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Subject: RE: September 28 NCOIL Employee Misclassification Subcommittee Call / Revised Model

The current Section 7D reads: If an employer fails to provide reasonable access to payroll records for a payroll verification audit under Section 4, the employer shall pay a premium to the carrier or self-insurer not to exceed the most recent estimated annual premium as estimated by the [*Insert State Insurance Department*] from the best available records by class.

It doesn't make sense to make an individual self-insurer pay a premium to itself for underestimating its exposure. With respect to self-insurers, I suspect that the scope is supposed to be group self-insurers, not individual ones. This would make more sense. In Nevada, self-insurers do not pay premiums. I think Section 7D should refer to group self insurers (in Nevada, we call these associations of self-insured employers) rather than self-insurers generally. Also, in Nevada, at least, associations of self-insured employers assess their members. The fees are called assessments, not premiums. I am not sure whether this is the case in other states generally, but premiums imply insurance, at least in Nevada.

I would recommend the following language for Section 7D:

If an employer fails to provide reasonable access to payroll records for a payroll verification audit under Section 4, the employer shall pay a premium to the carrier, if insured, or an assessment to the association of self-insured employers, if a member of an association of self-insured employers, not to exceed the most recent estimated annual premium or assessment, as applicable, as estimated by the [*Insert State Insurance Department*] from the best available records by class.

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