

**Joint Testimony of the
Claimant Advocacy Program, First Shift Justice Project, Legal Aid Society of the District
of Columbia, Washington Lawyers' Committee for Civil Rights and Urban Affairs, and
Whitman-Walker Legal Services**

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

**Public Oversight Hearing on the District's Unemployment Compensation Program
During the COVID-19 Pandemic**

September 16, 2020

The Claimant Advocacy Program,¹ First Shift Justice Project,² Legal Aid Society of the District of Columbia,³ Washington Lawyers' Committee for Civil Rights and Urban Affairs,⁴ and

¹ The Claimant Advocacy Program (CAP) is a free legal counseling service available to individuals who file unemployment compensation appeals in the District of Columbia. CAP is a program of the Metropolitan Washington Council AFL-CIO, which works with over 200 affiliated union locals and religious, student, and political allies to improve the lives of workers and families throughout the greater metro Washington area. For more information, visit <http://www.dclabor.org/unemployment-help.html> or <http://www.dclabor.org/>.

² First Shift Justice Project is a D.C. based organization founded in 2014 with a mission to help working mothers in low wage jobs assert their workplace rights to prevent job loss. More information can be found at <http://www.firstshift.org/>.

³ 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.

⁴ The Washington Lawyers' Committee for Civil Rights and Urban Affairs is a non-profit civil rights organization that defends the rights of working people and addresses the interconnected issues of poverty, racism, and other forms of discrimination. To most effectively combat discrimination, including discriminatory treatment in the workplace, the Lawyers' Committee works with a broad array of community groups, labor unions, faith communities, and law firms across the District and throughout the Washington, D.C. metropolitan area. Among these efforts are our workers' rights clinics, which each month assist approximately 100 low-wage District of Columbia workers who face wage theft, discrimination on the job, illegal terminations, and

Whitman-Walker Legal Services⁵ submit the following joint testimony to raise serious, system concerns regarding the Department of Employment Services' (DOES) Unemployment Compensation program during the COVID-19 public health emergency.

COVID-19 caused catastrophic job losses for District workers, but it did not affect everyone equally. Workers with lower-paying jobs⁶ and Black, Hispanic, and Asian workers⁷ were more likely to have lost work during the pandemic. Additionally, due to systemic racism and economic inequality, these same workers are much less likely than their white, middle-class peers to have the financial resources needed to avoid economic hardship if their unemployment compensation claim is erroneously denied or delayed.⁸ Our clients have recently described being unable to pay their rent, gas and electric bills, cell phone bills, and prescription drug copays. Nationwide, widespread delays in unemployment benefits have contributed to food insecurity, with hunger rising to twice its pre-pandemic rate for adults and even higher for children.⁹

In the past six months, our organizations have collectively served nearly one-thousand District workers seeking unemployment compensation. Between CAP, Legal Aid, and the First Shift Justice Project, we have worked with DOES staff to resolve hundreds of clients' barriers to

employers who otherwise do not comply with legal protections. More information on the organization can be found at <https://www.washlaw.org>.

⁵ Whitman-Walker Health is a community health center guided by the principles of dignity, affirmation and respect—specializing in care for those facing barriers to care. WWH's services include primary, transgender, HIV medical care; behavioral health; addiction services; public benefits/insurance navigation; dental care; medical case management; and civil legal services. WW Legal Services was established in 1986 to provide free legal assistance with end of life planning and discrimination related to HIV/AIDS, and has expanded to serve patients of WWH, regardless of their LGBTQ or HIV status, on matters including immigration; discrimination; public benefits; private health and disability insurance; wills/advance directives; debtors' rights; and name/gender marker changes. More information can be found at <https://www.whitman-walker.org/>.

⁶ Molly Kinder and Martha Ross, *Reopening America: Low-wage workers have suffered badly from COVID-19 so policymakers should focus on equity*, Brookings Institute (June 23, 2020), available at: <https://tinyurl.com/y3py6frr>.

⁷ Jonnelle Marte, *Gap in U.S. Black and white unemployment rates is widest in five years*, Reuters (July 2, 2020), available at: <https://tinyurl.com/y4a3fgrt>.

⁸ Heather Long and Andrew Van Dam, *The black-white economic divide is as wide as it was in 1968*, Washington Post (June 4, 2020), available at: <https://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/>.

⁹ Jason DeParle, *Vast Federal Aid Has Capped Rise in Poverty*, New York Times (June 22, 2020), available at: <https://www.nytimes.com/2020/06/21/us/politics/coronavirus-poverty.html?searchResultPosition=1>.

payment. We are deeply grateful to the DOES employees who continue to work tirelessly through the pandemic in service to jobless workers and the District as a whole.

However, even the persistent dedication of individual DOES employees cannot overcome several systemic flaws in DOES's unemployment compensation system that prevent timely access to benefits for too many claimants. When we last submitted testimony to this Committee on May 28, 2020,¹⁰ we raised concerns about the inaccessibility of the DOES claims website, the urgent need for more ways to apply for unemployment compensation, and a lack of language access services for unemployment and federal CARES Act benefits. While DOES has made some progress on these matters, serious deficits remain.

Year after year, unemployment stakeholders have testified about the same handful of systemic failures at DOES. In 2012, after the significant rise in unemployment claims from the 2008 Recession, Legal Aid's topics for testimony were nearly identical to the issues we addressed today.¹¹ The COVID-19 pandemic, has laid bare systemic problems with the unemployment compensation system – problems that were *not caused* by the pandemic but existed well before it began. However, after each new crisis, the agency struggles to capitalize on lessons learned and make improvements to address underlying problems. The quick succession of directors and interim directors – five in the past ten years – contributes to this dynamic.¹²

Enough is enough. DOES is a large, well-resourced agency that can, should, and *must* do better by the District's most vulnerable claimants.

¹⁰ Joint Testimony from UI claimant advocates on the DOES FY2021 Budget and Recent Performance (May 28, 2020), available at: <https://www.legalaiddc.org/wp-content/uploads/2020/05/Joint-Written-Budget-Oversight-Hearing-Testimony-FINAL-2-1.pdf>

¹¹ In November 2012, Legal Aid testified about (1) delays in initial unemployment claims processing, (2) legal errors in claims determinations, (3) long delayed overpayment processing, and (4) inadequate language access services. Testimony of Legal Aid, Public Oversight Roundtable on DOES's Office of Unemployment Compensation, November 19, 2012, available at: <https://www.legalaiddc.org/wp-content/uploads/2013/10/DHagner11-19-12.pdf>

¹² Prior to the service of current director Unique Morris-Hughes, DOES's most recent directors or interim directors were Odie Donald II (2017-18), Deborah Carroll (2015-17), Thomas Luparello (2013-15) and Lisa Mallory (2010-13).

(1) DOES failed to provide adequate access to unemployment claims filing for jobless workers without computers, thus exacerbating the “digital divide”¹³

Since the public health emergency began in mid-March, jobless workers have filed more than 140,000 unemployment claims with DOES.¹⁴ However, claimants with home computers and secure internet service have had easier access to the claims system -- and are at the front of the line for benefit payments.

This is because DOES’s antiquated online unemployment claims portal¹⁵ is incompatible with mobile devices even though many lower-income families and younger workers rely solely on smartphones for internet access at home. With the computers at the DOES American Job Centers and DC libraries unavailable during the public health emergency, claimants without home computers were forced to file by phone. Additionally, claimants seeking Pandemic Unemployment Assistance have solely been directly to apply online.

Unfortunately, due to high claims volumes, trying to reach DOES by phone was an arduous process in the first few months of the public health emergency. Trying to file an initial or weekly claim required multiple calls to DOES and multiple hours on hold – sometimes surpassing our clients’ monthly allotment of cell phone minutes. While DOES has hired additional staff and reduced these wait times to 1 to 1.5 hours on average, these are still unacceptably high.

As claimant advocates, we spoke with DOES leadership four times in the past six months and were in frequent email communication.¹⁶ Each time we spoke, we urged DOES to increase the accessibility of the unemployment claims process and improve language access. Despite repeated requests from advocates, DOES would not agree to accept hard-copy initial claims sent by mail or hand delivery to a drop-box – even though other District agencies, like the Department of Human Services, have long utilized a drop-box for low-income customers.¹⁷

¹³ The “digital divide” refers to the growing gulf between those with computers and internet access and those without (often in low-income rural and urban areas).

¹⁴ From March 13 to September 3, 2020, the District government reported receiving 142,047 claims. See <https://coronavirus.dc.gov/page/unemployment-data>.

¹⁵ The unemployment claims portal can be found at <https://does.optimumui.com/#!/login>.

¹⁶ Representatives from the Claimant Advocacy Program and Legal Aid met with DOES representatives by telephone on April 3, April 17, May 1, and June 12, 2020 to discuss unemployment claims processing during the public health emergency.

¹⁷ DOES recently installed a physical drop-box last month at the Minnesota Avenue headquarters. However, DOES employees will only allow claimants to file continuing (weekly) claims forms at the drop box – not initial applications. Thus, a claimant without a home computer still has to find a point of entry to file an initial claim online through a third party or by navigating the phone lines at the DOES customer call center.

Thanks to leadership from this Committee, a provision of the Budget Support Act will require DOES to produce paper copies of applications plus a locked drop-box for initial claims and supporting documents at the agency's headquarters at 4058 Minnesota Avenue, Northeast in October 2020.¹⁸ We appreciate that DOES installed a locked drop-box recently ahead of this deadline. However, when a Legal Aid attorney last visited the DOES headquarters on September 9, 2020, DOES was only accepting continuing (weekly) claims forms – and *not initial claims* or applications – in that drop-box. While DOES has several more weeks to comply with the Budget Support Act provision, the way in which DOES is utilizing the drop-box currently is not as broad as the BSA provision requires. Thus, claimants must still somehow navigate the phone lines or ask a friend or service provider to file for them online.

It was particularly disheartening to learn that DOES has been working to modernize the benefit claims website for the past six years, committing \$29 million to a contractor without completing the project.¹⁹ If DOES had completed this project as originally promised in 2018, or even by the next promised deadline of 2019, many of these access problems could have been relieved.

Recommendations:

- DOES should implement the Budget Support Act provision requiring display of hard-copy unemployment benefit applications and a locked-box for submitting such applications, accessible to the public, including people with disabilities.
- The Council should appoint a monitor for expenditures on new or existing website modernization contracts from 2020 onward to the project's completion in 2022.

¹⁸ Bill 23-0760, section 2113 (requiring DOES to provide hard copies of unemployment insurance benefits applications and instructions, that may be submitted in a “locked box with a slot into which individuals may deposit their completed applications”), available at: https://lims.dccouncil.us/downloads/LIMS/45028/Signed_Act/B23-0760-Signed_Act.pdf

¹⁹ District of Columbia Office of the Inspector General, *Fiscal Year 2021 Audit and Inspection Plan*, page 7-8.

(2) DOES has failed to adequately serve Limited or Non-English Proficient workers during the public health emergency

While DOES has made some progress towards language access compliance in recent months, the agency generally fails to devote sufficient resources to meet their legal obligation to serve District workers with limited or no English proficiency (LEP/NEP). DOES has been on notice that nearly 1 out of 5 customers require language services, as the agency served nearly 5,400 LEP/NEP customers in 2017 out of 32,000 total customers (approximately 17%).²⁰

Unfortunately, DOES's unemployment claims portal is only accessible in English and Spanish.²¹ Up until six weeks ago, the online application for Pandemic Unemployment Assistance (PUA)²² was only available in English – even now, there is no Amharic translation, though DOES offers an English-to-Amharic instruction page.²³ Since Amharic speaking users cannot enter their answers into the application in Amharic, our community partners tell us the PUA application remains very difficult to navigate.

While DOES customer call centers have access to Language Line interpreters, NEP/LEP claimants calling DOES in the past six months *must first overcome several barriers to reaching a DOES representative by telephone before they may receive language services*. Given the long wait-times at the DOES customer call centers, many NEP/LEP workers gave up after multiple attempts to reach the agency. While, theoretically, they should have been able to request an interpreter if they had connected with a DOES representative, workers felt little reassurance that they would actually be served in their language after such a long wait.

When claimant advocates brought these concerns to DOES's attention at our scheduled calls, the agency was extremely slow to remedy these problems. The inaccessibility of the applications in languages other than English severely impacts low wage workers, especially immigrants and other workers of color.

²⁰ DOES Customer Service Report 2017, page 13, available here: <https://does.dc.gov/page/does-customer-service-reports>.

²¹ The online portal is available here: <https://does.dcnetworks.org/initialclaims/?Lang=en-US>. There is a small button that directs users to the Spanish portal (“click HERE for Spanish”). Users of other languages are directed back to DOES's customer call center, which has been difficult to access during the public health emergency.

²² Claimants file for Pandemic Unemployment Assistance here: https://dcdoes.force.com/PUAForm/s/?language=en_US.

²³ English-to-Amharic PUA instructions are available here: https://dcdoes.force.com/PUAForm/resource/1595947239000/PUAApplication_AmharicTranslation.

Recommendations:

- DOES should provide a complete Amharic translation of the PUA application online.
- DOES should provide translated initial claims, continuing claims, appeal forms, initial determination notices, and other vital documents in all languages required by the DC Language Access Act.

(3) Access to Pandemic Unemployment Assistance (PUA) has been slow and the agency has made critical legal errors

The District has been eligible to pay PUA benefits since the first week of April 2020. Workers have filed more than 24,000 PUA claims since the District launched the PUA application on April 24, 2020. However, several concerns with PUA claims processing have arisen.

First, DOES is required review unemployment compensation claims denied since January 27, 2020 in order to identify individuals who may be eligible for PUA. Federal guidance requires the District to screen for these claims and then “provide these individuals with appropriate written notification of their potential eligibility, including filing instructions.”²⁴ Claimant advocates have asked DOES if they are complying with this provision, and the agency has responded broadly by saying they are currently reviewing claims. However, DOES has provided no information about how they are reviewing denied claims or sending written notices to claimants who may be eligible for PUA.

Second, thousands of workers are receiving only the minimum weekly benefit amount (\$179/week) as of the date that they submitted their PUA applications and are entitled to back-benefits and/or higher weekly benefit amounts. *DOES also has not provided PUA applicants with written notification of any decisions.* While some of our clients have received emails from DOES stating that their PUA claim is denied, they have not received the written notice needed to file an appeal at the DC Office of Administrative Hearings. PUA claimants should receive a Monetary Determination and sometimes a second notice (likely called a Determination by Claims Examiner or Determination of Eligibility) in the mail. These notices must provide include a plain language description of the claimant’s appeal rights. PUA applicants are not receiving these written notices or any others providing them with updates on their applications or explanations of any delay or denial of benefits, contrary to federal guidance.²⁵

Fortunately, DOES reports that it is now accepting PUA applications by phone after many months of an English-only online application. However, advocates have been unable to find any public communications from DOES notifying claimants that they may file for PUA by phone (or instructing them on how to do so).

²⁴ Unemployment Insurance Program Letter 16-20 Change 1, p. I-2, available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1.pdf

²⁵ Unemployment Insurance Program Letter 16-20, p. I-11, available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf

In addition, up until mid-July, the District’s PUA application erroneously prevented claimants from filing if they had no earned income in 2019 – despite federal law making clear that PUA requires no minimum past earnings as long as the claimant meets the eligibility requirements. While the District eventually amended its PUA application to remove this question, remedial measures are needed to reach claimants who were erroneously prevented from applying for benefits and need to apply again.

Recommendations:

- DOES must meet their legal obligation to screen denied unemployment claimants for PUA – even if the claimant has not yet filed a PUA application.
- As a remedial measure, DOES’s communications team should launch an outreach campaign to the public to notify potential claimants that (1) they may be eligible for PUA even if they do not have earned income from 2019, and (2) that they may file for PUA by phone (with instructions on how to file).
- DOES should expeditiously process back-benefits and adjusted weekly benefit amounts for PUA claimants and provide written notice of eligibility (or denial) of PUA with notice of appeal rights.

(4) DOES has pursued overpayment collection in DC Superior Court during the public health emergency when former claimants are least likely to be able to participate meaningfully in their defense

Even while the Council has forbidden most creditors, such as landlords or credit card companies, from actively continuing litigation in DC Superior Court during the public health emergency, DOES has continued to sue former unemployment claimants for old overpayment debts. Since March 13, 2020, DOES has filed at least 43 of these cases during the public health emergency.²⁶

The majority of these filings are quite old – more than five years old, and sometimes ten or more years – leaving little reason why DOES must pursue these debts during a time of widespread economic hardship and stretched pro bono legal resources. Undoubtedly, many of these former claimants (now defendants) are presently experiencing economic, social, or health-related difficulties during the pandemic, making it even less likely they can participate meaningfully in litigation or participate in a fair settlement negotiation with DOES.

Claimant advocates have testified previously about our concerns about the accuracy and fairness

²⁶ DOES has filed at least 43 cases against former unemployment claimants in DC Superior Court since the beginning of the public health emergency in March 2020. These court records are publicly available online on e-Access, the DC Courts’ case search portal: <https://www.dccourts.gov/superior-court/cases-online>

of DOES's overpayment assessment and collection practices.²⁷ One of these 43 cases filed in the public health emergency came to Legal Aid for free legal help and became our client. DOES had sued her in DC Superior Court even after a bankruptcy court had discharged her overpayment debt – and the client had provided a copy of this court order to DOES. Unfortunately, even after receiving this notice, DOES sued her in DC Superior Court for the same previously discharged debt. Fortunately, she sought legal help. After Legal Aid began representing the claimant, DOES agreed to dismiss the lawsuit.

Recommendations:

- DOES should commit to requesting a stay of any overpayment lawsuits filed during the public health emergency and commit to a moratorium of litigation until 90 days after the public health emergency lifts, due to extreme financial hardships in the community due to coronavirus.
- DOES should provide an accounting for how much money DOES has recouped in overpayments during the public health emergency, broken down by money recouped from standard UI payments, PUA payments, and PUC payments.
- DOES should provide a list of all cases filed in DC Superior Court during the public health emergency.

Conclusion

We thank the Committee for the opportunity to submit this testimony.

²⁷ 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>