

January 26, 2016

MEMORANDUM

TO: UCRA Board of Directors
FROM: UCRA Industry Advisory Subcommittee
RE: Comments on the Draft UCRA Budget & Business Plan Presented in San Diego

The UCR Board clearly recognizes that the UCR program has reached a new level, now that collections of UCR fees are for the first time projected to exceed the total of state entitlements, so as to provide the Board with administrative funding. In response, the Board has taken steps to incorporate a UCR repository, to engage a contractor to manage aspects of the program, and to develop both a business plan and a budget for the prospective UCR, Inc. The Industry Advisory Subcommittee agrees that these are the right steps for the Board to be taking at this time. In particular, both a business plan and a budget for the repository are obviously critical to the future success of the program. The Industry Advisory Subcommittee has reviewed the presentation made in San Diego and submits its comments to the Board's attention.

Summary

In brief, the Subcommittee strongly believes:

The pro forma budget presented to the Board in San Diego is grossly inflated and wholly unjustifiable. It will not serve as the basis for the Board to fashion a realistic UCR budget. That work must start over.

If the Board adopts a budget for UCR that is not constrained, realistic, and justifiable, it will be an embarrassment to the program.

The Board must be prepared to recommend a significant reduction in UCR's administrative set-aside when it recommends a reduction of the UCR fees.

The Board must establish a reasonable reserve fund for UCR.

Many functions suggested by the draft business plan are appropriate, but the Board needs to consider carefully the degree of effort to be put into each one.

Portions of the business plan, or the means suggested for their accomplishment, are inappropriate.

The scale of the business plan must correspond with an appropriate, realistic repository budget.

Budget Proposal

The budget presented in San Diego is prominently labeled “pro forma.” It is certainly that, and little more might need to be said about it if the numbers and staffing in it were not so highly inflated and unjustifiable. A cursory look shows that no real effort has been made to justify either the funding or the staffing proposed. In the oral presentation, it was repeatedly stated that the numbers employed were “conservative.” They are no such thing, and the Board should not be misled by such usage.

A budget of anything like the scope suggested by the proposal would be inappropriate for UCR either in 2016 *or in any conceivable future year*. The UCR Board cannot plausibly spend nearly \$5 million annually – *or anything close to that amount* -- for UCR administration. The proposal lacks all plausibility, and does not reflect the current or future needs of the UCR program or the participating states. A budget of \$500,000 would seem to suffice for 2016. The Subcommittee is inclined to believe that little if any more will be required in 2017 to cover actual expenses.

Work on a Budget Must Start Over

The Board should not seriously consider the “pro forma” budget, which cannot serve as the basis to fashion a more acceptable budget. Rather, the Board should start over and take the time to do the job properly *from the ground up*, considering carefully what it is actually necessary for the repository to do, and what each of those repository functions may reasonably cost. We recommend that the Chairman appoint a small committee of Board members, including one or more industry representatives, to develop a more reasonable, *much more constrained* budget for 2016, with an eye to 2017 as well, and to present that budget to the Board at its meeting in June.

Although in the abstract it might be desirable for the Board to adopt a 2016 budget at its February meeting, the inadequacy of the proposal made in San Diego effectively prevents this. We believe that proposal cannot be amended so as to make it acceptable; the process must begin again. Fortunately, there appears to be no real urgency to adopt a budget; the Board can and should take its time, and continue during the intervening few months before June to approve expenditures *ad hoc*, as they may be needed.

An Inflated Budget Will Embarrass UCR

For the Board to adopt a course of spending on such a massive scale as that suggested in San Diego would inevitably embarrass the UCR program. When provision was made in the DOT rulemaking for a set-aside for UCR administration, there was little understanding of how much might really be needed, and perhaps little anticipation that the program would ever supply any administrative funds at all. The amount of \$5 million may have been arrived at almost at random, without much consideration.

By this time, the Board has had considerable experience with what the administration of the program should and will actually cost, even allowing for improvements in areas that have until now been given short shrift. That cost is nowhere near \$5 million a year. The Board must

recognize that the amount of the existing administrative set-aside was arbitrary, that it is far too large for a program on the scale of the UCR, and that it must be significantly reduced.

Comparison with IRP & IFTA

To provide some context: The International Registration Plan handles some \$2 billion in state funds annually through the IRP Clearinghouse, which the IRP repository built and now maintains. Besides managing the clearinghouse, IRP, Inc. provides all the coordination and communication that a repository function implies. Similarly, the International Fuel Tax Agreement repository has built and now maintains a clearinghouse, and provides much the same repository functions as does IRP, Inc. Both repositories maintain staffs, and IFTA owns its own headquarters building.

Both the IRP and IFTA programs are *significantly* more complex than UCR. Yet the *combined* annual budgets of IRP, Inc. and IFTA, Inc., including provision in each case for emergency reserves, is on the order of \$2.5 million. (IRP's is slightly more than \$1.5 million, IFTA's slightly more than \$900,000.) In both instances, these costs are met by dues paid by IRP and IFTA's 59 member states and provinces.

We stated above that for UCR to adopt a budget anything like what was presented in San Diego would embarrass the program. The comparison with IRP and IFTA should show why: the expenditure of such an enormous amount to support a relatively small program is wholly unjustifiable. That both IRP and IFTA repositories are funded by dues imposes a constraint on their budgets, and limits each organization's functions to those that are actually necessary. Were UCR to ignore this approach, it would open the program to much well-founded criticism.

Indiana Already Provides Many UCR Functions

It must not be forgotten either that well over 80% of UCR fees are collected through the national UCR system developed and supported by Indiana. Indiana also manages a large part of the accounting for those collections, as well as a great deal of customer service and outreach -- *all at no cost to UCR*. Indiana's services reduce considerably the functions a UCR repository might otherwise be called on to undertake. The Industry Advisory Subcommittee sees no reason to abandon the valuable relationship with the Indiana Department of Revenue, or to significantly alter its terms.

There's a Better Use for Much of the Set-Aside!

UCR will be called on to justify its administrative expenses almost immediately. Given that there is now a surplus of UCR funds collected, UCR fees must be reduced. Much was made in the budget presentation in San Diego of potential additional sources of revenue to reduce the UCR fees further. Many of those suggestions seem speculative at best.

On the other hand, any reduction in the current set-aside for UCR administrative expenses will go *directly and immediately* to lower UCR fees. The businesses that pay those fees will be giving UCR's administrative expenses a hard look in the near future, as the fee-reduction discussions get under way. The U.S. DOT and the participating states are very likely to as well.

The Board must be prudent and thoughtful in providing for a reasonable level of administrative program support, but it must also be prepared to recommend a *significant* decrease in the allowance for administrative costs in the next fee rulemaking.

UCR Expenses for 2016

UCR's necessary expenses for the current year and, it appears, for 2017 as well, seem to be quite limited.

Currently, the Board has executed two contracts, the first with Iteris, which continues through 2017, the second with DSL Transportation Services (Dave Lazarides), for 2016. In addition, the Board will cover the travel expenses of its members to the two scheduled in-person Board meetings of the year (and any others that may be held), of UCR subcommittee members to those same meetings, and of Board members and DSL for incidental travel on the Board's business. Finally, there are the presumably one-time legal expenses to be incurred with connection with the proposed incorporation of a UCR repository function. Those appear to be the sole monetary obligations the Board has so far incurred. However, it appears to be agreed that the Board must relieve Scott Morris of the accounting function he has performed, without recompense, for several years, and to farm it out to professionals, along with the ancillary expenses this change may entail.

Scale of the UCR Budget

Altogether, these expenses appear to total approximately \$450,000 to \$500,000 for 2016. So far, the Board has not incurred expenses for calendar 2017, apart from the continuing contract with Iteris. An appropriately constrained business plan could hold expenses to little more than \$500,000 for next year as well, without in the least preventing the Board and its contractor from investigating the degree to which the Board may plausibly determine to fund additional repository efforts in the future, along with the priority to be placed on each.

The Subcommittee believes that any additional areas of expense incurred by the Board, including the hiring of one or more employees, must be carefully considered and fully justified, item by item, before the adoption of any budget that incorporates them. That seems only prudent management of what are, after all, public funds. Some expansion might be found justifiable, but other suggestions, including many proposed in San Diego, appear to the Subcommittee to be inappropriate for the Board to finance or simply unnecessary. And of course the determination of the amount to be devoted to a particular budget item can be as critical as the determination whether to spend anything at all on that item. In this respect, we find the budget proposed in San Diego to be especially lacking in substance and realistic analysis.

UCR Reserves

One area of Board expense, however, seems to be critically necessary if the UCR program is not to face potential disruption at some point in the future. That is a provision for reserve funds. It is probably superfluous to point out that under the UCR Act the Board depends for any administrative funds in a given year on the total of UCR collections exceeding the total

entitlements of the participating states. If, on account of economic conditions or for some other reason, collections sharply diminish in a given year, little or no administrative funding may be available to the Board.

It is generally recommended that business associations – and for this purpose a UCR repository would closely resemble such an association – maintain reserves to fund operations in case of emergencies. Both the IRP and IFTA repositories have reserve funds.

There is no standard for how large such a reserve should be, but we recommend that the Board authorize a reserve fund of \$500,000 for the present, to cover a year of operations, to be drawn on in the event the administrative funds provided by the ongoing UCR collections are diminished. This should be sufficient to allow repository operations, possibly at a somewhat reduced level, to continue in an emergency, permitting the Board time to make other arrangements if it seems likely that funding will fall short for an extended period. It seems to the Subcommittee unnecessary to establish any larger reserve at this time.

UCR Business Plan

So far, we have spoken primarily to the budget presented in San Diego, rather than to the draft business plan presented there. Many of the functions outlined in the business plan are probably appropriate for the repository to undertake – at least at some level of effort. Most of those are reflected in the appendix to the services contract executed between the Board and DSL late in 2015. We would caution the Board, however, that the proposal tends to inflate inappropriately the scope of many of those functions, and that some of the functions – or the means suggested to accomplish them – are outside the scope of the repository altogether. Above all, the final business plan for UCR must reflect a constrained budget rather than the inflated numbers suggested in San Diego. We have a number of suggestions for the Board as it undertakes this necessary review.

UCR Cannot Undertake Government Functions

As several Subcommittee members pointed out in San Diego, it would likely be counterproductive for the UCR repository, in the name of the Board, to substitute itself for states to contact motor carriers or to perform UCR audits. Carriers and other fee-paying entities have legal obligations to their base states; they have none to the Board. Moreover, the industry is already deluged with ads offering assistance in paying UCR fees. Not all of these are legitimate, and probably most are to some extent misleading. A message from UCR, Inc. is apt to be seen as one more in this category, leading to confusion where it is not simply ignored. (This is not to say that the Board should not in certain circumstances reimburse a state when it incurs expenses in outreach efforts to carriers actually based in nonparticipating jurisdictions, as was recently the case with Texas.)

Retreat “Analysis”

The business plan offers a strong invitation for the Board to indulge in a frenzy of retreat analysis, while the budget proposal would devote multiple repository staff to this subject,

evidently on a permanent basis. It seems to the Subcommittee, however, that retreat, most especially in the higher fee brackets doesn't require analysis. Retreat is quite well understood, it seems to us. What retreat requires is *quick and effective follow-up by the base state with the carrier involved*, so that missing fees can be appropriately collected. To the extent this is not happening today, when participating states are required to audit high-value retreaters, it is due to states not meeting their obligations to enforce UCR, to the detriment of other states and the program as a whole.

State Obligations

That situation, to the extent it exists, doesn't call for analysis; it calls for a serious effort on the part of the Board to oblige all participating states to fulfill their duties under the program. IRP and IFTA both have thorough programs of peer review, and IRP in particular combines this very successfully with its dispute-resolution function to oblige member jurisdictions to toe the line.

The peer-review process is assisted in both IRP and IFTA by the related requirement that states and provinces file annual reports with the respective repositories on the audits they perform. Now that a satisfactory audit template has been developed for use in UCR audits, and given the rudimentary nature of such audits, participating states would seem to have little excuse for not meeting their obligations in this respect. This is where retreat "analysis" on the part of the UCR repository needs to focus, and if properly focused, should bring immediate and probably lasting improvement in collections.

The "Universe"

In a related area, the business plan suggests that there's a need for UCR to investigate whether there may not be many thousands of potential fee-paying motor carriers about which neither the participating states nor FMCSA knows anything at all. Undoubtedly there are carriers operating that do not pay UCR fees and ought to be paying them. Common sense, however would strongly indicate that these carriers are small, are unreachable by ordinary means of communication, and are hardly likely in the aggregate to yield revenue that exceeds the additional costs of collection.

Overall, it will be appropriate for the repository to explore the feasibility and usefulness (the two are different) of many functions proposed in the business plan. Until a realistic assessment can be obtained of each, we would caution the Board against devoting any great resources to them. Such exploratory initiatives, each on a small scale, should serve to fill the contractor's spare hours during probably the next 18 months or more, and only after that time will the Board be able to discern more definitely which functions are truly worth pursuing as valuable for the UCR program, and which are not.

Conclusion

As the Subcommittee noted at the beginning of these comments:

The draft budget presented to the Board in San Diego in December is not appropriate, and cannot be used as the basis of a budget suitable for the UCR repository. The Board must therefore begin work on the budget all over, with the hope of adopting a much more reasonable, constrained one by mid-year.

After having taken this step, and provided as well for a UCR administrative reserve fund of a justifiable size, the Board must consider reducing the scope of the UCR administrative set-aside very significantly when it makes its recommendation for lower UCR fees.

The repository business plan also requires adjustment. Although many of the functions suggested for the repository are appropriate, some are not. The repository's focus, given the services supplied to the UCR program by Iteris and the state of Indiana, should be on coordinating communications among the participating states, and in assisting the Board in requiring all of the UCR states to live up to their obligations under the UCR program.

The Board should resist the temptation to adopt a business plan or a budget for the UCR repository that exceed the scale reasonable for a program of the limited size and scope of the Unified Carrier Registration program.

The Industry Advisory Subcommittee appreciates the Board's consideration of these comments.

Robert C. Pitcher

Chair, UCR Industry Advisory Subcommittee

Vice Chair, UCR Board of Directors