Commonwealth of Virginia
November 8, 2021

Report to the Governor and the General Assembly of Virginia

Operations and Performance of the Virginia Employment Commission

2021



JLARC
JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

Joint Legislative Audit and Review Commission

Delegate Kenneth R. Plum, Chair
Senator Janet D. Howell, Vice Chair

Delegate Terry L. Austin
Delegate Betsy B. Carr
Delegate M. Kirkland Cox
Delegate Eileen Filler-Corn
Delegate Charniele L. Herring
Senator Mamie E. Locke
Senator Jeremy S. McPike
Senator Thomas K. Norment, Jr.
Delegate Robert D. Orrock, Sr.
Delegate Mark D. Sickles
Senator Lionell Spruill, Sr.
Delegate Luke E. Torian

Staci Henshaw, Auditor of Public Accounts

JLARC staff

Hal E. Greer, Director

Tracey Smith, Associate Director
Lauren Axselle, Project Leader
Sarah Berday-Sacks
Nick Galvin
Landon Webber
Dillon Wild

Information graphics: Nathan Skreslet
Managing Editor: Jessica Sabbath

JLARC Report 555
©2021 Joint Legislative Audit and Review Commission
jlarc.virginia.gov

Contents

Summary i

Recommendations and Policy Options ix

Chapters

1. Overview of the Virginia Employment Commission 1
2. Impacts of COVID-19 on VEC 11
3. VEC's Resources and Management 17
4. Unemployment Insurance Claims and Appeals Process 39
5. Quality and Accuracy of Claims Determinations 63
6. Unemployment Insurance System Modernization and IT Security 77
7. Unemployment Insurance Eligibility Criteria and Benefits 87
8. Unemployment Insurance Trust Fund Solvency and Employer Taxes 101

Appendixes

A: Study resolution 117

B: Research activities and methods 119

C: Estimated impacts of employment services provided by the Virginia Employment Commission 136

D: Analysis of selected Virginia Employment Commission staff salaries 141

E: Prioritization of JLARC report recommendations 145

F: Other states' oversight of unemployment insurance programs 155

G: Prioritized list of unemployment insurance communications to review 159

H: Work search activities and verification strategies 160

I: Unemployment insurance recipients and Virginia's modern workforce 163

J: Agency responses 173

Summary: Operations and Performance of the Virginia Employment Commission

WHAT WE FOUND

COVID-19 pandemic had a substantial negative impact on VEC operations

The rise in Virginia's unemployment caused by COVID-19 led to a rapid increase in the demand for unemployment insurance (UI) benefits administered by the Virginia Employment Commission (VEC). The number of UI claims increased at a much more rapid rate during COVID-19 than in previous recessions. New UI claims increased by a factor of 34 within the first two months of the pandemic, totaling 236,000 in April 2020. Continued weekly claims increased by a factor of 13 within this same time period, totaling 1.3 million.

VEC staff worked over 191,000 hours of overtime between March and December 2020 to handle the increased workload; this was a 1,600 percent increase compared with 2019 overtime and equivalent to 92 full-time staff positions.

VEC temporarily closed multiple offices during COVID-19 to help protect staff's health and safety and stopped providing in-person assistance at most local offices. VEC closed some offices because of outbreaks of COVID-19 infections among VEC staff.

WHY WE DID THIS STUDY

The Joint Legislative Audit and Review Commission (JLARC) approved a study resolution that directed JLARC staff to review the operations of the Virginia Employment Commission (VEC). Staff were directed to evaluate COVID-19's impact on VEC and the effectiveness of VEC's response; VEC's administration of the Unemployment Insurance (UI) program, including overpayments, appeals, and customer service; VEC's UI IT system; the sufficiency of VEC staffing, funding, and management; and UI benefits compared to other states.

ABOUT VEC

The majority of VEC's funding and staff support its administration of the UI program, which provides temporary financial assistance to eligible individuals who have lost their jobs. VEC employs more than 1,000 staff and received about $4.4 billion in funding in FY20. VEC is almost entirely dependent on federal funding for its operations and is subject to oversight by the U.S. Department of Labor as well as Virginia's secretary of labor in the executive branch of state government.

Insufficient funding, staff, and information technology contributed to VEC's inability to operate effectively during the pandemic

Significant weaknesses in VEC's operations—particularly its deficient staffing levels, antiquated UI IT system, performance monitoring, and oversight—were revealed during the COVID-19 pandemic. Staffing shortages prevented VEC from administering UI claims in an accurate and timely manner. The delayed replacement of its outdated IT system meant VEC was reliant on inefficient, paper-based processes that severely hampered timely and satisfactory responses to claimants. More comprehensive performance monitoring and prompt executive actions by VEC may have helped VEC respond more effectively to these and other challenges.

Funding

VEC leadership attributes the agency's underperformance to a lack of sufficient funding to administer the UI program. The federal government has provided insufficient

funding to states for UI program operations. Nevertheless, the total amount of funding Virginia received in 2019 was above the 50-state median, in total and per claim.

VEC receives less federal funding for UI operations than what DOL estimates it needs, and this is partly due to VEC's operational inefficiencies. The federal formula for allocating this funding penalizes states that operate their UI programs less efficiently than other states. In each of the five years preceding COVID-19, VEC reported lower operational efficiency than other states for most core UI functions. VEC also has a relatively high proportion of administrative staff compared with other states, which DOL's funding formula also penalizes. While DOL does not publish the specific amount it penalizes VEC for its inefficiencies, a subject matter expert interviewed for this study estimated it could be a relatively small portion of VEC's total funding. Nevertheless, because VEC relies almost exclusively on federal funding for operating the state's UI program, the agency should do all it can to maximize the amount of federal funding it is eligible for and efficiently spend the funding it receives.

For federal fiscal year 2022, Virginia will receive at least $41.2 million in UI operational funding. This amount is 20 percent higher than the amount DOL provided VEC at the beginning of federal fiscal year 2021 and is driven by VEC's higher workload during the pandemic.

Staffing

Inadequate staffing has contributed to VEC's mounting backlogs of UI claims for intake and adjudication, the poor performance of VEC's UI customer call center, undetected fraud, and the long-delayed replacement of VEC's antiquated UI claims processing IT system. The agency has experienced substantial fluctuations in staffing levels, prolonged vacancies, high turnover, and insufficient numbers of supervisory staff. VEC's staffing challenges were particularly prominent during the COVID-19 pandemic but are not new. The agency had not maintained an adequate staffing level in key UI functions for several years before the pandemic. VEC leadership attribute low staffing levels to inadequate federal funding for UI operations.

Information Technology

VEC has been in the process of modernizing its UI IT system for 12 years and is eight years behind schedule. VEC plans to launch the final phase of the project in November 2021 and to complete the project by June 2022. Like Virginia, many other states were in the process of modernizing their UI IT systems during the pandemic, but VEC's UI modernization project has taken significantly longer than several other states.

Delays in the UI modernization project have caused VEC customers and staff to rely on outdated, manual UI claims processes that contributed to persistent inefficiencies at VEC. VEC's legacy system does not have a customer-facing portal or dashboard; therefore, customers have had to rely on call centers and physical mail to check their UI claim status and submit required documents. Additionally, VEC staff have had to

manually process claims and build workarounds to overcome system limitations. The legacy system also lacks certain automated data analytics, which increases the risk of inaccurate or fraudulent benefit payments.

Insufficient staffing and ineffective project management have caused project delays. Neither VEC nor the contractor have consistently dedicated enough staff to the UI IT modernization project. VEC staff assigned to the project also indicated that the prolonged timeline has detracted from their ability to focus on their primary responsibilities at VEC. VEC's UI modernization project has also been delayed by difficulties converting claimants' data from the legacy system to the new system, including data on past claims, benefit payments, and personally identifiable information. The COVID-19 pandemic also delayed the project. VEC paused the UI modernization project for one year between May 2020 and May 2021 to focus on UI claims backlogs.

Significant UI claims backlogs accrued while VEC was slow to increase staff for UI claims intake, adjudication, and appeals

VEC has experienced significant backlogs in all areas of UI claims processing: initial intake, adjudications, and appeals. While backlogs in these areas did not exist prior to the pandemic, VEC was underperforming some DOL performance metrics for claims processing before 2020.

VEC had insufficient staff to process UI claims prior to the pandemic and did not act quickly or effectively to increase staff during the pandemic. For example, VEC did not hire

- contractors to assist with initial claims intake until November 2020, well after large backlogs had accumulated;
- contractors to help process a backlog of 580,000 employer separation reports until August 2021;
- employees for the majority of the newly created adjudication positions until after January 2021; or
- contractors to assist with adjudication until May 2021.

The backlogs of uncompleted claims at VEC will continue to grow. In May 2021, VEC estimated that its staff had approximately 2 million UI claims "issues" still to review, about 1 million of which may require adjudication. VEC's updated estimate as of October 2021 indicated that approximately 440,000 UI claims issues still require review to determine if adjudication is necessary. Some of the issues that are adjudicated will eventually be appealed, adding to the appeals workload. Moreover, the over 580,000 employer separation reports that have not been reviewed will also add to adjudication and appeals backlogs. In many cases, benefits have already been paid on these claims.

Rate and cost of incorrect benefit payments have increased substantially during COVID-19, estimated to exceed $1 billion

VEC may have incorrectly paid an estimated $930 million in 2020 in state UI benefits and an additional estimated $322 million between January and June 2021. Almost all of these incorrect payments are overpayments, which can occur because of mistakes made by VEC, the claimant, the employer, or because of fraud. VEC may eventually determine a portion of these overpayments are eligible for the federal Pandemic Unemployment Assistance program, which could declassify them as overpayments or transfer the financial liability from the state to the federal government. Nevertheless, the volume and amount of overpayments is expected to be substantial, and VEC is required by the federal government to try to recover overpayments for state and federal programs. Problems with the quality and accuracy of VEC's UI determinations are not new—VEC has not met the federal quality standard for most UI eligibility determinations over the past decade.

During COVID-19, many incorrect payments may be attributable to practices VEC implemented to pay benefits more quickly. These included not investigating certain claims issues, discontinuing fact-finding interviews as part of the adjudication process, and providing minimal training to new staff on how to accurately complete claims intake and adjudication. Another key driver of incorrect payments before and during COVID-19 is employers' incomplete and delayed submission of reports describing separation circumstances. Separation-related incorrect payments accounted for about 59 percent of VEC's UI overpayments in 2020, and about 24 percent of overpayments between 2016 and 2019. VEC is also not identifying many claimants who fail to meet weekly work search requirements. VEC stopped its manual work search verification process before 2020 because of staffing limitations.

VEC's estimated overpayments attributable to fraud have increased significantly since 2020. VEC's overall estimated fraud rate for the *state UI program* grew 440 percent from 1.4 percent in 2019 to 7.5 percent in 2020. At this rate, VEC has paid out an estimated $70 million in fraudulent state UI benefits in 2020 and an additional estimated $29 million in the first quarter of 2021. VEC did not begin using some critical fraud prevention and detection best practices until 2021, which likely would have reduced fraudulent payments made during the pandemic. VEC's *confirmed* fraud rates are much lower than its *estimates* because at least 164,456 potentially fraudulent claims were backlogged and awaiting VEC investigation as of October 2021.

VEC call centers did not sufficiently respond to increases in call volume throughout the pandemic

VEC call centers have struggled to meet call demand throughout the pandemic and continue to answer only a small percentage of total calls received. In June 2020, VEC received approximately 3.3 million calls and answered only about 6 percent, with customers who did get through waiting over one hour, on average, to speak with an agent.

In June 2021, VEC received approximately 3.4 million calls and answered about 4 percent.

Several factors, including sustained high call volume and insufficient staffing levels, have contributed to VEC's poor call center performance. Between February 2020 and April 2020, total call volume increased nearly 3,000 percent, from approximately 100,000 monthly calls to over 3 million. Call volume increased sharply to nearly 5 million monthly calls in early 2021. VEC reports that only about 85 staff were responsible for taking phone calls prior to the pandemic, which was insufficient to handle the increased call volume.

VEC has only recently taken meaningful steps to increase call center staff and better address customer service needs. The agency purchased a larger physical space for the customer contact center and had almost 390 staff and contractors answering calls as of July 2021. VEC has also recently contracted with an additional third-party vendor who has experience managing high-volume call centers and has launched new customer service technology solutions, including a virtual chat agent that can more efficiently address customer inquiries. The third-party vendor allowed VEC to bring on approximately 440 new agents through October 2021 with plans to add up to 200 additional agents by the end of November 2021. Because of these actions, VEC's call centers answered a higher percentage of total calls, blocked fewer callers, and improved wait times in September 2021.

New UI IT system is expected to improve claimant experience and increase operational efficiencies

VEC's new UI benefits system includes several key functions that experts recommend should be part of modernized UI IT systems. Most importantly, VEC's new system will have an online customer portal that will allow UI claimants to view their UI claim status, notices VEC has sent them, information they still need to provide VEC, and the total amount of weekly benefits they have received. These improvements should reduce the number of calls VEC receives related to claim status inquiries. The new system will also have guided workflows (automatic prompts that help claimants provide correct information) and pop-up prompts to help claimants understand specific terms and steps in the UI application process.

Some functions recommended by experts will not be fully implemented as part of the new system, including the ability to reset personal identification numbers (PINs) electronically or receive notifications by text regarding claim status. Additionally, given the amount of time it has taken VEC to complete the modernization project, it is possible that features of truly modern IT systems are not incorporated into the VEC system. Finally, unaddressed deficiencies in the employer tax portion of the UI modernization project (completed in 2015) suggests there will be challenges to address after the new system's final phase is implemented.

UI trust fund has been effectively managed, but VEC should take steps to maximize trust fund revenues

UI benefits are paid out of Virginia's UI trust fund, and Virginia has managed the trust fund well. While Virginia needed to borrow money from the federal government to pay UI benefits in the last two economic recessions, its loan amounts were lower than other states, and Virginia paid back its loans faster than other states. However, Virginia has not always rebuilt its trust fund back up as quickly as DOL recommends to be prepared for future recessions.

VEC should improve its efforts to collect UI taxes owed by Virginia employers to maximize revenue collection and rebuild the UI trust fund more quickly. The General Assembly could also consider increasing employer UI taxes to build a larger trust fund reserve to limit fluctuations in employer tax rates in response to recessions, but revenue increases are not essential because Virginia's tax structure is generally sound, and the state can take federal loans to ensure solvency.

VEC may have responded more effectively to the pandemic with stronger administration oversight and assistance and different executive decisions—continued legislative oversight is needed

VEC and the administration made changes to the UI program to better respond to the increase in demand for UI benefits during the pandemic. VEC leadership also appeared to appropriately prioritize the health and safety of its own staff and provide effective support to staff who faced exceedingly difficult personal and professional demands during the pandemic.

However, some of the most impactful executive actions by VEC leadership that would have helped VEC respond to the surge in UI claims were delayed over a year into the pandemic. Taking certain actions earlier in the pandemic—especially those related to staffing increases and IT system improvements—may have helped VEC respond more effectively to the increased UI claims volume and program challenges.

VEC could also have benefited from additional oversight and assistance from the administration and could have better availed itself of expertise and resources in other areas of state government. Given VEC's critical role during severe increases in unemployment—and the operational challenges that arise from them—future administrations and secretaries of labor need to provide strong oversight and assistance to VEC during severe economic downturns or other relevant emergencies.

Moving forward, the volume and complexity of the actions that VEC needs to take to improve its operation of the state's UI Program, along with the still-unfolding effects of the pandemic, necessitate continued oversight by the legislature.

Virginia's UI benefit levels are low relative to other states

Virginia's UI benefits provide less income replacement than many other states. Experts generally agree that UI benefits should replace roughly 50 percent of an individual's weekly wages. Virginia's average 2019 replacement ratio was 34 percent, ranking 33rd among other states. Virginia also has relatively low weekly benefit amounts compared with other states. In 2019, Virginia's *maximum* weekly benefit amount was $378, which ranked 37th nationwide, and Virginia's *average* weekly benefit was $316, which ranked 36th nationwide. Furthermore, Virginia's standard state UI benefits cover less than half of basic food, housing, and transportation costs for many individuals, particularly those who qualify for lower benefits, live in expensive areas, or have dependents.

WHAT WE RECOMMEND

Legislative action

- Create a subcommittee of the Commission on Unemployment Compensation to monitor VEC's performance in eliminating backlogs, addressing incorrect UI benefit payments, implementing and improving its new UI benefits system, spending General Assembly-appropriated funds for UI operations, and implementing JLARC's recommendations.
- Direct the Department of Human Resource Management to lead a workgroup of agency leaders and human resources staff to examine the feasibility of and policies and procedures necessary for granting agencies exemptions from competitive hiring requirements and requiring staff from selected state agencies to temporarily work for other state agencies in need of staffing assistance during emergencies.
- Require VEC to develop and maintain an unemployment insurance resiliency plan that describes how the agency would change its programs, staffing, and communications during periods of high unemployment to ensure efficient and effective administration of the UI program.
- Require employers to provide information related to UI claims, such as employer separation reports, to VEC electronically and to make unemployment insurance tax payments electronically.

Executive action

- Conduct a comprehensive efficiency review of VEC's UI operations using a national firm with relevant expertise.
- Cross-train staff from VEC's workforce division to assist with UI claims during future periods of high claims volume.
- Develop a detailed plan and timeline for resolving the backlog of claims that need to be adjudicated and the potentially fraudulent claims that need to be investigated.

- Establish and maintain a dedicated quality monitoring team in the VEC call centers, maintain an ongoing contract with a third party that provides call center staff augmentation services, and establish call center performance metrics that reflect industry standards.
- Regularly collect feedback on the usability of the new UI benefits system, make improvements to the system as necessary, issue a request for information to identify additional features needed for the modernized UI claims system that could be implemented by a contractor or VEC IT staff, and incorporate the features.
- Conduct a pilot program to test the effectiveness of additional methods to identify employers that are liable for—but not paying—UI taxes, implement a system to detect actions used by employers to avoid paying UI taxes, modify employer audit policies to more effectively identify unpaid employer taxes, and use the federal Treasury Offset Program to collect delinquent taxes.

POLICY OPTIONS FOR CONSIDERATION

Staff typically **propose policy options rather than make recommendations** when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

- Direct the Department of General Services and the Virginia Information Technologies Agency to assess agencies' needs for call center staff augmentation, ensure that contractual solutions to meet those needs are in place, and report the steps taken and available solutions.
- Increase the unemployment insurance taxable wage base to generate more revenue for the UI trust fund.
- Increase the minimum and maximum base unemployment insurance tax rate paid by employers.
- Modify the UI benefits formula to automatically adjust UI benefits according to a statewide economic metric, such as the increase in average weekly wages.

Recommendations and Policy Options: Operations and Performance of the Virginia Employment Commission

JLARC staff typically make recommendations to address findings during reviews. Staff also sometimes propose policy options rather than recommendations. The three most common reasons staff propose policy options rather than recommendations are: (1) the action proposed is a policy judgment best made by the General Assembly or other elected officials, (2) the evidence indicates that addressing a report finding is not necessarily required, but doing so could be beneficial, or (3) there are multiple ways in which a report finding could be addressed and there is insufficient evidence of a single best way to address the finding.

Recommendations

RECOMMENDATION 1

The secretary of labor should competitively procure a national firm with expertise in evaluating the efficiency of an organization's staffing structure, delegation of staff duties, and work processes to conduct a comprehensive efficiency review of the unemployment insurance (UI) operations of the Virginia Employment Commission to (i) identify specific actions that could be taken to improve the efficiency of VEC's UI operations, including through more efficient and effective use of staff and technology, (ii) recommend improvements to the agency's staffing and workflows to most effectively use existing federal funding for UI operations, and (iii) determine whether current funding is adequate to ensure effective UI operations. (Chapter 3)

RECOMMENDATION 2

The Virginia Employment Commission should establish goals for the ratio of supervisory staff to direct reports, particularly for key functions including call centers, adjudication and appeals centers, and fraud investigations. Agency leadership should regularly monitor the ratio of supervisory staff to direct reports relative to the goals, and report performance in meeting these goals in the monthly commissioner's performance report. (Chapter 3)

RECOMMENDATION 3

The General Assembly may wish to consider including language in the Appropriation Act requiring the Virginia Department of Human Resource Management to lead a multi-agency workgroup, comprising agency leaders and human resources staff from state agencies most likely to be in need of staffing assistance during emergencies, to examine the feasibility of and policies and procedures necessary for (i) granting agencies exemptions from certain competitive hiring requirements during emergencies; (ii) requiring selected state agency staff to temporarily support other agencies in need of staffing assistance during emergencies through existing or new state initiatives; and (iii) providing necessary funding to cover the associated costs. The workgroup should propose criteria to determine under what circumstances these emergency hiring practices may be invoked and a process for invoking this authority as well as terminating it. The workgroup should submit its findings to the secretary of administration, the chair of the House Appropriations Committee, and the chair of the Senate Finance and Appropriations Committee by June 30, 2022. (Chapter 3)

RECOMMENDATION 4

The Virginia Employment Commission should establish meaningful performance goals for its call center operations and fraud investigations, and ensure it has goals for effectively measuring performance in all other aspects of unemployment insurance operations. Agency leadership should regularly monitor performance relative to the goals and report goals and performance in the monthly commissioner's performance report. (Chapter 3)

RECOMMENDATION 5

The Virginia Employment Commission (VEC) should transfer the unemployment insurance quality assurance unit from the unemployment insurance division and have it report directly to the VEC commissioner. (Chapter 3)

RECOMMENDATION 6

The Virginia Employment Commission (VEC) should require its unemployment insurance quality assurance unit to compile its findings and recommendations in a central repository and routinely update VEC leadership on their status. (Chapter 3)

RECOMMENDATION 7

The General Assembly may wish to consider amending § 60.2-111 of the Code of Virginia to require the Virginia Employment Commission to develop and maintain an unemployment insurance resiliency plan that describes the specific actions the agency would take, depending on the level of increase in unemployment insurance (UI) claims, to address staffing, communications and other relevant aspects of operations to ensure continued efficient and effective administration of the UI program. (Chapter 3)

RECOMMENDATION 8

The Virginia Employment Commission (VEC) commissioner should ensure that all key policy or other significant changes that could affect the public, VEC, or VEC staff are communicated clearly and expeditiously to all VEC staff, especially those in leadership or positions communicating with the public. (Chapter 3)

RECOMMENDATION 9

The General Assembly may wish to consider including language in the Appropriation Act or amending § 30-222 of the Code of Virginia to create a subcommittee of the Commission on Unemployment Compensation to monitor the Virginia Employment Commission's: (1) key performance metrics related to UI backlogs; (2) efforts to identify, prevent, and recover incorrect UI benefits payments, including fraudulent payments; (3) project to modernize the UI IT system; (4) expenditure of state funds appropriated for UI administration; and (5) implementation of JLARC recommendations. The subcommittee should include individuals who can represent the interests and experiences of claimants and employers. The subcommittee could include members of the following General Assembly committees: Commission on Unemployment Compensation, House Appropriations, Senate Finance and Appropriations, House Labor and Commerce, and Senate Commerce and Labor. The subcommittee should meet at least once quarterly and sunset on June 30, 2025. (Chapter 3)

RECOMMENDATION 10

The Virginia Employment Commission (VEC) should, as soon as possible, have staff in its internal audit division review and revise documents and online resources to more clearly describe and explain (i) eligibility criteria for Unemployment Insurance (UI), (ii) how to navigate the UI claims and appeals process, and (iii) the status or outcome of a claim. VEC should use examples from other states and input from VEC staff and customers and should competitively procure a third party contractor with expertise in UI and customer communications to assist with these efforts. (Chapter 4)

RECOMMENDATION 11

The Virginia Employment Commission should develop (i) a series of instructional, short videos designed to help claimants better understand their potential eligibility for unemployment insurance, the steps of the application process, and how to file a claim and (ii) an interactive, online eligibility tool that enables claimants to better understand their potential eligibility and benefits under the program. (Chapter 4)

RECOMMENDATION 12

The Virginia Employment Commission should build a reserve of staff to assist with claims during periods of high claims volume by identifying workforce services division staff whose time can practicably be reassigned to non-workforce activities during periods of high unemployment insurance claim volume. These staff should be cross-trained on key unemployment insurance processes. (Chapter 4)

RECOMMENDATION 13

The Virginia Employment Commission should formalize a policy for prioritizing and assigning claims for adjudication during periods of high claims volume. This policy should detail how prioritization may change in response to claims volume and clearly state the expectation that VEC should generally prioritize resolving older claims. (Chapter 4)

RECOMMENDATION 14

The Virginia Employment Commission (VEC) should develop a detailed plan that includes specific actions and a timeline to resolve (i) outstanding adjudications and (ii) all issues on claims that VEC bypassed in 2020 and 2021. The plan should quantify the numbers and qualifications of new staff needed to resolve these claims, outline the actions planned for hiring needed staff, and identify potential risks and mitigation strategies. VEC should submit the plan to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by November 1, 2021 and provide a status update to each body quarterly in 2022. VEC should also publish the plan and updates on its website. (Chapter 4)

RECOMMENDATION 15

The Virginia Employment Commission should maintain an ongoing staff augmentation contract with a provider that is experienced in providing call center services for unemployment insurance programs and can quickly provide increased call center staff when call volumes increase. (Chapter 4)

RECOMMENDATION 16

The Virginia Employment Commission (VEC) should provide a written quarterly update on the performance of its call centers to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by December 31, 2021 and at the end of each quarter in 2022. VEC should also publish these updates on its website. (Chapter 4)

RECOMMENDATION 17

The Virginia Employment Commission (VEC) should establish and maintain a dedicated quality monitoring team composed of VEC staff from each customer contact center. This team should use the recently procured quality monitoring software to regularly review and assess call quality and performance for all VEC call agents, and identify any additional training needs on an agent-by-agent basis through weekly monitoring and assessment of at least three calls per agent. (Chapter 4)

RECOMMENDATION 18

The General Assembly may wish to consider amending § 60.2-619 of the Code of Virginia to specify that non-valid unemployment insurance claims resulting from monetary ineligibility are ineligible for appeal through the Virginia Employment Commission's (VEC's) appeals division. (Chapter 4)

RECOMMENDATION 19

The Virginia Employment Commission should revise monetary determination notices to clearly indicate if a claim is non-valid because of monetary ineligibility, and direct claimants who disagree with their non-valid monetary determination to request a redetermination from the monetary determination unit. (Chapter 4)

RECOMMENDATION 20

The General Assembly may wish to consider amending Article 2 of Chapter 1 of Title 60.2 of the Code of Virginia to direct the Virginia Employment Commission to create an appeals ombudsman position to provide impartial information about the unemployment insurance appeals process and help ensure that all parties are afforded due process in such appeals. (Chapter 4)

RECOMMENDATION 21

The Virginia Employment Commission should develop a standardized training program that explains how to conduct high quality unemployment insurance claims determinations and that is administered by a dedicated training manager to all new and existing adjudication staff. (Chapter 5)

RECOMMENDATION 22

The General Assembly may wish to consider amending §60.2-121.1 of the Code of Virginia to require employers to electronically provide separation information when requested to the Virginia Employment Commission unless they are granted a waiver from providing this information electronically. (Chapter 5)

RECOMMENDATION 23

The Virginia Employment Commission should resume auditing a sample of UI claims to verify compliance of claimants with the unemployment insurance program work search requirement no later than December 1, 2021. (Chapter 5)

RECOMMENDATION 24

The Virginia Employment Commission (VEC) should develop a plan for investigating the backlog of potentially fraudulent claims and establish a strategy for prioritizing its investigations according to the potential dollar amount of fraudulent payments per claim. This plan should include a strategy for hiring additional fraud investigators and expediting training of new hires. This plan should be presented to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by December 31, 2021. VEC should also publish these updates on its website. (Chapter 5)

RECOMMENDATION 25

The Virginia Employment Commission (VEC) should immediately resume overpayment recovery activities for all finalized overpayments and initiate collections activities for all future overpayments immediately after finalization. VEC should also create and adhere to internal timeliness standards for processing all previously received and future overpayment waiver applications to ensure overpayments are finalized and recovery activities are initiated in a timely manner. (Chapter 5)

RECOMMENDATION 26

The Virginia Employment Commission (VEC) should regularly collect feedback on the usability of the new Unemployment Insurance benefits information technology system from claimants and employers and make regular improvements to the system, as necessary, that address such feedback. VEC should provide a summary of user feedback and planned and completed system changes to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by March 31, 2022 and at the end of each quarter in 2022. VEC should also publish this information on its website. (Chapter 6)

RECOMMENDATION 27

The Virginia Employment Commission (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 staff. (Chapter 6)

RECOMMENDATION 28

The Virginia Employment Commission should require its unemployment insurance IT modernization contractor to develop a plan that includes specific actions and a timeline for addressing all existing tax system problems and details (1) how each problem will be fixed, (2) deadlines for fixing each problem, and (3) any additional resources needed to fix the problems. (Chapter 6)

RECOMMENDATION 29

The Virginia Employment Commission (VEC) should establish a plan with its unemployment insurance modernization vendor to ensure VEC IT staff are sufficiently trained to operate and modify the employer tax system. (Chapter 6)

RECOMMENDATION 30

The Virginia Employment Commission (VEC) should work with the Virginia Information Technologies Agency (VITA) to facilitate an audit of VEC's IT security systems and to identify any necessary IT security improvements. The audit should be completed by a vendor approved by VITA. The audit should validate whether VEC's existing IT security systems meet the requirements issued by VITA. (Chapter 6)

RECOMMENDATION 31

The Virginia Employment Commission should fully transform all agency IT systems and servers to the state's central IT infrastructure as soon as possible. (Chapter 6)

RECOMMENDATION 32

The General Assembly may wish to consider amending section § 60.2 of the Code of Virginia to require the Virginia Employment Commission (VEC) to annually calculate average unemployment insurance (UI) benefit levels, the average income replacement of UI benefits in Virginia, and the recipiency rate for UI benefits. VEC should provide this information in its annual report to the Commission on Unemployment Compensation. (Chapter 7)

RECOMMENDATION 33

The Virginia Employment Commission (VEC) should conduct a one-year pilot program to identify employers who owe unemployment insurance taxes but are not registered with VEC by auditing employers who do not register with VEC after receiving notifications of potential tax liability. VEC should assess the pilot program's effectiveness to decide whether to use this methodology on an ongoing basis. (Chapter 8)

RECOMMENDATION 34

The Virginia Employment Commission (VEC) should conduct a one-year pilot program to identify employers who owe unemployment insurance taxes but are not registered with VEC by auditing a sample of employers who may be misclassifying workers based on their 1099 tax filings. VEC should assess the pilot program's effectiveness and decide whether to use this methodology on an ongoing basis. (Chapter 8)

RECOMMENDATION 35

The Virginia Employment Commission should reinstate its State Unemployment Tax Act dumping identification system no later than December 2022. (Chapter 8)

RECOMMENDATION 36

The Virginia Employment Commission (VEC) should modify existing unemployment insurance (UI) tax audit policies to require field tax auditors to conduct at least half of their audits per year from a list of employers identified to be at-risk for UI tax avoidance. VEC should define "at-risk" to include industry and employer-specific factors and establish a system for consistently identifying such employers. (Chapter 8)

RECOMMENDATION 37

The Virginia Employment Commission should begin using the federal Treasury Offset Program for applicable delinquent taxes as soon as staff resources become available. (Chapter 8)

RECOMMENDATION 38

The Virginia Employment Commission should provide quarterly reports to tax division regional managers that list each employer with tax debt more than six months past due and require the managers to use this information to ensure that tax field staff are taking all reasonable steps to collect the debt. (Chapter 8)

RECOMMENDATION 39

The Virginia Employment Commission should designate customer service positions in the tax division to handle basic employer communications and questions. (Chapter 8)

RECOMMENDATION 40

The Virginia Employment Commission should require employers to make unemployment insurance payments electronically starting in 2023, develop criteria that would allow employers to be granted an exception to this requirement, and notify employers of the criteria. (Chapter 8)

Policy Options to Consider

POLICY OPTION 1

The General Assembly could include language in the Appropriation Act directing the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) to assess agencies' need for call center staff augmentation, ensure that contractual solutions to meet those needs are in place, and report steps taken and available solutions to the House Appropriations Committee and the Senate Finance and Appropriations Committee by December 31, 2022. (Chapter 4)

POLICY OPTION 2

The General Assembly could include language in the Appropriation Act establishing a pilot program that would require a sample group of employers to proactively provide a separation report to VEC and separated individuals for all employees who separate from employment over a designated period of time and direct the Virginia Employment Commission to collect feedback from employers on the requirement's potential administrative burden and impact on unemployment insurance claim accuracy and timeliness. (Chapter 5)

POLICY OPTION 3

The General Assembly could include language in the Appropriation Act to direct the Virginia Employment Commission (VEC) to (i) review U.S. Department of Labor guidance and model legislation regarding redesigned work search requirements, (ii) evaluate the potential impacts that adopting DOL's guidance would have on incorrect payments and other aspects of VEC's work (e.g., reemployment), and (iii) propose changes to the state's work search policies as needed. VEC should report the results of this review and any proposed legislative changes to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by February 1, 2022. VEC should also publish these results on its website. (Chapter 5)

POLICY OPTION 4

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to automatically adjust unemployment insurance benefit amounts annually based on a statewide economic metric. (Chapter 7)

POLICY OPTION 5

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to enact a one-time increase in the maximum unemployment insurance benefit amount. (Chapter 7)

POLICY OPTION 6

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefit formula to create a dependent allowance that is tied to an economic metric or calculated as a portion of the individual's weekly benefit amount. (Chapter 7)

POLICY OPTION 7

The General Assembly could amend section § 60.2 of the Code of Virginia to authorize the Commission on Unemployment Compensation to convene an advisory committee comprising stakeholders and subject matter experts to (1) review UI benefits, replacement ratios, and recipiency rates; (2) identify factors that affect UI benefits and recipiency (e.g., design of UI benefit calculations or UI eligibility criteria); (3) assess the advantages and disadvantages of potential changes to benefits; and (4) recommend to the Commission options to change benefit levels when needed. (Chapter 7)

POLICY OPTION 8

The General Assembly could amend § 60.2-229 of the Code of Virginia to increase the unemployment insurance taxable wage base. (Chapter 8)

POLICY OPTION 9

The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the minimum base unemployment insurance tax rate for all employers, to a new rate between 0.01 percent and 0.07 percent. (Chapter 8)

POLICY OPTION 10

The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the maximum base unemployment insurance tax rate. (Chapter 8)

1 Overview of the Virginia Employment Commission

The Joint Legislative Audit and Review Commission (JLARC) approved a study resolution that directed JLARC staff to review the operations of the Virginia Employment Commission (VEC). As part of this review, staff were directed to evaluate COVID-19's impact on VEC and the effectiveness of VEC's response; VEC's administration of the Unemployment Insurance (UI) program, including overpayments, appeals, and customer service; VEC's UI IT system; the sufficiency of VEC staffing, funding, and management; UI benefits compared to other states; and VEC's ability to connect job seekers with meaningful employment opportunities. (See Appendix A for study resolution.) This is JLARC's first review of VEC, though staff previously reviewed Virginia's workforce development system in both 2003 and 2014 (sidebar).

JLARC's 2014 review of the state's workforce system included 30 recommendations. Of these, 22 were either fully or partially implemented. Eight recommendations have not yet been implemented.

To address the study resolution, JLARC staff interviewed VEC staff; individuals and employers that have participated in the UI program; subject matter experts including staff from the U.S. Department of Labor (DOL); other Virginia state agencies with best practices; similar agencies in other states; researchers and consultants; and various stakeholders such as groups representing Virginia claimants and employers. JLARC staff surveyed VEC staff and employers for their feedback on the UI claims process or UI taxes. JLARC staff also reviewed and analyzed data on VEC funding and staffing, call center performance, UI claims timeliness and accuracy, UI trust fund solvency, UI benefits, and employment services. (See Appendix B for a detailed description of research methods.)

VEC's programs provide financial relief and job placement assistance to unemployed Virginians

VEC administers two programs to assist Virginians who are unemployed and are searching for work, as well as employers who are facing hiring challenges: unemployment insurance and workforce services. Both of these programs are "customer facing" and involve direct interactions between VEC staff and individuals and/or employers. These programs are federally required, and VEC must provide UI benefits and employment services in accordance with federal laws, regulations, and performance standards. VEC is also responsible for monitoring the state's UI trust fund and administering UI employer taxes and benefits.

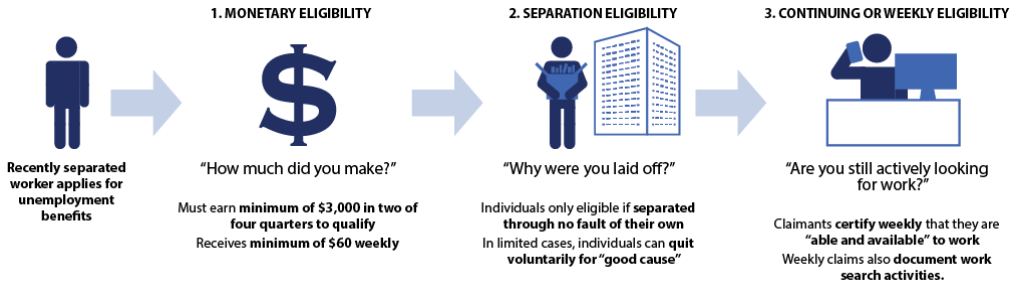
One of VEC's primary responsibilities is administering the state's unemployment insurance program

The **Social Security Act** (Title 42, 1935) requires states to establish unemployment insurance systems to provide temporary, partial income support for individuals who were laid off through no fault of their own. The **Federal Unemployment Tax Act** (Title 26, Internal Revenue Code) establishes most federal rules governing eligibility, UI taxes, and requirements for administering UI trust funds and benefits.

The UI program provides temporary financial assistance to eligible individuals ("claimants") who become unemployed (sidebar). Under federal law, individuals are eligible for UI if they meet minimum wage requirements, have lost work due to no fault of their own, and meet weekly eligibility requirements (e.g., demonstrate they are actively searching for work). Virginia has outlined 11 distinct eligibility criteria in state law that can be summarized in three broad categories—monetary eligibility, separation eligibility, and continuing or weekly eligibility (Figure 1-1). Virginia has instituted a minimum earnings threshold (a combined total of $3,000 in two of four quarters) claimants must meet to qualify for UI. To meet separation eligibility requirements, individuals must also be separated from their job through no fault of their own. Finally, to receive weekly benefits, individuals must continue to file weekly claims certifying that they have applied for jobs and remain available to take work when offered. (See Chapter 7 for more information on Virginia's UI eligibility requirements.) Approximately 78,000 individuals were eligible for UI benefits in 2019 (prior to the COVID-19 pandemic), which was around 65 percent of Virginia's unemployed population that year.

FIGURE 1-1

Individuals must meet three categories of eligibility requirements to receive UI benefits



SOURCE: Interviews with VEC staff.

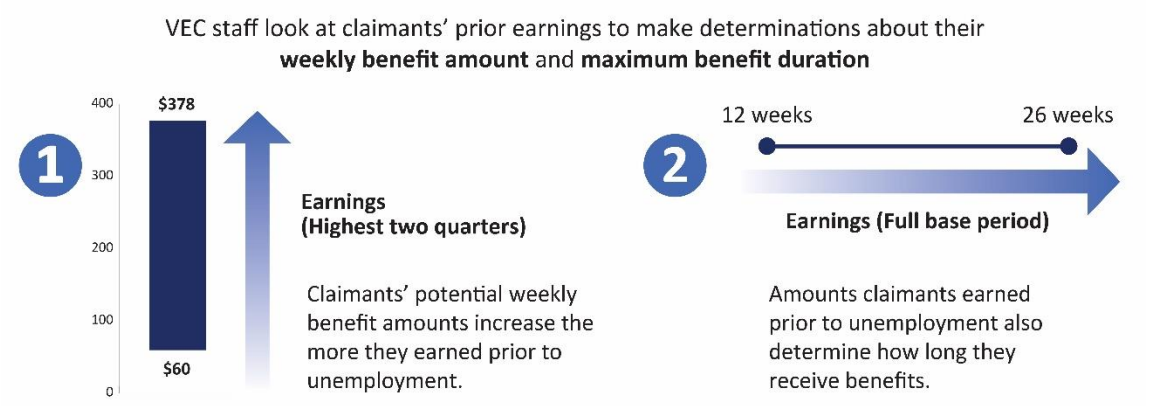
The amount of UI benefits that claimants receive depends on their earnings before their separation from employment and the length of time they worked for previous employers. Under the traditional UI program, claimants can receive between $60 (minimum) and $378 (maximum) in UI benefits each week for up to 26 weeks (Figure 1-2). Under the program's design, claimants with higher previous earnings are eligible for higher weekly benefit amounts, and claimants with more consistent work histories are eligible to receive UI benefits for more weeks. (Practically, Virginia bases determinations of both weekly benefit amounts and length of time claimants are eligible on prior earnings.) In 2019 (prior to the COVID-19 pandemic), claimants received an average of $316 in UI benefits each week for

an average of nearly 14 weeks. UI benefits are paid out of the state's unemployment insurance trust fund and funded through UI taxes on employers.

Claimants apply for UI benefits through VEC's multi-step claims process. Claimants can file initial UI claims online through VEC's website, by phone through VEC's call centers, or in person at 35 of the state's 56 career centers (also known as American Job Centers), where federal law requires that staff provide information and assistance to individuals seeking to file a UI claim. UI claims are reviewed by VEC staff for eligibility. Some claims are relatively straightforward (e.g., the claimant was laid off) and require minimal follow up from VEC staff. Other UI claims require detailed review ("adjudication"), where VEC staff collect additional information from the claimant and employer. VEC staff make two separate eligibility determinations regarding whether a claimant is approved for benefits. Staff issue a *monetary determination* on whether claimants' prior wages meet the minimum eligibility threshold and make a *separation determination* on whether claimants were separated from employment through no fault of their own. Claimants who are determined to have met both the monetary and the separation criteria are approved for UI benefits. Claimants must file continuing claims and certify they meet eligibility requirements each week until their benefit period ends.

Claimants and employers have the opportunity to appeal if they disagree with VEC's determinations. VEC processed approximately 136,000 initial UI claims, 986,000 weekly UI claims, and 13,000 UI appeals in 2019 (prior to the COVID-19 pandemic).

FIGURE 1-2
Claimants can earn up to $378 in UI benefits each week for up to 26 weeks



SOURCE: Code of Virginia, (§ 60.2-62) and interviews with VEC staff.
NOTE: A base period is used to determine which prior wages will be used to calculate the weekly benefit amount and duration of benefits. Virginia's base period is the first four quarters of the five quarters before a claimant files a claim. Claimants must file a claim within one year of their separation from employment. Figure reflects UI benefit levels for traditional state UI. Additional UI funding can be available through state extended benefits programs during natural disasters or periods of high unemployment. Federal COVID-19 UI programs increased UI benefits for certain claimants between March 2020 and September 2021.

VEC provides workforce services and is part of the state's larger workforce network

Federal Wagner-Peyser Act requires VEC to offer employment services as part of Title III of the Workforce Innovation and Opportunity Act (WIOA). These services are intended to minimize claimants' potential to exhaust their UI benefits and help them secure reemployment as quickly as possible.

VEC administers five workforce services programs, the largest of which is VEC's employment services program (Table 1-1). VEC is federally required to provide employment services, which help individuals find employment. For example, individuals can use self-assisted employment services, such as searching for job openings on VEC's job search website, or VEC staff-assisted employment services, such as receiving job search assistance, resume assistance, or work referrals. The majority of participants use self-assisted services, but there is some evidence that using staff-assisted services has a greater positive impact on wages. Employment services are free of charge and can be accessed online or at local career works centers where VEC has staff.

TABLE 1-1
VEC oversees five of Virginia's workforce programs

Program	Description	Participants (2019)	Participants (2020)
Employment services program	Helps individuals find jobs through job search assistance and job referrals. Helps employers find qualified individuals through development of job order requirements and job fairs.	55,430 [a]	35,099 [a]
Reemployment services and eligibility assessment (RESEA) program	Identifies UI beneficiaries likely to exhaust benefits before becoming reemployed, assists them in developing reemployment plans, and provides them with additional services such as resume assistance and/or job search workshops.	13,485 [b]	3,335 [b]
Jobs for veterans state grant program	Provides additional workforce services such as job counseling and training to veterans with significant barriers to employment (e.g., physical or mental disabilities, homelessness). Helps employers hire veterans.	4,552	3,602
Trade adjustment assistance program	Provides job search assistance, training, and financial support to individuals who have lost or may lose jobs as a result of foreign trade.	929	810
Rapid response program	Helps identify, plan for, or respond to layoffs and dislocations, and minimizes their impacts on individuals, businesses, and communities. Supports individuals with filing UI claims and provides reemployment-focused workshops and services.	12,705	11,494

SOURCE: JLARC staff review of VEC website and program participation data provided by VEC staff (2020).
NOTE: Participation in VEC's workforce services programs was lower in 2020 during the COVID-19 pandemic because job seekers did not have access to in-person services at most local career centers between March 2020 and July 2021. State work search requirements were also waived between March 2020 and May 2021, so many UI recipients did not use workforce services during that time to find reemployment. The number of participants is not representative of the total number of unique participants served as individuals can participate in multiple programs. [a] Counts reflect the sum of both job seekers and employers served by the program. [b] Counts reflects the number of claimants scheduled for their first RESEA session.

Employment services are available to help employers recruit qualified workers. For example, employers can post job openings or hiring notices on VEC's job search website and can also request VEC staff assistance with filling specific positions. VEC provided employment services to 47,780 individuals and 7,650 employers in 2019. This represented an estimated 40 percent of unemployed Virginians (118,807) and 3 percent of Virginia employers (225,576) in 2019.

Some individuals may participate in both VEC's UI and workforce services programs, though program participants are not always the same. VEC's reemployment services and eligibility assessment (RESEA) program specifically targets claimants receiving UI benefits and helps them develop employment plans or attend workshops to gain employment before they exhaust their UI benefits. In addition, to fulfill the federal work search requirement, claimants receiving UI benefits must register in VEC's Virginia Workforce Connection system and actively seek work by connecting with at least two job contacts each week. Both requirements encourage claimants from the UI program to use VEC's employment services.

VEC's workforce services programs fit into a broader state workforce development system that includes various state and local partners. VEC works closely with the Virginia Board of Workforce Development and multiple local workforce investment boards to provide job placement and other services to individuals and employers (sidebar). Individuals and employers can also access training, education, counseling, skill assessment services, and job placement services through several other state agencies including the Virginia Community College System, the Department for Aging and Rehabilitative Services, the Department of Social Services, and the Department of Veterans Services.

The **Virginia Board of Workforce Development** oversees Virginia's workforce programs across several agencies and advises state leaders on ways to meet state workforce needs. Board membership includes legislators, executive branch officials, higher education institutions, employers, and labor groups.

Fourteen local workforce investment boards set workforce policies, oversee local career works centers, and administer workforce services to jobseekers and employers. Board membership mostly includes business representatives.

VEC administers policies related to UI trust fund solvency, employer UI taxes, and UI benefits

Key aspects of the UI program are established through federal and state laws, including the funding formula for the UI trust fund and employer UI tax rates and UI benefit levels. Federal law requires states to have UI trust funds to fund UI benefits and sets broad parameters for the types of individuals who can qualify for UI benefits. The Code of Virginia establishes UI trust fund solvency policies (e.g., triggers for increased tax collections), state employer payroll tax rate schedules, detailed UI eligibility criteria (e.g., types of eligible work separations), and the amount and duration of UI benefits. The General Assembly must change state law to alter UI trust fund solvency policies, employer UI tax rates, or UI benefit levels.

Although VEC does not establish the policies in these areas, it manages the trust fund and administers employer UI taxes and UI benefits. VEC staff are responsible for tracking trust fund solvency, which is essential to determining which of the UI employer payroll tax schedules will be applicable for the upcoming year and whether an additional solvency tax is triggered. VEC also reviews claimants' UI

eligibility and calculates the amount of weekly UI benefits for which claimants qualify based on their prior earnings and benefits previously received.

VEC employs more than 1,000 staff and received ~$4.4 billion in funding in FY20

VEC is a large state agency with relatively high staffing and funding levels. VEC is led by a commissioner, a chief deputy commissioner, and two other deputy commissioners. VEC's commissioner and chief deputy commissioner are both appointed by the governor. The commissioner is responsible for overseeing all agency operations, while the chief deputy commissioner oversees VEC's administrative functions (e.g., IT, human resources, and finance). VEC's other deputy commissioners oversee the UI program and workforce services programs, respectively.

VEC staff work in 15 divisions and are located in VEC's central or local offices

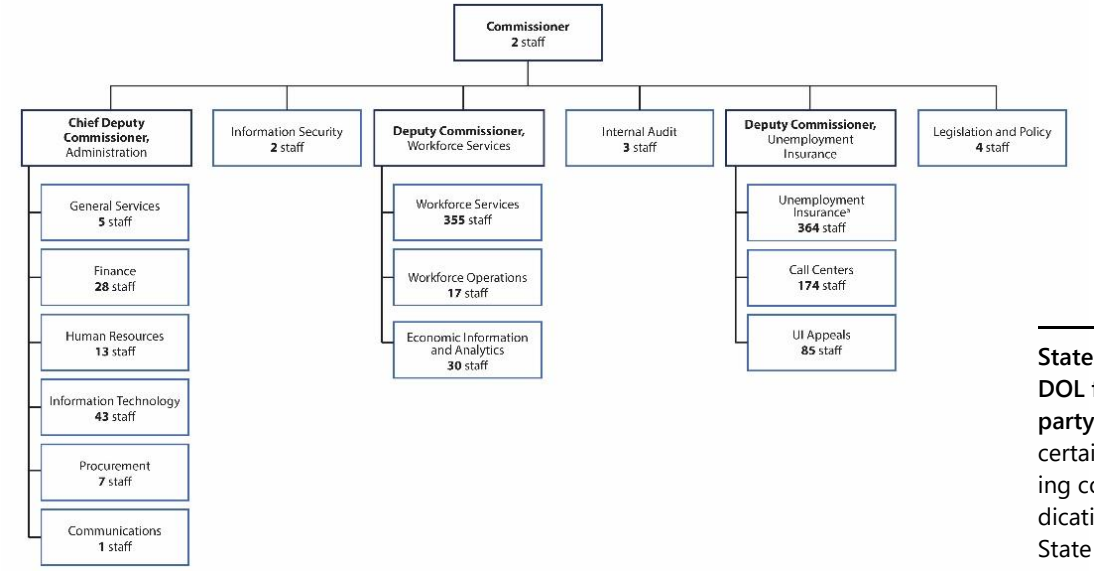
VEC staffing levels were lower prior to COVID-19. As of January 1, 2020, VEC had 824 (677 full-time and 147 part-time) staff.

As of September 2021, VEC had 1,135 full-time employees working across 15 divisions (Figure 1-3) (sidebar). (VEC also had 109 part-time employees working across 11 of these divisions during the same period.) Over half of full-time staff (55 percent) work in divisions that process UI claims (UI division, call centers, appeals division). The remainder work in divisions related to workforce services (36 percent) or administrative support functions (10 percent) such as IT, finance, and human resources.

Most VEC staff are in permanent positions, but approximately 21 percent of VEC staff are in "restricted" positions that are full time but expire after a set time period (typically two years). VEC uses restricted positions because positions may no longer be needed when unemployment levels and staff's workloads decrease. The majority of restricted positions work in VEC's local call centers (41 percent) and UI division (37 percent), though restricted positions also exist in VEC's workforce services and appeals divisions.

Just over one-third of VEC staff (36 percent) are located in VEC's central office in Henrico County; the rest of the staff work in local call centers (in South Boston and Grundy), local adjudication centers (in Newport News and Charlottesville), and the state's local career centers.

FIGURE 1-3
VEC is organized into 15 key divisions



SOURCE: JLARC staff review of VEC organizational chart and Department of Human Resource Management staffing data (2021).
NOTE: Staffing counts reflect the number of full-time staff as of September 15, 2021. [a] VEC has multiple units within the unemployment insurance division, including a tax unit and a quality assurance unit, which are not shown separately in this figure.

A large number of contract staff help support VEC programs and special projects. Federal restrictions limit the UI claims processing responsibilities that contractors can assist with, but restrictions were temporarily waived during the COVID-19 pandemic (sidebar). The majority of VEC's contractors assist with responding to call center calls, working on the back end of UI claims (e.g., processing separation reports), and reviewing claims (adjudication). For example, VEC had at least 600 hundred contract staff from three separate contractors assisting with calls and working on the back end of UI claims midway through 2021. Contractors also provide IT, fiscal, and administrative support to VEC.

States are prohibited by DOL from hiring third-party contractors for certain functions including conducting UI adjudications and UI appeals. State employees must be hired for those roles per federal law to assure quality decision-making. Contractors can work in support roles (e.g., customer call representatives, IT staff). This requirement was temporarily waived in 2020 and 2021 during COVID-19.

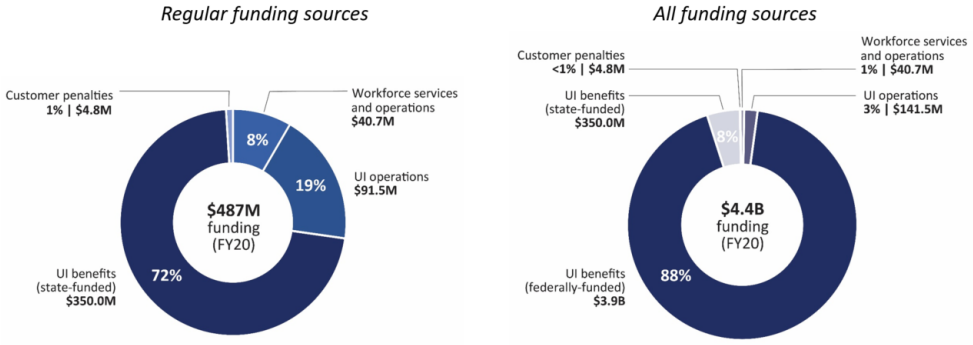
VEC's funding is divided among UI benefits, UI operations, and workforce services programs

VEC received a total of $4.4 billion in FY20, $487 million of which was from regular funding sources. Most funding from regular funding sources ($350 million; 72 percent) was used for UI benefit payments to claimants through the UI trust fund (Figure 1-4). The remainder of VEC's funding from regular funding sources covered costs associated with operating the UI program ($92 million; 19 percent) and workforce services programs ($41 million; 8 percent). Virginia does not regularly provide general funds to support VEC's programs or operations (sidebar).

VEC does not regularly receive state general funds but did during COVID-19. VEC was appropriated $35 million in general funds in FY22 for UI overpayment waivers, UI IT system modernization, and staffing support. Virginia also directed $210 million in federal CARES Act funds to the UI trust fund in FY21, and $864 million in American Rescue Plan funding to the UI trust fund in FY22. VEC also received $74 million in American Rescue Plan funding in FY22 for UI IT modernization and claims processing.

Most ($3.95 billion) of VEC's funding in FY20 was one-time federal funding for UI benefits and operations in FY20 during the COVID-19 pandemic. Nearly all ($3.9 billion) of the funding was used to provide UI benefits to individuals who are not eligible for state UI benefits (e.g., through the federal Pandemic Unemployment Assistance Program) and to increase the weekly UI benefit amount individuals could receive through state UI benefits (e.g., through the Pandemic Emergency Unemployment Compensation program). Additionally, $50 million of the funding was allocated to VEC to administer federal COVID-19 UI benefit programs.

FIGURE 1-4
Most VEC funding supports UI benefits



SOURCE: Funding data provided by VEC and DOL quarterly data.
NOTE: Customer penalties include fines or interest charged to employers or claimants. UI benefits includes UI tax revenue and UI trust fund interest.

VEC funding for UI benefits primarily comes from state employer UI taxes and UI trust fund interest

State employer UI tax revenue is the primary funding source for UI benefits. Funding that VEC collects from employers through state UI taxes is deposited into Virginia's UI trust fund and used exclusively for UI benefits, as required by federal law. The amount of employer taxes that VEC collects depends on the level of UI trust fund solvency, with tax collections increasing when solvency is low. VEC collected $389 million in employer taxes for FY19 and $348 million in employer taxes for FY20. (VEC collected $429 million in employer taxes in FY21 [sidebar].)

Interest earned from Virginia's UI trust fund can also be used for UI benefits but is a much smaller funding source than state employer UI taxes. VEC earned $5 million in interest from the UI trust fund in FY19 and $2 million in FY20. States can generate more interest by maintaining higher trust fund balances. The U.S. Department of the Treasury maintains states' UI trust funds and determines the interest rates.

Taxes rose in FY21 because tax rates rose in CY21. The low trust fund solvency level (1) triggered a CY21 tax schedule with a higher range of base tax rates than the prior year and (2) activated a 0.2% surcharge tax. The governor's Executive Order 74 reduced base tax rates for employers by disregarding claims filed by their former employees in April through June 2020.

VEC funding for UI operations mostly comes from federal grants

VEC's UI program operations are primarily funded through a federal administrative grant from DOL. VEC received $36 million in UI funding from federal grants in FY19 and $92 million in FY20. The amount of UI operational funding VEC receives is determined by a formula that is based on historic funding levels and anticipated staff workload (e.g., UI claim volume). The formula also accounts for a state's operational efficiency, staff allocation, and salary inflation. Federal grants for UI operations decline when unemployment levels are low because staff workload is assumed to decrease when there is less demand for UI benefits. (See Chapter 3 for more information on the UI operational funding VEC receives.)

VEC also funds a small portion of UI operations through revenue from penalties. Penalties are charged against employers for actions such as paying taxes late, submitting hard-copy (instead of electronic) quarterly reports, or repeatedly failing to respond to VEC information requests. Penalties are also charged against claimants who submit fraudulent claims. VEC collected $5 million in penalties in FY20. Penalties can be used to cover operational costs for UI or workforce services programs, but penalties are typically used for UI operations, according to VEC staff.

VEC funding for workforce services programs and operations comes from federal grants

Federal grants are the sole source of funding for VEC's workforce services programs, which include services for employers, services for workers, publication of labor market information, and economic research. The amount of workforce services funding VEC receives each year is determined by program-specific federal formulas. For example, the employment services grant depends on a state's civilian labor force size and total unemployment rate, while the Jobs for Veterans grant depends on a state's share of veterans seeking employment. VEC received a total of $33 million in FY19 and $41 million in FY20 for workforce services programs, the largest portion of which (over 38 percent in FY20) funded the employment services program.

VEC is subject to federal and state oversight

DOL oversees state UI programs and requires states to report on program performance each year. DOL sets performance standards for the timeliness and accuracy of UI claims determinations, UI appeals decisions, UI benefit payments, and employer state UI tax liability determinations. DOL can require states that underperform its standards to complete corrective action plans. DOL can also reduce the operational funding that underperforming states receive. Financially penalizing states for underperformance is extremely rare, according to DOL staff. While VEC has had to complete corrective action plans, it has not been subject to financial penalties.

DOL also oversees VEC's workforce services programs. VEC submits annual workforce plans to DOL to receive funding. DOL requires VEC to regularly report program performance metrics for certain programs. For example, states report to DOL quarterly on the percentage of workers re-employed in the second and fourth quarters after receiving VEC employment services.

State Auditor of Public Accounts's FY20 review of VEC confirmed the accuracy of VEC's accounting transactions but identified five administrative deficiencies, including that VEC paused required reemployment services for certain UI recipients without federal approval, and VEC did not deduct federal income tax from Pandemic Unemployment Assistance programs. FY20 and FY19 reviews identified deficiencies with VEC's IT security related to database security and IT governance.

Prior to the General Assembly's creation of the secretary of labor in 2021, VEC was overseen by the secretary of commerce and trade. The Code of Virginia directs the secretary to "hold agency heads accountable for their administrative, fiscal and program actions" and "direct the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government." Other state entities have limited roles providing VEC oversight. The state Auditor of Public Accounts conducts regular annual audits of VEC's operating expenditures, UI trust fund's solvency and expenditures, and IT system security, and it can examine specific elements of VEC programs or operations as needed (sidebar). The Virginia Board of Workforce Development recommends policies and strategies to help the state meet federal workforce services program requirements and state needs, some of which pertain to VEC's workforce services and programs. Moreover, the legislative Commission on Unemployment Compensation is responsible for monitoring Virginia's UI system, including the impact of existing or proposed state laws on the UI trust fund.

VEC has internal audit staff and quality assurance staff who regularly review agency performance and help ensure VEC complies with federal program requirements and standards. Each year, VEC's internal audit staff conduct an agency risk-assessment and complete several audits of agency processes. For example, internal audit staff annually review VEC's tax rate calculations and the security of fund transfers between VEC and the Virginia Treasury. Internal audit staff have reviewed other areas of VEC's operations when needed, such as the timeliness of employer debt collection (2019) and VEC's IT security (2020). VEC's quality assurance staff regularly audit the timeliness and accuracy of a sample of UI claims and employer UI taxes. The sample sizes and scope of these audits are set by DOL, and audit results are submitted to DOL each quarter.

2 Impacts of COVID-19 on VEC

The COVID-19 pandemic created extraordinary challenges for the Virginia Employment Commission (VEC). Beginning in March 2020, COVID-19 increased state unemployment levels quickly and on a larger scale than previous economic recessions, causing a substantial increase in the number of unemployment insurance (UI) claims VEC needed to process. VEC was also responsible for administering several new federal UI programs. COVID-19 also presented challenges to staff's health and safety, requiring VEC to discontinue offering in-person assistance with UI claims and implement safety precautions for staff working in VEC offices.

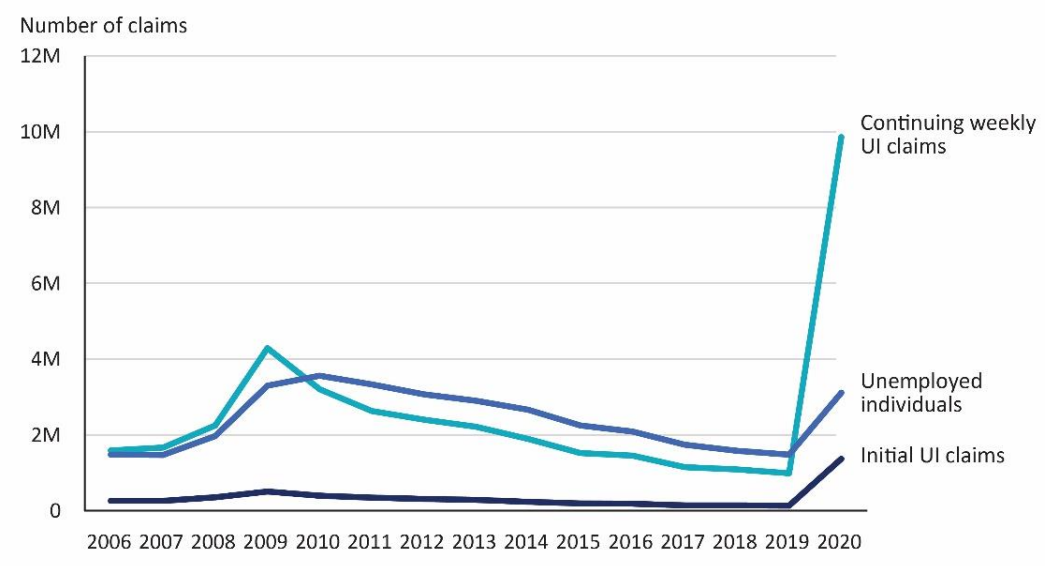
COVID-19 pandemic had substantial negative impact on VEC operations

The COVID-19 pandemic triggered an unprecedented increase in Virginia's unemployment level, which led to a rapid increase in the demand for state unemployment benefits. The number of unemployed individuals in Virginia increased from 117,294 (2.6 percent) in February 2020 to 482,111 (11 percent) in April 2020 (Figure 2-1). Many of these individuals ("claimants") applied for state UI benefits. *Initial* state UI claims increased by a factor of 34 within two months, totaling 236,000 claims in April 2020 (sidebar). *Continued* state UI claims increased by a factor of 13 within two months, totaling 1.3 million claims in April 2020. Unemployment levels and UI claims typically increase during economic recessions but did so more gradually during the last recession in 2009.

Claimants file an **initial UI claim** with VEC to be approved for UI benefits. After receiving approval, claimants must file **continued claims** each week to receive all UI benefits for which they are eligible.

Congress created six temporary federal UI programs for states to administer during COVID-19, which significantly increased VEC's workload. These programs extended and expanded UI benefits between April 2020 and September 2021 (Table 2-1). Most notably, the Pandemic Unemployment Assistance (PUA) program enabled previously ineligible individuals, such as self-employed and "gig" workers, to receive UI benefits. VEC received 375,581 initial PUA UI claims in 2020 and 51,418 initial PUA claims from April through July 2021. Congress amended these temporary federal UI program durations and requirements multiple times during 2020 and 2021. For example, Congress extended the duration of the PUA program three additional months through the Continued Assistance Act in December 2020, and instituted a new requirement that PUA claimants provide documentation of previous employment or self-employment. Congress again extended the PUA program, as well as the other pandemic programs, through the American Rescue Plan Act in March 2021. This prolonged the effect that federal programs had on all state UI agencies' workloads and increased the complexity of agencies' administration of the programs.

FIGURE 2-1
Unemployment and state UI claims reached unprecedented levels during COVID-19



SOURCE: Claims data from U.S. Department of Labor Employment and Training Administration data (2006–2020). Unemployment data from U.S. Bureau of Labor Statistics (2006–2020).
NOTE: Data for unemployed individuals reflects the total number of unemployed individuals in Virginia. The number of continuing weekly claims filed is higher than the number of unemployed individuals because individuals can file a continued claim each week they qualify for unemployment insurance benefits.

Adjudication staff review claims information, gather additional information, and make decisions regarding claimant eligibility based on law and policy.
Appeals staff conduct hearings and review information to determine whether law and policy was appropriately applied in eligibility decisions.

VEC had to rapidly increase staffing levels to process the high volume of state and federal UI claims received during COVID-19. VEC staffing was at a 10-year low (677 full-time staff) in January 2020 because of low unemployment and UI claims levels. This made it challenging to quickly hire the large number of additional staff needed, particularly in areas with complex responsibilities such as UI adjudication and appeals (sidebar), according to VEC leadership. VEC hired new staff (VEC staff and third-party contractors) and temporarily reassigned staff from the workforce services division to assist with UI claims, but they had to complete lengthy trainings to have the skills needed to process claims. VEC had limited physical space to accommodate staffing increases, which caused VEC to reopen a previously vacated building in Newport News in June 2020 for additional adjudication staff, open a new office for appeals staff in September 2020, and move one of its two call centers to a larger building in March 2021.

TABLE 2-1
Federal government created temporary federal UI programs during COVID-19

Program	Description	Time period
Pandemic Emergency Unemployment Compensation (PEUC)	Additional 13 weeks of UI benefits for claimants who exhausted regular UI benefits	4/4/20 – 12/26/20
	Extended by Continued Assistance Act to provide an additional 11 weeks of benefits	12/27/20 – 3/13/21
	Extended by American Rescue Plan Act to provide up to 53 total weeks of additional benefits.	3/14/21 – 9/4/21
Pandemic Unemployment Assistance (PUA)	Up to 39 weeks (reduced by any weeks of regular UI or extended benefits received) of benefits to claimants who exhausted UI benefits or are ineligible for regular UI. Expanded eligibility to certain previously excluded workers, including self-employed and part-time.	2/2/20 – 12/26/20
	Program extended 11 weeks by the Continued Assistance Act.	12/27/20 – 3/13/21
	Expanded duration to a maximum of 79 weeks by American Rescue Plan Act.	3/14/21 – 9/4/21
Federal Pandemic Unemployment Compensation (FPUC)	Initially increased weekly benefit amount by $600 per week for claimants collecting benefits under regular UI, PEUC, PUA, EB, or other existing programs.	4/4/20 – 7/25/20
	Reauthorized at a lower benefit supplement amount of $300 by the Continued Assistance Act. Further extended at $300 amount through American Rescue Plan Act.	1/2/21 – 9/4/21
Lost Wages Assistance (LWA)	Provided an additional $300 per week to claimants who are eligible for at least $100 per week in benefits from regular UI, PEUC, PUA, or EB.	8/1/20 – 9/5/20
Mixed Earners Unemployment Compensation (MEUC)	Provided an additional $100 each week to claimants with $5,000 or more in self-employment income in the previous tax year who are receiving unemployment benefits from a program other than PUA. Created under Continued Assistance Act and extended under American Rescue Plan Act.	1/2/21 – 9/4/21
Extended Benefits (EB)	Provided additional 13 or 20 weeks of benefits to claimants who exhaust benefits in states with high unemployment levels. This was an existing program that was triggered in many states during the pandemic.	Triggered on in VA: 5/31/20 Triggered off in VA: 11/21/20

NOTE: The PEUC and PUA programs had similar time periods but different purposes. PEUC extended the length of UI benefits for claimants who are traditionally eligible for regular UI benefits. If claimants exhausted both regular UI benefits and PEUC benefits in fewer than 39 weeks, they were potentially eligible for additional benefits through PUA for the remaining weeks in PUA's 39-week period.
SOURCE: U.S. Department of Labor and VEC websites.

VEC also had to modify its UI IT system to handle state and federal UI claims during COVID-19. VEC planned to finish modernizing its UI benefits system in June 2020 as part of a long-term UI IT modernization project. However, VEC paused UI modernization efforts in May 2020 because agency IT resources were needed to program the new federal UI programs into its legacy UI IT system and assist with launching new UI capabilities, such as an online UI application (Gov2Go) and live chat function. VEC resumed modernizing the UI benefits system in May 2021 but had to adjust the scope of the project to incorporate the federal UI programs and other additional capabilities into the new system. (See Chapter 6 for more information on VEC's UI IT modernization project.)

VEC temporarily shut down multiple offices during COVID-19 to help protect staff's health and safety. VEC stopped providing customers with in-person assistance with UI claims at local offices between March 2020 and June 2021. Multiple VEC offices—including VEC's central office and one of the call centers—were also temporarily closed because of outbreaks of COVID-19 infections. Moreover, customers made several serious threats against VEC staff's safety, prompting VEC leadership to hire

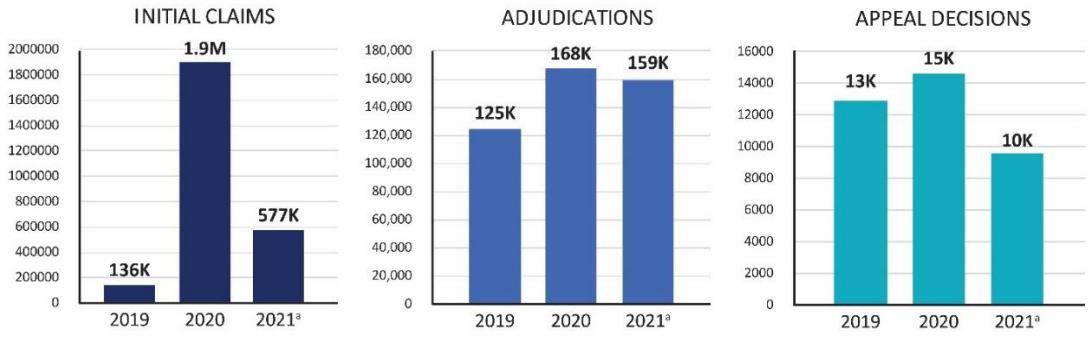
security guards. These challenges had a negative impact on staff's health and were disruptive to workflows.

Fact-finding interviews are conducted by adjudicators with both claimants and employers to gather additional information necessary to determine a claimant's eligibility for benefits during the adjudication process.

Additionally, VEC made several changes to the UI claims process to streamline staff reviews of state and federal UI claims and protect the health and safety of VEC employees. At the start of COVID-19, VEC reduced the duration of fact-finding interviews (sidebar) conducted for UI claims from 30 minutes to 15 minutes and began conducting all interviews by phone, with no option for in-person hearings. As of June 2020, VEC discontinued fact-finding interviews altogether and started relying solely on UI applications and other documents submitted to understand the circumstances of each claim. Additionally, VEC modified its UI IT system to automatically pay claimants who had experienced delays *before* their claims were fully reviewed.

Changes to UI staffing, systems, and processes enabled VEC to process many UI claims during COVID-19, but VEC is still experiencing significant delays and backlogs. Between March 2020 and July 2021, VEC processed about 2.5 million initial UI claims, 200,000 adjudications, and 24,000 appeals—significantly more than in 2019 (Figure 2-2).VEC staff worked over 193,000 hours of overtime agency wide in 2020 to handle the increased workload, which is equivalent to 93 full-time staff positions and is a 1,600 percent increase from the amount of overtime worked in 2019. Despite the large amount of work completed, VEC has not kept pace with UI demand and has accrued backlogs in initial claims intake, adjudication, fraud investigations, and appeals. (See Chapter 4 and Chapter 5 for additional information on UI claims backlogs.)

FIGURE 2-2
VEC processed significantly more UI claims, adjudications, and appeals in 2020 than in 2019



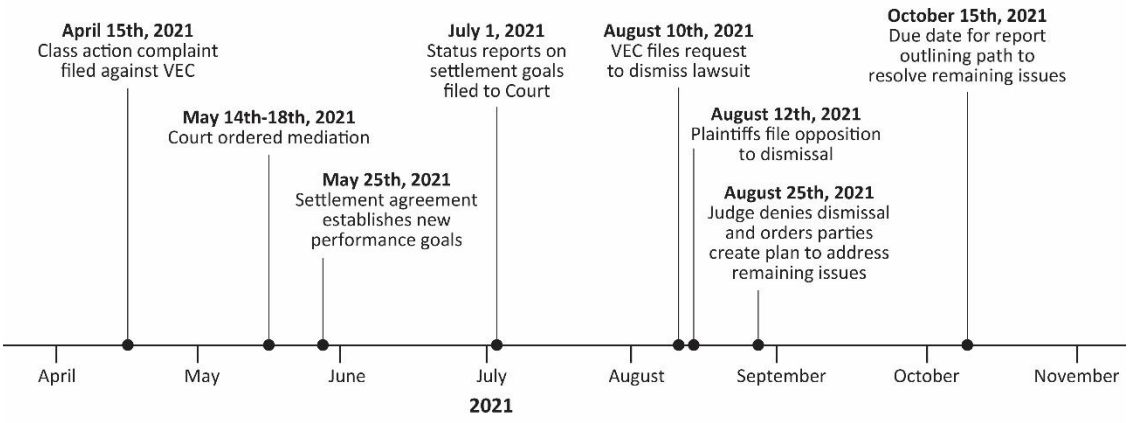
SOURCE: Federal ETA 5159 report for regular UI and PEUC claims, ETA 902P for PUA claims, ETA 207 report for adjudications, and ETA 5130 for appeals.
NOTE: The increase in initial claims between 2019 and 2020 was larger than the increase in adjudications between 2019 and 2020 because not all initial claims require an adjudication. Additionally, there are a substantial number of potential claim issues that are awaiting adjudication and are not yet reflected in adjudication totals. [a] 2021 data is January through June 2021.

Many customers and legislators have called for VEC to improve its processing of UI claims. A large number of eligible claimants have complained about not receiving

benefits in a timely manner and being unable to contact VEC staff to receive updates on their UI claims. Over 40 state legislators wrote a letter to VEC in July 2020 complaining about UI process delays and VEC's unresponsiveness to customers. Two congressional representatives sent letters to VEC and Virginia's governor in July 2020 and March 2021 with similar complaints. Moreover, the governor issued Executive Directive 16 in May 2021, which directed VEC to improve the timeliness of UI claims processing and finish modernizing its UI IT system by October 2021.

Several groups representing UI claimants filed a federal class-action lawsuit against VEC in April 2021 because of VEC's delayed processing of UI claims. The lawsuit faulted VEC for not adjudicating UI claims within the federally required 21 days and for cutting off UI benefits without sufficient justification. VEC entered a settlement with the claimants in May 2021 and agreed to address the issues raised by meeting a series of performance standards (Figure 2-3). VEC reported meeting the settlement standards in August 2021, but claimant representatives expressed concern that additional UI claims were not being processed in a timely manner. The court ordered VEC to meet with claimant representatives to draft a plan for resolving the remaining issues and provide a status report in late September 2021.

FIGURE 2-3
Claimant representatives filed a class action lawsuit against VEC in April 2021



SOURCE: JLARC review of legal documents related to class action lawsuit filed against VEC.

VEC could have been better prepared for pandemic with effective agency staffing, planning, processes, and systems

All states experienced challenges with the unprecedented volume of UI claims during COVID-19. A report issued by the U.S. Department of Labor's (DOL) Office of the Inspector General in May 2021 acknowledged shortcomings across states in prepar-

edness for the drastic increase in UI claims volume, concluding that "states had difficulty ensuring [federal UI] programs were implemented and claimants were paid promptly." The report cited several root causes for states' underperformance, including outdated UI IT systems, insufficient staffing, and poor guidance from DOL. In particular, the report found that: "DOL's guidance and oversight did not ensure states implemented the programs and paid benefits promptly."

Some states responded more effectively to challenges processing UI claims during COVID-19. For example:

- Utah largely avoided a UI claims backlog because it has a modernized UI IT system that allows customers to upload required documents online and check the status of UI claims without having to call a call center.
- New Jersey improved responsiveness to customer calls by hiring over 200 third-party contractors to assist with its UI call center in June 2020.
- North Carolina added 1,800 call center agents between April 2020 and May 2020, reducing average hold times to less than a minute. North Carolina also increased overall agency staffing from about 500 employees to over 2,500 between March 2020 and May of 2020, allowing the agency to process over 100,000 backlogged claims by September 2020.
- Maryland was close to completing its project to modernize its UI IT system when COVID-19 started. Rather than pausing the project, Maryland moved forward with launching its new system in 2020, which allowed staff to add new federal programs to the system and process UI claims more quickly.

A year and a half after the onset of COVID-19, VEC is still experiencing UI claims backlogs and delays. VEC could have better handled increased UI claims during the pandemic with more effective agency staffing, planning, processes, and systems. VEC began the pandemic understaffed in key areas (e.g., call center representatives, adjudication) and lacked a clear plan for increasing staffing levels during recessions. VEC also had a complex UI process that was unnecessarily inefficient in several areas and heavily reliant on an outdated UI IT system. These challenges caused VEC to underperform several DOL performance metrics for UI claims processing *prior* to COVID-19 and significantly exacerbated VEC's challenges *during* COVID-19. Subsequent chapters will detail how VEC could have been better prepared for a surge in UI claims and how it can improve its operations to reduce current backlogs and be better prepared for future economic downturns.

3 VEC's Resources and Management

The Virginia Employment Commission (VEC) needs to be effectively funded, staffed, managed, and overseen because its services are critical to Virginia's citizens and employers and are important to the state's economy. Public demands for VEC's assistance—especially unemployment insurance (UI) benefits—fluctuate with economic conditions. Therefore, efficient operations, sufficient staffing, proactive planning, effective executive decisions, and adequate oversight and assistance are essential to VEC's ability to quickly respond to sudden changes in economic conditions such as a recession.

VEC's operational shortcomings may not be apparent during periods of low unemployment, but they are especially problematic when demands for UI benefits escalate rapidly. Significant weaknesses in VEC's operations—particularly its deficient staffing levels, antiquated UI benefits IT system, performance monitoring, and oversight—were revealed during the COVID-19 pandemic. Staffing shortages prevented VEC from administering UI claims in an accurate and timely manner. The delayed replacement of its outdated IT system meant that VEC was reliant on inefficient, paper-based processes that severely hampered timely and satisfactory responses to claimants. In addition, inadequate performance monitoring and agency oversight hindered the timely identification and remediation of underperformance.

Federal appropriations for UI operations fluctuate over time, and funding formula penalizes VEC for its inefficiencies

Similar to other state UI agencies, VEC depends on federal funding to cover the costs of its UI operations. VEC spends the majority of its operational funding on staff salaries and benefits (54 percent) followed by contracts (30 percent) and other expenses (16 percent) (e.g., facilities, postage, miscellaneous). In 2019, VEC received $36 million in federal UI operational funding. This was the amount available to the agency for its UI operations in early 2020 prior to COVID-19. The total amount of federal UI operational funding that VEC received in federal fiscal year 2019 was *above* the 50-state median. VEC also received more federal funding per claim than the national median; VEC received $258 per UI claim processed in federal fiscal year 2019 compared with the 50-state median of $227 per UI claim (sidebar).

The amount of federal UI operational funding VEC receives is determined by a complex federal formula. States submit UI workload and staffing information that the U.S. Department of Labor (DOL) uses to estimate the base amount of federal funds each

VEC's operational funding has been characterized as low relative to the amount of federal UI taxes that Virginia contributes to the federal pool of funding. However, the amount states receive from this UI operations pool is not related to the proportion of funds states contribute. Therefore, the difference between the two amounts is not a valid indicator of the sufficiency of VEC's federal funding.

States receive a **base funding** amount for UI operations from DOL at the start of each fiscal year. States can receive **additional contingency funding** for UI operations from DOL if their UI workload increases beyond the amount assumed in DOL's base funding calculations. This occurred during the COVID-19 pandemic after UI claims increased dramatically in March 2020.

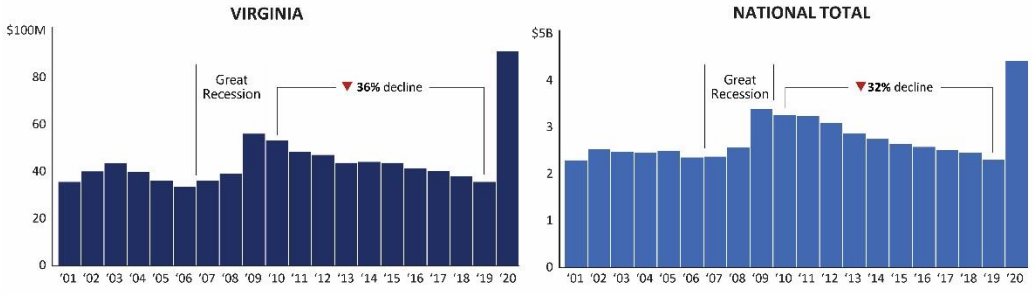
state needs to operate the UI program (sidebar). Funding amounts are largely driven by the amount of UI-related items (e.g., initial claims, continued claims, non-monetary determinations, appeals, and tax/wage records) states processed the previous year. States with higher workloads receive more funding. Additional adjustments are made to account for the funding states need for staff salaries and benefits, quality assurance activities (e.g., UI audits), non-personnel services (e.g., facilities), and postage. The funding formula benefits states that process UI claims efficiently (fewer minutes spent on each task) and use a smaller portion of administrative staff (e.g., IT programmers, mail services, etc.). Funding is ultimately divided among states. To prevent dramatic funding fluctuations, states cannot lose more than 5 percent or gain more than an established percentage annually.

Operational funding for the UI program fluctuates with economic conditions and does not always meet states' needs

Federal funding for UI operations is unpredictable because it is counter cyclical with the economy—funding increases when unemployment rates are high and UI workload increases. Escalating unemployment rates increase states' UI workload because more unemployment insurance claims are filed. As UI workloads increase, states receive more federal UI operational funding. When UI workloads decrease, federal funding for UI operations decreases. From the end of the Great Recession to 2019, VEC's UI operational funding decreased by over one-third from $56 million to $36 million (Figure 3-1). UI operational funding more than doubled for VEC and almost doubled nationwide between federal fiscal years 2019 and 2020 because of the COVID-19 pandemic. For federal fiscal year 2022, Virginia will receive at least $41.2 million in UI operational funding. This amount—like the national total of UI operational funding—is 20 percent higher than the starting amount DOL provided at the beginning of the last federal fiscal year. Virginia could receive more federal funding through contingency funding if its workload exceeds DOL's prediction.

The amount of federal funding awarded for UI operations is not always adequate to meet states' needs, according to stakeholders. DOL's formula for determining the total amount of UI operational funding states need was outdated until a recent update in 2021. This hindered DOL from accurately estimating states' funding needs, according to subject matter experts. A 2019 DOL report acknowledged that insufficient operational funding "create[ed] a challenge for states to adequately staff their UI program operations" and "significantly impact[ed] states' ability to manage program integrity operations that are staff intensive, such as being able to…conduct random work search audits." Similarly, a 2018 Upjohn Institute report described "inadequate" federal funding causing "severe" problems for states, such as restricting UI automation.

FIGURE 3-1
VEC's UI operational funding changed over time with unemployment levels, following the national trend



NOTE: Not adjusted for inflation. Limited to federal operational funding. Includes base and contingency federal UI operational funding but excludes Reemployment Services and Eligibility Assessments (RESEA). Also excludes operational funding to assist state implementation of federally funded COVID UI programs. Percentage difference represents change from 2009 to 2019.
SOURCE: US. DOL data on operational grants to states.

Unpredictable and insufficient amounts of federal funding have limited VEC's ability to pay for important UI operational expenses such as essential staff positions, according to VEC staff. For example, as explained in the next section on staffing, VEC leadership report being understaffed in key functions such as adjudication in 2019 because of insufficient funding. VEC staff also reported that funding constraints caused them to stop using essential quality monitoring and workforce management software in the call centers. This limited VEC's ability to effectively evaluate the quality of staff's customer service on calls and effectively monitor call center staffing levels. Many other states also believe they have not received the amount of federal funding needed to operate their UI programs. When asked about their federal UI operational funding, the majority of states surveyed by the National Association of State Workforce Agencies in 2018 reported facing "serious" or "critical" shortfalls.

VEC's inefficient UI operations put it at a disadvantage in federal funding formula and prevent it from effectively spending its funding

All states must make strategic decisions about how to use limited federal UI operational funding, especially during times of low unemployment. States have full discretion to allocate the funding they receive as long as it is spent administering UI, and DOL's funding formula rewards states with efficient operations. Therefore, VEC's operational inefficiencies adversely affect both its federal funding levels and its ability to efficiently spend the funding it receives.

VEC's operational inefficiencies have resulted in it receiving a smaller portion of the federal funding that DOL estimates VEC needs for UI operations. DOL's formula for allocating UI operational funding to states lowers the share of funding states receive depending on their efficiency relative to other states. In each of the five years preceding COVID-19, VEC reported notably lower operational efficiency than other states

for most core UI functions (initial claims, continuing claims, non-monetary determinations, appeals, and wage records). For example, in federal fiscal year 2019 VEC took nine minutes longer than other states to process initial UI claims, on average, ranking 39th nationwide (Table 3-1). Because efficiency is only one of many factors that DOL considers in its funding formula, a subject matter expert interviewed for this study indicated that the penalties for inefficiency would represent a relatively small portion of VEC's total funding.

TABLE 3-1
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 minutes (+33%)	39th
Continued UI claims	3	2	+1 minute (+45%)	39th
Non-monetary determinations	80	53	+27 minutes (+50%)	44th
Appeals	286	233	+53 minutes (+23%)	36th
Wage records	0.09	0.05	+4 seconds (+88%)	37th
Employer taxes	36	49	-13 minutes (-27%)	8th

SOURCE: JLARC analysis of minutes per unit adjustment tables in U.S. DOL's Unemployment Insurance Program Letter 2-21.
NOTE: Rankings are scaled so the state in first place is the most efficient and 50th place is the least efficient. Data reflects state operations in federal fiscal year 2019.

VEC also has a relatively high proportion of administrative staff compared with other states, which counts against its efficiency. Virginia had the sixth highest portion (29 percent) of staff dedicated to administrative functions (such as mail services, printing, and data entry) in federal fiscal year 2019. (The 50-state median was 21 percent.) Unlike many other states, VEC has not yet finished modernizing its UI IT system and is reliant on manual, paper-based processes and administrative staff (sidebar). For example, staff have to manually type UI claim information into the UI system, even when applications are submitted online. VEC spends more administrative resources than should be required per UI claim processed, which not only reduces the portion of needed funding it receives through the DOL formula, but also prevents it from directing more of its funding to priority UI expenses, such as adjudication staff positions and IT investments.

> *"We are so heavily reliant on paper…We have paper in every nook and cranny."*
>
> **– VEC staff**

Automating states' UI processes is key to maximizing federal funding for operations, according to the National Association of State Workforce Agencies. Recent and upcoming automations of VEC's UI processes are expected to improve efficiency. For example, VEC's new UI benefits system will automate certain tasks like linking UI claims submitted online to accounts of responsible employers and enabling electronic messages and document sharing with claimants. These processes have been entirely manual and paper-based before and during the COVID-19 pandemic.

Once the new UI IT system is in place, VEC will become less reliant on manual, paper-based processes and will require fewer administrative staff. This will free up funding for functions that have been under-resourced because of the need to direct funding to the manual processing of UI claims. This greater efficiency will be reflected in the funding allocated to VEC through DOL's funding formula and allow the agency to better prioritize spending.

Virginia does not supplement federal funding for UI operations with state funds, unlike some other states

Virginia's share of total UI operational funding from non-federal sources (5 percent) was smaller than the 50-state median (10 percent) in federal fiscal year 2019. However, Virginia is not the only state to rely almost completely on federal funding; 15 other states—including Maryland and West Virginia—rely on federal funding to at least the same extent as Virginia. Penalties on employers and claimants are typically VEC's only non-federal funding source for UI operations.

Some other states supplement federal funding for UI operations with state funding generated through special employee or employer taxes. At least eight states (Ohio, Florida, California, Hawaii, Idaho, Iowa, New Mexico, and South Dakota) appropriated general funds for UI operations in federal fiscal year 2019. At least four other states (New York, Louisiana, New Hampshire, and Rhode Island) and the District of Columbia have established administrative taxes paid by employers to support UI operations. These taxes are in addition to the employer-paid taxes that fund UI benefits. For example, New York taxes 0.075 percent of employers' taxable wages to fund UI automation initiatives and UI staff positions. If Virginia had an additional employer tax of 0.075 percent (the *lowest* among states with a known rate) in state fiscal year 2020, the tax would have generated $23 million in revenue. If Virginia had an employer tax of 0.4 percent (the *highest* among states with a known rate) in state fiscal year 2020, the tax would have generated $120 million in revenue. (For reference, DOL provided VEC $92 million for regular state UI operations in state fiscal year 2020 and $36 million in state fiscal year 2019.) In Pennsylvania, UI operational funding is collected from taxes on employees (sidebar).

Pennsylvania has an employee tax that supports UI operations. Employees are typically taxed at 0.08 percent, but the rate falls to 0.06 percent when the state has outstanding UI debt. Several experts indicate that employee taxes are beneficial because they increase workers' awareness of a UI.

The General Assembly could consider appropriating state general funds or creating employers' or employees' UI taxes for VEC's operations, but a general fund appropriation may not be necessary. Implementation of the modernized UI IT system toward the end of 2021 is expected to improve the efficiency of the UI program's operations, which should reduce VEC's need for administrative staff to support UI operations. Additionally, Virginia's base UI operational funding for federal fiscal year 2022, is 20 percent higher than the base amount DOL provided at the beginning of the last federal fiscal year.

If the General Assembly wishes to appropriate state general funds or raise additional revenue for VEC's operations, it should prioritize funding for increasing VEC's internal IT staff capacity because several IT programmers are eligible to retire. Additional

funding could be used to recruit and compensate qualified IT staff to fill positions as they become vacant, to add IT staff positions, or both. Having an adequately staffed IT division is critical to the success of the UI modernization project.

If the General Assembly wishes to appropriate general funds for VEC operations beyond those needed for additional IT staff, it would be most prudent to wait until after the modernized UI IT system is fully functioning in June 2022, and VEC has clearly identified how it will spend its additional federal funds. In addition, VEC should first undergo a comprehensive efficiency review. This review would identify the efficiencies VEC has gained through recent automation of its UI IT system and processes. The review should also identify any *additional* efficiencies VEC could pursue (e.g., opportunities to automate employer and UI claims communications) to maximize the UI operational funding it receives from DOL. The efficiency review findings should dictate whether additional state funds are needed to adequately fund the VEC.

RECOMMENDATION 1

The secretary of labor should competitively procure a national firm with expertise in evaluating the efficiency of an organization's staffing structure, delegation of staff duties, and work processes to conduct a comprehensive efficiency review of the unemployment insurance (UI) operations of the Virginia Employment Commission to (i) identify specific actions that could be taken to improve the efficiency of VEC's UI operations, including through more efficient and effective use of staff and technology, (ii) recommend improvements to the agency's staffing and workflows to most effectively use existing federal funding for UI operations, and (iii) determine whether current funding is adequate to ensure effective UI operations.

VEC has not maintained sufficient staffing in key functions

Many of the shortcomings in VEC's UI program administration and operations during the COVID-19 pandemic were because too few staff were assigned to critical agency functions. VEC has experienced substantial fluctuations in staffing levels, prolonged vacancies, high turnover, and insufficient numbers of supervisory staff. Insufficient staffing has contributed to the poor performance of VEC's UI customer call center, mounting backlogs of UI claims for intake and adjudication, undetected fraud, and the long-delayed replacement of VEC's antiquated UI claims processing system.

VEC's staffing challenges were particularly prominent during the COVID-19 pandemic but are not new. The agency had not maintained an adequate staffing level in key UI functions for several years prior to the pandemic. VEC staff attribute this to receiving insufficient funding for its UI operations from DOL.

VEC staffing levels have fluctuated significantly over time

VEC's staffing levels have fluctuated over time with unemployment levels. Staffing levels decrease when unemployment and the number of UI claims are low because state UI agencies receive less UI operational funding from the federal government. During the pandemic, VEC's staff positions more than doubled due to unprecedented increases in unemployment levels and UI claims. VEC had 677 full-time agency staff positions in January 2020 when the state's unemployment rate was 2.5 percent. VEC had 1,063 full-time staff positions by the end of June 2020 when the unemployment rate was 8.8 percent, and 1,733 staff positions by the end of June 2021. (VEC staffing levels remained high in June 2021 even though unemployment had decreased to 4.3 percent because staff were still processing large volumes of backlogged UI claims.)

Staffing levels increased more slowly than the unemployment level and the number of UI claims partly because VEC had to create and fill new positions (sidebar). Additionally, as discussed in Chapters 4 and 5, VEC could have been more proactive and timely in filling positions.

VEC created over 1,000 new full-time staff positions during COVID-19 (March 2020 – September 2021) to handle higher UI claims volume. According to staff, more positions were created than needed in anticipation of increasing workloads. Additionally, VEC could not fill all newly created positions because of funding limitations.

VEC has experienced relatively high staff vacancy and turnover rates

VEC's vacancy rate for staff positions has been relatively high in recent years, with many positions remaining vacant for multiple months. VEC's vacancy rate ranged from 13 to 25 percent of full-time staff positions between 2015 and 2019 and was consistently higher than the average vacancy rate across Virginia state agencies. Some of VEC's positions were needed but deliberately held vacant because of insufficient funding, according to agency leadership. Other positions were vacant because they were not needed. VEC does not have records that distinguish needed vacant positions from unneeded ones but VEC leadership indicated the agency was appropriately staffed in 2014 when 750 out of 892 full-time positions were filled.

VEC's vacancy rate increased during COVID-19, reaching a high of 46 percent of full-time staff positions vacant in September 2020. (The average vacancy rate for full-time staff positions across all Virginia state agencies was 14 percent.) One of the reasons that the proportion of vacancies was so high is that VEC created over 1,000 new full-time positions to handle increased workloads during COVID-19. One year later, in September 2021, VEC's vacancy rate was 38 percent with a total of 697 vacant full-time staff positions unfilled, most of which were concentrated in the agency's call center, adjudication, UI benefits, and appeals functions. Positions were vacant for 226 days, on average. Several key positions were vacant for longer than one year, including positions for UI field tax staff, adjudication staff, appeals staff, fraud investigators, and call center staff. VEC had difficulty filling new positions in a timely manner because of certain state hiring requirements and challenges attracting and retaining new hires.

VEC staff turnover has historically been comparable to other state agencies, but turnover increased significantly during COVID-19. VEC's annual turnover rate for full-time agency staff was 10 percent in FY19, which was *lower* than the average across

similar Virginia state agencies (15 percent). However, VEC's turnover rate for agency staff increased to 24 percent during COVID-19 (March 2020–September 2021). (Annual turnover also reportedly increased among VEC's third-party contractors [sidebar].) VEC had over 250 separations of full-time staff, many of which occurred in VEC's UI-related functions, including adjudication.

Turnover among VEC's contract staff has been high during the COVID-19 pandemic. VEC does not currently track turnover rates for third-party contractors, but many contractors in adjudication and call center roles have left after several months, according to multiple VEC staff.

Several key factors contributed to high VEC staff turnover during COVID-19, including increased staff workloads, health concerns, and staff salaries. Agency-wide, VEC staff worked over 191,000 overtime hours between March and December 2020 to keep up with unprecedented UI claims volume. This was equivalent to 92 full-time staff and was a 1,600 percent increase from staff's 2019 overtime levels. Many staff were required to work in-person, risking COVID-19 exposure and infection. Dissatisfaction with pay also factored into VEC staff turnover; nearly half of VEC staff who responded to JLARC's survey (sidebar) disagreed their salaries were reasonable, and over half of former VEC staff who recently left VEC and completed an exit survey cited salary as a reason for leaving. An analysis of VEC staff salaries compared with salaries at other Virginia state agencies and private-sector entities confirmed that VEC staff salaries for several key positions are low; specifically, adjudication staff, call center staff, and appeals staff. (See Appendix D for more information on JLARC staff's salary analysis.)

JLARC surveyed VEC staff in April 2021 about their perceptions of their job, VEC as an employer, IT systems and security, and agency leadership. JLARC received responses from 789 VEC staff, for an overall response rate of 70 percent. The survey included both full-time and part-time agency staff. Contract staff were not included in the survey. (See Appendix B for more information.)

Despite high levels of staff vacancies and turnover, most VEC staff are generally satisfied working at VEC. Three-quarters of VEC staff who responded to a JLARC survey indicated they were satisfied with VEC as an employer. The level of satisfaction was slightly lower for staff in UI-related roles (67 percent) but still represented a majority of UI staff. VEC staff's average tenure was seven years in September 2021.

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

The number of supervisors an agency should have largely depends on the type of role they are overseeing; however, experts generally agree that supervisors should have no more than eight direct reports for skilled functions (e.g., program administration, IT programming) and no more than 15 direct reports for task-based functions (e.g., facilities maintenance, administrative support).

VEC has a small number of supervisory staff in several UI functions. Twenty-seven of VEC's 171 supervisors have 20 or more full-time staff reporting directly to them, with several having over 40 full-time direct staff reports. The largest supervisor-to-staff ratios are in VEC's call centers, where five supervisors each oversee between 40 and 60 full-time staff. Supervisor-to-staff ratios are also relatively large for other key UI functions, with one appeals supervisor overseeing 41 full-time staff, one fraud investigations supervisor overseeing 32 full-time staff, and one adjudication supervisor overseeing 29 full-time staff. VEC's number of supervisory staff is insufficient in part because supervisory roles did not increase at the same rate as new positions created and filled during the pandemic. However, important UI functions including call

centers and adjudication centers, had an insufficient number of supervisory staff before the pandemic, according to VEC staff.

VEC's insufficient number of supervisory staff has made it difficult for the agency to effectively monitor UI staff performance. For example, seven local call center supervisors were responsible for managing over 300 VEC call center representatives as of September 2021. These supervisors were not able to actively monitor call quality for all of their staff, especially because call monitoring had to be done in person given VEC's lack of quality monitoring software. During COVID-19, at least five call center supervisors were pulled away from their regular roles temporarily to help recruit and train new call center staff, further exacerbating the supervisory staff shortage.

To ensure VEC supervisors are able to sufficiently oversee all staff who report to them, VEC should establish goals for the ratio of supervisory staff to direct reports, particularly for key functions including call centers, adjudication and appeals sections, and the fraud investigations section. Supervisory staff ratio goals may vary based on the nature of different UI functions. Agency leadership should regularly monitor the ratio of supervisory staff to direct reports and include the results in the monthly commissioner's performance report (sidebar). This would help VEC leadership identify areas with too few supervisory staff and prompt the agency to hire additional supervisors where needed. VEC should take steps as soon as possible to either increase the number of supervisors in its call centers, adjudication and appeals sections, and fraud investigations section, or improve supervisors' effectiveness where increasing the number of supervisors is not practicable.

VEC's commissioner receives a monthly performance report that includes descriptive information about Virginia's labor force, UI benefit recipients and claims, UI determinations and appeals, and various tax and financial metrics. The report does not include information about UI claim quality or timeliness or call center responsiveness.

RECOMMENDATION 2

The Virginia Employment Commission should establish goals for the ratio of supervisory staff to direct reports, particularly for key functions including call centers, adjudication and appeals centers, and fraud investigations. Agency leadership should regularly monitor the ratio of supervisory staff to direct reports relative to the goals, and report performance in meeting these goals in the monthly commissioner's performance report.

State hiring policies should be reviewed and revised to help agencies meet staffing needs during emergencies

State law, through the Virginia Personnel Act, requires state agencies to use a competitive hiring process to fill vacant state employee positions. The Department of Human Resource Management (DHRM) has established the components of a competitive hiring process for agencies to follow. For example, agencies must interview individuals being considered for classified positions before they are hired. Competitive hiring requirements apply to all full-time state classified positions, meaning that wage positions cannot be converted to full-time positions without competitive hiring.

The governor issued two executive orders in 2019 recognizing that exceptions to traditional, competitive hiring may need to be made during staffing emergencies. Specifically, executive order 41 (2019) created the adjunct emergency workforce and executive order 42 (2019) created the Virginia emergency support team. These initiatives allow state employees to support other agencies during emergencies and assist with understaffed functions. To date, temporary staffing reassignments through these programs have largely been used on a voluntary basis and were not used to assist VEC.

VEC did try to obtain hiring flexibilities and staffing assistance from other agencies but was mostly unsuccessful. VEC leadership requested an exemption from state hiring requirements from cabinet officials in April 2020, but this request was not granted. Consequently, VEC could not simply convert existing wage staff to full-time staff and instead had to have wage staff apply for full-time positions. This hindered VEC's ability to quickly increase call center staff in particular because VEC had many wage staff in call center positions. (DHRM did allow VEC to streamline parts of the competitive hiring process to make hiring as efficient as possible; for example, hiring panels were not required in all cases.) VEC leadership also worked with DHRM to request that other state agency staff be temporarily assigned to VEC (including former VEC staff), but no staff from other state agencies were willing to work at VEC, and executive branch officials did not require them to do so. Moreover, VEC requested assistance from the National Guard to help process UI claims and adjudications, but the request was not approved due to the federal government's limitations on the use of the National Guard.

The governor issued Executive Directive 16 in May 2021 directing VEC to "continue to hire staff" and "coordinate with the Virginia Department of Human Resource Management to identify employees across Virginia's state agencies who can temporarily serve as VEC adjudicators, program support and administrative staff, or fraud investigators."

DHRM, VEC, and cabinet officials met to discuss several potential strategies to help VEC fill needed staffing positions in May 2021 to respond to an executive directive issued by the governor (sidebar). One strategy discussed was the creation of 100 program support positions that would be filled by employees from different state agencies. Employees would be assigned to VEC each week in groups of 20 staff. Another strategy was to direct agencies with investigator positions to make those staff available to support VEC. Both of these strategies and several others were not pursued, though some would have provided VEC with additional staff resources during COVID-19.

VEC would likely have been able to increase staffing levels more quickly during COVID-19 if it had received temporary help from other state agencies or been fully exempt from competitive hiring requirements when converting wage positions to full-time employees. However, implementation of these strategies had not fully been planned, and their complexities and possible unintentional consequences were a deterrent to using them. To ensure that state agencies can maximize the use of their own staff and staff in other agencies during emergencies that require rapid staffing increases, DHRM staff should work with human resources staff in other state agencies to propose policies (including legislation) and procedures for:

- granting agencies exemptions from certain competitive hiring requirements during emergencies, including the circumstances under which exemptions would be granted and the guidelines that would be needed to ensure agencies make prudent hiring decisions;
- requiring selected state agency staff to temporarily support other agencies in need of staffing assistance during emergencies, including through existing state initiatives like the adjunct emergency workforce; and
- providing necessary funding to cover the costs of these actions, particularly converting part-time staff positions to full-time staff positions and temporarily assigning staff from selected agencies to agencies in need of staffing assistance.

RECOMMENDATION 3

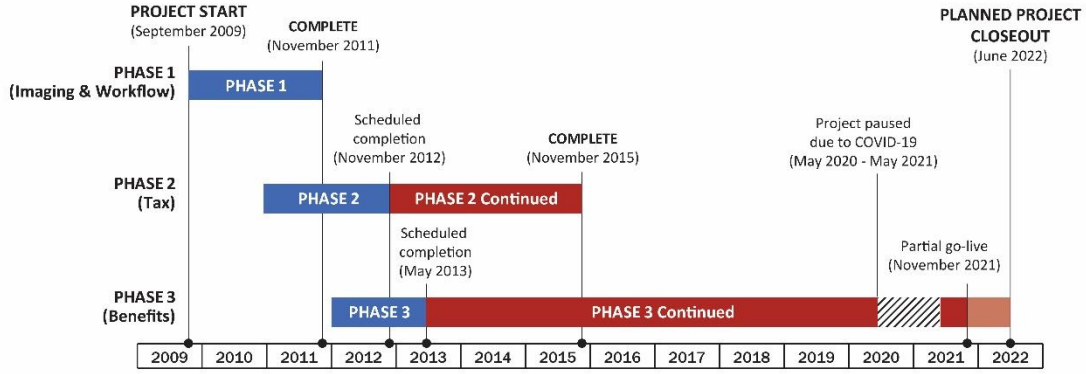
The General Assembly may wish to consider including language in the Appropriation Act requiring the Virginia Department of Human Resource Management to lead a multi-agency workgroup, comprising agency leaders and human resources staff from state agencies most likely to be in need of staffing assistance during emergencies, to examine the feasibility of and policies and procedures necessary for (i) granting agencies exemptions from certain competitive hiring requirements during emergencies; (ii) requiring selected state agency staff to temporarily support other agencies in need of staffing assistance during emergencies through existing or new state initiatives; and (iii) providing necessary funding to cover the associated costs. The workgroup should propose criteria to determine under what circumstances these emergency hiring practices may be invoked and a process for invoking this authority as well as terminating it. The workgroup should submit its findings to the secretary of administration, the chair of the House Appropriations Committee, and the chair of the Senate Finance and Appropriations Committee by June 30, 2022.

VEC's UI IT modernization project has been significantly delayed

Continued reliance on an outdated UI IT system to perform one of the agency's core functions was, along with inadequate staffing, a key reason for VEC's inability to process UI claims in a timely, accurate, and secure manner. Particularly during the COVID-19 pandemic, VEC's legacy system was a key root cause of VEC's inability to more successfully manage the unprecedented influx of UI claims, interact effectively with customers, and detect and prevent potential fraud.

VEC has been in the process of modernizing its UI IT system for 12 years and is eight years behind schedule. The project was originally scheduled to be completed by May 2013 but has faced multiple delays. The final phase of the project (benefits system) is currently expected to go live in November 2021 with the project close-out planned for June 2022 (Figure 3-2).

FIGURE 3-2
UI modernization will have partial go-live in November 2021, and conclude in June 2022, more than 8 years past original deadline



SOURCE: VEC project management documents and interviews with VEC staff.
NOTE: Figure does not include one year "warranty period" following project close-out. HCL is responsible for providing continued support to VEC to maintain the system until June 2023, or one year after the project close-out.

Insufficient staffing, poor contract management, and data conversion problems contributed to project delays

IV&V reviews of VEC's UI modernization project conducted in 2010, 2012, 2013, 2014, and 2017 found that both VEC and HCL faced challenges with staffing the project. The 2017 report stated, "both VEC and HCL have lost staff members over the course of the project resulting in a loss of institutional and project knowledge." Reviews also found that VEC did not clearly specify its contract requirements.

Neither VEC nor HCL dedicated enough staff time to the UI modernization project, which contributed to delays. Staffing was cited as a key risk in a November 2017 independent verification and validation (IV&V) report (sidebar). The number of staff assigned to the project has decreased over time, from 79 in October 2013 to 37 in July 2021. This decreased number of staff has been insufficient to write and test programs for the new system, as many of these staff have additional responsibilities outside of the project. Similarly, VEC currently has one lead project manager and one contract manager dedicated to the project, and both have other VEC responsibilities. HCL staffing levels have also been insufficient, and the contractor has experienced high levels of turnover. HCL initially assigned 25 FTEs to the project, but indicated as many as 40 FTEs worked on the project at one point. However, there were only 10 core HCL staff assigned to the project as of July 2021. Turnover in HCL staff caused further delays to the project, as the new staff lacked institutional knowledge or expertise, according to VEC and the IV&V reports.

VEC has not managed the project contract effectively and has not clearly documented contractual requirements. For example, a recent contractual change to the UI benefits system included only high-level milestones, did not clearly define specific functions to be included, and included incorrect dates. The document outlining the contract changes stated the UI benefits system would be deployed in April 2022, rather than VEC's stated go-live date in October 2021. Concerns about documenting requirements were cited in multiple third-party IV&V reports as far back as 2010. For example, the 2010 IV&V report recommended that VEC "consider fully documenting complete detailed requirements," and the 2014 report recommended that VEC

"documentation tasks and resources at a more granular level." VEC also did not formally document performance failures or use available contractual tools, such as penalties or cure letters, to address prolonged delays and system defects. In March 2020, VEC removed a per-formance bond from their contract that would have required HCL to pay 25 percent of the total contract value for poor performance. While ineffective contract manage-ment may not have had direct or even significant impacts on the pace or quality of the project, VEC missed opportunities to hold the vendor financially accountable for poor performance, to establish clear expectations for future high quality performance, and to convey VEC's intent to enforce the contract's terms.

The COVID-19 pandemic also delayed the UI modernization project. Although the project was near completion in early 2020, VEC leadership determined that converting to a new system at the start of the pandemic was too risky and paused the project for one year between May 2020 and May 2021 to focus on UI claims backlogs. HCL con-tinued some work activities (e.g., running stress tests and preparing to add new federal UI programs), but minimal progress was made on developing the new system during this time. UI program changes during COVID-19 required VEC to develop additional system functions that further strained the project timeline. For example, VEC had to build eight new federal programs (e.g., Pandemic Unemployment Assistance) into the old benefits system on short notice, which required additional hours of programming (sidebar).

VEC signed a change request with HCL in May 2021 to expand the modernized UI benefits system to include new federal CARES Act programs. The request added 10,000 hours of work for HCL to complete the CARES Act programs as well as incorporate additional functions into the system (e.g., identity verification).

VEC's UI modernization project has taken significantly longer than other states. A large UI modernization project should typically take between three and five years to complete, according to experts. Several other states completed their UI IT moderni-zation projects in five years or less. Utah, a state that modernized its IT system in house, completed its project in five years. Other states that used third-party vendors, including Minnesota, Pennsylvania, Washington, and Arkansas, completed their pro-jects in three years or less. Arkansas had the shortest project duration (two years) but modernized different portions of its system concurrently. However, many states' UI IT modernization projects have exceeded their budget or timeline, and some failed altogether.

Project delays required VEC to continue to rely on manual processes and made it difficult to process influx of COVID claims

Delays in the UI modernization project have had substantial negative impacts on VEC's UI processes and staff. Claimants have been largely reliant on physical mail and VEC's call center to complete UI claims. VEC staff have had to manually process claims and build workarounds to overcome system limitations. VEC staff have also had to dedicate a significant amount of staff time to help design and test functions of the new system, which detracted from their ability to focus on their primary responsi-bilities at VEC.

Additional information and recommendations related to VEC's ongoing UI modern-ization efforts are included in Chapter 6 of this report.

VEC has not actively monitored key areas of UI performance or adequately planned for recessions

Large customer-facing programs like UI require regular performance monitoring and quality improvement by agency leadership to ensure effective operations. DOL guidance emphasizes the importance of regularly monitoring UI performance to identify areas of underperformance and needed operational changes. Performance monitoring is most effective when agencies establish clear goals for acceptable performance levels and regularly track agency performance relative to those goals. When issues are identified, agency management must take action to address deficiencies to ensure that performance is improved over time.

VEC has no performance expectations for UI call center or fraud investigations, despite their importance for effectively responding to escalating unemployment levels

VEC leadership has not established performance goals for several important aspects of the UI program. Currently, this is a significant concern for VEC's call centers, which have been a major obstacle and source of frustration for the public and legislators during the COVID-19 pandemic. DOL does not have metrics or standards related to UI call centers, so states must establish their own. This is not unusual for federal programs; for example, the Department of Medical Assistance Services sets performance measures for its Medicaid call center even though Medicaid is a federal program. VEC measures certain aspects of call center performance, including the percentage of calls answered and average call wait time. However, no performance expectations have been set. Without clear call center performance goals, underperformance cannot be promptly identified, documented, and corrected. For example, VEC leadership did not make necessary adjustments to call center systems or staffing to improve performance until many months after the start of the pandemic.

Establishing call center performance goals is a common industry practice for all types of call centers. For example, Oregon's Employment Department set a goal for its UI call center to answer 90 percent of calls in under five minutes in December 2021. Several Virginia state agencies with call centers also have goals, including the Department of Medical Assistance Services (answer 90 percent of calls in 90 seconds) and the Virginia Department of Taxation (answer 88 percent of calls overall).

VEC also has not established internal performance goals for timely UI fraud investigations. Prompt fraud investigations are crucial to minimize the amount of trust fund money lost from making incorrect payments and to minimize the time that eligible individuals must wait to receive benefits. DOL does not have metrics or standards related to the timeliness of fraud investigations, and VEC staff do not routinely track the duration of fraud investigations. This lack of information limits VEC leadership's awareness of and ability to address slow fraud investigations. Fraud investigation time-liness has become particularly important during COVID-19 because of the

substantial increase in cases flagged for potential fraud and VEC's backlog of 136,000 potentially fraudulent claims awaiting investigation.

VEC should establish clear performance goals for key UI operations that currently lack goals and regularly monitor agency performance relative to these goals. These areas should include, but not be limited to, call center timeliness and quality and UI fraud investigation timeliness. These goals and VEC's progress toward meeting them should be regularly reported to the VEC commissioner as part of the existing monthly commissioner's performance report.

RECOMMENDATION 4

The Virginia Employment Commission should establish meaningful performance goals for its call center operations and fraud investigations, and ensure it has goals for effectively measuring performance in all other aspects of unemployment insurance operations. Agency leadership should regularly monitor performance relative to the goals and report goals and performance in the monthly commissioner's performance report.

VEC has not systematically addressed findings from DOL-required UI quality assurance audits

VEC management has not systematically tracked or addressed audit findings from VEC's UI quality assurance unit. As described in Chapter 1, VEC leadership regularly receives audit findings from two VEC units: internal audit and quality assurance (sidebar). VEC maintains a centralized repository of the internal audit unit's findings and the status of its recommendations, but no equivalent repository exists for the quality assurance unit's findings and recommendations. As a result, VEC leadership has not systematically tracked or addressed all deficiencies related to UI. For example, in 2017 the quality assurance unit found that VEC was not fully verifying whether certain claimants had returned to work before stopping their payments, which resulted in some claimants being incorrectly denied benefits. Quality assurance staff recommended that VEC update agency procedures to include additional eligibility checks before payments are stopped, including confirming claimants' work status with employers. This recommendation was not implemented by VEC leadership.

VEC's quality assurance unit conducts federally required periodic reviews of randomly sampled UI activities, including the accuracy of benefit eligibility decisions and employer tax records. It also identifies incorrect payments through cross-matches of all benefit claims and assesses the accuracy of certain data reported to the U.S. DOL.

The quality assurance unit's position in VEC's organizational structure partially explains why its audit findings are not prioritized by agency leadership. VEC's quality assurance director reports to the UI assistant director, who reports to the UI director, who reports to the UI deputy commissioner. Federal regulations require the organizational location of a quality assurance unit to "maximize its objectivity" and be "independent" of units subject to its audits. Placement within the UI division limits the visibility of the quality assurance unit's audit findings and VEC's follow-through on its recommendations, according to staff.

The quality assurance unit should be removed from the UI division and should report directly to VEC's commissioner to better ensure audit findings are independent and are known to VEC leadership. For example, the District of Columbia's Bureau of Compliance and Independent Auditing (which includes the group equivalent to VEC's quality assurance unit) reports directly to the UI agency head.

In addition, the findings and recommendations produced by the quality assurance unit should be formally compiled in a central repository, and the status of the unit's findings and recommendations should be routinely updated and reported to VEC leadership. VEC could use the existing central repository for internal audit recommendations for this purpose.

RECOMMENDATION 5

The Virginia Employment Commission (VEC) should transfer the unemployment insurance quality assurance unit from the unemployment insurance division and have it report directly to the VEC commissioner.

RECOMMENDATION 6

The Virginia Employment Commission (VEC) should require its unemployment insurance quality assurance unit to compile its findings and recommendations in a central repository and routinely update VEC leadership on their status.

VEC has not effectively planned for periods of high unemployment

The **Federal Emergency Management Agency** publishes guidance on resiliency planning. Portions of the guidance are relevant to state UI programs. For example, guidance directs entities to plan how mission-critical services would continue to be administered during different types of emergencies. Ohio used FEMA guidance to develop a UI resiliency plan for staffing.

State agencies like VEC that experience large increases in workflows and provide time-sensitive services need a plan to ensure effective operations during emergencies (sometimes called a "resiliency plan"). Resiliency plans can improve the speed with which agencies are able to increase staff and make other operational adjustments in response to economic recessions. The Federal Emergency Management Agency (FEMA) recommends regular resiliency planning by government agencies and provides guidance relevant to state UI agencies (sidebar). Virginia's Department of Emergency Management also recommends resiliency planning and emphasizes its importance for ensuring the continuity of operations during emergencies. Strong resiliency planning includes identifying potential threats, predicting their impact on agency operations, defining highest-priority agency activities, and considering steps to mitigate disruption to those activities.

VEC has completed most mandatory agency plans, but these plans did not include actions needed for effective and efficient operations during periods of high UI claims volume. As required of all Virginia state agencies, VEC submits a continuity of operations plan to the Department of General Services. VEC's most recent plan covers leadership succession and primarily addresses incidents that disrupt operations but do not increase program demand (e.g., closing local offices). In its most recent mandatory biennial strategic plan submitted to the Department of Planning and Budget, VEC acknowledges the risks of economic recessions to agency operations and notes the

importance of having staff augmentation contracts, but VEC did not have pre-negotiated staff augmentation contracts prior to COVID-19. None of VEC's plans (sidebar) outline specific strategies or steps VEC will take to modify staffing levels or processes in response to incidents that increase UI program demand.

Other **plans required of VEC** include: a workforce programs plan (coordinated with other state agencies) that is federally required; a state emergency plan as required by executive order; and a biennial IT strategic plan submitted to VITA.

VEC's existing plans also do not outline a strategy for clearly communicating key program changes to customers. Insufficient communication caused widespread claimant frustration and confusion during COVID-19. UI program eligibility rules and benefits changed frequently during COVID-19. Recognizing the potential for confusion, DOL advised states to provide "current and accurate" messaging to the public about UI programs. However, VEC did not provide clear and timely notice about UI program changes. For example, federal law required claimants to be denied regular state UI benefits before they could qualify for Pandemic Unemployment Assistance (PUA), but VEC did not update its denial letters to explain this requirement. Many claimants who were denied regular state UI benefits, and who could have qualified for PUA, pursued appeals or gave up.

VEC would have been better prepared for COVID-19 if it had developed a comprehensive resiliency plan. VEC's resiliency plan should describe agency actions that should be taken under various economic scenarios and levels of demand for UI benefits, including:

- how existing staff would be re-allocated to high-priority functions (e.g., shifting existing staff to claims processing);
- how the hiring process would be streamlined to fill key vacant positions (e.g. adjudication and appeals staff);
- how VEC's policies and procedures would be modified in response to high demands on its services;
- a strategy for communicating important UI information to VEC staff, the public, and the General Assembly; and
- other tactical actions to be taken to ensure the continuity of UI claims processing and customer service.

VEC should incorporate its resiliency plan for the UI program into an existing plan, such as the agency's biennial strategic plan or annual continuity of operations plan. (The strategic plan template already has a section for documenting agency risks where VEC could include a resiliency plan. The continuity of operations plan template covers operational changes but is primarily geared towards declared emergencies.)

Ohio and Oregon have implemented best practices for UI resiliency planning. Ohio's UI agency established a staffing plan for varying levels of UI workload volume. For example, the plan covers several scenarios, including normal seasonal upswings prompting mandatory staff overtime and a major recession prompting use of third-party staff augmentation contracts and increased local UI assistance services. Similarly, Oregon has a plan that describes how it will change public communications about UI

during economic recessions. Specifically, the plan indicates which staff will be responsible for different types of communications, and it includes several communications goals, such as clearly conveying UI program and policy changes.

RECOMMENDATION 7

The General Assembly may wish to consider amending § 60.2-111 of the Code of Virginia to require the Virginia Employment Commission to develop and maintain an unemployment insurance resiliency plan that describes the specific actions the agency would take, depending on the level of increase in unemployment insurance (UI) claims, to address staffing, communications and other relevant aspects of operations to ensure continued efficient and effective administration of the UI program.

VEC management did not keep key staff sufficiently informed during the pandemic

VEC's internal communications hindered staff's awareness of important program developments during the pandemic. Staff with responsibility for communicating with claimants and employers especially need to understand policy changes to convey accurate information. At VEC, such staff include public relations personnel, legislative liaisons, traditional and social media staff, customer service representatives, the webmaster, and staff in local workforce offices.

"Claimants and the news media would hear about problems and updates before it was announced to the local office,"

During the pandemic, important VEC executive decisions were not shared internally in a timely or comprehensive manner, so staff responsible for interfacing with the public were not always able to provide helpful or accurate answers (sidebar). Internal communications were particularly challenging when information had to be shared across divisions or among the central and local offices. Several VEC staff described only learning of program changes from outside sources. Staff attribute insufficient communications to VEC leadership having an ad hoc and sometimes limited approach to sharing information about key program and process changes.

"There needs to be a more coordinated effort to combine the resources at VEC as far as communication… Everything has gotten so disorganized with the influx of claims….We need to have a communications strategy that is followed and that we adhere to,"

– VEC staff

VEC should improve the timeliness, accuracy, and reach of communications to VEC staff. Specifically, VEC's commissioner should establish clear processes to ensure that important programmatic changes are relayed to all relevant staff. This will require consideration of effective methods and timelines to share management decisions and important external developments (e.g., new federal guidance) with staff. Priority should be given to ensuring that accurate and clear information reaches staff in local offices and line-level staff interacting with customers and the media in a timely manner.

RECOMMENDATION 8

The Virginia Employment Commission (VEC) commissioner should ensure that all key policy or other significant changes that could affect the public, VEC, or VEC staff are communicated clearly and expeditiously to all VEC staff, especially those in leadership or positions communicating with the public.

VEC may have responded more effectively to the pandemic with stronger administration oversight and assistance and different executive decisions

Demand for UI benefits can increase quickly during economic recessions and emergencies that adversely affect employment. Prompt executive decisions on staffing levels, claims prioritization, and other process changes are needed to ensure that VEC awards benefits to eligible individuals accurately and in a timely manner.

VEC and the administration made changes to the UI program to better respond to the increase in demand for UI benefits during the pandemic. VEC leadership also appeared to appropriately prioritize the health and safety of its own staff and provide effective support to staff who faced exceedingly difficult personal and professional demands during the pandemic. However, some of the most impactful actions that would have helped VEC respond to the surge in UI claims were delayed over a year into the pandemic, as described in this chapter and chapters 4, 5, and 6.

VEC leadership could not have fully understood the magnitude and duration of COVID-19 or its impacts at the start of the pandemic, and decisions were made using the best available information. However, taking certain actions earlier in the pandemic—especially those related to staffing increases and IT system improvements—may have helped VEC respond more effectively to the increased UI claims volume and program challenges.

Future administrations need to ensure VEC accountability and provide assistance when able, especially during economic downturns

Future administrations need to provide additional oversight and assistance to VEC during severe economic downturns or other relevant emergencies. Each administration is responsible for the effective performance of its agencies, including VEC. The Code of Virginia grants the governor responsibility "for the formulation and administration" of policy. The Code of Virginia also gives cabinet secretaries the authority to "hold agency heads accountable for their administrative, fiscal and program actions."

Given VEC's critical role during severe increases in unemployment—and the operational challenges that arise from them—future secretaries of labor must effectively fulfill their role to ensure the agency is performing adequately. Effective, regular, and proactive oversight would help to ensure that significant performance issues are quickly identified and plans developed to address them.

In addition to providing oversight, future secretaries of labor need to identify ways they can use the power and access of their office to assist VEC during challenging periods. The secretary is in a position, as part of the governor's collective cabinet, to identify resources or solutions for VEC that have been used successfully in other functions of the executive branch. VEC could have benefited from assistance with hiring

staff and better availed itself of expertise and resources in other areas of state government.

Existing legislative commission could be tasked with monitoring VEC's post-pandemic performance

In 2021, JLARC staff have been reviewing VEC's performance through its authority as the General Assembly's oversight agency. Information about VEC's performance was presented to JLARC at the May, July, September, and finally, the November meetings. JLARC began making recommendations to VEC at the September meeting and prior to that provided VEC leadership with insights and observations intended to encourage improvements. This final report includes 40 recommendations that will help VEC improve its performance issues. As part of its existing recommendation tracking process, JLARC staff will periodically ask VEC to report progress in implementing recommendations and provide status reports to JLARC.

Appendix F of this report describes approaches taken by seven **other states** to provide either legislative or executive branch **oversight for their Unemployment Insurance programs**. All seven states include legislators in these oversight structures.

Moving forward, though, the volume and complexity of the actions that VEC needs to take to improve its operation of the state's UI program, along with the still-unfolding effects of the pandemic, necessitate continued oversight. Virginia has a legislative Commission on Unemployment Compensation that is tasked with monitoring the state's UI program (sidebar). State law directs the commission to meet at least twice annually and gives its members the authority to evaluate the impacts of UI legislation, examine ways to enhance the effectiveness of Virginia's UI system, monitor the state UI trust fund, and annually report findings to the General Assembly and governor. The General Assembly should create a temporary, subcommittee of this commission to monitor VEC's management of the UI program as it continues to address the challenges created by the COVID-19 pandemic. The subcommittee should be responsible for monitoring VEC's:

- key performance metrics related to UI backlogs;
- efforts to identify, prevent, and recover incorrect UI benefits payments, including fraudulent payments;
- project to modernize the UI IT system and subsequent efforts to improve functionality;
- expenditure of state funds appropriated for UI administration; and
- implementation of JLARC recommendations.

The subcommittee should meet at least once quarterly through 2025. Membership should include employee stakeholder representatives, such as a representative from the Legal Aid Justice Center or the Southern Poverty Law Center, and employer representatives, such as a representative from the Virginia Chamber of Commerce. The subcommittee could also include a member of the Commission on Unemployment Compensation and one member each from four legislative committees: the House Appropriations Committee, the Senate Finance and Appropriations Committee, the

House Labor and Commerce Committee, and the Senate Commerce and Labor Committee.

RECOMMENDATION 9

The General Assembly may wish to consider including language in the Appropriation Act or amending § 30-222 of the Code of Virginia to create a subcommittee of the Commission on Unemployment Compensation to monitor the Virginia Employment Commission's: (1) key performance metrics related to UI backlogs; (2) efforts to identify, prevent, and recover incorrect UI benefits payments, including fraudulent payments; (3) project to modernize the UI IT system; (4) expenditure of state funds appropriated for UI administration; and (5) implementation of JLARC recommendations. The subcommittee should include individuals who can represent the interests and experiences of claimants and employers. The subcommittee could include members of the following General Assembly committees: Commission on Unemployment Compensation, House Appropriations, Senate Finance and Appropriations, House Labor and Commerce, and Senate Commerce and Labor. The subcommittee should meet at least once quarterly and sunset on June 30, 2025.

4 Unemployment Insurance Claims and Appeals Process

The goal of the federal unemployment insurance (UI) system is to help stabilize the economy during times of economic hardship by providing temporary financial assistance to individuals who lost work through no fault of their own. State workforce agencies, like the Virginia Employment Commission (VEC) are responsible for administering UI benefits directly to claimants. The majority of VEC's resources are dedicated to the UI program. Federal and state laws and regulations and guidance from the U.S. Department of Labor (DOL) establish requirements states must meet for processing UI claims and issuing benefit payments, but states have flexibility in how they operationalize those requirements.

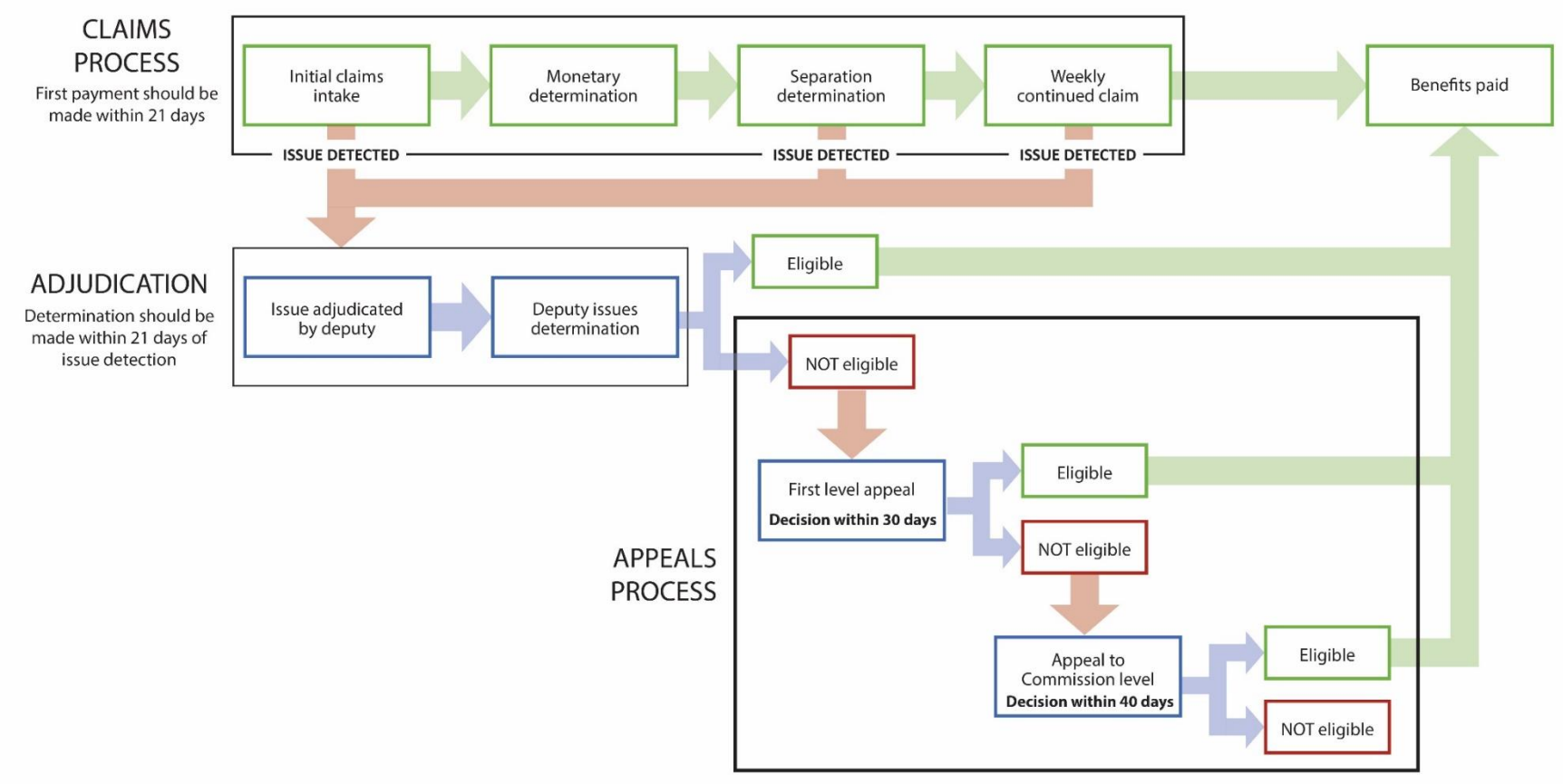
Federal law requires states to provide UI benefits to *eligible* claimants as *quickly* as administratively feasible. To fulfill this requirement, VEC should clearly explain the UI program so that unemployed individuals are aware of their potential eligibility for benefits; make the application process as simple as possible to facilitate speedy and accurate applications for benefits; expediently and thoroughly review claims and make appropriate decisions regarding eligibility; and issue benefit payments as quickly as possible. DOL has established performance standards for several parts of the UI claims process to assess whether state workforce agencies like VEC meet expectations.

UI claims process includes several eligibility decisions and grew more complex during COVID-19

Claims for UI benefits are subject to a multi-step review process. Claimants file their initial UI claims online or by phone through VEC's customer contact centers (Figure 4-1). VEC staff process the application and make two determinations—a monetary eligibility determination and a separation determination—based on wage records and information that claimants and employers provide. Claimants who meet criteria for both determinations are deemed eligible for UI benefits; however, they must file weekly UI claims and continue to meet weekly eligibility criteria to receive UI benefit payments.

At any point during the initial or weekly claims process, VEC staff may detect an "issue" concerning the claimant's eligibility. Issues are flagged for further review through VEC's adjudication process. Common issues requiring adjudication include when VEC must determine if a person was terminated for misconduct rather than laid off, if a person was physically able and available to work during a certain week, or if a person refused a suitable job offer. After investigating the issue, VEC staff make a determination regarding whether the claimant is eligible to receive UI benefits.

FIGURE 4-1
VEC's UI claims process involves multiple steps and determinations of eligibility for UI benefits



SOURCE: JLARC analysis of VEC external and internal documents and interviews with VEC staff.
NOTE: Challenges to monetary determinations are currently addressed through appeals or redeterminations by VEC's monetary unit.

Claimants found ineligible for UI benefits through this process may be required to repay any UI benefits collected prior to the determination. Individuals who disagree with VEC's claims decisions have the right to appeal determinations in a two-step process.

Several temporary federal UI programs were created during the pandemic that contributed to claimants' confusion and VEC's workload. Most federal programs required claimants to complete an additional application to demonstrate their eligibility for the program. For example, claimants were required to demonstrate they had exhausted traditional state UI benefits before they could receive additional weeks of benefits under the Pandemic Emergency Unemployment Compensation (PEUC) program. For the Pandemic Unemployment Assistance (PUA) program, claimants first had to apply for regular UI benefits, receive a denial, and then file a separate PUA application. (See Chapter 2 for additional information about federal UI programs.)

VEC's antiquated IT system, existing staff shortages, and inefficient workflows made the agency unprepared for the surge in claims it received during the pandemic. These problems created backlogs in each step of the claims processing during the pandemic—claims intake, adjudication of eligibility issues, and appeals. In addition, the complexity of the UI process made it difficult to increase and train staff quickly to help address backlogs in any of these areas. UI processes are inter-related; therefore, delays and quality issues with one step in the process create challenges for other steps in the process.

VEC has not adequately explained UI application and eligibility requirements

While most unemployed people are aware of the UI program (sidebar), many have difficulty understanding how the UI program works and how to file a claim. VEC staff, employer representatives, legal aid clinic attorneys, and unemployed individuals themselves have all reported that the UI claims process is difficult to understand and navigate for those attempting to access benefits. Many Virginians do not understand the UI program's "able and available to work" eligibility criterion, which requires that claimants be ready to work to qualify for UI. For example, claimants may report that they were both able and available to work in a given week, even if they were injured and unable to report for any job offers they may have received. In addition, many claimants do not understand how to complete VEC's identity verification requirements, which involves: creating an account with a third-party system; submitting documents, photographs, and personal information; and consenting to share this information with VEC. If these claimants had received clear information about the "able and available to work" requirement and identity verification requirements, some of VEC's existing adjudication backlog and call volume tied to these issues could have been avoided.

The **Census Bureau collects data on UI awareness** through a supplement to the Current Population Survey. The supplement was sent to unemployed individuals who did not file for UI in 2018 and found that only 7 percent in Virginia did not apply for UI due to lack of awareness. See Appendix B for more information.

> *"I get daily questions from people about what it means to have an outstanding issue on their claim, why the issue is there, and how it can be resolved…Most people do not know what UI program they are on. The packet from VEC tells them, but they may not necessarily read or understand it."*
>
> **– VEC staff**

Providing clear, thorough information about the UI program and its application requirements would improve claimants' understanding and ability to access benefits. Currently, many VEC forms, notices, instructions, and guidelines are unclear and do not emphasize the most important information. For example, after a claim is approved, VEC sends the claimant a letter that is intended to provide the information they need to begin receiving benefits. However, the letter is eight pages long, has sections written at or above a college reading level, and directs claimants to review excerpts from the Code of Virginia on VEC's website. The most pertinent information, such as how to file a weekly claim, is near the end of the letter.

Other VEC documents are also unclear. VEC's monetary determination letter includes an estimated benefit amount but does not clearly explain that agency staff have not yet officially determined claimants' eligibility. Therefore, claimants may presume they will receive this amount even though their eligibility is subject to further review. In addition, the denial letters claimants received for the traditional state UI program did not clearly articulate that claimants denied for traditional state UI may be eligible for PUA benefits. As a result, some claimants incorrectly believed that VEC had deemed them ineligible for all UI programs and filed appeals. This unnecessarily increased VEC's appeals workload. While VEC attempted to reach out to claimants using automated texting and phone campaigns and also used third-party expertise to clarify some website language (sidebars), it is unclear whether these efforts improved claimant understanding. Many claimants continued to report high levels of confusion and misunderstanding about the program and how to file a claim.

VEC launched 22 automated texting and phone campaigns in 2020 and 2021 to direct specific claimants (e.g., those who had been denied from traditional UI but were eligible for PUA) to VEC's website or the online claims filing page for more information. Data indicates messages were delivered, but it is unclear how many claimants read and understood the messages or took action on their claims.

VEC hired a third-party vendor (Capital Results) in 2020 to make design and language changes to its website, but basic UI information is still difficult to find and understand. For example, claimants click through four pages to find a detailed description of eligibility criteria, and they file claims with little to no explanation during the process.

VEC should formally review the forms, notices, instructions, and guidelines it issues to the public to identify opportunities to streamline and clarify their contents. VEC's internal audit division should conduct this review with assistance from an external third party with UI expertise that is competitively procured (sidebar). As part of the review, VEC staff and customers (individual UI claimants and employers) should provide input on the specific topics and communications that cause the most confusion. Examples of other states' communications should be collected during the review and used to inform improvements to VEC's communications. VEC should then revise relevant communications to ensure greater understanding of the UI program, eligibility criteria, and the application process. New Jersey did this by creating infographics with plain language aimed at helping claimants understand the difference between UI programs (federal and state) and the state's temporary disability and family leave insurance programs after receiving feedback about frequent confusion.

A near-term review and revision of *all* VEC UI communications would be difficult because of VEC's UI claim backlogs and limited staff resources. Therefore, in the near term, VEC should prioritize revising documents and online resources that tell claimants how to navigate the UI claims and appeals process (e.g., initial letter sent to claimants outlining benefit rights and responsibilities) and notify claimants about the status or outcome of their claim (e.g., all determination and decision letters). (A prioritized list of items in need of revision is included in Appendix G.) VEC staff should

improve these communications as soon as possible. VEC should receive assistance from a third-party contractor with relevant expertise, but VEC should not wait to begin this effort until a third party is hired. Over the longer term, after VEC reduces UI claims backlogs and its newly modernized UI IT system is fully implemented, staff should develop a process for regularly reviewing and revising all guidance documents and online re-sources.

RECOMMENDATION 10

The Virginia Employment Commission (VEC) should, as soon as possible, have staff in its internal audit division review and revise documents and online resources to more clearly describe and explain (i) eligibility criteria for Unemployment Insurance (UI), (ii) how to navigate the UI claims and appeals process, and (iii) the status or outcome of a claim. VEC should use examples from other states and input from VEC staff and customers and should competitively procure a third party contractor with expertise in UI and customer communications to assist with these efforts.

VEC should also develop several new tools to help claimants better understand UI eligibility criteria, the claims process (including differences between UI programs), and how to file UI claims. Several other states convey this information through helpful online videos, simplified one-page summaries, and infographics. For example, Maryland, North Carolina, and Texas have videos and other promotional materials that clearly explain the UI program, eligibility criteria, and the steps for filing a claim. New Jersey has a series of infographics and visual one-page summaries that cover frequently asked questions about the traditional state and new federal COVID-19 UI programs. New Jersey also has an interactive tool that helps unemployed individuals understand whether they may be eligible for UI, the program they may be eligible for, and the level of benefits they could expect to receive. To date, VEC staff, working with a third party contractor, have developed one video aimed at explaining UI eligibility and the basic components of the claims process. The video, which has not been published on the agency's social media channels, does not explain in simple language terms that tend to be the most confusing for claimants, such as the "able and available to work" eligibility criterion.

RECOMMENDATION 11

The Virginia Employment Commission should develop (i) a series of instructional, short videos designed to help claimants better understand their potential eligibility for unemployment insurance, the steps of the application process, and how to file a claim and (ii) an interactive, online eligibility tool that enables claimants to better understand their potential eligibility and benefits under the program.

UI claims intake has been significantly backlogged and understaffed

VEC had a substantial backlog of initial UI claims awaiting intake from March 2020 to November 2020. The backlog grew from 179,000 claims (March) to a high of 716,000 claims (June) during this time period. VEC reported that they completely cleared this backlog of initial claims in December 2020, but smaller backlogs accrued throughout 2021. As of October 2021, VEC reported less than 500 backlogged initial claims. Backlogs in initial claims intake caused some claimants to experience delays in their benefit payments while VEC staff entered their claims into the system. These backlogs, while large, represented a small percentage of the over 2.2 million initial claims that VEC reported completing since March 2020.

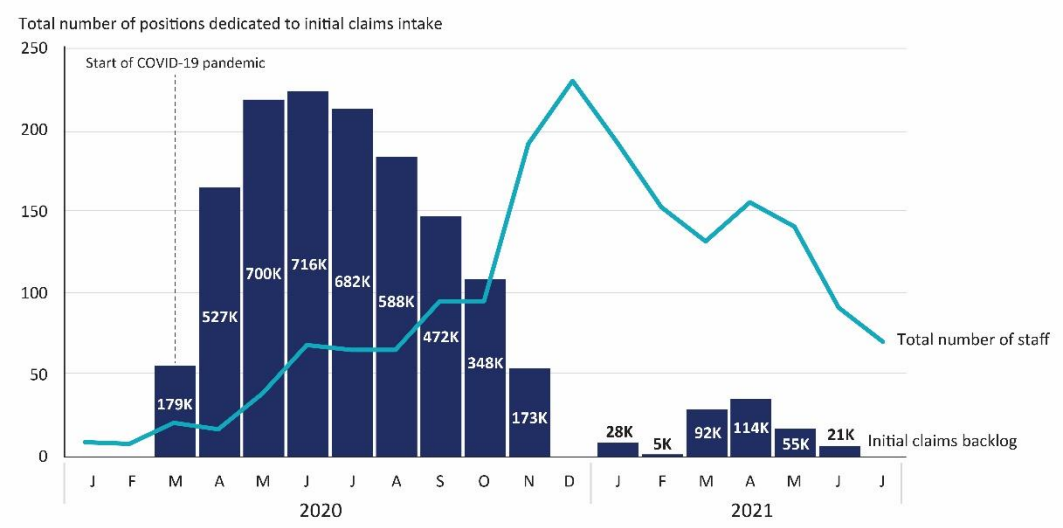
Once claimants submit an application for UI benefits, VEC staff must conduct several intake activities before eligibility decisions can be made, including issuing requests for additional information. One key request for additional information is the *separation report*, which is used to help verify claimants' eligibility for UI benefits. Separation reports are sent to claimants' previous employers, who are asked to provide information regarding the claimants' previous wages and reasons for separation from employment. Once returned by employers, VEC staff must review the report, enter information into the claims system, and identify issues requiring further review. Claimants are able to receive UI benefit payments while waiting for VEC staff to review employer separation reports, but some claimants' payments may be paused if review of the separation report finds potential eligibility issues that require adjudication. Claimants found ineligible during the adjudication may be required to repay UI benefits previously received.

VEC was still reviewing employer separation reports submitted for nearly 580,000 UI claims as of August 2021. The oldest employer separation reports awaiting review were approximately 12 months old.

VEC was slow to increase UI claims intake staff, allowing significant backlogs to accrue

Backlogs in UI claims intake were largely caused by insufficient staffing levels. Prior to the pandemic, VEC had only seven customer contact center staff members dedicated to initial claims intake, which was insufficient to keep up with VEC's workload during the pandemic. Between March and June 2020, VEC received an average of 279,000 initial claims per month. In response, VEC increased the number of customer contact center staff assigned to initial claims intake from seven to 55 mostly by reassigning existing VEC staff to this function. However, staffing remained insufficient, and UI claims backlogs quickly accrued (Figure 4-2). VEC did not hire contractors to assist with initial claims intake until November 2020, well after large backlogs had accumulated.

FIGURE 4-2
Increases in intake staff lagged peak in UI claims intake backlog by several months



SOURCE: VEC data on claim intake staffing levels and backlogs (January 2020 – July 2021).
NOTE: Staffing levels decreased in early 2021 as most staff VEC who had been temporarily reassigned to assist with UI claims intake returned to their original functions.

Insufficient staffing also contributed to significant backlogs in separation report processing. Prior to the pandemic, only five VEC customer contact center staff were dedicated to processing separation reports. VEC began receiving tens of thousands of separation reports each month mid-2020; however, between July 2020 and November 2020, only 20 VEC staff were assigned to this function, many of whom had been reassigned from other VEC functions. As a result, a backlog of approximately 465,000 separation reports accrued by November 2020, grew to over 580,000 by January, and persisted at this level through August 2021. VEC assigned 35 contractors to process separation reports in August 2021 and increased the staff assigned to this function to 263 staff as of October 2021.

To enable VEC to increase staffing levels quickly and minimize the risk of future backlogs in UI claims intake (as well as other parts of claims processing), VEC should cross train workforce services division staff on UI claims processing. Workforce division personnel make up nearly half of VEC's staff and have a basic understanding of the UI program. During periods of high UI claim volume, selected workforce staff should be temporarily reassigned to assist with claims processing, as long as demand for their traditional workforce responsibilities allows. VEC used this strategy to a limited extent during COVID-19. To minimize time spent training staff during crises, VEC should identify workforce division staff who may have relatively lower workloads and less urgent responsibilities during periods of high claim volume and can therefore be practicably redirected. These staff should be cross-trained to process initial UI claims and review employer separation reports. Training could be incorporated into

orientation for new workforce division staff and completed as part of ongoing training for existing workforce division staff. Several staff have indicated this type of cross-training would be helpful (sidebar). VEC-equivalent agencies in Oregon and Washing-ton have developed policies for cross-training their workforce staff so they can quickly be reassigned to assist with UI claims when claim volume increases.

"I feel that if the VEC would empower their seasoned staff with training and access to assist with the complex and overwhelming unemployment claims this would help in reducing the number of customers being dissatisfied with our services and benefits being administered in a timely manner."

"We have been asked to take on responsibilities (post COVID) for which we received absolutely NO training. We have had to learn UI, essentially from the ground floor, in a pandemic environment."

– **VEC workforce staff**

RECOMMENDATION 12

The Virginia Employment Commission should build a reserve of staff to assist with claims during periods of high claims volume by identifying workforce services division staff whose time can practicably be reassigned to non-workforce activities during pe-riods of high unemployment insurance claim volume. These staff should be cross-trained on key unemployment insurance processes.

Inefficient and confusing UI IT system also contributed to backlogs in initial UI claims

The antiquated IT system was another root cause of VEC's backlogs in initial claims intake and separation report processing. VEC's legacy UI IT system requires staff to manually (1) review, verify, and enter claimant information from internet UI claim applications into the system; (2) identify relevant employers and link them to each UI claim; (3) enter information from employer separation reports into the system; and (4) review, key, or resolve issue codes generated by separation report responses. Moreover, the system does not allow electronic document submission, so VEC staff must mail forms or call claimants and employers to gather additional claim information. These manual and paper-based activities require a significant amount of VEC staff time and prevent many claimants from receiving their full UI benefits in a timely manner.

VEC staff expect some of the challenges caused by its outdated UI IT system to be resolved after the launch of its new UI IT benefits system. For example, information from online applications will be automatically added to the system, employers will be automatically linked to UI claims, and claimants will be able to electronically upload claims-related documents. (See Chapter 6 for more information about VEC's new UI benefits system.)

Major improvements needed to improve timeliness and eliminate backlog of UI claims determinations

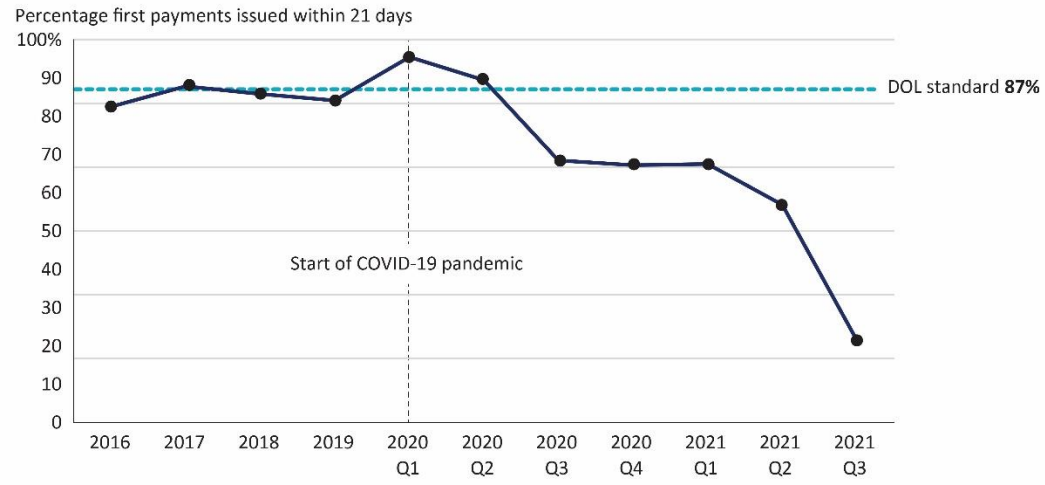
States are required to administer UI benefits in a timely manner to qualify for federal funding for the UI program. Specifically, the Social Security Act requires each state to administer benefits to eligible claimants "when due." The Supreme Court and U.S. Department of Labor (DOL) have interpreted this to mean as close to the nearest payday following termination as possible. DOL has established several standards for benefit payment timeliness in federal regulations and monitors compliance with these standards. States that do not comply risk losing federal administrative funding for UI

and a federal employer tax credit, which reduces federal UI tax rates for state employers.

VEC's first UI payments are not timely for most claimants, and many subsequent payments have been paused during pandemic

VEC has underperformed the federal standard for first payment timeliness since the beginning of the COVID-19 pandemic (Figure 4-3). The DOL standard for first payment timeliness is that 87 percent of all first payments are made within 21 days. Beginning in April 2020, VEC's first payment timeliness decreased because of unprecedented UI claim volume and insufficient staff to process claims. VEC issued approximately two-thirds of all first payments within 21 days—more than 36 other states—but some first payments took significantly longer. Between July 2020 and March 2021, approximately 18 percent of first payments took 70 days or longer to issue. Recent decreases in first payment timeliness are the result of VEC's recent prioritization of reducing backlogs of adjudications. For example, beginning in May 2021, VEC reassigned 15 customer contact center staff from initial claims intake to adjudication assistance and claims correction roles.

Figure 4-3
Timeliness of first UI payments has decreased drastically



SOURCE: DOL Benefit: Timeliness and Quality Reports (2016–2021).
NOTE: 2021 Q3 is through August 2021.

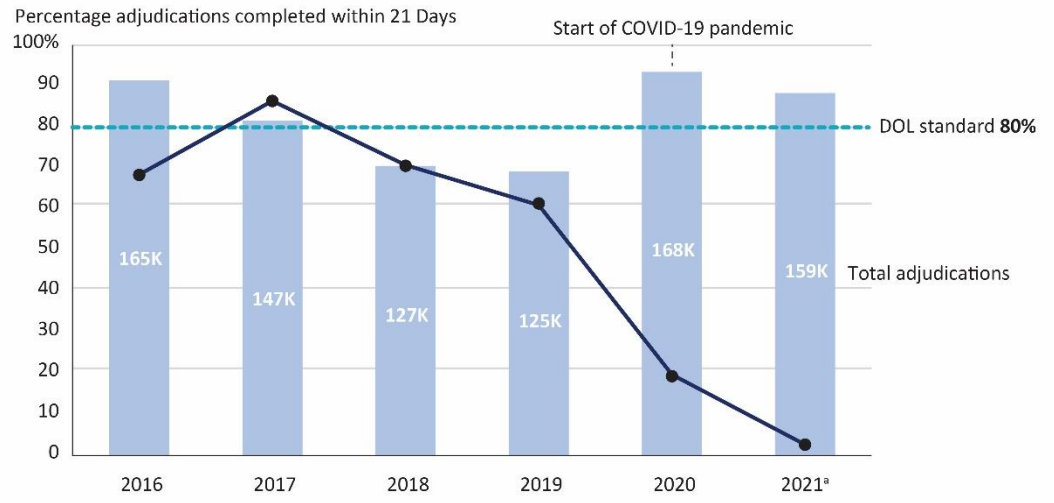
Many claimants who have received first payments have had subsequent payments paused by VEC. VEC may pause payments to claimants for several reasons, including when an issue is discovered on their initial claims application, separation report, or continued weekly claim application. As of August 12, 2021, at least 50,000 claims that had received a first payment since March 2020 later had payments paused because VEC discovered issues that required adjudication.

VEC has struggled to quickly adjudicate claims issues, resulting in large backlogs and delayed payments

DOL expects states to quickly investigate eligibility issues that arise during the claims process so that eligible claimants receive initial and weekly benefits in a timely manner. The process of investigating potential eligibility issues is called *adjudication,* and the written decision that VEC issues upon completion of the investigation is called a *determination*. DOL's standard for the adjudication process is that 80 percent of adjudications be completed and determinations made within 21 days of issue detection.

VEC has not met the federal standard for adjudication timeliness in several years, and timeliness decreased significantly during COVID-19 (Figure 4-4). VEC last met the DOL standard for adjudication timeliness in 2017, when staff issued 86 percent of determinations within 21 days. Since 2017, performance has varied but decreased dramatically after the pandemic's onset. VEC went from issuing 75 percent of determinations within 21 days in the first quarter of calendar year 2020 to less than 15 percent in the second quarter. Performance continued to decrease in the first two quarters of 2021, falling to less than 3 percent of adjudications completed within 21 days. The majority of claims (82 percent) were awaiting adjudication for more than 70 days. VEC has ranked last or second-to-last in the country on this measure for the past five quarters.

Figure 4-4
VEC has not adjudicated UI eligibility issues in a timely manner



SOURCE: DOL Benefits: Timeline and Quality Reports and ETA 207 Nonmonetary Determinations Activities report.
NOTE: [a] 2021 represents totals and timeliness for January through June.

UI claimant representatives filed **a federal class action lawsuit** against VEC in April 2021 in response to 92,000 delayed adjudications. A settlement was reached in May 2021 that directed VEC to increase its weekly adjudications to 20,000 by August 1, 2021 and resolve at least 95 percent of unpaid claims awaiting adjudication by September 6, 2021. (See Chapter 2 for more information about the lawsuit and settlement.)

Significant backlogs of claims awaiting adjudication continue to accrue. In May 2021, VEC reported a backlog of over 92,000 UI claims awaiting adjudication that remained unpaid. In response to a federal court order (sidebar), VEC prioritized and resolved

this specific backlog of unpaid claims. However, additional claims requiring adjudication accumulated while VEC was addressing cases related to the lawsuit. Similarly, claims that received at least one payment but later had an issue that required adjudication accrued in a separate backlog. As of October 2021, VEC reported that 61,800 total claims (regular state UI and federal pandemic program claims) were awaiting adjudication.

VEC has not been able to hire enough adjudication staff

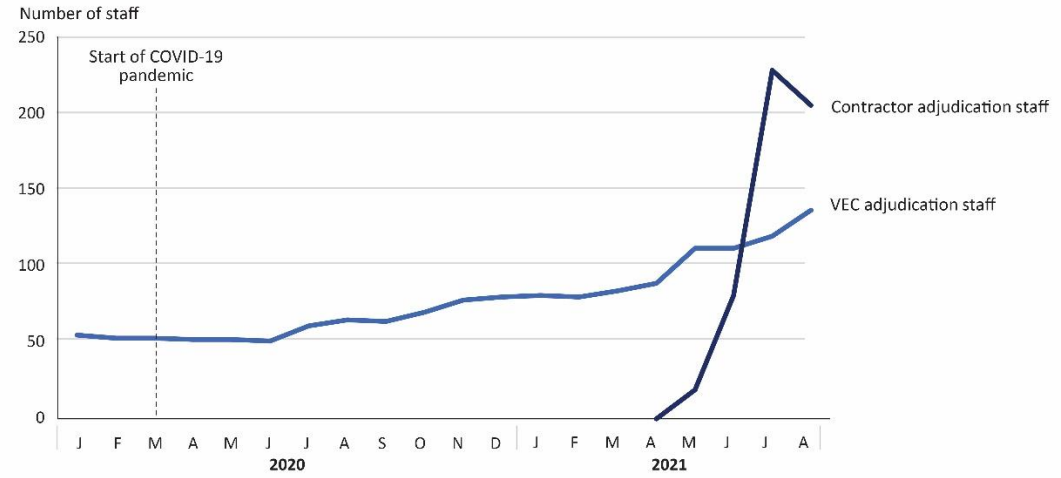
VEC had an insufficient number of adjudication staff prior to the pandemic to meet demand, according to VEC leadership. Fifty-five staff were responsible for adjudicating claims prior to the pandemic. Staff were unable to process adjudications in a timely manner at this staffing level and recorded approximately 3,780 hours of overtime in the 12 months before the pandemic (equivalent to 2 full-time staff). Five adjudication positions were held vacant because VEC staff believed they lacked sufficient administrative funding to fill them. (See Chapter 3 for more information on VEC's staffing and administrative funding.)

VEC was unable to hire enough adjudication staff to keep pace with UI claims during the pandemic because of high staff turnover and lengthy training requirements. VEC hired 65 agency adjudication staff between January 2020 and July 2021. However, 70 adjudication staff left VEC during the same time period. Nearly half of VEC's adjudication positions were vacant as of July 2021 and had been so for a median of 136 days. Adjudication staff that VEC did hire had to complete training lasting between six weeks and three months before being able to independently conduct adjudications (sidebar).

Adjudication training covers UI claims intake, UI laws and regulations, and a large volume of previous decisions. Trainees must also learn how to navigate VEC's legacy UI IT system, which requires learning an outdated programming code language.

Moreover, VEC's hiring efforts for adjudication staff were slow and insufficient. VEC created over 200 new adjudication positions during COVID-19, but the majority (61 percent) were created after January 2021. The number of new VEC adjudication staff increased slowly, reaching 137 staff in August 2021 (Figure 4-5). VEC did not begin hiring third-party contractors to assist with adjudication until May 2021. This was because VEC was focusing on hiring agency staff, according to VEC leadership. Approximately 206 contractors were assisting with adjudications as of August 2021.

Figure 4-5
VEC has been slow to hire adjudication staff



SOURCE: Adjudication staffing data provided by VEC (January 2020 – August 2021).

VEC should establish a strategy for quickly increasing adjudication staffing during times of high claims volume. This strategy should address how training for adjudication staff can be streamlined to allow new hires to be productive as quickly as possible. The strategy should also detail when and how third-party contractors will be used, including specifying which functions they will perform in the adjudication process. (Federal staffing requirements typically restrict contractors from making official adjudication decisions. However, VEC is able to use contractors to assist with other parts of the adjudication process until an official determination is necessary.) The need for a staffing strategy is not limited to adjudication staff, but the adjudication function is critical to ensuring benefits are paid promptly and accurately during times of high claims volume (Recommendation 7, Chapter 3).

VEC's UI IT system also contributed to adjudication delays

Manual, time-intensive processes required by VEC's legacy UI IT system also contributed to delays in adjudications. For example, VEC staff had to call claimants and employers to collect additional information about UI claims—called fact-finding interviews—and request documents through fax or mail because the IT system was unable to accept electronic communications. VEC's modernized UI IT system will automate key communications, including fact-finding and electronic notifications. (See Chapter 6 for more information and recommendations on VEC's UI IT system.)

Lack of clear prioritization strategy initially slowed adjudications

Prior to the pandemic, VEC had no formal policy outlining how claims should be prioritized and assigned to staff during times of high claims volume. This lack of strategy negatively affected adjudication efficiency in the months following the start of the pandemic. VEC traditionally relied on a "first in, first out" strategy, with one

adjudicator tasked with resolving all issues on a single claim, but this strategy became infeasible during the pandemic. In response, VEC explored several different strategies, including prioritizing certain types of claims and assigning different issues on the same claim to different staff members so that a single claim could be adjudicated more quickly.

VEC should use lessons learned from the pandemic to develop and formalize a policy for prioritizing and assigning claims during periods of high claims volume. The policy should prioritize older claims and should detail how claims should be assigned to adjudicators based on experience and skill level (sidebar). The development and formalization of this policy should be incorporated into VEC's resiliency planning process (Recommendation 7, Chapter 3).

Other states established formal strategies for prioritizing and assigning claims earlier in the pandemic. For example, North Carolina and Utah prioritized older claims and created a team of experienced staff to address the most complicated claims. Utah also had one staff member working all issues on a claim rather than assigning different issues to different staff.

RECOMMENDATION 13

The Virginia Employment Commission should formalize a policy for prioritizing and assigning claims for adjudication during periods of high claims volume. This policy should detail how prioritization may change in response to claims volume and clearly state the expectation that VEC should generally prioritize resolving older claims.

Many additional claims that have received payments may require adjudication

In addition to current adjudication backlogs, VEC had over 2 million UI claim issues that staff initially bypassed during COVID-19 to review as of May 2021. Staff had estimated that approximately 1 million of these bypassed issues would require adjudication. Beginning in March 2020, VEC programmed its UI system to automatically pay out benefits for certain types of claims before staff reviewed all potential eligibility issues. In total, 19 different types of issues were bypassed. For example, issues about claimants' ability and availability to work or partial unemployment were bypassed for more than 12 months, from March 24, 2020 to April 9, 2021. Other issues were bypassed for shorter periods of time, such as separations where claimants had voluntarily quit from March 31, 2020 to April 22, 2020. As of October 2021, VEC had made progress reviewing previously bypassed UI claims issues, but approximately 440,000 issues still needed review to determine if adjudication is necessary.

Bypassing claims issues allowed VEC to more quickly issue payments to claimants; however, payments were likely made to ineligible claimants. DOL is requiring VEC and other states to review all bypassed issues to comply with federal claims processing standards. Any issues requiring adjudication identified during reviews of these approximately 2 million bypassed issues will be added to VEC's existing adjudication backlog. If adjudications identify ineligible claimants, VEC will have to notify these claimants and attempt to collect overpayments. Overpayments not identified and recovered will reduce the amount of funds available in the state's UI trust fund, which is used to pay UI benefits. Lower trust fund levels may raise employers' UI tax rates.

Federal regulations require that most claims determination functions be performed by merit staff. Exceptions made during the pandemic to allow contractors to perform adjudication functions expired September 4, 2021. VEC and other state workforce agencies have requested extensions of these exceptions.

Given the size of VEC's current adjudication backlog and likelihood it will increase, VEC should develop a written plan for staff to complete claims reviews and adjudications. The plan should outline the total volume of claims issues/items requiring review; identify the number and qualifications of adjudication staff needed to conduct the reviews and the actions planned for hiring needed staff; and include a timeline for completing reviews of all issues that were bypassed. The plan should also describe potential risks that could further delay adjudications, including the loss of contractors' ability to conduct adjudications (sidebar) and strategies to mitigate the risks. VEC should submit the plan to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by November 1, 2021 (sidebar) and provide a status update to each body quarterly in 2022.

Several JLARC recommendations have a November 1, 2021 completion date because they were published during a briefing to the Joint Legislative Audit Review Commission on September 20, 2021 and are high-priority recommendations to implement in the near term.

RECOMMENDATION 14

The Virginia Employment Commission (VEC) should develop a detailed plan that includes specific actions and a timeline to resolve (i) outstanding adjudications and (ii) all issues on claims that VEC bypassed in 2020 and 2021. The plan should quantify the numbers and qualifications of new staff needed to resolve these claims, outline the actions planned for hiring needed staff, and identify potential risks and mitigation strategies. VEC should submit the plan to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by November 1, 2021 and provide a status update to each body quarterly in 2022. VEC should also publish the plan and updates on its website.

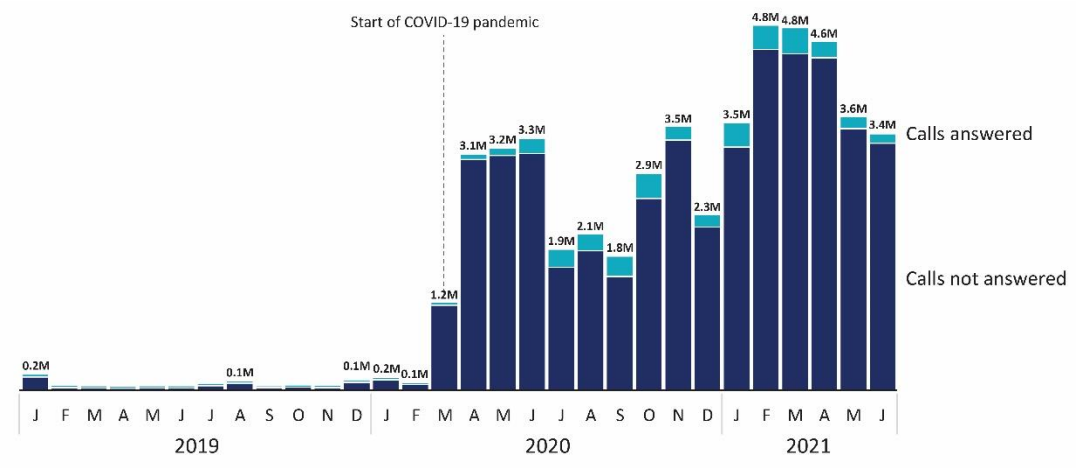
VEC's call centers have not adequately met customer needs

Individuals call VEC for several reasons, including filing UI claims, inquiring about the status of their ongoing claim, or asking questions about the claims process. Calls are first routed to an automated system where claimants can file weekly UI claims; hear limited information regarding the status of their claim, appeal, or payment; or hear basic information about the UI claims process. For example, claimants may be able to hear that they have an issue on their claim through the automated system, but are unable to hear more detailed information about the reason for the issue or how to resolve it. This has been the case prior to and throughout the pandemic. To learn more about specific claims issues and other needs or inquiries, individuals must speak with a call center representative. Individuals who need to file initial or weekly claims for CARES Act programs, like PUA or PEUC, are directed by the automated system to call a separate number for VEC's third-party call center.

VEC call centers did not sufficiently respond to increases in call volume throughout the pandemic

VEC call centers have struggled to meet call demand throughout the pandemic and continue to answer only a small percentage of total calls 18 months into the pandemic. In June 2020, VEC received approximately 3.3 million calls and answered only about 6 percent, with customers waiting over one hour, on average, to speak with an agent (Figure 4-6). In June 2021, VEC received approximately 3.4 million calls and answered about 4 percent. Many callers heard a message that all agents were busy and were disconnected, and other callers waited long periods of time to hear back from VEC (Figure 4-7).

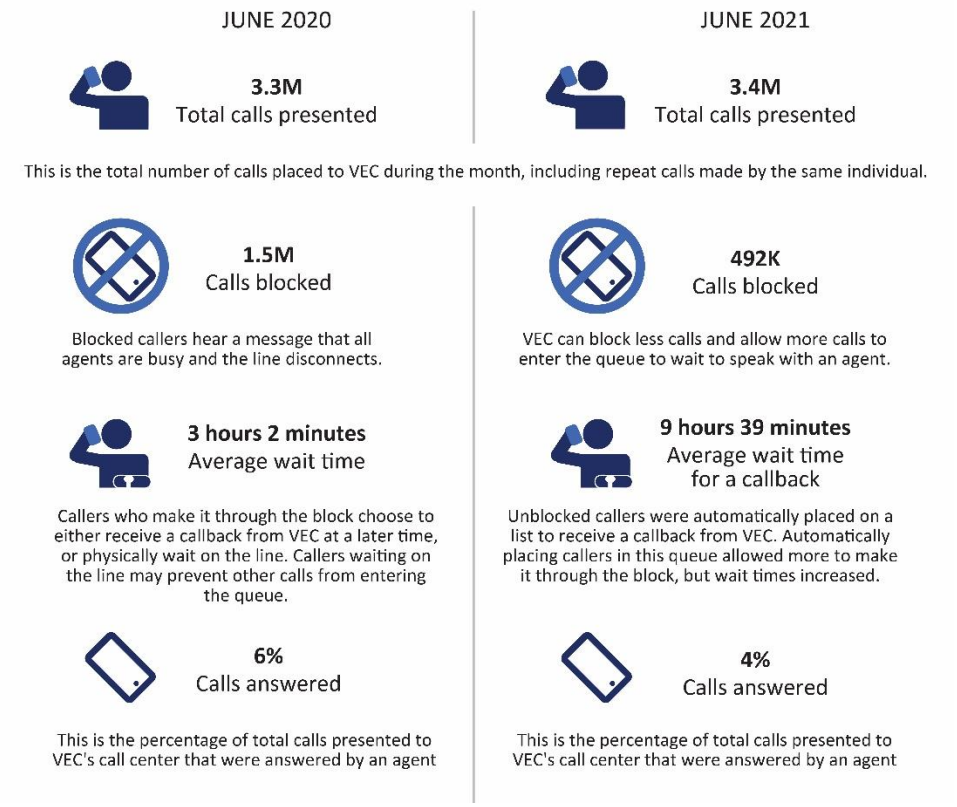
FIGURE 4-6
VEC has answered a very small percentage of total calls



SOURCE: VEC call center performance data.
NOTE: Calls not answered include calls that were blocked or otherwise disconnected from the automated IVR system. A small percentage of calls that disconnected from the automated IVR system may have received an automated answer that satisfied their inquiry. Calls answered include callbacks to claimants from VEC after the claimant entered the callback queue.

VEC's call center performance challenges have been driven by several factors including sustained high call volume, insufficient staffing levels, an outdated UI IT system, limited physical space, and several policy changes. Between February 2020 and April 2020, total call volume increased nearly 3,000 percent, from approximately 100,000 monthly calls (pre-pandemic) to over 3 million. Over the next 10 months, total call volume fluctuated between about 1.7 million and 3.5 million monthly calls, before spiking to nearly 5 million monthly calls in the early months of 2021. VEC reports that only about 85 staff were responsible for taking phone calls prior to the pandemic, which was insufficient to handle the increased call volume.

FIGURE 4-7
Small percentage of callers who were not blocked experienced long wait times



SOURCE: VEC call center performance data.
NOTE: Calls not answered or blocked include those disconnected from the automated IVR system. A small percentage of calls that disconnected from the automated IVR system may have received an automated answer that satisfied their inquiry. Calls answered include callbacks to claimants from VEC after the claimant entered the callback queue.

VEC has only recently taken meaningful steps to increase call center staff and better address customer service needs. The agency purchased a larger physical space for the customer contact center and had almost 390 staff and contractors answering calls as of July 2021. VEC has also recently contracted with an additional third-party vendor who has experience in managing high-volume call centers and has launched new customer service technology solutions, including a virtual chat agent that can more efficiently address customer inquiries. This contract allowed VEC to bring on approximately 440 new staff through October 2021 with plans to add up to 200 additional staff by the end of November 2021. As a result of these actions, call center performance improved in September 2021, with VEC answering approximately 12 percent of the 1.3 million total calls presented and blocking approximately 71,000 calls. Average wait times also improved slightly in September 2021 and then dropped to under 20 minutes in October 2021. VEC's call centers are also now better able to identify repeat callers and callers who abandon calls before entering the queue to speak with an agent.

Several challenges may have partially impeded VEC's efforts to add additional call center staff. The need to complete procurement for staffing contracts, physical space constraints, and training and onboarding challenges impeded VEC's ability to quickly scale up call center staffing. In particular, not enough supervisory staff, evolving health and safety protocols, and complex, outdated IT systems (sidebar) made it difficult to quickly onboard and train large numbers of new agents at once. For example, the complexity of VEC's current IT system required new staff to receive access to nine different computer systems, which requires significant time and agency resources. This created a bottleneck that limited the number of new staff that could be added to VEC's systems, even once staff or contractors were hired.

VEC's modernized UI IT system has the potential to simplify the call center training process and reduce overall call volume by providing claimants more detailed claims information through their online accounts. The system is scheduled to launch in November 2021.

VEC could benefit from having standing call center staffing augmentation contracts in place ahead of future economic downturns. VEC had no staffing augmentation contracts prior to the pandemic and had to complete a time-intensive procurement process to significantly increase contract staff. VEC should proactively contract with a third party that provides call center staff augmentation services to allow the agency to quickly increase staffing in response to significant increases in call volume. The contractor should have experience providing call center services for UI programs, as these services are relatively complex. VEC should design the contract so that call center staffing can be quickly scaled up or down as needed in response to changing call volumes.

RECOMMENDATION 15

The Virginia Employment Commission should maintain an ongoing staff augmentation contract with a provider that is experienced in providing call center services for unemployment insurance programs and can quickly provide increased call center staff when call volumes increase.

Several other state agencies, including the Department of Medical Assistance Services and the Department of Social Services, also operate call centers that may benefit from a standing call center staffing augmentation contract. Such a contract may also benefit the Virginia Department of Health. A standing statewide call center staffing contract would reduce the time it takes state agencies to hire additional staff, provide the flexibility to reduce the number of staff when demand has subsided, and allow Virginia agencies to be more responsive to major shifts in customer demand. The General Assembly could direct the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) to work together to fully assess state agencies' call center staffing needs and identify the best way to meet those needs. VEC could use the contractual solution identified by DGS and VITA to reduce the time and staff resources needed to procure an ongoing call center staff augmentation contract (Recommendation 15).

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

POLICY OPTION 1

The General Assembly could include language in the Appropriation Act directing the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) to assess agencies' need for call center staff augmentation, ensure that contractual solutions to meet those needs are in place, and report steps taken and available solutions to the House Appropriations Committee and the Senate Finance and Appropriations Committee by December 31, 2022.

VEC's call centers did not meet customer needs or employ key tools and practices, even prior to the pandemic

VEC's call center performance appears to have lagged industry standards even prior to COVID-19. VEC did not meet a common call center industry benchmark of answering 80 percent of calls in 20 seconds or less or an abandoned call rate of 5 percent to 8 percent. Of the calls answered by VEC staff in 2019, only about 50 percent were answered in *5 minutes* or less—far below the common benchmark of 80 percent of calls in *20 seconds* or less. The average monthly abandoned call rate was 10 percent during this period, higher than the 5 percent to 8 percent benchmark. Furthermore, in 2019, VEC answered an average of only 37 percent of the total calls presented each month.

VEC has not adequately monitored call center performance, which affected its operations both before and during the pandemic. Best practices suggest call center staffing decisions should be based on call volume and the nature of customer inquiries. To make these decisions, VEC must actively monitor both overall call center performance through metrics like wait times and percentage of calls answered in a certain amount of time, as well as individual call quality. VEC has not established internal benchmarks for overall call center performance, including acceptable percentages of calls answered, average wait times, or call resolution rates. (See Chapter 3 for additional information on agency performance monitoring and metrics.)

Given the ongoing challenges with call center performance, insufficient history of monitoring, and recent actions taken to increase call center capacity, VEC should regularly update the legislature and governor on call center performance for the next several quarters and publish the performance updates on VEC's website.

RECOMMENDATION 16

The Virginia Employment Commission (VEC) should provide a written quarterly update on the performance of its call centers to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by December 31, 2021 and at the end of each quarter in 2022. VEC should also publish these updates on its website.

VEC also does not efficiently or effectively monitor call quality and agent performance (sidebar). Currently, call quality is manually reviewed and assessed by Customer Contact Center supervisors, who are each responsible for monitoring 30 to 40 agents in addition to other management responsibilities. A common practice among call centers is to establish a dedicated quality monitoring team and equip them with quality monitoring software that allows them to remotely record, review, and assess call quality. VEC indicated that they previously used quality monitoring software, but discontinued its use because of budget limitations. VEC recently procured new quality monitoring software, which was implemented in October 2021.

Call quality is commonly assessed by reviewing calls and scoring agents' performance on a variety of criteria, such as following scripts and resolution rates. Monitoring call quality allows call centers to identify agent training needs, improve the quality of information provided to callers and customer satisfaction, and reduce repeat callers.

The Virginia Tax Department uses a dedicated quality monitoring team for its call center, and TAX staff indicate that regular agent quality monitoring by this team is critical to meeting customer needs. VEC should adopt this model and establish a dedicated team of VEC call center staff responsible for monitoring call quality. This team should use VEC's recently procured quality monitoring software to regularly review and assess call quality and agent performance, and identify additional training needs on an agent-by-agent basis. Developing a dedicated agent quality monitoring team can help reduce overall call volume, particularly from repeat callers, reduce the workload of overextended call center supervisors, and improve the overall efficiency and quality of VEC customer service.

RECOMMENDATION 17

The Virginia Employment Commission (VEC) should establish and maintain a dedicated quality monitoring team composed of VEC staff from each customer contact center. This team should use the recently procured quality monitoring software to regularly review and assess call quality and performance for all VEC call agents, and identify any additional training needs on an agent-by-agent basis through weekly monitoring and assessment of at least three calls per agent.

VEC recently made progress implementing this recommendation by establishing a customer service Quality Assurance (QA) team within the Customer Contact Centers and filling several positions to staff this team beginning October 25, 2021. VEC should maintain this dedicated quality monitoring function on an ongoing basis to help ensure quality customer service. Additional funding may be necessary to maintain these positions and quality monitoring software in the future.

Significant appeals backlog has developed and is likely to grow

Two-tiered UI appeals systems exist in 47 states. Three states (Hawaii, Minnesota, and Nebraska) and Washington, D.C. have a single-tiered UI appeals system.

All of VEC staff's UI claims determinations (e.g., monetary determination, separation determination, and weekly eligibility determination) are subject to appeal through a two-tiered system (sidebar). Both claimants and employers can submit appeals. For a first-tier (first-level) appeal, VEC staff conduct a hearing where the claimants, employer, and other witnesses can provide testimony and submit information. VEC

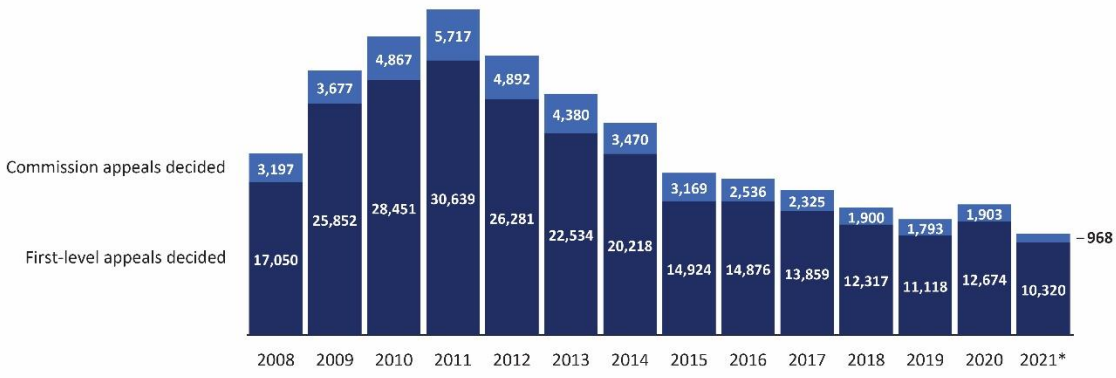
staff issue a decision on whether to uphold VEC's original determination. If the claimant or employer disagrees with the first-level appeals decision, they can file a second tier (commission-level) appeal. No additional testimony or evidence is accepted for most commission-level appeals; VEC staff decide whether to uphold the first-level appeal determination based on information from the first-level appeal. Claimants or employ-ers who disagree with VEC staff 's commission-level appeals decision can pursue their case in circuit court.

Similar to UI claims, VEC's UI appeals volume increases during periods of high unemployment and decreases when unemployment decreases. Changes in appeals volume typically lag changes in UI claims volume because appeals are the last step in VEC's UI claims process. Most VEC appeals (86 percent of all appeals filed) only go to the first tier (first level) of VEC's appeals system, and about 14 percent also go through the second tier (commission level) for additional consideration by different appeals staff. The majority of VEC appeals are initiated by claimants instead of employers.

The number of UI appeals decided by VEC peaked in 2011 following the Great Recession but increased in 2020 (Figure 4-8). An average of 23,027 appeals of VEC determinations were decided annually between 2010 and 2019. In 2020, VEC decided approximately 14,600 appeals, a 13 percent increase over the 12,900 decisions in 2019. Through July 2021, VEC was on pace to decide approximately 19,300 appeals in 2021. This represents a 32 percent growth in appeals decisions over 2020.

VEC already has a backlog of appeals, which is expected to grow. Currently, VEC has a backlog of just over 76,000 appeals waiting to be heard. The number of appeals filed is expected to increase further and remain elevated for several years as VEC processes backlogs of UI claims that may lead to appeals.

FIGURE 4-8
Appeals decisions increased in 2020 and are expected to grow for several years



SOURCE: DOL Benefit Appeals Report.
NOTE: High appeal volume in 2009–2012 was driven by Great Recession claims volumes. 2021 totals only include appeals decided through July 2021.

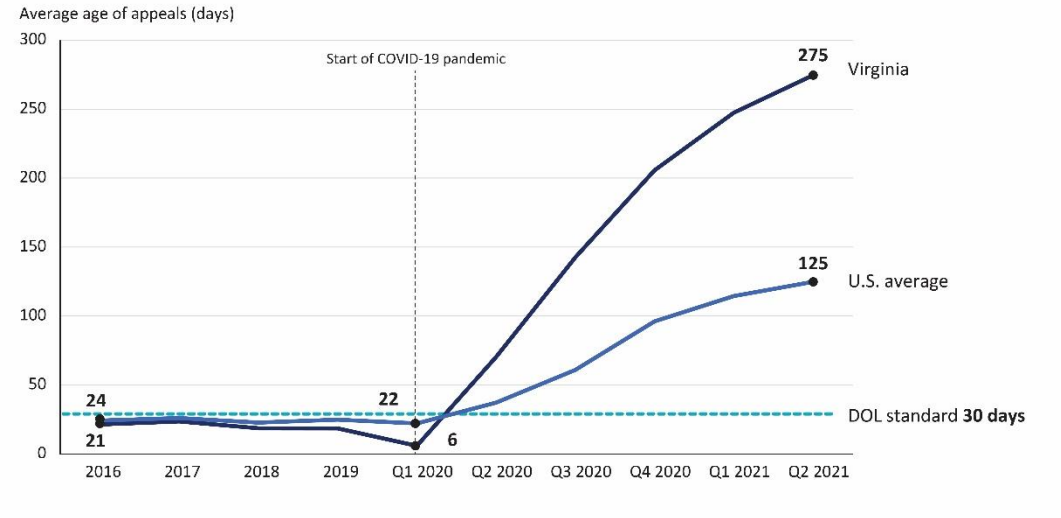
Appeals determinations became significantly delayed during COVID-19 because of inefficient workflows and staffing challenges

VEC is required by federal law to provide claimants and employers with the opportunity to appeal UI claims determinations in a fair hearing. DOL has established a standard that appeals hearings be "simple, speedy, and inexpensive." The DOL standard is that pending first-level appeals be resolved within an average of 30 days or less from the day of filing, and commission level appeals be resolved within an average of 40 days or less.

VEC has met the DOL standard for appeals timeliness over the past several years, but *first-level* appeals began to be significantly delayed in 2020 (sidebar). In the first quarter of 2020, the average age of VEC's first-level appeals was just under six days but has steadily increased to approximately 275 days in the second quarter of 2021 (Figure 4-9). Delays have been seen throughout the country, but VEC's delays have been more than double the U.S. average and are expected to increase as VEC processes the backlog of over 76,000 first-level appeals that are awaiting a decision.

VEC's average age of commission level appeals is currently within acceptable limits (less than 40 days) with minimal backlogs. VEC staff expect delays in commission appeals to begin in the next several months, as claims and first-level appeals backlogs are processed.

FIGURE 4-9
First-level appeals have experienced significant delays over the past year



SOURCE: DOL State Rankings of Core Measures.

Insufficient staffing and recruitment and training challenges have prevented VEC from adequately responding to the increase in appeals. Prior to the pandemic, VEC had 14 full-time appeals examiners able to conduct six to eight hearings a day. As of August 2021, VEC had added 12 full-time positions, for a total of 26. At this staffing level it will take at least 300 business days for VEC staff to clear the current backlog. VEC staff indicate they are working to hire an additional 30 appeals examiners by March 2022, but staff believe it will be difficult to recruit and retain qualified appeals examiners because of low salaries. JLARC staff analysis of state salary data suggests

that VEC appeals examiner median salaries are 15 percent lower than salaries for similar positions in other state agencies. In addition, VEC requires new appeal examiners to undergo a two- to three-month training program before they are able to issue decisions on their own. In turn, managers and experienced appeals examiners spend time training new examiners, which prevents them from conducting appeals full time. (Additional discussion of VEC's staffing challenges and recommendations are included in Chapter 3.)

Monetary determinations indicate the amount of benefits a claimant may receive and how long they may collect them based on wages previously earned by the claimant. Monetary determinations do not confirm eligibility but state the amount and duration of benefits a claimant may receive if they are eligible. Monetary determinations can include denials of eligibility if claimants do not have sufficient wages on record to qualify for benefits.

Inefficient workflows have also contributed to delays processing appeals. Currently, claimants who receive a monetary determination (sidebar) that results in a denial of benefits because of insufficient prior wages are considered to have non-valid claims. These claimants are *allowed* to file an appeal if they believe the wage information used to make the monetary determination is incorrect or incomplete. However, these claimants *do not actually qualify for an appeal hearing* because they have a non-valid claim. (Claimants who have sufficient wages but disagree with other aspects of their monetary determination, such as the date VEC determined they became eligible for benefits, *do* qualify for an appeal hearing.) Appeals that do not qualify for a hearing are remanded back to VEC's monetary determination unit for further review and clarification of wage information.

The process of reviewing these appeals of monetary determinations and remanding them back to the monetary determination unit is an inefficient use of appeals staff and hinders their ability to conduct hearings and issue decisions for other bona fide appeals in a timely manner. VEC appeals staff indicate that they have received tens of thousands of appeals of monetary determinations over the past year that will not qualify for an appeals hearing, which resulted in substantial processing backlogs that prevented appeals staff from meeting timeliness standards for other appeals.

VEC's appeals workflow could be more efficient if claimants filed requests for reviews or redeterminations of their monetary determinations directly to VEC's monetary determination unit instead of filing appeals. VEC staff believe this change could reduce VEC's appeals workload by 30 to 40 percent. Making this change would require a change to state law to allow non-valid claims (those that are denied benefits because of insufficient wages) to go directly to the monetary determination unit. State law currently requires that all VEC determinations are eligible for appeal, including determinations of monetary ineligibility that are not eligible for an appeals hearing. This requires VEC's appeals staff to *review and process* all appeals of monetary determinations, even if it is clear they should be remanded to the monetary determination unit. Claimants with valid claims would retain the right to an appeals hearing regarding monetary determination issues. In addition, VEC's monetary determination notices and related communications should be updated to instruct claimants who disagree with their monetary determination to request a review or redetermination directly from the monetary determination unit.

Some states, including North Carolina, do not allow claimants to appeal monetary determinations, including non-valid claims. Other states, including Maryland and

UTah direct claimants who disagree with their monetary determination to submit protests or requests for redeterminations of their determination to their respective claim centers or monetary determination unit for reconsideration, rather than filing an appeal. Staff in Utah report that this limits the number of appeals of monetary determinations filed that have to be remanded back to the monetary determinations unit without a hearing.

RECOMMENDATION 18

The General Assembly may wish to consider amending § 60.2-619 of the Code of Virginia to specify that non-valid unemployment insurance claims resulting from mon-etary ineligibility are ineligible for appeal through the Virginia Employment Commis-sion's (VEC's) appeals division.

RECOMMENDATION 19

The Virginia Employment Commission should revise monetary determination notices to clearly indicate if a claim is non-valid because of monetary ineligibility, and direct claimants who disagree with their non-valid monetary determination to request a re-determination from the monetary determination unit.

Appeals determinations meet quality standards and process is fair, but claimants do not understand the process

VEC's federal quality scores for appeals, appeal reversal rates, and employer opinions suggest that the appeals process affords sufficient due process. DOL requires states to conduct quality evaluations of first-level appeals decisions, requiring 80 percent of appeals to have quality scores of at least 85 percent. All VEC first-level appeals have met quality score requirements each year since 2011, including during COVID-19. Additionally, over the past five years, about one-fourth of first-level appeals and 14 percent of commission level appeals reversed previous determinations. In a limited survey and interviews of employers and employer groups conducted by JLARC staff (sidebar), employers were generally positive about the fairness of the appeals process.

JLARC staff surveyed a limited group of employers regarding their experiences with VEC. The survey was disseminated by several employer groups at JLARC's request, and 49 businesses responded.

However, VEC needs to ensure that all claimants understand the appeals process and their rights, because some claimants do not fully understand them or how to effectively present their case. According to federal standards, appeals are supposed to be easy to navigate for claimants without representation. VEC's appeals notices and appeals rights information contain highly technical language that can be difficult to understand (sidebar). Additionally, VEC's notices and communications do not effectively explain the information claimants are expected to provide or discuss during appeals hearings. For example, in JLARC observations of appeals hearings, several claimants did not understand which determination the hearing was regarding or the types of information they were allowed, or expected, to discuss.

> *"The claimants are pretty much only given the statutory language, which is utterly meaningless to them. They don't know what to focus on and what not to. They have no idea how to question someone…. The VEC simply does not know how to give notices to people that are meaningful…".*
>
> **– Claimant representative**

Claimants prevailed in only 16 percent of VEC appeals they filed between 2016 and 2020, half the rate at which they prevailed nationally. While the reason for this discrepancy is not fully known, it is possible that claimant lack of understanding regarding

the appeals process contributes to lower rates of claimant success in Virginia. As part of the review and revision of communications in Recommendation 10, VEC should review and revise its information regarding appeals, including notices of appeal, notices of hearings, and the UI handbook for claimants, to clarify the role and rights of claimants in appeals hearings. This review should be conducted in coordination with input from stakeholders, including claimants and claimant representatives.

Additionally, the General Assembly could direct the VEC to create an ombudsman position to help parties navigate the appeals process and understand their rights. This ombudsman should serve as an impartial source of information regarding the UI appeals process, including both claimants' and employers' rights and responsibilities in the process (sidebar). Additional clarity in communications (Recommendation 10) will help parties better understand their rights and the appeals process, but the complicated nature of UI law and regulations makes the appeals system inherently challenging to navigate. The system is particularly difficult to navigate for parties without legal representation. The ombudsman can serve as a source of free, impartial information that can help ensure both claimants and employers are able to make educated decisions as they navigate the UI appeal process. Information regarding the role and services of the ombudsman should be added to the UI Handbook for claimants and provided again to all individuals who file an appeal. Funding would also need to be appropriated in the state budget to create and fund this position.

A similar ombudsman position was created by the Virginia Workers' Compensation Commission in response to a previous JLARC recommendation. The goal of this position is to provide impartial information to unrepresented parties so that all parties are able to make educated decisions while navigating the workers' compensation system.

RECOMMENDATION 20

The General Assembly may wish to consider amending Article 2 of Chapter 1 of Title 60.2 of the Code of Virginia to direct the Virginia Employment Commission to create an appeals ombudsman position to provide impartial information about the unemployment insurance appeals process and help ensure that all parties are afforded due process in such appeals.

5 Quality and Accuracy of Claims Determinations

In addition to administering unemployment insurance (UI) benefits in a timely manner, state workforce agencies like the Virginia Employment Commission (VEC) are expected to make thorough and accurate decisions regarding claimant eligibility and UI benefit payments. To make high quality eligibility determinations, state workforce agencies must gather all necessary information about UI claims, thoroughly review the information, adhere to federal and state requirements, and calculate accurate benefit payments. State workforce agencies must balance the need to produce *quality* claims determinations with the need for *timeliness* and getting payments to eligible individuals as quickly as possible.

Making accurate UI claims determinations has been an ongoing challenge for VEC, but it was particularly difficult for the agency during the pandemic. The creation and implementation of new federal UI programs, record levels of claims, and evolving health and safety protocols created new challenges across states. However, VEC struggled more than many other states to make high quality decisions and accurate payments during COVID-19 because of its staffing shortages, insufficient staff training, and antiquated IT systems.

UI determination quality and payment accuracy was poor over past decade and worsened during COVID

Federal law requires states to obtain and review sufficient information to ensure that UI eligibility determinations are high quality and benefit payments are accurate. The quality of determinations can influence the accuracy of payments, but quality and accuracy are assessed and monitored separately by the U.S. Department of Labor (DOL). High quality determinations involve gathering necessary information, appropriately applying laws and regulations, and writing clear and understandable determinations. Accurate UI payments involve paying the correct amount of benefits to eligible individuals. Meeting both quality and accuracy standards is critical to ensuring eligible individuals can access UI benefits and the correct employer is held liable for the cost, though it can be difficult to achieve when balancing timeliness. DOL requires states to regularly review and report on the quality of determinations and accuracy of payments.

VEC underperformed quality standards for UI determinations for more than a decade

DOL evaluates state agencies' adherence to UI determination quality standards through the benefits timeliness and quality review process and requires at least 75

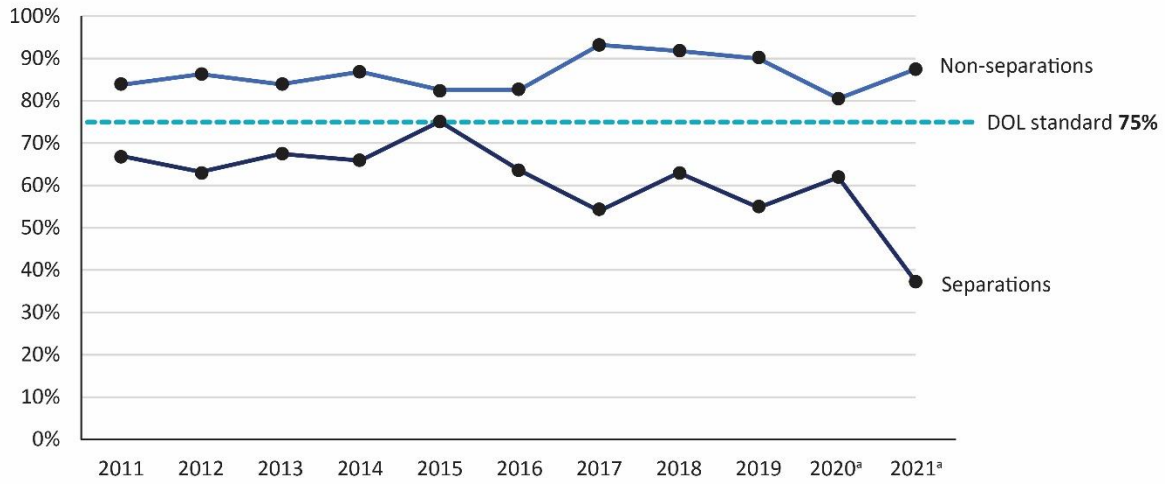
UI determinations are the formal, written decisions regarding a claimant's eligibility made by the state workforce agency. Examples include monetary determinations and eligibility determinations related to a claimant's separation from work.

percent of all determinations to meet this quality standard (sidebar). To complete determination quality reviews, VEC quality assurance staff randomly sample 60 determinations each quarter and evaluate the quality of the adjudication process and written decision using a scoring system based on claims determination standards. This process includes reviewing the information gathered by adjudicators, assessing whether they made sufficient efforts to gather all necessary information, determining whether law and policy were correctly applied in the decisions, and evaluating the clarity of the written decisions provided to customers. The types of determinations sampled and scored are broken into two categories: *separation* and *non-separation* determinations. Separation decisions, such as whether an employee was laid off, account for 70 percent of all determinations. Non-separation decisions pertain to other eligibility requirements, such as being able and available to work, account for the remaining 30 percent.

DOL suspended quality monitoring requirements during the first two quarters of 2020 so states could devote more resources to claims processing. VEC staff say that quality scores were likely low during this period because inexperienced new hires were conducting determinations, and VEC streamlined the determination processes.

VEC has not met the federal quality standard for determinations over the past decade. VEC met the 75 percent standard for *separation* determinations only once since 2011, and quality has been poor since 2016 (Figure 5-1). Virginia ranked 44th or worse in comparison with other states on this measure between 2016 and 2019. Determination quality reviews were temporarily suspended by DOL during COVID-19 (sidebar), but VEC underperformed federal quality standards for separation determinations in late 2020 and early 2021.

FIGURE 5-1
VEC has consistently underperformed the federal standard for separation determination quality



SOURCE: DOL Benefits Timelines and Quality reports.
NOTE: Separation determinations pertain to issues related to an individual's separation from employment, including quits and discharges. Nonseparation determinations pertain to other eligibility issues, such as whether an individual was able and available to work during a particular week.

Poor determination quality is largely driven by training and staffing challenges. New adjudication staff currently receive some formal training, but few ongoing training opportunities exist for adjudicators who have been on the job more than one year. Multiple VEC managers and staff have identified a need for additional training for adjudication staff. Over 30 percent of UI benefits staff who responded to a JLARC survey indicated they were dissatisfied with the job training opportunities they received (sidebar). The retirements of several skilled adjudication staff also contributed to poor determination quality, according to VEC leadership.

VEC should develop a standardized training program for adjudication staff that emphasizes high-quality claims processing and determinations. Current training for adjudicators is primarily provided on the job by supervisors, with little standardization. As described in Chapter 3, the adjudication section has too few supervisors relative to the number of employees, so reliance on supervisor-provided training may not ensure quality or timely training. The new training curriculum should be developed using the federal standards for quality determinations and input from VEC's quality assurance team and adjudication managers. A dedicated training manager should oversee the training and ensure it is provided to all new adjudication staff during orientation and to all existing adjudication staff every three years. The training could be provided more frequently when poor determination quality is identified through determination quality reviews.

> *"Training with this agency when new people arrive really needs to be addressed. Everyone should have the proper training by a training group instead of having staff take time away from their job duties to train new staff."*
>
> *"There have been no job training opportunities since becoming a certified employee. I wish the agency had a training department/team instead of just sending emails about information and expecting you to learn that way."*
>
> **– VEC UI staff**

RECOMMENDATION 21

The Virginia Employment Commission should develop a standardized training program that explains how to conduct high quality unemployment insurance claims determinations and that is administered by a dedicated training manager to all new and existing adjudication staff.

Rate and cost of incorrect benefit payments have increased substantially during COVID-19, estimated to exceed $1 billion

Federal law requires states to protect against incorrect UI payments (sidebar). Specifically, states are required to estimate, detect, and attempt to recover benefits incorrectly paid because of errors by the state agency, individuals, or employers. DOL has established standards for these efforts, requiring states to identify and attempt to recover at least 50 percent of the estimated incorrect payments and limit their estimated incorrect payment rate to 10 percent or less. States estimate and report their incorrect payments and common causes of incorrect payments quarterly through the benefit accuracy measurement program (BAM) (sidebar). Incorrect payments add to VEC staff's workload and create financial burdens for individuals who are asked to repay incorrect payments, employers that are temporarily charged for incorrect payments, and the UI trust fund that covers the cost of unrecovered incorrect payments.

Incorrect payments (or "improper payments") are payments that should not have been made or that had an incorrect amount. They can be caused by errors or misrepresentation by individuals, employers, or state agencies. Most of VEC's incorrect payments are overpayments.

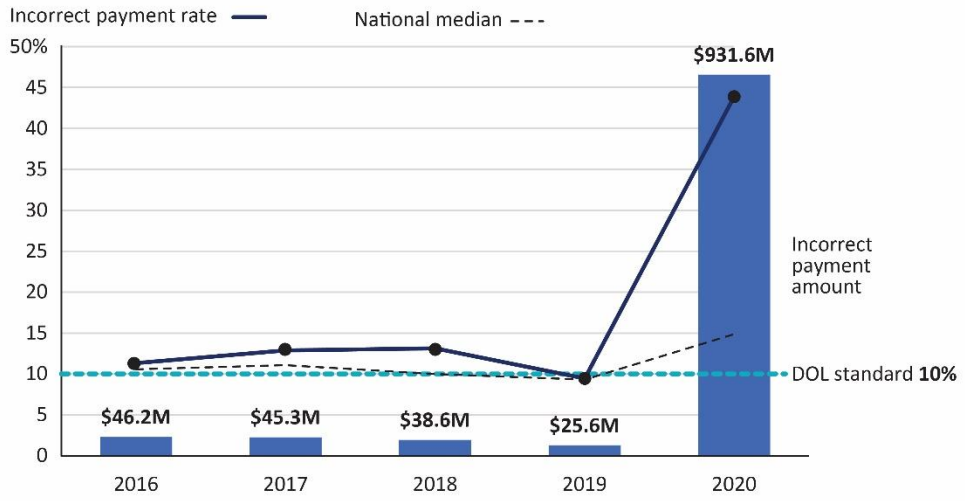
The Benefit Accuracy Measurement (BAM) program is used by states to estimate the accuracy of UI benefit payments. VEC staff randomly sample 480 paid claims a year, investigate the claims process, and determine the accuracy of payments and causes of errors. Results are used to estimate the accuracy of all paid claims in the state UI program.

VEC has not been detecting the federally required 50 percent of incorrect payments (specifically overpayments) for several years. In the three-year period prior to the pandemic, ending March 2020, VEC detected, on average, about 37 percent of overpayments estimated by BAM, a lower percentage than 48 other states. The proportion of overpayments detected declined during COVID-19, falling to approximately 11 percent for the three-year period ending June, 30, 2021. This decline in detection of overpayments means that VEC is likely unaware of a large portion of incorrect payments, which prevents staff from stopping these payments and initiating collection efforts.

A portion of state UI overpayments may have been paid to claimants who actually qualify to receive benefits under a federal pandemic program, such as PUA. VEC is working to determine how many claimants incorrectly received state UI instead of federal benefits. In those instances, federal program funds may be used to pay back overpayments paid from the state UI trust fund.

VEC's annual estimated incorrect payment rate has also exceeded the federal 10 percent limit. VEC's annual incorrect payment slightly exceeded the federal standard in four of five years between 2016 and 2019, averaging approximately 12 percent (Figure 5-2). Incorrect payment reviews were temporarily suspended by DOL during the second quarter of 2020, but VEC's estimated incorrect payment rate increased significantly in 2020. VEC's most recent incorrect payment rate estimate is 60 percent (2021, second quarter). Based on these estimates, VEC may have incorrectly paid an estimated $930 million in 2020 from the state program, and an additional estimated $322 million in 2021 from the state program (through June 2021) (sidebar).

Figure 5-2
Estimated incorrect payment rate and cost increased significantly in 2020 for state UI



SOURCE: DOL Unemployment Insurance Payment Accuracy data.
NOTE: The estimated incorrect payment rate and dollar values in this figure pertain only to the state UI program. Federal pandemic UI programs are not included in these estimates.

During COVID, many incorrect payments were likely attributable to practices VEC implemented to streamline the UI claims process. For example, VEC bypassed investigating certain claims issues (e.g., able and available to work, failure to accept work), which may have reduced the accuracy of those claims' benefit payments. In

addition, VEC staff discontinued fact-finding interviews in the adjudication process to increase the speed of determinations. Instead of conducting these interviews, VEC relied solely on written information provided by claimants and employers, which limited the information used to inform decisions to pay or deny benefits. VEC also hired many new staff to complete claims intake and adjudication, who received only minimal training on how to accurately complete these processes.

Another key driver of incorrect payments before and during COVID-19 is incomplete and delayed submission of employer separation reports. Separation-related incorrect payments are a leading cause of overpayments and are estimated to account for about 59 percent of VEC's UI overpayments in 2020 and about 24 percent of overpayments between 2016 and 2019. Requiring employers to submit separation reports electronically through the State Information Data Exchange System (SIDES) can improve the timeliness and accuracy of these reports (sidebar). A 2017 study by the DOL's Office of the Inspector General found a significant reduction in incorrect payments related to separation issues when claims were processed through SIDES. Utah, where the majority of employers use SIDES, cites SIDES as a key reason for its low incorrect payment rate.

SIDES and SIDES E-Response is a free tool created and maintained by DOL and the National Association of State Workforce Agencies (NASWA) that allows employers and third-party administrators to receive and respond electronically to UI information requests.

Fewer than 10 percent of Virginia employers participate in SIDES. Requiring Virginia employers to participate in SIDES would help reduce VEC's total overpayments and allow VEC to better identify overpayments for recovery. Requiring employer participation is likely necessary because marketing and outreach efforts are generally unsuccessful in encouraging employer participation in SIDES, according to DOL. However, employers could be allowed to seek a waiver from participating.

VEC indicates that employers will eventually be able to submit separation information through the Employer Self-Service portal in the modernized VUIS system. Once this capability is fully functional, employers could be given the option to submit separation information electronically through this portal rather than SIDES.

RECOMMENDATION 22

The General Assembly may wish to consider amending §60.2-121.1 of the Code of Virginia to require employers to electronically provide separation information when requested to the Virginia Employment Commission unless they are granted a waiver from providing this information electronically.

Virginia could also consider requiring employers to proactively provide a separation report to VEC shortly after an employee's separation from employment, as well as provide a copy to the separated employee. These proactive reports should be provided to VEC electronically, either through SIDES or VEC's Employer Self-Service portal. If a separated individual then files a claim for UI benefits, the employee would submit the employer's separation report with the UI application for validation with the employer-submitted report.

Proactive separation reports could improve the accuracy of claims decisions and streamline the claims process by reducing the need for VEC to request separation information from employers *after* claimants file a UI claim. Requiring employers to submit proactive separation reports to VEC would allow the agency to compare newly filed claims against separation records to assess the validity of claims. This would be similar to the process of checking claims against wage records or the new hire database and would help prevent fraudulent claims from being paid. Moreover, the notices provided to newly separated individuals could increase awareness by informing them about UI and how to file a claim. A potential drawback of proactive separation reports is the additional burden they would place on some employers because employers would be required to complete reports for *all* separated individuals rather than just the subset who file UI claims.

To assess the impacts of this practice, the state could first pilot this requirement with a diverse sample of employers. VEC could solicit feedback from the employers on the requirement's feasibility and determine whether the requirement helped reduce incorrect payments. Tennessee requires employers to proactively provide separation reports to both the state UI agency and employees when they are separated from employment. However, Tennessee state UI agency staff indicate that many employers do not comply with this requirement. An enforcement mechanism or incentives may be required to encourage employer compliance. When employers fail to provide the separation report proactively, VEC would still be able to request the information be provided through SIDES. The proactive separation report could be closely modeled after the SIDES separation report template to maintain consistency across requests for information from employers.

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

POLICY OPTION 2

The General Assembly could include language in the Appropriation Act establishing a pilot program that would require a sample group of employers to proactively provide a separation report to VEC and separated individuals for all employees who separate from employment over a designated period of time and direct the Virginia Employment Commission to collect feedback from employers on the requirement's potential administrative burden and impact on unemployment insurance claim accuracy and timeliness.

Work search requirements were temporarily suspended by executive order from March 2020 through May 2021. Beginning the week ending May 30th 2021, claimants were once again required to make an active search for work each week.

Another common driver of incorrect payments is work search issues. On average, between 2016 and 2019, BAM estimates indicate that about 27 percent of overpaid dollars were attributable to work search issues each year. Federal law requires that individuals actively search for work to be eligible for benefits. In Virginia, claimants must make at least two job contacts per week to satisfy this requirement (sidebar). If claimants do not make these contacts in any given week, they are considered ineligible to receive benefits for that week, and any payment they receive for that week would be an overpayment. Claimants are asked to report the full name of each employer they

contacted that week when filing their weekly benefit claimants and are directed to maintain records of their contacts, which are subject to random verification by VEC.

Currently, VEC conducts very limited verification of job contacts. VEC indicates that they previously verified about 3 percent of job contacts reported in the weekly claims filing process, similar to the amount verified in other states. Verification was primarily a manual process in which VEC would request records of job contacts from claimants, review the records, and reach out to employers to verify the contact had taken place. However, VEC reports that this function was stopped before 2020 because of staffing limitations. As a result, the only claims currently subject to work search verification are the roughly 30 claims sampled each month as part of the BAM survey. This is equivalent to less than one-tenth of a percent of all weekly claims filed in 2019. As a result, VEC is likely not identifying claimants who fail to meet weekly work search requirements.

VEC should immediately resume verification of at least 3 percent of job contacts submitted in weekly claim filings. While it is infeasible to verify compliance with work search requirements for every claim filing, the current absence of any verification of work searches likely reduces many claimants' incentive to comply with this requirement. Randomly reviewing a portion of job contacts weekly would allow VEC to at least detect a portion of claimants who were not meeting this requirement and thus are incorrectly being paid. Recovery of the incorrect payments could then be pursued and recovered amounts could be returned to the trust fund.

RECOMMENDATION 23

The Virginia Employment Commission should resume auditing a sample of UI claims to verify compliance of claimants with the unemployment insurance program work search requirement no later than December 1, 2021.

Additionally, Virginia's current work search requirements do not fully align with best practices for reducing work search related incorrect payments and promoting reemployment. In February 2020, DOL issued guidance to states that outlined a template to better support claimants' ability to meet their work search requirements in the modern labor market. Virginia's current definition of acceptable work search activities is narrower than the proposed list of activities included in DOL's guidance and model legislation. (Additional detail regarding these activities is available in Appendix H.)

Fully implementing the proposed model legislation would represent a significant shift in Virginia's work search policies. However, DOL suggests that adopting this proposed legislation can help states lower incorrect payment rates related to work search requirements. The General Assembly could direct the VEC to review DOL's guidance and model legislation, evaluate the potential impacts that adopting DOL's guidance would have on incorrect payments and other aspects of VEC's work (e.g., reemployment), and propose changes to the state's work search policies as needed. VEC could report

the results of the review, and any proposed changes to Virginia statute, to the General Assembly by February 2022 and post the results of the review on its website.

POLICY OPTION 3

The General Assembly could include language in the Appropriation Act to direct the Virginia Employment Commission (VEC) to (i) review U.S. Department of Labor guidance and model legislation regarding redesigned work search requirements, (ii) evaluate the potential impacts that adopting DOL's guidance would have on incorrect payments and other aspects of VEC's work (e.g., reemployment), and (iii) propose changes to the state's work search policies as needed. VEC should report the results of this review and any proposed legislative changes to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by February 1, 2022. VEC should also publish these results on its website.

Incorrect payments attributable to UI fraud have increased during COVID-19 and cost the state an estimated $100 million

States are required to prevent, detect, investigate, and recover fraudulent overpayments. While each state defines fraud differently, any benefit paid as a result of willful misrepresentation is typically considered fraudulent. Common examples of fraud include an individual returning to work and continuing to collect benefits, individuals not reporting earnings when filing weekly claims, or individuals otherwise providing false information to secure or increase UI benefits (Case Study 5-1). Additionally, imposter fraud can occur when a claim is filed using the information of a victim of identity theft (Case Study 5-2). Fraudulent overpayments are included in the overall incorrect payment rate and reported to DOL quarterly through VEC's BAM program. VEC's fraud rate is an *estimate* that reflects the level of fraud detected in a representative sample of UI claims.

CASE STUDY 5-1

Prisoner fraud schemes

In February 2021, VEC reported paying out over $40 million in state and federal funds to individuals who had submitted claims on behalf of prison inmates through various schemes. Prisoners are categorically ineligible for UI benefits because they are not able and available to work while incarcerated. After this fraud was detected, VEC worked with police and federal prosecutors to prosecute the fraudulent actors. In one scheme, 24 fraudulent actors were indicted for filing fraudulent claims for 37 individuals. The main conspirator agreed to repay $499,000 to VEC through a plea agreement. Similar schemes involving prisoners have targeted various states throughout the pandemic.

CASE STUDY 5-2
Bank account fraud

In April 2021, VEC suspended online filing of initial UI claims in response to a claims "hijacking" scheme. Through this scheme, fraudsters were able to change the bank account information of eligible individuals who had filed UI claims. This resulted in UI benefits being paid to the wrong accounts. VEC has not yet been able to identify how many claims may have been affected by this scheme; however, VEC has since programmed their application system to stop payments on claims in which certain information was changed.

VEC's estimated overpayments attributable to fraud have increased significantly since 2020. VEC's overall estimated fraud rate for the *state UI program* grew 440 percent from 1.4 percent in 2019 to 7.5 percent in 2020 (sidebar). At this rate, VEC paid out an estimated $70 million in fraudulent state UI benefits in 2020, representing about 3.3 percent of total state benefits paid. VEC's *confirmed* fraudulent payments are much lower than its estimates, with $1.6 million in confirmed fraud for January through August 2021 compared with an *estimated* $29 million for the first quarter alone. VEC's confirmed fraud is significantly lower than the estimated fraudulent payments because at least 164,500 potentially fraudulent claims were backlogged and awaiting VEC investigation as of October 2021. This could yield an additional 9,900 fraudulent claims based on previous fraud rates.

Fraud rates in other states also increased significantly during COVID-19. The U.S. median fraud rate increased from about 2 percent in 2019 to over 3 percent in 2020. Other states and DOL have acknowledged that states faced unprecedented fraud threats because of enhanced benefit amounts, new programs, and sophisticated bad actors.

The federal Pandemic Unemployment Assistance (PUA) program has been particularly susceptible to fraud because self-employed individuals have fewer records to prove their eligibility than state UI recipients. As of September 2021, VEC reported approximately $117 million in confirmed PUA overpayments, of which $54 million was to fraudulent claimants. VEC's reported PUA overpayment rate is approximately 2.5 percent, which is much lower than the state UI incorrect payment rate. PUA overpayment rates are likely similar to the overall U.S. incorrect payment rate (~10 percent), according to DOL's Office of the Inspector General. Consequently, VEC could have paid out as much as $475 million in total PUA overpayments, of which half is likely fraudulent. PUA benefits are financed by federal funds rather than taxes on Virginia employers and do not directly affect Virginia's UI trust fund. However, states are responsible for maintaining the same program integrity standards for federal programs as regular state UI to conform to federal law, according to DOL guidance.

VEC *currently* meets all mandatory fraud prevention and detection requirements but did not begin using some critical fraud prevention and detection best practices until 2021. VEC has used these new processes to retroactively evaluate all claims submitted since March 2020. However, having these fraud-identifying processes in place likely would have reduced fraudulent payments made during the pandemic. This year

- VEC began submitting claims to UI Integrity Center's Integrity Data Hub (IDH), which provides a risk score for each claim that helps states flag potentially fraudulent claims and prioritize them for investigation;
- VEC cross-matches filed claims with state and local jail incarceration data to help identify claims that were filed fraudulently; and
- VEC implemented a new database tool to help identify patterns in internal claims data that indicate potential fraud, such as repeat physical addresses.

Many potentially fraudulent claims still await investigation because of insufficient staffing in VEC's benefit payment control unit. When a claim is identified as potentially fraudulent, payments are paused and each claim is investigated by a VEC fraud investigator. As of October 2021, VEC had a backlog of approximately 164,500 claims awaiting fraud investigation. Turnover of experienced staff and limited capacity of new staff have contributed to these backlogs. VEC currently has 29 fraud investigators, 24 of whom were hired after March 2020. Eight experienced investigators have left VEC since March 2020. VEC's newest fraud investigators have limited ability to conduct investigations; new investigators often require six to 12 months of training before they are able to independently investigate claims.

VEC should investigate the backlog of potentially fraudulent claims as quickly as possible so that payments for non-fraudulent claims are resumed, and collections are initiated for confirmed fraudulent claims. To quickly investigate these claims, VEC needs to increase staffing in the benefit payment control unit and expedite training for new investigators. VEC should develop a plan for investigating current backlogs in potentially fraudulent claims and establish a strategy for prioritizing potentially fraudulent claims according to the dollar amount. VEC should prioritize fraudulent claims against the regular state UI program over federal pandemic programs because of the direct impact of state UI claims to the UI trust fund. Additionally, this plan should include a strategy for hiring additional fraud investigators. According to VEC leadership, at least 15 to 20 additional fraud investigators are needed to handle the current volume of fraud investigations. The plan should also include strategies for expediting training to ensure new investigators can conduct independent investigations as quickly as possible. This plan should be developed and presented to the General Assembly no later than December 31, 2021. VEC should also post this plan on its website.

RECOMMENDATION 24

The Virginia Employment Commission (VEC) should develop a plan for investigating the backlog of potentially fraudulent claims and establish a strategy for prioritizing its investigations according to the potential dollar amount of fraudulent payments per claim. This plan should include a strategy for hiring additional fraud investigators and expediting training of new hires. This plan should be presented to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by December 31, 2021. VEC should also publish these updates on its website.

Incorrect payments increase funds VEC must recoup through collections and can negatively affect UI trust fund

Federal and state law require individuals to repay any incorrect UI payments they received and tasks VEC with trying to recover the payments. VEC pursues several collections actions, including wage garnishments, for unpaid overpayments. Unpaid overpayment debt is also subject to interest, and overpayments due to fraud are assessed a 15 percent penalty. Payments that are recovered are repaid to the state UI trust fund or federal government. Payments that are not recovered reduce the amount of funds available to pay UI benefits to eligible individuals. VEC is always responsible for recovering incorrect payments made through the traditional state UI program, but staff also became responsible for recovering incorrect payments made through the federal pandemic programs during COVID.

VEC completes all required activities and several recommended strategies to recover UI overpayments. Recovery efforts are initiated by VEC's benefit payment control unit, which sends monthly billing statements to individuals, establishes repayment plans, and offsets current benefit payments for claimants with outstanding debts to VEC. After 60 days of nonpayment, VEC's benefit payment control unit forwards delinquent accounts to VEC's collections unit, which sends a final bill. After 30 more days of nonpayment, VEC's collections unit refers accounts to other state agencies for enrollment in offset programs where tax refunds, lottery winnings, or wages earned through contract work for the state are garnished for repayment. Moreover, delinquent accounts with balances under $3,000 are referred to a third-party private collections agency, and accounts over $3,000 are referred to the Office of the Attorney General for recovery. Accounts that remain delinquent after one year are referred to the U.S. Department of Treasury for enrollment in the federal treasury offset program. Accounts with balances remaining after seven years may be written off. Local commonwealth's attorneys determine whether to criminally prosecute fraud (sidebar).

VEC has historically been relatively successful at recovering overpayments, but recovery has decreased during COVID. VEC's recent decrease in collections is likely attributable to the increase in collections workload during the pandemic and suspension of collection activities. DOL expects states to recover at least 68 percent of overpayments that they detect. VEC met this standard in the five years prior to COVID-19, with an average recovery rate of 104 percent between 2015 and 2019 (sidebar). VEC's rate of recovery of overpayments decreased in 2020, falling to 53 percent for the year, and has continued to decrease to 19 percent in the first two quarters of 2021.

VEC has suspended referrals of delinquent debt to OAG and a private collections agency, key collection activities, since October 2020. In July 2021, VEC suspended all remaining overpayment collections activities. VEC indicates that these activities were suspended to allow for backlogs in UI appeals to be processed so that overpayment decisions could be finalized. (If collections begin before an overpayment decision is finalized, VEC would potentially have to refund any debt payments that were

Fraudulent actors who receive overpayments can be prosecuted on criminal charges, but VEC does not have authority to pursue these cases. Decisions to pursue criminal charges for fraud are typically made by the local commonwealth's attorney in the jurisdiction the claimant resides. Fraudsters can also be prosecuted in federal court by the U.S. Department of Justice.

Recovery rates may exceed 100 percent because they do not account for when the recovered overpayments were established. For instance, amounts recovered in one quarter may have been established in previous quarters. Therefore, the amount recovered in one particular quarter could exceed was what established.

collected prematurely.) VEC also decided to suspended collections activities for all *finalized* over-payments in anticipation of the launch of the modernized UI system in November 1, 2021. The suspension of collections activities is expected to continue until at least March 2022 but may continue through July 2022.

HB 2040 (2021 special session I) established an overpayment waiver program allowing claimants who received an overpayment at no fault of their own to have the overpayment forgiven if they demonstrate repayment would be "contrary to equity and good conscience". Claimants overpaid for weeks claimed between March 15th, 2020 and July 1, 2022 may apply for a waiver.

VEC has also suspended some collections activities because of pending decisions related to VEC's new overpayment waiver program (sidebar). The new law requires VEC to investigate the individual's situation to determine if requiring repayment would deprive the individual of the income needed for basic necessities or essential living expenses. VEC plans to use benefit payment control unit staff to process these applications, and staff estimate that this process will significantly add to their workload, leading to further delays in resolving claims issues. About 10,000 overpayment waiver applications were received in the first six weeks of the program. Collections actions cannot begin on any overpayments that do not qualify for forgiveness until the application is processed, a decision is made by benefit payment control unit staff, and appeals rights have been exhausted.

To maximize the potential recovery of overpayments, VEC should immediately resume overpayment recovery practices for all overpayments that are finalized and approved for collections. Results of the BAM survey estimate that VEC has issued more than $1.2 billion in overpayments from the state program since 2020 (January 2020 through June 2021) that is potentially recoverable, but the agency is not currently pursuing recovery of this debt. Subject matter experts indicate that debt recovery is more difficult the older the debt becomes. Therefore, VEC's suspension of overpayment recovery activities may reduce the likelihood that overpayments will be recovered, which hinders replenishment of the UI trust fund. It also slows reimbursement to employers who were incorrectly charged.

To minimize the potential impact to the trust fund and employers, VEC should immediately resume collections activities for all finalized overpayments. Further, applications for waivers of overpayments that have already been received should be processed quickly so that any overpayments not forgiven can be finalized and recovery activities initiated. There is no federal timeliness standard or goal for processing overpayment waivers, but a reasonable time period could be for VEC to process all previously received overpayment waiver applications within 60 days and future overpayment waiver applications within 30 days of receipt. VEC should create and adhere to internal timeliness standards for processing overpayment waivers.

Additionally, backlogged appeals should be processed as quickly as possible so that any bona fide overpayments can be finalized and collection efforts may begin. Recommendations addressing the challenges causing these backlogs are discussed in Chapters 3 and 4.

RECOMMENDATION 25

The Virginia Employment Commission (VEC) should immediately resume overpayment recovery activities for all finalized overpayments and initiate collections activities for all future overpayments immediately after finalization. VEC should also create and adhere to internal timeliness standards for processing all previously received and future overpayment waiver applications to ensure overpayments are finalized and recovery activities are initiated in a timely manner.

6 Unemployment Insurance System Modernization and IT Security

The Virginia Employment Commission (VEC) is in the final phase of completing a three-phase modernization project to replace its legacy unemployment insurance (UI) information technology system (sidebar). VEC began the project in 2009 and hired a third-party vendor, HCL America (HCL), to complete the project. The project was scheduled to be completed by May 2013 but has experienced multiple delays. Phase one of the project enabled VEC to scan UI case files and documents into a digital repository. Phase two created a new system for calculating and tracking employer UI taxes. Phase three will create a new system for processing and administering UI benefits.

VEC's legacy UI IT system was built in 1985 and is VEC's primary tool for administering UI claims. The system relies on a mainframe and COBOL programming, an outdated code language that was originally designed in 1959.

In 2021, more than half of states completed or were in the process of modernizing their UI IT systems. States have taken several approaches to modernization projects, including completing them in-house, through third-party vendors, or through multistate consortiums. States have spent between $14 million and nearly $100 million to modernize their UI IT systems, depending on the project scope. Modernizing UI IT systems is complex and requires both software programming and UI expertise, according to experts. A 2016 national review of states' UI IT modernization projects found that more than a third of projects exceeded their budget or timeline. In addition, about a quarter of the projects had failed or been discontinued, underscoring the importance of robust project management, careful planning, and proactive risk mitigation for VEC's UI modernization project.

VEC has continued to rely on manual processes because of UI modernization project delays

Delays in the UI modernization project have had consequences for out-of-work Virginians' timely receipt of UI benefits. Specifically, delays have required claimants and staff to continue to use outdated, manual UI claims processes that contributed to persistent inefficiencies at VEC. VEC's legacy system does not have a customer-facing portal or dashboard; therefore, claimants must rely on call centers, physical mail, or VEC's customer service unit to check their claims status and submit required documents. Additionally, VEC staff have had to manually process claims and build workarounds to overcome system limitations. For example, VEC staff are required to manually link the associated employer and wage data to each claim. This process required so much staff time that VEC had to reassign a portion of its workforce division staff to assist with this task during the pandemic. The legacy system also lacks certain automated data analytics, which increases the risk of inaccurate or fraudulent claims

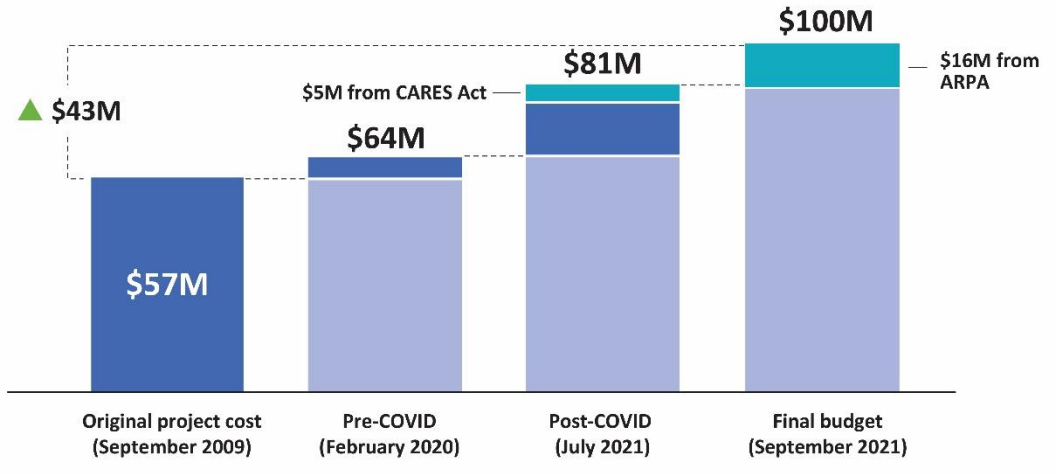
being filed. For example, until August 2021, VEC fraud investigators had to manually trans-fer data from the legacy system to a database, and then conduct analysis within the database to identify patterns of potential fraud, such as duplicate addresses or social security numbers.

Delays have also meant that some key staff have been unable to fulfill their primary job responsibilities because they have been tasked with supporting the ongoing IT project. VEC has had to dedicate significant staff time to help design and test functions of the new system. Project delays have required some key VEC staff, such as IT programmers, appeals and adjudication staff, and quality assurance staff, to devote significant time to the modernization project. Many of these staff indicated that their work on the UI modernization project detracted from their ability to focus on their primary responsibilities at VEC. Using these staff was problematic between 2015 and 2019 when reductions in VEC's federal administrative funding required VEC to hold some positions vacant, and it became increasingly problematic in 2020 when VEC accumulated large UI claims backlogs during the pandemic.

Expenditures on VEC's UI modernization also nearly doubled the original projected costs, but much of the increases account for additional functionality. Cost increases were modest before 2020, with the total project budget increasing 19 percent from $54 million to $64 million between 2009 and early 2020 (Figure 6-1). These additional funds accounted for certain system requirements not in the original contract, as well as an increased number of VEC staff being dedicated to the project. The COVID-19 pandemic spurred recent, larger expenditures. Between March 2020 and July 2021, the total expenditures for the project increased another 26 percent from $64 million to $81 million. These additional funds were used to hire VEC IT staff to work with the system, add new federal COVID-19 UI programs, and build in additional functionality (e.g., more robust identity verification, enhanced customer relationship management [CRM] capabilities).

VEC also requested and received an additional $16 million from the General Assembly for FY22 (using funds from the American Rescue Plan Act of 2021) to complete the testing and deployment of the remaining federal COVID-19 programs and add training required for the new system. This brought the total UI modernization expenditures to $100 million. VEC has requested another $13 million for several technology upgrades after the completion of the UI modernization project, including additional CRM enhancements, improved communication between the call center and UI systems, enhanced workforce management functions, and upgraded architecture for VEC's applications.

FIGURE 6-1
UI modernization expenditures significantly exceeded original project cost, partly due to new federal programs



SOURCE: VEC financial documents, including ARPA request, (updated September 2021), and interviews with VEC staff.
NOTE: VEC's UI IT modernization project has been primarily funded through REED Act funds, federal CARES and ARPA funds, and penalties and interest collected on employer taxes. Five percent of the project's funding has come from state general funds. Does not include an additional $13 million in ARPA funds requested to upgrade the UI system following the completion of the modernization project.

New system expected to have most functions recommended by experts and enhance usability

VEC's new UI benefits system includes several key functions that experts recommend should be part of modernized UI IT systems. Most importantly, VEC's new system will have an online customer portal that will allow UI claimants to view their UI claim status, notices VEC has sent them, information they still need to provide VEC, and the total amount of weekly benefits they have received (Table 6-1). These improvements should reduce the number of calls VEC receives related to claim status inquiries. The new system will also have guided workflows (sidebar) and pop-up prompts to help claimants understand specific terms and steps in the UI application process. This will reduce claims errors that require VEC staff to conduct detailed reviews of claims. Additionally, the new system will allow claimants to provide detailed information about the circumstances of their separation from employment and other aspects of their UI eligibility, which should reduce staff time spent adjudicating claims.

Guided workflows are designed to respond to claimants' answers as they complete the application. For example, if claimants indicate they lost their job because of a specific reason, the application would then prompt them with questions designed specifically for that situation, to ensure the correct information is provided and to reduce the back-end work needed to process the claim.

However, two important functions are not yet fully included in VEC's modernized UI IT system. The new system will not allow claimants to electronically recover their personal identification number (PIN), if lost. Claimants will be able to electronically request a new PIN but will have to wait to receive it by mail. PINs will no longer be needed to file claims online in the new system, according to VEC staff, but they will still be needed for claimants who contact VEC by phone to file their claims or

inquire about the status of their claim. Several states offer the ability to electronically recover PINs (e.g., Arkansas, Michigan, and Utah).

In addition, the new system will be able to automatically notify claimants by email when their claims status changes or VEC staff need additional information to process their UI claim, but not by text. VEC leadership indicate they will enable text-based notifications through VEC's existing call center contract with Verizon, but it is unclear when this function would be implemented, and it would not be fully integrated into the new UI benefits system. Until this function is fully implemented, VEC will continue to experience claims delays and high call volume from claimants. A national report by The Century Foundation identified the ability to electronically receive email or text notifications as a best practice for modernized UI systems.

TABLE 6-1
New UI system is expected to have most functions recommended by experts

Criteria	Included in new VEC UI benefits system
Guided workflow/process for completing applications	Fully
Adjustable user capacity during periods of high volume	Fully
Optimized for multiple devices (computer, laptop, tablet, phone)	Fully
Interface with back-end systems (e.g., appeals, workforce)	Fully
Customer portal with claim status information	Fully
Electronic document upload/repository	Fully
Role-based access permissions for VEC staff and other agencies	Fully
Electronically reset/recover passwords or PINs	Partially [a]
Automatic cross-match of UI claims with national fraud databases	Fully
Customer relationship management system (CRM) [b]	Partially
Live-chat with staff (business hours) or automated chat-bot (24/7)	Partially
Automatic text/email notifications about claim status & required documents	Partially

SOURCE: Interviews with VEC staff and national SMEs, including NTT data, On Point Technology, and UWC Strategy; VEC system demonstration; Review of national white-papers from The Century Foundation, National Employment Law Project, National Conference of State Legislatures, and U.S. Department of Labor.

[a] Claimants will not be able to electronically recover PINs, but PINs will no longer be necessary to apply for a claim online or access claim information through customer portal.

[b] A CRM acts as a repository for all information related to customer interactions, which staff can easily access to respond to customer claims, with a history of transactions, communications, and other account information.

About two-thirds of the modernized system's functions will be available when the system is launched, including all basic features needed to process UI claims. The remaining one-third of functions are expected to be completed before the close-out of the project in June 2022. Many of these latter functions would improve the efficiency and effectiveness of the UI claims process, including a CRM system, or the ability for

claimants receiving certain UI benefits to inquire about the status of their claim using VEC's Interactive Voice Response system. According to VEC staff, many of these functions also relate to federal reporting capabilities and will not be needed until quarterly reports are filed in January 2022.

VEC has taken recent actions to help mitigate project risks, but transition to the new system will present challenges for claimants and VEC staff

Several significant project risks could prevent VEC's modernized UI IT benefits systems from going live successfully in November 2021. For example, if VEC is unable to accurately convert data from the legacy IT system, VEC may be unable to ensure the accuracy of previous claims and whether they were over or underpaid.

VEC staff have taken steps to mitigate some of the key risks to the project. For example, to address the risk of staff attrition, VEC has dedicated more resources to the project, including hiring five IT contractors to assist with programming and maintaining the new system. Additionally, VEC has held meetings more frequently, including both its Internal Agency Oversight Committee (IAOC) meetings (from monthly to biweekly) and its Risk Assessment Meetings (from quarterly to monthly) (sidebar). Staff involved in UI modernization are providing weekly updates to VEC leadership to discuss ongoing risks and mitigation strategies. Moreover, VEC has tested the system with a wide variety of agency staff, including both experienced staff as well as newer staff who have less familiarity with the UI program.

The Virginia Information Technologies Agency (VITA) has also increased its oversight of VEC's UI modernization project and support to help VEC mitigate risks that could delay the project's launch (sidebar). Because of the project's size and complexity, VITA's project management division (PMD) has overseen VEC's UI modernization project since it began in 2009, and VITA staff participate in monthly oversight meetings with VEC leadership and the vendor. VITA staff have also worked with an external vendor to complete IV&V reports identifying risk areas throughout the project. In July 2021, VITA dedicated additional staff time to managing key project risks and helping VEC plan staff training on the new system. VITA also recommended increasing monthly project oversight meetings to twice monthly and an additional IV&V report.

In September 2021, VEC announced it would delay the launch of the new system by one month to November 2021 to mitigate several risks to the system's successful implementation. The modernized UI system was scheduled to go live on October 1, 2021, pursuant to an executive directive from the governor in May 2021. According to VEC leadership, this additional time would allow the agency to train more VEC staff to use the new system and to conduct usability testing with claimants at VEC field offices. This decision followed an interim report by JLARC that identified insufficient training and user testing as key risks to the project's success.

The **Internal Agency Oversight Committee** (IAOC) is a monthly meeting to discuss the UI modernization project overall, and includes staff from VEC, its vendor HCL, and VITA's Project Management Division.

The **Risk Assessment Meetings** are quarterly meetings that focus specifically on identifying and managing risks to the UI modernization project, and includes VEC leadership and a smaller subset of project staff.

VITA's **project management division (PMD)** oversees state IT projects that cost $1 million or more (or are considered "major" because of importance or complexity). PMD staff monitor whether projects are on schedule and within budget and scope. For projects significantly behind schedule or over budget, PMD staff can recommend that the state halt the project or take other steps to minimize further costs and delays.

One of the most significant risks to the UI modernization project's ongoing success is inaccurate/incomplete data conversion, which could make transitioning to the new system challenging for some claimants and for VEC staff. Data from past and ongoing UI claims—such as past claims, benefit payments, and personally identifiable information—must be converted to a format that can be read by the new system and then migrated to the new system. Without proper conversion, attempts to migrate the data may result in either incomplete or inaccurate data being loaded into the new system. Successful conversion and migration of this data is important because errors in claimants' data could affect the accuracy of their benefits calculations and payments for ongoing or future claims, or for identifying overpayments for past claims. As of October 2021, VEC and HCL had conducted 42 data conversion tests. As of September 2021, 95 percent of the data had been converted, with 80 percent of the data converting correctly. During the most recent test in October 2021, 99 percent of the data had been converted and the percentage of data converting correctly increased to 92 percent. This is above VEC's minimum acceptable accuracy rate of 90 percent, as established in its contract with HCL. VEC does not plan to run the old and new systems concurrently, which makes it important that a substantial portion of the data converts correctly when the new system is launched.

Another significant risk to the UI modernization project's ongoing success is staff attrition. VEC's highest staffing risk is not having a sufficient number of IT staff with the programming experience needed to support the launch of the new system and make programming changes *after* it comes online. For example, experienced IT programmers will be needed to maintain a read-only version of the legacy system for several months after the new system is launched. Several of VEC's IT programmers familiar with the legacy system have indicated they intend to retire in November 2021. Additionally, VEC will need to hire additional programmers who can maintain and modify the new system once the warranty period with HCL ends.

> *"Our single strongest recommendation is to place customers at the center of the project, from start to finish. The biggest mistake we saw states make was failing to involve workers at critical junctures in the modernization process."*
>
> **– Centering Workers: How to Modernize UI Technology**

VEC should consider taking several additional actions to ensure the long-term success of the modernized UI IT system, including regularly collecting user feedback on system usability. VEC planned to conduct some usability testing with claimants at field offices before the new system is launched in November, according to VEC leadership. However, VEC should also periodically collect feedback from end users after the new system is launched. This would help VEC identify areas of customer confusion and collect suggestions for continued system improvement. It would also align VEC with guidance from experts that states should "allow for extensive usability testing by…staff and customers" (sidebar). Several other states, including Pennsylvania and Massachusetts, created mechanisms for stakeholder involvement during the development and implementation of their UI modernization projects. Washington and New Mexico send surveys to claimants and employers to collect feedback on their IT systems and needed improvements.

RECOMMENDATION 26

The Virginia Employment Commission (VEC) should regularly collect feedback on the usability of the new Unemployment Insurance benefits information technology system from claimants and employers and make regular improvements to the system, as necessary, that address such feedback. VEC should provide a summary of user feedback and planned and completed system changes to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by March 31, 2022 and at the end of each quarter in 2022. VEC should also publish this information on its website.

After completing the UI modernization project, VEC should identify additional functions that would be beneficial to the new UI IT system. As described previously, VEC's new UI benefits system currently lacks a few functions experts recommend (Table 6-1). Given the length of VEC's UI modernization project, the new system also may lack functions recently developed for modern UI IT systems. Therefore, VEC should conduct a request for information (RFI) to identify any additional features that would further enhance the efficiency or effectiveness of the UI IT system. Information should be collected for all parts of VEC's UI system—imaging, employer UI tax, and UI benefits. The RFI should help VEC identify specific features it could add to its UI IT system, the cost of implementing those features, and the entities capable of developing those features. After completing the RFI, VEC should determine the feasibility of modifying its UI IT system using in-house resources or by procuring a third-party vendor and then proceed with developing them.

RECOMMENDATION 27

The Virginia Employment Commission (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 staff.

Significant problems remain unresolved in previously completed UI IT upgrades

Although Phase 2 of VEC's UI modernization project (the employer tax system) was launched in November 2015, 49 system problems remain unresolved. VEC and the vendor have categorized the remaining problems as either minor or moderate in their severity, but multiple VEC staff indicate that these problems hinder effective UI tax collection from employers. One problem with the modernized system is that inaccurate tax rate notices are produced for some employers, and another problem is that incorrect rates of delinquent employer UI tax payments are applied to some employer accounts. These problems result in employers being charged inaccurately.

> *"I spend more than half of my day trying to find ways to get VUIS to work as it should."*
>
> *"We are having to do a lot of workarounds in order to complete our jobs. These take time to figure out and sometimes prevent [us] from being able to take further steps in our collection efforts."*
>
> *"Employers point out errors and mistakes on important aspects of the correspondence that our system generates—especially miscalculations on Annual Tax Rate Notices that are defects of our system and cannot be fixed."*
>
> **– VEC tax staff**

They also increase the workload of VEC staff who must respond to employer inquiries and manually revise the inaccurate rates and notices (sidebar).

VEC and its vendor have resolved the majority of the problems identified with the modernized system, but there is no formal plan to address the remaining 49. Nearly 600 problems have been identified since testing began in 2012, and more than 90 percent had been resolved as of November 2021. More than half of the remaining 49 issues have been unresolved for two years or more. Moreover, VEC tax staff interviewed and surveyed by JLARC expressed overall dissatisfaction with the new system, citing slowness, unexpected errors, and a general lack of user-friendliness. According to VEC staff, there is no formal plan or timeline for resolving these problems.

RECOMMENDATION 28

The Virginia Employment Commission should require unemployment insurance IT modernization contractor to develop a plan that includes specific actions and a timeline for addressing all existing tax system problems and details (1) how each problem will be fixed, (2) deadlines for fixing each problem, and (3) any additional resources needed to fix the problems.

VEC IT staff are also not sufficiently trained to modify or extract data from the employer tax system. VEC's contract with HCL assigns responsibility to HCL, "to construct training materials so that the VEC assigned…staff is familiar with the functions and features (including navigation) of the UI system." However, almost no VEC IT staff have received training on the employer tax system, including on how to run accurate data queries. HCL staff are still considered the system experts and are often consulted about the information contained in the system. This is problematic because HCL will stop providing system support one year after the project close-out date, at which point VEC staff will assume full responsibility for the system.

VEC should work with HCL to draft a plan for training VEC IT staff to use and modify the employer tax system. The plan should describe which VEC staff require training, what the training will cover, and when the training will be complete. Training should be scheduled when HCL and VEC staff have sufficient capacity, but all training should be completed before HCL's contractual warranty ends in June 2023.

RECOMMENDATION 29

The Virginia Employment Commission (VEC) should establish a plan with its unemployment insurance modernization vendor to ensure VEC IT staff are sufficiently trained to operate and modify the employer tax system.

VEC's IT systems, policies, and processes have not undergone comprehensive review in several years

VEC has not had a comprehensive review of IT security requirements conducted since December 2017. VEC's internal audit division regularly audits VEC's IT security, but its audits are limited in scope and based on risk, with security controls and requirements being reviewed on a rotating basis. Virginia's Auditor of Public Accounts (APA) also regularly reviews VEC's IT security, but reviews are similarly limited in scope. In recent years, the APA identified several findings related to VEC's IT security practices, including the need to improve the agency's IT strategic governance. VEC hired a third party (Vaco Risk Solutions) to conduct a comprehensive review of its compliance with state IT security standards in 2017. The review identified 80 security shortcomings. Nearly all of the issues identified were resolved by 2019, and VEC has not had any major cybersecurity breaches since then (sidebar). Nevertheless, VEC's last comprehensive IT security compliance review was conducted several years ago. Another comprehensive review is warranted, particularly given the many changes that VEC's IT systems have undergone during 2020 and 2021. Furthermore, although many of VEC's agency policies align with VITA's IT security requirements for state agencies, a comprehensive IT security review would verify the extent to which VEC is fully meeting these requirements.

VEC has documented 18 attempted cybersecurity breaches since 2019, four of which were at least partially successful. In two of these breaches, a VEC employee's credentials may have been compromised, but VEC's IT security staff took immediate action to minimize the risk. In both cases, the incident was isolated to a single device, and did not compromise the entire VEC network.

VITA staff have indicated that they would be better able to assist VEC with IT security if the agency were fully transformed to the state's central IT environment. VEC is one of the last agencies in the Commonwealth to fully transform to Virginia's centralized IT infrastructure provided by VITA. VEC currently receives many services through the centralized model, but a portion of VEC's IT network exists *outside* of the state's central environment, including more than 300 servers used for developing and testing the modernized UI IT system and several other minor administrative systems. VEC was originally scheduled to fully transform to the state's centralized IT infrastructure in 2020, but the agency's UI modernization project has delayed VEC's ability to complete transformation.

Added IT security is a key advantage to fully transforming to the state's centralized IT infrastructure. VITA and the state's third-party security vendor (Atos) are responsible for testing and ensuring the security of systems within the state's environment, and VEC has this responsibility for the systems that remain in its own environment. However, many of VEC's internal servers are not tied to the centralized IT infrastructure, so they are not receiving the ongoing security scans and monitoring that VITA's security vendor provides. VITA staff indicate that neither they nor their vendor has full visibility into VEC's internal systems to monitor information security, and so they are unable to detect vulnerabilities or security breaches and would be unable to contain data breaches.

VEC should work with VITA to have an IT security audit conducted by a vendor as soon as possible because complete transformation to the state's IT infrastructure is

unlikely before June 2022. The audit should (1) review the extent to which VEC is complying with state IT security requirements and (2) clarify the coverage of VITA and VEC's IT security protections and identify any gaps that warrant corrective action.

RECOMMENDATION 30

The Virginia Employment Commission (VEC) should work with the Virginia Information Technologies Agency (VITA) to facilitate an audit of VEC's IT security systems and to identify any necessary IT security improvements. The audit should be completed by a vendor approved by VITA. The audit should validate whether VEC's existing IT security systems meet the requirements issued by VITA.

VEC should also complete its transformation to the state's central IT infrastructure as soon as possible after completing UI modernization. Transferring to the state's infrastructure will mitigate many of VEC's potential IT security risks because there will be more clarity on the coverage of IT security protections and VEC's adherence to state IT security requirements. Transformation will also eliminate VEC's need to maintain a temporary cloud solution to host untransformed servers, which costs VEC approximately $2.4 million per year. Transforming before UI modernization is complete (scheduled for June 2022) is not feasible, according to VEC staff. Both projects require significant VEC IT staff resources, and IT challenges with transformation could negatively affect the success of UI modernization.

RECOMMENDATION 31

The Virginia Employment Commission should fully transform all agency IT systems and servers to the state's central IT infrastructure as soon as possible.

7 Unemployment Insurance Eligibility Criteria and Benefits

Federal law requires each state to provide unemployment insurance (UI) benefits to individuals who meet eligibility requirements (sidebar). There are federal eligibility requirements, but states interpret these and add their own requirements. States also set the amount and duration of UI benefits individuals can claim. The Virginia Employment Commission (VEC) reviews individuals' UI eligibility and administers UI benefits, but the General Assembly sets UI eligibility requirements and benefit levels.

Federal unemployment law is established through the *Federal Unemployment Tax Act* and the *Social Security Act of 1935*.

UI benefits should be accessible to eligible unemployed individuals searching for employment. Accessibility can be limited when eligibility criteria are especially restrictive, there is insufficient awareness of the UI program, or the benefits application process is overly complex. (See Chapter 4 for more information on awareness in Virginia and the complexity of VEC's application process.) Low participation in UI programs limits states' ability to provide temporary income support to unemployed individuals, which ultimately helps stabilize the state economy.

Many Virginians eligible to claim UI benefits do not, as evidenced by Virginia's low recipiency rate

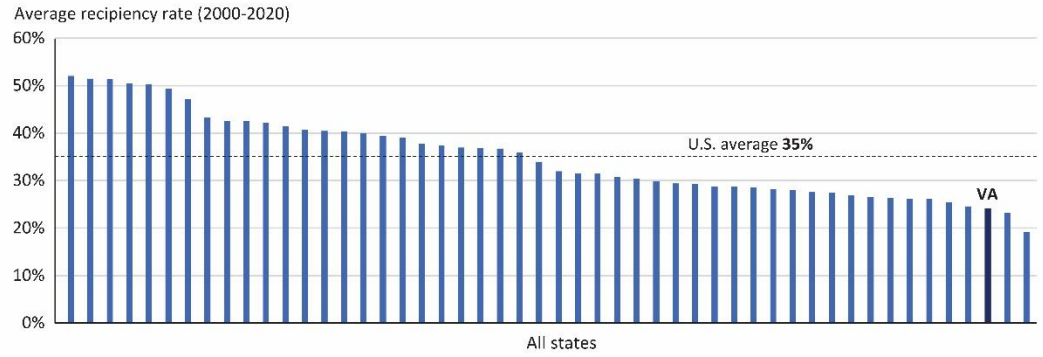
Subject matter experts point to a state's *recipiency rate* as the best *regularly* reported measure of the accessibility of a state's UI program. A state's UI recipiency rate is defined as the percentage of the state's unemployed population receiving UI benefits. Recipiency is an imperfect measure of accessibility because it is calculated using a state's *total* estimated unemployed population, rather than a state's *eligible* unemployed population. Consequently, recipiency rates (as defined by the U.S. Department of Labor) underestimate the actual utilization (or take-up) of a state's UI program, because the recipiency rate calculation includes ineligible individuals whereas the take-up rate calculation does not (sidebar). As a result, some experts try to calculate UI take-up rates (sidebar). Nevertheless, recipiency rates are the more commonly used measure of accessibility because they are regularly published and based on federal statistics. Before COVID-19, no state had achieved a recipiency rate of much more than 50 percent since after the Great Recession.

A state's UI **recipiency rate** underestimates the actual accessibility of UI. For example, an estimated 300,000 Virginians were unemployed on average each month during COVID-19, but only an estimated 220,000 were eligible for UI.

Take-up rate is an estimate of UI claimants as a share of the *eligible unemployed* population. Additional details about the methodology to estimate eligibility is in Appendix B.

Virginia has consistently had one of the lowest recipiency rates in the country over the last two decades. Virginia's average recipiency rate was 24 percent between 2000 and 2020 compared with the national average recipiency rate of 35 percent. Only two other states (Arizona and South Dakota) consistently had lower recipiency rates (Figure 7-1).

FIGURE 7-1
Virginia's average recipiency rate was third lowest in the nation from 2000–2020

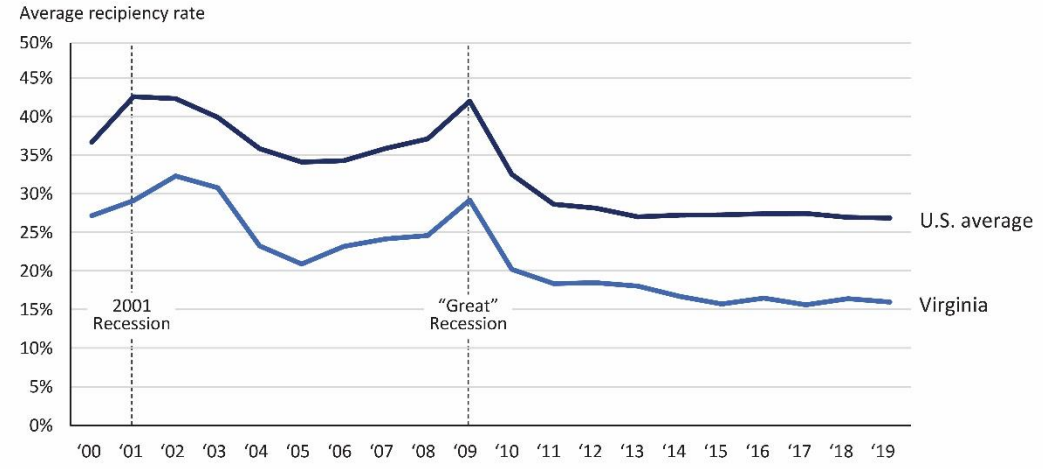


SOURCE: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Chartbook, Section A: Labor Force Data.

Recipiency rates increased during COVID-19. Virginia's recipiency rate increased to 70 percent in 2020 (over 300% from 2019). The average national recipiency rate increased to 75 percent. Recipiency rates similarly increased during previous economic recessions (e.g., post 9/11 recession and Great Recession), but the COVID-19 increase was significantly larger.

Virginia's recipiency rate has also generally declined in recent decades, similar to other states. Virginia's recipiency rate decreased from 27 percent in 2000 to 16 percent in 2019. Virginia's decreasing recipiency rate follows a broader national trend; the national average recipiency rate decreased from 37 percent in 2000 to 28 percent in 2019. (Virginia and other states experienced a significant and atypical increase in recipiency rates in 2020 during COVID-19, sidebar.) Although recipiency rates have generally decreased nationwide, Virginia's recipiency rate has remained comparably low, never exceeding the lowest 10 states between 2000 and 2019 (Figure 7-2).

FIGURE 7-2
Virginia's recipiency rate has remained below the U.S. average since 2000



SOURCE: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Chartbook, Section A: Labor Force Data.

Several factors likely contribute to Virginia's low and generally decreasing recipiency rate. Two of the main factors that limit UI utilization, according to experts, include stringent UI eligibility criteria and relatively low UI benefits. Overly stringent UI eligibility criteria limit the number individuals who are eligible for UI benefits. Low UI benefits can depress recipiency when the value of benefits is not enough to justify the time or administrative burden of completing the claims process.

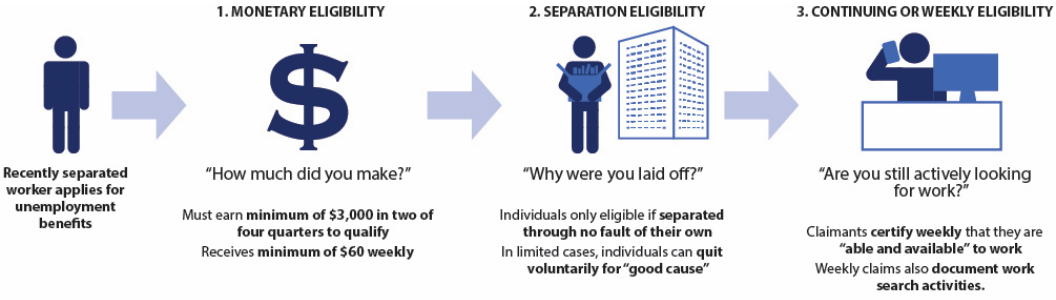
A **base period** is used to calculate the amount of UI benefits claimants receive in Virginia. For most claimants, VEC staff look at wages in the first four of the last five quarters before the UI claim was filed.

Virginia's UI eligibility requirements are similar to other states

An individual must meet three categories of eligibility requirements to qualify for UI: monetary eligibility, separation eligibility, and continuing or weekly eligibility (Figure 7-3). To be monetarily eligible, individuals in Virginia must earn a combined total of $3,000 in two of the four quarters of their base period (sidebar) to qualify for the lowest potential benefit amount ($60 per week). To meet separation eligibility requirements, individuals must be unemployed through no fault of their own. Specifically, individuals cannot have been fired due to misconduct or engaged in fraud. The state outlines limited circumstances when an individual may voluntarily quit their job and still be eligible for unemployment insurance (known as a "voluntary quit"). Finally, individuals must file a continuing weekly claim certifying that they have met work search requirements and remain "able and available" for work to satisfy weekly eligibility requirements.

JLARC staff compared 12 states' eligibility policies with those in Virginia. Three categories of states were selected, including neighboring states (Washington, D.C., Kentucky, Maryland, Tennessee, West Virginia), states with high recipiency rates (Massachusetts, New Jersey, Pennsylvania), and states with low recipiency rates (Arizona, Florida, Georgia, South Dakota). Twenty-two eligibility policies and requirements were evaluated. A subset of these is shown in Table 7-1 and the full analysis is provided in Appendix I.

FIGURE 7-3
Individuals must meet three categories of eligibility requirements to receive UI benefits



SOURCE: Interviews with VEC staff.

Virginia's UI eligibility requirements and policies generally align with UI eligibility requirements and policies in 12 other states reviewed (sidebar) (Table 7-1). For example, consistent with many of the 12 states, Virginia requires earnings to establish UI eligibility and includes employees who voluntarily quit but demonstrate "good cause." As in every other state reviewed, some workers are categorically ineligible for participation in the program, including self-employed workers or independent contractors (also known as "gig workers") (sidebar).

Self-employed workers and independent contractors ("gig workers") are ineligible for UI benefits in Virginia and other states because they are not attached to an employer who pays UI taxes. This policy will increasingly affect accessibility to UI as the share of self-employed workers grows. A description about the growth of the gig economy and the potential impact on UI is included in Appendix I.

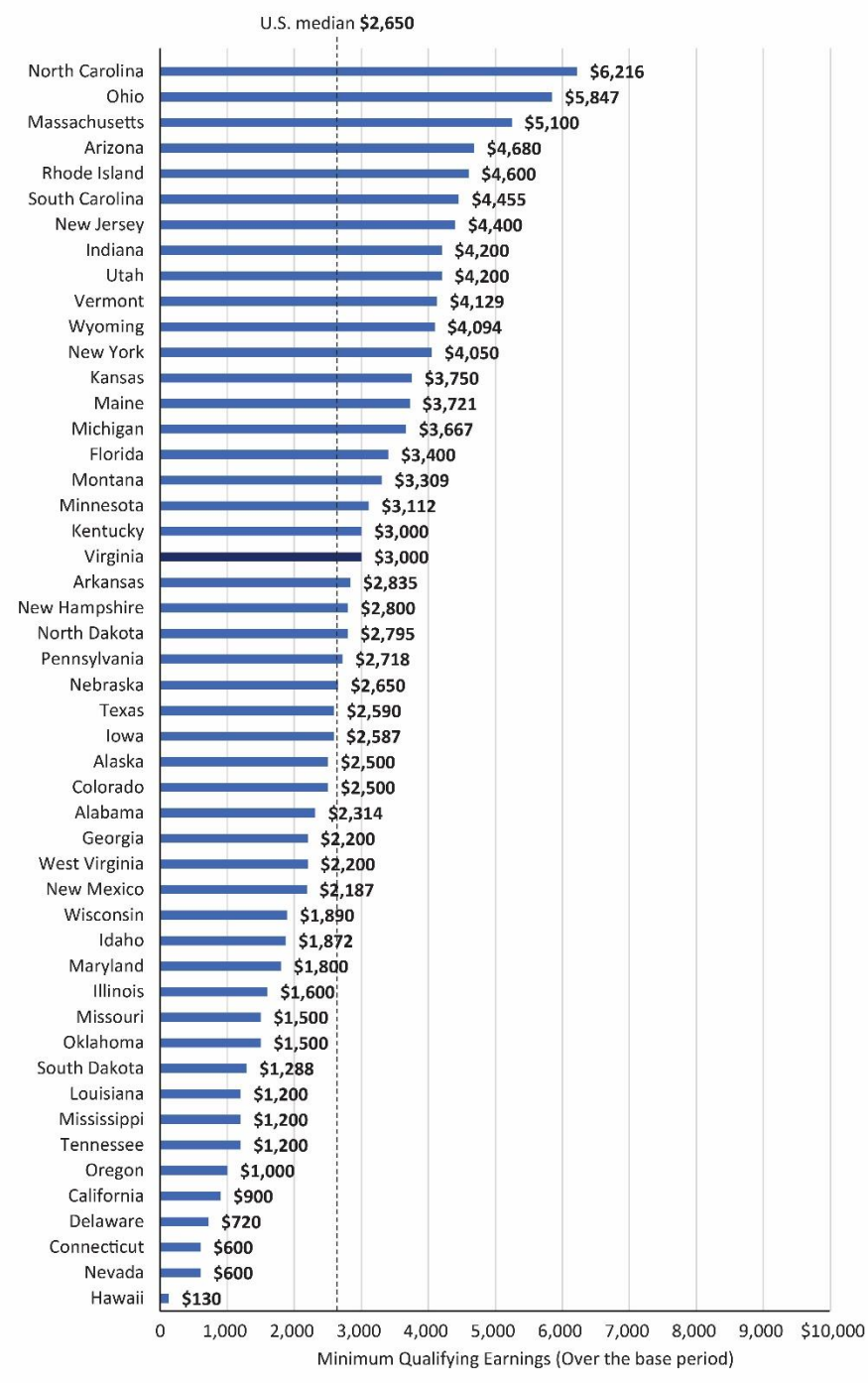
TABLE 7-1
Virginia's eligibility policies largely align with those in a sample of 12 other states

Eligibility-related policies	Policy exists in Virginia	# peer states (of 12) where policy exists
Allows voluntary quit separations for "good cause"	Yes	12
Misconduct disqualification (10 weeks or less) [a]	Yes	11
1–3 work search contacts required per week	Yes	11
Disqualification because of illegal drug use	Yes [b]	6
Multiple quarterly earnings used to calculate benefits	Yes	12
Allowance for dependents	No	4
Maximum benefit duration >= 26 weeks	Yes	10
Partial earnings allowed while receiving benefits	Yes	7

SOURCE: U.S. Department of Labor, Employment and Training Administration, 2020 Comparison of State Unemployment Laws; Code of Virginia.
NOTE: Table includes a subset of the eligibility policies reviewed. Full list of eligibility policies reviewed is included in Appendix I and a description of the 12 states used for comparison is included in Appendix B. [a] If individuals are discharged (or separated) from work because of misconduct, they are ineligible for UI under both federal and state law. States retain authority to define misconduct, and state UI agencies interpret these statutory definitions when administering the program. State laws generally require that an individual work again for a specified number of hours or weeks before they can again file a claim for UI if laid off by a new employer. Subject matter experts generally consider a disqualification period of 10 weeks or less to be standard. [b] If confirmed by positive U.S. Department of Transportation screen.

While Virginia's eligibility requirements generally align with those in other states, the state's minimum earnings threshold to qualify for UI benefits is slightly higher than thresholds in a majority of other states. Virginians must earn a total of at least $3,000 during the two highest quarters of their base period to be eligible for UI benefits. This means that a minimum wage worker earning $9.50 per hour would need to work slightly more than 13 hours per week, on average, for two quarters to qualify for the minimum weekly UI benefit. Compared with all other states, Virginia's minimum earnings threshold is the 19th highest (Figure 7-4). Minimum earnings requirements vary widely among other states. Washington is the only state that does not have a minimum earnings eligibility requirement, instead requiring claimants to work a minimum number of *hours* to qualify. North Carolina has the highest minimum earnings threshold, where workers need to earn a minimum of about $6,200 in total during the two highest quarters to qualify for UI.

FIGURE 7-4
Virginia's minimum earnings threshold is higher than the national median



SOURCE: U.S. Department of Labor, Employment and Training Administration, 2020 Comparison of State Unemployment Laws.
NOTE: States use varying base periods to calculate whether a claimant's earnings meet the state's minimum qualifying threshold. Washington is not included in this chart because it does not have a minimum earnings threshold for individuals to qualify for UI. Instead, Washington requires claimants to have worked for 680 hours and earned wages (no baseline qualifying amount) during their base period to qualify for UI.

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

The original intent of UI is to provide partial financial support while individuals search for reemployment. However, UI benefits are meant to be temporary and are not intended to disincentivize individuals from returning to work. Therefore, states must balance helping individuals replace income and cover basic living costs with encouraging reemployment. To achieve this, many states structure benefit levels as a share of average wage levels in the state to reflect cost-of-living adjustments, while also limiting the number of weeks claimants are eligible to receive benefits (also known as benefit *duration*), so individuals return to work.

States have maximum UI benefit durations because UI benefits are intended to provide temporary financial support while individuals search for reemployment. Individuals are eligible for the *upper limit* of Virginia's maximum UI benefit duration when they earn more than $37,800 during their base period. Similarly, they are eligible for the *lower limit* of Virginia's maximum UI benefit duration when they earn at least $3,000 during their base period.

Benefit levels and duration are set by the General Assembly. To determine a claimant's maximum benefit duration, VEC staff must examine a claimant's total prior earnings during the entire base period to measure how actively the claimant worked during the base period. The more a claimant makes during the *entire* base period, the longer they can receive benefits. In Virginia, the maximum length of time claimants may receive state UI benefits ranges from 12 to 26 weeks in non-recessionary periods, depending on a claimant's prior earnings (sidebar). (VEC is permitted to extend claimants' benefits for an additional 13 weeks during periods of high unemployment.)

VEC staff must also determine the weekly benefit amount an individual is eligible to receive. Weekly benefits are based on the highest two quarters of earnings during the individual's base period (the first four of the last five quarters before the UI claim was filed). Weekly benefit levels range from a minimum of $60 to a maximum of $378. An individual would need to meet the minimum threshold of $3,000 in total during the two highest quarters of their base period (equivalent to $6,000 per year if a claimant's earnings and hours are consistent) to qualify for the $60 minimum weekly benefit amount and make $18,900 over the highest two quarters of the base period (equivalent to $37,800 per year) to qualify for the $378 maximum weekly benefit amount.

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

Claimants typically collect UI benefits for fewer weeks than their allotted maximum duration. This occurs when claimants find a new job and stop filing for benefits, do not file their weekly claims, or become ineligible because of other factors. In 2019, claimants collected UI benefits for an average of nearly 14 weeks in Virginia and just under 15 weeks nationwide. That same year, only 35 percent of claimants received benefits for their full number of eligible weeks (known as "exhausting" benefits).

The *upper limit* of Virginia's maximum UI benefit duration (26 weeks) is similar to 39 other states (Figure 7-5). Only eight states, including North Carolina and Georgia,

have a shorter upper limit (ranging from 16 to 25 weeks). Montana (at 28 weeks) and Massachusetts (at 30 weeks) are the only states that routinely allow some claimants to receive benefits for longer than 26 weeks.

The *lower limit* of Virginia's maximum UI benefit duration (12 weeks) is somewhat low compared with other states. The shortest maximum timeframe claimants could be eligible for UI benefits is longer in 29 other states, but there is wide variation across states. For example, Washington's range of maximum UI benefit duration goes down to one week, while some states allow all claimants to receive unemployment benefits for 26 weeks (depending on weekly claims filing). Having a comparably lower limit of maximum UI benefit duration means that some Virginia claimants receive benefits for less time than claimants in other states. However, changes to Virginia's lower limit appear unnecessary because most claimants do not claim benefits for all weeks they are eligible.

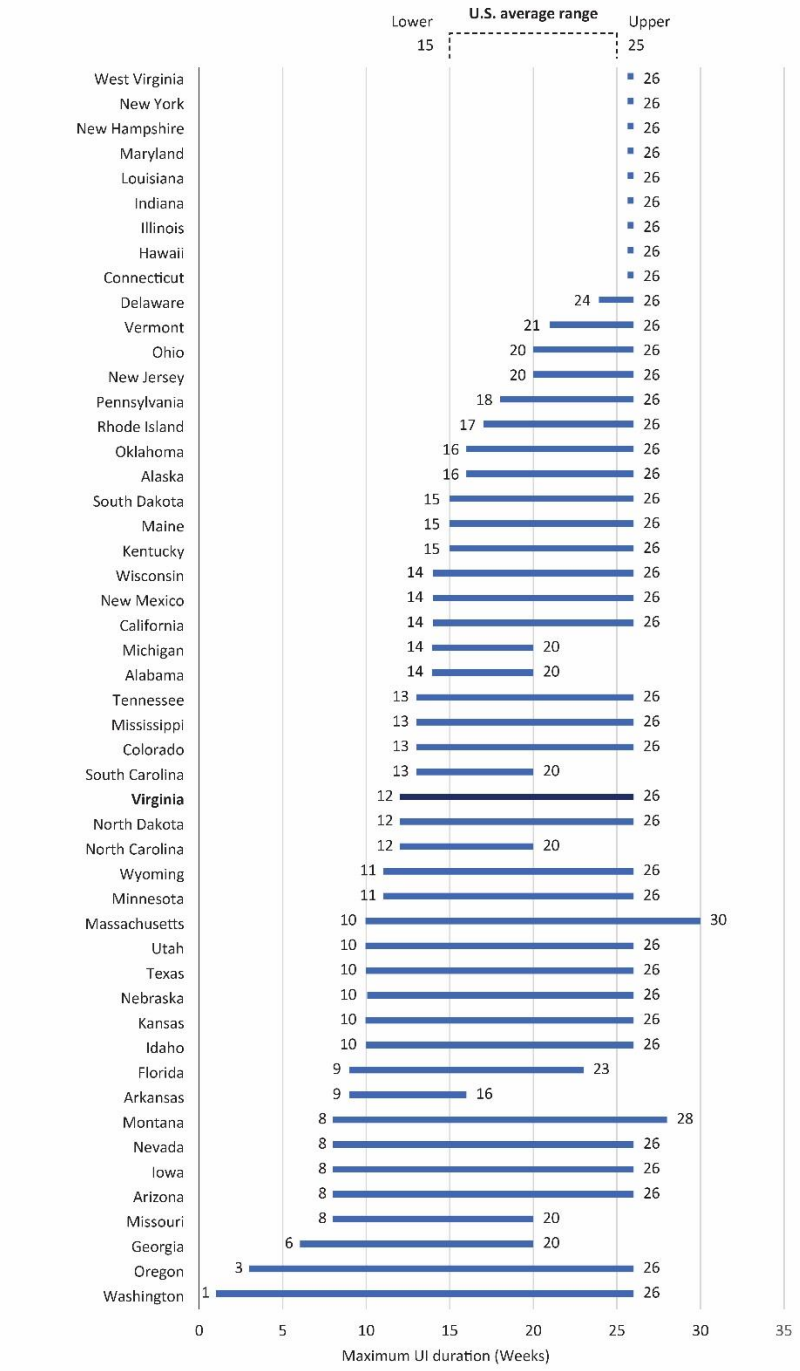
Virginia provides lower UI benefit levels than other states

Virginia's UI benefits provide less income replacement than many other states. Experts generally agree that UI benefits should replace roughly 50 percent of an individual's weekly wages. For individuals earning between $6,000 and $37,800 a year (about 40 percent of Virginia's workforce), Virginia's UI benefits replace 52 percent of their income. For roughly 56 percent of Virginia's workforce (individuals earning more than $37,800), Virginia's UI benefits replace less than half of claimants' prior income because Virginia caps the maximum benefit amount claimants receive. Virginia's average 2019 income replacement ratio was 34 percent, ranking 33rd among states.

In addition to its replacement ratio, Virginia has relatively low weekly benefit amounts compared with other states. In 2019, Virginia's *maximum* weekly benefit amount (sidebar) was $378, which ranked 37th nationwide (Figure 7-6). Virginia's maximum benefit is also low as a share of the state's 2019 average weekly wage of $1,154. The $378 maximum benefit for state UI is just under 33 percent of the state's average weekly wage, making it 43rd in the nation on this measure. Virginia's *average* weekly benefit was $316, which ranked 36th nationwide in 2019 and which has consistently fallen below the average and median weekly benefit for the nation. Virginia's average weekly benefit amount dropped considerably in 2020 because lower earners participated at higher rates in the traditional state UI program during the pandemic. Decreases in the average weekly benefit amount are typical during high unemployment periods.

The **maximum weekly UI benefit amount** reflects the largest UI benefit that claimants can receive each week through Virginia's state UI program. The **average weekly UI benefit amount** reflects the amount of UI benefits that claimants collected, on average, each week through Virginia's state UI program.

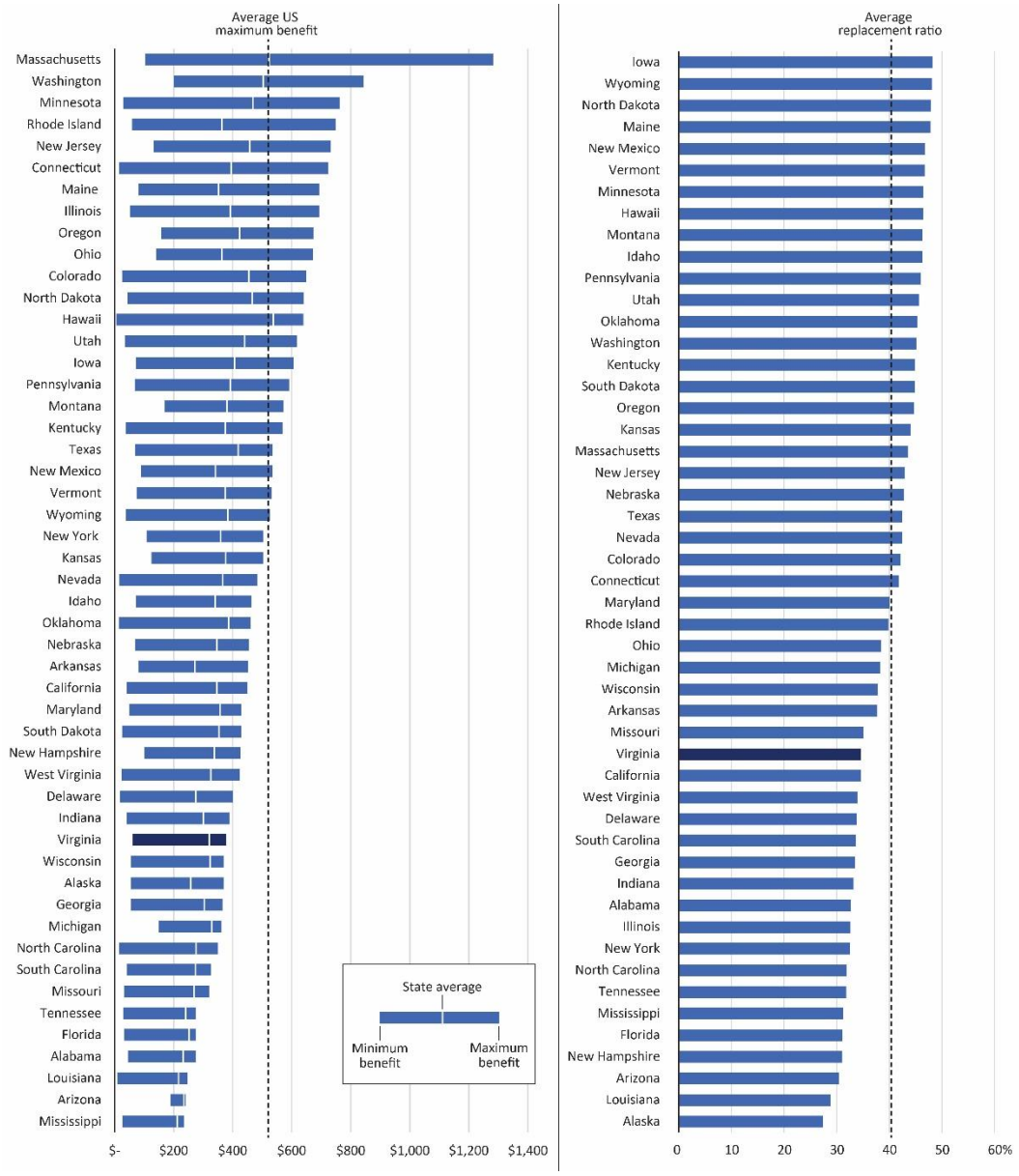
FIGURE 7-5
Virginia's upper bound for benefit duration is comparable to other states, but its lower bound is moderately low



SOURCE: U.S. Department of Labor, Employment and Training Administration, 2020 Comparison of State Unemployment Laws.
NOTE: Nine states, including West Virginia and Maryland, have what is called *uniform duration*, meaning all claimants are eligible to receive unemployment benefits for a set maximum duration (26 weeks), which does not vary with hours worked or prior earnings. Claimants in these states are subject to similar weekly filing requirements and may stop receiving benefits before their full duration has expired.

FIGURE 7-6

Virginia's average and maximum benefit levels are relatively low, meaning that benefits replace less of claimants' prior earnings than in other states



SOURCE: U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Chartbook, Section A: Labor Force Data; 2020 Comparison of State Unemployment Laws.

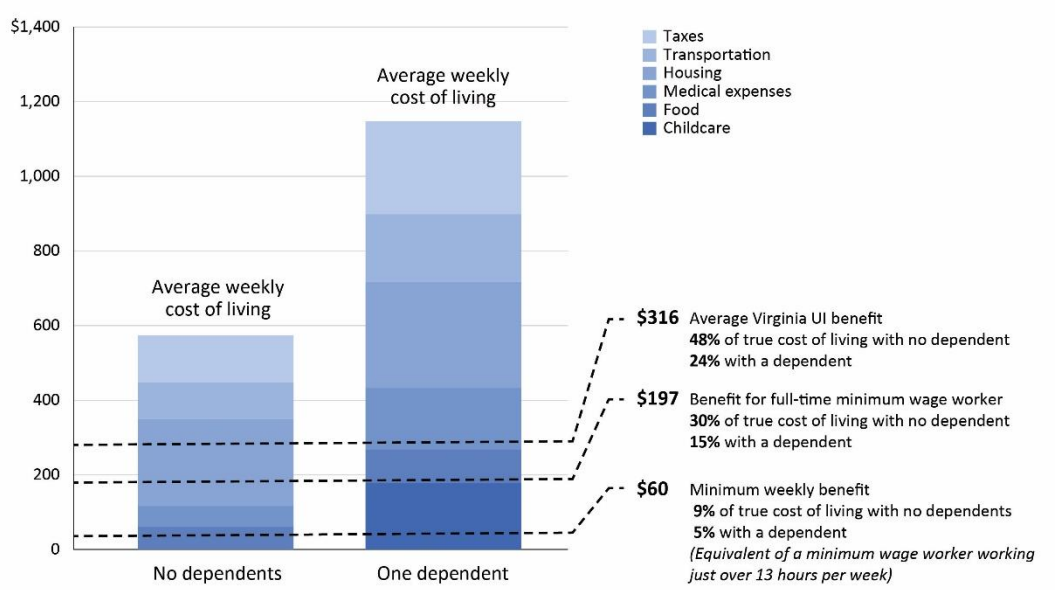
NOTE: The right-hand side of the figure reflects 2019 replacement ratios prior to the COVID-19 pandemic. Replacement ratios typically fall during recessionary periods as the group of individuals claiming UI diversifies and includes higher-income individuals who cannot replace their income at the same rates because of maximum benefit caps. In 2020, however, replacement ratios improved in some states as a greater share of lower-income earners from high-risk industries affected by pandemic-related closures claimed unemployment insurance.

Virginia's UI benefit levels do not cover basic food, housing, and transportation needs for many individuals

Cost-of-living estimates use cost-of-living data from the Massachusetts Institute of Technology's (MIT) Living Wage Project and are limited to Virginia's traditional state UI program, where the maximum weekly benefit is $378. This analysis does not include temporary federal UI programs (e.g., PUA, PEUC) that increased benefits $300–$600. See Appendix B for additional information.

Virginia's standard state UI benefit replaces less than half of basic food, housing, and transportation costs for many individuals, particularly those who qualify for lower benefits, live in expensive areas, or have dependents (sidebar). For example, a single adult working full time and making the minimum wage could be eligible for a $197 weekly unemployment benefit. This weekly benefit would not cover the individual's cost of housing or the combined cost of food, transportation, and medical expenses (Figure 7-7).

FIGURE 7-7
Benefits do not support basic food, housing, and transportation costs for many individuals



SOURCE: Massachusetts Institute of Technology, Living Wage Project; U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Chartbook, Section A: Labor Force Data.
NOTE: Individuals whose pre-unemployment income qualifies them for the $60 minimum weekly benefit and individuals whose pre-unemployment income was equivalent to full-time minimum wage would not have been able to cover their cost of living even when employed. All data comes from MIT's 2020–2021 update, and values are reported in 2020 dollars. The new minimum wage of $9.50 per hour was used to calculate earnings and benefit levels for minimum wage workers. The benefit levels shown above are solely based on traditional state UI and not expanded federal benefits available during the COVID-19 pandemic. Taxes reflect MIT estimate that single adults in Virginia pay approximately $6,500 and individuals with dependents pay approximately $13,000 in taxes annually.

The percentage of living expenses standard UI benefits replace varies widely across the state. For example, the $316 average weekly benefit (2019) would cover 65 percent of basic living costs in Roanoke and 40 percent in Arlington County. The $197 weekly benefit for full-time minimum-wage earners would cover 41 percent of basic living costs in Roanoke and 25 percent in Arlington County, because the local cost of living varies significantly.

The UI benefit covers a lower proportion of expenses for claimants with dependents. For claimants with a single dependent, a weekly UI benefit of $316 would cover roughly 19 to 31 percent of the cost of living and dependent care. A weekly UI benefit of $197 would cover only 12 to 20 percent of the cost of living and dependent care. The weekly UI benefit covers less expenses if the claimant supports additional dependents.

General Assembly could consider increasing UI benefits

A state's UI benefit levels are a legislative policy decision. UI benefits are funded through state UI employer taxes; therefore, increasing benefits would require increasing employer tax rates or identifying an alternative funding source (e.g., general funds or a new administrative UI tax). Chapter 8 includes policy options that could raise additional revenue for the trust fund and potentially cover the costs of benefit enhancements the General Assembly wishes to implement, if any.

Increasing UI benefits by tying them to an economic metric

Virginia does not regularly increase UI benefit amounts, which is a primary reason its UI benefits are lower than other states. Virginia's UI benefits were last increased in 2014 (sidebar). Experts recommend automatically indexing maximum weekly UI benefits to an economic metric that will rise with earnings levels, such as a percentage of the state's average annual salary or average weekly wage. A 1981 third-party review of Virginia's UI program recommended tying the maximum weekly benefit amount to 55 percent of the state's average weekly wage and indexing it annually but was only partially implemented (sidebar). Currently, 35 other states automatically index their maximum weekly benefit amount to a statewide economic metric (e.g., the state's average weekly wage or average annual earned income).

The General Assembly has several options to automatically increase its UI benefits if it wishes to do so. Specifically, the General Assembly could amend state law to index the maximum UI benefit to a statewide economic measure, such as a percentage of the state's average weekly wage (e.g., 50 percent) or the state's annual growth rate of the average weekly wage (e.g., 3 percent). The economic metric chosen would affect the size and speed of UI benefit level increases and would have varying fiscal impacts on the state's UI trust fund. For example, if benefits were indexed to 50 percent of the state's average weekly wage, maximum benefits would increase from $378 to approximately $682 in the first year and automatically adjust each year after that as the state's average weekly wage changes (Table 7-2). This approach would have a significant upfront cost for the UI trust fund—approximately $46 million in the first year (CY23) and $340 million over five years (CY23–CY27). In contrast, if benefits were indexed to the state's annual growth rate of the average weekly wage (assumed to be nearly 3 percent), maximum benefits would increase from $378 to approximately $389 in the first year and automatically adjust each year after that as the state's average

The **General Assembly altered UI benefit levels in 2008 and 2014**. In 2008, the maximum benefit was raised from $363 to $378, which corresponded to 44% of the state's average weekly wage. (This was a one-time increase; benefits were not indexed to weekly wages.) In 2014, the General Assembly altered the minimum benefit, increasing it from $54 to $60 and raised the threshold for monetary eligibility from $2,700 to $3,000.

weekly wage changes. The financial impact to the trust fund would occur more gradually but still accumulate over time, totaling approximately $2 million in the first year (CY23) and $41 million over five years (CY23–CY27).

Under any scenario, the General Assembly could require adjustments to the benefits formula to be made gradually each year until the target amount or growth rate is achieved. This approach would prevent the increase in benefits from too acutely affecting the trust fund, especially if an increase were to be enacted during recovery from a recession or other period of high unemployment.

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

POLICY OPTION 4

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to automatically adjust unemployment insurance benefit amounts annually based on a statewide economic metric.

If the General Assembly wishes to increase UI benefits but does not want to do so annually, another option is to enact a one-time increase to UI benefits. The increase could be designed several ways. For example, Virginia's maximum UI benefit could be increased to $577, which was 50 percent of Virginia's average weekly wage in 2019 (Table 7-2). This change would cost the state's trust fund approximately $32 million in the first year (CY23) and $209 million over five years (CY23–CY27).

POLICY OPTION 5

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to enact a one-time increase in the maximum unemployment insurance benefit amount.

TABLE 7-2

Increases to Virginia's maximum benefit amount could be structured in several ways, but each option would increase trust fund costs

Policy	New max UI benefit amount (2023)	Potential state UI trust fund cost (2023)
Index max UI benefit amount (e.g., to 50% of VA's average weekly wage)	$682	$46 million
Index growth of the max UI benefit amount (e.g., to growth rate of VA's average weekly wage of 2.8%)	$389	$2 million
One-time increase to max UI benefit amount (e.g., to 50% of VA's 2019 average weekly wage)	$577	$32 million

SOURCE: JLARC analysis of data from the U.S. Department of Labor and U.S. Bureau of Labor Statistics using the UNIS-X model.

NOTE: Table reflects the new potential maximum benefit amount and the potential initial increase to Virginia's UI trust fund in calendar year 2023. Maximum benefit amounts and trust fund costs would increase in later years for several of the policies. For more information about the assumptions and data used for these projections, see Appendix B.

Increasing benefits for claimants with dependents

Virginia could also consider increasing UI benefits for eligible individuals with dependents. Dependents significantly increase individuals' living expenses. Thirteen states currently have "dependent allowances" to help benefits cover some of the increased cost of dependent support. In Maryland, for example, individuals can receive between $8 and $40 per dependent up to a certain amount. In New Jersey and Rhode Island, individuals receive dependent allowances, which are calculated as a portion of claimants' weekly benefit amount. States' definitions of a dependent varies, but dependents must be primarily supported by the individual.

A dependent allowance could be calculated as a percentage of an individual's weekly benefit amount for each dependent. Alternatively, the state could develop a dependent allowance based on a portion of the median cost of childcare for Virginians. When considering whether to increase benefits for claimants with dependents, the General Assembly could take into account other supports they receive. For example, the TANF program is available to help low-income Virginians with dependent expenses. The new federal Child and Dependent Care Tax Credit is also available to help with the costs of dependents. The credit is set to sunset in 2021 but may remain available through 2025 if Congress extends it.

POLICY OPTION 6

The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefit formula to create a dependent allowance that is tied to an economic metric or calculated as a portion of the individual's weekly benefit amount.

Regularly measuring UI benefits would inform policy decisions

Regardless of whether the General Assembly increases UI benefits, Virginia should regularly track metrics related to UI benefits and establish a mechanism to help assess the adequacy of benefits. Neither VEC leadership nor the legislative committee that currently oversees the state's UI trust fund (the Commission on Unemployment Compensation) regularly examine metrics related to recipiency, average benefit levels, or benefit income replacement ratios. VEC should annually calculate and compile information on average UI benefit levels, the average income replacement of UI benefits in Virginia, and the recipiency rate for UI benefits. VEC should include this information in its annual report to the Commission on Unemployment Compensation. Other states, like New Jersey and California, regularly review state UI benefit levels, income replacement ratios, and recipiency rates.

RECOMMENDATION 32

The General Assembly may wish to consider amending section § 60.2 of the Code of Virginia to require the Virginia Employment Commission (VEC) to annually calculate average unemployment insurance (UI) benefit levels, the average income replacement of UI benefits in Virginia, and the recipiency rate for UI benefits. VEC should provide this information in its annual report to the Commission on Unemployment Compensation.

As part of this regular review of UI benefits, the Commission on Unemployment Compensation could be granted the authority to convene an advisory committee to consider potential changes to Virginia's UI benefits. Committee membership could include employer representatives (e.g., chambers of commerce, industry associations), employee representatives (e.g., labor advocacy groups, legal aid representatives), and subject matter experts (e.g., labor economist, finance expert, labor law expert). The advisory committee could be tasked with (1) reviewing UI benefits, replacement ratios, and recipiency rates; (2) identifying factors that affect UI benefits and recipiency (e.g., design of UI benefit calculations or UI eligibility criteria); (3) assessing the advantages and disadvantages of potential changes to benefits; and (4) recommending to the Commission options to change benefit levels when needed.

POLICY OPTION 7

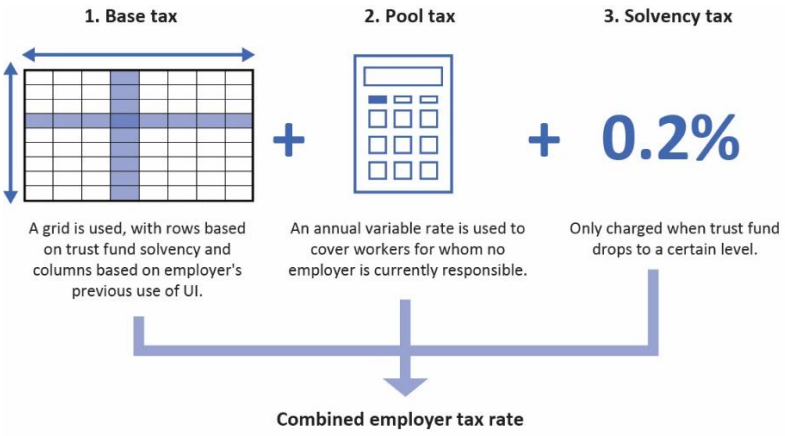
The General Assembly could amend section § 60.2 of the Code of Virginia to authorize the Commission on Unemployment Compensation to convene an advisory committee comprising stakeholders and subject matter experts to (1) review UI benefits, replacement ratios, and recipiency rates; (2) identify factors that affect UI benefits and recipiency (e.g., design of UI benefit calculations or UI eligibility criteria); (3) assess the advantages and disadvantages of potential changes to benefits; and (4) recommend to the Commission options to change benefit levels when needed.

8 Unemployment Insurance Trust Fund Solvency and Employer Taxes

Federal law requires states to fund unemployment insurance (UI) benefits with employer taxes, but most of the tax design and collection are left to states' discretion. Collected taxes are deposited in special trust funds, which can be used only to pay UI benefits. A state's trust fund level will rise if tax collections exceed benefit payments in the same year or fall if the reverse is true. Trust funds must be adequately funded because eligible claimants are legally entitled to benefits. In some states, including Virginia, trust fund health also affects the amount of state UI taxes that employers pay, with rates increasing when the trust fund drops below certain levels.

In addition to the state's economy and the demand for UI benefits, Virginia's trust fund levels depend on the General Assembly's policies for employer UI taxes. State law establishes three components of the UI tax on liable employers (Figure 8-1). The first component—the *base* tax—consists of 14 possible schedules depending on the prior year's trust fund level. Each schedule contains a range of rates; an employer's assigned rate depends on its prior use of UI (unless assigned a flat rate such as for new or delinquent employers). The second component is a *pool tax* paid by all employers to fund benefits that cannot be charged to a specific Virginia employer (e.g., paid to former workers of out-of-state employers or employers that are now out-of-business). The third component is a *solvency tax* of 0.2 percent that goes into effect when the state's trust fund falls below 50 percent of the state's solvency goal. Based on the trust fund level at the end of the prior fiscal year and the amount of benefits needing to be funded by the pool tax, the Virginia Employment Commission (VEC) determines each year's tax rates.

FIGURE 8-1
Virginia's UI tax has three parts



SOURCE: JLARC analysis of Code of Virginia.

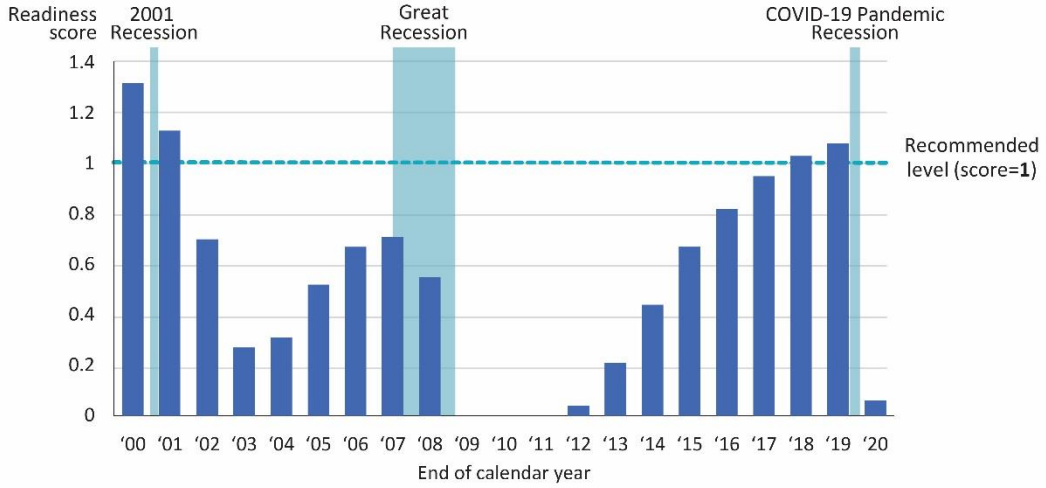
Virginia's UI trust fund has recovered from recessions at a pace comparable to other states

The U.S. Department of Labor (DOL) and experts view the optimal UI trust fund balance as large enough to remain solvent during a typical economic downturn and to avoid "prolonged and large-scale indebtedness" if insolvency does occur. States need outside funding to cover trust fund insolvency, typically through interest-bearing loans. Insolvent or low trust funds require either increasing employer taxes or cutting claimant benefits. Higher trust fund levels can mitigate or delay the need for these actions until the economy improves.

The **Average High Cost Multiple** is the most common measure of UI trust fund readiness used by experts to assess the funds needed to pay UI benefits during economic downturns. The ratio's numerator is the trust fund balance divided by covered wages and the denominator is the average of the three highest benefit cost ratios (i.e., benefits paid divided by covered wages in same year) in the past 20 years or three recessions (whichever time period is longer).

According to a widely used measure of trust fund readiness (sidebar), Virginia's readiness met recommended levels before two of the last three economic recessions. A trust fund with a readiness score of "1" is commonly recommended and means a state could afford one typical year of recession payments. Virginia's readiness score fell below the recommended score prior to the Great Recession and slightly exceeded the recommended score prior to the 2001 recession and COVID-19 pandemic (Figure 8-2). (Virginia's readiness score exceeded the 50-state median prior to the 2001 recession and was similar to the 50-state median prior to the Great Recession and COVID-19 pandemic.)

FIGURE 8-2
Virginia's trust fund met the recommended goal before two of the last three recessions

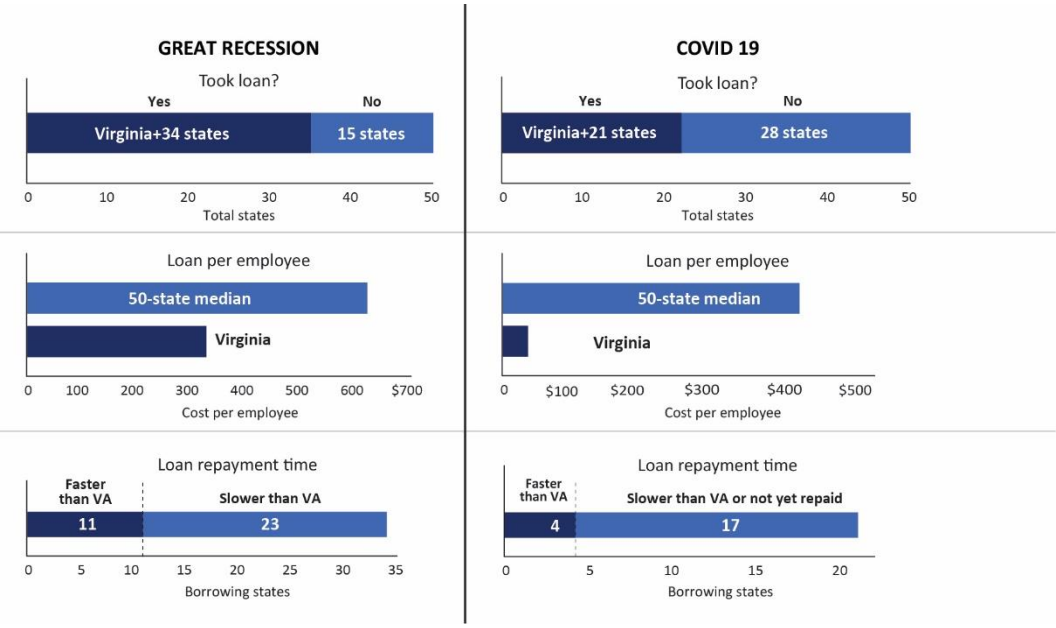


SOURCE: National Bureau of Economic Research recession definitions and JLARC analysis of DOL ETA 394 data.
NOTE: Because readiness depends on prior benefit payouts and current trust level, a readiness score of "one" translates into different trust fund levels across time for the same state. The 2001 recession occurred March through November 2001, and readiness data reflects the end of CY2000. The Great Recession occurred December 2007 through June 2009, and readiness data reflects the end of CY2007. The COVID-19 pandemic recession occurred February through April 2020 and readiness data reflects the end of CY2019.

Virginia needed to borrow money from the federal government to pay UI benefits during the last two economic recessions like many states (sidebar), but its loan amounts were lower than other states (Figure 8-3). Virginia borrowed $986 million during the Great Recession and $164 million during COVID-19, but these amounts are lower than other states when measured relative to the total number of workers. Virginia did not need to borrow money to fund the increases in UI benefit levels during the 2001 recession, but eight states did.

States can receive **trust fund loans** from the U.S. Treasury, and loans are subject to interest (with exceptions). Repayment is due by November 10 of the second consecutive year during which a state has an outstanding loan on January 1.

FIGURE 8-3
Virginia's UI loan amount and repayment times



SOURCE: U.S. Treasury data on state loans.
NOTE: Whether a loan is required and its amount are not a sole indication of solvency; some states, including Virginia, used outside funding sources like CARES to avoid or reduce borrowing. The 50-state median and loan repayment time are limited to borrowing states. Borrowing frequency and amount are limited to federal loans, and therefore exclude other sources of funding used by some states, such as bonds.

The cost of borrowing from the federal government to pay UI benefits has been moderate for Virginia. The state paid $14 million in interest on Great Recession loans. Unlike some states, Virginia did not reduce benefit levels to aid trust fund recovery after the Great Recession. After the Great Recession, Virginia missed its loan repayment deadline by one year, causing employers in the state to pay an extra $21 per employee in federal UI taxes in 2011. Employer taxes increased because the federal UI tax rate rises each year after the due date federal loans are unpaid. (Federal UI taxes are a flat rate determined by federal law and fund UI administration rather than trust funds; see Chapter 1.) More recently, Virginia avoided paying interest on COVID-19 loans because it fully repaid the loans before interest starting accruing.

Virginia repaid its federal UI loans faster than some states. Faster repayment reduces interest and avoids federal tax increases for employers. Virginia repaid its Great Recession and COVID-19 loans faster than the majority of states that borrowed money (Figure 8-3). Virginia deposited $1.1 billion of federal COVID-19 funds (Coronavirus Aid, Relief, and Economic Security Act and American Rescue Plan Act) into the UI trust fund. This allowed Virginia to quickly repay its COVID-19 loan, reduce its rebuilding time, and avoid prolonged increases in state UI employer taxes.

Virginia has not always rebuilt its UI trust fund balance within five years, as recommended by DOL. After loan repayment, DOL recommends that states rebuild trust funds within five years because that is the average frequency of recessions in the modern economy. Trust funds that are rebuilt quickly are better able to weather recessions. When the 2001 recession ended, Virginia's trust fund was not close to regaining its prior level six years later at the onset of the Great Recession. As a result, the trust fund was not well positioned to pay out claims during the Great Recession. It took Virginia six years to rebuild its trust fund to the previous level after the Great Recession ended. The recession caused by the COVID-19 pandemic occurred farther from the preceding recession than is typical for recessions, which gave Virginia more years to rebuild its trust fund. The state will need to maximize revenue collection to rebuild the UI trust fund more quickly to prepare for the next recession.

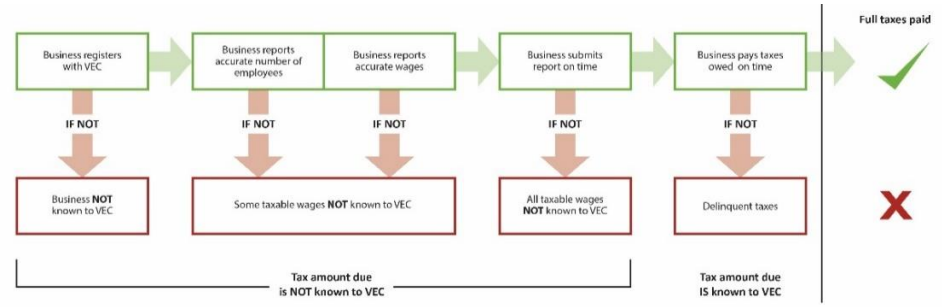
Undetected **misclassification** can allow employers to underpay income tax, workers' compensation premiums, and UI taxes. Misclassified workers can lose important rights (e.g., minimum wage) and benefits (e.g., UI, workers' compensation).

Virginia initiatives to address misclassification in 2021 include a new unit established at the OAG and an inter-agency task force (including VEC) examining misclassification on large construction projects. VEC has dedicated a team to misclassification since 2015.

Improvements to VEC's employer tax processes would increase tax revenue

Consistent and comprehensive tax collection is important to the trust fund's health, but some employers do not pay the taxes for which they are liable. Tax underpayments can result from employers misunderstanding UI rules or intentionally violating them to reduce tax payments (Figure 8-4). Employers who are liable for UI may not register with VEC so they pay no UI taxes. Even registered employers may receive a lower tax bill than they should if they undercount taxable wages in their quarterly reports to VEC. For example, an employer may illegally misclassify workers as independent contractors instead of employees (sidebar), so the employer avoids paying taxes on their wages. Lastly, employers may register and submit accurate reports to VEC but not pay the taxes owed. Employers who do not pay owed taxes can indirectly increase the tax burden on employers who are complying with the law, because a lower trust fund balance results in higher tax rates for everyone.

FIGURE 8-4
Employers can underpay UI taxes in several ways



SOURCE: Interviews with VEC tax staff and review of VEC field tax manual.

VEC could take additional steps to detect unregistered employers subject to UI taxes and registered employers that are underpaying

VEC takes most steps recommended by DOL or used by other states to identify UI tax revenue that is legally owed, but not currently reported, to the state. DOL advises states to educate new employers about UI and make registration easy to maximize the number of new employers proactively paying UI taxes. VEC accomplishes these goals through integrating its registration process with that of the Virginia Department of Taxation and by posting a VEC link on several state agencies' websites (e.g., the Department of Small Business and Supplier Diversity and the State Corporation Commission). To identify employers who did not voluntarily register with VEC, the agency analyzes federal internal revenue service (IRS) data. The IRS provides VEC with lists of new employers that (1) recently registered with the IRS or (2) pay federal UI taxes. VEC sends letters to employers who are not registered with VEC that explain their potential tax liability.

VEC could adopt an additional step used by some other states to pursue unregistered employers. Currently, VEC does not follow up when employers they have notified of their potential tax liability do not register with VEC. In contrast, Utah audits some of those employers and indicates this practice can be helpful in finding unreported workers. Virginia should conduct a one-year pilot program to assess the effectiveness of auditing employers who do not respond to notices of potential tax liability.

VEC should also conduct a separate one-year pilot program to assess the effectiveness of using a new data source to find unregistered employers liable for UI taxes. States such as Montana and Utah use Form 1099 data from the IRS regarding independent contractors to identify unregistered employers potentially liable for UI taxes. VEC should identify employers not registered with VEC who reported 1099 workers to the IRS (sidebar) and send notices to these employers that they are potentially liable for UI taxes. To reduce the administrative burden of this effort, VEC could prioritize larger employers (e.g., with at least five independent contractors).

VEC used **1099 data** from 2015 to identify registered employers with a high number of 1099 workers (independent contractors). Staff audited a selected subset of those employers. However, VEC did not tally the results of those audits (e.g., amount of tax revenue added), so it is impossible to conclude whether the approach was cost effective.

VEC should assess the results of both pilots to determine if they should be converted into permanent practices. In making the decisions, VEC should consider the amount of new tax revenue from audited employers who are found liable for the UI tax, staff time required for the new audits, and their value in deterring employers from misclassification.

RECOMMENDATION 33

The Virginia Employment Commission (VEC) should conduct a one-year pilot program to identify employers who owe unemployment insurance taxes but are not registered with VEC by auditing employers who do not register with VEC after receiving notifications of potential tax liability. VEC should assess the pilot program's effectiveness to decide whether to use this methodology on an ongoing basis.

RECOMMENDATION 34

The Virginia Employment Commission (VEC) should conduct a one-year pilot program to identify employers who owe unemployment insurance taxes but are not registered with VEC by auditing a sample of employers who may be misclassifying workers based on their 1099 tax filings. VEC should assess the pilot program's effectiveness and decide whether to use this methodology on an ongoing basis.

"**SUTA dumping**" is the federally prohibited practice of deliberately selling or otherwise restructuring businesses to lower UI tax rates. For example, an employer with a high UI tax rate (because of high prior UI use) creates a shell company whose rate as a new business is lower, then transfers workers to the new company. "SUTA" stands for the federal State Unemployment Tax Act.

VEC currently lacks a "SUTA dumping" detection system, which violates federal requirements. Since 2010, DOL has required states to use automated systems to identify employers that have engaged in illegal "SUTA dumping" (sidebar). These systems perform checks such as flagging employers who moved a large number of workers from one business to another. VEC had an automated SUTA dumping detection system prior to 2015, but it stopped working when VEC launched the first phase of its modernized UI tax system. VEC did not address the problem because it would have required VEC IT staff to update the programming, and these staff were dedicated to working on VEC's UI modernization project. A DOL audit in 2018 cited VEC's noncompliance with SUTA dumping software requirements, and VEC said it planned to resume using it in 2019. Currently, VEC has no timeframe for when the SUTA dumping system will be re-activated.

VEC should reinstate an automatic SUTA dumping system no later than December 2022. This will allow VEC to complete the ongoing UI modernization project (expected June 2022) before dedicating IT resources to recoding the SUTA dumping system. Reinstating this system will put VEC back in compliance with DOL requirements and allow VEC to collect additional UI tax revenue. Nationwide, states reported capturing $21 million in additional UI revenue through SUTA dumping identification in 2019. VEC's system should contain all components listed in federal law and guidance, including automatic processes to flag employers with unusually high movement of employees between quarters.

RECOMMENDATION 35

The Virginia Employment Commission should reinstate its State Unemployment Tax Act dumping identification system no later than December 2022.

VEC audits fewer employers than DOL requires, but individual audits are effective at identifying owed UI taxes

A major responsibility of VEC tax staff is auditing a subset of registered employers annually. During audits, staff review employer records (e.g., W-2s, time sheets) to check employer compliance with tax rules. VEC collects owed UI taxes from a business when an audit finds unreported workers or taxable wages. The amount of UI revenue collected through audits depends on the volume of audits conducted and the effectiveness of each audit. Audits are conducted by field staff, each of whom has an assigned geographical domain.

VEC has not always met DOL's standards for the number of employers and share of wages audited. In three of the five years preceding the pandemic (sidebar), VEC slightly underperformed the standard of auditing 1 percent of employers. For example, VEC audited 0.9 percent of employers in 2019. VEC tries to meet this standard by requiring each field tax staff member to annually audit at least 52 employers.

Audits during 2020: VEC fell significantly short of DOL's standard and the national total for both audit *volume* standards. VEC surpassed DOL's standard and the national total for both audit *effectiveness* metrics.

In all five years before the pandemic, VEC underperformed DOL's standard of auditing 1 percent of total wages. VEC's underperformance was more pronounced for this standard; for example, VEC audited only 0.5 percent of wages in 2019 (third lowest in the nation). VEC tries to meet this standard by requiring each staff member to annually audit at least one large employer.

VEC leadership attribute low audit volume to staff vacancies and turnover, but another reason is underperformance by existing staff. Since 2018, an average of 13 percent of the approximately 50 field tax positions responsible for audits were vacant. In addition, tax staff are not meeting VEC's requirement to audit 52 employers annually. For example, of the 37 staff in FFY19 (sidebar), only 25 staff completed at least 52 total audits and 34 staff completed at least one large audit. To consistently meet DOL's standards, VEC needs to increase the number of audits completed by each tax staff member or increase the number of total tax staff, or both.

Audit analysis uses federal fiscal year because that is the time period for VEC's 52 audit requirement. In addition to the 37 staff present and trained during the full FFY19, eight staff were new to the position or employed only part of the year.

VEC regularly surpasses DOL's two measures of tax audit effectiveness, but collects less new tax revenue per audit than is collected in other states. In each of the five years preceding COVID-19, VEC exceeded DOL's standards to (1) identify at least 2 percent of misreported *wages* out of all audited wages and (2) identify an average of two misclassified workers per audit. While those benchmarks are important, maximizing the amount of additional tax *revenue* that can be collected should be prioritized. However, VEC's audits do not capture as much tax revenue as other states' audits. For example, in 2019, VEC captured an average of $114 net new taxes per audit, compared with the 50-state median of $168. Virginia's low taxable wage base would appear to at least partially explain the lower amount of tax revenue collected per audit in Virginia.

Targeted audits are more likely to collect additional tax revenue according to staff, but VEC selects employers to be audited through a mix of random and targeted selection. DOL requires 10 percent of audits to be random but otherwise encourages states to be "targeting their audits to maximize the discovery of improper employer reporting" through audit criteria "that reflect potential noncompliance." Staff have full flexibility in selecting employers to audit and choose the majority at random, according to managers. The remainder are selected based on the employer's industry or history of concerning incidents (e.g., repeated instances of former employees filing for UI benefits that were not reported by the employer, recurrent delinquency, discrepancies in quarterly reports, or anonymous tips).

Requiring more targeted audits of employers would likely yield more tax revenue. VEC should require tax auditors to conduct at least half of their audits (26) on employers more likely to avoid UI taxes. VEC should develop a definition for employers at risk of UI tax avoidance—to include those in industries with a high likelihood of misclassification or who previously exhibited concerning behavior—and develop a system for tax staff to identify employers meeting that definition. Such a system would ensure consistency in the types of employers flagged for potential audits among regions while retaining flexibility for staff to pick audits based on their expertise and personal knowledge of employers.

RECOMMENDATION 36

The Virginia Employment Commission (VEC) should modify existing unemployment insurance (UI) tax audit policies to require field tax auditors to conduct at least half of their audits per year from a list of employers identified to be at-risk for UI tax avoidance. VEC should define "at-risk" to include industry and employer-specific factors and establish a system for consistently identifying such employers.

VEC should add a collection method for delinquent taxes and strengthen accountability for staff collection efforts

Unpaid employer UI taxes are another potential revenue source for the UI trust fund. VEC tax staff are responsible for collecting taxes and are required by Virginia law to "take all appropriate and cost-effective actions to aggressively collect" delinquencies. In 2019, 4 percent ($15.6 million) of UI taxes were not paid on time.

VEC's collection of delinquent taxes is similar to other states and comparable to Virginia state agencies. In 2019, Virginia collected 98.4 percent of UI taxes that were known to be owed, which was similar to the 50-state median of 98.3 percent. Another measure of tax collection effectiveness is the percentage of debt over 60 days old. In an analysis of state debt as of March 2020 conducted by the Virginia Department of Accounts, 22 percent of VEC's UI tax debt was over 60 days due. This was similar to the average across state agencies (excluding the Virginia Department of Taxation and courts system) of 19 percent.

VEC could collect additional delinquent taxes by using the Treasury Offset Program, which is required by federal and state law. Through this program, states submit lists of debt over a year old to the U.S. Treasury to intercept federal money, such as income tax refunds. Since 2015, federal law required states to participate for employer UI taxes, and 37 states now participate. (States are also required to use the federal Treasury Offset Program to collect debt from individuals who have received UI benefit overpayments; see Chapter 4.) VEC would collect additional delinquent employer taxes by using this program, though the amount is difficult to estimate because other states with similar tax collection volume to Virginia collect varying amounts of delinquent taxes, ranging from hundreds of dollars to nearly one million dollars. VEC staff attribute delays in participation to having limited IT staff available to implement program changes needed to fulfill federal data submission requirements. DOL granted VEC an extension through June 2020 to implement the program, but VEC did not meet the deadline. VEC currently plans to send tax debt to the Treasury Offset Program once its UI modernization has been completed and IT staff become available.

RECOMMENDATION 37

The Virginia Employment Commission should begin using the federal Treasury Offset Program for applicable delinquent taxes as soon as staff resources become available.

VEC staff do not always pursue delinquencies in a timely and thorough manner. VEC policies require staff to resolve cases within 90 days of assignment, and staff have several methods to collect delinquent taxes. However, JLARC reviewed 14 employers who were delinquent in August 2019 (sidebar), and nine were still delinquent two years later. Per VEC policies, staff should steadily escalate efforts from warning methods, such as warning letters, to more aggressive measures (e.g., subpoenas, bank liens). However, none of these aggressive measures were used in four of the 14 cases. Staff in two cases started using these more aggressive collection options two years after delinquency. In addition to formal warning letters and more aggressive measures, VEC staff are expected to use informal methods to pursue delinquencies, which can sometimes be worthwhile, according to tax staff and managers. For example, calling an employer gives staff the opportunity to convey the financial repercussions, and internet searches can reveal that an employer may have moved and not received delinquency letters. Staff used these types of informal efforts to collect delinquencies in only six of the 14 cases.

JLARC conducted a **case file review** of 14 randomly selected employers who received the delinquency rate in 2019. See Appendix B for more details.

More systematic tracking of outstanding delinquencies could help managers identify and assist underperforming staff, including initiating informal and aggressive efforts when appropriate. DOL expects states to monitor tax collection efforts. A 2019 VEC Internal Audit report found that staff's efforts to collect delinquencies were inadequate. In response, VEC developed a corrective action plan that would start providing managers with lists of outstanding delinquencies quarterly. The agreed-upon corrective action plan was not implemented at least in part because COVID-19 began three months after its completion. However, managers stated that regular information on

outstanding delinquencies would be helpful because the current tax software system does not allow ready access to that information. Without this information, assessing whether staff are taking timely and appropriate steps to collect delinquent payments is "very difficult," according to two regional managers. They can manually review individual employer records, which is time-consuming and can only provide insight into a limited number of cases.

> *"There is very little time to actually process work because customer service has taken over most of the work day."*
>
> **– VEC central office tax staff**

> *"Employers [who] attempt to resolve their questions by contacting the Central Office will contact the Field Tax Representative in their area when they don't get a response. Field Tax Representatives fill the Customer Service void requiring them to constantly shift their duties."*
>
> **– VEC field tax staff**

RECOMMENDATION 38

The Virginia Employment Commission should provide quarterly reports to tax division regional managers that list each employer with tax debt more than six months past due and require the managers to use this information to ensure that tax field staff are taking all reasonable steps to collect the debt.

Reducing tax administrative workloads would increase time for audit and delinquency collection

Meeting customer service demands in addition to fulfilling other responsibilities is sometimes challenging for VEC tax staff (sidebar). Unlike VEC's benefits division, there is no designated customer service staff for tax assistance. In JLARC's survey, a minority (41 percent) of all tax division staff agreed their division was "able to effectively meet the needs of VEC customers." In particular, central office tax staff struggle to both respond to employer inquiries and fulfill mission-critical tasks in a timely manner (e.g., processing payments). Approximately half (48 percent) of central office tax staff who responded to a JLARC staff survey (sidebar) described their workload as "too much," which was higher than the rest of the agency (31 percent), and central office tax staff consistently work overtime hours. While overtime is not significant for field tax staff, they estimate spending 5 to 20 percent of their time on customer service, reducing time available for audits and delinquency collection.

JLARC surveyed VEC staff in April 2021 about their perceptions of their job, VEC as an employer, IT systems and security, and agency leadership. JLARC received responses from 789 VEC staff, for an overall response rate of 69 percent. The survey included full-time and part-time agency staff. Contract staff were not included in the survey. (See Appendix B for more information.)

Centralizing some customer service functions would allow VEC to use resources more efficiently. VEC should make certain tax staff positions responsible for providing basic customer service (e.g., looking up tax rates or deactivating an account) in a centralized manner, and adjust the number of positions as needed for adequate capacity to answer questions from employers. VEC should modify its website and formal letters to direct employers to these customer service staff. (VEC should maintain the responsibility of specialized customer service [e.g., advising on mergers] with relevant divisions.) With electronic filing being implemented, the workload is decreasing for some central office staff, positioning them for this new role. Eliminating the responsibility of answering incoming employer questions would allow skilled staff to concentrate on complex work, as well as create time for more audits and delinquency efforts. The Virginia Workers' Compensation Commission initiated a similar restructuring to separate customer service from staff with other responsibilities and found the approach improved efficiency.

RECOMMENDATION 39

The Virginia Employment Commission should designate customer service positions in the tax division to handle basic employer communications and questions.

Another way to gain efficiencies in the tax division would be to require electronic payment of taxes. Currently, employers have the *option* to pay taxes online or mail hard-copy checks to VEC. Staff estimate that paper payments account for 40 percent of total payments but 60 percent of staff processing time. Each paper payment requires VEC staff to sort agency mail, deliver checks to the right unit, type up its contents, compare the payment amount to agency records, and shred checks after a waiting period. These steps, in combination with intermittent staff shortages, sometimes result in waits of weeks or months for payments to appear in VEC's electronic records, making it more difficult for staff to track delinquent payments. Delays also increase calls from concerned employers. VEC should require electronic payment of taxes (and related transactions such as fine payments) in 2023, by which time employers will have transitioned to electronic filing. VEC should offer exceptions for employers for the same circumstances as currently provided for quarterly report submissions. Utah took this step, and found it saved significant time. Similarly, the Virginia Department of Taxation reported a smooth roll-out of its electronic payment mandate, with nearly all employers now paying electronically. With the reduction of staff resources spent processing paper payments, VEC could increase the number of tax field staff dedicated to audits and collection of delinquent payments.

RECOMMENDATION 40

The Virginia Employment Commission should require employers to make unemployment insurance payments electronically starting in 2023, develop criteria that would allow employers to be granted an exception to this requirement, and notify employers of the criteria.

Changes to tax design are not necessary but could be considered

Virginia's state employer UI tax design is adequate to support trust fund solvency and aligns with best practices recommended by experts. Specifically, Virginia's 14 tax rate schedules, solvency tax, and pool tax create a wide range of rates for employers, a goal encouraged by experts. Changes to Virginia's UI taxes are triggered by solvency levels, which is preferable to the static measures used by some states. Additionally, Virginia has a forward-funded UI tax structure, meaning that its tax revenue exceeds benefit payments during a strong economy to build up trust fund reserves. Further, the amount of taxes collected and the amount of benefit payments are aligned to prevent the trust fund from becoming too overfunded or underfunded.

Revenue increases are not essential because Virginia's tax structure is generally sound, and the state can take federal loans to ensure solvency. However, additional revenue could be used to build a larger trust fund reserve to limit the fluctuations in tax rates and would be needed if the legislature increased UI benefit levels. (See Policy Options 4 through 6 in Chapter 7.)

If the General Assembly wishes to increase revenues for the UI trust fund, the legislature could consider policy changes that would enhance the fairness of the state employer UI tax structure. The tax structure results in employers with lower UI usage subsidizing the benefit costs for employers with the greatest use. Policy changes to increase revenue for the UI trust fund could be structured to increase taxes on certain employers while leaving other employers' tax rates unchanged. There are several options to consider, including raising the taxable wage base, minimum tax rate, or maximum tax rate (Table 8-1).

Employers would face a financial burden from additional UI taxes. Therefore, any changes could be delayed until average UI tax rates return to their level prior to COVID-19 pandemic. Because of substantial federal funds being deposited into the UI trust fund and state policies restricting UI tax growth in the prior and upcoming calendar years, this may be soon. As long as changes were modest, Virginia's UI tax rates would remain relatively low compared with other business taxes and other states' UI tax rates. Virginia's average tax rate as a percentage of total wages (0.2 percent) was eighth lowest in the nation and about half the 50-state median (0.5 percent) in 2019. Additionally, average UI taxes were at most 1 percent of total business taxes in Virginia in 2019. The average Virginia employer pays more in other payroll taxes (e.g., Medicare and Social Security) and income taxes (personal or corporate).

Forty-three states had a higher **taxable wage base** than Virginia in 2019, with the highest being Washington at $52,700. Alabama had the same base as Virginia. Five states were lower than Virginia: Louisiana had a base of $7,700 while Arizona, California, Florida, and Tennessee had bases at the federal minimum of $7,000.

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

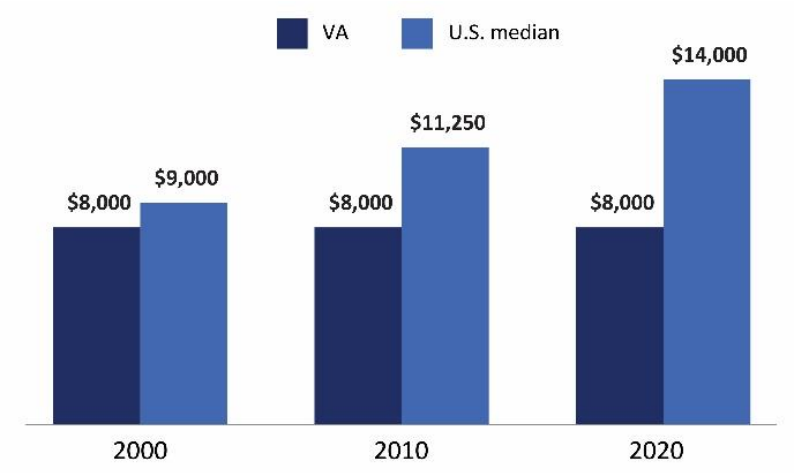
Virginia's taxable wage base ("base")—the maximum amount of employees' income that is subject to UI tax—is lower than most states (sidebar). State law sets Virginia's base for UI at $8,000, which was last increased in 1991. Federal law establishes a minimum allowable base of $7,000. Virginia's base is lower than the 50-state median ($14,000), and the gap has grown over time between Virginia's base and other states' (Figure 8-5). Virginia's base for UI is set in state law.

TABLE 8-1
Revenue gains through revising tax structure could supplement the trust fund or be used to lower other tax rates

Policy	Potential change	Potential annual revenue increase	Employers affected [a]
Taxable wage base	Index to annual wage change	$3.6M-$5.9M [b]	76%
	Increase to $14,000	$113.3M-$186.1M	
Minimum tax rate [c]	Increase from 0% to 0.01%	$655,000-$735,000	71-85%
	Increase from 0% to 0.04%	$2.6M-$2.9M	
Maximum tax rate	Increase from 6.2% to 6.8%	$2.2M-$3.3M	2-4%
	Increase from 6.2% to 10%	$4.2M-$15.2M	

SOURCE: JLARC analysis of Code of Virginia, VUIS data, DOL Form 204 data, and UNIS-X model.
NOTE: Projections are based on employer taxable wages in 2020. The range of potential annual revenue increases for each option reflects data limitations (e.g., some apparently duplicate employer records) as well as differences in revenue depending which tax schedule is in effect. See Appendix B for a detailed explanation of projection methodology. [a] This is the share of all contributory employers, so employers assigned special tax rates (e.g., delinquent rates) are included but reimbursing employers (i.e., nonprofits, governments) are excluded. [b] Revenue would increase each year that average annual wages increase. Data in table assumes CY2023 as the first year of implementation, when the base is projected to be $8,160. In 2032, the base is projected to be $9,752 and the potential revenue increase is estimated between $37.9 million and $62.1 million. Projections assume average wages increase 2% annually (based on average of decade prior to COVID-19). [c] Potential annual revenue increase and employers affected pertains to years in which a 0% minimum tax rate would have been activated.

FIGURE 8-5
Taxable wage base remained fixed in Virginia, grew in other states



SOURCE: ETA 394 data from U.S. DOL.

Virginia's low base means that employers paying higher wages have a lower effective UI tax rate. A lower tax base results in a larger difference in the percentage of wages employers pay as taxes—a measurement of tax burden. For example, a Virginia employer pays an effective tax rate of 0.01 percent in taxes for a high-wage worker earning $200,000, compared with an effective tax rate of 0.08 percent (eight times higher) for

a minimum-wage employee (Table 8-2). As workers make higher wages, they are eligible for higher UI benefits (up to the maximum of $378 per week), which disproportionately affects the trust fund. Because employers can pass tax burdens on to workers through lower wages, a low base also creates the potential for low-wage workers to lose income.

Some states index their UI tax rates to a metric that captures the changing economy. This ensures predictable, incremental updates to the base without needing regular legislative changes. Half of states automatically adjust their bases through indexing; nearly all through defining their base as a percentage of the average annual wage. Virginia could adopt a similar approach. To avoid a substantial one-time jump in taxes for employers, Virginia could set its base to increase by the same percentage as wages increased in the past year. This approach could raise the base by $160 (to $8,160) the first year implemented, if Virginia's wages followed historic trends.

TABLE 8-2
Virginia's taxable wage base of $8,000 results in lower effective tax rates for employers that pay higher salaries

	Worker 1 (at base)	**Worker 2** (minimum wage [a])	**Worker 3** (average wage [b])	**Worker 4** (higher-wage)
Wages in year	$8,000	$19,760	$59,736	$200,000
Taxable wages	$8,000	$8,000	$8,000	$8,000
Tax paid	$16	$16	$16	$16
Percentage of taxable wages	100%	40%	13%	4%
Effective tax rate [c]	0.20%	0.08%	0.03%	0.01%

SOURCE: JLARC analysis of Code of Virginia.
NOTE: Example assumes base tax rate of 0.2 percent tax, the average tax rate prior to COVID-19. Example excludes solvency and pool taxes. [a] Full-time at minimum hourly wage of $9.50, effective in Virginia as of May 1, 2021. [b] Full-time average wage of a Virginia worker covered by UI in 2019. [c] Effective tax rate calculated by dividing taxes paid by the workers' yearly wages.

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

Alternatively, Virginia could keep a fixed taxable wage base but raise it through one-time legislation. For example, the state could set its base at the 50-state median of $14,000. This would raise the employers' UI tax for any workers earning at least $8,000 annually and would increase tax revenue by $113.3 million to $186.1 million annually, depending on the tax schedule in effect.

POLICY OPTION 8
The General Assembly could amend § 60.2-229 of the Code of Virginia to increase the unemployment insurance taxable wage base.

Virginia could require employers with no recent UI use to pay a minimal UI tax

Experts recommend that states avoid using a 0 percent tax rate for employers who have not recently used UI benefits. Even employers that do not typically use UI benefits may need to do so during recessions. If employers go bankrupt and their former employees need to use UI, VEC will not be able to recoup those UI costs by taxing the bankrupt employer. Virginia employers share the burden caused by bankrupt employers through the pool tax charged to all employers. Requiring all tax-paying employers to pay at least a small amount of tax lessens the tax burden on other employers.

Four of the 14 possible *base* tax schedules in Virginia include 0 percent tax rates for employers who have not recently used UI benefits. In years when the trust fund meets the state's funding goal, these tax schedules are in effect, and employers with no use of UI in the last four years will receive a 0 percent tax rate. Virginia's minimum tax rates are relatively consistent with other states. These tax schedules have not been used since 2001, and VEC's model predicts these tax schedules will be activated starting in 2030, if no recessions occur beforehand.

Virginia could slightly increase its minimum tax rate from 0 percent. This would increase taxes for 80 to 85 percent of employers. For example, a new tax rate of 0.01 percent would raise $655,000–$735,000 annually for the UI trust fund—an average cost of $4 per affected employer. The new minimum tax rate could be between .01 percent and 0.07 percent (because the current second-lowest tax rate is .08 percent).

POLICY OPTION 9

The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the minimum base unemployment insurance tax rate for all employers, to a new rate between 0.01 percent and 0.07 percent.

Virginia could increase the maximum tax rate for employers with the highest recent UI use

States' UI tax rates vary depending on an employer's UI use, and employers are subject to a maximum tax rate. Federal law requires state tax rates to generally increase with employers' use of UI for two reasons: to discourage employers from unnecessarily laying off workers and to ensure that UI costs are paid for by those employers who generate the most UI claims. However, all states set maximum tax rates to minimize the tax burden on any one employer. Experts caution against inappropriately low maximum tax rates because they may not effectively discourage layoffs. However, there is no expert consensus about an ideal maximum rate, aside from the federal requirement to be at least 5.4 percent. While Virginia's maximum tax rate is similar to other states, employers paying the maximum tax rates pay less in Virginia than in other states be-

cause Virginia's taxable wage base is lower. Virginia employers at the capped rates accounted for 12 percent of taxes in 2020 but 22 percent of benefit charges in the prior year.

The General Assembly could raise its maximum tax rates to increase the equity of employer UI taxes. Increasing the maximum employer tax rate would better align UI usage and benefits paid for the subset of employers that most frequently use UI. This policy change could be paired with a decrease to the tax rates paid by other employers—who have subsidized benefit costs generated by employers who have the 6.2 percent maximum tax rate—to improve the equitability of tax distribution.

Per state law, VEC assigns a **delinquency tax rate** of 6.2 percent to penalize employers who are delinquent for at least three months as of the preceding July 31. The delinquency rate overrides the base rate an employer would otherwise have been assigned. Delinquency tax rates are designed to exceed regular tax rates to incentivize employers to make timely tax payments.

To generate additional trust fund revenue, the state could increase the maximum tax rate *without* decreasing rates for other employers. If Virginia increased the maximum tax rate to the 50-state median of 6.8 percent, rates would increase for 2 to 4 percent of employers, and tax revenue would increase by approximately $2 million to $3 million annually. At a higher maximum rate of 10 percent, the UI trust fund would gain approximately $4 million to $15 million in additional revenue per year. Any change to the maximum tax rate should be accompanied by consideration of changing the delinquency rate (sidebar) to avoid the unintended consequence of the delinquency rate being beneficial for employers with the highest UI use.

POLICY OPTION 10

The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the maximum base unemployment insurance tax rate.

Appendix A: Study resolution

Review of the Virginia Employment Commission

Authorized by the Commission on November 16, 2020

WHEREAS, the economic losses due to the COVID-19 pandemic led to historically high unemployment benefits claims in the United States and Virginia, and Virginia's monthly unemployment rate rose sharply from 3.3% in March 2020 to 10.8% in April 2020, declining to 6.1% in August 2020; and

WHEREAS, the Virginia Employment Commission (VEC) is the state agency responsible for administering the Unemployment Insurance (UI) program, including receiving and processing unemployment benefits claims and issuing payments; and
WHEREAS, citizens have expressed frustration with their inability to navigate VEC's unemployment benefits claims process, successfully file benefits claims, and receive benefits in a timely manner; and

WHEREAS, efforts to modernize the information technology systems VEC uses to operate the unemployment insurance program have been delayed; and

WHEREAS General Assembly members introduced budget amendments during the 2020 Special Session to (i) create within VEC a team of IT experts to help fulfill the agency's mission and (ii) enable VEC during a declared state of emergency to redirect staff resources normally dedicated to collecting benefit overpayments of less than $500; and

WHEREAS, VEC also administers key federal laws related to increasing employment opportunities through job placement and job training assistance, and demand for such assistance has increased because of COVID-19's economic impacts; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission that staff be directed to review the operations of the Virginia Employment Commission.

In conducting its study, staff shall (i) evaluate the impacts of the COVID-19 pandemic on VEC's operations and staffing; (ii) evaluate the timeliness and effectiveness of the operational and staffing changes VEC implemented in response to the pandemic; (iii) evaluate how VEC's UI operations are supervised and led; (iv) evaluate the IT systems used to receive, review, and process unemployment insurance claims and respond to customer inquiries; (v) evaluate the effectiveness of VEC's coordination with the Virginia Information Technologies Agency; (vi) examine the upfront and ongoing costs and cost savings of creating a core team of IT experts within the agency; (vii) identify opportunities to improve customer service, including ways to increase automation and improve customer call-back protocols; (viii) compare Virginia's UI benefit amounts to benefit amounts provided by other states; (ix) evaluate the efficiency and fairness of the unemployment insurance appeals process; (x) determine

how VEC has used additional federal funding made available to states during the pandemic; (xi) quantify the frequency and volume of benefit overpayments that are less than $500 and the VEC staff resources dedicated to their collection; (xii) evaluate VEC's ability to connect out-of-work Virginians with meaningful employment opportunities; and (xiii) determine whether additional funding is needed to enable VEC to enhance its operations to a standard that reasonably meets the public's needs and expectations.

JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including the Virginia Employment Commission, the Auditor of Public Accounts, and the Virginia Information Technologies Agency shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

Appendix B: Research activities and methods

Key research activities performed by JLARC staff for this study included:

- interviews with Virginia Employment Commission (VEC) staff, other Virginia and federal agencies, employers and employer groups, claimants and claimant representatives, subject-matter experts, and other states;
- analyses of VEC data on unemployment insurance (UI) claims, tax audits, agency staffing, overtime hours worked, and agency funding; Virginia Department of Human Resource Management data on state agency staffing and salaries; U.S. Department of Labor (DOL) 50-state data on UI timeliness and accuracy, UI trust fund levels, federal UI operational funding; and Virginia trust fund modeling through UNIS-X and VUIS;
- surveys of VEC staff and employers;
- case file reviews for a sample of VEC's UI appeals and a sample of tax files for employers delinquent on state UI taxes;
- usability assessment of VEC's UI claims filing website;
- observations of appeals hearings, customer service interactions, and meetings; and
- reviews of documents and literature, including research literature related to UI eligibility criteria, UI benefit levels and design, UI claims administration, UI tax design, and UI modernization; federal law and guidance; VEC documents, such as agency policies and procedures, forms, applications, and notices; website materials; staff training materials; and staff position descriptions.

Structured interviews

Structured interviews were a key research method for this report. JLARC staff conducted over 180 interviews with individuals from a variety of agencies and organizations. Key interviewees included:

VEC staff

JLARC staff conducted 122 interviews with 61 staff from VEC, including the commissioner, deputy commissioners, directors of all major UI divisions, and several staff from each UI division. For example, JLARC staff conducted multiple interviews with the chief deputy commissioner, deputy commissioner of UI, UI division director, acting chief of UI benefits, chief of UI tax, director of IT, chief administrative law judge, and director of customer service and customer contact centers to learn about the agency's programs, ongoing response to the challenges presented by COVID-19, and plans for future improvements. Interviews were also conducted with staff in many divisions and units to understand the roles and responsibilities of each division and unit; the work processes and procedures used to carry out their primary responsibilities; and staff perspectives on VEC's processes, challenges, and culture. Interviews were also used to discuss the availability and meaning of VEC's UI claims and tax data.

Other Virginia state agency and federal agency staff

JLARC staff conducted 25 interviews with staff at 10 Virginia state agencies. These interviews were conducted for a range of purposes:

- to learn about VEC's UI modernization project, VEC's transition to cloud infrastructure, and VEC's IT security, JLARC staff interviewed staff at the Virginia Information Technology Agency (VITA);
- to discuss various aspects of VEC's UI IT modernization contract management and contract documents, JLARC staff spoke with staff at VITA and the Office of the Attorney General (OAG);
- to obtain information on how other agencies operate call centers, and provide customer service, JLARC staff interviewed staff at the Department of General Services, the Virginia Department of Transportation, and the Virginia Department of Taxation;
- to learn about strategies for tax and debt collection and how other agencies work with VEC to help collect debt, JLARC staff interviewed staff at the Virginia Department of Taxation, the Virginia Department of Accounts, and the OAG;
- to discuss the state's competitive hiring requirements and salary data and benchmarks for specific VEC staff positions, JLARC staff interviewed staff at the Virginia Department of Human Resource Management;
- to learn about effective approaches for disseminating eligibility information and conducting hearings and appeals, JLARC staff spoke with staff at the Virginia Workers' Compensation Commission;
- to obtain information on its role regarding UI appeals and debt collection, JLARC staff spoke with staff of the OAG;
- to discuss various aspects of VEC's operations and IT security, JLARC staff interviewed staff at the Auditor of Public Accounts (APA); and
- to learn about agencies' responsibilities related to emergency planning, JLARC staff interviewed staff at the Virginia Department of Emergency Management.

JLARC staff also conducted eight interviews with federal agency staff, including three interviews with the Internal Revenue Service to learn about federal UI taxes, UI tax oversight, debt collection, and UI fraud; four interviews with DOL to discuss federal funding, the resource justification model, and UI trust fund revenue modeling; one interview with the DOL Office of the Inspector General (OIG) to discuss OIG reports and UI best practices; and one interview with the DOL State Conformity and Compliance Team to discuss potential state UI policy and procedure changes.

Employers and employer groups

JLARC staff conducted seven interviews with employers or groups representing employers, including the Associated General Contractors of Virginia; the Virginia Chamber of Commerce; the Virginia Metropolitan League; the Virginia chapter of the National Federation for Independent Business; the Virginia Network of Private Providers; the Virginia Restaurant, Lodging, and Travel Association; and the Virginia Retail Federation. Staff also conducted an interview with a large third-party administrator that operates on behalf of businesses to interact with VEC regarding UI claims. The purpose of these

interviews was to obtain employer perspectives on VEC activities, including tax rate setting and tax collection, the UI claims and appeal process, and other interactions with VEC.

UI claimants and claimant representatives

JLARC staff conducted interviews with three groups that represent UI claimants, including the Virginia Chapter of the AFL-CIO and legal aid groups. The primary purpose of these interviews was to learn more about claimants' experience working with VEC during the claims application, adjudication, and appeals processes.

JLARC staff also spoke directly with several individuals who had direct experience with the UI claim process and received written feedback from numerous other individuals. These conversations focused on claimants' experience working with VEC during the UI claims and appeals processes, including challenges claimants faced with VEC's online claims application system, phone system, and other customer services.

Subject-matter experts

JLARC staff conducted 17 interviews with subject-matter experts, including individuals from the National Conference of State Legislatures, the National Association of State Workforce Agencies, the National Employment Law Project, Strategic Services on Unemployment & Workers' Compensation, the Urban Institute, Georgetown Law – Center on Poverty and Inequality, the Century Foundation, the State Software Collaborative, NTT Data, On Point Technology, and Deloitte Consulting. These interviews covered a variety of topics based on the expertise of the individual, but most interviews covered best practices for UI benefits and tax administration, customer service, and UI IT modernization.

Other states

JLARC staff conducted 21 interviews with staff from other states, including Alaska, Illinois, Maine, Maryland, Montana, New Jersey, Ohio, South Carolina, Utah, Washington, Tennessee, and Vermont. The purposes of these interviews varied by state and staff, but interviews dealt primarily with other states' practices and strategies for administering UI benefits quickly and accurately, collecting taxes and auditing employers, maintaining trust fund solvency, UI debt collection, customer service, and strategic planning.

Data collection and analysis

Several types of data analyses were performed for this study, including analyses of:

- VEC UI benefits and claims data;
- DOL UI performance data;
- DOL improper payment data;
- VEC and DHRM data on staff turnover and salaries;
- 50-state data on federal funding;
- 50-state data on UI trust fund levels;
- VEC UI tax audit counts and results; and

- Virginia trust fund modeling through UNIS-X and VUIS.

50-state spending data (Chapter 3)

JLARC used state financial data collected by DOL for FFY2015 through 2020 to conduct several analysis of operational efficiency. First, JLARC compared VEC's efficiency to other states using Minutes Per Unit (MPU) data. The MPU is the average number of minutes it takes a state to complete a workload unit. Workload units differ for each function, such as one appeal (appeals function) or one employer (tax function). The six UI functions examined were initial claims, containing claims, non-monetary determinations, appeals, wage records, and UI tax. Analysis of VEC's Systematic Alien Verification for Entitlement was omitted because the amount of associated funding is much smaller than the other functions. JLARC calculated the 50-state median MPU and compared it to Virginia's. The data source for these calculations was DOL's relevant Unemployment Insurance Program Letter containing each year's UI grant allocation. Second, JLARC analyzed state-level data on the share of administrative staff out of total UI staff. Administrative staff were defined as those reported under two spending categories: administrative staff and technical services (e.g., certain leadership, internal audit, and public relations) and support (e.g., research and time sheet review).

VEC and DHRM staffing and salary data (Chapters 3, 4, and 5)

JLARC collected data from VEC and DHRM to analyze agency staffing levels, vacancies, and turnover rates. Staffing levels were calculated over time (2015 – 2021) for different types of staff positions (full-time and part-time; permanent and restricted) and divisions. VEC's vacancy rate was calculated over time (2015 – 2021) using the number of vacant full-time positions relative to total full-time positions, and it was compared to the average vacancy rate across all Virginia state agencies and a cohort of similar Virginia state agencies. Finally, VEC's turnover rate was calculated over time (2015 – 2021) using the number of agency separations of full-time staff relative to the total number of full-time positions. Two calculations were performed: one capturing all separations (e.g., retirements) and one for voluntary separations (e.g., leaving VEC for another job).

JLARC also used DHRM salary data to conduct an analysis of VEC salaries for selected positions and determine parity with the average, median, maximum, and minimum salaries for sets of comparable employees across Virginia state agencies. Salary data was for full-time, filled positions at VEC and other Virginia state agencies. With DHRM guidance, JLARC staff identified 19 comparison sets for 14 VEC positions across five divisions and subgroups (Call Centers, UI Benefits, Tax, UI Appeals, and IT). JLARC staff ensured that comparison sets of employees at other Virginia state agencies included at least 30 individuals (except for VEC positions with fewer than 5 employees). Comparison sets were comprised of individuals with comparable position levels (e.g., employees, first-line supervisors, and managers) and either identical or matching Standard Occupational Classification (SOC) System codes or DHRM's role-class codes. Once comparison sets were identified, average and median salaries of VEC staff were compared to the average, median, maximum, and minimum salaries for the comparison sets.

In addition, DHRM shared data from the proprietary Mercer Benchmark Database with JLARC staff to make comparisons between the 14 VEC positions and private sector comparison sets. Mercer data

included salaries for individuals in comparable positions who work for private sector companies nationwide. DHRM staff suggested 23 position titles from the Mercer Database corresponding to each of the VEC positions. JLARC staff then compared average, median, 25th percentile, and 75th percentile VEC salaries with these private sector comparison sets.

VEC claims data (Chapter 4)

JLARC staff analyzed individual-level UI claims data from VEC. Data was extracted from VEC's legacy UI IT benefit system and included all UI claims submitted between January 1, 2018 and March 22, 2021 for the regular state UI program, extended benefits program, and federal Pandemic Emergency Unemployment Compensation programs. JLARC staff used this data to calculate summary statistics for the number and type of UI claims, adjudications, and appeals VEC staff processed before and prior to the COVID-19 pandemic.

JLARC staff also analyzed VEC claims level data from the Pandemic Unemployment Assistance (PUA) program. Staff used this data to determine the proportion of PUA payments that were made inaccurately and the proportion of inaccurate payments attributable to fraud. These calculations were based on data provided by VEC for PUA claims submitted between April 18, 2020 and April 8, 2021.

DOL UI performance data (Chapters 4 and 5)

JLARC staff used data reported by states and maintained by the DOL Employment and Training Administration (ETA) to analyze and compare VEC's performance on a number of metrics related to UI claims and appeals administration. JLARC staff assessed timelines of claims processing and appeals using the ETA 9050 First Payment Time Lapse dataset, ETA 9052 Nonmonetary Determination Time Lapse Detection Date dataset, ETA 9054 Appeals Time Lapse dataset, and ETA 9055 Appeals Case Aging dataset. JLARC staff assessed the quality of claims and appeals determinations using data from the ETA 9056 Nonmonetary Determinations Quality dataset and ETA 9057 Lower Authority Appeals Quality Review dataset.

JLARC staff primarily analyzed the above datasets to compare VCE's performance across time on various metrics, as well to compare to other states and 50-state medians. The data listed above was often accessed through DOL ETA's "Benefits: Timeliness and Quality" and "State Rankings of Core Measures" reporting functions, as well as downloaded from DOL ETA's "Data Downloads" page and "Unemployment Insurance Payment Accuracy Datasets" page.

DOL improper payment data (Chapter 5)

JLARC staff reviewed and analyzed data published by DOL ETA on state workforce agencies' UI improper payments (called "incorrect payments" in Chapter 5), including the ETA 227 Overpayment Detection and Recovery Activities dataset and improper payment data derived from the Benefit Accuracy Measurement (BAM) statistical survey. These data were used to assess the accuracy of benefit payments and potential extent of fraudulent payments made by VEC.

The BAM survey is designed to estimate the accuracy of paid and denied claims in the regular state UI program and is conducted by agency staff in each state. In Virginia, VEC's quality assurance unit assesses payment accuracy for these programs by randomly sampling paid claims and denials on a

quarterly basis from the UI claims populations. On an annual basis, VEC samples 480 paid UI claims and 150 cases for each of the three types of denials – monetary, separation, and nonseparation. VEC quality assurance staff also reconstruct the UI claims process for each claim and investigate the claimant's monetary and separation eligibility, as well continuing weekly eligibility requirements for the specific week sampled to evaluate the accuracy of each sampled payment. For claims improperly paid or denied, a cause, the party responsible for the error, and the point in the process where the error occurred is identified. For incorrectly paid claims, quality assurance staff determine the amount of benefits the claimant should have received. The results of the BAM sample is then used to estimate the accuracy rates, number of overpayments, number of underpayments, and total UI benefits paid across all paid claims in the regular state UI program during the sampling time period. These amounts are used to determine an overall Improper Payment Rate (IPR) for the state's UI program (UI benefits overpaid plus UI benefits underpaid divided by the total amount of UI benefits paid).

JLARC staff used the data collected through the BAM program and reported by DOL to estimate the amount of UI benefits that VEC may have incorrectly paid. JLARC staff compared VEC's improper payment rates and amounts between 2016 and 2020 to assess how payment accuracy was affected during COVID-19. VEC staff also used BAM improper payment data to assess impacts to the fraud rate among VEC's improper payments during the COVID-19 time period. JLARC staff also reviewed BAM results provided by VEC quality assurance staff for the first and second quarters of the 2021 calendar year to assess the continued impacts to UI payment accuracy.

50-state recipiency and benefit levels data (Chapter 7)

JLARC staff used data from Section A of DOL ETA's Unemployment Insurance Chartbook (Labor Force Data) to compare Virginia's annual recipiency rates from 2000-2020 with those in all other states and territories. JLARC staff also calculated a U.S. average and median recipiency rates for the period, as well as quintiles for state recipiency rates over the period. JLARC staff ranked Virginia's average recipiency rate from 2000-2019 with average recipiency rates for the same period in the other 49 U.S. states. In addition, JLARC staff compared Virginia's recipiency rates over time as well as the increase in recipiency from 2019 to 2020 with the U.S. average recipiency rate.

JLARC staff used data from Section A of the Chartbook to examine average benefit levels for Virginia compared with the other 49 U.S. states, as well as the U.S. average and median benefit levels.

JLARC staff also used data from Section A of the Chartbook to examine the share of prior income for claimants replaced by benefits received in Virginia (replacement rate). JLARC staff compared Virginia's replacement rate with those in the other 49 states, as well as against the U.S. average. DOL ETA calculates two replacement ratios, Replacement Ratio 1 and 2, by dividing weekly benefit amounts by normal hourly wages, multiplied by 40 hours. The ratios differ in terms of which values are weighted. JLARC staff used Replacement Ratio 2 for comparison purposes because it uses weighted averages for both weekly benefits and normal wages.

For all other comparisons of minimum weekly benefit amounts, maximum weekly benefit amounts, minimum earnings threshold for eligibility purposes, dependent allowance levels, and a range of other monetary and non-monetary UI policy comparisons, JLARC staff used the 2020 Comparison of State

Unemployment Laws provided by US DOL ETA. This report reflects the status of state laws enacted as of January 1, 2020.

Eligibility policy factors analysis and comparison against peer states (Chapter 7)

JLARC staff utilized the 2020 Comparison of State Unemployment Laws provided by DOL ETA to create a list of 22 policy factors that influence recipiency rates and overall accessibility of state UI programs, according to subject matter experts. These policy factors included factors that determine state UI eligibility criteria (i.e., enabling individuals who voluntarily quit for "good cause" to be eligible for UI), as well as policy factors (i.e., benefit levels) with a more indirect impact on accessibility. JLARC staff compared Virginia's policy factors to 12 other states. The 12-state sample was selected to ensure a mix of states with high recipiency rates, states with low recipiency rates, and neighboring states:

- Low Recipiency: Arizona, Florida, Georgia, South Dakota
- High Recipiency: Massachusetts, New Jersey, Pennsylvania
- Neighboring: District of Columbia, Kentucky, Maryland, Tennessee, West Virginia

The 22 policy factors are listed in Table 7-1 in Chapter 7.

Calculation of UI take-up rates and eligible unemployed population (Chapter 7)

JLARC staff used five-year estimates from the American Community Survey produced by the U.S. Census Bureau to produce proxies for the eligible unemployed populations in both Virginia and nationwide. JLARC staff used respondent answers to questions about employment status to filter out self-employed individuals and respondent answers to questions about whether or not individuals were able and available to work to estimate the share of unemployed individuals who would meet separation eligibility criteria.

JLARC staff also used survey data collected by the Bureau of Labor Statistics (BLS) as part of the Current Population Survey (CPS) UI Nonfiler Supplement. The supplement is targeted to unemployed individuals who decided not to file for and has only been issued in two years – 2005 and 2018. JLARC staff used data from the 2018 supplement to estimate the share of unemployed individuals in both Virginia and the nation as a whole who did not file for UI because they were not aware of the program.

Calculation of benefit levels relative to cost-of-living measures (Chapter 7)

JLARC staff used data collected and published by the Massachusetts Institute of Technology's Living Wage Calculator to examine Virginia's average cost of living figures for each household and family expenditure category for single individuals, as well as individuals with one dependent. Staff also examined the average cost of living figures for 11 Virginia metropolitan statistical areas and two Virginia independent cities. JLARC staff recalculated the annual cost of living estimates provided by MIT as weekly estimates and compared them to various benefit levels including: the minimum weekly benefit amount, the maximum weekly benefit amount, the 2019 average weekly benefit amount, the 2020 average weekly benefit amount, and the weekly benefit amount that would be earned by a full-time, minimum wage worker.

The following household and family expenditure categories were included in the analysis:

- Food
- Child Care (for individuals with one dependent)
- Medical
- Housing
- Transportation
- Taxes

The following 11 MSAs, one county, and two independent cities were included in the analysis:

- Arlington County, VA
- Blacksburg-Christiansburg-Radford, VA
- Charlottesville, VA
- Harrisonburg, VA
- Lynchburg, VA
- Richmond, VA
- Roanoke, VA
- Staunton-Waynesboro, VA
- Virginia Beach-Norfolk-Newport News, VA
- Winchester, VA
- Kingsport-Bristol-Bristol, TN
- Washington-Arlington-Alexandria, DC
- Martinsville, VA
- Danville, VA

Projection of trust fund impact of potential policy options altering maximum benefit amount levels (Chapter 7)

JLARC projected the fiscal impact of two UI benefit level adjustments: (i) Indexing the maximum benefit amount to 50 percent of the state's average weekly wage, and (ii) requiring that the maximum benefit amount to be increased by the growth rate of the state's average weekly wage. To model the trust fund impacts of these two changes, JLARC staff utilized DOL's UNIS-X model. The version used was last transmitted to VEC by DOL on May 11, 2020.

General assumptions

JLARC adjusted the baseline Economic Scenario Variables. First, the change in labor force participation was projected to drop by 2.15 percent in 2021 and then to grow by 0.79 percent each year from 2022 to 2032, using the five-year average growth rate in labor force participation from 2014 to 2019. JLARC similarly adjusted projections for changes in the share of total covered employment. Covered employment was projected to drop by 5.30 percent in 2021 and then to grow each year by 1.56 percent from 2022 to 2032 using the five-year average growth rate in covered employment from 2014 to 2019.

JLARC also incorporated unemployment rate estimates into the model, inputting an estimated unemployment rate of 4.7 percent for the first quarter of 2021 (according to the Bureau of Labor Statistics)

and assuming a constant unemployment rate of 3.8 percent from 2022 to 2032, the five-year average unemployment rate from 2014 to 2019.

JLARC also included estimates about the growth of the state's average weekly wage, assuming a growth rate of 2.4 percent in 2021 according to the Bureau of Labor Statistics Quarterly Census of Employment and Wages (QCEW). A growth rate of 2.8 percent was assumed for 2022 to 2032, based on the five-year growth rate in the state's average weekly wage from 2014 to 2019.

Indexing the maximum weekly benefit amount to 50 percent of the state's average weekly wage

JLARC used DOL's model to project the fiscal impact to the UI trust fund of increased benefit payments that would result from indexing the maximum weekly benefit amount to 50 percent of Virginia's average weekly wage. The state's average weekly wage for 2020 ($1,255) was taken from Bureau of Labor Statistics data. JLARC assumed a yearly growth rate of 2.8 percent based on the five-year average growth rate for Virginia's average weekly wage from 2014-2019. JLARC then calculated 50 percent of these increasing state average weekly wage levels to estimate a new maximum weekly benefit amount.

Indexing the growth of the maximum weekly benefit amount to the growth of the state's average weekly wage

JLARC also used DOL's model to project the fiscal impact to the UI trust fund that come from increasing benefit payments by indexing the growth of the maximum weekly benefit amount to the growth rate of Virginia's average weekly wage. The state's average weekly wage for 2020 ($1,255) was increased each year by 2.8 percent based on the state's historical five-year growth rate from 2014-2019. JLARC then calculated the impact of increasing benefit levels from the current maximum weekly benefit amount of $378 by 2.8 percent each year.

Making a one-time adjustment to tie the maximum benefit amount to 50 percent of Virginia's 2019 average weekly wage

JLARC used Bureau of Labor Statistics data to determine the average weekly wage in Virginia for 2019, which was $1,153. JLARC then calculated 50 percent of this average weekly wage ($577) and incorporated this amount as the new maximum benefit amount beginning in 2023.

VEC tax audit analysis (Chapter 8)

Form 581 data reported by VEC to DOL combined with VEC human resources data provided by DHRM was used to analyze VEC's UI tax audit activities.

VEC is required by DOL to audit at least 1 percent of all contributory employers in the state. Because Virginia had 221,325 in the base period, staff would need to have completed 2,213 audits to meet this requirement. Even if VEC's 40 field staff (as of 1/1/2019) had met the 52 audit annual requirement, VEC would only have completed 2080 audits.

VEC is also required by DOL to audit at least 1 percent of wages paid by contributory employers in the state. Because Virginia had $175,718,978,273 wages in the base period, staff would need to have audited $1,757,189,783 of wages to meet this requirement. With 40 staff, VEC audited $921,471,616 wages. Assuming this average of $23,036,790 per audit held, 52 audits per staff person would only have covered $1,197,913,101 wages.

JLARC calculated the return on investment for VEC staff time spent on UI employer tax audits. According to data reported to DOL, VEC captured $221,000 additional taxes from audits in 2019. That revenue is much lower than the $705,000 spent completing the audits, estimated as one-third of VEC tax staff annual salaries as of 1/15/2019.

State UI tax burden on employers (Chapter 8)

JLARC compiled data from several sources to determine that state UI taxes accounted for 1 percent of total business taxes paid in Virginia (Table B-1). This figure is an approximation for two reasons. First, data represents slightly different time periods across business tax types. Second, no data was available on the amount of federal and state individual income taxes paid by Virginia pass-through businesses.

TABLE B-1
State UI taxes are a small amount compared to other Virginia business taxes

Business tax	Total Payments ($M)	Percentage of total payments
Local taxes [a]	$15,427	38%
Social Security [b]	13,219	33
Federal corporate income tax [c]	6,969	17
Medicare [d]	3,528	9
State corporate income tax [e]	943	2
UI state tax in Virginia [f]	367	1%
UI federal tax [g]	156	0%[h]
Total	**$ 40,609**	**100%**

SOURCE: Virginia Department of Taxation's FY2019 annual report; Social Security Administration website, "Earnings and Employment Data for Workers Covered Under Social Security and Medicare" tables on Internal Revenue Services; ETA 394 data from DOL website.
NOTE: [a] Data for SFY2019. Includes tangible personal property, machinery and tools, merchants' capital, and public service corporations taxes; excludes Business, Professional, and Occupational License tax because no statewide totals were available. [b] Employer contributions for Old-Age & Survivors and Disability Insurance in CY2018. [c] SFY2019 data. [d] Employer contributions for Medicare Part A in CY2018. [e] SFY2019 data. [f] CY2019 data. [g] FFY2019 data. [h] Actual figure is 0.4 percent.

This table only depicts the aggregate of taxes and does not illustrate a typical employer's experience. A business's tax liability is dependent on its circumstances and the unique rules around each tax type. For example, federal taxes for limited liability corporations are the rate of the owner's personal income taxes, while corporations pay 21 percent. Other taxes paid by employers such as Social Security and federal UI depend on their number of employees and the amount of their wages. Lastly, various tax deductions or credits can be applicable.

Projection of UI trust fund impact of raising UI taxable wage base and certain taxes (Chapter 8)

JLARC projected the fiscal impact of three UI tax changes: increasing the taxable wage base, increasing the minimum tax rate, and increasing the maximum tax rate.

General notes

JLARC's projections for all three tax changes used data from VEC's employer tax records — the Virginia Unemployment Insurance System (VUIS) — provided by VEC. The data contains quarterly records for each contributory employer (whose owed UI taxes equal their assigned tax rate multiplied by taxable wages), and excluded reimbursing employers (whose owed UI taxes equal the exact amount of UI benefits paid to prior employees). JLARC's analyses relied on CY2020 data, which contained 2,447,223 records. After excluding duplicate records and records for employers classified as inactive (i.e., out of business), 839,867 records remained. Data from the fourth quarter of CY2020 (220,902 observations after data cleaning) was used to count the number of employers potentially affected by tax increases to avoid duplication across quarters. JLARC's projections for tax rate changes also used CY2020 summary data reported by VEC to DOL's Employment and Training Administration (ETA), called ETA 204 data. The data contains average or total annual data for employers by experience rating group. It includes 224,005 contributory employers.

JLARC's projections are limited to expected changes in the base tax. The analysis doesn't account for changes in UI trust fund interest from the U.S. Treasury, which would increase if the trust fund was higher in a given year. Tax projections are limited to the base UI tax, not the pool or solvency tax. To calculate the share of affected employers for each policy option, JLARC only considered the total number of contributory employers because reimbursing employers would not be affected.

Taxable wage base

JLARC projected the increased tax revenue for increasing the taxable wage base ("base") to $14,000, selected because it is the 50-state median in 2019 (Table B-2). JLARC staff predicted the respective increase in taxable wages for each employer. If all employees' annual wages would exceed the new base, then raising the base to that level increases tax revenue by that same percent as the base increased. Therefore, raising the base to $14,000 (a 75 percent increase) can result *at most* in a 75 percent tax increase for individual employers. Taxes will increase by less than 75 percent for employers for whom 75 percent increase in taxable wages would result in taxable wages exceeding gross wages; a logical impossibility.

JLARC used the same method to project the fiscal impact of indexing the base to annual average wages (Table B-2). An additional step was needed to predict the new base values in each future year, which requires predicting annual average wage trends. JLARC analyzed historic average Virginia wage data from US DOL's 394 data and found an average annual increase of 2 percent between 2010 and 2019. (2020 data was available but excluded as an outlier year due to the COVID-19 pandemic.) Going forward, a 2 percent annual average increase in wages would prompt the same percent increase in the UI base. Assuming indexing begins CY2023, the base would rise to $8,160 in that year. It would likely increase annually, reaching an estimated $9,752 in CY2032.

TABLE B-2
Impact of raising taxable wage base depend on tax schedule and new base

New base	Tax schedule	Projected new taxes	Number of affected employers
$14,000 (fixed)	50%	$186,147,712	168,239 [a]
	85%	163,238,105	
	115%	113,252,742	
$8,160 (CY2023, if indexed)	50%	5,907,163	
	85%	5,190,043	
	115%	3,622,642	
$9,752 (CY2032, if indexed)	50%	62,102,027	
	85%	54,479,690	
	115%	37,891,013	

SOURCE: JLARC analysis of VUIS data.
NOTE: All analysis uses VUIS data; none use ETA 204 data [a] Equal to the number of total contributory employers.

Minimum tax rate

JLARC modeled two potential minimum tax rates: 0.01 percent and 0.04 percent. 0.01 percent is the smallest possible non-zero minimum tax rate while maintaining the number of current decimal points in state taxes. 0.04 percent is approximately halfway between the current minimum rate of 0 percent and the second-to-minimum rates (0.08 percent, 0.09 percent, 0.10 percent) in the tax schedules containing a minimum tax rate of 0 percent. The amount of new taxes produced by increasing the minimum tax rate does not vary across the four relevant tax schedules. JLARC projected the fiscal impact of raising the minimum tax rate using both VUIS data and ETA 204 data (Table B-3) to counteract weaknesses in the data.

Using the VUIS method, each employer's taxable wages were multiplied by the new tax rate of 0.01 percent to calculate tax revenue, which was summed across employers to provide total new tax revenue. The same process was repeated for a new tax rate of 0.04 percent. The ETA 204 method used a similar approach with summary-level data about employers.

TABLE B-3
Impact of raising minimum tax rate depend on methodology and new tax rate

New minimum tax rate	Method	Projected new taxes	Number of affected employers
0.01%	VUIS	$655,006	187,607
	ETA 204	735,000	157,990-161,671
0.04%	VUIS	2,620,024	187,607
	ETA 204	2,938,000	157,990-161,671

SOURCE: JLARC analysis of VUIS and ETA 204 data.

Maximum tax rate

JLARC projected the fiscal impact of two possible maximum tax rates (Table B-4). The lower bound of 6.8 percent was chosen because it ais the 50-state median of possible tax rates as of January 2020, and represents a small but noticeable increase from the current 6.2 percent. The upper bound of 10

percent was chosen to represent a large but feasible increase; eight states had maximum rates at or above that benchmark.

The amount of new tax revenue from raising the maximum tax rate varies by tax schedule because current tax rates at a given experience rating vary across schedules. The fiscal impact of each new maximum tax rate was tested at three tax schedules: (1) trust fund solvency at the CY2020 level of 85 percent (selected to enable comparisons to actual 2020 data and test fiscal impact on a midway schedule), (2) trust fund solvency at 50 percent (schedule containing highest tax rates), and (3) trust fund solvency at 115 percent (schedule containing lowest tax rates).

For each tax schedule, JLARC developed a hypothetical revised version for each of the two new maximum tax rates. Next, JLARC pulled the amount of taxable wages at each experience rating from VUIS data. Tax revenue for each experience rating level under current policy equals their taxable wages multiplied by their current tax rate, aggregated to arrive at total tax revenue. Similarly, tax revenue at a higher maximum rate equals the current taxable wages of employers at each experience rating level multiplied by their new tax rates, aggregated to arrive at total tax revenue. JLARC also projected the fiscal impact of raising the maximum tax rate using ETA 204 data for 85 percent solvency.

TABLE B-4
Impact of raising maximum tax rate depend on methodology and new tax rate

New maximum tax rate	Method	Projected new taxes ($)	Number of affected employers
6.8%	VUIS | 50% schedule	$3,304,071	5,549
	VUIS | 85% schedule	2,173,335	4,076
	ETA 204 | 85% schedule	2,734,000	6,357
	VUIS | 115% schedule	2,500,678	3,473
10%	VUIS | 50% schedule	15,166,436	5,549
	VUIS | 85% schedule	8,689,916	4,076
	VUIS | 115% schedule	4,242,271	3,473

SOURCE: JLARC analysis of VUIS and ETA 204 data.

Surveys

Two surveys were conducted for this study: (1) a survey of VEC agency staff and (2) a limited survey of Virginia employers.

Survey of current VEC staff

JLARC staff administered an electronic survey to 1,128 full-time and part-time staff at VEC (excluding contractors) in April 2021. The survey received 789 responses, for a response rate of 70 percent. JLARC received responses from staff in every division at VEC, but more than half of respondents worked in either the Unemployment Insurance or Workforce Services division. Survey topics included:

- perceptions of their overall experience working at VEC;
- perceptions of their division at VEC;

- staff satisfaction with working at VEC, including salary, workload, and turnover intention;
- perceptions of technology and data security at VEC;
- perceptions of interactions between VEC headquarters and local offices;
- challenges and improvements related to VEC's administration of the UI program; and
- perceptions of agency senior leadership.

Survey of employers

JLARC administered an electronic survey to a limited group of employers in March through May 2021 that covered various aspects of their interactions with VEC. At JLARC's request, the following employer groups disseminated the survey to their members: the Virginia Restaurant, Lodging & Travel Association; the Metropolitan Business League; the Chamber of Commerce; the Virginia branch of the National Federation of Independent Business; the Associated General Contractors of Virginia; and the Virginia Network of Private Providers. The total number of businesses that received the survey is unknown, but 49 individuals completed the survey. Survey topics included the affordability and administrative ease of UI taxes, and employers' experiences working with VEC on UI claims, UI appeals, and workforce programs.

Case file reviews

JLARC staff reviewed a limited sample of seven case files of UI appeals, including three first-level appeals, three commission-level appeals, and one circuit court appeal. The case files included the underlying deputy determination, the original claim application and corresponding information submitted by the claimant, information submitted by employers, notices of appeal, notices of hearings, and the decision of the appeals examiner. The case files were selected and provided by VEC to allow JLARC staff to learn more about the types of documents and decisions involved in UI appeals.

JLARC staff also reviewed a sample of 14 case files of UI tax information for delinquent employers. The sample of 14 was randomly selected from the 2,500 active employers with a delinquent tax rate in 2020 (after excluding potentially duplicate records). The time period reviewed differed for each case: it *ended* when the employer resolved the delinquency (or March 2021, whichever came first), and it *began* when the employer first became delinquent (or January 2016, whichever came first). The March 2021 cut-off ensured the review didn't extend to months for which VEC was still processing documents, while the January 2016 cut-off excludes records prior to the IT system being modernized. JLARC considered missing quarterly reports or outstanding account balance to be delinquencies.

For each case, JLARC examined all formal collection letters to employers, sheriffs, banks, and courts. JLARC calculated the amount of time between each collection letter and counted the number of escalated letters (e.g., liens, set-offs) versus warning letters (e.g., quarterly notices, billing statements). JLARC also read staff documentation of personal work to address delinquencies such as calling employers or searching for them through online databases. For each case, JLARC assessed if VEC applied interest and the late report filing deadline when appropriate. Lastly, JLARC noted context explaining the delinquency or delay in resolution, such as an incorrect address being on file.

Usability Assessment

JLARC staff conducted a usability test of VEC's UI claims filing website, Gov2Go. This assessment was developed based on standards established by Usability.gov, a national resource for user experience best practices and guidelines, which is managed by the Digital.gov team in the U.S. General Services Administration Technology Transformation Service.

The usability assessment's purpose was to determine the extent to which VEC's online customer-facing processes for receiving UI benefits were usable and accessible by customers. The usability framework asked the following questions, some of which used an 'agree/disagree' scale:

1. Which type of benefits did you apply for?
2. Were you able to successfully complete this process?
    a. [If No] At what point in the process were you unable to navigate further, and why were you unable to navigate further?
    b. [If Yes] Approximately how long did it take to complete the process?
3. It was easy to find where to begin this process on the website.
4. The instructions for how to complete this process were clear and comprehensible.
5. It was clear to me how far along I was at each step in the process
6. It was easy to navigate within this process
7. Most people would be able to complete this process quickly.
8. The information I needed for this process was readily available on the website
9. Did you have to use the automated chat-bot function at any point in the process?
    a. [If yes] I was easily able to find the information I needed using the automated chat-bot function.
10. Did you have any additional feedback to share regarding the usability / ease-of-use of this process?

Usability tests completed by JLARC helped identify potential usability issues and could provide a future framework for VEC to use to assess the usability of its modernized UI IT system.

Readability Assessment

JLARC staff conducted a simple readability assessment of public-facing webpages discussing UI benefits, eligibility, how to file a claim, and answering frequently asked questions related to the claims process. Five of the most public-facing webpages were analyzed using Microsoft Word's Readability Statistics, indicating a relatively high (i.e., between high school and college) reading level for all webpages.

Observations

JLARC staff observed seven appeals hearings, including four first-level hearings and three commission-level hearings. These hearings were conducted over the phone, and JLARC staff listened to the hearings with permission of all parties involved. The purpose of the observations was to learn about VEC's procedures for conducting the hearings, the role and practices of VEC's appeals examiners in hearings, and any challenges experienced by claimants or employers during the hearings.

JLARC staff reviewed four recordings of customer calls received by VEC Customer Contact Centers. The purpose of this limited observation was to learn about the experiences of both customers and VEC call center agents during calls. These calls were previously recorded and shared with JLARC staff for review because of technological limitations and COVID-19 restrictions.

JLARC staff observed monthly (later bi-weekly) Internal Agency Oversight Committee (IAOC) meetings pertaining to the UI IT modernization project. The primary purpose of these observations was to monitor the progress of the development and implementation of the UI IT modernization project. These observations also allowed JLARC staff to learn about the management and oversight of the project.

Document reviews

JLARC staff reviewed a wide variety of documents to inform its study of VEC, including:

- statutes and regulations pertaining to VEC, UI, and workforce services, including 50-state comparisons of UI laws produced by the DOL's Employment and Training Administration (ETA);
- internal VEC documents, including agency policies and procedures, staff training materials and guidance, employee work profiles, organizational charts, internal audit reports, State Quality Service Plans, and contract documents between VEC and third-party vendors;
- VEC's UI application materials, benefit forms, and claimant benefit rights information;
- DOL UI program letters, training and employment notices, and other guidance documents;
- DOL Employment and Training Administration research reports related to UI call centers, UI eligibility and benefits, nonmonetary policies and practices, and financing state UI trust funds;
- reports from the DOL Office of Inspector General;
- documents related to best practices in UI administration from the National Association of State Workforce Agencies;
- documents relating to UI tax design best practices and state variation, including documents from the IRS and VA TAX and subject-matter experts;
- previous reviews of VEC conducted by the APA and The Urban Institute; and

- strategic and emergency planning documents from other Virginia state agencies, including the Virginia Department of Emergency Management, the Virginia Economic Development Partnership, and the Virginia Retirement System.

Appendix C: Estimated impacts of employment services provided by the Virginia Employment Commission

JLARC staff analyzed the impacts of staff-assisted workforce services provided by the Virginia Employment Commission (VEC) to unemployment insurance (UI) claimants and other job seekers under the Wagner-Peyser Employment Services program. Participants' earnings and employment were compared to the same outcomes for individuals who used only self-services available through VEC's Employment Services program. A majority (64 percent) of participants received individualized career services, and some (16 to 20 percent) received individual employment plans, career guidance, and staff-assisted job search. Comparison group members received no staff-assisted services, primarily doing their own job search online using the Virginia Workforce Connection.

JLARC's analysis indicates that people who receive workforce services will, on average, see higher levels of earnings and employment than those who do not. The analysis found modest positive impacts of staff-assisted services on earnings, which are estimated to have increased by 8 percent, and participants' employment rates, which are estimated to have increased by about 2 percent. The results of this analysis were largely consistent with similar research at the national level, with an overall increase in quarterly earnings, across all cohorts, of nearly 8 percent. Similarly, the estimated impact on employment was 1.7 percent.

One key limitation of this analysis was that the data indicated beginning and end dates of services, but the data did not indicate the total amount of services received. For example, it is unclear how many times a participant might have met with workforce services staff during this time. Other limitations of the analysis are discussed in further detail below.

Background

VEC provides workforce services to UI claimants and other job seekers under the Wagner-Peyser Employment Services program. The services are intended to help UI beneficiaries return to employment and to connect individuals looking for work with employers seeking workers. The Employment Services program is one of the core programs authorized and funded under the federal Workforce Innovation and Opportunity Act (WIOA) in Virginia's workforce development system. Other WIOA core programs are:

- The Adult, Dislocated Worker, and Youth program administered by the Virginia Community College System;
- The Adult Education and Family Literacy program administered by the Virginia Department of Education; and
- The Vocational Rehabilitation programs administered by the Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired.

The Wagner-Peyser Employment Services program offers mainly short-term help for job seekers, such as job search assistance, career guidance, and individualized employment plans. The program does not offer longer term services such as job training, but some participants receive job training from other workforce programs. Wagner-Peyser services may be delivered with the assistance of VEC staff or

self-service. The program prioritizes staff-assisted employment services for unemployment insurance claimants most likely to exhaust their benefits.

National research suggests that the Employment Services program produces small positive impacts for participants and is cost-effective. A recent random assignment evaluation of DOL-funded reemployment services for UI claimants in four states found small increases in employment and earnings for participants, and reductions in the number of weeks they received UI benefits (Klerman and Saunders 2019). Older research studies of staff-assisted employment services for UI claimants have found small reductions in unemployment durations (summarized in Balducci and O'Leary 2018). In addition, several evaluations of work requirements and job search assistance in state welfare reform programs generally find small positive effects on earnings and employment.

Data and sample used for analysis

Services provided to individual participants were measured using person-level data provided by VEC from the Participant Individual Record Layout (PIRL) system developed by U.S. DOL. Earnings and employment outcomes were measured using individual-level, quarterly wage records provided by VEC from the Unemployment Insurance Program. PIRL data covered the period from the third quarter of 2016 to the first quarter of 2019. Quarterly earnings data covered the 21 calendar quarters between the fourth quarter of 2015 and fourth quarter of 2020.

Participants were defined as those who received staff-assisted services under the Wagner-Peyser Employment Services program. The comparison group was individuals who received only self-services under Wagner-Peyser. The participant group consisted of 77,141 individuals, and the comparison group included 128,204 individuals.

All participants (individuals in the staff-assisted group) received basic career services, 64 percent received individualized career services, 20 percent received an individual employment plan, 17 percent received career guidance, and 16 percent received staff-assisted job search. PIRL data shows 39 percent of participants received training, although the type and source of training is not indicated. Individuals in the self-service group received only basic information services.

Impacts were estimated for two outcomes: the 75th percentile of quarterly wages, and the average percentage of individuals employed in a quarter (employment rates). The 75th percentile of earnings was chosen because median earnings in the sample were zero, and mean earnings are less reliable because they tend to be influenced by large positive outliers.

Characteristics of participant and comparison groups

Participants are generally similar to comparison group members (Table C-1). Participants are slightly more likely to be male, and Black, but are very similar to the comparison group in age and employment rates at program entry. Participants had substantially lower pre-program wages than the comparison group. The approach to estimating impacts, using a difference-in-difference model, is intended to account for this.

TABLE C-1
Sample characteristics

Characteristic	Participants (staff-assisted services)	Comparison group (self-services)
Male	56%	49%
White	49%	57%
Black	50%	41%
Average age	40	41
Employed at program entry (according to quarterly wage records)	41%	42%
Avg. of 75th percentile of quarterly wages in the three quarters before program entry [a]	$2,749	$4,489
Avg. quarterly percentage employed in the three quarters before program entry	39%	41%
Unemployment Compensation claimant (including exhaustees)	40%	--

SOURCE: JLARC staff analysis of data from PIRL and UI quarterly wage records.
NOTE: Applies to whole table. (Example: Not adjusted for inflation. Numbers may not add because of rounding.)
[a] Includes individuals with zero earnings.

Approach to estimating impacts

Impacts are estimated using a difference-in-difference model: the estimated impact is calculated as the outcome post-participation minus the outcome pre-participation for individuals receiving staff-assisted services minus the analogous pre-post difference for the self-services group.

The pre-period was the three quarters before services (or, for the comparison group, registration for services), and the post-period was the seven quarters after service receipt. (The quarter of service receipt was excluded because it includes time pre- and post-services.) The pre- and post-time periods were chosen to maximize sample size given the available quarters of data. For individuals who received services in more than one quarter, only the most recent quarter of service receipt (or the most recent quarter of registration for services) was included.

The analysis controlled for differences in the timing of service receipt across the participant and comparison groups by doing separate comparisons for cohorts defined by quarter of service receipt. The overall estimates are calculated as the average difference-in-difference value across cohorts. The cohort entering in the fourth quarter of 2017 was excluded because of a data limitation: the comparison group included only 39 individuals, compared with an average of 13,000 individuals in the other quarterly cohorts.

The analysis was conducted including pandemic quarters (the second quarter of 2020 through the fourth quarter of 2020) and excluding them. Excluding pandemic quarters did not change the results.

Results

The overall increase in quarterly earnings, averaged across cohorts, is estimated as 7.9 percent, and the estimated impact on employment is a 1.7 percent increase (Tables C-2 and C-3). These results are

broadly consistent with the findings from national research. Impacts for both outcomes vary substantially across quarterly cohorts, however, which provides less confidence in the overall impact estimates.

Limitations of analysis

There were several limitations to the analysis, including:

- The PIRL data system provides begin and end dates of services by type, but no measures of the amount of services received.
- The data shows that, on average, earnings and employment are lower after the program than before the program. This is consistent with national research that most people who are laid off earn less at their new jobs. Lower post-program earnings, however, do not mean that workforce services are ineffective. The pre-post decline in earnings is larger for the comparison group than for the group that received workforce services, so the impact estimated by the difference-in-difference model is positive.
- The difference-in-difference model assumes that there are no time-varying differences between the participant and comparison groups. This assumption is supported by an inspection of quarter-to-quarter changes in outcomes before program entry.

TABLE C-2
Estimated impacts of staff-assisted employment services on quarterly earnings

75th percentile of quarterly earnings

	Participants			Comparison Group				
Outcome and entry cohort	Pre-enrollment	Post-enrollment	Post minus Pre	Pre-enrollment	Post-enrollment	Post minus Pre	Estimated impact (diff-in-diff)	Percentage impact
2016 (Q3)	$ 3,043	$ 2,576	$ -468	$ 4,026	$ 3,563	$ -464	$ -4	- 0.1 %
2016 (Q4)	2,686	2,413	-273	3,970	3,489	-480	208	5.2
2017 (Q1)	3,163	2,690	-472	3,809	3,556	-253	-219	-5.8
2017 (Q2)	2,909	2,306	-603	4,524	3,537	-988	385	8.5
2017 (Q3)	2,277	2,153	-124	3,611	3,572	-40	-84	-2.3
2018 (Q1)	2,851	2,117	-734	5,342	3,513	-1,829	1,094	20.5
2018 (Q2)	2,487	2,109	-378	5,213	3,374	-1,839	1,461	28.0
2018 (Q3)	2,915	1,987	-928	5,505	3,996	-1,509	581	10.6
2018 (Q4)	2,650	1,869	-781	4,919	3,757	-1,162	381	7.7
2019 (Q1)	2,963	1,834	-1,129	5,819	4,290	-1,529	400	6.9
Average across cohorts							**$420**	**7.9%**

SOURCE: JLARC staff analysis of data from PIRL and UI quarterly wage records.

TABLE C-3
Estimated impacts of staff-assisted employment services on quarterly employment rate

	Quarterly employment rate							
	Participants			Comparison Group				
Outcome and entry cohort	Pre-enrollment	Post-enrollment	Post minus Pre	Pre-enrollment	Post-enrollment	Post minus Pre	Estimated impact (diff-in-diff)	Percentage impact
2016 (Q3)	40%	37%	-3%	41%	39%	-1 %	-2%	-4%
2016 (Q4)	39	36	-3	41	38	-3	0	1
2017 (Q5)	40	37	-4	40	39	-2	-2	-4
2017 (Q2)	39	36	-3	42	38	-3	0	0
2017 (Q3)	37	36	-1	39	38	-1	-1	-1
2018 (Q1)	40	35	-5	42	36	-6	1	3
2018 (Q2)	38	35	-2	43	36	-7	5	11
2018 (Q3)	38	34	-4	43	36	-6	2	5
2018 (Q4)	38	33	-5	41	35	-6	1	3
2019 (Q1)	39	33	-6	43	36	-7	1	3
Average across cohorts							**0.7%**	**1.7%**

SOURCE: JLARC staff analysis of data from PIRL and UI quarterly wage records.

References

Balducchi, David E., and Christopher J. O'Leary. 2018. "The Employment Service–Unemployment Insurance Partnership: Origin, Evolution, and Revitalization."

Klerman, Jacob A., and Correne Saunders. 2019. "Findings Summary" (REA Impact Study Briefs). Produced for the U.S. Department of Labor, Chief Evaluation Office. Rockville, MD: Abt Associates Inc.

Appendix D: Analysis of selected Virginia Employment Commission staff salaries

JLARC staff analyzed the salaries of 14 VEC staff positions with responsibilities related to the unemployment insurance (UI) program, including UI benefits staff, UI tax staff, UI appeals staff, call center staff, and IT staff. Two analyses were conducted to determine how the salaries for these selected VEC staff positions compare to relevant benchmarks:

- (1) an assessment of VEC staff's salaries compared to salaries for similar staff positions in other Virginia state agencies; and
- (2) an assessment of VEC staff's salaries compared to salaries for similar staff in private sector positions.

The results of these analyses were used to determine whether VEC staff's salaries were above or below relevant benchmarks. JLARC staff worked with staff from the Department of Human Resource Management (DHRM) to identify positions at Virginia state agencies and within the private sector that are comparable to the selected VEC staff positions.

VEC salaries for several key positions are lower than salaries for comparable positions at other Virginia state agencies

Most (11 of the 14) of the VEC positions examined had *lower* median salaries than comparable positions at other Virginia state agencies (Table D-1). These positions included all of the UI benefits, UI appeals, and call center positions examined, and a majority of the IT staff positions examined. For example, the median salary for VEC's adjudication supervisors was 51 percent lower than the median salary for comparable positions in other Virginia state agencies, such as the Department of Health Professions, the Department of Juvenile Justice, and the Department of Professional and Occupational Regulation. Adjudication supervisors oversee VEC's detailed reviews of UI claims that require further examination of claimants' eligibility. In addition, the median salary for VEC's customer contact center representatives was 27 percent lower than the median salary for comparable positions in other Virginia state agencies, such as the Department for Aging and Rehabilitative Services and the Department of Social Services. Currently, VEC has over 120 full-time customer contact center representatives who are responsible for answering calls about UI claims.

Two of the VEC positions examined had *higher* median salaries than comparable positions at other state agencies. Specifically, the median salary for VEC's tax representatives (including regional leads) was 36 percent higher than the median salary for comparable positions at other Virginia state agencies, such as the Department of Motor Vehicles and the Department of Taxation. The difference between VEC's median salary for IT applications supervisors and that of comparable positions at other Virginia state agencies was more modest, with VEC median salaries measuring only 1 percent higher.

TABLE D-1
Salaries for VEC staff positions reviewed are largely lower than salaries for comparable positions at other Virginia state agencies

VEC position	VEC positions	Comparable VA agency positions	VEC median salary	VEC difference
Call Center Staff				
Customer contact center representative	131	287	$31,200	27% lower
Customer contact center specialist	19	287	35,278	18% lower
Customer contact center supervisor	7	187	45,000	2% lower
UI Benefits Staff				
UI/claims special investigator [a]	44	6,910–6,927	44,773	20-21% lower
Hearing officer [a]	86	38–77	38,392	11–38% lower
Adjudication supervisor	8	8	50,000	51% lower
UI adjudication center manager [a]	3	1-3	58,000	42–52% lower
UI Tax Staff				
UI tax representative/regional lead	44	212	54,504	36% higher
UI Appeals Staff				
Appeals examiner/Admin. law judge	5	23	75,000	15% lower
IT Staff [b]				
Applications programmer/analyst expert	10	183	93,250	8% lower
Applications programmer/analyst	5	121	60,000	9% lower
Applications supervisor	5	25	114,000	1% higher
Data warehouse DBA/developer [c]	3–10	95–1,067	72,855–94,000	1% lower–8% higher
Java programmer	4	8	56,000	41% lower

SOURCE: Department of Human Resource Management salary data for Virginia state employees as of June 30, 2021.
NOTE: Comparison sets comprised individuals at other state agencies with comparable position levels (e.g., employees, first-line supervisors, managers) and either matching Standard Occupational Classification (SOC) System codes or DHRM's Role-Class codes. For some positions, additional filters were applied to further refine comparison sets. This analysis was conducted on filled, full-time positions at both VEC and other comparison state agencies. See Appendix B for additional information on JLARC staff's salary analysis methodology. [a] In some cases, VEC position salaries were compared to salaries for more than one comparison set of other state agency employees. [b] Java programmers were included in each of the IT staff position groups analyzed, depending on their working title, and then also analyzed separately as a group. [c] When positions with an exact match to certain SOC or Role-Class codes did not exist at VEC, multiple groups of VEC employees were used to derive a median salary.

VEC staff salaries for key positions are lower than salaries for many comparable private sector positions

To compare VEC staff salaries to comparable private sector positions, JLARC staff worked with DHRM staff to select comparable positions in the U.S. Mercer Benchmark Database. The Mercer database is a large proprietary, multi-industry compensation database that provides access to compensation data from over 3,000 private sector companies and organizations covering over 2 million em

ployees and over 1,200 types of positions. The positions used for comparison from the Mercer database were full-time positions for similar occupations, taken from a cross-section of employers located across the country.

Eight of the VEC positions examined had *lower* median salaries than comparable positions in the private sector (Table D-2). These positions included all of VEC's call center staff, as well as a majority of the UI benefits staff and some critical IT positions. For example, the median salary for hearing officers was 18 percent lower than the median salary for comparable positions in the Mercer database, such as entry-level claims adjusters, examiners, or processors. Hearing officers conduct fact-finding interviews and make eligibility decisions on claims that require more in-depth review. In addition, the median salary of VEC's Java programmers was 32 to 33 percent lower than the median salary for comparable positions in the Mercer database, such as system programmers. As of June 30, VEC had four Java programmers in the IT division. These staff are responsible for the design, development, and management of applications used to support VEC's operations. For example, the new IT system, VUIS, was designed using the Java programming language.

Three of the VEC positions examined had *higher* median salaries than comparable private sector positions. Specifically, the median salary for IT applications supervisors was 10 percent higher than the median salary for comparable positions in the Mercer database, such as applications system programmers. Differences between VEC's median salary for appeals examiners or administrative law judges and comparable positions in the Mercer database (e.g., paralegals or legal assistants) were more modest at 4 percent to 9 percent, respectively.

TABLE D-2
VEC salaries are largely lower than those for comparable positions in the private sector

VEC Position	VEC positions	Comparable private sector positions	VEC median salary	VEC difference
Call Center Staff				
Customer contact center representative	131	1,539	$31,200	14% lower
Customer contact center specialist [a]	19	3,015–4,485	35,278	19-22% lower
Customer contact center supervisor [a]	7	1,336–3,476	45,000	8–10% lower
UI Benefits Staff				
UI/claims special investigator [a]	44	41–766	44,773	18% lower–3% higher
Hearing officer	86	4,543	38,392	18% lower
Adjudication supervisor	8	7,835	50,000	15% lower
UI adjudication center manager	3	4,775	58,000	24% lower
UI Tax Staff				
UI tax representative/ regional lead [a]	44	174–658	54,504	9% lower – 9% higher
UI Appeals Staff				
Appeals examiner/Admin. law judge [a]	5	318–1,739	75,000	4–9% higher
IT Staff [b]				
Applications programmer/analyst expert	10	8,826	93,250	13% higher
Applications programmer/analyst	5	16,220	60,000	42% lower
Applications supervisor	5	16,220	114,000	10% higher
Data warehouse DBA/developer [c]	3–10	230	72,855–94,000	18% lower – 6% higher
Java Programmer [a]	4	333–908	56,000	32–33% lower

SOURCE: Department of Human Resource Management salary data for Virginia state employees as of June 30, 2021. Mercer Benchmark Database salary data as of July 2021.

NOTE: DHRM shared data from the proprietary Mercer Benchmark Database with JLARC staff to make comparisons between 14 VEC positions and private sector comparison sets. DHRM staff suggested 23 position titles from the Mercer Database corresponding to each of the VEC positions. This analysis was conducted on filled, full-time positions at both VEC and other comparison state agencies. See Appendix B for additional information on JLARC staff's salary analysis methodology. [a] In some cases, VEC position salaries were compared to salaries for more than one comparison set of private sector employees. [b] Java programmers were included in each of the IT staff position groups analyzed, depending on their working title, and then also analyzed separately as a group. [c] When positions with an exact match to certain SOC or Role-Class codes did not exist at VEC, multiple groups of VEC employees were used to derive a median salary.

Appendix E: Prioritization of JLARC report recommendations

The JLARC report *Operations and Performance of the Virginia Employment Commission* (VEC) contains recommendations to improve VEC's management and administration of the state's unemployment insurance (UI) program. Most of these recommendations are directed to VEC and will require agency leadership to take specific actions or make changes to internal agency policies, processes, or procedures. There are also recommendations directed to the General Assembly because they either require a change in state law or can be implemented through budget language.

Appendix organization

This appendix organizes the report's recommendations according to VEC's operational areas and topics focused on in JLARC's review: agency staffing and management, understandability of the UI process, UI claims backlogs, VEC's call centers, overpayments of UI benefits, VEC's information technology, and the UI trust fund's solvency.

The appendix also includes recommended timeframes for implementing the agency-directed recommendations: by December 31, 2021, by June 30, 2022, and by December 31, 2022. Based on these timeframes, VEC should act soonest on recommendations to:

- establish goals for and monitor performance of the most important aspects of UI operations;
- ensure that VEC staff are informed about key UI policy and procedural changes;
- improve the understandability of the UI claims process for claimants;
- eliminate adjudication backlogs;
- improve call center performance;
- investigate potentially fraudulent claims;
- resume collection of overpayments; and
- improve efforts to identify unpaid employer taxes.

The General Assembly may wish to take action on legislative recommendations during the 2022 General Assembly session.

Agency staffing and management

Recommendations for General Assembly action

The report contains recommendations for the General Assembly to take action to (i) improve VEC's ability to temporarily rely on other state agency staff for assistance when workloads escalate in response to sudden periods of high unemployment, (ii) improve VEC's planning and preparedness for future recessions, and (iii) enhance the legislature's oversight of VEC's performance. Another recommendation would amend the Code of Virginia to allow disputes about certain claims that do not qualify for a formal appeal to bypass the appeals division, to reduce the appeals division's workload and improve the efficiency with which these disputes are handled.

Obtain temporary staffing assistance from other state agencies ► The General Assembly may wish to consider including language in the Appropriation Act requiring the Virginia Department of Human Resource Management to lead a multi-agency workgroup, comprising agency leaders and human resources staff from state agencies most likely to be in need of staffing assistance during emergencies, to examine the feasibility of and policies and procedures necessary for (i) granting agencies exemptions from certain competitive hiring requirements during emergencies; (ii) requiring selected state agency staff to temporarily support other agencies in need of staffing assistance during emergencies through existing or new state initiatives; and (iii) providing necessary funding to cover the associated costs. The workgroup should propose criteria to determine under what circumstances these emergency hiring practices may be invoked and a process for invoking this authority as well as terminating it. The workgroup should submit its findings to the secretary of administration, the chair of the House Appropriations Committee, and the chair of the Senate Finance and Appropriations Committee by June 30, 2022. (Recommendation 3)

Plan operational response to UI claims increases ► The General Assembly may wish to consider amending § 60.2-111 of the Code of Virginia to require the Virginia Employment Commission to develop and maintain an unemployment insurance resiliency plan that describes the specific actions the agency would take, depending on the level of increase in unemployment insurance (UI) claims, to address staffing, communications, and other relevant aspects of operations to ensure continued efficient and effective administration of the UI program. (Recommendation 7)

General Assembly monitoring of VEC's performance ► The General Assembly may wish to consider including language in the Appropriation Act or amending § 30-222 of the Code of Virginia to create a subcommittee of the Commission on Unemployment Compensation to monitor the Virginia Employment Commission's: (1) key performance metrics related to UI backlogs; (2) efforts to identify, prevent, and recover incorrect UI benefits payments, including fraudulent payments; (3) project to modernize the UI IT system; (4) expenditure of state funds appropriated for UI administration; and (5) implementation of JLARC recommendations. The subcommittee should include individuals who can represent the interests and experiences of claimants and employers. The subcommittee could include members of the following General Assembly committees: Commission on Unemployment Compensation, House Appropriations, Senate Finance and Appropriations, House Labor and Commerce, and Senate Commerce and Labor. The subcommittee should meet at least once quarterly and sunset on June 30, 2025. (Recommendation 9)

Improve efficiency of appeals workflow ► The General Assembly may wish to consider amending § 60.2-619 of the Code of Virginia to specify that non-valid unemployment insurance claims resulting from monetary ineligibility are ineligible for appeal through the Virginia Employment Commission's appeals division. (Recommendations 18 and 19)

Recommendations for agency action

The report recommends that VEC take specific actions to improve agency staffing and agency management. VEC should implement most of these recommendations before December 31, 2021 or before June 30, 2022. Recommendation 1, which is directed to the secretary of labor, should be implemented after July 1, 2022 because it is contingent on the completion of VEC's modernized IT system, scheduled for June 30, 2022. The report does not include recommendations to increase VEC staff compensation to improve staff recruitment and retention, but the salary analysis presented in Appendix D concludes that some VEC staff salaries are lower than comparable positions in other state agencies and the private sector.

Staffing

Hire contractor to conduct detailed efficiency review for improved staffing and workflows ► The secretary of labor should competitively procure a national firm with expertise in evaluating the efficiency of an organization's staffing structure, delegation of staff duties, and work processes to conduct a comprehensive efficiency review of the unemployment insurance (UI) operations of the Virginia Employment Commission to (i) identify specific actions that could be taken to improve the efficiency of VEC's UI operations, including through more efficient and effective use of staff and technology, (ii) recommend improvements to the agency's staffing and workflows to most effectively use existing federal funding for UI operations, and (iii) determine whether current funding is adequate to ensure effective UI operations. (Recommendation 1)

Improve staff supervision ► The Virginia Employment Commission should establish goals for the ratio of supervisory staff to direct reports, particularly for key functions including call centers, adjudication and appeals centers, and fraud investigations. Agency leadership should regularly monitor the ratio of supervisory staff to direct reports relative to the goals, and report performance in meeting these goals in the monthly commissioner's performance report. (Recommendation 2)

Increase number of VEC staff trained in UI ►The Virginia Employment Commission should build a reserve of staff to assist with claims during periods of high claims volume by identifying workforce services division staff whose time can practicably be reassigned to non-workforce activities during periods of high unemployment insurance claim volume. These staff should be cross-trained on key unemployment insurance processes. (Recommendation 12)

Recommendation #	Implementation Timeframe		
	By December 31, 2021	By June 30, 2022	By December 31, 2022
1			•
2	•		
12			•

Agency management

Establish goals and monitor performance of key UI operations ► The Virginia Employment Commission should establish meaningful performance goals for its call center operations and fraud investigations, and ensure it has goals for effectively measuring performance in all other aspects of unemployment insurance operations. Agency leadership should regularly monitor performance relative to the goals and report goals and performance in the monthly commissioner's performance report. (Recommendation 4)

Enhance independence and awareness of quality assurance unit ► The Virginia Employment Commission (VEC) should transfer the unemployment insurance quality assurance unit from the unemployment insurance division and have it report directly to the VEC commissioner (Recommendation 5) and require its unemployment insurance quality assurance unit to compile its findings and recommendations in a central repository and routinely update VEC leadership on their status (Recommendation 6).

Keep key VEC staff informed of policy and procedural changes ► The Virginia Employment Commission (VEC) commissioner should ensure that all key policy or other significant changes that could affect the public, VEC, or VEC staff are communicated clearly and expeditiously to all VEC staff, especially those in leadership or positions communicating with the public. (Recommendation 8)

	Implementation Timeframe		
Recommendation #	By December 31, 2021	By June 30, 2022	By December 31, 2022
4	•		
5		•	
6		•	
8	•		

Understandability of the UI claims process

Recommendation for General Assembly action

The report includes a recommendation for the General Assembly to create an ombudsman position within VEC to address concerns identified during JLARC's review about the understandability of the appeals process, especially by claimants.

Create an appeals ombudsman position ►The General Assembly may wish to consider amending Article 2 of Chapter 1 of Title 60.2 of the Code of Virginia to direct the Virginia Employment Commission to create an appeals ombudsman position to provide impartial information about the unemployment insurance appeals process and help ensure that all parties are afforded due process in such appeals. (Recommendation 20)

Recommendations for agency action

The report recommends that VEC take specific actions to improve the understandability and accessibility of UI eligibility and the claims and appeals processes. These recommendations should be implemented by VEC before December 31, 2021.

Clearly explain UI eligibility and claims/appeals process ► The Virginia Employment Commission (VEC) should, as soon as possible, have staff in its internal audit division review and revise documents and online resources to more clearly describe and explain (i) eligibility criteria for Unemployment Insurance (UI), (ii) how to navigate the UI claims and appeals process, and (iii) the status or outcome of a claim. VEC should use examples from other states and input from VEC staff and customers and should competitively procure a third party contractor with expertise in UI and customer communications to assist with these efforts. (Recommendation 10)

Develop instructional videos and online eligibility tool ► The Virginia Employment Commission should develop (i) a series of instructional, short videos designed to help claimants better understand their potential eligibility for unemployment insurance, the steps of the application process, and how to file a claim and (ii) an interactive, online eligibility tool that enables claimants to better understand their potential eligibility and benefits under the program. (Recommendation 11)

	Implementation Timeframe		
Recommendation #	By December 31, 2021	By June 30, 2022	By December 31, 2022
10	•*		
11	•		

*Should be initiated by VEC staff internally by December 31, 2021, but procurement of a third-party contractor is likely infeasible until mid-2022.

Backlog of claims requiring adjudication

Recommendations for General Assembly action

None

Recommendations for agency action

The report recommends that VEC take specific actions to eliminate the current backlog of claims requiring adjudication. These recommendations should be implemented by VEC before December 31, 2021.

Strategically prioritize claims needing adjudication ► The Virginia Employment Commission should formalize a policy for prioritizing and assigning claims for adjudication during periods of high claims volume. This policy should detail how prioritization may change in response to claims volume and clearly state the expectation that VEC should generally prioritize resolving older claims. (Recommendation 13)

Detail actions and resources needed to resolve adjudication backlogs ► The Virginia Employment Commission (VEC) should develop a detailed plan that includes specific actions and a timeline to resolve (i) outstanding adjudications and (ii) all issues on claims that VEC bypassed in 2020 and 2021. The plan should quantify the numbers and qualifications of new staff needed to resolve these claims, outline the actions planned for hiring needed staff, and identify potential risks and mitigation strategies. VEC should submit the plan to the House Labor and Commerce Committee, the Senate

Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor and provide a status update to each body quarterly in 2022. VEC should also publish the plan and updates on its website. (Recommendation 14)

Recommendation #	Implementation Timeframe		
	By December 31, 2021	By June 30, 2022	By December 31, 2022
13	•		
14	•		

UI Call Center Performance

Recommendations for General Assembly action

None

Recommendations for agency action

The report recommends that VEC take specific actions to improve the performance of its call center. Two of these recommendations should be implemented prior to December 31, 2021, and the third should be a priority for the agency in 2022.

Retain contractor for quickly escalating call center capacity ► The Virginia Employment Commission should maintain an ongoing staff augmentation contract with a provider that is experienced in providing call center services for unemployment insurance programs and can quickly provide increased call center staff when call volumes increase. (Recommendation 15)

Report call center performance to General Assembly ► The Virginia Employment Commission (VEC) should provide a written quarterly update on the performance of its call centers to the House Labor and Commerce Committee, the Senate Commerce and Labor Committee, the Commission on Unemployment Compensation, and the governor by December 31, 2021 and at the end of each quarter in 2022. VEC should also publish these updates on its website. (Recommendation 16)

Assess and improve performance of call center staff ► The Virginia Employment Commission (VEC) should establish and maintain a dedicated quality monitoring team composed of VEC staff from each customer contact center. This team should use the recently procured quality monitoring software to regularly review and assess call quality and performance for all VEC call agents, and identify any additional training needs on an agent-by-agent basis through weekly monitoring and assessment of at least three calls per agent. (Recommendation 17)

Recommendation #	Implementation Timeframe		
	By December 31, 2021	By June 30, 2022	By December 31, 2022
15		•	
16	•		
17	•		

Accuracy of claims processing and recovery of overpayments

Recommendations for General Assembly action

The report includes a recommendation for the General Assembly to amend the Code of Virginia to require employers to send information about a former employee's separation from employment to VEC electronically rather than through the mail to improve the timeliness of claims determinations.

Require employers to report employee separations electronically ► The General Assembly may wish to consider amending §60.2-121.1 of the Code of Virginia to require employers to electronically provide separation information when requested to the Virginia Employment Commission unless they are granted a waiver from providing this information electronically. (Recommendation 22)

Recommendations for agency action

The report recommends that VEC take specific actions to improve the quality of its claims determinations, to investigate the backlog of potentially fraudulent claims, and to begin the process of recovering excess benefits that were paid to claimants. Most of these recommendations should be implemented by December 31, 2021.

Train VEC staff to conduct high-quality UI claims determinations ► The Virginia Employment Commission should develop a standardized training program that explains how to conduct high quality unemployment insurance claims determinations and that is administered by a dedicated training manager to all new and existing adjudication staff. (Recommendation 21)

Audit compliance with work search requirement ► The Virginia Employment Commission should resume auditing a sample of UI claims to verify compliance of claimants with the unemployment insurance program work search requirement no later than December 1, 2021. (Recommendation 23)

Plan for investigating backlog of potentially fraudulent claims ► The Virginia Employment Commission (VEC) should develop a plan for investigating the backlog of potentially fraudulent claims and establish a strategy for prioritizing its investigations according to the potential dollar amount of fraudulent payments per claim. This plan should include a strategy for hiring additional fraud investigators and expediting training of new hires. This plan should be presented to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by December 31, 2021. VEC should also publish these updates on its website. (Recommendation 24)

Resume recovery of overpayments ►The Virginia Employment Commission (VEC) should immediately resume overpayment recovery activities for all finalized overpayments and initiate collections activities for all future overpayments immediately after finalization. VEC should also create and adhere to internal timeliness standards for processing all previously received and future overpayment waiver applications to ensure overpayments are finalized and recovery activities are initiated in a timely manner. (Recommendation 25)

Recommendation #	Implementation Timeframe		
	By December 31, 2021	By June 30, 2022	By December 31, 2022
21			•
23	•		
24	•		
25	•		

Information technology

Recommendations for General Assembly action

None

Recommendations for agency action

The report recommends that VEC take specific actions to ensure that its new UI IT modernization system is assessed and improved on an ongoing basis, that the unresolved problems with the employer tax portion of the new system are resolved before VEC's contract with the modernization vendor ends, and that VEC's IT environment meets IT security standards. Each of these recommendations can be implemented in 2022.

Regularly improve UI system based on claimant feedback ► The Virginia Employment Commission (VEC) should regularly collect feedback on the usability of the new Unemployment Insurance benefits information technology system from claimants and employers and make regular improvements to the system, as necessary, that address such feedback. VEC should provide a summary of user feedback and planned and completed system changes to the House Committee on Labor and Commerce, the Senate Committee on Commerce and Labor, the Commission on Unemployment Compensation, and the governor by March 31, 2022 and at the end of each quarter in 2022. VEC should also publish this information on its website. (Recommendation 26)

Identify ways to further modernize UI system ► The Virginia Employment Commission (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 staff. (Recommendation 27)

Detail actions and timeline for fixing UI tax system problems ► The Virginia Employment Commission should require its unemployment insurance IT modernization contractor to develop a plan that includes specific actions and a timeline for addressing all existing tax system problems and details (1) how each problem will be fixed, (2) deadlines for fixing each problem, and (3) any additional resources needed to fix the problems. VEC should also establish a plan with its unemployment insurance modernization vendor to ensure VEC IT staff are sufficiently trained to operate and modify the employer tax system. (Recommendations 28 and 29)

Undergo an IT security audit ► The Virginia Employment Commission (VEC) should work with the Virginia Information Technologies Agency (VITA) to facilitate an audit of VEC's IT security systems and to identify any necessary IT security improvements. The audit should be completed by a

vendor approved by VITA. The audit should validate whether VEC's existing IT security systems meet the requirements issued by VITA. (Recommendation 30)

Fully transform to state's central IT structure ► The Virginia Employment Commission should fully transform all agency IT systems and servers to the state's central IT infrastructure as soon as possible. (Recommendation 31)

Recommendation #	Implementation Timeframe		
	By December 31, 2021	By June 30, 2022	By December 31, 2022
26		•	
27			•
28		•	
29		•	
30		•	
31			•

Trust fund solvency (Chapter 8)

Recommendations for General Assembly action

None

Recommendations for agency action

The report recommends that VEC take specific actions to improve its ability to collect employer UI taxes owed to the state's trust fund. A handful of these recommendations could be implemented by December 31, 2021, but most could be implemented in 2022.

Identify employers who owe UI taxes ► The Virginia Employment Commission (VEC) should conduct two, one-year pilot programs to identify employers who owe unemployment insurance taxes but are not registered with VEC by 1) auditing employers who do not register with VEC after receiving notifications of potential tax liability and 2) auditing a sample of employers who may be misclassifying workers based on their 1099 tax filings. VEC should assess the pilot programs' effectiveness to decide whether to use these methodologies on an ongoing basis. VEC should also reinstate its State Unemployment Tax Act dumping identification system no later than December 2022. (Recommendations 33, 34, and 35)

Conduct targeted employer audits and delinquent tax collections ► The Virginia Employment Commission (VEC) should modify existing unemployment insurance (UI) tax audit policies to require field tax auditors to conduct at least half of their audits per year from a list of employers identified to be at-risk for UI tax avoidance. VEC should define "at-risk" to include industry and employer-specific factors and establish a system for consistently identifying such employers. VEC should also provide quarterly reports to tax division regional managers that list each employer with tax debt more than six months past due and require the managers to use this information to ensure that tax field staff are taking all reasonable steps to collect the debt. (Recommendations 36 and 38)

Use Treasury Offset Program to collect delinquent employer taxes ► The Virginia Employment Commission should begin using the federal Treasury Offset Program for applicable delinquent taxes as soon as staff resources become available. (Recommendation 37)

Enhance tax division efficiency and customer service ► The Virginia Employment Commission should designate customer service positions in the tax division to handle basic employer communications and questions. (Recommendation 39)

Require electronic UI tax payments ► The Virginia Employment Commission should require employers to make unemployment insurance payments electronically starting in 2023, develop criteria that would allow employers to be granted an exception to this requirement, and notify employers of the criteria. (Recommendation 40)

	Implementation Timeframe		
Recommendation #	By December 31, 2021	By June 30, 2022	By December 31, 2022
33			•
34			•
35	•		
36	•		
37			•
38	•		
39			•
40			•

Appendix F: Other states' oversight of unemployment insurance programs

There are no federal requirements for states to have entities dedicated to overseeing unemployment insurance (UI) programs, but at least seven states have such entities, and their characteristics vary widely. Of the seven states, four have an executive branch oversight entity, two have legislative branch oversight entities, and one has separate entities in the executive and legislative branches (Table F-1). Membership varies, but all seven states include legislators in their UI oversight; two states include executive branch representatives (e.g., the state agency administering UI, other state agencies, a cabinet secretary); and six states include stakeholders (e.g., labor, businesses). The scope of most states' oversight entities is fairly broad, typically including any aspects of UI policy and operations. Oregon and Ohio are exceptions. Oregon's two oversight entities focus specifically on IT modernization, and Ohio's oversight entity is tasked with reviewing UI benefit claim and receipt processes (e.g., customer service, IT). At least several states (such as Alaska and Vermont) do not possess an entity dedicated to UI oversight.

TABLE F-1
State oversight bodies can be composed of legislators, executive branch representatives, or stakeholders

State	Entity type	Members		
		Legislators	Executive branch	Stakeholders
Illinois	Agency board	○	○	●
	Legislative subcommittee	●	○	○
Maryland	Legislative committee	●	○	●
North Carolina	Legislative committee	●	○	○
Ohio	Agency council [a]	●	●	●
Oregon	Agency forum	●	●	○
	Agency board	○	●	●
South Carolina	Agency review committee [a]	●	○	●
Tennessee	Agency advisory council [b]	●	○	●

SOURCE: States' statutes, regulations, agency websites, and interviews with JLARC.
NOTE: [a] Type not explicitly stated. Classified as agency type because description is located in executive branch section of state statute and the governor selects stakeholder members. [b] Type not explicitly stated. Classified as agency type because description is located in executive branch section of state statute and the agency commissioner selects stakeholder members.

Illinois

Illinois's Employment Security Advisory Board (ESAB) is an agency advisory board. Its statutory scope is broadly to "aid the Director in formulating policies and discussing problems related to the administration." The board was given one-time responsibilities such as studying the state's experience rating methodology in 2000 and reporting findings on UI benefits and trust fund solvency by 2007. It has existed since at least 2000. It has four members each from the following categories: (1) "a labor organization recognized under the National Labor Relations Act", (2) "representative citizens chosen from the employing class", and (3) "representative citizens not identified with either the employing class or a labor organization." Its bylaws require quarterly meetings. State law requires the director of the UI agency to submit an annual report to the ESAB about trust fund finances. The ESAB's meetings similarly focus on trust fund health but sometimes review other topics such as staffing levels during COVID-19. When legislation related to UI is considered, the ESAB typically provides recommendations. Additionally, the Illinois Senate has a labor subcommittee for UI.

Maryland

Maryland's Joint Committee on Unemployment Insurance Oversight is a permanent legislative body. State law authorizes it to "examine the need for additional alterations to the unemployment insurance system, including the charging and taxation provisions and the eligibility and benefit provisions, in consideration of the fairness of the system and in order to maintain" trust fund adequacy. It was created in 2005 then re-authorized in 2007. It has 15 members: six legislators (three senators and three delegates), two *ex officio* executive branch members (the secretary of labor and the secretary of commerce), and six stakeholder members specified in law: a Maryland Retailers Association representative, Maryland Chamber of Commerce representative, National Federation of Independent Business representative, Job Opportunities Task Force representative, and two representatives of union labor (chosen by the Maryland State and District of Columbia AFL–CIO). An additional member is a representative of the academic profession who is knowledgeable in unemployment insurance law. The committee has no meeting frequency requirements and met at least once in 2020. The committee proposes legislation (including in 2020) and is consulted on legislation proposed by others. State law generally requires the UI program to "report to the Committee on the condition of unemployment insurance in the State." The committee is required to report its findings to the governor and General Assembly in years when the committee meets.

North Carolina

North Carolina's Joint Legislative Oversight Committee on Unemployment Insurance is a permanent legislative body. State statute affirms its scope should be interpreted generously and includes: reviewing UI statute and administration, identifying UI laws in need of change, monitoring trust fund debt and adequacy, and reviewing workforce programs operated by the agency that also administers UI. The committee was created in 2013 with a 10-year sunset, which was repealed in 2020 bill. It is composed of eight legislators: four representatives and four senators. It has no meeting frequency requirements other than at the call of the chair and met three times in 2020. Information presented by the agency varies by meeting, such as administrative funding, IT modernization, and COVID operational

changes. The committee proposed legislation in its 2021 report to the legislature. The committee is not required to produce reports.

Ohio

Ohio's Unemployment Compensation Modernization and Improvement Council was created in fall 2020. It is tasked with reviewing UI claims and benefits processes, including: technology, potential improvements to customer responsiveness, and coordination with other programs. Statute explicitly forbids the council from considering UI trust fund solvency and benefit levels. There are 11 members. The six legislators include chairpersons of the standing committees that handle UI legislation, two senators (one each from majority and minority parties), and two delegates (one each from majority and minority parties). The governor appoints four stakeholder members who are defined as those who "on account of their vocation, employment, or affiliations can be classed as representative of employers" and two employee representatives with the same definition. The last member is an agency representative. The council has no minimum meeting frequency but met 14 times between January and August 2021. Information presented to the council varies by meeting and has included the agency's funding, recession plan, UI fraud, and call centers. The council has interacted with the state auditor's office, which conducted a performance review of Ohio's UI agency in 2020. The state auditor's office provided information directly to the council, and the council is likely to focus on its recommendations. The council is required to provide annual opportunities for public testimony. Within six months of its creation, it is required to produce a report describing the UI claims process and "any planned improvements" to it. Ohio's UI agency is required to notify the council of any "substantial disruption" in the UI eligibility determination process or unauthorized access to agency records.

Oregon

Oregon created two external oversight entities to assist with its current UI IT modernization project: the Modernization Oversight Forum and the Modernization Stakeholder Board. Neither the board nor the forum has authority to make final decisions related to Oregon's UI IT modernization project.

The Modernization Oversight Forum was created in 2020 to provide expertise and advice to the UI IT modernization project on issues such as risk mitigation and best practices. The forum consists of six members: two senators, two representatives, the state chief information officer, and the state legislative fiscal office. The forum is required to meet quarterly, and its only meeting to date occurred in 2021.

The Modernization Stakeholder Board was created in 2019 to make "decisions that have a cross-organizational operational impact." Its responsibilities include identifying strategies for better customer service, operating technical work groups, and providing information to their host organizations to make needed changes due to the modernization project. The board consists of seven to 15 voting members selected by the UI agency executive director from a pool listed in the modernization project charter. Members currently include six specified state agencies whose processes interface with UI (e.g., Department of Revenue, Department of Consumer and Business Services) and five customer representatives (e.g., Equifax, a legal aid organization, business owner). The board is required to meet monthly and met seven times in 2020.

South Carolina

The Department of Employment and Workforce (DEW) is South Carolina's state agency administering UI, workforce statistics, and certain workforce services. The DEW has a review committee that oversees all agency programs, but UI is a significant focus. The review committee is responsible for conducting an annual performance review of the executive director and agency, screening candidates for the appellate panel, reviewing the agency's budget proposal, and making recommendations to the governor and legislature. It is also charged with nominating applicants for executive director for the governor to appoint but has no authority to remove the existing director. It was created in 2010. Members consist of three senators (including at least one from the minority party), three representatives (including at least one from the minority party) and four citizens selected by the governor (including one representing businesses with under 50 employees and one representing businesses with under 500 employees). It has the authority to administer oaths and issue subpoenas if needed for its investigations. There are no meeting frequency requirements, and the review committee has not met since prior to the COVID-19 pandemic (March 2020).

Tennessee

Tennessee's State Unemployment Compensation Advisory Council is a permanent advisory council to the agency that administers UI. It is responsible for assisting the commissioner of that agency "in formulating policies and discussing problems related to the administration of" UI and "assuring impartiality and freedom from political influence." It has existed since at least 1947, and the agency commissioner appoints members. Statute does not specify the number of members, but it states the number of employer representatives and employee representatives "who may fairly be regarded as representative because of their vocation, employment or affiliations" must be equal, and it also allows members "representing the general public that the commissioner may designate." There are currently six members, including: the AFL-CIO, auto union, National Federation of Independent Business, and state chamber of commerce. The council is required to meet twice a year with the UI division's chief administrative officer, who must provide information on UI operations.

Appendix G: Prioritized list of unemployment insurance communications to review

The Virginia Employment Commission (VEC) has various unemployment insurance (UI) forms, notices, instructions, and guidelines that cause confusion among UI claimants, employers, and other stakeholders. These items require review and clarification to ensure better understanding of the UI program, eligibility criteria, and the application process.

A prioritized list of items in need of revision are included below. Additional VEC communications would benefit from review and revision when agency resources become available.

VEC website content:

- "Apply for Benefits" page
- "UI Home" page
- "Benefits Information" and all linked pages
- "Benefit Rights and Responsibilities" page
- "Waiver of Overpayment Action" page
- "The UI Claims Process" page
- "UI Claimant Handbook" page
- "UI FAQs" page
- "I'm Unemployed, Now What?" page
- "Unemployment Insurance Information for Employers" page
- "FAQ - Employer UI Tax" page

VEC forms, notices, and other guidance documents:

- Benefit Rights and Responsibilities letter
- Monetary Determination letter
- Denial letter (sections that explain appeal rights)
- Letters to claimants seeking additional information about "able and available to work" status, separation eligibility, or good cause for voluntary quits
- Letters to employers delinquent on UI tax payments (e.g., billing statements, notices of lien)
- Virginia Employer's handbook

Appendix H: Work search activities and verification strategies

State unemployment insurance (UI) laws are federally required to include a requirement that claimants make an active search for work during each week of their unemployment period to be eligible to receive benefits. States vary in how they define qualifying work search activities in their UI laws, but many states have traditionally relied on employer contacts or job applications as acceptable work search activities.

The U.S. Department of Labor (DOL) issued guidance encouraging state workforce agencies to adopt model UI state work search legislation in 2020. The model legislation was intended to help states more effectively achieve the rapid reemployment of UI claimants and to better align states' requirements with the modern practices individuals use to search for work. The model legislation included a list of acceptable work search activities that was developed by a workgroup made up of staff from state workforce agencies, the National Association of State Workforce Agencies, and DOL. States can incorporate this list of work search activities into their work search requirements. Fully implementing the proposed model legislation would represent a significant shift in Virginia's work search policies because of the broadened definition of what constitutes an acceptable work search activity.

Acceptable work search activities outlined in the DOL model legislation include:

- creating a reemployment plan;
- creating a resume*;
- uploading a resume to online job boards;
- registering for work with the state's labor exchange system, placement firm, temporary work agencies, or educational institution with job placement offices*;
- using online career tools;
- logging on and looking for work in the state's labor exchange or other online job matching systems;
- using reemployment services in [American Job Centers] or completing similar online or self-service activities (e.g. obtaining and using labor market and career information, participating in Reemployment Services and Eligibility Assessment (RESEA) activities, participating in a skills assessment for occupational matching, instructional workshops, or other specialized activities);
- completing job applications for employers that have (or are reasonably expected to have) job openings, or *following through on job referrals or job development attempts, as directed by state workforce or UI staff;
- applying for and/or participating in employment and training services provided by partner programs in [American Job Centers];
- creating a personal user profile on a professional networking site;
- participating in work-related networking events (e.g. job clubs, job fairs, industry association events, networking groups, etc.);

- making contacts or in-person visits to employers that have, or are reasonably expected to have, job openings;
- taking a civil service exam;
- going to interviews with employers (virtually or in-person); or
- any other work search activities prescribed by the state in [regulation and/or policy].

**Activities that are part of the Virginia Employment Commission's current work search requirements*

The workgroup of state workforce agencies, the National Association of State Workforce Agencies, and DOL also developed a set of strategies that state workforce agencies can use to monitor and verify UI claimants' work search activities (Table H-1). These strategies are intended to help states improve the efficiency and effectiveness of their work search verification efforts.

TABLE H-1
Documentation and verification strategies for states' proposed work search activities

Proposed work search activity	Documentation/verification strategy
Creating a Reemployment Plan using a state-provided electronic tool	Plans could be submitted electronically or on paper when initially developed and revised and/or when requested by the state UI agency
Creating a resume and/or uploading resumes to an online job board	Print out of the resume or a confirmation email from the site used
Registering for work with: • state's labor exchange system • placement firms • temporary work agencies • educational institutions that have placement offices	"Full" registration (work history, resume, job preferences, etc.) could be considered a work search activity that is easily verified by electronic cross-match Registration with private employment agencies can be documented by providing an electronic or paper copy of the registration form or a copy of an email confirming registration
Using on-line career tools, such as: • job match advisors • other national job boards • My Skills My Future	Print out or screen shot of the results from tools used
Logging in and looking for work: • in the state labor exchange • in any other online job matching system	Print out of a resume or job application or a confirmation email from the site that was used
Using reemployment services in one-stops, such as: • obtaining and using labor market and career information • participating in profiling (if required) • participating in instructional workshops (resume, interviewing, job searching, etc.) • participating in other activities/specialized services, e.g., job clubs, job fairs, etc.)	Use of these services is documented in state and/or local case management systems, which are generally accessible to state UI agencies electronically One-Stops frequently have sign-in logs when customers participate in events or use the resource room that may also be a source of documentation

Completing job applications for employers that have (or are reasonably expected to have) job openings, or following through on job referrals or job development attempts, as directed by workforce center staff	Can be documented by the individual's attestation and potentially verified by follow-up contacts with employers to whom an application was made
Applying for and/or participating in: • partner-sponsored reemployment services • non-WIOA-related/sponsored training, such as digital literacy, GED, or ESL, when the training is job-related and the individual remains available for work	Generally documented by the individual's attestation along with any documents issued by the sponsor or training provider showing enrollment, participation, or completion
Creating a personal user profile on a professional networking site (e.g., LinkedIn)	Printed screen shot of the profile which could be verified by the state agency through access to LinkedIn or other sites
Participating in work-related networking events (e.g., job clubs, industry association events)	Registration confirmation, ticket, or name badge showing the name and date of the event
Making in-person visits to employers that have or are reasonably expected to have job openings	Individual's attestation may be the only documentation available
Going on interviews with employers (virtually or in-person)	Generally documented by attestation and can be potentially verified by contact with the employer

SOURCE: "Documentation and Validation of Required Work Search for Unemployment Insurance Eligibility in the 21st Century Labor Market" white paper from the Pathway to Reemployment Framework (2016). Accessed from: https://rc.workforcegps.org/resources/2016/10/03/05/36/Pathway_to_Reemployment_Framework.

Additionally, DOL's guidance encouraged states to use automation to capture claimant work search activities as part of the weekly UI claim filing process and to use other innovative strategies to document work search activities by leveraging case management systems and partnering with private workforce partners, like LinkedIn. DOL asserts that integration of work search documentation with online weekly claims filing processes enables states to immediately know whether the claimant has satisfied requirements prior to payment of benefits for the week. DOL found that states have lower incorrect payment rates related to work search requirements when they:

- include reemployment service activities as acceptable work search activities;
- support claimant compliance with work search requirements by connecting them to reemployment services; and
- have automated systems that document claimants' participation in reemployment service activities to support verification of completed work search activities.

Appendix I: Unemployment insurance recipients and Virginia's modern workforce

Federal law requires states to provide unemployment insurance (UI) benefits to individuals who are unemployed through no fault of their own while they search for reemployment. The Virginia Employment Commission (VEC) administers UI benefits in Virginia. This appendix provides descriptive information about Virginia's UI benefits and recipients (called "claimants"), including (1) the demographic characteristics (e.g., race, age, gender) of UI claimants, (2) the distribution of UI benefits they have received, (3) Virginia's UI eligibility requirements compared to neighboring and peer states' eligibility requirements, and (4) recent changes to Virginia's workforce.

State UI benefits are awarded to a variety of Virginians

Demographic data for UI benefits through Virginia's traditional state UI program in 2018, 2019, and 2020 shows that, on average, Virginia's UI claimants are largely white, male, and middle-aged (Table I-1). Black Virginians are represented at higher rates among claimants than they are in Virginia's population. The largest occupational group among claimants was office and administrative support positions. The lower wages and temporary nature of many back-office or other support positions (which are included in this broader group) likely contribute to this. A significant number of claimants do not report their occupation to the VEC.

The VEC provided demographic data for approximately 118,000 UI claims filed in 2018, 124,000 UI claims filed in 2019, and over 1.3 million UI claims filed in 2020. A significant number of UI claims were filed beginning in March 2020 during the COVID-19 pandemic and the recession that followed.

A large number of UI claimants both before and during COVID-19 received the maximum weekly benefit amount of $378 under the traditional state UI program. In 2019, a relatively low number of UI claims were filed and paid, but the amount of UI benefits awarded skewed heavily toward the higher end of allowable weekly benefits. Specifically, over 46 percent of all claimants received the maximum allowable weekly benefit amount of $378, and the average weekly benefit was slightly over $320. In 2020, a higher number of UI claims were filed, but the amount of UI benefits awarded still skewed heavily toward the higher end of the allowable weekly benefits. Nearly 30 percent of all claimants received the maximum UI benefit, and the average weekly benefit was slightly over $270. In the first three quarters of 2021, the percentage of claimants receiving the maximum benefit amount had returned nearly to 2019 levels, with 44 percent of claimants receiving a weekly benefit amount of $378.

TABLE I-1
Virginia state UI descriptive statistics

Demographic characteristic	2018 (%)	2019 (%)	2020 (%)	% of VA population (2020)
Race				
White	49.1%	48.4%	50.4%	65.7%
Black	37.1	38.0	30.4	20.3
Asian	2.6	2.5	6.5	7.8
Hispanic or Latino [a]	0.9	0.8	0.3	n/a
American Indian or Alaskan Native	0.5	0.5	0.5	0.5
Native Hawaiian or Other Pacific Islander	1.4	1.2	0.4	0.1
Other	3.3	2.6	0.8	5.6
Unknown ("Race INA") [b]	8.4	8.7	11.5	n/a [d]
Ethnicity [a]				
Hispanic	5.3	5.3	8.6	10.5
Non-Hispanic	76.2	79.1	86.1	89.5
Unknown ("Ethnicity INA") [b]	18.5	15.6	4.7	n/a [d]
Gender				
Female	48.1	47.7	55.9	50.8
Male	51.9	52.3	44.1	49.2
Age				
Younger than 22	0.1	0.3	4.7	6.5
22–24	1.5	2.4	8.8	6.6
25–34	18.2	20.1	28.1	13.8
35–44	23.7	24.0	20.3	13.8
45–54	22.3	22.2	16.8	12.8
55–64	24.3	22.4	14.9	13.1
>65	10.0	7.9	6.5	15.9
Educational Attainment				
Some School	10.4	7.2	8.7	9.9
High School Graduate/GED	39.5	41.5	45.2	24.9
Some College/Associate's Degree	21.1	22.3	25.5	28.8
Bachelor's Degree	13.7	14.8	14.5	21.2
Some Graduate School	0.5	0.6	0.4	n/a [d]
Postgraduate Degree	6.0	6.3	4.5	15.2
Unknown ("Education INA") [b]	8.8	7.4	1.1	n/a [d]
Top Local Workforce Development Areas (LWDAs)				
Southern Virginia (LWDA XIV)	21.2	21.1	22.2	n/a
Northern Virginia (LWDA XI)	11.9	11.7	19.2	n/a
Capital Region (LWDA IX)	12.5	12.7	13.2	n/a
Out-of-State Work Location	15.0	14.0	7.8	n/a
Bay Consortium (LWDA XIII)	5.7	5.7	5.4	n/a
Top occupational groups				
Office and Administrative Support	11.9	12.8	16	10.5
Management	10.6	11.4	10.1	11.2
Production	9.7	8.5	9.2	4.3
Sales and Related	8.9	9.6	6.3	9.5
Information not provided ("Occupation INA") [b]	11.0	11.1	10.9	n/a [d]

SOURCE: Virginia Employment Commission claims data (2018–2021). U.S. Census Bureau, American Community Survey, 5-year estimates.

NOTE: [a] VEC's racial demographic data for UI claimants includes a "Hispanic" category. This has been relabeled here to reflect U.S. Census Bureau terminology, but reflects VEC"s data output. Both the Census Bureau and the VEC (in a separate question) offer respondents the opportunity to provide specific information about Hispanic or Latin origin. This data is provided in the *Ethnicity* category. [b] VEC's data provides an "Is Not Available" (or INA) response for certain demographic categories. [d] Category does not align with Census Bureau data.

Virginia's eligibility criteria largely align with other states

Virginia's UI eligibility requirements and policies were compared to UI eligibility requirements and policies in 12 other states (Table I-2). Five states (Maryland, Tennessee, Kentucky, North Carolina, and West Virginia) were selected because of their geographic proximity to Virginia. Three states with high average recipiency rates over the last 20 years were also selected (New Jersey, Massachusetts, and Pennsylvania), along with four states with low average recipiency rates (Florida, Georgia, Arizona, and South Dakota). Table I-2 provides the comparative analysis for the full list of 22 policy factors examined. An abbreviated version of this table reflecting the results for eight of these policy factors (*italicized in the table*) is included in Chapter 7 as Table 7-1.

For 19 of the 22 policies, Virginia's eligibility requirements and policies generally aligned with requirements in at least half of the selected states. In two of the three identified instances when Virginia's policies did not align with the other states, Virginia's policies made benefits more accessible to claimants. In some cases, Virginia's policies were different but no more or less restrictive.

The primary policy where Virginia's benefits stood out among the compared states was its lower maximum weekly benefit ($378). Eight of the 12 states have higher maximum benefit amounts that exceed $400 per week.

Self-employed workers and independent contractors represent a growing share of Virginia's workforce but are ineligible for traditional state UI

Workers who are self-employed or who provide contract services to businesses (many of these workers are often called "gig workers") are making up a growing share of Virginia's modern workforce. These workers are not hired and paid by specific, single employers, but rather perform services on a job-by-job or contractual basis. Because of their status, these workers are categorically ineligible for standard UI benefits. As the number of self-employed workers or independent contractors grows, a smaller share of the overall labor force will receive the temporary, partial income support provided to traditional employees under state UI programs. This has prompted some states to begin studying and recommending policy options to offer temporary financial support to self-employed workers and independent contractors who are temporarily out of work.

TABLE I-2

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

Eligibility-related policies	Policy exists in Virginia	# peer states (of 12) where policy exists
Requires earnings across 2 quarters	Yes	7
Allows most recent quarter's earnings to be counted for eligibility	Yes	8
Calculates earnings required for individuals to requalify for UI after voluntarily quitting as a factor of weekly benefit amount [a]	No	10
Allows voluntary quit separations for "good cause"	Yes	12
Misconduct disqualification (10 weeks or less) [b]	Yes	11
1-3 work search contacts required per week	Yes	11
Accepts part-time work search	Yes	8
Disqualification because of illegal drug use	Yes [c]	6
Multiple quarterly earnings used to calculate benefits	Yes	12
Benefit levels achieve high income replacement rates on average	No	2
Minimum weekly benefit amount >= $100	No	2
Maximum weekly benefit amount >= $400	No	8
Maximum weekly benefit amount >= $600	No	2
Allowance for dependents	No	4
Partial earnings allowed while receiving benefits	Yes	9
Maximum duration >= 26 weeks	Yes	10
Mixed duration levels based on earnings	Yes	9
Reduces benefit amount to account for employee pension contributions	No	11
Short-time compensation (or "worksharing")	Yes	7
Self-Employment Assistance program	No	2
Optional extended benefit triggers	Yes	8
Offers additional state benefits [d]	No	4

SOURCE: U.S. Department of Labor, Employment and Training Administration, 2020 Comparison of State Unemployment Laws; Code of Virginia.
NOTE: JLARC staff reviewed this set of 22 eligibility and accessibility-related policy factors for a sample of 12 other states to produce comparisons. Other states reflect a mixture of high-recipiency, low-recipiency, and neighboring states. See Appendix B for additional information on this analysis.
[a] If individuals are found to have voluntarily quit without good cause, they are disqualified from receiving UI benefits. Most states calculate the amount individuals need to earn to requalify for UI as a number of weeks multiplied by the weekly benefit amount for which the individual would have been eligible. [b] If individuals are discharged (or separated) from work because of misconduct, they are ineligible for UI. States generally specify the number of hours or weeks an individual must work before they can file for UI again. [c] If confirmed by positive U.S. Department of Transportation screen. [d] A number of states have provisions for extending the potential duration of benefits during periods of high unemployment for individuals in approved training who exhaust benefits, for example. Although some states call these programs "extended benefits," this table uses the term "additional benefits" to avoid confusion with the federal-state Extended Benefit program.

Self-employed workers and independent contractors are growing portion of labor force

Experts generally agree that self-employed workers and independent contractors represent a small but growing component of the labor force in the U.S. Several experts—including Gallup and the McKinsey Global Institute—estimate that the percentage of workers performing task-based work as self-employed, independent contractors could be as high as 30 percent of the U.S. workforce and could grow to roughly 50 percent of the U.S. workforce between 2030 and 2032. While many of these workers may continue to work full-time or part-time for traditional employers, some experts, including researchers at the Brookings Institution, estimate that payroll growth for self-employed workers or independent contractors grew over three times that of normal payroll employment, indicating that a larger share of workers could be supplementing their wages by participating in the modern workforce.

The percentage of self-employed workers and independent contractors is growing because some employers and industries are shifting away from conventional full-time, salaried employment to self-employed workers or independent contractors.

There is evidence that self-employed workers and independent contractors are a growing portion of Virginia's labor force. Based on JLARC staff's analysis of American Community Survey data through 2019, the estimated number of self-employed workers (including those at both incorporated and unincorporated establishments) as a share of Virginia's economy grew significantly in recent years, growing from less than 5 percent in 2014 to over 8 percent in 2019 (Figure I-1). This rate of growth (over 9 percent) is more robust than the nearly 3 percent growth calculated for the U.S. as a whole, which more closely aligns with standard growth rates for payroll employment. In addition, Virginia has consistently had a higher share of workers who are self-employed than the nation as a whole. Close to 5 percent of these workers were self-employed at incorporated establishments, while over 3 percent were self-employed at unincorporated establishments. The ACS data likely underestimates the full population of workers who are self-employed or work as independent contractors, since it only counts workers as self-employed if independent work is their primary source of income. Workers who rely on independent, task-based work to supplement their incomes are not counted in this data.

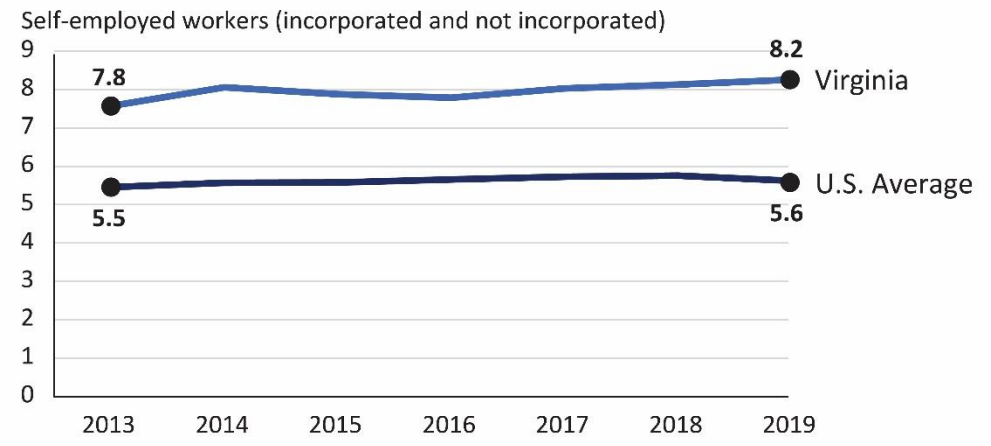
Many of Virginia's self-employed workers and independent contractors are concentrated in several industries. The U.S. Census Bureau calculates data for "nonemployer establishments," which it defines as businesses that have no paid employees and have annual business receipts of $1,000 or more (except for the construction industry). Analysis of the Census Bureau's nonemployer statistics also shows a stronger growth rate for nonemployer establishments in Virginia than in the U.S. overall. As of 2018, over 70 percent of Virginia's "nonemployer establishments" were concentrated in 10 North American Industry Classification System (NAICS) categories (Figure I-2), including professional, scientific, and technical services (nearly 16 percent), real estate rental and leasing (over 11 percent), other services (over 10 percent), and transportation and warehousing (over 10 percent).

The federal Pandemic Unemployment Assistance (PUA) program, which provided temporary income support to individuals not traditionally eligible for state UI during COVID-19, recently demonstrated the large portion of self-employed workers and independent contractors in Virginia. Between March 2020 and September 2021, over half of those filing for PUA payments (more than 780,000 individuals) in Virginia self-identified as "gig economy workers."

American Community Survey data shows that self-employed workers differ from the overall civilian workforce in several key ways, which have informed discussions about unemployment support needed for these workers in other states (Table I-3). Self-employed individuals working at non-incorporated establishments work fewer hours and earn lower incomes and are more likely to work in service and construction (although they do perform jobs in other skilled fields) than those in the broader labor pool. These individuals are also less likely to have earned a high school diploma or received bachelor's or graduate degrees. Rates of poverty and receipt of needs-based assistance for self-employed workers are generally higher than the rest of the workforce, and self-employed workers are nearly twice as likely to lack health insurance.

FIGURE I-1

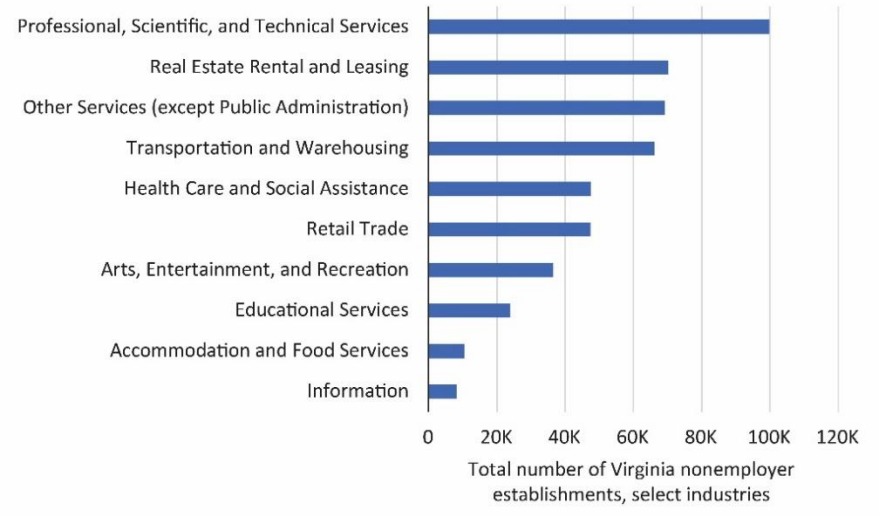
Self-employed workers or independent contractors grew to over 8 percent of Virginia's workforce in 2019 and represent a larger portion of workers than in the U.S. overall



SOURCE: U.S. Census Bureau, American Community Survey, Integrated Public Use Microdata Series (IPUMS), 2019.
NOTE: Using American Community Survey data to estimate the portion of self-employed workers and independent contractors is likely an underestimate. Many self-employed workers or independent contractors do not rely on revenues from their independent work as their primary source of income and would not be counted in this data.

FIGURE I-2

Self-employed workers participating in the modern economy are concentrated in several core industries



SOURCE: U.S. Census Bureau, Nonemployer statistics, 2018.

In quantifying the size of Virginia's self-employed population and assessing demographic trends, both data sources—the American Community Survey and the Census Bureau's nonemployer statistics—have limitations. Self-employed workers may register multiple nonemployer establishments, leading to duplications and overstating the size of the population. American Community Survey only reports

individuals as self-employed when independent work is their primary source of income. As a result, individuals who participate in independent, task-based work to supplement income earned from traditional employers will not be captured by this data.

TABLE I-3
Self-employed workers in Virginia work fewer hours, earn lower incomes, and are nearly twice as likely to be uninsured

	Virginia workers	
Demographic characteristics	Self-employed workers (non-inc.) (2019)	All civilian workers (2019)
Median hours worked (weekly)	37 hrs	39 hrs
Median personal income (annual)	$32,000	$43,680
Unemployment rate	3%	2%
Below poverty level	22%	14%
Uninsured	18%	10%
Receives Medicaid	7%	5%
Receives SNAP	7%	6%
Receives TANF	1%	1%

SOURCE: U.S. Census Bureau, American Community Survey, Integrated Public Use Microdata Series (IPUMS), 2019.
NOTE: JLARC staff reviewed the analysis produced by Virginia's Future of Work Task Force (established in 2019) and analyzed Census Bureau data, using an approach modeled on the task force's work. The analysis relied on the latest data available (five-year estimates from the 2019 ACS) and demographic characteristics shown represent those for the self-employed workforce working at non-incorporated establishments in Virginia. Numbers for self-employed workers as a whole and self-employed workers working at incorporated establishments align much more closely with or outperform those for the civilian workforce as a whole.

Other states offer temporary financial support to unemployed self-employed workers but largely do not use the traditional state UI structure

Several states have set up taskforces or work groups to study the changing composition of their workforces and propose ways to support modern workers. In many cases, these states have not fully taken action, but are instead studying issues affecting self-employed workers and independent contractors before they decide how to design programs or benefits. Importantly, none of these states have extended traditional state UI benefits to self-employed workers and independent contractors. Most recommendations to offer temporary income support to self-employed workers and independent contractors call for the creation of an entirely new program and are often packaged with other issues related to self-employed workers or independent contractors, such as misclassification, workers' compensation, or health insurance benefits. In some cases, states have called upon the federal government to enact proposals for a Jobseeker's Allowance, which would provide partial income support and reemployment services for individuals who are unemployed through no fault of their own, are actively seeking work, and are ineligible for traditional UI.

Virginia has a task force reviewing various worker-related issues that may address benefits for self-employed workers and independent contractors. In March 2019, Governor Northam established Virginia's Future of Work taskforce to study the changing nature of employment arrangements in Virginia and recommend strategies to better serve the state's modern workforce. Specifically, the taskforce was directed to develop practical, implementable policies and initiatives to support these workers and their families. The taskforce will issue its final report in November 2021. VEC staff were appointed as members of the taskforce and provided data analysis for the project. While there was no explicit mention of serving self-employed workers and independent contractors through the state's traditional UI program, nor any recommendation to provide income support to self-employed workers and independent contractors, the taskforce presented its initial findings in June 2021 and recommended continued research and efforts to create an "innovative legislative landscape for portable benefits."

California

California has the most extensive labor protections of any state for self-employed workers and independent contractors. Advocates' efforts to secure these protections culminated in the passage of AB5, the legislation that first sought to classify certain self-employed workers as employees, rather than as independent contractors. AB5 was first proposed in December 2018 and ultimately passed by the Assembly in September 2019. It officially went into effect on January 1, 2020. The law put into place the three-pronged test to redefine "employees," known as an "ABC" test. The test, first clarified in a California Supreme Court decision, essentially allows regulators to presume that a worker is an employee *unless* they satisfy all three prongs of the law's test. In November 2020, however, California's voters approved Proposition 22, a ballot initiative that specifically exempted ridesharing and delivery drivers from most of the protections contained in AB5. Currently, California's State Assembly is considering proposals to modify AB5 to ensure minimum wage protections, workers' compensation insurance, and portable employment benefits for qualifying self-employed workers or independent contractors. The Assembly has also directed the California Labor and Workforce Development Agency to begin studying how it could codify the "ABC" test as regulation.

New York

New York has created a task force to address challenges posed by the modern economy. In early 2020, New York's governor announced a goal to produce a detailed policy proposal for adding protections for self-employed workers and independent contractors. To study the modern economy and make policy recommendations for worker protections, the governor proposed legislation (still pending a final funding decision in the state budget) that created the Digital Marketplace Worker Classification Task Force. The task force was charged with recommending measures to regulate the modern workforce and cover everything from wages, classification, employment criteria, safety and health regulations, collective bargaining, and anti-discrimination protections. The task force has nine members, with one appointed by the senate majority leader, one appointed by the Assembly speaker, and seven appointed by the governor, including a commitment to appointing industry representatives. This proposal is not the first attempt by state officials in New York to offer protections or programs to self-employed workers that are typically provided only to traditional employees. In 2016, the State Department of Labor provided unemployment benefits to two Uber drivers. That same year, the legislature considered a proposal that would have given workers the option to certify to the state that they are

aware they are categorized as independent workers and that this categorization is correct. In return, the state would have levied a 2.5 percent fee on each job worked and place this into an individual health savings account for each worker, which could be drawn on for health care or as unemployment insurance.

New Jersey

New Jersey has proposed several mechanisms for funding portable benefit programs, though an extension of UI benefits to self-employed workers and independent contractors has not yet been passed. The New Jersey legislature is considering several proposals related to benefits for self-employed workers and independent contractors. The primary proposal (Senate Bill 943, first proposed in 2019) would guarantee portable job benefits to self-employed workers across the state. Under the legislation, self-employed workers would be defined as those working for rideshare apps, delivery services, and other app-based platforms that rely heavily on contract labor. Benefits would include unemployment insurance benefits, health insurance, paid time off, and tax-advantaged retirement savings. The bill would require the contracting agents (e.g., platforms such as Uber or Lyft) to contribute the lesser of $6 per worker-hour or 25 percent of each consumer transaction fee to cover the cost of these benefits. The fees would cover the cost of workers' compensation insurance and any voluntary benefits that the workers elected to receive, such as health insurance and paid time off. In early 2020, Governor Murphy signed three modest worker protections laws focused on self-employed workers. These laws increased penalties for worker misclassification, strengthened the state's enforcement power against noncompliant businesses, and required businesses to make workers aware of the rules around employee misclassification.

Washington

The Washington legislature is also considering creating a worker protection bill for self-employed workers that combines elements of proposals for self-employed worker benefits in other states with aspects of a robust anti-misclassification bill. The proposed legislation would impose civil penalties and damages on employers that misclassify employees as independent contractors. It would also allow for the creation of workers' boards empowered to set minimum pay and other protections in certain industries. In addition, it would expand protections against retaliation in the workplace and allow eligible self-employed workers to opt into portable benefits programs, including health insurance, retirement benefits, paid time off, and any other benefits offered by workers' chosen benefits providers. The portable benefits proposal, first put before the state legislature in 2017, requires employers like Lyft and TaskRabbit to contribute the lesser of $1 for each worker-hour or 5 percent of the total transaction charge paid by consumers. It also requires covered employers to provide adequate workers' compensation insurance.

Oregon

Oregon has addressed the issue of providing benefits to self-employed workers and independent contractors through administrative guidance. State officials broadened the interpretation of the definition of an employee to extend workplace protections to self-employed workers and independent contractors. In 2015, Oregon's Commissioner of the Bureau of Labor and Industries issued administrative guidance that rideshare workers should be considered employees. (In contrast with other states in this

section, Oregon makes a distinction between self-employed (or "gig" workers) and independent contractors, having determined that the latter do not qualify for benefits or privileges traditionally afforded to full-time employees.) This has not yet resulted in these types of workers being extended unemployment benefits, however. An Oregon legislative taskforce is currently developing policy recommendations for how state law might be modified to address the attorney general's administrative guidance. One of the topics the taskforce has considered is expanding unemployment benefits to these workers.

Appendix J: Agency responses

As part of an extensive validation process, the state agencies and other entities that are subject to a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff sent an exposure draft of the full report to the Virginia Employment Commission and the secretary of labor. JLARC staff also sent relevant sections of the report to the Virginia Information Technologies Agency, the Department of Human Resource Management, and the Department of General Services.

Appropriate corrections resulting from technical and substantive comments are incorporated in this version of the report. This appendix includes a response letter from the Virginia Employment Commission and the secretary of labor.

COMMONWEALTH of VIRGINIA

Virginia Employment Commission

Ellen Marie Hess
Commissioner

6606 West Broad Street
Richmond, VA 23230

Post Office Box 26441
Richmond, VA 23261-6441

October 29, 2021

Hal Greer, Executive Director
Joint Legislative Audit and Review
Commission201 North Ninth Street General Assembly Building, Suite 1100
Richmond, VA 23219

Dear Executive Director Greer:

Thank you for providing me with a draft copy of the "Report to the Governor and the General Assembly Performance of the Virginia Employment Commission." We are especially grateful that we were able to provide input into the process. Furthermore, I appreciate your recognition of the extremely dedicated public servants of the Virginia Employment Commission (VEC) and the enormous volume of work that they produced in response to the Covid-19 pandemic. The impact of the pandemic is unprecedented in the history of the Commonwealth and the staff of the VEC has worked tirelessly in challenging circumstances for more than a year to respond.

As you know, in the weeks prior to the outbreak of Covid-19 in the United States, Virginia's unemployment rate and claims for unemployment benefits were at all-time historically low levels. As a consequence of the workload based funding formula for unemployment insurance programs, VEC was also at a low point for funding and staffing. The economic impact of the pandemic was felt at a scale and speed never seen before, providing the agency no time to prepare.

In response to the outbreak of Covid-19 in the United States, Congress enacted six new federal unemployment insurance benefit programs. Within weeks, VEC completed the programming to implement the new benefits. At the same time the agency worked to acquire laptops and other technology needed to move staff to telework in order to protect staff and the agency's processes. Additionally, the agency undertook a herculean effort to increase staffing with mandatory overtime, leased more than a hundred thousand additional square feet of office space, and entered into numerous support and technology contracts. Despite these demands, VEC paid more than $14 billion on 1.9 million initial claims and more than 25 million weekly claims.

While the agency has done much to respond to the pandemic and its impact on Virginia there is still much work to be done. JLARC staff has acknowledged in a recent meeting that the scale of the remaining workload is enormous and will require much more to be successful. VEC is working with stakeholders at the state and national level to explore opportunities to address these issues from the pandemic, but just as importantly, to strengthen the system for the future. We look forward to JLARC's recommendations in this regard as well.

Sincerely,

Ellen Marie Hess

Ellen Marie Hess

COMMONWEALTH of VIRGINIA

Megan Healy, Ph.D.
Secretary of Labor

P.O. Box 1475
Richmond, Virginia 23218

October 29, 2021

Joint Legislative Audit & Review Commission
201 North 9th Street
General Assembly Building, Suite 1100
Richmond, VA 23219

Dear Director Greer:

Thank you for your comprehensive review of the Virginia Employment Commission's (VEC) response to the COVID-19 pandemic and for providing a draft copy of your report. I was appointed in July of this year to serve as the Virginia Secretary of Labor to Governor Ralph Northam after previously acting as the Chief Workforce Development Advisor. With my newfound oversight of the VEC, I sincerely appreciate your efforts to analyze the agency's past performance as we strive for a more successful future.

We still have a long way to go on this path to organizational transformation. I look forward to collaborating on the implementation of your recommendations, the protection of Virginia's workers, and the reform of this long-neglected but incredibly important system. In the meantime, we will continue to work diligently to ensure that every Virginian receives the unemployment benefits that they are eligible for.

Sincerely,

Megan Healy
Virginia Secretary of Labor



JLARC.VIRGINIA.GOV
919 East Main Street Suite 2101 Richmond, VA 23219