

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

Reference: RIN 3064-AD37

Mr. Feldman,

On behalf of the Lawyers Trust Fund of Illinois, which administers the IOLTA program in Illinois, we urge modifying the proposed FDIC regulations regarding implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the Act, unlimited deposit insurance coverage under the FDIC's TAG program will cease on December 31, 2010. The proposed regulations would require financial institutions to give notice to IOLTA account depositors no later than December 31 informing them that the accounts will no longer be eligible for unlimited FDIC coverage effective January 1, 2011. Because legislation has been introduced in the Senate that would continue the unlimited deposit insurance coverage for IOLTA accounts beyond December 31, we request that the required notice regarding IOLTA accounts be delayed until Congress has had an opportunity to act on the legislation in the "lame duck" session that is expected to begin on November 15.

Background

The FDIC included IOLTA accounts in the category of noninterest-bearing accounts receiving unlimited deposit insurance coverage when it created its original regulations regarding the Transaction Account Guarantee Program (TAGP) in 2008. This reflected that fact that IOLTA accounts are functionally similar to the other types of noninterest-bearing accounts receiving unlimited coverage under TAG. The Dodd-Frank Act extended the unlimited deposit insurance coverage under TAGP for two years beyond the planned expiration date of December 31, 2010. Due to an oversight IOLTA accounts were unintentionally left out of that extension and the unlimited coverage of IOLTA accounts is set to end December 31, 2010.

Just before the Senate went into recess at the end of September, the bill to reinstate coverage of IOLTA accounts under TAG was introduced by Sen. Merkley (D-OR). It stands to be considered during the lame duck session after the election. The bill is understood to have bipartisan support from Sens. Corker of TN and Enzi of WY and there is a good chance it will be passed before the current session of Congress is adjourned.

Risks of requiring notice prematurely

Our request to delay the notice requirements regarding IOLTA accounts is based on the possibility this legislation will become law. The reinstatement of TAG coverage for IOLTA accounts would obviate the need for the required notice. Moreover, requiring notice before Congress can act on the bill would have several negative consequences:

- Lawyers, as IOLTA account depositors, will be left in confusing situation if they are given notice by their bank about the expiration of TAG coverage, and that coverage is restored in short order by legislative action.
- Requiring banks to give notice now would force many lawyers to take action regarding their client trust funds in ways that may cause lasting harm the IOLTA programs in Illinois and other states. Without unlimited coverage, many lawyers will choose to distribute client funds among accounts at several different financial institutions (and forego the higher interest rates typically paid on accounts with larger balances) or elect to shift their deposits to the perceived safety of large national banks at the expense of smaller community banks (which often pay higher interest rates on IOLTA deposits). A worst-case scenario is that lawyers will place client funds into noninterest-bearing accounts coverage by TAG, in violation of ethics rules in most states that require client funds be held in IOLTA accounts or other types of interest-bearing accounts. The removal of client funds from IOLTA accounts and from IOLTA accounts at institutions paying favorable rates of interest will diminish IOLTA revenues and decrease IOLTA programs' charitable funding for legal aid.
- A widespread migration of accounts and funds from existing banking relationships at smaller banks to the perceived safety of large banks may threaten the health and stability of those smaller institutions.

To avoid these negative effects, the FDIC should not take action unless and until it is clear that the proposed legislation to reinstate coverage for IOLTA accounts will not succeed during this session of Congress. **Accordingly, we request that notice not be required for IOLTA accounts until after Congress has recessed, or if required, that the notice be sent to IOLTA account depositors no earlier than December 30, 2010.**

Thank you for your consideration,

Helen E. Ogar
President
Lawyers Trust Fund of Illinois

Ruth Ann Schmitt
Executive Director
Lawyers Trust Fund of Illinois