

**Testimony of Satcha Robinson
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**Before the Special Committee on COVID-19 Pandemic Recovery
Council of the District of Columbia**

**Public Oversight Hearing Regarding an Equitable End to Safety Net Protections Put in
Place During the COVID-19 Pandemic**

May 21, 2021

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding ensuring an equitable end to the safety net protections put in place during the COVID-19 pandemic. My testimony will focus on the protections related to the unemployment program. Specifically, the District must ensure timely distribution of unemployment payments, improve service delivery of the various unemployment programs, and capitalize upon the lessons learned from creative pandemic policy solutions. Before delving into Legal Aid’s recommendations, I must discuss the scope of the problem.

Undeniably, the COVID-19 pandemic has changed life as we know it and has caused the community to experience loss at levels that many have never seen before – physically, financially, and emotionally. However, the catastrophic losses caused by COVID-19 have fallen heaviest on the District’s Black, Latinx, and lower-income residents.² The District has

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.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 89 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 See Elise Gould et al., *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus – Racism and Economic Inequality*, Economic Policy Institute (June 1, 2020), <https://www.epi.org/publication/black-workers-covid/>; Elise Gould et al., *Latinx Workers – Particularly Women – Face Devastating Job Losses in the COVID-19 Recession*, Economic Policy Institute (Aug. 20, 2020), <https://www.epi.org/publication/latinx-workers-covid/>.

experienced a record shattering number of claims for unemployment since the beginning of the pandemic. Over 200,000 claims were filed between March 13, 2020 and May 14, 2021.³

The Department of Employment Services (DOES) has utterly failed to adequately and expeditiously administer unemployment benefits.⁴ This failure will create far reaching and lingering issues for workers. Figures released by DOES imply that approximately 12,000 workers' claims are still pending. However, Legal Aid believes the estimated number of workers waiting for determination or payment from DOES is much higher because the above figure does not account for individuals who are waiting for their PUA weekly benefit to be adjusted.

The harm caused to District residents over more than 14 months by this widespread failure to provide unemployment benefits cannot be undone in a matter of weeks. Erroneous delays and denials of benefits have caused our clients to be unable to pay their bills, such as for their rent, mortgage, gas and electric, cell phone, and prescription drug copays; to experience food insecurity; and to be unable to afford child care.⁵ Legal Aid urges the Council to take a long-term approach to pandemic recovery.

The Council needs to implement a thoughtful and long-term approach to prevent dire outcomes when the safety net protections put in place during the COVID-19 pandemic expire. Legal Aid urges the Council to act decisively regarding three main areas. First, the District needs to ensure timely distribution of unemployment payments by continuing to administer federal programs, protecting workers from the harshest consequences until the unemployment system is

³ *Unemployment Compensation Claims Data*, Department of Employment Services, <https://does.dc.gov/publication/unemployment-compensation-claims-data> (last visited May 18, 2021).

⁴ Legal Aid has appeared before the Council regarding issues with the unemployment process five times in the past year. The written testimony submitted is available for (1) May 28, 2020 DOES Budget Hearing, at: <https://www.legalaiddc.org/wpcontent/uploads/2020/05/Joint-Written-Budget-Oversight-Hearing-Testimony-FINAL-2-1.pdf>; (2) September 16, 2020 Public Oversight Hearing on the District's Unemployment Compensation Program During the Public Health Emergency, 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>; (3) 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>; and (4) March 3, 2021 DOES Performance Oversight Hearing, at: <https://www.legalaiddc.org/wp-content/uploads/2021/03/Joint-Testimony-DOES-performance-3.3.2021-FINAL.pdf>. Additionally, 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.

⁵ See also Morgan Baskin et al., *'I Don't Know What to Do': Applying for Unemployment Benefits has been a Nightmare for These D.C.-Area Residents*, DCist (Dec. 22, 2020), <https://dcist.com/story/20/12/22/unemployment-delay-dc-maryland-virginia/>.

functioning effectively, and delaying reinstatement of work search requirements. Second, the District needs to improve service delivery in order to provide meaningful access to all claimants and process the backlog of claims. Last, the District needs to make permanent changes to the unemployment system by expanding the category of eligible workers, dedicating resources to excluded workers, providing supplemental weekly payments, and adopting a more generous income threshold for part time workers to receive partial unemployment insurance (UI) payments.

The District Needs to Timely Distribute Unemployment Payments

The District Must Continue to Administer Federally Funded Unemployment Benefits

In response to the COVID-19 pandemic, the federal government created several new jobless benefits for unemployed workers. Through the CARES Act and subsequent stimulus packages, Congress created (1) Pandemic Unemployment Assistance (PUA) for workers typically excluded from unemployment benefits, such as gig-workers, self-employed workers, workers who earn too little to normally qualify for unemployment insurance (UI), and any worker unavailable to work due to COVID-19; (2) Pandemic Emergency Unemployment Compensation (PEUC), which extends unemployment insurance beyond the normal 26 weeks; and (3) Federal Pandemic Unemployment Compensation (FPUC), which provides supplemental weekly payments for claimant's eligible for one of the various unemployment programs.

As of May 18, 2021, twenty-one states have elected to withdraw from federal pandemic-related jobless benefits.⁶ An abrupt reduction or loss of a public benefit leads to higher rates of food and housing insecurity, disproportionately affecting families of color.⁷ The federal jobless programs, which are 100% federally funded, provide support to a significant number of District workers and the total funds at stake amount to over \$194,000,000.⁸ These federal funds provide crucial lifelines to unemployed workers, allowing them to continue paying for basic necessities – such as food, shelter, and medical care – without falling into poverty. To promote an equitable recovery, at a bare minimum, the District needs to continue administering federal pandemic-related unemployment programs.

⁶ *Unemployment Program Status American Rescue Plan*, <https://unemploymentpua.com/articles/states-ending-unemployment-benefit-programs-early-tracker.html> (last visited May 18, 2021).

⁷ Alexa Tapia et al., *Slashing Unemployment Benefit Weeks on Jobless Rates Hurts Workers of Color*, National Employment Law Project (May 14, 2021), <https://www.nelp.org/publication/slashing-unemployment-benefit-weeks-on-jobless-rates-hurts-workers-of-color/>.

⁸ Andrew Stettner, *Fact Sheet: What's at Stake as States Cancel Federal Unemployment Benefits*, The Century Foundation (May 13, 2021), <https://tcf.org/content/commentary/fact-sheet-whats-stake-states-cancel-federal-unemployment-benefits/>.

The District Should Protect Workers Until the Unemployment System is Working Effectively

Legal Aid has served more than 400 low-wage workers and referred another 60 cases to pro bono lawyers during the pandemic. In the course of our individual case work, we have uncovered significant systemic issues within DOES's unemployment compensation program.⁹ These systemic issues have led to claimants experiencing severe delays in receipt of these crucial lifeline benefits. For example, in the first quarter of 2021, DOES only paid 35.6% of initial claims within 21 days.¹⁰ Stated another way, 64.4% of workers filing a claim with DOES in 2021 had to wait more than three weeks to receive payments, which violates the threshold set by federal regulation.¹¹ Legal Aid has seen clients who have waited six months or longer after applying to receive any benefits. This abysmal performance, which is well below the acceptable level of 87%, puts the District in 48th place compared to other jurisdictions.¹²

These are not the agency's only problems. DOES Director Unique Morris-Hughes testified on May 12, 2021 that about 20% of workers' benefits were interrupted in early March 2021 alone. Moreover, estimates based on figures released by DOES indicate that approximately 12,000 individuals are waiting for a determination.¹³ Legal Aid believes these figures significantly understate the true number of individuals waiting for a determination or owed money by DOES because it does not include claimants who experienced an interruption in benefits for which they have never been paid, nor does it include the at least 18,000 PUA recipients who are awaiting a monetary redetermination after being approved for the preliminary minimum amount.¹⁴ Any increase in benefits as a result of a monetary redetermination would apply to all weeks paid to the PUA claimant from March 2020 to the present.

⁹ See *supra* note 4.

¹⁰ *State Rankings of Core Measures for the Period: 01/01/2021 to 03/31/2021*, United States Department of Labor, <https://oui.doleta.gov/unemploy/ranking/rankingrpt.asp> (last visited May 19, 2021).

¹¹ See 20 C.F.R. § 640.5.

¹² See *supra* note 10.

¹³ Michael Brice-Saddler, *More than 13,000 District Unemployment Claimants Missed Payments This Spring*, Washington Post (May 12, 2021), https://www.washingtonpost.com/local/dc-politics/dc-unemployment-council-morris-hughes/2021/05/12/3dd202de-b337-11eb-9059-d8176b9e3798_story.html.

¹⁴ Unique Morris-Hughes, *Responses to Fiscal Year 2020 Performance Oversight Questions*, Department of Employment Services, 33 (Feb. 12, 2021), <https://dccouncil.us/wp-content/uploads/2021/02/DOES-POH-2021-PreHearing-Question-Narrative-Responses-FINAL.pdf>.

The many jobless workers who have struggled to access unemployment benefits during the pandemic may have accrued significant debt and be several months behind on bills, due in large part to extreme delays in processing claims or inconsistent payment by DOES. This is particularly troubling because DOES has failed to adequately serve Limited or Non-English Proficient workers and jobless workers without computers. Given the current performance of DOES, Legal Aid has serious concerns that jobless workers with outstanding issues with DOES will receive resolution and payment before protections tied to the public health emergency end. The Council needs to provide sufficient time for jobless workers to reach resolution of their issues pending with DOES before ending the pandemic response safety net protections, like those regarding evictions, utility cut-offs, and debt collection. Based on the performance by DOES, 60 to 90 days is insufficient. In the alternative, the Council should provide protections against loss of the safety net for individuals who certify that they are awaiting determination or funds from DOES.

The District Should Thoughtfully and Carefully Consider Safety Before Reinstating Work Search Requirements

Before the pandemic, federal and local law required unemployment claimants to actively search for work to remain eligible for benefits. Jurisdictions were required to waive work search requirements as part of the federal COVID relief packages. The Department of Labor under the Biden Administration is working with remaining states to put appropriate work search requirements in place as health and safety conditions allow.¹⁵ Work search requirements may impose arduous requirements and force workers to apply for and accept lower-paying jobs.¹⁶ Additionally, in a recovering labor market, there may not be enough suitable jobs for people seeking re-employment, which can lead to work search requirements perpetuating systemic racism by trapping workers of color in underpaid jobs with fewer benefits.¹⁷ Legal Aid urges DOES and the Council to cautiously consider the health and racial equity considerations before reinstating the work search requirements.

¹⁵ *Fact Sheet: President Biden Announces Additional Steps to Help Americans Return to Work*, The White House (May 10, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/10/fact-sheet-president-biden-announces-additional-steps-to-help-americans-return-to-work/>.

¹⁶ Sydney Ember, *Unemployment Pay May Again Require a Job Search. Is it too Soon?*, The New York Times (May 16, 2021), <https://www.nytimes.com/2021/05/16/business/unemployment-job-search-requirements.html>.

¹⁷ *See id.*

The District Needs to Improve Service Delivery of Unemployment Programs

DOES Needs to Maintain a High Level of Staffing after the Public Health Emergency Ends

As described above, Legal Aid anticipates that DOES will have a significant backlog of claims and issues to process when the public health emergency ends. In order to ensure higher levels of safety net assistance extends beyond the end of the pandemic, the Council needs to ensure that DOES has enough resources to administer its unemployment programs. To continue processing the backlog of initial claims, back payments, and monetary redeterminations, DOES needs to be fully staffed. Furthermore, DOES must adequately staff and train employees.

DOES Needs to Provide Meaningful Access to Services

District workers faced persistent challenges accessing services from DOES during the pandemic. Many lower-income workers and younger workers rely solely on smartphones for internet access at home. Unfortunately, the antiquated online unemployment claims portal is incompatible with mobile devices, and claimants without home computers were forced to file by phone. Many workers lost weeks or even months of unemployment benefits because they could not get through to the DOES Call Center.

To improve service delivery at the end of the pandemic DOES should: (1) adequately staff and train call center staff, (2) encourage customers to continue utilizing the call center and claims portal, and (3) plan the safe reopening of the American Job Centers to provide more meaningful access to DOES services and communicate the plan to the public.

The District Should Make Permanent New Benefits for Jobless Workers

Confronting the unprecedented crisis of the COVID-19 pandemic required creativity and novel policy choices by lawmakers. The DC Council should take this opportunity to update our benefit and safety net systems to thrive in existing conditions.

The District Should Provide Unemployment Benefits to Historically Excluded Workers

The District should expand the category of workers who are eligible for unemployment benefits. The pandemic has exposed the ways in which many workers – including independent contractors and gig workers – have been deprived of job protections.¹⁸ Independent contractors and gig workers were only able to access unemployment payments during the pandemic because of the federal PUA program. The pandemic – and creation of the PUA program – has demonstrated that it is feasible to administer benefits detached from any particular job and workers' access to

¹⁸ *Independent Contractors & COVID-19: Working without Protections*, National Employment Law Project, 1-2 (March 2020), <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Independent-Contractors-COVID-19-Working-Without-Protections.pdf>.

unemployment shouldn't depend on their employer's classification choices.¹⁹ Further, gig-workers are more highly concentrated among Latinx and Black workers, with 31% and 27% of Latinx and Black adults respectively, earning money through the gig economy.²⁰

Because workers of color are overrepresented in gig jobs, excluding these jobs from receiving unemployment is another tool for upholding structural racism.²¹ In addition to race equity, redefining eligibility for unemployment benefits to include independent contractors is a language access issue. There are generally fewer barriers to becoming an independent contractor or gig worker as compared to becoming an employee.²² As such, many people who experience difficulty entering employer-employee relationships, like Limited or Non-English Proficient individuals or returning citizens, may turn to these low barrier arrangements for work. For example, Ethiopian immigrants in the District experienced blocked mobility in the workplace, which led to taxi driving as an ethnic occupational niche among Ethiopian immigrants.²³ The Council should legislatively expand unemployment benefits to be available to independent contractors and gig workers.

Unfortunately, a large subset of workers in the District were entirely excluded from federal and local unemployment benefits including those who are undocumented or otherwise in the informal cash economy. The DC Cares Program provided local funding in the amount of a one-time \$1000 payment to individuals excluded from other forms of unemployment relief. Although Legal Aid applauds the efforts to serve these excluded workers, the payment amount is too little to provide meaningful relief. The excluded workers "were the first to lose their jobs from this crisis and will be among the last to get their jobs back."²⁴ The Council must consider the needs of this sizeable population and set aside resources to assist with their recovery.

¹⁹ Alex Rosenblat, *Gig Workers are Here to Stay. It's Time to Give Them Benefits.*, Harvard Business Review (July 3, 2020), <https://hbr.org/2020/07/gig-workers-are-here-to-stay-its-time-to-give-them-benefits>.

²⁰ *The Gig Economy*, Marketplace Edison Research, 5 (Dec. 2018), <http://www.edisonresearch.com/wp-content/uploads/2019/01/Gig-Economy-2018-Marketplace-Edison-Research-Poll-FINAL.pdf>.

²¹ *See supra* note 18.

²² *See* Jane Dokko et al., *Workers and the Online Gig Economy*, The Hamilton Project, 1-2 (Dec. 2015), https://www.brookings.edu/wp-content/uploads/2016/07/workers_and_the_online_gig_economy.pdf.

²³ Elizabeth Chacko, *Ethiopian Taxicab Drivers: Forming an Occupational Niche in the US Capital*, 9 Afr. & Black Diaspora: Int'l J. 200 (2015), <https://www.tandfonline.com/doi/abs/10.1080/17528631.2015.1083177>.

²⁴ Eliza Berkon, *Protesters at Freedom Plaza Demand Funds for D.C. Workers Excluded from Coronavirus Relief*, DCist (June 29, 2020), <https://dcist.com/story/20/06/29/protesters-at-freedom-plaza-demand-funds-for-d-c-workers-excluded-from-coronavirus-relief/>.

The District Should Provide Supplemental Weekly Payments and Reevaluate Partial UI Calculations

The District should take this opportunity to provide supplemental weekly payments and reevaluate the income standard to receive partial UI. Although there are signs of economic growth with the increasing access to vaccinations, these headlines “mask a deeply unequal recovery for workers . . . [j]ob losses have disproportionately affected minorities, women, younger workers, and workers with lower educational attainment or income.”²⁵ For example, Black and Latinx workers faced 1.6 to 2.0 times the unemployment rates of their white counterparts, households with less than \$30,000 in annual income faced double the unemployment rates of higher-income households, and women accounted for over 50% of workforce exits since the start of the pandemic.²⁶ Exacerbating these statistics, the District’s unemployment benefits are ranked 41st compared to other jurisdictions, after analyzing the average weekly benefit, benefit length, and cost of living index.²⁷ The supplemental weekly payments provided by FPUC have been found to be an incredibly efficient tool against poverty.²⁸ The federal FPUC payments provided by the American Rescue Plan are currently set to expire around Labor Day. For vulnerable workers who might remain unemployed beyond Labor Day, or experience more frequent job transitions in the coming months, access to a local program akin to FPUC, will be crucial to promoting an equitable recovery. If the federal government does not extend FPUC, the District should use local funds to provide supplemental weekly payments that will help fight poverty, particularly for our most vulnerable workers.

Another option for promoting an equitable recovery is enhancing the partial UI system by adopting a more generous formula. Partial UI allows workers to return to work at reduced hours while still receiving reduced unemployment benefits. For many years after the Great Recession, involuntary part-time unemployment, where individuals seeking full-time employment can only

²⁵ André Dua et al., *Achieving an Inclusive US Economic Recovery*, McKinsey & Company (Feb. 3, 2021), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/achieving-an-inclusive-us-economic-recovery#>.

²⁶ *Id.*

²⁷ Lisa Rowan, *The States with the Best and Worst Unemployment Benefits*, Forbes Advisor (Mar. 17, 2021), <https://www.forbes.com/advisor/personal-finance/best-and-worst-states-for-unemployment/>.

²⁸ Andrew Stettner, *More than 25 Million Americans are About to Lose an Essential \$600-a-Week Unemployment Insurance Benefit*, The Century Foundation (July 8, 2020), <https://tcf.org/content/commentary/25-million-americans-lose-essential-600-week-unemployment-insurance-benefit/>.

find part time work, increased to unprecedented levels.²⁹ If the pandemic recovery follows a similar pattern, we should expect more District workers, especially low-wage workers, to be underemployed in the coming years.³⁰ To promote economic security for these workers, the District should adopt a more generous partial unemployment formula.

Under current law, a recipient of unemployment may continue to receive reduced UI payments if 66% of their weekly earnings is less than their weekly benefit amount plus \$50.³¹ A more generous formula would disregard a higher percentage of claimants' weekly earnings and would provide partial payments to any worker earning less than 1.5 or 2 times their weekly benefit amount. Even the Biden Administration has remarked that partial UI is an "overlooked option for helping employers ramp up" and the Department of Labor will be encouraging states to raise the income threshold where workers can both work and receive some UI benefits.³²

Conclusion

The unemployment system in the District has failed its workers during a time of great need. Individual workers should not face the harsh repercussions of DOES' failures. As such, the Council needs to make targeted and specific changes to law and policy to ameliorate catastrophic outcomes when the safety net protections put in place during the COVID-19 pandemic expire. Legal Aid urges the Council to act decisively regarding three main areas. First, the District needs to ensure timely distribution of unemployment payments by continuing to administer federal programs, extending safety net protections beyond 60 days after the end of the emergency, carving out individuals awaiting unemployment payments or a decision regarding unemployment eligibility from the harshest consequences, and delaying reinstatement of work search requirements. Second, The District needs to improve service delivery of unemployment programs by fully staffing DOES, providing thorough and adequate training, and safely reopening American Job Centers to in-person visits. Last, the District should capitalize on the creativity born from the pandemic by expanding the category of eligible workers, dedicating resources to excluded workers, providing supplemental weekly payments, and raising the income threshold where workers can work part time and receive partial UI. Thank you for this opportunity to testify.

²⁹ Andrew Stettner et al., *A New Safety Net for an Era of Unstable Earnings*, The Century Foundation (Dec. 15, 2016), <https://tcf.org/content/report/new-safety-net-for-an-era-of-unstable-earnings/>.

³⁰ *See id.*

³¹ *See* D.C. Code § 51-107(e).

³² *Supra* note 15.