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Date: May 20,2002

To: Mr. John Morrall

Fax#: 202-395-6974

FROM: Bill Hammond, *Chief Executive Officer*
Texas Association of Business
512-499-8825

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PRO-BUSINESS • PRO-TEXAS

FOR OVER 75 YEARS

Mr, John Morrall
Office of Information and Regulatory Affairs
Office of Management and Budget, NEOB, Room 10235
725 17th Street, NW
Washington, D.C. 20503.

Dear Mr. Morrall:

I respectfully urge the Office of Management and Budget to support rescission of **the** Birth and Adoption Unemployment Compensation (BAA-UC) rule promulgated by the Department of Labor in 1999. The BAA-UC regulations authorize states to withdraw funds from their unemployment insurance (UI) trust accounts to compensate employed workers who take leave following the birth or adoption of a child.

By diverting UI trust funds for paid leave, BAA-UC is clearly contrary to Congress's intent under both the Federal Unemployment Tax **Act** and the Family and Medical Leave Act. Paid leave as authorized under the BAA-UC regulations is not unemployment insurance. Workers who take leave are not "unemployed." Their employers have work for them, but these individuals are not available for work.

BAA-UC will hurt workers and employers by putting the safety net for unemployed workers at risk by inviting **states** to spend down their unemployment insurance reserves for the entirely unrelated purpose of compensating leave takers. State UI trust fund **reserves** are **needed** to assure that funds are available to **pay** unemployment compensation to jobless workers while they seek new work and to protect against the adverse economic consequences of payroll **tax** increases needed to finance unemployment benefits.

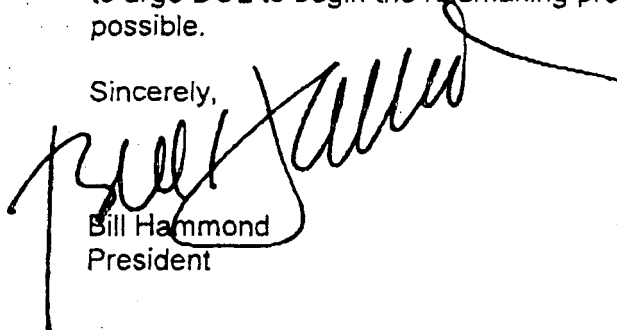
State UI trust fund reserves are drawn down quickly when the economic cycle turns. Several states, including New York and Texas, have already needed federal loans to pay their UI benefits. In these and many other states, payroll tax increases are will be imposed on employers to replenish UI trust funds. Moreover, using UI trust **funds** for paid leave puts the federal budget itself at significant risk, because the federal government is the financial guarantor for state UI benefits.

A legal challenge to BAA-UC is currently pending in the United States District Court for the District of Columbia. The case is *LPA, Inc. v. Herman* (No. 00-01505 PLF). The plaintiffs contend that the BAA-UC rule violates the Federal Unemployment Tax **Act** and the Family and Medical Leave **Act**. During the Clinton Administration, DOL asked the court to dismiss this **lawsuit** because no state **has** enacted a UI-paid leave **law**. There has been no decision yet on the motion to dismiss or the underlying merits of the case. **As** a result, UI-paid leave proposals are now under active consideration in New Jersey and other states. It is extremely important that the **BAA-UC** rule be rescinded before any state enacts a "Baby UI" statute. The judicial system will need years to resolve this

issue. In the interim, the continued **existence** of the BAA-UC regulations as final rules fosters unhealthy interest in "raiding" UI trust funds.

We encourage dialogue on positive **ways** to encourage financial **support** for parents who take **leave** *following* the birth **or** adoption of a child. However, the misuse of the unemployment insurance program for this unrelated purpose **is** unwise and unworkable. I therefore respectfully urge OMB to recommend that the BAA-UC rule be rescinded, **and** to urge DOL to begin the rulemaking process to accomplish this objective as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Hammond", written over the typed name and title.

Bill Hammond
President

BH:es