

Premium Trust Funds

Obligations and Restrictions Imposed on Insurance Producers

BACKGROUND

As an insurance producer, you may be responsible for collecting, holding, managing and remitting premium funds to insurance companies. To limit producers from mismanaging or misappropriating premium funds, most states impose fiduciary obligations on insurance producers which include certain restrictions and limitations on the use of premium funds held by producers. Understanding these requirements and restrictions is important as violations could result in the revocation or suspension of the producer's license, significant fines, and even criminal penalties.

FIDUCIARY CAPACITY

Most states expressly require insurance producers to hold premium funds in a "fiduciary capacity". As fiduciaries, insurance producers have a duty to hold and manage premium funds for the exclusive benefit of the insureds and the insurance companies and not for the producer's own use. Producers must therefore make certain that premium funds are not improperly used or withheld, and maintain complete and accurate records to confirm premium funds are properly accounted for.

PLEASE NOTE

The contents of this white paper are provided for informational purposes only, should not be construed as legal advice, may not reflect the most current legal and regulatory developments and should not be considered an indication of future results.

PREMIUM TRUST ACCOUNTS

To prevent producers from mishandling or misappropriating funds held in fiduciary capacity, most states require producers to deposit and hold premium funds in "premium trust accounts" separate from agency operating account(s).

Certain states further require that the accounts be designated as “trust” account on bank records. In other states, insurance producers must maintain premium trust accounts with particular financial institutions (e.g., national or state banks, savings institutions, FDIC insured banks, etc.) subject to more stringent regulatory oversight.

Even in the absence of state laws on premium trust accounts, some insurance departments either strongly “recommend” the use of a separate premium trust account or issued written guidance requiring that premium funds be clearly ascertainable from the producer’s other funds. While state laws vary on this issue, it is best practice for insurance producers to maintain records so premium funds are easily ascertainable from other funds.

COMMINGLING OF PREMIUM FUNDS

In some states, producers are prohibited from comingling premium funds with personal or general operating funds even if such premium funds are separately ascertainable. States that allow comingling of premium funds often impose significant restrictions, such as permitting a carrier’s premium funds to only be comingled with accounts holding premiums for other companies, or permitting such comingling only after the producer obtains the consent of the companies for whom the producer is holding the premium funds as fiduciary.

PREMIUM TRUST ACCOUNT INTEREST

The laws in the majority of states are silent regarding the permissibility of a producer to retain interest on premium funds being held by the insurance producer. Seventeen (17) states that permit insurance producers to retain interest generated on premium funds held in premium trust accounts impose certain limitations on such retention of interest including:

- Requirement to obtain consent from the beneficiary of the premium funds.
- Periodic removal of interest to avoid an accumulation of large reserve funds in premium trust accounts.
- Allowing interest withdrawal only if such withdrawal will not result in a penalty (e.g., overdraft fees, threshold fees) against the principal amount held in the account.

In addition to state law, it is important for insurance producers to review their agency agreements with insurance companies as they may impose additional restrictions and/or limit the producer’s ability to retain interest on the premium funds.

PERMISSIBILITY OF PREMIUM FUND INVESTMENT

Investment by the insurance producer of premium funds is limited in most states and subject to stringent restrictions intended to reduce the risk of loss in the principal amount deposited. No state expressly permits a producer to invest premium funds freely in a discretionary manner. Those states that do not expressly prohibit investment of premium funds either:

- Require consent from the beneficiary of the funds prior to investment; or
- Only allow premium funds to be deposited in certain types of interest-bearing accounts (e.g., money market accounts paying interest) involving minimal risk of loss in the principal amount deposited.

The investment of funds contrary to the restrictions and limitations imposed by state law may be considered to be a misappropriation or conversion of funds which may result in the revocation or suspension of the producer license, significant fines and even criminal penalties.

PREMIUM FUND REMITTANCE TIMELINE

Insurance laws generally do not strictly regulate the timeline for remittance of premium funds by insurance producers to insurance companies. While some state insurance laws provide a specific timeframe for the remittance of premium funds, the laws in other states either require producers to remit the funds “promptly” or defer to the timeline set forth in the agency agreement between a producer and the appointing insurance company.

CONCLUSION

To summarize, most states impose: (1) fiduciary requirements on insurance producers collecting, holding and managing premium funds on behalf of insureds and insurance companies; (2) restrictions on the use and commingling of premium funds by insurance producers; and (3) penalties for the misappropriation or conversion of premium funds. ACCEL Law Group P.C. (“ACCEL”) has extensive experience advising clients on matters related to insurance producer fiduciary obligations and best practices.

ABOUT ACCEL Compliance

ACCEL Compliance provides comprehensive compliance services and software to insurance agents and brokers. We focus on ensuring insurance intermediaries meet their regulatory obligations while freeing their resources to focus on growth. Learn more at [ACCELCompliance.com](https://www.accelcompliance.com).

ABOUT ACCEL Law Group

ACCEL Law Group specializes in advising insurance agents and brokers on complex mergers, acquisitions and regulatory matters. Learn more at [ACCELLawGroup.com](https://www.accellawgroup.com).