Assessment of Public Comment

During the public comment period, the Board received approximately 11 unique written comments, and two comments after the public comment period ended.

One comment from a law firm opining that the requirement for Notice and Election forms for claimants with no compensable lost time increases the administrative costs to payers because it requires direct deposit forms to be provided to claimants where indemnity or death benefits will never become due, and suggested requiring the timing to be whichever is later, rather than earlier, in 300.26(e)(1), or modifying the language to say injured worker “entitled to” benefits rather than just injured workers generally. One comment suggested amending the proposal to allow notification for direct deposit to be sent only when established that a claimant will receive an indemnity payment, instead of all incidents reported. For existing claims without indemnity, the form is not required because no subsequent report of injury is due, but it will be required for all new claims, and the Board made a change to clarify this.

One comment requested that self-insured employers be allowed fourteen days to provide the Notice and Election forms for existing claims, and to not require self-insured employers to provide advance notice to claimants with existing claims of their right to receive direct deposit. Two comments also requested some flexibility in 300.26(e). One comment recommended this section be amended to allow carriers to determine how to notify existing claimants. The Board made a clarifying change to this section as noted above.

This comment also requested that 300.26(e)(2) have language added to clarify whether the PDFs themselves must appear on the website or if it is sufficient to have the required text, but in a fillable online form for electronic submission. The text of the proposal already permits this, so no change has been made in response to this comment.

The comment also suggested that 300.26(c) be modified to add “and filled out completely by the injured worker or person entitled to a death benefit” to the requirement that the form be in the format prescribed by the Chair. Because the format prescribed by the Chair already requires all information to be complete, no change has been made in response to this comment.

The comment also requested that additional language be added to the regulation to address what happens in the case of a claimant who chose a fixed dollar amount and the benefit amount is later reduced. Nothing in the law or the proposed regulation prohibits an insurance carrier from adding language on their form addressing this, or adding language to their website, but the law supersedes anything in the regulation, and no claimant can be paid higher benefits than what is required by law, and thus no change has been made in response to this comment.

The comment also requested clarification about the case where a deposit amount is less than the minimum set. This is best addressed by business practices – it may be programmed into the website, etc. but no change has been made to the proposal in response to this comment.
The comment requested that the last sentence in section 300.26(d) beginning “in the event of failure to notify” be removed, opining that it is superfluous. This language is necessary to make clear that the regulatory provisions apply in this situation, so no change has been made in response to this comment.

The comment requested that the phrase “injured worker or person entitled to a death benefit” be used throughout the proposed regulation, to replace other references to “claimant.” The Board has made this clarifying change throughout the proposal.

The comment pointed out two typographical errors. The Board has corrected these errors.

Two comments from an association objected to the requirement that direct deposit be allowed to be made to multiple bank accounts of the same claimant, or in the alternative that there be a 7/1/22 implementation deadline. Four comments also requested that allocations for direct deposit be limited to a fixed percentage only and not a dollar amount for administrative convenience. Because the statute requires regulations permitting payments to be “split between multiple accounts by either a dollar amount or exact percentage,” no change has been made in response to these comments.

One comment requested clarification if the notice for direct deposit can be provided via the CIP (claimant information packet) process, and clarification for why publication would be needed on the website. The proposed regulation does not prohibit this, so no change has been made in response to this comment, and the reasoning for the publication on the website is to ensure that injured workers or persons entitled to a death benefit are aware of their right to receive benefits via direct deposit.

One comment from a law firm requested clarification on whether a self-insured employer would need to use the forms provided by the Board. One comment from an association requested clarification about whether carriers must use the DD-1 form or if they can alter it or create their own form. The Board has clarified the language in the proposal to clarify that the format prescribed by the chair means that the data elements listed on the Board’s form must be used in whatever method carriers and self-insured employers use, and while customization is permitted within certain elements (such as allowing for more than two bank accounts, if desired), elements cannot be added.

The comment also requested clarification if a self-insured employer already has direct deposit authorization, whether this proposal requires a new authorization, as well as how existing application forms would be affected. Injured workers or persons entitled to a death benefit must still be notified that they can now divide their direct deposit into multiple accounts or change the percentage or dollar amount, so no change has been made in response to this comment.

The Board received three comments also requesting clarification about the “receipt of notice from the claimant” language in Section 300.26(f). The Board has made a change to clarify this section.
The Board received a comment from an insurance company requesting clarification whether New York Automated Clearinghouse refers to any bank that is authorized to participate in ACH as operated by the Clearing House Payments Company LLC. This is correct, but no change has been made in response to this comment.

The Board received a comment from a third-party administrator supporting the proposal generally but indicating that an effective date of 7/1/21 would be a hardship, and possibly not feasible, recommending 1/1/22 at the latest. One comment received after the deadline also indicated concern for the implementation timeline. The effective date for direct deposit is set by statute at 7/1/21 so no change has been made in response to these comments.

The Board received three comments requesting clarification if the Notice and Election form could be sent via email. There is no express prohibition on this in the proposal if they have an email for the injured worker or person entitled to a death benefit and are sure they receive it, so no change has been made in response to these comments.

One comment requested clarification about how the application form for direct deposit from employers relates to the Notice and Election form in the proposal. The Board has clarified this sentence.

The comment also requested the ability to add language to the annual certification statement saying that the claimant has not returned to work (or remarried) and remains entitled to payments, as well as the claimant’s current address. The certification in the regulation permits inquiry solely as to whether the injured worker or person entitled to a death benefit elects to continue direct deposit, so no change has been made in response to this comment.

One comment requested that the requirement for a claimant for direct deposit notify the carrier when no longer entitled to such payment be included on the Notice and Election form prescribed by the Chair. While this is not a required element of the Notice and Election, because it is permitted by the regulation, a carrier may include this in its forms, so no change has been made in response to this comment.

One comment received after the public comment period ended requested that if a claim is acquired in an inventory assumption, that a new election form should be filed with the new claims administrator and recommended specific language updates. Because a new carrier would send a new notice, and the mechanism of payment would not change without a new election from the injured worker or person entitled to a death benefit, no change has been made in response to this comment.

The comment also requested the right to redact forms if the Board requests them to ensure privacy when it concerns banking information. The Election Form (or DD-1) should not be sent to the Board, so no change has been made in response to this comment.
The comment also requested clarification if section (g) will be complied with using the forms from the Board. Because this requirement is not a one-time requirement, no change has been made in response to this comment. A carrier may include an election form with annual recertification, but the claimant is not required to complete the election form annually.

**Changes made:**
- Corrected typographical errors
- Changed references from “claimant” to “injured worker or person entitled to a death benefit” throughout the proposal for consistency and clarity
- Clarifying language changed in section 300.26(e)
- Changed “receipt of notice” to “receipt of the Election Form” in section 300.26(f)
- Changed reference to “application” to “Notice and Election Form” for clarity