

May 15, 2017



Insurance Agents & Brokers of Maryland

Lisa Larson, Esq.  
Assistant Director, Regulatory Affairs  
The Maryland Insurance Administration  
200 St. Paul Place, Suite 2700  
Baltimore, Maryland 21202

Dear Lisa:

**RE: IA&B COMMENTS ON PROPOSED REGULATION 31.03.03**

On behalf of the Insurance Agents & Brokers of Maryland (IA&B), I am providing these comments on the proposed changes to COMAR 31.03.03 as published in the Maryland Register on April 14, 2017. We appreciate the Maryland Insurance Administration's review of our October 2016 comments during the initial draft period, as well as the opportunity to comment further on some of our continued concerns.

We continue to believe that the amendment to prohibit the commingling of agency funds with premium funds is problematic. We recently surveyed our membership and found that over 40% of respondents feel strongly that the flexibility allowed by the ability to commingle agency and premium funds is important and should be maintained. Given that commingling has been permissible for the last 20+ years, is subject to strict requirements including carrier consent, mitigates some of the administrative burden on small agencies, and has not posed enforcement issues for the MIA, we feel strongly that this right should not be eliminated, and we urge the MIA to reconsider its position. With the majority of today's premium funds flowing through direct billing, we would argue that the risk of misappropriation of funds is much lower now than it's ever been. To this point, our member feedback indicates that when over 90% of premiums are direct-bill, disallowing commingling altogether would force an agency to open one or several separate accounts for occasional agency-billed placements, such as for Surplus Lines. This account would have a consistently low average balance. Prohibiting commingling would be an unnecessary administrative burden, particularly for small agencies that do not have a full accounting department available to manage more accounts and transactions.

In addition, as we noted in our October 2016 letter, 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. Thus, we're concerned that the language in *B. Commingling of Premium*, which states that "(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," leaves the door open for carriers to force agents to have a separate account for each carrier. (Even a poorly drafted agency agreement could unintentionally create



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that situation.) Such a requirement - to have separate bank accounts for each carrier - would impose a huge burden on agencies that deal with numerous carriers and would not be of any benefit to either carriers or insureds.

Finally, we would like to stress that our comments are not driven by a lack of appreciation for the importance of an agency's fiduciary obligations. A few years ago, we worked closely with the MIA's Enforcement Division (in particular Don Thompson), and developed a resource for our members in order to help them understand their fiduciary duties and handle their compliance properly. In doing so, we conducted extensive research, including contact with the Federal Deposit Insurance Corporation (FDIC) in order for our members to leverage better FDIC protection for their fiduciary accounts **for the benefit of their customers**. This was done at a time when bank failures were increasing, and this guidance had tangible effects on the level of protection from which each customer and carrier benefited; agents following our guidance were able to leverage the FDIC limit for each beneficiary of the fiduciary account (i.e. each carrier and each customer) rather than applying the FDIC limit to the account itself. Our entire research and guidance was shared with the MIA.

In short, IA&B takes the fiduciary responsibility of insurance producers very seriously, but we do not believe that the proposed changes to COMAR 31.03.03 serve to mitigate any real risks. We appreciate your consideration of our comments and we would welcome the opportunity to discuss this matter further with you in more detail.

Should you have any questions please do not hesitate to contact me at (717) 795-9100 x607 or laurenb@iabforme.com.

Sincerely,



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