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**Testimony of Megan Ocean
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**Before the Committee on Executive Administration and Labor
Council of the District of Columbia**

Performance Oversight Regarding the Department of Employment Services

February 10, 2025

Legal Aid DC¹ submits the following testimony regarding the recent performance of the Department of Employment Services (DOES).

At Legal Aid DC, as part of our Public Benefits practice, we represent low-income workers navigating the DC Department of Employment Services' unemployment insurance system. We appreciate the work that DOES has done over the past few years updating the online DC Networks system that claimants can use to apply for and manage their benefits online.

However, we continue to have some serious concerns with issues at DOES regarding due process, and specifically providing claimants with notices of adverse actions, as well as DOES proceeding with adverse actions against claimants without sufficient evidence. We will focus our comments on three specific ongoing systemic issues that highlight these concerns:

- (1) UI overpayment collection actions in Superior Court involving aged claims.

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

- (2) DOES determining that claimants have fraudulently received UI benefits without gathering any evidence of fraud.
- (3) UI overpayment clearance issues, where cleared payments remain incorrectly reflected in the DOES system. For example, clients may receive zero-balance letters but still face tax offsets or billing issues.

Overpayment Collection Actions of Old Claims

In the past year or so, Legal Aid has seen the Department of Employment Services file waves of claims in Superior Court trying to collect overpayments from former UI claimants. For example, between December 4, 2023, and October 4, 2024, DOES filed approximately 219 debt collection cases in the Superior Court Civil Division's Small Claims and Civil Action Branches.² Of these, about 171 were filed in the Small Claims Branch.³ Each case involves an effort by the District of Columbia (as the plaintiff) to recover overpayments related to unemployment compensation and paid family leave. Apart from a small number of defendants who are represented by Legal Aid in the unemployment cases, nearly all defendants have been or are currently unrepresented.

Alarming, some of the alleged overpayments that DOES is trying to collect are quite old. Some date from early in the pandemic era – 2020 and 2021. Others are more than a decade old. Pursuing claims this old further reduces the likelihood that former claimants, now defendants, can engage meaningfully in litigation or participate in fair settlement negotiations with DOES.

At times, the claimants have received no prior notice, as required by law, that they even owe an overpayment.⁴ That means they received no prior communication or determinations from DOES until the Superior Court summons.

² A list of the 219 cases and access to the contents of their dockets are public and can be obtained by using the Superior Court's case search portal: <https://www.dccourts.gov/superior-court/cases-online> by searching "Robinson, Tonya" as the DOES attorney of record for every overpayment case.

³ Cases seeking a money judgment for \$10,000.00 or less must be filed in the Small Claims Branch.

⁴ DC Code 51-119(d)(2).

For example, DOES sued one Legal Aid client, Mr. Milton Martin, for more than \$12,000 in Superior Court. Before the Superior Court action was initiated, Mr. Martin was unaware that DOES believed he had been overpaid.

Another claimant, in response to DOES's Superior Court complaint attempting to collect an alleged overpayment from 2012, provided in his answer to Superior Court that he "never received a notice for this claim until this year (2024)."

On top of these serious notice issues, DOES also has filed claims without having evidence that an underlying overpayment even exists. In Mr. Martin's case, once Legal Aid got involved, DOES moved to dismiss the Superior Court case so that the parties could address the underlying merit at the Office of Administrative Hearings (OAH). Then DOES recalculated the alleged \$12,000+ overpayment and amended their allegation to assert an overpayment for less than \$3,000. Before OAH, DOES had no evidence that Mr. Martin owed any overpayment at all, and the judge ordered a reversal of the determination to eliminate the alleged overpayment.

These Superior Court collection actions provide an illustration of two serious concerns we believe the Council should review – a failure to provide claimants with proper and timely notice of adverse actions taken against them and DOES taking adverse actions without any evidence to support the alleged overpayment.

The consequences of DOES's actions can be extreme for claimants. Having to participate in Superior Court proceedings is often stressful and requires claimants to take time off of work and other obligations to attend. Most of the claimants being sued are handling these cases without a lawyer and risk having unsupported judgments made against them. This price is too high for DOES to be engaging in these widespread filings of claims that are often unfounded.

Recommendation:

- DOES must develop internal procedures to ensure that prior to filing any collection action in Superior Court, DOES has evidence that they provided adequate written notice to the individual about the assessed overpayment as required by law and they have sufficient evidence that the overpayment occurred. The notice must include a description of how and when the overpayment occurred; instructions on how claimants can appeal the decision if they disagree; and plain language instructions on how to file a waiver request.

Fraud Findings with No Investigation Showing a Real Finding of the Requisite Intent or Knowledge

In our testimony last year, we described how DOES violates DC law in its practices regarding allegations of claimants filing fraudulent claims for unemployment benefits. DC law requires DOES to have evidence that a claimant has made a “false statement” or “knowingly failed to disclose a material fact”⁵ before deciding that they have committed fraud.

However, in practice, DOES often does not make this requisite finding, and claimants do not have the requisite intent, before assessing fraud. DOES frequently assesses fraud simply because someone’s earnings found did not match the earnings reported, even when DOES itself has admitted it was a simple mistake. It is our understanding that DOES maintains a policy of automatically assessing a fraud penalty for any claimant with four or more weeks of misreported wages.

This level of misreporting is frequent, because the reporting requirements are not intuitive for many claimants. DOES requires claimants to report gross wages as they are earned, not as they are received. This means that for most claimants, they have to report their wages before they receive their paycheck, and they have to report a different amount of money than they actually take home. It is incredibly easy to make mistakes.

However, the consequences are serious. When DOES includes a fraud penalty on an overpayment, it can add an additional 15% of whatever overpayment is assessed⁶ to the total that the claimant must pay back, which can be debilitating, especially to marginalized DC workers who earn lower wages. DOES is also allowed to disqualify claimants from receiving future benefits for up to a year when they assess fraud.⁷

The story of one recent Legal Aid client illustrates how easily DOES assesses fraud without any evidence of the requisite intent. Ms. D came to Legal Aid because she had received a notice from DOES alleging that she had committed fraud and disqualifying her from receiving future benefits for a year. Upon reviewing Ms. D’s file, Legal Aid found no indication that DOES had collected any evidence that Ms. D had made any false statements or otherwise engaged in any intent to commit fraud. After Legal Aid pointed

⁵ D.C. Code § 51–119.

⁶ DC Code § 51-119(e)(3)

⁷ *Id.* at (e)(1).

out the lack of any evidence that Ms. D made false statements or intended to commit fraud, DOES reversed the fraud determination.

Again, most claimants being accused of fraud are not represented. Many may not know that they can challenge these findings, even if they receive notice of them. Thus, there are most likely thousands of dollars unfairly coming out of the pockets of vulnerable workers due to DOES's legally insufficient fraud investigations and determinations.

Recommendation:

- DOES must come into compliance with [D.C. Code § 51-119](#), which includes but is not limited to making requisite findings of intent *before* determining that an individual committed fraud and seeking penalties.

Improper Referrals to the Treasure Offset Program and Erroneous Seizures of DC Workers' Tax Refunds

One of the tools available to DOES for collecting overpayments is referring claims to the federal Treasury Offset Program (TOP), which is used to offset claimants' federal tax refunds to repay their DOES overpayment. Similarly, DOES can offset claimants' DC tax refunds.

Legal Aid continues to see DOES improperly offset claimants' tax refunds through these programs. For several years, continuing into 2024, DOES has continued to collect claimants' tax refunds even after the agency has determined that the claimants do not owe an overpayment. For example, Legal Aid client Ms. F received an erroneous tax offset after DOES rescinded an improper overpayment determination.

Despite DOES acknowledging that claimants like Ms. F no longer have an overpayment, DOES still had claimants' tax refunds seized through the Treasury Offset Program. In such cases, claimants are bearing the burden of lost money and having to spend time and energy getting their money back. As with each concern described today, this process also often occurs with insufficient notice to the client – the first time that claimants learn of the offset can be when their tax refunds are taken.

Recommendations:

- DOES must improve communication between the Benefit Payment Control office, which investigates overpayments, and the Treasury Offset Program office, which collects overpayments, so that when overpayments are

cleared, claimants are properly and timely removed from the Treasury Offset Program.

Conclusion

While we have addressed some pressing concerns in this testimony, other significant issues raised in last year's testimony remain unresolved. These include: barriers to applying for unemployment and accessing continued claims, inadequate language access services, insufficient response to issues caused by third-party fraudsters, and an inadequate and inaccessible waiver process. We encourage the Council to review our 2024 testimony⁸ for a more comprehensive understanding of these ongoing challenges, which continue to demand attention and action. We remain committed to working with the Council and the agency to ensure that these issues are fully addressed.

We thank the Committee for its continued oversight of DOES operations, and we look forward to working with the Committee and DOES to resolve problems for claimants.

⁸ Available at: <https://www.legalaiddc.org/media/3870/download?inline>.