

November 14, 2018

VIA ELECTRONIC MAIL

Honorable Joseph M. Otting
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219
regs.comments@occ.treas.gov

RE: Docket ID OCC-2018-0008; Reforming the Community Reinvestment Act Regulatory Framework

Dear Comptroller Otting:

We, the undersigned state Interest on Lawyers Trust Accounts (IOLTA) programs, write in support of improvements to the Community Reinvestment Act (CRA)'s regulations that build on the CRA's legacy of fostering inclusion and upward economic mobility. IOLTA programs are present in all fifty states, the District of Columbia, and the Virgin Islands. Many financial institutions choose to participate in IOLTA programs, and this important public-private partnership facilitates the community development encouraged by the CRA.

Specifically, we believe that it is vitally important that updates to the regulations implementing the Community Reinvestment Act include the provision for: (1) ensuring that any amended definition of the types of activities that are considered to further community development include civil legal aid services for low-income and disadvantaged populations as these services form a vital link in the supports necessary for low and moderate income (LMI) individuals and families to become economically self-sufficient and participate more fully in our national economy; (2) directing regulators to provide a limited number of nonbinding "pre-examination" eligibility determinations in response to requests from financial institutions or organizations serving LMI communities as to whether a particular potential investment or service is likely to qualify for CRA credit, and; (3) providing standardized guidelines describing the documentation necessary for financial institutions to receive CRA credit for community development investments or services that support organizations serving LMI communities, so that these organizations are better able to develop and present CRA opportunities to financial institutions as well as recognize those institutions that continue to take a leadership role in supporting opportunity in LMI communities.

The concept underlying the IOLTA public-private partnership 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 authority and is used to fund civil legal aid for low-income and disadvantaged individuals and families. 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 a variety of additional civil legal assistance - all of which are critical to the foundational capacity of low-income families to obtain safe housing, sustain employment, and thereby reap the benefits that come from being able to more fully participate in our economic system.¹

(1) Importance of Considering Civil Legal Aid in the Context of Community Development

IOLTA-funded civil legal aid is a vital link in the supports which are necessary to help LMI individuals and families receive the assistance they need to become economically self-sufficient, while at the same time stabilizing and revitalizing disadvantaged communities.

Evidence of this critical link and the resulting economic impact can be found in communities large and small across our nation. For example, in 2015, civil legal aid organizations in Maine helped recover \$710,000 that had been previously lost due to financial exploitation of the

¹ See generally, Pennsylvania Legislative Budget & Finance Committee, *The Commonwealth's Access to Justice Act* at 39; 46 (October 2016), <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/572.pdf> (last accessed November 14, 2018); Montana Legal Services Association, *The Impact of Civil Legal Aid to the State of Montana* (2015), <https://courts.mt.gov/portals/189/supreme/boards/a2j/docs/Economic%20Impact%20Civil%20Legal%20Aid%20Final.pdf> (last accessed November 14, 2018); Todd Gabe, *Economic Impact of Civil Legal Aid Services in Maine* (November 2016), <https://www.justicemaine.org/wp-content/uploads/Gabe-Report-Submitted-November-14-2016.pdf> (last accessed November 14, 2018); Louisiana Bar Foundation, *The Economic Impact and Social Return on Investment of Civil Legal Aid Services in the State of Louisiana*, (2016), <http://files.lsba.org/documents/ATJ/EIS2017.pdf> (last accessed November 14, 2018); Paola Cavallari, et. al., *Justice Measured: An Assessment of the Economic Impact of Civil Legal Aid in Arkansas* (October 2014), <https://arkansasjustice.org/wp-content/uploads/2017/04/AR-Economic-Impact-Study-2014-combined-1.pdf> (last accessed November 14, 2018); Access to Justice Commission, *Economic Impact of Civil Legal Services in Maryland* (2013), <https://mdcourts.gov/sites/default/files/import/mdatjc/pdfs/economicimpactofcivillegalservicesinmd201301.pdf> (last accessed November 14, 2018).

elderly;² and in Arkansas in 2013, legal aid intervention in domestic abuse cases saved \$3.9 million in avoided medical and mental health costs.³ Similarly, in FY10-11, 1,715 low-income Pennsylvania families were able to avoid the need for emergency shelter due to the assistance provided by civil legal aid programs, resulting in a savings of \$14,794 per family and \$25 million in total;⁴ while in 2009, civil legal assistance in New York brought nearly \$21 million in earned income tax credits to the state.⁵ Two recent studies that utilized the U.S. Bureau of Economic Analysis's Regional Input-Output Multiplier System (RIMS) conducted in Florida⁶ and Nevada⁷ that examined the economic multiplier effects of legal aid found a \$7 return on investment for every \$1 invested in legal aid funding. Further, the tangible economic benefits achieved by civil legal aid flow directly to the individuals and families the CRA was designed to assist as the eligibility criteria to receive IOLTA-funded legal aid is often much more stringent than that of the CRA. For example, in Pennsylvania, in order to be eligible for IOLTA-interest funded civil legal aid, a potential recipient's family monthly gross income must not exceed 187.5% of the federal poverty guidelines,⁸ while other states cap eligibility at 125%. Additionally, the vast majority of legal aid providers who use IOLTA-interest funded grants to deliver civil legal aid services are nonprofit 501(c)(3) organizations that are deeply rooted in the communities they serve.

² Todd Gabe, *Economic Impact of Civil Legal Aid Services in Maine* at 12 (November 2016), <https://www.justicemaine.org/wp-content/uploads/Gabe-Report-Submitted-November-14-2016.pdf> (last accessed November 14, 2018).

³ Paola Cavallari, et. al., *Justice Measured: An Assessment of the Economic Impact of Civil Legal Aid in Arkansas* at 22 (October 2014), <https://arkansasjustice.org/wp-content/uploads/2017/04/AR-Economic-Impact-Study-2014-combined-1.pdf> (last accessed November 14, 2018).

⁴ Pennsylvania Legislative Budget & Finance Committee, *The Commonwealth's Access to Justice Act* at 39 (October 2016), <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/572.pdf> (last accessed November 14, 2018).

⁵ Report to the Chief Judge of the State of New York, *The Task Force to Expand Access to Civil Legal Services in New York*, at 13 (2010), http://www.greatprograms.org/Economic_impact_assessment/pdfs/J-1-NYTaskForce-ReportOnAccessToCivilLegalAid.pdf (last accessed November 14, 2018).

⁶ Resource for Great Programs, *Economic Impacts of Civil Legal Aid Organization in Florida* (The Florida Bar Foundation) (November 2016), <https://fbfcdn-lwncgfpypgomdk2qxt0e.stackpathdns.com/wp-content/uploads/2017/01/Economic-Impacts-of-Civil-Legal-Aid-Organizations-in-Florida.pdf> (last accessed November 14, 2018).

⁷ Resource for Great Programs, *Executive Summary of the 2017-18 Nevada Statewide Study of Legal Needs and Economic Impacts* (Nevada Access to Justice Commission) (2018), <https://www.nvbar.org/wp-content/uploads/Final-EXECUTIVE-SUMMARY-NV-Legal-Needs-Study-101118.pdf> (last accessed November 14, 2018); see also, Highlights of the 2017-18 Nevada Statewide Study of Legal Needs and Economic Impacts, <https://www.nvbar.org/wp-content/uploads/SBN-AM-ENTIRE-PPT-NV-ATJ-Legal-Needs-Study-Slides-UDATE-6-23-2018.pdf> (last accessed November 14, 2018).

⁸ See Pennsylvania IOLTA Board Specialized Legal Services Summary available at: <https://www.paiolta.org/grants/eligibility-applications/#specialized-legal-services> (last accessed November 14, 2018).

Participation in a state IOLTA program is optional for financial institutions, and accordingly, many IOLTA authorities have undertaken efforts to provide annual CRA Acknowledgement Reports to institutions which describe the community development impact of their IOLTA participation. 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 authority at a rate of interest above the market rate offered on similar interest bearing deposit products.⁹ Under the current regulatory framework, financial institutions typically receive CRA credit for their state IOLTA participation under the community development "investment test"¹⁰ or the community development "service test."¹¹

As the OCC considers opportunities to modernize and streamline the regulations implementing the CRA, we urge you to ensure that a financial institution's support for IOLTA-funded civil legal aid is regularly considered in CRA Performance Evaluations. Additionally, we encourage the OCC to consider standardizing CRA examination procedures so that a financial institution's IOLTA participation is evaluated consistently in each state across the nation, given the common nature of the public-private partnership underpinning IOLTA programs. Further, efforts to standardize CRA examination procedures should ensure that financial institutions that choose to support the critical community development facilitated by IOLTA-funded legal aid (as verified by the documentation provided to them by their respective state IOLTA Authority) are afforded significant CRA credit commensurate with its substantial economic multiplier effects and community development impact.

(2) Providing Nonbinding "Pre-examination" CRA Eligibility Determinations to Financial Institutions and Organizations Serving Low to Moderate Income Communities

⁹ Some states follow a two tiered approach whereby participation in the IOLTA program requires that financial institutions must at least match the market rate for similar deposit products in order to offer IOLTA accounts, and those that voluntarily choose to exceed that rate are provided with CRA Acknowledgment Reports (such as Pennsylvania) while other states (such as Nevada) establish a single optional participation rate which is greater than the market rate.

¹⁰ 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); OCC, Community Reinvestment Act Performance Evaluation of Union Bank, N.A. at 33 (March 31, 2012), <http://www.occ.gov/static/cra/craeval/feb13/21541.pdf> (last accessed November 14, 2018).

¹¹ See FDIC, Community Reinvestment Act Performance Evaluation of First Priority Bank, N.A. at 18 (April 10, 2017), https://www5.fdic.gov/CRAPES/2017/58092_170410.PDF (last accessed November 14, 2018); FDIC Community Reinvestment Act Performance Evaluation of ACNB Bank at 17 (March 15, 2016), https://www5.fdic.gov/CRAPES/2016/07506_160315.PDF (last accessed November 14, 2018).

We agree with the recommendation in the Treasury Department's April 3, 2018 Memorandum that financial institutions should be able to request CRA eligibility predeterminations from regulators on specific potential investments or services.¹² Additionally, it is equally important that organizations directly involved in serving LMI communities targeted by the CRA likewise be able to request a limited number of nonbinding CRA eligibility predeterminations. This approach will help strike the appropriate balance between encouraging financial institutions to consider innovative investment and service opportunities developed by organizations with deep ties to the communities they serve, while also reducing uncertainty related to whether a new activity will likely be eligible for CRA credit.

(3) Publishing Guidelines Describing the Supporting Documentation Necessary to Substantiate Qualifying Community Development Investments and Services

While community development investment and service activities may not lend themselves to the same type of electronic reporting used for CRA-related lending reported by census tract, we respectfully suggest that an appropriate balance must be sought between recognizing vital community development investments and services, providing regulators with objective benchmarks, and valuing the input of organizations serving LMI communities. To accomplish this, regulators should consider requiring financial institutions to obtain an annual acknowledgement from the organization they partnered with to provide community development investments or services that includes the following: (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.

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 we are proud to play our part in this important

¹² Memorandum from the U.S. Department of the Treasury to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation at 8 (April 3, 2018), <https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf> (last accessed November 14, 2018).

endeavor. On behalf of the undersigned state IOLTA authorities, our legal aid grantees, and most importantly, the individuals and families that utilize civil legal assistance to obtain safe housing, sustain employment, and thereby reap the benefits that come from being able to more fully participate in our economic system, we thank you in advance for your careful consideration of our comments.

Respectfully Yours,



Colorado Lawyer Trust Account Foundation



The Florida Bar Foundation



Lawyers Trust Fund of Illinois



Kansas Bar Foundation



Maryland Legal Services Corporation



Michigan State Bar Foundation



Montana Justice Foundation



Nevada Bar Foundation

THE IOLTA FUND
of the Bar of New Jersey
The IOLTA Fund of the Bar of New Jersey

 **Ohio Legal Assistance Foundation**
FUNDING LAWYERS WHO CHANGE LIVES
Ohio Legal Assistance Foundation



Oregon Law Foundation

**Pennsylvania Interest on
Lawyers Trust Account Board**
HELPING TO SECURE EQUAL ACCESS TO JUSTICE

Pennsylvania Interest on Lawyers Trust Account Board

**TEXAS | ACCESS to JUSTICE
FOUNDATION**

Texas Access to Justice Foundation



Utah Bar Foundation

Vermont Bar Foundation
Promoting Equal Access to Justice for All Vermonters

Vermont Bar Foundation

L S C V
Legal Services Corporation of Virginia
Legal Services Corporation of Virginia

Equal Justice Wyoming Foundation
Equal Justice Wyoming Foundation