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VIA ELECTRONIC MAIL

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
regs.comments@federalreserve.gov

RE: Docket No. R-1723; RIN 7100-AF94; Modernizing the Community Reinvestment Act Regulatory Framework; Response to Advance Notice of Proposed Rulemaking

Dear Secretary Misback:

Please accept this letter from the National Association of IOLTA Programs (NAIP) regarding the Board of Governors of the Federal Reserve System's Advance Notice of Proposed Rulemaking which solicits input on modernizing the Board's Community Reinvestment Act regulatory and supervisory framework. This letter is sent on behalf of the NAIP organizational members identified below. Our comment includes a response to questions twenty-seven, twenty-nine, forty-two, and fifty-six.

Interest on Lawyer Trust Account ("IOLTA") programs are present in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. IOLTA programs benefit low-income communities in a manner which functions similar to the low-income housing tax credit (LIHTC) program. While the LIHTC program creates affordable housing for low-income families through the activities of a developer receiving financing to build affordable housing, the IOLTA program benefits low-income and disadvantaged people through financial institutions providing specifically designated IOLTA trust accounts to attorneys in private practice for which the state IOLTA program receives the beneficial interest in the income earned and utilizes this interest to fund civil legal aid grants.

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. 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.

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, IOLTA-funded legal aid provides help. Legal aid is also 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 harmed by the opioid crisis, as well as seniors who have fallen victim to financial exploitation.

Legal aid has always been important to helping lift individuals and communities out of poverty, but in the present moment the access to justice facilitated by IOLTA-funded civil legal aid has taken on additional urgency in relation to the CRA; in the words of Nancy Andrew of the Low Income Investment Fund:

It doesn't matter how many houses we build, how many billions of dollars we invest in transforming communities, how many schools we finance, or child care centers we support or jobs we create. If the people living in these communities wake up in the morning, knowing that society is tilted against them, the power of our work is undone. If the people we set out to help live 24 hours a day, seven days a week uncertain that they can trust society, uncertain they can count on civil institutions, laws, their fellow citizens for fair treatment, our investments are undone. We cannot achieve our mission of poverty alleviation without simultaneously including a focus on the system of laws, rights, institutions and social practices that condemn most of those we work with to second class citizenship and a lack of opportunity.¹

While there are 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. Financial institutions voluntarily choose whether or not to offer IOLTA accounts. Many IOLTA programs additionally encourage financial institutions that offer IOLTA accounts to voluntarily increase their investment in legal aid by paying a rate of interest above the market rate offered on similar interest bearing deposit products. Under the current regulatory

¹ Andrews, Nancy O. (2017) "A Hole in Our Vision: Race, Gender and Justice in Community Development" Federal Reserve Bank of San Francisco Community Development Investment Review, Volume 12(Issue 1), 11, <https://www.frbsf.org/community-development/files/cdir-building-on-what-works.pdf>.

framework, financial institutions have received varying degrees of CRA credit for their state IOLTA participation, depending on the regulating agency.²

When financial institutions apply a preferred interest rate to the beneficial interest held by IOLTA programs which exceeds that customarily paid for similar accounts, they do so in light of the important legal aid work funded by IOLTA programs. A financial institution's participation in a preferred interest rate program is fundamentally similar to other activities such as LIHTC tax credits which have been recognized as important avenues for banks to serve LMI individuals and meet their CRA obligations. Accordingly, the Federal Reserve should not only continue to recognize and reward financial institutions under the framework of the CRA for investing in low-income communities through IOLTA programs, but also make it clear to all banks and financial regulators that investment in legal aid merits CRA credit.

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 encourage you to consider ways in which appropriate weight can be given to a bank's decision to facilitate access to justice and upward economic mobility through its IOLTA participation, and additionally, we have provided answers to questions 27, 29, 42, and 56 to assist you in this process.

Question 27: Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?

Response: Yes, similar to programs such as the LIHTC tax credit program, where the financial element of the transaction or product is being utilized by a business or individual that would not meet the definition of a LMI individual, but which provides critically needed services for LMI individuals (whether access to affordable housing via the LIHTC, or access to justice in the form of expungement of old criminal records to enable employment, eviction defense representation, or domestic violence prevention as examples of IOLTA-interest funded civil legal aid), such products or services should receive CRA credit commensurate with the benefits to LMI individuals.

² 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 November 14, 2018); FDIC Community Reinvestment Act Performance Evaluation of ACNB Bank, at 26, 42, 55, and 69 (January 28, 2019), https://www7.fdic.gov/CRAPES/2019/07506_190128.PDF (last accessed January 14, 2021); 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 14, 2021).

The IOLTA funding model for legal aid functions because financial institutions offer IOLTA accounts to lawyers who are typically relatively affluent customers. Although these accounts are opened by lawyers, the real beneficiaries are LMI communities through the interest the financial institutions pay to state IOLTA programs to fund legal aid.

The data that can be collected from IOLTA accounts opened in middle- and upper-income areas to determine the benefit to LMI individuals and areas are the actual dollar amounts of interest generated by those accounts and paid to an IOLTA program.

Question 29: What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?

Response: In the context of determining the appropriate credit for a bank's IOLTA participation or other similar financial products that facilitate investment in nonprofit or state and local agencies that in turn serve LMI communities, we suggest financial institutions obtain an annual acknowledgement from the organization they partnered with to provide the innovative product or service that includes the following (which is currently provided to banks by many state IOLTA programs, and would not unduly create burdens for similar entities): (1) the organization's good faith calculation as to the monetary value received from the financial institution's investment or service during the period in question; (2) a description of the investment or service provided; (3) the number of LMI individuals served, and; (4) a description of the geographic area served by the investment or service (county, city, etc.). This approach will ensure that organizations with ties to the community are involved in providing feedback on the CRA performance of financial institutions and will also allow the flexibility needed to accommodate a wide variety of community development investments and services. Additionally, regulators will be able to consistently consider the total dollar value of the investment or service provided, the number of LMI individuals served, and the geographic area served by the investment or service.

Question 42: Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

Response: No, we do not believe that this is appropriate. While appropriate lending activities can have positive impacts and create opportunity in LMI communities, the dollar amounts of those lending activities can rapidly outpace the amounts banks spend on community investments, particularly investments in the form of donations to organizations providing community services to the people of LMI communities. We fear that some banks, when faced with a combined test, would choose the easy path of supporting a few large lending activities over the hard path of understanding and investing in smaller more people-focused community services.

In 2012, the Federal Reserve Bank of San Francisco and the Low Income Investment Fund published the book *Investing in What Works for America's Communities: Essays on People, Place & Purpose*. That book signaled a shift in what innovative and responsive Community Development looked like. The new vision created focused on solutions that address both the place and the people.³ That is, it takes more than putting up new buildings to revitalize a community and end poverty. Recently, Community Reinvestment has become aligned with programs that directly help people improve their lives. CRA credit for justice brought to the people of LMI communities with the help of IOLTA funded legal services is just one example of this realignment.

Question 56: How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

Response: The best method to determine if community service activities target low- or moderate-income individuals is through direct income screening of users of the community service. Unfortunately, the CRA's reliance on Area Median Income to determine if a community service user is an LMI individual can create complexity when a community service program assists residents of a broad geographic area. Legal aid and many federal programs screen with reference to the Federal Poverty Guidelines published annually by the Department of Health and Human Services. The Federal Reserve should specify a percent of the Federal Poverty Guideline, e.g., 200%; users of a community service programs with incomes below that level would be presumed to be low- or moderate-income regardless of AMI. Choosing an income threshold that references the Federal Poverty Guidelines would provide an annually updated income threshold and ease income screening for statewide community service activities. Programs that provide services either primarily or solely to individuals with incomes below the specified threshold would qualify for CRA credit.

If the Federal Reserve chooses an income threshold that references the Federal Poverty Guidelines to determine low- or moderate-income status, qualification for any government program that uses an equal or lower Federal Poverty Guideline based income threshold could be used as a proxy. Proxies that the Federal Reserve currently relies on for determining low- or moderate-income status, like eligibility for Medicaid and eligibility for the National School Lunch Program, are already based on the Federal Poverty Guidelines.

The Federal Reserve should not adopt purely geographic proxies. The CRA's purpose is to benefit the people who make up low- and moderate-income communities, not merely to place community

³ Choi, Laura (2017) "Foreword" Federal Reserve Bank of San Francisco Community Development Investment Review, Volume 12(Issue 1), 3, <https://www.frbsf.org/community-development/files/cdir-building-on-what-works.pdf> (last accessed January 14, 2021).

services in the geographic footprint of those communities. It is easy to conceive of a community service like a healthcare provider or childcare provider being physically situated within an LMI census tract and primarily serving higher-income people either from within or outside that LMI census tract. Because people, particularly higher-income people, are highly mobile, purely geographic proxies for LMI status are problematic.

As the Federal Reserve updates its regulations, it must ensure that innovative investments that benefit people of LMI communities, like interest payments to IOLTA programs and direct investment in civil legal aid, continue to be attractive vehicles through which banks pursue CRA credit. There is growing awareness that bringing vitality to LMI communities means more than putting up concrete and steel and more than consumer programs and low-cost bank accounts. Access to justice is necessary to help people escape from poverty, and that is precisely what IOLTA programs and civil legal aid offer LMI communities.

Respectfully Yours,
National Association of IOLTA Programs

Alabama Civil Justice Foundation	Missouri Lawyer Trust Account Foundation
Alabama Law Foundation	Nebraska Lawyers Trust Account Foundation
Arkansas Access to Justice Foundation	Nevada Supreme Court Access to Justice Commission
Colorado Lawyer Trust Account Foundation	New Hampshire Bar Association
Connecticut Bar Foundation	Ohio Access to Justice Foundation
Delaware Bar Foundation	Oklahoma Bar Foundation
Equal Justice Wyoming Foundation	Oregon Law Foundation
Georgia Bar Foundation	Pennsylvania IOLTA Board
Hawaii Justice Foundation	Rhode Island Bar Foundation
Indiana Bar Foundation	Tennessee Bar Foundation
IOLA Fund of New York	Texas Access to Justice Foundation
IOLTA Fund of the Bar of New Jersey	The District of Columbia Bar Foundation
Lawyers Trust Fund of Illinois	The Florida Bar Foundation
Legal Services Corporation of Virginia	Utah Bar Foundation
Maine Justice Foundation	Vermont Bar Foundation
Massachusetts IOLTA Commission	West Virginia State Bar
Michigan State Bar Foundation	Wisconsin Trust Account Foundation