

**Title 31**  
**MARYLAND INSURANCE ADMINISTRATION**  
**Subtitle 03 INSURANCE PRODUCERS AND OTHER INSURANCE**  
**PROFESSIONALS**

**31.03.03 Fiduciary Responsibility of Insurance Producers: Premium Accounts —  
Commingling of Funds**

Authority: Insurance Article, §§2-109 and 10-126, Annotated Code of Maryland

**Notice of Proposed Action**

[17-112-P]

The Insurance Commissioner proposes to adopt new Regulation **.01**, amend and recodify existing Regulations **.01— .03** to be Regulations **.02— .04**, and repeal existing Regulation **.04** under **COMAR 31.03.03 Fiduciary Responsibility of Insurance Producers: Premium Accounts — Commingling of Funds**.

**Statement of Purpose**

The purpose of this action is to define terms; update antiquated regulatory language; clarify the circumstances in which an insurance producer may commingle premium monies from multiple carriers into one or more premium accounts; clarify the circumstances in which an insurance producer may transfer interest from an insurance producer's premium account or premium accounts into the insurance producer's operating account; and clarify that an insurance producer may not commingle premium monies with the insurance producer's operating or personal accounts.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Lisa Larson, Assistant Director of Regulatory Affairs, Maryland Insurance Administration, 200 St. Paul Place, Ste. 2700, Baltimore, MD 21202,

or call 410-468-2007, or email to [insuranceregreview.mia@maryland.gov](mailto:insuranceregreview.mia@maryland.gov), or fax to 410-468-2020. Comments will be accepted through May 15, 2017. A public hearing has not been scheduled.

**.01 Definitions.**

*A. In this chapter, the following terms have the meanings indicated.*

*B. Terms Defined.*

(1) "Business day" means any calendar day except Saturday, Sunday, or a legal holiday.

(2) "Carrier" means a person that is:

(a) An insurer that holds a certificate of authority in the State and provides insurance in the State;

(b) A health maintenance organization that is licensed to operate in the State;

(c) A nonprofit health service plan that is licensed to operate in the State; or

(d) Any other person or organization that provides insurance or health benefit plans subject to State insurance regulation.

(3) "Operating account" means an account owned by an insurance producer containing monies that are utilized primarily for the day to day operation of the insurance producer's business.

(4) "Personal account" means an account owned by an individual who is an insurance producer containing monies that are utilized primarily for the individual's personal expenses.

(5) "Premium" has the meaning stated in Insurance Article, §1-101, Annotated Code of Maryland.

(6) "Premium account" means an account in a bank or banks authorized to do business in this State or subject to jurisdiction of this State containing premium monies or voluntary deposits, from which withdrawals may not be made except as specified in COMAR 31.03.03.02C.

(7) "Prompt remittance" means remittance of premium monies to carriers or insureds not later than the close of the fifth business day following receipt of the funds.

(8) "Voluntary deposit" means a deposit into a premium account in excess of aggregate net premiums, return premiums, and deposits received but not remitted, made for the purpose of maintaining a minimum balance, to guarantee the adequacy of the account, or to pay premium due but uncollected.

**[.01].02 General Requirements.**

A. Every insurance producer acting as such in this State who does not have the express written consent of the insurance producer's principals to mingle premium monies with the insurance producer's personal funds shall hold the premium monies separate from other funds in accordance with this regulation.

B. Insurance producers who do not make prompt remittance to principals and assureds of the funds shall deposit them in one or more appropriately identified accounts in a bank or banks authorized to do business in this State or subject to jurisdiction of this State, from which withdrawals may not be made except as hereinafter specified (any such account is hereinafter referred to as a "premium account").

C. An insurance producer who makes remittances to principals or assureds of the funds not later than the close of the fifth business day following receipt of the funds shall be deemed to have made prompt remittance and need not maintain a premium account for the funds. The term "business day" does not include Saturdays, Sundays, or legal holidays.

D. Deposits in a premium account in excess of aggregate net premiums, return premiums, and deposits received but not remitted may be made to maintain a minimum balance, to guarantee the adequacy of the account, or to pay premiums due but uncollected (any such deposit is hereinafter referred to as "a voluntary deposit").]

A. *Premium Account.* An insurance producer that does not make prompt remittance of a carrier or insured's premium shall maintain such premium in one or more premium accounts, which shall be separate from any operating accounts or personal accounts.

*B. Commingling of Premium.*

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

(a) May not commingle any premium account with any operating account or personal account.

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

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

(b) Unless prohibited by the carrier, commingle a single carrier's premium with the premium of one or more other carriers into one or more premium accounts.

[E.] C. *Withdrawals.*

(1) Withdrawals from a premium account may not be made other than for the following purposes:

(a) Payment of premiums to [principals] carriers.

(b) Transfer to an operating account of bank interest, if the [principals have] carrier has consented to it in writing.

(c) Transfer to an operating account of commissions either actual or average. If average commissions are used, the insurance producer shall maintain on file in the insurance producer's office at all times a letter from each [principal] carrier stating the percentage of the average commission.

(d) (text unchanged)

(e) Payment of return deposits to [assureds] *insureds*.

(f) Payment of return premiums to [assureds] *insureds* in the ordinary course of business when a written agreement with the [principal] *carrier* authorizing this practice exists.

(2) [However, a] A withdrawal may not be made if the balance remaining in the premium account thereafter is less than aggregate net premiums, return premiums, and deposits received but not remitted.

F. (text unchanged)

**[.02] .03 Account Current System.**

In the case of an insurance producer operating under an account current system, maintenance at all times in one or more premium accounts of at least the net balance of premiums as determined by either actual or average commissions, return premiums, and deposits received but not remitted, shall be construed as compliance with this chapter, provided that the funds so held for each [principal] *carrier* are readily ascertainable from the insurance producer's records.

**[.03] .04 Substantial Interest.**

In those instances when the officers, directors, or principal management of [an insurer] *a carrier* have a substantial interest in either the conduct or operation of the agency or brokerage business, or when the officers, directors, or principal management of an agency or brokerage business have a substantial interest in the conduct or operation of the [insurer] *carrier*, [a consent letter to the agency or brokerage business, by the insurer, may not be permitted, and separate accounts shall be maintained] *the agency or brokerage business shall maintain one or more premium accounts to be used exclusively for any premium collected from the carrier, which shall be separate from premium accounts for other carriers.*

ALFRED W. REDMER, JR.  
Insurance Commissioner