

Interest on Lawyer Account Fund of the State of New York

Funding civil legal assistance for low-income New Yorkers since 1984

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October 12, 2010

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

RE: FDIC rule: RIN 3064-AD37

Dear Mr. Feldman:

On behalf of the Interest on Lawyer Account Fund of the State of New York, ("The Fund") I want to raise concerns about the impact to The Fund from a proposed revised Regulation and notification procedure to implement 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.

IOLTA accounts, although included within the current definition of non-interest 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. Just before the Senate recessed for the November elections, Senators Merkley, Johnson, Corker, and Enzi introduced bi-partisan legislation that would correct the unintended exclusion of IOLTA accounts in the Dodd Frank Wall Street Reform and Consumer Protection Act.

In New York, there are approximately \$3.5 billion in balances in over 50,000 IOLA accounts. The proposed notification requirements, which were drafted prior to the filing of the Senate Bill, if implemented, will likely cause serious and irreparable damage as follows:

1. **Undermine existing banking relationships.** New York attorney and law firm depositors, unaware of the potential fix to this problem, will be forced to act upon receiving such a notification. Attorneys and law firms holding significant funds for clients in IOLA accounts would be forced to decide whether to keep those funds in their existing IOLA account or to move their accounts to the largest financial institutions presumed "too big to

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fail", undermining the stability of those large IOLA funds at participating TAG institutions.

2. **Cause unnecessary confusion to the over 50,000 New York lawyers associated with IOLA 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. **Cause significant damage to the New York IOLA Program.** Attorneys may feel compelled to remove funds from IOLA accounts entirely and place them in fully insured accounts, damaging a significant source of funding for low-income New Yorkers.

There is a national effort affirmatively seeking Congressional action on this matter 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 IOLA funding would already have occurred.

On behalf of The Fund, I also want to take this opportunity to thank the FDIC for its support and current inclusion in the unlimited deposit insurance coverage under the existing (TAG) Program. Inclusion continues to be critical for a variety of reasons, including:

- **The negative impact to the financial system** of the widespread movement of IOLA 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 program successfully avoided, including the large scale migration of deposit to banks presumed too big to fail.
- 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 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. Thus, they should continue to 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 that were thereby included as an exception to the non-interest bearing requirement by the FDIC.

- IOLTA provides a significant public benefit. In New York the millions of dollars in interest generated from IOLA accounts are used by The Fund to fund over 70 New York 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, due to the economic crisis, those vital services are needed the most.

We respectfully request that the FDIC delay the implementation of the proposed Regulation and notification requirement relative to 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,



Benito Romano, Chair
Board of Directors