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

RE: RIN 3064-AD37

Dear Mr. Feldman:

We are writing on behalf of the National Legal Aid & Defender Association (NLADA), the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating for equal access to justice for all Americans. On behalf of NLADA, we want to raise very serious concerns about the impact on the Interest on Lawyers Trust Account (IOLTA) program[1] and its funding of critical legal services to the poor in this country from the proposed rule to implement the section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) that provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts.

NLADA is submitting these comments to urge the FDIC to delay implementation of the proposed 12 CFR Part 330, Deposit Insurance Regulations; Unlimited Coverage for Noninterest-Bearing Transaction Accounts, until Congress has had an opportunity to act on the pending Senate Bill that would, if enacted, correct the unintended exclusion of IOLTA accounts from the category of noninterest-bearing accounts that are provided temporary unlimited insurance coverage in Dodd-Frank. If implemented before action can be taken on the pending bill, the notification requirements that are included in the proposed regulations will likely cause significant damage to the IOLTA program, as well as undermine existing banking relationships and cause unnecessary confusion to the hundreds of thousands of lawyers who have IOLTA accounts. The proposed regulation, including the notification requirement, was drafted prior to the introduction of the Senate bill, and thus the bill's impact was not taken into consideration by the drafters of the regulation. The bill, which has bipartisan support, would correct the unintended exclusion of the IOLTA program and make the notice unnecessary.

Background

[1] On November 13, 2008, NLADA submitted to the FDIC a comment letter regarding the Interim Rule implementing the Temporary Liquidity Guarantee Program. The letter includes detailed descriptions of both NLADA and the IOLTA program. Rather than repeating those detailed descriptions here, I am attaching a copy of the November 13, 2008 comment letter.

The IOLTA program, which pools small amounts of interest generated by individual IOLTA accounts, provides grants for the provision of civil legal assistance to the poor, the administration of justice, and law-related education, all of which are vital to our nation's legal system's guarantee of equal access to justice for all. Because neither the account owner nor the owner of the deposited funds benefit from the interest earned on the amount deposited, IOLTA accounts are functionally similar to the types of noninterest-bearing transaction accounts targeted for protection under the existing Transaction Account Guarantee (TAG) program, which is set to expire on December 31, 2010. Absent the requirements imposed by state IOLTA authorities, there would be no interest on these accounts and they would qualify for the unlimited deposit insurance coverage. With this understanding the FDIC included IOLTA within the current TAG definition of noninterest-bearing accounts that are now eligible for unlimited deposit insurance coverage by the FDIC. When Dodd-Frank was drafted, IOLTA accounts were inadvertently left out of the definition of noninterest-bearing accounts.

On September 27, 2010, the FDIC published for comment a proposed rule to implement the provisions of Dodd-Frank providing for unlimited deposit insurance coverage on noninterest-bearing transaction accounts. The proposed rule explicitly states that, as of January 1, 2011, IOLTA accounts would no longer be eligible for the unlimited insurance guarantee, and requires banks holding IOLTA accounts to provide, by December 31, 2010, notice and disclosure requirements to insure that depositors are aware of and understand the types of accounts that will be covered by the temporary deposit insurance beginning on 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 by Dodd-Frank of IOLTA accounts from the unlimited FDIC insurance coverage. Efforts are being made to seek Congressional action on this bill before the end of the year, and we are hopeful that these efforts will be successful. If Congress does act to amend Dodd-Frank to include IOLTA within the definition of noninterest-bearing accounts, the notice and disclosures required by the proposed rule would be unnecessary. However, if the regulation is adopted and the notice and disclosure requirements go into effect before Congress has had an opportunity to act, and then Congress does enact the correction, the FDIC will be forced to withdraw the notice and disclosure requirements, causing significant confusion among members of the legal community and damage to existing banking relationships, and undermining IOLTA programs in most states.

Specifically, banking relationships would be harmed because in most states, lawyers 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 that are presumed to be "too big to fail". This widespread movement of IOLTA funds could also negatively affect the stability of the financial system. As significant, IOLTA programs and their grantees would be adversely affected by the premature issuance of the notice currently required in the proposed regulation. Some attorneys, even in mandatory IOLTA jurisdictions, may feel compelled to remove funds from IOLTA accounts entirely and place them in fully insured accounts. If that were to occur, there would be a substantial loss of funding available for the provision of legal services to the poor.

Conclusion

We respectfully request that the FDIC delay the implementation of the proposed regulation and the notification and disclosure requirements relative to IOLTA accounts until Congress has had an opportunity to consider and, we hope, to pass the pending Senate bill or enact other corrective legislation once it returns after the election. Since Congress is expected to adjourn in mid-December, in the event that it does not pass legislation to correct the IOLTA exclusion, the FDIC will still have an opportunity to issue the regulation and require the notice and disclosure before the January 1, 2011 effective date of Dodd-Frank.

Yours truly,

Jo-Ann Wallace

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President and CEO

Don Saunders

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Vice-President for Civil Legal Services