Consumer and Worker Protection

Comments Received by the Department of Consumer and Worker Protection on

Proposed Rules related to Establishment of an Unclaimed Restitution Fund

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From:	Nadya Lucero
To:	rulecomments (DCWP)
Cc:	Hildalyn Colon Hernandez; Angel Condo
Subject:	[EXTERNAL] NICE Testimony NYC DCWP Rules Relating to Establishment for Unclaimed Restitution Fund
Date:	Thursday, July 9, 2026 12:04:21 PM
Attachments:	NICE Testimony NYC DCWP Rules Relating to Establishment for Unclaimed Restitution Fund.pdf

Dear Department of Consumer and Worker Protection,

Thank you for the opportunity to provide testimony regarding the proposed Unclaimed Restitution Fund during today's public hearing.

Please find attached a copy of my written testimony.

Best regards,

Nadya Lucero

View my contact details here: blinq.me/ATSGuyHwAz3M

NICE Testimony NYC DCWP Rules Relating to Establishment for Unclaimed Restitution Fund

Hearing Date: July 9, 2026
Format: Virtual
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Meeting ID: 275 457 090 210 302
Passcode: Dd3oy9so
DCWP NOH: Rules Relating to the Establishment of an Unclaimed Restitution F...

NYC Rules link

NICE Staff providing testimony:

- Nadya Lucero, Paralegal Legal Services Division
- Angel Condo, Associate Legal Services Division

Testimony

Good morning, DCWP Commissioner Levine and members of the Department of Consumer and Worker Protection.

Thank you for the opportunity to submit testimony in support of the proposed Rules Relating to the Establishment of a Fund for Unclaimed Funds.

My name is Nadya Lucero, and I am a Paralegal with the Legal Services Division at New Immigrant Community Empowerment (NICE), a longstanding community-based nonprofit dedicated to inspiring, empowering, and organizing immigrants in life and work across New New York City. As part of the organization, the Legal Services Division offers limited scope services to people seeking immigration, labor, and life and work preparedness.

As a longstanding community organization representing the, and advocating for the dignity and rights of the immigrant community—including low-income and immigrant workers across New York City—we recognize the importance of policies that protect workers and consumers, ensuring that funds rightfully belonging to individuals are returned to them and managed responsibly and transparently.

NICE Testimony NYC DCWP Rules Relating to Establishment for Unclaimed Restitution Fund

NICE strongly supports the establishment of the DCWP and NYC Comptroller Unclaimed Fund because we have seen firsthand the challenges immigrant workers face in recovering money that has been awarded to them. NICE regularly works with members who have experienced labor violations but are unable to recover the restitution awarded to them because an employer has closed its business, declared bankruptcy, disappeared, or simply failed to comply with a restitution order.

Too often, vulnerable immigrant New Yorkers and their families bear the financial burden of these violations, despite having successfully asserted their civil and labor rights. Establishing a clear and accountable process for managing unclaimed funds will ensure that money intended for immigrant workers and consumers is safeguarded until it can be returned to its rightful owners. This fund represents an important step toward promoting fairness, accountability, and access to justice for workers who have already overcome significant barriers to obtain relief.

At the same time, NICE has observed that many immigrant consumers do not claim funds legally awarded to them because they are unaware of their right to do so or fear that notices about unclaimed funds may be fraudulent. Language barriers, limited familiarity with consumer rights protections, and concerns about scams often discourage eligible individuals from claiming money that rightfully belongs to them.

The establishment of the DCWP and the NYC Comptroller Unclaimed Fund will provide greater transparency, legitimacy, and public confidence in the claims process. By creating a trusted and centralized mechanism for safeguarding and returning unclaimed funds, the Fund will reassure immigrant consumers and workers that these claims are legitimate and encourage them to exercise their rights and recover the money they are owed.

This rule is an important step in the right direction. It ensures that all workers and consumers, regardless of immigration status, are not deprived of compensation simply because a responsible party refuses to pay or cannot be located. For many low-income families, these funds are not merely financial awards—they are essential resources that cover basic necessities such as rent, groceries, transportation, childcare, and other household expenses. At a time when New York City continues to face a severe affordability crisis, ensuring that individuals can access money that is rightfully theirs can make a meaningful difference in their financial stability and well-being, and it can continue to emphasize trust in the justice system.

We encourage DCWP to continue partnering with trusted community-based organizations such as NICE to conduct outreach and connect with hard-to-reach immigrant consumers and workers who may be eligible for the Unclaimed Restitution Fund. Many community members change addresses or phone numbers, have limited English proficiency, experience digital barriers, or are unfamiliar with government processes. Community organizations are the trusted bridge that connects workers to the resources and protections available to them.

Finally, we respectfully encourage DCWP to continue advancing policies that close the loopholes bad actors use to evade restitution obligations. The Unclaimed Restitution Fund is an important step. Moving forward, preventing employers and corporations from avoiding accountability should remain a priority for enforcing City agencies.

For these reasons, NICE supports the proposed rules and encourages the DCWP to adopt this rule. Thank you for considering our testimony and for your commitment to protecting New York City's workers and consumers.

Online comments: 3

- **Anonymous**
  I hope they don’t plan to duplicate the Paid Family Leave situation and create yet another deduction from workers’ paychecks.

  Comment added June 10, 2026 11:25am

- **C. James Robert von Scholz SC**
  Please find the attachment as the Official Submitted Comment. Thank you.

  Comment attachment
  New-Chapter-14-of-Title-6-NYC-06152026.pdf

  Comment added June 15, 2026 11:06am

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Monday, June 15, 2026

BY WEBSITE SUBMISSION / NO HARDCOPY SENT:
https://rules.cityofnewyork.us/rule/establishment-of-unclaimed-restitution-fund/

Submitted to: **New York City Department of Consumer and Worker Protection (DCWP)**
Re: **Proposed Rule Adding a New Chapter 14 of Title 6 of the Rules of the City of New York**

Introduction

AS A REPRESENTATIVE, who routinely appears before the New York City Office of Administrative Trials and Hearings (OATH), I submit this comment in strong support, with amendments, of the proposed rule adding a new Chapter 14 of Title 6 of the Rules of the City of New York.

Benefits of the Proposed Rule

The proposed rule offers several significant benefits under New York City law:

1. **the rule furthers DCWP's statutory mission of protecting consumers and workers from unfair business practices and maintaining standards of integrity and fair dealing**. (See *Webster Parking LLC v City of NY*, 2008 N.Y. Misc. LEXIS 1229 [Sup Ct, NY County Feb. 7, 2008, No. 107477/07]; also See *Matter of Laureiro v NY City Dept. of Consumer Affairs*, 41 AD3d 717 [2d Dept 2007].) By ensuring that consumers and workers receive restitution they are owed, the rule directly advances these statutory objectives.

2. **the rule addresses a practical problem where restitution goes unclaimed by some consumers and workers while other consumers and workers are owed restitution that is never paid due to respondent insolvency or non-responsiveness**. The fund creates a mechanism to match unclaimed funds with unpaid restitution obligations, maximizing the effectiveness of DCWP's enforcement actions.
3. **the rule provides flexibility in administration**. DCWP retains discretion to determine whether to direct disbursements from the Fund and the amount of each disbursement based on multiple factors. This discretion is consistent with the broad discretionary power afforded to administrative agencies under New York law. (See *Chinatown Carting Corp. v Bus. Integrity Commn.*, 2007 N.Y. Misc. LEXIS 870 [Sup Ct, NY County Feb. 14, 2007, No. 109473/06].)
4. **the rule includes accountability measures**. The Commissioner must cause an accounting to be made of all Fund activities during the preceding fiscal year by September 30 of each year. The Fund will be administered by the Comptroller, who has statutory authority to audit city funds and ensure proper expenditure. (See *Comptroller of the City of NY v Dept. of Fin. of the City of NY*, 46 Misc 3d 403 [Sup Ct, NY County 2014]; also See *White Plains v New York*, 63 AD2d 396 [2d Dept 1978].)
5. **the rule explicitly preserves the Department's ability to collect outstanding obligations from respondents**. This ensures that the Fund serves as a supplementary mechanism rather than replacing primary collection efforts.

Potential Liabilities and Legal Challenges

Despite its benefits, the proposed rule presents several potential liabilities and areas of vulnerability:

1. **the rule may face challenges regarding whether it exceeds DCWP's statutory authority**. Administrative agencies can only promulgate rules necessary to carry out powers delegated by law. (See *Matter of NY Statewide Coalition of Hispanic Chambers of Commerce v NY City Dept. of Health & Mental Hygiene*, 23 NY3d 681 [2014].) If a court determines that creating and administering a restitution fund goes beyond implementing existing law and instead creates new substantive rights, the rule could be invalidated. The rule's statement that "nothing contained herein shall be construed to create a right of any person to any portion of the Fund" may be an attempt to address this concern, but this disclaimer may not be sufficient if the rule's practical effect is to create enforceable expectations.
2. **the rule grants DCWP extremely broad discretion in determining disbursements from the Fund**. While administrative agencies enjoy broad discretionary power, the rule's statement that "disbursements from the Fund will be made at the discretion of the Department" combined with the disclaimer that nothing creates "a right of any person to any portion of the Fund" could be challenged as arbitrary or lacking sufficient standards to guide agency action. (See *Chinatown Carting Corp. v Bus. Integrity Commn.*, 2007 N.Y. Misc. LEXIS 870 [Sup Ct, NY County Feb. 14, 2007, No. 109473/06].) Courts review

administrative determinations to ensure they are not arbitrary and capricious. (See *Matter of McDonald v Zoning Bd. of Appeals of Islip*, 31 AD3d 642 [2d Dept 2006]; also See *Davidson v NY State Bd. of Law Examiners*, 86 Misc 2d 744 [Sup Ct, Albany County 1976].)

3. **the rule's criteria for determining disbursements may raise equal protection or due process concerns**. The rule's criteria for determining disbursements may raise equal protection or due process concerns. The rule allows DCWP to consider factors including whether a consumer submitted a complaint to the department, participated in the investigation or proceeding, and provided material information to the department. These criteria could potentially favor certain consumers over others in ways that may not be rationally related to the restitution owed. The constitutional requirements of procedural due process apply to proceedings before administrative agencies. (See *Colopedo Corp. v City of NY Envtl. Control Bd.*, 2013 NY Slip Op 31810[U] [Sup Ct, Queens County 2013].) The touchstones of procedural due process, notice and opportunity to be heard, apply to administrative proceedings. (See *City of NY v Bay Ridge Prince LLC,* 2017 N.Y. Misc. LEXIS 3361 [Sup Ct, Kings County May 5, 2017, No. 503152/2016].)

4. **the rule requires that money transferred to the Fund shall be paid to a consumer or worker pursuant to section 14-04 of this chapter within the same fiscal year in which such money was transferred to the fund**. This requirement could create practical difficulties if insufficient eligible claims exist or if the

Department cannot process claims quickly enough. Failure to comply with this mandatory requirement could expose the City to legal challenges.

5. **the rule's provision allowing DCWP to "order that partial payment of an amount related to a claim be made from the Fund" and stating that "the Department will not direct that a disbursement be made that exceeds the balance of the Fund" could result in situations where consumers and workers receive only partial restitution**. This could lead to claims that the rule fails to adequately protect consumers and workers or that it creates inequitable treatment among similarly situated claimants.
6. **the rule may face challenges regarding the source of funds**. The rule allows transfer of money that is not claimed or received by an eligible consumer or worker within one (1) year from administrative or judicial decisions. There may be questions about whether DCWP has legal authority to redirect restitution awarded to specific individuals to a general fund, even if those individuals have not claimed the funds within one (1) year. This could implicate property rights of the intended beneficiaries.
7. **the rule's requirement that consumers may need to submit a claim to the department to access the fund creates an additional procedural hurdle that may not exist under the original restitution award**. This could be challenged as inconsistent with the underlying restitution orders or settlements.
8. **while the rule has been certified by the Law Department and Mayor's Office these certifications do not preclude judicial review**. Courts independently

assess whether administrative actions are illegal, arbitrary and capricious, or an abuse of discretion. (*Matter of McDonald v Zoning Bd. of Appeals of Islip*, 31 AD3d 642 [2d Dept 2006])

Comptroller's Role and Potential Issues

The rule provides that the Fund shall be administered by the Comptroller of the City of New York pursuant to section 93(j) of the charter. (See *Bd. of Educ. v Goldin*, 94 Misc 2d 574 [Sup Ct, Kings County 1978].) The Comptroller has broad authority to audit city accounts and expenditures. (See *Comptroller of the City of NY v Dept. of Fin. of the City of NY,* 46 Misc 3d 403 [Sup Ct, NY County 2014]; also See *White Plains v New York*, 63 AD2d 396 [2d Dept 1978].)

However, the division of responsibilities between DCWP (which determines disbursements) and the Comptroller (which administers the Fund) could create coordination challenges or disputes about authority.

The Comptroller's duty to ensure that no warrant is prepared unless sufficient appropriations are available, (See *White Plains v New York,* 63 AD2d 396 [2d Dept 1978]) could conflict with DCWP's determinations about disbursements if the Fund lacks sufficient balance. The rule attempts to address this by stating that the department will not direct that a disbursement be made that exceeds the balance of the fund, but this could still result in disputes about timing and prioritization of disbursements.

<u>Standard of Judicial Review</u>

If the rule is challenged, courts will apply a limited scope of review. The determination will be upheld if it has a rational basis and is not arbitrary, capricious, or an abuse of discretion. (See *245 Empire Grocery & Deli Corp. v NY City Dept. of Consumer & Worker Protection*, 2024 NY Slip Op 32887[U] [Sup Ct, NY County 2024]; also See *Matter of McDonald v Zoning Bd. of Appeals of Islip*, 31 AD3d 642 [2d Dept 2006]). Courts will not disturb underlying factual determinations made by the agency. (See *245 Empire Grocery & Deli Corp. v NY City Dept. of Consumer & Worker Protection*, 2024 NY Slip Op 32887[U] [Sup Ct, NY County 2024].) Administrative agencies enjoy broad discretionary power when rendering determinations on matters they are empowered to decide. (See *Chinatown Carting Corp. v Bus. Integrity Commn.*, 2007 N.Y. Misc. LEXIS 870 [Sup Ct, NY County Feb. 14, 2007, No. 109473/06])

This deferential standard of review favors upholding the rule, provided DCWP can demonstrate a rational basis for its determinations.

However, the rule must still comply with applicable legal requirements and cannot exceed the agency's statutory authority. (See *Matter of NY Statewide Coalition of Hispanic Chambers of Commerce v NY City Dept. of Health & Mental Hygiene*, 23 NY3d 681 [2014])

The proposed Unclaimed Restitution Fund rule offers significant benefits by furthering DCWP's mission to protect consumers and workers and by creating a mechanism to ensure restitution reaches intended beneficiaries. The rule appears to comply with CAPA's procedural requirements for rulemaking and has been certified by the City Law Department as within DCWP's authority. However, the rule presents several potential liabilities and areas of legal vulnerability. The primary concerns include:

1. whether the rule exceeds DCWP's statutory authority by creating new substantive rights rather than implementing existing law;
2. whether the broad discretion granted to DCWP in determining disbursements lacks sufficient standards and could be deemed arbitrary;
3. whether the criteria for determining disbursements raise equal protection or due process concerns;
4. whether DCWP has authority to redirect unclaimed restitution to a general fund; and
5. practical implementation challenges related to the requirement that funds be disbursed within the same fiscal year they are transferred.

If challenged, the rule will be reviewed under a deferential standard that asks whether the agency's determination has a rational basis and is not arbitrary, capricious, or an abuse of discretion. (See *Am. Scholastic TV Programming Found. v FCC*, 310 US App DC 256, 46 F3d 1173 [1995].)

While this standard favors upholding agency action, the rule must still fall within DCWP's delegated authority and comply with applicable legal requirements. The broad discretion granted to DCWP and the lack of enforceable rights for consumers and workers may be particularly vulnerable to challenge as arbitrary or lacking sufficient standards to guide agency action.

SUGGESTED AMENDMENTS

Amendment 1: Clarify Statutory Authority and Nexus to Existing Powers

Problem Identified: The rule may face challenges regarding whether it exceeds DCWP's statutory authority by creating new substantive rights rather than implementing existing law. Administrative agencies can only promulgate rules necessary to carry out powers delegated by law and cannot create rules out of harmony with the statute. (See *Matter of NY Statewide Coalition of Hispanic Chambers of Commerce v NY City Dept. of Health & Mental Hygiene*, 23 NY3d 681 [2014]; also See *McNulty v NY State Tax Com.*, 70 NY2d 788 [1987].)

Suggested Amendment: Add a new subsection to section 14-01 (Definitions) or section 14-02 (Establishment) that explicitly articulates the statutory basis for the Fund and its connection to DCWP's existing enforcement powers.

Proposed Language:

"§ 14-02(e) Statutory Basis. This Fund is established pursuant to the Department's authority under New York City Charter sections 2203(c), 2203(f), and 2203(h)(1) and Administrative Code section 20-104(b) to carry out the Department's powers and duties to enforce consumer and worker protection laws. The Fund implements the Department's existing statutory authority to obtain restitution for consumers and workers by creating a mechanism to ensure that restitution ordered or agreed upon in enforcement actions reaches intended beneficiaries when respondents fail to pay or when designated recipients fail to claim awarded amounts. The Fund does not create new substantive rights but rather implements existing restitution authority by providing an alternative payment mechanism consistent with the Department's mission to protect consumers and workers from unfair business practices."

Rationale: This amendment addresses the concern that the rule exceeds DCWP's statutory authority by explicitly tying the Fund to existing enforcement powers. By characterizing the Fund as an implementation mechanism rather than a source of new rights, the amendment strengthens the rule's defense against *ultra vires* challenges. Administrative agencies are clothed with powers expressly conferred by their authorizing statute as well as those required by necessary implication. (See *Greater NY Taxi Assn. v NY City Taxi & Limousine Commn.*, 121 AD3d 21 [1st Dept 2014].)

Amendment 2: Establish Objective Standards for Disbursement Determinations

Problem Identified: The rule grants DCWP extremely broad discretion in determining disbursements from the Fund, which could be challenged as arbitrary or lacking sufficient standards to guide agency action. Courts have identified failure to identify objective standards for implementing a program as grounds for finding a rule arbitrary and capricious. (See *Lynch v NY City Civilian Complaint Review Bd.*, 2021 NY Slip Op 32197[U] [Sup Ct, NY County 2021]; also See *Lynch v NY City Civilian Complaint Review Bd.*, 64 Misc 3d 315, 2019 NY Slip Op 30489[U] [Sup Ct, NY County 2019].)

Suggested Amendment: Revise section 14-04(b)(1) to establish clearer, more objective standards and prioritization criteria for disbursement determinations.

Proposed Language:

"§ 14-04(b)(1) Standards for Disbursement Determinations. The Department will determine whether to direct disbursements from the Fund and will determine the amount of money associated with each disbursement from the Fund based on the following standards and priorities:

(i) Primary Eligibility. A consumer or worker must be eligible for restitution under subdivision (a) of this section and the restitution must remain unpaid or uncollected.

(ii) Priority Categories. Subject to the availability of funds, the Department will prioritize disbursements in the following order:

(A) First Priority: Consumers and workers with final, non-appealable restitution awards or settlement agreements where the respondent has been determined to be judgment proof, dissolved, deceased, defunct, bankrupt, insolvent, or otherwise unable to satisfy the restitution obligation, and where the consumer or worker submitted a timely claim.

(B) Second Priority: Consumers and workers with final, non-appealable restitution awards or settlement agreements where the respondent is delinquent or nonresponsive for more than 180 days, and where the consumer or worker submitted a timely claim.

(C) Third Priority: Other eligible consumers and workers based on the date of the underlying violation or the date the restitution obligation arose, with earlier dates receiving priority.

(iii) Consideration Factors. Within each priority category, the Department may consider the following factors in determining the amount and timing of disbursements:

(A) The amount of restitution owed;

(B) Whether the consumer or worker submitted a complaint to the Department;

(C) Whether the consumer or worker participated in the investigation or proceeding that resulted in the award of restitution;

(D) Whether the consumer or worker provided material information to the Department during the investigation;

(E) The date of the event that makes the consumer or worker eligible for the Fund under subdivision (a);

(F) For consumers, whether the consumer submitted a complete claim to access the Fund and the date of submission;

(G) The financial hardship to the consumer or worker if restitution is not paid;

(H) The balance available in the Fund; and

(I) Any other factors reasonably related to ensuring equitable distribution of available funds and furthering the Department's consumer and worker protection mission.

(iv) Documentation. The Department shall document the basis for each disbursement determination, including which priority category applies, which consideration factors were evaluated, and the rationale for the amount and timing of the disbursement."

Rationale: This amendment addresses the concern that the rule lacks sufficient objective standards by establishing a clear priority system and enumerated consideration factors. Courts have found agency rules arbitrary and capricious when they fail to identify objective standards for implementing programs. (*See Lynch v NY City Civilian Complaint Review Bd.*, 2021 NY Slip Op 32197[U] [Sup Ct, NY County 2021]; also See *Lynch v NY City Civilian Complaint Review Bd.*, 64 Misc 3d 315, 2019 NY Slip Op 30489[U] [Sup Ct, NY County 2019].) The amendment provides a rational basis for agency action while preserving necessary flexibility. An administrative regulation will be upheld if it has a rational basis and is not unreasonable, arbitrary or capricious.

<u>Amendment 3: Address Equal Protection and Due Process Concerns</u>

Problem Identified: The rule's criteria for determining disbursements may raise equal protection or due process concerns by potentially favoring certain consumers over others in ways that may not be rationally related to the restitution owed. The criteria must bear a rational relationship to legitimate governmental purposes.

Suggested Amendment: Add a new subsection to section 14-04 addressing equal treatment and procedural protections.

Proposed Language:

"§ 14-04(c) Equal Treatment and Procedural Protections.

(1) Non-Discrimination. The Department shall administer the Fund in a manner that does not discriminate against any consumer or worker on the basis of race, color, ethnicity, national origin, age, disability, creed, religion, sex, sexual orientation, gender identity, gender expression, or any other protected characteristic.

(2) Rational Basis. All consideration factors applied under subdivision (b) of this section shall bear a rational relationship to one or more of the following legitimate governmental purposes:

(i) Ensuring that restitution reaches consumers and workers who actively participated in enforcement actions that benefit the public;

(ii) Prioritizing consumers and workers who cannot obtain restitution through other means;

(iii) Encouraging cooperation with Department investigations and enforcement actions;

(iv) Ensuring equitable distribution of limited Fund resources; or

(v) Furthering the Department's mission to protect consumers and workers.

(3) Notice of Determination. When the Department makes a determination regarding a disbursement from the Fund, the Department shall provide written notice to the affected consumer or worker that includes:

(i) Whether a disbursement will be made and in what amount;

(ii) If a disbursement is denied or reduced, the specific reasons for the denial or reduction;

(iii) The priority category and consideration factors applied; and

(iv) Information about how to request reconsideration of the determination.

(4) Reconsideration. A consumer or worker may request reconsideration of a disbursement determination by submitting a written request to the Department within 30 days of receiving notice of the determination. The request must explain why the determination was erroneous. The Department shall issue a written decision on the reconsideration request within 60 days."

Rationale: This amendment addresses equal protection and due process concerns by prohibiting discrimination, requiring rational basis for consideration factors, and providing notice and an opportunity for reconsideration. Courts apply a rational basis standard of review and require that criteria bear a rational relationship to legitimate governmental purposes. While the amendment does not create a full administrative appeal process (which might conflict with the rule's statement that nothing creates a right to Fund proceeds), it provides basic procedural protections that reduce the risk of arbitrary action.

Amendment 4: Clarify Authority to Redirect Unclaimed Restitution

Problem Identified: There may be questions about whether DCWP has legal authority to redirect restitution awarded to specific individuals to a general fund, even if those individuals have not claimed the funds within one (1) year, as this could implicate property rights of intended beneficiaries.

Suggested Amendment: Revise section 14-03(a) to clarify the legal basis for transferring unclaimed restitution and to provide additional notice to intended recipients.

Proposed Language:

"§ 14-03(a) Transfer of Money to the Fund.

(1) The Department may transfer money to the Fund that meets any of the following criteria:

(i) Money designated as restitution to a consumer or worker pursuant to a settlement of an investigation, an administrative or judicial proceeding, or action concerning laws or rules within the Department's jurisdiction, if:

(A) The money designated for restitution is not claimed or received by an eligible consumer or worker within the time set forth under such settlement;

(B) Such settlement expressly authorizes unclaimed money designated as restitution to be transferred to the Fund or grants the Department sole discretion to allocate such funds; and

(C) The Department provided notice to the consumer or worker at the address or contact information provided in the settlement or investigation file at least 90 days before the transfer, informing them of the pending transfer and providing instructions for claiming the restitution.

(ii) Money designated as restitution to a consumer or worker in an administrative or judicial decision concerning laws or rules within the Department's jurisdiction, if:

(A) The money designated for restitution is not claimed or received by an eligible consumer or worker under such decision within one year;

(B) The Department made reasonable efforts to locate and notify the consumer or worker, including sending notice to the last known address or contact information in the Department's records at least 90 days before the transfer; and

(C) The notice informed the consumer or worker of the amount of restitution available, instructions for claiming the restitution, and the date by which the restitution must be claimed to avoid transfer to the Fund.

(iii) Any other money for which the Department has express legal authority to transfer to the Fund.

(2) Property Rights Preserved. Transfer of unclaimed restitution to the Fund does not extinguish the underlying restitution obligation or the consumer's or worker's right to receive the restitution to which they are entitled. Consumers and workers retain the right to submit claims to the Fund for restitution that was transferred under this section, subject to the requirements and limitations of section 14-04.

(3) Records Retention. The Department shall maintain records of all restitution transferred to the Fund, including the identity of consumers and workers entitled to such restitution, the amount transferred, the date of transfer, and documentation of notice efforts."

Rationale: This amendment addresses concerns about redirecting restitution awarded to specific individuals by requiring enhanced notice before transfer and explicitly preserving the underlying entitlement. The amendment clarifies that transfer to the Fund is an administrative mechanism rather than an extinguishment of rights, reducing the risk of property rights challenges. The notice requirements ensure that consumers and workers have a meaningful opportunity to claim restitution before it is transferred.

Amendment 5: Address Practical Implementation of Same-Fiscal-Year Requirement

Problem Identified: The rule requires that money transferred to the Fund be paid to a consumer or worker within the same fiscal year in which it was transferred, which could create practical difficulties if insufficient eligible claims exist or if the Department cannot process claims quickly enough. Failure to comply with this mandatory requirement could expose the City to legal challenges.

Suggested Amendment: Revise section 14-03(b) to provide flexibility while maintaining accountability.

Proposed Language:

"§ 14-03(b) Timing of Disbursements.

(1) General Rule. The Department shall make reasonable efforts to disburse money transferred to the Fund to eligible consumers or workers within the same fiscal year in which such money was transferred to the Fund.

(2) Carryover. If money transferred to the Fund in a fiscal year cannot be disbursed to eligible consumers or workers within that fiscal year due to insufficient eligible claims, pending claim reviews, or administrative processing requirements, such money shall remain in the Fund and be available for disbursement in subsequent fiscal years.

(3) Priority for Carried-Over Funds. Money carried over from a prior fiscal year shall be prioritized for disbursement before money transferred in the current fiscal year,

to the extent practicable and consistent with the priority categories established in section 14-04(b)(1)(ii).

(4) Annual Reporting. The accounting required under section 14-05 shall include information about money carried over from prior fiscal years, the reasons why such money was not disbursed in the fiscal year it was transferred, and the Department's plan for disbursing carried-over funds."

Rationale: This amendment addresses the practical difficulties created by the mandatory same-fiscal-year requirement by converting it to a reasonable-efforts standard with carryover provisions. The original requirement could expose the City to legal challenges if circumstances prevent timely disbursement. The amendment maintains accountability through prioritization of carried-over funds and annual reporting requirements while providing necessary operational flexibility.

Amendment 6: Establish Minimum Disbursement Standards to Address Partial Payment Concerns

Problem Identified: The rule's provision allowing DCWP to order partial payment and stating that disbursements will not exceed the Fund balance could result in situations where consumers and workers receive only partial restitution, potentially leading to claims of inadequate protection or inequitable treatment.

Suggested Amendment: Add provisions to section 14-04(b) establishing minimum disbursement standards and transparency requirements.

Proposed Language:

"§ 14-04(b)(5) Partial Disbursements and Fund Balance Limitations.

(i) Full Payment Preference. The Department shall prioritize making full disbursements of restitution owed whenever the Fund balance permits. Partial disbursements should be made only when necessary to ensure equitable distribution among multiple eligible consumers and workers or when the Fund balance is insufficient to make full payment to all eligible claimants.

(ii) Minimum Partial Payment. When the Department determines that partial payment is necessary, the Department shall disburse at least 25% of the restitution owed to each eligible consumer or worker in the same priority category, unless the Fund balance is insufficient to provide such minimum payment to all eligible claimants in that category.

(iii) Pro Rata Distribution. When the Fund balance is insufficient to make full or minimum partial payments to all eligible consumers and workers in a priority category, the Department shall distribute available funds on a pro rata basis among eligible claimants in that category based on the amount of restitution owed to each claimant.

(iv) Subsequent Disbursements. Consumers and workers who received partial disbursements shall remain eligible for additional disbursements from the Fund in subsequent periods when additional funds become available, and shall receive priority for such subsequent disbursements until their full restitution obligation is satisfied.

(v) Transparency. The Department shall publish quarterly reports on its website showing the total amount of restitution owed to eligible consumers and workers, the total Fund balance, the number and amount of disbursements made, and the number of consumers and workers awaiting full or partial payment."

Rationale: This amendment addresses concerns about partial payments and inequitable treatment by establishing minimum standards and transparency requirements. The amendment provides a rational basis for partial payment decisions and ensures that similarly situated claimants receive equitable treatment. Courts have found agency rules arbitrary and capricious when they allow for uneven enforcement or discriminatory impact. (See *Lynch v NY City Civilian Complaint Review Bd.*, 2021 NY Slip Op 32197[U] [Sup Ct, NY County 2021]; also See *Lynch v NY City Civilian Complaint Review Bd.*, 64 Misc 3d 315, 2019 NY Slip Op 30489[U] [Sup Ct, NY County 2019].) The transparency requirements enhance accountability and allow for public oversight.

<u>Amendment 7: Clarify Coordination Between DCWP and Comptroller</u>

Problem Identified: The division of responsibilities between DCWP (which determines disbursements) and the Comptroller (which administers the Fund) could create coordination challenges or disputes about authority. The Comptroller's duty to ensure sufficient appropriations could conflict with DCWP's disbursement determinations.

Suggested Amendment: Add a new section addressing coordination and administrative procedures.

Proposed Language:

"§ 14-06 Administration and Coordination.

(a) Comptroller Administration. The Fund shall be administered by the Comptroller of the City of New York pursuant to section 93(j) of the Charter. The Comptroller shall maintain the Fund as a separate account, track all deposits and disbursements, and ensure proper accounting of all Fund activities.

(b) DCWP Determinations. The Department shall make all determinations regarding eligibility for disbursements from the Fund and the amount of each disbursement in accordance with this chapter. The Department shall communicate such determinations to the Comptroller in writing.

(c) Disbursement Process. Upon receiving a written determination from the Department directing a disbursement from the Fund, the Comptroller shall:

(1) Verify that sufficient funds are available in the Fund to cover the disbursement;

(2) If sufficient funds are available, prepare and issue a warrant for payment to the designated consumer or worker within 30 days;

(3) If sufficient funds are not available, notify the Department in writing within 10 days, specifying the Fund balance and the amount of the shortfall.

(d) Insufficient Funds. If the Comptroller notifies the Department that insufficient funds are available for a directed disbursement, the Department shall:

(1) Revise the disbursement determination to conform to the available Fund balance in accordance with the standards in section 14-04(b)(5); or

(2) Defer the disbursement until sufficient funds become available in the Fund.

(e) Coordination Procedures. The Department and the Comptroller shall establish written procedures for coordination of Fund administration, including procedures for:

(1) Regular communication regarding Fund balance and anticipated disbursements;

(2) Transfer of money to the Fund;

(3) Processing of disbursement determinations;

(4) Record-keeping and reporting; and

(5) Resolution of any disputes regarding Fund administration.

(f) Comptroller Audit Authority. Nothing in this chapter shall limit the Comptroller's authority under section 93 of the Charter to audit the Department's administration of the Fund and to make recommendations regarding Fund operations."

Rationale: This amendment addresses coordination challenges by clearly delineating responsibilities and establishing procedures for communication and dispute resolution. The Comptroller has statutory authority to audit city accounts and ensure proper expenditure, and no warrant shall be prepared unless sufficient appropriations are available. (See *White Plains v New York*, 63 AD2d 396 [2d Dept 1978].) The amendment respects these statutory requirements while providing a clear process for coordination. The provision preserving the Comptroller's audit authority ensures appropriate oversight.

<u>Amendment 8: Address Relationship to Primary Collection Efforts</u>

Problem Identified: While the rule states that it preserves the Department's ability to collect outstanding obligations from respondents, the relationship between Fund disbursements and ongoing collection efforts needs clarification to avoid unintended consequences.

Suggested Amendment: Expand section 14-02(d) to clarify the relationship between Fund disbursements and collection efforts.

Proposed Language:

"§ 14-02(d) Relationship to Collection Efforts and Outstanding Obligations.

(1) Preservation of Collection Authority. The establishment and administration of the Fund does not extinguish, diminish, or otherwise affect any obligation of any person to pay outstanding money owed to the Department or to consumers or workers. The Department retains full authority to pursue collection of all outstanding obligations through all available legal means.

(2) Subrogation. When the Department directs a disbursement from the Fund to a consumer or worker for restitution that a respondent was obligated to pay, the Department shall be subrogated to the rights of that consumer or worker against the respondent to the extent of the disbursement made. The Department may pursue collection from the respondent and shall deposit any amounts collected through such subrogation into the Fund.

(3) No Release of Respondent. Disbursement from the Fund to a consumer or worker does not release, discharge, or satisfy the respondent's obligation to pay the restitution. The respondent remains liable for the full amount of restitution ordered or agreed upon, and the Department may continue collection efforts against the respondent.

(4) Priority of Direct Payment. Before directing a disbursement from the Fund under section 14-04(a)(3) based on a determination that a respondent is unable to satisfy a restitution obligation, the Department shall:

(i) Make reasonable efforts to collect the restitution directly from the respondent;

(ii) Evaluate whether the respondent has assets or income from which restitution could be collected; and

(iii) Document the basis for determining that the respondent is judgment proof, dissolved, deceased, defunct, bankrupt, insolvent, delinquent, nonresponsive, or otherwise unable to satisfy the restitution obligation.

(5) Coordination with Settlement Agreements. When a settlement agreement provides for payment of restitution by a respondent and also authorizes transfer of unclaimed restitution to the Fund, the Department shall continue to enforce the respondent's payment obligations under the settlement agreement and shall not treat the availability of the Fund as a substitute for respondent compliance with settlement terms."

Rationale: This amendment clarifies that the Fund is a supplementary mechanism rather than a replacement for primary collection efforts and establishes subrogation rights to allow the Department to recover disbursed amounts from responsible respondents. The amendment ensures that respondents remain accountable for their obligations and that the Fund does not create a moral hazard or reduce collection efforts. The priority-of-direct-payment provisions ensure that the Fund is used appropriately as a last resort rather than a first option.

Amendment 9: Enhance Accountability and Reporting Requirements

Problem Identified: While the rule includes an annual accounting requirement, enhanced transparency and accountability measures would strengthen the rule's defense against challenges of arbitrary administration.

Suggested Amendment: Expand section 14-05 to provide more comprehensive reporting and accountability requirements.

Proposed Language:

"§ 14-05 Accounting, Reporting, and Transparency.

(a) Annual Accounting. The Commissioner shall, by September 30 of each year, cause an accounting to be made of all of the Fund's activities during the preceding fiscal year. The accounting shall include:

(1) The total amount of money transferred to the Fund during the fiscal year, itemized by source;

(2) The total number and amount of disbursements made from the Fund during the fiscal year, itemized by priority category;

(3) The number of consumers and workers who received full disbursements and the number who received partial disbursements;

(4) The total amount of restitution owed to eligible consumers and workers who have submitted claims but have not yet received payment;

(5) The Fund balance at the end of the fiscal year;

(6) The amount of money carried over from prior fiscal years;

(7) The total amount recovered through subrogation and deposited into the Fund;

(8) A summary of the consideration factors most commonly applied in disbursement determinations;

(9) Any challenges or disputes regarding Fund administration and their resolution; and

(10) Recommendations for improving Fund operations.

(b) Public Availability. The annual accounting shall be published on the Department's website and shall be available for public inspection at the Department's offices.

(c) Quarterly Reports. The Department shall publish quarterly reports on its website containing summary information about Fund activities, including the current Fund balance, the number of pending claims, and the total amount of disbursements made during the quarter.

(d) Individual Claim Status. The Department shall provide a mechanism for consumers and workers who have submitted claims to check the status of their claims online or by contacting the Department.

(e) Review and Evaluation. The Department shall conduct a comprehensive review and evaluation of the Fund's operations every three years and shall publish a report containing findings and recommendations for any necessary amendments to this chapter."

Rationale: This amendment enhances accountability and transparency by expanding reporting requirements and providing for regular review and evaluation. The Comptroller has authority to audit city accounts and ensure proper expenditure. (See *Comptroller of the City of NY v Dept. of Fin. of the City of NY*, 46 Misc 3d 403 [Sup

Ct, NY County 2014]; also See *White Plains v New York*, 63 AD2d 396 [2d Dept 1978]). Enhanced reporting requirements facilitate oversight and reduce the risk of challenges based on arbitrary or capricious administration. The public availability of information allows for external monitoring and accountability.

Amendment 10: Address Claim Submission Requirements for Workers

Problem Identified: The rule requires consumers to submit claims but does not clearly address whether workers must also submit claims or whether different procedures apply to workers. This ambiguity could lead to inconsistent treatment and administrative confusion.

Suggested Amendment: Revise section 14-04(b)(2) to clarify claim submission requirements for both consumers and workers.

Proposed Language:

"§ 14-04(b)(2) Claim Submission Requirements.

(i) Consumer Claims. The Department may require a consumer to submit a claim to the Department to access the Fund by completing a form made available by the Department that includes information about the consumer, the restitution owed, and any other information reasonably required by the Department to verify eligibility and determine the appropriate disbursement amount. The Department shall make claim forms available on its website and at its offices and shall provide assistance to consumers in completing claim forms upon request.

(ii) Worker Claims. The Department may require a worker to submit a claim to the Department to access the Fund by completing a form made available by the

Department that includes information about the worker, the employment relationship, the restitution owed, and any other information reasonably required by the Department to verify eligibility and determine the appropriate disbursement amount. The Department shall make claim forms available on its website and at its offices and shall provide assistance to workers in completing claim forms upon request, including assistance in languages other than English.

(iii) Waiver of Claim Requirement. The Department may waive the claim submission requirement when the Department has sufficient information in its records to verify eligibility and determine the appropriate disbursement amount, and when the Department can locate and contact the consumer or worker to provide notice of the disbursement.

(iv) Claim Processing. The Department shall review submitted claims for completeness and shall notify claimants within 30 days if additional information is required. The Department shall make a determination regarding each complete claim within 90 days of receipt, subject to the availability of funds and the priority categories established in section 14-04(b)(1)(ii).

(v) Waitlist. The Department may maintain a waitlist of accepted claims submitted by consumers and workers in chronological order based on the date on which such claims were fully submitted to the Department. The Department shall provide claimants with information about their position on the waitlist and estimated timeframes for disbursement based on anticipated Fund availability."

Rationale: This amendment clarifies that claim submission requirements apply to both consumers and workers and establishes clear procedures for claim processing. The amendment addresses potential equal protection concerns by ensuring consistent treatment of consumers and workers. The waiver provision provides flexibility when claim submission would be unnecessary or burdensome. The processing timeframes and waitlist transparency provisions enhance accountability and reduce the risk of arbitrary administration.

In Conclusion

The proposed Unclaimed Restitution Fund rule advances DCWP's mission to protect consumers and workers but presents several legal vulnerabilities that could subject it to challenge as exceeding statutory authority, being arbitrary and capricious, or violating due process and equal protection principles. The ten (10) amendments recommended hereinabove address these vulnerabilities by:

1. ***Clarifying*** the statutory basis and nexus to existing enforcement powers to defend against ultra vires challenges;
2. ***Establishing*** objective standards and priority categories for disbursement determinations to address arbitrary and capricious concerns;
3. ***Providing*** equal treatment and procedural protections to address due process and equal protection concerns;
4. ***Clarifying*** authority to redirect unclaimed restitution and preserving underlying property rights;

5. ***Addressing*** practical implementation challenges with the same-fiscal-year requirement;
6. ***Establishing*** minimum disbursement standards to ensure equitable treatment;
7. ***Clarifying*** coordination between DCWP and the Comptroller to prevent administrative conflicts;
8. ***Addressing*** the relationship to primary collection efforts and establishing subrogation rights;
9. ***Enhancing*** accountability and reporting requirements to facilitate oversight; and
10. ***Clarifying*** claim submission requirements for both consumers and workers.

These amendments strengthen the rule's legal foundation while preserving the flexibility necessary for effective administration. Under the deferential standard of judicial review applicable to administrative agency determinations, a rule will be upheld if it has a rational basis and is not arbitrary, capricious, or an abuse of discretion. (See *Matter of Williamsburg & Greenpoint Parents: Our Pub. Schs.! v Bd. of Trustees, State Univ. of NY*, 130 AD3d 638 [2d Dept 2015]; also See *Lynch v NY City Civilian Complaint Review Bd.*, 2021 NY Slip Op 32197[U] [Sup Ct, NY County 2021].)

Respectfully Submitted:

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- **Make the Road New York**

  Please see attached file.

  Comment attachment

  Final_Comment-on-DCWP-Restitution-Fund-Rule.docx.pdf

  Comment added July 9, 2026 2:47pm

TO: Department of Consumer and Worker Protection ("DCWP," the "Department")
FROM: Workplace Justice Project, Make the Road New York
DATE: July 9, 2026
RE: Proposed Rule on Establishment of Unclaimed Restitution Fund ("Rule")

Via Electronic Submission

I. Introduction

Make the Road New York welcomes DCWP's proposed Rule on the establishment of an unclaimed restitution fund for workers aggrieved by abusive employers. Far too often, workers secure judgments, settlements, or adjudications in their favor, only to find it impossible to collect. Employers disappear, declare bankruptcy, hide their assets, or refuse to pay. Workers, most of whom are low-wage, must then engage in lengthy and expensive legal proceedings just to recover what they should have been paid in the first place. In many cases, workers give up, leaving delinquent employers undeterred from stealing from future employees.

A restitution fund like the one proposed here would go a long way towards ensuring that workers can recover what they are owed. In our experience, workers claiming unpaid sick and safe leave, fair workweek violations, or unjust termination generally hope to recover the financial compensation to which they are entitled. This fund would make that possible. More than that, it would provide a much-needed insurance against the many employers who make recovery impossible.

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We especially appreciate the Rule's broad application to any worker with an enforceable claim under DCWP's jurisdiction.[1] Many workers negotiate settlements with employers through counsel, or secure default judgments in court, only to be met by a nonresponsive or elusive employer. By ensuring that the fund is available to any worker with an enforceable claim, DCWP equalizes the playing field to all those who benefit from the laws under its jurisdiction.

We feel that the Rule may be strengthened in two ways. First, workers and advocates may benefit from greater clarity around how disbursements to workers will be calculated if full restitution is not available, and on the ways the Department may exercise its discretion on disbursement. Second, to avoid incentivizing employers to skirt the law by providing an alternative collection mechanism, DCWP should continue to enforce judgments against employers on behalf of workers using its relevant enforcement authority under the New York City Administrative Code ("N.Y.C. Admin. Code"). By this model, workers may collect claims from the restitution fund and assign their judgments to DCWP. DCWP then pursues delinquent employers where workers cannot and, if they recover, return any collected monies to the restitution fund.

The proposed Rule fills a critical gap for workers seeking to vindicate their rights. Even after receiving a judgment or a settlement in their favor, abusive employers find ways not to pay what workers are owed. Make the Road New York strongly supports DCWP's proposal to redress the problem. We suggest two changes to the Rule to improve outcomes for workers who choose to take advantage of the restitution fund.

II. **Suggested Changes to the Rule**

a. Clarify disbursement criteria

Under the proposed Rule, the Department determines whether and how much to disburse to an eligible worker.[2] The Rule identifies several factors that the Department may take into account in its determination, most of which involve whether the worker has submitted a complaint to DCWP or participated in its investigation.[3] The Rule also establishes that any disbursement is entirely up to the discretion of the Department.[4]

To fully take advantage of the restitution fund, workers with valid claims should understand how disbursement amounts are calculated. If the fund cannot guarantee full restitution, workers and advocates should be able to make informed decisions about whether to collect from the fund, attempt only to collect from the employer, or both. As it stands, the proposed Rule has no criteria by which workers can estimate disbursement amounts.

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[1] Proposed Rule § 14-04(a).
[2] Proposed Rule § 14-04(b).
[3] Proposed Rule § 14-04(b)(1)(i-v) .
[4] Proposed Rule § 14-04(b)(4).

Furthermore, discretionary disbursement criteria may result in unequal restitution amounts for the same violations. Under the current text of the proposed Rule, two workers with identical claims may collect two different amounts from the fund.[5] This creates clear equity concerns for workers with substantially similar claims.

To avoid inequitable disbursement, and to communicate effectively to workers, the Rule should, at a minimum, direct the Department to publish clearer decisionmaking criteria and factors in calculating disbursement amounts.

b. Seed the fund using enforcement actions against elusive employers

The Rule seeds the restitution fund out of unclaimed money from other DCWP enforcement actions.[6] Workers seeking to recover from elusive employers may choose to forgo the complex and costly process of collecting, and use the fund exclusively, leaving those employers unchecked.[7] Further, employers may see the fund as a way to get out of paying workers: by simply being difficult to reach, or hiding assets, or closing and reopening a business under a different name, employers may force the worker to collect from the fund and get away with violating the law without financial penalties.

The Rule could instead contain language that seeds the fund with money collected from subsequent enforcement of judgments from elusive employers. If an aggrieved worker collects from the fund, they can then assign their judgment to the Department. The Department then uses its extensive authority to collect on those judgments where possible, and reseed the fund with the proceeds from collection. California already does this in its industry-specific wage theft recovery funds.[8] This model helps hold abusive employers accountable and prevents the fund from becoming a free pass for employers to skirt the law. It also has the added benefit of providing an additional revenue source for the fund.

We encourage the Department to add additional language to the text of the Rule that prompts workers who collect from the fund to assign any judgments to DCWP so that the Department can subsequently recover funds against elusive employers. The Department can model this language after existing language in California's statutes, cited above.

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[5] The Rule's criteria listing participation in an ongoing investigation as a factor in determining disbursement further suggests that the Department may prioritize those claimants over others with equally valid (and equally enforceable) claims.
[6] Proposed Rule § 14-03(a)(1-2).
[7] Proposed Rule § 14-02(d) emphasizes that the obligation to pay the Department remains outstanding even if the worker collects from the fund. It seems unlikely, given limited Department resources and financially satisfied workers, that the Department will dedicate time and energy to collecting on those obligations without additional language in the Proposed Rule.
[8] Cal. Lab. Code § 2675.5(a)(3) (for garment workers); Cal. Lab. Code § 2065(a)(2)(C) (for carwash workers).

III. Conclusion

The proposed Rule would be a very welcome addition to DCWP's already excellent policy and enforcement work. Make the Road New York wholeheartedly supports the establishment of a fund for workers to recover the financial compensation they are owed in the face of elusive, intractable, or uncollectible employers. We hope the Department will modify the Rule to include our suggestions, and we welcome the opportunity to continue to collaborate on its development.