

**New York State Workers' Compensation Board  
Request for Information - Potential Transfer of Liability from Special Disability  
Fund, the Fund for Reopened Cases, the Uninsured Employer's Fund, defaulted  
Group Self-Insured Trusts, and defaulted Self-Insured Employers**

**August 18, 2017**

Question	Response
1 Do current statutes (amendments and original statutes creating SDFs) permit the transfer/novation of claims from current carrier(s)?	The Workers' Compensation Law ("WCL") permits the transfer of claims from the Funds to a carrier issuing an assumption of workers' compensation liability policy ("ALP").
2 Please provide a summary of current claims/payment administration processes for each of the SDFs.	Please see Response to Question No. 3.
3 Please provide a detailed explanation for the responsibilities of WCB as respects each fund.	<p>Fund for Reopened Cases: At present, a third party entity administers the direct pay claims and, where payment is properly due to any party (the claimant, a medical provider, etc.) such payment is made from the Fund. The WCB also takes necessary legally permissible steps to ensure that the Fund is solvent.</p> <p>Special Disability Fund: The original carrier remains responsible for administration of these claims; however, once applicable parameters have been met, the carrier is permitted to seek full reimbursement for payments made to parties (the claimant, medical providers, etc.) from the Fund. Such requests for reimbursement are submitted to the WCB for review. Once the WCB determines that the payment was made in accordance with the applicable law and meets other WCB requirements, reimbursement is remitted. The WCB takes necessary legally permissible steps to ensure that the Fund is solvent.</p> <p>Group Self-Insured Trusts and Self-Insured Employers: In the event an employer or group of employers authorized to self-insure defaults in the payment of obligations under the WCL, the WCB assumes administration of the defaulting self-insurer's claims. At present, the WCB has contracted with a third party to administer these claims. The WCB also takes necessary legally permissible steps to ensure that funds remain available in the event of such defaults.</p> <p>Uninsured Employers' Fund ("UEF"): Where a claim is filed and there appears to be no coverage for the alleged employer, the UEF may ultimately be required to cover the claim. As such, a unit within the WCB initially defends the claim up to the point where the claim is either established against a proper carrier, established against UEF because it is determined that there is no such proper carrier, or disallowed. At present, once established, UEF claims are administered by a third party pursuant to a contract with the WCB. The WCB also takes necessary legally permissible steps to ensure that the Fund is solvent.</p>
4 Please provide current or future financial and/or statistical reporting requirements for the affected claims required of current carriers or WCB.	Reporting requirements will depend upon which Fund such claims fall within and the applicable law. Reporting requirements may also be created or impacted by the structure of a potential ALP, as such may be suggested as part of the responses to this RFI.

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<p><b>5</b> Please provide detailed explanation and data as to what claim information is available for each of the funds.</p>	<p>It is the present intention of the WCB to provide full access to information available to the WCB in its capacity as the administrator of the Funds to qualifying bidders who sign the required non-disclosure agreement ("NDA") during the anticipated bidding process.</p> <p>Respondents are also encouraged to highlight any and all information and data that Respondents believe will aid in effectuating transfers, and to provide an explanation as to how the information and data will impact the process.</p>
<p><b>6</b> Are there any limitations/restrictions to information or system access for each of the funds?</p>	<p>Please see Response to Question No. 5.</p>
<p><b>7</b> Are there any rights of WCB that would not transfer to the transferee?</p>	<p>Through the RFI, the WCB wishes to learn industry participants' analyses and recommendations regarding how best to structure the anticipated transactions, including suggestions on which rights should and should not be transferred to the transferee. Accordingly, Respondents are encouraged to provide analyses and recommendations regarding which rights should and should not be transferred to the transferee, noting that any such transfers will remain subject to all applicable laws and rules.</p>
<p><b>8</b> Can you please provide calendar year claim payments out of 25a for each of the prior ten calendar years (2007 through 2016)?</p>	<p>The 10 year average of claim payments is approximately \$200M.</p>
<p><b>9</b> Can you please provide calendar year claim payments out of 15-8 for each of the prior ten calendar years (2007 through 2016)?</p>	<p>The 10 year average of claim payments is approximately \$550M.</p>
<p><b>10</b> Can you please provide the number of claims that are currently waiting to be adjudicated, as well as those currently being adjudicated, for entry into 25a?</p>	<p>At present, the WCB intends to transfer only claims in which a determination establishing WCL § 25-a applicability has already been finalized.</p>
<p><b>11</b> Can you please provide the number of claims that are currently waiting to be adjudicated, as well as those currently being adjudicated, for entry into 15-8? · All of these claims may be viewed as the "backlog"</p>	<p>At present, the WCB intends to transfer only claims in which a determination establishing WCL § 15(8) applicability has already been finalized.</p>
<p><b>12</b> The closure of 25a is currently being litigated. If the litigation results in 25a being reopened for a specific period of time, is it the NY WC Board's intent to proceed with this project for claims currently in 25a, as opposed to new claims that would/may enter as a result of an adverse litigation result?</p>	<p>Any and all claims that are the liability of the Fund for Reopened Cases will be considered for transfer.</p>

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<p><b>13</b> The sample Invitation for Bids (Section C-Claims Information) states...“Loss runs, an updated actuarial report, a summary of excess retention and specific and aggregate policies and access to claims files will be supplied once the intent to bid and Non-Disclosure Agreement (See Appendix A) has been filed with the Board.” Submitting a Non-Disclosure isn’t an issue, but is it possible to have access to the data prior to intent to bid?</p>	<p>The inclusion of the sample Invitation for Bids was intended to provide potential Respondents with an example of a prior transaction. The purpose of this RFI is to gather ideas and suggestions from Respondents as to how to potentially expand upon and improve the process for future transactions.</p> <p>As such, insofar as a Respondent wishes to suggest that particular data be provided at a certain point in a potential bidding process, the Informational Response should so specify, along with an explanation.</p>
<p><b>14</b> If that data (see question 13) cannot be provided yet, is it possible to provide a high level summary of the claim count and loss data in the interim?</p>	<p>The most recent number of claims being paid in 25a is approximately 22,000. The most recent number of claims being reimbursed in 15(8) is approximately 40,000. The UEF and defaulted self insurers have a combined total of less than 4,000 claims.</p>
<p><b>15</b> When do we anticipate the project to go out for bid (i.e. 4Q16 or 1Q17)?</p>	<p>Through the RFI, the WCB wishes to learn industry participants’ analyses and recommendations regarding the development of a project plan for transferring Fund liability. Accordingly, Respondents are encouraged to provide analyses and recommendations regarding the project plan for transferring Fund liability, including a timeline for such transactions. Based on such analyses, recommendations, and other factors, the WCB intends to develop and finalize a projected timeline for the transactions.</p>
<p><b>16</b> The information materials distributed for the Request for Information include a statement that the nominal value of the future liabilities of the Special Fund for Reopened Cases has been estimated by an independent actuarial firm at \$3.2 billion. There is no indication of any similar analysis of ultimate liability for any of the other funds. Have any actuarial studies been undertaken for any of the other funds? Is a liability carried for an estimate of the ultimate for any of the other funds?</p>	<p>The Board is continuously monitoring the liabilities of the Funds. For the two largest funds, the Special Disability Fund and the Fund for Reopened Cases, actuarial reports will be prepared before seeking bids in connection with proposed transfers of liability.</p>

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<p><b>17</b> It is requested that RFI Responses note tax, structural and other characteristics in providing a response to the RFI. Given that many of these aspects will be impacted heavily by certain basic information about the funds, is it anticipated that <i>any</i> additional information will be made available prior to responses to the RFI being due, specifically</p> <ul style="list-style-type: none"> <li>(a) Actuarial reports</li> <li>(b) Claims information</li> <li>(c) Information concerning the current administrative costs of the funds, including headcount, expenses, and costs and contractual terms of any third party administrators currently functioning on the administration.</li> </ul>	<p>The WCB will not be providing additional information prior to the due date for this RFI, except as set forth in these Responses.</p> <p>It is noted that certain basic information regarding the Funds was supplied in the RFI, including Exhibit A thereto. Additional information is available in the public domain. Further information may be gleaned from the fact that all claims in the Funds are New York State workers' compensation claims as governed by the WCL. It is the present intention of the WCB to make more information available to qualifying bidders who sign the required NDA during the anticipated bidding process.</p>
<p><b>18</b> What is the Board's anticipated funding source for any of the assumption or transfer arrangements that might be considered in connection with the funds' liabilities?</p>	<p>This RFI does not seek information regarding actual or potential funding sources for the anticipated transactions. It is noted that the WCB has various resources, including existing funds, assessments, and bonding capability.</p>
<p><b>19</b> What is the Board's anticipated timetable for reviewing and acting upon any RFI responses? Is there a timetable governing the process such that the Board is seeking to implement a transition by a certain date?</p>	<p>Please see Response to Question No. 15.</p>
<p><b>20</b> Is it intended there will be a cut-off for claims to be subject to the ALP for each fund?</p>	<p>Through this RFI, the WCB wishes to learn industry participants' analyses and recommendations regarding how best to structure the anticipated transactions, including whether there should be a cut-off for claims to be subject to an ALP. Accordingly, Respondents are encouraged to provide analyses and recommendations regarding whether there should be a cut-off for claims to be subject to an ALP.</p> <p>Based on such analyses, recommendations and other factors, the Funds may, for example, structure the transactions such that they involve transfers of closed blocks of discretely identified claims, groups of claims defined by date, or otherwise.</p>

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Question	Response
<p><b>21</b> Would the NYSWCB consider relaxing the Bidder mandatory requirements where a counterparty can demonstrate an ALP solution with i) appropriate alternative security arrangements, ii) relevant workers' compensation experience whilst not having written for the past 3 years within NY?</p>	<p>The inclusion of the sample Invitation for Bids was intended to provide potential Respondents with an example of a prior transaction. The purpose of this RFI is to gather ideas and suggestions from Respondents as to how to potentially expand upon and improve the process for future transactions which may or may not impact mandatory bidder requirements.</p> <p>Accordingly, Respondents are encouraged to provide analyses and recommendations for transactional structures that will best achieve the Goals, which are: (1) transfer all liability and claims administration functions for the transferred claims to the transferee(s); (2) ensure the timely and proper handling and payment of all claims; (3) preclude reversion of liability to the Funds; (4) maintains cost efficiency for the Funds; and (5) achieve commercial viability.</p>
<p><b>22</b> What are the undiscounted value of total future liabilities for i) the Special Disability Fund, ii) the Uninsured Employers Fund, and iii) the defaulted Group Self-Insured Trusts and defaulted Self Insured Employers?</p>	<p>Please see Response to Question No. 14.</p>
<p><b>23</b> For each fund, please provide details of who administers the claims, the headcount and the annual cost of administration?</p>	<p>Please see Responses to Question Nos. 3 and 14.</p>
<p><b>24</b> Will current actuarial reports be prepared for each fund to support the undiscounted value of the total future liabilities?</p>	<p>Please see Response to Question No. 16.</p>
<p><b>25</b> Will information be available to assess the benefits, assessments, penalties, reimbursements which may not transfer?</p>	<p>Through this RFI, the WCB wishes to learn industry participants' analyses and recommendations regarding how best to develop the plan for transferring Fund liability, including what information should be provided as part of the bidding process. Accordingly, Respondents are encouraged to provide recommendations and reasoning regarding the information that should be provided to potential bidders.</p>
<p><b>26</b> What is the basis for the benefits, assessments, penalties, reimbursements potentially not transferring?</p>	<p>Please see Responses to Questions No. 7 and 25. In their analyses and recommendations, Respondents should consider all limitations on transfers of rights that may be required by applicable law.</p>
<p><b>27</b> For each fund, are there sufficient assets available to fully support the established undiscounted value of the total future liabilities?</p>	<p>Please see Response to Question No. 18.</p>
<p><b>28</b> For each fund, can the coverage provided together with the years covered by provided?</p>	<p>Please see Response to Question No. 3, as well as Exhibit A to the RFI.</p>
<p><b>29</b> Can it be advised how many pending claims there are that are still subject to review and possible acceptance or denial into these funds?</p>	<p>Please see Responses to Question Nos. 10 and 11.</p>
<p><b>30</b> How many new claims are added to each of the funds annually?</p>	<p>Please see Responses to Question Nos. 10 and 11.</p>
<p><b>31</b> What is the level of reimbursement received for each fund which may be lost under an ALP?</p>	<p>Please see Response to Question No. 4.</p>

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Question	Response
<b>32</b> Are existing liabilities to be transferred supported by current assets on hand, including any assessments which would be needed to fully fund the assumption premium for transfer of liabilities?	Please see Response to Question No. 18.
<b>33</b> Would the NYSWCB consider relaxing the Bidder mandatory requirements where a counterparty can demonstrate appropriate NY licensure and relevant workers' compensation experience while not having written on a direct basis for the past 3 years within NY?	Please see Response to Question No. 21.
<b>34</b> Have liabilities and exposures in the Funds been evaluated by an external actuarial firm, and if so, would those reports be made available, and how recent are such actuarial studies?	Please see Response to Question No. 16.
<b>35</b> As State Fund assets, will there be any special requirements or limitations on investment of the assets supporting the present and future liabilities other than standard permitted investment rules applicable to insurers?	Through the RFI, the WCB wishes to learn industry participants' analyses and recommendations regarding how best to structure the anticipated transactions, including whether and to what extent there should be limitations on the investment of the premium proceeds, in accordance with applicable law. It can be expected that the terms and conditions of any proposed ALP and any ancillary agreements will require the approval of the New York Department of Financial Services ("DFS"). With that expectation in mind, Respondents are encouraged to set forth their analyses and recommendations regarding whether and to what extent there should be limitations on the investment of the premium proceeds.
<b>36</b> If assumed by a California or Illinois licensed insurer would the State require the assuming insurer to invest underlying assets in accordance with NY permitted investment rules?	Please see Response to Question No. 35.
<b>37</b> For each fund, are there sufficient assets available to fully support the established undiscounted value of the total future liabilities, and if not, will there be a mechanism in place to support further assessments? Will any assessment rights be transferred incident to the transaction?	Please see Response to Question No. 18.
<b>38</b> For each fund, can the coverage provided together with the years covered by provided?	Please see Response to Question No. 3, as well as Exhibit A to the RFI.
<b>39</b> Do reserves or other provisions exist for future claims handling and administrative costs of managing the portfolios, and if so how are such provisions drafted?	The WCB currently expects that any ALP or other such transfers involving these Funds will encompass all claims liability and claims administration responsibilities.  Through this RFI, the WCB wishes to learn industry participants' analyses and recommendations regarding how best to structure the anticipated transactions, including the terms and provisions of any transactional documents. Accordingly, Respondents are encouraged provide recommendations and reasoning regarding the terms and provisions of any transactional documents.

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<b>Question</b>		<b>Response</b>
<b>40</b>	Is there a clear cut-off date for the transferred portfolios, either by date of loss or date the claims was reported?	Please see Response to Question No. 20.
<b>41</b>	What information will be made to bidders during due diligence?	Please see Response to Question No. 25.
<b>42</b>	Will there be any limitations on post ALP transfer reinsurance cessions with respect to the assumed liabilities?	Through the RFI, the WCB wishes to learn industry participants' analyses and recommendations regarding how best to structure the anticipated transactions, including whether and to what extent there should be limitations on post-transfer reinsurance cessions. Accordingly, Respondents are encouraged provide analyses and recommendations regarding whether and to what extent there should be limitations on post-transfer reinsurance cessions, keeping in mind that any subsequent transactions will remain subject to all applicable laws.