

**EMPLOYMENT ADVISORY COUNCIL MEETING
DRAFT MINUTES**

DATE AND TIME: Thursday, January 22, 2009

PLACE: Department of Workforce Services
140 E 300 S
Room 101S
Salt Lake City, UT

MEMBERS

PRESENT: Thomas Bingham
Greg Diven
Raylene Ireland
Richard Kingery
Tony Montano
James V. Olsen
Reta Oram
Dan Peay
John Williams

MEMBERS

EXCUSED: Kristen Cox
Chyleen Arbon
John Chindlund
James R. Judd
Mary Catherine Perry
Richard Thorn

OTHERS:

Chris Love, DWS
Bill Starks, DWS
Jerry Fruin, DWS
Bradley Salmond, DWS
Kathy Prettyman, DWS
Melissa Smith, Utah Community Action Partner

WELCOME

Chris Love welcomed the members.

APPROVAL OF OCTOBER 2, 2008 MINUTES

A motion was made by James Olson, and seconded by Dan Peay, to approve the October 2, 2008 minutes. Motion passed unanimously. Bill Starks noted that there is an "Open and Public Meetings" bill to require the recordings of public meetings be posted within three days of the meeting; and reminded members the meeting was being recorded.

VACANCIES AND TERMS

Bill Starks said there is a vacancy in the labor representation. Jim Judd recommended Annette Cunningham of the Communications Workers of America, but after two requests he has not received a response from her. He asked if the labor side has a recommendation of someone to fill the vacancy to forward the information to him for consideration by Kristen Cox.

UPDATE ON TRUST FUND AND WORKLOAD

Chris Love said Utah's Trust Fund is in better shape than many other states. Bill Starks said as of December 31, the Trust Fund was at \$813 million, but is probably below \$800 million now. It hit an all time high earlier this year at \$855 million. The workload has dramatically increased over the last 10 weeks. Initial claims have doubled, as have benefit payments. Most recently, \$10.5 million in benefits was paid for one week compared to the mid-November's weekly payments of less than \$5 million. A portion of that amount is the Emergency Unemployment Compensation, which is reimbursed by the federal government. The increase has burdened our claims taking process. We have added phone trunk lines, increased staffing, and staff are working overtime in the evenings and on Fridays, when we're typically closed, but the increase came on so quickly, our response was not adequate to handle the workload. The federal government provides contingency money as the workload increases thus we have adequate funding. As a percentage, Utah's workload has increased faster than many other states. We've almost doubled the number of claims-taking staff, but some are still in training. Approximately 75-80 percent of claimants file on the Web, which is more efficient. We have recently rolled out paper applications in the employment centers, as they are inundated by hundreds of claimants who cannot reach the Claims Center by phone or are unable to file on the Web. We are using that process judiciously and as a short-term measure to provide some immediate relief to frustrated claimants, however it is not efficient to process claims manually thus this is only a stopgap until more staff is trained. In two to three weeks, we hope to be in front of the curve. Other state's systems have crashed, and in Georgia, only 3 percent of payments are paid timely; Utah's payment timeliness is still over 90 percent.

Thomas Bingham noted a conversation with someone who was trying to file on-line, and said the system's response was that the person was qualified, but did not give information when benefits started. Jody McMillan, UI Program Manager said this information is included in an information page, but is not on the confirmation page or the e-mail page, which would be a good idea. She will research it to see if it could be more informative to the claimant upon completion of the claim.

Chris Love said the way this department is financed is complex, but as you read about budget cuts by legislation and impact, UI to a great extent is insulated because staff charges are charged directly against the federal grant and there are ample funds to finance the UI programs. Jim Olsen said in the last meeting we discussed the special administrative fund (also known as the penalty and interest fund), and it was his understanding in the Appropriations meeting yesterday, that they were again trying to use those funds. He asked if the funds are being used outside of unemployment insurance or in other parts of the government. Chris Love said his understanding of the \$13.7 million was that it was appropriated back to DWS as the General Fund component, which is not an unemployment

insurance component. The funds are not being appropriated to Chapter IV, Employment Security activities. The code suggests it ought to be appropriated for that purpose, but it is being appropriated for the general fund shortfall. During the Job Service period, it was off the radar screen and was used primarily for brick and mortar funding. Now fiscal analysts and legislators know of the fund's existence, so they look at this during fiscal shortfalls.

Raylene Ireland asked if the UI structure is stable at the federal level. Chris Love said it is state specific. States that did not centralize and automate their UI functions are struggling to meet the needs in the current economic downturn. Those that have modernized and have achieved efficiencies like Utah are doing OK. Greg Diven asked when the Trust Fund level would reach a level that is problematic. Bill Starks said there are a lot of self-balancing mechanisms in our rate system. The reserve factor went from .95 to 1.0 and social costs increased from .1% to .2 % in 2009. There was a small tax increase to employers in 2009 and the taxable wage base increased thus we expect higher revenues this year than last year. Also, some of the experience-based employers, which are typically larger employers, have increased benefit charges the past year, which will increase rates also. If the balance of the fund moves below the adequate range area, the reserve factor goes up. At this point, he recommends we let the statutory formulas dictate the rates. Bill Starks will have more information later in the meeting about Reed Act monies. Some states receive only 30-40 percent back in FUTA dollars and don't receive adequate funding.

Raylene Ireland said it is great news that 90 percent of benefit payments are timely, and asked what the number is for payments that are not timely. Bill Starks said we are taking about 5,000 new claims per week thus approximately 500 people. We have been liberal about backdating claims if claimants say they haven't been able to reach us, but it exacerbates the timeliness problem. We're at optimal staffing, but some staff are still in training. If the workload continues to grow, we will likely go to shift work and extend our hours further. Raylene Ireland asked if we have some statement for our citizens trying to get through about high volume and other options. Bill Starks said when claimants call in; the message says their first option is to file at jobs.utah.gov. We also tell them upfront what the wait time is, so they have the option of filing on the Web without waiting. We've added phone trunk lines, which will correspond to the training completion of the additional staff. To train claims center staff takes about three weeks, but adjudication training can take several months. He has e-mailed and communicated with all employment center staff regularly, we have also provided signage and instruction sheets. The employment center resource areas are so full that they are taking numbers to get on computers. If claimants can't get on a computer and have been unable to get through over the phone we are now taking paper applications as a temporary solution. Chris Love said Bill Starks and his staff have worked hard to stay on top of that. Raylene Ireland said the statistic of over 90% receiving timely payment is remarkable, but alternative options for citizens are helpful. Bill Starks said the Department has also done press releases.

FEDERAL UI MODERNIZATION

Bill Starks reviewed federal bill HR 290 that includes a \$7 billion UI distribution that will be part of President Obama's stimulus package referred to as the UI Modernization Act. The \$7 billion of Reed Act money is essentially surplus FUTA dollars. The distribution is conditional on the states implementing enhanced benefit provisions. This version of the bill

has a 3-year window (FY2009-2011); the earlier version had a 5-year window for implementation. (A five-page handout was provided detailing the options, fiscal impact, and the number of claimants affected.)

It is estimated that Utah could receive an estimated \$56.5 million in additional funding, representing their share of the \$7 billion total distribution. Utah would have to institute an alternate base period or base period that includes the most recently completed quarter and at least two of four other provisions to receive the maximum distribution. Enacting Option A, a base period that includes the most recently completed calendar quarter, is an expensive provision to administer and would have minimal positive impact on claimants eligibility. It would require \$150,000 in one-time IT costs, \$405,000 in additional staff costs per year and take six months to implement. Employers currently report wages 30 days after the quarter and we have 60 days to enter them into the system, thus our wage records may not reflect wages for 3 to 6 months after they were paid. This provision would require us to request wage information from employers, often before it is due on their quarterly reports, thus would be burdensome on employers also. Option B, which includes the most recently completed calendar quarter for individuals who would otherwise be ineligible, is a better provision. With this provision, we would keep the standard base period, that is use the first four of the last five completed calendar quarters, and if they did not monetarily qualify we would use an alternate base period, that is the last completed four calendar quarters. It would require \$250,000 in one-time IT costs, \$189,000 in additional staff costs per year and take six months to implement. About 1,200 to 1,800 claimants per year would qualify under this provision. Melissa Smith agreed Option B was better.

Bill Starks said after the bill is passed, the state certifies with DOL, which ensures the law meets its standards. If the law's effective date is within 12 months of certification, it is considered certified. It has to be permanent law and not have any sunset provisions. We bring all bill proposals to the Advisory Council, and if the Council recommends going forward, we will approach a sponsor. December 1st was the deadline for an agency-sponsored bill. This bill hasn't been vetted in committee, but the stimulus package seems to be on fast track. Timing is critical, if the bill passes Congress while the state legislature is in session, we may want to proceed while the Legislature during this session. There is a three-year window (2009-2011) to enact the legislation, if the Legislature doesn't pass it this year. Melissa Smith said UCAPA has been talking to Bill Starks about a trigger bill that wouldn't go into effect unless passed by Congress. Raylene Ireland agreed since it is tied to a large national issue, moving forward with the trigger provision would be helpful.

Bill Starks said the Department currently has a 20-week rule, under which a claimant can become eligible if he doesn't qualify under the standard base period. It is a cumbersome process that takes almost one full-time staff to administer. In 2008, an additional 236 claimants qualified using this provision. Using a sampling, it appears that 80 percent of the 236 would have qualified with an alternate base period. Ultimately about 50 claimants would not have been monetarily eligible if we eliminated the 20-week option. Only two other states use the 20-week rule and he is not aware of any state that has three options. He estimated that the department would also save about \$50,000 in annual administrative expenses if the

provision were eliminated. He recommended if we go forward with the alternate base period to eliminate the 20-week rule.

The second part of the law says states must include at least two of the following four provisions:

(1) Part-time work: An individual would not be denied regular UI if seeking part-time work, however the state may or may not require that the majority of the weeks of work in their base period include part-time work. "Majority" is not defined. If most of the claimants base period work were full-time, a worker would not qualify if they were now only seeking part-time work. We currently have a provision that allows a part-time worker to qualify if medically prevented from working full time. It would require \$50,000 in one-time IT costs, \$108,000 in additional staff costs per year and take two months to implement. About 2,400 additional claimants per year would qualify under this provision.

(2) Domestic Violence, Illness, Quit-to-Follow Spouse: An individual will not be disqualified for separating from employment if the separation is for a compelling family reason which includes domestic violence, illnesses of an immediate family member, or due to a quit to follow a spouse that has relocated. Currently in cases of domestic violence or illnesses of immediate family, Utah generally allows benefits under equity and good conscience provisions. Currently we specifically deny quit-to-follow spouse, even under equity and good conscience, a provision enacted in the 1980s when the Trust Fund was insolvent and Utah had to borrow from the federal government. Only about five states have this provision. This would be the least costly provision to add as we already have two of the three. Approximately 419 claimants would have been eligible under this provision this year. It would require \$10,000 in one-time IT costs and take about one month to implement. About 400 to 450 additional claimants per year would qualify under this provision. The benefit cost would be about \$1.9 million per year. Greg Diven said from the employer standpoint, this is a problem. Chris Love said the benefit costs would not be charged to the employer, but would go to social costs.

(3) Training Programs Allowance: This would allow claimants who have exhausted their regular UI benefits up to 26 additional weeks of benefits while in an approved training program. This is a fairly expensive provision. It would require \$500,000 in one-time IT costs, \$108,000 in additional staff costs per year and take twelve months to implement. About 2,200 to 2,400 additional claimants per year would qualify under this provision at a cost of \$15.7 million per year. The benefit cost of this provision would go to social costs.

(4) Dependent Allowance: In the case of claimants who have dependents. A minimum dependent allowance is \$15 per week per dependent, with the total aggregate for multiple dependents of not less than \$50 per week. This would be difficult and costly to administer. Bill Starks indicated that he personally felt this provision deviated from the fundamental objective of Unemployment insurance which is wage replacement and this moves it into the realm of means-tested, like other public assistance programs. Bill spoke with Ohio, which is now attempting to do away with their dependent allowance provision, they indicated about one third of its claims processing costs are attributable to verifying this provision and they are

also looking for ways to help shore up their trust fund which went insolvent. It would require \$200,000 in one-time IT costs, \$675,000 in additional staff costs per year and take six months to implement. It is unknown how many additional claimants per year would qualify under this provision since it is not presently captured. We anticipate this would cost \$12-14 million in additional benefits annually.

Greg Devin said it would be beneficial to move ahead now with legislation. This would benefit not only individuals, but put money into the economy. It would be better to do it now and have the benefit in 2009. Raylene Ireland suggested we use the approach of a trigger bill and recommend those options we support as a committee.

Utah will receive 1/3 of the funding if it chooses Option A or B and the remainder if it implements two of the above four options, or an additional 1/3 of the funding for implementing one of the four options. Bill Starks asked for discussion of options A and B. No one was in favor of Option A (base period to include the most recently completed calendar quarter) or options 3 (training programs) and 4 (dependent allowance). Bill Starks asked if we went to the alternate base period, would the Council support the elimination of the 20-week provision. Greg Diven said it was time to change.

Administrative funding: Bill Starks said there is a one-time \$500 million distribution to states; Utah's share is estimated to be \$4.2M which could be used for administrative costs, improve outreach to claimants, staff assisted reemployment services, anything to improve our UI services.

Motion: Raylene Ireland made the motion that the Department begin work on a trigger piece of legislation that would adopt option B to become state law and also include the repeal or removal of 20-week provision that exists and also endorse options 1 and 2 as discussed. Seconded by Greg Diven.

Jim Olsen asked for more discussion on the 20-week provision. Bill Starks said if a claimant doesn't qualify under the standard base period, a claimant may monetarily qualify by providing proof, typically they provide check stubs, to show that they made \$150 a week for 20 weeks. Elimination of the 20-week provision would be conditional upon the alternate base period passing.

Jim Olsen asked if a person nearing retirement worked full-time, but now only wants to work part-time, would he be eligible. Bill Starks said if the majority of the work were full-time, we would not pay benefits if the claimant was now interested in only working part-time. Chris Love said it could be rolled in as a state call. The provision could state that only individuals, whose work history was part-time, would be eligible for seeking part-time work. We want to reflect the will of the Council, as to more or less restrictive. Jim Olsen said he sees the possibility of abuse, if someone nearing retirement wants only part-time work and receives benefits. If the person was working full-time when laid off, he should seek full-time work; if he worked part-time, he can look for part-time work. Raylene Ireland said from the citizens'

perspective, she likes the part-time option for seniors and youth, but is ok with it being more restrictive. Jim Olsen and Tom Bingham said they supported tightening it up. Raylene Ireland agreed with the condition if someone leaves full-time employment, then needs to seek full-time work; if working part-time, then can seek part-time work. Tom Bingham is ok also. Melissa Smith said the provision benefits part-time workers, such as seniors or single moms, who haven't had the opportunity to have benefits. Raylene Ireland asked if the labor representatives agreed with the emphasis on part-time. Richard Kingery agreed benefits should be paid on which status they've worked the majority of time, and we need a definition of that.

Amended: Raylene Ireland amended the motion to state that regarding the provision for part-time employment, that it exclude individuals whose majority of weeks worked were full-time from these benefits. If option B passes, the 20-week would be rescinded. Greg Diven seconded. Motion as amended passed unanimously.

Bill Starks will work with Jim Wilson, Legislative Counsel to make the changes to the draft. Chris Love recommended working with Raylene Ireland, Tom Bingham, Jim Olsen and a labor representative to identify a sponsor. Raylene Ireland recommended beginning with the Senate and said the Council would be available to testify in the hearings. Bill Starks asked if the Council would like to meet after the legislation is drafted, which they would. There was discussion on whether the Council could meet by telephone. Bill Starks thought it had to be in a public environment for input. Jim Olsen asked that the draft legislation be e-mailed to them for review. We are talking general concepts and he would like to see what it looks like in bill form. Bill Starks will have the legislation drafted within the next 10 days and send out for comment. At that point, the Council can decide whether it needs to meet.

USDOL AWARD FOR APPEALS

Chris Love read a letter from the Department of Labor recognizing DWS of attaining top performance and timely and high quality in appeals cases. The Council applauded the award.

MISCELLANEOUS

Bill Starks said part of the stimulus package is another emergency unemployment compensation (EUC) extension, which is likely according to DOL. The extension would be up to 33 weeks. We had 13 weeks added in July, and a 7-week extension in November. The only language he has seen is that it would add 33 weeks but doesn't know if it's on the lower end or if it's the maximum. He thinks for the lower-tier states, it would be an additional 13 weeks. The other piece is an additional \$25 on top of every benefit check, which is problematic as it would be hard for states to administer.

ADJOURN

The meeting was adjourned.