NAIP

National Association of IOLTA Programs

October 13, 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-AD3

Dear Mr. Feldman:

I am writing on behalf of the National Association of IOLTA Programs (NAIP), whose membership consists of IOLTA Programs from throughout the country. IOLTA Programs exist in every state, the District of Columbia, and the Virgin Islands. There are billions of dollars in IOLTA accounts with hundreds of thousands of lawyers associated with those accounts.

In 2009, IOLTA accounts generated over $124 million in revenue for funding for legal services to the poor and the administration of justice. Throughout the country, these funds are used, in large part, to fund hundreds of legal aid programs, whose services include assisting victims of domestic violence, helping with foreclosure problems, and obtaining benefits for veterans, persons with disabilities and the elderly. These services are more critical than ever in light of the current economic crisis.

We have grave concerns about the impact to IOLTA Programs, the programs they fund, and to the millions of poor people who desperately need those services, from 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, currently included in the 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. Just before the Senate recessed, bi-partisan legislation was introduced that would correct the unintended exclusion of IOLTA accounts in the Dodd-Frank Wall Street Reform and Consumer Protection Act. There is a national effort affirmatively seeking Congressional action on this matter before the end of the year.

We are particularly concerned that the proposed notification requirements, which were drafted prior to the filing of the Senate Bill, if implemented, will likely cause considerable and irreparable damage. Undoubtedly, attorney and law firm depositors holding significant client funds in IOLTA accounts receiving the notice, unaware of the potential fix to this problem, will be obligated to act upon receiving such a notification. They would be compelled to decide whether to keep those funds in their existing IOLTA accounts, move their accounts to the largest financial institutions presumed "too big to fail" or, worse, some may feel obliged to remove funds from IOLTA accounts entirely and place them in fully insured accounts, damaging a significant source of funding for civil legal services to the poor in the United States.

Indeed, the notification would cause unnecessary confusion to thousands of lawyers with IOLTA accounts before any action can be taken on the bill. Banks following the notification directive prior to congressional action will be required to rescind that notification should the legislation be passed. Needless damage to existing banking relationships and the IOLTA Program will have already occurred.

The FDIC clearly understood the need to include IOLTAs in the unlimited deposit insurance coverage under the existing Transaction Account Guarantee (TAG) Program. Inclusion continues to be necessary and makes for sound public policy. There would be no interest on these accounts and they would qualify for the unlimited coverage absent the requirements imposed by state IOLTA Programs. IOLTAs are effectively non-interest bearing accounts for the account owner and the owner of the funds deposited therein. Also, 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.

Consideration should also be given to the negative impact to the financial system of the widespread movement of IOLTA accounts out of existing banking relationships, based on conflicting deposit insurance rules. A significant portion of the billions of dollars held in U.S. IOLTA accounts is the result of individual client activity in excess of the standard maximum deposit insurance amount of $250,000. Examples of this include real estate closings, litigation and other settlement funds, as well as a variety of short-term corporate transactions. Large scale movement of those funds would undermine their current stability and create many of the same risks to the banking system the original TAG program successfully avoided.

We believe that it is imperative and 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 takes other corrective legislation. Further, we believe it is essential 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 the significant potential for irreparable harm to IOLTA funding in this country.

Sincerely,

Betty Balli Torres
President