



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

May 15, 1998

[

]

Re: Indiana Interest on Lawyer Trust Account Program

Dear []:

This responds to your inquiry regarding whether client trust funds held by Indiana lawyers participating in the Interest on Lawyer Trust Accounts (“IOLTA”) program, established by Rule 1.5, Indiana Rules of Professional Conduct, may be maintained in interest-bearing checking accounts (negotiable order of withdrawal (“NOW”) accounts) at savings associations regulated by the Office of Thrift Supervision (“OTS”).

We have reviewed the description of the Indiana IOLTA program set forth in your letter. We also have reviewed the enclosures to your letter, including (1) the Indiana Attorney General Opinion dated March 30, 1998 concluding that the entire beneficial interest in IOLTA accounts is held by the Indiana Bar Foundation, in satisfaction of 12 U.S.C. § 1832(a)(2), and (2) the letter dated June 26, 1996 from the District Director, Internal Revenue Service, indicating that the Indiana Bar Foundation is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code (“IRC”).

The OTS and its predecessor, the Federal Home Loan Bank Board (“FHLBB”), have previously concluded in connection with several other states’ IOLTA programs that IOLTA funds are eligible for deposit in NOW accounts in savings associations

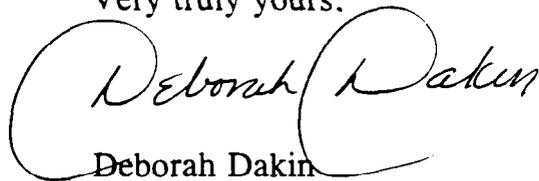
regulated by the OTS.¹ In addition, we refer you to OTS regulation 12 C.F.R. § 561.29(b) (1998) (“NOW Accounts”), which provides that an organization will be deemed to meet the requirements of 12 U.S.C.A. § 1832 if the organization is described in, among others, section 501(c)(3) of the IRC.

Assuming the completeness and accuracy of the facts set forth in your letter and its enclosures, and assuming that the Indiana Bar Foundation continues to hold tax exempt status under section 501(c)(3) of the IRC, the Indiana IOLTA program appears similar in all material respects to the program discussed in the FHLBB’s January 26, 1982 opinion. For the reasons discussed in the 1982 opinion, we conclude that Indiana IOLTA funds are eligible for deposit in NOW accounts in savings associations regulated by OTS.

We note that our conclusion is consistent with that reached by the General Counsel of the Federal Reserve Board on April 9, 1998 with respect to member banks of the Federal Reserve System.

If you have any questions concerning this matter, please call Raynette Gutrick at (202) 906-6265.

Very truly yours.



Deborah Dakin
Deputy Chief Counsel

Enclosures

¹ See e.g., OTS Chief Counsel letter dated October 29, 1991, relying on an opinion of the FHLBB General Counsel’s Office dated January 26, 1982 (copies enclosed). See also letters issued by the FHLBB General Counsel’s office dated December 15, 1986; April 2, 1986; and March 7, 1984 (copies enclosed).



Office of Thrift Supervision
Department of the Treasury

Harris Weinstein
Chief Counsel

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6404

October 29, 1991



RE: Virginia Lawyers' Trust Account Program

Dear Ms. [REDACTED]:

This responds to your inquiry regarding whether client funds held in trust by Virginia lawyers and law firms pursuant to Disciplinary Rule 9-102(E) of the Rules of the Supreme Court of Virginia, which establishes the Virginia interest on lawyers' trust account ("IOLTA") program, may be deposited in negotiable order of withdrawal ("NOW") accounts in savings associations regulated by the Office of Thrift Supervision ("OTS"). See 12 U.S.C.A. § 1832(a)(2)(West 1989).

We have reviewed the description of the Virginia IOLTA program set forth in your letter and attachments thereto, including the Virginia Attorney General opinion dated August 4, 1983, concluding that the entire beneficial interest in IOLTA accounts is held by the Virginia Law Foundation. Assuming the completeness and accuracy of the facts set forth in your letter and attachments and assuming that the Foundation is tax exempt under section 501(c)(3) of the Internal Revenue Code, as you represent, the Virginia IOLTA program appears substantially similar to the program discussed in an opinion of the Office of the General Counsel of the Federal Home Loan Bank Board dated January 26, 1982 (copy attached).

For the reasons set forth in the January 26, 1982 opinion, we conclude that Virginia IOLTA funds are eligible for deposit in NOW accounts in savings associations regulated by OTS.

Very truly yours,

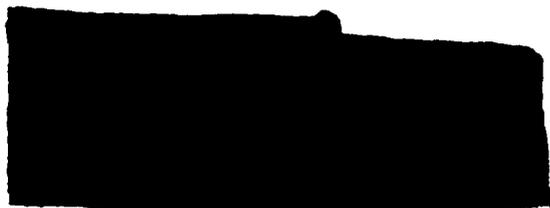
Harris Weinstein
Chief Counsel

Federal Home Loan Bank Board

JAN 26 1982



1700 G Street, N.W.
Washington, D.C. 20553
Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corp.



Dear Mr. [REDACTED]:

Thank you for your letter of November 3, 1981, regarding the Florida Bar Foundation's Interest on Trust Accounts Program. Please excuse our delay in responding.

You have asked whether client trust funds held by attorneys participating in the Interest on Trust Accounts Program may be deposited in NOW accounts at member institutions. The Federal NOW account legislation at 12 U.S.C. § 1832(a)(2) (Supp. IV 1980) provides that NOW accounts must "consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit" (emphasis added). The Interest on Trust Accounts Program permits Florida attorneys to deposit client funds in interest-bearing accounts at depository institutions. All interest earned on those accounts is forwarded by the depository institution to the Florida Bar Foundation, Inc., for use in public interest programs. In re Interest on Trust Accounts, 356 So. 2d 799 (Fla. 1978). It is understood that the Florida Bar Foundation, Inc., is a nonprofit organization that satisfies the section 1832(a)(2) eligibility criteria.

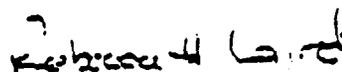
The history of the section 1832(a)(2) eligibility restriction indicates that Congress' primary objective was to prevent business organizations from earning interest on checking funds.¹ The words "beneficial interest" were intended to preclude evasion of this restriction through fiduciary arrangements; thus, the term should be applied to instances where ineligible organizations attempt through trust or other fiduciary arrangements to benefit from the payment of interest on their checking funds. In the instant case, corporate clients are not utilizing the Interest on Trust Funds

Program to evade Congressional intent: no benefit flows to them when a depository institution pays interest earned on their funds to the Florida Bar Foundation. It is therefore most consistent with the purpose of the statute to conclude that attorneys' client do not hold a prohibited beneficial interest in client trust NOW accounts opened pursuant to the Interest on Trust Accounts Program. Consequently, trust funds that are part of the Program may be deposited in NOW accounts at member institutions.

We note that this conclusion is the same as that reached in a staff opinion issued by the Federal Reserve Board on October 15, 1981.

Please contact this office if you should have further questions.

Sincerely,



Rebecca H. Laird
Senior Associate
General Counsel

1. See S. Rep. No. 96-368, 96th Cong., 1st Sess. 2 (1979); 22 Fed. Res. Bull. 192 (1936) (discussion of the purpose of the Regulation Q language that was ultimately incorporated verbatim in 12 U.S.C. § 1832(a)(2)).

MDS:lle 1/19/82, 1/26/82
(MDS disk)

Federal Home Loan Bank Board



1700 G Street, N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

December 15, 1986

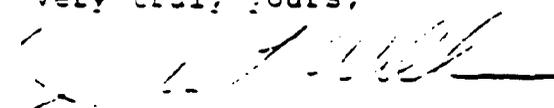
Dear

This is in response to your letter dated November 6, 1986, requesting an opinion from this Office of the Federal Home Loan Bank Board ("Bank Board") concerning whether Arkansas lawyers and law firms, who are authorized under Rule 1.15 of the Model Rules of Professional Conduct adopted by the Arkansas Supreme Court on December 16, 1985, to participate in the interest on lawyers' trust account ("IOLTA") program, are eligible to maintain client trust fund accounts in negotiable order of withdrawal ("NOW") accounts at institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") in connection with the Arkansas IOLTA program.

Enclosed is an opinion rendered by the Office of General Counsel of the Bank Board on January 26, 1982, determining that trust accounts established under a similar Florida trust program may be deposited in NOW accounts of insured institutions. As described in your letter and attachments, the Arkansas trust account program appears substantially similar in all material respects to that approved in the enclosed opinion.

Accordingly, Arkansas IOLTA funds should similarly be eligible for deposit in NOW accounts at FSLIC-insured institutions.

Very truly yours,


Julie L. Williams
Deputy General Counsel for
Policy and Corporate
Structure

Enclosure

Federal Home Loan Bank Board



1700 G Street N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

April 2, 1986

Dear Mr.

This is in response to your letter dated March 17, 1986, requesting an opinion from this Office of the Federal Home Loan Bank Board ("Bank Board") concerning whether Massachusetts lawyers and law firms, who are authorized under an Order of the Massachusetts Supreme Judicial Court to participate in the interest on lawyer trust account program ("IOLTA"), are eligible to maintain client trust fund accounts in negotiable order of withdrawal ("NOW") accounts at Federal Savings and Loan Insurance Corporation ("FSLIC")-insured institutions in connection with the Massachusetts IOLTA program.

Enclosed is an opinion rendered by the Office of General Counsel of the Bank Board on January 26, 1982, determining that trust accounts established under a similar Florida trust program may be deposited in NOW accounts of FSLIC-insured institutions. As described in your letter and attachments, the Massachusetts trust account program appears substantially similar in all material respects to that approved in the enclosed opinion.

Assuming the completeness and accuracy of the facts set out in your letter, and your receipt of a favorable opinion from the Attorney General of Massachusetts on the issue of beneficial interest (as referenced at page 3 of your letter), Massachusetts IOLTA funds should similarly be eligible for deposit in NOW accounts at FSLIC-insured institutions.

Very truly yours,

Julie L. Williams
Acting Deputy General
Counsel for Policy
& Corporate Structure

Enclosure

Federal Home Loan Bank Board



1700 G Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

March 7, 1984

Stan Sitnick, Esq.
P.O. Box 12443
Portland, Oregon 97212

Dear Mr. Sitnick:

This is in response to your letter of October 3, 1983, requesting an opinion concerning the availability of interest bearing negotiable order of withdrawal ("NOW") accounts at Federal Savings and Loan Insurance Corporation ("FSLIC") insured institutions in connection with the Oregon Interest on Lawyer Trust Accounts Program.

Enclosed please find an Office of the General Counsel opinion of January 26, 1982, determining that trust accounts established under a similar Florida trust program may be deposited in NOW accounts of FSLIC-insured institutions. As described in your letter, the Oregon trust account program appears substantially similar in all material respects to that approved in the enclosed opinion.

Accordingly, Oregon Interest on Lawyer Trust Accounts Program funds should similarly be eligible for deposit in NOW accounts at FSLIC-insured institutions.

Sincerely,

Wendy B. Samuel
Deputy Director
Regulations & Legislation