Testimony for the Performance Oversight Hearing on the Department of Employment Services’ Office of Unemployment Compensation (FY2014-15)

Committee on Business, Consumer & Regulatory Affairs
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The Legal Aid Society of the District of Columbia\(^1\) submits this testimony to encourage the Department of Employment Services’ (DOES) Office of Unemployment Compensation to continue to increase transparency to the public.

Legal Aid has seen first-hand how unemployment claimants’ lives can change when they (and their advocates) are informed about the laws that impact their claims. As described below, Legal Aid represented a survivor of domestic violence who appealed her denial of unemployment benefits only after reading a flyer from DOES that included information about domestic violence and unemployment benefits.

We have also experienced the same frustration and confusion that claimants experience with certain difficult-to-navigate processes of the Office of Unemployment Compensation. For example, almost five years after the Council amended the D.C. Unemployment Compensation Act in 2010, DOES has yet to promulgate needed regulations to clarify certain areas of the law. Further, claimants remain substantially uninformed about the overpayment waiver process and thus under-utilize, or misunderstand how to use, this important protection. DOES has been unable to produce any guidelines or rules used to assess these claims, raising significant due process concerns.

Legal Aid looks forward to working with newly appointed Acting Director Deborah Carroll and Office of Unemployment Compensation staff on necessary reforms.

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\(^1\) The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” For more than 80 years, Legal Aid attorneys and volunteers have served tens of thousands of the District’s neediest residents. Legal Aid currently works in the areas of housing, family law, public benefits, consumer, and appellate law. Since 2011, Legal Aid has represented or counseled more than 200 low-income claimants in unemployment matters at the Department of Employment Services, Office of Administrative Hearings, or the DC Court of Appeals. By helping claimants receive the benefits they are legally entitled to, Legal Aid helps prevent utility terminations, evictions and other collateral consequences of unemployment. Legal Aid’s testimony is based on these experiences. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.
I. Transparency Works: Serving Victims of Domestic Violence

Legal Aid commends the DOES Office of Unemployment Compensation for its recent efforts to serve victims of domestic violence. As this Committee knows, the D.C. Unemployment Compensation Act was amended in 2004, and again in 2010, to allow workers who lose their jobs due to domestic violence against themselves or a family member to receive unemployment benefits. See D.C. Code § 51-131 et seq. While the law requires DOES to annually train its staff, see id. § 51-134, DOES had not done so in recent years.

However, last year, after a significant decision by the D.C. Court of Appeals interpreting the domestic violence provision, DOES collaborated with Legal Aid to train eighty (80) DOES staff members on the dynamics of domestic violence, how it impacts the workplace, and the procedures for handling unemployment claims related to domestic violence. In March 2015, Legal Aid will provide a second training for new employees.

When DOES claims examiners and other staff are trained about updates in the law, they can properly educate the public and also process claims more accurately, thus reducing time-consuming appeals and litigation. A recent client story illustrates this. Legal Aid represented Ms. Williams (name changed to protect her identity), whose boyfriend assaulted her, leaving her unable to attend work for several days. Like many victims of domestic violence, Ms. Williams spent years hiding the abuse from friends and coworkers. She did not tell her employer the reason for her absences and they eventually fired her. When she applied for unemployment benefits, she was quickly denied benefits. However, when she received her denial notice in the mail, she also received an informational flyer from DOES that included mention of the domestic violence provision of the unemployment law. Ms. Williams came to Legal Aid, flyer in hand, to learn more. With Legal Aid’s help, Ms. Williams appealed and was granted benefits. She has since moved out of the home she shared with her abuser. Her unemployment benefits help ensure that she has the financial resources needed to rebuild an independent life.

By training employees and providing accurate information for the public about changes in unemployment law, DOES helps ensure that all claimants – including victims of domestic violence – receive the benefits they are entitled to.

II. Transparency Needed: 2010 Regulations and Overpayment Waiver Processing

Despite these improvements, Legal Aid remains concerned that: (a) DOES has yet to share any plan or schedule for promulgating regulations to the 2010 amendments of the D.C. Unemployment Compensation Act, and (b) DOES continues to lack transparency in how it assesses overpayments and processes waiver requests.

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a. Promulgating Regulations to the 2010 Amendments.

In 2010, the District took an important step forward to help unemployed workers and their families when the D.C. Council enacted amendments to the D.C. Unemployment Compensation Act. See Unemployment Compensation Reform Amendment Act of 2010 (B18-0455). These amendments, added in part to conform with federal funding requirements, expanded unemployment benefits to cover job losses for certain “compelling family reasons.” Under the law, workers who quit their jobs to care for an ill or disabled family member, or to move with a spouse to a location from where it is impractical to commute, are now qualified for benefits. See D.C. Code § 51-110(b)(4)-(5). The 2010 amendments also included important procedural protections for claimants, including expanding the 10-day appeal deadline to 15-days and including a late-filing exception for those who show “excusable neglect or good cause.” See id. § 51-111(b).

Almost five years have passed since the amendments became law. DOES needs to promulgate regulations so that all unemployment stakeholders have guidance on the application of these amendments. For example, in its regulations, DOES should define the term “family member” to make clear the type of family circumstances that would qualify an individual for benefits. Legal Aid has represented claimants under these circumstances, including a recent worker who quit her job to care for a disabled non-minor child. Regulations would help prevent inconsistent benefit awards and avoid litigating gray areas on a case-by-case basis.

Since 2012, Legal Aid has asked DOES to promulgate regulations several times. DOES has yet to share with advocates any concrete steps taken, such as forming a committee or proposing a timeline, for promulgating regulations.

**Recommendation:**

- Promulgate regulations to the Unemployment Compensation Reform Amendment Act of 2010 (B18-0455) by January 2016.

b. Overpayment and Waiver Request Processing.

Legal Aid continues to be concerned about DOES’s opaque overpayment waiver process. While some overpayments involve dishonest or fraudulent conduct by claimants, the majority of claimants who seek help from Legal Aid were overpaid through no fault of their own.³

The DOES Benefit Payment Control Unit investigates possible overpayments, makes determinations, collects overpaid funds, and has the authority to waive overpayments when a claimant can establish that he or she was not at fault and repayment would cause hardship.⁴

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³ For example, Legal Aid clients have been asked to repay benefits when an employer’s successful appeal terminates their benefits. Other times, an employer may have incorrectly submitted wage information.

⁴ DOES waives overpayments at their discretion, except in circumstances where the overpayment is being recouped from future unemployment benefits. See DC Code 51-119(d)(1); DOES v. Smallwood, No. 09-AA-719 (DC August 18, 2011).
However, too few claimants even know that a waiver process exists – let alone how to apply. According to DOES’s responses to a FOIA request that Legal Aid filed in March 2013, less than one-half of one percent of claimants asked for a waiver of their overpayment.\(^5\)

Further, once a claimant applies for a waiver, the process is completely lacking in transparency and accountability resulting in hardship for claimants who were overpaid through no fault of their own. DOES has yet to share what standard it applies when assessing waiver requests under DC Code § 51-119(d)(1). Legal Aid has asked DOES for information on the policies or guidelines used to assess waiver requests on numerous occasions. DOES has repeatedly stated that it does not have any guidelines or rules, let alone a standard waiver request form, which raises due process concerns.

**Recommendation:**
- Publish existing guidelines for overpayment investigations to ensure meaningful opportunities for claimants to review and challenge alleged overpayments.
- Develop and implement standards for evaluating waiver requests (including hardship and no fault standards) in a public DOES Policy Manual.
- Commit to halting overpayment recoupment when a waiver request has been filed until a determination has been made to grant or deny the waiver request.

**Conclusion**

Legal Aid thanks the Committee for the opportunity to submit this testimony and we look forward to working with DOES to continue resolving matters impacting claimants’ benefits.

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\(^5\) According to DOES data, in FY 2011, DOES issued 6,613 Notices of Overpayment. Only 29 claimants submitted waiver requests, of which 19 were granted. In FY 2012: DOES issued 5,274 Notices of Overpayment. Only 14 claimants submitted waiver requests, of which 11 of those granted.