



Presentation to:

UCR Board of Directors

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Can Things Continue As They Are?

- Much of the daily activity of the UCR Plan is being performed by outside contractors
- Daily activities not performed by contractors are being performed by Board members giving their time to the operation and administration of the UCR Plan
- Responsibility for coordinating these activities rests with a Board Chairman serving in a volunteer capacity
- Any organization whose day-to-day operations are run depend upon volunteers is inherently unstable


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Possible Solution?

- UCR must replace those volunteers with people/organizations who are paid to perform these functions/activities
- Independent contractors or employees?
 - Some of each?
- Retained/employed by whom?


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What is the UCR Plan?

- FMCSA says Plan is "an agency of the participating states"
- What is that? Not sure.
- A unique entity under the law.

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So What?

- Creates uncertainty in contracting and employment
- Gaps in the law
 - Indemnification for legal expenses
 - Advancement of defense costs
- What fiduciary standard applies?
- What law applies?

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What Are Our Options

- Consider contracting with an existing organization
 - Who?
 - Indiana Department of Revenue
 - Iteris
 - DSL Transportation Services
 - Outside Management Consultant (e.g., Booz/Allen/Hamilton)
- Lack of control/conflicting priorities is biggest concern with this approach

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Incorporate?

- Consider establishing nonprofit corporation to administer the UCR Plan
- Not a policy-making entity
 - Plan Administration only

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Incorporation

- | <u>Pros</u> | <u>Cons</u> |
|--|---|
| <ul style="list-style-type: none"> ▪ <u>Clarity</u> <ul style="list-style-type: none"> – Plan Board – Contracting and employment ▪ Stability ▪ Continuity ▪ Control | <ul style="list-style-type: none"> ▪ Additional Cost <ul style="list-style-type: none"> – Cost of creation – Annual filings <ul style="list-style-type: none"> • Estimated at \$10,000 annually |

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Incorporation - Structure

- A nonprofit corporation controlled by a Board of Directors
 - How many directors?
 - Odd number
 - Not too large
 - Suggestion? 5? 7?
 - Composition?
 - FMCSA
 - States
 - Industry

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Incorporation – Structure (cont'd)

- How are directors elected?
 - 3 options
 - Self-perpetuating
 - By Plan Board of Directors
 - By members of nonprofit corporation
- Term?
 - Staggered 3-year terms
 - No more than 2 successive 3-year terms

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Incorporation – Structure (cont'd)

- Membership in the Corporation?
 - All 41 participating jurisdictions?
 - Only those who want to be members?
- What do members vote on?
 - Election of directors
 - Adoption/amendment of By-laws
 - Dissolution of Corporation

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Incorporation – Structure (cont'd)

- Where do we incorporate? What state?
 - Criteria used:
 - 1) Must be a participating state under the Plan
 - 2) Must be connected to daily Plan activities
 - 3) State nonprofit code must be based on Revised Model Nonprofit Corporation Act
 - 4) Must not have an overly burdensome regulatory regime/activist Attorney General (e.g., California/NewYork)

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Incorporation – Structure (cont'd)

	AL	IN	ND	NM	TX	VA
Participating state	Yes	Yes	Yes	Yes	Yes	Yes
Nexus	Yes	Yes	Yes	Yes	Yes	Yes
Model Act State	Yes	Yes	No	No	No	No
Good Regulatory Environment	Yes	Yes	Yes	Yes	Yes	No

Result: Alabama and Indiana top the list

Happy to consider other jurisdictions upon request.