

ADVISORY COUNCIL

October 15, 2009

Present: John Chindlund, Tom Bingham, Greg Diven, Richard Thorn, Jim Olsen, Chyleen Arbon, John Williams, Raylene Ireland, Dan Peay, Jim Judd, Richard Kingery, and Kristen Cox

Guests: Bill Starks, Chris Love, Representative Steven Mascaro, Art Hunsaker, Jim Wilson, Melissa Smith, Kris Springer, Jody McMillan, Kathy Prettyman, Brad Salmond, Susan Pixton, Jerry Fruin

Welcome and Approval of Minutes

Kristen welcomed those in attendance and called for a motion on the August 11, 2009 minutes.

Motion: Jim Judd made a motion that the minutes be approved as written. Richard Kingery seconded the motion and the motion was approved by unanimous vote.

Trust Fund and Tax Rate Update

Bill Starks referenced the handout depicting the UI Trust Fund Reserve Factor and Social Cost Calculation. He stated that preliminary estimates for 2010 haven't changed from the last meeting; the reserve factor should remain at 1.0 and the social tax rate at .002, the same as CY 2009. The department will be sending out the contribution rate letters to all employers at the end of November; the final tax rates are expected to remain at these rates. However, the reserve factor is on the rise and it is anticipated that for 2011 through 2013 the reserve factor will continue to rise until reaching 1.5, which is the highest rate that can be assigned unless the trust fund becomes insolvent. Bill noted that he does not expect Utah's fund will go insolvent. Bill noted that because the Advisory Council has always done a good job of tracking the fund, and making statutory adjustments when warranted, thus he does not expect Utah's fund to go insolvent. This situation sets Utah apart from most of the nation as it is expected that by 2012, 40 of the 50 states are expected to have insolvent trust funds totaling \$90 billion dollars. However, the Utah trust fund would become insolvent if the current economic downturn does not begin improving by mid 2010.

Federal UI Benefits Extension Update

Bill referred to the handout depicting the different UI programs authorized by state and federal law. The first grouping of "regular" UI benefits are those benefits that are state funded with a duration of up to 26 weeks. Bill noted that currently there are about 1,200 to 1,500 individuals who are exhausting these benefits each week and moving to the Tier I of federal Emergency Unemployment Compensation (EUC) which include an additional 20 weeks of benefits funded by the federal government. Of this group, there are about

600 individuals each week who are exhausting their EUC benefits. Bill noted that it was reported earlier today that Utah's unemployment rate went up to 6.2 percent, which will trigger Utah into the EUC Tier II benefits, which includes an additional 13 weeks of UI benefits paid for by the federal government. These additional benefits are based on the fact that Utah will have reported an unemployment rate of 6.0 percent or higher (seasonally adjusted) for three consecutive months. Utah claimants who are potentially eligible will be notified effective November 8th about these additional 13 weeks of benefits. This will keep department staff very busy.

Bill also reported that there is currently federal legislation being considered that would allow an additional 13 weeks of benefits for states with UI rates of 8.5 percent or higher. The bill has been passed in the House but there has been some push back in the Senate because of those states that wouldn't hit this mark. The Senate has introduced a compromise bill that would grant an additional 14 weeks of benefits to states regardless of their UI rate and add an additional 6 weeks of benefits for states with a UI rate of 8.5 percent or higher. It is unclear at this time as to whether or not either piece of legislation will pass. Bill noted that it is unusual that these bills are being considered due to the fact that all the EUC programs and the \$25 additional benefit that are in place right now will expire the end of 2009 and there has been no legislation introduced that would extend current EUC programs.

Social Security Offset Provision

During the last Advisory Council meeting, there was some disagreement about the Social Security Offset Provision with five members voting to retain the current 50 percent offset provision and five members voting against doing so. The September Workforce Services Legislative Interim Committee voted to remove the expiration date on the social security offset provision and leaving the offset at 50 percent indefinitely. He noted that this decision in part was made due to the recent Merrill v. Utah Labor Commission Supreme Court case. While this case involved offsetting Worker's Compensation benefits from social security benefits, some individuals feared that the same action would be taken with respect to UI benefit provisions. Based on these issues, Bill stated that he had been working with Jim Olsen and Jim Judd to develop a proposal that would be revenue neutral and could possibly be supported by all members of the Advisory Council. Bill also discussed the preliminary proposal with others on the council.

Bill mentioned that it is important to look at the entire UI benefit and tax package when potential modifications are proposed. Bill noted that Utah is ranked 13th highest in nation with respect to the maximum weekly benefit amount paid to UI claimants and seventh highest with respect to the average weekly benefit amount based on the average weekly wage. It was suggested that an adjustment in the weekly benefit amount might help with the development of a cost neutral option based on a proposal for no (zero percent) social security offset. A \$3 reduction in the weekly benefit amount would still rank Utah as seventh with respect to the average weekly benefit amount as a percentage of average weekly wages and would also represent less than a one percent reduction in the average weekly benefit amount paid to UI claimants. To achieve the necessary savings to fund a

zero percent social security offset and for the proposal to be revenue neutral, this \$3 decrease in benefits would need to be for all claimants, even those who qualify for the maximum benefit amount.

Jim asked for a clarification on the proposal and stated that if approved, the \$3 offset would be effective July 1, 2010 when the current 50 percent social security offset provision expires and the new zero percent offset takes effect. The same formulas would be used for calculating UI benefit amounts; with the \$3 reduction applied to the calculated benefit amount and would be applied to all claimants. It was recognized that calculating the benefit amount in this manner would mean a greater percentage reduction in benefits for those individuals who earn a lesser benefit amount, but that the \$3 reduction was the only way to ensure a cost neutral scenario with a zero percent offset. Council members agreed that this proposal accomplishes the need to address the zero percent offset while not negatively impacting the UI trust fund.

Bill noted that an additional option was to consider modifying the calculation of the maximum weekly benefit amount, which is currently set at 62.5 percent of the average weekly wage. Reducing the calculation to 62 percent would result in an average reduction in the weekly benefit amount of \$4 per week for the last two years and \$3 for 2006 and 2007. This modification would calculate to a slight net increase to the trust fund. Concern was raised with this option. It was suggested that it would be much easier to remove the \$3 decrease in benefits, at a later date if warranted, with the first option.

Motion: Jim Judd made a motion to approve the \$3 weekly benefit amount reduction to all UI benefit payments, including the maximum weekly benefit amount. In return the social security offset provision would become zero. Tom Bingham seconded the motion and the motion carried by unanimous vote.

Representative Mascaro stated that in preparation of a favorable vote on the \$3 benefit reduction, proposed legislation had been drafted and will be introduced during the upcoming legislative session. Representative Mascaro will work closely with Bill to ensure that the proposed legislation accurately reflects the proposal approved by the Advisory Council. There needs to be some clarification regarding the date of the change and how the \$3 reduction would be applied. It was agreed that both the \$3 benefit reduction and the zero percent offset provision would become effective to an individual whose benefit year begins after July 3, 2010.

Art Hunsaker noted that because the agenda for next week's Legislative Interim Committee has already been distributed, the decision of the Advisory Council and the resulting proposed legislation should be the first item of business discussed during the meeting to ensure that the action of the Advisory Council is taken into consideration. Representative Mascaro stated that he would contact the co-chair prior to the meeting. Jim Olsen noted that he already had discussions with Senator Madsen concerning this issue and that he had expressed his support of the \$3 benefit reduction provided the Advisory Council supported it.

Other Retirement Provisions

Current Utah law requires that if an individual applies for unemployment insurance and is receiving a retirement or pension from a base-period employer, 100 percent of the retirement payment is deducted from the UI benefit amount. Federal law requires 100 percent of the retirement benefit amount to be deducted from the weekly benefit amount if the retirement benefit is made through periodic payments, is the result of a base period employer, and the individual has not made a contribution to the retirement benefit. Utah law does not have to be modified based on the federal requirement, but a change could be considered based on an individual who has contributed to the retirement benefit. Bill stated that for Utah, this would be a very small number of individuals – only 90 individuals in 2009 and in typical years it is approximately 40 individuals. It was the consensus of the group not to change the current language regarding the impact of retirement benefits on unemployment insurance claims.

Federal State Extended Benefit (EB) Program

Bill referred to a briefing document referencing information relative to the federal/state Extended Benefit (EB) program and discussed the possibility of sponsoring legislation that would impact the point at which Utah would “trigger” into an additional 13 weeks of UI EB benefits. Federal law specifies two “trigger” points for EB – an optional trigger based on a total unemployment rate (TUR) of 6.5 percent or the mandatory trigger of an insured unemployment rate (IUR) of 5 percent. Bill noted that Utah law does not currently specify the 6.5 percent TUR, but that it may be something the Advisory Council would want to consider based on the fact that Utah’s IUR is declining and the TUR is pushing 6.5 percent. Prior to the implementation of ARRA, federal/state extended benefits was funded with 50 percent state funds and 50 percent federal funds. With the implementation of ARRA and through December 2009, EB benefits are 100 percent federally funded and this difference may be a factor for considering the addition of the 6.5 percent trigger.

Estimates are that approximately 2,000 claimants per month would exhaust their EUC benefits and would be eligible for EB benefits if the TUR trigger were adopted and the Utah hits a 6.5 percent TUR. The only negative impact to employers would be to state and local governments and Indian tribes who would continue to be charged 50 percent to 100 percent of the EB charges, depending on whether they were a Contributory or Reimbursable employer. The question is whether or not the potential cost of almost \$300,000 per month to state and local governments outweighs the possibility of bringing an additional \$2.8 million dollars per month into Utah’s economy. Consideration also needs to be given to the possibility that the 100 percent federally funded provision under ARRA is scheduled to end in December 2009 and there is no guarantee that the provision would be extended. Utah’s TUR is unlikely to hit 6.5 percent before the end of 2009, thus unless the federal government extends the 100 percent federal funding, the issue is essentially moot. There is also a small risk to any state that adopts a TUR trigger that is conditional on 100 percent federal funding. Once a state has triggered onto EB, they are

required to continue the program for a minimum of 13 weeks thus potentially a state could trigger onto EB, 100 percent federal funding ends a couple of weeks later and the state would be required to fund the EB benefits for the remainder of the 13 week mandatory period.. While this scenario is remote, it is possible.

The consensus of the group was not to take any action at this time and wait to see if the 100 percent funding is extended beyond 2009 and to carefully watch and monitor Utah's UI rate over the next several months. It was also agreed that it would be wise to identify a forum for addressing this issue with state and local governments.

UI Special Administration Fund Update

Bill reported that he and Chris Love had met with Rich Thorn, Jim Judd, and Chyleen Arbon, just prior to this meeting, to discuss possible uses of the penalty and interest revenues, also known as the Special Administrative Expense Fund. The idea is to discuss with key legislators the possibility of dedicating these revenues for activities specifically related to employers, job and economic development activities, rather than simply using the fund to offset or balance the state budget. Possible uses of the fund included addressing UI compliance issues through the hiring of additional staff, reducing employer penalties, identifying potential workforce development issues that would assist employers in the hiring process and being more competitive in a global market (i.e., through the funding of apprenticeships, training, curriculum development), etc.

The consensus of the group was that Bill and Chris Love would develop a proposal for the group to consider based on the potential uses of the fund as outlined in the discussion with Rich, Jim and Chyleen. The Advisory Council would use this proposal as the starting point for future discussion and consideration.

Motion: Tom Bingham made a motion that the meeting be adjourned. Jim Judd seconded the motion and the motion carried by unanimous vote.