporarily helped cover the gaps in the unemployment insurance system, but a modernization may help to ensure proper coverage for Vermonters long-term.

1.1.1 THE UNEMPLOYMENT INSURANCE MAINFRAME SYSTEM

A primary issue exposed by the pandemic is the legacy computer program responsible for running the benefits claims system, which is too difficult to operate and update, especially under such adverse conditions. At the beginning of the pandemic the Vermont Department of Labor moved the system from its old mainframe in Montpelier to a modern mainframe run by New York-based Blue Hill Data Solutions.[10] However, this did not address the main problems with the computer infrastructure underlying one of the most important social safety net programs in the state. The system itself is a 51-year-old application that uses Combined Business-Oriented Language (COBOL). The language is still widely used on the mainframes of large financial institutions, but there is a rapidly dwindling supply of developers as most people familiar with the language are retiring.[11] Vermont is reliant on contractors to continue servicing the legacy system but faces heavy competition from several other, far more populous states as well as very wealthy financial institutions.

The system is not only hard to maintain, but also very difficult to use. Modern systems allow the user to make changes in real time, however, the legacy system used by Vermont requires the testing of complete batches of data, meaning that one misplaced character can result in a whole day of lost work when the system aborts.[12] Even once the files are successfully entered into the system, problems remain. Unemployment benefits claim files are stored by the system in an unstructured manner, which makes it a challenge to retrieve the information necessary for proper claim processing, updating, and benefit reinstatement.[13] The legacy system behind UI in Vermont, coupled with the administrative challenges of such a large spike in unemployment across the state in early 2020, led to delays in benefits processing and payment. Even a year later, many Vermonters were still receiving their benefits too late to make their essential payments on time and are racking up late fees in the process.[14] Overall, the software behind the unemployment insurance system needs a major overhaul, as it effectively blocks the implementation of any policy changes suggested by the Unemployment Insurance Study Committee.

1.1.2 BENEFITS PAYMENTS

When Vermonters get their UI benefits payments, many struggle to make ends meet, which is largely due to the design of the UI system itself. The benefits are specifically calculated to be lower than what the recipients earned from their jobs, to incentivize them to return to paid work.[15] While this is a useful measure in a healthy labor market, situations like major recessions and the COVID-19 pandemic make it very difficult for people to find and take paid jobs, leaving them with insufficient benefits and no

alternatives. Both Vermont's average and maximum weekly UI benefits are middle of the pack in the United States when adjusted for the cost of living.[16] This can produce a major gap between workers' original wages and their UI benefits payments, which can leave them struggling to make ends meet, as many did during the pandemic. The Pandemic Emergency Unemployment Compensation (PEUC) initially covered many of the gaps in the unemployment insurance system with additional weeks of benefits, a supplement to weekly payments, and an expansion of eligibility. However, the end of federal funding on September 6, 2021, meant the end of these crucial stopgap measures. The design of the current unemployment insurance system requires the federal government to step in during every major structural economic crisis and expand benefits to meet the increased need. While this is typically a reliable occurrence, Vermont may consider having systems in place to cover people who remain unemployed after federal emergency benefits expire.

1.1.3 FUNDING UNEMPLOYMENT INSURANCE

The current UI system receives its funding from a tax on each eligible worker, with the revenue flowing into each state's UI trust fund to pay for future benefits. Vermont uses an experience rating system that charges companies with the highest layoffs the most.[17] In response to the COVID-19 pandemic and the resulting mass lay-offs by companies in Vermont, the legislature based a bill, Act 51, to eliminate 2020 from the experience rate calculation. Not doing this would have led to a much higher tax rate for many companies in the state.[18] This was an important step to take, but it might be helpful for Vermont to have a system in place that automatically prevents situations where companies would be faced with a much higher tax bill through no fault of their own.

2 AREAS OF FOCUS

In this section, the key findings of Report of the Unemployment Insurance Study Committee, the Memorandum on the Feasibility of Changing the Unemployment Insurance Mainframe Program, the Unemployment Insurance System Modernization plan, the Report on the Status of Misclassified Employees in the Vermont Workforce, and the Unemployment Fraud and Overpayment Review were synthesized and combined with a selection of best practices from comparison states. Specifically, this overall section examines: the unemployment system modernization already planned by the State of Vermont and highlights the system modernizations undertaken by Massachusetts, potential changes to the UI benefits formula, the solvency of the Vermont UI trust fund, the current state of the legal framework for handling cases of employee misclassification, the relevance of repayment requirements and UI benefits penalty weeks, and closes by reviewing potential changes to UI fraud statutes.

2.1 UI SYSTEM

States with old UI systems were especially adversely affected during COVID because their systems could not keep up with the increased unemployment claims filed in a short amount of time. In fact, according to Bloomberg in June 2020, there was almost a $67 billion gap between what unemployed Americans were owed and what they had received so far, mainly due to out of date UI systems.[19] According to a 2017 presentation by the National Association of State Workforce Agencies, the federal funding available for state unemployment insurance agencies to upgrade their technology, pay workers, and cover other administrative expenses has been falling steadily for the past 25 years, dipping roughly thirty percent below mid-1990s levels.[20] The National Association of State Workforce

Agencies conducted a survey of forty states' workforce agencies, and they found more than half of respondents said their administrative budget shortfalls were either "serious" or "critical," thus impairing the progress of renovating online UI systems[21]. As concluded by Indivar Dutta-Gupta, co-executive director of the Georgetown Center on Poverty and Inequality, states' UI system technology represent "some of the most antiquated and least versatile computer systems among public agencies."[22]

The limitations of the UI system are so severe that the Memorandum on the Feasibility of Changing the Unemployment Insurance Mainframe Program produced by the IT Consultant for the Joint Fiscal Office, Lisa Gauvin, concluded that "changes to the state mainframe UI program pose a high degree of risk and should be avoided."[23] Two main issues hamper the current mainframe system: the lack of a traditional development and testing environment for safe system changes and major data security concerns. According to the Memorandum, a modern mainframe system typically includes at least three environments, one for the development of code, one for testing code in an environment similar to the actual production environment, and the production environment for live data and current programs. Mainframe systems can also feature an optional pre-production environment for complex systems to allow for testing of the intersection between many complex modules.[24] The current UI mainframe system does not have any of the three required features of modern mainframes, meaning that all edits must be made directly to data already stored in the system. The system only has a type of pre-production environment that is used "often if not every day" to edit incorrect strings of data stored in the UI system.[25] Using this pre-production environment to test the new code required for UI policy changes, like the new benefits formulas discussed in the Report of the Unemployment Insurance Study Committee,[26] "risks making the environment unavailable for the typical daily edits," severally limiting UI benefits processing.[27] This problem is compounded by the lack of documentation of the UI program, which makes system changes much more difficult. This caused a problem recently when the last increase in the maximum UI benefit amount led to errors due to "the lack of documentation of the code that should be adjusted when this change is made."[28] The current mainframe also has limited utility for the State of Vermont due to security concerns regarding the legacy system. The IRS does not allow VDOL access to important 1099 from previous tax seasons, which "would allow VDOL to investigate employee misclassification more efficiently."[29] Replacing the current mainframe with a modern system would allow Vermont policy makers to create and implement changes to UI benefits and support VDOL by making employee misclassification more efficient by allowing for access to IRS 1099 data.

Replacing the current, outdated mainframe system with a modern and more flexible digital infrastructure is already a major priority for the State of Vermont. The Agency for Digital Services (ADS) published an outline for its Unemployment Insurance Systems Modernization in June 2021, providing a useful road map to the planned upgrade of the UI system. The plan is divided into four distinct phases across two sequential modernization time segments.
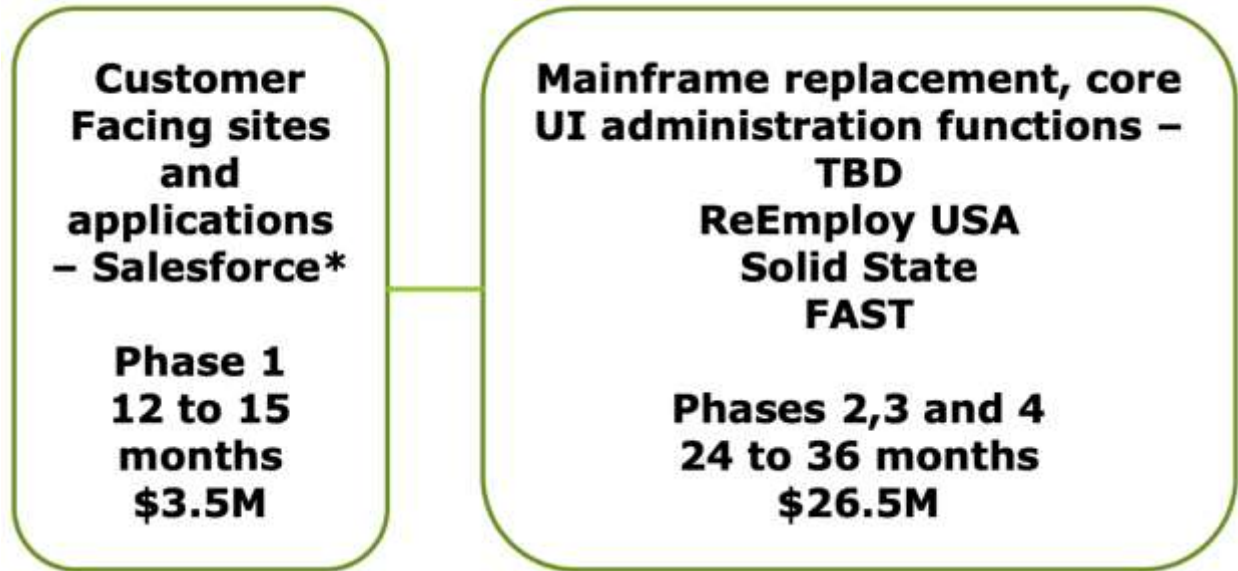
Figure 2.1: UI Systems Modernization summary from Unemployment Insurance Systems Modernization, pg. 4

The first time segment focuses Phase 1, which entails an upgrade of customer facing sites and applications. This will build on improvements already made to the customer facing portions of the system when the Salesforce platform was tasked with handling the development and administration of the Pandemic Unemployment Assistance (PUA) program. The effectiveness of the Salesforce platform is "a bright spot for technology in the UI space" and will pair well with the planned Phase 1 improvements to the claimant and employer portals, better employer registration SOS integration, and enhanced fraud reporting and case management.[30] Completing Phase 1 is expected to take between 12 and 15 months and cost around $3.5 million.

The second time segment of the modernization will consist of Phases 2, 3, and 4 which collectively focus on replacing the mainframe and modernizing core UI administration functions.[31] Phase 2 of the UI system modernization will begin by replacing the current mainframe with a new benefits system. Once this is complete the new benefits system will be integrated with the upgraded claimant portal from Phase 1 to allow for improved administration and reporting of benefits. Phase 3 will complete the mainframe replacement by introducing a new tax system, which will be integrated with the new employer portal to allow for improved tax reporting and collection. Finally, Phase 4 will involve a thorough review of the new UI system to test the accuracy and reliability of its key functions. The series of checks for this phase will include Benefit Accuracy Measurement (BAM) case management, external agency reports, Labor Market Information (LMI) reports, Disaster Unemployment Assistance (DUA) tax system – test procedure specification (TPS), and a Re-employment Services Eligibility Assessment Program (RESEA) employer audit.[32] In total, Phases 2, 3, and 4 are expected to cost $26.5 million and take between 24 and 36 months. This brings the projected total cost of the UI systems modernization to $30 million with projected annual maintenance and operations costs of about 20 percent or $5-6 million after its completion.[33]

Figure 2.2: UI Systems Modernization Road Map from Unemployment Fraud and Overpayment Review, pg. 18

While the upgrades to customer facing sites and applications have been well planned-out, the Unemployment Systems Modernization plan from ADS does not indicate which system will replace the current mainframe in Phase 2 and 3. A look at peer states provides a helpful idea of how Vermont could replace its current mainframe system. Considering almost all New England states have thirty-to forty-year-old UI systems in place, Massachusetts is the best state for examining an updated UI system. Massachusetts is the first state ever to have an UI system hosted in a public cloud. Starting in 2017, Massachusetts migrated its unemployment technology to a cloud made by Amazon Web Services (AWS), predicting $800,000 would be saved annually in ongoing maintenance expenses.[34] Since then, particularly during COVID, according to state officials, Massachusetts's online system has mostly kept up with demand for UI.

Hosting UI services in a public cloud can be beneficial for multiple reasons: it can increase security if done right, drive cost-efficiency, and improve application performance. Massachusetts' new cloud service helps secure confidential taxpayer data, saving infrastructure and licensing costs and reducing susceptibility to long system outages, which became especially relevant with the increased COVID claims. Due to a combination of faster connections to the cloud application coupled with optimization of Infrastructure resources, UI Online system response times are nearly 33 percent faster under the cloud.[35] AWS provides full disaster recovery, meaning outages will have no impact on website users because an automatic failover will push the application to another functioning Availability Zone.[36] Everyday users of the UI system have seen the progress with the cloud based system first-hand: a 26-year-old dental hygienist in Central Massachusetts submitted an UI application online when he found that his dental office would close, and his application was approved a mere two days later, immediately providing benefits for him and his family.[37] In addition to general application performance for users, the UI Online Fraud Detection System has reduced data extraction and analysis from 36-plus hours to six hours, meaning fraud detection and money recuperation is faster than before as well.

Massachusetts has paved the way for other states to also enlist help from companies like Amazon and Google to help revise their UI systems. For example, Rhode Island (RI) recently acquired help from Amazon Web Services (AWS) to process UI claims. In April 2020, RI's old computer systems and outdated call center became overwhelmed by the number of individuals seeking unemployment assistance during the coronavirus pandemic. The state's Department of Labor drew on some of the federal dollars awarded in a stimulus package to pay $300,000 for Amazon to develop an online application that accepts benefits applications from independent contractors and other employees made newly eligible by the federal stimulus COVID unemployment bill.[38] The changes allowed the Department of Labor to be among the first states to begin rolling out the federal program that gave more aid to these new categories of unemployed workers.

Vermont could acquire a cloud-based system like Massachusetts currently uses (AWS), or search for an alternative. Regardless of which new system the state chooses to replace the mainframe, the replacement should include the essential features outlined in the Report of the Unemployment Insurance Study Committee. Most importantly, the new system must be designed to be adaptable to changing needs while incorporating current advances in technology. The current mainframe system is outdated and does not allow for updates to the system due to a lack of experienced COBOL coders to operate the system and the absence of a proper test environment for system updates, which makes any change to the current mainframe a potential threat to the day-to-day functions of the system.[39] This reality impacts every issue examined in the Report of the Unemployment Insurance Study Committee and "prevents the development or implementation of many policy proposals" including changes to the UI benefits formula.[40] Replacing the current mainframe with a modern and adaptable system would allow Vermont to make important changes to its UI benefits,[41] improve system security to access the IRS 1099 data needed to make employee misclassification investigations more efficient,[42] and ensure that the system can be adapted to changing needs in the future. In addition to being modern and flexible to allow for future changes, the replacement system must allow for weekly benefit formula adjustments, changes to the minimum and maximum payment, progressive benefit formulas or targeted benefits like dependent benefits, tax schedule adjustments and additions, surcharges, experience rating changes, penalties, overpayment recovery, and the ability to retroactively correct claim filing errors.[43] Finally, the new system will play a key role in information gathering for UI policy changes and fraud enforcement so it must track employer-size, hourly wages, hour worked, earnings, and other key economic and demographic data.[44] Replacing the mainframe will likely not be complete for another two to three years so it may be useful to create a web-based data environment separate from it to allow VDOL to access data for fraud investigations and determinations without requiring the help of ADS.[45]

Effectively replacing the current UI mainframe system will require extensive collaboration and coordination between VDOL, ADS, and the General Assembly to ensure that the system meets the needs of each and can be developed and introduced rapidly and effectively.[46] Testing and evaluating the new system is essential to ensuring it meets all planned requirements. Establishing Independent Verification and Validation (IV and V), an industry best practice for all large-scale IT projects,[47] would enhance the effectiveness of the system checks included in Phase 4 of the modernization. Finally, supporting the systems modernization with an external Project Outcomes Management Office, as recommended by the Office of the Vermont State Auditor in the Unemployment and Fraud Overpayment Review, would allow for an overall assessment of the modernization project outcomes, beyond the implementation of the software, to ensure that the new system meets the expectations set by the Unemployment Insurance Study Committee, VDOL, ADS, and the General Assembly.[48] Effective coordination between government stakeholders, evaluation of system functions, and overall assessment of project outcomes would help enable an effective UI system modernization that gives the State the ability to generate and implement UI policy with the benefit of more information and superior, flexible administration technology.

2.2 BENEFITS

UI benefits vary from state to state, especially when the cost of living is accounted for to quantify the benefits in real terms, instead of nominal terms. Factoring in the cost of living leaves many states with a higher purchasing power at the top of the rankings, and drops many progressive, labor friendly states

to the middle of the pack. According to the U.S. Department of Labor, which has determined the cost of living index and average weekly benefit amount for every state, the only state with a cost of living index score over the national median of 100 to rank in the top five is Massachusetts with an average weekly benefit of $473 and a cost of living index score of 129.9.[49] Meanwhile, Vermont is ranked at number 24 with an average weekly benefit of $358 and a cost of living index of 116.4.[50] This mid-range ranking can cause real life issues for unemployed workers who rely on their weekly benefit checks. Now that federal funding to supplement weekly benefits has expired, but many remain out of work, it is important for Vermont to consider raising benefits payments to help people make ends meet during tough economic times.

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.

Figure 2.3: UI Benefit Increases from Report of the Unemployment Insurance Study Committee, pg. 15

The UI benefits formula determines the benefits claimants receive, so changes to the formula have a direct impact on the lives of claimants. Unfortunately, while updating the benefits formula may be useful, it is currently not possible due to the outdated mainframe computer system. The weekly benefit amount is tied to many other calculations in the mainframe so "any coding error could result in a cascade of errors throughout the system, which could, in turn, result in a system crash."[51] Although federal law permits major changes to the UI benefits formula, the current mainframe system prevents this, according to both VDOL and ADS.[52] Introducing a minimum weekly benefit is also likely not viable using the current mainframe.[53] In place of a benefits formula adjustment, Vermont could make changes to the maximum weekly benefit until a new mainframe system is in place. The Report of the Unemployment Insurance Study Committee evaluates the cost of raising the maximum benefit from $531 to $751 or raising the minimum benefit from $75 to $351 for the next 10 years across three economic scenarios (like 2019, lingering pandemic, and strong economy), each with different levels of unemployment claims. The calculations determined that in all three scenarios, raising the minimum benefit cost less than raising the maximum benefit.[54] Unfortunately, increasing the minimum benefit is currently not a viable option until the old mainframe system is replaced. Additionally, raising the minimum benefit would create an induced entry scenario in which people who would not have applied for benefits under the original minimum benefit would choose to claim benefits. Those earning the minimum amount in the base period to qualify for UI benefits would receive "about 2.4 times their average weekly wage while receiving UI benefits."[55] This could produce significant induced entry and raise the overall costs of providing a higher benefit beyond the amount calculated in the Report of the

Unemployment Insurance Study Committee.[56] An increase in the maximum benefit is therefore easier to implement using the existing mainframe, and can be quantified more reliably.

Massachusetts provides a useful example for a potential increase in the maximum weekly benefit. Considering that Massachusetts and Vermont are both New England states with comparable costs of living, at least relative to the rest of the nation, they have very different maximum benefits. Massachusetts offers a weekly maximum of between $855 and $1282,[57] exceeding that offered by Vermont, which currently provides a maximum of $583 per week.[58] In addition to offering higher benefits, even when considering the cost-of-living difference between the two states, Massachusetts also offers more flexibility with a higher maximum of weeks payable. In Massachusetts, unemployed people are eligible for up to 30 weeks,[59] which is a much wider range and higher maximum than Vermont's up to 26 weeks.[60]. Increasing the maximum benefit is possible under the current mainframe system while extending payable weeks should be possible as well given that the weeks of payment received already vary from claimant to claimant. Raising benefits or offering a higher maximum weeks payable could be effective ways to help Vermonters looking for work have a better chance of making ends meet, and Massachusetts provides a strong example of that.

Modernizing the mainframe system successfully would allow for more extensive modifications to UI policy by allowing the creation of a new benefits formula. The primary option considered in the Report of the Unemployment Insurance Study Committee is a progressive weekly benefit formula that would provide more wage replacement to those who earned less than to those with higher past earnings. In this progressive formula "the rate of wage replacement would decrease as a claimant's base period wages reached certain thresholds."[61] This would meet the needs of claimants with lesser needs while allowing for reduce expenditure on UI benefits for base period higher income earners. However, this progressive benefits system could affect the eligibility of claimants for other benefits, and these impacts should be considered carefully before any changes are made to the benefits formula.[62]

2.3 MISCLASSIFICATION

In 2020, the Vermont legislature created a task force dedicated to examining efforts to combat misclassification of workers and to submit a report "regarding ways to improve the effectiveness and efficiency of the system of joint enforcement by the Commissioner of Labor and the Attorney General of laws related to employee misclassification."[63] Employee misclassification is defined by the National Conference of State Legislatures as, "the practice of labeling workers as independent contractors, rather than employees."[64] Whether misclassification occurs intentionally or by error, employers who misclassify avoid "paying taxes on worker's wages, paying for worker's compensation or unemployment insurance, and complying with minimum wage and overtime laws."[65]

Act No. 85 of the 2020 legislative session, titled, "An act relating to employee misclassification" allowed the Commissioner of Labor to refer complaints of certain employee misclassification to the Attorney General, who was granted the powers to investigate and enforce those complaints.[66] The Act was signed into law on February 20, 2020, just weeks prior to the disruption of the COVID-19 pandemic to the entire unemployment insurance system. As a result, due to temporary Department employee reassignments and other pandemic disruptions, the Act has not yet been fully implemented in a normal cycle. The Misclassification Task Force saw the ongoing information sharing and

collaboration as positive and recommended its continuation as well as education and outreach to employers and workers.

The Misclassification Task Force was required to examine the possibility of a private right of action or private attorneys general act, particularly in the context of other states. The state of Virginia issued two misclassification reports in 2012 and 2019, in which Virginia's Commission recommended a private right of action, which was adopted by lawmakers. [67] A private right of action allows an individual employee to bring an action in superior court for appropriate relief. A private right of action currently exists in Vermont for misclassification cases involving payment of wages, minimum wage, and overtime.[68] A Private Attorneys General Act (PAGA) was also explored, particularly based on the state of California's laws. In California's PAGA act, the state does not waive its power to enforce the law. A PAGA action allows employees to initiative an action to enforce with notice to the State. The State can then elect to enforce or allow a complaint to proceed. Considering California's vastly different labor market with large employers and various sectors, the task force considered a PAGA act as potentially another tool in the toolbox. In the end, the task force suggested lawmakers gain a better understanding of the scope of mandatory arbitration clauses and/or class waivers affecting large numbers of Vermont workers.[69]

Ultimately the Task Force recommended "a common sense, light touch regulatory approach". allowing more time for Act 85 to work; continuing collaboration amongst the agencies; extending information sharing agreements among agencies; providing education and outreach to employers and employees; and providing updated information to policy makers.[70]

2.4 SOLVENCY

The unprecedented number of individuals who utilized UI benefits during the COVID-19 pandemic strained state trust funds across the country. Vermont's Trust Fund has historically maintained desirable levels, ranking first in the nation in state solvency levels.[71] However, Vermont still can examine other state's practices for future improvement, notably in this report, Connecticut's automatic adjustments to experience rates.

During its 2021 legislative session, Connecticut engaged in and passed a bipartisan agreement to restructure and update the state's unemployment system, with Act, PA 21-200.[72] This act focused its efforts on funding Connecticut's insolvent trust fund, an issue not as challenging in Vermont. The Act PA 21-200 instituted a requirement for Connecticut "to adjust the experience rates for employers in industry sectors that are experiencing above-average employment losses in those sectors."[73] Experience rates help determine the amount of state unemployment tax an employer must pay by looking at the number of benefits paid out to an employer's former employees in the previous three years, raising an employer's tax rate if more UI is paid out.[74] In circumstances like the COVID-19 pandemic, the experience rate would result in increases of businesses' tax due to the large number of layoffs due to health and economic factors. Connecticut implemented an automatic measure that will trigger in future recessionary periods, allowing businesses more flexibility in their response to recessions.[75]

Because of the significant reserves remaining in the Trust Fund despite 2020's unprecedented benefit payments due to the COVID-19 pandemic, questions were raised about the tax rate and

benefits. The December 2021 Report of the Unemployment Insurance Study Committee repeatedly considered "the appropriate target balance for the Trust Fund … and whether Vermont's UI taxes might be higher than necessary."[76] Throughout the COVID-19 pandemic, UI claimants took part in a range of federal programs that supplemented regular UI benefits. The positive impact of the increased benefits on the State economy and the claimants' well-being led to the Committee examining whether Vermont's benefits should be increased.[77] Ultimately the three meetings allocated to the Unemployment Insurance Study Committee was not sufficient time "to determine the amount necessary to ensure the Trust Fund remains solvent and able to continue meeting the needs of claimants during a future economic recession and subsequent recovery."[78] As a result, the Committee recommended the General Assembly utilize the report as well as the annual UI Trust Fund Report to further examine Trust Fund solvency in upcoming legislative sessions.

2.5 FRAUD REPAYMENT AND DISQUALIFICATION

Properly defining fraud and avoiding one-size-fits-all approaches to consequences for fraudulent activity are key to addressing it effectively. Vermont, like many states across the country, has fraud statutes that are written "vaguely and obscurely which allows for multiple interpretations as to what constitutes fraud," with no specific consequences for differing levels of fraudulent activity like identity theft or overpayments.[79] While larger fraud schemes and identity theft are considered "two of the most egregious behaviors that deserved penalties," fraud statutes like those in Vermont treat them the same as less severe forms of fraud like providing inaccurate information to induce overpayment.[80] States like Massachusetts, Washington, and Nevada "define various fraudulent activities and outline appropriate penalties for each one," allowing departments to make efficient decisions to distinguish egregious fraud and incidental issues, while avoiding blanket penalties that may not be appropriate for varying degrees of fraudulent activity.[81] Modifying fraud statutes in Vermont would save VDOL time in applying penalties while providing improved flexibility in enforcement.

2.5.1 WAGE GARNISHMENT FOR OVERPAYMENT

Clarifying fraud statutes and proper enforcement methods for fraud cases would be a step toward improving fraud enforcement efficiency for VDOL. Building on this, the State of Vermont could further improve efficiency by establishing accompanying legislation allowing VDOL to garnish wages without going through the court system for individuals who meet specific overpayment criteria.[82] Such an enforcement system requires clear definitions of different types of fraud and unreported earnings to be effective, so it would be important to pair with modifications to existing fraud statutes to make them less vague. The Unemployment Overpayment and Fraud Review recommends aligning wage garnishment rules with the guidelines set by the Treasury Offset Program (TOP)[83] which is responsible for collecting past-due debts owed to state and federal agencies.[84] Implementing a wage garnishment mechanism through VDOL would positively impact the health of the UI Trust Fund by ensuring quicker return of overpayments. Effectively recouping overpayment through VDOL also provides a more effective deterrent to fraudsters by delivering quick responses to fraud attempts.[85] Changing fraud legislation to allow for administrative wage garnishment by VDOL in specific cases is a low-cost action that can be developed and implemented in an estimated five to nine months and improve overpayment and fraud response in the state.[86]

2.5.2 PENALTY WEEKS

Allowing VDOL to garnish wages without court action in clearly defined overpayment and fraud cases is a potentially useful step; however, it does not cover the full range of modifications that can be made to current overpayment and fraud enforcement. Eliminating the use of penalty weeks in cases of fraud, as recommended by the Unemployment Overpayment and Fraud Review, is another useful step away from one-size-fits-all overpayment and fraud enforcement. Penalty weeks do not deter fraudsters who commit UI fraud and then never apply for UI benefits in Vermont again, while keeping the state from properly recouping its losses from fraud.[87] Replacing penalty weeks with a tiered administrative penalty framework would allow VDOL to extend its recovery mechanisms beyond the borders of the state, while tailoring penalties to the severity of the fraud.[88] If the State chooses to keep the penalty week system, it could consider creating a mechanism that allows penalty weeks to expire after a set amount of time. For example, a period of disqualification in Georgia can only be enforced during the quarter in which fraud was committed and the subsequent four quarters, while in Rhode Island disqualification lasts one year after a fraud conviction.[89] Additionally, Vermont UI law allows for reconsideration rights in many of its provisions, extending these to allow individuals to petition for reconsideration of fraud determination and penalty weeks could be useful.[90]

2.5.3 REDUCTION OR WAIVER OF OVERPAYMENT LIABILITY

Further extending reconsideration rights in UI law to include overpayment liability reduction or waiver applications would decrease the burden placed on individuals who received an overpayment without fault of their own and would struggle to repay the money they received. The Report of the Unemployment Insurance Study 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."[91] Implementing a reconsideration mechanism requires clarifying which cases of overpayment constitute an individual being without fault, so combining the introduction of an overpayment waiver with modifications of current fraud and overpayment statutes to introduce varying degrees of overpayment and fraud severity would be useful. If implemented, an overpayment reduction or waiver could help reduce the burden on people who would struggle to repay incorrect benefits.

3   FEASIBLE NEXT STEPS

The UI mainframe system modernization is a prerequisite for any adjustments to UI benefits and necessary to gain access to the IRS 1099 data that would allow VDOL to better investigate employee misclassification. However, the UI systems modernization will be an extended a complicated process and there are some important steps that the State could take immediately to support the modernization, improve misclassification and fraud investigation, and modify the fraud penalty system. The December 2021 Unemployment Fraud and Overpayment Review prepared by the Office of the Vermont State Auditor provides a useful value/feasibility matrix with several recommendations for immediate steps, listed as "Do Now."

Two of these steps pertain to the planning of the UI systems modernization, recommending strategic planning and design for Phase 1, leveraging human centered design in the modernization process.

These steps would allow Vermont to design and create a system that can "likely deliver the expected value" and operate with the needs of claimants and employers in mind.[92] To provide enhanced monitoring of the systems modernization and project outcomes the Unemployment Fraud and Overpayment Review recommends establishing external Independent Verification and Validation (External IV and V), and the creation of an external project outcomes management office (POMO) to ensure that the final product meets the needs and expectations of the State. Independent Verification and Validation "is an industry best practice for large scale IT projects" because it allows for the rapid detection of potential problems that could grow to undermine the project.[93] Allowing for external IV and V would protect the money invested in the modernization by helping to ensure a system is delivered with independent feedback actively incorporated throughout the process. The further addition of a project outcomes management office would build on IV and V by advancing the role of a traditional project management office. A POMO focuses on outcomes beyond the completion of the project allowing for improved tracking and achievement of planned outcomes.[94] Creating a POMO would give VDOL and the General Assembly improved insight on modernization progress and more latitude for input since developing features of the new system may be matched to well-defined success criteria.[95]
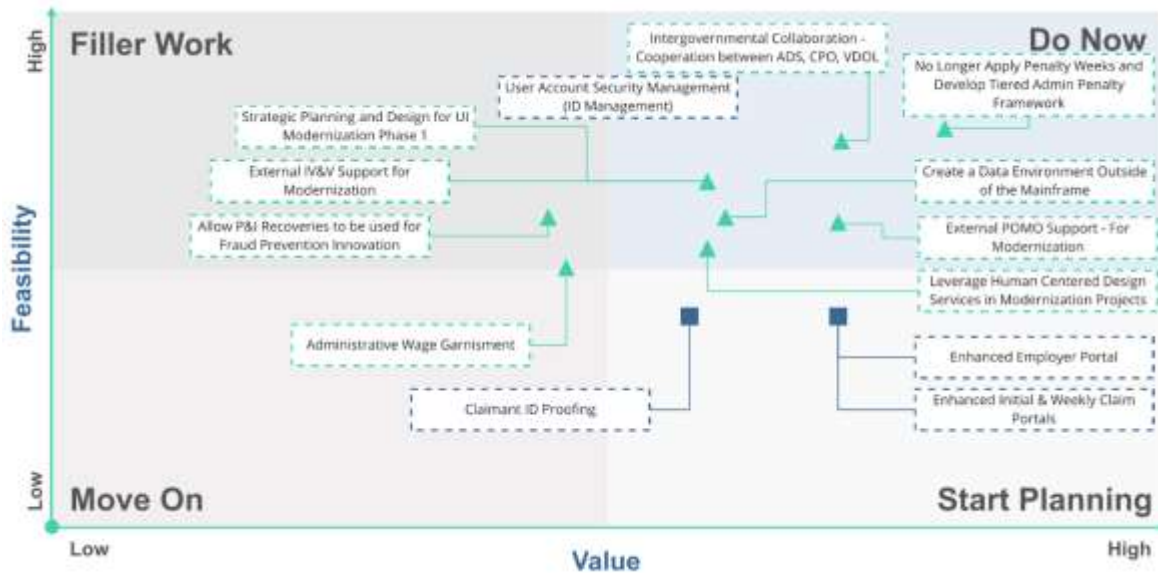

Figure 3: Value/Feasibility Matrix from Unemployment Fraud and Overpayment Review, pg. 52

While the systems modernization is in progress, Vermont could invest in an external data environment separate from the mainframe that would allow the VDOL improved access to their data "to develop meaningful datasets for fraud detection" and better carry out UI program evaluation and reporting.[96] A separate data environment can be used without fear of negatively impacting the mainframe and reduce the need for F-COBOL programmers to retrieve data.[97] In addition to creating a separate data environment, the General Assembly could take steps to implement legislative changes that improve the ability of VDOL to recoup overpayments and improve flexibility in penalizing fraud. The Unemployment Fraud and Overpayment Review recommends establishing legislation to give VDOL the ability to garnish wages through an administrative process, without needing to go through the court system. This legislation would support the health of the UI Trust Fund by "recouping payments

more quickly," and serve as a deterrent to fraud be ensuring that the state acts efficiently in response to cases of fraud.[98] Additionally, the Unemployment Fraud and Overpayment Review recommends legislation to end the use of penalty weeks and create a tiered administrative penalty framework that can better respond to different types of fraud.[99] Penalty weeks are limited in their effectiveness by whether or not an individual applies for UI benefits in the future. In the case of out-of-state fraudsters, the funds cannot be recouped using penalty weeks. Developing a tiered administrative penalty framework would allow VDOL to "recoup losses through recovery mechanisms that extend beyond Vermont's borders."[100] Claimants would benefit from a new, tiered administrative framework that limits the impact on first time offenders and allows claimants to resolve overpayment before requiring new benefits. This more equitable punishment also allows the government to match penalties to specific types of fraud and could better deter severe cases like identity theft.[101]

There is a potentially useful step that Vermont can take without making an investment in new technology or passing new legislation. Increasing intergovernmental collaboration between ADS, the CPO, and VDOL would "ensure that operational and technological processes are aligned across agencies" a valuable step during a period of modernization.[102] According to the Unemployment Fraud and Overpayment Review, improved collaboration would increase the likelihood of success for government projects, build public trust, reduce the workload on individual agencies, especially VDOL, and increase opportunities to innovate through the sharing of ideas.[103] Collaboration would be possible at a low cost while delivering potentially significant value to the state by supporting the UI systems modernization and future projects.

4 CREATIVE IDEAS FOR FUTURE IMPROVEMENT

In this section, this report briefly explores a range of topics that, while perhaps not immediately applicable to the State of Vermont's current position, may still serve as case studies for creative approaches to UI in the future. From the State of Washington to Denmark, there are many approaches to UI and they can serve as potential opportunities and thought experiments to improve the lives of Vermonters.

4.1 ADAPTING TO THE MODERN LABOR MARKET

While Vermont offers strong and comprehensive UI benefits overall, the state, like much of the country, has not adapted its system to longer-term changes in the labor market. When UI was originally designed, it was meant to cover traditional full-time workers, helping them return to full-time work. However, non-traditional employment, including part-time and contract work, is on the rise, contributing to a long-term decline in the proportion of unemployed people eligible for UI benefits.[104] Vermont does not have any provisions in its UI system to provide benefits to those who have lost part-time or contract work, limiting the system's effectiveness in a modern economy. Some states have adjusted their minimum requirements for UI benefits by waiving the minimum income requirement and changing to an hours-based eligibility system that allows some part-time workers to collect benefits, but Vermont continues to require a minimum income of $2,999 in the highest base period quarter.[105] Vermont also denies UI eligibility to people who quit their job unless they can prove it was caused by their employer's actions,[106] a restrictive policy that puts the burden on workers to prove their eligibility.

Additionally, Vermont has not adopted any provisions that would allow unemployed people to work towards self-employment instead of looking for a full-time job. Unemployed workers in Vermont are eligible for extended UI benefits beyond 26 weeks, but only if their previous job was in a declining occupation and they are successfully attending training for a new role.[107] Other states have adopted Self-Employment Assistance (SEA) programs, which allow unemployed workers to receive benefits while working to start a business instead of being forced to search for full time work to remain eligible. These have generated positive effects on both future rates of employment and earnings, but such programs only exist in nine states.[108] Vermont is currently missing out on the opportunity to use SEA programs to make its UI system more flexible and impactful.

Finally, the current system does not provide benefits to self-employed workers, who have become much more common in the modern economy. The Pandemic Unemployment Assistance (PUA) program under the CARES Act extended UI benefits to self-employed and contract workers,[109] however, since these expired many have been left without the money they need in Vermont. It is advisable for Vermont to review its UI programs and eligibility requirements to ensure that they are compatible with the modern labor market.

4.2. WASHINGTON: MORE PEOPLE ELIGIBLE FOR BENEFITS

Determining who is eligible for UI benefits is just as important as deciding the amount of benefits that will be paid to unemployed people. While Vermont has eligibility requirements that allow more people to claim UI benefits than in most other states, there are some that offer eligibility to even more people in a broader range of circumstances.

A great example of how Vermont could expand UI eligibility to reach more people is Washington where the eligibility system has several features that Vermont has yet to match. Most prominently, Washington uses a minimum-hours-worked requirement instead of a minimum-income requirement to determine eligibility for UI benefits. Those filling for UI are only required to have worked 680 hours in the 12-month base period or in 12 months of the alternate 18-month base period. This means that many people who worked less than full time jobs are eligible for at least the minimum weekly UI benefit, which is relatively high in Washington at $295 per week. Beyond being the only state to use work hours as the basis for benefits eligibility, Washington also has strong provisions to protect UI benefits for those who quit their job due to adverse situations. For example, Washington allows workers to claim UI benefits when they move to be with their spouse outside of their original labor market area, or even for those who left to take another job that did not happen. These provisions are essential to keep everyone in need of UI benefits eligible for payments. Finally, Washington also gives UI beneficiaries flexibility in their job search with the Self-Employment Assistance Program (SEAP), which has shown itself to be effective in raising employment rates and earnings. SEAP allows unemployed people to receive UI benefits while working to start their own business, giving them the chance to create employment opportunities for themselves and others. Taken together these measures ensure high levels of eligibility for UI benefits and allow people to stay eligible while pursuing a wide variety of valuable tasks to generate future employment for themselves and others.

4.3 DENMARK: UI FOR NON-TRADITIONAL WORK

The UI benefits systems across the United States have not adapted to the modern labor market, where an increasing number of people are self-employed, contract workers, or participate in the gig-economy. While the Pandemic Unemployment Assistance component of the CARES Act successfully extended UI coverage to these groups, this was only a temporary measure that has already expired. In the long term, it is difficult to cover self-employed people and independent contractors because they do not have an employer paying into the system for them and it is hard to tell if they are voluntarily or involuntarily unemployed. Denmark offers a potential solution to this issue with a system that allows self-employed people with long histories of stable earnings to make themselves eligible for UI by paying into the system like an employer typically would. This system coupled with the methodology used by the Disaster Unemployment Assistance program that formed the basis of the Pandemic Unemployment Assistance program to determine whether unemployment is involuntary, would allow for eligibility to be expanded to people in non-traditional work. This would expand coverage and reduce the damage of major economic shocks.

5 CONCLUSION

The COVID-19 pandemic caused a sharp increase in unemployment that has exacerbated existing issues and uncovered cracks in UI across the United States. Vermont weathered the storm, but it is apparent that the UI system in the state needs modernization. This report synthesizes the findings of four key reports with the addition of specific examples of modernization steps taken by Massachusetts and Connecticut. The aging UI mainframe system plays a key role in any modernization of the Vermont UI system because it holds the data required for employee misclassification investigations and influences the calculation of benefits for all claimants. Replacing the current mainframe with a modern computer system is a prerequisite for any potential changes to the UI benefits formula. Gaining access to the IRS 1099 data needed by VDOL to investigate employee misclassification in greater detail, while eliminating the need to search for rare F-COBOL experts, is vital. Creating a more reliable and flexible system better prepared for future changes to the UI system and benefits, as well as a system responsive to tumultuous periods like the COVID-19 pandemic, which put a severe strain on the UI system is also crucial. The report highlights a series of recommendations that synthesized the four reports provided. These recommendations include, but are not limited to: 1) the creation of a modern UI computer system; 2) the consideration of future changes to the UI benefits formula by the General Assembly to be implemented after the UI systems modernization is complete; and 3) the elimination of penalty weeks to be replaced with a tiered administrative framework supported by administrative wage garnishment by VDOL. The report also outlines some feasible immediate steps including the introduction of external IV and V as well as a POMO, and supports enhanced intergovernmental cooperation between ADS, CPO, and VDOL to improve the likelihood of a successful modernization and help generate ideas for further improvements. Finally, the section on creative UI solutions serves as a starting point for the vast range of possible methods and practices that could improve the unemployment system for all Vermonters.

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