

FAML I Policy Guidance

Declaration of Intent Escrow Requirements

Control Number: #E-26-004	Effective Date: October 2, 2026
Issued By: Elliot Schreur, Assistant Secretary	Issuance Date: October 2, 2026

Issue

Under Code of Maryland Regulations (COMAR) [09.42.03.10B](#), if an employer's Declaration of Intent (DOI) to enroll in an equivalent private insurance plan (private plan) is accepted by FAML I, that employer is exempted from contributions to the FAML I Trust Fund accruing from January 1, 2027 until the date their private plan application is approved.

However, under COMAR [09.42.03.10A\(1\)\(d\)](#), the employer with an accepted DOI must hold any contributions in an escrow account that would have been owed and paid to the FAML I Trust Fund.

The contribution rate is determined annually and is applied to the employee's wages up to the Social Security Wage base, as outlined in Labor and Employment Article [§8.3-601](#) of the Annotated Code of Maryland. The current rate is 0.9% and will be in effect through December 31, 2027. Employers are entitled to withhold up to 50% of the total contribution rate from their employees' pay. Small employers, those with fewer than 15 employees both within and outside Maryland, are exempt from the employer portion of the contributions.¹

This guidance explains how employers with accepted DOIs should manage escrow account requirements.

¹ For more information on small employer determination please see FAML I's Policy Guidance on Small Employers (Control #E-26-002).

Definitions

In this document, the following terms have the meanings indicated:

- Commercially insured equivalent private insurance plans – defined in COMAR [09.42.01.01B\(10\)](#). Also known as commercially insured private plans.
- Contribution – defined in COMAR [09.42.01.01B\(12\)](#).
- Contribution rate – described in Maryland [Labor and Employment Article §8.3-601](#).
- Declaration of Intent – defined in COMAR [09.42.03.01B\(1\)](#).
- Employee – defined in COMAR [09.42.01.01B\(20\)](#).
- Employer – defined in COMAR [09.42.01.01B\(21\)](#).
- Equivalent private insurance plan - defined in COMAR [09.42.01.01B\(23\)](#). Also known as a private plan.
- Escrow account – for the purposes of escrowing contributions in compliance with COMAR [09.42.03.10A\(1\)\(d\)](#), escrow account means an expense or escrow account which tends to protect the security of a loan by the accumulation of funds for the payment of taxes, insurance premiums, water and sewer facilities assessments, or other expenses. Defined in Maryland Commercial Law Article §§ [12-109\(a\)\(2\)](#) and [12-1026\(a\)\(2\)](#).
- FAMLI Trust Fund – Defined in Maryland Labor and Employment Article [§8.3-101](#). See also COMAR [09.42.01.01B\(42\)](#).
- Self-insured equivalent private insurance plans – defined in [COMAR 09.42.01.01B\(39\)](#). Also known as self-insured private plans.
- State Plan – defined in COMAR [09.42.01.01B\(42\)](#).

Policy discussion & procedure

1. Which employers are required to escrow contributions?

Under COMAR [09.42.03.10A\(1\)\(d\)](#), employers with accepted DOIs are required to escrow contributions.

There is one exception to the escrow requirement for “employers who are allowed to pool together with other employers under §19–602 of the Maryland Insurance Article to purchase insurance,” outlined in [Ch. 363 \(2025\) Section 2](#).

2. How do employers determine the escrow amount?

The amount deposited in escrow must be equivalent to what contributions would have been paid to the FAMLI Trust Fund, regardless of any rates quoted by insurance carriers.

3. What are the requirements for the escrow account?

Escrow accounts are accounts that accumulate funds for the payment of insurance premiums. See §§ [12-109\(a\)\(2\)](#) and [12-1026\(a\)\(2\)](#) of the Commercial Law Article of the Maryland Annotated Code. Employers are required to hold the funds in an account strictly segregated from other monies. Employers are responsible for establishing an escrow account and should work with their existing financial institutions to set it up. FAMLI will not administer escrow accounts.

4. Can an employer fully fund the escrow account without withholding from employees?

Yes. An employer can choose to fully fund the escrow account with their own funds.

5. When are funds required to be deposited in escrow?

Any contributions withheld from employees must be deposited in the escrow account immediately after each pay period. Employer contributions must be deposited by the quarterly due date. By April 30, 2027, the amount deposited should total what would have been paid to the FAMLI Trust Fund had the employer enrolled in the State Plan during that same time. By July 31, 2027, the amount deposited should total what would have been paid to the FAMLI Trust Fund had the employer enrolled in the State Plan during that same time. The account may accrue interest. See Question 15.

6. How long do the funds have to be held in escrow?

The funds are required to be held in escrow until FAMLI approves the employer's private plan application. Private plan applications will open in the Summer of 2027. FAMLI will begin reviewing submitted applications at that time.

7. Are there employer-to-employee notification requirements related to escrow?

Yes, all employers must provide employees written notice that FAMLI contributions will be withheld from their paychecks at least one pay period in advance. This includes withholding for the purposes of escrow. See COMAR [09.42.02.05D](#). FAMLI will be releasing notice templates for this purpose.

8. How and when will FAMLI monitor compliance with the escrow requirements?

FAMLI will ask employers with accepted DOIs to provide proof of the escrow accounts as part of their private plan application. Proof of escrow account should include the appropriate balance and plans for distribution of contributions and interest accrued on both employee and employer contributions. FAMLI may terminate the DOI for lack of escrow account as outlined in COMAR [09.42.03.10A\(4\)](#). If an employer cannot demonstrate they meet escrow requirements in their private plan application, FAMLI will consider this a deficient private plan application under COMAR [09.42.03.05E\(2\)](#).

9. Can an employer change course and revoke their DOI and related escrow requirements after submission?

The DOI is a legally binding document. An employer cannot revoke a DOI and related escrow requirements once submitted.

10. FAMLI termination of DOI

a) What happens to funds in escrow if FAMLI terminates the DOI before the employer's private plan application is approved?

As mentioned, employers cannot revoke a DOI once submitted. However, FAMLI does have the authority to terminate a DOI for certain violations outlined in COMAR [09.42.03.10A\(4\)](#). If FAMLI finds that an employer has committed a violation and terminates their DOI, FAMLI will notify the employer of the total amount past due, including contributions and any related interest or penalties. Funds in the escrow account may be used to pay the amount due. The employer will then be required to make contribution payments to the FAMLI Trust Fund.

b) If FAMLI terminates the DOI before the employer's private plan application is approved, is the employer able to make up any balance to the FAMLI Trust Fund through employee withholding?

No, employers cannot retroactively withhold additional funds from employee wages to pay past due contributions to the FAMLI Trust Fund, per COMAR [09.42.03.10A\(1\)\(d\)\(iii\)](#). The employer is solely responsible for any balance.

11. Employer failure to apply for private plan

a) What happens to funds in escrow if an employer submits a DOI, but then fails to apply for a private plan?

If the employer does not apply for a private plan by October 1, 2027, FAMLI will notify the employer of the total amount past due to the FAMLI Trust Fund, including contributions and any related interest or penalties. Funds in the escrow account should be used to pay the amount due.

b) If the employer submits a DOI, but then fails to apply for a private plan, is the employer able to make up any balance to the FAMLI Trust Fund through employee withholding?

No, employers cannot retroactively withhold additional funds from employee wages to pay past due contributions to the FAMLI Trust Fund, per COMAR [09.42.03.10A\(1\)\(d\)\(iii\)](#). The employer is solely responsible for any balance.

12. FAMLI denial of private plan application

a) What happens to funds in escrow if an employer submits a DOI and FAMLI denies their private plan application?

Similarly, if FAMLI denies the employer's private plan application, the employer will be notified by FAMLI of the total amount past due to the FAMLI Trust Fund, including contributions and any related interest or penalties. Funds in the escrow account should be used to pay the amount due.

b) If the employer submits a DOI, but then FAMLI denies their private plan application, is the employer able to make up any balance to the FAMLI Trust Fund through employee withholding?

No, employers cannot retroactively withhold additional funds from employee wages to pay past due contributions to the FAMLI Trust Fund. See COMAR [09.42.03.10A\(1\)\(d\)\(iii\)](#). The employer is solely responsible for any balance.

13. What happens to funds in escrow when an employer's private plan is approved?

Self-insured private plan

If the employer's approved application is for a self-insured private plan, the employer has two options. First, they may use the funds in the escrow account to seed a separate account for their self-insured plan's fund. See COMAR [09.42.03.10A\(1\)\(e\)](#).

Alternatively, if the employer decides not to seed a self-insured plan fund, the employer is required to return employee contributions with any interest accrued in the account to the employees whose wages were withheld. See COMAR [09.42.03.10A\(1\)\(e\)](#). If, after a reasonable effort, a former employee cannot be located, their contributions are required to be paid to the State Plan. See COMAR [09.42.03.10A\(1\)\(f\)](#). For more on the disbursement of interest, please see Question 15.

The employer may keep employer contributions deposited in the escrow account. There is no requirement that those funds go toward premiums for the private plan.

Commercially insured private plan

If the employer's approved application is for a commercially insured private plan, the employer is required to return employee contributions taken with any interest accrued to the employees from whom they were withheld. See [COMAR 09.42.03.10A\(1\)\(e\)](#). If, after a reasonable effort, a former employee cannot be located, their contributions are required to be paid to the State Plan. See [COMAR 09.42.03.10A\(1\)\(f\)](#).

The employer may keep employer contributions deposited in the escrow account. There is no requirement that those funds go toward premiums for the commercially insured private plan.

14. How should the employer handle interest accrued on the escrow account after their private plan is approved?

Self-insured private plan

If the employer is approved for a self-insured private plan, they may either seed a separate account for the self-insured plan, or not.

If the employer chooses to seed the separate account, they may also deposit any interest accrued on the escrow into the self-insured plan's fund.

If the employer chooses not to seed a separate account, they must return employee contributions as outlined above. An individual employee's contribution should be returned to them, along with their share of the interest accrued. The employer may retain their share of the interest accrued.

Commercially insured private plan

If the employer's approved application is for a commercially insured private plan, the employer is required to return employee contributions taken with the employee's share of any interest accrued to the employees whose wages were withheld. The employer may retain their share of the interest accrued.

15. Do employers need to provide proof of employee refunds to the state? If so, how should an employer account for a former employee they attempted to refund, but could not locate?

Employers should retain records for audit and investigation purposes. Under Maryland Labor and Employment Article [§8.3-905](#), FAMLTI has the discretion to investigate an employer if a complaint is filed against an employer alleging noncompliance. Records should describe the unsuccessful attempts to contact the former employee and subsequent refund to the FAMLTI Trust Fund.

16. Could the employer refund an employee's contributions at the time of their separation from employment prior to private plan approval, provided the employer simultaneously replaces those funds in the escrow account with its own funds?

The source of the funds in the escrow account does not matter, so long as it totals the amount owed to the FAMLTI Trust Fund. An employer could refund early to separating employees and replace with its own funds, or it could choose to self-fund the escrow account without employee withholding.

17. Are there tax-reporting implications associated with escrow refunds to employees?

FAMLTI cannot offer tax advice. For federal Internal Revenue Service (IRS) guidance related to tax treatment of paid family and medical leave program benefits and contributions and related private plans, please see [Revenue Ruling 25-04](#) and [Notice 2026-28](#).

References

- United States Internal Revenue Service [Revenue Ruling 25-04](#)
- U.S. IRS Notice [2026-28](#)
- Commercial Law Article, §§ [12-109\(a\)\(2\)](#) and [12-1026\(a\)\(2\)](#), Annotated Code of Maryland
- Labor and Employment Article §[8.3-905](#), Annotated Code of Maryland
- [Ch. 363 \(2025\) Section 2](#)
- COMAR [09.42.01.01B](#)
- COMAR [09.42.02.05](#)
- COMAR [09.42.03.10](#)
- FAML I Policy Guidance: Small Employers (Control #E-26-002)

FAML I contact

If you have additional questions about this guidance, please contact FAML I's Customer Care Center at (410) 525-4010 or paid.leave@maryland.gov