

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762

October 15, 2010

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

Re: Rin # 3064-AD37; Comments on Proposed 12CFR§330.16

Dear Mr. Feldman:

On behalf of the American Bar Association and its nearly 400,000 members, I am writing to alert the FDIC of the impact on Interest on Lawyers' Trust Accounts (IOLTA) in the final regulation implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act section regarding non-interest bearing transaction accounts. Specifically, I am requesting that the FDIC delay implementing the requirement that financial institutions notify IOLTA account holders that as of January 1, 2011, IOLTA accounts will no longer be eligible for unlimited FDIC insurance. This request is based upon pending legislation that, if acted upon before the end of the year, will avoid any interruption in the provision of unlimited FDIC insurance coverage to IOLTA accounts through December 31, 2012.

As you may recall, the ABA submitted comments in 2008 requesting that IOLTA accounts be granted full FDIC insurance protection in the Temporary Liquidity Guarantee Program's (TLGP) Transaction Account Guarantee Program (TAGP). The FDIC and Congress both supported inclusion of IOLTA accounts within the definition of non-interest bearing transaction accounts under the TAGP, and the final regulations reflected that view. However, IOLTA accounts were inadvertently left out of the definition of non-interest bearing transaction accounts when the final Dodd-Frank Act was signed into law.

Two days after the FDIC published its proposed regulations to implement the Dodd-Frank Act, Senators Merkley, Johnson, Corker and Enzi introduced bipartisan legislation that would amend the Act to provide full FDIC protection to IOLTA accounts. Congress is actively working on this legislative fix but will be unable to address it before returning in mid-November. Therefore, we respectfully request that you allow Congress to act on this legislation and not require notification of the potential coverage change until the Act is amended or until Congress adjourns for the year.

Notifying lawyers prematurely of the change in FDIC protection in IOLTAs will have serious consequences. Banks following the notification directive will have to rescind that notice if the legislation is passed before the end of the year, causing unnecessary expense for the banks and confusion on the part of IOLTA account holders. IOLTA is among the most significant sources of funding for programs that provide civil legal services to the poor, and revenue for these programs would be seriously compromised if full FDIC protection is not provided for IOLTAs.

To avoid the confusion that could arise from prematurely notifying lawyers of the change in FDIC insurance coverage, as well as the loss of IOLTA revenue and the negative effects on states, please delay final implementation of this regulation until Congress has an opportunity to vote on the legislation; the ABA and many others are actively seeking Congressional passage before the end of the year. We therefore urge that at this time you refrain from requiring banks to notify attorneys of the change in FDIC protection for IOLTA accounts, particularly since Congress may render such action unnecessary and moot.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman