

Assessment of Public Comment

During the public comment period, the Chair and Board received one written comment from a law firm.

The comment suggested changing section 317.20(c)(2) to take away the discretion of the Board if the group self-insurer has satisfied the conditions. The conditions listed are considered the minimum requirements to qualify for financial assistance – there may be other specific facts that affect whether or not financial assistance will be offered. The Board believes a permissive approach is more appropriate, so no change has been made in response to this comment.

The comment also requested requiring the Chair's approval and remittance of the funds within 30 days of the request. Because the regulation already states that the Board shall use reasonable efforts to assist the group in effectuating an assumption of liability policy, a specific timeline is unnecessary, so no change has been made.

The comment also requested an addition of language to clearly permit groups to issue assessments to cover the full cost of an ALP in order to facilitate the levy and collection of the assessment. The regulation already makes clear that the group will submit a dissolution plan and that the plan shall include the execution of an assumption of liability policy, so no change is required.

The comment also requested that the regulation clarify that the Chair is responsible for collection of any outstanding assessments upon execution of the ALP, as well as whether the group retains the ability to calculate the amount of each participating member's commitment. Paragraph (c)(3) of the regulation specifically states that the repayment agreements and confessions of judgment will run in favor of the Board, so no change has been made in response to this comment.

This comment also suggested adding a sentence clarifying how the repayment agreements and confessions of judgment will be allocated among the participating members. The regulation already provides that it is the group's responsibility to propose and allocate an assessment as part of the dissolution plan, so no change has been made.

This comment also suggested adding language stating that if the ALP does not go forward, the repayment agreements and confessions of judgment should be voided. As the suggestion clarifies the language proposed, the Board has made this change in the final text.

The comment requested a revision allowing for the funding of all costs of an ALP, not just the policy premium. The regulation already makes clear that the group is liable for all ancillary costs of an ALP as set forth in section 50(3-a)(7)(b) of the Workers' Compensation Law, so no change has been made in response to this comment.

The comment opined that it was unclear whether the assessment must be collected prior to the request for funding. The regulation already makes clear that 60% of the cost of the ALP must be paid upfront, and therefore the remaining 40% may be paid afterward – therefore, the Board has not made a change in response to this comment.

The comment suggested adding language to indicate when the group members that have executed the repayment agreements and confessions of judgment under subdivision (c)(3) will receive a full and final release from liability. As subdivision (c)(2)(i) already makes clear that the group will propose these specifics as part of its dissolution plan and the Board will either approve or modify these specifics, no change has been made in response to this comment.

The Chair has made the following clarifying change to the regulation:

- Added language to 317.20(c)(4) to clarify explicitly that if the ALP is not approved or not executed, the repayment agreements and confessions of judgment referenced in 317.20(c)(3) are deemed void and unenforceable.