

We received over 70 questions, many with the same issue. We took the liberty of consolidating them where possible. In addition, if the question was not specifically related to the legislation or specific to an individual trust, it was not included. Therefore we have 26 questions to address.

1. What happens if my trust does not meet all of the provisions of the new legislation?

Any group that does not meet ALL of the provisions of the new Legislation will be required to terminate its coverage no later than December 31, 2011. In that event, the group would be required to issue termination notices to all active members not later than November 1, 2011.

2. What does fully funded mean?

Fully funded is defined as 100 percent funded on a regulatory basis as determined by the Chair.

3. Can you explain how the security deposit calculation will be made and what it will include?

The Security deposit calculation that is posted with the Board will be broken into two different categories- old program and new program.

PART A. Claims obligations under the old program

1. First Year deposit due on November 1 2011 will be:
12/31/10 actuarial central estimate, using assumptions and discounts deemed reasonable by the Chair.
2. November 1, 2012 deposit will be the 12/31/11 central estimate, using assumptions and discounts deemed reasonable by the Chair.
3. Each year thereafter, the actuarial report for the claims through 12/31/11 will be updated and posted by November 1.

PART B. Claim obligations under the new program.

1. Year 1 (Nov 1 2011) there will be no posting for claims under the new program (only posting will be for old program)
2. Years 2, 3, and 4 (2012-2014) will be incrementally increased to ultimately cover all existing and prospective claims costs after 12/31/11.– For individuals the prospective piece is typically about a year's worth of claim obligations.

- a. Here is an example of the required security on November 1, 2014

PART A — Post old claims obligations as of 12/31/11 valued as of 12/31/2013.

PART B –

- 1.) Claims obligations from 1/1/12 through 12/31/13 as determined by the model
- 2.) Plus expected claims through 2014

3.) Plus expected future claims in 2015

In summary we will ultimately be holding security to support claims under the old program, the new program through the current year, plus one year of claims for the upcoming year. The current security deposit can be used to offset the future requirements or will be returned if another form of deposit is provided.

4. What is the “additional” amount required to be deposited for the “other liabilities” such as assessments and unallocated loss adjustment expenses?

Under the new statute, all other liabilities owed by the trust must be posted in a trust account as provided under Part 126 (Reg 114) of Title 11 of the New York Codes, Rules & Regulations. Regulation 114 of the Insurance Department contains a number of requirements to comply with this provision including:

- a.) SIGs must establish a new account with a Bank & Trustee approved by the Chair.
- b.) A new 114 trust agreement must be executed between the Board and the Bank with the Board as the sole beneficiary
- c.) Amounts deposited into the 114 account for all liabilities other than claims obligations, such as assessments and ULAE can be invested. The amount and types of these investments will be subject to certain limitations based on regulations issued by the Chair.

The amount to be deposited into the new 114 account will be established annually similar to the security deposit amount and must also be posted no later than November 1 of each year.

The specific requirements under Reg 114 will be explained in a future circular once the details have been worked out with the insurance department.

5. Is a SIG required to utilize a Regulation 114 Trust to deposit other liabilities?

A SIG may choose to not utilize a Regulation 114 Trust. However, a non participating SIG must then deposit the same amount with the Board, in a form similar to the claims security deposit by November 1 of each year. In the event that SIG fails to do either, it will be terminated.

6. A question was received from several of the Catholic Diocese regarding how these new statutory changes will affect them?

Each Diocese will have to apply and meet the new requirements under this legislation or they will need to obtain alternate coverage.

7. What control if any do the groups have over assets posted with the Board?

Assets posted with the Board must be either bonds, letters of credit, cash or other acceptable securities. These amounts are to be placed in the name of the chair and must be held by the Board. The security deposit is designed to be held by the Board for use in the event of a default. Groups will be able to replace instruments as needed but it is not expected that these will be frequent transactions. Any interest income or other earnings will be returned to or credited to the trust posting such security. For regulation 114 trust, the Board is the sole beneficiary and the terms of the agreement will be at the sole discretion of the Chair.

8. What will be the new reporting requirements for SIGs going forward?

They will continue to have to provide actuarial reports as well as audited financial statements. SI-4 forms will need to be filled out for the new program. The forms will capture data for each individual claim, its associated reserves, and any recoveries.

9. Does the Board have reserving guidelines?

Yes, currently the Board uses reserving guidelines for the individual program and the same guidelines will be used for the claims for the new program. The Board will review the claims data on the SI-4 forms and make adjustments as necessary. This information will be used in the security deposit model to determine the security deposit requirements for claims occurring after January 1, 2012. Further information regarding specific reserving questions will be forthcoming.

10. How does assessment relief apply to members of trusts who were solvent at the time of closure?

Any group trust that was not deemed insolvent upon termination of coverage will be relieved from the assessments (151, IDP, 15-8, and 25-a) prospectively with the exception of 50-5.

11. What if I am an inactive trust that has received a non 50-5 assessment bill in 2011?

Groups that have received assessments bills for 15(8), 25-a and 151 in 2011, are not required to pay the bills. If they have been paid already then the group will receive a credit or refund. This assessment relief only applies to assessment cycles beginning in 2011. True ups for prior years remain due and payable and will continue to be issued under regular billing cycles.

12. When will the security deposit be released for an inactive GSIT?

Upon the execution of an alp or when the chair recognizes that all claims and other obligations have been met.

13. What is the Boards position on ALPs and the exit fee?

The Board would encourage any group that is interested in completing an ALP to obtain the forms from our website and reach out to carriers to receive quotes. As explained in Group Circular 2010.5 regarding exit fees the current exit fee will be reduced to 12.1% based on this legislation.

14. If I am a closed trust, should I be required to accrue assessments on my financial statements as of 12/31/2010?

You should defer to your accountant on the treatment of subsequent events.

15. The legislation effectively eliminated the group trusts. Are groups that are approved for the new program going to be considered individual self insurers?

Technically no, while they will be treated in a similar manner, they will be called self insured groups (SIGs) and they will remain subject to joint and several liability. In addition new rules and regulation be promulgated for SIGs.

16. What does my current GSIT need to do to be qualified as a SIG under the new program?

Assuming it meets the qualifications detailed in section 10, the GSIT needs to schedule a meeting with the Board to review in detail the requirements for qualification as a SIG. This will include, but is not limited to, completing an application form, executing a new trust agreement, participation agreement, and By laws.

17. Do the group administrator and tpa have to be unrelated entities in the new program?

The task force report recommended these functions be separate. The Board intends to adopt this recommendation in the context of future regulations.

18. Is a security fund being considered for the SIGs?

At this time, the Board is looking into creating a security fund or pool for the individuals. We are not certain if this will extend to the SIGs.

19. What are the possible additional assessments that might be charged to SIGs in accordance with provisions of the new law that allow for the recalculation of the 15-8, 25-a, and 151 assessments?

Effective January 1, 2011, all active group self insurers will be assessed in the same manner as the Individual Self Insurers, municipalities, and the State Insurance Fund; i.e based upon relative percentage of indemnity payments. In effect this will return the active groups to the same methodology that was in existence before the 2007 change to pure premium. It important to note that the overall amount of the WCL §15(8), 25-a and 151 assessments will remain unchanged; rather the only change will be how those amounts are allocated upon the participants in the workers' compensation industry. Any assessment bills that were issued for these sections attributable to fiscal year 2011-2012 will be reissued utilizing the new allocation methodology of indemnity.

20. How will the assessment relief be given to members who have already been billed by the Board under joint and several?

Members who have received deficit assessments will have their deficit assessment amount recalculated to reflect the removal of the future assessment liability from the original calculation.

21. What is the impact of the new legislation on the proposed rules and regulations that were out for comment?

The currently proposed regulations contain several provisions that will no longer be applicable under the new statute. Therefore, the Board anticipates publishing new regulations for comment in the near future.

22. Will the rate adequacy filing still be required for new groups under section 10?

Yes. Groups will still be required to submit rate filings. Details regarding the filing requirements will be forthcoming.

23. Can new groups form under the provisions of section 10?

The only groups that can qualify under this legislation are groups that were authorized by the Chair and providing active coverage prior to March 31, 2011.

24. Does this new legislation make any changes to require groups to pay into the Aggregate Trust fund?

No

25. What does the new section 15-a mean and how does it work?

As explained earlier, new section 15-a it withdraws the relief granted by section one of the Legislation for those members of certain insolvent GSITs who do not take any of the following actions by 2016:

- Enter into a settlement agreement and remain current on their payments;
- The Trust in which they participated transfers all of its remaining obligations pursuant to ALP; or
- Pay all monies billed to them by the Board at the time such assessment was due.

In the event that none of these conditions are satisfied, then the member will become subject to an assessment in the amount the group self insurer's share of the WCL §15 (8) assessment multiplied by the employers remaining unpaid obligations to their former trust. Any funds collected under this section will be used as an offset against future 15(8) & 151 assessments imposed on other employers.

26. Will the Board have a follow up conference call?

We don't anticipate another conference call at this time. Over next few months, the Board will be issuing several circulars to clarify what was stated today. However, any group that is considering applying under the new provisions should contact the Board to discuss the requirements and the applicable next steps.