INDIANA BAR
FOUNDATION
The FOUNDATION of OUR PROFESSION

October 13, 2010

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

Via e-mail to comments@fdic.gov

RE: FDIC rule: RIN 3064-AD37

Dear Mr. Feldman:

On behalf of the Indiana Bar Foundation (Foundation), administrator of the Indiana IOLTA (Interest on Lawyer Trust Account) Program, and the Indiana State Bar Association (Association), the largest legal organization in the state, we want to raise very serious concerns about the impact to the Indiana IOLTA Program, 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, 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 Indiana, there are approximately $200 million in balances in approximately 5,000 IOLTA accounts, with over 9,000 Indiana attorneys associated with those 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:

- **Undermine existing banking relationships.** Indiana 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.

- **Cause unnecessary confusion to the over 9,000 Indiana 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.

- **Cause significant damage to the Indiana 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 civil legal services to the poor in Indiana.

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 the Indiana Bar Foundation and the Indiana State Bar Association, we 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 Transaction Account Guarantee (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 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 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 Indiana, the dollars in interest generated from IOLTA accounts are used by the Foundation to fund Indiana's state-wide pro bono network which provides 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 finalization or implementation of the proposed Regulation and notification requirement relative to IOLTA accounts until Congress has an opportunity to take action on this matter. 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,

Robert C. Beasley
President
Indiana Bar Foundation

Roderick H. Morgan
President
Indiana State Bar Association