NC IOLTA

The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts

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

Reference: RIN 3064-AD37

Dear Mr. Feldman:

I write on behalf of the North Carolina State Bar Plan for Interest on Lawyer Trust Accounts (NC IOLTA) respectfully to request that the FDIC delay implementation of the proposed Regulation and notification requirement relative to IOLTA accounts under the section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that provides temporary unlimited coverage for non-interest bearing transaction accounts until Congress has had an opportunity to act on the pending Senate bill or other legislation that would return IOLTA accounts to unlimited FDIC coverage.

IOLTA accounts, although included within the current definition of non-interesting bearing accounts receiving unlimited coverage under the existing Transaction Account Guarantee (TAG) program, would be excluded in the revised Regulation, and thus cease to be fully covered effective January 1, 2011. However, just before the Senate recessed for the November elections, Senators Merkley, Johnson, Corker, and Enzi introduced bi-partisan legislation that would correct the exclusion of IOLTA accounts in the Dodd Frank Wall Street Reform and Consumer Protection Act. The proposed notification requirements, if implemented, will likely cause significant damage to the IOLTA Program, undermine existing banking relationships and cause unnecessary confusion to the hundreds of thousands of lawyers with IOLTA accounts, before any action can be taken on the bill.

The pending Senate Bill would make the proposed changes unnecessary. The proposed Regulations, including the notification requirement, were drafted prior to the filing of the Senate Bill and thus the bill's impact was not taken into consideration. Attorney and law firm depositors, unaware of the potential fix to this problem, may be forced to act upon receiving such a notification.

Potential harm from the proposed regulation.

In most states, attorneys and law firms holding significant funds for clients in IOLTA accounts would be forced to decide whether to keep those funds in their existing IOLTA account or to move their accounts to the largest financial institutions presumed "too big to fail," undermining the stability of those large IOLTA funds at the thousands of participating TAG institutions. Some attorneys, even in mandatory jurisdictions, may feel compelled to remove funds from IOLTA accounts entirely and place them in fully insured non-interest bearing accounts, damaging the IOLTA program in those states.

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.

If Congress acts before the end of the year, this movement of funds would have been completely unnecessary, but the damage to the smaller banks and IOLTA funding would already have occurred.

The negative impact to the financial system of the widespread movement of IOLTA accounts out of existing banking relationships could undermine current stability and may create many of the same risks to the banking system the original TAG program successfully avoided, including the large scale migration of deposits to banks presumed too big to fail.

IOLTA accounts should receive unlimited coverage.

IOLTAs are effectively 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 law firm. Absent the requirements imposed by state IOLTA authorities, there would be no interest on these accounts, and they would qualify for the unlimited coverage. As such, they should be included in the types of accounts afforded full coverage.

IOLTAs are functionally similar to the types of non-interest bearing transaction accounts targeted for protection in the original TAG, and should be included as an exception to the non-interest bearing requirement by the FDIC. IOLTAs remain functionally equivalent

to the types of transaction processing accounts found in the proposed rule, and should continue to be provided full coverage.

IOLTA provides a significant public benefit. Interest generated from IOLTA accounts is paid to IOLTA programs that provide grants for the provision of civil legal aid to the poor, the administration of justice, and law-related education, all of which are vital to our democratic system's guarantee of equal access to justice for all. If IOLTA accounts are not covered, millions of dollars for the provision of legal services to the poor, that prevent homelessness, protect women and children from violence and help the elderly will be lost, at a time when those services are needed the most.

We therefore urge the FDIC to continue to support, as a matter of sound public policy, 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 nationwide.

We respectfully request that the FDIC delay the implementation of the proposed Regulation and notification requirement relative to IOLTA accounts until Congress has had an opportunity to act on the pending Senate bill or other corrective legislation.

Sincerely,

Robert G. Baynes

Robert G. Baynes
Chair, NC IOLTA