



## Dividend Filing Guidelines

### Applicable Law

Dividend filings are primarily governed by s. 631.51, Wis. Stat., which states, in part:

*Any insurer may distribute a portion of surplus attributable to policies, other than life insurance or annuities, in amounts and with classifications the board of directors determines to be fair and reasonable. Such distribution may not be made contingent on the continuation of the policy or of premium payments. A schedule explaining the basis for the distribution shall be filed with the commissioner prior to the distribution. When not specified in the policy, a schedule explaining the basis for the distribution shall be filed with the commissioner at least 30 days prior to the distribution.*

### What and When to File

The “schedule” explaining the basis for the distribution consists of the dividend plan descriptions and rules, such as: class or classes of Wisconsin business included in the plan, names of any safety groups, any premium thresholds or loss ratio restrictions and the proposed dividend percentages for each class, plus any participating endorsements.

If a filed schedule changes or if the Board of Directors declares a dividend distribution for a schedule different than the previously filed schedule, a filing is required.

### How to File

Dividend filings are not considered rate, rule or form filings and do not go through the usual filing submission process. Dividend filings can be submitted via SERFF. All filings should contain the following and be directed to the attention of Andrew Stoughton:

- A cover letter describing the applicable line(s) of business, new plan(s) or plan changes. Do not send OCI or NAIC transmittal forms. Indicate the subject as “Dividend Filing,” not a form or rule filing.
- The schedule as described above.

### PROHIBITED PROVISIONS

#### CONTINGENT ON THE CONTINUATION OF THE POLICY AND THE PAYMENT OF PREMIUM

Section 631.51 (2), Wis. Stat., prohibits the distribution of a dividend from being contingent on the continuation of the policy or the payment of premium. It is OCI’s position that had the legislature only been concerned with companies making dividends contingent on the ‘renewal’ of the policy, they would have used the word ‘renewal’ as they have in other sections of the law. Because they chose the word ‘continuation,’ OCI holds companies to the broader meaning of the word. This means that any policy that cancels mid-term, for whatever reason, cannot lose its eligibility for a declared dividend payment if it would otherwise qualify under the dividend filing.

This does not mean that the company cannot reduce or offset outstanding premiums owed by the amount of the dividend payable. However, the offset can only be applied towards premium owed on the policy for which the dividend was declared unless the company has prior, written consent from the policyholder to apply it to premiums owed on other policies (i.e., the offset cannot be applied to “any” premium owed).

The following references in filings will also not be accepted since they appear to violate this section: “policy expiration” instead of “expiration/termination” or “expiration/cancellation”; and “net annual premium” instead of “net audited premium.”

#### DIFFERENTIATING GUIDELINES FOR MULTIPLE PLANS

If the company offers multiple dividend plans and a policyholder can qualify for more than one of those plans, the plans must have differentiating eligibility guidelines or the company must demonstrate it has controls in place in order to avoid unfair discrimination among policyholders of the same class of business when determining which of the dividend plan options will be applicable to individual risks.

### DIVIDENDS CANNOT BE GUARANTEED

Pursuant to s. 631.51, Wis. Stat., dividend plans cannot be guaranteed and must be declared by the Board of Directors. All dividend materials and documents provided to a policyholder should clearly and conspicuously disclose such.

### ESTIMATED OR ANTICIPATED DIVIDENDS AND/OR NET PREMIUMS

It is OCI's position, based on ss. 628.34 (1) and (2) (a) and 631.51 (2), Wis. Stat., that estimated or anticipated dividends cannot be used to reduce the initial premium paid on insurance policies. In addition, estimated or anticipated dividends should not be credited against the unearned premium to display a net premium in a proposal or as part of a sales presentation. Proposals should not show billing plans, collections arrangements, or the total estimated premium using a net premium based on estimated or anticipated dividends.

Our position does not prevent an agent or company from showing estimated or anticipated dividends in a regular proposal or sales presentation, so long as the proposal or sales presentation meets with our position. In addition, every reference to estimated or anticipated dividends should clearly indicate that a dividend cannot be guaranteed and must be declared by the Board of Directors of the insurer. Refer to OCI's *Wisconsin Insurance News* 2010 Winter Issue #1<sup>2</sup> and *Bulletin to Insurers* dated June 2, 1998<sup>1</sup>.

### SAFETY GROUP DIVIDEND PLANS

Section 631.51, Wis. Stat., requires insurers to pay dividends to the policyholder. As of August 2011, it is permissible for the insurer to pay dividends to the safety group/third-party association rather than directly to the eligible members/policyholders, provided all of the following apply:

1. The policyholder enters into a written contract with the third-party association assigning the dividend to the association;
2. The worker's compensation insurer agrees to the assignment of the dividend; and
3. The worker's compensation insurer notifies the policyholder of the amount of the dividend at the time the dividend is paid to the third-party association.

### MISCELLANEOUS

It is considered misleading, pursuant to s. 628.34 (1), Wis. Stat., to refer to any dividends as refunds or refer to dividend plans as rating plans or retention plans.

<sup>1</sup> Documents available on our Web site at <http://oci.wi.gov/workcomp.htm>. Although they reference only worker's compensation, they apply to dividends for all lines of business, except life and annuities.

<sup>2</sup> Document available on our Web site at [http://oci.wi.gov/ins\\_rev.htm](http://oci.wi.gov/ins_rev.htm).