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SPECIAL POINTS OF INTEREST:

- With rising joblessness, Oklahoma's Unemployment Insurance Trust Fund balance is dropping rapidly;
- Declining Trust Fund balances risks triggering "conditional factors", which levy automatic tax increases on employers and benefit cuts on jobless workers;
- Oklahoma could be eligible for \$75.9 million in federal funds that could avert or minimize tax increases and benefits cuts;
- To be eligible for these funds, Oklahoma must enact modest and worthwhile changes to its UI program.

UPDATING UNEMPLOYMENT INSURANCE LAWS WOULD BOLSTER TRUST FUND, HELP OKLAHOMA'S WORKERS AND BUSINESSES

BY DAVID BLATT, DIRECTOR OF POLICY

INTRODUCTION

As the national economic downturn hits Oklahoma with increasing force, a rapidly growing number of Oklahoma workers are joining the ranks of the unemployed. The state's seasonally-adjusted unemployment rate reached 5.5 percent in February, still well below the national average, but up sharply from 3.9 percent just four months prior. The number of initial claims for Unemployment Insurance benefits reached a weekly average of 4,705 persons in February, up 148 percent compared to September. The state paid out of \$36.4 million in unemployment benefits in February, setting an all-time high for the second consecutive month.

The surge in jobless benefits is already beginning to have an impact on the state's Unemploy-

ment Insurance (UI) Trust Fund. Oklahoma is fortunate to have entered the downturn with its Trust Fund in strong shape. As of December, 2008, the Trust Fund balance was at \$824 million (Fig. 1); by one acknowledged measure of trust fund solvency, Oklahoma had the third most financially secure UI system at the end of 2008.¹ However, the UI Trust Fund balance has already declined by \$100 million since August, falling to \$763 million as of mid-March of 2009 (Fig. 2).²

In order to keep the UI Trust Fund system solvent, Oklahoma law establishes what are known as "conditional factors", which automatically trigger both increases in employer taxes and cuts in jobless benefits whenever the Fund's balance falls by a determined amount. Conditional factors range from "A" to "D", de-

pending on the severity of the drop in Fund balances.

Fortunately for Oklahoma, a provision passed by Congress in February as part of the American Recovery and Reinvestment Act of 2009 (ARRA), could provide Oklahoma with an additional \$75.9 million in federal dollars that would bolster the solvency of Oklahoma's UI Trust Fund and help avert or minimize tax increases and benefit cuts in the years ahead. To receive the funds, Oklahoma must only approve minor changes to its unemployment insurance system that will allow the program to better serve certain categories of laid-off workers who are currently ineligible for benefits.

This brief looks at the UI reforms contained as part of ARRA; what Oklahoma must do to become eligible for the additional federal

Fig. 1: Oklahoma Unemployment Insurance Trust Fund, End-of-Year Balance, 2000-2008 (in \$ millions)

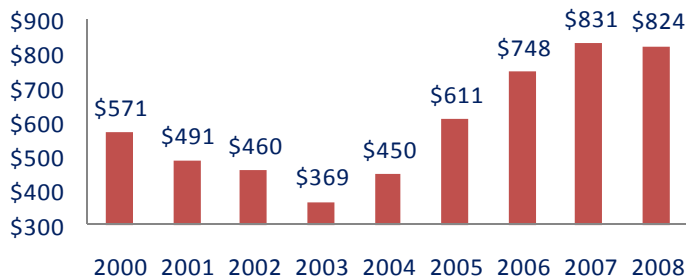
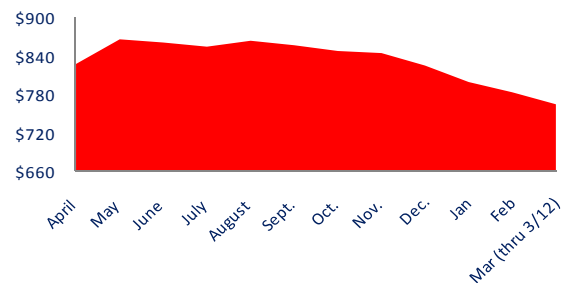


Fig. 2: Oklahoma Unemployment Insurance Trust Fund, End-of-Month Balance, April 2008 - Mar 2009 (in \$ millions)



funds, and why enacting these reforms is in the state's interest.

II. THE UNEMPLOYMENT INSURANCE MODERNIZATION ACT

The \$787 billion stimulus bill signed by President Obama in February included provisions known as the Unemployment Insurance Modernization Act, or UIMA, intended to help close gaps in the unemployment insurance program that deny benefits to certain categories of workers. Today, only 37 percent of unemployed workers nationally collect state unemployment benefits, due in large part to the failure of the program to adjust to a changing workforce.³ In particular, program eligibility rules tend to exclude low-wage and part-time workers, especially women, who make up a growing segment of the workforce. According to the National Employment Law Project, low-wage workers are twice as likely to become unemployed as higher wage earners but only one-third as likely to collect benefits as a result of antiquated eligibility rules.⁴ In Oklahoma, 36 percent of the unemployed received UI benefits during the most recently completed 12 months.

UIMA provides incentive payments to states to adopt reforms to the program that help otherwise eligible laid-off workers qualify for benefits. To be eligible for UIMA funding, states must enact the following changes:

- 1/3rd of incentive funding is contingent on a state adopting an "alternative base period" (ABP), which counts a workers' most recent earnings when determining eligibility for benefits. This allows lower-wage workers with more recent work histories to qualify for benefits [see text box, *What is the Alternative Base Period?*];

- If a state enacts the ABP, it may then receive the remaining 2/3rds of funds by adopting any two of the four following reforms

- ◇ Providing benefits to laid-off part-time workers who are pursuing only part-time work;
- ◇ Providing benefits to individuals who

leave work for compelling family reasons;

- ◇ Providing a minimum weekly dependent allowance of at least \$15; and/or
- ◇ Providing additional weeks of benefits to long-term unemployed workers engaged in training programs.⁵

III. WHAT OKLAHOMA NEEDS TO DO

Oklahoma's share of the total \$7.0 billion UIMA incentive payments would be \$75.9 million. Oklahoma is in the favorable position compared to many other states of already conforming to UIMA's requirements in whole or in substantial part. The state is required to make only modest and inexpensive adjustments to its UI program in order to be eligible for the full additional amount. Enacting legislation prepared by the Oklahoma Employment Security Commission (OESC), HB 1384, would fully qualify Oklahoma for UIMA funding by doing the following:

1. *Remove a trigger that suspends the Alternative Base Period during years when the UI program is in conditional factors.* Oklahoma's Legislature enacted the Alternative Base Period in 2002. However, under current law, the ABP is suspended in years when the Trust Fund balance has dropped and the state is in conditional factors. UIMA explicitly requires that alternative base periods be permanent and "not subject to discontinuation under any circumstances other than repeal by the Legislature".⁶

2. *Expand the definition of "compelling family circumstances".* Under current law, Oklahoma already provides a number of good cause exceptions under which an applicant for UI benefits can voluntarily quit employment and still receive unemployment benefits. These include: illness of an applicant or an immediate family members; a spouse transferred for work; and domestic violence. HB 1384 clarifies and broadens slightly the language in current law to

WHAT IS THE ALTERNATIVE BASE PERIOD (ABP)?

All states use a 12-month base period, or base year, to determine whether laid off workers have earned enough wages to qualify for benefits. The traditional base period excludes the current quarter and the most recently completed calendar quarter, known as the lag quarter. This means that a worker's earnings in the three to six months prior to being laid off are excluded. Under the ABP, wages earned in the completed lag quarter can be included to determine eligibility. In Oklahoma, workers must have earned \$1,500 during their base period, and the individual's total base period wages must be at least 1.5 times his or her high quarter wages.

Alternative base periods allow more workers to qualify for benefits. Studies have found that the ABP makes the Unemployment Insurance program more equitable by enabling a larger percentage of low wage, part-time and intermittent workers to qualify.¹ Twenty states have adopted the ABP. Oklahoma enacted the Alternative Base Period in 2002, but suspended eligibility through the ABP for years when the state is in conditional factors. In 2008, 2,418 employees became eligible for UI through the Alternative Base Period.

¹ National Employment Law Project, "What is an Alternative Base Period and Why Does My State Need One", undated.; at: <http://www.nelp.org/page/-/UI/Alternative%20Base%20Period.pdf>

conform with U.S. Department on Labor guidance.⁷ and

3. *Expand eligibility for certain part-time workers.* To receive UIMA funds, Oklahoma must provide benefits to applicants who are seeking part-time work while unemployed *if* the applicant worked part-time during a majority of weeks in their base periods. In other words, someone who was primarily a part-time worker who otherwise qualifies for UI can receive benefits while seeking only part-time work. According to the OESC, the Department already interprets existing state laws this way in practice. To receive UIMA funds, the state only needs to spell this out in statute.⁸

It is clear that Oklahoma’s federal UIMA payment will pay for many years of increased benefits. OESC has calculated that tweaking existing policies concerning compelling family circumstances and part-time work would lead to additional benefits of \$100,000 per year. The agency further estimates

that the state would pay an additional \$2.8 million in annual benefits by maintaining the alternative base period in years where it would otherwise be suspended.⁹ Assuming that the state is in conditional factors one year in three, the additional federal UI funding equates to 80 years of additional benefits.

IV. THE BENEFITS OF ADOPTING UIMA

Adopting the three modest reforms required to receive UIMA incentive payments would be beneficial to Oklahoma’s workers, employers, and to the state’s UI program:

- *Adopting UIMA reforms will help keep jobless working families afloat.* The provisions in UIMA that Oklahoma must adopt to be eligible for this new federal funding are sensible policies that will provide temporary support to laid-off low-wage and part-time workers. Relying exclusively on the traditional base period, which can exclude earnings from the most recent 4-6

months of work in determining eligibility for benefits, is particularly anachronistic in this period of easily-transmitted information.

- *Adopting UIMA can avert or minimize tax increases on Oklahoma businesses and benefit cuts to unemployed workers.* Upon adoption of the requisite legislation implementing UIMA, Oklahoma would receive a \$75.9 million deposit to its Trust Fund. The higher the Trust Fund balance, the less severe are the correctional “conditional factors” in the upcoming years, which would minimize the extent to which employers are subject to higher UI taxes and laid-off workers to reduced benefits. An additional \$76 million could make the difference between avoiding conditional factors versus falling into conditional factor “A” or “B” in 2010 [see text box, *What Are Conditional Factors?*].

- *Adopting UIMA will help fund administration of the state’s UI program:* Unlike the UI taxes paid by em-

WHAT ARE CONDITIONAL FACTORS?

Conditional factors are a statutory mechanism that attempt to ensure that Oklahoma’s UI Trust Fund does not become insolvent by automatically raising employer contributions and reducing worker benefits when the Fund’s balance begins to drop. Under the law (Title 40, Section 3-113), conditional factors take effect in calendar years when the balance of the UI Trust Fund is less than three and one-half times the average net benefits paid over the four most recently completed years. Conditional factors range from the lowest, or least severe, “A”, to the highest, or most severe, “D”. The lower the ratio of the Fund’s balance to average yearly benefits, the higher the conditional factor.

When conditional factors are in place, they trigger two changes to the program affecting employers and three changes affecting claimants. To receive UIMA stimulus funds, the state could no longer suspend the alternative base period under conditional factors.

The chart displays the effect that conditional factors would have had on UI tax rates and benefits in 2009.

| Provision | Applies to | No Conditional Factor | | | | |
|--|------------|-----------------------|-------------|-------------|-------------|-------------|
| | | Condition A | Condition B | Condition C | Condition D | |
| Taxable Wage Base | Employers | \$ 14,200 | \$ 15,100 | \$ 16,000 | \$ 16,900 | \$ 17,700 |
| Tax Rate (percent of taxable wage base) | Employers | 0.1% - 5.5% | 0.2% - 5.8% | 0.2% - 7.3% | 0.2% - 8.3% | 0.3% - 9.2% |
| Maximum Weekly Benefit | Claimant | \$ 409 | \$ 393 | \$ 375 | \$ 358 | \$ 341 |
| Maximum Total Benefit | Claimant | \$ 8,900 | \$ 8,400 | \$ 8,000 | \$ 7,500 | \$ 7,100 |
| Alternative Base Period | Claimant | Eligible | Suspended | Suspended | Suspended | Suspended |

ployers, which can only fund benefits, UIMA funds can be used either to pay benefits or to operate the UI program. The OESC is a non-appropriated state agency whose operations, including administering and overseeing the UI system and providing reemployment services, are funded entirely by federal grants. The agency's base federal funding suffices to pay for only 550 or the agency's 750 employees. In recent years, OESC has been supplementing its operating budget with one-time federal funding enacted in 2002. As this money runs out, OESC is looking to UIMA to serve as a source of operating funds in the years ahead. In the absence of this new funding stream, OESC is contemplating an administrative fund assessment on employers in lieu of a portion of current UI taxes. While this approach could preserve agency operations, it would divert money currently going to the UI Trust Fund and risk placing the state in more severe conditional factors.⁸

V. WHERE THINGS STAND

Legislation to implement UIMA, HB 1384, authored by Rep. Randy McDaniel (R—Oklahoma City) was introduced as a committee substitute early in the 2009 legislative session and passed unanimously out of the House Economic Development and

“It is very clear that Oklahoma is in a very different position than other states around the country... If we don't take the stimulus funds, there is a greater chance we will run out of money, and it would fall on the backs of businesses to supplant that through higher unemployment taxes. We want to avoid that if at all possible.”

-Gov. Brad Henry

Tulsa World, March 4, 2009

Financial Services committee. However, the bill died when it was not brought up for a vote before the full House in advance of the legislative deadline. There may be other vehicles to carry UIMA language later in the session if an agreement can be reached. SB 1175, which would levy an assessment on employers to help fund operations of the OESC in return for a decrease in taxes passed the full Senate and is awaiting a hearing in the House Appropriations Committee.

NOTES

¹ National Employment Law Project (NELP), *Unemployment Financing: State Trust Funds in Recession as of December 31, 2008*, undated; at: http://www.nelp.org/page/-/UI/Trust_Fund_Solvency_Update.pdf

² Data on UI Trust Fund balances can be found at: http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_utf.htm

³ NELP, *The Unemployment Insurance Modernization Act: Filling the Gaps in the Unemployment Safety Net While Stimulating the Economy*, February 17, 2009; at: <http://www.nelp.org/page/-/UI/uima.fact.sheet.jan.09.pdf?nocdn=1>

⁴ NELP, “Get the Facts Straight, Governors”, Press Release, February 23, 2009; at: www.nelp.org/page/-/Press%20Releases/GovernorsPRUIMA.pdf

⁵ See note 3, above.

⁶ U.S. Department of Labor, *Unemployment Insurance Program Letter No 14-09*, February 26, 2009.

⁷ John Miley, *Summary of House Bill 1384*, Oklahoma Employment Security Commission. Compelling family reasons would be broadened to include removing the 50-mile limit for workers who move with spouses; adding medical care of parents and spouses; and domestic violence against parents, spouse or child.

⁸ Ibid.

⁹ Letter from John Brock, Executive Director, Oklahoma Employment Security Commission to Governor Brad Henry, February 25, 2009.

¹⁰ Ibid. SB 1175 would implement the new administrative assessment.

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