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 Christopher Smith, Rules Coordinator, and Gary Kamimura, Cheryl Metcalf, Neil Gorrell, Art Wang, and Ted Wade.
MR. SMITH: I want to thank everybody for coming. This is the self-employment stakeholder meeting. My name is Christopher Smith. I am facilitating this meeting here for UI policy. What I like to do first is kind of go around and I want everybody to introduce their name, where they're from.

But before that, I want to let you know this is Cheryl Smith. She is a court reporter. She will be transcribing the meeting today. So I will go into some ground rules later on.

But first I'd like to go around and have everyone introduce themselves and where they're from.

MS. LEMMONS: I'm Teresa Lemmons with the Metropolitan Development Council in Tacoma and president of the Washington State Micro Enterprises Association. Last name Lemmons, L-E-M-M-O-N-S.

MS. SMITH: My name is Lisa Smith, S-M-I-T-H. And I'm the executive director for Enterprise For Equity.

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1       MS. METCALF: I'm Cheryl Metcalf. M-E-T-C-A-L-F.
2  I'm the manager of unemployment insurance policy and
3  training.
4       MS. CUMMINS: I am Carolyn Cummins. C-U-M-M-I-N-S.
5  and I'm with the Washington State Board of Community
6  Technical Colleges.
7       MR. GORRELL: I'm Neil Gorrell. G-O-R-R-E-L-L. I'm
8  the deputy assistant commissioner for UI in charge of,
9  among other things, policy and training.
11  I'm a manager with the employment training division.
13       MR. WADE: Ted Wade. W-A-D-E. I'm with the
14  unemployment insurance policy unit.
15
16                     Background and Issues
17
18       MR. SMITH: Thank you very much.
19  What I'd like to do is establish a few ground rules.
20  I want to let everybody know that the court reporter today
21  has the authority to interrupt this meeting. So I want to
22  be sure that she captures all the comments and everything
23  for the record.
24  So also, I'd like to be sure that when you are
25  participating and like to provide comments to be sure you
state your name before you speak and be sure to please
wait your turn and not to interrupt just so everything can
be recorded. Everyone will be given an opportunity to
speak today, so if you would please wait your turn.

What I want to do first is give you a little
background piece on self-employment. From there, I'm
going to open it up for comments, questions or concerns or
whatever it is you would like to contribute about the
program. Again, like I said, please remember to say your
name when you provide your comments.

And also, a transcript of this meeting will be posted
on our web site in about two to three weeks.

First of all, the self-employment program is new
legislation which authorizes the development of a
self-employment assistance program. Now, individuals
enrolled in self-employment would be approved under the
following conditions: They must be eligible for regular
UI benefits, they have been identified by the Department
as likely to exhaust their regular unemployment insurance
benefits, enrollment in this program does satisfy the
weekly work-search requirement, that an individual must be
eligible to receive weekly benefits. The enrollment does
not entitle the enrollee to any additional benefit
payments. And we are not obligated -- when I say "we,"
the Employment Security Department -- is not obligated to
expand any additional funds on providing the
self-employment assistance program.

There is also a new caveat to this law where the
participants in this program may not directly compete with
their former employer. And the effective date of this new
law will be January 1, 2008.

Discussion on Rules

MR. SMITH: What I would like you to do now is take
your blue sheet where it says "Unemployment Benefits -
Proposed New or Amended Rules." What I would like to do
is basically go down the list here, get your input in
regards to how we're going to try to draft some rules this
year.

The first part here, we want to clarify that the
self-employment assistant program is a component of
commissioner-approved training. Now,
commissioner-approved training, what that entitles the
claimant to do is they are eligible to receive their
unemployment benefits while they're taking classes. I'm
not sure how small business or technical colleges feel
about that, but as I said, we'll just go through the list
here. If there's anything you'd like to say, please
provide that.
MS. CUMMINS: Christopher, can I just clarify? Is it helpful for you to get any comments or feedback on these right now or are we just going through and clarifying some key terms and concepts?

MR. SMITH: Well, I'd like for you to give us comments and feedback. Because we are going to take all your input so we can start drafting rules.

MS. CUMMINS: Wonderful.

So my comment just on commissioner-approved training, we have done research through the community and technical colleges and found that people who are receiving income support like unemployment insurance benefits while they're at training helps them complete their training programs. So that's a really positive benefit that that income support helps them be successful in their training pursuits.

MR. SMITH: Thank you.

The second bullet: The training programs that will be approved for participants and/or the criteria the Department will use to approve a participant's training program.

The next bullet: That once a claimant has been removed from the program due to failure to participate, they will not be able to re-enroll.

No. 4: That a claimant who is removed from the
self-employment assistance program remains eligible for unemployment benefits if they meet the availability and job-search requirements.

MS. McALEENAN: I have a comment in regards to that one. I just want to make sure that it's clear that it's so long as they remain eligible for UI benefits. For example, if they were dismissed from the program for a fraudulent behavior or something and that would disqualify them from UI overall, they're not still entitled to it. I think that's probably a given. I just wanted to make sure that it was clear.

MR. SMITH: Well, what we're kind of looking at here was failure to participate being attendance, maybe participation in regards to, I guess maybe there might be a counseling component to this to where they go through and they continue to return for that for some follow-up. If for some reason they're not meeting those requirements, we will drop them from the program. In regards to maybe some type of fraud in regards to some other aspect of unemployment, we'll definitely consider that as well.

MS. McALEENAN: Thank you.

MS. SMITH: I have a question. On the point right above that that once a claimant has been removed from the program due to failure to participate, they will not be able to re-enroll in that particular program or ever or
what is the parameter for that?

MR. SMITH: What we're looking on that is for the
benefit year, if I'm correct. Now, in order for them to
-- I'll probably get into that later how they're qualified
for the program -- once their benefit year is completed,
then they qualify later after the benefit year, then they
might be able to re-enroll then.

MS. SMITH: We have found that sometimes, like it
takes seven times to quit smoking, sometimes it takes
multiple ways of engaging in self-employment to be
successful. And so it's important to make sure that the
ways the participant get in are sound so they have a good
solid footing before they start.

MR. SMITH: Next bullet here: A claimant's earnings
while engaged in self-employment activities are deductible
from benefits.

And last: The noncompete clause for up to one year
means from the date of completion of the training.

MS. McALEENAN: I have a question. On the earnings
while engaged in self-employment activities, is that
different than if someone were collecting regular UI
benefits and they have earnings, I think there's a certain
amount of earnings you can have that don't negate the
benefits entirely, it just lessens them; is that correct?
I guess my question is, is this similar in concept to
normal collection of benefits?

MR. SMITH: Yes, it is. When a claimant were to report earnings on a weekly basis, we'll make a deduction from the weekly benefit amount. Now, it's not a dollar-for-dollar deduction, per se. So when they do report it, they're not totally -- I can't say denied from benefits, but they're not going to get their full amount for that week.

MS. LEMMONS: Also on that point, we need to make sure we understand the process by which individuals are reporting their earnings as in gross or net earnings to the individual versus the earnings of the business -- business earnings minus expenses. So we just need to make sure we're looking at the methodology of doing that.

MR. SMITH: Right now what we're looking at is we are using the net earnings.

MS. SMITH: Tax on profits.

MR. SMITH: Yes. That's what we're planning with right now. Unless there's some concern with that, that's where we're headed.

MS. CUMMINS: Just a comment on the last bullet, the noncompete clause for up to one year means from the date of completion of training. Just would reflect that from experience, we have some training programs that conclude, so there's an end date for the classroom components. But
occasionally -- and I'm not sure if this is true in the
self-employment kinds of programs, but then there may be
ongoing counseling or follow-up sessions that the person
is still participating, they're progressing towards a goal
that is part of the goal of the program, but training has
concluded. So you may just want to kind of fine-tune what
that definition of the completion of training means. Does
that make sense? We learned the hard way through a tax
credits for training program, getting that timing just
right.

MR. SMITH: Any other comments, questions or concerns
about this first section under "clarify"?

The next part about this, we're looking into putting
definitions in regards to the new legislation. The first
one we're considering defining are requirements to engage
in activities associated with starting a business.

MS. McALEENAN: In regard to that, I didn't
specifically define what are requirements to engage in
activities associated with starting a business because I
think for -- depending on what type of business it is,
those may be different things. But I actually took a term
that's used a lot in criminal law which is "substantial
steps." In criminal law, it's used in defining whether
you've attempted a crime or not, whether you can be
charged for attempt, but it's when you've made an action
that is a substantial step towards the opening of a business. And I think by analogy, that type of argument might be useful in this type of situation.

MR. SMITH: That is definitely noted.

Our next bullet: He fails to participate in the approved program. And I understand "fails to participate" can be very broad. So like I said, we are here to try to get any ideas that you may have specifically about "failing to participate." How we're looking at it is we're looking at it as attendance and participation in regards to maybe follow-up counseling or whatever it is. So anything you'd like to add to that at all?

MS. SMITH: In our program, "participation" means actually writing a business plan, presenting at our micro business showcase where we have 100 people come from the community and celebrate their success. So I would say definitely attend, definitely actively participate. But there's also homework -- you know, completing homework, completing a business plan depending on the program, whatever their completion requirements are.

MR. SMITH: What we're also considering is using progress reports just like commissioner-approved training to where every six weeks or about that, we will send something with the claimant saying are they meeting satisfactory progress. So it will be up to the training
provider to complete that if they feel they're making it
and then go from there.

MS. CUMMINS: Do you do that with, for example, the
worker retraining program through the community and
technical colleges where they're getting
commissioner-approved training to enroll in a professional
and technical program? Does the UI division actually
confirm with the colleges on every one of those?

Everybody who has CAT is getting verified through the
training provider.

MR. SMITH: Yes.

MS. CUMMINS: I feel like I should know that, but
there's no time like the present to learn. Every six
weeks?

MR. SMITH: Every six weeks.

MS. CUMMINS: So from our worker retraining program,
one of the things that we require for the student to get
their financial assistance is to have an individual
education plan. And so they're meeting with -- and I
imagine these are probably fairly individualized programs
as well. So they're actually meeting with a worker
retraining coach or student services person on our
campuses. And they have their own plan. And that way,
the college is partnering with that student to define and
track satisfactory progress. So then when we talk about
1 financial aid under our program, it's all geared around
2 the concept of making satisfactory progress toward that
3 individual educational plan or learning plan.
4       MS. SMITH: We have a similar process when we work
5 with people with disabilities. Their process is different
6 and their progress is different, so being able to attend
7 to the variation of levels of participation is important.
8 And I think they could be pretty rounded out so they're
9 definable according to their pace or whatever.
10       MS. LEMMONS: When on this worksheet we're working
11 from such as "requirements to engage" and "fails to
12 participate" are quoted here, I'm assuming that you're
13 linking that directly to the legislation. And it would be
14 really helpful for us to have the location of this quote
15 so we can reference this back. Because I would like to be
16 thinking about this pretty completely. So if you can tell
17 me where that's referencing. I'm just trying to recollect
18 and not finding it here.
19       MR. SMITH: "Fails to participate," right off, is on
20 line 22 which is on page 2 of the Bill.
21       MS. LEMMONS: The one above that is where I'm trying
22 to figure out where that's at.
23       MS. SMITH: The "requirements to engage"?
24       MR. KAMIMURA: 6 and 7.
25       MS. McALEENAN: Following up on that, I was just
about to ask a similar question. Where is the -- we're
calling it a "noncompete clause," but the "up to a year"
requirement, is that actually in the Bill?

MR. SMITH: Yes. Well, it says the time period may
not in any case exceed one year. That is starting on line
27 of the Bill. And that is under Section 5 -- excuse me,
Section 1.

MS. McALEENAN: Why am I not finding this?

MR. SMITH: It's on page 2.

MS. McALEENAN: I just skipped that paragraph for
some reason. Thank you.

MS. LEMMONS: I'm just wanting some ground rules for
this particular meeting and dialogue. It's fairly formal
in how we're doing this, so I'm not sure if it's really
encouraging a good deal of dialogue around some of these
issues in the in-depth dialogue that we need to have.
Taking this forward, is the feedback you're getting today,
can you tell us what that's being utilized for and can you
kind of give us a picture of how our comments are going to
be used in what's going forward?

MR. SMITH: For us to draft rules, we're going to
take your comments and concerns and whatever and use that
to come up with more specific rules or clarifications. So
we come to you again in the draft rules to be able to see
what has been brought in. So like I say, if you feel like
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1 -- I just want everyone to participate, just give us
2 whatever ideas you have so we can go ahead and come up
3 with these rules where hopefully we can get everyone
4 satisfied on these.

5       MS. LEMMONS: And when you say rules, are you talking
6 about procedural rules -- or internal procedural rules and
7 how the Agency is going to administer this program?

8       MR. SMITH: Yes.

9       MS. LEMMONS: I don't know about others, but I'm
10 having a really hard time being able to get to any meat
11 here that we can -- you know, it's very difficult to do it
12 this way. It's not a criticism. I'm just having a hard
13 time thinking that we're going to get to where we want to
14 go here. So maybe we can open it up a little more.

15       MR. KAMIMURA: Teresa, one of your concerns -- and
16 maybe you have issues you would like to raise that are not
17 within the bulletin, whether it will be some sort of open
18 comment period, just other issues and comments on the
19 record.

20       MS. LEMMONS: I just don't think we're having a
21 dialogue that's bringing up issues that are going to
22 satisfy the implementation. So that's all.

23       MR. SMITH: Well, if you'd like to add, please, by
24 all means. That's what we're here to do. So I'm just
25 putting out ideas here that maybe might jog someone's
memory for things. But if there's something you have on
your mind, please, by all means, share it.

Would you like to share now?

MS. LEMMONS: No. I just -- as I said, I wanted to
understand the ground rules of this meeting, if we are
going to be able to have a little bit more of an in-depth
open dialogue or if it's going to be structured.

MR. SMITH: Well, no. I would like to kind of go
through these and then if there's any other --

MS. LEMMONS: That's fine.

MR. SMITH: And then the last part here where it says
"other," what we're trying to look into here is who
determines a reasonable time period and geographic area
for purposes of the noncompete provision. There have been
issues discussed about this in regards to an individual
who, let's say, for instance, computers, and they live in
Spokane. Well, there might not be -- well, let me narrow
that down. Let's say Wenatchee. And someone from there,
well, there's another competing business. They're going
to look at that geographic area compared to Seattle where
there might be two or three computer places here in the
same neighborhood. So that's something that we're going
to have to try to determine.

MS. LEMMONS: Just a clarification on what you were
just describing, where you said the noncompete and
1 geographic areas and by industry, is that -- clarify what
2 you were just -- because that's --
3 MS. SMITH: It might be the past employer.
4 MR. SMITH: The past employer.
5 MS. LEMMONS: But not in the industry.
6 MR. SMITH: No. Not industry. I just gave that as
7 an example. I'm not trying to specify a specific
8 occupation. We will definitely look at many different
9 factors before we make our determination on that.
10 MS. McALEENAN: In regard to this section in its
11 entirety in regard to what we're calling a noncompete
12 agreement, I think that, one, I do think ESD should define
13 these terms to the extent possible in rule. And I do
14 agree that depending on the type of the business and the
15 actual geographic area, it is going to vary because you
16 may have a smaller market area in a bigger city or for a
17 different type of business. So recognizing that that's
18 probably going to be difficult to do with any specificity,
19 but the more specific you can be, the better.
20 I think in regard to noncompete agreements, there's a
21 lot of case law out there in regards to what's reasonable
22 in terms of time frame and geographic location. I think
23 in regard to time frame, one year is generally considered
24 to be pretty reasonable and that's prescribed in the Bill
25 already.
In regard to the noncompete agreement itself, this section is set out to mirror a lot of what we have in contract law for noncompete agreements. But I think we need to be really clear in specifying that this is not a standard noncompete situation.

Generally when a court is looking at a noncompete agreement, they're looking at the fairness in terms of overall bargaining power, so to speak, when the employer essentially holds all the cards and the employee is forced to accept the noncompete agreement in order to take the job. This is not that type of situation at all. Really, this is an agreement not to engage in that type of business in consideration for being accepted into this program while you're receiving your UI benefits. And so in that regard, I think it will be helpful to make sure that we're not being held to as strict of a standard as courts generally hold on regular noncompete agreements.

But I see this as an entirely different situation.

MR. GORRELL: It might be helpful, Mellani, if you could tell us a little -- I think that there's going to be some discussion in the room based on some body language here -- how do you see -- for the Agency, how do you see this working? Who has this information? How is this negotiated from your perspective? Who makes the decision? And I think it might be helpful for you to give your take
and then if there are other takes in the room too, they can share what they have just about how this works. It appears this was dropped in here. How does the Agency even know a lot of the information that might be necessary in order to determine what's reasonable in this context?

MS. McALEENAN: To start with a question, when someone -- what type of information right now is available to ESD in regard to when someone is claiming benefits? Do you have the type of employer that they came from in the first place already available to you? So I am thinking that you wouldn't necessarily want to do this on a case-by-case basis, but I think you could probably spell out some general guidelines of any metropolitan area. Geographic distance might be something. I'm sorry, I don't know the specifics on what I think that might be. And also in terms of different kinds of businesses, I don't think that you would want it to be subjective so that, one, you would have to go through that analysis every single time you have someone in this training program. That might be cumbersome. And the amount of objectivity, I think, is better.

So if you could just maybe make some generalizations, but more specific generalizations in that. If it's "this" type of business in "this" type of location, we would consider "this" to be reasonable. I'm not asking for a
specific determination in each case, but actually I believe that what we have in the Bill is too specific than what it ought to be in terms of -- to be honest, what we would have preferred is that you just aren't allowed to go into that type of business right off. That's not what we ended up with. But I do think that -- I do think that I lost my train of thought. I apologize.

MR. GORRELL: I think that's a good starting point.

MS. SMITH: I'm not so sure about the experience that you've had maybe with employees of businesses that have gone on to work in the same industry, but where our orientation was in passing this legislation, the focus or maybe the legislative intent was to help people who are on unemployment get back into the economy through self-employment. And what we consistently do is support someone's experience, their training, their job -- their work on the job to actually use those talents and gifts to actually get into business. And I would suspect like in any industry, whether it's the medical field or the legal field, there's always going to be some problems there.

But on the whole, I think one way we can help folks who are on unemployment is help them tap into their training and their skills and to use those skills in self-employment which is one of the primary goals of this and other pieces of legislation that were passed in this
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1  session. Does that make sense?
2       MS. McALEENAN: I have a comment in regards to that.
3  I think when we're talking about legislative intent, one
4  of the intentions of putting this section in the Bill was
5  so that we were not requiring employers to pay benefits
6  and therefore taxes to allow someone to be trained to go
7  into competition with them. So I would disagree with you
8  slightly on what you just said.
9       MS. LEMMONS: Issues of Agency role, individual role
10  and the business role, who is this noncompete with? This
11  noncompete is between the individual and the company,
12  correct? I'm not sure who is policing that. Again,
13  that's going to go back to Agency rule.
14       Rather than -- I'm just thinking out loud or
15  wondering out loud because I don't work internally with
16  your agency, but rather than taking the burden of that
17  responsibility at the Agency level, is that not something
18  that the individual and the company then pursue? Because
19  if this is a no compete between the individual and the
20  company, the Agency doesn't have any teeth in it as far as
21  I can see and has no real ability to police this as far as
22  I can see. I don't know. So do we take the Agency out of
23  it and leave that? Is that something that the individual
24  would need to provide and maybe there's a template form
25  that the individual provides to the Agency to collect
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their benefits that has been executed between those two
parties? Just trying to think about some solutions versus
how we got there, but how do we make that a solution
that's doable? Because I could see this being a real
roadblock procedurally. Management and monitoring-wise, I
can see it as a real roadblock. And we don't want it to
be a roadblock. We want people to be able to move
forward. Some suggestions there.

MR. GORRELL: Would you anticipate this as being part
of the application process or coming in early when
someone's applying for --

MS. LEMMONS: I would think that it could be part of
applying for benefits, part of that process if they meet
with a -- you know, it's very different. I know Gary and
I talked a little bit about how this is very different
than the traditional people nowadays are calling on the
phone and doing everything over the telephone. And this
is, I think, going to need a little bit more people
involvement. And so is there an interview process? Is
there an enrollment process? Is there a packet of
materials that has to be completed? We need to kind of
get to some of those things that will help us solve some
of these implementation barriers, I think. I'm not sure
how that would play out.

MS. McALEENAN: I think that to the extent that the
employer/employee relationship has been severed already, it doesn't make sense to make this an agreement between the employer and the former employee. For one, we have to remember this is not a standard noncompete agreement. That kind of thing would be entered into, say, for a consideration for employment. That type of situation no longer exists. So to then put the burden for being able to uphold the agreement and to essentially police the agreement on the employer because, one, that is unduly burdensome on the employer, particularly when you are thinking about -- well, for a big or a small business, I think the reasons why it would be difficult vary. But in either situation, I do think the best "policemen" that we have available is the Agency and it should not be put back on the employer. To the extent on how you do that, I'm sorry, I don't have a readily available answer.

MR. GORRELL: Do you have any suggestions? How does that play out?

MS. CUMMINS: I guess I kind of step back and think about what's happening in the market when somebody becomes unemployed. So I'm wondering what happens with commissioner-approved training and training benefits, applications that go through that kind of process where, for example, at community and technical colleges, students do have some freedom of choice around the kind of training
program they choose, but they are counseled very closely
on the demand for the occupation that they're training
for. We're not going to put -- pay to put folks through
training that's not going to get them a great job.

And I can imagine the same goes for entrepreneurial
self-employment programs. You all probably have in your
programs, Lisa and Teresa, a higher touch than may happen
in some of the self-enrollment stuff that happens at small
development business centers. I'm not sure. I can't
speak for them. But I'm just wondering if we could look
at how that training benefits demand decline list is used
for that kind of population and there may be some
practical solutions that you can apply to this.

If there's a market for the service or the product,
then it's easier to determine a noncompetition situation,
right? If you can determine that there's a viable market
-- people aren't going to enroll to become self-employed
in a field where there's no competition, right? If the
market is that bad that it caused a layoff, it's a little
bit more of a vacuum. I don't know how you develop some
rules to get there, but I think you could learn some
lessons from your demand decline list and how that's
administered.

MS. McALEENAN: I'm not disagreeing with most of what
you say because I do think that for the most part, that
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1 makes a lot of sense and there might be other areas that
2 I'm not familiar enough with that we could be learning
3 from just exactly like you would say. But I do think that
4 we need to be not thinking of necessarily mass layoffs
5 either, but also in the situation where you let someone go
6 and then -- I mean, in a perfect world, the person would
7 not then go and try to compete in that where there is no
8 market availability. We can't necessarily guarantee that
9 that's going to happen, though, and that's what this is
10 designed to accomplish, I think. I think we can't assume
11 that. I think it would be nice if we could, but I don't
12 think we can.

MS. SMITH: Do we have data? Are there any --
13 there's been mention of fraud and other kinds of legal and
14 courts involvement, is their data that shows that this is
15 a problem? I don't know. I honestly don't know this
16 industry. I would love to learn more.

MS. McALEENAN: One, right now ESD is engaging in
18 rulemaking on claimant fraud. That is in -- unfortunately
19 it happens just like there's business fraud. Two, we're
20 dealing with a program that doesn't really exist very much
21 any place else. So in terms of what data is available, I
22 don't think that we necessarily have a lot of good
23 examples. If we did, I would say, "Hey, look at
24 Massachusetts. They have one that's working really well."
Let's just copy it." There is one in Massachusetts. I don't know if we should be copying it or not. So I think unfortunately we do have to invent the wheel to a certain degree.

MS. SMITH: Might it make sense to have a period of time to see if there is actually a problem and then, based on the data, actually formulate adequate, comprehensive and effective strategies to deal with that? Would that make sense?

MR. SMITH: We looked at -- I shouldn't say we looked at it, but in analyzing the Bill and going through some other things, other states have done similar programs. And the numbers weren't really there, it didn't seem like. Like I said, there's a lot of factors that go into that to get a participation rate. But that's something that we can do to try to assist this.

MS. SMITH: Until we know what the problem is, it's hard to kind of figure out a solution or the language or the procedure until we know kind of what we're dealing with. And I would support anything that would prevent any activities that aren't good. But it would be so much easier to resolve it once we know what the problem is. So maybe there could be a period of time where we could see how things go and explore and see if there are any problems. If there are, address them when we know what
the character of those problems are. Just an idea.

MS. METCALF: Can I ask you a clarifying question?

Are you speaking of the whole rule process or are you speaking of one particular part?

MS. SMITH: Just specifically with this. I'm just not familiar with the problems that arise.

MS. LEMMONS: A couple of points. I don't see that the noncompete agreement is the actual language in here. So we may be taking that much further than we really need to be.

Also, my experience in working for the last 12 years doing self-employment programing for individuals receiving public benefits, very seldom do we have individuals who are going into business in the field in which they may have just lost employment. Usually it's a totally different thing. So I know we're not dealing with large percentages.

I also know that we have been talking about utilizing a particular percentage of individuals most likely to exhaust their benefits as the target for this. So we really are limiting our field of play here.

The other thing I wanted to mention is that we are not taking into account Subsections A, B, C of this which discusses restraining the individual from performing services necessary for protection of the employer or the
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1 employer's goodwill; B, whether the agreement harms the
2 individual more than is reasonably necessary to secure the
3 employer's business or goodwill. So we have the balance
4 of both the employer and the individual's goodwill in
5 question here. And so I think we need to be careful how
6 we construct this, not call it a "no-compete agreement,"
7 but be careful how we structure this so that it does
8 satisfy both parties and doesn't harm both parties. So I
9 just wanted to point those things out.
10       MR. GORRELL: I don't want to overly drive this, but
11 Mellani, kind of getting to your point, what I was
12 originally trying to get a discussion of is how does the
13 Agency know anything about A, B, C? I mean, we know the
14 address, we know the separating employer, we know all the
15 base year employers, we know where the claimant lives.
16       MS. McALEENAN: I don't know the answer to that. And
17 to be honest with you, when I was going through this
18 preparing for today's meeting, I grabbed my Bill that I
19 had during session and I assumed I have the most current
20 copy. I didn't. So when I was looking at it, I didn't
21 even realize that there was an A, B and C.
22       But I think you raise a very good question. I don't
23 know how you're going to know that. You can't unring the
24 bell, but I think that's why just saying you're not
25 allowed to compete would have been much easier than going
into this level of specificity. I'm going to have to think about it a little bit, Neil. I just don't know the answer.

MR. GORRELL: It doesn't surprise me which version you have. This was thrown in at the last minute.

MR. SMITH: Any other concerns about that? We can always come back and revisit it if necessary.

The next one: Should we define "likely to exhaust" in rule? On line 1 of page 2, a claimant or an unemployed individual is eligible for this program if they have been identified as likely to exhaust regular unemployment benefits under a profiling system that is established by our labor market. Right now we're still working on that. So like I said, should we define that in rule as part of the legislation to implement this?

MS. McALEENAN: I do think "likely to exhaust" should be defined. I think to the extent that you can remove subjectivity, it should be so that the more clear that you could be on the definition, the better.

I also understand, though, that when I was researching this Bill during session that people that I talked to from other states pretty much indicated that determining whether you're likely to exhaust or not is more of an art than a science. If the Bill references P.L. 103-152 -- and I looked for that on the Department of
1 Labor's web site and I found references to it but I didn't
2 actually find it specifically. So when it says -- at
3 least the Bill -- okay, it's still in here. I was
4 thinking I might be referring to the wrong Bill. But to
5 the extent that it says "...as defined in P.L. 103-152," I
6 didn't even -- I don't know what that definition is.
7   MS. LEMMONS: Can we quote the line that this is
8 referencing?
9   MS. McALEENAN: Top of page 2.
10   MR. WADE: That law is referencing now what's in the
11 Federal Unemployment Tax Act. There's a profiling section
12 in FUTA.
13   MS. McALEENAN: And can anybody tell me what it
14 actually does?
15   MR. WADE: We can get that to you. But what it does
16 is it sets up -- it says every state has to have a worker
17 profiling program. And we've defined our worker
18 profiling. I think it's an RCW 50.20.011.
19   MS. McALEENAN: I can look that up myself.
20   Does it say specifically -- do we already have a
21 definition of things like "likely to exhaust" or is that
22 something that we have to -- do we have something we can
23 copy already or do we have to redefine it?
24   MR. WADE: I think it just says "likely to exhaust."
25 It doesn't define it.
MS. McALEENAN: It doesn't say how you determine. In that regard then, I don't know if this is helpful or not because I didn't specifically look it up, but I did see that Massachusetts developed some sort of algorithm to determine whether someone is likely to exhaust. And so I would suggest that maybe that's something to be looked at. Without having looked it up myself, I don't know if it -- I'm just suggesting that it may be an option, not one that I'm necessarily recommending.

MR. SMITH: Our labor market has a profiling system. And we'll definitely forward that idea to them to look at to see how we can use that to implement for us.

MS. McALEENAN: The less often that we have to reinvent the wheel, the better. I'm just looking for places where we can copy things.

MR. GORRELL: I think your question was answered. But your underlying question, is there someplace in federal law that says this is what you're supposed to do, it looks like? And the answer is no.

MS. McALEENAN: So that's what we need to develop. So then that goes back to the thing I said about Massachusetts. I think they have something. I don't know how successful it is.

MS. CUMMINS: I just want to be really clear. Washington State has a claimant profiling program,
correct, under the labor market branch of Employment
Security? So that is a model with lots of variables about
unemployment insurance claimants and it's used to
determine which of that population are most likely to
exhaust. So that exists.

MS. McALEENAN: I thought that was what Neil was just
telling me didn't exist.

MR. GORRELL: What I was trying to say was when you
look back at FUTA, it doesn't say what "most likely to
exhaust" means. It directs us to figure out what we think
it means.

MS. McALEENAN: And have we figured out what we think
it means?

MR. GORRELL: LMEA --- and correct me, those people
that are here -- LMEA has developed a modeling program
that tries to do that. There's another provision called
the claimant placement program that does something
similar. And that may or may not exactly as it exists
today be a good fit for this statute.

Anything you want to add, Cheryl?

MS. METCALF: No. That was perfect.

MR. KAMIMURA: I would add that with respect to the
tool that has been developed by the labor market branch,
it assigns a score to every individual from 0 to 100 in
terms of percent. So I think that piece that we're
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1 missing here is not that a person has a score, but where
2 between 0 and 100 do we believe a person is more or less
3 likely to exhaust. And that's the part I think we're
4 trying to get input on from stakeholders. Of course,
5 we're looking at that internally as well.
6
7 MR. GORRELL: And that's exactly what the problem is
8 is who is more likely to exhaust than the next person in
9 line on their model. But what does that mean for this
10 statute's purpose which is what you're all inputting on
11 now?
12
13 MS. SMITH: Would you help me as a layperson in the
14 language that you're talking about understand what is the
15 risk and the problem here? Because I'm not sure I know
16 and I would just love you to explain it to me. So what I
17 understand is when people are on unemployment, some people
18 get off unemployment and get a job, some people start a
19 business and some people keep staying on unemployment.
20 And so it's for those people who haven't so far been
21 successful in getting off unemployment; is that right?
22
23 MR. GORRELL: It's attempting to guess in advance who
24 among the total population that we serve are the ones who
25 are most likely to exhaust their claim before they've done
26 so.
27
28 MS. SMITH: And the reason why we want to predict
29 that in advance is because --
MR. GORRELL: This program -- I don't want to speak too much -- but it appears to be targeted toward that population of all claimants who need the most help so that they don't exhaust their benefits. It's not for everyone. It's for a slice --

MS. SMITH: Do we have data over time in the past that has kind of looked -- see like 20 percent or do we -- have you -- is that data available?

MR. KAMIMURA: As we shared with some stakeholders, there is data that would show based on a group's profile score what share, for example, actually exhausted which, since you -- if you were looking at it you would know that it isn't a one-for-one match. You would know that it is, obviously, a guess. So we have that information.

So again, I think for us the question still remains and it is a policy question more than anything else. It's not a right or wrong that you can quantify absolutely, but where should we draw that line and should we go through every score? If we use the score, should it be a score of 40? 60? anything above, below or in between?

MS. LEMMONS: Also along those lines, we need to take a look at the amount of benefits and the time line that it takes to participate in a program and become actively engaged in a business venture or a self-employment strategy. So I don't know if that bears the same kind of
discussion or if that's among -- I don't know how your profiling works specifically, but is the likely to exhaust
-- I guess I'm trying to visualize an individual coming in, they would have to at least have some fairly
significant amount of benefits to help them through this process. So there's 26 weeks of benefits --
MR. KAMIMURA: Over a 52-week period.
MS. LEMMONS: -- over a year. So my thinking is,
well, if they're coming into the process with three weeks of benefits left, it's probably not the right person. So I'm not sure how to articulate this exactly because I don't know your system that well. But I think it needs to be a factor in how we decide that.

MS. METCALF: As a part of our other training programs, and we have commissioner-approved training and training benefits, part of the application process is a financial plan of how the person plans to complete. Because often, the training programs are longer than 26 weeks. So that's something that we look at with the individual prior to them being approved for training. And whether that applies here, we'll see.

MS. LEMMONS: And just to follow up, normally, the programs -- self-employment programs and the training programs that some of the community-based organizations are running are definitely shorter than a 26-week period.
They will have plenty of time. So they're usually between, I'd say, 6 to 10 weeks, maybe 4 to 10 weeks. It varies by the agency and the program and the intensity of the program, the location of the program. So they vary. And so I don't anticipate that anybody would not be able to complete if they had the majority of their benefits available to them.

MS. SMITH: Our program is 16 weeks, but the training goes throughout that. Not every day. It's kind of an extended process. And that's just the training part. That's not the ongoing counseling and technical assistance and all the other details.

So 26 weeks would seem like an exceedingly long time from our perspective.

MS. LEMMONS: Also, on the time line, there's also the issue of being able to engage in a training program that has a class available to them when they're going through their financial planning or their counseling appointment or enrollment process. So I don't know if that also needs to have some dialogue and if that's too detailed, if we're talking at too detailed of a level here or not. But those are also some issues we need to resolve is how accessible -- how quickly can they get into a training program or what are their activities prior to a training program starting. So we need some dialogue
MR. KAMIMURA: I think you answered my question. So basically, you're asking when does the clock start --

MS. LEMMONS: Right.

MR. KAMIMURA: -- if, in fact, there is an immediate enrollment in the program and whether that would need to be occupied with some sort of pretraining activities?

MS. LEMMONS: Right. And just to clarify too, most of the programs also offer a technical assistance component as well. So prior to training, perhaps the individual could be getting some pre one-on-one individualized development service and then get into training. Again, I'm probably getting too detailed with that, but I didn't want to leave that as a gaping hole thinking that that would be a problem. I think we can solve that problem.

MS. SMITH: In ours and other programs, sometimes there's an assessment period and then we have a business readiness process where they just kind of make sure they're ready and then the full-on business training and then ongoing follow-ups. So there's a lot of different ways of doing that.

MS. METCALF: I have another question. When you're speaking about these other things that go along with the training, are you indicating that we should look toward
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1 rule to define what the training program encompasses? Is
2 that what I'm hearing here?
3 MS. LEMMONS: I think it's pretty laid out here.
4 MS. METCALF: You think it's defined well enough in
5 the law?
6 MS. LEMMONS: Every program is unique in how it
7 operates. So I don't think we want to be restricted to
8 the programs in giving the clients the service they need.
9 So if we are too detailed about every piece that -- again,
10 back to detail. I don't know how detailed you want to
11 get, but I think we've had training technical assistance.
12 The general basic things are listed in the legislation.
13 MS. METCALF: And you're comfortable with it as it is
14 in the statute then. Is that what you're saying?
15 MS. SMITH: And maybe I could just add one thing.
16 And some of the folks -- the majority of the folks we
17 serve -- we only serve low-income -- people with low
18 incomes -- and it often takes a little bit more hand
19 holding in the beginning to help them -- make sure the
20 right ones are -- the ones who are ready actually are
21 successful in our training program. So I would say there
22 might be some benefit to have parameters defined.
23 So, for example, if someone has never been
24 self-employed and they want to be self-employed and they
25 go to an SBDC, for example, and get counseling for that
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one hour, that's definitely technical assistance. But that without more is not really maybe going to support that person towards their long-term plan for self-employment. And maybe a class is okay, but that without more may not support them in their long-term planning. Or take an accounting class at a community college is great, but that without more often is not enough to help these folks build their capacity to be successful in self-employment.

So if I were to say anything, it would be that programs that have all of those together really do help these folks be successful in self-employment. And that's what our data shows. And I know that there are people that get into accounting and pursue and go ahead. Anyway, that's just our learning. Did that make sense?

MS. CUMMINS: It does to me. I see throughout the legislation very clear use of the term "program" which indicates more than a course class. So it includes but not limited to seems to be the need for -- acknowledging the program is more than one thing.

MS. SMITH: Thank you. I just want to make sure I got in on that.

MS. CUMMINS: And I think the colleges would certainly be supportive of that. Again, with our worker retraining program, we have the educational plan and it
typically doesn't include -- it can include short courses, but it has to have an employment outcome. So it's typically not one class in isolation but a short course with a job-related outcome.

MR. SMITH: And in the legislation it does say "and requirements to engage in activities." Those could be all aspects of starting a business. So however you want to go about that. And kind of piggybacking what Ms. Cummins was saying, as long as we can get everything in there that's in that program, I think we'll be good.

MS. LEMMONS: I like the use of the word "comprehensive." So it's a comprehensive self-employment program meaning that that is really what the goal is is they're going in with a goal of being self-employed versus a career training type of program which can have a different outcome when the employment is traditionally the response to that. Anyway, I just like the -- keep in mind that it needs to be a comprehensive program.

MS. CUMMINS: Let's play that one out a little bit. We have in colleges a few massage therapy programs but a little bit of cosmetology, barbering, but in the private career schools, quite a bit of massage therapy. That outcome is typically a self-employment type of situation. So how would that comprehensive -- use of the word "comprehensive" treat somebody who is, with intent,
choosing to pursue self-employment in that kind of -- in a particular field?

MS. LEMMONS: And I'm pretty familiar with that model. And we've worked with several massage practitioners and that sort of thing so I understand that and that's a good point.

My experience also, though, is that a lot of those programs do not necessarily bring a curriculum around self-employment to the table. So while they're teaching them the trade and how you go about being an independent massage practitioner, it's not really a self-employment curriculum that's being developed -- an entrepreneurial development program. So I think we can bring that together. We can enhance what's there by adding that component maybe and that would make it more comprehensive as a self-employment program. That's just my field experience in working with some of the colleges and those programs. And we have done some training and worked with some of the colleges to bring that to the table. And I know there are different levels and some groups are doing it more inclusively than others so it probably depends on the instructor at some point or the curriculum that's being offered at the college. I didn't mean to deny that as a strategy. I'm just, in general, going through --

Lisa brought up accounting. And yes, accountants can also
be independent. But anybody can be independent but it's not specifically a self-employment program that they're going through.

MS. CUMMINS: I think that's exactly what I wanted to kind of tease out a little bit more. And it's been something that we've discussed on what is a self-employment or entrepreneurial program. How much will this serve people who just need the technical skills, the occupational skills versus that concept of how do you go into business for yourself?

MS. SMITH: What we have found, and just to mirror back what Teresa says, you can have the best day care in the world, but managing it as a business is another thing. And so I'm saying if it can be integrated with massage school and day care, their training is great. But I think that many of the folks that we serve have had experience on the job or have been in their training and this is the next step to actually develop that business strategy on paper before they go into business. It just helps with their successful life.

And what I meant with the accounting, it's not accounting business, but we have had so many people from our program finish our training, they have a business plan and then they go to an accounting class. And then they go to the SBDC and the SBDC can really work with them at that
MR. SMITH: Thank you.

We'll move on to the next bullet here. Any other comments?

The second to last bullet here under "other" is: Do we need to define "injures the public" when determining whether the noncompete clause should be applied? We're going right back to it again. I understand. Should we define it or not?

MS. CUMMINS: I think it's going to depend on -- and we're referring to page 2 line 35 of the legislation. I think it's really going to depend on how you deal with the rest of that issue on the noncompete. It's going to impact how far you go in defining "injuries to the public." But how I read line 35 and 36 of the law is really about is there a supply and demand gap out there, that the public needs those services or goods? And again, how do you quantify that in a given marketplace? That's a tough job. But to me, it's is there a critical shortage of the good or service being offered by that person.

MR. KAMIMURA: They have a monopolistic situation that it might injure the public to not allow individuals to provide competing services.

MS. CUMMINS: So price control.

I think in some health fields, as a few examples, but
I think it's going to be really hard to verify unless you go case by case.

MS. LEMMONS: Just kind of a baseline here, I'm curious if we around the table know what the source of these clauses are?

MR. SMITH: For the noncompete?

MS. LEMMONS: For all of 5 through A, B and C.

MR. SMITH: This was brought up during legislation. This was brought up and kind of thrown in, if I'm correct, to kind of prevent the other employers -- I'm trying to think how I can word this correctly.

MS. LEMMONS: I understand it to be that it's to prevent an unfair advantage to somebody receiving public assistance benefits or public benefits for going into business in a field that they may have just lost their employment in and that that would somehow injure an employer whose claims may be affected because they are now responsible for paying unemployment insurance on behalf of their employes who then may compete with them. I understand that.

But where A, B and C came from -- and I know that Mellani wasn't sure. She hadn't been familiar with that and I kind of thought she was part of that movement. So we were kind of shocked to hear that she didn't know where those were coming from. But my question is, if we know
where they were coming from, we could learn more about the intent, you know. Who brought these forward? Are these borrowed from somewhere? Is this just language that was pulled out of the air to satisfy a whim or is there real intent behind some of this?

I don't think we need to get to the point where we're defining "public injury." And if we do, then we need to define the harm to the individuals and we need to define all these other things. So we could be making a huge mountain out of a mole hill here, but I would really like to get to the intent at some point. If we could learn more about that, I think we could be better at solving the problem.

MR. SMITH: To go back, I was trying to define the noncompete part. I'm sorry. I wasn't going into specifically A, B and C. But where that came from, honestly, I don't know for sure. I could probably do some research and get back to you on that.

MS. LEMMONS: Because it does seem kind of arbitrary and not necessarily -- I don't know. It wasn't well discussed, I know, in the legislative process. But intent would be so great to know.

MS. METCALF: Would knowing intent, which I don't know, help you to give comments on whether or not there should be rules?
MS. LEMMONS: I think so, definitely. I mean, if you have a goal, you need to know what that is in order to have your outcome. So that's kind of how I see it.

MR. SMITH: What I will do is I will definitely get back to everybody on that and do some research and everything.

So I'm just going to go ahead and move on from there.

The last part here would be: Modifying existing commissioner-approved training rules to address the self-employment assistance program. Right now the existing commissioner-approved training rules, as it stands, as long as the person is making satisfactory progress in a program, they are eligible to get their unemployment benefits. They are not required to search for work as long as they're doing these things. And like I said, was this something that we should use to mirror the self-employment program? The way it says here in the legislation is yes, as long as they are participating, we are going to waive their job-search requirement, they're eligible to receive their weekly benefits and everything from there. So it is real close, but is there anything in there -- in the commissioner-approved training rules that you know that we should use to address or change it?

You don't know the rules specifically? Okay.

MS. CUMMINS: I would just say as much as possible,
mirror the rules from CAT rather than reinventing or -- I
know there's going to be some variation, but the more
familiar and transparent they are among CAT, I think the
more success you'll have with great referrals, appropriate
referrals from your WorkSource offices and other places
into effective comprehensive programs. It's how you
implement. Get it to make sense to the people who are
actually going to administer it which is the people who
are making the referrals, right?

MS. SMITH: Will you repeat that?

MS. CUMMINS: Don't reinvent the wheel.

MS. SMITH: So what that means is referrals from
workforce or other places will think about self-employment
with those individuals who are wanting to go into those
CAT. They'll funnel more people to successful
self-employment outcomes if they use those existing
standards.

MS. CUMMINS: If they're comfortable with the
concepts in rules, and so you've got lots of workforce
development professionals out there in Washington who are
really comfortable with the commissioner-approved training
rules and conditions for making referral -- you know, I
don't know if "referral" is the right word, but there's
lots of practitioners that kind of get it so it enables
them to recognize opportunities for people to seek
training. And so I just say, make them as similar as possible because the more comfortable your workforce development system is with the rules of the program, the more success you'll have in getting people into the program -- the right people into the program. That's all I'm saying. Don't reinvent the wheel.

MS. METCALF: The commissioner-approved training rules have a few things in them that if you haven't all looked at the rules, you might want to look at and you might want to comment on. And at the end of this hearing, Christopher is going to tell you how long you will have to offer written comments afterwards. So if you would like to take a look and then offer comments, there will be a period of time to do that.

MS. LEMMONS: That would be great.

Is there anything that comes to mind as you're working with those rules that you already kind of are earmarking it as maybe needing to be done differently?

MS. METCALF: Well, I'm not looking at them maybe to be done differently, but maybe there are a couple of elements that we would not include. And, of course, this is also subject to comment and I'm just putting that out there. And one that I'm thinking of right now is that the training has to be full-time. And how does this work? I don't know how your programs work. And if that phrase --
you would want to comment on that phrase and a couple of things like that.

I think the training -- the commissioner-approved training rules are very good and our WorkSource offices like to work with them just like you said. But are there some elements -- I don't have them in front of me. Maybe there's nothing there, but if you want to offer comment, then we would certainly want to hear it.

MS. SMITH: I'm understanding more about this maybe now that it's nearly ended.

So, for example, this first one of the point under clarification that the program is a component of the commissioner-approved training, so this is what you're -- so by not commenting on that first point there, we were kind of saying, "Yeah, this should be a component." And I wasn't there yet to say that. So what I would say is yes, it does make sense for us to really re-examine the CAT parameters so that we can say either don't reinvent the wheel or adjust it to make it clear or whatever. So I would like that opportunity.

MR. KAMIMURA: As was mentioned by Cheryl, this can be essentially a guideline. I think we're looking at CAT as a framework so it is a CAT. That is an actual formal program. But to the extent we can design something that essentially follows that same format --
MS. SMITH: And make it easier to implement.

MR. KAMIMURA: It would make it easier to implement, it's familiar -- when it comes out that it's familiar to staff because it is similar to something they had to work with already. If you agree with that approach and you feel there might be certain tweaks, we would like to hear about those tweaks in particular.

MS. SMITH: I would definitely be willing to do that. One thing that we have encountered is in some state agencies that are working with people that we're serving is that if the self-employment plan does not fit within those strict parameters, they won't approve it. And for many people, they can make a very good living or increase their income even though it's not within those approved areas. And so now that I'm understanding better what you're talking about, it does make sense for us to at least share our experience with what we have found. So I would like that opportunity.

MS. CUMMINS: For the record, my intent and my comment about CAT rules was what Gary said, use it as a framework because it's familiar and easy to get, easy to implement. But yes, we will look at the specifics and give feedback.

MS. METCALF: That's exactly what you said.

MS. SMITH: So then on that second point where it
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1 says the training programs that will be approved for
2 participants and/or the criteria the Department will use
3 to approve a participant's training program is what we
4 would help to define. And we didn't comment on that
5 either. It's kind of brought out in the legislation, but
6 if we were to provide some written comments for that, that
7 would be helpful.
8       MS. METCALF: Yes, it would.
9       And also, that is all spelled out in the
10 commissioner-approved training rule on what's required for
11 that program and for that application, actually. So when
12 you see that, then you'll be able to compare it to what
13 you think might need to go in this one.
14       MR. KAMIMURA: To the extent in the meeting or
15 meetings we had prior to this one here, some of the
16 questions that we posed in terms of, again, what works
17 from a problematic standpoint, how would we identify
18 programs, how would we maintain our list, a number of
19 things -- all those things we are looking to providers to
20 help us design the most efficient approach possible since
21 we all have to try and make it work together.
22       MS. LEMMONS: Now, is that something that is outlined
23 in the CAT rules or is that something -- it's a subset --
24 you know, all those extras, is that a subset?
25       MR. KAMIMURA: I would call that a subset. The CAT
program has more prescribed -- 

MS. LEMMONS: So as long as the CAT that we agree to allows for the things -- the activities that need to happen and those issues are taken into consideration, we're good to go.

MR. SMITH: Any other comments or questions about anything else we've discussed today or not discussed?

MR. KAMIMURA: That you would like to discuss?

MS. LEMMONS: We did talk also, Gary, at one time about monitoring and progress reporting. We touched on it very lightly here, I think, already. And I think we're very interested in talking about how to make that process work. Because this is going to be very different than an automated, telephone in, did you do your three or five or whatever job hunts this week, what are those questions going to be that the individual has to respond to to maintain their benefits while they're going through the process? So what role can our agencies and -- programs, I should say, instead of agency. That's you. What role can the programs play in that communication pipeline to make sure that the clients and the program and the Unemployment Security Agency are talking and sharing information and kind of working out this system so that you're informed when a client has completed a program, you're informed when a client's enrolled in a program or you're informed
1 when they've dropped out of a program or those sorts of
2 things? I don't know when that dialogue needs to take
3 place, but I think that monitoring and communication is
4 something that we need to also talk about.
5 MS. METCALF: Commissioner-approved training rules,
6 and I'm sorry to say this again, have set out a monitoring
7 process for commissioner-approved training which is an
8 automatic mailing every six weeks to the provider -- the
9 training provider saying, "Is this person still enrolled?
10 Are they making satisfactory progress?" I'm sorry.
11 That's mailed to the claimant who has to take it to the
12 training provider and have it signed and return it to us.
13 And that's how it's currently monitored. And whether this
14 program is monitored the same way is subject to input.
15 MS. LEMMONS: So that's laid out in this CAT
16 guideline.
17 And then is there a standardized form? Do we need to
18 look at some of the forms that we're using to try to
19 collect the right data? Is that of interest as well to
20 discuss that? Or do you feel that the data that -- the
21 forms that you use in implementing the CAT are sufficient
22 for self-employment? Do we need a review of that?
23 MR. SMITH: Right now we're looking at the forms we
24 have now for commissioner-approved training and see if
25 maybe we need to modify those to make it fit the
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1  self-employment program.
2       MS. LEMMONS: Is that something that you would allow
3  our feedback on?
4       MR. SMITH: Definitely.
5       MS. LEMMONS: Because in the field, we might have
6  some ideas for how that would be smoother.
7       MR. KAMIMURA: Something simply may or not make sense
8  based on what you understand about the types of programs
9  you run.
10       MS. METCALF: That is not a part of the rulemaking
11  process. That's not a rule which is what this meeting is
12  about. However, as Christopher says, we will be happy to
13  have your input on form development.
14
15  Summary/Rulemaking Process: What's Next
16
17       MS. SMITH: Could you give us a sense of the time
18  line for this rulemaking process and what are the
19  milestones next coming up?
20       MR. SMITH: Our process right now would be to review
21  the comments. And after that we will decide whether to
22  proceed with the rules or not from there. Decision to
23  proceed and what we're going to do there is see what form
24  those rules will take, see how they're worded and
25  everything.
There will be another round of meetings because we're going to come up with the draft rules and then come back together and say, "Okay. 'This' is what we've come up with. What do you feel about that?" And we'll kind of go through this again and give you the opportunity again to provide comments, questions and concerns about it. So that's kind of in a nutshell how it's going to go along.

MS. SMITH: And would this next meeting theoretically be in a month or in two weeks or two months? Just to get a sense of your time line.

MR. SMITH: Like I said, once we gather everything and then a notification will be sent out maybe within the next month or two. I can't really give you an exact time right now.

MS. SMITH: So what we can do is inform ourselves about the CAT. We can get forms from you. We can give our feedback on those the best we can in writing or in person or verbally. You'll incorporate them the best you know how and then put them in some form and then we'll come back and comment and connect about them again.

MS. METCALF: Right. We need to wait for the transcript so Christopher can review everything you've said today and we need to wait for your written comments. And then Christopher will evaluate it all and he'll write up a little report on everything that's -- you know, all
the comments and things. And then we have to take a good
hard look and see how much is there and how much
controversy is there, which probably it's just a process
during any hearing process. And then he will make a
recommendation on shall we do some draft rules and go out
again with draft rules or is there enough that we need to
clarify that we need another meeting before we actually do
a draft of the rules. And that's a judgment call. And
usually it's a pretty easy judgment call based on what
comes in. So this all takes a little bit of time.

And I think a month would be wonderful, Christopher.

However, it might be longer.

And the forms and things, probably we're not quite to
that form development on that. Am I wrong or right on
that?

MR. SMITH: You're right.

MS. METCALF: So we don't have to have your comments
on the forms as quickly as we need to move on the rules.
And those we won't be using until after it becomes
effective in January. So we have some time to work with
you on those separate and apart from the rules process.

MR. KAMIMURA: I would say the same holds true and
separate from the rules process or some of the questions I
just mentioned a while ago about how we identify
providers, how will we maintain a list. Because those are
also about rules issue but they're things that I'll need
to start really hitting those questions -- I think you
have the questions. It's just a matter of really sort of
pull all that together and making it real.

MS. SMITH: And then once the rules are out there,
then there's a comment period for the public or is it
pretty much done at that point?

MR. SMITH: No. There will be a comment period.
MR. KAMIMURA: A 30-day comment period.
MR. SMITH: I think that's correct.
MS. METCALF: Yes. After they're filed, it's 30
days.

MS. LEMMONS: You use the word "hearing." So is
there a formal hearing process and who is that heard
before?

MS. METCALF: It'll be before -- Christopher will do
the formal hearing. First of all, we'll have a hearing or
meeting on the draft rules. And then there'll be more --
there will be a court reporter again and more time for
comment. And based on that, then there's a process called
-- what's that statement called -- the explanatory
statement that talks about every comment that's made of
the draft rules. And if the comments are not included
after the hearing, there's a -- concise explanatory
statement. It finally came to me. Then we get back to
the people who made the comment and why we aren't using it. And so this all takes some time to move along but we want to make sure that not only is everybody heard, but everybody gets feedback from what they had to say. So this is all part of the Administrative Procedures Act and we really strictly go by this. So then after that and the drafts come out and we heard the comments, then we write up the formal rules and there's a hearing on the formal rules and then they're filed and there's still 30 more days for comment. So it's a long process, but it's a process where we get participation from our stakeholders.

MS. LEMMONS: Is this considered a hearing then here?

MS. METCALF: No. Today is the meeting.

MS. LEMMONS: And so the hearing will be conducted in a similar environment here probably?

MS. METCALF: It will probably be here. If there were 150 people, we would be someplace else. If we had -- the notices that went out, if we had had a lot of people across the state express interest, then Christopher would have traveled across the state to have a second one of these meetings which is based on the kind of input we get.

MS. LEMMONS: It's a lot of work. We respect what you have to go through for all of this.
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1      MS. SMITH: And this is my first time doing anything
2  like this so it will be a very interesting process to
3  learn how you do it. So thank you.
4    MR. SMITH: We'll both do this together.
5     Well, if there's nothing else, I want to thank
6  everyone for attending. My name and e-mail address --
7  excuse me -- and phone number are located on the agenda
8  which is the purple sheet. And if you have any questions
9  or anything that comes up along the way, please give me a
10  phone call or an e-mail.
11    Like I said, again, thank you for coming. And I'll
12  be getting the information to you soon.
13  (Whereupon, proceedings
14  adjourned at 2:45 p.m.)
CERTIFICATE

STATE OF WASHINGTON  
)  
  ss.  
County of Pierce  

I, Cheryl A. Smith, a Certified Court Reporter in and for the State of Washington, do hereby certify:

That the foregoing transcript of proceedings was taken before me and transcribed under my direction; that the transcript is an accurate transcript of the proceedings insofar as proceedings were audible, clear and intelligible; that the proceedings and resultant foregoing transcript were done and completed to the best of my abilities for the conditions present at the time of the proceedings;

That I am not a relative, employee, attorney or counsel of any party in this matter, and that I am not financially interested in said matter or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my hand on this 6th day of August, 2007, at Auburn, Washington.

____________________________
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