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November 12, 2008

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington DC 20429

Re: Comments on IOLTA and the Temporary Liquidity Guarantee Program

Dear Mr. Feldman:

I am writing as President of the National Organization of Bar Counsel (NOBC), an organization comprised of lawyers whose jobs may include one or more of the following: investigating and prosecuting complaints of attorney misconduct; providing informal ethical guidance to lawyers on topics that include the appropriate handling of client funds; processing claims made to a state's client protection fund; and participating in the drafting of formal and informal ethics opinions for lawyers. Many of our members have spent their entire legal careers in these pursuits and, as such, know the true value of requiring that lawyers maintain client funds in a trust account, separate from the lawyers' monies.

On behalf of the NOBC, I am urging the FDIC to consider modifying the recently announced Temporary Liquidity Guarantee Program (TLGP) to clarify that Interest on Lawyer Trust Accounts ("IOLTA" accounts) fall within the category of "noninterest-bearing transaction accounts" that is eligible for unlimited insurance under TLGP.

As you may be aware, ethical rules in place in every state require lawyers to deposit funds not belonging to the lawyer – monies received from clients or third parties – in a trust account separate from the lawyer's own money. The *practical* reason for maintenance of these trust accounts is to protect the client or third party's funds from the vicissitudes that might befall a lawyer's operating account, through no fault of the client or third party. In reality, clients and third parties whose funds are held by a lawyer typically have little or no say in what institution the lawyer chooses for establishment of a trust account.

IOLTA programs have been established in all fifty states. In thirty-seven of those states, lawyers are required to maintain an IOLTA account as their trust account whenever a client's funds cannot earn net interest for the client if placed in an individual account. The interest generated by IOLTA accounts is not paid to either the lawyer or the client or third party whose funds comprise the balance in the account. In that sense, IOLTA accounts are truly "noninterest-bearing transaction accounts" because neither the owner nor the lawyer account holder earn interest from them. Instead the interest is paid to a non-profit organization in each state and utilized to support the provision of civil legal aid to the poor, the administration of justice, and law-related education, all in support of the concept of equal access to justice for all.

With the recently announced TLGP, lawyers who periodically receive funds on behalf of clients that exceed the individual depositor $250,000 limit are challenged with whether to maintain the money in an IOLTA account that is not fully insured or to place the funds in a noninterest-bearing account in order to ensure full coverage in the event of a failure of the institution.[1] Under the current language of the TLGP, any lawyer choosing to leave amounts above $250,000 in an interest-bearing IOLTA account may be placing the client's money at risk – even though the client did not choose the bank and does not earn interest on the money.

The NOBC urges the FDIC to clarify that IOLTA accounts are covered within the TLGP. The persons whose funds are held in IOLTA accounts do not earn interest on those deposits. The owners of those accounts in a very real sense utilize them as transactional accounts as the money comes in and is paid out to third parties. They <u>are</u> in operation noninterest-bearing transaction accounts.

Finally, including IOLTA accounts within the definition of "noninterest-bearing transaction account" is consistent with the FDIC's expressed intent of seeking to "preserve confidence and encourage liquidity in the banking system" and to "avoid or mitigate serious adverse effects on economic conditions and financial stability." If lawyers are assured that the clients' monies will be safeguarded without having to be moved any time a single client's funds on hand exceeds $250,000, it will provide for stability within a single institution. In addition, if an institution should fail, the client will not be faced with a loss sustained through no fault of theirs in the selection of the institution. It is also worth noting that it is impractical for lawyers to split deposits over $250,000 into multiple financial institutions because a larger fund is often on deposit in an IOLTA account only long enough for the check to clear and disbursements to be made. Short of attempting to divide larger deposits, some lawyers may want to move their entire IOLTA account from their community bank to the perceived greater safety of a larger bank, which is at odds with the TLGP goals of stability for these accounts.

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[1] It should be noted that moving the money into a *non*interest bearing account in the client's name, as opposed to moving it to an interest-bearing account, might subject the lawyer to discipline under rules in many states.

The NOBC also recognizes that another ethical obligation of lawyers is to help assure access to justice for those who are unable to pay for a lawyer. We believe that IOLTA programs are an important way of addressing this challenge by providing important financial assistance to nonprofit organizations to assure that low-income families have access to justice. NOBC is willing to provide any additional informational that might be helpful with regard to attorney ethics and regulation as this request is being considered. Please also note that I can be reached at (517) 346-6328 if you have any questions or concerns.

Sincerely,

Dawn M. Evans
President
National Organization of Bar Counsel

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