

ARKANSAS
ACCESS TO
JUSTICE
REPRESENTING HOPE

October 15, 2010

VIA EMAIL: comments@fdic.gov

Mr. Robert E. Feldman, Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

Re: RIN 3064-AD37

Dear Mr. Feldman:

On behalf of the Arkansas Access to Justice Commission, I am writing to express serious concerns about the impact that the proposed rule implementing section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) will have on Arkansas's Interest on Lawyers Trust Accounts (IOLTA) program. The Commission, which coordinates statewide efforts to address the civil legal needs of low-income Arkansans, is particularly concerned about the negative impact that the proposed rule is likely to have on the IOLTA program's ability to fund critical legal services for the nearly 24,000 Arkansans who qualify for legal aid and who call our state's two legal aid providers each year for help

IOLTA accounts, although included within the current definition of non-interest bearing accounts receiving unlimited coverage under the existing TAG Program, are excluded in the proposed regulation and will thus cease to be fully covered as of January 1, 2011. Just before the Senate recessed for the November elections, Senators Merkley, Johnson, Corker, and Enzi introduced bipartisan legislation that would correct the unintended exclusion of IOLTA accounts from the Dodd-Frank Act.

In Arkansas, there are currently 2694 IOLTA accounts with 3552 Arkansas attorneys associated with those accounts. The interest earned on these accounts constitutes 96% of the IOLTA Foundation's income, which in years past has comprised a significant source of grant funding for Arkansas's two legal aid providers. Historically low interest rates have caused these grants to dwindle, to the detriment of low-income Arkansans without access to civil legal assistance. The proposed notification requirements, which were drafted prior to the filing of the Senate Bill will, if implemented, likely cause serious and irreparable damage to our state's already struggling program, as follows:

Annabelle Imber Tuck – *Chair*

Judge Jim Spears – *Vice Chair*

Rose Adams

Judge Waymond Brown

Nate Coulter

Angela Duran

Zina Frazier

Prof. Chuck Goldner

Judge Craig Hannah

Leon Johnson

Rep. Bubba Powers

George Shelton

Sen. Robert Thompson

Bill Waddell

Danyelle Walker

Ex Officio

Jean Carter

Prof. D. Iorah Hughes

Ron Lanoue – *Secretary*

Prof. Kelly Browe Olson

Lee Richardson

Amy Johnson – *Executive Director*

- 1 **By undermining existing banking relationships.** Arkansas attorneys and law firms, unaware of the potential fix to this issue, will be forced to act upon receiving such notification. Attorneys and law firms holding significant funds for clients in IOLTA accounts will be forced to decide whether to keep those funds in their existing IOLTA accounts or to move their accounts to the four or five largest financial institutions in Arkansas presumed "too big to fail," thereby undermining the stability of those large IOLTA funds at other participating TAG institutions.
- 2 **By causing unnecessary confusion to over 3500 Arkansas attorneys associated with IOLTA accounts before any action can be taken on the bill.** Banks following the notification directive prior to congressional action will have to rescind that notification should the legislation be passed, causing significant confusion among depositors about their insured funds and the potential for significant disruption of existing banking relationships.
- 3 **By causing significant damage to the Arkansas's IOLTA program's primary source of funding.** Attorneys may feel compelled to protect their clients' interests by removing funds from IOLTA accounts entirely and placing them in fully insured accounts, damaging a significant source of funding for civil legal services to the poor in Arkansas.

There is a national effort seeking Congressional action on this issue before the end of the year. If Congress acts, this movement of funds would have been completely unnecessary, but the damage to the smaller banks and Arkansas's IOLTA program would have already occurred.


The Arkansas Access to Justice Commission greatly appreciates the FDIC's current inclusion of IOLTA accounts in the unlimited deposit insurance coverage under the existing TAG Program. Inclusion continues to be critical for a variety of reasons, including the following:

- 1 **The negative impact to the financial system** of widespread movement of IOLTA accounts out of existing banking relationships based on conflicting deposit insurance rules will undermine current stability and may create many of the same risks to the banking system the original TAG system successfully avoided, including the large scale migration of deposits to banks presumed too big to fail
- 2 **IOLTAs are, in effect, non-interest bearing accounts for the account owner and the owner of the funds deposited therein.** Interest is not included in the gross income of either the client or the law firm since the IOLTA program holds the entire beneficial interest in the account. There would be no interest on these accounts and they would qualify for the unlimited coverage absent the requirements imposed by IOLTA programs.
- 3 **IOLTAs are functionally similar to the types of non-interest bearing transaction accounts** targeted for protection in the original TAG Program and that were thereby included as an exception to the non-interest bearing requirement by the FDIC.

4. **IOLTA provides a significant public benefit.** In Arkansas, the interest generated from IOLTA accounts are used by the Foundation to fund Arkansas's two legal aid programs that provide civil legal services to the poor to protect women and children from domestic violence, help veterans and the elderly obtain benefits to which they are entitled, and keep people in their homes. These funds will be lost at a time when, because of the economic crisis, these vital services are needed the most.

We respectfully request that the FDIC delay the implementation of the proposed regulation and notification requirement relative to the IOLTA accounts until Congress passes the pending Senate bill or other corrective legislation. Further, we believe it is important that the FDIC continue to support unlimited deposit insurance or other full guarantee coverage for IOLTAs to avoid the potential wide-scale disruption of the banking system and irreparable harm to IOLTA programs.

Sincerely,



Annabelle Imber Tuck, Chairperson
Arkansas Access to Justice Commission