

Vermont Bar Foundation

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October 13, 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 Vermont Bar Foundation, administrator of the Vermont IOLTA (Interest on Lawyers Trust Account) Program, I am very concerned about the impact to the Vermont IOLTA Program and its funding of critical legal services to the most vulnerable in this country 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.

Although IOLTA accounts were included within the current definition of non-interest bearing accounts receiving unlimited coverage under the existing Transaction Account Guarantee (TAG) program, they 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 Vermont, there is approximately \$80 million associated with IOLTA 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. It will:

1. **Undermine existing banking relationships.** Vermont attorneys unaware of the potential fix to this problem, will be forced to act upon receiving such a notification. They 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. **Cause unnecessary confusion 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. This will cause significant disruption of existing banking relationships.
3. **Cause significant damage to the Vermont IOLTA Program.** Attorneys may feel compelled to remove funds from IOLTA accounts entirely and place them in fully insured accounts, damaging a major funding source for civil legal services to the poor in Vermont.

Vermont, along with other programs across the nation are actively 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 the Vermont Bar Foundation, 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. Continued inclusion is critical for a number of reasons:

- **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.
- **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 that were thereby included as an exception to the non-interest bearing requirement by the FDIC.
- **IOLTA provides a significant public benefit.** In Vermont, the interest generated from IOLTA accounts is paid to the Vermont Bar Foundation to fund grants for civil legal aid to the poor 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 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 believe it is important that the FDIC 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.

Sincerely,

Joseph F. Cahill, Jr., Chair
Board of Directors

cc: Senator Patrick J. Leahy
Senator Bernard Sanders
Representative Peter Welch