



**KENNETH J. POKALSKY**  
Senior Director of Government Affairs

July 6, 2009

Mr. Michael Rasnick  
Senior Policy Advisor and Counsel  
New York State Insurance Department  
25 Beaver Street  
New York, New York 10004

Dear Mr. Rasnick:

The Business Council appreciates the opportunity to comment on the Department's "Workplace Safety and Loss Prevention Incentive Program," which sets forth premium discounts that will be provided to employers obtaining workers' compensation coverage through commercial carriers.

The Business Council was a major proponent of the 2007 statutory reforms that authorize these loss prevention credits, and we appreciate that the Departments of Insurance and Labor are now moving forward with implementation rules. The 2007 legislation reflected a careful balance of increased worker benefits and systemic cost-savings, and it is essential that the State finalize implementation of the cost-control provisions of that reform package.

The Council is also preparing comments on the Department of Labor's companion regulations, which will establish procedural and substantive requirements for qualifying safety, substance abuse prevention and return to work programs.

Not having final qualification requirements in hand, it is difficult to evaluate the adequacy of the proposed credits. We believe that certain components of the Department of Labor's proposal— such as the requirement to provide vocational services to injured workers that cannot be returned to their pre-injury employment – would impose significant potential costs that may not be offset by the credits proposed here.

Nonetheless, The Business Council would like to submit the following comments on the Department of Insurance's credit proposal. In addition, we will also provide you with our comments on the Department of Labor's regulation once they are submitted.

**Section 151-3.1** – The draft preamble discusses the provisions of Chapter 6, Laws of 2007 that authorize these proposed workers' compensation premium credits. Chapter 6 also provides that these regulations adopted by the Department of Insurance also establish, in effect, a cap on the security deposit reductions available to self-insured employers that implement WSLPIP programs (see WCL section 134.7). This notice of rulemaking, and the proposed preamble

to this rule, should have also discussed the effect of this rule on self-insured employers, and this effect should be included in the Department's final preamble.

**Sections 151-3.3, 3.4., 3.5 and 3.7** – The proposal would provide annual credits ranging from 4 percent to 1 per year for each of the three WSLPIP program components for the initial three year approval period. The rule also establishes an annual 1 percent per component credit for long-term participation in these programs, with a bump up to 2 percent in renewal years to offset potential administrative costs incurred by employers in the renewal application process.

We appreciate the Department's difficult task in setting these credits, given the lack of relevant data, and we understand the need to assure that premiums are adequate to cover claims and other costs incurred by commercial carriers.

However, we question whether these proposed credit levels are adequate to incentivize employers to participate in these loss prevention programs, and/or to offset the resource commitment required by the proposed program requirements. Even if an employer had a pre-existing program that generally meets the substantive requirements of the Department of Labor's implementation rule, these employers would be subject to program application requirements, and fairly open-ended review and oversight requirements, in addition to some additional program components.

Our concern about the credits' effect also reflects the fact that the impact of these programs, as reflected in an employer's experience rating, lags behind their actual loss experience. As such, we question the Department's rationale for reducing credits after the initial credit year. The Department's regulatory impact statement states that its proposed credits "decrease over the first three years consecutive years of a program's existence because the experience rating plan will incorporate the employer's actual loss experience into the premium separate and apart from the credits authorized by this regulation." We question this justification. If, for example, an employer was able to implement a WSLPIP program in time for a credit to come into effect January 1, 2010, by the employer's third year in the program, when the credit for all three WSLPIP components fell to one percent, the employer's experience rating will include only one year's worth of loss experience under an approved WSLPIP program, thereby accounting for only one-third of the experience rating for that policy/credit year. While a diminished credit may make sense once an employer's experience rating fully reflects the effect of these loss prevention programs, this would not occur until an employer's fifth year in the program.

For these reasons, any reductions in credits should coincide with the calculation of employers' experience rating and the phase-in of loss experience related for policy years for which an employer has one or more approved WSLPIP programs in place.

**Section 151-3.2 (c)** – From this proposed definition ("year in which an insured employer renews the credit..."), it is unclear whether the term "renewal year" means the year in which the employer applies for the renewal, or the year to

which the renewal is first applicable. Based on our discussions with the Department, the renewal year is the first year to which the renewed credit is applicable. This should be clarified in the final rule, e.g., "renewal year means the first year to which a credit renewal, as approved pursuant to 12 NYCRR 60-1.7, applies."

Again, on behalf The Business Council, we appreciate the opportunity to comment on the Department of Insurance's "Workplace Safety and Loss Prevention" rule, and would welcome the opportunity to follow-up on these comments, and to answer any questions you may have.

Sincerely,

A handwritten signature in black ink on a light-colored background. The signature reads "Kurt J. Pohly" in a cursive, slightly stylized font. The first name "Kurt" is written with a large 'K' and a small 'u'. The middle initial "J." is written with a small 'J' and a period. The last name "Pohly" is written with a large 'P' and a long, sweeping tail that extends to the right.