EMPLOYMENT ADVISORY COUNCIL MEETING
DRAFT MINUTES

DATE AND TIME:	Thursday, August 11, 2009 2:00 p.m.
PLACE:	Department of Workforce Services 140 E 300 S Room 101N Salt Lake City, UT
MEMBERS PRESENT:	Raylene Ireland John Williams Greg Diven Richard Thorn James Judd Thomas Bingham Dan Peay Tony Montano James Olsen Chyleen Arbon
MEMBERS EXCUSED:	Reta Oram Mary Catherine Perry Richard Kingery
OTHERS:	Art Hunsaker, Legislative Research Bill Starks, Dept of Workforce Services Charles Amonett, Dept of Workforce Services Bradley Salmond, Dept of Workforce Services Kris Springer, Dept of Workforce Services Kathy Prettyman, Dept of Workforce Services Jerry Fruin, Dept of Workforce Services Melissa Smith, Community Action Partnership of Utah Rep. Steve Mascaro

TERMS
Bill Starks said the terms for Tom Bingham, Mary Catherine Perry, and Dan Peay expired June 30, 2009. Tom Bingham and Dan Peay have agreed to serve another term, pending Kristen Cox's approval. We are awaiting Mary Catherine Perry's response. James Judd will put forth a name for the employee representative vacancy by the end of the month.

APPROVAL OF MAY 12, 2009 MINUTES
Motion by Raylene Ireland, second by James Judd to approve the May 12, 2009 minutes. Motion approved unanimously.

UPDATE ON UI TRUST FUND
Bill Starks reviewed the UI Trust Fund projections. On June 30, 2009, the Trust Fund balance was $640 million and within the minimum and maximum adequate reserve. It is projected the social cost will remain the same for 2010. A preliminary tax run for 2010 shows only about 33 percent of the experience-rated employers had benefit charges, an increase of only 4 percent. There should not be big tax increases for 2010. The reserve factor is moving towards 1.5 in 2011, 2012 and 2013. By law it stays at 1.5 until the Trust Fund goes insolvent, which we do not anticipate. The social costs are also projected to increase in 2012 and 2013. Sixteen states are currently borrowing from the federal government and that number is expected to rise to 35 by the end of year. Tom Bingham said he is pleased with what we have done to keep Utah's fund solvent. He said in order for California to get out of insolvency it would cost employers as much as their healthcare costs. Bill Starks said Utah's fund is the fifth healthiest in the nation (along with NM, OR, OK, MS), and if it did go insolvent, it will be one of the last. The federal government is giving states interest-free loans for this year and next year. After that, if states don't pay the loans back within two years, they start losing their State Unemployment Tax credit against the Federal Unemployment Tax and the IRS collects the loan repayments.

We are paying less in UI benefits every week through the multiple state and federal programs. For the week ending August 8, 2009, Utah paid $9,688,265 in benefits from the state trust fund and the federal government paid $3,548,000 in emergency benefits and $25 per week federal additional compensation. At the time of the last Council meeting, Utah was paying $11 million per week. Although it paints a picture that the economy is improving, in actuality, 50 percent of claimants are exhausting their UI benefits, which has never happened before. Utah's unemployment rate was 5.7 percent in June; there will be a new number on Friday. About $140 million, or $12 million a month, flowed into the Trust Fund in the last fiscal year.

Bill Starks referred to handout, *Maximum Weeks of Unemployment Benefits,* which outlines the various currently authorized UI programs. In addition to the regular 26-week state UI benefit, Emergency Unemployment Compensation (EUC) passed in July 08 with a stimulus extension that provides up to an additional 20 weeks of benefits. Tier II EUC will trigger if a state reaches the 6 percent TUR (total unemployment rate) or 4 percent IUR (insured unemployment rate). Under that scenario, it provides 13 additional weeks of benefits through the end of the year. All but five states have reached that level. The next program extension is the permanent federal state Extended Benefits (EB) program, which Utah last triggered in 1983. It will trigger if Utah reaches 5.0 percent IUR and provides up to 13 weeks of extended benefits. We will discuss an optional TUR trigger later in the meeting.

Bill Starks explained the “total unemployment rate” is based on a survey of households conducted by the Bureau of Labor Statistics. In Utah, 600 households are called and asked how many members are unemployed and looking for work. This includes people who have exhausted or been denied benefits. The “insured unemployment rate” represents people who are receiving unemployment benefits. Those who have exhausted their regular unemployment benefits and are on EUC, and those not looking for work, are not included in the IUR figure. Utah reached the 3.5 percent IUR about two months ago and the level has been going down steadily. We don’t think we will trigger Tier II or EB under the IUR thresholds, but anticipate triggering EUC Tier II, which is 100 percent federally funded, within two to three months under the TUR trigger.

SOCIAL SECURITY OFFSET

Bill Starks referenced the Social Security Offset handout. The 50 percent Social Security offset is due to expire for all new claims beginning June 2010. If the law isn’t changed, the offset will revert back to the 100 percent offset. He discussed two different scenarios, which measured the impact with the current 50 percent offset and with a 0 percent offset. In FY2006, the net impact with a 50 percent offset was 539 claimants, 553 employers and $291,337 in benefit costs. The benefit costs would have been $609,248 with a 0 percent offset. In FY2009, the number of claimants doubled to 1124, 1178 employers and $1,623,167 in benefit costs with a 50 percent offset. The benefit costs would have been $4,223,121 with a 0 percent offset. The second page compares the 0 percent, 50 percent and 100 percent offsets. Although EUC is federally funded, social security benefits are also offset on EUC.

Raylene Ireland asked about the history of the Social Security offset. Bill Starks said it was part of a compromise on a Reed Act funding distribution. The Council would use roughly half of the distributions on employer interests and half on claimant interests. The Department provided for temporary state UI compensation in 2003-2005 and the 50 percent social security offset provision to support claimant interests. Additional amounts supported various UI automation and employment service initiatives; the remainder was left in the trust fund to help maintain lower UI taxes. At the time we projected the cost of the offset to be about four times greater than what it actually was. Jim Olsen said there was a Reed Act money infusion of $62 million in 2002 and the Council decided to use half for the Trust Fund and half for benefit enhancements. It had a sunset so it wouldn’t burden employers in the long term. It was extended because the social security offset cost less and the money took longer to distribute. Originally, Utah was given permission to charge the offset back to the Reed Act. After we extended the sunset, the federal government said the offset couldn’t be charged to Reed Act; from that point forward, employers were charged.

The Social Security offset provision is on the August 19 Interim Agenda. Bill Starks said the Council doesn’t necessarily need to have a firm position today, but he would like a position while Interim is in session. He asked for more discussion on how the members feel about it. Nationally, Puerto Rico and the Virgin Islands have a 100 percent offset. Seven states (UT, CO, IL, LA, SD, MN, VA) have a 50 percent offset and 43 states have no offset provision. At the time the original bill was passed, more states had the same 50 percent offset; since then more states have eliminated the provision altogether.

Jim Judd said he would be hesitant to go back to the 100 percent offset and is in favor of continuing the current 50 percent offset. Dan Peay, Tony Montano, John Williams, and Chyleen Arbon also agreed with the 50 percent offset. Raylene Ireland expressed concern that when the provision was put in place, that at one point the funds would be gone and employers would continue to be charged. She prefers allowing the 50 percent to sunset and returning to the original provision. It is hard during these times to saddle employers with that cost. Greg Diven said since the feds changed the rules as to charging, we need to preserve the Trust Fund. He would return to the 100 percent offset by letting it sunset. Richard Thorn said, as painful as it is, we are headed in the wrong direction, and he would vote for the sunset. Thomas Bingham said that until we see what the triggers do to the Trust Fund, we don't want to exacerbate the problem and we are fortunate that we did put the triggers in. Jim Olsen said when we negotiated the agreement, there was discussion that once a benefit is given, it's hard to take it away. He noted that the other side of the table agreed that when the money ran out, we would go back to the original offset. He would stick to the agreement.

Bill Starks said since the Council is evenly split on this, maybe there is some middle ground. He said two states have triggers based on the health of the Trust Fund. The law could state if the Trust Fund was within the minimum/maximum, there would be a 50 percent offset; if it was below the minimum, there would be a 100 percent offset; if was above the maximum, there would be no offset. Kristen Cox asked what the Council thought about a triggered approach. Greg Diven said it would still cost to administer it. Bill Starks said the administrative part isn't charged to the Trust Fund. Tony Montano said he wasn't sure we would want to go to a 3-tier system. Bill Starks said we could only have two tiers. Tony Montano said if funds go down to minimum adequate then it would trigger. Bill Starks asked if he was proposing that if the Trust Fund were at or above the minimum adequate level, for example, on June 30th, the following calendar year there would be a 50 percent offset; if it was below, it would be a 100 percent offset. The trigger would be on a fiscal year and the benefits paid on the next calendar year. Thomas Bingham said this would result in two separate recipients and he doesn't want to draw down to the possibility of failure when we have people who have nothing who will be impacted much harder. Kristen Cox asked what was the philosophy behind not counting Social Security income. Tom Bingham said it was driven by the Reed Act infusion. Raylene Ireland said it was not the regular nature of business which triggered the discussion of benefiting the broader base and that's why the decision was made between the groups that it was a fair distribution of benefits; when that money dried up the benefit would stop. She said we face instability of employers in the state and it's difficult. The impact was not as high as originally expected and the extension was to fulfill the original agreement. AARP wanted 0 percent offset. Tom Bingham thought the incentive decreased for a person to return to work when receiving both Social Security and UI benefits.

Jim Judd understands the concern that the person is retired, but the employer has paid into the Trust Fund at the same rate as for one who is not on Social Security and now we are disadvantaging those on Social Security. Greg Diven said you don't give the same benefits to other workers. John Williams said you are treating them differently than other employees. Greg Diven said the 50 percent offset puts additional stress on employers when they can't afford it and impacts the Trust Fund. A person on Social Security has an added bonus by having that benefit. Richard Thorn if we don't let it sunset, we're getting in trouble faster. Bill Starks said the Social Security retirement is a bit like retirement benefits. If a claimant is receiving a pension from the base period employer, we offset 100 percent. Kristen Cox said it would be great if we had a consistent policy of not treating folks differently, but it is a retirement benefit and we are allowing flexibility to that group of people. Bill Starks said the Supreme Court overruled the state on worker's compensation benefits in regard to retirement benefits, and our attorneys think the courts may decide on this as well.

Kristen Cox asked if there was any change of vote. Chyleen Arbon said if we voted for 50 percent, would there be another sunset. Bill Starks said we didn't have a discussion on that. Raylene Ireland said if we talked about 50 percent and then sunset, it doesn't deliver much. We need to discuss if as a state we need to be at 50 percent or do we take a stand on the fiscal impact. She would not favor a sunset. Chyleen Arbon thinks it needs a sunset. Jim Judd thinks any offset may risk a lawsuit. Tom Bingham said we need to be fiscally conservative. Kristen Cox said it's important we know so we can the take the split feeling to the governor's office. Bill Starks asked Raylene Ireland, in her experience, when there is a split vote does legislation typically go forward? She said we need consensus. She said she appreciates the other perspective. Jim Olsen said when companies go out of business, the costs go back to social costs. Greg Diven questioned whether the Trust Fund balances reflect what we've implemented. Bill Starks said the $1 million in benefits we paid in FY 2009 is negligible with respect to total benefits we are now paying.

EXTENDED BENEFIT PROGRAM
Bill Starks said our insured unemployment rate (IUR) is going down, as claimants are exhausting benefits. It is unlikely we will trigger into Extended Benefits (EB) with the current state IUR trigger. There is the possibility that Utah could achieve a 6.5 percent total unemployment rate (TUR) by the end of the year. Currently, the federal government will pay 100 percent of costs (except for reimbursable state and local governments and Indian tribes) through the end of the year. Rep. McDermott has introduced legislation to extend the 100 percent reimbursement as well as several other UI programs. If it were extended, it might be beneficial for the state to adopt the TUR trigger only for the period the 100 percent reimbursement is available. It is estimated that the state could potentially receive $7.3 million per month in additional benefits to Utah claimants, which, in turn, goes back into local economies. Any state that implements a TUR trigger is required to also have a "High EB" trigger of 8 percent, which provides for up to an additional seven weeks. The law could be crafted so that it would be conditional on the federal government paying costs for contributory employers. Tom Bingham asked if this is disparate treatment for local and state government employees. Bill Starks said state and

local governments and Indian tribes do no pay federal unemployment taxes thus they are not considered ‘sharable” costs under EB. They pay benefits when there is a claim; it would potentially increase their cost. Greg Devin said this could be hard on them. Jim Olsen asked if 501C nonprofits orgs are the same. Bill Starks said they are at a permanent 50 percent share, the same as contributory employers, but are currently at 100 percent for this year. Bill Starks said the entire discussion about adopting a TUR trigger will be a moot issue unless the 100 percent federal reimbursement for most employers is extended for another year. This issue isn’t on the September Interim agenda. If the extension does pass, he could bring the issue back to the Council or he could get their initial reaction now. Greg Diven thought is worth looking at if it is federally funded, but felt it is hard to provide a benefit and then sunset it. Bill Starks noted it is an automatic trigger and the federal government has provided guidance that the TUR trigger could be sunsetted based on the level of federal reimbursement. Kristen Cox asked if the Council had a sense of their preference now or would they like to reconvene later. Richard Thorn would like to meet to review options. Jim Judd said if the money is available, do we want to disadvantage the citizens by not using it. Greg Diven said if it benefits the state and provides funds then we should take advantage of it. If it is not funded for another year, then we would not.

The Council asked for a draft bill to review. Bill Starks will draft the legislation and circulate it to the Council for review.

ADMINISTRATIVE FUND

Kristen Cox said we previously discussed the $13 million in the UI Penalty and Interest fund. She asked the Council for discussion on investing the P&I funds in the long term. It is time to be more explicit about it. The fund averages about $2.3 million per year. She would like a workgroup to discuss this and bring its findings to the Council. One possibility is that it could be used for training funds for employers. Some states have a diversion tax and can use UI funds for economic development or expansion of businesses. The fund could be used for that. Tom Bingham said we need to avoid shifting funding from something different than what employers think they are paying for.

Kristen Cox will convene a workgroup to discuss the P&I fund.

DEPARTMENT UPDATE

Kristen Cox said the department is putting out grants and has consolidated the eligibility division. The job growth and training pieces will be changing to give more local flexibility and she will have drafts of that to share in September.

Bill Starks provided the UI modernization recommendation to Governor Huntsman. Kristen Cox will meet with the new governor to get his input. We don’t anticipate substantial changes.

NEXT MEETING

The next meeting will depend on the draft TUR legislation. Bill Starks will draft the legislation within three weeks. The P&I subgroup could also present recommendations at the meeting.   The meeting adjourned at 3:40 p.m.