

October 28, 2016



Insurance Agents & Brokers of Maryland

Catherine Grason
Director of Regulatory Affairs
The Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

Dear Catherine:

RE: IA&B COMMENTS ON DRAFT PROPOSED REGULATION 31.03.03

On behalf of the Insurance Agents & Brokers of Maryland (IA&B), I am providing these comments on the draft proposed changes to COMAR 31.03.03. The members of IA&B are independent insurance agencies located throughout Maryland providing insurance products and services to citizens of the State. We appreciate the opportunity to outline some concerns we have with the proposed regulation as currently drafted and to suggest several edits.

The regulation, as proposed, now prohibits the commingling of agency funds with premium funds. While IA&B traditionally does not recommend such commingling, some agents may still wish to have the ability to commingle. Since commingling is currently subject to strict requirements, including carrier consent, we do not see the need to eliminate the right altogether, which could place some unsuspecting agents out of compliance through no fault of their own.

In addition, we are unclear as to whether the intent of the draft proposed regulation is for agencies to have one account for each carrier's premium funds, or one account for all carriers. We believe that either way, the restriction would be inadequate since the provision imposes a requirement to have a single premium fiduciary account. A number of agencies will need to have several premium accounts. In our view, the most important aspect of the regulation is to remind producers that they are holding premium funds in a fiduciary capacity (as the title of the chapter implies). That fiduciary responsibility means that the producer is responsible for the entirety of the premium until that premium is transferred to the carrier. Therefore, producers must make sure that the account is identified and handled as a fiduciary account.

Large agencies with many company appointments need to maintain the ability to have several accounts, and in some cases several financial institutions in order to both better leverage the investment and better protect the principal. Spreading the risk over several financial institutions in particular allows an agency to optimize FDIC protection, which is particularly important if they are handling large premiums.



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We respectfully suggest the following changes to the draft proposed regulation:

.02 General Requirements

(2) Except as described in COMAR 31.03.02B, an insurance producer shall hold ~~each insurer's insurers' premiums in a singular~~ one or more premium accounts, separate from any other operating, personal, or premium accounts and shall hold those funds in a fiduciary capacity.

The consent traditionally needed to commingle applies to the commingling of premium funds with the agency's operating or personal funds, not to the commingling of premium funds together. The proposed edits to B. below would be consistent with neighboring states' regulatory language (see Delaware Regulation 505, in particular 3.0 Definitions, 5.0 and 7.0, and Pennsylvania Chp 37, section 37.81).

B. Commingling of Premium

(2) An insurance producer acting as such in this State may:

(a) Make voluntary deposits into the insurance producer's premium account.

(b) Comingle a single carrier's premium with the premium of one or more other carriers into a single the same premium account, ~~provided the insurance producer shall first obtain the express, written consent of the carrier, or~~

(c) commingle premium funds with the agency's own funds if

- the insurance producer has first obtained the express, written consent of the carrier,

- the funds are reasonably ascertainable from the agency's books and records, and

- the amounts due such carriers are equal to or less than the combined accounts receivables and current bank balances.

~~(3) An insurance producer acting as such in this State may not commingle premium with the insurance producer's operating account or personal account.~~

Finally, the form of the letter of consent is very specific in Maryland, something that is unusual, but because it is governed by statute, we see no room for change in the regulatory framework. However, we do not see any need, nor any benefit in requiring an officer signature on the letter. Most exchanges between carriers and agencies occur with a Regional Director who should have ample delegation of authority to grant or deny consent. We would suggest to strike subparagraph B.

05. Form of Letter of Consent

~~B. The letter of consent shall be signed by an officer of the carrier.~~

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Thank you for your consideration of our comments on the draft proposed changes to COMAR 31.03.03. Should you have any questions please do not hesitate to contact me at (717) 795-9100 x607 or laurenb@iabforme.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Brinjac". The signature is fluid and cursive, with the first name "Lauren" written in a larger, more prominent script than the last name "Brinjac".

Lauren Brinjac
Government Affairs Director, IA&B

cc: Jason F. Ernest, Esq., Deputy CEO and Counsel, IA&B
Bryson Popham, Popham & Andryszak, PA
IA&B Board of Directors and Government Relations Committee