

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

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

March 22, 2022

The Legal Aid Society of the District of Columbia¹ and the Claimant Advocacy Program (CAP)² submit this testimony regarding the Mayor's proposed FY2023 budget for the Department of Employment Services (DOES). Our review of DOES's proposed budget raises a number of concerns, as it appears to reflect cuts affecting the Department in crucial areas. To begin, we urge the committee to allocate funds for technology³ and communications.⁴ Additionally, the

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.

³ FY23 Proposed Budget and Financial Plan, Vol 3 Agency Budget Chapters - Part 2, Table CF0-4, 60 (Mar. 16, 2022), available at <https://app.box.com/s/fv097b10l1son3o4p9pnywe9d4mtjacl>.

⁴ *Id.*

committee should ensure adequate funding is allocated to customer service⁵ and customer experience,⁶ since well-trained and responsive staff are crucial to DOES improving its historical underperformance. We will also emphasize the potential systemic impact of budget cuts across multiple areas of the Department's operations. Without consistent and increased funding for improvement in the areas we describe in detail, the District's unemployed workers, who are often the most marginalized, will continue to face unnecessary and systemic burdens from the same government agency that is ostensibly there to support and service them.

From our experience representing thousands of jobless workers this past year, Legal Aid and CAP identified ongoing, systemic issues with unemployment compensation administration and propose solutions, many of which would be further negatively impacted, including:

- DOES should take immediate steps to make unemployment compensation claims filing more accessible to jobless workers without computer skills or English proficiency, including: (1) resuming accepting initial unemployment compensation claims by telephone, as it has done for many years, and (2) distributing the initial application and filing instructions in plain English and translate these vital documents into the languages required by the DC Language Access Act. *If DOES' communications and information technology budget is reduced, the digital divide and language barrier issues may increase.*
- DOES should address systemic issues that keep DOES from issuing adequate written notices every single time the agency denies, terminates, or seizes unemployment compensation benefits in order to preserve the claimant's right to request a review of DOES's adverse action at the Office of Administrative Hearings. The committee should ensure that the unemployment insurance program has sufficient staff and training to address the chronic failure to issue notices.
- 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. Waiving no-fault CARES Act overpayments should save the District funding overall, as all efforts by DOES to recoup these overpayments will not replenish the District Trust Fund – recovered overpayments will be returned to the U.S. Treasury. A fair waiver policy will resolve no-fault overpayments with the least amount of time required by DOES.

⁵ *Id.*

⁶ *Id.*

- DOES should further implement the blanket waiver measures strongly suggested by the U.S. Department of Labor in UIPL 20-21, Change 1⁷ to reduce the administrative burden on DOES and allow the agency to reserve its resources for resolving its pressing difficulties. Again, it is important to ensure that the UI program has sufficient staff as *DOES is still processing hundreds of back-benefit escalations from the COVID-19 public health emergency.*

In addition, we recommend amending the Budget Support Act (BSA) to address ongoing systemic concerns as well as two further recommendations. We recommend amending the BSA to (1) eliminate the one-week wait before UI benefits are paid out and (2) set a 3-year limit on DOES's overpayment collection efforts for non-fraud overpayments. In making these significant legislative changes, DOES would be moving toward equity for unemployed District workers.

Unfortunately, DOES' current inefficient processes and procedures have exacerbated the harm to District communities which, 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.⁸ The ongoing systemic issues discussed below demonstrate the challenging experiences that Legal Aid and CAP clients encounter with DOES regularly.⁹ Improving the circumstances through our recommendations for the District's unemployed workers makes the District a better place for all residents to live.

DOES Must Address Substandard Technology and Access Issues With UI

DOES should receive greater budgetary and resource investments in communications, information technology, and adequately staffed to better serve UI claimants. In particular, DOES should receive funds to bring back phone service for initial UI claims.

Recently, DOES stopped allowing claimants to file initial UI claims by telephone. This is the latest and the most glaring example of DOES' failure to listen to and learn from the impact of its programming decisions on the most vulnerable jobless workers in the District. On February 17, 2022, the DOES Director testified that shutting down initial telephone claims was necessary to combat fraud. However, DOES has not demonstrated that shutting down initial telephone claims

⁷ United States Department of Labor, Unemployment Insurance Program Letter, No. 20-21, Change 1 *available at* https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8527.

⁸ *See* 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 available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7762908/>.

⁹ 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.

will prevent fraud. In fact, both individual bad actors and criminal enterprises have frequently filed fraudulent claims via online initial claims portals -- especially exploiting states with aging electronic infrastructure.¹⁰ Thus, it seems that DOES's antiquated claims portal places the District are far more at risk for fraud than initial telephone claims.

The Director further justified the decision to eliminate initial phone claims by arguing that the District was one of only a handful of states still accepting telephone claims. However, among our neighboring states, the District was in good company with Maryland¹¹, Virginia¹², and Pennsylvania¹³ all accepting initial unemployment claims by telephone.

This egregious cut in phone service means unemployed workers without computer access will face significant hardship and delay receiving employment benefits.¹⁴ 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 initiate a claim. Although the DOES customer call center has been challenging for workers seeking unemployment benefits to navigate,¹⁵ eliminating telephone access puts our clients at risk for foreclosure, homelessness,

¹⁰ See Cezary Podkul, How Unemployment Insurance Fraud Exploded During the Pandemic, ProPublica, July 26, 2021, available at <https://www.propublica.org/article/how-unemployment-insurance-fraud-exploded-during-the-pandemic>.

¹¹ Maryland accepts initial unemployment claims phone, online portal, and smartphone app. See Maryland Department of Labor, Helpful Information for Claimants - Unemployment Insurance, <http://www.labor.maryland.gov/employment/uibenefits.shtml> (last accessed Mar. 20, 2022).

¹² Virginia accepts initial unemployment claims by phone or on the online portal. See Virginia Employment Commission, Applying for Benefits, <https://www.vec.virginia.gov/unemployed/Claimant-Handbook/Claimant-Handbook/Applying-for-Benefits> (last accessed Mar. 20, 2022).

¹³ Pennsylvania accepts initial unemployment claims by phone and online. For the deaf community, Pennsylvania also offers dedicated hours for accepting initial claims via videophone with American Sign Language. See Pennsylvania Office of Unemployment Compensation, How to File, <https://www.uc.pa.gov/unemployment-benefits/file/Pages/Filing-Instructions.aspx> (last accessed Mar. 20, 2022).

¹⁴ While the American Job Centers provide some public computers for use, they are only accessible by reserving a limited number of weekly appointments – and the reservation must be completed online.

¹⁵ See The Call Center Is a Disaster: Department of Employment Services Director Offers Explanations to Ongoing D.C. Unemployment Problems, Washington City Paper (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/>.

and other collateral consequences.¹⁶ Funding the DOES phone line for initial UI claimants will remove barriers for the District's most vulnerable jobless workers.

Further, the online claims portal fails to meet the needs of the District residents most impacted by pandemic job loss and least likely to return to comparable work in the economic recovery period. In Wards 7 and 8, where Black residents account for more than 90% of the population, only 45 percent of households in Ward 7 and 48 percent of households in Ward 8 have broadband subscriptions.¹⁷ We know that, in general, 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. And even when Black and Latinx households have broadband, they are more likely than White users to experience problems with their high-speed internet connection speed, reliability, or quality at home. 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.

Recommendations:

- DOES must immediately resume accepting initial unemployment claims (a/k/a applications) by telephone.
- DOES must staff the Call Center appropriately to allow callers to community-based receive callbacks and prevent long wait times and train their Call Center employees to better respond to the needs of callers. DOES's budget must meaningfully improve online platforms and implement beta tests for unemployed workers most often disadvantaged by the digital divide.

Language Access Services Are Still Inadequate, especially for Amharic Workers

DOES often fails to serve Limited or Non-English Proficient unemployed workers adequately. Amharic and Spanish speakers are routinely sent emails about their claims in English only – even after notifying DOES of their Limited English Proficiency. Legal Aid clients with Limited English Proficiency report waiting on hold (while listening to English language phone tree

¹⁶ 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>.

¹⁷ Leah Hendey, New Data Reveal Digital Divides across DC Neighborhoods, Urban Institute (July 25, 2019) available at <https://greaterdc.urban.org/blog/new-data-reveal-digital-divides-across-dc-neighborhoods>; DC Health Matters, Demographic Data, Households/Income available at <https://www.dchealthmatters.org/demographicdata>

prompts) for hours with the DOES Call Center before requesting an interpreter to apply for benefits.

Unfortunately, despite DOES making changes to the website in recent months, the initial unemployment claim is only available in English and Spanish. Instructions on how to file for unemployment – called the Unemployment Benefits Quick Guide – are only easily found in English on the DOES website. Even the translated website pages, such as the Amharic language page¹⁸, link back to English-language versions of the quick guide, not Amharic.

Investments in communications and information technology should be priority areas for DOES funding. DOES was awarded 2.28 million dollars in federal equity grants and says they plan to use the funds “... to improve the unemployment system and address inequities faced by DC workers. Funding may also be used to incorporate human-centered design into program operations.”¹⁹ The Council must ensure that DOES uses the funds to prioritize language translations (including Amharic),²⁰ disability access, and online portal compatibility with mobile devices through its communications, information technology, and adequately staffed UI budget allocations.

Recommendations:

- DOES must 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 grant funding from the U.S. Department of Labor to expand partnerships with community based non-profit organizations to improve language access for worker applicants.

¹⁸ District of Columbia Department of Employment Services, Unemployment Compensation Process, <https://does.dc.gov/service/unemployment-compensation-process> (Amharic language website is accessible at the top of the website, under the Google translator, by selecting “Amharic” from the drop-down menu of languages) (last accessed March 20, 2022).

¹⁹ District of Columbia, Department of Employee Services, District of Columbia Awarded \$2.28M U.S. Department of Labor Grant to Improve Unemployment Insurance System and Equity Access to DC Workers (Mar. 1, 2022) available at <https://does.dc.gov/release/district-columbia-awarded-228m-us-department-labor-grant-improve-unemployment-insurance>.

²⁰ 35,000 Ethiopian Americans live in the District of Columbia and a critical minority in DOES’s customer service base. 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.

- The committee should inquire into exact allocations of the federal equity funds in the budget and ask how success will be measured on the investment of those federal dollars.

Funding Cuts Could Further Hinder DOES Production of Notices

Legal Aid and CAP have testified previously about DOES’ pattern of denying or terminating unemployment benefits without providing a written notice called a Determination by Claims Examiner. The Office of Administrative Hearings (OAH) will not schedule an appeal 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 appeal 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 (if a determination is in fact issued) many weeks longer for OAH to schedule a hearing.

The problem is widespread. According to OAH’s responses to 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.²¹ That percentage dropped to 29% in the first quarter of Fiscal Year 2022, but still reflected a troublingly high proportion of appeals.²²

Table 1: DOES Unemployment Insurance Appeals to OAH

	Appeals Filed <i>without</i> a Determination by Claims Examiner ²³	Total number of Appeals Filed ²⁴	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%

Recommendations:

²¹ Office of Administrative Hearings, Performance Questions FY22, Question 47, (Feb. 2022) available at <https://dccouncil.us/wp-content/uploads/2022/02/Pre-Hearing-Responses-OAH.pdf>.

²² *Id.*

²³ Office of Administrative Hearings, Performance Questions FY22, Question 47, (Feb. 2022) available at <https://dccouncil.us/wp-content/uploads/2022/02/Pre-Hearing-Responses-OAH.pdf>.

²⁴ *Id.* at Question 57.

- 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.
- The committee should ask how DOES is going to ensure that the notice problem is addressed and inquire into the steps DOES will take to resolve the notice issue that are reflected in the budget.

The BSA Should Include a Statute of Limitations for Recoupment of Overpayments

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.²⁵ These problems persist and have only been exacerbated due to the pandemic, which brought many former unemployment claimants back to the unemployment claims system.

To address these issues, this Committee should introduce an amendment to the BSA to focus DOES's overpayment collection efforts on the most recent overpayments. According to the Department of Labor, nearly half of states have laws setting a time-limit for state collection of unemployment overpayment debt.²⁶ A bill designed to limit the amount of time DOES may collect to three (3) 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.

Legal Aid urges amending D.C. Official Code § 51-119(d) as follows:

- Paragraph (1) is amended by striking the phrase "or by the collection remedy set forth in D.C. Official Code § 47-1812.11(a)" and inserting the phrase "no more than 3 years from the date that such sum was paid to the claimant" in its place.

Legal Aid is available to assist with further development of new BSA language to ensure a three-year statute of limitations.

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

²⁵ Joint testimony of Legal Aid and CAP, Public 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>

²⁶ U.S. Department of Labor, Comparison of State Unemployment Laws 2021, Overpayments, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/overpayments.pdf> (last accessed Mar. 20, 2022)

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 FY21.²⁷ With DOL guidance²⁸ strongly urging states to issue waivers for overpayments, DOES should seize this opportunity to automatically waive overpayments, which would ease the agency's administrative burden and greatly benefit jobless workers.²⁹

The Council Should Amend the BSA to End the UI Waiting Week³⁰

Currently, jobless workers who apply for unemployment benefits and are found eligible must wait one week after filing before they are entitled to be paid benefits.³¹ This rule was temporarily suspended during the pandemic when the federal government reimbursed states (and the District) for benefits paid to claimants during the waiting week. This meant that claimants received benefits sooner after a job loss. While temporary federal funding for the waiting week has expired, the District should take steps to permanently eliminate the waiting week. This would bring the District in line with Maryland and six other states who have already eliminated the waiting week.³²

²⁷ *Id.* at Question 48.

²⁸ 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.

²⁹ See Joint Testimony before the Committee on Labor and Workforce Development, Council of the District of Columbia, Oversight Hearing on the Department of Employment Services' Office of Unemployment Services Jen Jenkins, Policy Advocate, Drake Hagner, Supervising Attorney, Legal Aid Society of the District of Columbia, and Tonya Love, Program Director and Attorney, Claimant Advocacy Program, Feb. 14, 2022 <https://www.legalaiddc.org/wp-content/uploads/2022/02/Testimony-before-the-Committee-on-Labor-Workforce-Development-regarding-the-DOES-Jen-Jenkins-Drake-Hagner-Tonya-Love-1.pdf> (This FY23 performance oversight testimony offers greater detail of the DOL guidance and how DOES should implement waivers).

³⁰ A waiting week occurs during the first week of a new spell of unemployment when a jobless worker satisfies all the requirements for eligibility but does not receive any benefit payment for their first week of unemployment. As a result, unemployed workers who exhaust UI benefits draw their last payment (often the 26th and final payment) in their 27th week of unemployment in states with a waiting week. Therefore, claimants who do not exhaust benefits are effectively denied one week of benefits in states with waiting weeks.

³¹ See D.C. Code § 51-109(5).

³² U.S. Department of Labor, Comparison of State Unemployment Laws 2021, Monetary Entitlement, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/monetary.pdf> (last accessed Mar. 20, 2022).

