CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

c/o State Bar of California - 180 Howard Street - San Francisco, CA 94105 - (415) 538-2251- (415) 538-2524/fax

October 12, 2010

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
Comments about impact to the Interest on Lawyers Trust Account (IOLTA) Program

Dear Mr. Feldman:

On behalf of the California Commission on Access to Justice, I am writing to urge the FDIC to delay implementation of this proposed regulation and notification requirement relative to IOLTA accounts. Bi-partisan legislation has been introduced that would correct the unintended exclusion of IOLTA accounts in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and we hope the FDIC will delay implementation of this regulation to give Congress the opportunity to pass the pending Senate bill or pursue other corrective legislation.

To avoid the potential wide-scale disruption of the banking system, and irreparable harm to IOLTA programs nationwide, the FDIC should continue to support unlimited deposit insurance or other full guarantee coverage for IOLTA accounts as a matter of sound public policy.

The California Commission on Access to Justice has some very serious concerns about the impact on IOLTA programs because of the proposed rule 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.

The proposed notification requirements, if implemented, will likely cause significant damage to IOLTA programs, which provide critical funding for legal aid services to our country's poor. It will also 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, will be forced to act upon receiving such a notification. If the legislation is passed, it will cause significant confusion among depositors about their insured funds; and banks that follow the notification directive prior to congressional action will have to rescind that notification.

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 accounts 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 accounts, damaging the IOLTA program in those states.

IOLTA accounts, moved out of existing banking relationships based on conflicting deposit insurance rules, will undermine current stability. There will be a negative impact to the financial system and this may create many of the same risks to the banking system that the original TAG Program successfully avoided.

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

IOLTAs are effectively non-interest bearing accounts for the account owner and the owner of the funds deposited therein. The IOLTA program holds the entire beneficial interest in the account and 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.

We respectfully request 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 urge the FDIC to continue to support, unlimited deposit insurance or other full guarantee coverage for IOLTAs, as a matter of sound public policy, to avoid the potential wide-scale disruption of the banking system, and irreparable harm to IOLTA programs nationwide.

Thank you for this opportunity to comment, and thank you for your support of the system of IOLTA programs as an invaluable part of the safety net for the poor in this country.

Sincerely,

Ronald B. Robie

Hon. Ronald B. Robie
Chair