

Joint Testimony of the Claimant Advocacy Program, First Shift Justice Project, Legal Aid Society of the District of Columbia, Neighborhood Legal Services Program, Public Justice Advocacy Clinic at the George Washington University Law School, and Whitman-Walker Health

**Before the Committee on Labor & Workforce Development
Council of the District of Columbia**

Public Oversight Hearing Regarding the Budget of the Department of Employment Services

May 28, 2020

The Claimant Advocacy Program,¹ First Shift Justice Project,² Legal Aid Society of the District of Columbia,³ Neighborhood Legal Services Program,⁴ Public Justice Advocacy Clinic at the George Washington University Law School,⁵ and Whitman-Walker Health⁶ submit the following

¹ The Claimant Advocacy Program (CAP) is a free legal counseling service available to individuals who file unemployment compensation appeals in the District of Columbia. CAP provides legal advice and/or representation to 50-60 claimants each month. CAP is a program of the Metropolitan Washington Council AFL-CIO, which works with over 200 affiliated union locals and religious, student, and political allies to improve the lives of workers and families throughout the greater metro Washington area. For more information, visit <http://www.dclabor.org/unemployment-help.html> or <http://www.dclabor.org/>.

² First Shift Justice Project is a D.C. based organization founded in 2014 with a mission to help working mothers in low wage jobs assert their workplace rights to prevent job loss.

³ 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.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. 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 justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

⁴ Neighborhood Legal Services Program (NLSP) is a non-profit law firm that has provided free legal information, advice and representation to low-income DC residents on civil matters for 56 years. NLSP assists in the areas of housing, economic security, and family law. The work of the economic security unit specifically consists of advocacy regarding public benefits, unemployment compensation, barriers to employment, and consumer law. NLSP thanks Councilmember Elissa Silverman for the invitation to submit comments for this hearing.

⁵ This civil litigation clinic focuses on employment law, particularly wage and hour and unemployment compensation cases. Students represent low-income clients or non-profit groups in the U.S. District Court for the District of Columbia, D.C. Superior Court, D.C. Court of Appeals, and in administrative courts.

joint testimony regarding the Department of Employment Services (DOES) Office of Unemployment Compensation.

Since the beginning of the COVID-19 public emergency in the District, an unprecedented and alarming number of DC workers have applied for unemployment benefits through DOES. As of May 19, DC had received over 100,000 claims for unemployment.⁷ There is currently an immense need for workers to be able to submit applications for unemployment benefits and begin receiving benefits quickly. With businesses shut and families staying at home, these benefits are often the only source of income for many to pay rent, buy food, and purchase other necessities. We appreciate the extensive efforts that must be taken by DOES staff and leadership to process this extraordinary number of claims.

Significant flaws in the system, however, prevent a large number of DC workers from accessing these critical benefits, and we encourage the Council to ensure that DOES receives the resources it needs to remedy these flaws quickly. In particular, there needs to be more ways to apply for unemployment benefits, the existing applications need to be updated to make sure that everyone who should be eligible can complete the application, and language access to the applications and other DOES resources need to be expanded. Limitations across these areas create significant hurdles in accessing unemployment benefits for some of the most vulnerable workers - those without access to computers or the internet, those with limited English skills, and those who do not have the time, resources, or technical knowledge to navigate DOES's outdated, overburdened system. Those without internet access can call DOES to apply for standard unemployment benefits (although there is currently no call option for the temporary program created for those who are not eligible for standard unemployment) but, as discussed below, calling in is fraught with delays, dropped calls, and misinformation. We ask the Council to help DOES address the following issues to make sure the system is working as it should to provide this necessary lifeline for DC workers and families.

(1) DOES Must Address Technology and Access Issues with Standard Unemployment Compensation

As part of DC's stay-at-home order, DOES's American Jobs Centers are closed until at least June 8, 2020,⁸ leaving claimants fewer points of entry for applying for unemployment benefits.

⁶ The mission of Whitman-Walker Health is to offer affirming community-based health and wellness services to all with a special expertise in LGBTQ and HIV care.

⁷ <https://coronavirus.dc.gov/page/unemployment-data>.

⁸ See <https://coronavirus.dc.gov/page/stay-home>.

Claimants can either apply online at dcnetworks.org, or over the phone at 202-724-7000, but face the possibility of significant issues and delays through both methods.

Applying Online

DOES is encouraging applicants to apply online,⁹ and have received thousands of applications through dcnetworks.org. However, we have heard from numerous applicants about a variety of errors and technical issues preventing them from completing their applications online. For instance, many have received the following error message: “Your information has been received. Due to the extremely high volume of claims currently being filed, we ask that you please resubmit your request on the next business day after 1:00 PM EST. If your claim still does not process, then please contact us.” Following the instructions provided and trying again the next day after 1:00 often leads to the same message. DOES even recommends filing online between 8:00 p.m. and 7:00 a.m., to ensure “faster processing times.”¹⁰

Other DC workers eligible for unemployment benefits do not have the technology necessary to apply online. The website is optimized for Internet Explorer,¹¹ a browser that was discontinued in 2016.¹² Applicants without computers or internet access cannot apply online, and those without access to Internet Explorer are left trying to apply on other browsers, running a higher risk of being unable to complete the applications.

Applying over the Phone

Claimants who cannot apply online are left with trying to apply over the phone. Since the start of the public emergency, claimants applying by phone have often encountered long wait times or have been unable to get through. Clients who have reached out to our organizations for help in applying report repeatedly trying to reach DOES by phone, but never being able to get through. Others report waiting hours on the phone, only to never be connected to DOES. Many DC workers have family responsibilities and do not have the time to wait for hours on the phone to reach DOES, or to try calling repeatedly; others have limited resources and may not be able to afford the number of cell phone minutes required to wait for hours on the phone.

A group of George Washington University law students reported these same frustrations during a week-long research project conducted May 11 through 15 in which they attempted to complete calls to the DOES hotline for the following options: to file a new claim, file a weekly

⁹ See

https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/How%20to%20File%20UI_v2%5B1%5D.pdf.

¹⁰ <https://does.optimumui.com/#!/login>.

¹¹ <https://does.dcnetworks.org/initialclaims/?Lang=en-US>.

¹² <https://www.microsoft.com/en-us/microsoft-365/windows/end-of-ie-support>.

claim, speak to a representative about information regarding filing a claim, hear general information about the unemployment program, hear information about an existing claim, and leave a message.

The students called the DOES hotline a total of 643 times, with a call connection rate of only 20 percent. The other 80 percent of calls were failed calls and resulted in either immediate disconnections or a busy message (“All lines are currently busy. Please call back later.”) followed by a prompt disconnection. Calls made in the morning were least likely to successfully connect. Out of 219 total calls made between 9 AM and 12 PM, approximately 9 percent successfully connected.

When the call connected to the automated system, students reported confusing and repetitive dial options. Selecting one dial option often resulted in looping back to the previous menu of options. Students also reported frequent disconnections at various stages of their calls.

In addition, students reported long wait times before reaching a DOES call center representative. In fact, one student reported waiting on hold for 2 hours and 24 minutes before successfully reaching a representative. Almost 30% of students who reached a DOES agent were placed on hold for more than 90 minutes. Students also left a total of 9 voicemails. None of the students received a call back within the promised 72 hours. Please see related infographics included in the Appendix.

In order to improve accessibility to the application for standard unemployment benefits, DOES should expand the capacity of both the online application and the call center. DOES should hire substantially more representatives and should provide a callback option, which would save the caller’s place in the queue until a representative is ready without requiring the caller to wait on hold. DOES should also add additional methods to apply for benefits, like creating a mail-in option, a drop-off option at designated drop boxes, or a smartphone app.

(2) DOES Must Address Language Access Issues with Standard Unemployment Compensation

The difficulties in applying for standard unemployment benefits are compounded for claimants who need to apply in a language other than English. The District’s Language Access Act of 2004 (DCLAA) requires District agencies to assess the need for and offer oral language services, as well as provide written translation of vital documents, in any non-English language spoken by a limited-English-proficient or non-English-proficient population that constitutes 3% or 500 individuals (whichever is less) of the population served or encountered or likely to be served or

encountered by the agency. These non-English languages covered by the DCLAA are Amharic, Chinese (Mandarin), French, Korean, Spanish, and Vietnamese.

Despite the requirements of the Act, the online application for standard unemployment benefits is only available in English and Spanish. Claimants who speak languages other than Spanish or English must call the DOES hotline and have reported having to wait on hold for hours for a DOES employee to call an interpreter.

Furthermore, the instructional information that accompanies the Spanish online application is not all provided in Spanish. For example, at does.dcnetworks.org, after switching to the Spanish page, the sections on the extra unemployment benefits provided by the CARES Act and the benefits calculator are all in English.

DOES must ensure that the application for standard unemployment benefits is accessible in every language covered by the DC Language Access Act.

(3) DOES Must Address Technology and Access Issues with Pandemic Unemployment Assistance

In April, DOES rolled out its application for Pandemic Unemployment Assistance (PUA), an essential source of funds for workers who are shut out of the standard unemployment program. This temporary program provides weekly unemployment benefits for workers who are not eligible for standard UI, like independent contractors, gig workers, people who are self-employed, and people who cannot work because they are caring for children who are not in school due to COVID-19 closures. We encourage the Council to ensure that DOES expand access to Pandemic Unemployment Assistance, which is currently limited in the following ways.

Availability of the Application

The application for PUA is only available online.¹³ Unlike the standard UI application, there is no alternate means of applying, like by phone. This vastly limits the accessibility of PUA. It means that anyone without a computer or internet access, or who lacks the technological know-how to navigate an online application, is unable to apply.

DOES should quickly add additional ways to apply for PUA, as for the standard unemployment program. There should be an option to apply by phone, and DOES should also consider adding a mail-in, drop-off, and/or smartphone app option.

¹³ <https://dcdoes.force.com/PUAForm/s/>.

The Application Process

The application process itself creates hurdles for applicants. First, In order to apply for PUA, you must first apply for standard UI, and potentially face all of the delays and issues described above.

In addition, the very first question on the application for PUA will disqualify applicants who may be eligible for PUA. It asks whether a claimant has worked in DC between January 2019 and the present, and does not let the applicant complete the application if they say no. However, even claimants who did not work in DC during that time may still qualify for PUA. For example, applicants who did not previously have a job, but had a job offer rescinded due to COVID-19, could be eligible for PUA. As DOES provides in its PUA FAQ, someone could be eligible if they “were scheduled to commence employment and do not have a job or are unable to reach [their] job as a direct result of the COVID-19 public health emergency.”¹⁴

DOES needs to change the application itself so that applicants who know they will not be eligible for standard unemployment do not have to go through the step of applying for standard unemployment before applying for PUA. DOES should also affirmatively screen DC workers who have applied for standard unemployment and been denied and contact those who may be eligible for PUA. Additionally, DOES should update the PUA application so that it does not reject applicants who may be eligible for PUA, but have not worked in DC in 2019 or the first part of 2020.

Supporting Documentation

The PUA application requires claimants to upload documents that show their recent income and that show that they lost a job or income due to COVID-19. However, the list of documents that DOES provided that they will accept to show recent income or COVID-related loss of job or income is incomplete.

In DOES’s “Tips for Documenting and Estimating Quarterly Wages,”¹⁵ it provides that DOES will accept as proof of income: a worker’s 2019 tax return (or if 2018 tax return if 2019 hasn’t been filed yet); W-2s; 1099s; bank statements; screenshots or generated reports, like balance sheets, from accounting software; signed contracts with payment amounts; earnings summaries from gig companies (Uber, Lyft, TaskRabbit, Airbnb); paystubs; or “any other proof of income.” Even though the guidance provides that the list is not exhaustive, it does not include any examples that would help workers with less formal jobs -- workers who are often lower-income and less technologically savvy -- prove their income. DOES should share widely that it will accept

¹⁴ https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DOES_PUA_FAQs.pdf.

¹⁵ <https://dcdoes.force.com/PUAForm/resource/1587694093000/TipsAndExamples>.

documentation such as self-affidavits or declarations, letters from customers or employers, and other methods of proving income for workers who may not have the more formal examples listed in the DOES guidance.

Similarly, the DOES guidance's examples for proof of loss of income due to COVID-19 are: "email exchanges (with dates) documenting postponed start dates, cancelled commitments, reduced hours, or rescinded offer letters; notification of school closing; email from employer or government requiring you to quarantine; signed contracts with payment amounts that were canceled."¹⁶ There should be more examples provided for workers who do not have email accounts, those who engaged in verbal contracts for work, and others who engaged in less formal work. This again could include documentation like self-affidavits or declarations and letters from customers or employers.

Post-Application Issues

Workers are encountering additional hurdles after submitting their initial applications for PUA. Once an initial application is submitted, there is no clear process for providing updates to or receiving updates from DOES. For example, workers who find additional documentation showing their recent income after submitting their PUA application should be clearly informed of a way to upload documents after the fact. DOES should broadly distribute clear directions and contact information, including a hotline and email address, for workers to be able to follow up on their PUA applications. Similarly, DOES should broadly advertise the process they will be using to communicate with applicants about the status of their application, including whether applicants should expect to receive monetary determinations in the mail describing eligibility decisions or issues, as are provided to applicants for standard unemployment compensation.

DOES must also provide more instruction on how PUA claimants should submit their weekly claim cards. Workers must submit claim cards for each week that they wish to receive PUA benefits. The PUA application provides instructions for uploading claim cards for past weeks as part of the initial application, and instructions on how to fill out claim cards once a PUA application is approved, but not for how workers should submit claim cards while their application is pending. DOES should broadly distribute to workers the process for submitting claim cards while they are waiting for their PUA application to be processed.

The claim cards themselves, which appear to be the same for PUA and standard UI, need to include all of the circumstances under which someone would be eligible for either standard UI or PUA. They currently do not include enough questions to allow workers to report enough information to DOES to determine whether they continue to be eligible for benefits, creating

¹⁶ <https://dcdoes.force.com/PUAForm/resource/1587694093000/TipsAndExamples>.

confusion for workers and additional work for DOES claims examiners when workers fill out the cards incorrectly. In particular, the claim card available through claimants' online accounts have a drop-down menu available for workers to choose a COVID-19-related reason for eligibility for unemployment benefits, but the list omits an important reason: a reduction in business due to COVID-19. Many rideshare drivers and others are applying for unemployment because although their businesses haven't technically "closed," business is so slow that they cannot make enough money to survive.

(4) DOES Must Address Language Access Issues with Pandemic Unemployment Assistance

In addition to only being available online, the application for PUA is only available in English. There is no alternate means of applying, like by phone, for claimants with limited English proficiency. Like the standard unemployment application, the PUA should be available in all languages covered by the DC Language Access Act.

(5) DOES Must Address Language Access Issues for COVID-19-Related Materials

DOES has a number of resources on its website for claimants¹⁷ providing helpful information to DC workers like a flyer on how to file for unemployment benefits, FAQs on the new federal unemployment programs created in response to the COVID-19 crisis, a Coronavirus FAQ, and a Quick Guide on accessing unemployment benefits. The materials are also available in Spanish, with a link to the Spanish page from the English page.¹⁸ However, most do not appear to be currently available in the other languages covered by the DC Language Access Act. The DOES homepage provides only general information about the services it offers in Amharic, Chinese, French, Korean, and Vietnamese rather than the fuller information provided in English and Spanish. In addition, the DOES Home Page offers assistance via chat with a virtual agent, but this feature is available only in English. All resources should be translated in a timely fashion into the languages required by the DC Language Access Act.

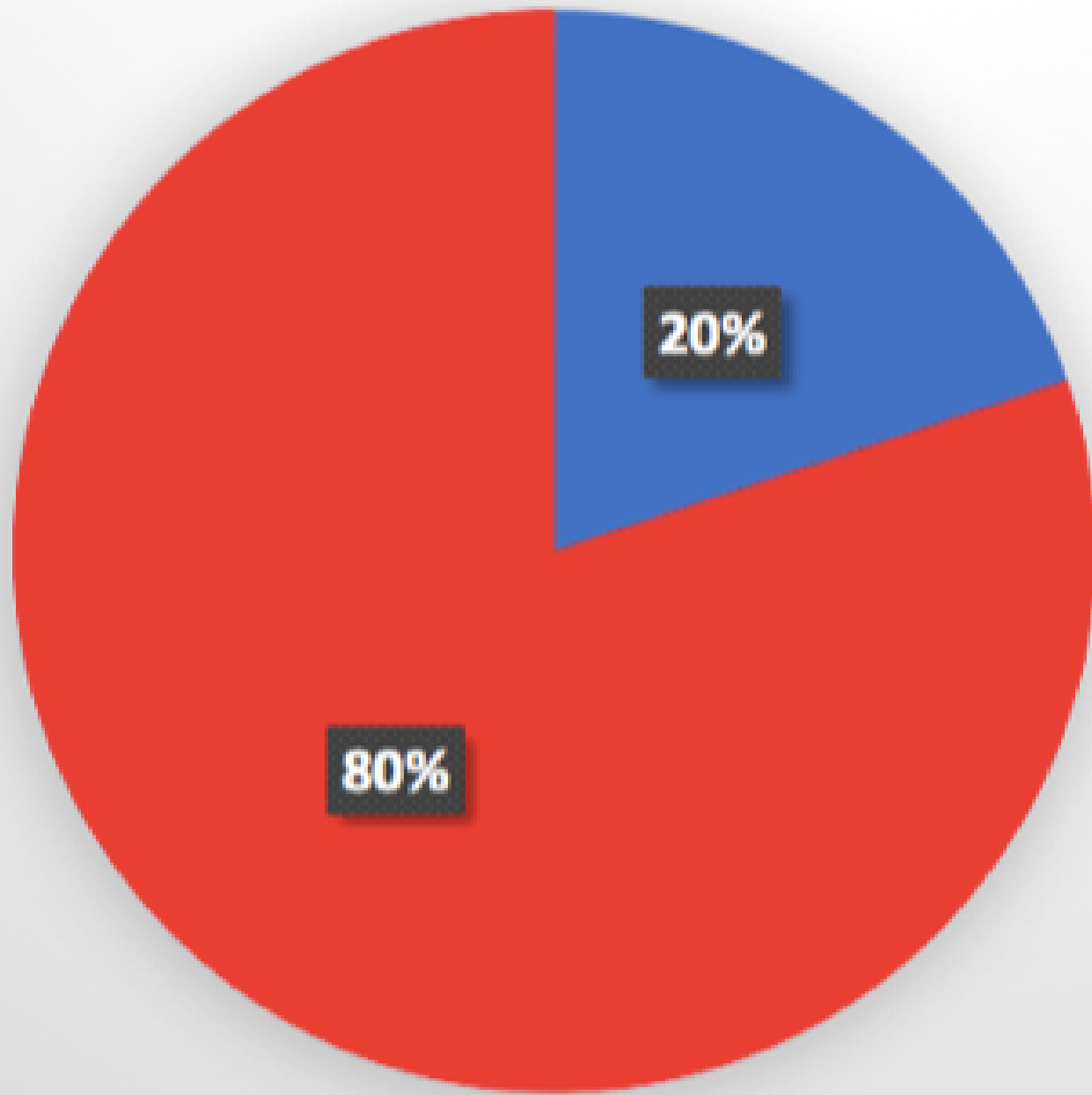
Conclusion

We thank the Committee for the opportunity to submit this joint testimony. We urge the Committee to ensure that DOES is provided with the resources required to expand timely access to unemployment compensation for all who qualify, and we look forward to working with the Committee and DOES to address these issues.

¹⁷ <https://does.dc.gov/page/ui-benefits-claimants>.

¹⁸ <https://es.does.dc.gov/>.

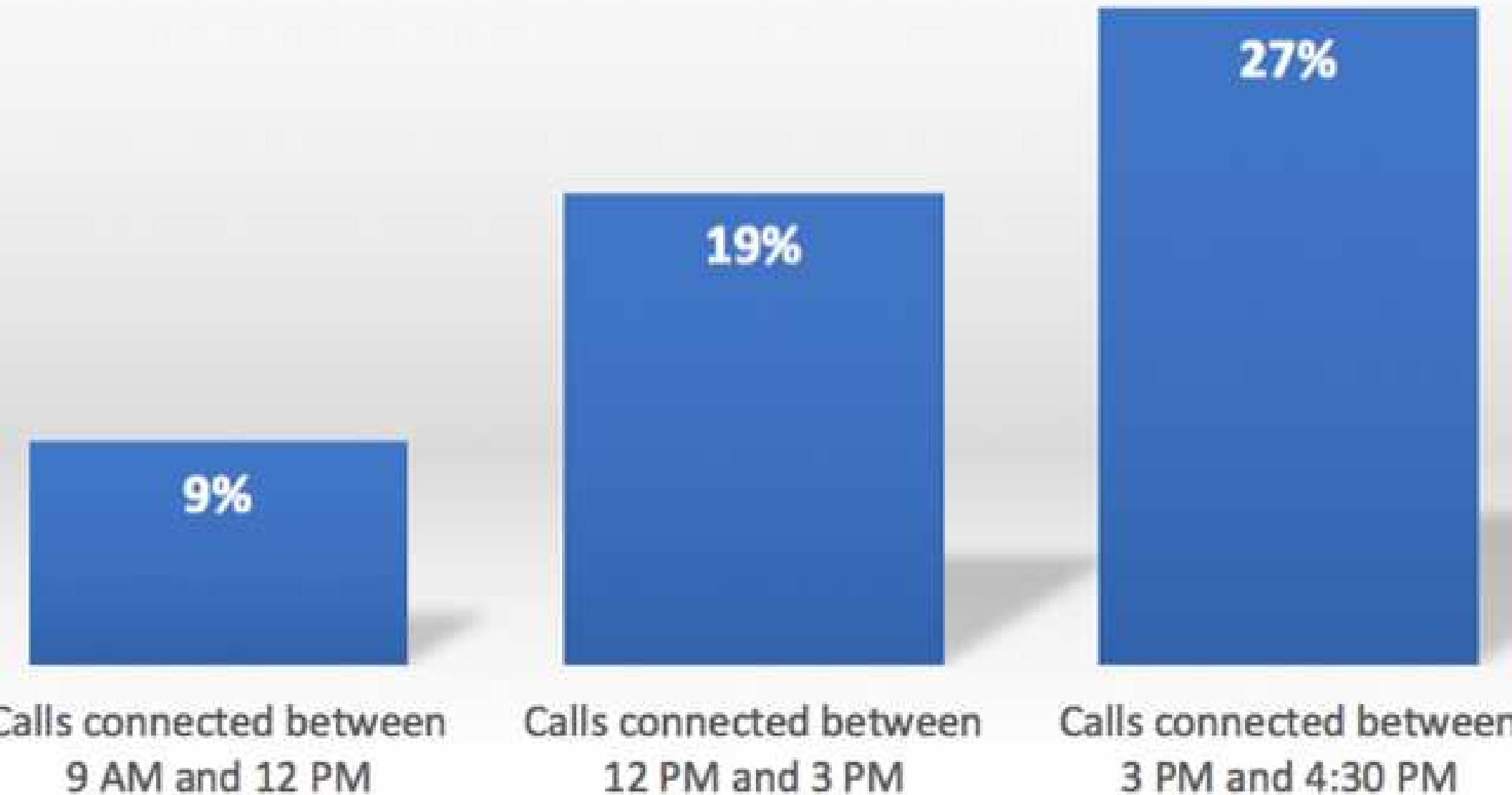
Total Call Connection Rate*



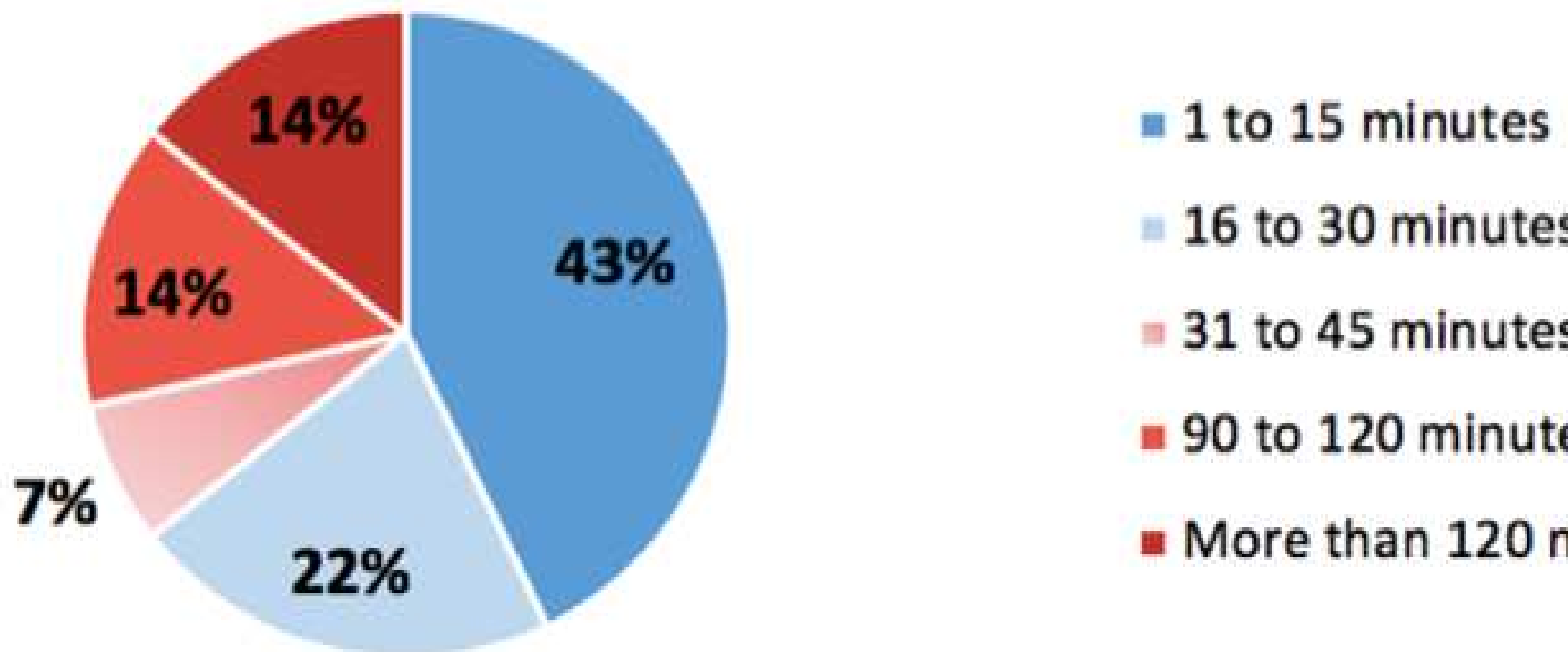
■ Connected Calls

■ Failed Calls
(resulted in either an immediate disconnection or a busy message)

DOES Hotline Call Connections Based on Time of Day

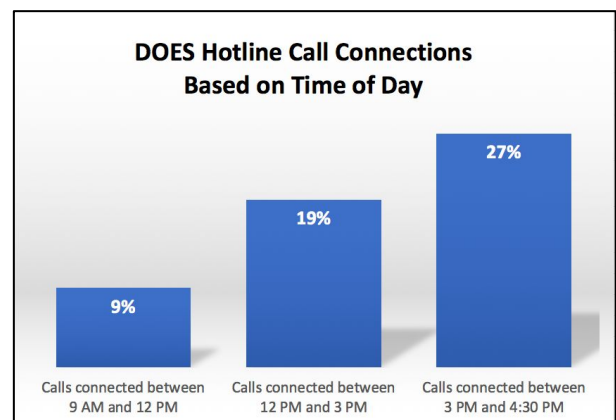
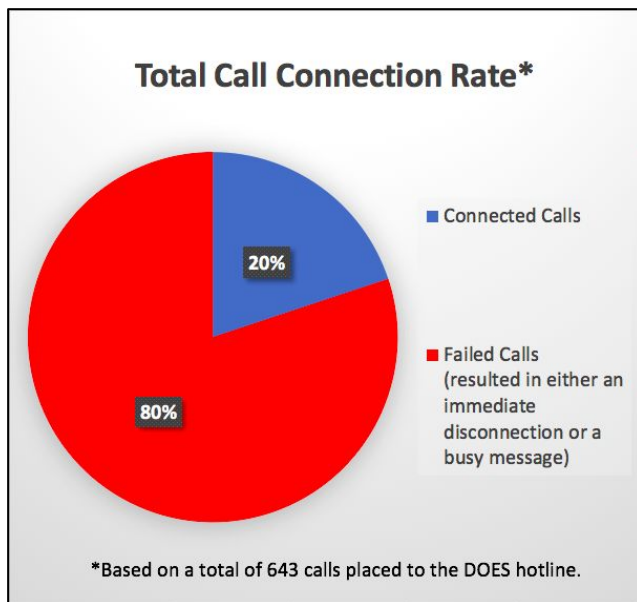


Number of Minutes Placed "On Hold" For Callers who Successfully Connected with a DOES Agent

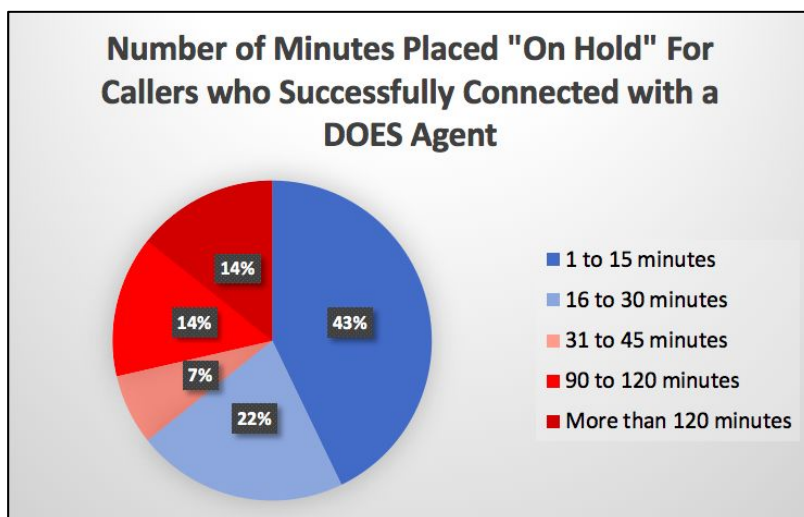


Findings from Calling DOES Hotline

A group of George Washington University Law Students called the DOES hotline Monday, May 11 through Friday, May 15 in three shifts each day: from 9:00 AM to 12:00 PM, 12:00 PM to 3:00 PM, and 3:00 PM to 5:00 PM. Students were directed to attempt to complete six calls during each shift and document their experience. Half of the students were directed to follow the English language prompts when connected to the call, and the other half the Spanish language prompts.



Calls placed between 9 AM and 12 PM were less likely to connect to the DOES hotline than calls placed in the afternoon or evening.



Students who were placed on hold but were not successfully connected to a DOES agent waited an average of 42 minutes before the call disconnected or the student hung up.

Notable Observations:

- Calling experiences between students who followed the English prompts and those who followed the Spanish prompts were comparable.
- Students observed that the "busy message" is only in English, and gives no guidance about how to seek information online.
- Several students reported being disconnected after reaching a DOES agent because of technical and audio issues at the call center.
- A student received after-business hours message despite calling within business hours.
- Students frequently reported disconnections at various stages of the calling process.