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***Testimony of Nicole Dooley,
Supervising Attorney, Public Benefits Law Unit,
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***Before the Committee on Executive Administration and Labor
Council of the District of Columbia***

Public Roundtable on the Department of Employment Services

June 22, 2023

Legal Aid of the District of Columbia¹ appreciates the opportunity to give testimony on the recent performance and effectiveness of the Department of Employment Services (DOES).

Because we have submitted extensive comments to this Committee twice earlier this year – for the February 27, 2023, Performance Oversight Hearing² and for the Budget Oversight Hearing³ - we are not providing additional written comment, and instead are

¹ Legal Aid 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 91 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.

² <https://www.legalaiddc.org/media/3412/download?inline>

³ <https://www.legalaiddc.org/media/3435/download?inline>

attaching our prior written submissions. We look forward to the opportunity to speak at the Roundtable to highlight the most widespread issues we have recently described with DOES's administration of unemployment benefits, which continue to affect District workers.

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.

ATTACHMENTS



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***Joint Testimony of Megan McFeeley, Staff Attorney, Public Benefits Law Unit,
Legal Aid of the District of Columbia,***

Tonya Love, Program Director and Attorney, Claimant Advocacy Program,

Sophia Mitchell, Policy Attorney, First Shift Justice Project, and

***Kevin Kearns, Paralegal, Economic Security Unit, Neighborhood Legal Services
Program***

***Before the Committee on Executive Administration and Labor
Council of the District of Columbia***

Performance Oversight Hearing Regarding the Department of Employment Services

February 27, 2023

Legal Aid of the District of Columbia¹, the Claimant Advocacy Program (CAP)², First Shift

¹ Legal Aid 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 91 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.

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

Justice Project³, and Neighborhood Legal Services Program⁴ submit the following testimony on the recent performance of the Department of Employment Services (DOES).

We would like to begin by expressing our excitement about the newly passed D.C. Domestic Worker Bill of Rights. The exclusion of domestic workers from D.C.'s Human Rights Act (DCHRA) and other basic workplace protections dates back to chattel slavery in the United States and domestic workers in D.C. have been fighting for many years to reverse this exclusion. The Department of Employment Services has a very significant role in implementing the provisions of the D.C. Domestic Worker Bill of Rights, as it is charged with: creating a template contract for domestic workers and their employers; creating a new website with instructions on how to use the model contract and information about domestic workers' rights under relevant D.C. laws; creating regulations that provide additional guidance; and enforcing the contract requirement. We are eager to partner with DOES on the implementation to ensure that both domestic workers and their employers realize their rights and obligations.

Towards that goal, we would like additional information on: (1) the current timeline DOES has in place to meet these goals; (2) how DOES plans to make the website user-friendly and accessible to people who speak languages other than English; (3) what DOES's outreach strategy will be to make sure people know about these important protections and valuable informational resources; (4) which office within DOES will be charged with implementing this program; and (5) how we and other organizations in the coalition can collaborate with them. We were pleased to hear Chairperson Bonds' suggestion to assemble a task force to ensure that this program meets the needs of the DC workers it is intended to serve. We believe that a task force is well within the existing authority and capacity of DOES and does not require additional legislation or funding. We are excited to see the aims of this law be realized as soon as possible and want to ensure that

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 First Shift Justice Project is a nonprofit organization that helps working parents in low wage jobs assert their workplace rights to prevent job loss. More information can be found at <http://www.firstshift.org/>.

⁴ Neighborhood Legal Services Program (NLSP) is a nonprofit legal services organization that provides free legal information, advice, and representation to low-income District of Columbia residents on civil legal matters. We are committed to equal access to justice for all members of our community. NLSP is committed to working towards a more just and equitable Washington D.C. for all residents. For more information, please visit our website at www.nlsp.org.

nothing delays the administration of this new program. We hope to learn more about DOES's plans in the upcoming months and would be happy to share any knowledge we have gained through our work in public benefits law and the paid family leave program that may help in establishing this program.

We would also like to note continuing issues with DOES's administration of unemployment benefits. Over the past year, we have seen DOES continue to underserve District workers who depend on the Agency to weather periods of unemployment. The people impacted, primarily Black and Brown residents in Wards 4, 5, 7, and 8,⁵ will be experiencing the toll of unnecessary monetary loss and hardship for years to come unless and until DOES addresses its failures, some of which extend back to the pandemic-related programs that expired in 2021. The ongoing systemic issues discussed below demonstrate the challenging experiences that District workers regularly encounter with DOES. We also include recommendations throughout, but our highest priority solutions include:

- To expand unemployment insurance filing access to DC workers: DOES must immediately resume taking phone calls and in-person applications.
- For adequate language access: 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.
- To ensure the upcoming new claimant portal functions at its best: DOES should include claimants, claimant advocates, and other interested parties in the modeling, implementation, and continued improvement of the new system. This could be through the creation of an advisory committee.
- To preserve DOES' resources in overpayment recoupment: waive non-fraud, no-fault overpayments, including CARES Act overpayments, where the claimant cannot afford to repay the debt and notify all overpaid claimants of their right to file a waiver request.

⁵ 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_Annual_Avg_2010-2020_BM.pdf; https://does.dc.gov/sites/default/files/dc/sites/does/release_content/attachments/DC_Ward_Data_Jun22-May22-Jun21.pdf.

- To comply with the DC Code and eliminate improper fraud assessments: when DOES suspects fraud, it should investigate every case individually to determine whether someone misrepresented a fact *knowingly* and with *intent to obtain a benefit they were not entitled to*.
- To alleviate undue burden on innocent claimants trying to access benefits: DOES should immediately begin paying claimants who have fallen victim to third party fraud their due benefits and/or pay the claimant all due back benefits or seized funds.
- To help claimants whose unemployment claim issues remain unresolved for extended periods of time: DOES should implement a simple and widely disclosed process for claimants to request an escalation on their claim, a prompt review by a claim examiner, and a swift resolution to ongoing delays.
- To ensure fair access to Paid Family Leave: Remove the current employment requirement from the D.C. Paid Family Leave Program so workers who lose their jobs or are terminated because of pregnancy, the demands of family caregiving, or a serious health condition are able to access paid family leave benefits.

Issues with Access to Assistance at DOES

Filing New Applications

In January 2022, DOES decided to stop allowing claimants to file an initial UI claim by telephone, a policy that continues today. DOES is also not currently allowing claimants to file initial applications in person, leaving only online applications. This is the latest and the most glaring example of DOES's 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. Eliminating telephone and in-person applications places an unnecessary barrier in the way of receiving benefits, and ultimately put low-income workers at greater risk of foreclosure, homelessness, and other collateral consequences of job loss.

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. Therefore, even if DOES reinstates initial application by telephone for unemployment claimants, it must still ensure that the telephone access is adequate.

Website Issues

The advocate community has seen an influx of claimants who have been unable to file an initial claim because the online portal will not work for them. Even after contacting the Call Center to try to troubleshoot these issues, many claimants' technical issues persist. This is a major barrier to benefits because filing online is the only way claimants can file. Although claimants can call or go in-person to receive assistance, their claim still must be filed online. This likely means that DOES's reported statistics for the number of people applying for benefits are artificially low, as they are only capturing the number of people who successfully apply. The number of people trying to apply may be noticeably higher.

Additionally, the current system has been "kicking out" users at seemingly random moments. Most notably, when claimants click to see their profiles, they are often kicked out and forced to log in again. Sometimes this cycle repeats, and they are ultimately unable to access their claimant profile. This has made it difficult for claimants to access important information such as which claim they are currently being paid under and how much is left on that claim.

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.

As DOES implements a new claimant-facing portal (which we address in more depth below), we encourage DOES to incorporate best practices for language access throughout that new system.

Recommendations:

- DOES must immediately resume taking phone calls and in-person applications for UI.
- DOES should train and support Call Center representatives to ensure that customers hear back from the Department in a timely fashion.
- 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 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 should incorporate language access best practices into the new claimant portal.

Online Portal Issues Fails to Ease Access and Can be Improved Upon as DOES Works to Implement a New Online Portal

DOES' Current Website Fails to Ease Access to Benefits for Workers In 2021,

DOES transitioned to a new website at unemployment.dc.gov and touted improved features on the online claims portal at www.dcnetworks.org. Unfortunately, the website continues to lack essential features and services.

- Much of the content is available in English only.
- The website appears to have the functionality to provide access for claimants to see DOES determinations and other documents, but this feature appears to not be in use – we have not worked with any claimants who were able to access documents this way.
- The current claims portal is difficult to use on a mobile phone, which produces many issues with accessibility. Many DC workers, especially those who are low-income, 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.

Upcoming Switch to New Vendor for the Online Portal is an Opportunity to Implement Claimant-Friendly Features from the Start

DOES announced in a recent stakeholder meeting that it plans to implement a new online claimant portal in late 2023. This presents DOES with an opportunity to ensure that the new online portal includes claimant friendly features and efficient systems. There are many issues that could be avoided and improved if DOES were to adopt an inclusive feedback process to include both claimants and claimant advocates.

Recommendations:

- Ensure the new site gives claimants access to all relevant information by immediately uploading all notices to the claimants' accounts.
- Have workers who have applied for unemployment benefits before beta test the system, including those who would access it from a smart phone, as they are 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 access⁶, and compatibility with mobile devices.
- Include claimants, claimant advocates, and other interested parties in the modeling, implementation, and continued improvement of the new system. This could be through the creation of an advisory committee.
- Implement an "advocate login" into the new system, allowing advocates to create accounts that link to those of the claimants they represent.
- Incorporate feedback and updates to improve the system even after it has "gone live."

DOES Should Improve its Waiver Process

D.C. law gives DOES the discretion to waive any overpayment received by a claimant.⁷

Although a waiver form is available on the DOES website,⁸ it is difficult to find, as it does not appear to be mentioned on the DOES home page or on information pages about the UI program. One can locate on the "Fraud" tab a section mentioning that someone can

⁶ See DC.Gov Accessibility Policy, available at <https://dc.gov/page/dcgov-accessibility-policy>

⁷ D.C. Code § 51-119(d)(1) ("Any person who has received any sum as benefits under this subchapter to which he is not entitled . . . may have such sum waived in the discretion of the Director.").

⁸ See Request for Waiver of Overpayment, available at https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Request_for

apply for a waiver, but not when the overpayment was due to fraud.⁹ On that page, there is no link to the actual waiver request form. In fact, when one searches “waiver” on the DOES website, the only related content that comes up is the waiver form itself, meaning that the only time a claimant can find information about waiver is if they already know that waivers are available. And the only time someone could find that waiver is even an option, other than word of mouth, is if they are reading about “fraud,” for which waiver is not an option. Simply put, claimants do not know that they have a right to ask DOES to waive their debts because the agency does provide public information about it.

Even if claimants do find the waiver form, it states that they only have 30 days from receiving the Overpayment Notice to request a waiver. That deadline is only found on the waiver request itself. Not only is this deadline difficult to find, but it is unreasonably brief for all claimants – especially those who did not receive an overpayment notice or did not know that they were entitled to request a waiver, as described below.

DOES does not individually alert claimants who may be eligible to request a waiver. Notices that claimants receive alerting them to overpayments do not include information about the procedure for applying for a waiver. For instance, if DOES accidentally overpaid someone because it forgot to input wages that someone correctly reported, a claimant is supposed to receive an overpayment notice (although many do not receive this required notice). The standard Notice of Overpayment contains no plain-language description of how to request a waiver or what standard DOES will use to assess their request. In fact, the explanatory language in the notice provides that claimants “will be required to repay” the overpayment.¹⁰ Additionally, claimants who do not receive these required overpayment notices may first find out about an alleged overpayment through a Notice of Intent to Offset letter, in which there is also no mention of a waiver request.

This failure to let claimants know of the availability of waivers creates unnecessary hardship for claimants, who committed no error in applying for or receiving these benefits, and yet are expected to pay back thousands of dollars. Despite assessing and recouping thousands of overpayments every year, DOES reports that less than ten

⁹ See What is Unemployment Insurance Fraud? *available at* <https://does.dc.gov/page/what-unemployment-insurance-fraud>, “If you are trying to repay an improper payment and are not able to make the payments, you are able to request a waiver. Please note that if you are paying back improper payments because of fraud, you are not eligible for a waiver.”

¹⁰ The notices do attach the statutory language governing overpayments, which includes the

clause regarding waiver. However, this language is not in the notice itself.

individuals asked DOES to waive their overpayment debt in Fiscal Year 2021.¹¹ DOES did not approve any of these waiver requests. Further, DOES has not provided any description of how they decide whether to grant a waiver request.¹² 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.

However, in the past year, instead of working to make it easier for DOES to waive no-fault overpayments, DOES chose not to follow federal guidance to expand the avenues by which claimants could receive waivers for no-fault overpayments of CARES Act benefits. 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 (“UIPL”) 20-21, change 1, the DOL strongly urged states to waive no-fault overpayments of federal CARES Act benefits.¹³ 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 could benefit from these policies but has yet to adopt them.¹⁴ 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.

DOES's decision not to use all means available to them to waive no-fault overpayments has had negative consequences for clients, especially those who received benefits through the Pandemic Unemployment Assistance, or PUA. This was a pandemic program available to people who were otherwise ineligible for regular unemployment and were

¹¹ This is the most recent year for which we have waiver information reported by DOES.

¹² See DOES-FY22-POH-Performance-Questions-Responses *available at* <https://dccouncil.gov/wp-content/uploads/2022/02/DOES-FY22-POH-Performance-Questions-Responses-only.pdf>.

¹³ See Unemployment Insurance Program Letter No.20-21, Change 1 *available at* <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-20-21-change-1>.

¹⁴ There is no deadline for States that wish to propose additional scenarios within the context of the CARES Act UC programs to be considered for blanket waivers.

unemployed, partially unemployed, or unable or unavailable to work because of a COVID- 19 related reason.

When claimants applied, DOES did not always place them in the correct program. Sometimes, claimants were told they were not eligible for regular UI and were approved for PUA, when in fact they were eligible for regular UI. Others were approved for PUA in 2020, but then DOES recently reconsidered their application and decided they should not have been found eligible for PUA at all. Nearly 2 years after receiving PUA benefits, DOES is now issuing notices of massive overpayments to these claimants – even for claimants who applied in good faith, believed they were eligible, and committed no errors in applying.

One current Legal Aid client, Ms. S, received PUA in 2020 after applying and being found ineligible for regular UI. Her PUA payments stopped without warning in January 2021. She repeatedly followed up with DOES throughout 2021 and 2022, but received no explanation or additional payments until she received a “Notice of Intent to Offset” in January 2023, stating that she owed DOES over \$14,000. After Legal Aid contacted DOES on her behalf earlier this month, she was told that DOES is reevaluating her entire claim because, although she reported all of her information correctly to DOES, they were missing some other wage information in their system.

Recommendations:

- DOES should conduct a proactive review of claimants who have an issue code or other flag preventing them from receiving a portion or all of their PUA or PEUC benefits and working to resolve those codes or flags.
- DOES should provide a plain-language description of how to request a waiver and what standard DOES will use to assess a waiver request on all overpayment notices and in the UI section of the DOES website.
- DOES should extend the 30-day deadline for a waiver request.
- DOES should agree to waive non-fraud, no-fault overpayments, including 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.

Lack of Response to Fixing Issues Caused by Third Party Fraudsters Places Undue Hardship on DC Workers Who are Not at Fault

Multiple claimants have sought assistance with getting access to their UI benefits or addressing an “overpayment” after a third-party fraudster had used their account to obtain benefits. Claimants have found out in multiple, unfortunate ways:

- Some claimants get an intent to offset notice alerting them to an “overpayment” after not having applied for or received UI over the time period of the alleged overpayment. Many claimants in this situation may not know how to combat such an allegation. As described above, these notices tell claimants that they must repay these debts, and do not describe any avenues for requesting a waiver. They also do not alert claimants to the possibility of fraudulent activity on their accounts. Even the claimants that do follow the instructions on these notices for appealing the decision have a difficult time getting a response from DOES in a timely manner, as there is no established procedure or timeline for DOES to respond to internal requests for appeal or reconsideration.
- Some claimants do not receive even that level of notice, instead finding out about the fraudulent activity when their tax refund is seized. They then must figure out how to contact DOES in order to try to get a refund from DOES of the erroneous seizure of their tax refund.
- Other claimants learn of the fraudulent access to their accounts when attempting to file a new claim for benefits. After filing, they will be denied and sometimes accused of fraud themselves. Legal Aid has had two clients where this happened.
- Mr. A tried to file for benefits in 2020 when he found out he was being blocked because of alleged fraud. He immediately and continually followed up with DOES and asked what he could do to rectify the situation. He was told to file a police report and that DOES was conducting an investigation and would get back to him. Mr. A kept periodically checking in by calling or emailing DOES. By the Winter of 2021, Mr. A still could not get an answer but did get an intent to offset notice for over \$5,000. He tried to contact DOES again, but to no avail and he had over \$5,000 seized in the Spring of 2022. Mr. A got Legal Aid involved in 2022. It was only after Legal Aid asked DOES for an overpayment notice and filed an appeal at the Office of Administrative Hearings (OAH) that DOES began to investigate and determine Mr. A was not responsible. Before any hearing took place, Mr. A

received his money back and could finally have his 2020 application processed.

- Ms. N had a similar issue of finding out a fraudster used her account when she attempted to apply for unemployment in 2020. After several emails and phone calls, she could not get DOES to conduct an investigation to determine she was not the fraudster so she could have her 2020 application processed. Ms. N then received a notice of a tax offset in spring 2021 for over \$2,000. Legal Aid began escalating this issue and after two months was finally able to get Ms. N paid back her tax refund and allowed her 2020 application to be processed.
- Ms. J. discovered a fraudster had been receiving her benefits while she was in the middle of an approved 2022 claim. Despite filing a police report and following up on a near weekly basis since August 2022, Ms. J still is missing 8 weeks of benefits that a fraudster obtained.
- Similarly, Ms. W began receiving benefits in 2022, but had them interrupted several times when a third-party fraudster hacked into her account. She is still waiting for DOES to pay her three missing weeks of benefits from July 2022.

Although we appreciate DOES's efforts to investigate third-party fraudsters, it often leads to claimants either having their benefits indefinitely delayed or having their tax refunds seized or held by DOES. Not only are the claimants having to constantly contacting DOES to try to get updates, but they also are having money they are entitled to delayed or taken from them. DOES's decision to withhold payment to these claimants while conducting the investigation, even after they have acknowledged no wrongdoing on the part of the claimants, causes undue hardship for people who had their identities stolen.

Recommendation:

- After determining the claimant was not the one behind the fraudulent action, DOES should immediately begin paying the claimant their due benefits and/or pay the claimant all due back benefits or seized funds.

Overpayment Issues

Lack of Notice

In prior years, advocates have raised concerns about the accuracy and fairness of DOES's overpayment and fraud penalty assessment and collection practices,¹⁵ including the exacerbation of these issues due to the pandemic, which brought many former unemployment claimants back to the unemployment claims system. As we provided last year:

- 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.¹⁶ 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 last year illustrate the scope of this problem. DOES seized unemployment benefits from 5,064 individuals in Fiscal Year 2021 and 617

¹⁵ See, e.g., Joint testimony of Legal Aid and CAP, Public Oversight Hearing Regarding DOES, February 14, 2022, *available at* <https://www.legalaiddc.org/media/288/download>

¹⁶ 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 ...”).

individuals in the first quarter of Fiscal Year 2022.¹⁷ We have continued to receive requests for help with these overpayment issues.

Fraud Findings with No Investigation Showing a Real Finding of the Requisite Intent or Knowledge

Through our advocacy and legal representation, we have found DOES engaging in categorically finding fraud and adding a fraud penalty to overpayments without doing an investigation into the requisite “intent” nor “knowledge” needed to make such a finding.

According to D.C. Code, § 51-119(a)¹⁸, fraud requires a claimant to “...make[] a false statement or representation knowing it to be false, or knowingly fail[] to disclose a material fact. ”

In practice, DOES often does not make this requisite finding, and claimants do not have the requisite intent, before assessing fraud. Frequently, DOES has assessed fraud simply because someone’s earnings found did not match the earnings reported, even when DOES itself has admitted it was a simple mistake.

When DOES does an overpayment, includes a fraud penalty, it can add an additional 15% of whatever overpayment is assessed¹⁹ to the total that the claimant must pay back, which can be debilitating, especially to D.C. workers who earn lower wages. DOES is also allowed to disqualify claimants from receiving future benefits for up to a year when they assess fraud.

In the case of Mr. D, a Legal Aid client, DOES flagged an inconsistency between wages included in their system and the earnings reported by Mr. D. Mr. D was not aware of this issue until DOES sent him a wage audit form. Mr. D attested that the wages DOES found were correct and explained on the form that he had accidentally misreported some wages due to his confusion on how to report them. He made his best guess and possibly had some typing mistakes. Not even 24 hours later and without any calls to Mr. D, DOES issued an overpayment notice assessing fraud. DOES could not have fully investigated Mr. D’s knowledge or intent, given the timing of the decision and lack of contact. Legal

¹⁷ Department of Employment Services, Responses to Fiscal Year 2021-2022 Performance Oversight Questions (February 8, 2022), Question 46, *available at* <https://dccouncil.us/wp-content/uploads/2022/02/DOES-FY22-POH-Perfrmance-Questions-Responses-only.pdf>.

¹⁸ <https://code.dccouncil.gov/us/dc/council/code/sections/51-119>.

¹⁹ DC Code, § 51-119(d)(3).

Aid assisted Mr. D in appealing this determination and DOES removed the fraud determination within a month. Had Mr. D not had Legal Aid, he would have been paying over \$1,000 in penalties without cause.

DOES has even pursued fraud penalties in cases where DOES conceded that the claimant merely made a mistake. Such is the case of Legal Aid's former client, Mr. C. Mr. C explained to DOES that his failure to report wages was a mistake and memory problem. DOES acknowledged in writing in advance of a hearing that Mr. C did not engage in fraud. Despite this, DOES proceeded with the allegation of fraud. Fortunately, Mr. C was represented by Legal Aid and prevailed when the Judge found no fraud and the penalty was removed.

There are many claimants who may not even understand that they can appeal the fraud portion of the overpayment or will not find a lawyer who can assist them. Thus, there are most likely thousands of dollars coming out of the pockets of vulnerable workers and going to DOES simply because DOES is foregoing an adequate investigation.

Technical Errors Creating False Information Causing Erroneous Seizure of DC Workers' Tax Refunds

One of the most frustrating and alarming issues that D.C. workers are currently facing is erroneous overpayments generated on their account due to a technical error. Throughout the pandemic, claimants were placed in various pandemic-era programs such as the Pandemic Emergency Unemployment Compensation program (PEUC) and the Pandemic Unemployment Assistance program (PUA). DOES is now going back and placing some claimants in different programs, or otherwise re-evaluating claimants' benefits. In some cases, this is generating overpayments on claimants' accounts. The claimants often only learn of these overpayments when they receive a Notice of Intent to Offset letter providing that DOES intends to offset their state and federal tax refunds.

Take, for example, the case of a claimant Legal Aid assisted, Mr. A, who received an alarming Notice of Intent to Offset letter saying that he owed DOES over \$17,000 ahead of this tax season. This notice did not include any reasoning nor calculation of how the alleged overpayment occurred – just that his tax refund would be offset to pay back this “debt.” Legal Aid assisted Mr. A in requesting an explanation about this unexpected notice. DOES took about a month to figure out the issue and notify Mr. A he no longer had an overpayment on his account. We confirmed that his overpayment was removed

from the Treasury Offset Program (“TOP”) but are wary of the possibility it was not, and he may still have his tax refunds seized.²⁰

This phenomenon is not limited to CARES Act programs. CAP has encountered claimants who had their overpayment issues resolved before they filed their taxes in a season. Despite DOES acknowledging the zero-overpayment balance, some claimants have still had their tax refunds seized through TOP. Because the overpayment no longer exists, this seizure is in violation of federal statutes and regulations governing the TOP.²¹ Not only is it in violation of the law, but again claimants are bearing the burden of lost money and having to spend time and energy getting it back.

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.
- 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.
- When DOES suspects fraud, it should investigate every case individually to determine whether someone misrepresented a fact *knowingly* and with *intent to obtain a benefit they were not entitled to*, as required by the DC Code.

²⁰ This wariness is based on past client experiences. During the 2022 tax season, at least one Legal Aid client had their tax refund offset based upon an “overpayment” that had been cleared by one department of DOES, but that clearing was not communicated to the Treasury Offset Program.

²¹ 26 U.S.C. 6402.

- DOES should improve communication between the Benefit Payment Control office, which investigates overpayments, and the Treasury Offset Program office, which collects overpayments.

Implement Escalation Procedure for Pending Claims that Remain Perpetually and Indefinitely Unresolved

We recommend that DOES implement an accessible, effective, and easy-to-follow procedure for claimants to escalate UI claims that remain pending and unresolved after extended periods of time. Due to technical or administrative errors, claimants may wait weeks, months, or in some cases more than a year to receive a determination on their UI claims. In these instances, the only avenues for recourse currently available to claimants are oftentimes time-consuming, not widely known to the public, and, despite the considerable effort involved, ultimately ineffective.

One such avenue for recourse is to contact DOES directly via their phone line, which often involves waiting on hold for upwards of an hour, if not longer. Anecdotal evidence from D.C. legal services providers' client base suggests that phone agents are rarely, if ever, able to resolve issues involving indefinitely pending UI claims, and are often unreliable when it comes to updating the case file or effectively escalating a claim. Even if a claim is successfully escalated, DOES agents provide neither a guarantee of a claim's eventual resolution nor a timeline by which a resolution may be reached, leaving claimants in another state of indefinite limbo. The only way to check the status of an escalated claim is to call the DOES phone line, wait on hold, and hope there is an update. If there is not, as anecdotal evidence suggests is often the case, the only next step is to repeat the process, potentially ad nauseum.

Another potential avenue for recourse is to schedule an appointment with the American Jobs Center. This option is inherently time-consuming, as it requires an in-person appointment, which may not be accessible to all claimants. Similar to the DOES phone line, anecdotal evidence from clients suggests American Jobs Center agents are rarely able to resolve or effectively expedite issues involving an indefinitely pending claim. Even if the matter is successfully escalated, claimants run into the same general problems with availability and accessibility for a follow-up, given this process's time-consuming nature.

Other avenues for recourse include reaching out to a local legal services provider or their councilmember's constituent services staff. These options, while potentially more effective than those detailed above due to increased institutional knowledge and the availability of insider contact information, can be the most time-consuming of all.

Moreover, many claimants might not be aware these resources are available, or if they are, they might not realize that they can provide assistance on this specific issue. Further, even if every claimant with this issue was aware of these resources and their potential

efficacy, it is neither appropriate nor sustainable for legal service providers or D.C. councilmembers' staff to expend their limited resources to correct and/or ameliorate errors of DOES's own making. No claimant should have to wait a year to receive a decision on their UI claims, and it is critical that DOES implement an effective procedure that allows claimants in that situation to quickly resolve the administrative or technical errors responsible for the hold-up.

Recommendation:

- DOES should implement a simple and widely disclosed process by which claimants whose UI claims remain unresolved after an extended period of time may request an escalation on their claim, a prompt review by a claim examiner, and a swift resolution to ongoing delays. This process should include a firm timeline that is communicated clearly to claimants, so they may know when to expect a response and when it is appropriate to follow-up with DOES directly.

Remove the Current Employment Requirement in the D.C. Paid Family Leave Program

Finally, we recommend the elimination of the current employment requirement in the D.C. Paid Leave Benefit Program. We were happy to see that the Universal Paid Leave Portability Amendment Act of 2023 was introduced to remedy this issue and hope that a hearing will be held soon so our clients can share their experiences with the committee.

Currently, a worker who loses their job because they were not protected under FMLA or DCFMLA, illegally laid off for taking protected leave, or any other reason, cannot apply for paid leave benefits. Data provided by DOES shows that 73% of the claims that were denied due to lacking "current employment," were applicants applying for parental leave.²² This aligns with client experiences observed at First Shift, as many clients face pregnancy discrimination and are fired for pregnancy-related reasons. The remaining claims are from applicants who are experiencing serious illnesses or caring for a family member with a serious illness, including COVID. Making paid family leave benefits available to D.C. workers who have been separated from their job (but are ineligible for unemployment insurance because they have experienced a life event that temporarily makes them unavailable for work) will help address the realities of the precarity of the pandemic.

²² Dr. Unique Morris-Hughes, Responses to Fiscal Year 2021-2022 Performance Oversight Questions, Question 90, Table C, January 28, 2022.

Recommendation:

- Remove the current employment requirement from the D.C. Paid Family Leave Program so that workers who lose their jobs or are terminated because of pregnancy, the demands of family caregiving, or a serious health condition can still access paid family leave benefits.

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.



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***Testimony of Becca Steele, Staff Attorney, and
Nicole Dooley, Supervising Attorney,
Legal Aid of the District of Columbia***

***Before the Committee on Executive Administration and Labor Council of the District of
Columbia***

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

April 5, 2023

Legal Aid of the District of Columbia¹ submits the following testimony about the Department of Employment Services' (DOES) unemployment insurance (UI) program and Fiscal Year 2024 budget. Our review of DOES's proposed budget raises a number of concerns, as the budget appears to reflect cuts and under-funding impacting DOES in crucial areas. To ensure DOES can adequately administer the District's UI system, which provides safety-net benefits to District workers who recently became unemployed through no fault of their own, the District should allocate funding to address the issues outlined below.

As claimants, Legal Aid, and other advocates testified at the oversight hearing in February 2023 and years prior, the failure to adequately fund and administer the

¹ Legal Aid 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 91 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.

District’s UI program has the most severe impact on claimants who do not have other resources to turn to when they become unemployed. Legal Aid’s clients in these positions have experienced eviction, houselessness, hunger, bankruptcy, and other collateral consequences of job loss. Black and Brown residents in Wards 4, 5, 7, and 8² are disproportionately impacted by cuts to and failures of the UI program. Adequate funding at this crucial juncture of the UI system in the District – as DOES attempts to clear the backlog of claims from the federally funded pandemic programs, while implementing an entirely new claimant portal – could resolve some of the issues that have plagued the UI system for years.

Further, the District should allocate resources to DOES to fund the implementation of the Domestic Worker Employment Rights Amendment Act. Passed by the D.C. Council in 2022, the Act remedies the almost century-old exclusion of domestic workers from DC’s Human Rights Act. This exclusion stemmed from a history of racism and sexism that devalues domestic work, which is primarily done by Black and Brown women. The Act is a major step forward, but additional funding will be necessary to make the promises of this important new law a reality.³

The District Should Increase Funding for the Unemployment Insurance Benefits Division

As outlined below, there is a significant need for investment to improve the administration of UI benefits. Numerous DC workers have been waiting years for their benefits – Legal Aid continues to receive intake requests from claimants who are waiting on funds from 2020, 2021, and 2022. At the same time, Legal Aid is receiving requests for assistance from claimants who only recently lost their job but are unable to file applications or to obtain a decision on their claim. Years have passed, but the issues remain the same, showing that DOES has not fixed the systemic technical and other issues that the pandemic surge laid bare. Earlier this year, DOES reported that the agency has a backlog

² *DOES Responses to Committee on Executive Administration and Labor Agency-Specific Questions*, at Q 131 (Feb. 2023), available at: <https://dccouncil.gov/wp-content/uploads/2023/03/Question-Responses-for-Committee-2.24.pdf>

³ Legal Aid is a member of the Fair Budget Coalition and supports the Fair Budget Coalition’s FY24 Budget Platform, which includes this recommendation. For more details, please see the Fair Budget Coalition’s FY24 platform, available at: <https://fairbudget.org/2024-budget->

of over 45,000 unprocessed claims for FY 2023.⁴ Yet for both FY 2022 and FY 2023, the agency assigned only 8 staff “to assess issues and payment of back pay.”⁵

In the face of this pressing need, the proposed budget slashes funds for the “Benefits” section of the Unemployment Insurance division by \$1,480,000.⁶ As noted in the budget itself, the benefits section is responsible for providing cash payments to eligible workers.⁷ Although understaffing is already demonstrated by claimants waiting months or even years to resolve issues with their claim, the proposed budget reduces the number of FTEs by 5%⁸. This cut will cause extreme hardship for unemployed District workers. The impacts of this cut will be felt widely, given that DOES is still working on tens of thousands of unprocessed cases. The huge influx in claim-filing numbers during 2020 and 2021 will continue to impact the agency in 2024.

i. The District Should Fund the Restoration of Telephone and In-Person Options for Filing Claims

UI claimants previously had three methods available to file a claim for benefits: DOES accepted claims filed over the phone, in person, or on the website. However, in 2022, DOES eliminated all channels for initial claim filing other than the website.⁹ Claimants can no longer file in person or over the phone. For many of the District’s most vulnerable workers, this causes significant hardship. In some cases, it creates a complete bar to accessing benefits. In particular, the decision to stop taking phone and in-person applications impacts claimants who do not have computer access, claimants who are not

⁴ *DOES Responses to Committee on Executive Administration and Labor Agency-Specific Questions*, at Q 132 (Feb. 2023), available at: <https://dccouncil.gov/wp-content/uploads/2023/03/Question-Responses-for-Committee-2.24.pdf>

⁵ *Id.*

⁶ D.C. Proposed FY2024 Budget, Department of Employment Services (CF0), at Table CF0-4 (Mar. 22, 2023), available at: https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/cf_does_chapter_2024m.pdf

⁷ *Id.*, at “Division Descriptions.”

⁸ *Id.*, at Table CF0-4.

⁹ OES Responses to Committee on Executive Administration and Labor Agency-Specific Questions, at Q 125(c) (Feb. 2023), available at: <https://dccouncil.gov/wp-content/uploads/2023/03/Question-Responses-for-Committee-2.24.pdf>

proficient in English, claimants with disabilities, and claimants with low literacy. The current restrictions place an unnecessary barrier in the way of receiving benefits, and ultimately put low-income workers at greater risk of foreclosure, houselessness, and other collateral consequences of job loss.

Restricting unemployed District residents to filing for benefits only through the website is particularly problematic given the extensive issues with the claim-filing online portal. First, many pages of the initial application are available only in English, and those that are translated are only translated to Spanish – none of the other languages required by the D.C. Language Access Act, as described in greater detail below. Further, many claimants who do attempt to use the website encounter glitches and error messages that are impossible for them to resolve. Some claimants are unable to file a claim at all due to these issues with the website. Legal Aid assisted one claimant, Ms. B., who came to Legal Aid after more than a year of unsuccessfully trying to file for benefits. Ms. B received an error message when attempting to file online at the end of 2021 and was therefore unable to submit her application. She unsuccessfully raised this issue with DOES at in- person appointments and over the phone for the better part of a year. When she came to Legal Aid for assistance at the end of 2022, she had still been unable to log on to file her initial application.

Accordingly, to ensure claimants can actually access the UI benefits they are entitled to, it is crucial that the District allocate funding for DOES to resume accepting initial applications by phone and in person, as the agency previously did. Moreover, DOES must increase staff at the call center and American Jobs Centers such that claimants can actually access these services. In recent years, claimants have struggled with accessing appointments at American Jobs Centers and hours-long waits on hold after calling for assistance. The examples listed above of problems with initial claim filing are indicative of an urgent need to invest further in unemployment benefits, to ensure claimants have access to the most fundamental step in the UI process: filing an application.

ii. The District Should Fund Additional Staff to Resolve Pending Claims that Remain Perpetually and Indefinitely Unresolved

As referenced above, UI claimants are still following up with DOES regarding issues with claims dating back to 2020 and 2021, when federally-funded pandemic programs including Pandemic Emergency Unemployment Compensation (PEUC), Pandemic Unemployment Assistance (PUA), and Federal Pandemic Unemployment Compensation (FPUC) were in place. Other claimants have encountered new issues with their claims in 2022 and 2023, which they similarly have been unable to resolve. However, DOES currently has no backstop in place to help workers whose claims remain unresolved for months and years – despite the fact that federal standards require prompt

determinations issued within 21 days.¹⁰ In response to a question posed by the Committee on the agency's timeline for processing applications, DOES represented that "it can take up to 21 days to get a claim payment out to an applicant who is qualified and approved to receive Unemployment Compensation."¹¹ However, the UI claims data from FY 2022 shows that of the 42,400 approved claims (claims that were found monetarily eligible), only 6,348 (15%) were paid within 21 days.¹²

In Legal Aid's experience, claimants who do not receive prompt payment on their claim call or make appointments with DOES repeatedly. They meet with low-level agency representatives or contractors who are unable to resolve the technical or administrative issues impacting their claim. As a result, DOES reported earlier this year that there are more than 45,000 unprocessed claims.¹³

To address this urgent need, DOES should receive funding to implement a simple and widely disclosed process by which claimants whose UI claims remain unresolved after an extended period of time may request an escalation on their claim, a prompt review by a claims examiner, and a swift resolution to ongoing delays. Further, DOES staff should be tasked with proactively identifying and resolving claims that have been pending for longer than the 21-day period detailed in applicable federal law.

The District Should Increase Funding and Oversight of the UI Benefit Payment Control Unit

As detailed in the budget itself, the Benefit Payment Control (BPC) Unit is responsible for the "prevention, detection, investigation, prosecution, and recovery of UI overpayments made to claimants. BPC is also responsible for the investigation and determination of

¹⁰ Dep't of Labor, Attachment to UIPL No. 1145: Procedures for Implementing the Java Decision's Requirements, available at: https://wdr.doleta.gov/directives/attach/UIPL/uipl_pre1975/uipl_1145a.cfm

¹¹ DOES Responses to Committee on Executive Administration and Labor Agency- Specific Questions, at Q 125 (Feb. 2023), available at: <https://dccouncil.gov/wp-content/uploads/2023/03/Question-Responses-for-Committee-2.24.pdf>

¹² *Id.*, at Q 132.

¹³ *Id.*

fraudulent and/or erroneous payment cases.”¹⁴ In performing these duties, the BPC Unit currently makes numerous erroneous overpayment assessments, improperly identifies fraud in cases that clearly fail to meet the legal standard, delays payments for claimants whom the agency acknowledges are missing benefits due to third party fraudsters, and fails to take advantage of waiver programs that would dramatically benefit claimants while preserving the District’s resources.

The current proposed funding for the BPC Unit is \$1,692,000 for FY2024, compared to \$3,928,000 actually spent in FY2022.¹⁵ Although UI claim numbers have decreased, the BPC Unit is currently in the process of reviewing thousands of claims from the pandemic programs in 2020-2021, meaning the effects of the influx of UI claims are far from over. Without adequate funding and oversight, the BPC Unit will continue to cut corners and harm claimants who are trying to access safety net benefits.

i. The District Should Fund Improvement and Quality Control of UI Overpayment Assessments and Recovery

The current DOES overpayment assessment and recovery programs are in dire circumstances: overpayments are assessed erroneously and categorized as fraud without any legal basis. Moreover, these errors are often made without DOES ever issuing legally required notice. This means that DC claimants are advised they need to pay back overpayments and fraud penalties they often do not actually owe, without any understanding of what is happening in their case. These problems are addressed below and described in greater detail in Legal Aid’s 2023 Joint Testimony Before the Committee on Executive Administration for the DOES Performance Oversight Hearing. These issues can be resolved by funding system-wide improvements and quality control measures for the BPC Unit.

There is currently an alarming trend of D.C. workers experiencing erroneous overpayments generated on their account due to technical errors within DOES’s system. In reality, these workers owe no money to DOES, but the DOES system erroneously reflects a debt. In these cases, claimants rarely receive notice of the “overpayment.” Instead, they learn of the error in their account when they receive a Notice of Intent to Offset letter providing that DOES intends to offset their state and federal tax refunds.

For example, Mr. M received a letter in 2021 indicating that he had an overpayment of

¹⁴ D.C. Proposed FY2024 Budget, Department of Employment Services (CF0), “Division Descriptions,” (Mar. 22, 2023), available at: https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/cf_does_chapter_2024m.pdf

¹⁵ Id., at Table CF0-4.

over \$20,000 for federal pandemic benefits he received in 2020. DOES acknowledged that the letter was incorrect and issued in error, but it took more than a year of advocacy on the part of Mr. M and Legal Aid to obtain confirmation from DOES that the overpayment was created in error and that he did not owe any of that amount. These erroneous overpayment assessments cause claimants significant stress and in some cases actual financial loss, when the non-existent debt is referred to the Treasury Offset Program for a tax refund intercept. Additional oversight and quality control is necessary to prevent the issuance of these erroneous notices.

Additionally, in cases where a claimant actually was overpaid, DOES improperly applies fraud penalties without satisfying the legal standard required for a finding of fraud. In many cases, clients can be overpaid for an entirely innocent reason – including that DOES made a mistake regarding their case. However, in cases where the overpayment was caused by fraudulent activity on the part of the claimant, DOES is authorized to impose a financial penalty of 15% of the total overpayment, in addition to a disqualification from receiving UI benefits for a year.¹⁶ The D.C. Code stipulates that to apply this fraud penalty, the misrepresentation that lead to the overpayment must have been made *knowingly*.¹⁷ This penalty is not designed to apply to claimants who accidentally made a mistake when filing their claim, nor claimants who were impacted by a mistake on DOES's part. Nonetheless, DOES is quick to assess fraud without any investigation of knowledge and intent in a wide variety of overpayment cases. For example, as described in Legal Aid's 2023 Joint Testimony Before the Committee on Executive Administration for the DOES Performance Oversight Hearing, Legal Aid client Mr. C explained to DOES that his failure to report wages was a mistake attributable to a memory problem. DOES acknowledged in writing in advance of a hearing that Mr. C did not engage in fraud. Nonetheless, DOES proceeded with the allegation of fraud in the hearing itself. Mr. C was represented by Legal Aid and prevailed when the Judge in his case found he had not committed fraud and removed the penalty. However, other claimants may not be represented, or may not even be aware of their right to appeal.

Additional resources are crucial for DOES to perform the statutorily mandated investigation into potentially fraudulent overpayments and to end DOES's practice of improperly assessing overpayments as fraudulent without evidence of knowledge and intent.

Finally, an issue which affects the full spectrum of cases involving overpayments and overpayment recoupment is lack of notice. Many claimants never receive notice that DOES has assessed an overpayment in their case. Instead, these claimants only learn of

¹⁶ D.C. Code § 51-119(e).

¹⁷ D.C. Code § 51-119(e)(1).

the existence of the overpayment when they receive a notice that the Treasury Offset Program intends to seize their tax refund. Clear notices on overpayments, appeal rights, waiver rights (as described below), and the recoupment of payments are crucial for the fair and effective administration of the UI system. The District should allocate additional resources to ensure these notices are produced and timely issued.

ii. DOES Should Preserve Funds by Taking Advantage of Federal Benefit Overpayment Waivers, While Improving the Administration of the Waiver Program on the Whole

District law gives DOES the ability to waive overpayments.¹⁸ However, very few claimants know about this option: the waiver form is difficult to find on the DOES website, the agency does not individually notify claimants about their eligibility to request a waiver, and overpayment notices do not include information about the procedure for applying for a waiver. This failure to inform claimants of the availability of waivers creates unnecessary hardship for claimants, who committed no error in applying for or receiving these benefits, and yet are expected to pay back thousands of dollars – sometimes years later, long after the money has been spent. The lack of awareness of the possibility of seeking a waiver is evidenced by the fact that despite assessing and recouping thousands of overpayments every year, DOES reports that less than ten individuals asked DOES to waive their overpayment debt in Fiscal Year 2021.¹⁹ DOES did not approve any of these waiver requests,²⁰ and has not provided any explanation of how the agency decides whether to grant a waiver request.

Improving the waiver process will require up-front investment to make the waiver process more accessible and transparent, but it will also ensure that DOES resources are well spent. 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.

¹⁸ D.C. Code § 51-119(d)(1) (“Any person who has received any sum as benefits under this subchapter to which he is not entitled . . . may have such sum waived in the discretion of the Director.”).

¹⁹ FY 2021 is the most recent year for which we have waiver information reported by DOES. See DOES-FY22-POH-Performance-Questions-Responses, available at: <https://dccouncil.gov/wp-content/uploads/2022/02/DOES-FY22-POH-Perfrmance-Questions-Responses-only.pdf>.

20 *Id.*

In addition to waiving overpayments of funds coming out of the District UI trust, DOES should take advantage of the opportunity to waive no-fault, non-fraud CARES Act overpayments of federal funds. On February 7, 2022, the U.S. Department of Labor (DOL) issued guidance to state UI offices strongly urging states to waive no-fault overpayments of federal CARES Act benefits. However, in contrast to many states throughout the country, the District has yet to adopt any policies to waive these federal overpayments.²¹ Waiving no-fault CARES Act overpayments would save the District funding overall, as all efforts by DOES to recoup these overpayments will not replenish the District Trust Fund. Instead, recovered overpayments will be returned to the U.S. Treasury.

A fair waiver policy will resolve no-fault overpayments while minimizing DOES's overpayment recoupment expenditure. Moreover, it will ensure that claimants who were overpaid through no fault of their own are not penalized with overpayment assessments of thousands of dollars. As described in Legal Aid's 2023 Joint Testimony Before the Committee on Executive Administration for the DOES Performance Oversight Hearing, one current Legal Aid client, Ms. S, received PUA in 2020 after applying and being found ineligible for regular UI. Her PUA payments stopped without warning in January 2021. She repeatedly followed up with DOES throughout 2021 and 2022, but received no explanation or additional payments until she received a "Notice of Intent to Offset" in January 2023 stating that she owed DOES over \$14,000. After Legal Aid contacted DOES on her behalf earlier this month, she was told that DOES is reevaluating her entire claim. Although Ms. S reported all of her information correctly to DOES, the agency was missing some other wage information in their system.

iii. The District Should Allocate Funds to Ensure Fraudulent Claims Are Identified and Resolved to Minimize Their Impact on Legitimate Claimants Who Cannot Access Their Benefits

Multiple District workers have been impacted by a third-party fraudster using their account to obtain benefits. These workers may experience barriers to accessing their own benefits as a result of the fraudulent claim, or may have their tax refunds seized due to an "overpayment" of money they never actually received.

Legal Aid works with multiple clients in this position. In many cases, these clients have to wait years to get the overpayment issue resolved. For example, as detailed in Legal Aid's 2023 Joint Testimony Before the Committee on Executive Administration for the DOES Performance Oversight Hearing, Mr. A tried to file for benefits in 2020 and found out his

²¹ There is no deadline for States that wish to propose additional scenarios within the context of the CARES Act UC programs to be considered for blanket waivers.

application was being blocked because of alleged fraud. He continually followed up with DOES and complied with all advice he received on how to rectify the situation. Despite these efforts, DOES seized \$5,000 from Mr. A in 2022 as a result of the claim someone else had filed on his account, and it was not until later that year that Mr. A was able to resolve the fraud issue and file his backdated claim from 2020.

DOES's current efforts to address fraudulent claims result in legitimate unemployment claimants having their benefits indefinitely delayed, and other District workers who did not file a UI claim having their tax refunds seized by DOES to repay their "debt." These cases take years to resolve, and sometimes will only be resolved once the claimant involves a lawyer in their case. Additional resources are necessary to ensure that DOES can resolve fraud issues raised by the legitimate accountholder immediately. This will ensure that UI claimants will receive their benefits when they are due, and District workers will not have to "repay" money they never actually received.

The District Should Increase Funding for Communications and Information Technology

As DOES makes a push to modernize the District's UI system, the need for adequate funding for Communications and Information Technology is greater than ever. This funding will help ensure that the modernization process is implemented in a way that helps rather than harms the claimants the system is intended to serve.

However, the proposed budget for Communications in 2023 is \$575,000, when the actual spending in FY2022 was \$717,000. As previously noted, DOES has not yet cleared the backlog of claims from 2020 and 2021, and many claimants have no information on the current status of their claim. Communications from the agency fail to meet language access needs and similarly fail to comply with best practices regarding plain language.

The federal Department of Labor is currently making a push towards increasing the use of plain language in UI systems throughout the country and sharing resources to help facilitate that.²² DOES requires funding to be able to take advantage of these resources and address other communications issues within the UI system.

Further, while the budget for Information Technology has increased, this increase is not sufficient to account for the significant investment that is required in the time immediately before and after the implementation of an entirely new claimant portal.

²² Dep't of Labor, *The UI Lexicon Project: Defining Commonly Used UI terms in Plain Language*, available at: <https://www.dol.gov/agencies/eta/ui-modernization/ui-lexicon>

i. The District Should Allocate Funds to Ensure DOES Can Meet its Legal Obligation Under the Language Access Act

DOES fails to provide adequate service and access to Limited or Non-English Proficient unemployed workers. As described above, many components of the claimant portal (the sole means of filing an application for UI) are accessible exclusively to English-speakers. In addition, DOES frequently sends Amharic- or Spanish-speaking claimants crucial notices on their claim only in English. These notices include important and time-sensitive information, such as the decision on an initial application, appeal rights, an assessment of an overpayment, an intent to intercept tax refunds, and more. DOES's practices in this area deprive non-English speaking claimants of benefits they are due while violating the DC Language Access Act.²³

Accordingly, it is crucial that the District allocates funds to ensure that DOES can translate all applications, web pages, notices, instructions, and any other written material into the languages required by the DC Language Access Act. The District must also make sure that claimants can speak with someone either in their language or through a competent interpreter when claimants seek services via the call center or in-person at American Job Centers.

ii. The District Should Allocate Funds to Address Longstanding Website Issues Take Advantage of the Transition to a New Online Claimant Portal

The current claimant portal creates significant barriers that prevent workers from accessing their benefits and understanding the status of their claim. As described above, the portal prevents many eligible claimants from even filing an initial application.

Additionally, the current system "kicks out" users at seemingly random times, sometimes repeatedly. This has made it difficult for claimants to access important information, including which claim they are currently being paid under and how much money is left on that claim.

In addition to these glitches, the design of the portal itself fails to account for UI claimants' needs. The website is mostly in English, which creates insurmountable barriers to access for workers who are not fluent in English, as described above. The current claimant portal is difficult to use on a mobile phone, which results in many issues with accessibility. Further, the portal lacks crucial information: it does not include any copies of determinations DOES has made on a claimant's case, it does not include any information on the status of overpayments, and it does not include any way for a claimant to contact DOES.

²³ D.C. Code §§ 2-1901 - 2-1937.

DOES is currently in the process of implementing a new claimant portal; a project that it has stated will be completed in the third quarter of 2023.²⁴ The District has the opportunity to remedy many of the problems with the current portal by leveraging this transition – but only if it allocates resources during this key juncture.

Creating an accessible, efficient, user-friendly portal is possible, but it will require significant input from stakeholders like claimants and their advocates. It is crucial for DOES to have resources to engage in these kinds of consultations, as well as resources to implement the resulting changes. The involvement of claimants and their advocates will also help to ensure allocated resources are put to effective use. Multiple states, including Pennsylvania²⁵ and Michigan,²⁶ have created UI benefit modernization advisory committees. The District should allocate resources to do the same. DOES has indicated that the total anticipated cost of the UI Benefits Claimant Portal will be \$4,258,899.²⁷ To date, DOES has not made any public representations about any of these or other funds being used to create opportunities for advocates and claimants to be involved in the overhaul of the claimant portal.

Further, the District should allocate resources to ensure there is extensive beta testing and input by claimants and their advocates before the system goes live, and continued feedback once the new system is in place. DOES should focus outreach and testing on claimants who are underserved by the current website, including: Limited or Non-English Proficient workers, workers who do not have a computer in their home, and workers with disabilities. DOES must also consult with individuals with low to no technological literacy, to ensure alternative access channels remain open to them and to prevent the

²⁴ Dep't of Employment Services, Quarterly Community and Business Stakeholder Engagement Meeting (Dec. 8, 2022), available at: <https://does.brandlive.com/DOES-Quarterly-Community-and-Business-Stakeholder-Engagement-Meeting-December-2022/en>

²⁵ Pennsylvania Act of Dec. 20, 2017, P.L. 1191, No. 60.

²⁶ Michigan Dep't of Labor and Economic Opportunity, *UIA Modernization Workgroup identifies goals that benefit workers, employers* (Feb. 3, 2023), available at: <https://www.michigan.gov/leo/news/2023/02/03/uia-modernization-workgroup-identifies-goals-that-benefit-workers-employers>

²⁷ Attachments to DOES Responses to Committee on Executive Administration and Labor Agency-Specific Questions, at Q 46 DOES POH 2023_Technology (Feb. 2023), available at:

modernization process from worsening the digital divide. Running these kinds of tests and consultations are crucial and will require additional funding.

In addition to this critical funding to facilitate consultation throughout the District's transition to a new portal, the District must allocate funds to address necessary changes to make the portal more accessible and effective. For example, DOES will require resources to translate all pages on the portal to languages covered by the Language Access Act, to make the portal accessible for claimants with disabilities, and to upload determinations and other important documents for claimants to access online. These are all key features of an effective claimant portal that DOES is not currently implementing, and will therefore require additional funding.

The District Should Fund the Implementation of the Domestic Worker Employment Rights Amendment Act

In December 2022, the DC Council passed the Domestic Worker Employment Rights Amendment Act, which will include domestic workers in laws they have long been excluded from and create new rights and benefits for domestic workers. Now that the law has passed, it is crucial that the District allocate the funds necessary to implement it. This includes funding additional staff at the Department of Employment Services to develop and implement the new requirements of this law. Legal Aid strongly urges the council to allocate \$612,000 to DOES for FY2024, to make the recently passed Domestic Worker Employment Rights Amendment Act a reality.

Conclusion

We thank the Committee for its efforts to work with the Mayor to implement a budget that benefits District workers. We offer our assistance to improve the DOES budget as well as the overall systemic issues at DOES as identified in our testimony.