

Background Paper for Assembly Insurance Committee

Informational Hearing: February 3, 2010

California's Unemployment Insurance Program:

Is the State's Administration of the Program Serving the Needs of California's Unemployed?

Introduction

California is presently experiencing the worst economic downturn since the Great Depression. An estimated 2.3 million Californians, or 12.4 percent of the labor force, are unemployed, and 1.1 million jobs have been lost since the recession commenced two years ago.¹ In some communities, particularly those in the agricultural areas of the Central Valley and Imperial County, local unemployment rates are as high as 35 percent.

Since the 1930s, the federal – state partnership known as the Unemployment Insurance (UI) Program has provided a lifeline to workers who are laid off due to no fault of their own. In California, the UI Program is administered by the Employment Development Department (EDD), which is responsible for distributing UI benefits that equal 50 percent of an unemployed worker's previous weekly wage, up to a maximum of \$450, for a period not to exceed 26 weeks.

The current recession has been severe, and many Californians are experiencing long-term unemployment that lasts a year or longer. In response, the federal government has approved a series of unemployment relief measures extending the number of weeks that some long-term unemployed workers may receive, and temporarily adding \$25 to the weekly unemployment benefit.

As the nation's and California's unemployment rates have grown, and more laid-off workers have filed for UI benefits, the federal Department of Labor (DOL), which is EDD's UI Program partner, has been urging state UI administering agencies to staff-up, streamline, and modernize their programs for carrying out essential UI Program functions.² See Attachment 1. Unfortunately, notwithstanding DOL's urgings, EDD has been unable to adequately rise to the occasion and satisfactorily meet the needs of California's growing number of unemployed. The problems in the state UI Program are major, and include, for example, EDD's late distribution of UI benefit extension checks, a tardy start and cost overruns in modernizing its UI program technology, delays in approval of certified training benefits for unemployed workers, massive amounts of EDD staff overtime and questionable priorities for the expenditure of federal UI administration grant funding.

This background paper is intended to provide details of EDD's problems in administering the UI Program and to suggest areas of inquiry the Committee may wish to make as it considers the problems besetting the Department's administration of the state UI Program.

UI Program Performance

The Regional Administrator of the Employment and Training Administration of the U.S. Department of Labor has reported on California's recent and historical performance in administering the state's UI program.³ Attachment 2 contains details.

The DOL provided information on four key performance measurements: 1) Timeliness of UI payments, measured in the number of days between the first compensable week and the issuance of the first payment; 2) Timeliness in processing UI appeals by the California Unemployment Insurance Appeals Board (CUIAB), measured in the number of days between the request for an appeal hearing and the date of decision; 3) Case aging of appeals, measured for both lower level appeals and higher level appeals as the number of days all cases have been unaddressed; and 4) Timeliness of nonmonetary determinations, which includes items like the review and approval of California Training Benefits (CTB), measured in terms of the number of days between a request and a determination. The following chart summarizes the information provided by the DOL on California's performance when measured against DOL standards:

<u>California's Performance in the UI Program</u>			
Performance Criteria	Performance Standard	California	Rank
Timeliness of UI payments	87% of 1st payments made in 14 days	70.6%	49 of 53
Timeliness of UI Appeals	60% of decisions in 30 days/80% in 45 days	3.2%/7.4%	52 of 53/53 of 53
Case Aging in UI Appeals	30 days for lower authority/40 days for higher authority	55 days/39 days	42 of 53/25 of 48
Nonmonetary Determinations	80% of determinations completed in 21 days	53.3%	31 out of 53

These measurements reveal California is not meeting federal performance standards, and in some instances, California ranks as the worst or nearly the worst in the nation and three U.S. territories. Additionally, California has ranked poorly in these performance measures for the last 10 years.

While DOL has the authority to withhold UI administrative grants, it prefers not to do so, because defunding the state UI Program would primarily punish unemployed workers. Rather, the DOL requires underperforming state agencies like EDD and the CUIAB to develop Corrective Action Plans (CAPs) that detail the steps the state is taking to improve its UI Program performance.

Notwithstanding the fact that EDD and the CUIAB have produced annual CAPs for the last several years, the state's performance has continued to deteriorate. For example, between 2005 and 2009, EDD's performance in timeliness of UI payments decreased from 81.9 percent to 70.6 percent and CUIAB's performance in timeliness of UI appeals decreased from 25.7 percent in the first 45 days, to 7.4 percent. Similar historical trends exist for the other performance measurements as well.

The data provided by DOL raises the question of how well EDD and the Administration have chosen to respond to the overwhelming problem of growing unemployment in California. For example, EDD was unable to quickly utilize federal funding to begin modernizing its UI technology, and made numerous missteps along the way that led to more than five years of delay and more than \$80 million in modernization project cost overruns. And despite the urging of DOL to upgrade and improve the Department's approval process for training benefits, EDD apparently did not respond until the end of last year, when workforce training agencies began to complain about EDD delays.

As the Committee considers the problems and issues set forth below, it may wish to examine:

- The pace, progress and costs of UI modernization, EDD's ability to assist workers to obtain training and acquire skills to be re-employed,
- EDD's policy to continue furloughing UI Branch employees and then require employees to work large amounts of overtime, and
- EDD's priorities for use of federal UI administration funding, and its decisions on how to best deploy its limited resources to administer the UI program.

UI Modernization

EDD's Corrective Action Plans have emphasized massive technology system upgrades to improve its UI Program performance. Indeed, the problems over the last year underscore the inability of EDD systems to handle the demands of growing unemployment. For example, as the state's unemployment rate increased dramatically, EDD reported that as many as three million attempts were made per month to reach EDD telephonically. UI claimants found that human contact was nearly impossible as EDD chose not to staff One Stop Employment Centers with anyone who could personally assist people with their UI questions. Instead, UI claimants were directed to a wholly inadequate phone system and on-line programs. This led to an unprecedented telecommunications deluge.

As a growing number of unemployed workers kept redialing EDD to no avail,⁴ EDD's telephone system eventually collapsed. Further, EDD's on-line systems were slow to keep up with the filing of initial claims. To further complicate matters, EDD currently has no on-line system for UI beneficiaries to re-certify their claims, forcing claimants to do so via U.S. mail. It is fair to say that unemployed Californians were confounded, frustrated and terribly disheartened with the service they received from EDD, at one of their greatest times of need.

Another example of EDD's technological deficiencies became apparent when the federal government enacted the most recent of several 100 percent federally-funded extensions of unemployment insurance benefits for long-term unemployed workers in high unemployment states. Those new benefits, enacted on November 6, 2009, were crucial to the hundreds of thousands of long-term unemployed people, but most importantly, to the approximately 120,000 Californians whose benefits were set to expire in December, 2009. Unfortunately for these 120,000 Californians, EDD's computers proved incapable of delivering these new benefits to them in a timely manner.⁵ It was only after EDD and the Labor Agency decided to "automatically qualify" these existing benefit recipients – a procedure that EDD and the Administration had steadfastly refused to do for each of the previous federal benefit extensions – that these 120,000 Californians were eventually able to obtain the benefits that were due. The failure to send out UI checks in a timely manner caused severe problems to many low-income people which, among other things, included evictions due to UI benefit recipients' inability to pay rent.

EDD has argued, with some validity, that the newest federal law was not written in the manner that would have been easiest to implement, and that its computer systems are so old that they could not handle immediate implementation of the new law. There is no doubt that EDD's existing technology is not up to the task of effectively meeting the growing demands on the UI Program. But it is important that the Committee take a step back and ask why this situation exists, what is being done about it, and whether the improvement efforts are adequate to meet the challenges ahead.

EDD's technology systems are more than 25-years old and not equipped to handle heavy UI claims volume, facilitate communication with claimants, nor quickly to respond to complex changes in unemployment insurance law, such as implementation of the Alternative Base Period (ABP) enacted by the Legislature last year, or an extension of UI benefits as enacted by Congress.

EDD's computers are known in IT lexicon as a Legacy System. They are written in computer language (COBOL) which has not been taught nor used for at least two decades. Also, there are precious few experts who can work in a COBOL programming environment, and due to the ancient architecture of the system, making changes becomes very labor intensive and slow.

EDD's reliance upon these non-responsive, antiquated IT systems has led to undesirable consequences. Tens of thousands of unemployed workers waited an inordinate amount of time to receive federal extension benefits last December while EDD struggled to write 500,000 lines of new computer code, and 62,000 unemployed workers suffered a second delay in receiving UI extension checks due to problems EDD experienced in programming changes to filing deadlines. Thousands more low-wage, seasonal workers are not qualifying for benefits as EDD defers implementing ABP until it upgrades its data base system, and as reported above, tales of UI beneficiaries not being able to communicate with EDD representatives have become legend.

EDD has known its IT systems were inadequate for some time. In 2002 the Department made a strategic decision to carve \$66 million from a \$937 million federal Reed Act grant (funds intended to pay UI benefits) to begin modernization of its computer system. However, due to errors in judgment about the complexity of IT problems, bad planning, multiple changes in procurement processes and contradictory decisions on how to proceed in pursuing IT modernization, projects funded by the Reed Act money are now more than five years behind schedule. Projects originally scheduled for completion in 2008 will not be completed until 2014.

While Reed Act funded projects are now underway, EDD has notified the Legislature that their cost is rapidly escalating. EDD reports that vendor contracts need to be increased by more than \$37 million due to hardware and software needs unanticipated by the Department when it designed the projects. EDD has stated that all cost increases will be federally funded or reimbursed. However, staff notes that some of those cost overruns will be paid from EDD's federal UI administration base grant.

As will be pointed out later in this paper, federal UI administration funds fail to fully reimburse the state for all UI administrative workload. In conjunction with the fact that EDD is not meeting federal UI program performance standards, the use of UI administration base grant money to pay for project cost overruns may be necessary, but at the same time, unfortunate. Utilizing limited UI administration funding to cover UI modernization cost overruns may mean that EDD is unable to hire more staff for the purpose of improving current performance in monetary and nonmonetary determinations, handling UI appeals, answering phones, and helping unemployed workers file UI claims at One Stop Employment Centers around the state. The Committee may wish to inquire why UI modernization projects are running so substantially over original cost estimates and what trade-offs EDD has to make in order to use UI administration funding to cover project cost overruns.

EDD has also received an additional \$60 million in 2009 for more computer modernization as part of the American Recovery and Reinvestment Act (ARRA). EDD has identified an additional six technology upgrades (plus implementation of ABP) to address myriad problems that beset the administration of the UI Program.

Similar to UI modernization projects funded with Reed Act money, ARRA funded projects are also experiencing cost overruns. In this case, the costs will exceed initial specifications by almost \$53 million – nearly double the estimates barely a year old -- due to yet even further unanticipated hardware and software requirements. EDD reports that it will dip into the State Disability Insurance Fund to pay a portion of these cost overruns.

The Disability Insurance Fund is currently solvent, and some of the ARRA funded technology projects will benefit the Disability Insurance Program. However, it is worth noting that the Governor has also proposed borrowing money from this Fund to implement a major new worker training program, creating multiple pressures on the Fund. The Disability Insurance Fund is funded by employee contributions, and using

these monies to pay for IT project cost overruns and training programs may be cause for further scrutiny, particularly in light of EDD's seeming inability to accurately estimate technology project costs.

Information regarding Reed Act and ARRA funded UI Modernization technology projects are provided in attachments 5 and 6.

California Training Benefits

The California Training Benefits (CTB) Program is authorized by state and federal laws to allow eligible UI claimants who lack competitive job skills to receive their UI benefits while attending a training or retraining program approved by EDD.⁶ The CTB Program was established to assist those individuals in need of training or retraining in skills required in demand occupations. Under the CTB program, the traditional role of UI changes from one of partial wage replacement while the employee looks for work to one of assisting the individual in training or retraining in an effort to return to full employment.⁷

If a person is approved for CTB, he or she does not need to meet the following regular UI eligibility requirements: looking for work, being available for work, and accepting suitable work. Also, an extension of CTB training benefits may be available beyond the regular UI claim period (26 weeks) if additional time is needed to complete the period of approved training.⁸

The California Workforce Association (CWA), representing the local workforce agencies that administer the Workforce Investment Act (WIA) and other job training and job placement funding, have been reporting for months that eligible applicants were having existing benefits cut off for up to four to eight weeks while EDD verified whether the training program that an eligible beneficiary was enrolled in was in fact qualified. In other instances, UI beneficiaries were choosing not to enroll in training so that their UI benefits would not be interrupted, resulting in state and federal training funds going unused during a period of unprecedented unemployment.

While the US DOL urged states to revise their training certification laws as early as May of last year, EDD has been slow to institute new and efficient ways for approving CTB. According to workforce development professionals, much of the delay is a result of unnecessary impediments that EDD has erected for the CTB approval process. Staff notes that EDD claims it is required by law to take a number of the actions which cause delay.

The Federal Unemployment Tax Act (26 U.S.C Section 3304(a)(8) also known as FUTA) states that "Compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, or refusal to accept work)." A federal regulation, 20 CFR 604.5, reiterates this statutory requirement. In short, federal law does not specify what the states' training approval

criteria must be. Instead, states are free to define what constitutes approved training, how it is approved, and to waive the otherwise applicable eligibility requirements.

EDD's proposed CTB approval streamlining does not promise to be quick and easy. In discussions and communications with staff, EDD has represented that it will roll out the improved process out in stages. Time will be taken to train staff, then apply the new approval process in three phases. EDD cannot tell us when the new CTB approval process will be fully implemented, but on its face, early arrival does not appear to be a reasonable expectation. Further, CWA members believe that EDD's streamlining proposal does not fully address the problems that workers are experiencing in obtaining CTB approval. Therefore, CWA may sponsor legislation this year to solve the problem.

The Committee may wish to inquire why EDD was late in responding to DOL's urging that CTB approval be streamlined and broadened, and what EDD anticipates will be the schedule for implementation of these changes.

UI Administration Funding and Staffing

EDD's administration of the UI Program is federally reimbursed. Federal funding is provided in a baseline grant that considers the Department's previous year's workload. Baseline operations workload levels are determined by the DOL. Although each state's base grant is based on data reported by the state administering agency, applied to specific federal funding factors, DOL may alter those funding factors if states' funding needs exceed the national UI appropriation level. Agencies like EDD may also seek additional above base funding when current workload grows. However, EDD reports that, historically, even above base funding levels are less than 100 percent of a state agency's requested reimbursement level. In short DOL does not reimburse EDD for all of its workload.

The method of calculating federal UI administration grant funding has led to serious consequences in EDD's UI Program staffing. Last December, EDD reported to the Legislature that due to a flattening in new UI claims, the data it submits to DOL justifying its level of reimbursement would not result in enough federal funding to support the full amount of personnel years (PYs) the Legislature had authorized for EDD's UI Program in the 2009-10 budget. As a result, EDD advised the Legislature it was unilaterally reducing its UI Program staffing authorization for the rest of the fiscal year.

Having to reduce authorized PYs for a troubled program is an unfortunate circumstance. As reported in an EDD letter to DOL sent October 20, 2009, in order to meet growing demands on the state UI Program EDD ordered employees to work more than 677,000 hours of overtime between January and September of last year in its UI Branch, and another 23,600 hours of overtime at the CUIAB. Further, the Administration has prohibited EDD employees from taking normal furlough Fridays and has instituted, instead, a "directed furlough" program. EDD employees must work on the furlough days, and "bank" the time to be used later. Commencing July 1, 2010, EDD employees will

face a "use it or lose it" period of two years within which to use the banked furlough time. The potential negative impact of substantial staff time off in an environment where EDD is already underperforming is a serious problem that the Committee may wish to explore.

In addition to the impact on the adequacy of staffing, there is a financial element to this directed furlough policy. EDD has accumulated more than \$16.5 million in UI Program salary costs that will not be reimbursed by DOL. At this time, EDD does not know how these latent costs will be covered.

Considering EDD's failure to meet federal performance standards for administering the UI Program, the difficulties unemployed workers are having in communicating with EDD, the delays in paying UI extension checks, the cost overruns of the UI technology project, the delays in EDD's approval of California Training Benefits, and the costs and amount of staff overtime and the repercussions of banked furloughs, it may be appropriate for the Legislature to carefully scrutinize how EDD and the Administration chooses to spend UI administration funds and to inquire how the State Administration sets UI Program priorities.

For example, the Governor has proposed a new initiative to assist 30,000 veterans returning to California annually from the wars in Iraq and Afghanistan. This initiative is called Operation Welcome Home. It is intended to assist veterans navigating the state UI Program, including providing fact sheets, help with filing for initial and continuing benefits, assistance with specified UI forms for recently discharged veterans, and for veterans who have been out of the service longer, help with Internet claim filing through e-Apply. The initiative will also assist veterans who need to contact EDD claims representatives to obtain answers to questions, handle claims problems, and to train veterans to use various UI automated systems.

In light of Operation Welcome Home's UI related components, the Governor proposes to cover 50 percent of the initiative's costs with federal UI administration funds. Further, the Governor believes that the UI related activities of Operation Welcome Home are consistent with the intent of the federal UI administration grant California receives each year to administer its UI compensation and laws, and therefore, no state or federal approvals are necessary. In fact, EDD has unilaterally begun implementing the program. For the time being, the initiative is expected to operate between January and December of 2010.

Assisting veterans to connect with government services for the purpose of helping them reintegrate back into civilian society is unquestionably a high priority. It may be prudent, however, for the Legislature to ask whether this is the most efficient use of federal UI administration grant funding to best serve returning veterans and the estimated 1.2 million other unemployed California workers who qualify for UI benefits.

The Administration's decision to use UI administration grant funding for Operation Welcome Home without oversight and input from the Legislature fails to allow the

Legislature to work with EDD to determine UI Program priorities and assess the impacts of this policy choice in contrast to other policy approaches. The Committee may wish to inquire why EDD has acted unilaterally and whether its actions place a worthwhile effort to assist veterans in direct competition for UI Program resources without any evaluation of overall UI Program priorities. The Committee may wish to examine this issue and make some recommendations to the Assembly Budget Committee for its hearings this Spring.

Conclusion

EDD and the state's administration of the UI Program continue to fail to meet the federal performance standards for administering the UI Program, fail to resolve major communications difficulties between EDD and unemployed workers, do not address the delays in determining and paying regular UI claims and UI extensions, suffer from UI technology project cost overruns, and have been too slow in approving California Training Benefits. In light of these serious problems, the answer to this hearing's central question of whether the state's administration of the UI Program is serving the needs of California's unemployed might be, "Not very well." Thus, it can be asked, in what ways can the Legislature and the Administration partner to develop a more effective UI Program?

¹ California Crisis: A Portrait of Unemployed Workers, by Lauren D. Appelbaum, Ph.D., Research & Policy Brief, No. 4, December 2009, by UCLA Institute for Research on Labor and Employment, pps. 1-2.

² Communication from the federal government to the states titled "Training and Employment Guidance Letter No. 21-08" sent by Douglas F. Small, Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, to State Workforce Agencies and State Labor Commissioners, dated May 8, 2009.

³ Letter to Assembly Member Jose Solorio, Chair of the Assembly Insurance Committee, and Assembly Member Juan Arambula, Chair of Budget Subcommittee No. 4, by Richard C. Trigg, Regional Administrator, U.S. Department of Labor, dated January 21, 2010.

⁴ Attachment 3 is a Contra Costa Times newspaper article that reflects "improved performance" based on data that suggests people must re-dial EDD's telephone number an average of 17 times before reaching an EDD employee.

⁵ Attachment 4 to this background paper are typical newspaper reports from the San Mateo Daily Journal and the San Francisco Chronicle on the delays in delivering UI benefits in December, 2009.

⁶ The state laws are codified in Sections 1266 – 1274.10 of the California Unemployment Insurance Code.

⁷ Fact Sheet: California Training Benefits Program, Employment Development Department, State of California, DE 8714U Rev.8 (6-08) (INTERNET).

⁸ Ibid.