CENTER FOR
CIVIC VALUES
PROVIDING EDUCATION AND RESOURCES
FOR PUBLIC PARTICIPATION IN THE LAW

**Interest on Lawyer Trust Accounts**
**Gene Franchini High School Mock Trial**
PO Box 2184
Albuquerque NM 87103-2184
40 First Plaza, Suite 607
voice 505-764-9417
instate wats 800-451-1941
fax 505-242-5179
web civicvalues.org

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-AD37
Via E-Mail: Comments@FDIC.gov

Dear Mr. Feldman:

On behalf of the Center for Civic Values' ("CCV"), I am writing to express our significant 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 the New Mexico Interest on Lawyer Trust Accounts ("IOLTA") program.

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. 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 Mexico, there are more than 2,108 IOLTA accounts, with 3,074 New Mexico attorneys associated with those accounts. The interest earned on these accounts, which are located at 61 different financial institutions, represents the majority of IOLTA revenue in our state, which comprises a significant source of grant funding for nonprofits that provide free civil legal services to the poor. Historically low interest rates have already forced CCV to cut its grant budget, to the detriment of low-income New Mexicans who have limited or no access to civil legal assistance. The proposed notification requirements which were drafted prior to the filing of the Senate Bill, if implemented, will likely cause serious and irreparable damage to our already struggling IOLTA program because they will:

1. **Undermine existing banking relationships.** New Mexico 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 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 participating TAG institutions.

2. **Create unnecessary confusion to the more than 3,000 New Mexico lawyers 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. **Cause significant damage to the New Mexico IOLTA Program.** Attorneys may feel compelled to remove funds from IOLTA 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 IOLTA funding would already have occurred.

On behalf of CCV, 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:

1. **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, 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.

2. **IOLTA accounts 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 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.

3. **IOLTA accounts 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.

4. **IOLTA provides a significant public benefit**. In New Mexico, the interest generated from IOLTA accounts is used by CCV to fund programs that protect women and children from domestic violence, help senior citizens to obtain benefits to which they are entitled and ensure our poverty population is properly served by state agencies bound to provide critical services to the needy. These funds will be lost at a time when – due to the economic crisis – those vital services are needed more than ever.

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 IOLTA accounts to avoid the potential wide-scale disruption of the banking system and irreparable harm to IOLTA programs across the county.

Sincerely,

MGiger

Michelle Giger
President & CEO