



President

JIM L. JULIAN

October 12, 2010

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

RE: Rule: RIN 3064-AD37

Dear Mr. Feldman:

On behalf of the 5,000+ members of Arkansas Bar Association, I want to raise very serious concerns about the impact to the Interest on Lawyers Trust Account (IOLTA) Program 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 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 Arkansas, there are currently 2694 IOLTA accounts with 3552 Arkansas attorneys associated with those accounts. The interest earned on these accounts constitutes 96% of our program's income, which in years past has comprised a significant source of grant funding for Arkansas's two legal aid providers. Historically low interest rates have forced our foundation to slash our grant awards, to the detriment of low-income Arkansans without access to civil legal assistance. The proposed notification requirements, which were drafted prior to the filing of the Senate Bill will, if implemented, likely cause serious and irreparable damage to our already struggling program, as follows:

- 1. By undermine existing banking relationships.** Arkansas attorneys and law firms, 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

will be forced to decide whether to keep those funds in their existing IOLTA account or to move their accounts to the four or five largest financial institutions in Arkansas presumed "too big to fail", undermining the stability of those large IOLTA funds at other participating TAG institutions.

2. **By causing unnecessary confusion to over 3500 Arkansas attorneys 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.
3. **By causing significant damage to the Arkansas IOLTA program's primary source of funding.** Attorneys may feel compelled to protect their clients' interest by removing 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 Arkansas.

There is a national effort 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.

The members of the Arkansas Bar Association greatly appreciate the FDIC's current inclusion of IOLTA accounts in the unlimited deposit insurance coverage under the existing TAG Program. Inclusion continues to be critical for a variety of reasons.

1. **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.
2. **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 the 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.
3. **IOLTAs are functionally similar to the types of non-interest bearing transaction accounts** targeted for protection in the original TAG Program and that were thereby included as an exception to the non-interest bearing requirement by the FDIC.

- IOLTA provides a significant public benefit.** In Arkansas, the interest generated from IOLTA accounts is used by the Arkansas IOLTA Foundation to fund Arkansas' two legal aid programs that provide civil legal aid 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, because of the economic crisis, these vital services are needed the most.

We respectfully request the FDIC delay the implementation of the proposed regulation and notification requirement relative to IOLTA accounts until Congress passes the pending Senate bill or other corrective legislation. Further, we encourage the FDIC to continue to support as a matter of sound public policy, 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 nationwide.

Sincerely,



Jim L. Julian

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