

February 11, 2016

Rakesh Mohan
Director, Office of Performance Evaluations
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Dear Director Mohan:

Thank you for affording the Idaho Department of Labor (the "Department") an opportunity to submit a formal response to your report on administrative hearings and risk of bias. In this response, we hope to explain the unique characteristics of the Department's hearing officer system, which functions at a very high level, is subject to stringent federal oversight and has a very low risk of bias. In light of these unique characteristics, the Department believes there is no reason for discontinuing the Department's current hearing officer system and moving it to a central panel.

The greatest number of appeals heard by the Department relate to unemployment insurance ("UI") benefit determinations. The first level appeals of determinations are heard by the Appeals Bureau, an independent division within the Department. For the period 2011 through 2015, the number of first level UI appeals ranged from 5,000 to nearly 8,000 annually. At the height of the recent recession, appeals exceeded 10,000 in one year.

Idaho's UI system is administered by the Department with ongoing oversight by the federal government. This oversight is a product of federal "conformity" requirements and federal funding of state administrative costs. Nearly all of the Department's costs related to its UI program are directly funded by annual federal grants through a complex formula that includes, among other measures, an evaluation of the timeliness, efficiency and quality of decisions of the Appeals Bureau.

If Idaho were to fail to meet federal "conformity" requirements, there could be drastic consequences. Idaho's covered employers could lose their existing federal FUTA tax credit against state unemployment taxes (SUTA), resulting in much greater taxes, and the Department could lose federal funding of its UI program.

Nearly all of the factors described in this report that would contribute to bias are not found in UI appeals, and most of the protective factors exist in UI appeals. These include:

- **The Director of the Department has no role in the appeals process.**
- **Department hearing officers are independent.** They are all full-time, classified state employees, and physically and organizationally separated from the rest of the Department. They are not involved in the Department's underlying investigations and determinations of eligibility.
- **Department hearing officers are experienced.** Of the Appeals Bureau's seven current full-time hearing officers, four have 13 or more years experience in the UI field. The average of our hearing officers' UI appeals experience is more than 11 years.
- **Department hearing officers are subject matter experts in the UI benefits field.** The UI field requires an understanding of unique procedural rules and substantive law and the more than 60 different legal issues that may arise. The Department's appeals hearings are not subject to the Idaho Administrative Procedure Act or the Idaho Attorney General's Procedure Rules, but rather to procedural rules promulgated by the Department.
- ***Ex parte* communications are prohibited.** Applicable IDAPA rules prohibit *ex parte* communication with hearing officers, the Chief of the Appeals Bureau (who directly supervises the hearing officers), and their clerical personnel. The rules expressly state the Department staff shall not attempt to influence the disposition of an appeal by the Appeals Bureau.
- **First level appeals to the Appeals Bureau and second level appeals by the Idaho Industrial Commission are conducted on a *de novo* basis.** There is no presumption of correctness of the fact finding and legal conclusions of both the initial eligibility determination and the first level appeal. The Industrial Commission, which conducts the second level *de novo* review, is completely independent of the Department.
- **The Department does not have a vested interest in the outcome of UI appeals.** Unemployment benefit claims are paid from a federally managed trust fund and have no effect on the operating budget of the Department. The real parties in interest in these appeals are employers and claimants.
- **The Department's UI hearings are systematically monitored by the federal government for due process, timeliness and the quality of their decisions.** The United States Department of Labor ("USDOL") conducts quarterly reviews of randomly selected hearings and scores them for timeliness and quality. The expected timeliness measure requires written decisions in first level appeals within 10 days of the hearing date and no later than 30 days from the date of filing of the appeal. USDOL reviews the quality of UI hearings and decisions based on 38 criteria, including due process, bias and prejudice, testimony and cross-examination, quality of the record, and clarity of written decisions. The Appeals Bureau's performance is consistently ranked by USDOL among the top 5 of all states.

- **Competing federal requirements assure fair decisions.** The federal government requires the Department to promptly make determinations of eligibility. It also requires the Department to protect against and collect overpayments and to afford claimants due process. These competing policies result in fairer decisions because the Department could not favor claimants over employers, or vice-versa, without negatively impacting federal performance measures.
- **UI hearings will become fully integrated with the Department's internet unemployment system ("iUS").** The Department's iUS system recently received a national award for technological advancement. The Department intends to integrate UI appeals within this system to improve efficiency and have real-time tracking of performance metrics, which exist now for its initial determinations. The iUS system is required to meet USDOL and Social Security Act data security requirements; system information cannot be shared or transmitted over networks of other state agencies. These heightened data security requirements apply to activities relating to both initial determinations and subsequent appeals.

Because of these differences and protective features, the risk of bias in the Department's appeals hearings is very low. That fact, combined with the unique area of law involved in these appeals and UI hearings officers' top federal scoring, are strong reasons for maintaining the Department's existing hearing officer system.

Sincerely,



Kenneth D. Edmunds
Director