



National Association of IOLTA Programs
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April 7, 2020

VIA ELECTRONIC MAIL

Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@fdic.gov

RE: RIN 3064-AF22; Reforming the Community Reinvestment Act Regulatory Framework; Response to Notice of Proposed Rulemaking

Dear Chairman McWilliams:

Please accept this letter on behalf of the National Association of IOLTA Programs (NAIP) regarding the FDIC's Notice of Proposed Rulemaking to amend the Community Reinvestment Act (CRA)'s implementing regulations. This letter is sent on behalf of the NAIP organizational members identified below.

IOLTA programs are present in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. Many financial institutions partner with state IOLTA programs, and this public-private partnership facilitates the community development encouraged by the CRA by providing funding for civil legal aid organizations that serve LMI (low to moderate income) individuals. Civil legal aid is a life-line for low-income families facing critical civil legal problems where basic human needs such as access to shelter, nutrition, or healthcare are at stake, as well as a knowledgeable guide to the web of complex local, state, and federal programs intended to help lift low-income families out of poverty. Those receiving civil legal aid include veterans improperly denied benefits, families facing a wrongful eviction, victims of domestic abuse seeking civil protection orders, neglected and abused children impacted by the opioid crisis, as well as seniors who have fallen victim to financial exploitation.

As noted in the joint comment submitted on November 18, 2018 by IOLTA programs in response to the OCC's Advance Notice of Proposed Rulemaking, the concept underlying the IOLTA public-private partnership with banks is simple. A lawyer who receives client funds must place those funds in a trust account separate from the lawyer's own money, and when the income earned on the funds would not be enough to offset the cost involved in establishing a separate account solely for the benefit of that particular client, the funds are placed in a pooled IOLTA trust account for safekeeping at an FDIC or NCUA insured institution that has agreed to participate in a state IOLTA program. The interest earned on IOLTA trust accounts is remitted to the state IOLTA program and is used to fund civil legal aid for low-income and disadvantaged individuals and families. While there are some minor variations in IOLTA program requirements across different states, they all generally involve financial institutions providing interest earned on the principal held in a law firm's IOLTA trust account to the state IOLTA program at a rate of interest at or above the market rate offered on similar interest bearing deposit products.

Accordingly, given the significant and nationwide scope of the IOLTA public-private partnership with banks and the direct congruence with the objectives of the CRA, we offer the following suggestions for your consideration which are described in greater detail below.

(1) Both loans and grants should be included within the example of qualifying legal assistance related community support services under §§ 25.04(c)(4) and 345.04(c)(4)

The current proposed example for community support services under 12 C.F.R. § 25.04(c)(4) and 12 C.F.R. § 345.04(c)(4) which references legal assistance programs reads as: "Loan to a legal assistance program for LMI individuals." We respectfully suggest that this should be modified to read as:

Loan or grant to a legal assistance program for LMI individuals.

This simple modification will ensure that a financial institution's decision to partner with a state IOLTA program to provide additional interest income on its IOLTA accounts in excess of any threshold participation requirements for the purpose of increasing grant funding for civil legal aid for LMI individuals, will be recognized as a qualifying activity.

(2) Grants for civil legal assistance for LMI individuals through local or state programs should be included within the examples of qualifying federal, state, local, and tribal government programs, projects, or initiatives under §§ 25.04(c)(8) and 345.04(c)(8)

As described above, financial institutions play a little known but critical role in funding civil legal assistance for low-income and disadvantaged populations through voluntary

participation in state IOLTA programs. While there is a right to counsel for defendants in criminal proceedings if they cannot afford one, no such right exists for a low-income individual facing a civil legal crisis where basic human needs are at stake. A number of financial institutions assume a leadership role in their public-private partnership with IOLTA by assigning an above-market interest rate to a state IOLTA program's beneficial interest in the interest income generated by IOLTA trust accounts, thereby increasing the amount of funding available for civil legal assistance for LMI individuals. The supported civil legal aid services include: advocacy for individuals with disabilities, the elderly, veterans, and the homeless; domestic abuse prevention; custody and family preservation for those impacted by the national opioid crisis; eviction prevention and tenants' rights; as well as other kinds of civil legal assistance - all of which are critical to the foundational capacity of low-income families to secure and maintain safe housing, sustain employment, and thereby reap the benefits that come from being able to more fully participate in our economic system.

Financial institutions that choose to leverage their IOLTA deposits to support civil legal aid for LMI individuals beyond the minimum state IOLTA participation requirements have historically been recognized by both state IOLTA programs and most federal CRA examiners¹, and accordingly, we respectfully suggest that the following should be added as an example of qualifying activities under 12 C.F.R. § 25.04(c)(8) and 12 C.F.R. § 345(c)(8):

Investments or grants that support civil legal assistance for LMI individuals made through state, local, and tribal government programs.

(3) We encourage the OCC and FDIC to coordinate the final regulation and guidance framework with the Federal Reserve Board, and in particular, consider the adoption of separate retail and community development tests as suggested by Federal Reserve Governor Lael Brainard

Financial institutions across the country, both large and small, participate in state IOLTA programs. Accordingly, to ensure greater predictability and clarity when it comes to CRA examinations, we encourage the OCC and FDIC to work with the Federal Reserve Board to issue a common set of strong interagency standards. While the proposed list of qualifying CRA activities as suggested by the OCC and FDIC goes a long way to improving the predictability and clarity of CRA credit, a framework which separately accounts for retail versus community

¹ See OCC, Community Reinvestment Act Performance Evaluation of Pioneer Trust Bank, N.A. at 7 (April 4, 2016), <https://www.occ.gov/static/cra/craeval/aug16/21060.pdf> (last accessed January 21, 2020); FDIC, Community Reinvestment Act Performance Evaluation of Mid Penn Bank at 18 (May 6, 2019), https://www7.fdic.gov/CRAPES/2019/09889_190506.PDF (last accessed January 21, 2020).

development investment, lending, and services as suggested by Federal Reserve Governor Lael Brainard² would capture more fully the impact of innovative products and investments that may be extremely important to LMI communities despite involving smaller dollar amounts. This approach would also reduce the risk that financial institutions could meet expectations through a few large community development loans that have an incidental impact on LMI communities, rather than by providing investments and services that specifically address local needs in keeping with the original intent of the CRA.

The Community Reinvestment Act is integral to combating inequality and providing opportunity for low-income and disadvantaged individuals and families to access our economic system in the pursuit of the American dream, and IOLTA programs across the country are proud to play a part in this important endeavor. On behalf of the undersigned state IOLTA programs, our legal aid grantees, and most importantly, the individuals and families that utilize civil legal assistance to secure safe housing, sustain employment, and thereby reap the benefits that come from being able to participate more fully in our economic system, we thank you in advance for your careful consideration of our comments.

Respectfully Yours,

Lee Bryan Claassen, CAE
Executive Director

² Lael Brainard, Governor, Federal Reserve Board, Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose, at the Urban Institute (January 8, 2020), *available at*: <https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm> (last accessed January 21, 2020).

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