Public Meeting on Unemployment Tax Rules, 9/18/07

EMPLOYMENT SECURITY DEPARTMENT
STATE OF WASHINGTON

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TRANSCRIPT OF PROCEEDINGS
of
PUBLIC MEETING ON UNEMPLOYMENT TAX RULES
PROFESSIONAL EMPLOYER ORGANIZATIONS
________________________________________________________

Date and Location

September 18, 2007 Employment Security Department
Tuesday, 9:00 a.m. Maple Leaf Conference Room
212 Maple Park
Olympia, Washington

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BE IT REMEMBERED, that a rules meeting was held on
the date and location as set forth above. The Employment
Security Department was represented by Art Wang, Special
Assistant for Unemployment Insurance Taxes, and Jill Will,
Lisa Marsh and Joel Sacks.

Reported by:
Cheryl A. Smith, CCR, CVR
(License #3017)

EXCEL COURT REPORTING
16022-17th Avenue Court East
Tacoma, WA 98445-3310
(253) 536-5824
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MR. WANG: Why don't we go ahead and proceed here. My name is Art Wang. And I'm the special assistant for unemployment taxes with Employment Security. And I will be facilitating this meeting today. This is the second public meeting we've held on the unemployment tax rules dealing with the subject of PEO's. Actually, in some respects, it's the third meeting. We had one yesterday on PEO's, so this is kind of an extension of that meeting. We had a meeting previously on June 26 that dealt with several subjects of tax rulemaking. PEO's is just one portion of that. Actually, you've got materials -- you've seen materials that are on the table over there that have the rules for all of the different proposed batches of things including PEO's.

MR. WANG: Let's go ahead and simply go around the room and introduce yourselves. The people on the phone have already given their names and spellings to the court reporter, but for the others, please do so also for the
court reporter, Cheryl Smith, here and identify your organization. 

And actually, I've already introduced myself. Let me start with the people on the phone, if you could just introduce your name and organization or title.


MS. KURZWEG: Cecelia Renn Kurzweg with ADP Total Source.

MS. MACKEY: Erica Mackey with ADP Total Source.

MR. WANG: Those are the three people on the phone.

So please identify yourself when you speak on the phone.

MS. WILL: And that might also be helpful just for the people on the phone to just identify yourself when you're making a comment.

And this is Jill Will with the Employment Security Department.


MR. COHN: Todd Cohn, C-O-H-N, with the National Association of Professional Employer Organizations.


MR. SORENSEN: Mel Sorensen, S-O-R-E-N-S-E-N, on Excel Court Reporting (253) 536-5824
MR. HALSTROM: Jim Halstrom, H-A-L-S-T-R-O-M, on behalf of NAPEO.


Rulemaking Process

MR. WANG: Just to briefly go over the process, again, and schedule of things, as I said, we had the first public meeting on June 26. We also had received written comments from that from a number of people. Lisa Marsh, Jill Will and I all met with several groups of stakeholders and received comments on that. Based on all of those things, the outlines that we had distributed at the June 26th meeting, the meetings, the comments received and everything, we put together these draft rules, which I have for you, which were released on September 7th. I want to emphasize that they are still in draft form.

Now is the time to comment on them and to provide input. We really need input by the end of this week because we intend to file formal proposed rules with the
code revisor by October 3rd, and that's the CR-102 process
formally that we would be going through October 3rd. And,
frankly, it's very hard to change rules significantly
after that. So even though there will be another public
hearing after that, it's much harder to change the rules
after that. So now is the time when I need the input on
these draft rules.

We would anticipate emergency rules around November
1st on rate setting because we need that to become
effective in time for late November when we calculate the
2008 rates. In late November we will file the CR-103
which announces the adoption of the final rules and the
remainder of the rules will be effective January 1st. So
that's generally the timeline of what we're planning here.

Public Comments & Discussion on PEO Issues

MR. WANG: With that, I'm simply going to go around
and ask if there are comments and things that you want to
introduce or things that you want to discuss. I tried to
listen last time and make this a less formal situation and
just have it more at a conference table and we can have a
more open discussion.

And I did receive some written comments also in
advance from ADP.
MR. THORESEN: Are those going to be shared with the rest of the group?

MR. WANG: Why don't we do it this way, why don't we leave it open for ADP. I'll start with ADP and if they want to comment, whatever extent they want to share those things, I'll leave that up to them.

Cece and Erica, do you want to start?

MS. KURZWEG: Sure. Art, would you like us to simply address the section that we commented on? Would that be the quickest, easiest way to approach this? Or I'm wondering whether it might be helpful to go section-by-section and everybody who has comments on each section can chip in.

MR. WANG: I'm amenable either way. So it does not matter either way. What's the preference of the group? Let's do it section-by-section.

We've also been joined by two other people. And let me get you to introduce yourselves.

MR. SACKS: Joel Sacks, S-A-C-K-S. I'm with the Employment Security Department.

MR. JOHNSON: Jeff Johnson with the Washington State Labor Council, AFL-CIO.

MR. WANG: Well, let's go ahead then section-by-section. Is there anything on -- the first one is joint accounts. Any comments on that?
MR. COHN: This is just to clarify, this is just taking the statutory language and putting it back into the WAC, is that correct, with regard to joint accounts?

MR. WANG: Basically, yes.

How about the next section, 200? What I tried to do here is to balance out the convenience of having a definition of the PEO together with the PEO rules, but also referring to the statutes without repeating full text of the definitions in all the various statutes. So it's kind of a little bit of both rather than just repeating.

MS. KURZWEIG: That's nicely done. We don't have any comments on this section.

MR. WANG: 210, requirements for PEO's and client employers. I assume there will be several things here.

MR. COHN: I'll start off. I have several comments here, but I'll start off with one comment and see where we go from there and reserve the right to come back with other comments, Art, if that's all right with you.

I first wanted to focus on the 30-day requirement, which is in Subsection (5), saying that within 30 days for any client employer registering with the Department for the first time that the PEO must provide posted information. I don't have a problem there. I guess I just want to know how this will mesh up with, I guess, Section (3), in this section as well where it says,
"(PEO's) must ensure that their client employers are registered with the department.... (PEO's may also) only file papers to register the client employer if they also filed with the department a power of attorney form...."

Is the inference here that the PEO has 30 days upon bringing on a new client to register all of this information with the Department? That may not be something you can answer now, but I guess that's an open-ended question. Are all the requirements for PEO's in registering their clients and client information with the Department, is that a 30-day requirement from the inception of the PEO relationship? And if so, we just like to ensure that it's clear throughout the regulation that all the requirements for reporting upon both the entrance into a PEO relationship and the exit follow that 30-day requirement.

MR. WANG: I'm not sure I'm quite understanding. As I envision it, in order to have the authority to register the client, you need the POA. So you need to have the power of attorney first in effect. And then you have to register that within 30 days of whenever you are -- you have to register it within 30 days of when you start the relationship with the client.

MS. KURZWEG: If I could ask Erica a brief question.

Erica, don't most of our clients already come on board
with their numbers and we can track them through our comp
data?

MS. MACKEY: A majority of the clients usually come
on board with a UBI number.

MS. KURZWEG: How does this differ?

MS. MACKEY: The difference is is that they can have
a UBI number but may not have been set up for unemployment
purposes. We do have that happen a lot.

MS. McHENRY: So what you're saying is that the power
of attorney has to be in place prior to any type of
registration with the Department. And it seems that the
Department has to actually approve the power of attorney
as well because there seems to be another section where it
says the Department will acknowledge the power of attorney
with a letter.

And so to follow through everything you're saying,
you're saying that we have to submit the power of attorney
first, the Department must acknowledge it, and then we can
register on our client's behalf.

MR. WANG: Actually, no. If that's what I implied,
then I did not mean to. What I'm anticipating is that you
would simply send in the power of attorney at the same
time as the registration. That would make sense to me in
terms of just how you would do it. You would send in the
paperwork all at once.
MS. KURZWEG: That's how we read it too.

MS. MACKEY: Art, I had a question regarding the State acknowledgment of the power of attorney from the PEO. How quickly will that be set up in the State's system so that the State recognizes the PEO as the authorized agent or authorized representative for the client?

MR. WANG: I thought it was in effect now. Are your clients not receiving them now? And I'm seeing heads shaking saying, no, that they are not.

MS. MACKEY: They are getting them. Some of them are. I guess our concern was to make sure that the acknowledgment is in the State's system so that, say for instance, a client came on and we sent in the power of attorney at the time we filed their returns, we want to ensure that we don't get our returns rejected or delinquencies sent to the client because we're not their authorized representative.

MS. KURZWEG: In other words, Art, how long will it physically take the Department to process the POA's and complete any necessary system setups in order to recognize us for reporting purposes? Is it like a matter of a day? Or is there going to be some manual element to it on the Department's end that will take time? How long will it take the ESD to process the POA's and make any setups?
necessary to recognize us for filing purposes?

MR. WANG: Let me back up and indicate what my understanding is and I will have to go back and recheck this to make sure this is, in fact, what we are doing. But my understanding was that you would submit typically the POA at the same time as anything else. If it's a new client, for example, you would submit the POA and the information about registering the new client presumably at the same time. You would be recognized -- the confirmation to the client is intended -- it doesn't require any other action from the client's end or from the Department's end. It's simply a verification. So we just wanted to make sure that, for example, with all the concerns about everything from identity theft, etc., that there was some means of just making sure that the client, in fact, knows that, yes, indeed, somebody is claiming to represent them. And so its intended to be just a unilateral letting the client employer know that information. So it doesn't require any additional setup from our end other than just receiving the POA in the first place.

MR. HEATON: My question is is how long will it take for the Department to acknowledge they received what we've sent? We sent the majority of the required information in August before September 1st and we have received no
acknowledgment that it was even received. And this is really concerning. We don't know whether we're completely out of compliance, whether you have handcuffs ready for me today. I mean, seriously, there should have been a courtesy reply that something was received. And we submitted it all in the format, and there's always questions going in, there's always variances.

We had one client who will be a subaccount because they're a very large organization and their legal counsel said, "Go ahead and sign it, but don't put any of your personal information on the POA." Who do we turn to on questions like this?

We have a client who is a Canadian company who does not have a Social Security number. They can't possibly fill it all out. And there's no one for us to turn to to answer these kinds of operational questions.

So we sent it into the State. We think it must have been received somewhere, but we're not sure.

MR. WANG: And I apologize. I did not realize that we had not sent out acknowledgements at all or that there's been no response.

MR. HEATON: But the acknowledgement, sending it to the client, I understand why you're doing that. But the client doesn't call us and say they received anything. Because we were the ones who had the legal obligation to
1  send it to the State and there's been no response that it
2  has been received.
3       MS. WILL:  And we'll take that up with the tax
4  branch.
5       MR. HEATON:  There should be an auto reply within
6  five minutes. Because we're sending sensitive
7  information.
8       MR. WANG:  And your point is well taken. We should
9  acknowledge that, I agree. We should find a means to
10  acknowledge that and deal with that.
11       It is the status unit within the tax branch which has
12  been dealing with a lot of these things and they have just
13  been overwhelmed with -- it's not an excuse, but they have
14  been overwhelmed because of a number of other changes that
15  have been going on with the corporate officers and various
16  other things too.
17       MS. MARSH:  Can you point me to what section we're
18  talking about? I've gotten lost in the WAC's.
20       MR. WANG:  Basically, just the process of registering
21  with the POA is, I think, what we're talking about here.
22       MS. MARSH:  And so we're asking to have a requirement
23  in the WAC's that says a response by ESD in a certain time
24  frame, is that what the request is?
25       MR. WANG:  I don't think you're asking for any
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1 changes in the WAC's.
2 MR. HEATON: Just a courtesy to let someone know that
3 information was received. Because the absence of it tells
4 us you didn't receive it.
5 MS. KURZWEG: Or that it's not complying so that we
6 could cure it prior to the quarterly filings so that your
7 systems recognize us.
8 MR. WANG: Your point is well taken. I understand
9 your concern and I agree that we should be acknowledging
10 it. Whether or not we can actually go through and verify
11 everything is correct, you know, I don't think we can do
12 that. I mean, we're not going to go through and say,
13 "Okay, everything's" --
14 MR. HEATON: Will there come a day when we do know
15 whether it's all correct?
16 MR. WANG: I think that normally the process would be
17 -- I mean, it's hard just to say -- to give a blanket,
18 okay, everything's correct. Because it could be that we
19 discover that -- conceivably we do discover six months
20 down the road, oops, she gave us the wrong Social Security
21 number on this. It's not a big deal. But nevertheless,
22 we can't give you carte blanche saying, "Yes, everything
23 is perfectly correct on this" without having investigated
24 or doing something on it. And, frankly, I'm not sure that
25 makes a whole lot of sense for anybody to do that.
MS. WILL: For instance, Jim, we would not verify the correctness of a Social Security number, for instance, until the point in time that the Social Security number was needed to process a claim or some pieces of information we would take at face value from you until such time as something came up to say that there may be an error here. If we were mailing a piece of information and it came back undeliverable, it's not to say that we are going to physically validate every piece of information that you provide to us. It would be our presumption that the information you are providing us is correct unless there was a reason to believe otherwise. If we ran the Social Security number for purposes of establishing eligibility for a claim and for some reason that came back from the Social Security Administration as a no match, then we would, at that point, take steps to say, "We have information that there is a problem with the information. Can you correct this or can you verify this?"

Do you understand the distinction I'm making?

MR. HEATON: I understand that what we send is not taken seriously. Because what you just told me is that don't worry about sending accurate information because only maybe someday in the future we'll care if it's accurate. And we're out there really struggling in operational reality trying to get accurate information.
And there's all kinds of things on there that some of our clients will not fill out. We need someone to turn to. If it was not important, it should not be on the form.

MS. WILL: It is important, Jim. But I'm saying to you, every piece of information that we gather as a department is a requirement, but we do have -- for instance, we receive millions of pieces of information of Social Security, name, wages paid, hours worked. We need all that information in order to operate our system. But we don't verify every piece of information unless something comes up, an anomaly occurs. If someone makes a claim and the name does not match the Social Security number or the Social Security number shows up not valid by the Social Security Department or there is no eligibility established, yet the worker thinks that they have worked enough hours --

So there is -- you know, unless there's an audit which occurs, numbers are usually presumed to be correct. And the same way that you supply information for a variety of purposes, that information is presumed correct until a problem comes up.

MR. THORESEN: I would just like to ask kind of a clarifying question. The employee stuff that is sent in quarterly, I mean, that's been done and we continue to do that. But what is our understanding, you know, you want
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officers, owners' names, "sosh" numbers and all that information. And part of the purpose was to see whether those particular owners or officers were on your list of people that you have trouble with, that have abused the unemployment system. So if nobody is doing anything, how are we going to know that?

MS. WILL: We will be checking the database of corporate officers against the Social Security information. When a claim comes in, we will run that information against the corporate officer database.

MR. THORESEN: Only if they file a claim.

MS. WILL: If they file a claim. That's why I'm saying if at some point in time that match takes place or somebody seeking to file a claim, you have, you know, here's Path A for regular employer, here's Path B for a corporate officer. And if it's a corporate officer, we need all the rest of that information in order to continue with the process that says, "Yes, this person is eligible for benefits," or "No, this person is not."

MR. WANG: We're also mixing together at least two different things here. Because we are talking here, I think, specifically about the PEO's and the application of the corporate officer requirement for PEO's. There's also a wider, more general mailing which went out to 98,000 corporations in this state to file information about
corporate officers. And so that is due at the end of this
month as opposed to the registration for PEO's which was
due at the beginning of this month. It just happens to
coincide. They're kind of overlapping in time. But I'm
not sure if we're mixing together those two different
issues.

MR. HEATON: My question is from what I've just heard
now is how serious and what parts of the POA do we take
serious. Does someone even check if there's a signature?
Because I don't know what parts are important now.

MR. THORESEN: It's kind of a follow-up and it kind
of relates to both what we've already sent in, but on an
ongoing basis. So what happens to those? Where do they
going? Do they somehow get into your system so if we have to
call the Employment Security Department and say, "Hey, we
need to verify the client's rate?" are they going to say,
"Well, I'm sorry. I can't talk to you"?

And we say, "Look, we sent in a POA two weeks ago."

How does this kind of all work and how are we going
to be able to use -- to confirm with people in the
Department that we've got the authority to speak on behalf
of the client?

MR. WANG: Lisa, please jump in as I get into trouble
on this. But my understanding is the information is
recorded and should be available basically in our computer
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1 system so that it's available. And I believe it would
2 show up on a screen that shows when the client employer
3 comes up -- if a question comes up about a client
4 employer, there should be on the screen an indication to
5 see who the representative is. And that should be linked
6 so that your name as the PEO would pop up for that.
7 Lisa, is that correct?
8 MS. MARSH: That is.
9 MR. HEATON: And so would this help in the instance
10 where the client's been with us for so many years, there's
11 no record with your Department? How do we open the new
12 account? We have the POA. There is no account number in
13 that.
14 MS. MARSH: You'd report the information on the
15 report of new client form even though -- because it's a
16 new client for purposes of the new processing methods. Or
17 you can send it electronically, that alternative option
18 for this first time since there may be hundreds of clients
19 being registered at the same time. That will be entered
20 into our database as Art describes so that employees can
21 see that in the computer system in a one stop that there
22 is a power of attorney on file. If any question about
23 what that power of attorney indicates come up, the power
24 of attorney itself is also scanned into our imaging system
25 and it's available to employees that way as well.
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em. HEATON: But how do we open an account? Because for many clients, there was record of an account. But we have clients that there is no record of account, they gave us the POA. How do we get the account opened when there was no record of it?

m. MARSH: The report-of-new-client form.

Mr. THORESEN: On the ones that we sent in electronically for this -- by September 1st, are you going to assign those numbers?

Mr. WANG: Yes. We should be.

Mr. THORESEN: And then you'll notify us?

Ms. MARSH: Yes.

Mr. THORESEN: Because that was the one piece of information because a lot of these clients that we've had for a long time had no clue as to what their ESD number was.

Mr. WANG: We have not provided them yet.

Ms. MARSH: You've been providing the electronic requests to us. We've been responding. I think, Jim, you've sent them a number of times.

Mr. THORESEN: Who have you been responding to?

Ms. MARSH: To the PEO who has submitted the request for ES reference numbers.

Mr. HEATON: You did respond. However, there are some companies that don't have an account number. So this
is what I'm asking now: Now what do we do?

MS. MARSH: And that's the report-of-new-client form. I'm missing something.

MR. THORESEN: Let's back up to the information that we were required to send by September 1st and that we sent electronically. The Employment Security Department account number was missing on probably 90 percent of our clients because they've been there for a long time, their accounts have been closed, we don't know what that number is. How are you going to reopen for existing clients?

MS. MARSH: We will re-open -- we will open accounts for the clients who do have an ES reference number.

MR. THORESEN: And you will do that. We don't have to fill out another form or anything.

MS. MARSH: The forms that you filled out and sent in will be used for both purposes for this first time.

MR. HEATON: But we don't know if you've received them because we've received no acknowledgement.

MS. MARSH: We appreciate that.

MR. COHN: From what I'm hearing here, I think there's a lot of concern from the industry about sending in information to the Department and not hearing back from the Department, and we've addressed that in some respects, and also getting information back from the Department in terms of new Employment Security numbers, etc. I might...
propose for you to think about as you go through the
revision process here, in putting forth a section in the
proposed WAC's here that require the Department within
certain time frames -- I'm not going to tell you what
those time frames need to be -- but to have some
disclosure back to the PEO, acknowledgement that, A, they
received information from the PEO, and secondly, if there
is a new Employment Security number, that that number be
disclosed to the PEO and to the client in "X" amount of
days so that there's no question that the Department has
to respond to the information that the PEO provides and
that there is a physical time frame in which the
Department has to do it just as there is a time frame for
the PEO to submit information to the Department.

MR. WANG:  I appreciate the suggestion there.  I
suspect that -- well, I shouldn't speculate here.  I think
that we clearly do need to acknowledge the receipt of
things and we should be responding to provide the
reference numbers and so forth so that -- everybody needs
to know that.  When they are assigned, we should be doing
that.

We've beaten that subject into the ground.

MS. KURZWEG:  Art, I just have a very, very minor
point.  With respect to (5)(a)(iii), which uses the terms
"within thirty days whenever the professional employer
organization adds a client employer," and I recommend more specificity with respect to the term "add." And it's a generic term that really doesn't have implications for any specific point in the process of becoming a PEO for a client. And one solution that occurred to me, and I'm totally fine with any suggestion that the industry may have, but one point certain that occurred to me would be either deem the PEO to have added a new client on the date it filed the POA or maybe perhaps the start date indicated on the POA. And again, I'm open to any specific suggestions from anyone else in the room. And we just would like to have certainty with respect to the term "add a new client."

MS. WILL: Could it be something as in the date that the PEO and the client company signed their contract?

MS. KURZWEG: I'm open to anything that provides us with a date certain so that we know what our obligation is with respect to the 30 days.

MR. COHN: I might suggest language which simply says the inception of the PEO contract or PEO agreement, the effective date.

MS. KURZWEG: Effective date. 30 days from the effective date? Does that work for the Department?

MR. WANG: I'm just looking at the form for the POA and it has a provision for effective date, beginning
authorization date. So that would presumably -- well, no, that's different from the contract date because it would be beginning that the POA is authorized. What's the preference? It seems to me that the beginning authorization date might be the -- since that would be the date that you are authorized to represent the client employer -- that the PEO would be authorized to represent the client employer, maybe that should be the starting date. That's just off the top of my head.

MS. WILL: But they've entered into a contractual relationship together which may be prior to the date that the power of attorney is signed.

MR. THORESEN: We'd have an effective date of when the relationship starts because it's employment related, you know, liability.

MR. HEATON: I'd like to talk about payroll operational realities. It's got nothing to do with contracts or agreements.

Once the POA has been established that we can now represent the client, PEO's have to understand some lag time potential here until the Department responds back because I'm assuming under this new arrangement that we will be putting in year-to-date tax basis. So you've got to be careful about coming to the end of the quarter, how closely. Because when you're doing your computations in
your payroll system, you're going to have to take into account the tax basis year to date if it's mid-year, so that we don't know when these employees are going to pop up under the PEO relationship. So depending on the lag time here, if it's the 25th of March and the Department has not responded and the next day is payroll day and you've agreed to do it, we don't know if the Department has even acknowledged or received it, we don't know what the tax basis is. You've got to be careful about processing that first payroll. And this is going to happen. This is just what happens day to day. And I don't see anything addressing this.

MR. WANG: I think that's a slightly separate issue in terms of just -- because your concern, basically, is just acknowledgment by the Department there which is, I think, a little bit different.

MR. HEATON: Well, it's our coordination of when it's acknowledged by the Department and the PEO does the first payroll. It all blends together.

MS. WILL: Because I understand that during some transition period, the PEO -- the tax rate that's going to be reported -- I mean, during a short transition period, it may be different, but --

MR. HEATON: It's not the tax rate that's as important as the tax basis year to date per individual
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1 employee.

2 MS. WILL: I'm sorry. I guess I don't understand
3 that. Because the basis is not going to be reset.
4 MR. HEATON: That's right. We have to know
5 year-to-date basis because we're gonna have to report to
6 you. Say the employee has earned $15,000 when the
7 transition takes place to the PEO. What we have to be
8 careful of is that when we report to you at the end of the
9 next quarter, if we don't have the proper basis in there
10 and the year-to-date taxes, we're going to be reporting to
11 you incorrectly.

12 So the parts that challenges us is how quickly does
13 the Department respond back that we know the POA is, in
14 fact, in effect on the 20th. Because let's say it's the
15 25th March. You're getting close to the end of the first
16 quarter. You're going to have to report very soon the
17 previous -- the client company has been processing year to
18 date, so you have to transfer all that year-to-date tax
19 basis into the PEO's payroll system.

20 MS. KURZWEG: What about a definition for "add" in
21 (5)(a)(iii) there? What do you think would be reasonable?
22 That's a vague term. It could mean different things to
23 different PEO's.

24 MR. HEATON: Yes. And it also comes down to just the
25 timing of when the first payroll is done. And we could
all live with the timelines that are established in the rules, but we need to know where they are.

MS. KURZWEG: John, don't you think you could get this list of information to the Department prior to the first payroll? I mean, do you think you're going to have to do the first payroll in order to get the information they're requesting in that section, (5)(a)?

MR. HEATON: Well, it's not any different challenge than you're going to have with as many different PEO's in this room.

MR. WANG: I'm unclear as to what you want on this. What would you prefer?

MS. MACKEY: I guess I have a question. I guess I'm not following here as well. With the clients -- and this is for John -- when your client, when they come on board, are you expecting the Department to provide you with their prior taxable wage information so you can load them in your system to properly run the payroll?

MR. HEATON: No. The client could supply that. The challenge comes is how soon the POA is recognized. We need to know the instant that it's recognized. Because if it's three days before the end of the quarter and the Department has not officially recognized that POA, and if I process the payroll -- the last payroll of the quarter, who's going to report this? Because the POA might not be
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1 effective and recognized by the Department. So if the
2 Department does not recognize the POA until the 5th of
3 April and the PEO processed the payroll on the 25th of
4 March, we've got some real confusion taking place here.
5 Because if the Department says, "We don't officially
6 recognize this POA until the 5th of April," then the PEO
7 should not be processing that payroll on the 25th of
8 March, right?
9
10 MS. WILL: And, Lisa, correct me on this, this is not
11 so much necessarily a rules issue as it is an operational
12 issue that we need to clarify with the status unit about
13 how quickly they can process and make whatever computer
14 database modifications are necessary to, in effect, enable
15 that power of attorney.
16
17 MR. WANG: Let me just stop things for a second here.
18 It seems to me we're talking about three different issues
19 here. One is when the power of attorney is acknowledged.
20 And that we should do basically -- that's just a routine
21 business practice we should be doing. And, frankly, it's
22 a matter of convenience for all parties when we do that
23 just to make sure that we acknowledge receipt.
24
25 Secondly is a problem of when the power of attorney
26 takes effect from the Department's standpoint. And I
27 guess my presumption is it would normally take effect
28 immediately. Now, it's possible that there will be
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defects in it. For example, it turns out it's not signed. But that's not something that we would normally -- we're not going to probably go over each one with a -- that's a pretty obvious error. But nevertheless, we're not going to investigate each one as it comes in. It's just going to be routinely part of the package of stuff and it's not going to be -- and you would discover a defect like that only when an issue comes up.

And then thirdly, you're talking about how to process payroll. And it seems to me you don't even need the power of attorney.

MR. HEATON: No. It's the reporting. Maybe it's only an issue for me, but I see operational reality here. It's going to be a challenge if we're not recognizing when there is the co-employment relationship.

MR. THORESEN: You get our form. And somewhere in the system, Employment has to go into the system because that form says, "We get all the mail from now on." So just the timing of kind of all of that.

MS. WILL: Right. That's why I'm seeing that there may be some operational issues that we don't have the technical people here at the table to say once we receive this electronic package of information from the PEO about the client employer, physically, how long does it take us to either -- are there manual processes that occur or is
this an automated process that occurs that enables this
d power of attorney within our system. And we don't have
the right people at the table to say, "It takes an hour, a
day," or "We have a backlog of three days."

Lisa, do you have any information on that?

MS. MARSH: There will be an automated process of
entering it into our database so that as I described
earlier, it will show up on our computer system who the
representative for taxes is, who the representative for
benefits is, if it's different, all of those options under
power of attorney.

But I think what more we're getting at now is the
operational reality, to make John happy, of we will not
provide information to a PEO or anyone about an employer's
account if we don't have a release from the employer, the
power of attorney in this case. But we do not currently,
and I do not foresee operationally, having an automated
reject on receiving information.

So we haven't yet fully processed your power of
attorney. You send in payroll under the client's ES
reference number using the employees wage basis that the
client has already been reporting for the beginning part
of the year, using the tax rate that we have provided to
the client that the client tells you about when you sign
them up. We are going to process those incoming tax and
wage reports. We are not going to say, "This was filed by a PEO, not by the client. We're not cashing your check."

So as an operational standpoint, the issue isn't going to be so much filing the first taxes, it's going to be getting any information from the Department after that as far as the timing.

And then, yes, there will be some manual keying. Of course, this will be a client at a time so we will not end up with the same backlog that the Agency is currently facing trying to process all of the PEO's, all of the corporate officers, do the annual tax-rate run, everything at one time, which is what's currently being faced.

I still think that Cece's comments are good in that identifying what is the trigger for "add," whether it be that effective date of the relationship is a good one and something that we should consider. But operationally, will we accept the taxes filed by somebody else? Yes. And if you sign up for the electronic filings and the employer gives you their password, you will actually file as though you were the employer -- on behalf of the employer, not as though you were. I should be careful with that language. You will actually file on behalf of the employer and it will be seamless. And by them having given you that password, you'll be able to get into the system.
So there's a number of different options that can be pursued.

MS. WILL: And I think that probably the key thing that we should remember is that the power of attorney stuff has implications for the confidentiality of information that is driven at the federal level about the information that can be shared with a third party. And that confidentiality is not the driver on the actual payment of taxes. That may be part of the difference.

MR. WANG: I'm not sure that was entirely clear to everybody. But basically, there are federal rules which provide us -- which restrict our release of information to people unless we've got the power of attorney.

MS. WILL: There are no federal rules about how we can receive tax information or the payroll information.

MR. WANG: So we can receive information. Federal rules don't provide confidentiality against that. But we can't give back information unless there's a power of attorney.

We still haven't addressed the original issue which was what "adds" means, what date to use for "adds." Do you have a preference as to what date you want us to use for adds or how to define adds?

MR. THORESEN: Mine's the effective date of when we start. The contract date -- the effective date, not
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1 necessarily the date the contract was signed, but we have
2 in there an effective date.
3 MS. KURZWEG: Question about that. Is it okay to use
4 the date that we're identifying on the POA, the effective
5 date of the agreement?
6 MS. WILL: The only reason I hesitated about that is
7 because it's -- is the date that you signed the POA
8 actually the same date that you're taking over the client
9 or taking over the client's business, in effect? And
10 that's why there could be -- you may have signed the power
11 of attorney 20 days down the road or whatever, but you've
12 already been in a contractual relationship with your
13 client prior to that signature of the POA.
14 MS. MARSH: Jill, I don't think she's -- correct me
15 if I'm wrong, but you're not talking about the signature
16 date, you're talking about the date that we ask you for
17 which is the effective date.
18 MS. KURZWEG: That's correct. Although, we're
19 comfortable with whatever the meeting of the minds is. So
20 I'm just suggesting that we enter the definition of the
21 term "add" for clarity's sake.
22 MR. WANG: Lisa, the form itself says "beginning
23 authorization date" which means the date that the POA is
24 authorized rather than the effective date.
25 MS. MARSH: And I guess that's what I'm saying is, is
there a reason that that date cannot be used? Not for
this first round, obviously, where people are saying,
"Well, the beginning authorization date was 20 years ago."
But the impact of the rules is going to be the adds that
occur on an ongoing basis. And speaking to the PEO's that
are represented there, from a business modeling
standpoint, there's no reason that date cannot be used.

MR. THORESEN: I'm losing track. I'm going to use
the effective date that I'm responsible for the payroll.
That's when we take over. Payday could be a month later,
it could be two weeks later, it could be a week later, but
it's going to be the day that we become responsible for
doing their payroll. To me, that's the effective date of
the agreement.

MR. HEATON: Well, we've never done this before.

MR. THORESEN: And I think, in my case, the beginning
authorization date on the POA is going to be the same as
the effective date in my contract.

MR. HEATON: We probably would refrain from any dates
30 days prior to the end of the quarter because we don't
have any commitment from the Department on how fast
they're going to recognize anything. That's just what I'm
going to do operationally. So if they want to start and
it's already in the mid-year, then we'll start only 60
days after the start of the quarter. That gives at least
a 30-day lag time.

MR. THORESEN: If we fill out the forms correctly, I mean, you're not going to reject -- the Department is not going to reject a client of ours. If we followed the process, as far as I'm concerned, that client is -- you know, we're just rolling along like we did before.

MR. WANG: That's my understanding.

MR. THORESEN: I don't expect a rejection from the Employment Security Department saying, "You can't have that client."

MR. WANG: That's correct. That's my understanding of it also.

MS. MARSH: If we are rejecting, what we're going to end up rejecting is the power of a PEO to operate period, not on a client-by-client basis. It's not a review approval, it's just the documentation or confidentiality and processing and contact and representative reasons.

MR. COHN: I think the best way to tackle this one issue which we've been screwing around with what "adds" really means is we define that as the effective date the PEO contracts a relationship -- a contract, to put it in contractual terms. And I think for each PEO, that's going to mean something a little bit different depending upon how they operate and what the effective date of that POA is going to be. But if we set the goal with "adds"
meaning the effective date that the PEO contracts, I think
that allows each PEO to figure it out for themselves while
giving some clarity to the situation.

MR. THORESEN: We have to put a date on this POA,
beginning authorization date.

MR. COHN: And if a PEO chooses -- chooses to put
today's date if they're not going to do payroll for four
weeks, well, that's their choice.

MR. WANG: Before we move off of POA's then, Jeff, I
know you had raised concerns yesterday. Do you want to
restate those since people here were not present yesterday
for the most part?

MR. JOHNSON: I can. I was assuming that they heard
from their representatives that were here yesterday.

The suggestion that I made was that the client
employer -- I don't have my notes from yesterday so I
don't have the same -- what's written on the notes -- that
the client employer has the option -- I guess it's when
ESD writes to confirm with the client employer that
they've given their power of attorney to the PEO, that the
client employer be given the option to receive information
from ESD on substantive changes that happened at the
Department, whether it's by RCW or through WAC rulemaking,
since the ultimate liability for taxes is the client
employers. It gives them the option of information. You
have a more informed employer. I think that helps them understand the system better and it may also help the PEO's have a more knowledgeable client as well. So that was a suggestion.

MR. WANG: Just to understand, so not client-specific information but just -- are you asking that client-specific information go to the client or just generic information? Because now you're talking about substantive changes in rules and things.

MR. JOHNSON: Let me go back to my notes and take a look.

MR. WANG: Because I thought you were talking about client-specific information.

MR. JOHNSON: I'll take a look. This is a discussion I want to have with our folks and I'll write up the testimony and send it to whoever wants to see it.

MR. WANG: The reason I bring that up is twofold. I have done some investigation from our end in terms of just how we do things. And unfortunately, within the limits of our present computer system, the address fields and various other things, it makes it difficult for us to do that. I'm not sure how we can provide the information to the PEO and to the client employer at least while we're still doing the tax system. There are some technical difficulties with our antiquated computer system.
MS. MARSH: And I would add that just simply from an expense standpoint, even if we were able to send everything to multiple addresses, that the printing, the mailing, the postage on the addresses might make more sense for PEO's who prefer to receive the majority of paperwork on their clients. But for the clients to be informed, that they work with their clients to sign up for the listserv that is available by Employment Security so that there is no additional expense, no additional addresses, no limitations on the computer system, but the client remains informed.

MR. WANG: The other concern that I wanted to bring up, because I know most of the PEO's last time around expressed concern about not having information going to both places, that they wanted information to come through the PEO to the client rather than having it go directly to the client. And so that's a little bit in conflict also. So I wanted to at least raise the issue and see if that was still the -- or if there was a way to get the two concepts to work together at all. For example, I think Jeff mentioned yesterday that another possibility would be to put some sort of -- since the client remains liable, is there any sort of reasonable requirement that we can put on the PEO to say that the PEO is responsible for communicating relevant information back to the client?
Presumably, that's something that you do anyway, but is there something that we should be -- that would be appropriate to put in rules along those lines?

MR. HALSTROM: What's your authority to do that? As long as the PEO's are in conformity with the requirements of the law, how are you going to dictate the contractual relationship or the obligations from the PEO to the client employer?

MR. THORESEN: What information are we talking about?

MR. WANG: Jeff, what kind of information are you looking at?

MR. JOHNSON: That's a good question. There are major rule writes around unemployment insurance. There are -- every year since probably 2000 there have been substantive changes to the UI law. Those types of changes, at the very least, we think that client employers ought to at least have the option of receiving information from the Department on those things.

ESD used to -- I don't know if they still do -- I was an employer which was for about 15 years. For at least half of that time, at about the time where I got my tax rate for the next year, a newsletter went out -- I think they went into electronic form -- that was basically four sides that gave a sense of what was happening to the system, what level socialized costs were at that point in
time. It was something that both business and labor at
the UIAC committee had worked through over a number of
years and it was kind of an informative piece that I know
as an employer I felt good about. It helped me learn more
about the system. So at the very least, those are the
pieces of information that I think would be helpful to a
client employer if they choose to get it.

What I had suggested yesterday wasn't that the
Department impact the contractual relationship between a
PEO and a client company. It was more a question -- it
was a question of what type -- are there any disclosure
obligations on the part of a PEO with their client. Not
that ESD could impact that, but I think it would be --
anyway. That's it.

MR. COHN: I think he brings up an interesting point.
I think there is some general employer information that's
out there. And, again, I think we've -- you know, no
position whether clients receive that information or not.
If it's helpful to them, that's great. If it's not, it's
not. If it's a general newsletter, general employer
information, the state of the trust funds, all that kind
of stuff, the reason clients utilize PEO's is to take
administrative burdens off of themselves. And I think
that's really where we're getting back to. I think the
reason the POA is in place and I think that the reason the
PEO's want everything to go through them is because that
is the service that we provide in managing all that.

MR. HEATON: And I think that's addressed well in the
current power of attorney. If a client says, "I want to
receive that information," it can go to them. We're not
dictating to our clients whether it comes to us or it goes
to them. So I think the mechanics are already in place
for the client to be able to elect where the information
goes.

MR. WANG: I do have copies of the power of attorney
if anybody needs to see one, by the way.

MR. HEATON: So there's about three or four different
sections on there that the client chooses where the
information should go to. So it's not a system where the
client can never see everything. It's all right there.

MR. COHN: Art, can I ask you a question? I think
what Jeff said, some of it we have absolutely no problem
with, is the general state of the UI system and informing
employers in general that might be curious about how UI
works or what's going on. Are those forms or that type of
newsletter, is that only sent out with the rate notice
renewal every year? Is that how the Department
communicates that to employers or can it or is it done
through any other means, either through electronic means
or otherwise?
MR. WANG: I'm not sure.
Lisa, do you know the answer?
MS. MARSH: It's sent through a listserv as well and it's distributed through a number of different government entities. So depending on the particular location, maybe the Department of Licensing will have a stack on their counter for distribution as the Business Update. And then they are pushed out through a listserv as well.
MR. JOHNSON: So someone help me. I don't see -- it may be here but I don't see it. Where does it say that the client employer can choose to receive information as well?
MS. MARSH: Not as well. Instead.
MS. WILL: It's an either/or right now.
MR. THORESEN: Mailing tax documents.
MR. WANG: But it is an either/or as Jill was saying. And the problem is, our system does not have the capacity to send to both. That's one of the things, presumably, that will be addressed in the new computer system. But under the old system, we don't have the capacity is my understanding.
MS. MARSH: It's that way actually with a number of different -- I mean, it's the same issue that entities that have multiple physical locations have preferred to report separately on their separate locations and, of
course, they're all rolled into one for tax-rate purposes. Those will also currently only get one mailing.

MR. SACKS: We should be outside of this -- we should be able to check to see if that would still be the case with the new tax system that comes out in a few years. I don't know.

MR. WANG: I do not know on the new tax system. That's several years down the road anyway.

MS. MARSH: I couldn't hear Joel.

MR. WANG: Joel was asking about the new tax system and whether the new tax system would cover it. And that's something we should be looking into as an element for the new tax system. But that's years down the road we're talking.

Any other questions or items dealing with power of attorney in that area?

Do you want to go through some more of this general section then on the requirements for PEO's and client reporters or does the court reporter need a break yet?

(Recess taken.)

MR. WANG: Let's resume here.

MR. HALSTROM: Art, can I intrude? I'm going to go back and beat a dead horse maybe in some people's opinion, but let's talk about the POA and its advocacy and what it means.
And I think the way I'm looking at it, they have a POA signed by the client employer and they file it with the Department. I think it's obvious that the Department has an obligation to acknowledge receipt of it within a given period of time, whatever. And I think once you acknowledge receipt of it, I understand -- John doesn't -- but I understand how you're not going scrub every one of those POA's for absolute accuracy and legitimacy and all of that. But that's not his problem.

I think it needs to be stated that you acknowledge receipt of it and that then they're entitled to proceed on a presumption of validity and, until you tell them otherwise, it's full and complete authorization. And there's no "gotcha" after the fact unless and until you say, "We found this problem." I think that's what they want is something specified to that effect.

MS. WILL: And Lisa, I don't know if you can answer this or not, but when we currently accept a power of attorney from, say, just a third-party payroll agency, do we simply take that at face value and act on the assumption that it's valid upon receipt? Is that correct or not? Or is there some acknowledgement process from us that triggers the acknowledged validity of that power of attorney?

MS. MARSH: No. What we've always done in the past
is require that powers of attorney be notarized and taken
that at face value and never sent a confirmation out to
anyone as long as the notary was there. And if the notary
was not there, we simply rejected the power of attorney.

MS. WILL: And we chose not to require the notarized
power of attorney because that was an operational request
to ease the transition period for the PEO. So I recall
having that conversation.

So then the question is, given this change in our
operating procedure, would we presume the power of
attorney to be live upon receipt or live upon
acknowledgement, whatever form that may be, an e-mail or a
letter or whatever of the -- upon receipt or upon
acknowledgment?

MS. MARSH: We are considering it upon receipt to be
live. Even though we have the acknowledgement, we're
trying to use it as a -- to meet the federal rules'
terminology of --

MS. WILL: Informed consent?

MS. MARSH: Yeah. The federal rules require that you
have -- I'm losing the two words right now -- substantial
and reasonable that this is truly the request of the
employer. I don't remember the exact words. It's
something like substantial and reasonable. And so we are
considering sending the confirmation instead of having the
notary to be substantial and reasonable. And so we're doing it to comply with the federal rules but, again, taking the power of attorney when we receive it at face value, sending this out later, and then, if necessary, reversing our position if the client contacts us and said, "I did not sign something like this."

One of the things that we are trying -- that we are looking at doing is trying to send out the confirmations to the clients as quickly as possible so that they will remember having signed these documents so that we don't end up revoking a bunch of powers of attorneys when the clients have forgotten that they signed the document and then having to reinstate them again later.

MS. WILL: And is that an automated response coming out of taxes or is that a manual letter?


MS. WILL: So is the PEO cc'd now on the response letter; do you know?

MS. MARSH: I'm thinking. I'm doubting it but I don't --

MS. WILL: What Jim needs is some way to close the loop. Even though he can presume that he has sent off the information correctly, without some acknowledgment, he's left hanging. I understand that.

MR. HEATON: We also have the question because we
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1 might have submitted this because it's a subaccount, we
don't know which way you're even recognizing it. That's
why it's even more important that we receive some kind of
confirmation back on how it's being set up.

MS. MARSH: And as I say, we're setting that up.

6 Right now we cannot enter the client information into our
7 computer system.

8 MR. WANG: The client information?
9 MS. MARSH: We can't enter it in until October 1st,
10 the whole liable date issue.
11 MR. WANG: Unfortunately, part of it is we just have
12 an antiquated tax computer system.
13 MR. HEATON: Operational reality.
14 MR. HALSTROM: I'm not ridiculing the agency. It's
15 just you've got a Catch-22 here.
16 MR. WANG: In terms of the acknowledgment of the
17 power of attorney, though, it seems to me that, one, we
can find a way when we receive something that we could
18 just say, "Yes, we received it." And that should just be
19 a courtesy. We should be able to find a way to do that.
20 Secondly, in terms of the effectiveness, yes, the
21 routine would be, sure, we presume it's effective
22 immediately. I hesitate to just put in something that
23 just says that everything is automatically effective
24 immediately from the standpoint of -- you could
potentially get somebody playing games then with just
routinely sending in stuff that is not signed and that is
never signed hypothetically, or something like that. And
I don't want to just give a blanket authorization that
those are automatically accepted immediately.

MR. HALSTROM: I think what I said was the
presumption of validity until you notify to the contrary.

MR. WANG: Yes.

MS. MARSH: If all the information isn't completed,
then there's not going to be a presumption that it was
valid. If there is no signature at all, there won't be a
presumption of validity. If it is completely filled out
and there is a signature, we will presume -- you know,
that was just the agreement we made is we'll send the
confirmations instead of requiring your clients to do the
notary.

MS. WILL: But it's presumed valid upon receipt of a
complete and signed power of attorney.

MS. MARSH: Yes.

MR. COHN: Again, I think I suggested this earlier,
we might consider putting in some language in the WAC
attesting that that's the position of the Department.

MR. HEATON: But if there's no Social Security
number, then we would not have a complete, valid form.

MR. HALSTROM: Art, can I pursue this a little bit
further? Because there seems to be confusion over the effective date. And I think what this says is authorization. If John and I enter into an agreement, I sign it, the authorization is effective September 1. That authorizes him to do it. That doesn't mean he's going to implement the contractual relationship. I think that's kind of at the PEO/client employer option and I don't think you care about it, do you? I mean, it's triggered by when you receive a report.

MR. WANG: So this is getting back to what date do you want for "add"? I don't care. I don't care what date. What date would you guys want?

MR. HALSTROM: All I'm looking for is that it be specified. We know what we're talking about and there's nothing left to chance here.

MR. THORESEN: I thought we were going to use this date. We're not going to -- is there anything wrong with this date?

MR. WANG: I think that's what he was just objecting to.

MR. HALSTROM: I'm not objecting. I'm just saying it means one thing to Drew, it means another thing to John.

MR. THORESEN: But this is between us and the client and the Department that says that beginning on October 1st, the PEO has this authority. That's what they're
saying. If we don't do payroll for six months, I mean, that's -- all it's done is given us the authority to do these things. And we're going to get it in the mail. We're going to get their form, their payment notice.

MR. HALSTROM: The part what I was coming off of is this doesn't say effective date. It says "beginning authorization date."

MR. THORESEN: That's what we're looking for, authorization to do this.

MR. HALSTROM: That's different than when you do it, isn't it?

MR. THORESEN: It's not going to be with me. This is going to be my contract date, the day I'm responsible for their payroll. That's the date we're responsible -- in my opinion, we're responsible to the Department.

MR. COHN: Cece, are you on the phone? I guess we lost her.

I think -- and, again, this is an internal PEO issue here. But I think by putting that date as we talked about before, it leaves it up to every PEO basically to put in the date that they feel operationally makes sense for them. And so while it is a date that is on paper -- or, excuse me, a mandate that's on paper setting the effective date, you can make that anything you want. So it leaves it up to you as the PEO to meet that compliance with
whatever date that you choose between you and your client.  
Does that sound reasonable, John?

MS. WILL: But the power of attorney date may be a different date than the effective date of the agreement between the PEO and its client. And I think to get to the spirit of the 30-day requirement in the law that you notify the Department when you add a client, that it makes sense to say the effective date of your contractual agreement.

MR. COHN: What does adding a client mean?

MS. WILL: That's it. That's what we're saying.

MR. COHN: But this is strictly for Employment Security purposes. We could add a client for other reasons, but it really only is applicable for this WAC and for this statute when we're talking about Employment Security, we're talking about unemployment insurance. So I think that's where that date matters for us. And I think that would be in the spirit of what the statute, I think, what the WAC is trying to get at, 30 days in getting unemployment insurance. But you might sign a contract today and you might not start providing the service for 60 days.

MS. McHENRY: Or you have a situation where you sign a contract for a client and the client doesn't have Washington-based employees until sometime in the future.
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MS. WILL: In the future. I see.

MR. WANG: Let's move back to the other issue we were talking about. And I want to ask Jeff to follow up.

MR. JOHNSON: Sure. Actually, on this one just because I heard the horse whinny just a little bit more so I thought I would do it in totally. Listening to your arguments, I agree with you all that ESD can and should acknowledge receipt for the PEO as quickly as possible, if not immediately, and that it should be presumed valid as long as a complete form has been sent in and signed. I also believe that, as Lisa said, the confirmation letters to the client employer, you know, she said should be sent out as soon as possible. It would be nice to get ESD to come up with a date certain that they do that. I recognize it's resource bound, but nonetheless, it would be really nice to have some level of certainty that the client employer got the confirmation letter and then can respond back, "Yes, I did get my power of attorney letter," or "I did not."

On the issue that Art wanted me to address, I'm sorry, I was a little bit out to lunch before. When I raised the issue yesterday about giving the option to the client employer to receive information, I think Drew during the break taught me some things that maybe make the issue I raised less relevant. But when I read through the
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WAC's and the section that says that the client employer, of course, is ultimately responsible, is ultimately liable for taxes, penalties, interest, and so forth, it seemed to me that there's certain information that that client employer should get or at least have the option to get so that they're in the -- they have some responsibility and obligation as well. And so obviously, their own tax rates are important to know. And Drew says you do that every time you sent out the payroll receipt, the tax rates are on there. So it's not like it's a mystery what the client employer's tax rates are.

But clearly, they would need that for several reasons. Obviously, if you're a contractor, you're bidding jobs into the future, you'd want to know what your tax rate is so that you can build that into the bids. If you want to do what the system was set up to do, the experience-rating system is supposed to be a system of incentives and disincentives, basically, to help you control your employment practices.

Again, you'd want certain information like your tax rate so that you can say, "I need to do things a little bit differently," or "I could do things differently here that would lower this rate." So that was the purpose of client-specific information going back to the client.

But it sounds like, at least in Drew's practice,
that's readily available to the client employers. The
more generic information -- you know, there are RCW
changes and WAC changes that are of a significant nature
that, again, one would think that the client employer
should at least have the option of receiving. That's not
to say that you as the PEO's don't send that information
along to them. You may well and I hope you do. And that
runs into Art's problem of saying that their antiquated
computer system, they can't do that. That's unfortunate.
Drew told me that L&I sends -- you know, like when
they do premium rate changes, sends to both the client
employer and the employer at the same time, if that makes
sense. And I guess my suggestion would be that with the
new system, it seems like we're always lobbying for more
money for computer systems for ESD. Let's do it right
next time.
MR. WANG: Let's go on to other issues, if we may.
MR. COHN: I have two questions in this particular
section, 210, with regard to electronic reporting
requirements. The first is in (5)(c) and the second one
I'll address is in Section (8).
The first, (5)(c), it talks about the Department may
require -- I'll stress "may require" -- the PEO to submit
the information in electronic format. Now, we are very
supportive -- I think we made it clear before of
submitting things electronically. I guess my question
and/or clarification I'd ask for here is under what
circumstances may the Department require it for one class
of PEO's and not for another class of PEO's? I guess it
leaves it open for the Department telling someone they
have to or not telling someone they have to file
electronically. I guess I'm just a little perplexed by
that.

MR. WANG: I can see the ambiguity there the way I've
written it. The intent was not to distinguish from one
PEO to another. It's just we may at some time in the
future say, "Okay, everything should be filed
electronically for all PEO's."

MR. HALSTROM: Put an "s" after the letter "n" in
organization and you've got it done.

MR. COHN: And get rid of "the." So "...may require
professional employer organizations to submit."

And then the second issue, I think which is a bigger
issue for us, is in Section (8) here. The Department may
provide an electronic system for filing quarterly tax and
wage reports allowing for a single tax payment. I know
we've all throughout the process here starting back to --

MR. WANG: Let me just interrupt you and address
that. Because I think I can take care of your problem. I
mean, we fully intend to do that. It's still in the
works. It's intended to be operational by January 1st. I put it as "may" because knowing computer systems, I just never have absolute faith that it's going to be in place by then.

MS. MARSH: Art, was that the single payment for multiple accounts?

MR. WANG: Yes.

MS. MARSH: That's actually back to February now. Same point but emphasizes even stronger the --

MR. WANG: Our intent is to have it operational. We're trying to make it operational as fast as we can.

MR. COHN: Understood. And just to get my concern out there, by leaving it permissive in the WAC, if budgets get cut at Employment Security or anything goes awry, the WAC says "it may." So this could be an issue, although, your intent, I guess, is admirable and great. If it stays like this in the WAC, this could get waylaid and, you know, through the WAC, you don't have to do it. I think our concern would be that we very much want that. It's something I think the commissioner, through the legislative process, had promised us we could do and here we are today still asking for it.

MR. WANG: Frankly, the reason I put this whole section in here was simply to re-assure you that we are working on it. Our intent is to do it. There's no real
need to have this subsection in. Do you want me just to scrap it?

MR. COHN: No. I would love the "may" to change to "shall", quite honestly.

MR. JOHNSON: We agreed to this in the legislation as well. So I could see the desire to have more certainty here. I think the Department has to protect itself as well. I mean, if you put "shall," I think you would have to have some kind of contingency language in there so it's something that, you know, says, "Contingent on funding for 'blah, blah, blah,'" that the intent is that they will do this but there may be variables that prevent it from immediately coming into play.

MR. COHN: I think moving in that direction, we're on the same page. I guess my only concern is -- and who knows what's going to happen between now and April when tax payments are due. If the WAC says "may" and the Department and the leadership in the Department says, "Well, we have to spend our resources on 'X, Y and Z.' We don't have to do this" because the WAC does not say that they're required to do so.

MR. THORESEN: We're filing electronically now. We don't really want to move off of that. That's what we're actually doing -- have been doing for a long time.

MR. WANG: It's a single payment for the multiple
things. And we all want to achieve that. So I don't
think there's any dispute that we all want to achieve
that.

MS. McHENRY: Can I take it from this angle, Art?
Can we say that the Department will accept single payments
from PEO's and not really address the electronic system?
It's just basically a statement that's saying -- that
places the intent there, that the Department will accept
single payment.

MR. COHN: And if the electronic system isn't on
board, then they can accept one hard check if need be
before the electronic system is up and running.

MS. McHENRY: As opposed to addressing the angle
level of whether or not the system is viable or not.

MS. WILL: I think we need to -- I understand what
you're suggestion is, but that would be something that we
need to look at the operational implication of manually
breaking out -- I mean, there are a lot of treasury
implications before we could say "yes" to that. Because
the treasury is, by its nature, a labor intensive system
and we need to make sure that we have the resources to be
able to handle a manual process.

MR. WANG: We'll take a look at that.

MR. THORESEN: We could even send an electronic text
file. And if you guys need to take it and fit it into
your system, that would be your --

MR. WANG: Part of the concern is just, frankly, what happens if there are glitches in it, what happens if the totals don't match up, that kind of stuff. And then everybody gets hurt in that process. So that's one of the reasons for wanting to do it electronically.

MR. THORESEN: But maybe we could say that PEO's would be allowed to send it in an electronic payment format, one payment. And even if your system isn't ready, we could still send it in an Excel file format, a text file format, a CSV file format, we could still send it electronically and send one payment. And then you would have to figure out what client names and all that.

MR. WANG: We'll take another look at the suggestion. And certainly, the intent is, on our part, to get it working and to have it operational.

Other issues?

MR. COHN: One other clarification in Sub (6) here. The last sentence, which states, "The department may require client employers or (PEO's) to produce other business and financial records at an in-state location in the same manner it requires other employers to do so." Is there a possibility or a way that you can add either in the WAC or statutory RCW there which relates back to the only mechanisms that the Department can utilize or what
records they can access? You're just saying the way that
any other employer can. Are there actually RCW's or WAC's
that say what the Department has the authority to do to
reference that?

MR. WANG: I'm not sure. I'll take a look at it.

MR. COHN: And, again, I know what your intent is. I
think it would be clearer and give us some comfort level
too that we would be treated just as every other employer
in the state under the law in the WAC.

MR. WANG: Typically, it's just the situation of an
audit comes on and you're trying -- you need more than --
you need some other records to confirm things. But I
don't know exactly what we have in terms of statutory
authority on that. But the intent is to treat -- I put
the language this way to say that we treat you the same as
any other business.

MR. COHN: Understood. I think it would give us a
little more comfort if there is some WAC's or RCW's which
state the authority with which the Department has to get
those records. It would make it clear as well.

MR. WANG: Cece indicated questions about what is the
scope of the term "payroll records." We maintain payroll
records on an electronic basis. Is this acceptable? And,
Lisa, tell me if I'm wrong, but my understanding is, yes,
that's acceptable.
MS. KURZWEG: Very good. Thank you.

Erica, do you want to add anything to that?

MS. MACKEY: No. As long as we can do it electronically, we're good.

MR. WANG: Anything else in this section?

Now we can get to the taxes, the rates. It's 11:00 and we haven't even got to that part. Let's get to the rates, 220.

MR. COHN: I'd like to throw a general question out there. We had a call, Art, as you recall a few weeks ago or probably a week and a half ago, two weeks ago in which you were explaining how the four-year look back period works in setting new rates. And I would like a little more clarity possibly between you, Jill and Lisa on not the immediate year look back, I understand how that works, but the three previous years of look back in setting the new rate. I do understand that for setting the 2009 rate year, the Department will look at 2008 and the client and its own experience and then will conduct a three-year look back at the PEO's previous rate for the previous three years. Where I get lost a little bit is in how the Department actually calculates the rate based on those three years of the PEO's experience look back.

I'm concerned a little bit or would like to know a little bit more on those three-year of the PEO's experience rate
look back and whether -- I know this is getting a little complicated, but whether salary and benefits for individual employees are looked at during that three-year look back in the PEO's rate.

MR. WANG: Well, actually, a couple people yesterday raised questions about the example I used that I provided in the rules here and just trying to understand the rules. So I did go through and do a more detailed and, unfortunately, complicated because there's no way to make it simple, but a detailed version of it. So let me pass that around here.

MS. WILL: And as we're passing this around, Lisa, could you clarify not just in terms of the PEO but in terms of our experience-rating system in general, when we say that we do a four-year look back, do we actually -- do we average the wages paid and benefits charged? Do we actually average those numerical pieces of information or do we average the previous year's benefit rate -- or benefit ratio rather? Just mechanically, can you tell us how that four-year experience rate is arrived at?

MR. WANG: Well, let me walk through this and maybe that will do it.

What I did here -- and unfortunately, the people on the phone don't have this -- but what I did was to come up with a hypothetical example here just to kind of follow
the example that I used in the text of the rules in terms of the 2 percent -- how you would assign 2 percent. So this looks back. This assumes that there's been a PEO that's been with the client employer, has been in operation since 2002. Each year it pays benefits of $100,000 and the payroll is $20 million for 2002 through 2005. So for 2006, you would look back at the ratio. In this case, there would be $400,000 in benefits paid, $80 million in payroll. So the benefit ratio would be .005.

You go to the statute. And that arrives you at a Rate Class 6 and a rate of .63. That doesn't include some other things that are added to the rates, but that's basically the statutory formula.

MR. JOHNSON: That's your experience-rated tax.

MR. WANG: That's your experience rate for a qualified employer. This is assuming that the PEO is a qualified employer. And that includes everybody -- it includes a variety of client employers within that.

In 2006, notice that I had benefits paid as higher. It's $200,000. So that's a bad year for whatever reason. That does not reflect in the rate for 2006 because you're looking back to the previous four years. I'm also oversimplifying from the standpoint of in setting the last rate, it's actually based on not the full year. But anyway, I won't even go there.
For 2007, we're back to the $100,000 in benefits paid and the $20 million in payroll. Your benefit ratio is a little bit different because you had a bad year in 2006. So your rate is calculated at -- your benefit ratio is $500,000 in benefits paid over the previous four years versus the $80 million in payroll. So you've got a slightly higher benefit ratio which drives a slightly higher rate class and it drives a slightly higher rate.

In 2008, we are now splitting out the client employer. And so we're assuming that as of January 1, 2008, the PEO had a total of 1,000 employees including clients. This particular client employee has 20 employees or 2 percent of the PEO's total. So in 2008, to calculate the PEO's rate, it still is based on the same $500,000 in benefits paid over the previous four years, same $80 million. So it still has the same tax rate, .625, and driving a Rate Class 7 and a rate of .75.

Now, for the PEO -- for the client employer, the client employer also, under the model that we have in the proposed rules under the draft rules, would get the same rate because we're treating it as split off from the employer to get the same rate as the PEO, the .75. Under this hypothetical, I'm assuming that for 2008, in turn, the client employer has benefits paid of $5,000 and a payroll of $500,000.
So now to calculate the 2009 rate, how do you do it? You look back and you say that for 2005, we're going to take the PEO experience, we're going to take 2 percent of that because they had 2 percent of the employees. So we take 2 percent of that. So 2 percent of the $100,000 in benefits paid, 2 percent of the $20,000 and $20 million in payroll, and that works out to $2,000 and $400,000.

For 2006, you would also use the same thing, apply 2 percent of that because 2006 was a bad year and you had higher benefits paid. The numbers are a little bit different.

For 2007, again, you apply the 2 percent.

For 2008, you use the client's own experience. So that drives the -- so to set the 2009 rate, you'd look back, you'd calculate those four years of experience. It turns out that there are $13,000 in benefits paid, $1.7 million in payroll over those four years. That benefit ratio turns out to be .76 percent which is a Rate Class 8. And so the rate is 0.88.

I hope that makes sense to everybody in terms of just how you go about the mechanism of calculating and doing things. This is my understanding of how it works.

MS. WILL: So we're not looking back at the individual -- at any particular individual company or individual worker. You're looking at the aggregate
information for the PEO as a whole. And that information
is available in the PEO account. It's not available to
the Department. There is no look back available to us by
compny. So we take as a reasonable assumption that if
you have represented 2 percent of the payroll, you're
going to represent 2 percent of the benefit charges.

Now, in actuality, maybe that works out or maybe
there's one company that went under that had a lot more
benefits associated with its account than others and it's
going to skew that overall assumption. But absent any
other rational basis, this is how -- in general terms how
the experience-rating system works when you're seeking to
transfer experience from a previous account to a new
account if there were to be a similar transfer outside of
the PEO realm.

MR. HEATON: And your computer system can now do
this?

MS. WILL: Lisa, correct me on this, are these going
to be manual or are we going to be able to automate all
the transfers?

MR. WANG: Well, this would be for 2009, first of
all. So we've got more time on doing some of those
things.

MS. MARSH: The system is supposed to be redesigned
in order to do it, yes.
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1       MS. WILL:  Yes. So this calculation you see here is
2 a year hence, not for 2008. So it's going to have to be
3 reprogrammed to split out that many multiples. But I
4 haven't heard if it's going to be manual or automated. So
5 it sounds like it's slated to be automated.
6       MR. THORESEN:  A couple things. My thoughts are by
7 using number of employees where the calculation actually
8 uses salaries, you really skew the calculation. So some
9 clients are benefiting and some are really getting hurt.
10 It seems to me that the easier way to do it is just to
11 assume these are new companies that started January 1st
12 that have no history. And they develop their history over
13 whatever that period of time -- no different than if I
14 formed a company on January 1st of 2008. I wouldn't have
15 any history and you'd start collecting that then. It
16 seems to me that's easier, probably fairer. Because this
17 results in a really disproportionate calculation for each
18 client -- individual client.
19       MR. WANG:  Let me distinguish here because you're
20 saying a new employer -- first of all, let's talk about
21 2008 because it sounds like you were talking about 2008
22 for that. And the issue is basically whether they should
23 get the -- or one option, the way we lay it out here is
24 that they would get, in effect, the PEO rate.
25       MR. THORESEN:  They could get the PEO rate to start
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1 with, but they would not have any history. Just like if I
2 -- forget I'm in a PEO relationship. I just go out and
3 start a new company on January 1, 2008. I don't have any
4 -- in that case, I'd get the new employer rate. But I
5 don't have any history.
6       MR. WANG: But I'm just trying to say for 2008 -- so
7 you're saying --
8       MR. THORESEN: The PEO rate is fine. Using that for
9 all the clients starting out, I don't have an issue with
10 that. What I have an issue with is trying to go back
11 based on number of employees and calculate history.
12 That's the issue.
13       MR. WANG: So you're talking about just the 2009, not
14 2008.
15       MS. WILL: Lisa, could you help me out with a
16 question here? Drew has a problem with the number of
17 employees because of the disparity of payroll. What if we
18 made the calculation on the basis of percent of payroll
19 paid rather than the number of workers reported? I mean,
20 I don't know if -- we're looking at this as analogous to a
21 transfer of -- in other business venues, but would it make
22 sense, either "yes" or "no," is a more rational basis of
23 the transfer on the basis of percentage of payroll paid
24 versus the number of employees?
25       MR. WANG: We're looking at it as of a single date of
January 1st was the conceptual model that we're using.

MS. WILL: Right. But that date is going to have the same defects whether it's the percentage of payroll or the percentage of workers.

MR. THORESEN: Why do you feel you need the look-back period?

MS. WILL: Because, in fact, these companies do have some sort of history. You don't simply leave history behind. In the experience-rated system, you have history that has accumulated. This is a change in reporting, but it's not a change in the fact that these companies have accessed the system. And I think the Department would feel that it would be unequitable to the remainder of taxpayers to simply have people shed all experience in this scenario.

Certainly, if there are better ways to approach assigning the appropriate experience rating, we would be open to that. But I just don't think it's appropriate to say, "There is no history." I understand that you're saying that there could be some winners and losers in this scenario and there probably will be. But let's come up with something that feels more equitable without simply saying -- you know, leave aside all the experience that's actually been accumulated.

MR. WANG: I saw Todd then John then Jeff.
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MR. COHN: Just to comment on a couple things, Jill.

I think the system that's currently laid out -- and, again, I know this is for discussion purposes at this point. You were talking about equity and equality. And if we went to a system such as Drew proposed -- again, this is just a proposal at this point -- that it would not be equitable for everyone else. Well, the system that is here at least laid out on paper I think is inherently inequitable to not only PEO clients but to all employers. Because it doesn't actually capture any true experience.

Now, I do agree with you, these folks have been operating as businesses under the current law. Up until January 1, 2008, the PEO is viewed as the employer so they have been gaining experience as employees of the PEO under the law. But to simply take a percentage, whether you're doing it by payroll, you're doing it by number of employees, and saying, "We're just going to create an artificial experience for the purposes of doing our normal look back so we can operate in the current context of our experience-rated system," I think, doesn't do it much justice either.

I don't necessarily have the solution, but I can certainly see from Drew's perspective and there may be some other perspectives in the room where at least the system that is currently articulated, while it does serve
some of the goals that you're looking for meaning fitting into the current type of system and doing the look back, I don't think the way it approaches it is inherently equitable for everyone in the system.

MR. WANG: Let me just respond before I get to John. One of the things we initially suggested back in June was to go back on a system which would look at individual -- client-by-client, individual-by-individual and get the individual experience. That would be a pure, fair system from that standpoint. And you guys hated it.

MR. THORESEN: It's a lot of work.

MR. WANG: It's a lot of work, yes. But that would also be the fairest in terms of just accurately identifying everybody to do that.

So we tried to come up with a system that achieves at least some of the purposes but without going through that whole process of trying to identify each person by Social Security number and track each individual's Social Security number and so forth.

MR. COHN: I appreciate that. I think what I'm trying to say is there may not be a perfect solution. At the end of the day, this might be the best solution we have. I think getting some of these ideas out on the table, however, in this type of setting may or may not lead us to a different place. And if this is the best we
get to, I think you're right. You're very accurate in saying that we don't want to have to go through all of our clients and piece out for the last four years payroll and attribute it to each individual employee and report that. I think it's a nightmare both for the Department and for the industry.

However, in this particular system, there are going to be some extreme winners and losers. I think if we just take a hypothetical PEO that has we'll just say all white-collar employees, but those white-collar employees range from $25,000 a year all the way up to $250,000 a year in wages in the whole context of the PEO, well, there's a huge wage disparity there. If you're simply going to aggregate all of the wages together and just take 2 percent of that, for individual clients, as it breaks out, there are going to be huge winners and losers in the game.

And, again, there may not be a perfect solution. This might be the best that we arrive at. But I think it's at least worth discussing a bit.

MR. WANG: John was next and then Jeff.

MR. HEATON: I just want to clarify that the number of employees on 1/1/08 is what the look-back number of employes would be for the individual company. So if they have 20 employees on January 1 of '08, that if we look
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1 back three or four years, we will have judged that they
2 had 20 employees. And I just want to clarify that's how
3 the formula was written.
4     MR. WANG: We would assign the percentage based on
5 that, yes. Recognizing there are going to be some winners
6 and losers.
7     MR. HEATON: That was just my question. No comments.
8     MR. JOHNSON: I guess what I want to say is we're
9 probably going to have a fundamental disagreement on one
10 suggestion that I have. But I want to start with one that
11 perhaps is less controversial.
12     The model that ESD has laid out that you gave us
13 today is a lot more helpful than what I had seen
14 yesterday. And I acknowledge a lot of the issues that you
15 raised. It's difficult when you create a complex formula,
16 whether you use employment numbers or payroll numbers,
17 you're going to get different outcomes and there will be
18 different winners and losers.
19     But there's another way to do it, I think, which is
20 my understanding -- and maybe not all PEO's operate the
21 same -- but at least one model is to basically blend
22 rates. So you've got 100 companies with a PEO,
23 inherently, some are going to be paying higher UI taxes
24 than they wouldn't if they didn't belong to the PEO and
25 you're going to have other client employers part of the
PEO that are paying less UI taxes than they would have otherwise. So we don't want to change the formula for doing this because that sets these employers different than any other employer in the system.

So you use the four-year formula but you use just the PEO rate -- the overall rate for each one of the years. So for 2008, basically, what you're looking at is the last four years of the PEO rate. So that could be 3 percent for one year, 2.5 for the next, 2 percent for another, 3 for the next. But basically, you've maintained the status quo.

Like I say, there are winners and losers in the system before, but they joined you all for a number of reasons, some for UI purposes, others for health care, others for worker comp., others for payroll functions. So you've just assumed basically the status quo for four years.

This next year, you begin to enter actual data elements from the client companies themselves. And over four years, you basically expunge all of the PEO rates from the formula and it's completely experience rated to the individual employer.

That's another way of doing this transition model which, I think, is a lot simpler, a whole lot fewer data points. You're not creating any more equity or inequity
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1 in the system that was there to begin with.
2 So that's my comments on doing this.
3 MR. WANG: Just to make sure I understand, you're
4 saying that to use the PEO rates for the different years
5 and use that as part of the blending in?
6 MR. JOHNSON: Absolutely.
7 MR. WANG: I think that's what this does.
8 MR. JOHNSON: Well, but what I hear people saying is
9 that it doesn't quite work out that way. Because if you
10 use -- they may have 100 different client employers, but
11 vastly different payroll, vastly different experience. I
12 may have a large -- I see what you're getting at. That's
13 what you're trying to do here.
14 MS. WILL: I think it, in effect, does that. This
15 maintains the same benefit ratio. Whether you are
16 imputing for a large company 20 percent and 80 percent of
17 the payroll or whatever, the actual effective benefit
18 ratio remains the same for each of those companies; isn't
19 that correct?
20 MR. WANG: Uh-huh.
21 MS. WILL: I mean, you're saying, basically, to take
22 the benefit ratio of the overall PEO and plug it into the
23 formula. I believe that's what this mathematical formula,
24 in effect, does.
25 MR. JOHNSON: That's the argument I hear you making.
I'm hearing PEO representatives say they don't think that's how it works out. And so if we can come to a meeting of the minds on that, then basically, if the PEO rate, rather than all the formulas, if you just said the tax rate was -- is indeed for all employers in a given PEO was .63 in '06 and you have a tax rate for each one of these four years that goes into the formula for next year, they're all going to be paying the same tax rate just as they would if this law change hadn't occurred. So no one wins, no one loses. It's status quo. And they begin earning their own experience rating during the course of 2008 for rates in 2009.

I hope I haven't confused folks with that. But I think that's the only way you get equity in the system. You maintain what would have been done otherwise.

MR. COHN: Jeff, I like that idea. And I'm not a math person. I'll be the first to say it. It may be the same thing that the Department is describing. This may be a more simplistic way of getting there by simply instead of doing the ratio and having to lock in the percentage of employees you had on January 1st of 2008, getting away from that. When you do the four-year look back, clearly in 2009, clearly in 2008, your one would be the individual experience of that client. But your two, your three and your four, if you can just instead of taking the
proportion, just take the rate, .63, .75, and .75 and blend those in.

MR. JOHNSON: Let me just rephrase what I'm saying. You still use the same formulas, but you're using the PEO absolute numbers as the basis for the formula. So if you look at the year 2004 which would be the first year in 2008's tax rate, so instead of $100,000 in benefits and $20 million in payroll, it's whatever it was for the entire PEO. And so whatever that translates into a rate, let's say it was .5, then that's the rate that every employer pays.

Now, you know and I know that actual individual employers that belong to your organization, some would have paid higher, some would have paid lower. But system wide, at least in this transition period, we've got status quo.

So if we're saying the same thing here, that makes sense to me. And we may be saying the same thing Art is saying.

MR. WANG: With one difference. I think that we are all saying the same thing in terms of that's the way this works with one difference. And that is that for the -- it varies with what their own experience is and how you blend that in. So, for example, what I'm hearing you say is that you take -- in this case it would be a .63, a .75, a
.75 and then whatever the 2008 would be and essentially average those four. The difference is that suppose 2008 is much smaller or much larger than -- and so instead of being based on the rate, this is based on the actual experience so that if the client employer goes off on its own, instead of being a tiny percentage -- instead of being 2 percent and having 20 employees in 2008, it grows to 2,000 employees or it grows to 200 employees or something, how that would be rated into the experience.

That would be the only difference.

MS. WILL: I think there's a -- we have to kind of walk through this intellectually because what Jeff has suggested in maintaining whatever the benefit ratio is or the tax rate, we would have to calculate the 2000 rate or the benefit ratio separately and then average those four years. You can't mix it. It's either got to be on the payroll basis for the four-year average or you have to calculate a separate benefit ratio just for 2008. And our system is not necessarily set up to do that. I'm not sure that I'm capturing what I'm trying to say here.

MR. THORESEN: I would just like to make a couple points. One, what happens if that client terminates the relationship at 12/31/2008? They're no longer part of that PEO.

And my second point is, this is not status quo. I
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1  understand your point about the history, but this is not
2  status quo. The Legislature changed the law. This is not
3  the same. So some clients have better unemployment rates
4  than other clients have. And that's where you're trying
5  to get to. We're not trying to maintain -- we're going to
6  try to maintain what we've been doing. Let us just keep
7  doing what we're doing and have a composite rate.
8  
9       MR. JOHNSON: Then I misspoke. What I'm saying is,
10  since the formula goes back in time, years already
11  happened, taxes already paid, that's what I mean by status
12  quo. You're not going back into history and changing --
13  rewriting history. So you're carrying that experience
14  forward as the experience of the individual company. From
15  2008 on, it's individual experience.
16  
17       Anyway, it may all work out the same. I need to sit
18  down with one of your statisticians and actually see them
19  do the numbers then I would understand whether I'm way off
20  base or this is right. But I'll tell you the point where
21  we're probably going to disagree, what I've asked and what
22  we'll put into written comments for the Department is
23  this: One, create the simplest model for capturing past
24  history so that it's simple. I mean, the more
25  complicated, the more difficult it is for everyone. Let's
26  make it as simple as possible. So that's step one. I
27  think we can agree on that.
Step two is this: From our perspective, since it's a four-year look back from 2004 through 2007, from our perspective, to make sense for the system as a whole, for any client employer that ESD has actual historical records for -- so let's say my company in 2004, 2005 I didn't belong to Drew's PEO but I joined in 2006. We'll make it real simple, January 1, 2006. So you've got two years of my experience with Drew but you've got two years of my own experience. If ESD actually has historical records on me, then use them. And that creates a more accurate record. Now, for the employer who has the better experience who may have actually -- I may have been paying more in UI taxes to Drew because I chose to go in not for UI purposes. I mean, it helps. I didn't want to do the number crunching but I'm doing it for payroll, I'm doing it for health care, I'm doing it for all these other reasons, I'm going to come out ahead individually. But my argument is not an individual argument. It's a systemic argument. If we got the history on the person -- on the employer, you ought to use it. And if you don't, then don't and use the model that ESD has come up with as long as we can create as simple a model as possible. So I recognize we may differ on that one.

MR. THORESEN: I'm just throwing this out. We haven't really talked about it. Should there be an
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1 option? So if a PEO elected to provide the history for
2 the last two or three years like Jeff is talking about, so
3 they make the choice or do they go with a simple model?
4 MR. WANG: Just off the top of my head, I think it
5 would be difficult to justify having two different systems
6 or having some people going one way in the individualized
7 model based on experience.
8 MR. THORESEN: But there are going to be companies
9 that you have history on.
10 MR. WANG: Before they were with the PEO you mean?
11 MR. THORESEN: Yes. Because maybe they've only been
12 on for a year or two or three.
13 MR. WANG: So to follow along with what Jeff was
14 suggesting.
15 MR. THORESEN: Yes. I mean, I'm just saying there
16 are alternatives and is there a -- I don't know the
17 answer. I would have to do some math too.
18 MR. COHN: I think -- and I'm just throwing this out
19 there -- at the end of the day, I think, as Jeff said, the
20 rules need to be simple. I mean, the simpler they are,
21 the better they are.
22 Again, I'm not sure we coalesced on anything. We
23 certainly need to before the end of the week to get you
24 some hard comments from the industry and a consensus. But
25 I think there are a couple different ways to do it. I
think Jeff has articulated a couple of ways. I think we've tried to clarify a couple ways. There's one way to do it which is -- that you proposed, there's one way that Drew has proposed. I think there are, in every type -- in every system that has been discussed, there are inherently winners and losers. I don't think there's any type of systems where there isn't. But I think the consensus from our group -- again, don't hold me to it -- but the simpler, the better. When we start complicating this type of system further and further, I think it adds headaches both for us and for the Department.

MR. THORESEN: It is a change in the law. It's something starting new. I mean, for me that's the argument for their history starts on January 1, 2008. You don't go back. There's nothing in the law that said you needed to go back. We're not doing this because one company is buying another company. We're doing this because there's a change in the law. And that's -- we're reporting one way up until December 31st and the next day we start reporting a different way. The history should start to follow that law.

MR. WANG: Just conceptually, just to make sure I understand it, wouldn't that mean that you should give them a new employer rate us of January 1, 2008, and then follow it from there? It doesn't make sense to me that
you would give them a PEO rate as of 2008 and then for 2009 you would give them a new employer rate.

MR. THORESEN: We've always said, I believe, and correct me if I'm wrong, either rate works for us. The PEO rate is going to be calculated anyway. It's a simple thing. But the new employer rate is --

MR. COHN: I may be mistaken, but I don't think that's what he meant. I think what he meant is on 1/1/08 they take the PEO rate which you had suggested here. And then moving forward, they would act as if they were a new employer. They would not receive a new employer rate in '09. They would stick with their rate and have their own experience moving forward.

But I think what Drew is proposing is because it's a change in the law and a new system, that the look back is not in effect, meaning it's moving forward and the look-back formula is not applied to previous years. Simply, they start off -- in your example, they'd start off on 1/1/08 with a .75 experience rating and they would exist for 12 months and whatever the Department currently does for new employers when they start off and have a rate on 1/1/08 and calculate a new rate for '09, they do it in this situation as well.

MR. WANG: And there's the problem. Because what the Department would do currently is they would apply -- the
new employer rate would have been for January 1, '08, in that hypothetical. So now we've got nothing to apply it to. It just makes it difficult to say that for '09, that we're going to come up with a new employer rate for '09 using the PEO rate for '08.

MR. COHN: Why would you have to under that situation? On 1/1/08 they have their "new employer rate." And in this situation, it's .75. And they would just accrue their experience moving forward as if they were a new employer on 1/1/08.

MS. WILL: If we were to treat them as a new employer on 1/1/08, it seems that a more logical basis would be a new employer rate. We can certainly talk about the relative merits of the PEO rate or the new employer rate, but I still remain concerned about leaving legitimately acquired experience completely behind.

There must be some basis on which we can all recognize that these companies are not, in fact, new companies. They have been in existence, they have paid into the system, they have received benefits from the system. And that seems to be a legitimate factor to bring into the calculation.

MR. COHN: What would happen if a client of a PEO who has been a client for five years decided tomorrow that they really didn't like the PEO relationship anymore, they
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1 didn't like these new rules, they just didn't want to be
2 involved with us anymore and they decide to end their
3 relationship with Drew? I think, unless I misunderstand
4 the system, they'd apply to Employment Security and
5 receive a new employer rate and move forward. And their
6 history would start right then and there.

7 And I think while Drew is not suggesting that every
8 client that is spun off on 1/1/08 receives a new employer
9 rate, I mean, I think there is merit to receiving what the
10 PEO rate would have been, there’s merit to that. I think
11 there’s also merit to looking at the relationship. They
12 are, in fact, under the law now a different animal, if you
13 will. It's under the current law up until December 31.
14 The PEO is the employer.

15 And now we're moving to a new system and under these
16 -- not only the statute, but the WAC, I think it could be
17 acknowledged that we're moving into a new paradigm here
18 and that paradigm includes taking the PEO rate and
19 potentially acting as if in the eyes of Employment
20 Security, for accruing experience and rates, moving
21 forward, they were a new employer.

22 MR. WANG: Just the logic of it, it's still not
23 making sense to me how you could -- either you can follow
24 a model of, as you say, that they are a new employer. If
25 they decide to break off as if the law hadn't passed,
they'd be a new employer in which case you'd get a new employer rate for January 1, '08, and would continue thereafter. I don't see how you could logically get to getting the PEO rate for January 1, '08, and then a new employer rate for '09.

MR. COHN: But why would you need a new employer rate in '09? I don't understand that logic. What I'm saying is, treat it as if they are a new employer, not receiving a new employer rate but treat it as if they were a new employer for purposes of looking at rates in years looking out.

MS. WILL: Because you need a certain number of quarters in order to establish the rate, to accumulate enough information on which to calculate the rate which is based on that four-year look back.

MR. WANG: For a new employer, it's not four years.

MS. WILL: It's not four years.

MR. WANG: But it's still longer than a year.

MR. COHN: So a new employer sticks with their current rate for almost four years.

MR. WANG: No. It's two years, basically.

MR. COHN: So they will stay with their current rate for two years until a new rate can be assigned is what you're saying.

MR. WANG: Yes.
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1 Lisa, is that correct?
2 MS. MARSH: It depends on where in the computation
3 year -- it's at least six quarters, but it can be up to
4 almost three years depending on when in the computation
5 year the new company starts.
6 MR. COHN: But if they were to start on 1/1/08, it
7 would be --
8 MR. WANG: It would be six quarters, the two years.
9 MR. COHN: So a year and a half.
10 MR. WANG: Yes. Which means that they've got the
11 same -- six quarters of experience which means you'd have
12 the same rate for two years.
13 MR. THORESEN: We are the employer now. To me, it's
14 just no different than if they were a new employer. I'm
15 forgetting which rate to use. I'm not sure how fair this
16 really comes out for all of the equity to all of the
17 employers. If it's to be their own experience ratio, I
18 mean, if that's the goal, then this just kind of divvies
19 up the pie.
20 MR. WANG: Because they are all in the same pie now
21 and they're all getting that same rate now.
22 MR. THORESEN: And I don't have a problem with that
23 starting out. I think that's fine. But going backwards,
24 the client that I've had for a year and so if they get
25 four years of my history instead of one year of mine and
three years of their own, that's --

MS. WILL: Well, and there are -- certainly, it would be for those companies for which we have experience history available as Jeff suggested. That is, in fact, the -- you made a comment that there are going to be winners and losers. But if, in fact, we use actual information, there's not going to be a winner or a loser, there's going to be the person that is paying the tax rate which they would have paid in the absence of a PEO relationship. And that's not a winner or loser, that's a mathematical calculation.

So as I see it, we have a choice between actual historical information that does not produce a winner or a loser. We have the aggregate spread of experience which is going to produce the same winner and loser calculation that was inherent in the aggregate nature of the PEO reporting. Or you have simply stating that you're going to cut off all historical relationship and act as if these were new employers. And obviously, we're going to take all of these things into account, but it's a decision to be made operationally and policy-wise. But to simply state that we're going to forgo all experience calculation seems to be kind of problematic.

MR. WANG: Let me throw out another concept here, another zinger. Just hypothetically, what would happen --
one of the concerns is also that what happens if somebody joins a PEO, somebody has been in business for ten years, they join a PEO today and they would then get the PEO rate for 2008. And under this model, they would then have -- they would, again, get the PEO experience from 2004, 2005, 2006 and so forth built in. Would it make sense or would it be feasible to simply say that anybody joining after July 1st of this year would simply maintain their own experience and their own rate? Would that cause problems?

MR. THORESEN: You mean if they started in the last half of the year?

MR. WANG: Just for those who started in the last half of the year.

MS. WILL: Because the tax calculation is cut off as of the 30th of June; is that right?

MR. WANG: Yes.

MR. COHN: I think I'd have to think about that.

MR. JOHNSON: It would cause problems in what way?

That's how you phrased the question, would this cause a problem.

MR. THORESEN: It clearly wouldn't be the bulk of the existing.

MR. WANG: No. I'm assuming there would be relatively small numbers of client employers who would do that.
MR. THORESEN: Compared to the total client base in place, I think it would be a relatively small number of clients.

MR. WANG: But those would be people where we do have clearly the experience where we wouldn't have to use any -- we could use their rate for 2008 and all the way through. They've got the experience because through June 30th would be the calculation period. So we would simply treat them as -- for purposes of this, basically, ignoring the fact that they joined the PEO during the last half of this year for purposes of calculating their own rate. Because there's no need to go through the PEO process for calculating the rate.

MR. COHN: What if they had claims in the last half of the year? How would you handle those?

MR. WANG: Good question. I'm not sure how we do that. That would be a problem.

MR. COHN: Would it be to the disadvantage of everyone else in the PEO pie to have those claims now in the look-back periods when that particular person has now potentially escaped those claims?

MR. WANG: That's true.

MS. WILL: Lisa, is it possible once we have all the PEO clients identified, could we transfer the claims and the wages on those particular clients out of the PEO
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1 reporting pool for the last half of 2007 and into their
2 already established account?
3 MS. MARSH: Well, we won't have that information
4 unless we get additional information. There's nothing
5 that we have done that has asked for wages by Social
6 Security number.
7 MS. WILL: Until the first of the year.
8 MS. MARSH: Right.
9 MR. COHN: It would be pretty messy, I would assume.
10 Because you're going to start to calculate rate years for
11 '08 before --
12 MR. WANG: The '08 calculation is simple. The
13 problem would be in '09.
14 MR. COHN: '09. Because you have six months of --
15 MR. WANG: We only have six months of '07 to work
16 from. That would be a problem for us, yes.
17 MS. WILL: But not for those companies with existing
18 accounts. I mean, we're talking about those companies
19 that already have a --
20 MR. WANG: But as of July 1 they join the PEO, then
21 we wouldn't have experience from them from July 1 through
22 December 31st of 2007.
23 MR. COHN: Art, I guess that brings up another
24 question I have. I didn't think of it until this moment.
25 Since the rate years are from July 1 to June 30 --
MR. WANG: No. It's January to December. However, in order to calculate the next year, we don't have -- we can't wait until December 31st to close out our books and calculate the rate for January 1st. So we do that based on the first six months.

MR. COHN: Do they ever get revised when you plug in the last six months?

MR. WANG: Is it July to June or is it --

MR. JOHNSON: I thought it was July to June.

MR. THORESEN: It's a fiscal year you do the calculation.

MS. WILL: You pick up the experience for the last six months of the year in the next year's calculation. It's never lost, it's just picked up in the following year.

MR. COHN: How is this going to work then?

MR. WANG: That's why I'm agreeing with you that there'd be a problem for the calculation of 2009 because you lose that tail of the last half of 2007.

MS. WILL: No. That was my question, though. You wouldn't lose that tail if you transferred it into the -- you would have to manually transfer it to the account.

MR. COHN: You're going to lose it for every single client of the PEO and not just those clients that started on July 1. For every single client that is being spun
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off, if you will, into individual accounts, you will lose
that last six months' tail.

MS. MARSH: But you would only have four quarters, I
think, is what the problem is. You would only have
July 1, '07. If you manually pulled all the wages by
Social Security number, you'd only have July 1, '07,
through June 30, '08, for the 2009 taxes.

MS. WILL: I see what you're saying.

MR. WANG: I'm not sure I do.

MR. COHN: I didn't catch that last part. I didn't
understand that last part. Going along, I think, with my
logic here, and I can be very flawed, but since the PEO's
rate, which will become the client's rate on 1/1/08, is
being calculated on the July 1 to June 30 of '06 to '07,
what happens for the six months July 1 to December 31 of
this year? It won't get picked up next year because it's
not a continuous rate moving forward because the clients
are going to start generating their own rates. So
potentially, for every client, you're going to lose that
last six months somehow.

MS. WILL: No, you're not. I think we need to think
through this, Lisa, but any benefits that would have been
charged off -- benefits that would have been charged off
to that quarter are going to fall to the PEO because they
were the employer of record during that last two quarters.
And they would then get spread back -- under the scenario that we were suggesting, any of those benefits paid would get spread back over the experience rate of the other companies.

MR. COHN: But it's not going to hit the PEO's rate until the '09 rate year. It will be the individual PEO's rate. It won't be, PEO, I employ 11 employees in my office, not, I have 1,000 co-employees. So you're really never going to ever use that PEO's rate again that accounts for that six months of lost time. Because you're looking back at 2007, 2006, 2005.

MR. WANG: It would be included in what's left of the PEO -- it would be built into the base of how calculating that rate for the small PEO and what's left in the PEO for 2009. So it would distort that.

MR. COHN: So what you're saying is, actually, the PEO's rate could potentially be artificially high. Because it's going to be.

MR. THORESEN: That's not fair either.

MR. COHN: I had not thought of that. But since you are taking all that payroll off of the PEO's books but still that experience is going to tag along to it --

MR. THORESEN: If you're going back and allocating this experience to the client, those charges get to go to the client, not to the PEO.
MR. JOHNSON: Well, they are going to go to the client.

MR. WANG: Not for the last six months of 2007.

MR. JOHNSON: No, they will. They will be part of the formula, Art. I mean, because we're going backwards in time here. They're gaining experience from 2008 on. The individual client employer's experience for the second half of 2007 is the PEO rate. So it's going to be a blended rate for the year 2008 figured into 2009 figures. That's the only way you can do it mathematically.

So how it impacts the PEO's as an organization themselves with 100 employees, I don't know. That's a separate issue. We're talking about both things. I heard what Drew just said and Todd before him. But yes, that's part of it.

And the other part is, how do you figure the rate for the client employer which there are many, many more of them. And it's going to be a blended rate of the PEO under the old system and their own experience rate in order to get to the figures for 2008 to calculate 2009.

MR. COHN: But, Art, and maybe I'm missing it. Jeff, I apologize if I am. But I think there's the potential for every single client to miss that last six months of '07 because the way that rates are calculated are from...
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1 July 1 of the previous year to June 30. So when you would
2 calculate the PEO's rate for 2008 which will then be
3 assigned to all the clients, you're not taking into
4 account July 1 to December 31 of this year. That's for
5 next year. Is that accurate to say? So the clients will
6 never realize that experience. It will all be put on the
7 PEO.
8
9 MR. WANG: Let's take a five-minute break now.
10 (Recess taken.)
11
12 MR. WANG: I did do some checking with our technical
13 people in terms of just the mechanics of the rate setting.
14 And without going through it all, we can address the
15 problem of that last six months of the July through
16 December under the model that's proposed here so that the
17 PEO doesn't get screwed with that. And we can address the
18 problem of, if we were to do saying that the -- nobody who
19 joins after July 1st -- that anybody who joins after July
20 1st, they still get their own rate and so forth. We can
21 address the problem of how we would assign the tail from
22 that July 1st through December 31st period. So I don't
23 want to have to go through all the details of how, but we
24 can do both of those.
25
26 MS. KURZWEG: Art, Erica had to jump off the call to
27 join another meeting and I would like to have the
28 opportunity to run that by her and discuss with our ops
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1 people.

2 MR. WANG: Now, while I was out of the room, I'm not
3 sure what else you folks were talking about here.
4
5 MR. COHN: We came across -- we were discussing a few
6 issues. And, Cece, I'm sorry you can't see on the white
7 board here, but there's one potential issue which I want
8 to bring up off of what Jill had put on the board here.
9 And for folks in the room, she was talking about base year
10 benefits. And if a claim is made, they look back at the
11 -- and correct me where I'm wrong here, Jill -- but the
12 last four quarters or the last five quarters.
13
14 MS. WILL: The first four of the last five quarters.
15
16 MR. COHN: The first four of the last five quarters
17 to basically ding the rate for the employer, for lack of a
18 better word.
19
20 And I guess one of the concerns we had as we actually
21 drew this out on the white board is on 1/1/08, clearly the
22 client is going to have their own rate, their own number,
23 etc. But for the first four quarters of the 2008 year,
24 any layoffs will attribute directly back to the PEO as
25 well. And it's a bit problematic.
26
27 Let me explain why we think it's a bit problematic.
28 It normally happens in the system now. But it normally
29 happens if, for instance, an employer -- it doesn't have
30 to be a PEO -- but an employer lays someone off, they get
hired by someone else and then they get laid off again. So it proportionately targets back to who the employers were in the first four of the last five quarters.

The issue here is we're not, under our own volition, laying off our co-employees who have been told by the statute that we are no longer the employer. However, if these clients on their own decide to lay off their employees, it will be directly attributable to our unemployment insurance rate and it will adversely affect us because we're going from a PEO, we'll just say, that's a thousand employees down to a PEO which is 15 internal employees. So it will disproportionately affect the PEO for every client -- for every one of the 100 clients that decides over the course of the year the first year that they're going to lay off an employee. And that's something I hadn't thought of before until we started to lay it out on the white board.

MR. WANG: But that experience under the model proposed here would -- I think it transferred out to the client employer.

MR. THORESEN: It should. But I think what we're seeing is that under the way it works, it may not.

MR. JOHNSON: No. Not only should it, it will translate to the client employer. It's the lag period. It's July 1, '07, to December 31st of '07. That period,
whatever experience happens there will be part of the individual client's experience along with the first half of 2008 for setting 2009 rates. That's just the way the math works, the formula works.

The question that the PEO's have, I believe, and it's a good one, is the layoffs that occur in the second half of 2007, does that become part of their individual PEO organization rate for rate setting in 2009 or not? It will go into the individual client employers, but will it go into theirs as well?

MR. WANG: No. Because if it's subtracted out from the individual client employer -- I mean, the example they used here did not go through what happens with the PEO's on this sheet. Because I tried to keep it simple, relatively.

But for the PEO's, essentially what happens is you subtract out everything that goes to the employers. And so since that experience from July 1st through December of 2007 will eventually get transferred to the employer, then it would be -- to the client employer, then it will be subtracted from the PEO at the same time.

MR. THORESEN: So if somebody is laid off in January, a claim comes into the Department, the Department is going to have to -- it's going to have our PEO name on it most likely because we haven't even reported anything in 2008
yet before April 30th. We're going to have to tell the
Department to charge this to XYZ client's account. And
you'd have to be willing to accept that. Because if
you're going to allocate history, any layoff after January
1st needs to go -- because you're saying that's that
client's experience unless we not allocate any history.

MS. WILL: And, Lisa, perhaps I am behind in the
discussions about this when we were talking about
allocating benefit charges during the transition, because
I think I was present for meetings before we came up with
this percentage experience transfer. So then had we
discussed making the client employer the base-period
employer based upon the fact that we were transferring a
percentage of experience?

MS. MARSH: No. And I've gotten a little confused in
the conversation because of that. So no, I think I'm
still at the same place you are, Jill. I thought that
would still go against the PEO experience and that that
was a large part of the reason of continuing to use the
PEO experience proportionately, two out of every 200
employees or whatever, to form the basis of the client
employer's experience.

MS. WILL: And that works for the history, but
there's still that transition year to be discussed because
the base-period employer was the PEO but we transferred
out the proportionate benefit history and wage history to
the client employers and we still have to apply the
base-year benefit charges that are going to start accruing
in 2008 where the base-year employer was the PEO for those
previous four quarters. I mean, we had discussed that
before, but we never discussed -- what Drew is suggesting
is once you proportionally charge out the wages and
benefits, then you convert the client employer to the
base-year employer rather than the PEO.

MS. MARSH: You don't want to do that. We looked at
that and that's what would slam almost every client
employer into a Rate Class 40. Because that's when you
would be -- the only people who would show up in your
ing rating are the ones you've laid off.

MR. THORESEN: Not until the next year for them. You
can't have it both ways, allocate history and then not
allow claims to be -- benefit charges against that
history.

MS. MARSH: You allocate the benefit charges and the
history.

MS. WILL: And I think this is where people are
confused, Lisa, because people are reading the example of
transferring in -- you know, if there was 2 percent of the
wages paid or 2 percent of the employees, that that, in
effect, becomes the base against which you would add in
the benefit charges and the wages. And it wouldn't skew
the history. And I'm having trouble trying to figure out
if there's a flaw in that logic. Because we had talked
about what happens when we don't transfer history. And if
you start allocating benefits to the client employer
without the history, it slams them into the high rate
class. But if you've actually allocated a proportion of
wages, wouldn't that then bring the benefit ratio back
down?

MS. MARSH: I don't have the exact rule in front of
me. We were not transferring in wages and going to say,
"Oh, 'this' employer in 2007 had 'this' many wages, in
2006 had 'this' many wages, in 2005" -- we're not going to
fake build an experience history for them from the
percentage of the PEO's base they used to be.

MR. WANG: That's still correct. What we're about
here is 2008, actually.

MS. WILL: No. This is important, Lisa. I think
there's a -- you say we're just going to take the benefit
ratio. You're not going to impute a number of wages paid
and a number of benefits paid. Is that what you're
saying?

MS. MARSH: That was my understanding. Art, we're
going to take a percentage of their rate and their
experience rating which will include pulling it again in
2008.

MR. WANG: I'm confused here.

MS. WILL: I didn't follow that.

May I suggest something here? We still have these issues on the table. We've got: How is the experience going to transfer, is the experience going to transfer, and this third issue is the benefit charging for what happens in calendar year 2008. And there are some questions that we thought were resolved but may not be all resolved on that benefit charging issue that's going to affect how the wages are calculated in 2009. Because it's going to affect their benefit ratio in that 2008 time period. So I think we need to get back together in ESD and clarify this situation of whether we're going to impute the amount of wages paid which is going to then, in effect, bring that benefit ratio back into balance where we were just talking about bringing over the benefit ratio and using that as part of the calculation which means that the issue of applying the benefit cost back to the client employer in 2008 is going to skew their rates.

MR. HALSTROM: I'm speaking for myself here, not my client. He's out of the room. But I think there's a rising sense of unease here that we've got a stream of consciousness decision-making going here. We don't know if we have a consensus within our group, we don't know
that we're acting on enough true information or
assumptions. We need to work out some way. If you people
go and give consideration to the issues and come to some
preliminary conclusions, we do the same, and then how do
we reconvene? You tell us whether it be by conference
call or whatever.

    MS. WILL: Right. And I'm just trying to see if
there's any other -- those are the points that are on the
table right now. And I don't know if it's going to be
real profitable to keep --

    MS. KURZWEG: I'm sorry. Could you repeat that? I
couldn't hear whoever was speaking to you.

    MR. WANG: Jim, do you want to repeat it?

    MR. HALSTROM: What I'm saying is -- speaking for
myself and Todd's out of the room right now, I've got a
growing sense of unease that we've got a stream on
consciousness going here and we've got nothing definitive
enough to be basing any decisions on. And I'm advocating
that the Department do what they need to do internally in
respect to reviewing this and we, outside of that, the
PEO's have a conference call and try to strive for some
understanding of what the issues are and some consensus on
how we want to approach them and then we get back together
again.

    MS. MARSH: I would add to that a recommendation that
once ES has provided out information on the method for
these to calculate, that you provide back any questions
about that method that you have or any concerns in writing
so that if we need to run some scenarios -- I mean,
you're actually pretty complicated calculations to take
each of the pieces of four out of the previous
five-quarter base-year period and the computation date
ending June 30th, that type of thing so that we can run
the scenarios, have the time to figure it out and be able
to respond to the questions and that those are the ones
that are addressed.

MR. HALSTROM: Can I respond to that first? I agree.
And I think what I would encourage you to do and I think
what we need to strive to do is to communicate as this is
evolving rather than try to wait for the Department, as an
example, to reach some definitive conclusions. If you can
convey, this is what we're thinking, these are other
parameters that need to be considered, whatever -- I think
you're on an accelerated time frame. I don't think we
have a lot of time to fool with this.

MR. JOHNSON: I would like to add this suggestion
too. I don't think the model that ESD has proposed in
these proposed WAC's is clear enough either in language or
in example to generate the right -- necessarily the right
questions for you then to react to. So my suggestion
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1 would be this: ESD, obviously, over the next couple days
2 you need your tax unit to sit down and work through what
3 it is you meant by this. And what I would like to see is
4 an explanation back to everyone in this room, both in text
5 as well as a simple arithmetic example. I recognize
6 things get difficult, but you've got good folks who can
7 actually translate it. It doesn't mean that there won't
8 be a lot of operations involved, but you can use simple
9 numbers. I mean, it's been done. But give us both a
10 textual explanation of your model and a mathematical one
11 so people can follow through. That serves the basis for
12 making decisions on: Is it a reasonable model to use or
13 not.
14       I'm still going to suggest an alternative model which
15 uses history when you've got it, which I think takes away
16 a lot of the problems here. But that would be very
17 helpful. Without that, then you really do have a lot of
18 people making comments on a model that no one fully
19 understands.
20       MR. WANG: Let me just throw in, I appreciate the
21 difficulty of understanding this, but you're asking me to
22 complicate it with at least three other factors in
23 addition to these.
24       MR. JOHNSON: No, I'm not.
25       MR. WANG: One is, in fact, on the PEO rates, which I
dropped off of this because I tried to keep it simple; one is the impact of the July through December, which I dropped off of this to keep it simple; and one is the effect of the base-year employer, which I dropped off of this, again, to keep it simple. I'm getting a little bit of a mixed message about trying to keep it simple, but at the same time, we've got to add all these considerations to it.

MR. THORESEN: If the process is to allocate the history, which is what I think you've been proposing here, then you have to allocate everything. If there's a claim that comes in after January 1st, it goes to the client. If that's what your goal is is to allocate history, then you have to be 100 percent. Claims, that's what you've done. You've divided the pie up into all of our clients and they -- and if it skews their rate, it skews their rate. It may or may not, but that's the impact. They've got the history. The history is in their rate that you gave them. If they have a bad year, they got a bad year. Why should you penalize the PEO? I think if you're not going to allocate history, maybe I would have a different issue.

MR. WANG: So on the rates, we need to get our act together and make sure we flush things out here and we'll get things out to all of you. Probably in the next couple
of days we'll need to sit down and find time to do that.
I know Lisa's out of the office for the next couple of
days also.

MS. KURZWEG: Art, I'm going to be traveling on
business and I know Erica is as well. What time frame are
you thinking? Are you still going to be shooting for the
October 3rd?

MR. WANG: Yes. We have to do that. That's a given.

Now, it's true that for the rate setting part of this
we've got a little bit more flexibility because that would
be presumably done as an emergency rule. So on the rate
setting part we can --

MR. THORESEN: What does that mean, Art?

MR. WANG: That means we would have a more -- an
earlier effective date and we would do it as something --
we just publish it and that's it if it's only good for a
certain period of time as opposed to going through all the
hoops of the normal rulemaking with the public hearing and
so forth.

So we will get -- on the rate setting part of that,
we will work on that and get back to you within the next
few days here.

As far as the other parts of the rules, we do need to
proceed with those. So let me just ask if there are any
other issues that you want to bring up here.
MR. COHN: I have one minor question on Section (2) -- or WAC 230(6). It's the last paragraph on page 5. "The department may revoke the authority of a (PEO) to act on behalf of its client employers if the (PEO) substantially fails to comply with the provisions...." Is there a definition for "substantially failing to comply" anywhere in the WAC's under Employment Security?

MR. WANG: I don't believe so, no.

MR. COHN: So it's a judgment call, I guess, by the Department? It's not one offense, two offense, it's three offenses. What would trigger the revocation under "substantially"? And maybe that's something that could be flushed out a bit.

MR. WANG: The language, I believe, is statutory. I believe that's where I got that, the substantially fails. I'm not positive about that.

MR. HALSTROM: I think maybe it was, Art. I think maybe the underlying question is, what's the process?

MR. WANG: The process would be --

MR. THORESEN: Is that No. 5 above that? Is that what you're referencing?

MR. WANG: That could be part of it. That would be one of the grounds for doing it. But if -- I mean, that's where if the PEO is refusing to cooperate and basically refusing to give it, keeps lumping the information in with
the -- and doesn't separate out the information for a client employer. If the PEO repeatedly refuses to comply with various things, whether it's -- just hypothetically, it receives a fine or something of that -- a penalty and refuses to pay or does something of that -- just a simple example.

MS. MARSH: I think because we're going into a new law that there are -- we're not sure we know. But the common law defines exemption and we use the common law.

And then your appeal process would be under the APA, RCW 34.05.

MR. WANG: And I was going to get to the appeal process, but that's intended to say that it would be an appealable order. So the process would be to determine that.

MR. HALSTROM: And it says that in here. And maybe you want to clarify it's subject to the APA.

MR. WANG: That's what this means. I mean, that's what this means. It's subject to the APA because it's -- that's why I said we're going to consider this an appealable order. That guarantees you that it's under -- the order and notice of assessment under 50.32.030 is an appealable order under the APA. It gives you access to the administrative law judge.

MR. HALSTROM: But we all know how the organization
MR. WANG: That's a side thing. I used to head up that organization so that's why he's giving me a bad time about it. But it's also been a very independent organization.

MS. MARSH: Is there comment? Is there feedback today about whether this would be under the OAH or whether this would be other agency action under the APA?

MR. WANG: No. We're not even talking about -- no. They just want to know what the process is, I think.

MR. HALSTROM: Well, he's asking what the standards are.

MR. COHN: And I appreciate that it's a new statute and it's a new process. I always feel a little safer when we know what the process is and what types of things we can do wrong in order to get thrown out of the game.

MS. WILL: Just do everything right and everything will be fine.

MR. WANG: Would it reassure you more to say explicitly it's under the APA or something? Does that help? Is that what you want?

MR. COHN: That actually clarifies it, yes.

MS. McHENRY: I have a question, Art, about -- I was just looking at this real quickly, under 192-300-230(4), this last section where it says, "All client employers..."
may be subject to the tax rate for delinquent taxpayers if a delinquency under WAC (whatever) cannot be assigned to a specific... employer." In what cases would that provision come into play?

MR. WANG: If you are furnishing information on all client employers together in a group kind of thing and the dollars don't match, they are short and we can't -- and the cutoff date is September 30th for determining a delinquent employer. So that would be if things have not been resolved between the time that the taxes are due, if there's a delinquency still, you haven't paid taxes and we can't figure out which employer because you paid it as a group basis, you've paid it for -- you've paid $1,000 for ten employers and it should have been $1,100 for the ten employers and we don't know how to attribute which one of the ten employers is delinquent, that would be the situation that would arise.

MR. COHN: Under the earlier part of Section (4) -- maybe this answers the question for me -- but it says that you will apply any penalties, late fees, errors in payment, etc., to the PEO's account first.

MR. WANG: Yes.

MR. COHN: Provided that the PEO pays those delinquencies or payments --

MR. WANG: Delinquent rate is a different thing.
That's not the same as the --

MR. COHN: Can you explain the two to me?

MR. WANG: The delinquent rate is what happens when the employer still has a delinquency as of the cutoff date of September 30th. So that means that the employer who has not signed a deferred payment agreement, has not -- and is still behind on taxes as of September 30th will get basically the highest rate for the next tax year. So that's the -- it's a significant impact on the employer.

But that's part of the teeth in the system that you've got to get your taxes in or sign a deferred payment agreement or something like that. So it's a significant impact, but it's not a penalty. It is simply that's the mechanism under statute for how the rates are calculated.

MS. MCHENRY: So is there any type of process --

okay, so there's like a delinquency cutoff date and you're assuming that everything, all -- you know, back-and-forth or information or communications have already -- should have been done by that date.

MR. WANG: Yes. And there are provisions in the other rules, actually, which deal with some of those.

MS. MCHENRY: That was my next question. So there's a process -- there's a rule process.

MS. MARSH: It's actually through the computation that we were talking about earlier, June 30th. All your
taxes from the third quarter of the prior year -- third quarter, fourth quarter, first quarter through June 30th must be up to date, current or alternate arrangements made for taxes, interest and penalties by September 30th for an employer to be considered a qualified employer and thus be entitled to an earned rate. Otherwise, they get 2/10 of a percent above the highest rate class then in effect. So you're actually given three -- even though your taxes for the second quarter are due by July 31st, you're given until September 30th for the whole year's taxes to make that. But that September 30th does not include that third quarter.

Does that answer the question that I thought I heard in the background?

MS. MCHENRY: Yes, it does. That's what my concern was, was there was some type of process that you had to go through before you automatically get the delinquency tax rate.

MS. MARSH: I'm sorry. Is there any kind of process that what?

MS. MCHENRY: Was there a process or something that you went through before you got hit with a delinquency tax rate.

MR. WANG: Just say "yes."

MS. MARSH: You would have gotten notices that you
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1 still owed taxes. You would have gotten notices that the
delinquent tax rate would be occurring. And that's the
process that you would get. Other than that, no, you
don't get an appealable request, if that's what you're
asking.

MS. McHENRY: No. Thanks.

MR. WANG: Other issues?

MR. SAVAGE: I've got a question for you concerning
subaccounts. And my question is this: Is there the
opportunity to track history for a subaccount and apply a
rate to that account and not blend it with the parent
company associated with it? For example, you've got a
parent company and you've got a pool of 100 employees in
this subaccount, they want to track that completely
separately and then they want to apply that experience and
the cost for that back to a group of 1099 employees who
utilize that pool of employees. Is there the opportunity
to track such a thing and not have the subaccount affect
the master pool, if you will, the parent company? Let's
call it a secretarial pool or an assistant pool. You've
got a bunch of 1099 employees who utilize this pool and
they're covered under L&I and everything else through the
parent company under their UBI number. They would like to
track that separately and then bill back to the folks that
actually utilize that. Is there the opportunity to have
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1 that done?

2 MR. WANG: But not to have that experience fold into
3 the parent company?

4 MR. SAVAGE: That's correct. Because these guys
5 would be picking up the whole tab, if you will. I mean,
6 the experience would certainly be paid for in the group,
7 obviously, but they would not like it to be applied to the
8 group as a whole. And the only other alternative is to
9 turn around and have one of those guys go out and hire
10 each of these people individually. And they don't
11 particularly -- they think that's onerous for the 1099
12 employees to do that.

13 MS. MARSH: So you want to actually report 1099 but
14 not employees?

15 MR. SAVAGE: No. The employee pool is W-2 wage
16 earners being reported under a UBI number of a parent
17 company, let's say. That experience for that separate
18 pool, they would like to keep separate and distinct
19 because they're going to charge the 1099 employees who
20 utilize that pool for labor, if you will, secretarial and
21 administrative, let's say. They want to back charge that
22 to those individuals.

23 MR. WANG: I'm not following the example still.

24 MS. MARSH: They want two different sets of rates.

25 One employer wants two different rates.
MR. SAVAGE: Correct. One for a subset -- a separate pool that they would pay on but that experience would be applied to -- it would be actually charged back to a different set of employees, a group of 1099 employees who actually pay the bills.

MS. MARSH: No.

MR. SAVAGE: The short answer's "no"?

MS. MARSH: The short answer's "no."

MR. SAVAGE: That's the answer I thought I was going to hear but I was going to ask anyway.

MR. THORESEN: So you can't calculate subaccount rates separately, basically, is what you're saying.

MS. MARSH: Right.

MR. WANG: Everything's got to get folded into one.

MR. THORESEN: So under what circumstances could you have two accounts? Is there any condition?

MS. MARSH: No.

MR. HEATON: She wants to go to lunch too.

MR. COHN: I guess my question is, even the largest corporations here in Washington state, Weyerhaeuser, Microsoft, Boeing, they all have one account with the state?

MS. MARSH: They could have multiple branch accounts if they want to track internally separately different information, but the tax rate is going to be for the
entire employer.

MR. WANG: So it all gets rolled up for the one employer.

MS. WILL: So you could have charges -- you could have charges tracked by your subaccount for purposes of billing back for cost-tracking purposes, but you couldn't have a separate insurance rate established.

MR. SAVAGE: So any claims in that pool would go against the parent company. That's essentially what they're trying to do. They're trying to put all of it on the backs of the folks that actually utilize it.

MS. MARSH: Well, you'd have to -- I mean, someone would have to manually calculate it.

MR. THORESEN: What if it was a subsidiary company, separate UBI?

MS. MARSH: Report them together.

MR. WANG: No. If it's a separate UBI, separate company is the question.

MS. MARSH: A separate UBI doesn't generally mean a separate company.

MR. THORESEN: But it's a separate corporation, just maybe it's a subsidiary or a partially owned subsidiary.

MS. MARSH: You can get there. I'm not going to try off the top of my head to give examples. It's very difficult to get there. Most of the time our agency will
consider it to be for the purposes of avoiding tax rates and we'll combine them back together. It is possible but not common.

MR. WANG: Other issues? Any other comments on the rules?

MR. SAVAGE: Keep it simple.

MR. COHN: Thank you for all your hard work, Art. I know we're going to continue to work together, but thank you for the work you've put into it. I recognize it's not easy.

MR. WANG: Thank you.

MS. KURZWEG: Thank you all very much.

Art, I'll give you a shout over the next couple days. And you are going to withhold the rate methodology section from the October 3rd filing or what are you considering at this point?

MR. WANG: I'm not sure how to proceed on that, frankly. I have not thought that through on just how to divide it up.

What I'm anticipating is getting something out to everybody in the next few days. I don't have a specific date yet in terms of just -- but doing it as quickly as possible on the rate setting. I need to proceed with things under the assumption of going ahead with everything else by October 3rd including all the other rules that are
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1 not PEO driven.

2 So I will be working on those things as well as trying to deal with the rate part separately. And I haven't thought through, frankly, how exactly to do that.

3 We do have some flexibility in that it doesn't have to be by October 3rd to go into effect on those, but we -- frankly, it would be a lot easier if we also did it in the long run for -- because we will need to go through a -- even if we do it as temporary rules, when we need to make them permanent, we'd have to go through the process to make them permanent. So let's try and make it as simple as possible.

4 MS. KURZWEG: Well let us know. And Erica and I are both traveling the next couple of days but we'll be back in the office on Friday.

5 MS. WILL: And can I ask a question? I think perhaps, Jim, this was one of your questions, do we need to have another in-person meeting or are we going to be able to have people call in since they're coming from all different places in the country? What are people's thoughts on that?

6 MR. COHN: I would suggest to call in.

7 MR. WANG: Can we at least identify a tentative date for doing that or what day it should be? Tuesday the 25th?
MR. COHN: What time are you thinking, Art?

MR. WANG: I frankly don't know at this point. But let's just tentatively put 10 a.m. Tuesday the 25th.

MS. KURZWEG: Thank you all. We really appreciate your time and patience.

MR. WANG: Thank you.

Anybody else? Last chance.

(Whereupon, proceedings adjourned at 12:55 p.m.)
CERTIFICATE

STATE OF WASHINGTON )
    ) ss.
County of Pierce )

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