

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

**Performance Oversight Hearing on the Department of Employment Services’
Unemployment Compensation program**

March 3, 2021

The Legal Aid Society of the District of Columbia (Legal Aid),¹ and Claimant Advocacy Program (CAP)² submit the following joint testimony to raise concerns about the Department of Employment Services’ (DOES) unemployment compensation program in the following areas:

- The “digital divide” hurting workers without computers,
- Language access services are still inadequate, especially for Amharic speakers,
- Pandemic Unemployment Assistance (PUA) claims processing is slow,
- Overpayments are aggressively recouped without sufficient notice,
- Workers with out-of-state wages are denied Pandemic Emergency Unemployment Compensation (PEUC) without notice, and
- Stubborn technology problems delay benefit payments.

¹ The Legal Aid Society of the District of Columbia 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.

² 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 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/>.

A Surge in Requests for Help with Unemployment Claims

Since the public health emergency began nearly one year ago, Legal Aid and CAP have worked tirelessly to help with the resulting surge in unemployment claims. In the first six months of the pandemic (April to September 2020), *CAP received nearly 5,000 requests for assistance* – plus thousands more requests since then. In response, CAP attorneys doubled the number of hearings accepted for representation at the Office of Administrative Hearings and regularly appeared in three or more unemployment hearings each day.

Legal Aid was also flooded with requests for help, and we temporarily mobilized attorneys and legal assistants from our other practice areas to serve as many low-wage workers as possible. Legal Aid has since served more than 400 low-wage workers and referred another 60 cases to pro bono lawyers. Yet, Legal Aid is still not able to accept all the requests for help we continue to receive each month – especially during a surge of new requests in January and February 2021 when technology problems at DOES prevented tens of thousands of unemployment claimants from receiving benefits. We tried to leverage our impact by presenting webinars for the DC legal community on the fast-changing unemployment compensation laws and by participating in community outreach events in English, Spanish, and Amharic.

Systemic Issues with DOES's Unemployment Compensation Program

In the course of our individual case work this year, Legal Aid and CAP uncovered significant systemic issues within DOES's unemployment compensation program.

In April 2020, just one month into the crisis, Legal Aid and CAP began meeting by telephone with DOES's Director to share these concerns. We continue to raise issues by phone and email with DOES leadership. Further, in the past year, Legal Aid and CAP have jointly testified before this committee four times.³ Many of the systemic issues we have described previously still remain.

³ Legal Aid and CAP jointly submitted testimony for the (1) March 4, 2020 Public Oversight Hearing Regarding DOES, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/03/DOES-Oversight-Testimony-03-04-2020-final-PDF.pdf>; (2) May 28, 2020 DOES Budget Hearing, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/05/Joint-Written-Budget-Oversight-Hearing-Testimony-FINAL-2-1.pdf>; (3) September 16, 2020 Public Oversight Hearing on the District's Unemployment Compensation Program During the Public Health Emergency, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/09/Joint-Testimony-of-CAP-First-Shift-Legal-Aid-WLC-WWLS-on-DOES-performance-9.16.2020-1.pdf>; and, (4) November 17, 2020 Public Hearing on B23-985 Unemployment Benefits Extension Amendment Act of 2020, available at: <https://www.legalaiddc.org/wp-content/uploads/2021/03/Joint-Testimony-of-CAP-First-Shift-Legal-Aid-Seven-Week-Extension-of-Benefits-11.17.2020-final.pdf>. Additionally,

(1) The “Digital Divide” Hurting Workers Without Computers

DOES has failed to provide adequate telephone access to jobless workers without computers. Many workers lost weeks or even months of unemployment benefits because they could not get through to DOES via the Customer Call Center (202-724-7000). Even after bypassing the wait time to leave a voicemail message, our clients report never receiving a call back.

Further, while DOES created a physical drop-box for documents in the lobby of DOES’s Minnesota Avenue headquarters (as required by the 2020 Budget Support Act), few claimants know about the drop-box or how to access it. When Legal Aid last visited the Minnesota Avenue office, the DOES receptionist was not able to provide a copy of the unemployment claim form and erroneously offered a Legal Aid attorney a Shared Work application form (for employers).

DOES must adequately staff and train Customer Call Center staff and plan for the reopening of the American Job Centers to provide more meaningful access to DOES services.

(2) Language Access Services Are Still Inadequate, Especially for Amharic Workers

DOES fails to adequately serve Limited or Non-English Proficient workers. To date, DOES still has not published Amharic translations of initial claims for UI, PEUC, Extended Benefit, or PUA applications; nor weekly (continuing) claims forms or appeal forms. Amharic and Spanish speakers are routinely sent emails about their claims in English only – even after notifying DOES of their Limited English Proficiency. To apply for benefits, callers with Limited English Proficiency must wait on hold for hours before requesting an interpreter.

As DOES begins to select a contractor for future website modernization, DOES must prioritize language translations (including Amharic), disability access, and compatibility with mobile devices. DOES must not repeat the same mistake it made when selecting a contract for the Pandemic Unemployment Assistance (PUA) online portal that was incompatible with Amharic – even though 35,000 Ethiopian Americans live in the District of Columbia and a critical minority in DOES’s customer service base.⁴

(3) Pandemic Unemployment Assistance Claims Processing Is Slow

After DOES launched an initial application for the new PUA program on April 24, 2020, a flood of claimants applied for benefits. While many were approved quickly, thousands of claimants experienced long delays in their PUA claims processing. Several Legal Aid clients with Limited English Proficiency waited more than six months after applying to receive any benefits. Even multiple escalation requests by Legal Aid attorneys seemed to have little impact.

Legal Aid provided oral testimony at the December 9, 2020 Public Oversight Roundtable on Unemployment Insurance Programs in the District During the COVID-19 Pandemic.

⁴ The Ethiopian Diaspora in the United States, Migration Policy Institute (July 2014), available at: https://wamu.org/sites/wamu.org/files/file_attach/rad-ethiopia.pdf.

Additionally, too few PUA claimants are receiving the weekly benefit amount they deserve. Only 1,275 claimants⁵ (out of more than 18,500⁶) have received a benefit level adjustment for a higher weekly benefit amount than the minimum of \$179 per week. Given that nearly half of standard unemployment benefit claimants receive the maximum weekly benefit amount, it is concerning that so few PUA claimants are receiving higher weekly benefit amounts. DOES has also been slow to award back-payment to PUA claimants indicating that there is a significant, troubling backlog of PUA claims.

DOES must individually notify PUA claimants of their right to request a higher weekly benefit amount and counsel claimants on the documentation required to support these claims. DOES must also release information on the volume of back-benefits and how the newly expanded PUA claims processing team will resolve the backlog.

(4) Overpayments Are Aggressively Recouped Without Sufficient Notice

In prior years, Legal Aid and CAP raised concerns with the accuracy and fairness of DOES's overpayment and fraud penalty assessment and collection practices.⁷ These problems remain and have only been exacerbated due to the pandemic, which brought a flood of former unemployment claimants back to the unemployment claims system. DOES has recouped more than \$5.8 million from 3,766 unemployed workers this year. DOES fails to notify claimants of their right to request a waiver of past debts or to file an appeal to challenge the recoupment.⁸

DOES has also continued to file lawsuits in D.C. Superior Court against former unemployment claimants seeking overpayment debts. DOES refuses to stay these cases during the public health emergency even though these claimants are least likely to be able to participate meaningfully in their defense.

Legal Aid has represented several defendants and referred others to pro bono counsel. One client was sued in D.C. Superior Court for an overpayment debt of more than \$30,000 that was more than ten years old. After an investigation, the client applied for a waiver and asked DOES to forgive the debt because he was not at fault – his award of unemployment benefits was reversed by an Administrative Law Judge and DOES had failed to reverse the award of benefits and stop

⁵ Letter to Councilmember Elissa Silverman (February 5, 2021), answer (C)(2).

⁶ Responses to Fiscal Year 2020 Performance Oversight Questions (February 12, 2021), answer 33 (stating that 17,115 claimants received PUA in FY2020 and 1,474 in FY2021).

⁷ Joint testimony of Legal Aid and CAP, Public Oversight Hearing Regarding DOES, March 4, 2020, available at: <https://www.legalaiddc.org/wp-content/uploads/2020/03/DOES-Oversight-Testimony-03-04-2020-final-PDF.pdf>.

⁸ DOES is not allowed to recoup an overpayment from future benefits if (1) the claimant is not at fault, and (2) the recoupment would “defeat the purpose of this subchapter or would be against equity and good conscience,” in other words, if the claimant cannot afford to pay back the funds or it would be grossly unfair to collect. DC Code 51-119(d)(1).

sending payments many years before.

DOES should commit to requesting a stay of any overpayment lawsuits filed during the public health emergency and commit to a moratorium of litigation until 90 days after the public health emergency lifts. DOES must notify claimants of their right to request a waiver or to appeal the recoupment of their unemployment benefits.

(5) Workers with Out-of-State Wages are Denied PEUC Without Notice

After exhausting the standard 26 weeks of unemployment compensation, most claimants have filed for the federal extension benefits called Pandemic Unemployment Emergency Compensation (PEUC). Unfortunately, for more than a thousand claimants with recent wages in both the District and a neighboring state, it has been extremely difficult to effectively navigate the PEUC process. More than one-hundred claimants contacted Legal Aid and CAP seeking assistance with PEUC claims – often after waiting more than 12 weeks and calling DOES many times to inquire about their claim without any success. Many of these PEUC claimants received an initial determination from DOES *awarding* them PEUC benefits, only to find out weeks (or months) later that this benefit approval had been in error. DOES would then email the claimants, advise them to file in Maryland or Virginia (or the other state where recent wages had been earned), and withdraw the claim.

Over and over, we uncovered cases where DOES withdrew a claimant’s PEUC claims without any written determination and notice of appeal rights. As a result, claimants did not have an opportunity to appeal their claim and get any meaningful review of DOES’s reversal. Instead, claimants were stuck navigating the overburdened DOES bureaucracy plus the bureaucracy of the new state, sometimes going back and forth between the two unemployment programs being denied benefits at each turn.

DOES must provide due process notices (with appeal rights) to claimants promptly upon terminating benefits or denying claims. DOES must also issue written notices each time benefits are denied and include instructions on how to appeal the determination. Finally, DOES must improve interstate coordination with Maryland, Virginia, and other states to prevent claimants from being unable to access benefits from any state.

DOES Must Address Stubborn Technology Problems That Delay Payments

January and February 2021 have been an extremely challenging time for District claimants as unspecified “information technology problems” have plagued the District’s unemployment claims system. Legal Aid and CAP heard from hundreds of claimants who were unable to file for benefits during this time or who filed but did not receive the benefits they were entitled to. DOES admitted that approximately 39,000 claimants missed one or more weeks of payments. Many claimants experienced significant stress and financial harm as a result of missed payments. One Limited English Proficient claimant incurred more than four late-payment fees from financial institutions for a total of \$140. DOES emailed him an English-language claims form as an attachment to an email, but even with his brother’s help to translate the form, he is unable to print, sign, and return the document because he does not have a printer.

While DOES has recently completed an upgrade to the claims system on February 23, 2021 that resolved these issues for many claimants, serious problems remain. Legal Aid and CAP continue to hear from claimants who cannot file claims this week – or where DOES has failed to process back-weeks of benefits that they emailed to a claims examiner. *DOES must diagnose and resolve IT problems that prevent claimants from receiving benefits on time.*

Conclusion

The flood of unemployment claims from the COVID-19 public health emergency has laid bare systemic problems with the unemployment compensation program in the District – problems that were *not caused* by the pandemic but existed well before it began. 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.