

August 5, 2021

Surplus Distribution Model Consultations
Health, Safety and Insurance Policy Branch
Ministry of Labour, Training and Skills Development
400 University Avenue, 14th floor
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To Whom it May Concern,

Re: Surplus Distribution Model Consultations

The Council of Ontario Construction Associations (“COCA”) is a federation of 29 construction associations representing approximately 10,000 general and trade contractors, both unionized and non-union, of all sizes, that perform work in the industrial, commercial, institutional (ICI) and heavy civil construction sectors in all regions of Ontario. COCA is mandated to work with our members and officials at Queen’s Park to ensure that the provinces laws and regulations support success in the construction industry and foster broad prosperity across the province.

We are pleased to have this opportunity to provide our response to the consultation on the proposed Workplace Compensation and Insurance Board (WSIB) Insurance Fund Surplus Distribution Model.

Before addressing the questions posed in the consultation paper, at the outset we are compelled to state in the strongest way possible and without equivocation that the proposed surplus funding corridor at the level of 115% to 125 % is far too high. Here’s why:

- Surplus funds beyond what might be reasonably necessary to provide a cushion against financial market shocks and other adverse events, are much better in the hands of employers, deployed for the purposes of expanding their businesses and creating jobs rather than sitting passively in the WSIB’s investment account
- Surplus funding at the level of 115% to 125% will see unwanted intergenerational transfers of claims, it will have today’s employers paying for the claims of tomorrow’s employers. This is not how the system should operate

- Surplus funding at the level of 115% to 125% allows for the possibility of, if not invites, undisciplined and sloppy management on the part of the WSIB. Ontario employers deserve and expect better
- Ontario has the largest and most diverse economy among all Canadian jurisdictions. Because of this, our workers' compensation system has successfully weathered significant financial market shocks and other adverse events in the past and there is no reason to think it will not do the same in the future. While comparisons with other Canadian jurisdictions may be interesting, none have the scale and diversity of Ontario so these comparisons are of little relevance
- No employer stakeholder recommended such a high funding corridor to the WSIB Operational Review and when a group of employer stakeholders met in person for a consultation with reviewer Sean Spears, this issue of a surplus funding corridor was an afterthought, not top of mind at all with Spears, not raised by Spears and was raised by a stakeholder

For all these reasons, COCA recommends a surplus funding corridor of 105% to 110%. Unless there are extenuating circumstances that are clearly identified and communicated, the WSIB should remain at all times predisposed to making a surplus distribution whenever funding is within the 105% to 110% corridor. The amount of the distribution should be designed to take funding down to the WSIB's own target funding level in accordance with its own operating funding policies.

In response to the questions posed in the consultation paper, we provide the following responses:

1. Should all Schedule 1 employers be eligible to receive a surplus or should some exclusions be established (e.g. employers with accounts in bad standing)?

All active WSIB employer accounts should be eligible to receive their share of a surplus distribution made by the WSIB. Through the normal course of its business operations, the WSIB must actively pursue employers whose accounts are in arrears, for payment. In Question 3 we recommend surplus distributions be made by way of credits to employers' accounts. For an employer whose account is in arrears, such a credit would reduce the amount owed.

It's important to note that employers operating in the sectors that are defined in the Workplace Safety and Insurance Act are required to participate in the province's workers' compensation scheme and to remit premiums based on the payrolls that they report to the WSIB. Construction employers that fall behind in premium payments will not be able to secure clearances from the WSIB. Clearances are required to commence new work. It's important for construction

employers to stay current in their payment of premiums to the WSIB. The WSIB must be mindful not to issue clearances to construction employers whose accounts are in arrears.

2. What method should be used to allocate surpluses (e.g. distribute surplus based on the proportion of premiums paid by individual employers compared to the total premium base)?

There are a number of approaches that could be taken in regard to making distributions of surplus funds to employer accounts. However, none of the approaches is a perfect solution. We prefer the approach that is the simplest, easiest to understand and most efficient to implement which is the prorated share of the distribution based on premiums.

3. How should the surpluses be distributed (e.g. credit to employer's account, premium reduction)?

Employers' shares of a surplus distribution should appear as credits in their WSIB accounts. These credits must be presented in a way that is clearly distinguishable from their premium rate. This is critically important for construction employers who bid future work based on their estimated costs, of which their WSIB premium rate is one. Construction employers must have a clear line of sight on their premium rates.

Before closing, we feel we must restate the point raised at the beginning of this submission only because we believe it so strongly, that the proposed corridor at the level of 115% to 125% is far too high.

We are thankful for this opportunity to make our views on this subject well known and we trust they will receive your very serious consideration.

Respectfully submitted,



Ian Cunningham
President