JLARC
JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

November 8, 2021

Operations and Performance of the Virginia Employment Commission

Commission Briefing

Study mandate

- Review the operations of the Virginia Employment Commission (VEC), including:
  - COVID-19's impact on VEC and effectiveness of response;
  - administration of Unemployment Insurance (UI) program, including overpayments, appeals, and customer service;
  - IT systems and UI modernization project;
  - sufficiency of agency staffing, funding, and management; and
  - UI benefits compared with other states.

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Key VEC interim report findings (Sept. 2021)

Processing of claims and appeals has not been timely and significant backlogs have accumulated.

Call centers answering only a small portion of calls, largely because of insufficient IT systems and staff.

Reliant on paper-based, manual processes; modernized system expected to improve claims process.

Rate and dollar amount of incorrect* benefit payments—including to fraudulent actors—increased substantially.

VEC communications to customers and own staff have caused significant frustration and confusion.

* VEC and U.S. DOL refer to these as "improper payments." Improper payments can result from mistakes made by claimants, employers, or VEC. They can also result from fraud, but majority do not.

Status of Sept. briefing recommendations

JLARC recommendations (September 2021 briefing)	Initiated (as of 11/1/21)	Not initiated (as of 11/1/21)
VEC develop a detailed plan that includes specific actions and a timeline to resolve adjudications and previously bypassed claims issues by 11/1/21.	✓	
VEC develop new tools, such as instructional videos and UI eligibility "wizard" to help claimants better understand UI program.	✓	
VEC collect feedback on usability of new UI benefits system from claimants and employers and share feedback and steps to improve by 12/31/21 and at the end of each quarter in 2022.	✓	
VEC Commissioner ensure key developments are communicated clearly and expeditiously to all VEC staff, especially leadership or positions communicating with the public.		✓

Note: See Appendix E of written report for a complete list of JLARC's recommendations.

Status of Sept. briefing recommendations, continued…

JLARC recommendations (September 2021 briefing)	Initiated (as of 11/1/21)	Not initiated (as of 11/1/21)
VEC clarify in internal policies and notices that claimants who disagree with monetary determinations should request a redetermination.		✓
VEC provide a written quarterly update on call center performance by 12/31/21 and at the end of each quarter in 2022.		✓*
VEC revise UI forms, notices, and other explanatory documents to more clearly describe UI program, eligibility criteria, and application process.		✓*
VEC should develop a detailed plan with actions and a timeline for addressing tax system problems with its IT modernization contractor.		✓*

Note: See Appendix E of written report for a complete list of JLARC's recommendations.
*Recommendation implementation is not yet applicable.

Several VEC backlogs decreased since Sept. briefing, but potentially fraudulent claims and appeals increased

Backlog	Performance reported Sept. briefing	Performance reported Nov. briefing	Change
Pending adjudications	~100K	~62K	-38K (-38%)
Previously bypassed UI claims issues	~2M*	~437K	-1.56M (-78%)
Separation reports	~580K	~580K**	--
Potentially fraudulent claims	~136K	~164K	+28,500 (+21%)
First-level appeals	~62K	~76K	+14,200 (+22%)
Commission-level appeals	0	25	+25

* Number presented in September reflects totals from May 2021.
**As of August 2021; updated figure not available.

Additional recommendations

VEC should formalize actions it took during the pandemic to prioritize claims for adjudication. Policy should detail how priorities may change with claim volume. Policy should prioritize resolution of older claims.

VEC should develop a plan by December 31, 2021 for investigating the backlog of potentially fraudulent claims and establish a strategy for prioritizing investigations by the potential dollar amount.

*See Chapters 4 and 5 of written report for more information about these recommendations.

VEC's total estimated* incorrect payments have increased, and overpayment collections still paused

- VEC is estimated* to have issued $930M in incorrect payments in 2020 and $322M in 2021 (through June)
  - Estimates are for state UI program
  - Some claims may be transferred to federal programs (e.g., PUA)
  - Fraudulent claims are small portion of estimate
- Majority of incorrect payments are overpayments
- VEC is federally required to try to recover overpayments, but has paused collections, including confirmed overpayments

*VEC provides estimates of incorrect payments quarterly to the U.S. Department of Labor through the Benefit Accuracy Measurement program. Estimates are based on a random sample of paid claims.

Key driver of incorrect payments is delayed submission of employer separation reports

- VEC staff review employer separation to determine UI eligibility; describes why claimants left their job
- Separation-related incorrect payments are leading cause of overpayments;
  - 59% of 2020 overpayments; 25% of overpayments (2016-2019)
- U.S. DOL requires VEC to issue first payments within 21 days, even if separation reports have not been reviewed
- DOL has free tool (SIDES) for employers to submit reports to VEC electronically, but <10% of VA employers participate
  - Most employers submit reports through U.S. mail

Recommendations

VEC should immediately resume overpayment recovery activities for all confirmed overpayments.

General Assembly may wish to consider requiring employers to provide separation information to VEC electronically through the existing SIDES tool or VEC's UI IT system rather than through mail.

*See Chapter 5 of written report for more information about these recommendations.

Policy option for consideration

General Assembly could create a pilot program that would require a sample group of employers to proactively provide a separation report to VEC and former employees each time an employee separates from employment, even if an employee has not yet filed a UI claim.

VEC could evaluate the impact on UI claims accuracy and timeliness and collect feedback from employers on the administrative burden.

Note: JLARC staff propose policy options instead of recommendations when (i) the action is a policy judgment best made by elected officials, (ii) evidence suggests the action could be beneficial, or (iii) a finding could be addressed multiple ways.

VEC's UI call center performance is better but still needs improvement

Backlog	Performance as of June 2021	Latest available data*	Change
Calls presented	~3.3M	~1.4M	-2M (-61%)
% calls answered	4%	12%	+8 % points (+200%)
Calls blocked	~490,000	~71,000	-419,000 (-86%)
Average wait	~10 hours	~20 minutes	-9+ hours (-97%)

- Quality monitoring and workforce management software implemented for call center in October 2021
  - Important for monitoring call quality, staff assignments
  - Software solution provided through Verizon/VITA; delayed 6 months

*Calls presented, answered, and blocked are monthly data for September 2021. Average wait time is point-in-time data as of a date in October 2021.

Additional recommendation

VEC should establish and maintain a dedicated quality monitoring team composed of VEC staff from each customer contact center. This team should use quality monitoring software to regularly review and assess call quality and performance and identify staff training needs.

*See Chapter 4 of written report for more information about this recommendation.

VEC delayed launch of modernized UI benefits IT system until November but mitigated several risks

- UI benefits system launch delayed one month to early November (currently in progress)
- VEC assessing ability to enable automatic text push notifications to inform claimants of changes to their claims
- Data conversion accuracy improved
  - 99% of data converted; 92% accurate (as of late October)
- Additional VEC staff trained to use modernized system
- Remaining risks = staff turnover, system defects

Additional recommendation

VEC should conduct a request for information to identify additional features needed for a modernized unemployment insurance IT system and hire a vendor to develop these features or develop them using agency IT staff.

*See Chapter 6 of written report for more information about this recommendation.

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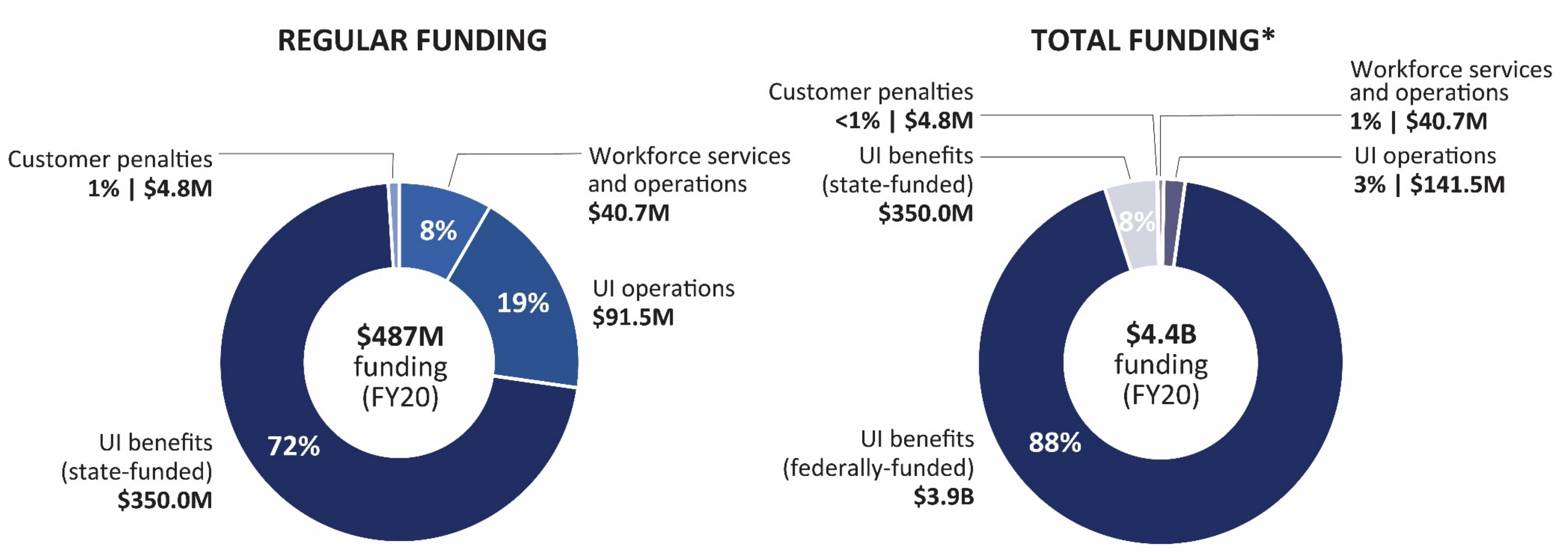
Most of VEC's UI funding supports UI benefits



*Total funding includes one-time federal funding provided for UI during COVID-19 pandemic.

VEC's UI operations funding is primarily from federal grants

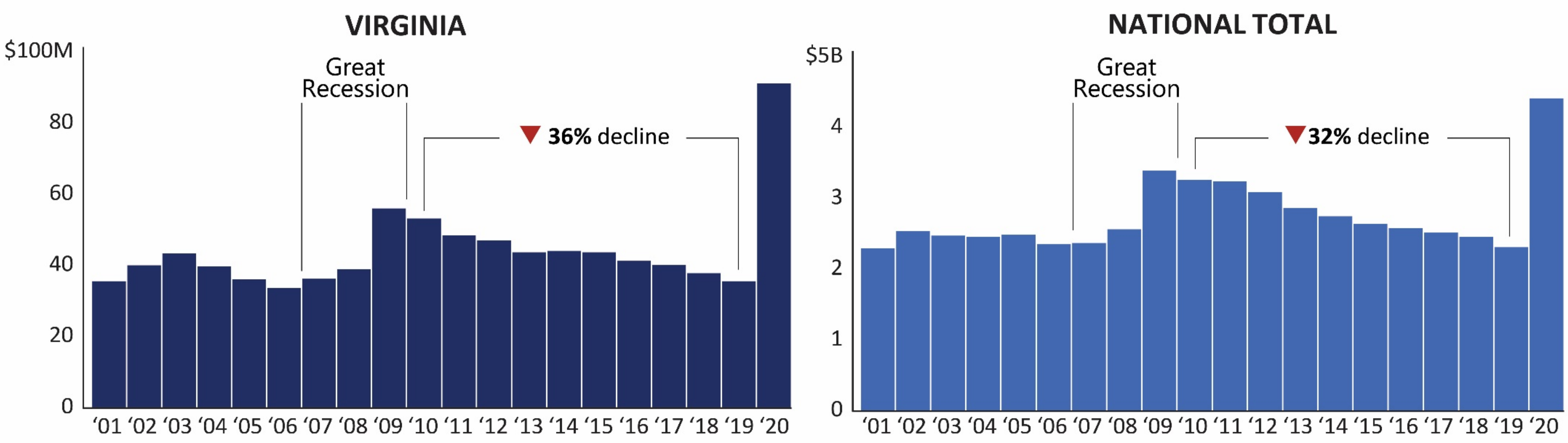
- VEC received $92M* for UI operations in FY20
  - $87M federal UI operational grant from U.S. DOL
  - $5M from employer penalties (e.g., for UI tax delinquency)
- UI operational funding grant amount determined by complex federal formula
  - Based on multiple factors including historic funding levels, anticipated UI workload, operational efficiency, staff allocation, and salary increases
  - Adjusted based on other states' funding needs

*Amount of funding from regular funding sources. VEC received an additional $50M in one-time federal funding in FY20 for operational costs to administer federal COVID-19 programs.

Finding

Funding for VEC’s UI operations has fluctuated with economic conditions, which made it challenging for VEC to maintain staffing and improve systems.

VEC's UI operational funding decreased over one-third between 2009 and 2019, following national trend



States report UI operational funding has not always been adequate to meet their needs

- Multiple experts, VEC, and other states describe UI operational funding as inadequate
  - Majority of states surveyed by NASWA* in 2018 reported facing “serious” or “critical” UI operational funding shortfalls
- VEC leadership reports inability to pay for essential staff positions (e.g., adjudication staff) and UI systems (e.g., call quality monitoring and workforce management systems)
- VEC’s federal UI operational funding was *above* 50-state median in 2019
  - VEC = $36M total; $258 per claim
  - 50-state median = $27M total; $227 per claim

*National Association of State Workforce Agencies

Finding

VEC's inefficient operations have put it at a disadvantage in the federal funding formula for UI operations and have prevented it from spending the operational funding it receives as efficiently and effectively as possible.

VEC is less efficient than other states for most UI functions

UI function	VEC timeliness (minutes)	50-state median timeliness (minutes)	VEC performance (per unit)	VEC rank*
Initial UI claims	38	29	+9 min (+33%)	39th
Continued UI claims	3	2	+1 min (+45%)	39th
Non-monetary determinations	80	53	+27 min (+50%)	44th
Appeals	286	233	+53 min (+23%)	36th
Wage records	0.09	0.05	+4 sec (+88%)	37th
Employer taxes	36	49	-13 min (-27%)	8th

*Rankings scaled so state in 1st place is most efficient. Data reflect VEC performance in 2019.

VEC has relatively high proportion of administrative staff compared with other states

- Virginia had 6th highest portion of staff dedicated to admin functions (e.g., mail services, printing, data entry)
- States with higher proportions of admin staff penalized by federal funding formula
- Automation is key to maximizing UI operational funding
  - VEC still largely reliant on manual, paper-based processes (e.g., staff manually type UI claim information into system)
  - UI IT modernization expected to improve efficiency

Recommendation

Secretary of labor should procure a national firm with relevant expertise to conduct a comprehensive efficiency review of VEC's UI operations to (i) identify specific actions that could improve efficiency, (ii) recommend improvements to staffing and workflows, and (iii) determine whether current funding is adequate to ensure effective UI operations.

Efficiency review should precede infusion of additional funding for UI operations

- Need for more funding unknown, depends on several factors
  - Efficiencies gained after VEC finishes modernizing UI IT system (June 2022)
  - Workflow improvements from JLARC recommendations
  - Results of third-party efficiency review
- Virginia does not supplement federal UI operational funding with state funds, unlike some other states
- Potential additional UI operational funding sources could include special administrative tax or state general funds
  - Some states levy a special administrative tax on employers or employees

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Finding

VEC has not maintained a sufficient number of supervisory staff, particularly in call center, appeals, fraud investigation, and adjudication positions.

VEC has too few supervisors to effectively manage staff in key UI roles

- Supervisors should have ≤ 8 direct reports for skilled functions; ≤ 15 direct reports for task-based functions, according to experts
- Many VEC supervisors have 20+ direct reports
  - Five call center supervisors each oversee 40–60 full-time staff
  - Several supervisors in appeals, fraud investigation, and adjudication oversee 29+ full-time staff
- Insufficient number of supervisory staff hinders effective monitoring of UI staff performance

Recommendation

VEC should establish goals for the ratio of supervisory staff to direct reports, particularly for call centers, adjudication centers, appeals, and fraud investigations. Agency leadership should regularly monitor ratios and report on them in the monthly commissioner's performance report.

Finding

Several additional actions could help VEC to staff up key functions more quickly during future periods of high unemployment.

VEC faced several challenges quickly adding agency staff and third-party contractors

- Unable to convert wage positions to full-time positions because of competitive hiring requirements in state law
- No staff in other state agencies willing to be temporarily reassigned to VEC
  - Requiring other state agency staff to work at VEC temporarily would have required executive branch directive
- National Guard and existing state emergency programs (e.g., adjunct emergency workforce) not mobilized to quickly increase VEC staff

Recommendations

Require DHRM to lead a multi-agency workgroup to examine (i) granting agencies exemptions from certain competitive hiring requirements in emergency circumstances; (ii) requiring state agency staff to temporarily support other agencies; and (iii) providing necessary funding to cover the associated costs.

VEC should build a reserve of workforce services staff who are cross trained to assist with claims during periods of high claims volume.

VEC should maintain a staff augmentation contract for call center services that can be used to respond when call volumes increase.

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Finding

VEC lacks a resiliency plan to help the agency effectively plan for periods of high unemployment.

Resiliency plans are important tools for helping agencies continue operations during emergencies

- Agencies that experience large workload increases and provide time-sensitive services need to ensure effective operations during emergencies
- Effective resiliency planning
  - identifies potential threats and impacts on operations
  - defines highest-priority activities
  - considers steps to mitigate operational disruptions

VEC does not have a plan for effective operations during high UI claims volume

- No specific strategies to modify staffing levels (e.g., internal reassignments, hiring) or UI processes
- No plans for communicating program changes to customers
- Ohio has plan to change staffing levels and overtime hours for different UI claim volumes
- Oregon has plan describing strategy for public communications about UI during recessions

Recommendation

General Assembly may wish to consider requiring VEC to develop a UI resiliency plan that describes specific actions the agency would take to address staffing, communications, and other relevant aspects of UI operations to ensure efficient and effective administration of the UI program when UI claims increase.

Finding

VEC needs additional oversight and assistance to ensure necessary improvements are made to address UI backlogs and other areas of underperformance during COVID-19, and to better respond to future periods of high UI claims volume.

VEC primarily overseen by DOL and executive branch

- U.S. DOL regularly collects data on VEC program performance but rarely issues financial penalties for poor performance
- Secretary of labor, and previously secretary of commerce and trade, charged with overseeing VEC
- Legislative Commission on Unemployment Compensation also helps monitor state's UI program

Stronger administration assistance & oversight, other executive decisions, could have improved outcomes

- Some of most impactful actions in response to surge in UI claims were delayed over a year into pandemic
  - *Examples – hiring contractors for adjudications & call center management; increasing oversight of UI modernization project; implementing key call center and fraud systems*
- Secretary in a position, as part of governor’s cabinet, to identify resources/solutions for agencies, especially during emergencies
- Essential for future secretaries of labor to ensure VEC held accountable for performance and provide assistance as able

Additional legislative oversight is needed

- JLARC report includes 40 recommendations to help VEC improve performance
- Temporary legislative entity should be created in near term to monitor VEC's recovery from pandemic
  - Commission on Unemployment Compensation could be given additional responsibilities

Recommendation

General Assembly may wish to consider creating a temporary subcommittee of the Commission on Unemployment Compensation to monitor VEC's (i) UI backlogs; (ii) efforts to identify, prevent, and recover incorrect payments; (iii) UI IT modernization project; (iv) expenditure of state funds appropriated for UI operations; and (v) implementation of JLARC recommendations.

Members should include claimant and employer representatives as well as legislators (including members of money committees and other standing committees). The subcommittee should meet at least once per quarter and be allowed to sunset on June 30, 2025.

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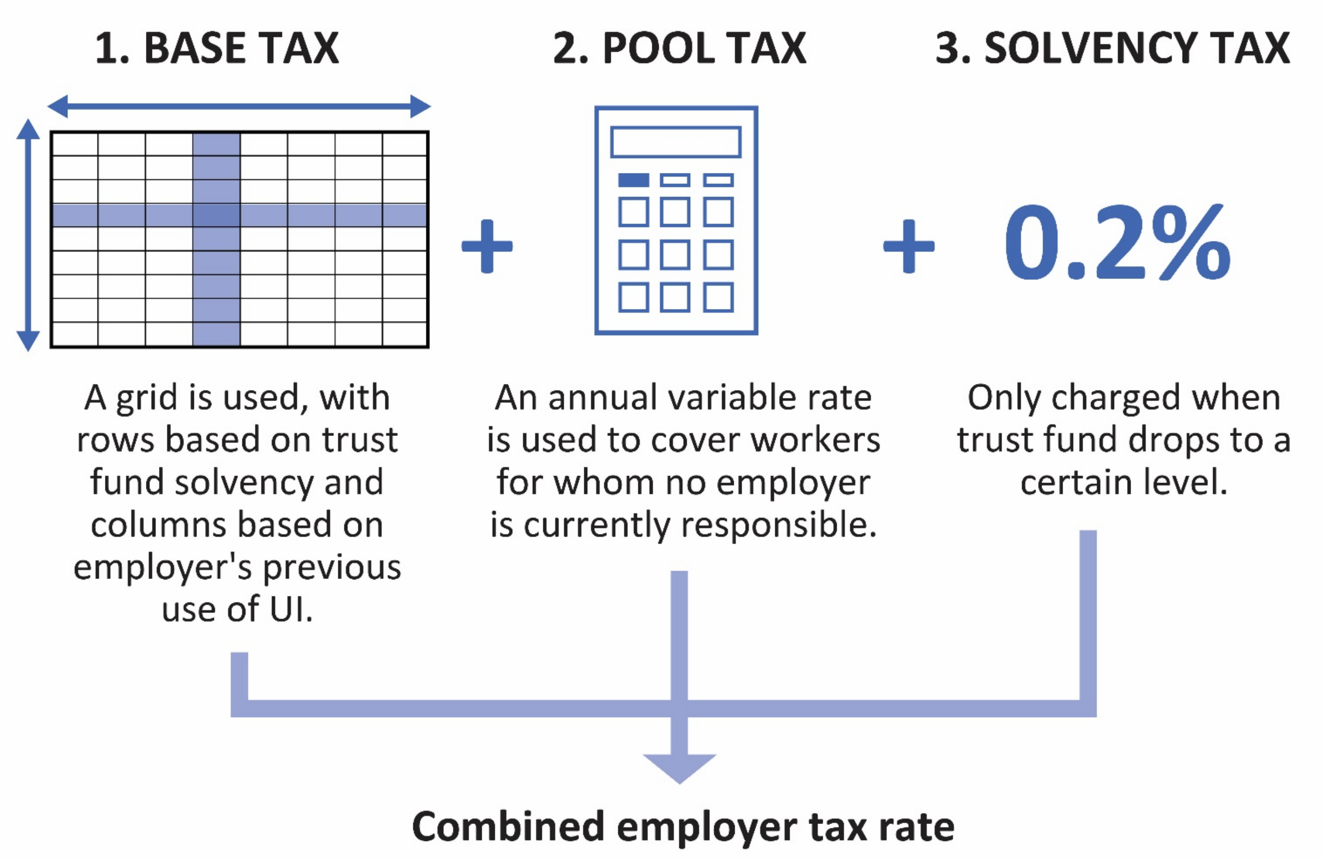
Virginia's state employer UI tax has three parts



- State UI taxes < 1% of total Virginia business taxes

Finding

Individual audits are effective at identifying owed UI taxes, but VEC audits fewer employers than DOL requires and does not effectively target audits.

VEC does not always meet DOL's standards for number of employers and share of wages audited

- Audits entail VEC staff review of employer wage records; issues identified can trigger more tax collections
- 3 out of 5 years before COVID-19, VEC audited less than federally required 1% of employers and 1% of wages
  - VEC audited 0.9% employers, 0.5% wages (2019)
- Targeted audits more likely to collect additional tax revenue, but VEC selects majority of employers to audit at random

Recommendation

VEC should modify existing UI tax audit policies to require staff to conduct at least half of annual audits from list of employers at risk of UI tax avoidance. “At risk” should be defined to include industry and employer-specific factors.

Finding

Changes to tax design are not necessary but could be considered if the General Assembly wishes to increase UI revenue for trust fund solvency or benefits.

Virginia's UI taxable wage base is low and could be increased

- Taxable wage base = max amount of employees' income that is subject to UI tax
- VA's base ($8K) is above federal minimum ($7K) but lower than most states
  - VA = tied for 44th lowest nationwide
  - 50-state median = $14K
- Low base means that VA employers paying higher wages have lower effective UI tax rate
- Half of states automatically adjust their base through indexing (mostly to a % of average annual wage)

Virginia could require more employers to pay min. UI tax or increase max. UI tax for high-use employers

- Experts recommend avoiding 0% UI tax rates, but 4 of 14 Virginia base tax schedules have 0% tax for employers without recent UI claims
  - Challenging to recoup UI costs from employers that go bankrupt or only use UI during recessions
- UI tax rates federally required to increase with employer use to discourage layoffs and place most tax burden on high-use employers
- Virginia's max tax rate consistent with other states, but high-use employers pay less because of low taxable wage base

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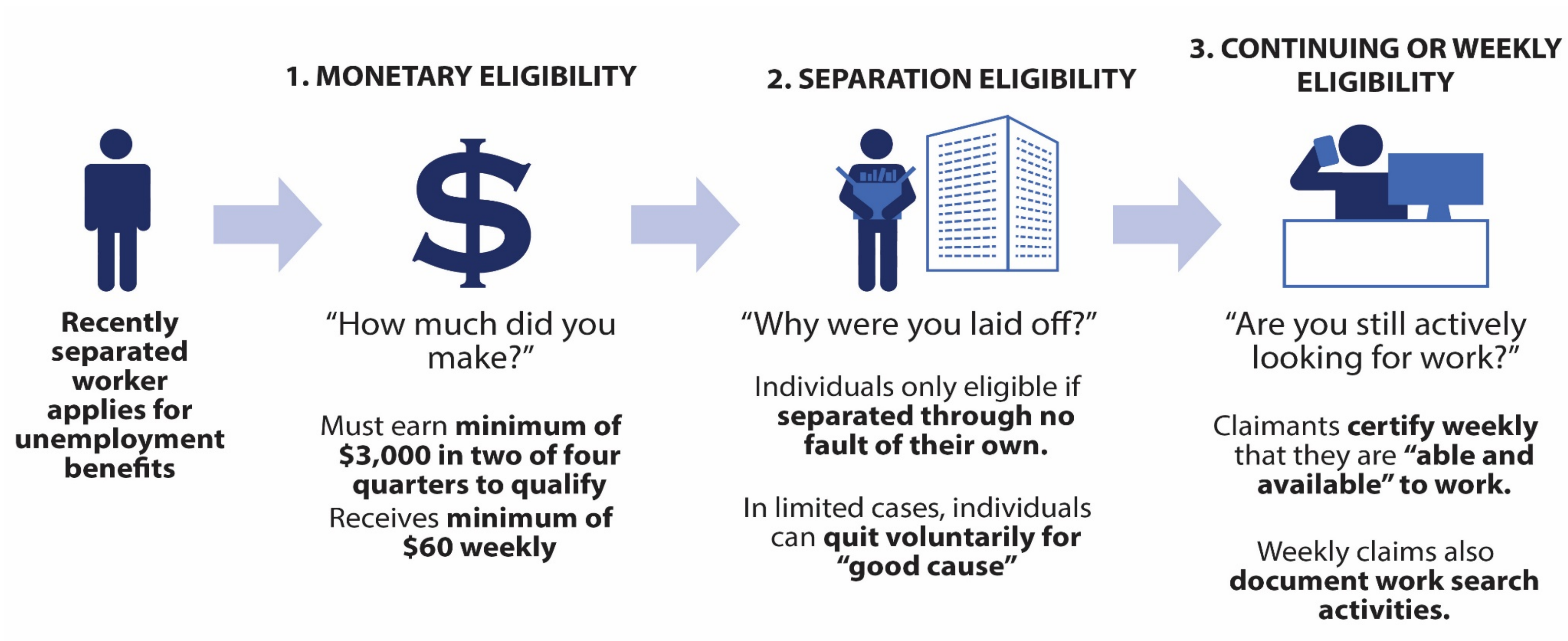
Finding

Virginia’s UI eligibility requirements are similar to other states.

Individuals must meet three categories of eligibility requirements to receive benefits



*Note: Self-employed and independent contractors ("gig" workers) are ineligible for state UI benefits because they are not attached to an employer that pays UI taxes.

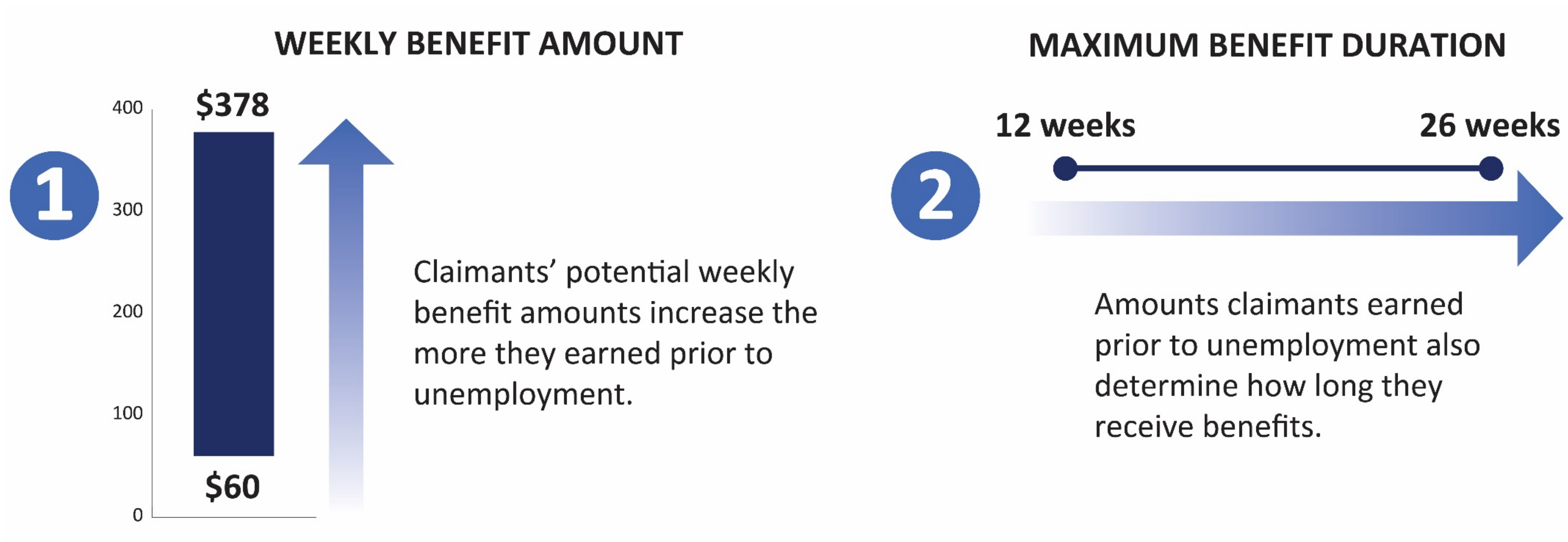
Virginia’s eligibility policies largely align with those in sample of 12 other states

- Three types of states compared:
  - neighboring states (MD, TN, WV, KY, D.C.)
  - states with high use of UI (MA, NJ, PA)
  - state with low use of UI (AZ, FL, GA, SD)
- VA’s eligibility mostly similar to other states

Finding

Length of time Virginians can receive UI aligns with other states, but UI benefit levels are relatively low.

Claimants can earn up to $378 in weekly state UI benefits for up to 26 weeks



Note: Does not include additional federal COVID-19 UI benefits. For most claimants, a full base period includes the first four of the last five quarters before their UI claim was filed.

Number of weeks Virginians can collect UI benefits is largely comparable with other states

- Upper limit of Virginia's maximum duration (26 weeks) is similar to 39 other states
  - 8 states have shorter durations (16–25 weeks)
  - Only MT and MA have longer durations for some claimants
- Lower limit of Virginia's maximum duration (12 weeks) is somewhat low compared with other states
  - Changes unnecessary because most claimants do not collect benefits for all weeks they are eligible

Virginia provides lower UI benefit levels than other states

- Maximum weekly benefit ($378); 37^{th} lowest in 2019
- Virginia's average income replacement ratio 34% in 2019
  - Experts recommend 50% income replacement ratio
- Virginia's UI benefits do not cover basic food, housing, and transportation costs for many individuals
  - *Example – Single adult working full-time making minimum wage is eligible for $197/week, covers 30% cost of living*

Virginia could consider increasing UI benefits if General Assembly wishes to do so

- UI benefit levels are a legislative policy decision
- UI benefit increases have trade offs
  - Benefit UI claimants
  - Require increasing state employer UI taxes or using alternative funding source (e.g., general funds)
- 35 other states automatically index maximum weekly UI benefits to a statewide economic metric (e.g., average weekly wage)
- 13 states have dependent allowances

Recommendation

General Assembly may wish to consider requiring VEC to annually calculate average Virginia UI benefit levels, the average income replacement of UI benefits, and the recipiency rate for UI benefits. VEC should provide this information in its annual report presented to the Commission on Unemployment Compensation.

Policy option to consider

General Assembly could authorize the Commission on Unemployment Compensation to convene an advisory committee comprising stakeholders and experts to (i) review UI benefits, replacement ratios, and recipiency rates; (ii) identify factors that affect UI benefits and recipiency; (iii) assess the advantages and disadvantages of potential changes to benefits; and (iv) recommend options to change benefit levels when needed.

*JLARC staff propose policy options instead of recommendations when (i) the action is a policy judgment best made by elected officials, (ii) evidence suggests the action could be beneficial, or (iii) a finding could be addressed multiple ways.

Key findings*

VEC's inefficient UI operations have placed VEC at a disadvantage in the federal funding formula used for UI operations and prevented VEC from spending the operational funding it receives as efficiently and effectively as possible.

VEC has not effectively planned for periods of high unemployment.

VEC needs additional oversight and assistance to ensure it makes necessary improvements to operations and performance and responds better to future periods of high UI claims volume.

*Does not include findings from September 20, 2021 interim briefing.

Key findings, continued*

VEC could take additional steps to increase UI employer tax collections, which would help maintain the health of the state's UI trust fund that is used to pay UI benefits.

Changes to tax design are not necessary but could be considered if the General Assembly wishes to increase UI revenue for trust fund solvency or benefits.

Eligibility criteria for UI benefits, and length of time Virginians can receive them, are comparable with other states; weekly benefit amount is relatively low.

*Does not include findings from September 20, 2021 interim briefing.

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