



Unemployment Insurance Advisory Committee

Meeting details

Date: Wednesday, October 19, 2022

Time: 10:00 a.m. to 12:00 p.m.

Location: Zoom

Committee members present

Employee Representatives

- Cindy Richardson, UNITE HERE Local 8
- Josh Swanson, Operating Engineers 302
- Brenda Wiest, Teamsters 117

Employer Representatives

- Tammie Hetrick, WA Food Industry Association (proxy for Bob Battles)
- Julia Gorton, Washington Hospitality Association
- Jerry VanderWood, Association of General Contractors

General Public Representatives

- Anne Paxton, Unemployment Law Project

ESD staff

- Joshua Dye
- Wendy Goldmark
- Caitlyn Jekel
- Marypat Meuli
- Scott Michael
- JR Richards
- Jill Will
- Dan Zeitlin

Committee members absent

- Bob Battles, Association of Washington Business
- William Westmoreland, Pacific Mountain Workforce Development Council
- Courtney Williams, Community Employment Alliance

Summary

Meeting Recorded

This meeting was [recorded](#) and also [livestreamed](#) by TVW.

Welcome and Opening Remarks

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked Wendy Goldmark to take roll call. All committee members were present except Bob Battles, William Westmoreland and Courtney Williams.

Agenda

Dan Zeitlin reviewed the meeting agenda and asked if anyone had any questions. (See Addendum I.)

Opening Discussion

Dan Zeitlin opened the meeting discussion with a slide presentation and highlighted the below topics to be covered.

- UIAC Charter
- Agency Request Legislation
- September UI Trust Fund Report
- UI Appeals Update
- November Meeting Topics

UIAC Charter: Decision Making Structure

[UIAC Charter](#): The members agree to use the *Robert's Rules of Order Newly Revised*. Advisory recommendations to policy makers of the committee shall be made on a consensus basis (consensus allows the majority of members to vote in favor of a recommendation while others abstain).

UIAC Updated Charter Draft: The members agree that the preferred method for decision-making on matters before the UIAC shall be consensus, when possible. If consensus cannot be reached, the members agree to use the *Robert's Rules of Order Newly Revised* to propose and agree upon decisions before the committee.

Jerry VanderWood: *I just want to walk us through that consensus is still a unanimous vote, not a majority vote. If the vote is for five in favor and four against, that is not a consensus, correct? But if there were six votes in favor and 3 abstain, that is a consensus because there are no votes against.*

Dan Zeitlin: *If there is one vote against, there is no consensus. If everybody votes in favor for something, that is consensus, so you are correct.*

Anne Paxton: *I'm wondering if there's any more specific guidance on what/how much consensus or majority vote the committee has to reach in order to fulfill its role because in the statute refers to consultation with an advisory committee. So, I am just wondering how important is it in the charter to achieve votes on certain issues.*

Dan Zeitlin: *The committee is here to provide consultation and advise in practice. In reality, we haven't done much voting. 99% of what we do is simply advising the department.*

Anne Paxton: So, would you want to hold a formal vote if on issues where you weren't really sure that there was going to be any consensus or majority vote?

Dan Zeitlin: As an agency, we have and we'll continue to hold votes when there's consensus to speak in practical terms. But it's an advisory body made up of different representatives, and we may reach points where there's a reason to vote, even if there isn't consensus. But our practice has been and our intentions continue to be to simply look for consensus on issues and, for the most part, we're here to make sure Committee Members are aware of what's occurring in the UI space, to take advice and to answer questions. That's really been the bulk of what our work is. Today, for example, we're briefing on the trust fund – taking questions and taking advice. There are no votes for most of the topics that we cover.

Julia Gorton: The only thing I was going to add to this conversation is that the only time we haven't been able to reach consensus is when we've been talking about changing the decision making in the charter. So, I just think that's a relevant point here. We've been able to reach consensus on everything else and so appreciate the continuation of making decisions on consensus basis.

Josh Swanson: I know that this was raised last meeting with respect to being consistent with how we function prior to our restructuring of this committee. You now have kind of new entrance or new entries with respect to the public sector members. My point last meeting was that we don't want a situation where you could hold the department hostage with respect to decision making, so all that to say that it looks like, based on your charter draft, that obviously we strive for consensus. But if consensus cannot be reached then we use Roberts Rules of Order which means that the majority rules in those situations.

Tammy Hetrick: I just want to be sure I clarify, even if you don't have consensus, you can still move forward. You just wouldn't have the recommendation of the UIAC. Am I correct?

Dan Zeitlin: So, let's just say we have an agency request legislation that employers and general public support, but employees do not. We wouldn't be going to the legislature and saying this is something supported by the UIAC. But it would be something we could still move forward - with employers and general public in support and employees opposed, and that would be the stakeholder information policy makers have on that topic. We are short a couple of members, so we can continue to engage in this conversation between this meeting and next and, hopefully, have full attendance and be able to finalize the direction at our November meeting.

Meeting Minutes

Dan Zeitlin requested that everyone review the meeting minutes for September 27, 2022 and provide their feedback. Brenda Wiest made a motion to approve the minutes and Josh Swanson seconded the motion. Dan asked for all members in favor to say, "Aye." All members responded, "Aye". Dan asked members that oppose to say, "Nay." No one responded. The September 27, 2022 meeting minutes were approved.

Dan Zeitlin handed the meeting over to Caitlyn Jekel, Government Relations Director, ESD to continue the discussion.

Agency Request Legislation

Job Search Agency Request Legislation

Extend flexibility of job search monitoring requirements (Job Search Requirements)

- ESD's legal ability to pursue alternate ways for claimants to fulfill job search requirements is set to sunset in 2023, ESD proposes removal of this sunset to make these provisions permanent.

Recommended edits proposed by business:

- Section 1(b) ...meet the intent of rigorous and relevant reemployment efforts that consider a claimant's employment history in determining appropriate job search activities.
- Section 1(c) ...the commissioner's agents shall utilize consult with an existing advisory committee
- Section 2
 - ...in consultation with the advisory committee referenced in RCW 50.20.240(1)(c) must submit a report
 - The report must include a section for advisory committee members to respond directly to the contents of the report.

Julia Gorton: *I just want to say that we appreciate the changes made in this bill. The advisory committee referenced in that statute is equal representatives, business and labor pre-suggesting that is this committee. Is it a subgroup of this committee, or something else?*

Dan Zeitlin: *In practice, it is this committee. This is the UI Advisory Committee, and on the one hand, there is equal representation of employee and employee representatives. On the other hand, we recognize there are general public representatives that have views as well. So, this would be this advisory committee. I think we could potentially discuss if it should be a subgroup looking at this issue or not to keep the balance, but the reference is to this committee.*

Anne Paxton: *Looking at 50.20, it still says that the Commissioner shall appoint a State Advisory Council that are not more than nine men and women – three representatives of employees, employer and the general public. Does that need to be updated?*

Dan Zeitlin: *For example, the minimum weekly benefit amount report we just engaged in was with this committee and with opportunities for comment on the contents of report that we did allow for obviously anybody on the committee to comment on so I don't know that the statute has to be changed for this bill to be and work as written. You will continue to run into an interest in the legislature in having equal representation across employers and employees advising the committee and commenting on reports and a statute that has three groups represented on that committee.*

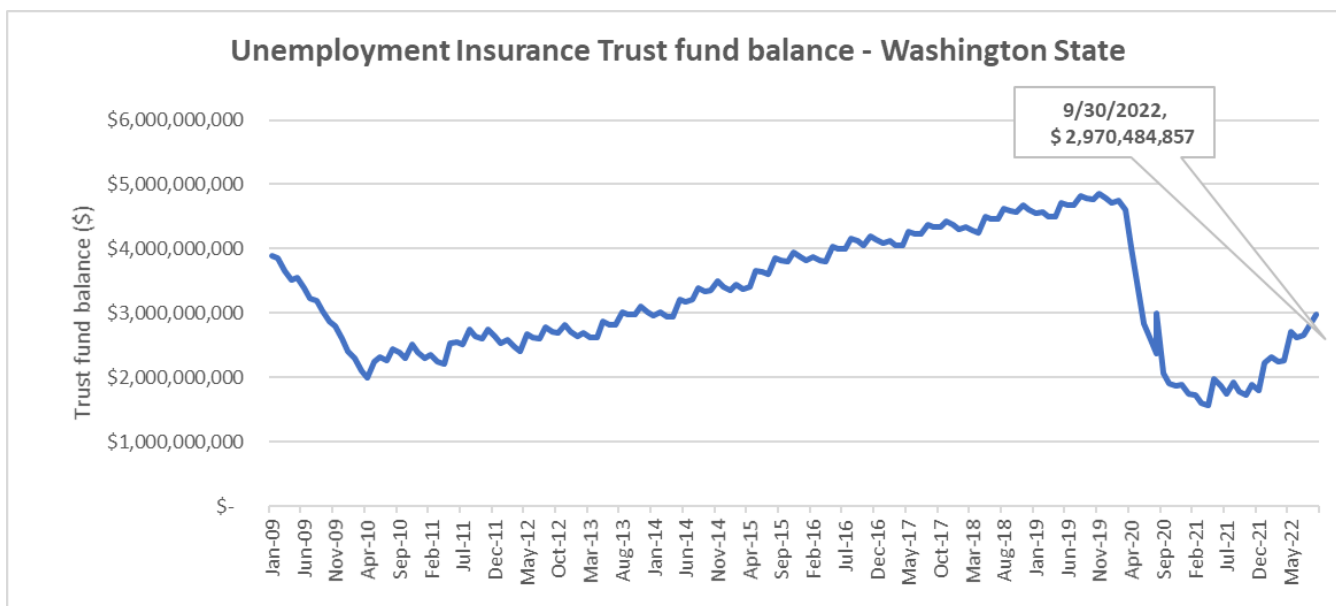
Anne Paxton: *If I could also make one comment about the proposed language – efforts that consider acquaintance, employment, history in determining appropriate job search activities. This is indeed one of the most important aspects of suitable work, but I was suggesting that because suitable work contains a lot of other goals or job search, that there be a cross-reference to suitable work factors as defined in 50.20. In place of this kind of narrow mention of only employment, history.*

Caitlyn Jekel: *Okay, we will explore that and send via email to this group.*

Dan Zeitlin handed the meeting to Vaughn Ellis, UI Trust Fund Analysis Supervisor, ESD to continue the discussion.

September UI Trust Fund Report

- The [September 2022 report](#) provides the status and updated projections of the state’s unemployment insurance (UI) trust fund for 2022 through 2027.
- The report is based upon the September 2022 economic forecast released by the state’s Economic and Revenue Forecast Council (ERFC).
- The report uses quarterly forecast information and UI tax and benefit data through June 2022 (Q2 2022).
- On September 30, the UI trust fund balance was approximately \$3.0 billion



September UI Trust Fund Report: Key Takeaways

- The unemployment trust fund balance is on a positive trajectory through 2027.
- The projected trust fund balance for 2022 is roughly \$3.3 billion, about \$340 million higher than in the June report.
- The average projected tax rate for 2022 is 1.33%, compared to 1.34% projected in June.
- Benefit payments are projected to be approximately \$98 million lower in 2022 than projected in the June report.

UI Trust Fund Forecast (September 2022)

	June 2022 Forecast	Sept 2022 Forecast
2022 Unemployment Benefit payment projection	\$1.2 Billion	\$1.1 Billion
2023 Unemployment Benefit payment projection	\$1.4 Billion	\$1.3 Billion
2022 Employer Contributions	\$1.8 Billion	\$1.8 Billion
2023 Employer Contributions	\$1.8 Billion	\$1.8 Billion

Benefit Payments

- The average annual wage is used to calculate unemployment benefit levels for the year (July-June).
- The minimum weekly unemployment benefit, calculated per state statute at 20 percent of the average weekly wage, is \$317 for new claims opened on or after July 4th.
- The maximum weekly benefit, which is the greater of \$496 or 63 percent of the average weekly wage, is \$999.
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Benefit Payment Amounts

Year:	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
Amount (in billions):	\$1.6	\$1.2	\$1.4	\$1.6	\$1.7	\$1.6	\$1.6

Experience Rate

- The experience rate tax is an annual calculation based on the ratio of benefit claims charged to the employer and “taxable wages” reported by the employer over the preceding four fiscal years.
- Per state statute, the taxable wage base was \$62,500 in 2022 and will be \$67,600 in 2023.

Average Experience Tax Rates

CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
1.23%	1.00%	1.00%	1.00%	1.00%	0.78%	0.75%

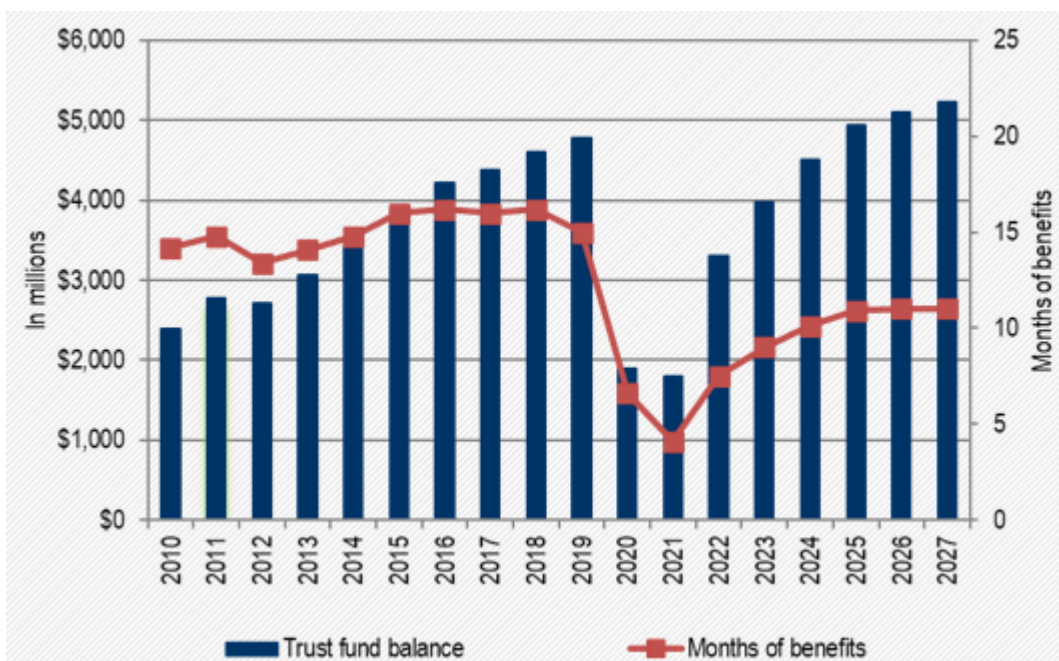
Social Tax Rate

- The “flat social tax” is an annual tax calculation made after September 30 subtracting total experience rated taxes paid by all employers over four consecutive quarters from total unemployment benefits paid to all claimants over those same quarters.
- This amount is then divided by total taxable payrolls and expressed as a percent.

Projected Flat Social Tax Rates

CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
0.50%	0.50%	0.60%	0.60%	0.50%	0.50%	0.45%

Projected Trust Fund Balances



Year	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027
Amount (in billions):	\$ 1.8	\$ 3.3	\$ 4.0	\$ 4.5	\$ 4.9	\$ 5.1	\$ 5.2

Anne Paxton: Is there anything simple we should know about the variation in the social flat rate?

Vaughn Ellis: We have a number of bills geared for tax relief, so the rates didn't get as high over the past couple of years.

Josh Swanson: If there is a mild recession in 2023, how well positioned is the trust fund to respond to that?

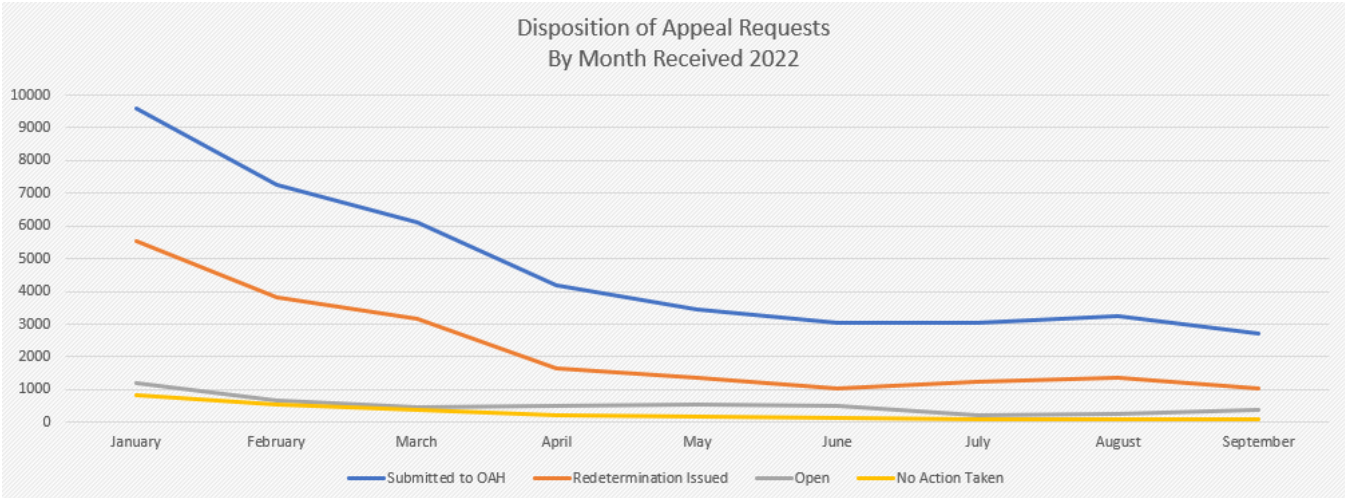
Dan Zeitlin: If we were to have a recession in 2023 or 2024, there are still those social tax caps in place below the -1.22% so we wouldn't breach those and bring more revenue in the fund. But with those caps, we would still see that gradual increase in that percentage and then individual employer experience rates smooth that over a 4-year period. Obviously, the other component of helping to build the trust fund back up is if we do see another recession.

Julia Gorton: I just want to say that this is really good news, at least from my perspective, that we were able to provide really historic relief to businesses while maintaining the benefits for workers without any detrimental impact to the trust fund. We didn't have to take a loan, so I think this is really positive and thanks for the report. I think we're also well positioned to enter any type of economic slowdown. If that's what happens, it's good to see that the trust fund is kind of slowly rebuilt to that sweet spot right at the 7 to 12 months of reserves and I just want to thank the department and the advisory committee members for working to achieve those results.

Dan Zeitlin announced a 15-minute break and asked everyone to return at 11:10 a.m.

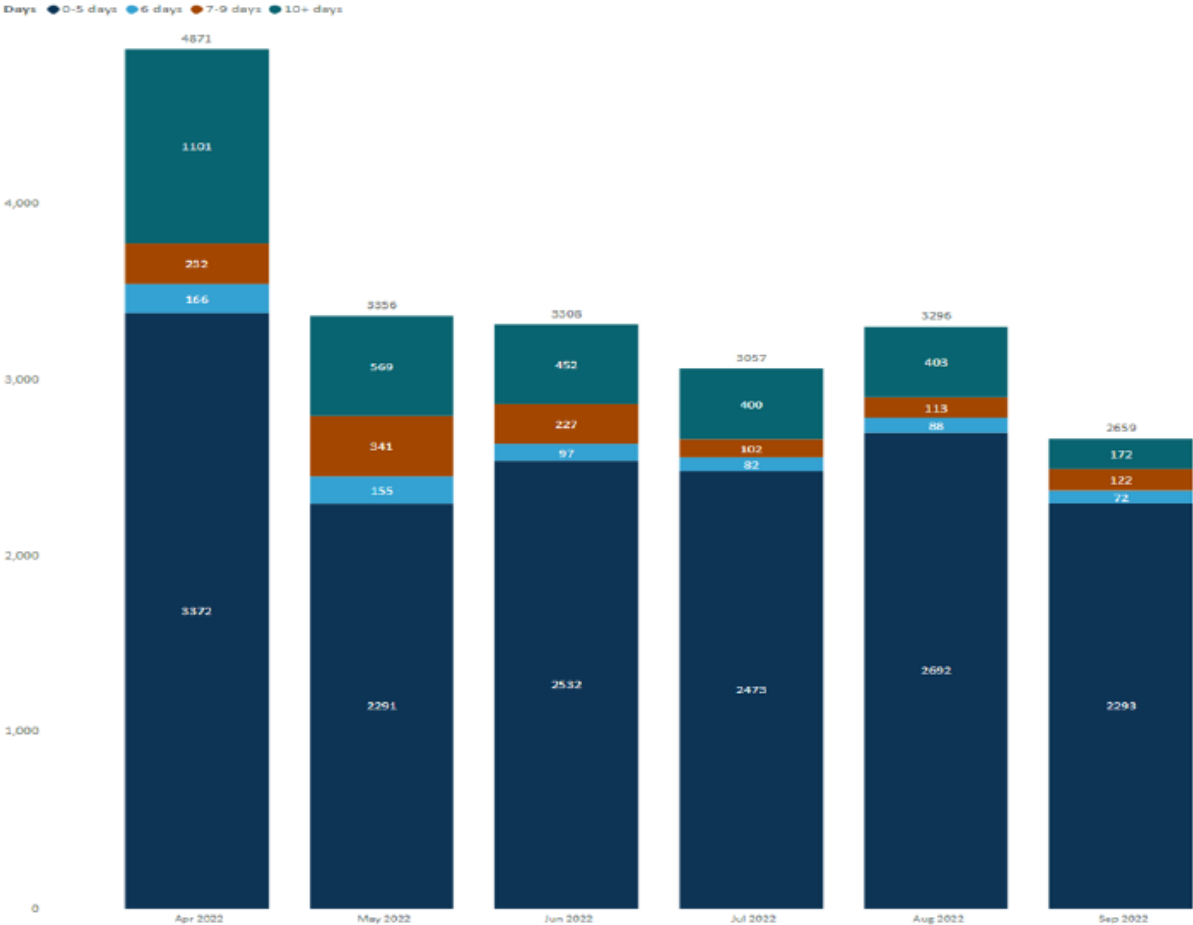
Upon return from the break, Dan Zeitlin handed the meeting over to JR Richards, Unemployment Insurance Customer Support Director, ESD to continue the discussion.

UI Appeals Update



UI Appeals – Days to Transmit to OAH

UI Appeals Transmitted to OAH by Month 2022



JR Richards handed the meeting over to Brendan Tukey, Division Chief, OAH to continue the discussion.

UI Appeals Update (2019-22 Overview)

	1 st Quarter CY 2022	2 nd Quarter CY 2022	3 rd Quarter CY 2022	4 th Quarter CY 2022	CY 2022 (To Date)	CY 2021	CY 2020	CY 2019
Intake	29,267	13,199	10,608	TBD	53,073	88,775	60,584	29,671
Closed Appeals	24,043	19,460	17,102	TBD	60,605	74,825	35,789	31,184
Backlog Change	+5,224	-6,261	-6,494	TBD	-7,532	+13,950	+24,795	-1,513
Default Rate	39.95%	34.56%	30.33%	TBD	35.5%	35.09%	36.10%	35.61%

Josh Swanson: *There's a significant uptick in appeals hearings and I am hoping that maybe some of these are getting a look at the department level with respect to the identity verification because we got a lot of those where the worker goes back to work. They quit looking at their online account. They get a notice from the department that requests that they verify identification. The worker does not see it until it is too late – until they get the letter, which is usually sometimes past the appeal date. I am hoping that's part of that 25% the department is handling that you guys don't have to.*

Brendon Tukey: *The general trend lines, I think, are all positive on that regard.*

Josh Swanson: *With respect to overturning of decisions by the department, do you track that as well?*

Brendon Tukey: *We don't particularly track that but that is information that we can dig into. We do have it. We just don't have reports that that make it super easy.*

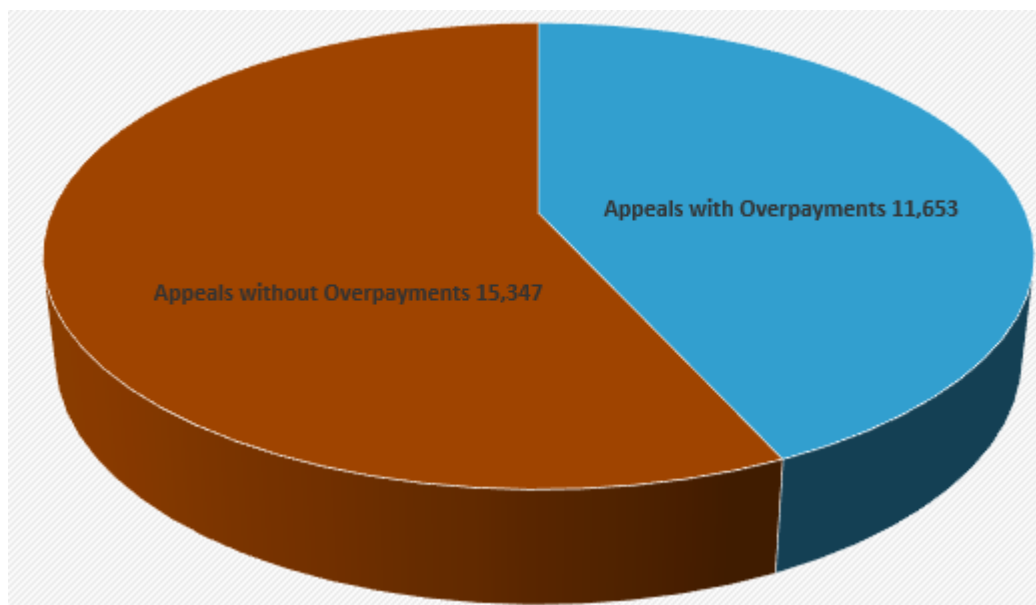
Anne Paxton: *I was struck by the default rate and I wondered if you could comment on it. I'm interested in what is the breakdown between employer defaults and employees' default, and I wondered if it looks like it's up significantly 4 to 5% in quarter one of this year.*

Brendon Tukey: *I don't have a breakout for you – employer versus employee on the default rate. That's certainly data we could develop for you if you'd like to follow up on that. So, our default rate has been right around the 35%, with some variation. Small variation maybe popping up 36, dropping on 34.*

Jerry Vanderwood: *What is it default?*

Brendon Tukey: *A default is where the person who filed the appeal does not appear at the hearing*

OAH Appeals Update (Overpayments)



Julia Gorton: *What is this graph showing? Is this current case load?*

Brendon Tukey: *I think last time you looked at this it was closer to around 50%, as you can see now, it's all over 50%, and it's been trending downwards.*

Josh Swanson: *Is there a part of your metrics to say we're seeing a trend or an uptick on these types of claims that are based on data and is it conveyed to the department?*

Brendon Tukey: *We're in regular contact with ESD. We have meetings that we have on a regular basis and also just day to day exchanging emails or calls questions or concerns about process.*

OAH Appeals Update (Brief Adjudicative Procedures – BAPs)

<u>As of 30 Sep 2022</u>	<u>Overpayment Pilot</u>
<ul style="list-style-type: none"> ▪ Total Docket No's: 3,487 ▪ Withdrawals: 151 (5.5%) ▪ Conversions: 134 (3.8%) ▪ Docket No's Resolved: 3,157 (90.5%) ▪ Would expect about 1,860 w/ FAP ▪ Submissions: 653 (20.6%) 	<ul style="list-style-type: none"> ▪ Starting: 7 Oct 2022 ▪ Set to run for three weeks (complete by 28 Oct 2022) ▪ 60 Docket No's per week – total: 180 (Predict 160+ resolved w/in BAPs)

Brendon Tukey handed the meeting back to Dan Zeitlin to continue the discussion.

November Meeting Topics

- **OPMA Training**
- **UI Overpayments Update**
- **State Quality Service Plan**
- ESSB 5193 (2021) Implementation
- CARES Act Program Close-Out

Action Item

- ESD data on appeal redetermination rate

Public Comments

Lexy Reyelts Salas, Working Washington

Q: What percentages of appeals are based on overpayments?

A: Office of Administrative Hearings (OAH) data presented at the meeting indicate that 43% of outstanding appeals have associated overpayment and 57% have no associated overpayment. "Outstanding" means appeals at OAH still awaiting action.

Q: Were there any overpayment waiver updates during this meeting?

A: No updates were given during this meeting

Q: Will you cover updates on the overpayment waivers for the next meeting?

A: ESD will provide updates at ULAC when we have new information to share.

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:45 a.m.

Next meeting

November 9, 2022 from 10:00 a.m. to noon via Zoom.

Addendum I

Agenda

Unemployment Insurance Advisory Committee (UIAC)

Wednesday, October 19, 2022 | 10:00 am - 12:00 pm | Via Zoom | 212 Maple Park Ave SE, Olympia, WA 98501

Time	Topic
10:00 am	Welcome from Dan Zeitlin, Employment System Policy and Integrity (ESPI) Director, Employment Security Department (ESD) <ul style="list-style-type: none"> o Agenda Overview
10:05 am	Approval of September 27, 2022 Meeting Minutes
10:10 am	General Administration <ul style="list-style-type: none"> - Dan Zeitlin, ESPI Director, ESD o UIAC Charter
10:20 am	Agency Request Legislation <ul style="list-style-type: none"> -Caitlyn Jekel, Government Relations Director, ESD o Job Search Requirement
10:30 am	September UI Trust Fund Report <ul style="list-style-type: none"> -Vaughn Ellis, UI Trust Fund Analysis Supervisor, ESD
11:00 am	Break
11:15 am	Appeals Backlog Update <ul style="list-style-type: none"> -JR Richards, Unemployment Insurance Customer Service Director, ESD -Brendon Tukey, Division Chief ALJ, OAH
11:45 am	Closing Discussion <ul style="list-style-type: none"> -Dan Zeitlin, ESPI Director, ESD o Future Agenda Topics
11:50 am	Public Comment
12:00 pm	Adjourn

For more information, please visit the UIAC website at <https://esd.wa.gov/newsroom/UIAC>

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