

**Joint Testimony of
Jen Jenkins, Policy Advocate, Legal Aid Society of the District of Columbia,
Drake Hagner, Supervising Attorney, Legal Aid Society of the District of Columbia, and
Tonya Love, Program Director and Attorney, Claimant Advocacy Program**

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

**Performance Oversight Hearing Regarding the Department of Employment Services'
Office of Unemployment Services**

February 14, 2022

The Legal Aid Society of the District of Columbia¹ and the Claimant Advocacy Program (CAP)² submit the following testimony on the recent performance of the Department of Employment Services' (DOES) Office of Unemployment Compensation. From our experience representing jobless workers this past year, Legal Aid and CAP identify ongoing, systemic issues with unemployment compensation administration and propose solutions, including:

- DOES should immediately resume accepting initial unemployment compensation claims by telephone, as it has done for many years, and advertise filing instructions in plain English and the other languages required by the DC Language Access Act, to make unemployment compensation accessible to jobless workers without computer skills or English proficiency.

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 90 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.

- DOES must address systemic issues that keep DOES from issuing adequate written notices each time the agency denies, terminates, or seizes unemployment compensation benefits to preserve claimant’s right to request review of that decision at the Office of Administrative Hearings.
- DOES and OAH should negotiate and execute a Memorandum of Understanding for Fiscal Year 2022 that compensates OAH for a higher volume of unemployment insurance appeals hearings.
- DOES should agree to waive non-fraud, no-fault CARES Act overpayments where the claimant cannot afford to repay the debt and notify all overpaid claimants of their right to file a waiver.
- DOES should also waive certain categories of federal benefit overpayments that occurred due to no fault of the claimant as encouraged by recent U.S. Department of Labor guidance (in UIPL 20-21, Change 1) to reduce the administrative burden on DOES.

Federal Benefits Expired Amidst a Surge in Requests for Unemployment Claim Assistance

When the U.S. Congress allowed federal pandemic unemployment benefits to expire on September 6, 2021, tens of thousands of District workers fell off a benefits cliff.³ Federal benefits were a lifeline for more than one-hundred thousand District workers who lost work due to COVID-19.⁴ Unfortunately, many workers in the District, including the most marginalized, experienced underperformance in the Office of Unemployment Compensation. Five months after the benefits cliff, DOES is still processing back-benefits claims and owes hundreds of claimants payments or a written determination explaining why their benefits were denied or terminated.

Thankfully, at the end of last year, the Council helped ease some of the stress for 10,000 unemployment insurance (“UI”) and Pandemic Unemployment Assistance (“PUA”) claimants that waited the longest to receive unemployment compensation.⁵ Those individuals received

³ Andrew Stettner, “The Century Table, 7.5 Million Workers Face Devastating Unemployment Benefits Cliff This Labor Day”, Appendix Table 1, Aug. 5, 2021, *available at* <https://tcf.org/content/report/7-5-million-workers-face-devastating-unemployment-benefits-cliff-labor-day/>.

⁴ Department of Employment Services, “Responses to Fiscal Year 2021-2022 Performance Oversight Questions”, Question 33, *available at* <https://dccouncil.us/wp-content/uploads/2022/02/DOES-FY22-POH-Perfrmance-Questions-Responses-only.pdf>

⁵ Ally Schweitzer, “D.C. Council Approves Plan To Send \$500 To Residents Forced To Wait Months For Unemployment Benefits”, DCIST, Aug. 3, 2021, *available at* <https://dcist.com/story/21/08/03/dc-council-approves-plan-to-send-500-to-residents-who-waited-months-for-unemployment-benefits/>.

\$500, and the funds were appreciated by community members. However, DOES needs systemic changes so District workers do not continue remain in precarity over receiving unemployment benefits.

DOES's Persistent Delay and Notice Problems Further Burden District Workers Who Are Owed Back-benefits

DOES' inefficient processes and procedures have exacerbated the harm to District communities who, even before the pandemic, faced deadly racial and economic inequities. The people impacted, primarily Black and Brown residents in Wards 5, 7, and 8, will be experiencing the toll of unnecessary monetary loss and hardship for years to come unless and until DOES addresses its failures.⁶ The ongoing systemic issues discussed below demonstrate the challenging experiences that Legal Aid and CAP clients regularly encounter with DOES.⁷

DOES Must Address Substandard Technology and Access Issues with Unemployment Insurance

Over the past eighteen months, hundreds of claimants have testified before this Committee about the difficulty of applying for unemployment benefits during the pandemic. These delays often mean that claimants go weeks or even months without these safety-net benefits. Regrettably, it appears that DOES has failed to learn from these heartbreaking stories. In January 2022, DOES decided to stop allowing claimants to file an initial UI claim by telephone. This is the latest and the most glaring example of DOES' failure to listen and learn from the impact of its programming decisions on the most vulnerable jobless workers in the District. Cutting the phone option means jobless workers without computer access will face significant hardship and delay when applying for and receiving employment benefits. The American Job Centers, which provide some public computers for use, are only accessible by reserving a limited number of weekly appointments – and the reservation must be completed online. Eliminating telephone access places an unnecessary barrier in the way of receiving benefits, and ultimately put low-

⁶ District of Columbia, Department of Employment Services, Unemployment Data for DC Wards, *available at* https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Ward_2020_BM.pdf; Maritza Vasquez Reyes, "The Disproportional Impact of COVID-19 on African Americans", *Health and Human Rights Journal*, Dec. 2020, *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7762908/>.

⁷ Legal Aid and CAP have testified jointly on the DOES Office of Unemployment Compensation for several years, and the most relevant testimony can be found in Appendix 1.

income workers at greater risk of foreclosure, homelessness, and other collateral consequences of job loss.⁸

Even when phone service was available, many workers lost weeks or even months of unemployment benefits because they could not get through to the Customer Call Center (202-724-7000) to file a claim.⁹ If a caller cannot wait on hold, they have the option of leaving a voicemail message, but many clients reported never receiving a call back from DOES. 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. Therefore, even if DOES reinstates initial application by telephone for unemployment claimants, it must still ensure that the telephone access is adequate.

Recommendations:

- DOES must immediately resume taking phone calls for all UI filings.
- DOES should train and support call-center representatives to ensure that customers hear back from the Department in a timely fashion.
- DOES should advertise the drop-box locations (including through language accessibility) and expand the number of drop boxes in Wards 5, 7, and 8.

DOES' New Website Fails to Ease Access to Benefits for our Clients

Last year, DOES transitioned to a new website at unemployment.dc.gov and touted new features on the online claims portal at www.dcnetworks.org. Unfortunately, the new website has not been built-out to include all the content of the old site, especially when it comes to language translation. Certain outreach materials (and their language translations) were removed but DOES did not always replace them with improved content.

Similarly, while Legal Aid and CAP were initially heartened to learn that the online claims portal would be improved, the improvements made have not necessarily resulted in better access to

⁸ See Center on Budget and Policy Priorities, Tracking the COVID-19 Economy's Effects on Food, Housing, and Employment Hardships, State-by-State Food, Housing, and Employment Hardship Data available at <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and>.

⁹ *Washington City Paper*, "The Call Center Is a Disaster: Department of Employment Services Director Offers Explanations to Ongoing D.C. Unemployment Problems", May 12, 2021 available at <https://washingtoncitypaper.com/article/516678/the-call-center-is-a-disaster-department-of-employment-services-director-offers-explanations-to-ongoing-d-c-unemployment-problems/>.

benefits for our clients. For example, while DOES determinations and other documents are supposed to be available on the online portal, many clients could not find any notices uploaded to their portal.

Further, the antiquated claims portal continues to be difficult to access for workers who access the internet through their mobile device or with less reliable internet service. In Wards 7 and 8, where Black residents account for more than 90% of the population, fewer than 65% of residents have high-speed internet access, compared with 85% in more affluent wards.¹⁰ Low-income internet users are significantly more likely to access the internet somewhere other than at home, are more likely to use dial-up services, and are considerably less likely to use broadband at home.¹¹ When Black and Latinx households have broadband, they are more likely than white users to experience problems with the speed, reliability, or quality of their high-speed internet connection at home.¹² Reliance on smartphones to access the internet also underscores issues with the digital divide – households relying only on a smartphone are more likely to be low-income or have a Black or Latinx householder.¹³

In Legal Aid’s experience, many of our clients rely on smartphones to access the internet. They regularly encounter readability issues with small screens, problems uploading documents, restricted data plans, and service suspensions. And what may seem like mere technological challenges have significant substantive impacts, particularly when experienced in the context of trying to apply for benefits or otherwise accessing critical government services.

Recommendation:

- Meaningfully improve online platforms and implement beta tests for unemployed workers most often disadvantaged by the digital divide.
- To better serve the District’s unemployed workers, DOES must prioritize language translations (especially in Spanish and Amharic), disability access, and compatibility with mobile devices.

¹⁰ Connect DC, “Digital Inclusion Initiative”, Fact Sheet, *available at* <https://connect.dc.gov/page/fact-sheet>; DC Health Matters, Demographic Data, Households/Income *available at* <https://www.dchealthmatters.org/demographicdata>.

¹¹ *Id.*

¹² Colleen McClain & Emily Vogels et al., Pew Research Center, “The Internet and the Pandemic, Navigating Technological Challenges”, 2021, *available at* <https://www.pewresearch.org/internet/2021/09/01/navigating-technological-challenges/>.

¹³ U.S. Census Bureau, “Computer and Internet Use in the United States: 2018”, 2021, *available at* <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs-49.pdf>.

Language Access Services Are Still Inadequate, especially for Amharic Workers

DOES often fails to serve Limited or Non-English Proficient workers in their language as required by the DC Language Access Act. DOES routinely sends English language emails to Amharic and Spanish speakers even after they notify DOES of their Limited English Proficiency. Legal Aid clients with Limited English Proficiency report waiting on hold (while listening to English language phone tree prompts) for hours with the DOES call center before they can request an interpreter to apply for benefits.

After DOES published an initial application for the new PUA program on April 24, 2020, a flood of claimants applied. While many claimants were approved quickly, thousands of other claimants experienced lengthy 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 negligible impact.

Recommendations:

- DOES should translate UI initial claims and continuing claims forms into all the languages required by the DC Language Access Act and make those translations available online and in paper at the American Jobs Centers. DOES should improve its customer service and reduce wait times for callers who need language interpretation.
- DOES should utilize District funds and granting funding from the U.S. Department of Labor to expand partnerships with community based non-profit organizations to improve language access for worker applicants.

DOES Failures Hinder Office of Administrative Hearings Processes

Legal Aid and CAP have testified previously about DOES's pattern of denying or terminating unemployment benefits without providing a written notice called a Determination by Claims Examiner.¹⁴ Without this written determination, the Office of Administrative Hearings (OAH) will not hear an appeal. If individuals do file an appeal, OAH will not schedule a hearing until it receives the determination from the claimant. If a claimant cannot obtain a copy – even after multiple calls and emails to DOES, then OAH will dismiss their case without a single hearing. This leaves unemployment claimants in limbo where OAH refuses to hold a hearing without paperwork that DOES is, in many cases, not providing. As a result, unemployment claimants may go months without benefits while waiting for DOES to issue a determination, and then many weeks longer for OAH to schedule a hearing.

¹⁴ Legal Aid and Claimant Advocacy Program, “Joint Testimony of Legal Aid Society of the District of Columbia (Legal Aid) and the Claimant Advocacy Program (CAP) before the Committee on Labor and Workforce Development, Budget Oversight Hearing Regarding the Department of Employment Services (DOES)”, June 9, 2021, *available at* <https://www.legalaiddc.org/wp-content/uploads/2021/07/Testimony-DOES-budget-6.9.2021.pdf>.

The problem is widespread. According to OAH’s responses to oversight questions posed by the Committee on Government Operations and Facilities, almost half of the unemployment insurance appeals filed in Fiscal Year 2021 had no written determination attached. That percentage dropped to 29% in the first quarter of Fiscal Year 2022, but still reflected a troublingly high proportion of appeals.

Table 1: DOES Unemployment Insurance Appeals to OAH

	Appeals Filed <i>without</i> a Determination by Claims Examiner ¹⁵	Total number of Appeals Filed ¹⁶	Percentage of Appeals Filed without a Determination by Claims Examiner
Fiscal Year 2021	2,172 appeals	4,535 appeals	47%
Fiscal Year 2022 (Quarter 1 only)	255 appeals	879 appeals	29%

Regretfully, the length of time that an Appellant must wait for an OAH hearing to be scheduled also increased during the pandemic. OAH reports that despite a record high number of unemployment insurance appeals during the pandemic, DOES did not provide any additional funding to OAH to administer these appeals hearings.¹⁷ The relevant Memorandum of Understanding between DOES and OAH has expired.¹⁸

Recommendations:

- DOES must issue adequate written notice each time it denies or terminates unemployment benefits as required by law. This notice will allow the claimant to review the reason for the denial or termination and to seek review of that decision at OAH if they disagree.

¹⁵ “Office of Administrative Hearings, Performance Questions FY22, Question 47”, *available at* <https://dccouncil.us/wp-content/uploads/2022/02/Pre-Hearing-Responses-OAH.pdf>.

¹⁶ *Id.* at Question 57.

¹⁷ *Id.* at Question 2 (“Despite requests for additional funds to manage the increased unemployment insurance caseload, OAH received no additional funds from either DOES or the U.S. Department of Labor. . . OAH has experienced difficulty in adjudicating unemployment insurance cases in a timely manner.”).

¹⁸ *Id.* at Question 23 (OAH reports that the Unemployment Insurance Appeal Cases MOU between DOES and OAH expired September 30, 2021).

- The Committee should ask the Director why DOES did not provide additional funding to OAH to process the record-high number of unemployment insurance appeals in the pandemic.
- The Committee should ask the Director why DOES has not executed a Memorandum of Understanding with OAH for FY22.

Overpayments Are Aggressively Recouped Without Adequate Notice

In prior years, Legal Aid and CAP have raised concerns about the accuracy and fairness of DOES's overpayment and fraud penalty assessment and collection practices.¹⁹ These problems persist and have only been exacerbated due to the pandemic, which brought many former unemployment claimants back to the unemployment claims system. For example, DOES all too frequently seizes (or "offsets") claimants' current unemployment benefits to pay back prior alleged overpayments without providing claimants with adequate written notices with all the information required by law. In the past year, dozens of claimants have contacted Legal Aid for help after DOES seized their benefits without any written notice. The claimants do not know why their benefits stopped and, without a lawyer, they may never have obtained information to explain why they were overpaid or how to challenge it.

Other claimants report receiving a DOES Offset Receipt. This standard document tells the claimant how much money was seized from their benefits and how much money DOES claims is still owed in overpaid benefits. However, it contains no explanation of how the overpayment occurred, nor does it explain to the claimant that DC law prohibits DOES from offsetting their current benefits if the underlying debt is not their fault and they cannot afford to pay it back.²⁰ Claimants have a right to appeal an offset of their benefits to OAH under this legal standard, yet the Offset Receipt contains no notice of their appeal rights.

DOES's performance oversight responses illustrate the scope of this problem. DOES seized unemployment benefits from 5,064 individuals in Fiscal Year 2021 and 617 individuals in the first quarter of Fiscal Year 2022.²¹

¹⁹ Legal Aid and CAP, "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>.

²⁰ *See* D.C. Code 51-119(d)(1) ("[N]o such recoupment from future benefits shall be had if such sum is received by such person without fault on his part and such recoupment would defeat the purpose of this subchapter or would be against equity and good conscience ...").

²¹ Department of Employment Services, "Responses to Fiscal Year 2021-2022 Performance Oversight Questions", Question 46, February 8, 2022, *available at* <https://dccouncil.us/wp-content/uploads/2022/02/DOES-FY22-POH-Perfrmance-Questions-Responses-only.pdf>.

Recommendations:

- DOES must issue an adequate written notice to everyone assessed an overpayment as required by law. This notice must include a description of how and when the overpayment occurred; instructions on how claimants can appeal the decision if they disagree; and plain language instructions on how to file a waiver request.
- DOES must immediately amend its standard Offset Receipt to include the information required by law, including the legal standard DOES must apply when deciding to offset.
- This Committee should introduce standalone legislation to focus DOES's overpayment collection efforts on the most recent overpayments. A bill designed to limit the amount of time DOES may collect to three years for non-fraud overpayments would provide a balance between DOES having a reasonable period to pursue overpayments and an unemployment recipients' requirement to pay back an overpayment.

DOES Should Waive More Non-Fraud Overpayments, Including CARES Act Overpayments

Despite assessing and recouping thousands of overpayments in the past year, DOES reports that less than ten individuals asked DOES to waive their overpayment debt in Fiscal Year 2021.²² DOES did not approve any of these waiver requests.²³ Simply put, claimants do not know that they have a right to ask DOES to waive their debts because the agency does not tell them. The standard Notice of Overpayment that some claimants receive contains no plain-language description of how to request a waiver or what standard DOES will use to assess their request. Without a robust waiver process to eliminate no-fault overpayment debts where a claimant cannot afford to pay back the debt, DOES's Benefit Payment Control Unit will be overwhelmed with overpayment recoupment efforts -- including repeatedly seeking benefits from claimants who will never be able to repay them.

Last week, on February 7, 2022, the U.S. Department of Labor (DOL) issued guidance to state unemployment insurance offices addressing the concern that the substantial number of overpayments resulting from CARES Act benefits will further bog down state recoupment efforts. In Unemployment Insurance Program Letter 20-21, change 1, the DOL strongly urged

²² *Id.* at Question 48.

²³ *Id.* at Question 50 (“No overpayment waiver requests were granted in part or in full in FY2021 and through December 31, 2021, for FY2022.”).

states to waive no-fault overpayments of federal CARES Act benefits.²⁴ This includes granting individual waiver requests and identifying certain categories of overpayments for a “blanket waiver” (meaning that each individual claimant would not have to submit a request – instead, the state will automatically find and waive those overpayments with minimal administrative hassle). The District of Columbia would benefit from these policies and should strongly consider adopting them. Any waivers in this category would not harm the District because overpayments DOES recoups from CARES Act overpayments would be otherwise returned to the federal government through the U.S. Treasury – and thus would not benefit the UI trust fund in the District of Columbia.

Recommendations:

- DOES should agree to waive non-fraud, no-fault CARES Act overpayments where the claimant cannot afford to repay the debt and notify all overpaid claimants of their right to file a waiver in plain language.
- DOES should further implement the blanket waiver measures strongly suggested by the U.S. Department of Labor in UIPL 20-21, Change 1 to reduce the administrative burden on DOES and allow the agency to reserve its resources for resolving its pressing difficulties.

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.

²⁴ U.S. Department of Labor, “Unemployment Insurance Program Letter 20-21”, change 1, February 7, 2022, available at https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8527.

Appendix 1: Select testimony of Legal Aid and CAP testimony on the DOES Office of Unemployment Compensation

Joint Testimony of Legal Aid Society of the District of Columbia (Legal Aid) and the Claimant Advocacy Program (CAP) before the Committee on Labor and Workforce Development, Budget Oversight Hearing Regarding the Department of Employment Services (DOES), June 9, 2021 *available at* <https://www.legalaiddc.org/wp-content/uploads/2021/07/Testimony-DOES-budget-6.9.2021.pdf>

Joint Testimony of Legal Aid and CAP before the Committee on Labor and Workforce Development, Performance Oversight Hearing Regarding DOES, Mar. 3, 2021 *available at* <https://www.legalaiddc.org/wp-content/uploads/2021/03/Joint-Testimony-DOES-performance-3.3.2021-FINAL.pdf>

Joint Testimony of CAP, First Shift Justice Project, Legal Aid, Washington Lawyers' Committee for Civil Rights and Urban Affairs, and Whitman-Walker Legal Services before the Committee on Labor and Workforce Development, Public Oversight Hearing on the District's Unemployment Compensation Program During the COVID-19 Pandemic, Sept. 16, 2020 *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>

Letter to Councilmember Elissa Silverman for Supplemental Performance Hearing for the DOES Office of Unemployment Compensation to Address immediate COVID-19 Related Performance Issues, June 30, 2020 *available at* <https://www.legalaiddc.org/wp-content/uploads/2020/07/Letter-to-Councilmember-Silverman.pdf>

Joint Testimony of CAP, First Shift Justice, Legal Aid, Neighborhood Legal Services Program, Public Justice Advocacy Clinic at the George Washington University Law School, and Whitman-Walker Health before the Committee on Labor and Workforce Development, Budget Oversight Hearing Regarding DOES, May 28, 2020 *available at* <https://www.legalaiddc.org/wp-content/uploads/2020/05/Joint-Written-Budget-Oversight-Hearing-Testimony-FINAL-2-1.pdf>

Joint Testimony of the Legal Aid and CAP before the Committee on Labor and Workforce Development, Performance Oversight Hearing Regarding DOES, Mar. 4, 2020, *available at* <https://www.legalaiddc.org/wp-content/uploads/2020/03/DOES-Oversight-Testimony-03-04-2020-final-PDF.pdf>

Joint Testimony of Legal Aid and CAP before the Committee on Labor and Workforce Development, Performance Oversight Hearing Regarding DOES, Mar. 7, 2018, *available at* <https://dev.legalaiddc.org/wp-content/uploads/2018/03/Legal-Aid-FY17-18-Performance-Oversight-Testimony-re-DOES-FINAL.pdf>

Testimony of Legal Aid before the Committee on Labor and Workforce Development, Budget Oversight Hearing Regarding DOES, May 4, 2017, *available at* <https://www.legalaiddc.org/wp-content/uploads/2017/05/dhagner5-4-2017-final.pdf>

Joint Testimony of Legal Aid and CAP before the Committee on Labor and Workforce Development, Performance Oversight Hearing on DOES, Mar. 15, 2017, *available at* <https://www.legalaiddc.org/wp-content/uploads/2017/03/Dhagner-03-15-2017.pdf>

Testimony of Legal Aid before the Committee on Business, Consumer and Regulatory Affairs, Performance Oversight Hearing on DOES, Mar. 7, 2016, *available at* <https://dev.legalaiddc.org/wp-content/uploads/2016/03/dhagner-03-07-2016.pdf>