

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

**Fiscal Year 2021 Budget Oversight Hearing on the
Department of Employment Services (DOES)**

June 9, 2021

The Legal Aid Society of the District of Columbia (Legal Aid)¹ and Claimant Advocacy Program (CAP)² submit the following joint testimony about the Department of Employment Services' (DOES) unemployment compensation program and Fiscal Year 2021 budget.

Looking ahead

On September 4, 2021, when federal pandemic unemployment benefits expire, tens of thousands of unemployed workers³ will receive their last benefit payment from the Department of Employment Services (DOES). Over the past fifteen (15) months, these locally administered

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>.

³ According to a U.S. Department of Labor report, as of the week ending May 8, 2021, 12,763 claimants claimed PUA, and as of the week ending May 15, 2021, 18,654 claimants remained insured, with 1,329 additional claimants who filed initial claims. U.S. Department of Labor, Unemployment Insurance Weekly Claims, May 27, 2021, available at: <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/ui-claims/20210963.pdf>

federal benefits⁴ were a lifeline for more than one-hundred thousand District workers who lost work due to COVID-19.

While some workers may secure work this summer, the uneven “K-shaped recovery”⁵ means that far too many low-wage workers and Black and Latinx workers of all income levels will remain unemployed or earning less than their pre-pandemic wages. Unfortunately, after federal programs expire, few workers will remain eligible for traditional unemployment compensation.

As we look ahead to assess the budget needs of the District in Fiscal Year 2021, we must prioritize the needs of tens of thousands of District workers who remain unemployed. While the Mayor’s proposed Fair Shot budget proposes needed increases to workforce development programs, there is little to no support for unemployed workers who are heading straight off a benefit cliff by summer’s end.

Legal Aid urges the District to pursue an aggressive action plan to ensure that unemployed workers have the resources they need to prevent dire economic consequences in the fall and winter of 2021. It is of utmost importance that DOES pay all benefits due to workers before federal benefits expire.

Proposed DOES plan of action for summer 2021

1. DOES must clear the backlog of unprocessed initial and continuing claims for benefits.

For the past year, District workers have faced obstacle after obstacle to receiving timely payment of unemployment benefits. Legal Aid and CAP have testified extensively about these benefit problems,⁶ including delayed PUA back payments and Weekly Benefit Amount adjustments and denials of PEUC benefits without adequate notice.

⁴ These federal programs were created by the CARES Act (March 2020) and then extended by the Continued Assistance Act (December 2020) and American Rescue Plan (March 2021). The benefits include Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Extended Benefits (EB). The Mixed-Earners Unemployment Compensation (MEUC) was created by the Continued Assistance Act.

⁵ “K-Shaped Recovery: Economic Recovery Shows Pandemic’s Uneven Impact, Even a Year Later,” CBS News, March 9, 2021, available at: <https://www.cbsnews.com/news/economy-k-shaped-recovery-covid-pandemic-impact-uneven/> (“Thirty-eight percent of Hispanics and 29% of Black Americans have experienced a layoff in their household at some point during the past year, compared with 21% of white Americans.”).

⁶ 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>;

Additionally, several major benefit disruptions occurred in the past five months. The first disruption began when DOES updated the claimant portal (dcnetworks.org) in order to comply with the Continued Assistance Act and American Rescue Plan shutting thousands of claimants out of filing their weekly continuing claims and payments. However, a second wave of benefit disruptions occurred in April 2021 shortly after the one-year anniversary of the COVID-19 public health emergency, when thousands of claimants again lost access to their benefits when their benefit year expired and they received sometimes contradictory guidance from DOES representatives on whether to reapply for benefits. Last month, DOES confirmed that approximately **13,000 claimants** – or one in five – had their benefits disrupted this spring.⁷

Unfortunately, claimants are still contacting Legal Aid and CAP each week alleging that they are missing weeks or even months of back-benefits even after repeated and persistent attempts to resolve the issue directly with DOES. Other claimants report long wait times on their initial claims – far past the 21-day benchmark provided by the U.S. Department of Labor.

DOES must make every effort to process back payments, issue adjustments for PUA weekly benefit amounts, and process any manually filed weekly continuing claims before federal benefits expire on September 4, 2021. DOES must also decrease initial claims processing times for newly filed claims.

2. DOES must immediately issue a written notice (informing workers of their right to appeal) when denying or terminating benefits.

DOES has problematic practices with regard to its denial and termination of unemployment benefits. First, DOES persistently **denies** unemployment benefits without issuing a written notice. Without a written notice, unemployed workers are unable to obtain an appeal hearing where an Administrative Law Judge from the Office of Administrative Hearings would review the denial decision.

(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>; (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> and (5) March 3, 2021 Performance Oversight Hearing, available 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.

⁷ “DC Unemployment Woes Explored at Council Roundtable,” Washington Post, May 12, 2021, available at: https://www.washingtonpost.com/local/dc-politics/dc-unemployment-council-morris-hughes/2021/05/12/3dd202de-b337-11eb-9059-d8176b9e3798_story.html.

For example, at a recent unemployment stakeholders meeting organized by the Office of Administrative Hearings (OAH), Legal Aid and CAP learned that OAH received more than 500 requests for appeals in unemployment hearings in April 2021 – however, approximately 400 of these requests were not scheduled for a hearing because the worker did not attach a written notice from DOES. Thus, in one month alone, **80%** of unemployed workers who were told by DOES that their claim for benefits were denied were unable to secure a hearing. Although DOES attended the stakeholder meeting, the agency did not engage in any discussion about this troubling issue.

Second, DOES also persistently **terminates** unemployment benefits before issuing a written notice in violation of federal rules and District law. Claimants contact Legal Aid and CAP desperate to reverse a sudden and unexplained termination of their benefits – and it is only when claimants’ attorneys contact DOES seeking information that we learn the reason for termination. There are a variety of reasons that these terminations are occurring. Claimants may allegedly appearing on a “new hire” database – even though federal rules forbid DOES from terminating benefits based on such a data hit without an investigation and issuance of a written notice.⁸ We have also seen cases of DOES offsetting current benefits to pay back an alleged overpayment – again, without sending notice explaining why and how the claimant was overpaid.

Again, if DOES fails to issue a written notice, claimants cannot obtain an appeal hearing from an Administrative Law Judge at OAH making it frustrating and time-consuming to correct any errors DOES may have made.

DOES must immediately stop its practice of denying and terminating unemployment benefits before a written notice (with appeal rights) has been issued.

3. DOES must immediately stop withholding 100% of FPUC benefits where federal rules forbid DOES from collecting more than 50%.

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.⁹ Recently, Legal Aid has

⁸ If the state agency obtains a “hit” on the “new hires directory” or state wage database indicating that a claimant is currently earning wages, the state must independently verify this information *before* making a determination of overpayment. U.S. Department of Labor, Unemployment Insurance Program Letter 01-16, available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16.pdf. The state may request information from the claimant and terminate benefits for “failure to respond” (and must notify the claimant of the consequences of failing to respond) – but not the underlying alleged overpayment until a determination of overpayment has been made. [UIPL 01-16, change 1, section I, questions 6-7.](#)

⁹ 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>.

uncovered a troubling problem related to DOES's "offset" (or withholding) of current unemployment benefits to pay back an alleged overpayment. While DOES may offset all of the weekly benefit amount toward an overpayment, DOES may not withhold more than 50% of the \$300 per week of FPUC benefits.¹⁰ This rule was enacted during the COVID-19 pandemic to provide a minimum income of \$150 per week to claimants even where a state agency may withhold all of the underlying benefit. Unfortunately, DOES appears to be offsetting 100% of FPUC, thus robbing claimants of \$600 per month in often desperately needed income.

DOES must immediately stop withholding 100% of FPUC benefits and instead cap withholdings at 50% in compliance with federal rules, thus allowing claimants to receive \$150 per week during the public health emergency.

4. DOES must commit to waiving no fault PUA overpayments.

There are numerous reasons why unemployed workers may incur an overpayment of Pandemic Unemployment Assistance benefits due to no fault of their own such. Legal Aid has already worked with several workers who incurred a PUA overpayment due to DOES's administrative error. [REDACTED] recent law change in the Continued Assistance Act allows DOES to "waive" (or forgive) repayment of a PUA overpayment if the claimant is not at fault and cannot afford to pay back the overpayment.¹¹ The PUA funds have already been spent on basic living expenses like food and utilities and it would be unfair to require their repayment. Since PUA is 100% federally funded, a waiver of PUA should not negatively impact the District's Unemployment Trust Fund.

DOES should commit to waiving PUA overpayments where the claimant is not at fault and notify claimants assessed PUA overpayments of their right to request waiver.

5. DOES must timely pay-out OAH Final Orders.

Legal Aid and CAP have observed a noticeable slowdown in DOES processing OAH Final Orders awarding unemployed workers their benefits after an appeal hearing. While DOES previously processed Final Orders and paid workers within a few weeks, some workers are now waiting months for benefits owed to them. In one of Legal Aid's cases, an unemployed worker has been waiting more than six months for DOES to release benefits she is entitled to.

DOES must improve its appeal processes to ensure OAH Final Orders are promptly processed and benefits paid to eligible claimants.

¹⁰ "A state may not offset more than 50% from the FPUC payment to recover overpayments from other state and federal unemployment benefit programs." Department of Labor, Unemployment Insurance Program Letter, UIPL 15-20, available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf.

¹¹ See Department of Labor, Unemployment Insurance Program Letter UIPL 16-20, change 4, available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_4.pdf.

6. Prioritize Re-opening American Job Centers to the Public.

Legal Aid and CAP have repeatedly raised concerns about the “digital divide” that leaves unemployed workers without home computers with unequal access to DOES services. As District Government offices re-open, American Job Center offices throughout the District should be prioritized for re-opening to allow an additional alternative for those with limited access or to or knowledge of technology. . Thousands of District residents can benefit from in-person access to job search and benefit application assistance – especially low-income residents.

The District should prioritize reopening the American Job Centers with evidence-based safety protocols and safety equipment to ensure that District employees and the public stay safe.

Conclusion

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.