I. ALLOCATION METHODOLOGY FOR PRO RATA BILLING

How was my pro rata share of the deficit determined?

Your share of any existing deficit was determined consistent with the language in the documents which govern CRISP’s operations (trust document, bylaws, etc.). The deficit was allocated to members as a proportional share of their contribution (i.e., premium) to total contributions for a specific year. However, please note that for each year (or part of a year) in which you were a member of CRISP, you are jointly and severally liable for the entire amount of the deficit for that year for which you were a member of CRISP (see Section II below on joint and several liability) and that this joint and several liability could result in additional billings.

What is the impact of the legislation signed into law by Governor Cuomo on April 1, 2011 as Chapter 57 of the Laws of 2011 have on the deficit assessment?

The bill provides assessment relief for insolvent and inactive trusts. Specifically, assessments pursuant to Sections 151, IDP, 15-8, and 25-A of the Workers’ Compensation Law were eliminated prospectively effective January 1, 2011. Assessments for 50-5 will continue to be issued. The impact on CRISP is reflected in the October 31, 2012 Financial Statements.

I am considering paying my pro rata share of the deficit via the 95% option. I did not make any payments in response to the WCB’s estimated billings. In looking at my invoice total and comparing it to the 95% dollar amount on the Attachment A, there appears to be a discrepancy between the two figures. Could you please explain this to me?

This is because the reduction or savings on the amount owed has been offset by the interest on the unpaid amount resulting from the failure to make payments on the estimated billings. As for example:

If the deficit allocation pro rata amount is $10,000, and the interest amount for the failure to pay on the estimated billings is $500, the total amount due on the invoice and shown as the total on the Attachment A would be $10,500. For the purposes of the 95% option on the Attachment A, the calculation would be as follows:

95% = $9,500 (95% x $10,000 pro rata amount) plus the $500.00 interest = $10,000

As shown in this example, the member is allowed to pay 95% on the pro rata allocation but not on the interest due for failure to make payments on the estimated billings.
What if a member has questions as to the years it was in CRISP or the amounts credited for payments made by the member on the invoice for the pro rata deficit assessment?

The member needs to provide documentation on these issues to the WCB's designated third party administrator at the address set forth in the information previously received from the WCB. If, based on the documentation provided, the WCB's designated third party administrator determines, in consultation with the WCB, that the invoice was in error in this regard, a revised invoice will be sent. However, the original 45 day deadline to enter into a Deficit Assessment Contractual Agreement (DACA) will remain in effect. Also, please note that for each year (or part of a year) in which you were a member of CRISP, you are jointly and severally liable for the entire amount of the deficit for that year for which you were a member of the group (see Section II below on joint and several liability) and that this joint and several liability could result in additional billings.

I was a member in fiscal year ending November 30, 2004, which is listed as a surplus. Can these funds be used to offset deficits from other years?

Each year of CRISP operates independent of other years for purposes of calculation of a deficit or surplus. Thus, while year ending November 30, 2004 may appear to be surplus at this time, other years remain as deficits and funds are needed for these years now. Accordingly, a potential surplus year cannot be used by a particular member to offset their deficit years. Surpluses attributable to fiscal year ending November 30, 2004, will be credited/refunded to the members participating in CRISP during that year after all of the obligations of the CRISP for that particular year have been extinguished.

What if a member does not agree with the contribution they paid for any given period, or believes that other members were not paying the appropriate contributions and, therefore, the deficit assessment is based on an incorrect contribution percentage?

Because members are jointly and severally liable for the assessment, the WCB could merely pursue only certain members for the entire amount of the deficit under joint and several liability provisions. Instead, the WCB has made a good faith effort to reasonably calculate each member's pro rata share of the deficit using generally accepted allocation methodologies prevailing in the industry.

I was never a member of CRISP because the WCB rejected my application for membership. Why am I being considered such for purposes of the assessment?

The rules and regulations that govern group trusts like CRISP require that coverage becomes effective in the group upon execution of a new member's participation agreement. This is because employers are required to obtain workers' compensation coverage for their employees and there are very significant civil and criminal penalties for the failure to do so. Accordingly, in the event that an application for participation was subsequently rejected, the WCB provided coverage in the group for at least thirty days to provide adequate time for the employer to obtain alternate coverage. When an
application is rejected the WCB notifies both the group administrator and the member. If your application was rejected, you were provided at least thirty days coverage in CRISP and are therefore responsible for your portion of the assessment applicable to that year.

II. JOINT AND SEVERAL LIABILITY

What does joint and several mean?

Joint and several liability means that each member is liable for the entire amount of each year’s deficit for which they participated in CRISP. The liability may be apportioned either among the members or assessed against only one member. This means that each member is potentially liable for the entire amount of the deficit owed for the period for which it was a member of the group. It must also be remembered that this joint and several liability could result in additional billings.

What companies am I jointly and severally liable with?

As a member of a group trust, an employer is jointly and severally liable for all obligations incurred during its period of membership. You are jointly and severally liable with the other employers who participated in CRISP at the same time.

If my company never had a claim, am I still jointly and severally liable?

Yes. Joint and several liability applies even if you never had a claim.

III. POTENTIAL ACTIONS AGAINST OTHER PARTIES AND RECOVERIES

Is the WCB pursuing other parties such as the Trustees or group administrator for their actions or inactions?

The WCB is in the process of reviewing the CRISP 2013 Performance and Operational Report. In the event that it is determined that one or more former key agents of CRISP were at least in part responsible for CRISP’s deficit, the WCB will commence an action or actions against those responsible parties to recoup funds. In the event that the WCB commences such an action and monies are recouped from third parties, these funds will be used to reduce the deficit amounts owed by the members of CRISP. However, and notwithstanding any potential future third party recoveries, the CRISP members remain responsible to make payments on the deficit assessments so as to ensure that CRISP injured workers continue to receive their benefits in a timely fashion.

Each member should also review all available information and make a determination as to what, if any, action it should take in this regard.

Is the WCB making a claim under any E&O or D&O policies that the group administrator or other such entities may have had?

As indicated above, the WCB continues to gather and evaluate information and will pursue any other such claims where applicable and appropriate. Each member should also review any such information and make a determination as to what, if any, action it should take in this regard.
CRISP had an excess policy on a per occurrence basis. Does that mean that my exposure under joint and several is limited?

Every group trust is required to maintain excess coverage on a per occurrence basis. This means that an insurance carrier could be responsible for any amounts on a particular claim which exceed the retention, or deductible limit. However, most claims fall well below the retention limit and this type of coverage only protects CRISP from catastrophic claims. Moreover, the amounts contained in the forensic accounting, and the resultant invoices, already reflect appropriate reductions in liabilities as a result of excess insurance where such coverage was triggered.

What happens if collections exceed the amount assessed?

If more money is collected than is needed to meet all obligations of CRISP such funds will be returned to members proportionally, if they are not in default status. However, surpluses attributable to any particular year will not be credited/refunded to the members participating in CRISP until all of the obligations of CRISP for that particular year have been extinguished.

IV. INFORMATION AVAILABLE

Under what section of the Workers’ Compensation Law are group self insured trusts permitted?

Group self-insured trusts are permitted under WCL Section 50 (3-a). Rules and regulations governing group trusts can be found in NYCRR Title 12 Part 317.

As a member, what information is available to me regarding CRISP?

As a former member of an inactive trust, an employer is entitled to any of the records which pertain to their period of membership including financial and actuarial reports and membership information. However, any information provided may be redacted to protect the privacy of individual claimant’s and/or other employer members. The WCB has established a website with relevant information for CRISP and that link is included in the cover letter received with the invoice.

V. DISSOLUTION OR BANKRUPTCY

What if my company is dissolved or bankrupt?

The WCB requires that additional information and documentation be provided in order for the WCB to review and consider the impact, if any, of the claimed dissolution or bankruptcy.

As to dissolution, please provide the following information: 1) the “Consent” issued by the State Tax Commission, required by the New York State Business Corporation Law (BCL) as a condition to the corporation’s dissolution; 2) the Certificate of Dissolution issued by the New York State Department of State; 3) the corporate resolutions and records, in whatever media, memorializing the dissolution of the corporation, the distribution of its assets, and whether any assets remain in the corporation; 4) all
financial statements produced during the two years immediately preceding the corporation’s dissolution, and any such statements produced after its dissolution; 5) the cash disbursements records for the two years immediately preceding the corporation’s dissolution, and any such disbursements since its dissolution; 6) the corporation’s complete, final federal and state tax returns, including all schedules, statements, and attachments filed therewith, and any amendments thereto; 7) a statement indicating whether the corporation gave notice to its creditors, pursuant to BCL § 1007, and, if so, documentation of such notice and the creditors to which such notice was given; 8) a statement indicating whether any proceeding was instituted pursuant to BCL § 1008, and, if so, the documentation identifying the parties to the proceeding, the court and county in which the proceeding was commenced, and the index number of the proceeding; 9) a statement indicating whether the corporation was dissolved pursuant to Article 11 of the BCL, and, if so, the documentation identifying the parties to the case, the court and county in which the case was commenced, and the index number of the case; and 10) documentation of any litigation, judicial, administrative, arbitrative or otherwise, commenced by, or against, the corporation after its dissolution. Such documentation should include the identities of the parties to such litigation, the court (tribunal), county, and state in which the case was commenced, and the index or other identifying number of the case.

As to bankruptcies, please provide the following information: 1) the Notice of the filing of a bankruptcy case; 2) any Notice of the conversion of the bankruptcy case from one chapter of the bankruptcy code to another; 3) the original case number under which the bankruptcy case was filed, and; if applicable, and other case numbers of associated bankruptcy cases; 4) the Notice of the granting of a bankruptcy discharge; and 5) the Notice of the dismissal of the bankruptcy case.

In either event, the above information should be provided to the WCB’s Litigation Unit located at 328 State St, Schenectady, NY 12305 and must be received by the WCB no later than the 45 day deadline set forth in the Deficit Assessment Billing Package you received from the WCB.

**What is the impact if a member is dissolved or bankrupt?**

As previously stated, the members of CRISP are jointly and severally liable for any deficits attributable to the period in which they participated in CRISP. Therefore, an additional deficit assessment of the other members could occur.

**VI. RESPONSE TO WCB DEFICIT ASSESSMENT BILLING**

**What will happen if I do not sign the Deficit Assessment Contractual Agreement (DACA), but do send a check for my first payment in an appropriate amount and continue to make the appropriate monthly payments?**

The WCB appreciates a member’s attempt at showing good faith and cooperation by making the proper payment(s). Despite this, the DACA is the only legal mechanism which preserves the WCB’s rights, and those of the other members, who could be potentially impacted by your failure to pay in the future. Therefore, absent a signed Agreement, the WCB must refer this matter to the Attorney General’s Office for collection. **However, if the proper payment is received on or before 45 days**
from the date of the invoice enclosed in the Assessment Billing Package, even though the Agreement is not signed, the WCB will recommend that the member be considered, at the Attorney General Office’s discretion, for the following relief: a significant extension on the time to answer any summons and notice/complaint issued to that member, and no assessment of a collection fee or any interest for late payment (as opposed to interest associated with your chosen payment plan) provided for pursuant to State Finance Law Sections 18.4 and 18.5.

What happens if I do not pay my obligation to the trust?

As stated in the correspondence from the WCB, if a member does not pay the obligations incurred in connection with its membership in CRISP, the WCB will consider the member in default. This will subject the member to enforcement and collection proceedings as authorized by law, including but not limited to referral to the Attorney General’s Office with the potential for an additional 22% collection cost plus interest being added to the pro rata assessment against the member as authorized by State Finance Law Section 18 and/or the imposition of a judgment, pursuant to WCL §26, in the amount of unpaid claims expenses.

Why am I being given only 45 days to respond to the Deficit Assessment Billing Package from the WCB?

This is necessary to ensure that the State it is acting in a manner fully compliant with the legal requirements of the WCL and to protect all of the rights and interests of the members of CRISP, and the injured workers of the employer members of CRISP. In this regard it is noted that the WCB has been making the claims payments and paying medical bills of injured workers of the employer members of CRISP from funds borrowed pursuant to Section 50-5(f) of the WCL.