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TO: All Insurance Producers Doing Business in the State of Idaho

FROM: Dean L. Cameron, Director

SUBJECT: Money Handling and Fiduciary Funds (Reissuance of Bulletin 11-01)

The purpose of this bulletin is to remind producers of their fiduciary responsibilities as mandated by Idaho Code § 41-1024, *Reporting and Accounting for Premiums,* and IDAPA 18.06.02, *Producers Handling of Fiduciary Funds*.

Idaho Code § 41-1024(2) states that "fiduciary funds shall include all funds collected by an insurance producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or the producer's employer, and all funds collected by an insurance producer from an insurance company or its agents that are to be paid to a policyholder or claimant under any contract of insurance."

Common examples of mishandling of fiduciary funds include:

- Not maintaining proper receipts of fiduciary funds.
- Not having a separate "trust fund account" set up for depositing and distributing fiduciary funds.
- Not meeting required timelines for depositing and distributing fiduciary funds.
- Not maintaining proper records of collections, deposits, and disbursements from fiduciary fund accounts.
- Not following permissible fiduciary fund distribution guidelines.
- Not properly distributing fiduciary funds held for more than 90 days.
- Co-mingling fiduciary funds with other funds.
- Diverting or misappropriating fiduciary funds for personal use.

Idaho Insurance Code does allow multiple producers to maintain and hold fiduciary funds in a single trust fund account or for producers to collect and deposit funds into a sweep account maintained by or for an applicable insurer. However, each producer is still responsible for compliance with Idaho Code § 41-1024 and IDAPA 18.06.02 even if funds are maintained in a fiduciary fund account established by another affiliated producer or in a sweep account.

IDAPA 18.06.02.016 provides for the types of accounts permissible for maintaining fiduciary funds. Fiduciary funds must be maintained in a federally insured account, with specific allowances only for the funds that exceed the federally insured limit. The purpose of this section is to ensure fiduciary funds are kept in a financially secure account, and not to imply that producers can use fiduciary funds for investment purposes.

Idaho Code § 41-1024 ensures that producers can account for all fiduciary funds and ensure fiduciary funds are paid to the person entitled to the funds. Idaho Code does not allow for temporary or short-term use of fiduciary funds for any other purpose.

Per Idaho Code § 41-1024(3), "any producer who, not being lawfully entitled thereto, diverts or appropriates to his own use such trust or fiduciary funds or any portion thereof, whether or not such funds have been separately deposited, shall upon conviction be guilty of a felony." The Department will pursue violations, as appropriate, against any producer who has violated fiduciary fund requirements.

The Department urges producers to thoroughly review Idaho Code § 41-1024 and IDAPA 18.06.02 to assure compliance with Idaho law.

This Bulletin is not new law but is an agency interpretation of existing law, except as authorized by law or as incorporated into a contract. Requests for additional information or other inquiries regarding this Bulletin can be directed to the Consumer Affairs at (208) 334-4250 or consumeraffairs@doi.idaho.gov.