

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

Consumer Services

18.06.02 – Producers Handling of Fiduciary Funds

Who does this rule apply to?

This rule applies to producers and bail agents who handle funds in a fiduciary capacity.

What is the purpose of this rule?

The purpose of this rule sets allowable fiduciary fund accounts and types, deposits of other funds, account designation, interest, and disbursement of funds.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

Insurance -

The Department of Insurance:

- [Section 41-211, Idaho Code](#) – Rules

Producer Licensing:

- [Section 41-1024, Idaho Code](#) – Reporting And Accounting For Premiums
- [Section 41-1025, Idaho Code](#) – Rules

Who do I contact for more information on this rule?

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18.06.02 – PRODUCERS HANDLING OF FIDUCIARY FUNDS

000. LEGAL AUTHORITY.

Sections 41-211, 41-1024, 41-1025, 41-1042, and 41-1043, Idaho Code. (7-1-24)

001. SCOPE.

This rule applies to “producers,” including bail agents, who handle fiduciary funds. (7-1-24)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Fiduciary Fund Account. A financial account established to hold fiduciary funds as provided in Section 016. (7-1-24)

02. Fiduciary Funds. All premiums, return premiums, premium taxes, funds as collateral, and fees received by a producer. Fiduciary funds include: (7-1-24)

a. All funds paid to a producer for selling, soliciting or negotiating policies of insurance except for those fees recognized by statute as earned by the producer upon receipt which are payable to the producer and not the insurance company, pursuant to Section 41-1030, Idaho Code. (7-1-24)

b. All funds received by a producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or to the producer’s employer. (7-1-24)

c. All funds provided to a producer by an insurance company or its agents that are to be paid to a policyholder or claimant pursuant to a contract of insurance. (7-1-24)

d. All checks or other negotiable instruments collected by the producer and made payable to the insurer. (7-1-24)

e. Cash collateral pursuant to Section 41-1043, Idaho Code. (7-1-24)

03. Receive. To collect or take possession of fiduciary funds. If fiduciary funds are in the form of a credit or offset on an account or other liability for the benefit of the consumer, without the producer actually taking possession of the funds, then constructive receipt is presumed to have occurred. (7-1-24)

011. -- 013. (RESERVED)

014. DEPOSIT AND REMITTANCE TIMING.

01. Payable to an Insurer. Fiduciary funds that are in the form of a check or another negotiable instrument, made payable to an insurer, are to be remitted to the insurer within the time period specified in the producers contract, or if not specified, then within fourteen (14) days of receipt. (7-1-24)

02. Payable to a Policyholder. Fiduciary funds that are in the form of a check or another negotiable instrument made payable to a policyholder or claimant are to be remitted to that person within fourteen (14) days of receipt or as specified by the terms insurance policy language, the insurer, or applicable law. (7-1-24)

03. All Other. All other fiduciary funds received by the producer, except as described under Subsections 014.01 and 014.02 are to be deposited into a fiduciary fund account as follows: (7-1-24)

a. Cash: within seven (7) days of receipt, except when the amount exceeds two thousand dollars (\$2,000), then such funds will be deposited within three (3) business days. (7-1-24)

b. Checks, money orders, other negotiable instruments, debit or credit card payments, or other electronic funds transfer: within seven (7) days of receipt. (7-1-24)

04. Documentation of Fiduciary Funds. A producer will document the receipt of funds by recording date received, the payee, and the amount received. For cash, including cash collateral, the producer will give the payor a detailed receipt at the time of payment indicating cash was received, date received, amount received, payor’s name, payee’s name, purpose of payment, and any other information important to the transaction. The producer will maintain the receipt for at least five (5) years. (7-1-24)

015. DEPOSITING OTHER FUNDS IN FIDUCIARY ACCOUNT-VOLUNTARY DEPOSITS.

A producer may deposit other additional funds for the sole purpose of: (7-1-24)

- 01. Reserves.** Establishing reserves for payment of return premiums. (7-1-24)
- 02. Bank Charges.** Advancing funds sufficient to pay bank charges. (7-1-24)
- 03. Contingencies.** For any contingencies that may arise in the business of receiving, transmitting or returning premium funds or cash collateral. (7-1-24)

016. TYPES OF PERMITTED ACCOUNTS.

- 01. Federally Insured.** A producer will maintain fiduciary funds only in federally insured accounts. (7-1-24)
- 02. Investments.** If funds held exceed the federally insured limits, then only the excess funds may be deposited into: (7-1-24)
 - a.** An investment account that invests only in United States government bonds, United States Treasury certificates or in federally guaranteed obligations; or (7-1-24)
 - b.** Money market mutual funds registered with the SEC which are rated AAA by Moody's S&P. (7-1-24)
- 03. Designation.** A fiduciary fund account is so designated on the records of the financial institution. The account has a separate account number, a separate check register and its own checks displaying "Trust Fund Account" or similar designation on the face of each check. (7-1-24)
- 04. Interest.** The producer will maintain records of any interest accrued. (7-1-24)
- 05. Affiliated Fiduciary Fund Account.** A producer may maintain fiduciary funds in the fiduciary fund account of an affiliated producer. Each producer retains responsibility for compliance. (7-1-24)

017. -- 018. (RESERVED)

019. PERMISSIBLE DISTRIBUTION.

Distributions from a fiduciary fund account are to only be made for the following purposes, and manner: (7-1-24)

- 01. Remit Premiums.** Remit premiums to an insurer or an insurer's designee pursuant to a contract of insurance; (7-1-24)
- 02. Return Premiums.** Return premiums to an insured or other person or entity entitled to the premiums; (7-1-24)
- 03. Remit Surplus Lines Taxes and Stamping Fees.** Remit surplus lines taxes and stamping fees collected to the appropriate state; (7-1-24)
- 04. Reimburse Voluntary Deposits.** Reimburse voluntary deposits made by the producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations. The reimbursement will be matched to a previous voluntary deposit. (7-1-24)
- 05. Transfer or Withdraw Accrued Interest.** Transfer or withdraw accrued interest to the extent that fiduciary fund account funds exceed the amount necessary to meet all fiduciary obligations. The reimbursement will be matched to a previous interest deposit by the financial institution. (7-1-24)
- 06. Transfer or Withdraw Commissions.** Transfer or withdraw commissions and those earned fees

earned by the producer, upon receipt, which are payable to the producer, only if the commissions and fees can be matched with funds previously deposited in the fiduciary account. (7-1-24)

07. Pay Charges Imposed. Pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary fund account. (7-1-24)

08. Transfer Funds. Transfer funds from one (1) fiduciary fund account to another fiduciary fund account. (7-1-24)

09. Return Cash Collateral. Return cash collateral to the person who deposited the cash collateral with the producer within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by the cash collateral, has been discharged. (7-1-24)

10. Convert Cash Collateral. Convert cash collateral where the defendant or other responsible party fails to satisfy the obligation of the bail bond and the bail or obligation was not exonerated by the court but instead executed by the court, provided such conversion is compliant with the contract between the producer and the person who deposited the cash collateral. (7-1-24)

020. -- 021. (RESERVED)

022. TIMELY DISBURSEMENT OF FIDUCIARY FUNDS.

In addition to the requirements of Section 014, after receiving fiduciary funds, a producer: (7-1-24)

01. Remits Premiums. Remits premiums directly to an insurer or an insurer's designee within the time period set forth in the producer's contract, or if not specified, within fourteen (14) days of receipt; (7-1-24)

02. Returns Money Received. Returns to the payer the money received as a premium deposit which is retained by the producer or returned to the producer by the insurer to the payer by the earlier of: (7-1-24)

a. Fourteen (14) days from the date the premium is received by the producer or (7-1-24)

b. Fourteen (14) days from the date the insurer notifies the insurance applicant that coverage has been denied if the producer retained the premium deposit. (7-1-24)

03. Refund Received from the Insurer. Issues a refund received from the insurer within fourteen (14) days by disbursing money to the insured or other party entitled thereto. If the producer is applying the refund to an outstanding amount owed by the insured, the producer obtains the insured's permission and provides the insured a detailed description of the amount owed to which the refund is being applied. (7-1-24)

04. Dispute of Entitlement of Funds. If there is a dispute as to entitlement of funds under Subsections 022.01 or 022.03, a producer notifies the parties of the dispute, seeks to resolve it, and documents the steps taken to resolve it. (7-1-24)

05. Funds Held for More Than Ninety Days. If funds within the scope of Subsections 022.01 or 022.03 are held for more than ninety (90) days, the producer investigates to determine the entitlement to fiduciary funds and pays those fiduciary funds when due to the appropriate person in accordance with this section. (7-1-24)

06. Return Cash Collateral. Returns cash collateral to the depositor within fourteen (14) after the obligation is discharged. (7-1-24)

023. - 999. (RESERVED)