



**Testimony for the Performance Oversight Hearing on the
Department of Employment Services (DOES) Office of Unemployment Compensation**

**Committee on Business, Consumer & Regulatory Affairs
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The Legal Aid Society of the District of Columbia¹ urges the Committee to raise the maximum weekly unemployment benefit – a proposal supported by the DC Department of Employment Services’ (DOES) Office of Unemployment Compensation – and to ensure that benefits automatically increase each year to keep pace with inflation. The Council should also adopt common sense measures to benefit low-wage workers, such as allowing part-time workers to receive more in partial unemployment benefits and standardizing the number of weeks of benefits that all workers receive. Finally, Legal Aid urges the Committee to ensure that DOES’s unemployment overpayment recoupment and assessment of the new federally mandated 15% fraud penalty is lawful and fair.

I. Raise DC’s unemployment benefits to benefit both middle-class and low-wage workers.

- a. DC’s maximum weekly benefit amount (\$359) is very low and should be raised.

Since 2011, I have represented numerous DC residents who were trying to obtain unemployment benefits. When I first began this work as a poverty lawyer, I fully expected to represent low-wage workers. I knew that low-income workers who live paycheck to paycheck are unlikely to have the financial resources needed to survive a sudden job loss. For them, unemployment benefits are an economic lifeline that prevent a free fall into extreme poverty.

However, I was surprised to learn that many of DC’s unemployed workers from middle-class jobs – such as nurses and unionized construction workers – are also living at or near the poverty line because DC’s highest rate of weekly unemployment benefits is so low. A single person receiving DC’s maximum weekly benefit amount (\$359 per week) lives well below 200%

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 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.

of the Federal Poverty Line,² which makes them eligible for DC Medicaid benefits. A single parent with two children receiving the maximum benefit amount lives below 100% of the Federal Poverty Line – a measurement widely regarded as extremely low income.

Table: Comparing Unemployment Benefits to Federal Poverty Guideline by Family Size

Family Size	Weekly Wage at 100% of Federal Poverty Guideline	Maximum Weekly Unemployment Benefit in DC	Percentage of Benefits at Federal Poverty Guideline
(1) Single person	\$228	\$359	157%
(2) Parent and one child	\$308	\$359	117%
(3) Parent and two children	\$387	\$359	93%
(4) Parent and three children	\$467	\$359	77%

In addition to their unemployment cases, many of these formerly middle class workers seek Legal Aid’s assistance for other legal matters that arise as collateral consequences of unemployment. Our clients exhaust their savings and still fall behind in paying their utilities, car payments, rent, or mortgage due to these low benefit amounts. While unemployment benefits are meant to replace 50% of wages up to a maximum benefit rate, DC’s benefits are so low that workers hit the maximum rate at relatively low wages. Thus, for workers previously earning more than \$37,000 per year, unemployment benefits replace less than half of their former wages. Even a modest increase in benefits could help these families meet more of their obligations.

DC’s maximum weekly benefit amount of \$359 per week is one of the lowest in the nation and must be raised. DC’s unemployed workers subsist on benefits lower than Maryland (\$430 per week), Virginia (\$378 per week), and 36 other states. It has been more than ten years since DC last increased this maximum benefit. During this time, while housing prices in DC have skyrocketed, DC’s unemployment benefits have lost 20% of its value due to inflation. To restore this benefit to its former purchasing power, the maximum weekly benefit amount should be raised to \$430 per week.

Fortunately, initial economic indicators demonstrate that DC can afford this increase. The Unemployment Insurance Trust Fund is robust and solvent – just last year, the fund had a \$50 million surplus. In their performance oversight responses, DOES’s Office of Unemployment Compensation supports raising the maximum benefits as long as the trust fund is monitored to ensure solvency. Legal Aid urges the Committee to seek the financial projections needed in order to expeditiously adopt an increase to the maximum weekly benefit amount.

²As this Committee knows, the federal poverty measures, updated each year by the Census Bureau, are an extremely low measurement tool. Because of this, Legal Aid represents clients with incomes up to 200% of federal poverty measures for most cases and 300% for certain cases (like foreclosure and Medicare). By contrast, DC’s living wage, for a single person is \$600 per week and for a two-person family is \$1,200 per week. *See Living Wage Calculation for District of Columbia*, Massachusetts Institute of Technology. <http://livingwage.mit.edu/counties/11001>.

- b. The maximum benefit amount should be automatically raised each year to allow benefits to keep pace with inflation.

Legal Aid further urges the Committee to add a provision automatically increasing the maximum weekly benefit amount each year to keep pace with inflation. Thirty-five states already index the maximum unemployment benefit to the state's average weekly wages. Indexing allows benefits to maintain their purchasing power as wages rise. Common sense measures can also be adopted to monitor the Unemployment Trust Fund and ensure solvency. Without an indexing provision, unemployed workers must return to the legislature again and again as the value of unemployment benefits fall with inflation, ensuring that benefits will remain artificially low.

- c. Increase incentives for claimants to work part-time.

In our post-recession economy, many workers are involuntarily working part-time even though they want to work full-time. Under the current unemployment system, workers keep their first \$20 in earnings each week, but then 80% of their remaining earnings are deducted from their unemployment benefits, resulting in very low benefits amounts. A more generous partial unemployment benefit formula would better support workers who have found only part-time work while they continue to look for full-time positions. A generous formula also incentivizes claimants to return to the workforce sooner, thus allowing DC to pay out less in unemployment benefits while collecting tax revenue from wages.

DC should make the partial unemployment benefits formula more generous, allowing workers to keep the first \$50 in earnings each week, and then reducing their benefits check by only 66% of their part-time earnings.³ Even this modest change would put more money in the hands of underemployed workers at the time they need it while incentivizing unemployed workers to accept part-time work while they look for full-time positions.

- d. Allow all DC workers to receive unemployment benefits for twenty-six weeks.

Finally, DC should standardize the number of weeks of unemployment benefits that all workers receive at twenty-six weeks. Currently, even if a worker meets the basic monetary eligibility test for unemployment, they will not receive all twenty-six weeks of benefits if their past wages are too low. Standardizing the number of weeks a worker can receive at twenty-six would benefit DC's lowest-wage workers and those who are underemployed, such as those working part-time or temporary positions with periods of unemployment in between. DC continues to have high unemployment rates among young people, older workers, and people of color. This provision would benefit the most vulnerable workers with only a modest cost.

³ See Unemployment Benefits Modernization Amendment Act of 2015 (Bill 21-0370).

II. Ensure that DOES's overpayment collection and 15% fraud penalty assessment is lawful and fair.

Legal Aid continues to be concerned about DOES's overpayment collection processes, including the assessment of the recently adopted 15% fraud penalty. *See* D.C. Code § 51-119(e)(3). In past years, DC has had a poor record of recouping overpaid funds and uncovering fraudulent claims in a timely manner. In the past few years, DOES's Benefit Payment Control Unit has undergone reforms in order to improve these efforts. Also, in accordance with federal guidelines, DC passed an amendment allowing DOES to assess a 15% penalty on any overpayment after October 2013 that occurred due to the claimant's fraudulent conduct. *Id.*

Advocates for claimants, including Legal Aid, support common sense reforms to uncover fraud, since fraudulent conduct weakens the unemployment trust fund and decreases public trust in the unemployment benefit system. However, in implementing reforms and the new 15% fraud penalty, Legal Aid is concerned that DOES has cast too wide a net and is penalizing some conduct that is not actually fraudulent.⁴ For example, without policies to protect claimants who might fail to report wages due to barriers in communication and comprehension such as with limited education, low or lack of literacy, or limited or no English proficiency, DOES is assessing a 15% fraud penalty on workers who were overpaid due to these limitations. Not only does such a policy contravene basic principles of fairness, it is inconsistent with District law, which requires a finding of intentional wrongdoing to support a finding of fraud.⁵

Maine's unemployment code offers clear, reasonable safeguards for vulnerable workers that should be a model for future DC policy:

In determining whether a claimant is at fault [or has committed fraud], the [Director] shall consider all pertinent circumstances, including the claimant's age and intelligence, as well as any physical, mental, educational, or linguistic limitations (including lack of facility of the English language).

Unemployment Insurance Reporter, Regulation, Maine, 2(B) (Definitions); *see also* New Hampshire, Emp. 502.03 (Overpayment Without Fault). Such a policy would allow DC to pursue the workers who knowingly and intentionally commit fraud without harming those who were overpaid without any intent to receive more benefits than they were due (which constitutes the majority of claimants).

Conclusion

Legal Aid thanks the Committee for the opportunity to submit this testimony and we look forward to working with the Committee to raise unemployment benefits in DC.

⁴ In fact, claimants across the country are more likely to lose benefits from improper denials of benefits or underpayments than to be overpaid due to fraud. 2010 Audit Data, ETA 581 Contributions Operations Report (finding that claimants lost \$2.18 billion in calendar year 2010 compared to being overpaid \$1.56 billion in benefits due to fraud).

⁵ DC Court of Appeals precedent providing that DOES must support any finding of claimant fraud with specific evidence that the individual "knowingly made a false statement for the purpose of obtaining benefits" (emphasis added). *See Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 289 (D.C. 1978).