

**New York State Workers' Compensation Board (WCB)
Group Self-Insurance Trusts (Trusts)
Frequently Asked Questions Related to Estimated Deficit
Assessment Billing Package
for Community Residence Insurance Saving Plan Self-Insurance
Trust ("CRISP" or "Trust")**

I. ESTIMATED PRO RATA DEFICIENCY BILLING

How was my estimated pro rata deficiency determined?

The estimated pro rata deficiency was determined as follows:

- Using membership roster data on file with the WCB (i.e., Name of Employer ("Member"), Total Payroll, Start Date, End Date), the WCB determined for each year of the Trust whether the Member participated in the Trust in that particular year.
- If the Member did participate in that year, the WCB calculated the percentage of the deficit for a particular Trust year to be allocated to each Member who participated in that Trust year by dividing the Member's payroll by the total allocated payroll of the Trust for that year. This results in the "allocation percentage" for a particular Member.
- The WCB then calculated the estimated deficit allocated to each Member for that year by multiplying the allocation percentage by the deficit for that year.
- The total deficit for a particular Trust year was calculated based on the most recent Actuarial report and all Audited Financial Statements received by the WCB.
- Finally, the WCB totaled the estimated allocation for all years that the Member participated in the Trust.

For the purposes of this billing, Members that left the Trust within the first month of the year were deemed to have not participated in the Trust for that year. If the final year of the Trust is one month or less, all active Members on the first day of the final year of the Trust are deemed to have participated in the Trust for that final year.

Please note that for each year (or part of a year) in which you were a Member of the Trust, ***you are jointly and severally liable for the entire amount of the deficit for that year for which you were a Member of the Trust*** (see Section III below on joint and several liability) ***and this joint and several liability may result in additional billings.***

What are the payment plan options available to me at this time?

New York State Workers' Compensation Law (WCL) Section 50(3-a)(7)(b) provides that the Chair has the authority to offer payment plans or settle claims as necessary to facilitate collection. For the period prior to the completion of the forensic accounting review for your Trust, the WCB is offering two interim payment plan options. The two options are: 1) a lump sum amount that equates to 95% of the Member's estimated pro rata deficit allocation; OR 2) a payment amount that equates to the Member's estimated pro rata deficit allocation divided by sixty (60) months. This option allows the Member

to make interim payments as if there were a five-year interest free payment plan in place.

Why are the payment plan options referred to as “interim”?

The payment plan options available at this time are referred to as interim because they are for the period of time between now and when the forensic accounting review has been completed for your Trust (See Item VIII, Infra). When the forensic accounting review has been completed for your Trust, each Member will receive what is known as a Deficit Assessment Billing Package. That package will include a forensic invoice, a Deficit Assessment Contractual Agreement and an Attachment A that will offer various payment plans to the member. Those payment plans will be, in part, dependent on how long the member participated in the Trust and whether the member has made payments pursuant to the estimated billings. Repayment options that extend beyond one year will include interest and the interest will increase based on the length of the repayment period selected by the member.

What if a Member has questions as to the years it was in the Trust or the amounts credited to the Member on the invoice for the pro rata deficit assessment?

The Member should provide documentation on these issues to the WCB’s designated third party administrator at the address set forth in the cover letter from the WCB. This will allow such information to be considered during the forensic accounting review. However, this will not result in a change to the estimated pro rata deficiency billing.

It should be remembered that because members are jointly and severally liable for the assessment, the Board could merely divide the deficit equally among the number of Members for any contribution period, or pursue only certain Members for the entire amount of a particular year’s deficit. Instead, the Board has made a good faith effort to reasonably calculate each Member’s individual estimated pro rata deficiency based on the information available to the Board at this time.

II. IMPACT OF CURRENT PAYMENTS ON PRIOR DEFICIT ASSESSMENT BILLINGS

What is the impact of payments currently being made on a prior deficit assessment billing for this Trust?

This estimated billing supersedes ANY prior deficit assessment billing(s). Members should cease making the payments under the prior deficit assessment billing and instead make the payments as required under this estimated billing.

All prior payments made on any prior deficit assessment billing(s) will be credited to the Member’s Deficit Assessment Billing upon completion of the forensic accounting review.

III. JOINT AND SEVERAL LIABILITY

What does joint and several liability mean?

In this situation, joint and several liability means that each Member is liable for the entire amount of the yearly deficit during which the Member participated, even if the

Member only participated for part of the year. This 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 participated in the Trust. It must also be remembered that this joint and several liability may result in additional billings even after the billings for the forensic accounting review are completed, until all amounts owed are paid.

What companies am I jointly and severally liable for?

As a Member of a Trust, an employer is jointly and severally liable for all obligations incurred during its company's period of membership, including all subsidiary companies. You are jointly and severally liable with all other employers who participated in the Trust in the same participation years.

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.

IV. POTENTIAL ACTIONS AGAINST OTHER PARTIES AND RECOVERIES

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

The WCB will review the results of the forensic accounting review (See Item VIII, Infra). Upon completion of this review, the WCB may refer matters, if necessary, to the appropriate agencies for legal action.

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

The WCB is gathering information and will pursue such a claim if applicable and appropriate. Each Member should also review any information in its possession and make a determination as to what, if any, action it should take in this regard.

The Trust that I belonged to had an excess policy on a per occurrence basis. Does that mean that my exposure under joint and several is limited?

Every Trust is required to maintain excess policy on a per occurrence basis. This means an insurance carrier will be responsible for any amounts which exceed the retention, or deductible limit, of the policy. However, most claims fall well below the retention limit and this type of coverage only protects the Trust from the most severe, or catastrophic, claims.

What happens if you collect more than you need to pay for the deficit?

If more money is collected than is needed to meet all of the financial obligations of the Trust 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 the Trust until all of the obligations of Trust for that particular year have been extinguished.

V. INFORMATION AVAILABLE

Under what section of the Workers' Compensation Law are Trusts permitted?

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

As a Member, what information is available to me regarding the Trust?

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

VI. 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, arbitral 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 must be provided to the WCB's Litigation Unit located at 20 Park Street, Albany, New York, 12207.

What is the impact if a Member is dissolved or bankrupt?

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

VII. RESPONSE TO WCB ESTIMATED DEFICIT ASSESSMENT BILLING

What will happen if I do not make payments to the WCB in response to the estimated deficit assessment billing?

The failure to pay any assessment and/or outstanding debt within thirty days of the enclosed invoice or future such invoices may result in the imposition of interest, running from the date the first payment on the estimated billing was due, and applied to the unpaid estimated billing balance, as well as any other remedies available to the WCB in this regard.

VIII. FORENSIC ACCOUNTING REVIEW PROCESS

What is the forensic accounting review and what impact will it have?

The forensic accounting review is the means by which the WCB, through its contractors, can determine what happened with the Trust historically that caused it to become insolvent and what individuals and entities may or may not have contributed to this. As part of this process, the reviewers will talk to members and others as they gather information.

In addition, the forensic accounting review process seeks to reconcile the deficits per year, as well as payments and credits, in order to arrive at a more accurate number as to the Trust's overall deficit and the per Member deficit.

As discussed in Item I. above, and in the cover letter hereto, the Board is statutorily mandated to issue the estimated billings. Thus, the Board cannot wait to issue bills until after the forensic accounting on the Trust has been completed.