

DEPOSITS INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

Questions have arisen regarding the FDIC insured status of funds held in IOLTA accounts. Federal regulations regarding insured deposits can be found at 12 C.F.R. Part 330. The FDIC has also issued at least two advisory opinions regarding the insured status of IOLTA deposits - FDIC Advisory Opinions 92-30 and 98-2.

Checking and Savings Accounts

Both FDIC Advisory Opinions indicate that the deposit account records of the banking institution must disclose the existence of a fiduciary relationship before insurance coverage based on fiduciary relationships will be recognized. If the deposit account records of the banking institution do disclose the existence of a fiduciary relationship, then FDIC insurance (up to applicable limits) will be available for each client or third person whose funds are held in the account, provided that either the banking institution or the lawyer maintains accurate records as to the ownership of funds held in the account.

Under Rule 1.15 of the Pennsylvania Rules of Professional Conduct, it is the responsibility of the lawyer to identify IOLTA accounts as IOLTA accounts, and also the responsibility of the lawyer to maintain complete records regarding the funds, including ownership thereof. The IOLTA designation is sufficient to disclose the existence of a fiduciary relationship. Lawyers should also refer to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement for additional requirements regarding Trust Accounts, including IOLTA Accounts.

For example, funds belonging to an individual but held in an IOLTA account would be insured up to \$100,000, assuming that the individual has no other accounts with the banking institution. FDIC regulations set forth applicable rules regarding insurance coverage of deposits owned by one or more individuals or entities.

Sweep Accounts

Some lawyers use sweep account arrangements for their IOLTA accounts. In a sweep account arrangement, some funds are maintained in the IOLTA checking account, and the funds actually in the IOLTA checking account are covered by FDIC insurance in accordance with applicable regulations. Deposited funds above a limit established or negotiated by the banking institution are “swept” into an alternate investment vehicle. IOLTA Comparability Guidance requires that the alternate investment vehicle used for the “sweep” must consist only of United States Government Securities or that the “sweep” must be fully collateralized by United States Government Securities. Specific investment vehicles will vary among banks. Lawyers using sweep account arrangements should take reasonable steps to assess the structure of the particular sweep arrangement and the safety of the investments used in a sweep account arrangement before placing IOLTA funds into a sweep account. Provided that the sweep arrangement is properly structured and secured, it may be prudent for a lawyer to consider using a sweep account if the lawyer is holding funds of a client or third party in excess of applicable FDIC insurance limits.

Additional Information

Additional information regarding the Federal Deposit Insurance Corporation and deposit insurance can be found at www.fdic.gov.