



WASHINGTON COUNCIL OF LAWYERS

Promoting Public Interest and Pro Bono Service

October 15, 2010

Via E-mail Only

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429
comments@fdic.gov

RE: RIN 3064-AD37; Comments on Proposed FDIC Rule relating to Deposit Insurance Regulations; Unlimited Coverage for Noninterest-Bearing Transaction Accounts and the Interest on Lawyer Trust Accounts (IOLTA)

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Dear Mr. Feldman:

The Washington Council of Lawyers (WCL) wishes to comment on the FDIC's Proposed Rule regarding the Deposit Insurance Regulations; Unlimited Coverage for Noninterest-Bearing Transaction Accounts. This rule, designed to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, will create a new, temporary deposit insurance category for noninterest-bearing transaction accounts. Covered accounts, primarily checking accounts used by businesses for payrolls, accounts payable and other purposes, do not include Interest on Lawyer Trust Accounts (IOLTA), which serve as a critical source of funding for civil legal services for the indigent.

Legislation currently pending in the Senate would, if enacted, correct Dodd-Frank's unintended exclusion of IOLTA from the category of noninterest-bearing accounts that are provided temporary unlimited insurance coverage. Since FDIC's proposed regulation was drafted prior to the introduction of the Senate bill, the rule's drafters did not take the bill's content into account. If the FDIC regulation is implemented *before* action can be taken on the pending bill, its notification requirements will have a dramatic impact on all facets of the IOLTA program. Given the bipartisan support the bill enjoys, it is likely it will be enacted and the FDIC notice will be unnecessary. Accordingly, we urge the FDIC to delay implementation of the proposed regulation, and its disclosure and notification requirements.

The Washington Council of Lawyers

The Washington Council of Lawyers (WCL) is a non-profit organization of lawyers and legal workers committed to the spirit and practice of public interest law. Founded in 1971, WCL is the District of Columbia's only voluntary bar association dedicated exclusively to promoting *pro bono* and public interest law.

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WCL has been making a difference in the Washington legal community for nearly four decades -- from lobbying to create the Legal Services Corporation in the 1970's, to reporting on federal Equal Employment Opportunity procedures in the 1980's, to surveying large D.C. firm *pro bono* programs in 1990, to establishing a death row representation project in the 1990's, and to participating in a study of federal agency *pro bono* programs in 2000.

Council members represent every sector of the Washington legal community – lawyers and pro bono coordinators from large and small law firms and law schools, lawyers from public interest groups, government agencies and congressional offices, as well as law students and members of law-related professions. Our members share a common concern for the well-being of our community and the integrity of our civil and constitutional rights. We are also united in our conviction that the legal system must serve the needs of the poor and the powerless – the homeless, the indigent, those facing foreclosure or disability – who are most impacted by IOLTA-funded programs.

The Need for Legal Services for Low-Income and Vulnerable Client Populations

The Washington Council of Lawyers works to ensure that the legal needs of DC's client populations are met. A September 2003 Report of the District of Columbia Bar Foundation: "Civil Legal Services Delivery in the District of Columbia" documented the gaps in civil legal services (<http://www.dccbarfoundation.org/access.html>). More recently, the DC Access to Justice Commission – a body of legal community leaders created by the D.C. Court of Appeals to ensure that low-income and other vulnerable District residents have access to the civil justice system – released a comprehensive civil legal needs report, "Justice for All? An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community." This October 2008 report (available at <http://www.dcaccesstojustice.org/CivilLegalNeedsReport.html>) concludes that legal services providers' "collective budget does not come close to...what is needed to serve the District's low-income community."

A cornerstone of achieving equal and meaningful access to justice is to ensure funding for civil legal services. 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. Legal services funding provided through IOLTA accounts should not be jeopardized due to the consequences of the FDIC's proposed rule.

Proposed Regulation and Legislative Response

When Dodd-Frank was drafted, IOLTA accounts were inadvertently left out of the definition of noninterest-bearing accounts. Thus, when the FDIC recently published its proposed rule to implement the Dodd-Frank provisions providing for unlimited deposit insurance coverage on noninterest-bearing transaction accounts, the proposal provides that, as of January 1, 2011, IOLTA accounts would no longer be eligible for the unlimited insurance guarantee. The rule also requires banks holding IOLTA accounts to prepare, 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.

In response, Senators Merkley, Johnson, Corker and Enzi introduced bi-partisan legislation to correct Dodd-Frank's unintended exclusion of IOLTA accounts from the unlimited FDIC insurance coverage shortly before the Senate recessed. Efforts are being made to secure Congressional action on this bill before the end of the year. Even if Congress does not pass legislation to correct the IOLTA exclusion before it adjourns, as expected, in mid-December, 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.

If Congress does amend Dodd-Frank to include IOLTA within the category of noninterest-bearing accounts, the notice and disclosures required by the proposed rule will be unnecessary. However, if the regulation is adopted and the notice and disclosure requirements go into effect before Congress has an opportunity to act, and then Congress enacts the amendment, the FDIC will be forced to withdraw the notice and disclosure requirements. This withdrawal will confuse members of the legal community, damage existing banking relationships, and undermine the IOLTA programs in most states. Individual practitioners as well as law firms will be forced to decide whether to keep funds in their existing IOLTA accounts or to transfer their funds from such accounts. A widespread movement of IOLTA funds could also negatively affect the stability of the financial system at a time when our nation can least afford it. Finally, IOLTA-funded programs and their grantees would be adversely affected; as lawyers and law firms respond to this regulatory change, there would likely be a substantial loss of funding available for the provision of legal services to the poor.

Conclusion

The Washington Council of Lawyers asks the FDIC to delay the implementation of the proposed regulation and the notification and disclosure requirements relative to IOLTA accounts until Congress has an opportunity to consider and, hopefully, to pass the pending Senate bill or enact other corrective legislation. Failure to delay will have a negative impact on the most vulnerable members of our legal system. We thank you, in advance, for considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Taryn Wilgus Null".

Taryn Wilgus Null

President

Washington Council of Lawyers